

From: (b) (7)(C)
Sent: Wednesday, April 27, 2011 8:22 AM
To: (b) (7)(C)
Subject: RE:

(b) (7)(C)

Just a heads up, I have not received any DCN approval as of today.

Thanks

(b) (7)(C)

From: (b) (7)(C)
Sent: Monday, April 25, 2011 12:25 PM
To: (b) (7)(C)
Subject: RE:

(b) (7)(C)

I completed the drop down codes and we should be all good. If you do not receive a DCN from someone in Phoenix in the next 24 hours please let me know I will check for you.

Thanks again,

(b) (7)(C)

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From: (b) (7)(C)
Sent: Friday, April 22, 2011 5:37 PM
To: (b) (7)(C)
Subject:

(b) (7)(C)

Just sent you the DCN request. Sorry it is late. I also left a few drop downs blank because I was not sure about proper coding. I will send you the voucher after I get the approval back from your side.

Thanks (b) (7)(C) and be safe,

(b) (7)(C)

Employee 2

1382

SPECIAL AGENT (b) (7)(C)
PROJECT OFFICER
OFFICE OF FIELD OPERATIONS
FIREARMS OPERATIONS DIVISION
CELL (b) (7)(C)
DESK (202) 648-(b) (7)(C)

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From: (b) (7)(C)
Sent: Monday, April 26, 2011 6:14:45 PM
To: (b) (7)(C)
Subject: FW:

1383

FYI,

Waiting on (b) (7)(C) to respond for suspect gun info.

-----Original Message-----

From: (b) (7)(C)
Sent: Tuesday, April 26, 2011 2:19 PM
To: (b) (7)(C)
Cc: (b) (7)(C)
Subject: RE:

(b) (7)(C) where did the converted Suspect Guns files get sent?

(b) (7)(C)

Special Agent
Chief, Law Enforcement Support Branch
National Tracing Center
Bureau of Alcohol, Tobacco, Firearms and Explosives
244 Needy Road
Martinsburg, WV 25405
(304) 260 (b) (7)(C)

Don't embrace mediocrity!
Quid Opus, Opus Bene.

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-----Original Message-----

From: (b) (7)(C)
Sent: Tuesday, April 26, 2011 2:10 PM
To: (b) (7)(C)
Subject:

(b) (7)(C)

Which drive are you referring to the fast and furious drive?

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From: (b) (7)(C)
Sent: Tuesday, April 26, 2011 2:33 PM
To: (b) (7)(C)
Subject: Re: Acting Sup.

(b) (7)(C)

From: (b) (7)(C)
To: (b) (7)(C)
Sent: Tue Apr 26 14:19:18 2011
Subject: Acting Sup.

(b) (7)(C)

Could you tell me the name of the acting Group VII supervisor in Phoenix? I want to invite him to the conference call this Thursday as we are now inviting all Gunrunner supervisors. Thanks.

(b) (7)(C)

*Program Analyst
Firearms Operations Division
Office of Field Operations
Bureau of ATF
202-648-*(b) (7)(C)

(b) (7)(C)

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Subject: Accepted: Fast & Furious mtg.
Location: Employee 2 (b) (7)(C) office

1385

Start: 4/26/2011 2:00 PM
End: 4/26/2011 2:30 PM
Show Time As: Busy

Recurrence: (none)

Required Attendees: (b) (7)(C)

Resources: (b) (7)(C) office

From: (b) (7)(C)
Sent: Tuesday, April 26, 2011 9:10 AM
To: (b) (7)(C)
Subject: FW: Updated Spreadsheet

FYI

From: McMahon, William G.
Sent: Monday, April 25, 2011 5:43 PM
To: (b) (7)(C)
Subject: RE: Updated Spreadsheet

(b) (7)(C)

Could you come down tomorrow and brief me and (b) (7)(C) on the spreadsheet? If you could just get with (b) (7)(C) and find out what time is best for both of us that would be great.

Thanks,

William G. McMahon
Deputy Assistant Director (West)
Office of Field Operations
Office - (202) 648-(b) (7)(C)

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From: Needles, James R.
Sent: Monday, April 25, 2011 3:42 PM
To: Newell, William D.; McMahon, William G.
Cc: (b) (7)(C)
Subject: FW: Updated Spreadsheet

If you have questions, (b) (7)(C) can explain this to you.

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From: (b) (7)(C)
Sent: Monday, April 25, 2011 2:20:30 PM
To: (b) (7)(C)
Subject: RE:

1387

No problem (b) (7)(C) I will just wait for the approval and send everything to you at once.

Be safe,

(b) (7)(C)

-----Original Message-----

From: (b) (7)(C)
Sent: Monday, April 25, 2011 12:21 PM
To: (b) (7)(C)
Subject: RE:

The funding strip will include and account for the OCDETF funding code. If you can just hold onto this until the accounting strips are included and then submit the entire voucher that would be great. Otherwise I will just lose and misplace it.

Thanks again,

(b) (7)(C)

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-----Original Message-----

From: (b) (7)(C)
Sent: Monday, April 25, 2011 7:09 AM
To: (b) (7)(C)
Subject: FW:

(b) (7)(C)

I remember saying I would not bother you with this little stuff. Sorry. Here is my partially completed travel voucher without the voucher number and without the accounting strip breakdown since I do not have these yet. Do you want me to hang on this voucher until I get that info and then fax or scan over the voucher in its entirety to include signature, receipts etc., to you? Not sure how you want me to proceed since this is an OCDETF thing.

Thanks (b) (7)(C)

(b) (7)(C)

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-----Original Message-----

From: (b) (7)(C)
Sent: Monday, April 25, 2011 5:26 AM
To: (b) (7)(C)
Subject:

This Employee 2 sent from "RNPE9F37A" (Aficio MP 3500).

1388

Scan Date: 04.25.2011 09:26:22 (+0000)

Queries to: richol@atf.gov

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From: (b) (7)(C)

Sent: Monday, April 25, 2011 10:29 AM

To: (b) (7)(C)

Subject: Firearm purchases - per date w recover.xlsxDRAFT

Attachments: Firearm purchases - per date w recover.xlsx

The Fast and The Furious - 2008R28105

Firearm Purchases and Recoveries

page 1 of 15
24 Apr 2011

ROI	work day	Date	Straw Purchaser	y	Total # Firearms	SURVEIL	SURVEILLANCE NOTES	When	#	Where Recovered
(b)(3)	(P.L.	112-55	125	Stat	552)					
(b)(3)	(P.L.	112-55	125	Stat	552)					
(b)(3)	(P.L.	112-55	125	Stat	552)					
(b)(3)	(P.L.	112-55	125	Stat	552)					

The Fast and The Furious - 2008R28165

Firearm Purchases and Recoveries

page 2 of 15
24 April 2011

ROI	work day	Date	Straw Purchaser	#	Total # Firearms	SURVEIL	SURVEILLANCE NOTES	When	#	Where Recovered
(b)(3)	(P.L. 112-55	125	Stat	552)						
(b)(3)	(P.L. 112-55	125	Stat	552)						
(b)(3)	(P.L. 112-55	125	Stat	552)						
(b)(3)	(P.L. 112-55	125	Stat	552)						
(b)(3)	(P.L. 112-55	125	Stat	552)						
(b)(3)	(P.L. 112-55	125	Stat	552)						
(b)(3)	(P.L. 112-55	125	Stat	552)						

The Fast and The Furious - 2008R28105

Firearm Purchases and Recoveries

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24 April 2011

ROI	work day	Date	Straw Purchaser	# Firearms	Total # Firearms Recovered	SURVEIL	SURVEILLANCE NOTES	When Recovered	# Where Recovered
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				

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Firearm Purchases and Recoveries

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24 April 2011

ROI	work-key	Date	Straw Purchaser	# Firearms	Total # Firearms Recovered	SURVEIL	SURVEILLANCE NOTES	When Recovered	# Where Recovered
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				

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Firearm Purchases and Recoveries

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24 April 2011

ROI	work-key	Date	Straw Purchaser	# Firearms	Total # Firearms	# Firearms Recovered	SURVEIL	SURVEILLANCE NOTES	When Recovered	# Where Recovered
(b)(3)	(P.L.	112-55	125	Stat	552)					
(b)(3)	(P.L.	112-55	125	Stat	552)					
(b)(3)	(P.L.	112-55	125	Stat	552)					
(b)(3)	(P.L.	112-55	125	Stat	552)					
(b)(3)	(P.L.	112-55	125	Stat	552)					

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Firearm Purchases and Recoveries

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24 April 2011

ROI	work-key	Date	Straw Purchaser	# Firearms	Total # Firearms Recovered	SURVEIL	SURVEILLANCE NOTES	When Recovered	# Where Recovered
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				

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Firearm Purchases and Recoveries

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24 April 2011

ROI	work-key	Date	Straw Purchaser	# Firearms	Total # Firearms Recovered	SURVEIL # Firearms Recovered	SURVEILLANCE NOTES	When Recovered	# Where Recovered
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				

The Fast and The Furious - 2008R28165

Firearm Purchases and Recoveries

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24 Apr 2011

ROI	work-key	Date	Straw Purchaser	# firearms	Total Firearms	# Firearms Recovered	SURVEIL	SURVEILLANCE NOTES	When Recovered	# S&F5	Where Recovered
(b)(3)	(P.L.	112-55	125	Stat	552)						
(b)(3)	(P.L.	112-55	125	Stat	552)						
(b)(3)	(P.L.	112-55	125	Stat	552)						
(b)(3)	(P.L.	112-55	125	Stat	552)						

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Firearm Purchases and Recoveries

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24 April 2011

ROI	work-key	Date	Straw Purchaser	# Firearms	Total # Firearms Recovered	SURVEIL	SURVEILLANCE NOTES	When Recovered	# Where Recovered
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				

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Firearm Purchases and Recoveries

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24 April 2011

ROI	work-key	Date	Straw Purchaser	# Firearms	Total # Firearms Recovered	SURVEIL	SURVEILLANCE NOTES	When Recovered	# Where Recovered
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				

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Firearm Purchases and Recoveries

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24 April 2011

ROI	work-key	Date	Straw Purchaser	# Firearms	Total # Firearms Recovered	SURVEIL	SURVEILLANCE NOTES	When Recovered	# Where Recovered
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				

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Firearm Purchases and Recoveries

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24 April 2011

ROI	work-key	Date	Straw Purchaser	# Firearms	Total # Firearms Recovered	SURVEIL	SURVEILLANCE NOTES	When Recovered	# Where Recovered
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				

The Fast and The Furious - 2008R28105

Firearm Purchases and Recoveries

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24 April 2011

ROI	work day	Date	Straw Purchaser	# Firearms	Total # Firearms Purchased	SURVEIL	SURVEILLANCE NOTES	When Purchased	# Where Recovered
(b)(3) (P.L. 112-55 125 Stat 552)									

The Fast and The Furious - 2008R28105

Firearm Purchases and Recoveries

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21 April 2011

ROI	work-day	Date	Straw Purchaser	# Firearms	Total # Firearms Recovered	SURVEIL	SURVEILLANCE NOTES	When Recovered	# Where Recovered
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				

(b)(3) (P.L. 112-55 125 Stat 552)

ROI	Week Day	Date	Straw Purchaser	# Firearms	Total Firearms	# Recoveries	SURVEL	SURVEILLANCE NOTES	When Recovered	# Guns	Where Recovered
(b)(3)	(P.L.	112-55	125	Stat	552)						
(b)(3)	(P.L.	112-55	125	Stat	552)						
(b)(3)	(P.L.	112-55	125	Stat	552)						
(b)(3)	(P.L.	112-55	125	Stat	552)						
(b)(3)	(P.L.	112-55	125	Stat	552)						
(b)(3)	(P.L.	112-55	125	Stat	552)						

(b)(3) (P.L. 112-55 125 Stat 552)
(b)(3) (P.L. 112-55 125 Stat 552)
(b)(3) (P.L. 112-55 125 Stat 552)
(b)(3) (P.L. 112-55 125 Stat 552)
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Fast and Furious 2009R29165

Firearm Purchases and Recoveries

page 1 of 16
22 APR 11

ROI	Date	Straw Purchaser	# Firearms	Total Firearms	# Firearms Recovered	SURVEIL	EYES ON # F/A	SURVEILLANCE NOTES	"Eyes On" Recoveries			When Recovered	# guns	Where Recovered
									FAST & FURIOUS	OTHER US LE	MEXICO			
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									

Fast and Furious 2009R29165

Firearm Purchases and Recoveries

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22 APR 11

ROI	Date	Straw Purchaser	# Firearms	Total Firearms	# Firearms Recovered	SURVEIL # F/A	EYES ON	SURVEILLANCE NOTES	"Eyes On" Recoveries			When Recovered	# guns	Where Recovered
									FAST & FURIOUS	OTHER US LE	MEXICO			
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									

Fast and Furious 2009R29165

Firearm Purchases and Recoveries

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22 APR 11

ROI	Date	Straw Purchaser	# firearms	Total Firearms	# Firearms Recovered	SURVEIL	EYES ON # F/A	SURVEILLANCE NOTES	"Eyes On" Recoveries			When Recovered	# guns	Where Recovered
									FAST & FURIOUS	OTHER US LE	MEXICO			
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									

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Firearm Purchases and Recoveries

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22 APR 11

ROI	Date	Straw Purchaser	# firearms	Total Firearms	# Firearms Recovered	SURVEIL # F/A	EYES ON	SURVEILLANCE NOTES	"Eyes On" Recoveries			When Recovered	# guns	Where Recovered
									FAST & FURIOUS	OTHER US LE	MEXICO			
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									

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Firearm Purchases and Recoveries

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22 APR 11

ROI	Date	Straw Purchaser	# firearms	Total Firearms	# Firearms Recovered	SURVEIL	EYES ON # F/A	SURVEILLANCE NOTES	"Eyes On" Recoveries			When Recovered	# guns	Where Recovered
									FAST & FURIOUS	OTHER US LE	MEXICO			
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									

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Firearm Purchases and Recoveries

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22 APR 11

ROI	Date	Straw Purchaser	# Firearms	Total Firearms	# Firearms Recovered	SURVEIL # F/A	EYES ON # F/A	SURVEILLANCE NOTES	"Eyes On" Recoveries			When Recovered	# guns	Where Recovered
									FAST & FURIOUS	OTHER US LE	MEXICO			
(b)(3)	(P.L. 112-55	125	Stat	552)										
(b)(3)	(P.L. 112-55	125	Stat	552)										
(b)(3)	(P.L. 112-55	125	Stat	552)										
(b)(3)	(P.L. 112-55	125	Stat	552)										
(b)(3)	(P.L. 112-55	125	Stat	552)										
(b)(3)	(P.L. 112-55	125	Stat	552)										
(b)(3)	(P.L. 112-55	125	Stat	552)										

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Firearm Purchases and Recoveries

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22 APR 11

ROI	Date	Straw Purchaser	# Firearms	Total Firearms	# Firearms Recovered	SURVEIL	EYES ON # F/A	SURVEILLANCE NOTES	"Eyes On" Recoveries			When Recovered	# guns	Where Recovered
									FAST & FURIOUS	OTHER US LE	MEXICO			
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									

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Firearm Purchases and Recoveries

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22 APR 11

ROI	Date	Straw Purchaser	# firearms	Total Firearms	# Firearms Recovered	SURVEIL	EYES ON # F/A	SURVEILLANCE NOTES	"Eyes On" Recoveries			When Recovered	# guns	Where Recovered
									FAST & FURIOUS	OTHER US LE	MEXICO			
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									

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Firearm Purchases and Recoveries

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22 APR 11

ROI	Date	Straw Purchaser	# firearms	Total Firearms	# Firearms Recovered	SURVEIL	EYES ON # F/A	SURVEILLANCE NOTES	"Eyes On" Recoveries			When Recovered	# guns	Where Recovered
									FAST & FURIOUS	OTHER US LE	MEXICO			
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									

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Firearm Purchases and Recoveries

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22 APR 11

ROI	Date	Straw Purchaser	# firearms	Total Firearms	# Firearms Recovered	SURVEIL # F/A	EYES ON	SURVEILLANCE NOTES	"Eyes On" Recoveries			When Recovered	# guns	Where Recovered
									FAST & FURIOUS	OTHER US LE	MEXICO			
(b)(3)	(P.L. 112-55	125	Stat 552)											
(b)(3)	(P.L. 112-55	125	Stat 552)											
(b)(3)	(P.L. 112-55	125	Stat 552)											
(b)(3)	(P.L. 112-55	125	Stat 552)											
(b)(3)	(P.L. 112-55	125	Stat 552)											
(b)(3)	(P.L. 112-55	125	Stat 552)											
(b)(3)	(P.L. 112-55	125	Stat 552)											

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Firearm Purchases and Recoveries

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22 APR 11

ROI	Date	Straw Purchaser	# firearms	Total Firearms	# Firearms Recovered	SURVEIL	EYES ON # F/A	SURVEILLANCE NOTES	"Eyes On" Recoveries			When Recovered	# guns	Where Recovered
									FAST & FURIOUS	OTHER US LE	MEXICO			
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									

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Firearm Purchases and Recoveries

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22 APR 11

ROI	Date	Straw Purchaser	# firearms	Total Firearms	# Firearms Recovered	SURVEIL # F/A	EYES ON	SURVEILLANCE NOTES	"Eyes On" Recoveries			When Recovered	# guns	Where Recovered
									FAST & FURIOUS	OTHER US LE	MEXICO			
(b)(3) (P.L. 112-55 125 Stat 552)														
(b)(3) (P.L. 112-55 125 Stat 552)														
(b)(3) (P.L. 112-55 125 Stat 552)														
(b)(3) (P.L. 112-55 125 Stat 552)														
(b)(3) (P.L. 112-55 125 Stat 552)														
(b)(3) (P.L. 112-55 125 Stat 552)														
(b)(3) (P.L. 112-55 125 Stat 552)														

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Firearm Purchases and Recoveries

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22 APR 11

ROI	Date	Straw Purchaser	# firearms	Total Firearms	# Firearms Recovered	SURVEIL	EYES ON # F/A	SURVEILLANCE NOTES	"Eyes On" Recoveries			When Recovered	# guns	Where Recovered
									FAST & FURIOUS	OTHER US LE	MEXICO			
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									

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Firearm Purchases and Recoveries

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22 APR 11

ROI	Date	Straw Purchaser	# firearms	Total Firearms	# Firearms Recovered	SURVEIL	EYES ON # F/A	SURVEILLANCE NOTES	"Eyes On" Recoveries			When Recovered	# guns	Where Recovered
									FAST & FURIOUS	OTHER US LE	MEXICO			
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									

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Firearm Purchases and Recoveries

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22 APR 11

ROI	Date	Straw Purchaser	# firearms	Total Firearms	# Firearms Recovered	SURVEIL # F/A	EYES ON	SURVEILLANCE NOTES	"Eyes On" Recoveries			When Recovered	# guns	Where Recovered
									FAST & FURIOUS	OTHER US LE	MEXICO			
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									

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Firearm Purchases and Recoveries

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22 APR 11

ROI	Date	Straw Purchaser	# firearms	Total Firearms	# Firearms Recovered	SURVEIL # F/A	EYES ON	SURVEILLANCE NOTES	"Eyes On" Recoveries			When Recovered	# guns	Where Recovered
									FAST & FURIOUS	OTHER US LE	MEXICO			
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									
(b)(3)	(P.L.	112-55	125	Stat	552)									

From: (b) (7)(C)

Sent: Monday, April 25, 2011 10:29 AM

To: (b) (7)(C)

Subject: Firearm purchases - per date w recover.xlsx DRAFT

Attachments: Firearm purchases - per date w recover.xlsx

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Firearm Purchases and Recoveries

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24 Apr 2011

ROI	work day	Date	Straw Purchaser	# Firearms	Total Firearms	# Firearms Recovered	SURVEIL	SURVEILLANCE NOTES	When Recovered	# Where Recovered
(b)(3)	(P.L.	112-55	125	Stat	552)					
(b)(3)	(P.L.	112-55	125	Stat	552)					
(b)(3)	(P.L.	112-55	125	Stat	552)					

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Firearm Purchases and Recoveries

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24 April 2011

ROI	work-day	Date	Straw Purchaser	# Firearms	Total # Firearms Recovered	SURVEIL # Firearms Recovered	SURVEILLANCE NOTES	When Recovered	# Where Recovered
(b)(3)		(P.L. 112-55		125			Stat 552)		
(b)(3)		(P.L. 112-55		125			Stat 552)		
(b)(3)		(P.L. 112-55		125			Stat 552)		
(b)(3)		(P.L. 112-55		125			Stat 552)		
(b)(3)		(P.L. 112-55		125			Stat 552)		
(b)(3)		(P.L. 112-55		125			Stat 552)		

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Firearm Purchases and Recoveries

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24 April 2011

ROI	work day	Date	Stow Purchaser	# firearms	Total Firearms Recovered	# Firearms Recovered	SURVEIL	SURVEILLANCE NOTES	When Recovered	# JARS	Where Recovered
(b)(3)	(P.L.	112-55	125	Stat	552)						
(b)(3)	(P.L.	112-55	125	Stat	552)						
(b)(3)	(P.L.	112-55	125	Stat	552)						
(b)(3)	(P.L.	112-55	125	Stat	552)						
(b)(3)	(P.L.	112-55	125	Stat	552)						
(b)(3)	(P.L.	112-55	125	Stat	552)						
(b)(3)	(P.L.	112-55	125	Stat	552)						
(b)(3)	(P.L.	112-55	125	Stat	552)						

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Firearm Purchases and Recoveries

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24 April 2011

ROI	work day	Date	Straw Purchaser	# Purchases	Total # Firearms Returned	SURVEIL	SURVEILLANCE NOTES	When Returned	# Where Recovered
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				

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Firearm Purchases and Recoveries

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24 April 2011

ROI	work-day	Date	Straw Purchaser	# Firearms	Total # Firearms Recovered	SURVEIL	SURVEILLANCE NOTES	When Recovered	# Where Recovered
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				

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Firearm Purchases and Recoveries

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24 April 2011

ROI	work-key	Date	Straw Purchaser	# Firearms	Total # Firearms Recovered	SURVEIL	SURVEILLANCE NOTES	When Recovered	# Where Recovered
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				

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Firearm Purchases and Recoveries

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24 April 2011

ROI	work-key	Date	Straw Purchaser	# Firearms	Total # Firearms Recovered	SURVEIL	SURVEILLANCE NOTES	When Recovered	# Where Recovered
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				

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Firearm Purchases and Recoveries

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24 April 2011

ROI	work-key	Date	Straw Purchaser	# Firearms	Total # Firearms Recovered	SURVEIL	SURVEILLANCE NOTES	When Recovered	# Where Recovered
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				

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Firearm Purchases and Recoveries

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24 April 2011

ROI	work-key	Date	Straw Purchaser	# Firearms	Total # Firearms Recovered	SURVEIL # Firearms Recovered	SURVEILLANCE NOTES	When Recovered	# Where Recovered
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				
(b)(3)	(P.L.	112-55	125	Stat	552)				

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Firearm Purchases and Recoveries

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24 April 2011

ROI	work-key	Date	Straw Purchaser	# Firearms	Total Firearms	# Firearms Recovered	SURVEIL	SURVEILLANCE NOTES	When Recovered	# Where Recovered
(b)(3)	(P.L.	112-55	125	Stat	552)					
(b)(3)	(P.L.	112-55	125	Stat	552)					
(b)(3)	(P.L.	112-55	125	Stat	552)					
(b)(3)	(P.L.	112-55	125	Stat	552)					
(b)(3)	(P.L.	112-55	125	Stat	552)					
(b)(3)	(P.L.	112-55	125	Stat	552)					
(b)(3)	(P.L.	112-55	125	Stat	552)					

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Firearm Purchases and Recoveries

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21 April 2011

ROI	work day	Date	Straw Purchaser	# Purchases	Total # Firearms Returned	SURVEIL	SURVEILLANCE NOTES	When Returned	# Where Recovered
(b)(3)	(b)(3)	(b)(3)	(b)(3)	(b)(3)	(b)(3)	(b)(3)	(b)(3)	(b)(3)	(b)(3)
(b)(3)	(b)(3)	(b)(3)	(b)(3)	(b)(3)	(b)(3)	(b)(3)	(b)(3)	(b)(3)	(b)(3)
(b)(3)	(b)(3)	(b)(3)	(b)(3)	(b)(3)	(b)(3)	(b)(3)	(b)(3)	(b)(3)	(b)(3)
(b)(3)	(b)(3)	(b)(3)	(b)(3)	(b)(3)	(b)(3)	(b)(3)	(b)(3)	(b)(3)	(b)(3)
(b)(3)	(b)(3)	(b)(3)	(b)(3)	(b)(3)	(b)(3)	(b)(3)	(b)(3)	(b)(3)	(b)(3)
(b)(3)	(b)(3)	(b)(3)	(b)(3)	(b)(3)	(b)(3)	(b)(3)	(b)(3)	(b)(3)	(b)(3)

Firearm Purchases and Recoveries

ROI	work day	Date	Straw Purchaser	# Firearms	Total # Firearms Recovered	SURVEIL SURVEILLANCE NOTES	When Recovered	# Where Recovered
(b)(3)	(P.L. 112-55	125	Stat 552)					
(b)(3)	(P.L. 112-55	125	Stat 552)					
(b)(3)	(P.L. 112-55	125	Stat 552)					
(b)(3)	(P.L. 112-55	125	Stat 552)					
(b)(3)	(P.L. 112-55	125	Stat 552)					
(b)(3)	(P.L. 112-55	125	Stat 552)					

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Firearm Purchases and Recoveries

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24 April 2011

ROI	work day	Date	Straw Purchaser	# Invoices	Total # Firearms Received	SURVEIL	SURVEILLANCE NOTES	When Received	# Where Recovered
(b)(3)	(P.L. 112-55	125	Stat	552)					
(b)(3)	(P.L. 112-55	125	Stat	552)					
(b)(3)	(P.L. 112-55	125	Stat	552)					

(b)(3) (P.L. 112-55 125 Stat 552)
(b)(3) (P.L. 112-55 125 Stat 552)

ROI	Weekday	Date	Straw Purchaser	# Firearms	Total Firearms	# Recoveries	SURVEL	SURVEILLANCE NOTES	When Recovered	# Guns	Where Recovered
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(b)(3) (P.L. 112-55 125 Stat 552)

(b)(3) (P.L. 112-55 125 Stat 552)

(b)(3) (P.L. 112-55 125 Stat 552)

(b)(3) (P.L. 112-55 125 Stat 552)

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From: (b) (7)(C)

Sent: Monday, March 21, 2011 6:02 PM

To: (b) (7)(C); (b) (7)(C)

Subject: FW: OCDETF Proposal (FF)

Attachments: The Fast and The Furious.doc; The Fast and The Furious narrative.doc

FYI

(b) (7)(C)

Chief, Firearms Operations Division
ATF HQ - Room 6.S.129
202.648. (b) (7)(C) Cell (b) (7)(C)

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From: (b) (7)(C)

Sent: Monday, March 21, 2011 6:01 PM

To: (b) (7)(C); Needles, James R.

Subject: FW: OCDETF Proposal (FF)

Attached is electronic "clean" copy as well as the supporting narrative document.

According to email below, it was approved 1/26/10. OCDETF #: SWAZP0496

(b) (7)(C)

Chief, Firearms Operations Division
ATF HQ - Room 6.S.129
202.648. (b) (7)(C) Cell (b) (7)(C)

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From: McMahon, William G.

Sent: Monday, March 21, 2011 5:55 PM

To: (b) (7)(C)

Subject: FW: OCDETF Proposal

FYI

NOTICE: THIS E-MAIL MESSAGE AND ANY ATTACHED FILES ARE INTENDED SOLELY FOR THE USE OF THE ADDRESSEE(S) NAMED ABOVE IN CONNECTION WITH OFFICIAL BUSINESS. THIS COMMUNICATION MAY CONTAIN SENSITIVE BUT UNCLASSIFIED INFORMATION THAT MAY BE STATUTORILY OR OTHERWISE PROHIBITED FROM BEING RELEASED WITHOUT APPROPRIATE APPROVAL. ANY REVIEW, USE, OR DISSEMINATION OF THIS E-MAIL MESSAGE AND ANY ATTACHED FILE(S) IN ANY FORM OUTSIDE OF THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS & EXPLOSIVES OR THE DEPARTMENT OF JUSTICE WITHOUT EXPRESS AUTHORIZATION IS STRICTLY PROHIBITED.

From: Newell, William D.

Sent: Friday, January 28, 2011 5:32 PM

To: McMahon, William G.

Subject: FW: OCDETF Proposal

Original proposal. Was eventually assigned the following OCDETF #: SWAZP0496

Bill Newell

Special Agent in Charge

Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)

Phoenix Field Division (Arizona and New Mexico)

Office - (602)776-5400

From: Gillett, George T. Jr.

Sent: Tuesday, January 26, 2010 11:26 AM

To: Newell, William D.

Subject: FW: OCDETF Proposal

Bill -

(b) (7)(C) and (b) (7)(C) OCDETF proposal was unanimously passed today at the USAO. (b) (7)(E)

(b) (7)(E)

(b) (7)(C), (b) (7)(E)

(b) (7)(E) purchases have significantly slowed for now as the "straws" are waiting for a significant cash infusion to make some "large" purchases, whatever those might be.

George T. Gillett

Assistant Special Agent in Charge

ATF - Phoenix Field Division

Office: (602) 776-5400

778065-09-0050 OPERATION: BIG MUSKY CASE TIMELINE

January 2009	Mexican Government Officials turns over to ATF firearm data for approximately 11,900 firearms for tracing.
February 13, 2009	Firearm Trace (b)(3) (P.L. 112-55 125 Stat 552) (b)(3) (P.L. 112-55 125 Stat 552)
February 19, 2009	(b)(3) (P.L. 112-55 125 Stat 552)
February 23, 2009	(b)(3) (P.L. 112-55 125 Stat 552)
February 25, 2009	St. Paul Field Division notified by ATF OSII about the trace data (b)(3) (P.L. 112-55 125 Stat 552), (b) (7)(C) is assigned the case.
March 2, 2009	(b) (7)(C) begins investigation.
March 3, 2009	Case opened in N-Force.
March 3, 2009	USAO briefed.
March 19, 2009	(b) (7)(C), (b) (7)(E)
April 14, 2009	(b) (7)(C) is interviewed by Minnesota State Patrol where he relates he brings items (cars, clothes, and appliances) to Mexico to sell.
May 13, 2009	(b) (7)(E)
June 1, 2009	(b) (7)(E)
June 3, 2009	(b) (7)(E)
June 16, 2009	(b) (7)(E)
July 7, 2009	(b) (7)(E)
July 8, 2009	(b) (7)(E)
July 9, 2009	(b) (7)(C), (b) (7)(E)
July 15, 2009	(b) (7)(C), (b) (7)(E)

August 14, 2009

(b) (7)(C), (b) (7)(E)

August 27- October 19, 2009 (b) (7)(C) entered and left the United States three times.

October 1, 2009

(b) (7)(E)

October 2, 2009

(b) (7)(E)

October 15, 2009

(b) (7)(E)

October 20, 2009

(b) (7)(E)

October 21, 2009

(b) (7)(E)

November 1-15, 2009

ATF and ICE agents maintain constant surveillance of (b) (7)(C) (b) (7)(C) activities.

November 16, 2009

(b) (7)(C) arrested in Laredo, TX with firearms bound for Mexico.

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**Southwest Border Initiative
(Project Gunrunner)**

Biweekly Update

April 18, 2011

The following is a biweekly update on significant events related to the Southwest Border Initiative. The information is collected from the different ATF offices involved in this initiative and intended for ATF use only.

FIELD OPERATIONS

DALLAS FIELD DIVISION

Investigations:

El Paso I

781035-11 (b) (7)(A)

(b) (7)(A)

781035-11 (b) (7)(A)

(b) (7)(A)

781035-11 (b) (7)(A)

(b) (7)(A)

El Paso III - Guzman

781035-11 (b) (7)(A)

(b) (7)(A)

HOUSTON FIELD DIVISION

Corpus Christi Field Office

782020-07-0012 (b) (7)(C) OCDETF Operation Chemo Therapy: On April 6, 2011, a Federal Grand Jury in the Southern District of Texas indicted (b) (7)(C). This superseding indictment charged (b) (7)(C) with four counts of violating 18 USC 922(a)(6) knowingly making a false statement to an FFL in conjunction with the acquisition of firearms. These firearms (37 total) were then illegally trafficked to Gulf Cartel and Zeta members in Mexico. (b) (7)(C) was also charged with Conspiracy to Possess with Intent to Distribute Cocaine and Federal Bank and Loan Fraud violations. (b) (7)(C) is currently in Federal custody.

782020-10- (b) (7)(A)

(b) (7)(A)

Laredo Field Office

782080-11-0034 (b) (7)(C) On April 9, 2011, agents with ATF were contacted by the Texas Department of Public Safety in reference to a traffic stop they had conducted on a 2002 blue in color, Chevrolet Trailblazer traveling on Hwy 83 toward Laredo. The driver, identified as (b) (7)(C) a previously deported illegal alien, was found to be in possession of numerous assault type rifles. At this time, agents with ATF made contact with (b) (7)(C) and advised him of his Constitutional Rights, to which he stated he understood. (b) (7)(C) stated that he was paid to transport the weapons from Pharr, Texas to Laredo for later transport to Eagle Pass, Texas. The weapons were identified as follows: 15 AR-15 type rifles with obliterated serial numbers, 22 AK-47 type rifles with obliterated serial numbers and 74 various magazines. (See 4/11/11 SIR.)

LAW ENFORCEMENT SENSITIVE

McAllen III - Gunrunner

782115-11-0047 (b) (7)(C) On March 30, 2011, agents with ATF McAllen Group III responded to the Hidalgo Port of Entry, along with Special Agents with ICE/HSI and McAllen Bomb Squad. Customs and Border Protection (CBP) officers had stopped a vehicle traveling southbound for routine inspection. CBP and Border Patrol Agents noted that there was a sticker of "La Santa Muerte," a commonly used image of narcotic and firearms traffickers. CBP and Border Patrol agents searched the vehicle and found four pistols, four AK 47 type firearms and two grenades, which were Improvised Explosive Devices (IEDs). ATF and ICE agents interviewed the driver and sole occupant of the vehicle. (b) (7)(C) (b) (7)(C) was arrested for violations of 922 (g)(5)(B) - Non-immigrant alien in possession of a firearm.

782055-09 (b) (7)(A)

(b) (7)(A)

782115-11 (b) (7)(A)

(b) (7)(A)

782115-11 (b) (7)(A)

(b) (7)(A)

782115-11-0004 (b) (7)(C) : On March 16, 2011, DEA and ATF Agents, with McAllen Group III, located a duffle bag near the Rio Grande River containing eight AK-47 type rifles, two AR-15 type rifles, one 40 mm grenade launcher, two hand grenades and several loaded magazines. One of the firearms was determined to have been purchased by (b) (7)(C) who has previously confessed to straw purchasing

firearms. To date, this case involves several straw purchasers in the Rio Grande Valley and is currently responsible for at least 68 firearms.

782115-11 (b) (7)(A)

(b) (7)(A)

(b) (7)(A)

(b) (7)(A)

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(b) (7)(A)

San Antonio Field Office

782090-11 (b) (7)(A)

(b) (7)(A)

(b) (7)(A)

782090-11-(b) (7)(A)

(b) (7)(A)

782090-11-(b) (7)(A)

(b) (7)(A)

LOS ANGELES FIELD DIVISION

Liaison, Training, Media, and Other SWB Interaction:

On April 13, 2011, El Centro RAC (b) (7)(C) attended the Bi-Monthly Imperial Valley LECC Executive Board meeting to discuss with area law enforcement department heads ongoing enforcement efforts. Following this meeting, RAC (b) (7)(C) met with San Diego U.S. Attorney's Office Deputy Chief (b) (7)(C) regarding Gun Show Operations and to discuss a high profile proactive investigation.

On April 13, 2011, agents of the El Centro ATF Field Office, along with agents of the California Department of Justice, provided training to the California Highway Patrol Imperial County Station. Training included an introduction to the ATF El Centro Field Office and the Imperial Valley Firearms Task Force, introduction to common federal firearms law, firearm identification, California prohibited firearm identification, and eTrace use. Approximately 30 law enforcement officers were trained. A second training is scheduled to occur on April 27, 2011.

Investigations:**El Centro Field Office**

784095-11-(b) (7)(A)

(b) (7)(A)

784095-11-(b) (7)(A)

(b) (7)(A)

784095-11-0033 (b) (7)(C) The ATF El Centro Field Office has commenced an investigation into several local gang members in the Brawley, CA-area with multiple felony convictions (b) (7)(C) twenty-one (21) grams of methamphetamine has already been purchased from (b) (7)(C) a two-time convicted felon. The gang members are known firearms and drug suppliers in the area. (b) (7)(E) (b) (7)(E) the investigation is ongoing.

784095-11-0004 Operation River's Edge: The ATF El Centro Field Office conducted an investigation into four individuals who were obtaining firearms illegally. (b) (7)(C), a previously convicted felon who (b) (7)(C) (b) (7)(C) to straw purchase firearms for him (b) (7)(C) also allowed three friends to use his address to help facilitate the illegal purchase and trafficking of firearms into California. On April 11, 2011, (b) (7)(C) (b) (7)(C) was sentenced to 40 months in prison and three years supervised release and (b) (7)(C) was sentenced to two years Supervised Release. There were two other defendants in this case who pled guilty to State of California Firearms Violation.

San Diego Field Office

784045-11-(b) (7)(A)

(b) (7)(A)

(b) (7)(A)

784045-10 (b) (7)(A)

(b) (7)(A)

(b) (7)(A)

784045-11-005 (b) (7)(C) This case was initiated when ATF received information that suspect (b) (7)(C) time convicted felon, was interested in selling numerous assault rifles and handguns to an individual with Tijuana connections (b) (7)(C) has since identified five firearms for sale. (b) (7)(C) meets have since been set and both times (b) (7)(C) failed to arrive stating (b) (7)(C) he wants to be careful as to whom he meets. This investigation is ongoing.

General Intelligence:

El Centro Field Office

784095-11-0001 Southwest Border General Intelligence: On April 1, 2011, the ATF El Centro Field Office observed three Multiple Sales Reports for a total of 12 handguns by (b)(3) (P.L. 112-55 125 Stat 552)

(b)(3) (P.L. 112-55 125 Stat 552)

On April 13, 2011, the El Centro IRS met with members of the Local National Border Group of Security and Public Security at the Calexico West Port of Entry (POE) regarding border incidents and safety, as well as mechanisms for coordinating enforcement efforts between the United States and Mexico.

LAW ENFORCEMENT SENSITIVE

The below stats/seizures were reported by CISEN for Mexicali, Mexico, for the period time of 3/16/2011 to 4/12/2011.

20 narcotic events
2 ultra-light planes
211 firearms (197 long firearms and 14 short guns)
194 grenades
514 rounds of ammunition
8 bulletproof vests

During the meeting, PGR authorities provided a short briefing on the incident that occurred near the Calexico East POE where two men were arrested in possession of duffle bags that held inert grenades, 33 lower rifle receivers and eight protective vests. ATF and ICE are currently involved in the investigative efforts within the United States.

PHOENIX FIELD DIVISION**Investigations:**

Tucson IV - Gunrunner

785130-11 (b) (7)(A)

(b) (7)(A)

(b) (7)(A)

(b) (7)(A)

(b) (7)(A)

(b) (7)(A)

(b) (7)(A)

785130-11 (b) (7)(A)

(b) (7)(A)

OFFICE OF STRATEGIC INTELLIGENCE AND INFORMATION

Significant Mexican Media Highlights This Period:

Army Seizes Massive Weapons Arsenal in Matamoros - The Secretariat of National Defense (Sedena) website in a 2 April press release reported that Army soldiers assigned to Operation Northeast seized an enormous cache of weapons at 2350 hours (local time) the previous night at a house in the Matamoros municipality, from where a group of suspects managed to flee upon the arrival of security forces. The following items were seized at the location: 59 shoulder firearms, 21 small arms, seven UZI sub-machine guns, one 7.62-caliber machine gun, one rocket launcher, one rocket, one grenade launcher, one crossbow, six .60-caliber mortar grenades, three rifle grenades, five dummy (inert) grenades, one RPG, 50 fragmentation grenades, four .40-caliber practice grenades, 412 packs of hydrogel industrial explosive, 12 meters of detonation cord, and \$59,700 in U.S. currency, among other items. No arrests were reported.

Army Arrests 9 Gunmen, Rescues 5 Kidnap Victims in San Fernando; Weapons Cache Seized - The Sedena website in a 2 April press release reported that Army soldiers arrested eight gunmen and one gunwoman around noon (local time) the previous day after a shootout on the northwest side of the San Fernando municipality. Five of the suspects' presumed kidnap victims were also rescued at the scene. The following items were seized after the gunfight: 10 shoulder firearms, four small arms, one .40-caliber grenade launcher, two .40-caliber grenades, one hand grenade, 136 ammunition clips, 3,487 ammunition rounds, 13 vehicles, and one motorcycle.

Army Captures Top Sinaloa Cartel Leader, 9 Alleged Members in Mexicali; Large Caches of Drugs, Weapons Seized - Tijuana *el mexicano* on 2 April reported that Army soldiers arrested 10 alleged members of the Sinaloa Cartel in possession of drugs and weapons during five different actions early the previous morning in Mexicali, including the group's top leader in the city. The presumed cartel operatives, who allegedly take orders from a known drug trafficker called "El Macho Prieto," are suspected in the 24 January massacre that left five dead at the La Resaca nightclub in the city. During the first action, soldiers arrested two persons at 2013 Zotoluca Avenue in the city's Calafia subdivision, where they seized 224.85 kg of cocaine, 91.6 kg of marijuana, two vehicles, \$13,100 in U.S. currency, and 10,000 pesos [U.S.\$844]. Later, soldiers arrested two and seized 3.52 kg of cocaine and a vehicle at 2070 Tierra Blanca Avenue in the Orizaba neighborhood. Six of the suspects were then arrested at 1780 Larroque Street in the Nueva neighborhood, where the following items were confiscated: 19 shoulder firearms, three small arms, 10 .40-caliber grenades, four grenade launcher

LAW ENFORCEMENT SENSITIVE

accessories, one defensive grenade, 93 ammunition clips, 17,835 ammunition rounds, three vehicles, and others. The article notes that Ochoa Zazueta, alleged head of the Sinaloa Cartel in Mexicali, was captured during this third action. Later, 75 kg of marijuana and two vehicles were seized at 468 Xalpa Street in the city's Zacatecas neighborhood. And in the final action of the operation, soldiers seized nine shoulder firearms, two small arms, 110 ammunition clips, 24 .40-caliber grenades, six defensive grenades, one grenade launcher accessory, and one vehicle at 401 Lima Avenue in the Cuauhtemoc neighborhood. (See IAO section for ATF assistance in this investigation.)

Army Arrests 20 Alleged Members of Los Zetas During March in Coahuila; Drugs, Weapons, Cash, "Narco-Banners" Seized - The Sedena website in a 3 April press release reported that Army soldiers arrested 20 alleged members of the Los Zetas drug cartel in Coahuila State from 10-22 March. These suspects include Emanuel Castillo Oliva ("Mikel"), believed to be in charge of laundering money for Los Zetas; Ernesto Cabral Rodriguez ("El Cabrito"), suspect in the murder of Nuevo Leon State's intelligence director; Pedro Toga Lara, alleged second-in-command for the cartel in Saltillo; and Gerardo Hernandez Sanchez ("El Jerry"), who allegedly headed up spy operations for Los Zetas. The following items were also seized during operations that took place during the aforementioned dates: 41 shoulder firearms, 21 small arms, a grenade launcher accessory, one .40-caliber grenade, 10 hand grenades, 19.135 kg of cocaine, 21.3 kg of crystal methamphetamine, 42 vehicles, \$199,980 in U.S. currency, and 5,522,780 pesos [US\$466,085]. Additionally, soldiers discovered five "narco-banners" inside some of the confiscated vehicles. The banners had messages that accused the Army of trampling the rights of citizens and abusing its authority.

State Police Station Suffers 6th Grenade Attack in Past Year - Monterrey *El Norte* on 2 April reported that unknown subjects threw a grenade last night at the State Police station located near the corner of Ruiz Cortines Avenue and Nogal Street in the Valle Verde area of Monterrey, causing structural damage but no injuries or deaths. A police patrol vehicle was also completely destroyed in the blast. Yesterday's attack was the sixth on that police station in less than a year, including a shooting on 29 December 2010 that left two officers and a police doctor dead.

Two U.S. Citizens Killed in Mexico - On April 6, 2011, Mexico City *Cadena 3* reported that U.S. citizens Kevin Romero and Sergio Salcido were murdered in Tijuana, Baja California State. The U.S. Consulate reported the two men were retired and had moved to Mexico to live by the sea. According to USA Today, on Monday, April 4, 2011, gunmen killed mixed martial artist Sergio Salcido near the Mexican border. Salcido and a friend, Kevin Joel Romero, were shot multiple times as they sat in a pickup truck while waiting to enter the United States from Mexico's Baja California state, officials told news outlets. Both men were U.S. citizens living in Mexico and working in San Diego, U.S. officials told the Associated Press.

Federal Police Arrest Zeta Member in San Luis Potosi - The Secretariat of Public Security website reported in bulletin 218 on 5 April that federal police detected a Zeta safe house in the Ciudad 2000 neighborhood of San Luis Potosi. They arrested Jose Manuel Garcia Soto, a.k.a. El Safado, a 30-year-old Zeta member who was responsible for transporting and selling weapons and drugs, kidnapping, stealing vehicles, and killing rivals. A kidnapping victim was freed when Garcia was arrested. Garcia admitted to having participated in the attack on an agent from the U.S. Immigration and Customs Enforcement Agency and said he was under orders from Julian Zapata Espinoza, a.k.a. El Piolin. Another Zeta safe house was detected in the San Angel housing development, and police freed more kidnapping victims there. In all, they freed four victims and arrested

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Garcia and five suspects. From them, police seized a fragmentation grenade; two 223-caliber AR-15 assault rifles; four AK-47 long arms; 35 magazines for an AK-47; 595 rounds of varying calibers; a 2010 white Toyota Tacoma Sport pickup truck, no plates; a 2009 wine-colored Toyota Camry, San Luis Potosi plates UDA-4220; three radio-frequency devices; eight mobile telephone devices; two radio communication devices; two laptops; a wooden paddle used to beat victims; and two ski masks.

Mexico: "Zetas" Pay Former "Kaibiles" for Training, Drug Smuggling - *La Jornada Online* reported on 6 Apr 11 that in a news conference, the Guatemalan deputy minister of security, Mario Castaneda, said that the "Los Zetas" cartel pays \$5,000 a month to former members of the kaibiles special operations force, groups of the Guatemalan Army that collaborate with the Mexican organization in training, education, and even distribution of drugs from that Central American nation.

Castaneda, who was interviewed on the activities of the 28th International Conference Against Drugs, admitted that the Mexican organization led by Miguel Angel Trevino Morales, aka El Zeta 40, and Heriberto Lazcano Lazcano, aka El Lazca, has at least three times stolen firearms from military installations, and part of what was removed was found in safe houses belonging to that organization in Guatemala.

Mario Castaneda mentioned the existence of at least four regional organizations linked to Los Zetas and the construction of drug labs in an area along the border with Honduras. According to that Central American Government's investigations, Los Zetas have established centers for operations, drug storage, drug production, and training camps inside ranches located in the direction of the Honduran side and also near the border with Mexico.

Mexico: Marisela Morales Voted First Female Attorney General - *Mexico City Mexico Weekly News Online* reported on 07 Apr 11 that Marisela Morales became the first female head of the Attorney General's Office (PGR) Thursday [7 April] after being ratified by the Senate. Morales was approved by a vote of 84-15, with 7 abstentions, *El Universal* reported. A Senate committee had determined Wednesday [6 April] that Morales met all the criteria specified by the Constitution for the post and the full Senate voted on the nomination Thursday after floor debate, *El Universal* reported. In her role as special prosecutor for organized crime, Morales made a name for herself by leading the case against Noe Ramirez, a former federal organized crime prosecutor who had been named Mexico's representative to the UN Anti-Drug Office. In December 2008, Ramirez was charged with providing classified information to the Beltran Leyva cartel.

Federal Police Seize Weapons at Buildings Linked to Manuel Mendez Mendez, A.K.A. "El Keroseno" The Secretariat of Public Security website reported in bulletin 226 on 8 April that federal police did follow-up investigation after the arrest of Manuel Mendez Mendez, a.k.a. El Keroseno, and searched two residences in Mexico State, one in Naucalpan and one in Tlalnepantla. Mendez is suspected of storing and providing weapons to the La Resistencia criminal organization. Police served search warrants at the two homes, arrested Gabriel Herminio Abrego Vargas, and seized the following: 97 weapons of different calibers and sizes; 100 magazines of varying calibers; 31 boxes of live cartridges of varying calibers; nine bags with 313 live cartridges of varying calibers; and 1,997 primers.

Suspect in 2009 Murder of U.S. Border Patrol Agent Captured in Tijuana - On 4/12/11, Tijuana *el mexicano* reported that members of the Tijuana Police's International Connection Unit arrested 26-year old

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Marcos Manuel Rodriguez Perez ("El Virus") in the city's La Mesa district. On 29 July 2009, the suspect allegedly disarmed U.S. Border Patrol Agent Robert Rosas and shot him with his own service firearm in the Tecate municipality, according to Tijuana Police Director Adrian Hernandez Perez. Ernesto Parra Valenzuela is also charged with the crime and continues in court proceedings. Christian Daniel Castro Alvarez (17) pleaded guilty and received a life sentence for the murder.

Mexico: Mass Graves Yield More Bodies in Tamaulipas; Detainees Linked to Zetas - On April 12, 2011, *EL UNIVERSAL.com.mx* reported that authorities in the state of Tamaulipas have reported that the number of dead found in several secret graves in the municipality of San Fernando has risen to 120, although the figure could go even higher in the hours to come. A spokesperson for the Attorney General's Office (PGR) told the press that early this morning (12 April), 32 more bodies had arrived at the Forensic Medical Service in Matamoros, which is on the border with Brownsville (Texas, United States), making a total of 88 corpses found in the area in recent days. The source explained that the bodies had been taken by Marines in two military vehicles to the facilities where tests will be conducted to determine their identification. The discovery was also confirmed by officials at the Attorney General's Office.

Authorities in Tamaulipas have begun to identify the first bodies found in the secret graves using evidence and testimony provided by relatives. Yesterday, the bodies of Gonzalo Garcia Casanova, a resident of the municipality of Matamoros, and a Guatemalan, Feliciano Tagual Ovalle, 44, were identified.

Yesterday also, the Attorney General's Office (PGR) distributed the photographs of 16 persons arrested in connection with the case, including two women, in the hope that citizens will file reports if the individuals in question are connected with other crimes. The PGR stated that most of those arrested, who are linked with the violent drug cartel known as Los Zetas, were captured in early April, and that the last two captures were made on Sunday and Monday (10-11 April).

In August of last year, 72 immigrants, most of them Central Americans, were also massacred in the municipality of San Fernando. Due to the gravity of the situation, Tamaulipas Governor Egidio Torre Cantu traveled to Mexico City today to meet with Secretary of Government Francisco Blake Mora, but no details have yet been released about what they discussed.

Mexico: Drug Cartels "Cloning" Official Vehicles: - On April 13, 2011, Mexico City *Mexico Weekly News Online* reported that, according to the newspaper *El Universal*, criminal organizations in Mexico are increasingly turning to "cloned" vehicles as a way of hiding their operations and, in some cases, making it appear as though the Army is responsible for criminal acts in the U.S. It was back in July 2010, when the U.S. government first issued warnings to local authorities to be wary about cloned vehicles of local (U.S. or Mexican) police that were being used by Mexican cartels on U.S. soil. From February 2011, the warning has extended to federal vehicles as well, and in some cases, the cartels have even cloned federal uniforms.

"Cloned vehicles are employed by organized crime groups to confuse the public and cover up their crimes," the National Defense Secretariat has said. On 11 December, for example, as a part of Operation Nuevo Leon-Tamaulipas, troops patrolling Tamaulipas discovered two olive-green pickup trucks with the double-deck style that is used by the Army. Cloned vehicles, including U.S. Border Patrol vehicles, have also been seen in the United States. On 12 March, for example, U.S. Border Patrol agents in Del Rio, Texas, apprehended a person in a cloned Border Patrol vehicle carrying 680 kg of marijuana. The vehicle was a replica down to exact copies

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of the unique federal license plates. Just two days later, on 14 March, U.S. Border Patrol agents stopped a vehicle with police license plates that was carrying 13 illegal immigrants dressed in U.S. Marine uniforms.

The cloned vehicles are nearly exact copies, from typography and numbering to physical characteristics. However, Mexican military vehicles have a series of numbers on the side doors, codes that are used for internal controls. Oftentimes, the cloned vehicles have a series of random numbers on the side doors, which is one way the Army has been able to detect them.

Trace Requests for Mexico Recoveries:**FY 11 Trace Requests Thus Far:**

(b)(3) (P.L. 112-55 125 Stat 552)

INTERNATIONAL AFFAIRS OFFICEMexico City - Gunrunner**Liaison, Training, Media, and Other SWB Interaction:**

From April 11-15, 2011, the ATF Mexico office provided a basic firearms identification course focusing on eTrace training to 17 students from various Mexican law enforcement agencies.

Tijuana - Gunrunner**Investigative Assistance:**

On April 1, 2011, the Tijuana Field Office received a request for assistance from the Mexican military in the identification and tracing of seized firearms. The Mexican military conducted a search of several residences in Mexicali that resulted in the seizure of 39 firearms, 34 40mm grenades, 7 hand fragmentation grenades, 5 grenade launchers, 6 silencers, approximately 100,000 rounds of assorted ammunition, dozens of AR-15 and AK-47 banana style and drum magazines, 11 ballistic vests, dozens of Blackhawk tactical holsters and magazine pouches, 9 vehicles, \$13,100 in U.S. currency, 225 kilograms of cocaine and 91 kilograms of marijuana. The seizure is connected to the Sinaloa Cartel cell head Gonzalo INZUNZA-Inzunza, AKA "EL MACHO PRIETO."

OFFICE OF TRAINING AND PROFESSIONAL DEVELOPMENT

No new updates provide for this period.

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ENFORCEMENT PROGRAMS AND SERVICES

On April 11, 2011, the ATF Firearms Technology Branch gave firearms identification briefings, demonstrations, and hands-on instruction to five congressional staffer members of the House Appropriations Committee. FTB replicated the firearms currently favored by the Mexican drug cartels, and included AK- and AR-type full and semiautomatic rifles and various pistols during the demonstrations.

From: (b) (7)(C)
Sent: Employee 2 April 15, 2011 9:26:45 AM
To: (b) (7)(C)
Subject: Re: Emailing: (b) (7)(C) BACKGROUND.pdf

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I don't dare ask you to ask others, especially in light of our most recent assistance, or lack thereof, by counsel's office. It can wait until your return.

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Original Message

From: (b) (7)(C)
To: (b) (7)(C)
Sent: Fri Apr 15 08:17:30 2011
Subject: RE: Emailing: (b) (7)(C) BACKGROUND.pdf

Bonehard,

Unfortunately I am out all next week because I have to go to Phoenix for the F&F case and I have two issues I have to deal with today. Is this something you need asap or can it wait for about 10 days? If you need it asap, I can attempt to solicit some help from others. Just let me know.

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-----Original Message-----

From: (b) (7)(C)
Sent: Friday, April 15, 2011 1:27 AM
To: (b) (7)(C)
Subject: Emailing: (b) (7)(C) BACKGROUND.pdf

Bonehard,

Can you dust-off your revolver and head-out to DC Metro and get a report for me? (b) (7)(C)
(b) (7)(C) was arrested on May 26, 2002 by DCMP, case number (b) (7)(C)

Thanks,

Eduardo Pesos

PS. I was in Tijuana today and the Tacos were righteous! I also knocked down three bottles, that's right, bottles, of Coke, which I haven't consumed in over a year.

The message is ready to be sent with the following file or link attachments:

(b) (7)(C) BACKGROUND.pdf

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how

ATF8-002-001-00003320

attachments are handled.

Employee 2

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From: McMahon, William G.
Sent: Monday, April 25, 2011 5:42 PM
To: (b) (7)(C)
Subject: RE: Updated Spreadsheet

(b) (7)(C)

Could you come down tomorrow and brief me and (b) (7)(C) on the spreadsheet? If you could just get with (b) (7)(C) and find out what time is best for both of us that would be great.

Thanks,

William G. McMahon
Deputy Assistant Director (West)
Office of Field Operations
Office - (202) 648-(b) (7)(C)

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From: Needles, James R.
Sent: Monday, April 25, 2011 3:42 PM
To: Newell, William D.; McMahon, William G.
Cc: (b) (7)(C)
Subject: FW: Updated Spreadsheet

If you have questions, (b) (7)(C) can explain this to you.

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From: Newell, William D.
Sent: Saturday, April 23, 2011 1:26 PM
To: (b) (7)(C)
CC: (b) (7)(C)
Subject: Re:

I'm in Phx for the weekend and don't come back until Wednesday. McMahon's aware. I gave the 3 "new" DOJ attorneys a 2 hour briefing on Friday and then a quick tour of the FO conf room. They will be sitting in the conf room on the opposite side of the hallway, down by OST AD. They are here to assist us with Congressional responses. McMahon can fill in more on that on Monday. This past week I somewhat organized our conf room as well as my temp office, where Needles was. I'll be in on Thurs/Friday.

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From: (b) (7)(C)
To: Newell, William D.
Cc: (b) (7)(C)
Sent: Sat Apr 23 13:05:17 2011
Subject:

Bill and (b) (7)(C)

Can we find some time on Monday or Tuesday to sit down so I can update you on the Phoenix trip -- what was accomplished and what is currently being done. Just want to keep everyone informed. Enjoy your holiday weekend and see you both Monday.

Thanks,

(b) (7)(C)

SPECIAL AGENT (b) (7)(C)
PROJECT OFFICER
OFFICE OF FIELD OPERATIONS
FIREARMS OPERATIONS DIVISION
CELL (b) (7)(C)
DESK (202) 648-(b) (7)(C)

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From: (b) (7)(C)
Sent: Friday, April 22, 2011 8:39 PM
To: (b) (7)(C)
Subject: RE: Updated Spreadsheet

You're welcome. Glad you made it back safely. Not glad you are still working though. It's 8:30 out there. See you soon as in you are coming back? Yea for us but ugh for you.

* * * * *

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From: (b) (7)(C)
Sent: Friday, April 22, 2011 5:26 PM
To: (b) (7)(C)
Subject: RE: Updated Spreadsheet

Thanks.

* * * * *

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From: (b) (7)(C)
Sent: Friday, April 22, 2011 8:26 PM
To: (b) (7)(C)
Subject: RE: Updated Spreadsheet

785115-10-0004. Case name is (b) (7)(C)

* * * * *

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From: (b) (7)(C)
Sent: Friday, April 22, 2011 5:25 PM
To: (b) (7)(C)
Subject: RE: Updated Spreadsheet

(b) (7)(C)

Thanks,

Can you give me the F@F case number?

Thanks,

(b) (7)(C)

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From: (b) (7)(C)
Sent: Friday, April 22, 2011 7:55 PM
To: (b) (7)(C); Needles, James R.; (b) (7)(C)
Cc: (b) (7)(C)
Subject: Updated Spreadsheet

Special Agent (b) (7)(C)
Bureau of Alcohol, Tobacco, Firearms and Explosives
Phoenix - Group VII
602 605 - (b) (7)(C) (Desk)
602 605 - 6500 (Fax)
(b) (7)(C) v

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From: (b) (7)(C)
Sent: Friday, April 22, 2011 8:25 PM
To: (b) (7)(C)
Subject: RE: Updated Spreadsheet

785115-10-0004. Case name is (b) (7)(C)

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From: (b) (7)(C)
Sent: Friday, April 22, 2011 5:25 PM
To: (b) (7)(C)
Subject: RE: Updated Spreadsheet

(b) (7)(C)

Thanks,

Can you give me the F@F case number?

Thanks,

(b) (7)(C)

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From: (b) (7)(C)
Sent: Friday, April 22, 2011 7:55 PM
To: (b) (7)(C); Needles, James R.; (b) (7)(C)
Cc: (b) (7)(C)
Subject: Updated Spreadsheet

Special Agent (b) (7)(C)
Bureau of Alcohol, Tobacco, Firearms and Explosives
Phoenix - Group VII
602 605 - (b) (7)(C) Desk)
602 605 - 6500 (Fax)
(b) (7)(C)

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From: Newell, William D.
Sent: Friday, April 15, 2011 4:07 PM
To: (b) (7)(C); (b) (7)(C); (b) (7)(C)
Subject: Fw: update with DEA case

FYI

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From: Brandon, Thomas E.
To: Chait, Mark R.; McMahon, William G.; Newell, William D.; Needles, James R.
Cc: Atteberry, Thomas G.
Sent: Fri Apr 15 16:05:30 2011
Subject: FW: update with DEA case

FYI

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From: (b) (7)(C)
Sent: Friday, April 15, 2011 3:48 PM
To: Atteberry, Thomas G.; Brandon, Thomas E.
Subject: update with DEA case

Gentlemen,

DEA case originated in April of 2010. (b) (7)(E) seized (all numbers approximate) 3 million in currency, 84 kilos of cocaine, 10 pounds of meth.

The call the other day to (b) (7)(C) was in regards to 46 firearms and 4 empty gun boxes (FN 5.7mm). Of those 46

firearms, 40 appear to come back to suspects of the Fast and Furious investigation. Of those 40 firearms they originate from (b)(3) (P.L. 112-55 125 Stat 552), have already been indicted and arrested. One thing of possible note is that firearm (b)(3) (P.L. 112-55 125 Stat 552), (b) (7)(C) (b)(3) (P.L. 112-55 125 Stat 552), (b) (7)(C) Yet the DEA lists it as being recovered in this event so we might have to verify a few serial numbers or there may be something else going on here? Of the 4 empty FN gun boxes 3 were purchased by 2 different straw purchasers from Fast and Furious, both who have been indicted and arrested. (The plastic gun box has a serial number sticker on the outside of the box.)

At 2 other locations (which to the best of my knowledge (b) (7)(C) was not called on?) the DEA also recovered firearms from Fast and Furious:

(b)(3) (P.L. 112-55 125 Stat 552), (b) (7)(C)

(b)(3) (P.L. 112-55 125 Stat 552), (b) (7)(C)

In summary 47 of the 60 firearms appear to be purchased by suspects associated with Fast & Furious, and 3 of the 4 empty gun boxes appear to be purchased by suspects associated with Fast & Furious.

Thanks,

(b) (7)(C)

Group Supervisor
Phoenix Group VII

(b) (7)(C)

From: (b) (7)(C)
Sent: Employee 2 April 29, 2011 5:14:40 PM
To: (b) (7)(C)
CC: Phoenix Div Travel
Subject: 11APHX15561 TRAVEL ESTIMATE AND REQUEST FOR DCN (b) (7)(C) WASHINGTON,
DC PHOENIX, AZ, 4/18/11 4/22/11, Approved by ASAC Needles

1006

Attachments: TRAVEL ESTIMATE AND REQUEST FOR DCN (b) (7)(C) WASHINGTON, DC PHOENIX, AZ,
4/18/11-4/22/11, Approved by ASAC Needles

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From: (b) (7)(C)
Sent: Friday, April 29, 2011 3:28 PM
To: (b) (7)(C)
Subject: RE:

I left a follow up voice mail message to (b) (7)(C). She is in charge of those here in Phoenix.

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From: (b) (7)(C)
Sent: Friday, April 29, 2011 11:14 AM
To: (b) (7)(C)
Subject: Re:

No worries (b) (7)(C) I have not received anything as of today

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From: (b) (7)(C)
To: (b) (7)(C)
Sent: Fri Apr 29 13:00:38 2011
Subject: RE:

(b) (7)(C)

Sorry for the delay in responding how are you sitting on this?

Thanks,

(b) (7)(C)

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From: (b) (7)(C)
Sent: Wednesday, April 27, 2011 5:22 AM
To: (b) (7)(C)
Subject: RE:

(b) (7)(C)

Just a heads up, I have not received any DCN approval as of today.

Thanks

(b) (7)(C)

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From: (b) (7)(C)
Sent: Monday, April 25, 2011 12:25 PM
To: (b) (7)(C)
Subject: RE:

(b) (7)(C)

I completed the drop down codes and we should be all good. If you do not receive a DCN from someone in Phoenix in the next 24 hours please let me know i will check for you.

Thanks again,

(b) (7)(C)

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From: (b) (7)(C)
Sent: Friday, April 22, 2011 5:37 PM
To: (b) (7)(C)
Subject:

(b) (7)(C)

Just sent you the DCN request. Sorry it is late. I also left a few drop downs blank because I was not sure about proper coding. I will send you the voucher after I get the approval back from your side.

Thanks (b) (7)(C) and be safe,

(b) (7)(C)

SPECIAL AGENT (b) (7)(C)
PROJECT OFFICER
OFFICE OF FIELD OPERATIONS
FIREARMS OPERATIONS DIVISION
CELL (b) (7)(C)
DESK (202) 648-(b) (7)(C)

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From: (b) (7)(C)
Sent: Friday, April 29, 2011 1:00 PM
To: (b) (7)(C)
Subject: RE:

(b) (7)(C)

Sorry for the delay in responding how are you sitting on this?

Thanks,

(b) (7)(C)

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To: (b) (7)(C)
Subject: RE:

(b) (7)(C)

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Thanks

(b) (7)(C)

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Sent: Monday, April 25, 2011 12:25 PM

To: (b) (7)(C)
Subject: RE:

(b) (7)(C)

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Thanks again,

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Sent: Friday, April 22, 2011 5:37 PM
To: (b) (7)(C)
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Thanks (b) (7)(C) and be safe,

(b) (7)(C)

SPECIAL AGENT (b) (7)(C)
PROJECT OFFICER
OFFICE OF FIELD OPERATIONS
FIREARMS OPERATIONS DIVISION
CELL (b) (7)(C)
DESK (202) 648 (b) (7)(C)

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From: (b) (7)(C)
Sent: Monday, April 25, 2011 12:20:32 PM
To: (b) (7)(C)
Subject: RE:

1086

The funding strip will include and account for the OCDETF funding code. If you can just hold onto this until the accounting strips are included and then submit the entire voucher that would be great. Otherwise I will just lose and misplace it.

Thanks again,

(b) (7)(C)

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-----Original Message-----

From: (b) (7)(C)
Sent: Monday, April 25, 2011 7:09 AM
To: (b) (7)(C)
Subject: FW:

(b) (7)(C)

I remember saying I would not bother you with this little stuff. Sorry. Here is my partially completed travel voucher without the voucher number and without the accounting strip breakdown since I do not have these yet. Do you want me to hang on this voucher until I get that info and then fax or scan over the voucher in its entirety to include signature, receipts etc.. to you? Not sure how you want me to proceed since this is an OCDETF thing.

Thanks (b) (7)(C)

(b) (7)(C)

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-----Original Message-----

From: (b) (7)(C)
Sent: Monday, April 25, 2011 5:26 AM
To: (b) (7)(C)
Subject:

This E mail was sent from "RNPB9F37A" (Alicio MF 3500).

Scan Date: 04.25.2011 09:26:22 (+0000)

Queries to: richol@atf.gov

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ATF8-002-001-00004946

express authorization is strictly prohibited.

E

1087

From: (b) (7)(C)
Sent: Monday, April 25, 2011 12:24 PM
To: (b) (7)(C)
Subject: RE:

(b) (7)(C)

I completed the drop down codes and we should be all good. If you do not receive a DCN from someone in Phoenix in the next 24 hours please let me know I will check for you.

Thanks again,

(b) (7)(C)

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From: (b) (7)(C)
Sent: Friday, April 22, 2011 5:37 PM
To: (b) (7)(C)
Subject:

(b) (7)(C)

Just sent you the DCN request. Sorry it is late. I also left a few drop downs blank because I was not sure about proper coding. I will send you the voucher after I get the approval back from your side.

Thanks (b) (7)(C) and be safe,

(b) (7)(C)

SPECIAL AGENT (b) (7)(C)
PROJECT OFFICER
OFFICE OF FIELD OPERATIONS
FIREARMS OPERATIONS DIVISION
CELL (b) (7)(C)
DESK (202) 648-(b) (7)(C)

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Unclassified information that may be statutorily or otherwise prohibited from being released without appropriate approval. Any review, use, or dissemination of this e-mail message and any attached file(s) in any form outside of the Bureau of Alcohol, Tobacco, Firearms & Explosives or the Department of Justice without express authorization is strictly prohibited.

TRAVEL VOUCHER <small>(Read the Privacy Act Statement on the back)</small>		1. DEPARTMENT OR ESTABLISHMENT, BUREAU DIVISION OR OFFICE ATF		2. TYPE OF TRAVEL <input checked="" type="checkbox"/> TEMPORARY DUTY <input type="checkbox"/> PERMANENT CHANGE OF STATION		3. VOUCHER NO. 1090		
TRAVELER (PAYEE)	5. a. NAME (Last, first, middle initial) (b) (6)			b. SOCIAL SECURITY NO. (b) (6)		6. PERIOD OF TRAVEL a. FROM 04/18/2011 b. TO 4/22/2011		
	c. MAILING ADDRESS (Included ZIP Code) 99 New York Avenue NE MS 6.N-529 Washington DC, 20226			d. OFFICE TELEPHONE NO. (202)648-(b) (6)		7. TRAVEL AUTHORIZATION a. NUMBER(S) b. DATES(S)		
	e. PRESENT DUTY STATION ATF HQ, Washington DC			f. RESIDENCE (City and State) Arlington, VA		10. CHECK NO.		
	8. TRAVEL ADVANCE			9. CASH PAYMENT RECEIPT		11. PAID BY		
a. Outstanding				a. DATE RECEIVED		b. AMOUNT RECEIVED		
b. Amount to be applied						\$		
c. Amount due Government <small>(Attached: <input type="checkbox"/> Check <input type="checkbox"/> Cash)</small>				c. PAYEE'S SIGNATURE				
d. Balance outstanding								
12. GOVERNMENT TRANSPORTATION REQUESTS, OR TRANSPORTATION TICKETS, IF PURCHASED WITH CASH <small>(List by number below and attach passenger coupon; if cash is used show claim on reverse side.)</small>		I hereby assign to the United States any right I may have against any parties in connection with reimbursable transportation charges described below, purchased under cash payment procedures (FPMR 101-7)					Traveler's Initials	
		AGENT'S VALUATION OF TICKET <small>(a)</small>	ISSUING CARRIER <small>(Initials) (b)</small>	MODE CLASS OF SERVICE AND ACCOMMODATIONS <small>(c)</small>	DATE ISSUED <small>(d)</small>	POINTS OF TRAVEL		
		\$1339.40	USA	Coach	04/14/11	FROM <small>(e)</small> Washington DC/DCA Phoenix, AZ	TO <small>(f)</small> Phoenix, AZ Washington DC/DCA	
13. I certify that this voucher is true and correct to the best of my knowledge and belief, and that payment or credit has not been received by me. When applicable, per diem claimed is based on the average cost of lodging incurred during the period covered by this voucher.								
TRAVELER SIGN HERE		(b) (6)			DATE	AMOUNT CLAIMED		
					04/25/2011	\$ 2370.27		
<small>NOTE: Falsification of an item in an expense account works a forfeiture of claim (28 U.S.C. 2514) and may result in a fine of not more than \$10,000 or imprisonment for not more than 5 years or both (18 U.S.C. 287; i.d. 1001).</small>								
14. This voucher is approved. Long distance telephone calls, if any, are certified as necessary in the interest of the Government. (NOTE: If long distance telephone calls are included, the approving official must have been authorized in writing by the head of the department or agency to so certify (31 U.S.C. 550a).)					17. FOR FINACE OFFICE USE ONLY COMPUTATION			
APPROVING OFFICIAL SIGN HERE					a. DIFFERENCES IF ANY (Explain and show amount)			
DATE					\$			
15. LAST PRECEDING VOUCHER PAID UNDER SAME TRAVEL AUTHORIZATION					b. TOTAL VERIFIED CORRECT FOR CHARGE TO APPROPRIATION			
a. VOUCHER NO.	b. D.O. SYMBOL	c. MONTH & YEAR		Certifier's initials:			\$	
16. THIS VOUCHER IS CERTIFIED CORRECT AND PROPER FOR PAYMENT					c. APPLIED TO TRAVEL ADVANCE (Appropriation symbol):			
AUTHORIZED CERTIFYING OFFICIAL SIGN HERE					\$			
DATE					d. NET TO TRAVELER			
					\$ 2370.27			
18. ACCOUNTING CLASSIFICATION								

SCHEDULE OF EXPENSES AND AMOUNTS CLAIMED

INSTRUCTIONS TO TRAVELER (Unlisted items are self-explanatory)

Col. (c) If the voucher includes per diem allowances for member of employee's immediate family, show members' names, ages, and relationship to employee and marital status of children (unless information is shown on the travel authorization.)

Complete only for actual expense travel

Col. (a) Show amount incurred for each meal, including tax and tips, and daily total

Col. (g) Meal cost

(h) Show expenses, such as: laundry, cleaning and pressing of clothes, tips to bellboy, porters, etc. (other than for meals)

(i) Complete for per diem and actual expense travel.

(j) Show total subsistence expense incurred for actual expense travel.

(m) Show per diem amount, limited to maximum rate, or if travel on actual expense, show the lesser of the amount from col. (j) or maximum rate.

(n) Show expenses, such as: taxi/limousine fares, air fare (if purchased with cash), local or long distance telephone call for Government business, car rental, relocation other than subsistence, etc.

Complete this information if this is a Continuation Sheet

PAGE 2 OF 2 PAGES

TRAVEL AUTHORIZATION NO.

TRAVELER'S LAST NAME
(b) (6)

DATE 2011	TIME (Hour and am/pm)	DESCRIPTION (Departure/arrival city, per diem computation, or other explanations of expense)	ITEMIZED SUBSISTENCE EXPENSES							MILEAGE RATE: NO. OF MILES	AMOUNT CLAIMED		
			MEALS				MISCELLANEOUS SUBSISTENCE	LODGING	TOTAL SUBSISTENCE EXPENSE		MILEAGE	SUBSISTENCE	OTHER
			BREAK FAST	LUNCH	DINNER	TOTAL							
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)
04/18	1:00PM	LV:Washington DC AR:Phoenix,AZ@\$71/Day				\$0.00	\$53.25	\$126.00	\$179.25		\$0.00	\$179.25	
04/19		Phoenix, AZ				\$0.00	\$71.00	\$126.00	\$197.00		\$0.00	\$197.00	
04/20		Phoenix, AZ				\$0.00	\$71.00	\$126.00	\$197.00		\$0.00	\$197.00	
04/21		Phoenix, AZ				\$0.00	\$71.00	\$126.00	\$197.00		\$0.00	\$197.00	
04/22	5:00PM	LV:Phoenix,AZ AR:Washington DC/DCA				\$0.00	\$53.25		\$53.25		\$0.00	\$53.25	
						\$0.00			\$0.00		\$0.00	\$0.00	
		Sato Fee				\$0.00			\$0.00		\$0.00	\$0.00	\$6.49
		Baggage Fee				\$0.00			\$0.00		\$0.00	\$0.00	\$50.00
		Room Tax				\$0.00			\$0.00		\$0.00	\$0.00	\$66.88
		Airline Ticket				\$0.00			\$0.00		\$0.00	\$0.00	\$1,339.40
		Taxi				\$0.00			\$0.00		\$0.00	\$0.00	\$30.00
		Parking				\$0.00			\$0.00		\$0.00	\$0.00	\$54.00
										SUBTOTALS ▶	\$0.00	\$823.50	\$1,546.77
										TOTALS ▶	\$0.00	\$823.50	\$1,546.77

If additional space is required, continue on another SF 1012-A BACK, leaving the front blank.

In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 5 U.S.C. Cap. 57 as implemented by the Federal Travel Regulations (FPMR 101 - 7), F.D. 11605 of July 22, 1971; E.O. 11012 of March 27, 1962, E.O. 9897 of November 22, 1945, and 26 U.S.C. 6011(b) and 6109. The primary purpose of the requested information is to determine payment or reimbursement to eligible individuals for allowable travel and/or relocation expenses incurred under appropriate administrative authorization and to record and maintain costs of such reimbursements to the Government. The information will be used by officers and employees who have a need for the information in the performance of their official duties. The information may be disclosed to appropriate Federal, State, local, or foreign agencies, when relevant to civil,

criminal, or regulatory investigations or prosecutions, or when pursuant to a requirement by this agency in connection with the hiring or firing of an employee, the issuance of a security clearance, or investigations of the performance of official duty while in Government service. Your Social Security Account Number (SSN) is solicited under the authority of the Internal Revenue Code (26 USC 6011(b) and 6109) and E.O. 9387, November 22, 1943, for use as a tax payer and/or employee identification number; disclosure is MANDATORY on vouchers claiming travel and/or relocation allowance expense reimbursement which is, or may be, taxable income. Disclosure of your SSN and other requested information is voluntary in all other instances; however, failure to provide the information (other than SSN) required to support the claim may result in delay or loss of reimbursement.

Enter grand total of columns (l), (m) and (n), below and in item 13 on the front of this form.

TOTAL AMOUNT CLAIMED ▶ \$2,370.27

April 14, 2011



For: (b) (6)

To: ATTN-(b) (6) 202-648-(b) (6)
6.N-529
WASHINGTON, DISTRICT OF COLUMBIA 20226
ATF

Sales Person: ZB
Locator: LYJCCZ
Customer Number: (b) (6)

*TICKET PURCHASE WITH (b) (6)
*THIS DOCUMENT BECOMES AN INVOICE WHEN THE PASSENGER
*NAME/INVOICE AND TICKET NUMBERS APPEAR
*IN THE PRICING BOX

FEES TOTALING 6.49PP CHARGED IN ADDITION TO TKT PRICE
FEE-JSD6.49PP-AIR/AMTRAK DOMESTIC, ONLINE

Monday April 18, 2011



US Airways Flight Number: 267
Class of Service: Coach Class Y
Depart: WASHINGTON/NATL,DC 10:30 Am April 18, 2011
Arrive: PHOENIX, AZ 12:28 Pm April 18, 2011
Total Flight Time: 4 Hours 58 Minutes Non-Stop
Equipment: 319
Meal Service: Available For Purchase
Status: Confirmed Confirmation Number: BJ5RH6
Reserved Seat: (b) (6) 20B
DEP-TERMINAL C ARR-TERMINAL 4

Friday April 22, 2011



US Airways Flight Number: 44
Class of Service: Coach Class Y
Depart: PHOENIX, AZ 8:47 Am April 22, 2011
Arrive: WASHINGTON/NATL,DC 4:06 Pm April 22, 2011
Total Flight Time: 4 Hours 19 Minutes Non-Stop
Equipment: 319
Meal Service: Available For Purchase
Status: Confirmed Confirmation Number: BJ5RH6
Reserved Seat: (b) (6) 22A
DEP-TERMINAL 4 ARR-TERMINAL C

Table with 7 columns: Name, Invoice / Ticket / Date, Base, Tax1, Tax2, Tax3, Total. Row 1: (b) (6), (b) (6), 1226.04, 91.86US, 7.40ZP, 14.00XT, 1,339.40. Row 2: Trip Fee, 6.49.

(b) (6)

*****TO BOOK RESERVATIONS ONLINE PLEASE VISIT*****
*****CWTSATOTRAVEL.COM*****

..... THANK YOU FOR USING CWTSATOTRAVEL
..... YOUR REFERENCE CODE IS *** SABRE OV4C

PLEASE CALL LOCAL OFFICE DURING NORMAL BUSINESS HOURS
TOLL FREE NUMBER 800-273-1989 MON-FRI 700A-700P CST
FOR AFTER HOURS EMERGENCY SERVICE IF TRAVEL IS WITHIN
24 HOURS CALL 1-800-273-1989 AND PRESS OPTION 1

.....
IF INTERNATIONAL 800 NUMBER DOES NOT WORK PLEASE
***** CALL COLLECT TO 210-877-3341 *****

.....
CONTRACT CARRIER CITY PAIR FARES DO NOT REQUIRE
ADVANCE PURCHASE. ALL OTHER FARES MAY REQUIRE ADVANCE
PURCHASE AND ARE NOT GUARANTEED UNTIL TICKETED

.....
TRANSACTION FEES ARE NONREFUNDABLE

.....
UNUSED PAPER TICKETS MUST BE RETURNED TO SATOTRAVEL
CONTACT SATOTRAVEL TO REFUND ELECTRONIC TICKETS

.....
GOVERNMENT ISSUED ID IS REQUIRED
.....

.....
TO VIEW ITINERARIES ONLINE PLEASE GO TO

.....*** WWW.VIRTUALLYTHERE.COM ***.....

ADD YOUR SABRE RESERVATION CODE, NAME AND EMAIL IN
THE APPROPRIATE BOXES AND ENTER.

**(b) (6)**

99 New York Avenue Ne
Washington, DC 20226
United States

Room Number: 1010
Arrival Date: 04-18-11
Departure Date: 04-22-11
CRS Number: 82617316
Rewards No:
Page No: 1 of 1

INFORMATION INVOICE

Folio No:

04-22-11

Date	Description	Charges	Credits
04-18-11	Overnight Parking	27.00	
04-18-11	Room Charge	126.00	
04-18-11	Occupancy Tax	10.42	
04-18-11	Occupancy Tax	6.30	
04-19-11	Room Charge	126.00	
04-19-11	Occupancy Tax	10.42	
04-19-11	Occupancy Tax	6.30	
04-20-11	Overnight Parking	27.00	
04-20-11	Room Charge	126.00	
04-20-11	Occupancy Tax	10.42	
04-20-11	Occupancy Tax	6.30	
04-21-11	Room Charge	126.00	
04-21-11	Occupancy Tax	10.42	
04-21-11	Occupancy Tax	6.30	
Total		624.88	0.00
Balance		624.88	

PRINTED IN U.S.A. BY MAGNETIC TICKET & LABEL CORP., DALLAS, TX 75243 448-1100

U.S AIRWAYS EXIT SEAT

(b) (6)

US FLIGHT: **267** 18APR

WASHINGTON - DCA

PHOENIX

API OK E-TICKET

SEAT: **9B**

BJ5RH6/US

SEQ 128

ZONE 2



PRINTED IN U.S.A. BY MAGNETIC TICKET & LABEL CORP., DALLAS, TX 75243 448-1100

U.S AIRWAYS

(b) (6)

US FLIGHT: **44** 22APR

PHOENIX

WASHINGTON - DCA

API OK E-TICKET

SEAT: **22A**

BJ5RH6/US

SEQ 100

ZONE 3



U.S AIRWAYS

(b) (6)

CONF: BJ5RH6/US ZONE 2

FFD: WASHINGTON - DCA
PHOENIX

FLIGHT DEPARTS DATE
267 1030A 18APR

GATE BOARDING TIME SEAT
39 1000A 9B

U.S AIRWAYS

(b) (6)

CONF: BJ5RH6/US ZONE 3

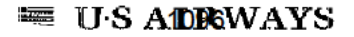
FFD: PHOENIX
WASHINGTON - DCA

FLIGHT DEPARTS DATE
44 847A 22APR

GATE BOARDING TIME SEAT
A23 817A 22A



U-S AIRWAYS



DR28RV/US 18APR11 BFCDBY5 E-TICKET RECEIPT
 (b) (6) ARRIVAL
 1000A EXCESS BAG EBC US 9957 Y 18APR 1130A FEE FEE

FROM
EB

PNR: BJSRH6
 BAGS CHKD: 000001 OF 01
 US931703
 AIRWAYS CHECK
 INF DCA
 US 267 PHX
 (b) (6)

(b) (6) /FC BAGGAGE FEE (1B) 01.0025 (2B) 00
 0000 (3B) 00 0000 (OW) 00 0000 (OZ) 00 0000 (SE) 00 0000 USD/TE 025.00E
 ND

FARE USD 25.00 DOCUMENT NUMBER 0372427361732
 TAX US 0.00
 TAX
 TOTAL USD 25.00 NO CASH VALUE

THANK YOU FOR FLYING
US AIRWAYS

PRINTED IN USA BY MAGNETIC MONEY & PAPER CO. AS TX PRE/610

U-S AIRWAYS

71DH7/US 22APR11 BE58BDY3 E-TICKET RECEIPT
 (b) (6) ARRIVAL
 1000A EXCESS BAG EBC US 9957 Y 22APR 1130A FEE FEE

FROM TO
 EBC FEE
 US AIRWAYS
 BAG CLAIM CHECK
 (b) (6)
 22APR11 07:09 Y3 PHX
 US 44 DCA PNR: BJSRH6

(b) (6) /FC BAGGAGE FEE (1B) 01.0025 (2B) 00
 0000 (3B) 00 0000 (OW) 00 0000 (OZ) 00 0000 (SE) 00 0000 USD25.00END

FARE USD 25.00 DOCUMENT NUMBER 0372427874909
 AX US 0.00
 AX
 TOTAL USD 25.00 NO CASH VALUE
 NOT VALID FOR TRAVEL

THANK YOU FOR FLYING
US AIRWAYS



NAME (b) (6)
 ZIP CODE/HOTEL RITZ CAR
 TRAVEL DATE 4-22-11
 FARE 27.00 DRIVER #
 TIP 3.00 CAR #
 TOTAL 30.00

From: (b) (7)(C)
Sent: Monday, March 21, 2011 1:08:49 PM
To: (b) (7)(C); (b) (7)(C); (b) (7)(C); (b) (7)(C)
Subject: FW: Revised SWB Staffing Report
Attachments: March 21, 2011-7SWS Summary.docx

FYI

(b) (7)(C)

ATF National Coordinator
Southwest Border/Project Gunrunner

(202) 648-(b) (7)(C)
(b) (7)(C) cell

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From: (b) (7)(C)
Sent: Monday, March 21, 2011 12:57 PM
To: (b) (7)(C); (b) (7)(C); (b) (7)(C)
Cc: (b) (7)(C)
Subject: Revised SWB Staffing Report

Please see the revised report. It has been updated with the report dates from the selection memos for the voluntary transfers to Sierra Vista and Brownsville.

(b) (7)(C)



March 21,
2011-7SWS
Summary.docx
(44 kB)

(b) (7)(C)

Program Analyst
Field Management Staff
(202) 648-(b) (7)(C)

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SOUTHWEST BORDER MOVES						
To Date						
Name	To	From	New Hire Backfill	Coding	Date	
(b) (7)(C)	SIERRA VISTA	CHEYENNE	TBD	11-7SWS-FO-785135-A1P F	3/13/11	1
(b) (7)(C)	LAS VEGAS	LITTLE ROCK II	TBD	11-7SWS-FO-786090-A1P F	3/13/11	1
(b) (7)(C)	BROWNSVILLE	LAREDO	TBD		5/8/11	1
(b) (7)(C)	BROWNSVILLE	ST. LOUIS II	TBD		5/8/11	1
(b) (7)(C)	BROWNSVILLE	SAN JOSE I	TBD		5/8/11	1
(b) (7)(C)	BROWNSVILLE	ROANOKE	TBD	11-7SWS-FO-782120-A1P F	5/22/11	1
(b) (7)(C)	SIERRA VISTA	FARGO	TBD		6/19/11	1
(b) (7)(C)	SIERRA VISTA	GREENVILLE	TBD		6/19/11	1
(b) (7)(C)	SIERRA VISTA	GRAND RAPIDS	TBD		6/19/11	1
SUBTOTAL TO DATE:						9

Direct Funded Moves in Support of the Southwest Border						
SUBTOTAL DIRECT:						0

Additional PCS Requirements						
# IOI	SIERRA VISTA	TBD			TBD	#
IOIs for lateral reassignment solicited 9/29/10; two volunteers; pending DAD review						
# IOI	BROWNSVILLE	TBD			TBD	#
IOIs for lateral reassignment solicited 9/29/10; no volunteers						
1 GS	ATLANTA	TBD			TBD	1
HOLD						
1 GS	DALLAS	TBD			TBD	1
HOLD						
1 RAC	LAS VEGAS	TBD			TBD	1
HOLD						
# S/A	LAS VEGAS	TBD			TBD	#
HOLD (SAs for lateral reassignment solicited 9/29/10; 5 volunteers)						
# IOI	LAS VEGAS	TBD			TBD	#
HOLD (IOIs for lateral reassignment solicited 9/29/10; 8 volunteers, 1—(b) (7)(C)—selected)						
1 GS	MIAMI	TBD			TBD	1

Updated March 21, 2011 (b) (7)(C)

7SWS \$37.5m

HOLD						
I RAC	OKC	TBD			TBD	1
HOLD						
# SA	OKC	TBD			TBD	#
HOLD (SAs for lateral reassignment solicited 9/29/10; 8 volunteers)						
# IOI	OKC	TBD			TBD	#
HOLD (IOIs for lateral reassignment solicited 9/29/10; 2 volunteers)						
SUBTOTAL ADD'L						5+
GRAND TOTAL						?

Additional Backfill Hires in Support of SWB						
(b) (7)(C)	SIERRA VISTA	PHOENIX VII	(Backfill needed)	N/A	TBD	

7SWS (\$37.5M)**Brownsville, TX**

601 P Street, Harlingen, TX 78550

Special Agents: (Brownsville Field Office-782120)*RAC (PCS move)*

1. (b) (7)(C) Roanoke Field Office, report date 5/22/11.

PCS Moves

2. (b) (7)(C) Laredo Field Office, report date 5/8/11.
3. (b) (7)(C) St. Louis II, report date 5/8/11.
4. (b) (7)(C) San Jose I, report date 5/8/11.

New Agents (Non PCS)

5. (b) (7)(C) graduates SABT 5/20/11
6. (b) (7)(C) graduates SABT 5/20/11
- 7.
- 8.
- 9.
- 10.
- 11.

IOIs: (Brownsville IO Satellite Office-782113)*PCS Moves (#TBD)*

- 1.

New Hires (non PCS)

2. (b) (7)(C) graduated IOIBT 12/22/10
3. (b) (7)(C) graduated IOIBT 12/22/10

IOI & SA Reassignment Request History:

- S/As for reassignment to Brownsville sought on 9/29/10. 4 volunteers, 3 selected.
- IOIs for reassignment to Brownsville sought on 9/29/10. No volunteers.

IRS: (b) (7)(C) selected, in BI.

IA: (b) (7)(C) selected, in BI.

Space Update:

RBOB 3/9: Lease for temporary space is signed with an effective date of April 2011. We will begin installing furniture, telecomm and security in April so that the space will be ready for a May 1, 2011 occupancy.

Vehicles:

Nine GOVs were ordered on 11/26/10 per (b) (7)(C) The total cost for the vehicles is \$240,992.06.

Updated March 21, 2011 (b) (7)(C)

7SWS \$37.5m

Sierra Vista, AZ

San Luis Professional Plaza, 1601 Paseo San Luis, Sierra Vista, AZ 85635

Special Agents: (Sierra Vista Field Office-785135)*RAC (PCS move)*

1. (b) (7)(C) Cheyenne Field Office, selected, effective 3/13/11

PCS Moves

2. (b) (7)(C) Fargo Field Office, report date 6/19/11.
3. (b) (7)(C) Greenville Field Office, report date 6/19/11.
4. (b) (7)(C) Grand Rapids Field Office, report date 6/19/11.

New Agents (Non PCS)

5. (b) (7)(C) graduates SABT 5/20/11
6. (b) (7)(C) graduates SABT 5/20/11
7. (b) (7)(C) graduates SABT 5/20/11
8. (b) (7)(C) graduates SABT 5/20/11
- 9.
- 10.
- 11.

IOIs: (Sierra Vista IO Satellite Office-785093)*PCS Moves (#TBD)*

- 1.

New Hires (non PCS)

2. (b) (7)(C) graduated IOIBT 12/22/10
3. (b) (7)(C) medically recycled, assigned to Detroit until granted medical clearance to return to IOIBT

IOI & SA Reassignment Request History:

- SAs for lateral reassignment solicited 9/29/10; no volunteers; Requested again 12/2/10.
- IOIs for lateral reassignment solicited 9/29/10; two volunteers; pending DAD review

IRS: (b) (7)(C) elected, in BI.

IA: (b) (7)(C) reassigned from Phoenix VII (Backfill needed)

Space Update:

RBOB 3/9: Lease for temporary space is signed with an effective date of April 2011. We will begin installing furniture, telecomm and security in April so that the space will be ready for a May 1, 2011 occupancy.

Vehicles:

Nine GOVs were ordered on 11/26/10 per (b) (7)(C). The total cost for the vehicles is \$255,448.10.

Atlanta, GA**Special Agents: (Atlanta IX-771070)***RAC (PCS move)*

1. HOLD (Atlanta seeks to reassign GS from Atlanta II to Atlanta IX, and then backfill for Atlanta II)

New Hires (non PCS)

2. (b) (7)(C) graduates SABT 5/20/11
3. (b) (7)(C) graduates SABT 5/20/11
4. (b) (7)(C) graduates SABT 5/20/11 (Does not appear on 1/25/11 listing from HR)
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.
- 11.

IOIs: (Atlanta VIII-771060)*New Hires (non PCS)*

1. (b) (7)(C) graduated IOIBT 12/22/10
2. (b) (7)(C) graduated IOIBT 12/22/10

IRS: (b) (7)(C) selected 1/28, but request to proceed to BI denied by Chief, RHS 1/31/11**IA:** (b) (7)(C) selected 1/28, but request to proceed to BI denied by Chief, RHS 1/31/11**Space Update:**

RBOB, 12/6/10: OM's Realty Buildings and Operations Branch (RBOB) was advised that the new Atlanta Gunrunner Group will be located in Strike Force Space.

Dallas, TX**Special Agents: (Dallas VII-781120)***RAC (PCS move)*

1. HOLD (Requested 9/21/10. V.A. closed 10/21/10. 10 applicants [3 NCR, 5 BQ, 1 WQ, 1 Withdrew]. NCR to DAD 11/4/10.)

New Hires (non PCS)

2. (b) (7)(C) graduates SABT 5/20/11
3. (b) (7)(C) graduates SABT 5/20/11
4. (b) (7)(C) graduates SABT 5/20/11
5. (b) (7)(C) graduates SABT 5/20/11
6. (b) (7)(C) graduates SABT 5/20/11
- 7.
- 8.
- 9.
- 10.
- 11.

IOIs: (Dallas V-781025 & Dallas VI-781085)*New Hires (non PCS)*

1. (b) (7)(C) graduated IOIBT 12/22/10
2. (b) (7)(C) graduated IOIBT 12/22/10

IRS: Requested 9/23/10 V.A closed 10/21/10. Cert issued 10/29/10, expired without a selection on 01/27/11.

IA: Requested 9/23/10 V.A closed 10/21/10. Cert issued 11/24/10, expired without a selection on 02/22/11.

Space Update:

RBOB 12/6: The Dallas Field Division has submitted justification for locating this office in Irving, Texas, and GSA is identifying space within that area.

Las Vegas, NV**Special Agents: (Las Vegas IV-786105)***RAC (PCS move)*

1. HOLD (Requested 9/21/10. V.A. closed 10/21/10. 6 applicants (3 NCR, 3 BQ). NCR to DAD 11/4/10.)

PCS Moves (#TBD)

2.

New Agents (Non PCS)

3.

4.

5.

6.

7.

8.

9.

10.

11.

IOIs: (Las Vegas III -786090)*PCS Moves (#TBD)*

1. (b) (7)(C) Little Rock II, Reports 3/13/11

New Hires (non PCS)

2. (b) (7)(C) graduated IOIBT 12/22/10

3. (b) (7)(C) graduated IOIBT 12/22/10

IOI & SA Reassignment Request History:

- S/A volunteers for reassignment to Las Vegas sought on 9/29/10. 5 names received. HOLD.
- IOI volunteers for reassignment to Las Vegas sought on 9/29/10. 8 names received, 1 selected. HOLD.

IRS: (b) (7)(C) selected and in BI

IA: (b) (7)(C) selected and cleared BI. Approval to hire denied on 1/10/11.

Space Update:

RBOB 12/6: Available space has been identified at the current location. GSA is currently preparing an OA for RBOB's review and approval.

Updated March 21, 2011 (b) (7)(C)

7SWS \$37.5m

Miami, FL**Special Agents: (Miami VIII-764085)***RAC (non PCS)*

1. (b) (7)(C) Miami Field Division, selected, but reassigned to Ft. Lauderdale eff 1/16/11.

New Hires (non PCS)

2. (b) (7)(C) graduates SABT 5/20/11
3. (b) (7)(C) graduates SABT 5/20/11
4. (b) (7)(C) graduates SABT 5/20/11
5. (b) (7)(C) graduates SABT 5/20/11 (Does not appear on 1/25/11 listing from HR)
6. (b) (7)(C) graduates SABT 5/20/11 (Reassigned to Puerto Rico II)
- 7.
- 8.
- 9.
- 10.
- 11.

IOIs: (Miami VI-764035)*New Hires (non PCS)*

1. (b) (7)(C) graduated IOIBT 12/22/10
2. (b) (7)(C) graduated IOIBT 12/22/10 (Does not appear on 1/25/11 listing from HR)

IRS: 10-DEU-413-DAF: Nonselect.

IA: 10-DEU-414-DAF: Nonselect. 11-MER-096-DAF: Cert issued 1/21/11, expired 2/21/11.

Space Update:

RBOB 12/6: RBOB will hold the Occupancy Agreement for new space pending a decision on the FY 2011 budget.

Oklahoma City, OK**Special Agents: (Oklahoma City III-781125)***RAC (PCS move)*

1. HOLD: Requested 9/21/10. V.A. closed 10/21/10. 3 applicants (1 NCR, 2 BQ). NCR to DAD 11/3/10.

PCS Moves (#TBD)

2.

New Agents (Non PCS)

3. (b) (7)(C) graduates SABT 5/20/11
4. (b) (7)(C) graduates SABT 5/20/11
5. (b) (7)(C) graduates SABT 5/20/11
- 6.
- 7.
- 8.
- 9.
- 10.
- 11.

IOIs: (Oklahoma City I-781050)*PCS Moves (#TBD)*

1.

New Hires (non PCS)

2. (b) (7)(C) graduated IOIBT 12/22/10
3. (b) (7)(C) graduated IOIBT 12/22/10

IOI & SA Reassignment Request History:

- S/As for reassignment sought 9/29/10. 8 volunteers. HOLD
- IOIs for reassignment sought 9/29/10. 2 volunteers. HOLD

IRS: 10-MER-424-EMH: Nonselect.

IA: 10-MER-421-EMH: Nonselect.

Space Update:

RBOB 12/6: There is available space in the same building where the Field Office is located. GSA is renegotiating the current lease to accommodate the expansion space.

Other Personnel Actions in support of SWB

Other SA New Hires for SWB

Other SA PCS for SWB

Other IOI PCS for SWB

Updated March 21, 2011 (b) (7)(C)

7SWS \$37.5m

Other Personnel Actions in support of SWB

Other SA New Hires for SWB

Other SA PCS for SWB

Other IOI PCS for SWB

Updated March 21, 2011 (b) (7)(C)

7SWS \$37.5m

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PAGE**

From: (b) (7)(C)
Sent: Friday, April 22, 2011 4:35 PM
To: Newell, William D.
Subject: Re: Info

Thanks bill and sorry for the late response. I just got off the plane

From: Newell, William D.
To: (b) (7)(C)
Sent: Fri Apr 22 16:31:03 2011
Subject: Re: Info

I got my answer from Needles. Thanks. But for future purposes my cell is (b) (7)(C)

* * * * *

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From: (b) (7)(C)
To: Newell, William D.
Sent: Fri Apr 22 16:29:25 2011
Subject: Re: Info

Bill

What number can I reach you at

* * * * *

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From: Newell, William D.
To: (b) (7)(C)

Sent: Fri Apr 22 13:32:15 2011

Subject: Info

(b) (7)(C) you're probably on the flight back but give me or McMahon a call if you are available. Looking for the product you worked on this week, if final.

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From: (b) (7)(C)
Sent: Friday, April 22, 2011 4:29 PM
To: Newell, William D.
Subject: Re: Info

Bill

What number can I reach you at

From: Newell, William D.
To: (b) (7)(C)
Sent: Fri Apr 22 13:32:15 2011
Subject: Info

(b) (7)(C) you're probably on the flight back but give me or McMahon a call if you are available. Looking for the product you worked on this week, if final.

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From: (b) (7)(C)
Sent: Employee 2 April 25, 2011 10:08:43 AM
To: (b) (7)(C)
Subject: FW:

1488

Attachments: 20110425092622919.pdf

(b) (7)(C)

I remember saying I would not bother you with this little stuff. Sorry.
Here is my partially completed travel voucher without the voucher number and without the accounting strip breakdown since I do not have these yet. Do you want me to hang on this voucher until I get that info and then fax or scan over the voucher in its entirety to include signature, receipts etc.. to you? Not sure how you want me to proceed since this is an OCDETF thing.

Thanks (b) (7)(C)

(b) (7)(C)

Original Message

From: (b) (7)(C)
Sent: Monday, April 25, 2011 5:26 AM
To: (b) (7)(C)
Subject:

This E-mail was sent from "RNPB9F37A" (Alicio MP 3500).

Scan Date: 04.25.2011 09:26:22 (+0000)

Queries to: richol@aui.gov

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ATF8-002-001-00005717

Employee 2 TRAVEL VOUCHER		1. DEPARTMENT OR ESTABLISHMENT, BUREAU DIVISION OR OFFICE ATF		2. TYPE OF TRAVEL <input checked="" type="checkbox"/> TEMPORARY DUTY <input type="checkbox"/> PERMANENT CHANGE OF STATION		3. VOUCHER NO. 1489	
(Read the Privacy Act Statement on the back)						4. SCHEDULE NO.	
TRAVELER (PAYEE)	5. a. NAME (Last, first, middle initial) (b) (6)		b. SOCIAL SECURITY NO. (b) (6)		6. PERIOD OF TRAVEL		
	c. MAILING ADDRESS (Included ZIP Code) 99 New York Avenue NE MS 6.N-529 Washington DC, 20226		d. OFFICE TELEPHONE NO. (202)648- (b) (6)		a. FROM 04/18/2011	b. TO 4/22/2011	
	e. PRESENT DUTY STATION ATF HQ, Washington DC		f. RESIDENCE (City and State) Arlington, VA		7. TRAVEL AUTHORIZATION		
					a. NUMBER(S)	b. DATES(S)	
8. TRAVEL ADVANCE		9. CASH PAYMENT RECEIPT		10. CHECK NO.			
a. Outstanding		a. DATE RECEIVED		b. AMOUNT RECEIVED			
b. Amount to be applied				\$			
c. Amount due Government (Attached: <input type="checkbox"/> Check <input type="checkbox"/> Cash)		c. PAYEE'S SIGNATURE					
d. Balance outstanding							
12. GOVERNMENT TRANSPORTATION REQUESTS, OR TRANSPORTATION TICKETS, IF PUR- CHASED WITH CASH (List by number below and attach passenger coupon; if cash is used show claim on reverse side.)		I hereby assign to the United States any right I may have against any parties in connection with reimbursable transportation charges described below, purchased under cash payment procedures (FPMR 101-7) ▶ <i>Traveler's Initials</i>					
		AGENT'S VALUATION OF TICKET (a)	ISSUING CAR- RIER (Initials) (b)	MODE CLASS OF SERVICE AND ACCOM- MODATIONS (c)	DATE ISSUED (d)	POINTS OF TRAVEL	
						FROM (e)	TO (f)
		\$1339.40	USA	Coach	04/14/11	Washington DC/DCA Phoenix, AZ	Phoenix, AZ Washington DC/DCA
13. I certify that this voucher is true and correct to the best of my knowledge and belief, and that payment or credit has not been received by me. When applicable, per diem claimed is based on the average cost of lodging incurred during the period covered by this voucher.							
TRAVELER SIGN HERE ▶		(b) (6)			DATE 04/25/2011	AMOUNT CLAIMED ▶	\$ 2370.27
<i>NOTE: Falsification of an item in an expense account works a forfeiture of claim (28 U.S.C. 2514) and may result in a fine of not more than \$10,000 or imprisonment for not more than 5 years or both (18 U.S.C. 287; i.d. 1001).</i>							
14. This voucher is approved. Long distance telephone calls, if any, are certified as necessary in the interest of the Government. (NOTE: If long distance telephone calls are included, the approving official must have been authorized in writing by the head of the department or agency to so certify (31 U.S.C. 550a).)					17. FOR FINANCE OFFICE USE ONLY COMPUTATION		
APPROVING OFFICIAL SIGN HERE ▶					a. DIFFER- ENCES IF ANY (Explain and show amount)		
15. LAST PRECEDING VOUCHER PAID UNDER SAME TRAVEL AUTHORIZATION					b. TOTAL VERIFIED CORRECT FOR CHARGE TO APPROPRIATION		
a. VOUCHER NO.	b. D.O. SYMBOL	c. MONTH & YEAR		Certifier's initials:			\$
16. THIS VOUCHER IS CERTIFIED CORRECT AND PROPER FOR PAYMENT					c. APPLIED TO TRAVEL ADVANCE (Appropriation symbol):		
AUTHORIZED CERTIFYING OFFICIAL SIGN HERE ▶					d. NET TO TRAVELER ▶		
					\$ 2370.27		
18. ACCOUNTING CLASSIFICATION							

SCHEDULE OF EXPENSES AND AMOUNTS CLAIMED

INSTRUCTIONS TO TRAVELER (Unlisted items are self-explanatory)

Col. (c) If the voucher includes per diem allowances for member of employee's immediate family, show members' names, ages, and relationship to employee and marital status of children (unless information is shown on the travel authorization.)

Complete only for actual expense travel

Col. thru (g) (a) Show amount incurred for each meal, including tax and tips, and daily total
(g) Meal cost
(h) Show expenses, such as: laundry, cleaning and pressing of clothes, tips to bellboy, porters, etc. (other than for meals)
(i) Complete for per diem and actual expense travel.
(j) Show total subsistence expense incurred for actual expense travel.
(m) Show per diem amount, limited to maximum rate, or if travel on actual expense, show the lesser of the amount from col. (j) or maximum rate.
(n) Show expenses, such as: taxi/limousine fares, air fare (if purchased with cash), local or long distance telephone call for Government business, car rental, relocation other than subsistence, etc.

Complete this information if this is a Continuation Sheet

PAGE 2 OF 2 PAGES

TRAVEL AUTHORIZATION NO.

TRAVELER'S LAST NAME
(b) (6)

DATE 2011	TIME (Hour and am/pm)	DESCRIPTION (Departure/arrival city, per diem computation, or other explanations of expense)	ITEMIZED SUBSISTENCE EXPENSES							MILEAGE RATE: NO. OF MILES	AMOUNT CLAIMED		
			MEALS				MISCELLANEOUS SUBSISTENCE	LODGING	TOTAL SUBSISTENCE EXPENSE		MILEAGE	SUBSISTENCE	OTHER
			BREAK FAST	LUNCH	DINNER	TOTAL							
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)
04/18	1:00PM	LV:Washington DC AR:Phoenix,AZ@\$71/Day				\$0.00	\$53.25	\$126.00	\$179.25		\$0.00	\$179.25	
04/19		Phoenix, AZ				\$0.00	\$71.00	\$126.00	\$197.00		\$0.00	\$197.00	
04/20		Phoenix, AZ				\$0.00	\$71.00	\$126.00	\$197.00		\$0.00	\$197.00	
04/21		Phoenix, AZ				\$0.00	\$71.00	\$126.00	\$197.00		\$0.00	\$197.00	
04/22	5:00PM	LV:Phoenix,AZ AR:Washington DC/DCA				\$0.00	\$53.25		\$53.25		\$0.00	\$53.25	
						\$0.00			\$0.00		\$0.00	\$0.00	
		Sato Fee				\$0.00			\$0.00		\$0.00	\$0.00	\$6.49
		Baggage Fee				\$0.00			\$0.00		\$0.00	\$0.00	\$50.00
		Room Tax				\$0.00			\$0.00		\$0.00	\$0.00	\$66.88
		Airline Ticket				\$0.00			\$0.00		\$0.00	\$0.00	\$1,339.40
		Taxi				\$0.00			\$0.00		\$0.00	\$0.00	\$30.00
		Parking				\$0.00			\$0.00		\$0.00	\$0.00	\$54.00
SUBTOTALS ▶											\$0.00	\$823.50	\$1,546.77
TOTALS ▶											\$0.00	\$823.50	\$1,546.77

If additional space is required, continue on another SF 1012-A BACK, leaving the front blank.

In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 5 U.S.C. Cap. 57 as implemented by the Federal Travel Regulations (FPMR 101 - 7), F.D. 11605 of July 22, 1971; E.O. 11012 of March 27, 1962, E.O. 9397 of November 22, 1945, and 26 U.S.C. 6011(b) and 6109. The primary purpose of the requested information is to determine payment or reimbursement to eligible individuals for allowable travel and/or relocation expenses incurred under appropriate administrative authorization and to record and maintain costs of such reimbursements to the Government. The information will be used by officers and employees who have a need for the information in the performance of their official duties. The information may be disclosed to appropriate Federal, State, local, or foreign agencies, when relevant to civil,

criminal, or regulatory investigations or prosecutions, or when pursuant to a requirement by this agency in connection with the hiring or firing of an employee, the issuance of a security clearance, or investigations of the performance of official duty while in Government service. Your Social Security Account Number (SSN) is solicited under the authority of the Internal Revenue Code (26 USC 6011(b) and 6109) and E.O. 9387, November 22, 1943, for use as a tax payer and/or employee identification number; disclosure is MANDATORY on vouchers claiming travel and/or relocation allowance expense reimbursement which is, or may be, taxable income. Disclosure of your SSN and other requested information is voluntary in all other instances; however, failure to provide the information (other than SSN) required to support the claim may result in delay or loss of reimbursement.

Enter grand total of columns (l), (m) and (n), below and in item 13 on the front of this form.

TOTAL AMOUNT CLAIMED ▶ \$2,370.27

April 14, 2011



For: (b) (6)

To: ATTN-(b) (6) 202-648-(b) (6)
6.N-529
WASHINGTON, DISTRICT OF COLUMBIA 20226
ATF

Sales Person: ZB
Locator: LYJCCZ
Customer Number: [REDACTED]

*TICKET PURCHASE WITH (b) (6)
*THIS DOCUMENT BECOMES AN INVOICE WHEN THE PASSENGER
*NAME/INVOICE AND TICKET NUMBERS APPEAR
*IN THE PRICING BOX

FEES TOTALING 6.49PP CHARGED IN ADDITION TO TKT PRICE
FEE-JSD6.49PP-AIR/AMTRAK DOMESTIC, ONLINE

Monday April 18, 2011



US Airways Flight Number: 267
Class of Service: Coach Class Y
Depart: WASHINGTON/NATL,DC 10:30 Am April 18, 2011
Arrive: PHOENIX, AZ 12:28 Pm April 18, 2011
Total Flight Time: 4 Hours 58 Minutes Non-Stop
Equipment: 319
Meal Service: Available For Purchase
Status: Confirmed Confirmation Number: BJ5RH6
Reserved Seat: (b) (6) 20B
DEP-TERMINAL C ARR-TERMINAL 4

Friday April 22, 2011



US Airways Flight Number: 44
Class of Service: Coach Class Y
Depart: PHOENIX, AZ 8:47 Am April 22, 2011
Arrive: WASHINGTON/NATL,DC 4:06 Pm April 22, 2011
Total Flight Time: 4 Hours 19 Minutes Non-Stop
Equipment: 319
Meal Service: Available For Purchase
Status: Confirmed Confirmation Number: BJ5RH6
Reserved Seat: (b) (6) 22A
DEP-TERMINAL 4 ARR-TERMINAL C

Name	Invoice / Ticket / Date	Base	Tax1	Tax2	Tax3	Total
(b) (6)	[REDACTED]	1226.04	91.86US	7.40ZP	14.00XT	1,339.40
					Trip Fee	6.49

(b) (6)

*****TO BOOK RESERVATIONS ONLINE PLEASE VISIT*****
*****CWTSATOTRAVEL.COM*****

..... THANK YOU FOR USING CWTSATOTRAVEL
..... YOUR REFERENCE CODE IS *** SABRE OV4C

PLEASE CALL LOCAL OFFICE DURING NORMAL BUSINESS HOURS
TOLL FREE NUMBER 800-273-1989 MON-FRI 700A-700P CST
FOR AFTER HOURS EMERGENCY SERVICE IF TRAVEL IS WITHIN
24 HOURS CALL 1-800-273-1989 AND PRESS OPTION 1

.....
IF INTERNATIONAL 800 NUMBER DOES NOT WORK PLEASE
***** CALL COLLECT TO 210-877-3341 *****

.....
CONTRACT CARRIER CITY PAIR FARES DO NOT REQUIRE
ADVANCE PURCHASE. ALL OTHER FARES MAY REQUIRE ADVANCE
PURCHASE AND ARE NOT GUARANTEED UNTIL TICKETED

.....
TRANSACTION FEES ARE NONREFUNDABLE

.....
UNUSED PAPER TICKETS MUST BE RETURNED TO SATOTRAVEL
CONTACT SATOTRAVEL TO REFUND ELECTRONIC TICKETS

.....
GOVERNMENT ISSUED ID IS REQUIRED
.....

.....
TO VIEW ITINERARIES ONLINE PLEASE GO TO

.....*** WWW.VIRTUALLYTHERE.COM ***.....

ADD YOUR SABRE RESERVATION CODE, NAME AND EMAIL IN
THE APPROPRIATE BOXES AND ENTER.



THE RITZ-CARLTON®
PHOENIX

(b) (6)

99 New York Avenue Ne
Washington, DC 20226
United States

Room Number: 1010
Arrival Date: 04-18-11
Departure Date: 04-22-11
CRS Number: 82617316
Rewards No:
Page No: 1 of 1

INFORMATION INVOICE

Folio No:

04-22-11

Date	Description	Charges	Credits
04-18-11	Overnight Parking	27.00	
04-18-11	Room Charge	126.00	
04-18-11	Occupancy Tax	10.42	
04-18-11	Occupancy Tax	6.30	
04-19-11	Room Charge	126.00	
04-19-11	Occupancy Tax	10.42	
04-19-11	Occupancy Tax	6.30	
04-20-11	Overnight Parking	27.00	
04-20-11	Room Charge	126.00	
04-20-11	Occupancy Tax	10.42	
04-20-11	Occupancy Tax	6.30	
04-21-11	Room Charge	126.00	
04-21-11	Occupancy Tax	10.42	
04-21-11	Occupancy Tax	6.30	
Total		624.88	0.00
Balance		624.88	

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U.S AIRWAYS EXIT SEAT

(b) (6)

US FLIGHT: **267** 18APR

WASHINGTON - DCA

PHOENIX

API OK E-TICKET

SEAT: **9B**

BJ5RH6/US

SEQ 128

ZONE 2

U.S AIRWAYS



(b) (6)

CONF: BJ5RH6/US ZONE 2

FFD: WASHINGTON - DCA
PHOENIX

FLIGHT DEPARTS DATE
267 1030A 18APR

Gate	Boarding Time	Seat
GATE	BOARD TIME	SEAT
39	1000A	9B

PRINTED IN U.S.A. BY MAGNETIC TICKET & LABEL CORP., DALLAS, TX 75248

U.S AIRWAYS

(b) (6)

US FLIGHT: **44** 22APR

PHOENIX

WASHINGTON - DCA

API OK E-TICKET

SEAT: **22A**

BJ5RH6/US

SEQ 100

ZONE 3

U.S AIRWAYS



(b) (6)

CONF: BJ5RH6/US ZONE 3

FFD: PHOENIX
WASHINGTON - DCA

FLIGHT DEPARTS DATE
44 847A 22APR

Gate	Boarding Time	Seat
GATE	BOARD TIME	SEAT
A23	817A	22A

E



U-S AIRWAYS

U-S AIRWAYS

DR28RV/US 18APR11 BFCDBY5 E-TICKET RECEIPT
 (b) (6) ARRIVAL
 1000A EXCESS BAG EBC US 9957 Y 18APR 1130A FEE FEE

FROM
EB

US AIRWAYS CHECK
 (b) (6)
 INF DCA
 PNR: BJ5RH6
 BAGS CHKD: 000001 OF 01
 US 267 PHX
 US931703

(b) (6) /FC BAGGAGE FEE (1B) 01.0025 (2B) 00
 0000 (3B) 00 0000 (OW) 00 0000 (OZ) 00 0000 (SE) 00 0000 USD/TE 025.00E
 ND

FARE USD 25.00 DOCUMENT NUMBER 0372427361732
 TAX US 0.00
 TAX NO CASH VALUE
 TOTAL USD 25.00

THANK YOU FOR FLYING
US AIRWAYS

PRINTED IN USA BY MAGNETIC MONEY & PAPER CO. INC. TX 75001

U-S AIRWAYS

71DH7/US 22APR11 BE58BDY3 E-TICKET RECEIPT
 (b) (6) ARRIVAL
 1000A EXCESS BAG EBC US 9957 Y 22APR 1130A FEE FEE

FROM TO
 EBC FEE
 US AIRWAYS
 BAG CLAIM CHECK
 (b) (6)
 22APR11 07:09 Y3 PHX

(b) (6) /FC BAGGAGE FEE (1B) 01.0025 (2B) 00
 0000 (3B) 00 0000 (OW) 00 0000 (OZ) 00 0000 (SE) 00 0000 USD:25.00END

US 44 DCA PNR: BJ5RH6
 BAGS CHKD: 000001 OF 01
 US259509

FARE USD 25.00 DOCUMENT NUMBER 0372427874909
 AX US 0.00
 AX NO CASH VALUE
 TOTAL USD 25.00 NOT VALID FOR TRAVEL

THANK YOU FOR FLYING
US AIRWAYS

NAME (b) (6)
 ZIP CODE/HOTEL RITZ CAR
 TRAVEL DATE 4-22-11
 FARE 27.00 DRIVER #
 TIP 3.00 CAR #
 TOTAL 30.00

ATF8-002-001-00005724

From: (b) (7)(C)
Sent: Saturday, April 23, 2011 5:05 PM
To: Newell, William D.
Subject: Re:

Sounds good thanks bill

From: Newell, William D.
To: (b) (7)(C)
Cc: (b) (7)(C)
Sent: Sat Apr 23 13:26:33 2011
Subject: Re:

I'm in Phx for the weekend and don't come back until Wednesday. McMahon's aware. I gave the 3 "new" DOJ attorneys a 2 hour briefing on Friday and then a quick tour of the FO conf room. They will be sitting in the conf room on the opposite side of the hallway, down by OST AD. They are here to assist us with Congressional responses. McMahon can fill in more on that on Monday. This past week I somewhat organized our conf room as well as my temp office, where Needles was. I'll be in on Thurs/Friday.

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From: (b) (7)(C)
To: Newell, William D.
Cc: (b) (7)(C)
Sent: Sat Apr 23 13:05:17 2011
Subject:

Bill and (b) (7)(C)

Can we find some time on Monday or Tuesday to sit down so I can update you on the Phoenix trip – what was accomplished and what is currently being done. Just want to keep everyone informed. Enjoy your holiday weekend and see you both Monday.

Thanks,

(b) (7)(C)

SPECIAL AGENT (b) (7)(C)
PROJECT OFFICER
OFFICE OF FIELD OPERATIONS

FIREARMS OPERATIONS DIVISION
CELL (b) (7)(C)
DESK (202) 648-(b) (7)(C)

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From: (b) (7)(C)
Sent: Saturday, April 23, 2011 1:05 PM
To: Newell, William D.
CC: (b) (7)(C)
Subject:

Bill and (b) (7)(C)

Can we find some time on Monday or Tuesday to sit down so I can update you on the Phoenix trip – what was accomplished and what is currently being done. Just want to keep everyone informed. Enjoy your holiday weekend and see you both Monday.

Thanks,

(b) (7)(C)

SPECIAL AGENT (b) (7)(C)
PROJECT OFFICER
OFFICE OF FIELD OPERATIONS
FIREARMS OPERATIONS DIVISION
CELL (b) (7)(C)
DESK (202) 648-(b) (7)(C)

From: (b) (7)(C)
Sent: Friday, April 15, 2011 2:03 PM
To: (b) (7)(C)
Subject: FW: BTEP training

From: (b) (7)(C)
Sent: Thursday, April 14, 2011 12:06 PM
To: (b) (7)(C)
Subject: RE: BTEP training

Sorry. Just replied without typing anything.

No worries, did not realize you are part of that. I can imagine you are busy. Will swing by and say hello next time I am over at HQ.

(b) (7)(C)

(b) (7)(C)
ATF Special Agent
Staff Coordinator - DEA SOD
(c) (b) (7)(C)

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From: (b) (7)(C)
Sent: Thursday, April 14, 2011 11:45 AM
To: (b) (7)(C)
Subject: RE: BTEP training

(b) (7)(C)

I am really sorry about not getting back to you yet. We are running around like crazy with this Fast and Fu case here in my group. I really appreciate you thinking of me but I am now assigned to this case full time and I have not had 5 minutes to even think so I am going to pass on your invite. It looks like this is going to be a long term thing so anytime in the very near future I am probably out. Thanks again for thinking of us and I bet (b) (7)(C) would want to attend.

(b) (7)(C)

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From: (b) (7)(C)
Sent: Thursday, April 14, 2011 11:05 AM
To: (b) (7)(C).
Subject: BTEP training

(b) (7)(C)

Would you be interested in the BTEP (Basic Telecommunications Exploitation Program) training that DEA SOD puts on? We are trying to grab a spot for you and Seth. No cost, held at some hotel in Chantilly.

Dates May 10-12 or June 7-9. Let me know if either works, so we can forward the request on.

(b) (7)(C)

(b) (7)(C)
ATF Special Agent
Staff Coordinator - DEA SOD
(e) (b) (7)(C)

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From: (b) (7)(C)
Sent: Friday, April 15, 2011 8:17:30 AM
To: (b) (7)(C)
Subject: RE: Emailing: (b) (7)(C) BACKGROUND.pdf

1501

Bonehard,

Unfortunately I am out all next week because I have to go to Phoenix for the F&F case and I have two issues I have to deal with today. Is this something you need asap or can it wait for about 10 days? If you need it asap, I can attempt to solicit some help from others. Just let me know.

Original Message

From: (b) (7)(C)
Sent: Friday, April 15, 2011 1:27 AM
To: (b) (7)(C)
Subject: Emailing: (b) (7)(C) BACKGROUND.pdf

Bonehard,

Can you dust-off your revolver and head-out to DC Metro and get a report for me? (b) (7)(C) aka (b) (7)(C) was arrested on May 26, 2002 by DCMP, case number (b) (7)(C)

Thanks,

Eduardo Pesos

PS. I was in Tijuana today and the Tacos were righteous! I also knocked down three bottles, that's right, bottles, of Coke, which I haven't consumed in over a year.

The message is ready to be sent with the following file or link attachments:

(b) (7)(C) BACKGROUND.pdf

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

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From: (b) (7)(C)
Sent: Thursday, April 14, 2011 12:16 PM
To: (b) (7)(C)
Subject: RE: BTEP training

I thought maybe you were mad when I saw no content in the e-mail. Thanks for understanding and I will hopefully see you soon.

From: (b) (7)(C)
Sent: Thursday, April 14, 2011 12:06 PM
To: (b) (7)(C)
Subject: RE: BTEP training

Sorry. Just replied without typing anything.

No worries, did not realize you are part of that. I can imagine you are busy. Will swing by and say hello next time I am over at HQ.

(b) (7)(C)

(b) (7)(C)
ATF Special Agent
Staff Coordinator - DEA SOD
(o) (b) (7)(C)

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From: (b) (7)(C)
Sent: Thursday, April 14, 2011 11:45 AM
To: (b) (7)(C)
Subject: RE: BTEP training

(b) (7)(C)

I am really sorry about not getting back to you yet. We are running around like crazy with this Fast and Fu case here in my group. I really appreciate you thinking of me but I am now assigned to this case full time and I have not had 5 minutes to even think so I am going to pass on your invite. It looks like this is going to be a long term thing so anytime in the very near future I am probably out. Thanks again for thinking of us and I bet (b) (7)(C) would want to attend.

Be safe,

(b) (7)(C)

* * * * *

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From: (b) (7)(C)
Sent: Thursday, April 14, 2011 11:05 AM
To: (b) (7)(C)
Subject: BTEP training

(b) (7)(C)

Would you be interested in the BTEP (Basic Telecommunications Exploitation Program) training that DEA SOD puts on? We are trying to grab a spot for you and (b) (7)(C) No cost, held at some hotel in Chantilly.

Dates May 10-12 or June 7-9. Let me know if either works, so we can forward the request on.

(b) (7)(C)

(b) (7)(C)
ATF Special Agent
Staff Coordinator - DEA SOD
(c) (b) (7)(C)

* * * * *

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From: (b) (7)(C)
Sent: Thursday, April 14, 2011 11:44 AM
To: (b) (7)(C)
Subject: RE: BTEP training

(b) (7)(C)

I am really sorry about not getting back to you yet. We are running around like crazy with this Fast and Fu case here in my group. I really appreciate you thinking of me but I am now assigned to this case full time and I have not had 5 minutes to even think so I am going to pass on your invite. It looks like this is going to be a long term thing so anytime in the very near future I am probably out. Thanks again for thinking of us and I bet (b) (7)(C) would want to attend.

Be safe,

(b) (7)(C)

From: (b) (7)(C)
Sent: Thursday, April 14, 2011 11:05 AM
To: (b) (7)(C)
Subject: BTEP training

(b) (7)(C)

Would you be interested in the BTEP (Basic Telecommunications Exploitation Program) training that DEA SOD puts on? We are trying to grab a spot for you and (b) (7)(C) No cost, held at some hotel in Chantilly.

Dates May 10-12 or June 7-9. Let me know if either works, so we can forward the request on.

(b) (7)(C)

(b) (7)(C)
ATF Special Agent
Staff Coordinator - DEA SOD
(c) (b) (7)(C)

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From: (b) (7)(C)
Sent: Thursday, April 14, 2011 8:15 AM
To: (b) (7)(C)
Subject:

Name: (b) (7)(C)

Meal Preference: standard

Flight Details | Roundtrip | *Government Fare Selected for Entire Trip*

DCA to PHX - Non-stop [Modify this flight](#) | [Remove this flight](#)

Mon, Apr 18 **10:30 AM - 12:28 PM** Washington, DC [\(DCA\)](#) to <https://www.usairways.com>
Phoenix, AZ [\(PHX\)](#) US Airways
Flight 267
Seat 20B
Class: Coach

Online Check-in is available 24 hours before the scheduled departure time.

PHX to DCA - Non-stop [Modify this flight](#) | [Remove this flight](#)

Fri, Apr 22 **8:47 AM - 4:06 PM** Phoenix, AZ [\(PHX\)](#) to <https://www.usairways.com>
Washington, DC [\(DCA\)](#) US Airways
Flight 44
Seat 22A
Class: Coach

Online Check-in is available 24 hours before the scheduled departure time.

Base Airfare: \$1,226.04

Taxes and Fees: \$113.36

Flight Total: \$1,339.40

SPECIAL AGENT (b) (7)(C)
PROJECT OFFICER
OFFICE OF FIELD OPERATIONS
FIREARMS OPERATIONS DIVISION
CELL (b) (7)(C)

Subject: Accepted: Fast & Furious Meeting
Location: 2.S-100

1507

Start: 4/13/2011 2:00 PM
End: 4/13/2011 3:00 PM
Show Time As: Busy

Recurrence: (none)

Required Attendees: (b) (7)(C)
Resources: 2.S-100

From: (b) (7)(C)
Sent: Wednesday, April 13, 2011 10:19 AM
To: (b) (7)(C)
Subject: RE: GRIT Reports

Thanks again (b) (7)(C)

From: (b) (7)(C)
Sent: Wednesday, April 13, 2011 10:18 AM
To: (b) (7)(C)
Subject: GRIT Reports

(b) (7)(C)

Here are both the internal and external Phoenix GRIT reports. These reports have been reviewed by our writer editor and are currently in hard copy with DAD McMahon. We are awaiting word to finalize them for release. Thanks, (b) (7)(C)

(b) (7)(C)

*Program Analyst
Firearms Operations Division
Office of Field Operations
Bureau of ATF
202-648-(b) (7)(C)*

(b) (7)(C)

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From: (b) (7)(C)
Sent: Wednesday, April 13, 2011 8:10 AM
To: (b) (7)(C)
Subject: RE:

I think I just missed your call.

From: (b) (7)(C)
Sent: Wednesday, April 13, 2011 7:44 AM
To: (b) (7)(C)
Subject: RE:

Hi (b) (7)(C) I will give you a call later this morning. You are probably not there yet. Thanks.

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From: (b) (7)(C)
Sent: Tuesday, April 12, 2011 3:46 PM
To: (b) (7)(C)
Subject:

(b) (7)(C)

if possible, can you give me a call at 202 648 (b) (7)(C) or (b) (7)(C) if reference to the GRIT report?

Thanks (b) (7)(C)

(b) (7)(C)

SPECIAL AGENT (b) (7)(C)
PROJECT OFFICER
OFFICE OF FIELD OPERATIONS
FIREARMS OPERATIONS DIVISION
CELL (b) (7)(C)
DESK (202) 648 (b) (7)(C)

NOTICE: This e-mail message and any attached files are intended solely for the use of the addressee(s) named above in connection with official business. This communication may contain Sensitive But Unclassified information that may be statutorily or otherwise prohibited from being released without appropriate approval. Any review, use, or dissemination of this e-mail message and any attached file(s) in any form outside of the Bureau of Alcohol, Tobacco, Firearms & Explosives or the Department of Justice

without express authorization is strictly prohibited.

From: (b) (7)(C)
Sent: Tuesday, April 12, 2011 3:46 PM
To: (b) (7)(C)
Subject:

Follow Up Flag: Follow up
Flag Status: Flagged

(b) (7)(C)

If possible, can you give me a call at 202 648 (b) (7)(C) or (b) (7)(C) if reference to the GRIT report?

Thanks (b) (7)(C)

(b) (7)(C)

SPECIAL AGENT (b) (7)(C)
PROJECT OFFICER
OFFICE OF FIELD OPERATIONS
FIREARMS OPERATIONS DIVISION
CELL (b) (7)(C)
DESK (202) 648 (b) (7)(C)

From: (b) (7)(C)
Sent: Monday, April 11, 2011 2:26 PM
To: (b) (7)(C)
Subject:

(b) (7)(C)

In reference to the trafficking orders re-write, the agents name in San Diego is (b) (7)(C) -cell (b) (7)(C). I spoke with him and he said he would be interested in participating. He has an abundance of firearms trafficking experience (10 years) both domestic and international and is an excellent writer. He is a nexus guy and is currently in the computer forensic training program.

Thanks (b) (7)(C)

(b) (7)(C)

SPECIAL AGENT (b) (7)(C)
PROJECT OFFICER
OFFICE OF FIELD OPERATIONS
FIREARMS OPERATIONS DIVISION
CELL (b) (7)(C)
DESK (202) 648 (b) (7)(C)

From: (b) (7)(C)
Sent: Friday, April 08, 2011 4:11:09 PM
To: (b) (7)(C)
Subject: Emailing: OIG Gunrunner 2010 full wATF.pdf

1513

Attachments: OIG Gunrunner 2010 full wATF.pdf

The message is ready to be sent with the following file or link attachments:

OIG Gunrunner 2010 full wATF.pdf

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

Subject: Conference Call w/Ambassador Carlos Pacquale

Location: Acting Dir. off.

Start: 2/26/2013 6:13 PM

End: 2/26/2013 6:13 PM

Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Required Attendees: Melson, Kenneth E.; Hoover, William J.; (b) (6)

Optional Attendees: (b) (6)

Resources: Acting Dir. off.

When: Tuesday, March 22, 2011 12:00 PM-12:30 PM (GMT-05:00) Eastern Time (US & Canada).

Where: Acting Dir. off.

Note: The GMT offset above does not reflect daylight saving time adjustments.

~~*~*~*~*~*~*~*~*

Subject: Accepted: Discuss the Fast and Furious Briefing
Location: Director's Conference Room

2

Start: 2/26/2013 6:13 PM
End: 2/26/2013 6:13 PM
Show Time As: Busy

Recurrence: (none)

Required Attendees:

(b) (6)

Resources: Director's Conference Room

Subject: Accepted: Discuss the Fast and Furious Briefing
Location: Director's Conference Room

3

Start: 2/26/2013 6:13 PM
End: 2/26/2013 6:13 PM
Show Time As: Busy

Recurrence: (none)

Required Attendees:

(b) (6)

Resources: Director's Conference Room

Subject: Accepted: Discuss the Fast and Furious Briefing
Location: Director's Conference Room

4

Start: 2/26/2013 6:13 PM
End: 2/26/2013 6:13 PM
Show Time As: Busy

Recurrence: (none)

Required Attendees:

(b) (6)

Resources: Director's Conference Room

Subject: Accepted: Discuss the Fast and Furious Briefing
Location: Director's Conference Room

5

Start: 2/26/2013 6:13 PM
End: 2/26/2013 6:13 PM
Show Time As: Busy

Recurrence: (none)

Required Attendees: (b) (6)
Resources: Director's Conference Room

From: System Administrator
Sent: Friday, March 18, 2011 6:22 PM
To: Axelrod, Matthew (ODAG) (SMO)
Subject: Undeliverable: Delivery Status Notification (Failure)

Your message did not reach some or all of the intended recipients.

Subject: Fast and Furious T III Affidavit 2 and 3
Sent:

The following recipient(s) could not be reached:

Axelrod, Matthew (ODAG) (SMO) on 3/18/2011 5:22 PM

This message is larger than the current system limit or the recipient's mailbox is full. Create a shorter message body or remove attachments and try sending it again.

From: System Administrator
Sent: Thursday, March 17, 2011 3:03 PM
To: Axelrod, Matthew (ODAG) (SMO)
Subject: Undeliverable: Delivery Status Notification (Failure)

Your message did not reach some or all of the intended recipients.

Subject: Project Gunrunner Background Documents Part 1
Sent:

The following recipient(s) could not be reached:

Axelrod, Matthew (ODAG) (SMO) on 3/17/2011 2:03 PM

This message is larger than the current system limit or the recipient's mailbox is full. Create a shorter message body or remove attachments and try sending it again.

Subject: ATF Briefing for Matt Axelrod

Location: Acting Dir. Off.

Start: 2/26/2013 6:13 PM

End: 2/26/2013 6:13 PM

Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Required Attendees: Melson, Kenneth E.; Hoover, William J.; (b) (6)
(b) (6) Axelrod, Matthew (ODAG) (SMO)

Optional Attendees: (b) (6) Henderson, Charles V (SMO)

Resources: Acting Dir. Off.

When: Tuesday, March 22, 2011 11:00 AM-2:00 PM (GMT-05:00) Eastern Time (US & Canada).

Where: Acting Dir. Off.

Note: The GMT offset above does not reflect daylight saving time adjustments.

~~*~*~*~*~*~*~*~*

Subject: Mtg. re: Posting the Aggregate Stats for Mexico on the Web

Location: Acting Dir. off.

Start: 2/26/2013 6:14 PM

End: 2/26/2013 6:14 PM

Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Required Attendees: Melson, Kenneth E. (b) (6) (b) (6)
Ford, Larry W.; (b) (6)

Optional Attendees: (b) (6)

Resources: Acting Dir. off.

When: Friday, March 25, 2011 9:00 AM-9:30 AM (GMT-05:00) Eastern Time (US & Canada).

Where: Acting Dir. off.

Note: The GMT offset above does not reflect daylight saving time adjustments.

~~*~*~*~*~*~*~*~*

Subject: Mtg. re: Posting the Aggregate Stats for Mexico on the Web
Location: Acting Dir. off.

Start: 3/24/2011 1:00 PM
End: 3/24/2011 1:30 PM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Required Attendees: Melson, Kenneth E.; (b) (6)

(b) (6); Ford, Larry W.; (b) (6)

Optional Attendees: (b) (6)

(b) (6)

When: Thursday, March 24, 2011 1:00 PM 1:30 PM (GMT 05:00) Eastern Time (US & Canada).
Where: Acting Dir. off.

Note: The GMT offset above does not reflect daylight saving time adjustments.

~~*~*~*~*~*~*~*~*

UPDATED: This meeting will take place today, March 24th at 1:00 p.m. Thank you.

Subject: Mtg. re: Posting the Aggregate Stats for Mexico on the Web
Location: Acting Dir. off.

Start: 3/25/2011 9:00 AM
End: 3/25/2011 9:30 AM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Required Attendees: Melson, Kenneth E.; (b) (6)

(b) (6); Ford, Larry W.; (b) (6)

Optional Attendees: (b) (6)

When: Friday, March 25, 2011 9:00 AM-9:30 AM (CMT-05:00) Eastern Time (US & Canada).
Where: Acting Dir. off.

Note: The GMT offset above does not reflect daylight saving time adjustments.

~~*~*~*~*~*~*~*~*

Subject: Mtg. re: Posting the Aggregate Stats for Mexico on the Web

Location: Acting Dir. off.

Start: 3/25/2011 9:00 AM

End: 3/25/2011 9:30 AM

Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Required Attendees: Melson, Kenneth E.; (b) (6)
Ford, Larry W.; (b) (6)

Optional Attendees: (b) (6)

Resources: Acting Dir. off.

Subject: Mtg. re: Posting the Aggregate Stats for Mexico on the Web

Location: Acting Dir. off.

Start: 3/25/2011 9:00 AM

End: 3/25/2011 9:30 AM

Show Time As: Busy

Recurrence: (none)

Meeting Status: Accepted

Required Attendees: Melson, Kenneth E.:(b) (6)
Ford, Larry W.:(b) (6)

Optional Attendees: (b) (6)

Resources: Acting Dir. off.

Subject: ATF Conference Call
Location: Acting Dir. off.

Start: 3/28/2011 10:00 AM
End: 3/28/2011 11:00 AM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Required Attendees: Melson, Kenneth E.; Hoover, William J.; (b) (6)

(b) (6) Axelrod, Matthew (ODAG) (SMO)

Optional Attendees: (b) (6) Simms, Donna Y.

(SMO); (b) (6)

When: Monday, March 28, 2011 10:00 AM-11:00 AM (GMT-05:00) Eastern Time (US & Canada).

Where: Acting Dir. off.

Note: The GMT offset above does not reflect daylight saving time adjustments.

x~*~*~*~*~*~*~*~*~*

Mr. Axelrod the number for you to call in for the conference call is 777-7778 - conference code 984728 followed by the # on your telephone keypad.

Thank you.

Subject: Conference Call w/Ambassador Carlos Pacquale
Location: Acting Dir. off.

Start: 3/22/2011 12:00 PM
End: 3/22/2011 12:30 PM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Required Attendees: Melson, Kenneth E.; Hoover, William J.; (b) (6)

Optional Attendees: (b) (6)

When: Tuesday, March 22, 2011 12:00 PM-12:30 PM (GMT-05:00) Eastern Time (US & Canada).
Where: Acting Dir. off.

Note: The GMT offset above does not reflect daylight saving time adjustments.

~~*~*~*~*~*~*~*~*

Subject: Mtg. re: Posting the Aggregate Stats for Mexico on the Web
Location: Acting Dir. off.

Start: 3/24/2011 1:00 PM
End: 3/24/2011 1:30 PM
Show Time As: Busy

Recurrence: (none)

Meeting Status: Accepted

Required Attendees: Melson, Kenneth E.; (b) (6)

(b) (6); Ford, Larry W.; (b) (6)

Optional Attendees: (b) (6)

(b) (6)

Resources: Acting Dir. off.

When: Thursday, March 24, 2011 1:00 PM-1:30 PM (GMT-05:00) Eastern Time (US & Canada).
Where: Acting Dir. off.

Note: The GMT offset above does not reflect daylight saving time adjustments.

UPDATED: This meeting will take place today, March 24th at 1:00 p.m. Thank you.

Subject: ATF Conference Call
Location: Acting Dir. off.

Start: 3/28/2011 10:00 AM
End: 3/28/2011 11:00 AM
Show Time As: Busy

Recurrence: (none)

Meeting Status: Accepted

Required Attendees: Melson, Kenneth E.; Hoover, William J.; (b) (6)

(b) (6) Axelrod, Matthew (ODAG) (SMO)

Optional Attendees: (b) (6) Simms, Donna Y.

(SMO); (b) (6)

Resources: Acting Dir. off.

When: Monday, March 28, 2011 10:00 AM-11:00 AM (GMT-05:00) Eastern Time (US & Canada).

Where: Acting Dir. off.

Note: The GMT offset above does not reflect daylight saving time adjustments.

x~*~*~*~*~*~*~*~*~*~*

Mr. Axelrod the number for you to call in for the conference call is (b) (6)
conference code (b) (6) followed by the # on your telephone keypad.

Thank you.

Subject: Conference Call w/Ambassador Carlos Pacquale
Location: Acting Dir. off.

Start: 3/22/2011 12:00 PM
End: 3/22/2011 12:30 PM
Show Time As: Busy

Recurrence: (none)

Meeting Status: Accepted

Required Attendees: Melson, Kenneth E.; Hoover, William J.; (b) (6)

(b) (6)

Optional Attendees: (b) (6)

Resources: Acting Dir. off.

When: Tuesday, March 22, 2011 12:00 PM 12:30 PM (GMT 05:00) Eastern Time (US & Canada).

Where: Acting Dir. off.

Note: The GMT offset above does not reflect daylight saving time adjustments.

~~*~*~*~*~*~*~*~*

Subject: Discuss Grassley Letters
Location: Director's Conference Room

Start: 2/1/2011 1:30 PM
End: 2/1/2011 2:30 PM
Show Time As: Busy

Recurrence: (none)

Meeting Status: Accepted

Required Attendees: Rubenstein, Steve R.; Hoover, William J.; Chait, Mark R.;
McDermond, James E.; Michalic, Vivian B.

Optional Attendees: (b) (6)

(b) (6)

Resources: Director's Conference Room

When: Tuesday, February 01, 2011 1:30 PM-2:30 PM (GMT-05:00) Eastern Time (US & Canada).
Where: Director's Conference Room

Note: The GMT offset above does not reflect daylight saving time adjustments.

LAMAR S. SMITH, Texas
CHAIRMAN

F. JAMES SENSENBRENNER, JR., Wisconsin
HOWARD COBLE, North Carolina
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
DANIEL E. LUNGREN, California
STEVE CHABOT, Ohio
DARRELL E. ISSA, California
MIKE PENCE, Indiana
J. RANDY FOXBES, Virginia
STYVE KING, Iowa
TREAT FRANKS, Arizona
LOUIE GOMBERT, Texas
JIM JOHNSON, Ohio
TED POE, Texas
JASON CHAFFETZ, Utah
TOM REED, New York
TIM GRUFFIN, Arkansas
TOM MARINO, Pennsylvania
TREY GOWDY, South Carolina
DENNIS ROSS, Florida
SANDY ADAMS, Florida
ULIN CLAYLE, Arizona

JOHN CONYERS, JR., Michigan
RANKING MEMBER

HOWARD L. BERMAN, California 30
JERROLD NADEAU, New York
ROBERT C. "BOBBY" SCOTT, Virginia
MELVIN L. WATT, North Carolina
ZOE LOPREHN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
STEVE COHEN, Tennessee
HENRY C. "HANK" JOHNSON, JR., Georgia
PEDRO R. PERALTA, Puerto Rico
MIKE QUIGLEY, Illinois
JUDY CHU, California
TED DEUTCH, Florida
LINDA Y. SANCHEZ, California
DEBBIE WASSERMAN SCHULTZ, Florida

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951

<http://www.house.gov/judiciary>

March 9, 2011

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
Washington, D.C. 20530

Dear Attorney General Holder,

We write to express our concerns about allegations that the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) Operation Gunrunner may have been complicit in the illegal transfer of firearms into Mexico. According to media reports, the Phoenix-based program known as "Fast and Furious" intentionally allowed straw buyers for criminal organizations to purchase thousands of guns so that ATF could track them across the border.

We find it ironic that the government allowed guns to be trafficked into Mexico as part of a program designed to stop guns from being trafficked into Mexico. We are also troubled that ATF engaged in activities that may have facilitated the transfer of guns to violent drug cartels while simultaneously attempting to restrict lawful firearms sales by border-area firearms dealers. In December, ATF sought to impose additional reporting requirements on semi-automatic rifles, a proposal that we strongly oppose.

The program resulted in a large flow of weapons across the border to Mexico. According to the Center for Public Integrity, ATF allowed nearly 2,000 guns—valued at over one million dollars—to cross the border to known criminal organizations.¹ As would be expected, many of the guns were used in violent crimes. Worse, two guns from the program were found at the murder scene of Customs and Border Protection Agent Brian Terry in December.

¹ John Solomon, David Heath, and Gordon Witkin, *ATF Let Hundreds of U.S. Weapons Fall into Hands of Suspected Mexican Gunrunners*, The Center for Public Integrity (March 3, 2011), available at <http://www.publicintegrity.org/articles/entry/2976/>.

REC'D
DEPT OF JUSTICE
EXECUTIVE SECRETARIAT
2011 MAR 10 AM 11:10

ATF's strategy to allow weapons to flow into the hands of criminals carried serious and obvious risks. More disturbing, however, is that ATF appears to have accepted these risks without due regard for the consequences

ATF initiated Operation Gunrunner after the Department of Justice Inspector General (IG) criticized the ATF's gun tracing ability. In a 2010 report, the IG wrote:

Despite the increased activity related to Project Gunrunner, ATF is not using intelligence effectively to identify and target firearms trafficking organizations operating along the Southwest border and in Mexico. Moreover, ATF's expansion of its automated system (eTrace) to trace guns seized in Mexico has yielded very limited information of intelligence value.²

In addition, there seems to have been little effective coordination between ATF and the Department as a whole. While guns continued to cross the border, the Department was apparently slow to approve wiretaps and to bring prosecutions. Internal ATF documents show that ATF's supervisors became increasingly concerned about the pace of the investigations. It was only this January, 15 months after ATF initiated the program and a month after agent Terry's murder, that the Department finally issued its first indictment based on evidence from the program.

We commend your request that the Department's Inspector General investigate these allegations. In the meantime, we ask that the Department respond to the following questions:

1. How many weapons have been allowed to pass to Mexico under the program known as "Fast and Furious"? Is the program still active?
2. Who at ATF Headquarters approved the program?
3. Who in the U.S. Attorney's Office for the District of Arizona approved the program? On what authority did the Office approve the program?
4. Did ATF or the U.S. Attorney's Office in Phoenix coordinate the "Fast and Furious" program with the Department? Did the Department approve the strategy?
5. What changes or improvements has ATF made to its eTrace program and its ability to use intelligence to target gun trafficking organizations in general?
6. Does ATF view the "Fast and Furious" program as a success?

Thank you for your attention to this matter. We respectfully request that the Department respond to these questions by Friday, March 18, 2011.

Sincerely,

² Review of ATF's Project Gunrunner, U.S. Dept. of Justice Office of the Inspector General, p. vi (2010), available at <http://www.justice.gov/oig/reports/ATF/e1101.pdf>.

Lamar Smith

Bob Latta

Tom Marino

Frey Bordy

J. Rody Forke

Elton Gallegly

ATMM

Jim Lammiman

Paul E. Ryan

Tom Goff

Scott Franks

Bob Goodlatte

Howard Coble

Steve King

cc: The Honorable John Conyers, Jr.

Myies, Tonia (JMD)

From: McKay, Shirley A (SMO)
Sent: Thursday, March 10, 2011 9:21 AM
To: DOJExecSec (JMD)
Cc: Tolson, Kimberly G (JMD); Wells, Barbara A (JMD)
Subject: FW: Letter to General Holder
Attachments: 3.9.11 HJC Gunrunner Letter.pdf

Importance: High

Pls log the attached ltr. Thanks.

From: Agrast, Mark D. (SMO)
Sent: Wednesday, March 09, 2011 7:13 PM
To: McKay, Shirley A (SMO); Kralovec, Jamie (JMD)
Cc: Weich, Ron (SMO); Burton, Faith (SMO); Gaston, Molly (SMO)
Subject: FW: Letter to General Holder

Shirley/Jamie,

Please log in and assign.

Mark

From: Lynch, Caroline [<mailto:Caroline.Lynch@mail.house.gov>]
Sent: Wednesday, March 09, 2011 5:30 PM
To: Agrast, Mark D. (SMO)
Cc: Hertling, Richard; Jezierski, Crystal
Subject: Letter to General Holder

Mark – attached please find a letter to General Holder. Thanks.

Caroline G. Lynch
 Chief Majority Counsel
 Subcommittee on Crime, Terrorism & Homeland Security
 House Committee on Judiciary
 B-370 Rayburn House Office Building
 Washington, D.C. 20515
 (202) 225-5727
 (202) 225-3672 (fax)

F. JAMES SENSENBRENNER, JR., Wisconsin
HOWARD COBLE, North Carolina
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
DANIEL E. LUNGREN, California
STEVE CHABOT, Ohio
DARRIN L. ISSA, California
MIKE PENCE, Indiana
J. RANDY FOXBES, Virginia
STYVE KING, Iowa
TREAT FRANKS, Arizona
LOUIE GOHMERT, Texas
JIM JOHNSON, Ohio
TED POE, Texas
JASON CHAFFETZ, Utah
TOM REED, New York
TIM GRIFFIN, Arkansas
TOM MARINO, Pennsylvania
TREY GOWDY, South Carolina
DENNIS ROSS, Florida
SANDY ADAMS, Florida
ULIN CLAYLE, Arizona

HOWARD L. BERMAN, California 35
JERROLD NADEAU, New York
ROBERT C. "BOBBY" SCOTT, Virginia
MELVIN L. WATT, North Carolina
ZOE LOPREHN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
STEVE COHEN, Tennessee
HENRY C. "HANK" JOHNSON, JR., Georgia
PEDRO R. PERALTA, Puerto Rico
MIKE QUIGLEY, Illinois
JUDY CHU, California
TED DEUTCH, Florida
LINDA Y. SANCHEZ, California
DEBBIE WASSERMAN SCHULTZ, Florida

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March 9, 2011

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Attorney General
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We find it ironic that the government allowed guns to be trafficked into Mexico as part of a program designed to stop guns from being trafficked into Mexico. We are also troubled that ATF engaged in activities that may have facilitated the transfer of guns to violent drug cartels while simultaneously attempting to restrict lawful firearms sales by border-area firearms dealers. In December, ATF sought to impose additional reporting requirements on semi-automatic rifles, a proposal that we strongly oppose.

The program resulted in a large flow of weapons across the border to Mexico. According to the Center for Public Integrity, ATF allowed nearly 2,000 guns—valued at over one million dollars—to cross the border to known criminal organizations.¹ As would be expected, many of the guns were used in violent crimes. Worse, two guns from the program were found at the murder scene of Customs and Border Protection Agent Brian Terry in December.

¹ John Solomon, David Heath, and Gordon Witkin, *ATF Let Hundreds of U.S. Weapons Fall into Hands of Suspected Mexican Gunrunners*, The Center for Public Integrity (March 3, 2011), available at <http://www.publicintegrity.org/articles/entry/2976/>.

REC'D
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Sincerely,

² Review of ATF's Project Gunrunner, U.S. Dept. of Justice Office of the Inspector General, p. vi (2010), available at <http://www.justice.gov/oig/reports/ATF/e1101.pdf>.

Lamar Smith

Bob Latham

Tom Marino

Frey Bordy

J. Rody Forke

Elton Gallegly

ATMM

Jim Lammiman

Paul G. Ryan

Tom Goff

Scott Franks

Bob Goodlatte

Howard Coble

Steve King

cc: The Honorable John Conyers, Jr.

Myies, Tonia (JMD)

From: McKay, Shirley A (SMO)
Sent: Thursday, March 10, 2011 9:21 AM
To: DOJExecSec (JMD)
Cc: Tolson, Kimberly G (JMD); Wells, Barbara A (JMD)
Subject: FW: Letter to General Holder
Attachments: 3.9.11 HJC Gunrunner Letter.pdf

Importance: High

Pls log the attached ltr. Thanks.

From: Agrast, Mark D. (SMO)
Sent: Wednesday, March 09, 2011 7:13 PM
To: McKay, Shirley A (SMO); Kralovec, Jamie (JMD)
Cc: Weich, Ron (SMO); Burton, Faith (SMO); Gaston, Molly (SMO)
Subject: FW: Letter to General Holder

Shirley/Jamie,

Please log in and assign.

Mark

From: Lynch, Caroline [<mailto:Caroline.Lynch@mail.house.gov>]
Sent: Wednesday, March 09, 2011 5:30 PM
To: Agrast, Mark D. (SMO)
Cc: Hertling, Richard; Jezierski, Crystal
Subject: Letter to General Holder

Mark – attached please find a letter to General Holder. Thanks.

Caroline G. Lynch
 Chief Majority Counsel
 Subcommittee on Crime, Terrorism & Homeland Security
 House Committee on Judiciary
 B-370 Rayburn House Office Building
 Washington, D.C. 20515
 (202) 225-5727
 (202) 225-3672 (fax)

From:**To:** Melson, Kenneth E.; Hoover, William J.; Axelrod, Matthew (ODAG) (SMO)**CC:** (b) (6), (b) (7)(C)**Subject:** FAST AND FURIOUS ROIs AND GUN BUY TIMELINE**Attachments:** FAST AND FURIOUS REPORTS OF INVESTIGATION.docx; Firearm purchases - per date w recover.pdf

Attached are all of the Fast and Furious event reports (ROIs) the gun buy summary, and the

(b) (6), (b) (7)(C)

Acting Chief of Staff

Office of the Director

O: 202-648 (b) (6), (b) (7)(C)

C: (b) (6), (b) (7)(C)

HQ Room 5 S 100

week day	# days purch	Date	Straw Purchaser	# firearms	Day Total - multiple purchases	Month Total Firearm	# Firearms Recovered	When	Where
2009			(b)(3)	(P.L.	112-55	125	Stat	552)	
			(b)(3)	(P.L.	112-55	125	Stat	552)	
			(b)(3)	(P.L.	112-55	125	Stat	552)	
			(b)(3)	(P.L.	112-55	125	Stat	552)	

week day	# days purch	Date	Straw Purchaser	# firearms	Day Total - multiple purchases	Month Total Firearm	# Firearms Recovered	When	Where
2009			(b)(3)			(P.L. 112-55 125 Stat 552)			
			(b)(3)			(P.L. 112-55 125 Stat 552)			
			(b)(3)			(P.L. 112-55 125 Stat 552)			

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2009			(b)(3) (P.L. 112-55 125 Stat 552)						
			(b)(3) (P.L. 112-55 125 Stat 552)						
			(b)(3) (P.L. 112-55 125 Stat 552)						

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									(b)(3) (P.L. 112-55 125 Stat 552)
									(b)(3) (P.L. 112-55 125 Stat 552)

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									(b)(3) (P.L. 112-55 125 Stat 552)
									(b)(3) (P.L. 112-55 125 Stat 552)

From:
To: (b) (6)
CC: Hoover, William J.; Chait, Mark R.; (b) (6)
Subject: Cancellation and Closing of SAC Phoenix Vacancy.

All:

The Director and Deputy in consultation with ASD Chait have decided to close the pending SAC Phoenix vacancy. SAC Newell will remain in place to complete the trial of Fast and Furious. The cert will expire before that occurs so we are closing it.

Please provide the list of applicants to me so we may notify them BEFORE we announce anything.

Please consider this notice that SAC Newell's reporting date to Mx City is delayed until at least PP 19 beginning 9/11/11.

(b) (6)
Acting Chief of Staff
Office of the Director
O: 202-648-(b) (6)
C: (b) (6)
HQ Room 5 S 100

From:**To:** Axelrod, Matthew (ODAG) (SMO)**Subject:** FFL Lone Wolf Trading**Attachments:** US v (b) (6), (b) (7)(C) FF MgtLog Pg4 (121709).pdf; FF FFL MediaRels SKMBT_C25311021008250 (2).pdf; FF Memo DKB Avila Purchases.wpd

Matt:

Some additional documents.

The 9th circuit case on 922(a)(6)

The memo by AUSA (b) (6), (b) (7)(C) documenting the contact with FFL Lone Wolf Trading

The related section of ATF's case management log documenting the same event

The two press releases by the FFL regarding his role in this case

(b) (6), (b) (7)(C)

Acting Chief of Staff

Office of the Director

O: 202-648 (b) (6), (b) (7)(C)

C: (b) (6), (b) (7)(C)

HQ Room 5 S 100

From: Stinnett, Melanie S.
Sent: Wednesday, March 23, 2011 3:17 PM
To: (b) (6)
Subject: IAD query of records

See below

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From: (b) (6)
Sent: Wednesday, March 23, 2011 2:15 PM
To: Stinnett, Melanie S.
Subject: RE:

Melanie,

IAPro and HR Connect was queried and we were unable to locate any information where (b) (6) was a complainant.

(b) (6)

(b) (6)

Special Agent in Charge
Internal Affairs Division, ATF
5111 Leesburg Pike, Suite 808
Falls Church, VA 22041
(571) 480-5940 office
(571) 480-5941 fax

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without express authorization is strictly prohibited.

From: Stinnett, Melanie S.
Sent: Wednesday, March 23, 2011 12:08 PM
To: (b) (6)
Subject:

(b) (6)

As you know, we have been asked a number of times whether the IG ever received a complaint from Special Agent (b) (6) in the Phoenix Field Division. Can you confirm whether IAD ever received a complaint from (b) (6)? I think the answer is no, but I need to confirm that. If we did get a complaint, can you provide the details?

Melanie

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From: (b) (6)
 Sent: Wednesday, March 23, 2011 12:10 PM
 To: (b) (6)
 CC: (b) (6)
 Subject: RE: Information Requested

Sorry (b) (6) This was meant for (b) (6)

(b) (6)

Public Affairs Division
 Bureau of Alcohol, Tobacco, Firearms and Explosives
 99 New York Avenue NE
 Washington, DC 20226

(b) (6)

(202) 648-(b) (6) Office

(b) (6) BlackBerry

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From: (b) (6)
 Sent: Wednesday, March 23, 2011 12:03 PM
 To: (b) (6)
 Cc: (b) (6)
 Subject: RE: Information Requested

LAW ENFORCEMENT SENSITIVE

Is this not information you should get from the NTC?
 Looping in (b) (6)

(b) (6)

Special Assistant to the Director

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LAW ENFORCEMENT SENSITIVE

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From: (b) (6)
 Sent: Tuesday, March 22, 2011 12:27 PM
 To: (b) (6)
 Cc: (b) (6)
 Subject: Information Requested

(b) (6)

I am working on the talking points and Q&As for the release of Mexican trace stats and I have a few more questions. Could you help me with some information? Thanks.

(b) (6)

Q. Why have the statistics dropped so dramatically between 2008 and 2010?

Q. Of the 4506 rifles recovered in 2010 – how many would fit into the “multiple sales reporting” category?

Q. What are the percentages of guns sourced from US, by year and overall, since 2007?

(b) (6)

Public Affairs Division
 Bureau of Alcohol, Tobacco, Firearms and Explosives
 99 New York Avenue NE
 Washington, DC 20226

(b) (6)

(202) 648-(b) (6) Office

(b) (6) BlackBerry

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From: (b) (6)
 Sent: Wednesday, March 23, 2011 12:03 PM
 To: (b) (6)
 CC: (b) (6)
 Subject: RE: Information Requested

LAW ENFORCEMENT SENSITIVE

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 Looping in (b) (6)

(b) (6)

Special Assistant to the Director
 Bureau of Alcohol, Tobacco, Firearms and Explosives

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From: (b) (6)
 Sent: Tuesday, March 22, 2011 12:27 PM
 To: (b) (6)
 Cc: (b) (6)
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(b) (6)

Public Affairs Division
Bureau of Alcohol, Tobacco, Firearms and Explosives
99 New York Avenue NE
Washington, DC 20226

(b) (6)

(202) 648-(b) (6) Office

(b) (6) BlackBerry

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From: (b) (6)
Sent: Wednesday, March 23, 2011 9:47 AM
To: (b) (6)
CC: (b) (6)
Subject: RE: VCAB #113971 - Top 5 Source States for Firearms Recovered and Traced in Mexico in CY08, CY09 and CY10

What criteria is a successful trace? VCAB normally doesn't use "successful". We identify source states based on traces to a purchaser and the FFL location.

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From: (b) (6)
Sent: Tuesday, March 22, 2011 4:42 PM
To: (b) (6)
Cc: Ford, Larry W.; Martin, Steve K.; (b) (6)
Subject: RE: VCAB #113971 - Top 5 Source States for Firearms Recovered and Traced in Mexico in CY08, CY09 and CY10

(b) (6)

Can we get this same data for all traces that were successful to FFLs (as opposed to first retail purchaser) located in the top 5 states?

(b) (6)
 Acting Chief of Staff
 Office of the Director
 O: 202-648 (b) (6)
 C: (b) (6)
 HQ Room 5 S 100

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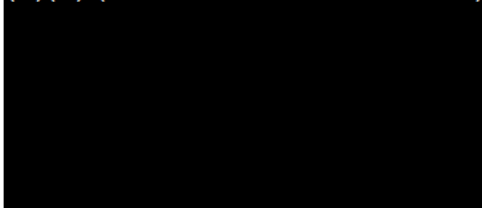
From: (b) (6)
Sent: Tuesday, March 22, 2011 11:15 AM
To: (b) (6)
Cc: Ford, Larry W.; Martin, Steve K.; (b) (6)
Subject: VCAB #113971 - Top 5 Source States for Firearms Recovered and Traced in Mexico in CY08, CY09 and CY10

(b) (6)

The following are source state statistics for CYs 08, 09 and 10, for firearms recovered and traced in Mexico that identified a purchaser and retail dealer. Duplicate traces were not included. These statistics are based on a query of the Firearms Tracing System (FTS) on March 1, 2011.

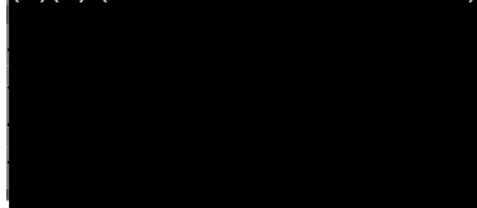
CY 2010

(b)(3) (P.L. 112-55 125 Stat 552)



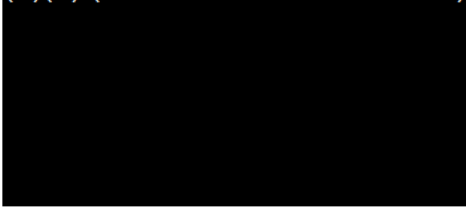
CY 2009

(b)(3) (P.L. 112-55 125 Stat 552)



CY 2008

(b)(3) (P.L. 112-55 125 Stat 552)



Please complete the attached OSII Customer Satisfaction Survey form. Click on the "Mail" box located at the bottom of the form and then click on "Send".

Please be advised that the Consolidated Appropriations Act of 2010, Public L. 111-117, which became effective on December 16, 2009, restricts the disclosure of any part of the contents of the Firearms Tracing System or any information required to be kept by Federal Firearms Licensees pursuant to 18 USC 923(g), or required to be reported pursuant to 18 USC 923(g)(3) and 923(g)(7).

The information, which is being provided per your request, is for official law enforcement use only and may only be disseminated by the Bureau of Alcohol, Tobacco, Firearms and Explosives to a Federal, State, local, or tribal law enforcement agency, or a Federal, State, or local prosecutor; or a foreign law enforcement agency solely in connection with and for use in a criminal investigation or prosecution; or a Federal agency for a national security or intelligence purpose. This disclosure restriction shall not be construed to prevent the sharing or exchange of such information among and between Federal, State, local, or foreign law enforcement agencies, Federal, State, or local prosecutors, and Federal national security, intelligence, or

counterterrorism officials. Congress has prohibited the public release of any data by the recipient law enforcement agency. The publication of statistical aggregate data regarding firearms traffickers and trafficking channels, firearms misuse, felons, and trafficking investigations is exempt from the restriction. If you have questions regarding these restrictions please contact ATF legal counsel prior to disclosing any of the information provided in this correspondence outside of ATF.

Thank you,

(b) (6)

Supervisory Intelligence Program Specialist
Violent Crime Analysis Branch
Bureau of Alcohol, Tobacco, Firearms and Explosives

(b) (6)

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From: Axelrod, Matthew (ODAG) (b) (6)
Sent: Tuesday, March 22, 2011 8:39 AM
To: (b) (6)
Subject: Re: ROI 205 WITH DEA 6

Great. Thanks, (b) (6)

From: (b) (6) (ATF)
Sent: Tuesday, March 22, 2011 08:27 AM
To: Axelrod, Matthew (ODAG)
Subject: ROI 205 WITH DEA 6

I HAVE ALL OF THIS PRINTED FOR YOU. YOU CAN PICK IT UP TODAY AT THE MEETING.

(b) (6)
Acting Chief of Staff
Office of the Director
O: 202-648 (b) (6)
C: (b) (6)
HQ Room 5 S 100

From: McMahon, William G.

Sent: Tuesday, March 22, 2011 8:35 AM

To: (b) (6)

Subject: F&F BPs

Attachments: December Fast and Furious BP for SAC.DOCX; briefing paper for round-up.docx; Fast and Furious Talking Points for DAD doc.docx; December Fast and Furious BP Supplemental December 16 2010.docx; December Fast and Furious BP for SAC (2) (2).docx

(b) (6)

Here are the BPs I have on the F&F case.

William G. McMahon
Deputy Assistant Director (West)
Office of Field Operations
Office - (202) 648-(b) (6)

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Title of Investigation: (b) (7)(C)	Investigation Number: 785115-10-0004	Report Number: 272
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SYNOPSIS:

CANINE ASSISTANCE: On June 3, 2010, Phoenix Police Department (PPD) K-9 Officer **(b) (7)(C)** and his K-9 partner, Zeke, assisted Alcohol, Tobacco, Firearms and Explosives (ATF) Special Agent (S/A) **(b) (7)(C)** with the detection of narcotics on U.S. currency located at Federal Firearms Licensee (FFL) "Lone Wolf Trading Company"

NARRATIVE:

1. On June 3, 2010, PPD Officer **(b) (7)(C)** and his K-9 partner "Zeke" assisted ATF S/A **(b) (7)(C)** with the detection of narcotics on U.S. currency received by employee **(b) (7)(C)** from the purchase of firearms by **(b) (7)(C)** from FFL, "Lone Wolf Trading Company", 5140 W. Peoria Avenue, Glendale, AZ. **(b) (7)(C)** as instructed by ATF, kept the currency from **(b) (7)(C)** and **(b) (7)(C)** purchases separate until the next morning, when S/A **(b) (7)(C)** and PPD K-9 Officer **(b) (7)(C)** arrived at approximately 0750 hours.
2. Upon arrival, ATF SOI #1 provided ATF S/A **(b) (7)(C)** a black plastic bag containing \$15,400.00 in U.S. currency from two separate purchases totaling **(b) (7)(C)**. SOI #1 also provided S/A **(b) (7)(C)** in U.S. currency from one purchase totaling **(b) (7)(C)** on **(b) (7)(C)**. Prior to PPD officer **(b) (7)(C)** arrival, the plastic bag from **(b) (7)(C)** purchase remained sealed.
3. At approximately 0755 hours, Officer **(b) (7)(C)** arrived and conducted a search of the interior of the business where the currency was to be placed. According to Officer **(b) (7)(C)** upon completion of this search K-9 Zeke had no alerts or final responses to any areas.
4. Upon instruction by PPD Officer **(b) (7)(C)** ATF S/A **(b) (7)(C)** using gloved hands, removed the \$15,400.00 in U.S. currency money from the plastic bag and placed the currency in the third drawer of a file cabinet located in the office area of the business. The U.S. Currency in the amount of \$6,640.00 from **(b) (7)(C)** purchase was placed inside a closed cardboard box in the rear area of the store.
5. Once the currency had been placed in the abovementioned locations, Officer **(b) (7)(C)** returned with K-9, Zeke

Prepared by: (b) (7)(C)	Title: Special Agent, Phoenix VII Field Office	Signature:	Date:
Authorized by: (b) (7)(C)	Title: Group Supervisor, Phoenix VII Field Office	Signature:	Date:
Second level reviewer (optional): William D. Newell	Title: Special Agent in Charge, Phoenix Field Division	Signature:	Date:

approximately 30 minutes later. Officer **(b) (7)(C)** and S/A **(b) (7)(C)** observed K-9 Zeke slow his search pattern, display a breathing change, and scratch both the file cabinet door and the cardboard box where the currency was placed. No additional similar behaviors were observed at any other time.

6. Upon completion of the search, ATF S/A's **(b) (7)(C)** took photographs and documented the U.S. Currency from both purchases. S/A **(b) (7)(C)** recorded the denominations of the \$15,400.00 in U.S. currency as, 93-\$100.00, and 305-\$20.00 bills from **(b) (7)(C)** purchase. S/A **(b) (7)(C)** recorded the denominations of the \$6,400.00 as, 8-\$100.00, 26-\$50.00, 215-\$20.00, 19-\$10.00.
7. Officer **(b) (7)(C)** provided the following certifications for K-9 Zeke,
 - NNDDA certification received in 2009
 - NPCA certification received in 2010
8. This investigation is ongoing, below are the four photographs pertaining to this report.







From: (b) (7)(C)
Sent: Monday, March 21, 2011 6:00 PM
To: (b) (7)(C); Needles, James R.
Subject: FW: OCDETF Proposal (FF)
Attachments: The Fast and The Furious.doc; The Fast and The Furious narrative.doc

Attached is electronic "clean" copy as well as the supporting narrative document.

According to email below, it was approved 1/26/10. OCDETF #: SWAZP0496

(b) (7)(C)

Chief, Firearms Operations Division
 ATF HQ - Room 6.S.129
 202.648 (b) (7)(C) Cell (b) (7)(C)

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From: McMahon, William G.
Sent: Monday, March 21, 2011 5:55 PM
To: (b) (7)(C)
Subject: FW: OCDETF Proposal

FYI

NOTICE: THIS E-MAIL MESSAGE AND ANY ATTACHED FILES ARE INTENDED SOLELY FOR THE USE OF THE ADDRESSEE(S) NAMED ABOVE IN CONNECTION WITH OFFICIAL BUSINESS. THIS COMMUNICATION MAY CONTAIN SENSITIVE BUT UNCLASSIFIED INFORMATION THAT MAY BE STATUTORILY OR OTHERWISE PROHIBITED FROM BEING RELEASED WITHOUT APPROPRIATE APPROVAL. ANY REVIEW, USE, OR DISSEMINATION OF THIS E-MAIL MESSAGE AND ANY ATTACHED FILE(S) IN ANY FORM OUTSIDE OF THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS & EXPLOSIVES OR THE DEPARTMENT OF JUSTICE WITHOUT EXPRESS AUTHORIZATION IS STRICTLY PROHIBITED.

From: Newell, William D.
Sent: Friday, January 28, 2011 5:32 PM
To: McMahon, William G.
Subject: FW: OCDETF Proposal

Original proposal. Was eventually assigned the following OCDETF #: SWAZP0496

Bill Newell
Special Agent in Charge
Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)
Phoenix Field Division (Arizona and New Mexico)
Office - (602)776-5400

From: Gillett, George T. Jr.
Sent: Tuesday, January 26, 2010 11:26 AM
To: Newell, William D.
Subject: FW: OCDETF Proposal

Bill –

(b) (7)(C) OCDETF proposal was unanimously passed today at the USAO. This

(b) (7)(A), (b) (7)(C), (b) (7)(E)

(b) (7)(A), (b) (7)(E)

(b) (7)(A), (b) (7)(E)

George T. Gillett
Assistant Special Agent in Charge
ATF - Phoenix Field Division
Office: (602) 776-5400

From: (b) (7)(C)
Sent: Monday, March 21, 2011 5:45 PM
To: (b) (7)(C)
Subject: FW: FF nforce narrative

fyi

(b) (7)(C)

Chief, Firearms Operations Division
 ATF HQ - Room 6.S.129
 202.648 (b) (7)(C) Cell (b) (7)(C)

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From: (b) (7)(C)
Sent: Monday, March 21, 2011 5:29 PM
To: (b) (7)(C)
Subject: FW:

(b) (7)(C)

Please see the below e-mail chain from (b) (7)(C) in reference to the master ROI list he sent me last week. It looks as though 3 ROI's are not in the list and (b) (7)(C)'s name should be removed.

Thanks,

(b) (7)(C)

NOTICE: This e-mail message and any attached files are intended solely for the use of the addressee(s) named above in connection with official business. This communication may contain Sensitive But Unclassified information that may be statutorily or otherwise prohibited from being released without appropriate approval. Any review, use, or dissemination of this e-mail message and any attached file(s)

in any form outside of the Bureau of Alcohol, Tobacco, Firearms & Explosives or the Department of Justice without express authorization is strictly prohibited.

From: (b) (7)(C)
Sent: Friday, March 11, 2011 8:49 AM
To: (b) (7)(C)
Subject: RE:

No problem. There was one more thing I noticed about the document that you should delete from the master copy. The first few lines of the document, shown below, are just references point from the query I used to create this document. The person (b) (7)(C) had nothing to do with this effort and his name should be deleted from all your copies to prevent any future questions or confusion about who he is.

SBU
 ATF
 SEA
 NFORCE
 20110310

(b) (7)(C)
 (b) (7)(C)

(b) (7)(C)
 202.648 (b) (7)(C) Office
 (b) (7)(C) Mobile

From: (b) (7)(C)
Sent: Friday, March 11, 2011 8:42 AM
To: (b) (7)(C)
Subject: RE:

Thanks for the heads up (b) (7)(C)

From: (b) (7)(C)
Sent: Thursday, March 10, 2011 2:22 PM
To: (b) (7)(C)
Subject: FW:

One more thing: These are the 3 event narratives that were not reported on in an ROI as of this report.

(b) (7)(A), (b) (7)(C)

(b) (7)(A), (b) (7)(C)

(b) (7)(A), (b) (7)(C)

(b) (7)(C)
 202.648 (b) (7)(C) Office
 (b) (7)(C) Mobile

From: (b) (7)(C)
Sent: Thursday, March 10, 2011 2:08 PM
To: (b) (7)(C)
Subject: RE:

Thanks,

(b) (7)(C)
Chief, NFOCIS
202.648 (b) (7)(C) Office
(b) (7)(C) Mobile
(b) (7)(C)

National Field Office Case Information System
The Home of ATF's Official Case Management System
ATF National Headquarters, Suites 8E352-8E449
99 New York Avenue, NE, Washington, DC 20226

From: (b) (7)(C)
Sent: Thursday, March 10, 2011 9:00 AM
To: (b) (7)(C)
Subject:

(b) (7)(C)

Can you give me a call in reference to an Nforce query question?

Thanks,

(b) (7)(C)

SPECIAL AGENT (b) (7)(C)
PROJECT OFFICER
OFFICE OF FIELD OPERATIONS
FIREARMS OPERATIONS DIVISION
CELL (b) (7)(C)
DESK (202) 648 (b) (7)(C)

Report of Investigation

(b) (7)(C)

Investigation Number:
785115-10-0004

Report Number:
109

SUMMARY OF EVENT:

Receipt of Information: On February 24, 2010, Alcohol, Tobacco, Firearms and Explosives (ATF) Special Agent (b) (7)(C) received information from ATF Digital Investigations and Cybercrime Branch (DCIB) regarding information associated with subjects of interest involved in this investigation (ATF UI #785115-10-0004.)

NARRATIVE:

- On February 24, 2010, ATF (b) (7)(C) received information from ATF DCIB Information Technology Specialist (b) (7)(C) regarding information associated with subjects believed to be involved in trafficking firearms from the United States into Mexico. The results of Specialist (b) (7)(C) research are attached.

ATTACHMENTS:

- ATF DCIB Memo
- My Space cross reference chart
- Public Access Research Results

Prepared by: (b) (7)(C)	Title: Special Agent, Phoenix VII Field Office	(b) (7)(C)	Date: 3-4-2010
Reviewed by: (b) (7)(C)	Title: Group Supervisor, Phoenix VII Field Office	(b) (7)(C)	Date: 3-5-10
Field level reviewer (optional): Sam D. Newell	Title: Special Agent in Charge, Phoenix Field Division	(b) (7)(C)	Date:

FEB COPY



Bureau of Alcohol, Tobacco, Firearms & Explosives
Office of Field Operations, Special Operations Division
Digital Investigations and Cybercrime Branch

Request for Assistance

Phone: (703) 948-2830

Fax: (703) 948-2831

February 24, 2010

TO: (b) (7)(C) Group Supervisor
Phoenix VII Field Office

THRU: (b) (7)(C) SAC
Digital Investigations and Cybercrime Branch

FROM: (b) (7)(C) IT Specialist
Digital Investigations and Cybercrime Branch

SUBJECT: Request for Assistance RE: SWB Firearms Traffickers
DICB # 100017

At the request of Group Supervisor (b) (7)(C) the Digital Investigations and Cybercrime Branch has searched the Internet for information associated with subjects of interest involved in NForce firearms trafficking investigation #785115-10-0004. The results of that examination are forwarded for your consideration and appropriate action.

Synopsis

A request was received from Group Supervisor (b) (7)(C) Phoenix VII Field Office, for assistance in searching the Internet for information associated with subjects of interest involved in NForce firearms trafficking investigation #785115-10-0004 with particular emphasis on associations between the subjects on the MySpace social networking website. A number of MySpace associations were found, some of which may represent new investigative leads.

Law Enforcement Sensitive

Primary Subject

Name: See attached chart

Narrative

A request was received from Group Supervisor (b) (7)(C) Phoenix VII Field Office, for assistance in searching the Internet for information associated with 26 subjects of interest involved in NForce firearms trafficking investigation #785115-10-0004 with particular emphasis on associations between the subjects on the MySpace social networking website.

MySpace accounts were identified for (b) (7)(C) on the list that was provided by the Phoenix Field Division. MySpace accounts were also identified for an (b) (7)(C) (b) (7)(C) MySpace accounts identified, the "friends" list could not be viewed on 6 of the accounts as they were set to "private". It was also noted that on (b) (7)(C) identified accounts, no user name had been entered.

(b) (7)(E)

(b) (7)(E)

(b) (7)(E)

(b) (7)(E)

(b) (7)(E)

Law Enforcement Sensitive

*Bureau of Alcohol, Tobacco, Firearms and Explosives,
Office of Field Operations, Special Operations Division
Digital Investigations and Cybercrime Branch*

888

WARNING: It is suggested that the website contained in this referral not be viewed by equipment connected to the ATF network.

If you have any questions, please contact IT Specialist (b) (7)(C)

Law Enforcement Sensitive

ATF8-001-001-00003117

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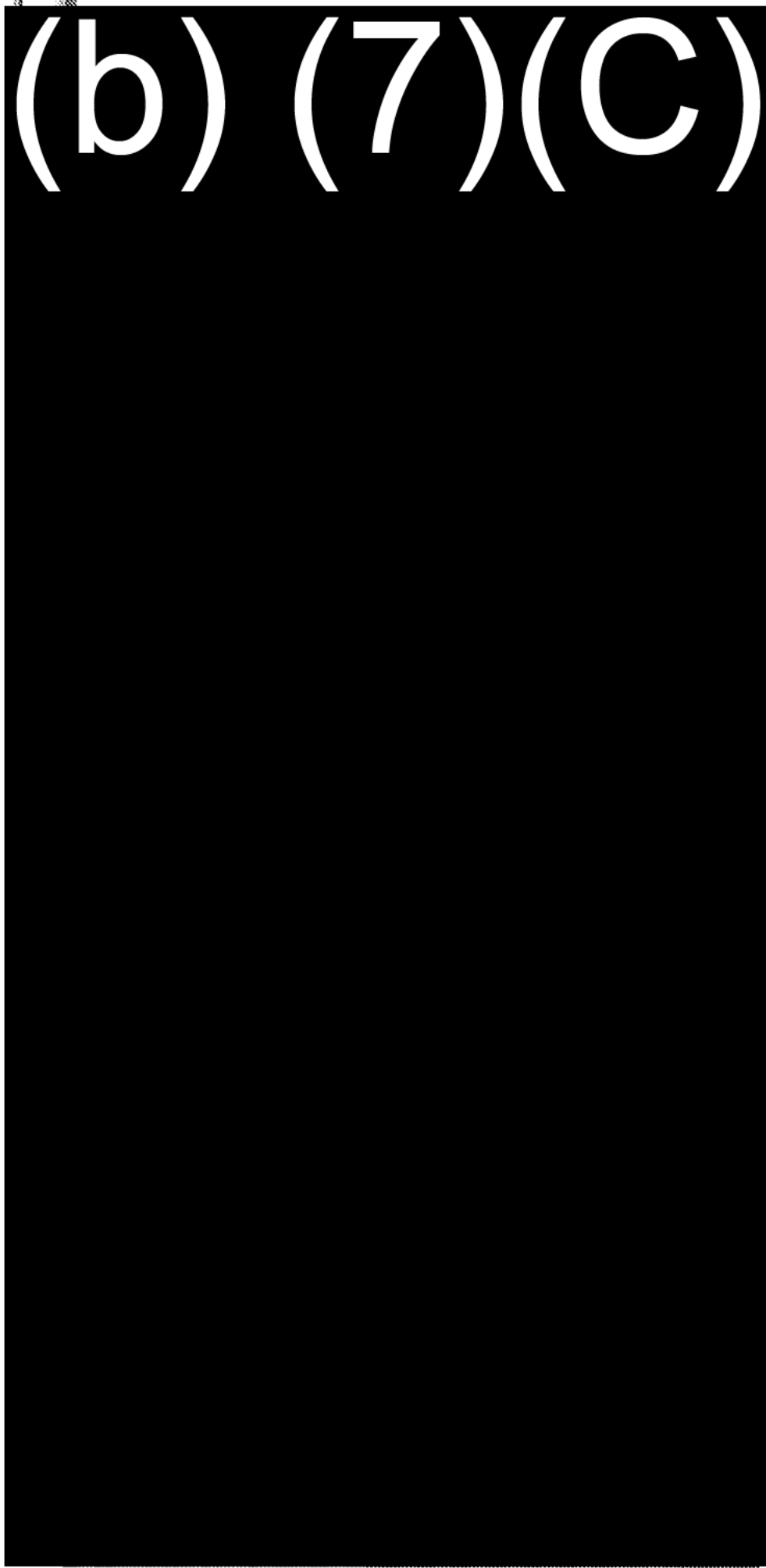
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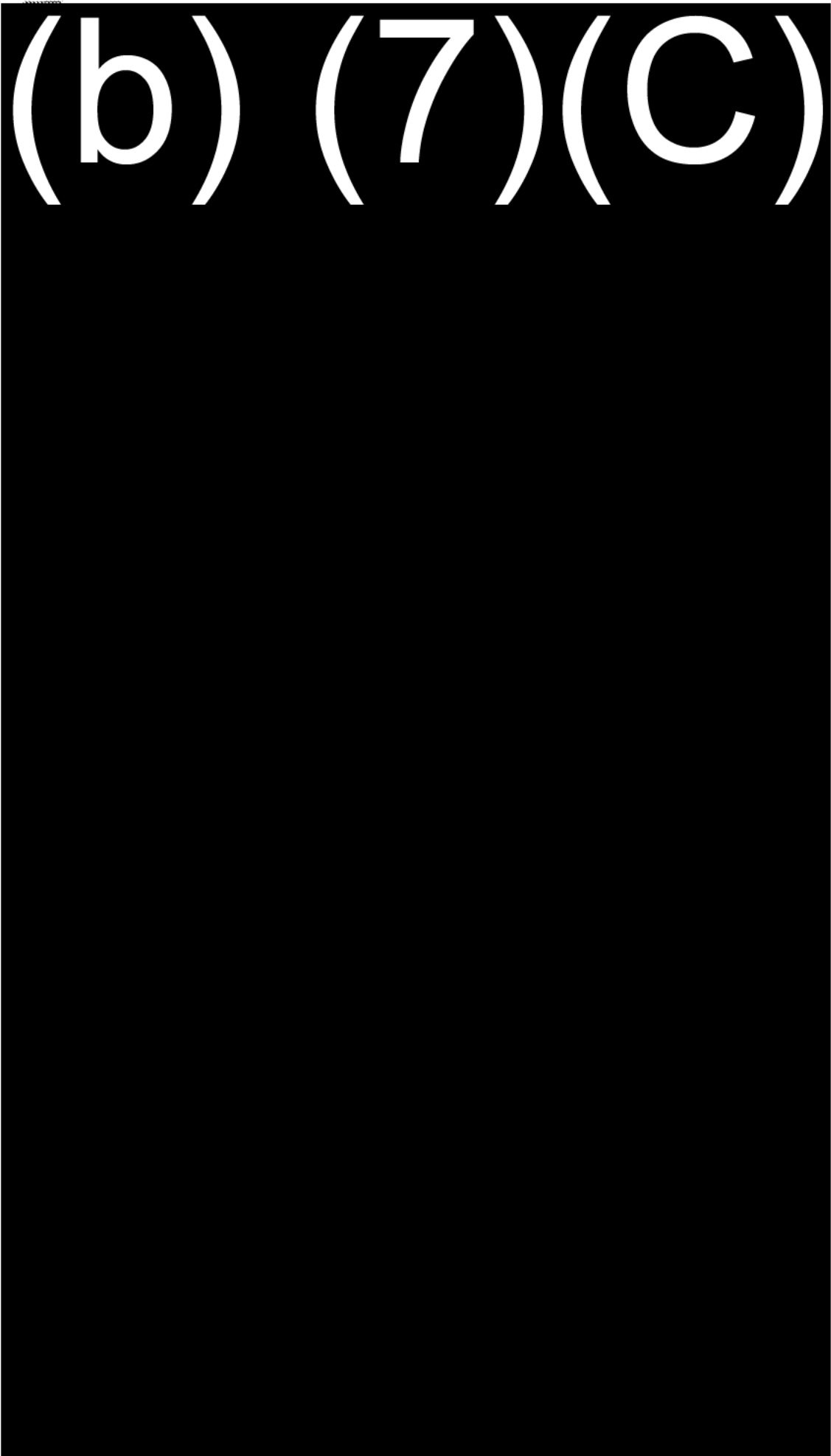
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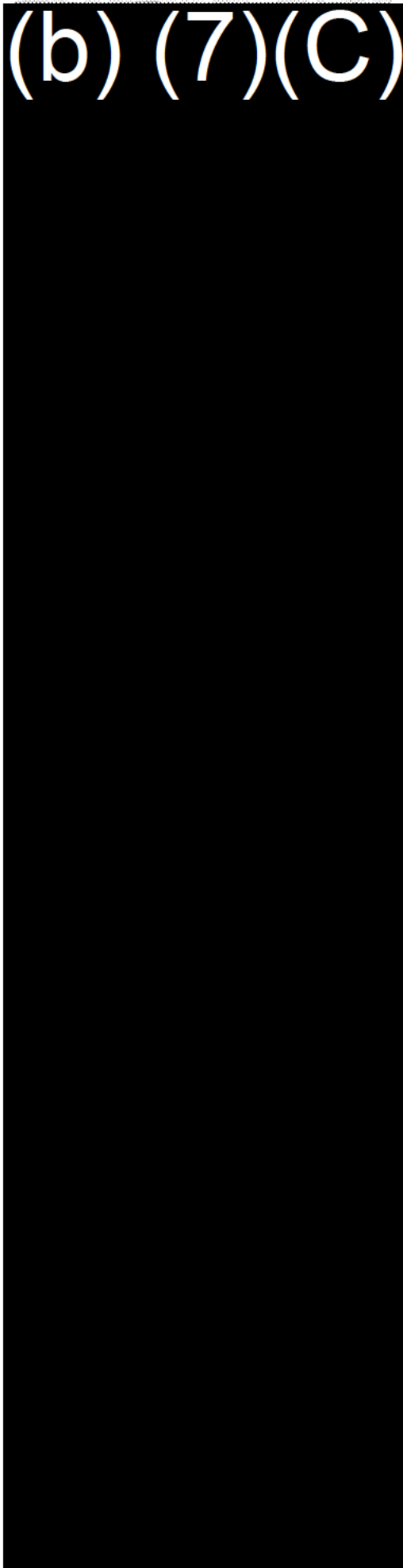
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NOTARY ACKNOWLEDGEMENT(S) TO WARRANT DEED

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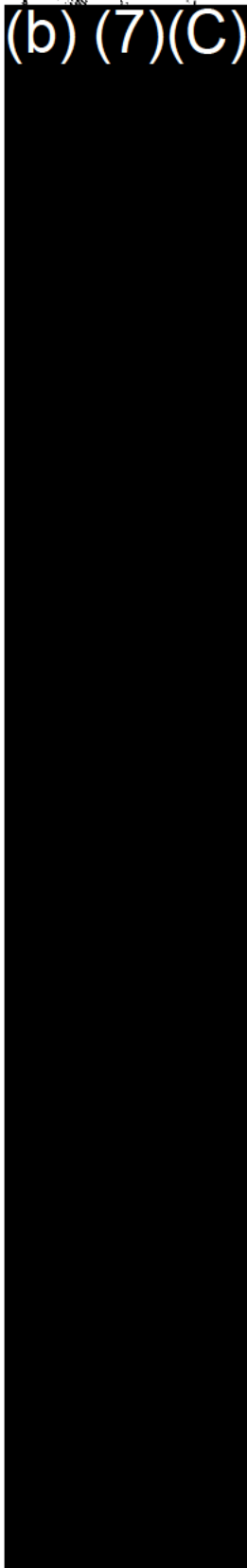
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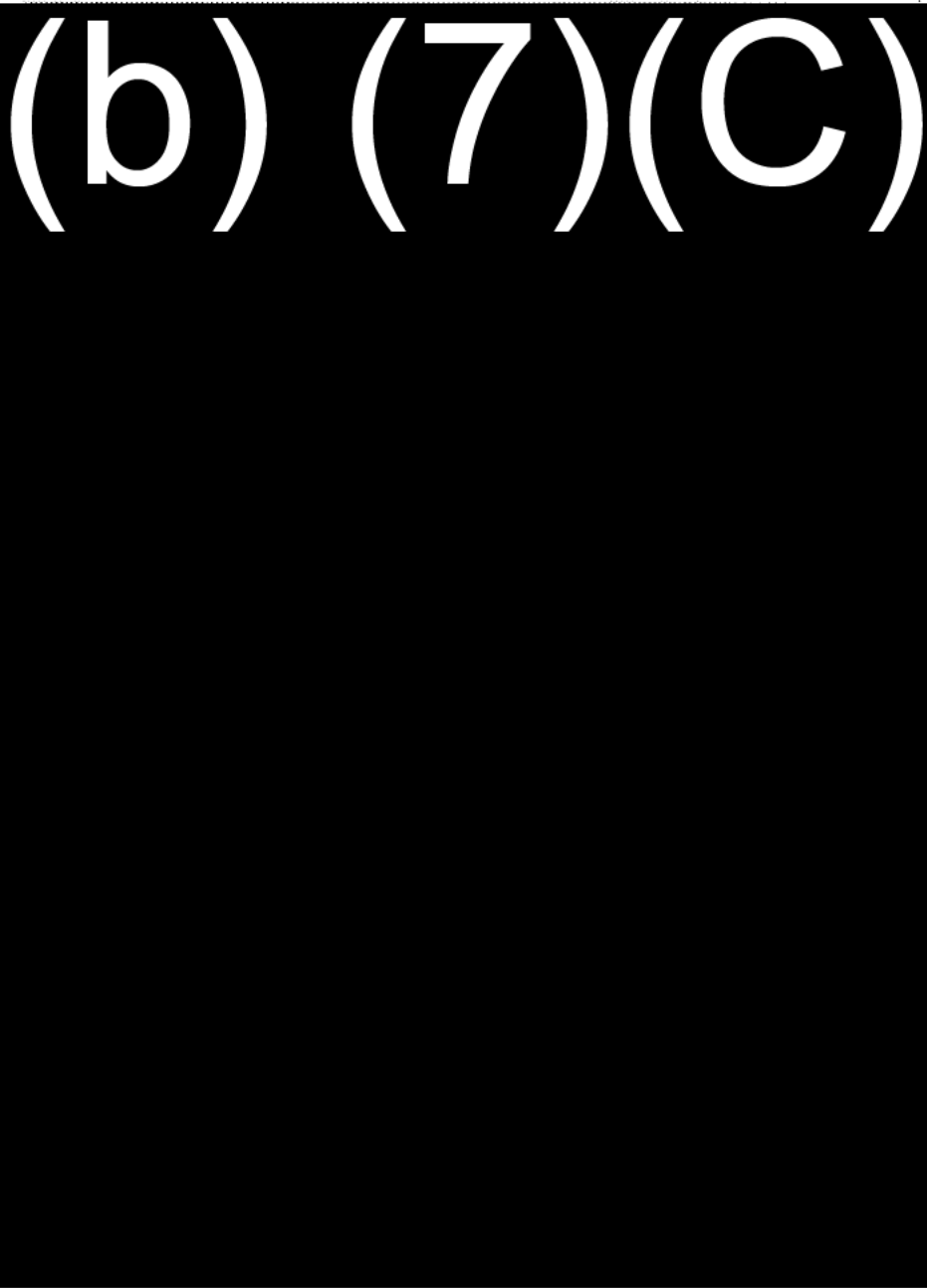
Search for other possible criminals:

First Name: Middle Name: Last Name: City: State: Zip:

To narrow your search using middle name, county, year of birth, or age range, please use our [Advanced Search](#)

CRIMINAL HISTORY CHECK

Note: Some states include minor traffic offenses in the data that we receive, however, these people might not be actual criminals.



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Show us at inventnow.org
 Anything's Possible. Keep Thinking.

Criminal Searches Data

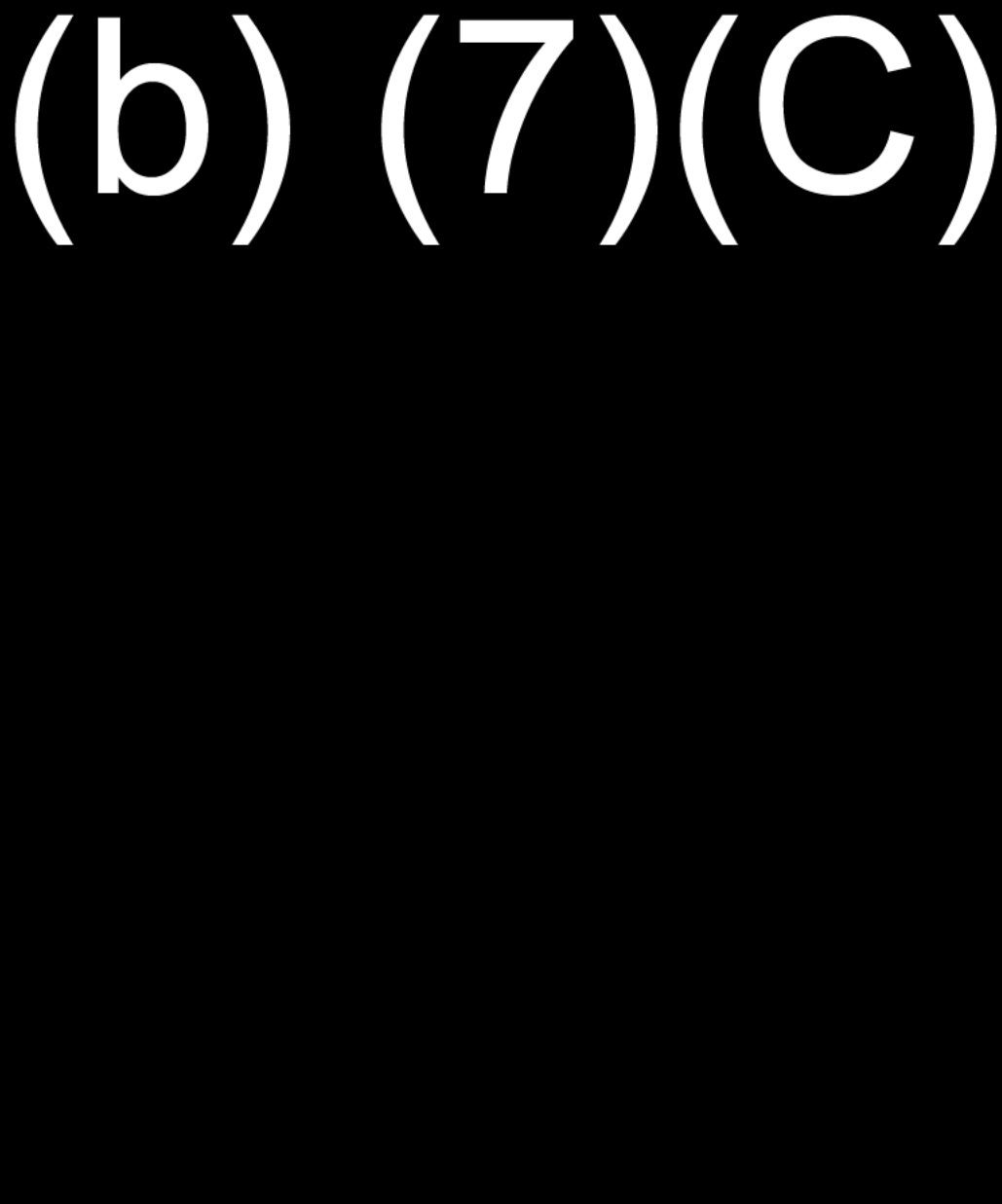
[Criminal Search](#) | [Neighborhood Watch](#) | [Get Offender Profile](#) | [Criminal Alerts](#) | [Criminal Statistics](#)

Search for other possible criminals:

First Name: Middle Name: Last Name: City: State: Zip:

To narrow your search using middle name, county, year of birth, or age range, please use our [Advanced Search](#)

CRIMINAL HISTORY CHECK



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Employee

(b) (7)(C)

941

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Listing 1-40 of 180 | 2 3 4 5

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4/24/2009 10:22 AM

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(b) (7)(C)

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Listing 41-80 of 180 1 2 3 4 5

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Listing 41-80 of 180 | 1 2 4 5

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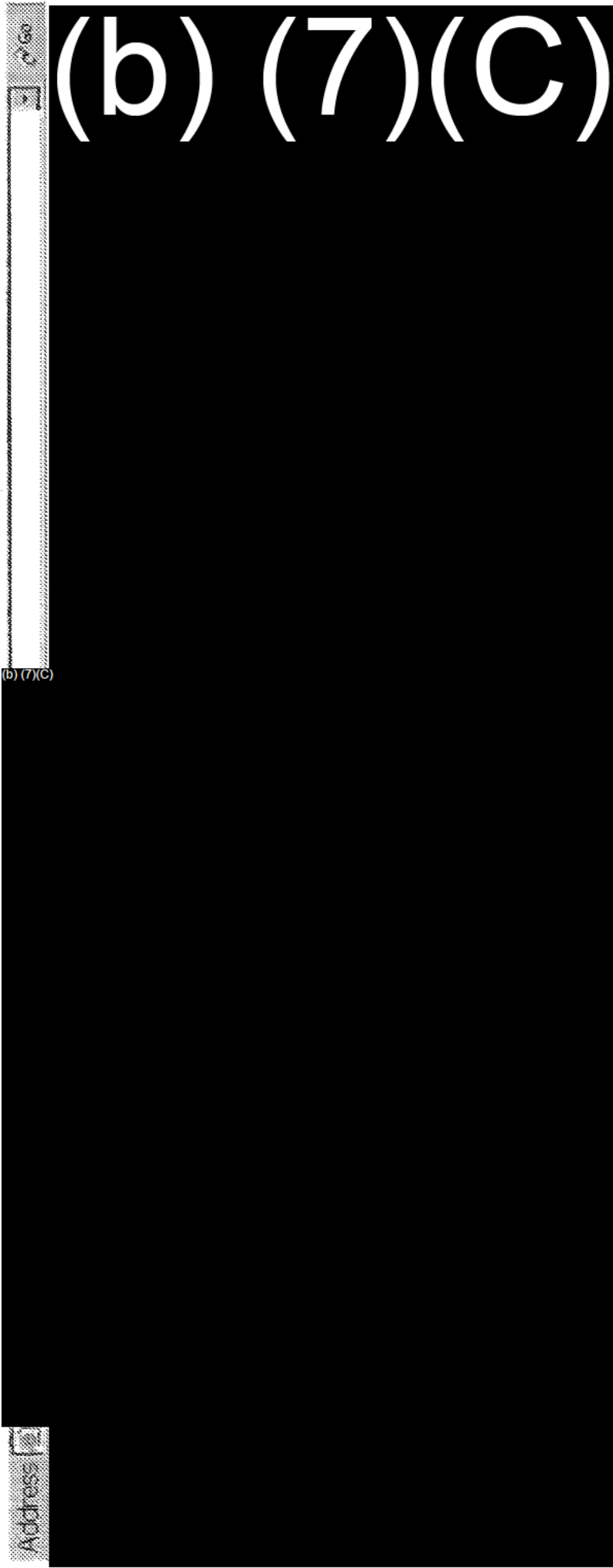
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Listing 61-120 of 180

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Listing 81-120 of 180 | 1 2 3 4 5

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Listing 121-160 of 180 | 1 2 3 4 5

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Listing 161-180 of 180 | 1 2 3 4

Listing 161-180 of 180 | 1 2 3 4

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2 of 2

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Listing 1-20 of 28

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1 3 of 3

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Listing 21-40 of 43

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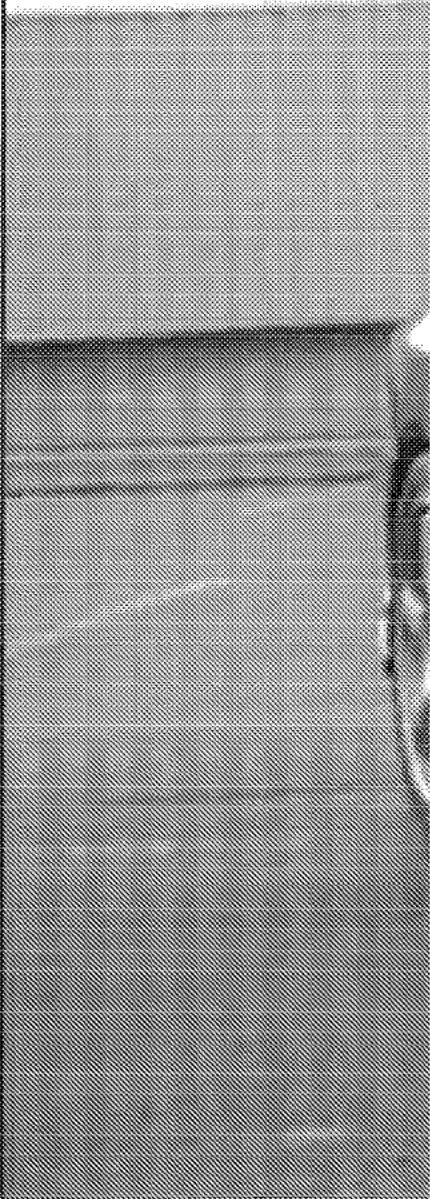
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Listing 1-40 of 44 | 2

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Listing 1-40 of 44

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This profile is set to private. This user must add you as a friend to see his/her profile.

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Employee

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Channel Comments

There are no comments for this user

Add Comment

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Employee

Page 1 of 1

Previous Next

973

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Listing 1-40 of 49 | 2

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Listing 1-40 of 49  2

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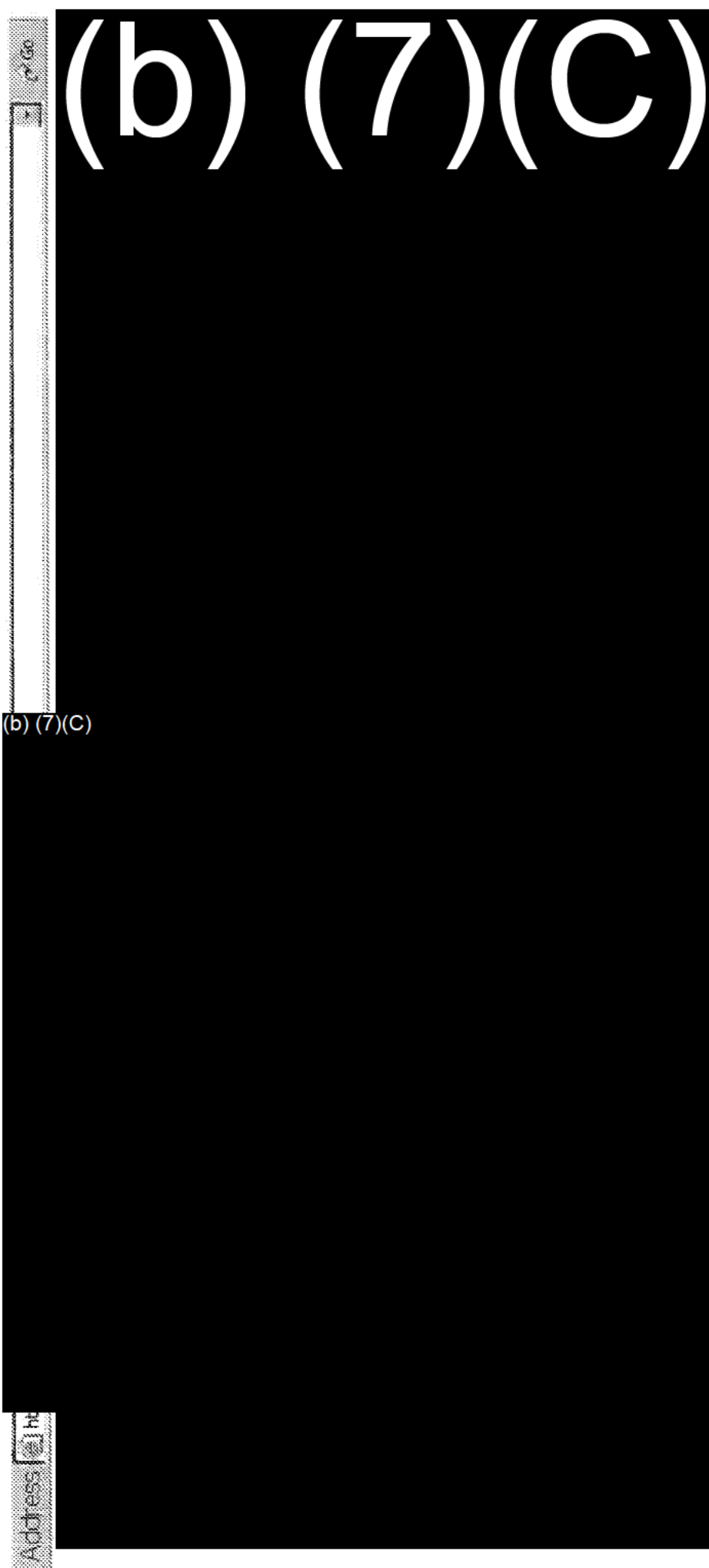
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Listing 41-41 of 41

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Listing 1-36 of 36

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Page 1 of 1



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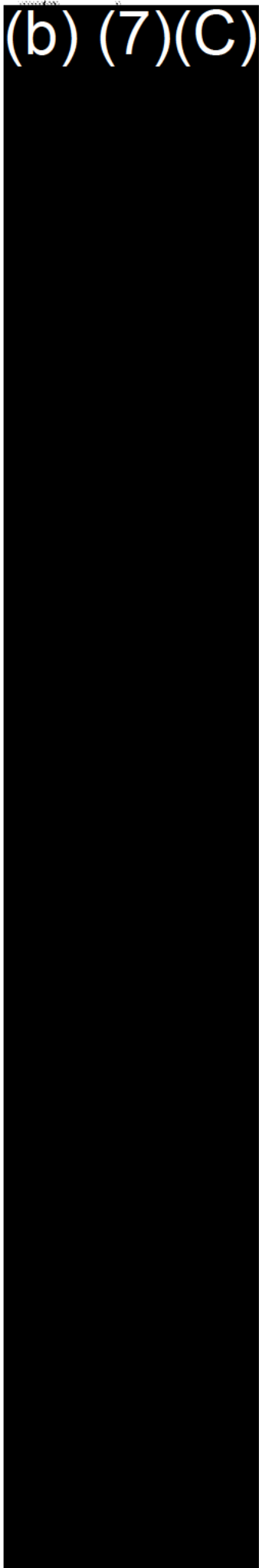
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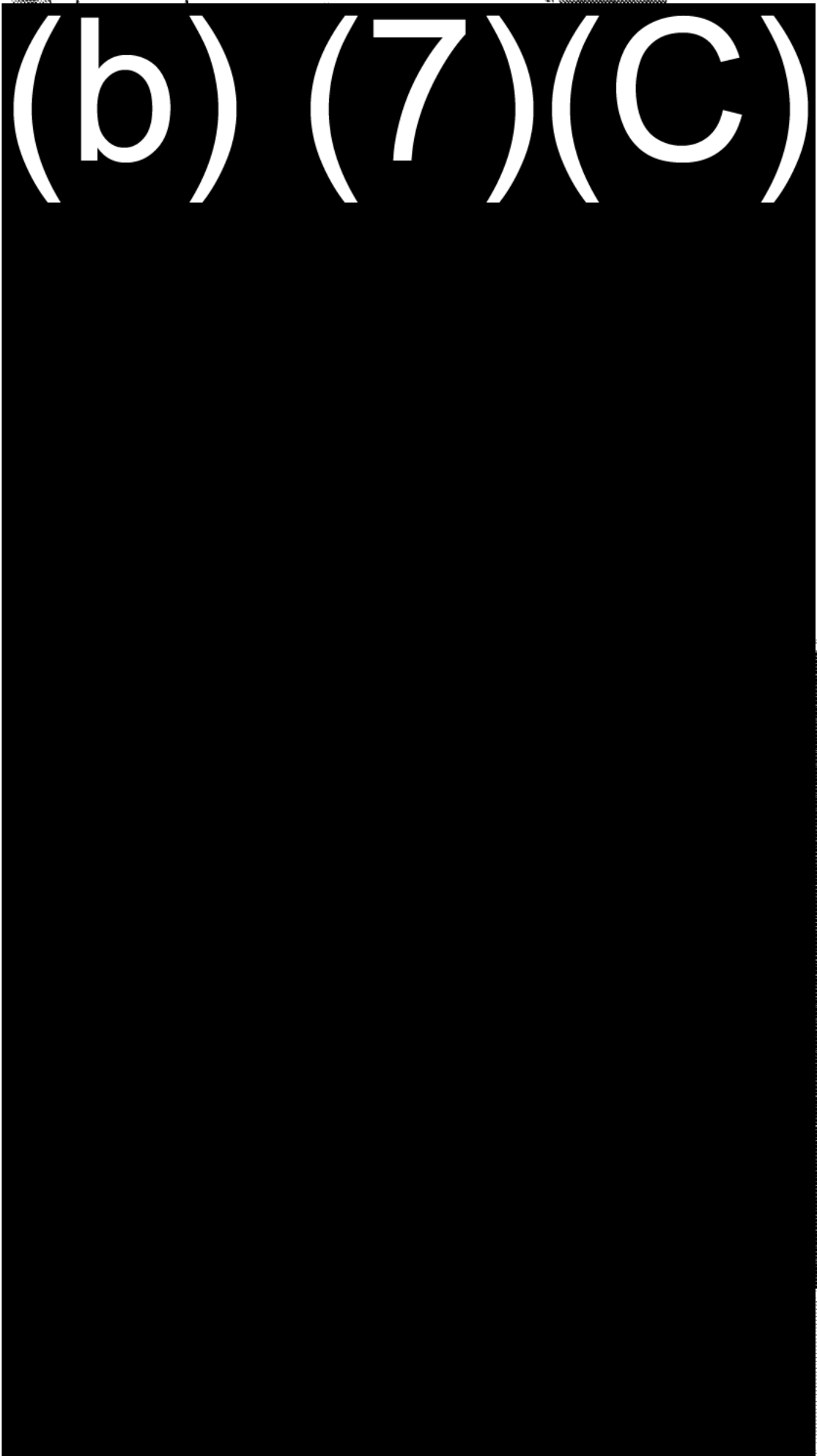


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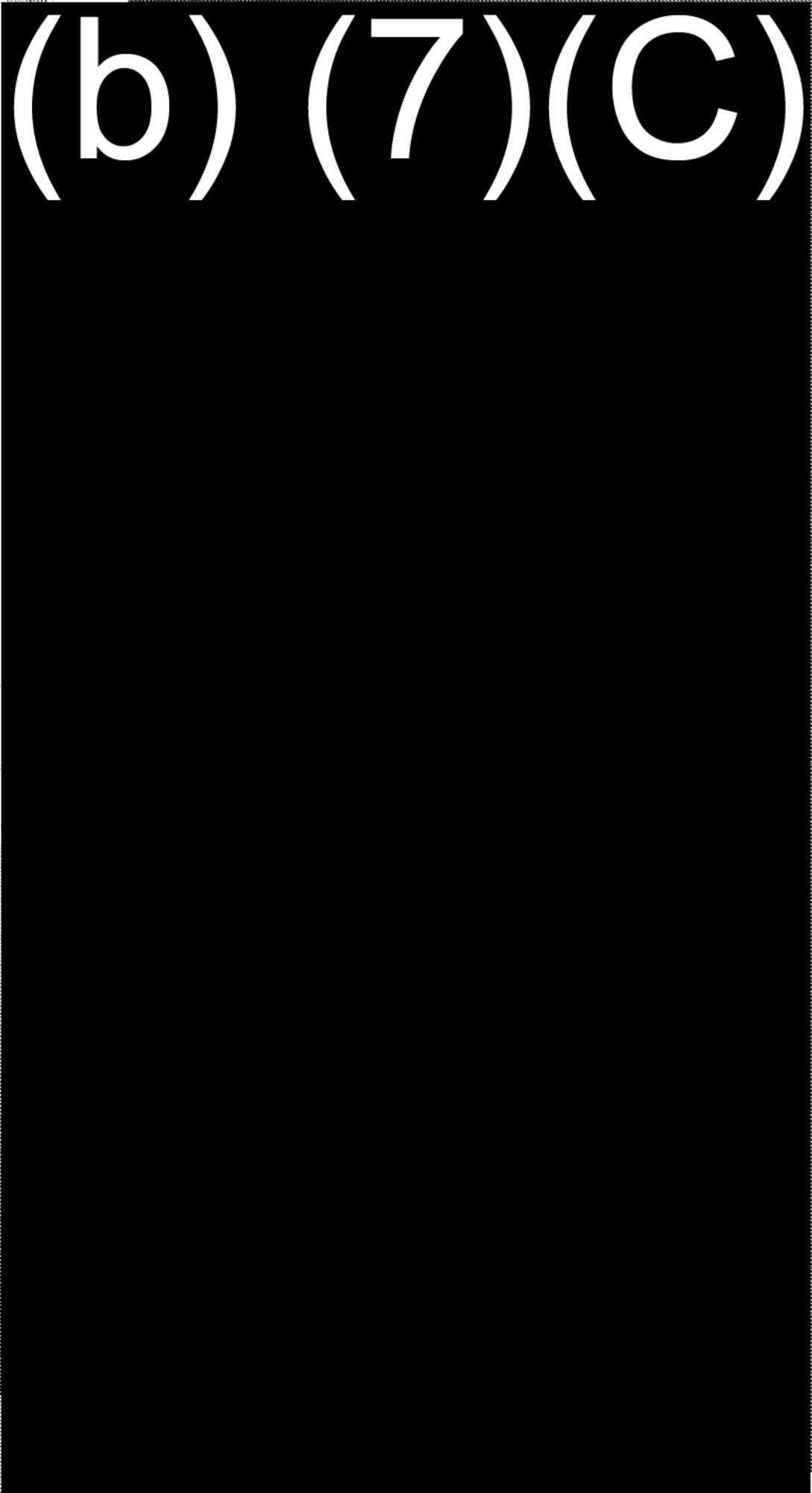
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Address: <http://www.myspace.com/romahan>

Employee 3

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Listing 1-40 of 212 | 2 3 4 5 ... 8

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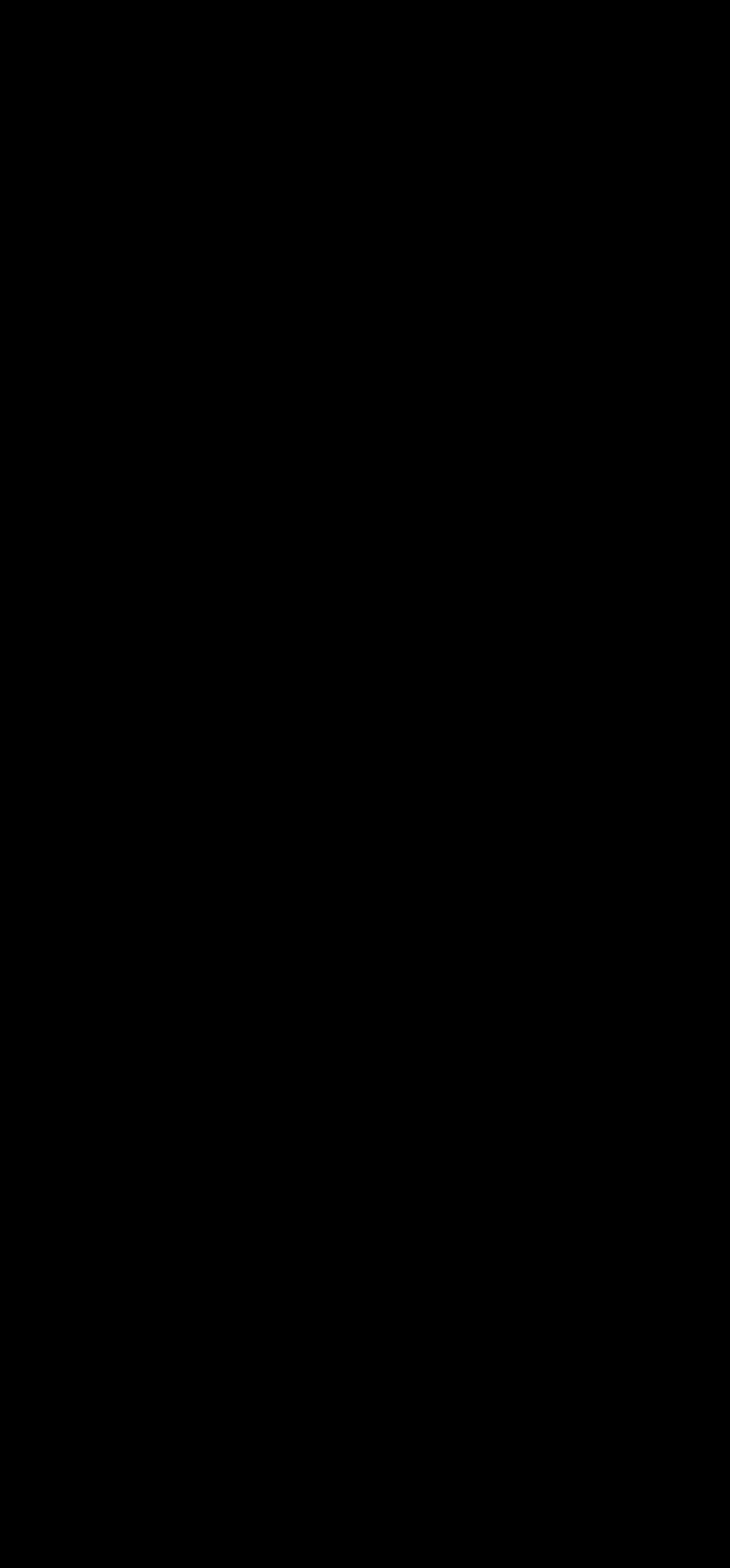
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Listing 121-150 of 212 | 1 ... 2 3 4 5 6

Employee 3

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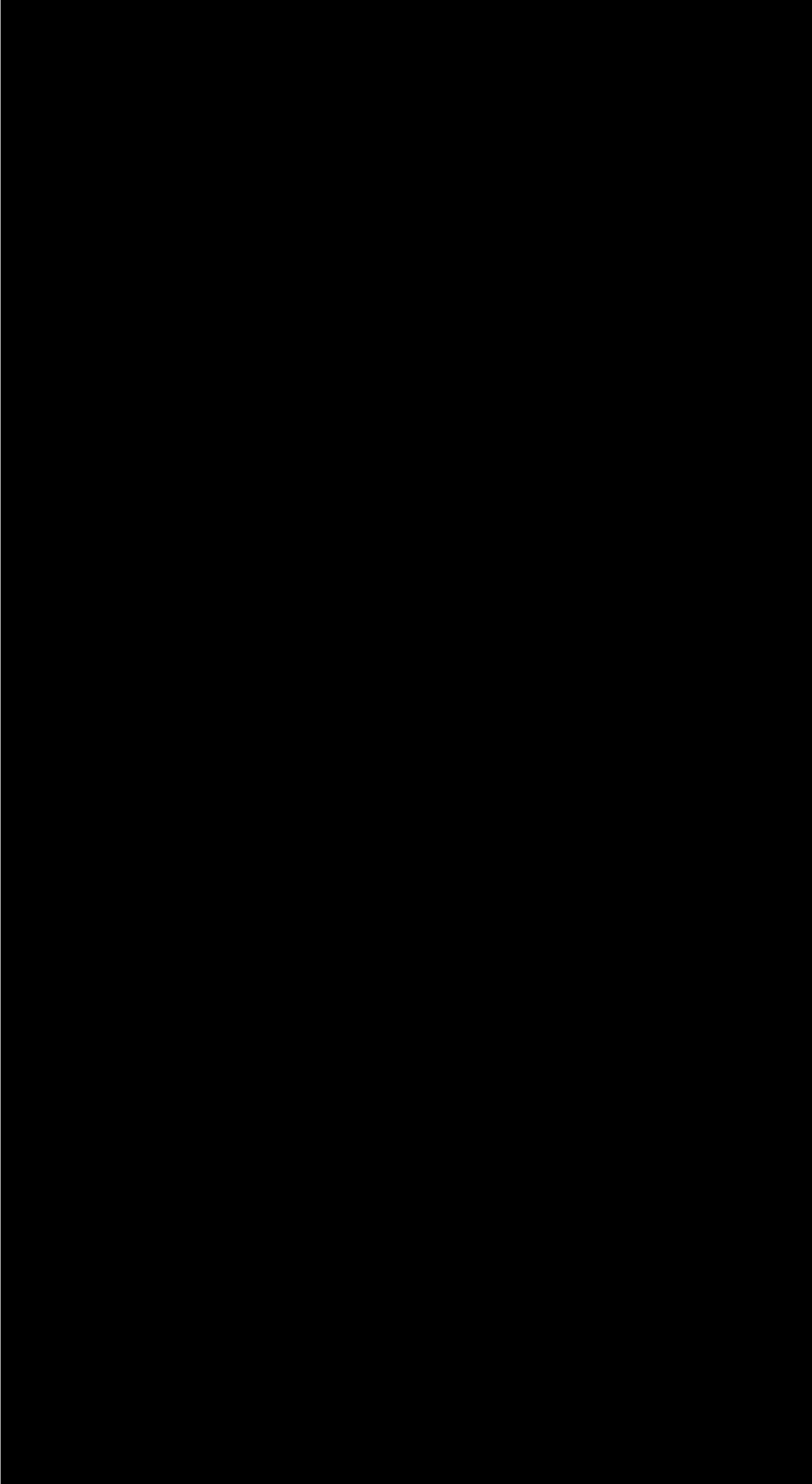
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Listing 201-212 of 212 | 1 2 3 4 5

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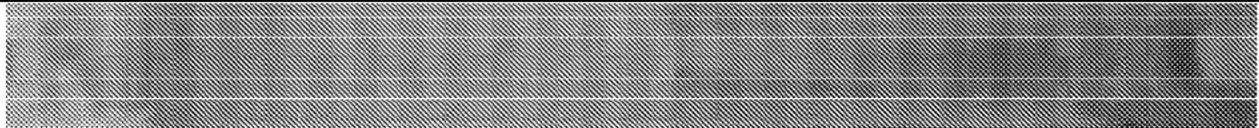
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(b) (7)(C)

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Employ

(b) (7)(C)

Address

1022

Add Comment

only's friends, comments, content, and more

From: (b) (7)(C)
Sent: Friday, March 25, 2011 5:29:33 PM
To: ATF
Subject: C:\Documents and Settings\ (b) (7)(C) \local Settings\Temporary Internet Files\Content.Outlook\N4JTU5FT\DOJ March 28-April 1 2011final.doc

Attachments: Shortcut to DOJ March 28-April 1 2011final.doc

From: (b) (7)(C)
Sent: Friday, March 25, 2011 5:19:23 PM
To: (b) (7)(C)
Subject: C:\Documents and Settings (b) (7)(C) \My Documents\CHIEF OF STAFF\AXELROD(b) (7)(C)\questions draft 1.docx

Attachments: Shortcut to (b) (7)(C)\questions draft 1.docx

From: (b) (7)(C)
Sent: Friday, March 25, 2011 5:04:13 PM
To: Jason Weinstein
Subject: C:\Documents and Settings\ (b) (7)(C) \Local Settings\Temporary Internet Files\Content.Outlook\N4JTU5FT\sjc atf briefing tps.docx

Attachments: Shortcut to sjc atf briefing tps.docx

From: (b) (7)(C)
Sent: Friday, March 25, 2011 4:58:40 PM
To: (b) (7)(C)
Subject: C:\Documents and Settings\ (b) (7)(C) \local Settings\Temporary Internet Files\Content.Outlook\N4JTU5FT\FF.docx

Attachments: Shortcut to FF.docx

From: (b) (7)(C)
Sent: Thursday, March 24, 2011 9:54:52 AM
To: (b) (7)(C)
Subject: C:\Documents and Settings\ (b) (7)(C) \local Settings\Temporary Internet Files\Content.Outlook\N4JTU5FT (b) (7)(C) unrunner clean.docx

Attachments: Shortcut to (b) (7)(C) unrunner clean.docx

From: (b) (7)(C)
Sent: Thursday, March 24, 2011 9:49:06 AM
To: (b) (7)(C)
Subject: C:\Documents and Settings (b) (7)(C) \My Documents\CHIEF OF STAFF\AXELROD (b) (7)(C) questions draft 1.docx

Attachments: Shortcut to (b) (7)(C) questions draft 1.docx

From: (b) (7)(C)
Sent: Thursday, March 24, 2011 8:03:04 AM
To: (b) (7)(C)
Subject: C:\Documents and Settings\ (b) (7)(C) \local Settings\Temporary Internet Files\Content.Outlook\N4JTU5FT (b) (7)(C) junrunner clean.docx

Attachments: Shortcut to (b) (7)(C) junrunner clean.docx

From: (b) (7)(C)
Sent: Wednesday, March 23, 2011 2:29:08 PM
To: (b) (7)(C)
Subject: C:\Documents and Settings\ (b) (7)(C) \Local Settings\Temporary Internet Files\Content.Outlook\N4JTU5FT\SWB Supp Mtg Agenda.doc

Attachments: Shortcut to SWB Supp Mtg Agenda.doc

From: (b) (7)(C)
Sent: Wednesday, March 23, 2011 9:50:48 AM
To: (b) (7)(C)
Subject: C:\Documents and Settings\ (b) (7)(C) \local Settings\Temporary Internet Files\Content.Outlook\N4JTU5FT\Guns TPs for DPC draft v1.docx

Attachments: Shortcut to Guns TPs for DPC draft v1.docx

From: (b) (7)(C)
Sent: Tuesday, March 22, 2011 8:45:43 AM
To: ATF
Subject: C:\Documents and Setting (b) (7)(C) \My Documents\CHIEF OF STAFF\AXELROD\December Fast and Furious BP for SAC (2) (2).docx

Attachments: Shortcut to December Fast and Furious BP for SAC (2) (2).docx

From: (b) (7)(C)
Sent: Tuesday, March 22, 2011 8:45:41 AM
To: ATF
Subject: C:\Documents and Setting (b) (7)(C)\My Documents\CHIEF OF STAFF\AXELROD\briefing paper for round-up.docx

Attachments: Shortcut to briefing paper for round-up.docx

From: (b) (7)(C)
Sent: Tuesday, March 22, 2011 8:45:39 AM
To: ATF
Subject: C:\Documents and Setting (b) (7)(C) \My Documents\CHIEF OF STAFF\AXELROD\Fast and Furious Talking Points for DAD doc.docx

Attachments: Shortcut to Fast and Furious Talking Points for DAD doc.docx

From: (b) (7)(C)
Sent: Tuesday, March 22, 2011 8:45:37 AM
To: ATF
Subject: C:\Documents and Setting (b) (7)(C) \My Documents\CHIEF OF STAFF\AXELROD\December Fast and Furious BP for SAC.DOCX

Attachments: Shortcut to December Fast and Furious BP for SAC.DOCX

From: (b) (7)(C)
Sent: Tuesday, March 22, 2011 8:44:58 AM
To: ATF
Subject: C:\Documents and Settings (b) (7)(C) \My Documents\CHIEF OF STAFF\AXELROD\Fast and Furious Talking Points for DAD doc.docx

Attachments: Shortcut to Fast and Furious Talking Points for DAD doc.docx

From: (b) (7)(C)
Sent: Tuesday, March 22, 2011 8:44:55 AM
To: ATF
Subject: C:\Documents and Setting (b) (7)(C) \My Documents\CHIEF OF STAFF\AXELROD\December Fast and Furious BP for SAC.DOCX

Attachments: Shortcut to December Fast and Furious BP for SAC.DOCX

From: (b) (7)(C)
Sent: Tuesday, March 22, 2011 8:44:53 AM
To: ATF
Subject: C:\Documents and Settings (b) (7)(C) \My Documents\CHIEF OF STAFF\AXELROD\December Fast and Furious BP for SAC (2) (2).docx

Attachments: Shortcut to December Fast and Furious BP for SAC (2) (2).docx

From: (b) (7)(C)
Sent: Tuesday, March 22, 2011 8:44:52 AM
To: ATF
Subject: C:\Documents and Settings (b) (7)(C) \My Documents\CHIEF OF STAFF\AXELROD\briefing paper for round-up.docx

Attachments: Shortcut to briefing paper for round-up.docx

From: (b) (7)(C)
Sent: Tuesday, March 22, 2011 7:58:28 AM
To: ATF
Subject: C:\Documents and Settings (b) (7)(C) \My Documents\CHIEF OF STAFF\AXELROD\ATF CARTEL STRATEGY.docx

Attachments: Shortcut to ATF CARTEL STRATEGY.docx

From: (b) (7)(C)
Sent: Monday, March 21, 2011 6:17:58 PM
To: (b) (7)(C)
Subject: C:\Documents and Setting (b) (7)(C)\My Documents\CHIEF OF STAFF\AXELROD\SUPPORTING DOCS TOC.docx

Attachments: Shortcut to SUPPORTING DOCS TOC.docx

From: (b) (7)(C)
Sent: Monday, March 21, 2011 6:17:56 PM
To: ATF
Subject: C:\Documents and Settings\ (b) (7)(C) \local Settings\Temporary Internet Files\Content.Outlook\N4JTU5FT\DOJ March 14 -18 2011final.doc

Attachments: Shortcut to DOJ March 14 -18 2011final.doc

From: (b) (7)(C)
Sent: Monday, March 21, 2011 6:17:43 PM
To: ATF
Subject: C:\Documents and Settings\ (b) (7)(C) \local Settings\Temporary Internet Files\Content.Outlook\N4JTU5FT\DOJ March 14 -18 2011final.doc

Attachments: Shortcut to DOJ March 14 -18 2011final.doc

From: (b) (7)(C)
Sent: Monday, March 21, 2011 4:35:02 PM
Subject: C:\Documents and Settings:(b) (7)(C)\My Documents\CHIEF OF STAFF\AXELROD\DOJ Firearms Guide False Stmt and Trafficking.wpd

Attachments: Shortcut to DOJ Firearms Guide False Stmt and Trafficking.wpd

From: (b) (7)(C)
Sent: Monday, March 21, 2011 4:17:15 PM
To: ATF
Subject: C:\Documents and Settings (b) (7)(C) \My Documents\CHIEF OF STAFF\AXELROD\DPC Gunrunner Talking Points 111710.docx

Attachments: Shortcut to DPC Gunrunner Talking Points 111710.docx

From: (b) (7)(C)
Sent: Monday, March 21, 2011 4:09:29 PM
Subject: C:\Documents and Settings\ (b) (7)(C) \My Documents\CHIEF OF STAFF\AXELROD\FF Memo (b) (7)(C) .wpd

Attachments: Shortcut to FF Memo (b) (7)(C) .wpd

From: (b) (7)(C)
Sent: Monday, March 21, 2011 1:36:41 PM
To: Jason Weinstein
Subject: C:\Documents and Settings (b) (7)(C)\My Documents\CHIEF OF STAFF\AXELROD\sjc atf briefing tps.docx

Attachments: Shortcut to sjc atf briefing tps.docx

From: (b) (7)(C)
Sent: Monday, March 21, 2011 12:30:22 PM
To: ATF
Subject: C:\Documents and Settings\ (b) (7)(C) \My Documents\CHIEF OF STAFF\AXELROD\ATF_NFORCE_201103_1.docx

Attachments: Shortcut to ATF_NFORCE_201103_1.docx

From: (b) (7)(C)
Sent: Monday, March 21, 2011 12:29:01 PM
To: ATF
Subject: C:\Documents and Settings (b) (7)(C) \My Documents\CHIEF OF STAFF\AXELROD\ATF CARTEL STRATEGY.docx

Attachments: Shortcut to ATF CARTEL STRATEGY.docx

From: (b) (7)(C)
Sent: Monday, March 21, 2011 12:26:57 PM
To: Jason Weinstein
Subject: C:\Documents and Settings (b) (7)(C) \My Documents\CHIEF OF STAFF\AXELROD\sjc atf briefing tps.docx

Attachments: Shortcut to sjc atf briefing tps.docx

From: (b) (7)(C)
Sent: Monday, March 21, 2011 12:26:17 PM
To: ATF
Subject: C:\Documents and Settings (b) (7)(C)\My Documents\CHIEF OF STAFF\AXELROD\Gunrunner WH response Budget Status.docx

Attachments: Shortcut to Gunrunner WH response Budget Status.docx

From: (b) (7)(C)
Sent: Monday, March 21, 2011 12:26:16 PM
To: ATF
Subject: C:\Documents and Settings (b) (7)(C) \My Documents\CHIEF OF STAFF\AXELROD\Gun Runner Study.docx

Attachments: Shortcut to Gun Runner Study.docx

From: (b) (7)(C)
Sent: Friday, March 18, 2011 6:23:04 PM
To: ATF
Subject: C:\Documents and Settings (b) (7)(C) \My Documents\CHIEF OF STAFF\AXELROD\FAST AND FURIOUS REPORTS OF INVESTIGATION.docx

Attachments: Shortcut to FAST AND FURIOUS REPORTS OF INVESTIGATION.docx

From: (b) (7)(C)
Sent: Friday, March 18, 2011 6:23:03 PM
To: (b) (7)(C)
Subject: C:\Documents and Settings (b) (7)(C) \My Documents\CHIEF OF STAFF\AXELROD\Fast and Furious ROIs.xlsx

Attachments: Shortcut to Fast and Furious ROIs.xlsx

From: (b) (7)(C)
Sent: Friday, March 18, 2011 5:41:58 PM
To: (b) (7)(C)
Subject: C:\Documents and Settings\ (b) (7)(C) \My Documents\CHIEF OF STAFF\AXELROD\Fast and Furious ROIs.xlsx

Attachments: Shortcut to Fast and Furious ROIs.xlsx

From: (b) (7)(C)
Sent: Friday, March 18, 2011 4:26:47 PM
To: ATF
Subject: C:\Documents and Settings (b) (7)(C) \My Documents\CHIEF OF STAFF\AXELROD\FAST AND FURIOUS REPORTS OF INVESTIGATION.docx

Attachments: Shortcut to FAST AND FURIOUS REPORTS OF INVESTIGATION.docx

From: (b) (7)(C)
Sent: Friday, March 18, 2011 4:26:46 PM
To: ATF
Subject: C:\Documents and Settings (b) (7)(C) \Local Settings\Temporary Internet Files\Content.Outlook\N4JTU5FT\Gun Runner Study.docx

Attachments: Shortcut to Gun Runner Study.docx

From: (b) (7)(C)
Sent: Friday, March 18, 2011 3:54:25 PM
To: ATF
Subject: C:\Documents and Settings\ (b) (7)(C) \local Settings\Temporary Internet Files\Content.Outlook\N4JTU5FT\Gun Runner Study.docx

Attachments: Shortcut to Gun Runner Study.docx

From: (b) (7)(C)
Sent: Friday, March 18, 2011 2:37:07 PM
Subject: C:\Documents and Settings\ (b) (7)(C) \local Settings\Temporary Internet Files\Content.Outlook\N4JTU5FT\FF Memo (b) (7)(C) 2).wpd

Attachments: Shortcut to FF Memo (b) (7)(C) 2).wpd

From: (b) (7)(C)
Sent: Friday, March 18, 2011 11:10:47 AM
Subject: C:\Documents and Settings\ (b) (7)(C) \My Documents\COMPSTAT\MULTIPLE SALES\Multiple Sales Analysis 2003 to 2010.xlsx

Attachments: Shortcut to Multiple Sales Analysis 2003 to 2010.xlsx

From: (b) (7)(C)
Sent: Thursday, March 17, 2011 3:38:23 PM
Subject: C:\Documents and Settings\ (b) (7)(C) \My Documents\CHIEF OF STAFF\AXELROD\DOJ Firearms Guide False Stmt and Trafficking.wpd

Attachments: Shortcut to DOJ Firearms Guide False Stmt and Trafficking.wpd

From: (b) (7)(C)
Sent: Thursday, March 17, 2011 3:29:47 PM
Subject: C:\Documents and Settings\ (b) (7)(C) \My Documents\CHIEF OF STAFF\AXELROD\DOJ Firearms Guide False Stmtns and Trafficking.wpd

Attachments: Shortcut to DOJ Firearms Guide False Stmtns and Trafficking.wpd

From: (b) (7)(C)
Sent: Thursday, March 17, 2011 1:14:26 PM
To: srvAppinstaller
Subject: C:\Documents and Settings\ (b) (7)(C) \My Documents\SPO\BUDGET
DOCS\ATF SOUTHWEST BORDER INITIATIVE PAPERv2.doc

Attachments: Shortcut to ATF SOUTHWEST BORDER INITIATIVE PAPERv2.doc

From: (b) (7)(C)
Sent: Thursday, March 17, 2011 1:10:13 PM
Subject: C:\Documents and Settings\ (b) (7)(C) \local Settings\Temporary Internet Files\Content.Outlook\N4JTU5FT\Gunrunner WH response Budget edits question.docx

Attachments: Shortcut to Gunrunner WH response Budget edits question.docx

From: (b) (7)(C)
Sent: Thursday, March 17, 2011 1:06:49 PM
To: Jason Weinstein
Subject: C:\Documents and Setting (b) (7)(C) \My Documents\CHIEF OF STAFF\AXELROD\sjc atf briefing tps.docx

Attachments: Shortcut to sjc atf briefing tps.docx

From: (b) (7)(C)
Sent: Thursday, March 17, 2011 1:03:31 PM
Subject: C:\Documents and Settings\ (b) (7)(C) \local Settings\Temporary Internet Files\Content.Outlook\N4JTU5FT\sjc atf briefing tps.docx

Attachments: Shortcut to sjc atf briefing tps.docx

From: (b) (7)(C)
Sent: Thursday, March 17, 2011 12:57:36 PM
To: ATF
Subject: C:\Documents and Settings (b) (7)(C) \My Documents\CHIEF OF STAFF\AXELROD\ATF CARTEL STRATEGY.docx

Attachments: Shortcut to ATF CARTEL STRATEGY.docx

From: (b) (7)(C)
Sent: Thursday, March 17, 2011 12:57:35 PM
Subject: C:\Documents and Settings\ (b) (7)(C) \Local Settings\Temporary Internet Files\Content.IE5\Y1S0MAOV\Cartel%20Strategy%209-7-10[1].docx

Attachments: Shortcut to Cartel%20Strategy%209-7-10[1].docx

From: (b) (7)(C)
Sent: Thursday, March 17, 2011 12:54:33 PM
Subject: C:\Documents and Settings (b) (7)(C) \local Settings\Temporary Internet Files\Content.IE5\HVCNP7ML\Cartel%20Strategy%209-7-10[1].docx

Attachments: Shortcut to Cartel%20Strategy%209-7-10[1].docx

From: (b) (7)(C)
Sent: Thursday, March 17, 2011 12:53:20 PM
Subject: C:\Documents and Settings\ (b) (7)(C) \Local Settings\Temporary Internet Files\Content.IE5\HVCNP7ML\Cartel%20Strategy%209-7-10[1].docx

Attachments: Shortcut to Cartel%20Strategy%209-7-10[1].docx

From: (b) (7)(C)
Sent: Wednesday, March 16, 2011 11:27:57 AM
To: ATF
Subject: C:\Documents and Settings (b) (7)(C) \My Documents\CHIEF OF STAFF\Gunrunner WH response Budget edits question.docx

Attachments: Shortcut to Gunrunner WH response Budget edits question.docx

From: (b) (7)(C)
Sent: Monday, March 07, 2011 1:21:06 PM
To: (b) (7)(C)
Subject: C:\Documents and Settings\ (b) (7)(C) \local Settings\Temporary Internet Files\Content.Outlook\N4JTU5FT\grassley atf response 37.docx

Attachments: Shortcut to grassley atf response 37.docx

From: (b) (7)(C)
Sent: Thursday, March 03, 2011 8:10:01 AM
To: ATF
Subject: C:\Documents and Setting (b) (7)(C) \My Documents\CHIEF OF STAFF\Gunrunner WH response Budget edits question.docx

Attachments: Shortcut to Gunrunner WH response Budget edits question.docx

From: (b) (7)(C)
Sent: Wednesday, March 02, 2011 1:56:33 PM
To: (b) (7)(C)
Subject: C:\Documents and Settings\ (b) (7)(C) \My Documents\COMPSTAT\SWB Analysis\Gunrunner Summary 2006 to 2010.xlsx

Attachments: Shortcut to Gunrunner Summary 2006 to 2010.xlsx

From: (b) (7)(C)
Sent: Wednesday, March 02, 2011 1:56:32 PM
Subject: C:\Documents and Settings\ (b) (7)(C) \My Documents\Gunrunner Summary 2006 to 2010.xlsx

Attachments: Shortcut to Gunrunner Summary 2006 to 2010.xlsx

From: (b) (7)(C)
Sent: Wednesday, March 02, 2011 7:50:32 AM
To: (b) (7)(C)
Subject: C:\Documents and Settings\ (b) (7)(C) \My Documents\COMPSTAT\SWB Analysis\SWB FY 2004 TO FY 2010 YEAR END.xlsx

Attachments: Shortcut to SWB FY 2004 TO FY 2010 YEAR END.xlsx

From: (b) (7)(C)
Sent: Tuesday, March 01, 2011 1:07:56 PM
Subject: C:\Documents and Settings\ (b) (7)(C) \My Documents\COMPSTAT\2011 Q1 SOURCE\SWB Property.xlsx

Attachments: Shortcut to SWB Property.xlsx

From: (b) (7)(C)
Sent: Friday, February 25, 2011 5:41:11 PM
To: (b) (7)(C)
Subject: C:\Documents and Settings (b) (7)(C)\My Documents\CHIEF OF STAFF\grassley atf (2).docx

Attachments: Shortcut to grassley atf (2).docx

From: (b) (7)(C)
Sent: Friday, February 25, 2011 4:25:22 PM
To: ATF
Subject: C:\Documents and Settings\ (b) (7)(C) \My Documents\2-25-11
GunrunnerStatement djw 110225 cap.docx

Attachments: Shortcut to 2-25-11 GunrunnerStatement djw 110225 cap.docx

From: (b) (7)(C)
Sent: Thursday, February 24, 2011, 5:15:11 PM
To: (b) (7)(C)
Subject: C:\Documents and Settings\ (b) (7)(C) \My Documents\COMPSTAT\SWB Analysis\SWB FY 2004 TO FY 2010 YEAR END.xlsx

Attachments: Shortcut to SWB FY 2004 TO FY 2010 YEAR END.xlsx

From: (b) (7)(C)
Sent: Wednesday, February 23, 2011, 12:09:19 PM
To: (b) (7)(C)
Subject: C:\Documents and Settings\ (b) (7)(C) \My Documents\COMPSTAT\SWB Analysis\SWB FY 2004 TO FY 2010 YEAR END.xlsx

Attachments: Shortcut to SWB FY 2004 TO FY 2010 YEAR END.xlsx

From: (b) (7)(C)
Sent: Wednesday, February 02, 2011 1:18:46 PM
To: (b) (7)(C)
Subject: C:\Documents and Settings (b) (7)(C)\My Documents\CHIEF OF STAFF\grassley atf (2).docx

Attachments: Shortcut to grassley atf (2).docx

From: (b) (7)(C)
Sent: Wednesday, February 02, 2011 1:13:54 PM
To: (b) (7)(C)
Subject: C:\Documents and Settings (b) (7)(C) \My Documents\CHIEF OF STAFF\grassley atf (2).docx

Attachments: Shortcut to grassley atf (2).docx

From: (b) (7)(C)
Sent: Wednesday, February 02, 2011 1:13:52 PM
Subject: C:\Documents and Settings\ (b) (7)(C) \Local Settings\Temporary Internet Files\Content.Outlook\N4JTU5FT\grassley atf (2).docx

Attachments: Shortcut to grassley atf (2).docx

PRESERVATION DIRECTIVE FOR RECORDS RELATED TO ATF PROJECT GUNRUNNER

This is in reference to the House of Representatives Committee on Oversight and Government Reform's review of ATF's firearms trafficking enforcement strategy known as Project Gunrunner. The requirements of this preservation directive are *in addition* to the requirements of the Preservation Directive issued on March 28, 2011 related to Operation Fast and Furious.

Pursuant to ATF Order 1340.4, **please identify and preserve any relevant documents and materials within your custody which may be relevant to this matter.** Relevant documents and materials include all records and evidence, **including electronic files and email,** relating in any way to Project Gunrunner. This requires a search of relevant documents and materials under your control that may include, but are not limited to, the following: Reports, any formal and informal documents (*e.g.*, memoranda, hand written notes), correspondence, telephone log entries, e-mail, word processing documents, internet usage files, systems manuals, and network access information. Please note that your preservation of Project Gunrunner documents should include any information related to the fatal shooting of Border Patrol Agent Brian Terry, this includes any property (*i.e.*, firearms and ammunition) in ATF custody relating to this incident.

Relevant documents and materials may include not only hard-copy documents, but all electronically-stored information ("ESI") created, received, and/or maintained by ATF on computer systems and elsewhere. Sources of information may include hard-copy files, computer hard drives, removable media (*e.g.* CDs, DVDs), laptop computers, PDAs, BlackBerry devices, telephones and pagers. All ESI should be preserved in its originally-created or "native" format. Please keep in mind that this is not an exhaustive list of date types or sources.

At this time, please –

- **Identify and preserve all documents and materials which may be relevant to Project Gunrunner. The relevant time period would begin July 1, 2009 until the present.**

If you have any documents or materials that fall within this directive, please place the hard copies in a separate file marked "PRESERVATION OF DOCUMENTS FOR PROJECT GUNRUNNER." Retain the file in a place where you can readily locate it upon request. E-mails should be retained in a PRESERVATION folder on Outlook, and Word and other documents in electronic format (*e.g.*, PowerPoint, Excel, Adobe Acrobat) should be identified and moved to a separate PRESERVATION folder in your personal library.

- **Assign a point of contact (POC) from the following Field Divisions in order to coordinate the preservation of relevant documents and materials:**
 - **Houston Field Division**
 - **Dallas Field Division**
 - **Los Angeles Field Division**

Please provide the POC's name to Assistant Director Melanie Stinnett by COB on Friday April 15, 2011.

- **In connection with the IG's review of Operation Fast and Furious, Assistant Director Stinnett has already established POCs in the other necessary Divisions and Offices. Unless you provide a second POC to Assistant Director Stinnett by April 15, 2011, she will assume that the same POC will be used for both the IG review and the House of Representatives Committee review.**

The POC is to ensure that all persons who may have information or a need to know about this directive are appropriately notified and instructed on their responsibility in a timely fashion. Also, the POC has the responsibility to notify Assistant Director Stinnett if (1) any additional ESI related to Project Gunrunner is discovered; (2) personnel involved in this directive are leaving the division, office or directorate; (3) the division, office or directorate will perform imminent data destruction; (4) the directorate will replace or discard equipment preserving ESI in this matter.

Of particular importance will be ensuring that no ESI is erased through routine destruction. If any ESI relating to Project Gunrunner has been purged as a result of routine destruction (*i.e.*, the aging process, separation from employment, etc) please, to the extent possible, find the dates of such purge and the information which would have been subject to destruction.

Please note that the failure to comply with this directive and/or the failure to maintain records, documents and information could negatively impact the Bureau, therefore please err on the side of retaining documents and information. Employees who fail to comply with their duties as outlined above will be subject to disciplinary action up to and including removal. Please note that this directive is in effect until you are notified that the hold has been terminated.

Thank you for your attention to this matter. If you have any questions concerning this directive, please contact Assistant Director Melanie Stinnett.

UNITED STATES of America,
Plaintiff-Appellee,

v.

Mary Peggy MOORE, Defendant-
Appellant.

UNITED STATES of America,
Plaintiff-Appellee,

v.

Lee Roy WILEY, Defendant-Appellant.

Nos. 94-30453, 94-30454.

United States Court of Appeals,
Ninth Circuit.

Argued and Submitted Jan. 23, 1997.

Decided March 31, 1997.

Defendant-neighbor, who purchased firearm for 14-year-old, and defendant-mother, who facilitated transaction, were convicted in the United States District Court for the District of Idaho, Justin L. Quackenbush, J., of making false statement in connection with purchase of firearm and conspiracy to violate Gun Control Act, respectively. Defendants appealed. The Court of Appeals, Tashima, Circuit Judge, 84 F.3d 1567, reversed. On rehearing en banc, the Court of Appeals, Trott, Circuit Judge, held that: (1) evidence supported convictions; (2) jury instruction did not impermissibly remove materiality issue from jury's consideration; (3) Gun Control Act was not unconstitutionally vague on its face, or as applied; and (4) mother was not entitled to favorable adjustment of offense level for acceptance of responsibility.

District court decision affirmed.

Tashima, Circuit Judge, dissented and filed opinion, in which Pregerson and Reinhardt, Circuit Judges, joined.

1. Weapons ⇌4

Under Gun Control Act, 14-year-old was ineligible to purchase firearm from federally licensed dealer. 18 U.S.C.A. § 922(b)(1).

2. Weapons ⇌4

"Straw man" doctrine holds that person violates Gun Control Act by acting as intermediary or agent of someone who is ineligible to obtain firearm from licensed dealer and making false statement that enables ineligible principal to obtain firearm. 18 U.S.C.A. § 922(a)(6).

See publication Words and Phrases for other judicial constructions and definitions.

3. Weapons ⇌4

Sham or "straw man" purchases occur, for purposes of Gun Control Act, when lawful purchaser buys firearm for unlawful one. 18 U.S.C.A. § 922(a)(6).

4. Weapons ⇌3

Primary purpose of Gun Control Act is to make it possible to keep firearms out of hands of those not legally entitled to possess them because of age, criminal background, or incompetency. 18 U.S.C.A. § 922.

5. Conspiracy ⇌47(3.1)

Weapons ⇌17(4)

Neighbor's conviction for making materially false statement in connection with "straw man" purchase of firearm for 14-year-old, and mother's conviction for conspiracy to violate Gun Control Act, were supported by evidence that they falsely stated that neighbor was minor's grandfather, who intended to purchase and hold firearm for minor until he was 21 years old; mother's claim that she consented to transaction, and that transfer of weapon to minor was therefore legal under Idaho law, did not establish defense to "straw man" doctrine, as it did not address materially false statements. 18 U.S.C.A. § 922(a)(6); I.C. § 18-3302A.

6. Criminal Law ⇌1038.1(2)

Objection to jury instruction would be reviewed for plain error, where defense did not raise it at trial. Fed.Rules Cr.Proc.Rule 52(b), 18 U.S.C.A.

7. Criminal Law ⇌1038.1(2)

If constitutional error occurs in jury instruction because defendant's right to have jury decide issue is infringed, error is both

Cite as 109 F.3d 1456 (9th Cir. 1997)

structural and plain and, therefore, requires reversal of conviction.

8. Weapons ⇨17(6)

Jury instruction in prosecution for making materially false statement in connection with purchase of firearm did not impermissibly withhold materiality element from jury's consideration, as court expressly instructed jury that materiality was element of charged offense and that government had to prove it beyond reasonable doubt. 18 U.S.C.A. § 922(a)(6).

9. Criminal Law ⇨823(5)

Jurors in prosecution for making materially false statement in connection with purchase of firearm were not misled or confused by language of jury instruction regarding materiality element, where judge answered jurors' question inquiring about interplay in instructions between intent and materiality by setting forth four separate elements which government was required to prove beyond reasonable doubt, including materiality of alleged false statements. 18 U.S.C.A. § 922(a)(6).

10. Criminal Law ⇨1038.1(4)

Any error in trial court's instruction in prosecution for making materially false statement in connection with purchase of firearm, which advised that if minor was true purchaser of firearm, then neighbor who purchased gun on minor's behalf had made false statement in connection with purchase, was harmless, rather than plain, as disputed instruction did not affect any substantial rights, in light of evidence, substance of defense, and verdict. 18 U.S.C.A. § 922(a)(6).

11. Constitutional Law ⇨258(3.1)

Weapons ⇨3

Gun Control Act provision prohibiting person from making false statement in connection with purchase of firearm was not unconstitutionally vague, on its face, as it unmistakably rendered juvenile ineligible to buy firearm from a federally licensed dealer, and made it crime to make any false statement in connection with such purchase. 18 U.S.C.A. § 922(a)(6).

12. Constitutional Law ⇨258(3.1)

Weapons ⇨3

Gun Control Act provision prohibiting person from making false statement in connection with purchase of firearm was not unconstitutionally vague, as applied to neighbor who purchased gun for 14-year-old and mother who facilitated transaction, notwithstanding Idaho law that allowed transfer of weapon to minor with parent's consent, as neighbor and mother understood legal obligations under Act, although they sought to work around them. 18 U.S.C.A. § 922(a)(6); I.C. § 18-3302A.

13. Criminal Law ⇨1252

Mother, who conspired with neighbor to illegally purchase gun for her 14-year-old son, was not entitled to reduction in offense level for acceptance of responsibility, as mother initially lied to law enforcement about her involvement in acquisition of firearm and denied that she told clerk that neighbor was her son's grandfather and that he would hold gun until son was 21 years old. 18 U.S.C.A. § 922(a)(6); U.S.S.G. § 3E1.1, 18 U.S.C.A.

14. Criminal Law ⇨1158(1)

Findings of sentencing judge as to acceptance of responsibility are entitled to considerable weight, and Court of Appeals will review denial of reduction in offense level for acceptance of responsibility under clearly erroneous standard. U.S.S.G. § 3E1.1, 18 U.S.C.A.

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George W. Breitsameter, Assistant United States Attorney, Boise, ID, (on the briefs) and Joseph Douglas Wilson, United States Department of Justice, Washington, DC (argued), for Plaintiff-Appellee.

Appeals from the United States District Court for the District of Idaho, Justin L. Quackenbush, District Judge, Presiding, D.C. No. CR-94-0018-JLQ.

Before: HUG, Chief Judge,
 PREGERSON, REINHARDT, BRUNETTI,
 KOZINSKI, THOMPSON, O'SCANNLAIN,
 TROTT, RYMER, KLEINFELD, and
 TASHIMA, Circuit Judges.

TROTT, Circuit Judge.

Mary Peggy Moore ("Mrs. Moore") and Lee Roy Wiley ("Wiley") appeal their respective convictions for conspiracy and for making a material false statement in connection with the purchase of a firearm. Wiley allegedly bought a firearm as a "straw man" on behalf of Mrs. Moore's fourteen-year-old son, Bobby Moore ("Bobby"). Mrs. Moore allegedly was liable as Wiley's aider and abettor and coconspirator in his making of the false statement.

In an attempt to overturn their convictions, Mrs. Moore and Wiley tender three arguments. First, they contend that Mrs. Moore as Bobby's parent consented to the acquisition of the firearm, thereby rendering the government's proof insufficient as a matter of law either to constitute a violation of 18 U.S.C. § 922(a)(6) or to establish the existence of an unlawful conspiracy.

Second, they argue that the district court failed adequately to submit for the jury's determination the question of whether the alleged false statement was material, advising the jury instead that if Bobby and not Wiley was the true purchaser of the firearm, then Wiley had made a material false statement in connection with its purchase. In support of this contention, the appellants direct us to *United States v. Gaudin*, — U.S. —, 115 S.Ct. 2310, 132 L.Ed.2d 444 (1995), in which the Supreme Court held that the materiality of a false statement offense must be decided by the jury, not by the court.

Third, the appellants assert that the Gun Control Act as it relates to this case is constitutionally vague (1) on its face, or (2) as applied.

Mrs. Moore alleges separately that the district court erred at sentencing in refusing to give her a favorable adjustment for acceptance of responsibility.

1. The opinions of the three-judge panel are re-

ported at 84 F.3d 1567 (9th Cir.1996).
 Because we conclude that these claims have no merit, we affirm the district court.¹

I

A.

The Facts

On September 2, 1993, fourteen-year-old Bobby Moore saw a .25 caliber handgun in a pawnshop which had a federal license to sell firearms. When he showed interest in the weapon, a clerk shooped him off the premises because his age rendered him ineligible under federal law to buy it. Undaunted, Bobby set out to find a way to acquire the handgun for himself. He approached his mother to buy it for him, but she turned him down. Bobby's friend Jason Marks witnessed this discussion. Jason's unchallenged testimony about the discussion established not only that Mrs. Moore refused to buy the gun on behalf of her son, but that she explicitly told him he would have to "get someone else" to get it for him because she "didn't want her name on the papers":

A. (By Jason Marks) Well, we [Bobby and Jason] left the pawn shop and we were trying to figure out a way that *he* could get the money to get the gun.

* * * * *

Q. (By the prosecutor) So what did you do as far as trying to get the money?

A. Well, we walked back to his house and I sat down and he was looking around his house at stuff that he could sell or get rid of to get some money.

* * * * *

Q. Okay. When [Bobby] first talked to Mrs. Moore, he was there looking for something to sell, looking at the boom box. When he first talked to his mom, what did he say? What did he ask her?

A. He asked if she would pawn this for him, and she said, no, and they got in an argument.

Q. Okay, and tell us what else was said.

A. Then Bob said why he wanted to pawn it and stuff, and—

ported at 84 F.3d 1567 (9th Cir.1996).

Q. Did [Bobby] ask her to pawn it or hawk it for anything particular?

A. Yeah, for the gun.

Q. What? For the gun?

A. Yeah, and Bob's mom said she didn't want to do it because she didn't want her name on the papers and he could hurt somebody and she didn't think he needed a gun. But Bob has a way of talking people into things, and so he kind of threw a tantrum and got all mad, and finally his mom said that she would do it.

Q. Said she would do what?

A. Pawn the CD Player.

Q. Did she say she would pawn the CD player for the gun, or just pawn the CD player?

A. *Just pawn the CD player and he would have to figure out a different way of getting the gun because she didn't want her name on the papers.*

Q. That's what he told her; is that correct? *He would have to get someone else to get the gun?*

A. *Yeah.*

(emphasis added).

Mrs. Moore then pawned Bobby's CD player and gave him the cash she received from the transaction. She did so knowing that he intended to use it to purchase a firearm.

The next day, Bobby went looking for someone else to help him acquire the weapon, as suggested by his mother. He took the cash to Wiley's residence to see if Wiley would assist him. The neighborhood knew Wiley as "Grandpa," and he frequently did favors for the neighborhood children. The record reflects that Wiley is a man of limited intelligence. Wiley was neither Bobby's parent nor guardian, nor was he related to him in any respect whatsoever.

Wiley balked at first, but Bobby persisted; and with the promise of money as a sweetener, Wiley relented and agreed to purchase the gun on Bobby's behalf.

Mrs. Moore then drove Wiley, Bobby, and Jason to the pawnshop. During this trip, Wiley asked Mrs. Moore if the purchase of

the gun was all right with her, to which she replied that it was fine.

When the group arrived at the pawnshop, Mrs. Moore waited in the car while Wiley, Bobby, and Jason went inside. Wiley asked the clerk to see the handgun Bobby had spotted on his earlier visit. Because the two boys were present, the clerk inquired for whom Wiley wanted to purchase the gun. Wiley responded that the gun was for Bobby, but that he Wiley was Bobby's grandfather, and that he was going to hold it for Bobby until Bobby was 21 years of age. Both of these statements were false and were intended to facilitate the transaction. On cross-examination, Wiley conceded that the only reason he was in the pawnshop was "to stand in for Bobby to get that gun."

The clerk responded to Wiley's representations with an inquiry about Bobby's parents and whether they knew about this purchase. Bobby said that his mother was outside, and he went to get her. In short order, Mrs. Moore appeared briefly in the doorway and, without prompting by Wiley, said to the clerk, "His grandfather is buying a gun for him. He's going to hold it until he's 21, and everything is fine with me."

Satisfied by Mrs. Moore's representations, the clerk had Wiley sign BATF Form 4473 as the "transferee (buyer)," accepted the cash Bobby had given to Wiley for the transaction, and turned the gun over to Wiley. Back in the car, and contrary to the intentions he expressed to the clerk, Wiley gave the gun to Mrs. Moore, expecting that it would go to Bobby. As Bobby intended from the start, he then took the firearm as his own possession.

Mrs. Moore's reluctance to buy this weapon for her son and to put her name on the papers was well founded, and her worry about Bobby hurting someone with it was prescient. On January 20, 1994, Bobby used it to shoot Ronald Wade Feldner, a New Plymouth, Idaho police officer, in the face. Officer Feldner died, leaving behind a wife and minor children.

B.

The False Statement

[1] In 18 U.S.C. § 922(a)(6), Congress made it a federal offense

for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter.

In the same statute, Congress also rendered it illegal for a licensed firearms dealer to sell or deliver "any firearm or ammunition to any individual who the licensee knows or has reasonable cause to believe is less than eighteen years of age," or to sell or deliver a handgun to anyone less than twenty-one years of age. 18 U.S.C. § 922(b)(1). Thus, federal law made Bobby Moore ineligible to purchase a firearm from a federally-licensed dealer.

The government's theory of its case against Wiley, and against Mrs. Moore as an aider and abettor and conspirator, is straightforward and simple. As charged in the indictment and as explained to the jurors in the jury instructions, the government alleges that the true buyer of the .25 caliber handgun was the ineligible Bobby Moore, and that Wiley acted merely as his disguised agent-in the parlance, as a "straw man" purchaser. Thus, goes the government's argument, when Wiley the straw man agent signed his name on Form 4473 as the "transferee (buyer)," he made a false statement because the buyer was not Wiley, but Bobby himself. The manifest materiality of this false statement, says the government, stems from the law's prohibition against Bobby buying a firearm.

The appellants, on the other hand, contend that Mrs. Moore consented to the acquisition of this firearm by Wiley on behalf of her son.

2. At the time this firearm was purchased, Idaho law did not prohibit the sale of a firearm to a minor so long as the minor had the consent of a parent or a guardian. Idaho Code § 18-3302A (1990). Since these events, the Idaho Legislature amended section 18-3302A to require the

They argue here, as they did to the trial court and to the jury, that such consent rendered the sale lawful per se, and accordingly, that any false statements that Wiley and Mrs. Moore made to the clerk were flatly immaterial. To support this argument, the appellants assert that, at the time of sale, transferring firearms to minors was legal in Idaho, so long as the minor's parents gave consent.²

The respective positions of the government and the appellants were carefully set forth by the district court in its instructions to the jury:

The government contends that Mary Peggy Moore is not charged with any unlawful transfer of the firearm to her son, but rather is *charged with aiding and abetting Lee Roy Wiley or being a principal in a straw man purchase* of a firearm in the place of the prohibited minor, James Robert Lee Moore, who the government contends was the true purchaser. *The defendant Mary Peggy Moore denies that she participated in a straw man purchase, or that a straw man purchase took place.*

* * * * *

[T]he defendants Lee Roy Wiley and Mary Peggy Moore cannot be found guilty of any charge pending against them in this case solely because they may have delivered the firearm to James Robert Lee Moore.

The limited charges against the defendants in Count 1 and 2 are that *James Robert Lee Moore was the true purchaser of the firearm and that the defendants served merely as straw men* for the purchase of the firearm in the place of James Robert Lee Moore.

(emphasis added).

C.

The Straw Man Doctrine

[2, 3] The straw man doctrine, which is nothing more than a long-standing construc-

written permission of a parent or a guardian. The Gun Control Act has also been amended to make it illegal for a juvenile to possess a handgun without a parent's or guardian's written consent. 18 U.S.C. §§ 922(x)(1)(A) & 922(x)(3)(A)(iii) (1994).

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tion of the relevant statutes, holds that a person violates section 922(a)(6) by acting as an intermediary or agent of someone who is ineligible to obtain a firearm from a licensed dealer and making a false statement that enables the ineligible principal to obtain a firearm. As we said in *Perri v. Department of the Treasury*, 637 F.2d 1332, 1336 (9th Cir.1981), "sham or 'strawman'" purchases occur "when a lawful purchaser buys for an unlawful one." See *United States v. Lawrence*, 680 F.2d 1126, 1127-28 (6th Cir.1982) (defendants who purchase firearms for ineligible foreign citizens violate section 922(a)(6)); *United States v. Ortiz-Loya*, 777 F.2d 973, 978 (5th Cir.1985) (same). In *Lawrence*, for example, the Sixth Circuit found determinative of straw man status that, like Wiley, the transferee (1) acted under the direction and control of the ineligible buyer, (2) purchased weapons selected by the ineligible buyer with the buyer's money, (3) took a commission that showed agency, and (4) had no intention of keeping the gun for himself. 680 F.2d at 1128; see also *United States v. Howell*, 37 F.3d 1197 (7th Cir.1994) ("The jury was entitled to conclude, beyond a reasonable doubt, that Mrs. Howell was no more than a straw purchaser, an eligible purchaser who is acting as an agent, intermediary, or straw purchaser for someone who is ineligible to purchase the firearm directly.") (internal quotations omitted).

[4] In effect, this doctrine is merely an application of a principle that dates back to the time when the legal profession relied regularly on maxims expressed in Latin to illuminate the law: "Qui facit per alium facit per se," or "He who acts through another acts himself." In this context, it is a construction of the statute that directly serves the primary purpose of the Gun Control Act, which is "to make it possible to keep firearms out of the hands of those not legally entitled to possess them because of age, criminal background, or incompetency." *Barrett v. United States*, 423 U.S. 212, 220, 96 S.Ct. 498, 503, 46 L.Ed.2d 450 (1976) (quoting S.Rep. No. 1501, 90th Cong., 2d Sess. 22 (1968) U.S. Code Cong. & Admin. News 1968 p. 4410).

3. Lawrence died during the pendency of the ap-

D.

Analysis

In an attempt to avoid the implications of the straw man doctrine, the appellants' sole defense was that Mrs. Moore consented to the purchase, and that because of her consent, Wiley and Mrs. Moore committed no crime, period. The defense argued that Wiley was *her* lawful agent implementing *her* lawful decision; he was not a straw man, and thus, Wiley and Mrs. Moore did not violate the statute. In the defense's view, the grandfather ruse was immaterial and irrelevant.

[5] Whether the defense is correct, of course, depends entirely on the facts. It was for the jury to decide whose agent Wiley was and whether Bobby was the actual buyer of the gun. If the jurors had a reasonable doubt about whether the buyer was Bobby, they would have acquitted. They did not. Read in the light of the indictment and the instructions, the jury verdict establishes conclusively that Bobby was the buyer, not Wiley, and that Wiley was merely Bobby's straw man agent for the purchase. Clearly, the jury attached no factual merit to the claim that Wiley was the buyer of the gun.

The appellants' argument echoes the failed argument of defendant Somogye in the *Lawrence* case.³ 680 F.2d at 1127. Somogye admitted that he and Lawrence knowingly purchased guns for an individual who could not legally buy them in his own name, but claimed that because they entered the store and paid for the weapons, as a matter of law they did not lie when they registered themselves on the transaction form as the buyers of the weapons. The Sixth Circuit dismissed this now familiar argument as novel, but "specious." *Id.* at 1127. The court explained that:

The foundation of Somogye's argument is that he and Lawrence were not agents of Hajjan but were instead middlemen who purchased the guns for resale to Hajjan. Hence, as principles, they were in fact the buyers of the weapons. *This argument*

peal rendering moot the case against him.

does not, however, conform to the facts of the case. Lawrence and Somogye were at all relevant times acting under the control and direction of Hajjan. They purchased the guns designated by Hajjan and did so with his money. The fixed commission they received further evidenced their role as agents. Therefore Lawrence and Somogye were not buyers and their statements on the forms were false in violation of 18 U.S.C. § 922(a)(6).

Id. at 1128 (emphasis added).

In the instant case, the uncontested facts presented to the jury did not as a matter of law establish a defense to the straw man doctrine. Nothing in the statute, the case law, or the rules of statutory construction suggests that a parent can either (1) render an unlawful straw man purchase legal by consenting to it, or (2) override the clear prohibition against making material false statements in a firearms transaction. Appellants ignore the specific rules that apply when someone purchases a firearm from a federally licensed dealer. Their suggestion that Idaho Code § 18-3302A "empowers" a parent to arm a child is misleading and a non sequitur. The fact that Idaho law permits a weapons transfer to a minor under 16 years of age with parental consent does not "empower" a juvenile to purchase a firearm from a federal dealer through an intermediary who falsely identifies himself as the buyer. The gravamen of the charge against Mrs. Moore and Wiley was the allegation that they made a material false statement. The district court properly explained the charge in denying the appellants' motion to dismiss:

The Court: But [parental authority to give a weapon to a child is] not what we are here about. What we are here about is whether or not false statements were made in connection with the purchase of the firearm, and I don't think the government's case against Mrs. Moore is that she got Wiley to purchase it, who gave it to her, who gave it to her son. I don't think that is an offense. The question being, whether or not she aided and abetted, or engaged in an legal [sic] agreement, conspiracy, to violate the federal law which

prohibits false statements in connection with the purchase of the firearm.

There is, of course, ample evidence in the record to support the jury's verdict and their conclusion that Bobby bought the gun for himself through an intermediary. Mrs. Moore turned down Bobby's request to buy the gun for him and refused to go on the papers. She told him he'd have to find someone else. He found Wiley.

Wiley was an archetypical straw man. He was recruited and compensated for his role because Bobby could not buy the coveted firearm and because his mother would not buy it for him. Wiley testified that the boys asked him to do "a favor for them," that they picked it out, and that Bobby gave him the money for it. Wiley's own testimony is dispositive of his role as a straw man purchaser in this matter:

(By Mr. Lindquist)

Q. Okay. You knew that—you knew why they were asking you to buy the gun, didn't you?

(By Wiley)

A. Yes, I did.

Q. You knew what Bobbie [sic] was asking you to buy the gun, didn't you?

A. What [sic] he wanted to own a gun, as far as I know.

Q. Bobbie wanted a gun?

A. That's right.

Q. And you knew that the reason that they were asking you was because Bobbie couldn't buy that himself, correct?

A. Well, that sounds about right.

Q. And so they were asking you, Bobbie was asking you to buy it in his place, right?

A. Yeah, as far as I know, yeah.

* * * * *

Q. So the person that was really getting that gun was Bobbie, wasn't it?

A. That's right.

Q. And you knew that, didn't you?

A. Yes, I did.

Q. And you knew that the only reason you were there, the only reason that they

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came to you was because Bobbie couldn't get it on his own?

A. That sounds about right.

Q. You weren't interested in getting a gun that day, were you, Mr. Wiley?

A. No, I wasn't.

* * * * *

Q. The only reason that you were there that day was to stand in for Bobbie to get that gun, correct?

A. That sounds about right.

(emphasis added). Wiley's involvement in the transaction is the smoking gun that proves both the illegality of this purchase and the existence of the conspiracy. Under the circumstances and given the jury's verdict, Mrs. Moore's words spoken in the pawnshop in support of the grandfather ruse serve primarily to connect her both to the false statement offense and to the conspiracy, rather than to provide the appellants with a defense. In her cameo appearance in the pawnshop's doorway, she did not reveal what was actually happening. Instead, she lied about the transaction in progress, and by so doing, purposefully enabled Wiley to make a material false statement on BATF Form 4473 and thereby consummate an illegal purchase. Her precise misrepresentation about Wiley's status as Bobby's grandfather and about who was going to control the weapon can hardly be called "consent." What the record demonstrates that she said and did does not square with the appellants' characterization of it. Thus, the appellants' argument that the evidence is insufficient to sustain these verdicts is demonstrably without merit.

In conclusion, we borrow again from the Sixth Circuit in *Lawrence*:

The result we reach here is necessary if the intentions of Congress as revealed in the Gun Control Act of 1968 are to be followed. If sales such as this one were insulated from the law's registration provisions, the effect would be tantamount to a repeal of those provisions. Other courts have upheld convictions for gun registra-

tion violations predicated on sham transactions and we must do so here.

680 F.2d at 1128.

II

The Instructions on Materiality

[6] Moore and Wiley argue that the district judge violated the *Gaudin* rule through its instruction to the jury. See *United States v. Gaudin*, — U.S. —, 115 S.Ct. 2310, 132 L.Ed.2d 444 (1995) (holding that the materiality of a false statement is a matter for the jury to decide). Specifically, they challenge the judge's instruction that:

If the government establishes by proof beyond a reasonable doubt that James Robert Lee Moore was the true purchaser of the handgun and that Lee Roy Wiley was not, then the government has established that Lee Roy Wiley made a material false statement in connection with the purchase of the firearm. But I want you to keep in mind the making of a material false statement is just one of the elements of an offense, and I described those elements to you in the earlier instructions.

Jury Instruction No. 14 (excerpt). Because the defense lodged no objection on *Gaudin* grounds to this instruction, we review for plain error pursuant to Federal Rule of Criminal Procedure 52(b).

Gaudin involved allegations of criminal false statements on federal loan documents in violation of 18 U.S.C. § 1001. The problem in *Gaudin* arose because the district court handled the issue of the materiality of the alleged false statements—which is an element of the crime—as a matter for the court to decide, not the jury. Unlike the instant case, the trial court instructed the jury that "[t]he issue of materiality . . . is not submitted to you for your decision but rather is a matter for the decision of the court. You are instructed that the statements charged in the indictment are material statements." — U.S. at —, 115 S.Ct. at 2313.

[7] The Supreme Court held that such an approach to the issue and such an instruction violated both the Fifth and the Sixth Amendments to the United States Constitution, which together "require criminal convictions

to rest upon a *jury* determination that the defendant is guilty of every element of the crime with which he is charged, beyond a reasonable doubt." *Id.* at —, 115 S.Ct. at 2313 (emphasis added). The Court concluded by saying that "[t]he trial judge's refusal to allow the jury to pass on the 'materiality' of Gaudin's false statements infringed that right [to have a jury decide]." *Id.* at —, 115 S.Ct. at 2320. The rule of this circuit is that if such a constitutional error occurs, it is both "structural" and "plain" and therefore requires reversal. *United States v. Gaudin*, 28 F.3d 943, 952 (9th Cir.1994), *aff'd*, — U.S. —, 115 S.Ct. 2310, 132 L.Ed.2d 444 (1995).

[8] The question we must answer, therefore, is whether the instruction of which the defendants complain withheld the element of materiality from the jury in violation of *Gaudin's* rule. Our answer is that it did not.

Unlike in *Gaudin*, here the court did not withhold the materiality element from the jury. The court expressly instructed the jury that materiality was an element of the charged offense, and that the government had to prove it beyond a reasonable doubt:

In order for a defendant to be found guilty of [making a false statement], the government must prove each of the following four elements beyond a reasonable doubt: . . . ; and third, *that the statement was intended or likely to deceive the firearms dealer with respect to a fact material to the lawfulness of the sale; . . .* If you find that the government has established each of the foregoing elements against a defendant by proof beyond a reasonable doubt, your verdict should be one of guilty against that defendant on this Count 2.

If you find that the government has not established all or any of the four elements by proof beyond a reasonable doubt against a defendant, your verdict should be one of not guilty on Count 2 against that defendant.

(emphasis added). The court also instructed the jury that "[t]he burden is always upon the government to prove guilt by proof beyond a reasonable doubt."

It is also noteworthy that when the court discussed the instructions with counsel before reading them to the jury, no one objected that the instruction now complained of violated the *Gaudin* rule, a rule established first by a three-judge panel of this court on June 22, 1993 and then affirmed en banc on June 21, 1994, more than two months before the trial. Moreover, the district court offered to enhance the instructions on the materiality element by giving an additional instruction offered by Mr. McCabe, counsel for Mr. Wiley, but Mr. McCabe withdrew the instruction. The exchange between court and counsel during this conference sheds light on this issue:

Mr. McCabe: The [instruction] I offered was number twelve, which is Devitt and Blackmar, and it says it is material if it is relevant to the decision and is capable of influencing them, and what I'm concerned with there is *if we leave it wide open like that, even though being a grandparent is not truly material to the transaction, they might decide that the false statement that was material was saying that he was his grandfather.*

The Court: I'm willing to give your number twelve.

Mr. McCabe: I will withdraw it at this time.

The Court: All right. Any other exceptions/failure to give, Mr. McCabe?

Mr. McCabe: I don't believe so, judge.

(emphasis added).

Mr. Nevin, counsel for Mrs. Moore, also addressed Instruction No. 14 in this conference, and he too did not object on *Gaudin* grounds. What he said about the disputed language was not that it withdrew the materiality element from the jury's consideration, but that it was "a comment on the evidence."

From these exchanges and from the transcript of the proceedings, it is clear that no one believed during the trial that the disputed instruction withdrew the hotly disputed element of materiality from the jury.

The *Gaudin* issue arose for the first time in a motion for a new trial after the chosen defense had failed. Counsel for Mr. Wiley argued to the court that "materiality is al-

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ways an issue that needs to be submitted to the jury . . .," to which the court responded, "I did submit it to the jury." To prove his point, the court then read the same instructions to counsel previously quoted in this opinion. Counsel's response was.

I understand, Judge. I concede all of those things. In terms of—and in fact you went further. When the jury came out with a question, you gave them an answer that included, yet again, an instruction to them that the government had to prove beyond a reasonable doubt that, quote, "That the alleged statement was of a nature material to the lawfulness of the sale." I concede all of that, judge.

Nevertheless, counsel made the same point that they make here, namely that the language in Instruction 14 had the effect of withdrawing consideration of this element from the jury's consideration. The court discussed the matter with counsel and then disagreed, denying the motion for a new trial. The record viewed as a whole supports the court's conclusion: the question of materiality remained with the jury.

[9] This leaves us, however, with the question of whether the jurors were misled or confused by the disputed language in Instruction No. 14. They were not. During deliberations they sent a question to the judge inquiring about the interplay in the instructions between intent and materiality. This is the question:

Count 2—Third Element [materiality], Instruction # 11.

"That the statement was intended or likely to deceive the firearms dealer. . . ."

Does the "intention" and "likely to deceive" both need to be met in this element or just one met for this element to be satisfied.

[signed]

One can conclude from this question only that the jury understood that the element of materiality was theirs to decide, and that they were attempting to decide it. There is no sign they believed or did otherwise.

More importantly, however, when the court answered the jurors' question, he told

them again that this essential element was on *their* table for decision:

In response to your question, you are advised that the government has the burden of proving beyond a reasonable doubt that the Defendant under consideration knowingly and wilfully made, or aided and abetted the making of a false statement. The government must also prove beyond a reasonable doubt that the defendant knew the alleged statement was false. *The government must also prove beyond a reasonable doubt that the defendant intended his or her statement to deceive a firearms dealer and that the alleged statement was of a nature material to the lawfulness of the sale and that the alleged statement was of a nature which would deceive the dealer or would likely deceive the dealer.*

. . . This Instruction sets forth four separate elements which the government must prove beyond a reasonable doubt.

(emphasis added). If the earlier statement in Instruction 14 might have been a problem, this certainly cured it.

Thus, when we view the instructions "as a whole in the context of the entire trial to determine if they were misleading or inadequate to guide the jury's deliberation," *United States v. Perez*, 989 F.2d 1111, 1114 (9th Cir.1993), we see clearly that they do not suffer from this defect.

[10] There is an explanation, of course, for Mr. McCabe's withdrawal of his enhanced materiality instruction, as well as for both counsels' disinclination to get too close to the materiality issue as framed by the prosecution. As Mr. McCabe candidly admitted at oral argument before the three-judge panel, he did not want the jury precisely to focus on the materiality of the admittedly false statements made by Mr. Wiley for fear that such a focus would distract the jury from the substance of the defense, which as described earlier in this opinion, was that *none* of the statements made by Wiley and Mrs. Moore could qualify as material false statements because no crime was being committed in that Mrs. Moore approved of the purchase. As Mr. Nevin says in his excellent brief,

As we argue above, Idaho law protected the right of *any* third party to give a gun to a child of *any* age, with the parent's permission. Thus the statements that Mr. Wiley was Bobby's grandfather, and that the gun would be held until Bobby turned 21, were in no way "material to the lawfulness of the sale."

(emphasis in original). This tracks exactly the argument Mr. Nevin made to the jury at the end of the case, demonstrating also that everyone involved in the trial considered the materiality element to be in play and not to have been preempted by the court. In fact, materiality was the essence of both defendants' defense. With this in mind, it is pellucid beyond a reasonable doubt that the court's disputed statement in Instruction No. 14 read in context and measured against (1) the evidence, (2) the substance of the defense, and (3) the verdict, was completely harmless. See *Perez*, 989 F.2d at 1115-1116 (holding that jury instructions were harmless beyond a reasonable doubt where the jury was told that "carrying"—for purposes of establishing the offense of carrying a firearm in relation to a drug trafficking offense—was shown conclusively if the firearm was within the defendant's reach). In context, the error, if any, certainly was not "plain," and the disputed instruction did not affect any substantial rights. See *United States v. Olano*, 507 U.S. 725, 732, 113 S.Ct. 1770, 1776-77, 123 L.Ed.2d 508 (1993).

III

The Constitutionality of the Gun Control Act

Prior to trial, the appellants unsuccessfully moved to dismiss the indictment on the ground that 18 U.S.C. §§ 922(a)(6) and (b)(1) are constitutionally vague. They argued that these sections fail to give adequate and fair notice to a person of ordinary intelligence that certain conduct is unlawful. See *Grazned v. City of Rockford*, 408 U.S. 104, 108, 92 S.Ct. 2294, 2298-99, 33 L.Ed.2d 222 (1972). We review this claim de novo, and we conclude that it has no merit.

[11] The plain language of section 922(b)(1) unmistakably renders a juvenile in-

eligible to buy a firearm from a federally licensed dealer. Section 922(a)(6) makes it a crime to make any false statement in connection with such a purchase. Any ordinary person of reasonable intelligence reading these sections could not help but understand that they prohibit sham straw man transactions designed to obtain a gun for an ineligible juvenile.

[12] The Fifth Circuit rejected an analogous argument that section 922(a)(6) was constitutionally vague as applied to a straw transaction in *United States v. Brooks*, 611 F.2d 614, 617 (5th Cir.1980), *overruled on other grounds*, *United States v. Henry*, 749 F.2d 203 (5th Cir.1984). In *Brooks*, a gun dealer was convicted for an illegal straw sale to a nonresident. The court found the statute's ban on the knowing "sale" to a nonresident to be a sufficiently definite warning of the conduct proscribed by application of the straw transaction doctrine. The court found that the words "sell or deliver . . . to any person who . . . does not reside in the State" gave fair notice that the defendant could not make a sham sale where he knows the ultimate recipient is a nonresident. 611 F.2d at 617.

Here, section 922(b)(1) reads that it shall be unlawful for firearms dealers "to sell or deliver . . . to any individual who . . . is less than eighteen years of age." Under the reasoning of *Brooks*, this practically identical language makes it reasonably clear that sham transactions designed to procure a gun for a minor are unlawful. If Wiley was therefore sufficiently warned that the sham transaction he engaged in was an illegal sale to *Bobby*, he can be charged with the requisite knowledge that his answer on the form was deceitful. See *United States v. Crooks*, 804 F.2d 1441, 1448 (9th Cir.1986), (holding that signature on tax form was sufficient to show knowledge that false statements on return were, in fact, false), *modified*, 826 F.2d 4 (9th Cir.1987).

Appellants reintroduce Idaho Code § 16-3302A (1990) into their void-for-vagueness argument. They claim that the vagueness of the federal statute's ban on straw sales to minors is "compounded" by the Idaho law's sanction of sales and transfers of firearms to

Cite as 109 F.3d 1456 (9th Cir. 1997)

minors under 16 with their parent's permission. As discussed earlier in Part I, Idaho law has no "empowering" effect that alters federal law on the prohibition of the straw sale of firearms to minors. Appellants state that a reasonably intelligent person would be confused about the interplay of federal and Idaho law here, but they cite no authority to reinforce their theory that state law can unconstitutionally "compound" the vagueness of federal law. In this regard, we find the holding of the Supreme Court in *United States v. Powell* to be instructive:

The fact that Congress might, without difficulty, have chosen "[c]learer and more precise language" equally capable of achieving the end which it sought does not mean that the statute which in fact drafted is unconstitutionally vague. *United States v. Petrillo*, 332 U.S. 1, 7, 67 S.Ct. 1538, 1541-42, 91 L.Ed. 1877 (1947).

423 U.S. 87, 94, 96 S.Ct. 316, 321, 46 L.Ed.2d 228 (1975). In *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, the Supreme Court declared:

"[V]agueness challenges to statutes which do not involve First Amendment freedoms must be examined in the light of the facts of the case at hand." [citations omitted]. "One to whose conduct a statute clearly applies may not successfully challenge it for vagueness." *Parker v. Levy*, 417 U.S. 733, 756, 94 S.Ct. 2547, 2562, 41 L.Ed.2d 439 (1974). The rationale is evident: to sustain such a challenge, *the complainant must prove that the enactment is vague "not in the sense that it requires a person to conform his conduct to an imprecise but comprehensive normative standard, but rather in the sense that no standard of conduct is specified at all."* *Coates v. City of Cincinnati*, 402 U.S. 611, 614, 91 S.Ct. 1686, 1688, 29 L.Ed.2d 214 (1971). Such a provision simply has *no core*." *Smith v. Goguen*, 415 U.S. 566, 578, 94 S.Ct. 1242, 1249, 39 L.Ed.2d 605 (1974).

455 U.S. 489, 495 n. 7, 102 S.Ct. 1186, 1191 n. 7, 71 L.Ed.2d 362 (1982) (emphasis added). Here, the extension of the prohibition against the "sale" of firearms to minors to also include straw man purchases for minors is not standardless; it delegates no policy matters

to policemen and juries, and most important, it is normatively comprehensible.

The record shows that both Mrs. Moore and Wiley understood their respective legal obligations in this case, even though they unlawfully sought to work around them. Mrs. Moore knew full well that a purchaser's name went on "papers" and that fulfilling that role entailed grave responsibilities she did not want. Wiley, too, was aware of the unlawful nature of his conduct. He clearly appreciated the legal problems associated with arming a juvenile and used a ruse about his relationship with Bobby to circumvent them. When the clerk tried vainly to warn Wiley, who was employed as a private security guard, about the danger of putting even a supervised firearm in the hands of a juvenile and about the "trouble" that could ensue, Wiley's dismissive response was, "I know the law."

In short, we discern no arbitrary or unfair application of the Gun Control Act in this case, an Act clear on its face and in its impact with respect to false statements and juveniles.

IV

Acceptance of Responsibility

Mrs. Moore contends that the trial court erred by not granting her a two-point reduction in offense level for acceptance of responsibility. She correctly points out that by putting the government to its proof she did not foreclose such a reduction. U.S.S.G. § 3E1.1, comment., n. 2 ("In rare situations a defendant may clearly demonstrate an acceptance of responsibility for [her] criminal conduct even though [she] exercises [her] constitutional right to a trial.>").

[13] The presentence report recommended denying such a reduction, pointing to Mrs. Moore's initial lies to law enforcement about her involvement in the acquisition of the firearm and to her denials post-trial that she told the clerk Wiley was her son's grandfather and that he would hold the gun until Bobby was 21. The district court agreed with the presentence report and found that her situation was not the rare one justifying such a benefit.

[14] The findings of a sentencing judge as to acceptance of responsibility are entitled to considerable weight. *United States v. Scarano*, 975 F.2d 580, 587 (9th Cir.1992). We review such a denial under the "clearly erroneous" standard. *Id.* We do not perceive any defect in the district court's decision in this case. We note that Wiley was awarded such a reduction, but that the trial court determined that Mrs. Moore's conduct did not measure up to the required standard. Such a holding was not clearly erroneous.

AFFIRMED.

TASHIMA, Circuit Judge, with whom PREGERSON and REINHARDT, Circuit Judges, join, dissenting:

For the reasons set forth in the panel majority's opinion, *United States v. Moore*, 84 F.3d 1567 (9th Cir.1996) ("*Moore I*"), I dissent. The majority errs in several major respects. I briefly address these errors *seriatim*.

1. Mrs. Moore's Consent

First, the majority refuses to recognize that the uncontradicted evidence establishes that Mrs. Moore consented to her son's purchase of the handgun. That she did consent is demonstrated by "The Facts," Part I.A., *Op.* at 1459, of the majority opinion. According to Bobby's friend, Jason: "But Bob has a way of talking people into things, and so he kind of threw a tantrum and got all mad, and finally his mom said that she would do it." (Emphasis added.) What Mrs. Moore agreed to do was to pawn the CD player.¹ Bobby "would have to figure out a different way of getting the gun because she didn't

1. This action, of pawning the CD player with the foreknowledge of what the money would be used for, also demonstrates Mrs. Moore's consent. Indeed, as a minor, Bobby could not pawn the CD player himself. That is why he importuned his mother to pawn the CD player for him. In the eyes of the law, both the CD player and the money obtained from pawning it belonged to Mrs. Moore.

2. Moreover, as the panel opinion pointed out, Mrs. Moore's conviction for aiding and abetting could not be sustained, unless she acted "knowingly and intentionally," *i.e.*, that she consented

want her name on the papers." As her later actions demonstrate, this was not a prohibition from Bobby purchasing the gun, it was only Mrs. Moore's refusal to have "her name on the papers." For, as the majority's summary of the facts next states:

Mrs. Moore then pawned Bobby's CD player and gave him the cash she received from the transaction. She did so knowing that he intended to use it to purchase a firearm.

The next day, Bobby went looking for someone else to help him acquire the weapon, as suggested by his mother.

Op. at 1459 (emphasis added). As the majority further states, "Mrs. Moore then drove Wiley, Bobby, and Jason to the pawnshop." During that trip, she told Wiley that the purchase of the gun "was all right with her," "it was fine." Finally, Mrs. Moore told the pawn shop clerk, "everything is fine with me."²

Mrs. Moore consented to Wiley's purchase of the handgun for Bobby.³ Short of purchasing the weapon herself, there was little else that Mrs. Moore could have done to facilitate the transaction.

2. The Parental Consent Exception

The majority's second error is to ignore Mrs. Moore's consent and, thus, the central issue in this case—the scope of the parental consent exception. The majority ignores Mrs. Moore's consent to the sale because it does not want to deal with the consequences of recognizing it.

Even the Bureau of Alcohol, Tobacco and Firearms ("BATF") agrees that Congress in-

to the transaction. *Moore I*, 84 F.3d at 1573 n. 6.

3. The majority's summary of the facts also shows that Wiley, after purchasing the firearm, did not hand the gun to Bobby, but "gave the gun to Mrs. Moore...." *Op.* at 1460. Thus, not only did Mrs. Moore consent to the purchase of the firearm, according to the majority's summary of the facts (i) the firearm was purchased with her money, (ii) she authorized Wiley to conduct the transaction, (iii) after purchasing the firearm, Wiley handed it to Mrs. Moore, and (iv) it was Mrs. Moore who actually handed over physical possession of the firearm to her son.

Cite as 109 F.3d 1456 (9th Cir. 1997)

tended that guns purchased for juveniles by their parents be excepted from the Gun Control Act's ("GCA") prohibition, and has administered the GCA to recognize such an exception.⁴ However, the BATF would limit that exception to transactions in which the parent herself or himself is the purchaser—the "Transferee (Buyer)."

As the panel opinion makes clear, there is no justification in the legislative history to construe the parental consent exception as narrowly as does the BATF, particularly when construing a criminal statute. For the reasons stated in Parts III and IV of the panel opinion, *Moore I*, 84 F.3d at 1571-73, the majority errs in failing to recognize Congress' intent that under the GCA, a parent may validly consent to the purchase of a gun for her minor child without being the physical purchaser.

Congress simply did not intend to criminalize acquisition of firearms by minors where the parent knows of and consents to the purchase.

The report of the Senate Judiciary Committee on the GCA listed among the serious national problems addressed by the legislation the acquisition of firearms by "juveniles without the knowledge and consent of their parents or guardians . . ." S.Rep. No. 1097, 90th Cong., 2nd Sess. (1968), reprinted in 1968 U.S.C.C.A.N., 2112, 2114 (emphasis added). The report elaborated:

The *clandestine* acquisition of firearms by juveniles and minors is a most serious problem facing law enforcement and the citizens of this country. The controls proposed in the title are designed to meet this problem and to substantially curtail it.

Id. at 2167 (emphasis added).

The committee report made clear that Congress did not intend to frustrate all gun acquisitions by minors:

4. No party has cited and the court has not found any reported case in which a straw purchaser has been prosecuted for buying a firearm for a juvenile where the straw purchaser is a parent or other close relative of the juvenile.

[U]nder the title, a minor or juvenile would not be restricted from owning or learning the proper usage of the firearm, since any firearm which his parent or guardian desired him to have could be obtained for the minor or juvenile by the parent or guardian.⁵

Id.

There is no indication that Congress intended to limit the exception for the purchase of a firearm for a minor exclusively to purchases made by the parent himself or herself. What the legislative history indicates is that Congress considered parental permission sufficient to allow a third party to purchase the firearm on behalf of a minor. The Senate Judiciary Committee's report clearly indicates that Congress' purpose was only to prohibit those acquisitions of firearms by minors that are "clandestine" or made "without the knowledge and consent of their parents."

Moore I, 84 F.3d at 1571-72 (footnote omitted).

3. *The Jury's Finding*

The majority also errs in pretending that the pivotal issue was fairly presented to and decided by the jury. The majority sets up a straw man and knocks it down. Under the majority's hypothesis, the issue, which "was for the jury to decide," was whether Wiley was Mrs. Moore's agent or Bobby's agent. Part I.D., *Op.* at 1461. That, of course, is not the issue.

As the instructions quoted by the majority show, if Bobby was the "true" purchaser, defendants were guilty as straw purchasers:

The limited charges against the defendants in Count 1 and 2 are that James Robert Lee Moore was the true purchaser of the firearm and that the defendants served merely as straw men for the purchase of the firearm in the place of James Robert Lee Moore.

5. The transaction at issue here meets this description—the firearm was "obtained for the minor" by Mrs. Moore through the arrangements that were made with Wiley with her substantial assistance and consent.

Part I.B., *Op.* at 1460. This instruction completely foreclosed the jury from finding that defendants were not guilty under the parental consent exception, if the jury found that Mrs. Moore had consented to Bobby's purchase of the handgun. Thus, it is disingenuous to say that the issue was submitted to the jury for its determination.

4. No False Statement

According to the government's theory of the case, the only material false statement made was made by Wiley when he signed the BATF form stating that he was the "transferee (buyer)."⁶ This statement was false, according to the government, because Bobby was the "true" purchaser and Wiley was a "straw man." However, even under this theory, under the BATF's own interpretation of what its own forms and regulations require, Wiley was *required* to state that he was the "transferee (buyer)."

According to the testimony of BATF Special Agent Sterling Nixon, when a parent purchases a gun for her child, even with the child's own money, she is *required* to list her own name as the "transferee (buyer)."⁷ BATF Form 4473 simply is not designed to accommodate a straw purchase, whether or not it is lawful.⁸ There was no place on the form where Wiley could have disclosed that he intended immediately to transfer the gun to Mrs. Moore, for eventual transfer to Bobby. Wiley did not make a false statement. He was, in fact, the "transferee (buyer)" and listed himself as such. Because he fully com-

6. The majority never precisely identifies the material false statement charged in this case; however, the government made clear at oral argument that the *only* statement it was relying on as false *and material* was Wiley's identifying himself as the transferee (buyer). This is confirmed by the materiality instruction quoted by the majority. Part II, *Op.* at 1463-64.

Throughout its opinion, the majority implies that Wiley's statements that he was Bobby's grandfather, and that he would hold the firearm until Bobby was 21 were material. However, they clearly were not material to the lawfulness of the sale. First, no one contends that the GCA authorizes a grandparent to act as a straw purchaser for his minor grandchild (absent a parent's consent). Second, neither does anyone contend that a minor may purchase a handgun if he promises that an adult will retain possession of it until he turns 21.

plied with the requirements of the BATF form and the form nowhere required disclosure of the "straw" aspect of the transaction, Wiley did not make a false statement by listing himself as the "transferee (buyer)," unless that action were criminalized by the "straw man" doctrine, discussed below.

Further analysis of the BATF's design⁹ and administration of its Form 4473 demonstrates the "Catch 22" in which straw purchasers are placed. According to BATF Agent Nixon's testimony, straw purchasers are required to list themselves as the "transferee (buyer)," even though they are standing in for the "true" purchaser, *e.g.*, where a parent is purchasing a firearm for her child. Thus, in the BATF's view, straw purchasers are required to make a false statement. The BATF then, in its discretion, determines whether or not that false statement is material, *i.e.*, whether or not Congress intended that transaction to be exempted from the BATF's "true" purchaser requirement. Whatever the merits of such an administration of the GCA for regulatory purposes, it is hardly a fair way to administer the criminal law.

5. The Straw Man Doctrine

Although not directly acknowledging it, the majority seems to recognize that the "straw man" doctrine is a judicially-created gloss on the GCA—it imposes criminal liability where there is none under a plain, strict reading of

7. Agent Nixon further testified that this required listing of the parent's name as transferee (buyer) would be true even if the parent intended immediately to transfer the firearm to her child, and that it would not be a false statement.

8. As noted in the panel opinion, not all straw transactions are illegal. *Moore I*, 84 F.3d at 1570. The paradigmatic straw transaction is, of course, the legal stand-in of a parent for her or his minor child.

9. The contents of the form are controlled by the BATF. See 27 C.F.R. §§ 178.21 (authorizing Director of BATF to prescribe forms), 178.124(f) (prescribing contents of Form 4473). Presumably, therefore, the BATF could require straw purchases, including those for minors with parental consent, to be disclosed on the form. Apparently, it has elected not to do so.

BUDGET RENT-A-CAR, INC. v. HIGASHIGUCHI

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the statute. We agree that it is a proper and useful doctrine. See *Moore I*, 84 F.3d at 1571. Where the majority errs, however, is in the doctrine's application, in deferring to the BATF to dictate its scope in construing the parental consent exception, when the BATF's construction is clearly at odds with Congress' intent. See *Moore I*, 84 F.3d at 1572-73 (Part III).

The application of the straw man doctrine to this case is bizarre and perverse. Mrs. Moore has been convicted of having aided and abetted the acquisition of a firearm by her son. Under 18 U.S.C. § 2, she is liable "as a principal." But, as a principal, as even the government concedes, she had the right to purchase a firearm for her son. Thus, she stands convicted of having aided and abetted an offense for which she could not have been convicted of as a principal.

The majority concludes its defense of applying the straw man doctrine to this case by borrowing from the Sixth Circuit:

The result we reach here is necessary if the intentions of Congress as revealed in the Gun Control Act of 1968 are to be followed.

United States v. Lawrence, 680 F.2d 1126, 1128 (6th Cir.1982)(emphasis added). The majority, however, has pointed to no such intent. Application of the straw man doctrine here does not follow "the intentions of Congress." No reported case has ever applied the straw man doctrine to criminalize the sale of a gun to a minor with a parent's consent. As we have demonstrated, Congressional intent compels exactly the opposite conclusion. The majority's novel application of that doctrine to this case does violence to the intent of Congress.

This court should not default to the BATF, or any other Executive Branch agency, the power to construe our criminal laws in derogation of the intent of Congress. Congress did not intend to criminalize the sale of a firearm to a minor; where the sale is made with the consent of the minor's parent. If, as it should be, the underlying transaction is seen as one within the parental consent exception, then the sale was lawful and any false statement made to facilitate it could not have been of "any fact material to the lawful-

ness of the sale," within the meaning of 18 U.S.C. § 922(a)(6).

For these reasons, I would reverse the convictions. I respectfully dissent.



BUDGET RENT-A-CAR, INC., Plaintiff-Counter-Defendant-Appellant,

v.

George HIGASHIGUCHI; Sharon Higashiguchi, Defendants-Counter-Claimants-Appellees,

v.

Alan STAUBER and Tammie Deponte, Defendants.

Nos. 94-15932, 94-16510.

United States Court of Appeals,
Ninth Circuit.

Argued and Submitted May 9, 1996.

Submission Deferred Jan. 21, 1997.

Resubmitted March 19, 1997.

Decided March 31, 1997.

Self-insured car lessor sought declaratory judgment that it had no duty defend or indemnify lessee and passenger against possible claims by assault victims. The United States District Court for the District of Hawaii, Samuel P. King, J., 849 F.Supp. 743, dismissed for lack of diversity jurisdiction. Lessor appealed. The Court of Appeals, Canby, Circuit Judge, held that potential tort liability of lessee and passenger satisfied amount in controversy necessary for diversity jurisdiction.

Reversed and remanded.

1. Federal Courts ⇨776

Dismissal for lack of subject matter jurisdiction is reviewed de novo.

United States Senate**WASHINGTON, DC 20510**

February 16, 2011

Via Electronic Transmission

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Dear Attorney General Holder:

I appreciate the staff briefing that Department of Justice (DOJ) and Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) officials provided on February 10, 2011. However, the briefers focused on general issues related to challenges in successfully prosecuting gun trafficking cases. They refused to answer specific questions about the facts and circumstances that led me to request the briefing.

Specifically, they refused to say whether the approximately 103 weapons seized according to the Jaime Avila indictment were the only seizures related to the nearly 770 weapons mentioned in the indictment. They refused to say whether the third assault rifle purchased by Avila in January 2010—the one not found at the scene of CBP Agent Brian Terry's shooting—has been recovered elsewhere. When asked whether ATF had encouraged any gun dealer to proceed with sales to known or suspected traffickers such as Avila, the briefers said only that they did not have any "personal knowledge" of that.

Therefore, please provide the following documents to the Committee:

- 1) All records relating to communications between the ATF and the Federal Firearms Licensee (FFL) who sold the weapons to Avila, including any Report of Investigation (ROI) or other records relating to the December 17, 2009 meeting "to discuss his role as an FFL during this investigation."
- 2) All records relating to communications between ATF headquarters and Phoenix Special Agent in Charge (SAC) William Newell from December 1, 2010 to the present, including a memorandum, approximately 30 pages long, from SAC Newell to ATF headquarters following the arrest of Jaime Avila and the death of CBP Agent Brian Terry.
- 3) A copy of the presentation, approximately 200 pages long, that the Group 7 Supervisor made to officials at ATF Headquarters in the Spring of 2010.

- 4) Copies of all e-mails related to Operation Fast and Furious, the Jaime Avila case, or the death of CBP Agent Brian Terry sent to or from SAC Newell, Assistant Special Agent in Charge (ASAC) George Gillette, Group 7 Supervisor, or the Case Agent between November 1, 2009 and January 31, 2011.

Please provide documents in batches on a rolling basis as they are identified and located. Also, please prioritize your search for documents and produce them in the following order: (1) documents in response to requests one through three, (2) documents in response to request four dated between December 13, 2010 and January 31, 2011, and (3) documents in response to request four dated between November 1, 2009 and December 13, 2010.

I look forward to receiving your response. Please provide the first set of requested documentation by no later than February 23, 2011. If you have any questions please contact Jason Foster or Brian Downey at (202) 224-5225. All formal correspondence should be sent electronically in PDF format to Brian_Downey@judiciary-rep.senate.gov or via facsimile to (202) 224-3799.

Sincerely,



Charles E. Grassley
Ranking Member

cc: The Honorable Patrick Leahy
Chairman
United States Senate Committee on the Judiciary

The Honorable Robert S. Mueller, III
Director
Federal Bureau of Investigation

Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives

The Honorable Alan D. Bersin
Commissioner
United States Customs and Border Protection

PATRICK J. LEAHY, VERMONT, CHAIRMAN

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 JOHN CORNYN, TEXAS
 MICHAEL S. LEE, UTAH
 TOM COBURN, OKLAHOMA

United States Senate

COMMITTEE ON THE JUDICIARY
 WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
 KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

March 15, 2011

Via Electronic Transmission

The Honorable John T. Morton
 Director
 U.S. Immigration and Customs Enforcement
 U.S. Department of Homeland Security
 500 12th Street, SW
 Washington, DC 20536

Dear Director Morton:

Since January, I have been investigating the Bureau of Alcohol, Tobacco Firearms, and Explosives (ATF) operation called “Fast and Furious”—part of the broader “Project Gunrunner” initiative. According to several agents, ATF leadership encouraged gun dealers to engage in sales of multiple assault weapons to individuals suspected of illegally purchasing for resale to Mexican cartels.

I understand from documents in my possession that Immigration and Customs Enforcement (ICE) Agents were aware of Operation Fast and Furious and possibly deeply involved in the operation. On March 9, at an oversight hearing of the Department of Homeland Security, I questioned Secretary Napolitano regarding possible ICE participation in Operation Fast and Furious. Secretary Napolitano indicated that she was unaware of a specific ICE Agent being part of ATF’s operation.

Accordingly, to get a better understanding of ICE’s involvement with Operation Fast and Furious please provide all records relating communications between ICE supervisors and ICE headquarters regarding ICE’s involvement. Additionally, I request that you arrange for knowledgeable ICE supervisors to brief members of my staff no later than March 25, 2011.

I would appreciate a response by no later than March 18, 2011. If you have any questions about this request, please contact Brian Downey at (202) 224-5225. Thank you for your prompt attention to this important matter.

Sincerely,



Charles E. Grassley
 Ranking Member

cc: The Honorable Janet Napolitano
 Secretary, United States Department of Homeland Security

PATRICK J. LEAHY, VERMONT, CHAIRMAN

HERB KOHL, WISCONSIN
 DIANNE FEINSTEIN, CALIFORNIA
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United States Senate

COMMITTEE ON THE JUDICIARY
 WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
 KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

March 16, 2011

Via Electronic Transmission

The Honorable Alan D. Bersin
 Commissioner
 U.S. Customs and Border Protection
 U.S. Department of Homeland Security
 1300 Pennsylvania Avenue, NW
 Washington, DC 20229

Dear Commissioner Bersin:

Since January, I have been investigating the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) operation called “Fast and Furious”—part of the broader “Project Gunrunner” initiative. According to several agents, ATF leadership encouraged gun dealers to engage in sales of multiple weapons to individuals suspected of illegally purchasing them for resale to Mexican cartels. Specifically, I am seeking information on whether CBP officials had an opportunity to seize weapons from straw purchasers on two specific occasions.

First, on March 8, 2011, federal authorities indicted 11 defendants, including the Mayor and the Police Chief of a small town in New Mexico, for conspiring to smuggle weapons from the United States into Mexico.¹ According to the indictment, on January 14, 2010, Blas Gutierrez and Miguel Carrillo were pulled over near the border and were found in possession of eight weapons, including three AK-47-type pistols.² Also according to the indictment, two of the weapons were later smuggled to Mexico, where they were found this month, March 2011.³ I understand that CBP may have been the agency that conducted the vehicle stop referenced in the indictment and that some of the weapons may have been connected to Operation Fast and Furious. However, CBP allegedly let the individuals go, perhaps because it failed to determine that the weapons or individuals were connected to ATF operation at the time of the vehicle stop.

Second, CBP officials allegedly stopped Jaime Avila near the border in the spring or summer of 2010. He allegedly had the two WASR-10 rifles in his possession that were later found at the scene of Agent Brian Terry’s murder, along with over thirty additional weapons. CBP officials contacted ATF or an Assistant United States Attorney who allegedly instructed CBP to allow Avila proceed without seizing the weapons.

¹ Indictment, filed March 8, 2011, United States v. Villalobos, Case 2:11-cr-00487. (Attachment 1)

² Id. at 3.

³ Id.

In order to ascertain the extent to which these accounts are accurate, please ensure that CBP officials are prepared to answer questions about these two incidents in addition to questions about the use of force policy at the staff briefing scheduled for this Friday. If you have any questions about this request, please contact Brian Downey at (202) 224-5225. Thank you for your prompt attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles E. Grassley", is positioned above the typed name.

Charles E. Grassley
Ranking Member

Attachment

727
FILED

UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

IN THE UNITED STATES DISTRICT COURT

MAR 08 2011

FOR THE DISTRICT OF NEW MEXICO

MATTHEW J. DYKMAN
CLERK

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

IGNACIO VILLALOBOS,
a/k/a "Nacho" and "Nachito";

BLAS GUTIERREZ,

a/k/a "Woody";

EDDIE ESPINOZA;

ANGELO VEGA;

IAN GARLAND;

ALBERTO RIVERA;

MIGUEL CARRILLO;

RICARDO GUTIERREZ;

MANUEL ORTEGA,

a/k/a "Coruco";

VINCENTE CARREON,

a/k/a "Tito"; and

EVA GUTIERREZ,

Defendants.)

11cr 487

Count 1: 18 U.S.C. § 371: Conspiracy;

Counts 2 - 42: 18 U.S.C. § 924(a)(1)(A):
False Statements in Connection With the
Acquisition of Firearms, and 18 U.S.C. § 2:
Aiding and Abetting; and

Counts 43 - 84: 18 U.S.C. § 554: Smuggling
Goods from the United States, and 18 U.S.C.
§ 2: Aiding and Abetting.

INDICTMENT

The Grand Jury charges:

Count 1
(Conspiracy)

Beginning on or about January, 2010 and continuing to on or about March, 2011, in Luna and Otero Counties and elsewhere, in the District of New Mexico and elsewhere, Defendants **IGNACIO VILLALOBOS, a/k/a "Nacho" and "Nachito," BLAS GUTIERREZ, EDDIE ESPINOZA, ANGELO VEGA, IAN GARLAND, ALBERTO RIVERA, RICARDO**

GUTIERREZ, MIGUEL CARRILLO, MANUEL ORTEGA, a/k/a "Coruco," VICENTE CARREON, a/k/a "Tito," and EVA GUTIERREZ, unlawfully, knowingly and intentionally did combine, conspire, confederate and agree together and with each other and with others known and unknown to the grand jury, to commit the following offenses against the United States: smuggling goods from the United States, contrary to 18 U.S.C. § 554; and making false statements in connection with the acquisition of a firearm, contrary to 18 U.S.C. § 924(a)(1)(A).

Manner and Means of the Conspiracy

1. As part of the conspiracy, the Defendants and others acquired firearms by purchasing them in the District of New Mexico and elsewhere from Federal Firearms Licensees (FFLs), licensed under the provisions of Chapter 44 of Title 18, and operating as licensed gun dealers.
2. As part of the conspiracy, and in the course of purchasing firearms in the District of New Mexico and elsewhere, the Defendants and others knowingly made false statements and representations with respect to information required by the provisions of Chapter 44 of Title 18, United States Code, to be kept in the records of a business licensed under the provisions of Chapter 44 of Title 18, United States Code, in that the Defendants executed Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) Forms 4473, Firearms Transaction Records, representing that the Defendant executing each form was the actual purchaser of the firearm(s) when in fact they were buying the firearm(s) for others.
3. As part of the conspiracy, the Defendants and others acquired and dealt in the types of firearms for which there was a ready market among the Mexican Cartels.

4. As part of the conspiracy, the Defendants and others unlawfully, knowingly and intentionally received, concealed, bought, sold, and facilitated the transportation, concealment, and sale of firearms prior to exportation, knowing the firearms were intended for exportation contrary to the laws and regulations of the United States.

5. As part of the conspiracy, after firearms were purchased from FFLs, the Defendants and others transferred the firearms to other members of the conspiracy both known and unknown to the grand jury to be stored, sold, and transported.

6. As part of the conspiracy, the Defendants and others unlawfully, knowingly and intentionally exported and sent firearms from the United States to Mexico contrary to the laws and regulations of the United States.

7. As part of the conspiracy, the Defendants and others shipped, transported, and exported firearms from the United States to Mexico.

Overt Acts

In furtherance of the conspiracy, and to accomplish the objectives of the conspiracy, the following overt acts, among others, were committed between January, 2010 and March, 2011 in the District of New Mexico and elsewhere:

1. On or about January 14, 2010, **BLAS GUTIERREZ** and **MIGUEL CARRILLO** possessed three AK-47 type pistols, two Ruger .45 caliber pistols, and three FN 5.7 mm pistols in a vehicle in Columbus, New Mexico. The three AK-47 type pistols and three FN 5.7 mm pistols had been purchased approximately five days before by straw purchasers in the District of Arizona. The two Ruger .45 caliber pistols mentioned above were smuggled to Mexico and found in Mexico around March, 2011.

2. On or about February 13, 2010, **BLAS GUTIERREZ** purchased two AK-47 type pistols from FFL New Deal Shooting Sports, Deming, New Mexico, and during the course of such purchase falsely represented on ATF Form 4473 that he was the actual purchaser of the firearms.

3. On or about June 27, 2010, **BLAS GUTIERREZ** purchased one Delton 5.56 rifle and two AK-47 type pistols from FFL Chaparral Guns, Chaparral, New Mexico (hereafter referred to as "FFL Chaparral Guns"), and during the course of such purchase falsely represented on ATF Form 4473 that he was the actual purchaser of the firearms. One of the AK-47 type pistols purchased by **BLAS GUTIERREZ** on this date was smuggled to Mexico and found in Mexico around March, 2011.

4. On or about July 9, 2010, an individual known to the grand jury purchased one AK-47 type rifle from FFL Chaparral Guns, and during the course of such purchase falsely represented on ATF Form 4473 that he or she was the actual purchaser of the firearm. **BLAS GUTIERREZ** drove this individual to FFL Chaparral Guns on July 9, 2010, and this individual purchased the one AK-47 type rifle at the direction of **BLAS GUTIERREZ**.

5. On or about July 13, 2010, an individual known to the grand jury purchased two AK-47 type pistols and one AK-47 type rifle from FFL Chaparral Guns, and during the course of such purchase falsely represented on ATF Form 4473 that he or she was the actual purchaser of the firearms. **BLAS GUTIERREZ** drove this individual to Chaparral Guns on July 13, 2010, and this individual purchased the two AK-47 type pistols and one AK-47 type rifle at the direction of **BLAS GUTIERREZ**. One of the AK-47 type pistols purchased by this individual on this date was smuggled to Mexico and found in Mexico around March, 2011.

6. On or about August 20, 2010, **BLAS GUTIERREZ** purchased three AK-47 type pistols and **ALBERTO RIVERA** purchased two AK-47 type pistols, all from FFL Chaparral Guns, and during the course of such purchase falsely represented on ATF Form 4473 that they were the actual purchasers of the firearms.

7. On or about September 5, 2010, **BLAS GUTIERREZ** purchased three AK-47 type pistols, **MIGUEL CARRILLO** purchased four AK-47 type pistols, and an individual known to the grand jury purchased three AK-47 type pistols, all from FFL Chaparral Guns, and during the course of such purchase falsely represented on ATF Form 4473 that they were the actual purchasers of the firearms. One of the AK-47 type pistols purchased by **MIGUEL CARRILLO** on this date was smuggled to Mexico and found in Mexico around March, 2011.

8. On or about September 7, 2010, **BLAS GUTIERREZ** purchased two American Tactical 9 mm pistols, **ALBERTO RIVERA** purchased five American Tactical 9 mm pistols, an individual known to the grand jury purchased three American Tactical 9 mm caliber pistols, and another individual known to the grand jury purchased five American Tactical 9 mm caliber pistols, all from FFL Chaparral Guns, and during the course of such purchase falsely represented on ATF Form 4473 that they were the actual purchasers of the firearms. These two individuals known to the grand jury were accompanied by **BLAS GUTIERREZ** on September 7, 2010, and purchased eight American Tactical 9 mm pistols at the direction of **BLAS GUTIERREZ**.

9. On or about September 24, 2010, **BLAS GUTIERREZ** purchased one FN 5.7 mm pistol and one Twin Pines 9 mm pistol from FFL Chaparral Guns, and during the course of

such purchase falsely represented on ATF Form 4473 that he was the actual purchaser of the firearms.

10. On or about September 30, 2010, **BLAS GUTIERREZ** purchased seven AK-47 type pistols and one Taurus .22 caliber pistol and **ALBERTO RIVERA** purchased five American Tactical 9 mm pistols, all from FFL Chaparral Guns, and during the course of such purchase falsely represented on ATF Form 4473 that they were the actual purchasers of the firearms.

11. On or about October 4, 2010, **EDDIE ESPINOZA** purchased five American Tactical 9 mm pistols and one AK-47 type pistol and **ALBERTO RIVERA** purchased two AK-47 type pistols, all from FFL Chaparral Guns, and during the course of such purchase falsely represented on ATF Form 4473 that they were the actual purchasers of the firearms.

12. On or about October 8, 2010, in Columbus, New Mexico, **EDDIE ESPINOZA** drove his vehicle in an attempt to block-in federal agents who were driving in Columbus, New Mexico. Soon thereafter, **ANGELO VEGA**, at the direction of **EDDIE ESPINOZA**, stopped the federal agents and inquired about what they were doing in Columbus.

13. On or about October 13, 2010, **BLAS GUTIERREZ** purchased two American Tactical 9 mm pistols and one Keltec .380 caliber pistol from FFL Chaparral Guns, and during the course of such purchase falsely represented on ATF Form 4473 that he was the actual purchaser of the firearms.

14. On or about October 18, 2010, **EDDIE ESPINOZA** purchased six AK-47 type pistols and **BLAS GUTIERREZ** purchased five American Tactical 9 mm pistols, all from FFL

Chaparral Guns, and during the course of such purchase falsely represented on ATF Form 4473 that they were the actual purchasers of the firearms.

15. On or about October 20, 2010, **ALBERTO RIVERA** purchased four AK-47 type pistols and three American Tactical 9 mm pistols from FFL Chaparral Guns, and during the course of such purchase falsely represented on ATF Form 4473 that he was the actual purchaser of the firearms.

16. On or about November 1, 2010, **EDDIE ESPINOZA** leased Apartment #802 at Colinas Del Sol Apartment Complex, located at 945 South Mesa Hills Drive, El Paso, Texas 79912 (hereafter referred to as "Apartment #802"). **EDDIE ESPINOZA** leased Apartment #802 for three months and paid \$3,600.00 for the three months with four separate money orders, all signed by **EDDIE ESPINOZA**.

17. On or about November 18, 2010, **EDDIE ESPINOZA** falsely claimed that **BLAS GUTIERREZ** was his son, and added **BLAS GUTIERREZ** as an occupant for Apartment #802.

18. On or about January 5, 2011, **BLAS GUTIERREZ** drove to FFL Chaparral Guns in a white Ford-F-150 unmarked police vehicle registered to the Village of Columbus, purchased at least one hand gun of unknown make and model and one long gun of unknown make and model from FFL Chaparral Guns, and during the course of such purchase falsely represented on ATF Form 4473 that he was the actual purchaser of the firearms.

19. On or about January 13, 2011, **BLAS GUTIERREZ** purchased five American Tactical 9 mm pistols and five AK-47 type pistols, **RICARDO GUTIERREZ** purchased ten

AK-47 type pistols, and **ALBERTO RIVERA** purchased five AK-47 type pistols and six American Tactical 9 mm pistols, all from FFL Chaparral Guns, and during the course of such purchase falsely represented on ATF Form 4473 that they were the actual purchasers of the firearms. Four of the AK-47 type pistols purchased by **RICARDO GUTIERREZ** on this date were smuggled to Mexico and found in Mexico in February and March, 2011.

20. On or about January 20, 2011, **ALBERTO RIVERA** purchased eight AK-47 type pistols from FFL Chaparral Guns, and during the course of such purchase falsely represented on ATF Form 4473 that he was the actual purchaser of the firearms. Two of the AK-47 type pistols purchased by **ALBERTO RIVERA** on this date were smuggled to Mexico and found in Mexico in February and March, 2011.

21. On or about January 24, 2011, **EDDIE ESPINOZA** purchased five AK-47 type pistols from FFL Chaparral Guns, and during the course of such purchase falsely represented on ATF Form 4473 that he was the actual purchaser of the firearms. An individual unknown to the grand jury arrived that day at FFL Chaparral Guns to pick up the five AK-47 type pistols. One of the AK-47 type pistols purchased by **EDDIE ESPINOZA** on this date was smuggled to Mexico and found in Mexico around March, 2011.

22. On or about January 25, 2011, **BLAS GUTIERREZ** purchased ten American Tactical 9 mm pistols and **RICARDO GUTIERREZ** purchased ten American Tactical 9 mm pistols, all from FFL Chaparral Guns, and during the course of such purchase falsely represented on ATF Form 4473 that they were the actual purchasers of the firearms.

23. After purchasing the twenty American Tactical 9 mm pistols on January 25, 2011, **BLAS GUTIERREZ** and **RICARDO GUTIERREZ**, along with **MANUEL ORTEGA**, a/k/a "**Coruco**" and **VICENTE CARREON**, a/k/a "**Tito**," drove to Apartment #802. **VICENTE CARREON**, a/k/a "**Tito**" purchased a black backpack from Kmart and carried the black backpack, along with a box containing the twenty firearms purchased that day, into Apartment #802. Shortly thereafter, **MANUEL ORTEGA**, a/k/a "**Coruco**" exited Apartment #802 with the black backpack, which was now full. **MANUEL ORTEGA**, a/k/a "**Coruco**" and **BLAS GUTIERREZ** went, in the Ford F-150 unmarked police vehicle registered to the Village of Columbus with the black backpack to the El Paso, Texas bus station, located on the corner of 6th Street and Oregon Street. **MANUEL ORTEGA**, a/k/a "**Coruco**" then drove to a Columbus, New Mexico home associated with **IGNACIO VILLALOBOS**, a/k/a "**Nacho**" and "**Nachito**."

24. On or about January 27, 2011, **MANUEL ORTEGA**, a/k/a "**Coruco**" and **VICENTE CARREON**, a/k/a "**Tito**" arrived at Apartment #802 with an unknown female driving a Honda Pilot with Chihuahua, Mexico plates. The Honda Pilot had entered the United States from Mexico one hour prior to arriving at Apartment #802. **VICENTE CARREON**, a/k/a "**Tito**," accompanied by **MANUEL ORTEGA**, a/k/a "**Coruco**," took a large black suitcase out of the Honda Pilot and carried it into Apartment #802. Approximately two hours later, **BLAS GUTIERREZ** wheeled the same large black suitcase out of Apartment #802 and placed it into the Ford F-150 unmarked police vehicle registered to the Village of Columbus. **BLAS GUTIERREZ** thereafter drove the large black suitcase to the El Paso, Texas bus station, located on the corner of 6th Street and Oregon Street.

25. On or about February 3, 2011, **BLAS GUTIERREZ** paid \$1,200.00 for Apartment #802 for an additional month with two money orders.

26. On or about February 5, 2011, **BLAS GUTIERREZ** and **IAN GARLAND** discussed **BLAS GUTIERREZ** purchasing, on behalf of others, ten semi-automatic firearms for a total of approximately \$20,000.00.

27. On or about February 5, 2011, **BLAS GUTIERREZ** asked an individual unknown to the grand jury whether that individual's uncle or cousin was still prepared to sign for firearms.

28. On or about February 5, 2011, **BLAS GUTIERREZ** ordered ten Beretta-style 9 mm handguns from **IAN GARLAND**, and told **IAN GARLAND** that **BLAS GUTIERREZ** and others would pay for the firearms the next day.

29. On or about February 5, 2011, **ANGELO VEGA**, at the direction of **BLAS GUTIERREZ**, purchased a .45 caliber handgun during a private sale and emphasized to **BLAS GUTIERREZ** that the private sale did not require paperwork or a signature. On the same day, **ANGELO VEGA** purchased multiple two-way radios for **BLAS GUTIERREZ**.

30. On or about February 9, 2011, **ALBERTO RIVERA**, accompanied by **BLAS GUTIERREZ**, purchased ten American Tactical 9 mm pistols from FFL Chaparral Guns, and during the course of such purchase falsely represented on ATF Form 4473 that he was the actual purchaser of the firearms. After the purchase, **ALBERTO RIVERA**, **BLAS GUTIERREZ**, and **VICENTE CARREON**, a/k/a "Tito" drove to a nearby dumpster, tore off parts of the UPC codes and serial numbers from the firearms boxes, and threw the firearms boxes in a dumpster. **ALBERTO RIVERA**, **BLAS GUTIERREZ**, and **VICENTE CARREON**, a/k/a "Tito" then

drove to a Columbus, New Mexico home associated with **IGNACIO VILLALOBOS, a/k/a "Nacho" and "Nachito."**

31. On or about February 10, 2011, **IGNACIO VILLALOBOS, a/k/a "Nacho" and "Nachito"** ordered **BLAS GUTIERREZ** to purchase a Browning or a 38 Super handgun for **IGNACIO VILLALOBOS, a/k/a "Nacho" and "Nachito."**

32. On or about February 10, 2011, **BLAS GUTIERREZ** and **ANGELO VEGA** purchased thousands of dollars worth of tactical combat gear at the direction of **IGNACIO VILLALOBOS, a/k/a "Nacho" and "Nachito,"** including body armor, to be sent to Mexico. **ANGELO VEGA** used his police credentials to purchase body armor that **ANGELO VEGA** knew would be smuggled to Mexico. Thereafter, **ANGELO VEGA** instructed **BLAS GUTIERREZ** and other individuals known and unknown to the grand jury not to tell anyone about the body armor.

33. On or about February 10, 2011, **BLAS GUTIERREZ** told **IAN GARLAND** that **RICARDO GUTIERREZ** would be coming to sign the Form 4473 for the purchase of ten AK-47 type pistols. On the evening of February 10, 2011, **RICARDO GUTIERREZ** signed the Form 4473 for ten AK-47 type pistols, and during the course of such purchase falsely represented on ATF Form 4473 that he was the actual purchaser of the firearms. **RICARDO GUTIERREZ** did not take the AK-47 type pistols with him when he departed Chaparral Guns.

34. On or about February 11, 2011, **BLAS GUTIERREZ** picked up the ten AK-47 type pistols from FFL Chaparral Guns, that had been signed for by **RICARDO GUTIERREZ** the night before. **IGNACIO VILLALOBOS, a/k/a "Nacho" and "Nachito"** directed this purchase of ten AK-47 type pistols.

35. On or about February 11, 2011, **BLAS GUTIERREZ** disposed of, in a dumpster, at least nine empty firearms boxes for AK-47 type pistols, as well as a white and blue empty box with the words "PACA Body Armor."

36. On or about February 11, 2011, **IAN GARLAND** informed **BLAS GUTIERREZ** that the forty AK-47 type pistols were expected to arrive at FFL Chaparral Guns that evening.

37. On or about February 11, 2011, **BLAS GUTIERREZ** discussed with an individual unknown to the grand jury the need to have two individuals sign for the forty AK-47 type pistols.

38. On or about February 11, 2011, **BLAS GUTIERREZ** told **IAN GARLAND** that the individuals who were going to sign for the forty AK-47 type pistols would be coming the next day.

39. On or about the evening of February 11, 2011, **EDDIE ESPINOZA** agreed with **BLAS GUTIERREZ** that **EDDIE ESPINOZA** would sign a Form 4473 for firearms at FFL Chaparral Guns, even though **EDDIE ESPINOZA** knew he would not be the actual purchaser of those firearms.

40. On or about the morning of February 12, 2011, **MIGUEL CARRILLO**, accompanied by **BLAS GUTIERREZ**, purchased ten AK-47 type pistols from FFL Chaparral Guns, and during the course of such purchase falsely represented on ATF Form 4473 that he was the actual purchasers of the firearms. **MIGUEL CARRILLO** and **BLAS GUTIERREZ** exited FFL Chaparral Guns each carrying one duffle bag. **IGNACIO VILLALOBOS**, a/k/a "Nacho" and "Nachito," directed this purchase of ten AK-47 type pistols.

41. On or about the morning of February 12, 2011, **BLAS GUTIERREZ** wheeled

multiple duffle bags into Apartment #802.

42. On or about the evening of February 12, 2011, **EVA GUTIERREZ**, accompanied by **BLAS GUTIERREZ**, purchased ten AK-47 type pistols from FFL Chaparral Guns, and during the course of such purchase falsely represented on ATF Form 4473 that she was the actual purchaser of the firearms. **IGNACIO VILLALOBOS**, a/k/a "Nacho" and "Nachito," directed this purchase of ten AK-47 type pistols.

43. On or about the evening of February 12, 2011, **BLAS GUTIERREZ** transported the ten AK-47 type pistols, purchased by **EVA GUTIERREZ** that evening, towards Columbus, New Mexico. Law enforcement stopped **BLAS GUTIERREZ** traveling towards Columbus on New Mexico Highway 9 and seized the ten AK-47 type pistols from his vehicle.

44. On or about February 12, 2011, after law enforcement seized the ten AK-47 type pistols, **BLAS GUTIERREZ** told his wife that she should get \$4,000.00 to purchase ten more AK-47 type pistols.

45. On or about February 12, 2011, after law enforcement seized the ten AK-47 type pistols, **EDDIE ESPINOZA** agreed to call law enforcement to help **BLAS GUTIERREZ** retrieve the ten AK-47 type pistols.

46. On or about February 13, 2011, **ANGELO VEGA** asked **BLAS GUTIERREZ** for the phone number of the officer that had seized the ten AK-47 type pistols so that **ANGELO VEGA** could help **BLAS GUTIERREZ** retrieve the ten AK-47 type pistols from law enforcement.

47. On or about February 14, 2011, after law enforcement had seized twenty AK-47 type pistols, thirty high capacity magazines, and a Dremel grinding tool kit from Apartment #802, **ANGELO VEGA** and **BLAS GUTIERREZ** discussed who could have taken the twenty AK-47 type pistols from Apartment #802, and **ANGELO VEGA** advised **BLAS GUTIERREZ** that **MANUEL ORTEGA, a/k/a "Coruco"** probably had already sent the twenty AK-47 type pistols to Mexico.

48. On or about February 14, 2011, after law enforcement had seized twenty AK-47 type pistols, thirty high capacity magazines, and a Dremel grinding tool from Apartment #802, **BLAS GUTIERREZ** called an individual in Mexico unknown to the grand jury and told the unknown individual that **BLAS GUTIERREZ** was having problems.

49. On or about February 14, 2011, **BLAS GUTIERREZ** advised **IGNACIO VILLALOBOS, a/k/a "Nacho" and "Nachito"** about the twenty AK-47 type pistols that were missing from Apartment #802, and discussed what **IGNACIO VILLALOBOS, a/k/a "Nacho" and "Nachito"** would tell the people in Mexico about the missing twenty AK-47 type pistols.

50. On or about February 14, 2011, **BLAS GUTIERREZ** and **ANGELO VEGA** discussed how **BLAS GUTIERREZ** had twenty more AK-47 type pistols that needed to be picked up, and **ANGELO VEGA** advised **BLAS GUTIERREZ** that he should purchase a gun safe to protect the next batch of firearms.

51. On or about February 14, 2011, **ANGELO VEGA** agreed to get an AR-15 semi-automatic rifle for **BLAS GUTIERREZ**.

52. On or about February 15, 2011, **BLAS GUTIERREZ** told **IAN GARLAND** that **BLAS GUTIERREZ** would be sending an individual known or unknown to the grand jury to

pick up the remaining twenty AK-47 type pistols that **IAN GARLAND** was holding for **BLAS GUTIERREZ**.

53. On or about February 16, 2011, **ANGELO VEGA** called a federal agent and vouched for **BLAS GUTIERREZ** to assist **BLAS GUTIERREZ** in retrieving the ten AK-47 type pistols that had been seized by law enforcement on February 12, 2011. In so doing, **ANGELO VEGA** lied to the federal agent by stating that everything **BLAS GUTIERREZ** was doing with firearms was legitimate, when in fact **ANGELO VEGA** knew **BLAS GUTIERREZ** was involved in smuggling firearms to Mexico.

54. On or about February 17, 2011, **BLAS GUTIERREZ** and **ANGELO VEGA** coordinated the pick-up of bulk cash in the Albuquerque, New Mexico area. **BLAS GUTIERREZ** then drove to the Albuquerque area, picked up the bulk cash, drove the bulk cash back to Columbus, New Mexico, from where the bulk cash was soon smuggled into Mexico.

55. On or about February 18, 2011, **BLAS GUTIERREZ** and **ANGELO VEGA** agreed that **ANGELO VEGA** would purchase four bullet-proof vests for **IGNACIO VILLALOBOS**, a/k/a "Nacho" and "Nachito."

56. On or about February 24, 2011, **BLAS GUTIERREZ** purchased five AK-47 type pistols and **ALBERTO RIVERA** purchased five AK-47 type pistols, all from FFL Chaparral Guns, and during the course of such purchase falsely represented on ATF Form 4473 that they were the actual purchasers of the firearms.

57. On or about February 24, 2011, **BLAS GUTIERREZ** and **ALBERTO RIVERA** transported the ten AK-47 type pistols towards Columbus, New Mexico. Law enforcement stopped **BLAS GUTIERREZ** and **ALBERTO RIVERA** traveling towards Columbus on New

Mexico Highway 9 and seized the ten AK-47 type pistols along with 1,580 rounds of 7.62 mm ammunition.

58. On or about February 24, 2011, **ANGELO VEGA** called a federal agent on behalf of **BLAS GUTIERREZ** and told the federal agent that **BLAS GUTIERREZ** was not sending firearms to Mexico, when in fact **ANGELO VEGA** knew **BLAS GUTIERREZ** was involved in smuggling firearms to Mexico.

In violation of 18 U.S.C. § 371.

Counts 2 - 42

(False Statements in Connection With the Acquisition of Firearms)

On or about the dates listed below, in Luna and Otero Counties and elsewhere, in the District of New Mexico, each Defendant, as set forth below, did knowingly make a false statement and representation with respect to information required by the provisions of Chapter 44 of Title 18, United States Code, to be kept in the records of the Federally Licensed Firearms Dealers listed below, businesses licensed under the provisions of Chapter 44 of Title 18, United States Code, in that each Defendant listed below executed an ATF Form 4473, Firearms Transaction Record, representing that the Defendant was the actual purchaser of the firearm(s) listed on the forms, when in fact the Defendant was purchasing the firearm(s) on behalf of another.

In violation of Title 18, United States Code, Section 924(a)(1)(A) and Title 18, United States Code, Section 2.

COUNT	DATE	DEFENDANT	FEDERALLY LICENSED FIREARMS DEALER
2	February 13, 2010	BLAS GUTIERREZ	New Deal Shooting Sports
3	June 27, 2010	BLAS GUTIERREZ	Chaparral Guns
4	July 9, 2010	BLAS GUTIERREZ	Chaparral Guns
5	July 9, 2010	IAN GARLAND	Chaparral Guns
6	July 13, 2010	BLAS GUTIERREZ	Chaparral Guns
7	July 13, 2010	IAN GARLAND	Chaparral Guns
8	August 20, 2010	BLAS GUTIERREZ	Chaparral Guns
9	August 20, 2010	ALBERTO RIVERA	Chaparral Guns
10	September 5, 2010	BLAS GUTIERREZ	Chaparral Guns
11	September 5, 2010	MIGUEL CARRILLO	Chaparral Guns
12	September 5, 2010	IAN GARLAND	Chaparral Guns
13	September 7, 2010	BLAS GUTIERREZ	Chaparral Guns
14	September 7, 2010	ALBERTO RIVERA	Chaparral Guns
15	September 7, 2010	IAN GARLAND	Chaparral Guns
16	September 24, 2010	BLAS GUTIERREZ	Chaparral Guns
17	September 30, 2010	BLAS GUTIERREZ	Chaparral Guns
18	September 30, 2010	ALBERTO RIVERA	Chaparral Guns
19	October 4, 2010	EDDIE ESPINOZA	Chaparral Guns
20	October 4, 2010	ALBERTO RIVERA	Chaparral Guns
21	October 13, 2010	BLAS GUTIERREZ	Chaparral Guns
22	October 18, 2010	BLAS GUTIERREZ	Chaparral Guns
23	October 18, 2010	EDDIE ESPINOZA	Chaparral Guns

COUNT	DATE	DEFENDANT	FEDERALLY LICENSED FIREARMS DEALER
24	October 20, 2010	ALBERTO RIVERA	Chaparral Guns
25	January 5, 2011	BLAS GUTIERREZ	Chaparral Guns
26	January 13, 2011	BLAS GUTIERREZ	Chaparral Guns
27	January 13, 2011	RICARDO GUTIERREZ	Chaparral Guns
28	January 13, 2011	ALBERTO RIVERA	Chaparral Guns
29	January 20, 2011	ALBERTO RIVERA	Chaparral Guns
30	January 24, 2011	EDDIE ESPINOZA	Chaparral Guns
31	January 25, 2011	BLAS GUTIERREZ	Chaparral Guns
32	January 25, 2011	RICARDO GUTIERREZ	Chaparral Guns
33	February 9, 2011	ALBERTO RIVERA	Chaparral Guns
34	February 11, 2011	RICARDO GUTIERREZ	Chaparral Guns
35	February 11, 2011	BLAS GUTIERREZ	Chaparral Guns
36	February 11, 2011	IAN GARLAND	Chaparral Guns
37	February 12, 2011	MIGUEL CARRILLO	Chaparral Guns
38	February 12, 2011	EVA GUTIERREZ	Chaparral Guns
39	February 12, 2011	BLAS GUTIERREZ	Chaparral Guns
40	February 12, 2011	IAN GARLAND	Chaparral Guns
41	February 24, 2011	BLAS GUTIERREZ	Chaparral Guns
42	February 24, 2011	ALBERTO RIVERA	Chaparral Guns

Counts 43 - 84
(Firearms Smuggling)

On or about the dates listed below, in Luna and Otero Counties and elsewhere, in the District of New Mexico, each Defendant knowingly and unlawfully received, concealed, bought, sold, and facilitated the transportation, concealment, and sale of the merchandise, articles, and objects as set forth below, prior to exportation, knowing the same to be intended for exportation from the United States contrary to any law or regulation of the United States.

All in violation of Title 18, United States Code, Sections 554 and Title 18, United States Code, Section 2.

COUNT	DATE	DEFENDANT	MERCHANDISE, ARTICLES, AND OBJECTS
43	January 14, 2010	BLAS GUTIERREZ	Three AK-47 type pistols, three FN 5.7 pistols, and two Ruger .45 caliber pistols possessed by Blas Gutierrez and Miguel Carrillo on January 14, 2010
44	January 14, 2010	MIGUEL CARRILLO	Three AK-47 type pistols, three FN 5.7 pistols, and two Ruger .45 caliber pistols possessed by Blas Gutierrez and Miguel Carrillo on January 14, 2010
45	February 13, 2010	BLAS GUTIERREZ	Two AK-47 type pistols purchased by Blas Gutierrez on February 13, 2010
46	June 27, 2010	BLAS GUTIERREZ	Two AK-47 type pistols and one 5.56 rifle purchased by Blas Gutierrez on June 27, 2010
47	July 9, 2010	BLAS GUTIERREZ	One AK-47 type rifle purchased on July 9, 2010 by an individual known to the grand jury

COUNT	DATE	DEFENDANT	MERCHANDISE, ARTICLES, AND OBJECTS
48	July 13, 2010	BLAS GUTIERREZ	Two AK-47 type pistols and one AK-47 type rifle purchased on July 13, 2010 by an individual known to the grand jury
49	August 20, 2010	BLAS GUTIERREZ	Three AK-47 type pistols purchased by Blas Gutierrez on August 20, 2010
50	August 20, 2010	ALBERTO RIVERA	Two AK-47 type pistols purchased by Alberto Rivera on August 20, 2010
51	September 5, 2010	BLAS GUTIERREZ	Seven AK-47 type pistols purchased by Blas Gutierrez and one individual known to the grand jury on September 5, 2010
52	September 5, 2010	MIGUEL CARRILLO	Four AK-47 type pistols purchased by Miguel Carrillo on September 5, 2010
53	September 7, 2010	BLAS GUTIERREZ	Ten American Tactical 9 mm pistols purchased by Blas Gutierrez and two individuals known to the grand jury on September 7, 2010
54	September 7, 2010	ALBERTO RIVERA	Five American Tactical 9 mm pistols purchased by Alberto Rivera on September 7, 2010
55	September 24, 2010	BLAS GUTIERREZ	1 FN 5.7 mm pistol and one Twin Pines 9 mm pistol purchased by Blas Gutierrez on September 24, 2010

COUNT	DATE	DEFENDANT	MERCHANDISE, ARTICLES, AND OBJECTS
56	September 30, 2010	BLAS GUTIERREZ	Seven AK-47 type pistols and one Taurus .22 caliber pistol purchased by Blas Gutierrez on September 30, 2010
57	September 30, 2010	ALBERTO RIVERA	Five American Tactical 9 mm pistols purchased by Alberto Rivera on September 30, 2010
58	October 4, 2010	EDDIE ESPINOZA	One AK-47 type pistol and five American Tactical 9 mm pistols purchased by Eddie Espinoza on October 4, 2010
59	October 4, 2010	ALBERTO RIVERA	Two AK-47 type pistols purchased by Alberto Rivera on October 4, 2010
60	October 13, 2010	BLAS GUTIERREZ	Two American Tactical 9 mm pistols and one Keltec .380 caliber pistol purchased by Blas Gutierrez on October 13, 2010
61	October 18, 2010	BLAS GUTIERREZ	Five American Tactical 9 mm pistols purchased by Blas Gutierrez on October 18, 2010
62	October 18, 2010	EDDIE ESPINOZA	Six AK-47 type pistols purchased by Eddie Espinoza on October 18, 2010
63	October 20, 2010	ALBERTO RIVERA	Four AK-47 type pistols and three American Tactical 9 mm pistols purchased by Alberto Rivera on October 20, 2010
64	January 5, 2011	BLAS GUTIERREZ	At least one hand gun and at least one long gun of unknown makes and models purchased by Blas Gutierrez on January 5, 2011

COUNT	DATE	DEFENDANT	MERCHANDISE, ARTICLES, AND OBJECTS
65	January 13, 2011	BLAS GUTIERREZ	Five AK-47 type pistols and five American Tactical 9 mm pistols purchased by Blas Gutierrez on January 13, 2011
66	January 13, 2011	RICARDO GUTIERREZ	Ten AK-47 type pistols purchased by Ricardo Gutierrez on January 13, 2011
67	January 13, 2011	ALBERTO RIVERA	Five AK-47 type pistols and six American Tactical 9 mm pistols purchased by Alberto Rivera on January 13, 2011
68	January 20, 2011	ALBERTO RIVERA	Eight AK-47 type pistols purchased by Alberto Rivera on January 20, 2011
69	January 24, 2011	EDDIE ESPINOZA	Five AK-47 type pistols purchased by Eddie Espinoza on January 24, 2011
70	January 25, 2011	BLAS GUTIERREZ	Twenty American Tactical 9 mm pistols purchased by Blas Gutierrez and Ricardo Gutierrez on January 25, 2011
71	January 25, 2011	RICARDO GUTIERREZ	Twenty American Tactical 9 mm pistols purchased by Ricardo Gutierrez on January 25, 2011
72	January 25, 2011	MANUEL ORTEGA, a/k/a "Coruco"	Twenty American Tactical 9 mm pistols purchased by Blas Gutierrez and Ricardo Gutierrez on January 25, 2011
73	January 25, 2011	VICENTE CARREON, a/k/a "Tito"	Twenty American Tactical 9 mm pistols purchased by Blas Gutierrez and Ricardo Gutierrez on January 25, 2011

COUNT	DATE	DEFENDANT	MERCHANDISE, ARTICLES, AND OBJECTS
74	February 9, 2011	ALBERTO RIVERA	Ten American Tactical 9 mm pistols purchased by Alberto Rivera on February 9, 2011
67	January 13, 2011	ALBERTO RIVERA	Five AK-47 type pistols and six American Tactical 9 mm pistols purchased by Alberto Rivera on January 13, 2011
68	January 20, 2011	ALBERTO RIVERA	Eight AK-47 type pistols purchased by Alberto Rivera on January 20, 2011
69	January 24, 2011	EDDIE ESPINOZA	Five AK-47 type pistols purchased by Eddie Espinoza on January 24, 2011
70	January 25, 2011	BLAS GUTIERREZ	Twenty American Tactical 9 mm pistols purchased by Blas Gutierrez and Ricardo Gutierrez on January 25, 2011
71	January 25, 2011	RICARDO GUTIERREZ	Twenty American Tactical 9 mm pistols purchased by Ricardo Gutierrez on January 25, 2011
72	January 25, 2011	MANUEL ORTEGA, a/k/a "Coruco"	Twenty American Tactical 9 mm pistols purchased by Blas Gutierrez and Ricardo Gutierrez on January 25, 2011
73	January 25, 2011	VICENTE CARREON, a/k/a "Tito"	Twenty American Tactical 9 mm pistols purchased by Blas Gutierrez and Ricardo Gutierrez on January 25, 2011
74	February 9, 2011	ALBERTO RIVERA	Ten American Tactical 9 mm pistols purchased by Alberto Rivera on February 9, 2011

COUNT	DATE	DEFENDANT	MERCHANDISE, ARTICLES, AND OBJECTS
75	February 9, 2011	BLAS GUTIERREZ	Ten American Tactical 9 mm pistols purchased by Alberto Rivera on February 9, 2011
76	February 11, 2011	RICARDO GUTIERREZ	Ten AK-47 type pistols purchased by Ricardo Gutierrez on February 11, 2011
77	February 11, 2011	BLAS GUTIERREZ	Ten AK-47 type pistols purchased by Ricardo Gutierrez on February 11, 2011
78	February 11, 2011	IGNACIO VILLALOBOS, a/k/a "Nacho" and "Nachito"	Ten AK-47 type pistols purchased by Ricardo Gutierrez on February 11, 2011
79	February 12, 2011	MIGUEL CARRILLO	Ten AK-47 type pistols purchased by Miguel Carrillo on February 12, 2011
80	February 12, 2011	BLAS GUTIERREZ	Twenty AK-47 type pistols purchased by Miguel Carrillo and Eva Gutierrez on February 12, 2011
81	February 12, 2011	IAN GARLAND	Twenty AK-47 type pistols purchased by Miguel Carrillo and Eva Gutierrez on February 12, 2011
82	February 12, 2011	IGNACIO VILLALOBOS, a/k/a "Nacho" and "Nachito"	Twenty AK-47 type pistols purchased by Miguel Carrillo and Eva Gutierrez on February 12, 2011

COUNT	DATE	DEFENDANT	MERCHANDISE, ARTICLES, AND OBJECTS
83	February 24, 2011	BLAS GUTIERREZ	Five AK-47 type pistols purchased by Blas Gutierrez on February 24, 2011 and one thousand five hundred rounds of 7.62 ammunition purchased by either Blas Gutierrez or Alberto Rivera on February 24, 2011
84	February 24, 2011	ALBERTO RIVERA	Five AK-47 type pistols purchased by Blas Gutierrez on February 24, 2011 and one thousand five hundred rounds of 7.62 ammunition purchased by either Blas Gutierrez or Alberto Rivera on February 24, 2011

Forfeiture Allegation

Upon conviction of one or more of the offenses in violation of Title 18, United States Code, Sections 554 and 924, set forth in Counts 2 through 84 of this Indictment, the Defendants shall forfeit to the United States pursuant to Title 18, United States Code, Section 924(d) and Title 28, United States Code, Section 2461(c), any firearms and/or ammunition involved in or used in the knowing violation of the statutes set forth above.

If any of the property described above, as a result of any act or omission of the Defendants:

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to, or deposited with, a third person;
- (3) has been placed beyond the jurisdiction of the Court;

- (4) has been substantially diminished in value; or
- (5) has been commingled with other property which cannot be subdivided without difficulty,

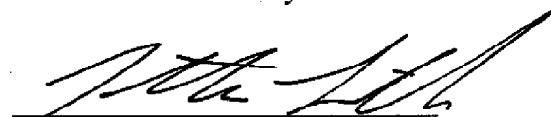
the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).

All pursuant to 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c).

A TRUE BILL:

/s/
FOREPERSON OF THE GRAND JURY

KENNETH J. GONZALES
United States Attorney


Assistant United States Attorney



U.S. Department of Justice

December 2, 2010

The Honorable William K. Sessions III
United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

Re: Department Proposals to Amend the Federal Sentencing
Guidelines to Address Southwest Border Firearms Trafficking

Dear Chief Judge Sessions:

On August 12, 2010, the United States Senate passed the Southwest Border Security Act,¹ which the President signed into law on August 13, 2010, allocating \$600 million to provide increased funding for, among other things, the investigation and prosecution of illegal drugs and weapons trafficking along the Southwest border of the United States. *See* Statement by the President on the Passage of the Southwest Border Security Bill, Aug. 12, 2010. In particular, the new law provides for additional prosecutors, the provision of ballistic analysis support to Mexican law enforcement operations, and additional ATF Gunrunner Teams. *Id.* In praising the law, a bipartisan accomplishment passed after special sessions of both the House of Representatives and the Senate,² U.S. Homeland Security Secretary Janet Napolitano emphasized that the law will bolster the United States' "crack down on transnational criminal organizations and reduce the trafficking of people, drugs, currency and weapons" -- an enforcement objective

¹ H.R. 6080, 111th Cong., 2d Sess. (2010).

² Both the House and Senate re-convened for special sessions during their August 2010 recess. Since the formalization of the recess period in 1970, the only other time the Senate has re-convened during its August recess was in 2005 in response to Hurricane Katrina.

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she characterized as “a matter of national security.” *See* Statement by Secretary Napolitano on Passage of Southwest Border Bill in the U.S. Senate, Aug. 5, 2010; Press Briefing by Press Secretary Gibbs and Secretary of Homeland Security Napolitano, Aug. 13, 2010 (available at www.m.whitehouse.gov/the-press-office/2010/08/13/press-briefing-press-secretary-gibbs-and-secretary-homeland-security-nap).

In its September 8, 2010, notification of final policy priorities for the 2010-11 amendment cycle, the Commission advised that, pursuant to the directive in section 107(b) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, it would study and report to Congress “regarding violations of . . . sections 38, 39, and 40 of the Arms Export Control Act (22 U.S.C. [§§] 2778, 2779, and 2780), . . . including consideration of amendments to § 2M5.2 (Exportation of Arms, Munitions, or Military Equipment or Services Without Required Validated Export License) *or other guidelines in Part K or Part M of Chapter Two of the Guidelines Manual that might be appropriate in light of the information obtained from such study.*” 75 Fed. Reg. 54699 (emphasis added).

We understand that on October 28, 2010, a team composed of Department of Justice officials and ATF agents met with Commission staff members and discussed the challenges of investigating and prosecuting firearms trafficking along the Southwest border and the implications for national security and foreign policy interests of the United States. During that meeting, the Department officials urged the Commission, in the context of any report it prepares for Congress in connection with this priority, to consider changes not only to those guidelines to which 22 U.S.C. §§ 2778, 2779, and 2780 specifically are referenced, but also to USSG § 2K2.1, the guideline that applies in the bulk of cases in which arms trafficking is prosecuted.

As the chief federal law enforcement officers in the Southwest border region, we strongly believe the Commission must amend USSG § 2K2.1 if it is truly to address the national security implications of arms trafficking. As the Department explained during its meeting with Commission staff, straw purchasers are the primary source of firearms trafficked to Mexico from the United States. Most of the defendants prosecuted for arms export or arms trafficking offenses involving the Southwest border would not have obtained the firearms at issue were it not for the efforts of straw purchasers. Yet because straw purchasers face such low guideline ranges under § 2K2.1, and because many judges see straw purchasing as a mere “paper” violation, the sentences received by straw purchasers fail to reflect the seriousness of the crime or the critical role played by these defendants in the trafficking and illegal export of weapons. Simply put, straw purchasing and illegal arms exporting go hand in hand, and both must be

The Honorable William K. Sessions III

December 2, 2010

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addressed together.³

Accordingly, we believe that the Commission's report to Congress should, in addition to analyzing the implications for the operation of the United Nations Participation Act, the Trading with the Enemy Act, and the Arms Export Control Act, (1) explain the significant role that "straw purchasers" and licensed corrupt dealers (prosecuted under 18 U.S.C. §§ 922(a)(6) and 924(a)(1)(A)) play in the illegal export of arms beyond *all* U.S. borders; (2) acknowledge (as Congress already has) the growing national security and foreign policy risk posed specifically by firearms trafficking to Mexico; (3) explain how straw purchases and other illegal transactions that facilitate firearms trafficking into Mexico are conducted not just in the Southwest border region, but rather throughout the United States (indeed, as far away from the Southwest border as Washington State and Minnesota), further necessitating prosecutions beyond 22 U.S.C. §§ 2778, 2779, and 2780; and (4) detail the inadequacies of a federal sentencing framework where firearms offenses whose prosecution is key to the government's disruption of arms smuggling to violent drug cartels are not subject to statutory minimum penalties and, indeed, typically result in little or no prison time.

In addition, we believe it is critical that in this amendment year, the Commission promulgate amendments to the firearms trafficking-related sentencing guidelines like those the Department has discussed with Commission staff, which would provide modest but meaningful increases in penalties for straw purchasing offenses. We look forward to discussing these and other related proposals with the Commission.

³ A recent series of articles on firearms trafficking in the *Washington Post* discussed the law enforcement and public safety challenges posed by straw purchasers. See, e.g., "Realco Guns Tied to 2,500 Crimes in D.C. and Maryland," Oct. 24, 2010 (<http://www.washingtonpost.com/wp-dyn/content/article/2010/10/23/AR2010102302994.html?sid=ST2010102304311>); "The Story of Two Guns That Killed Police Officers," Nov. 22, 2010 (<http://www.washingtonpost.com/wp-dyn/content/article/2010/11/21/AR2010112103202.html>).

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December 2, 2010
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We appreciate the opportunity to share with you our views on this matter, and look forward to working further with the Commission to achieve effective and just sentencing laws as we continue our efforts to dismantle violent drug cartels and strengthen our country's security.

Sincerely,



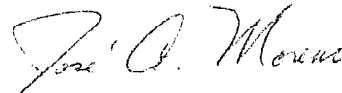
Dennis K. Burke
United States Attorney
District of Arizona



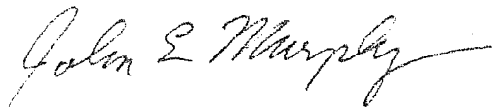
Laura E. Duffy
United States Attorney
Southern District of California



Kenneth J. Gonzales
United States Attorney
District of New Mexico



José Angel Moreno
United States Attorney
Southern District of Texas



John E. Murphy
United States Attorney
Western District of Texas

cc: Commissioners
Judith Sheon, Staff Director
Kenneth Cohen, General Counsel



Office of the Inspector General

March 21, 2011

The Honorable Charles E. Grassley
Ranking Member, Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Grassley:

The Department of Justice (DOJ or Department) Office of the Inspector General (OIG) recently initiated a review of the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) firearms trafficking investigation known as Operation Fast and Furious, and other investigations with similar objectives, methods, and strategies. I am writing to inform you of the scope and preliminary objectives of our review, and to respond to the request in your March 8, 2011 letter to the Integrity Committee of the Council of Inspector General on Integrity and Efficiency (CIGIE) that the DOJ OIG be recused from this review.

The preliminary objectives of our review are to examine the development and implementation of Operation Fast and Furious and other firearms trafficking investigations; the involvement of the Department (including ATF, the Criminal Division, and U.S. Attorneys' Offices) and other law enforcement or government entities in the investigations; the guidelines and other internal controls in place and compliance with those controls during the investigations; and the investigative outcomes. We believe our review will address many of the important issues you have raised about Operation Fast and Furious.

In your letter to the CIGIE Integrity Committee, you requested that the OIG be recused from conducting this review and that another Inspector General's office handle the investigation. I have carefully considered your letter, but firmly believe there is no basis for the DOJ OIG to recuse itself from this review. The DOJ OIG is the most appropriate Inspector General's office to conduct this review. Our investigative team is composed of senior attorneys, including former prosecutors, law enforcement agents, and analysts. The OIG's significant investigative experience and extensive knowledge of Department components and operations makes it uniquely capable of conducting a review of Operation Fast and Furious and similar operations.

You expressed three concerns in requesting our recusal. The first is that the OIG does not have a Presidentially-appointed and Senate-confirmed leader. However, my status as an Acting Inspector General does not in any way compromise the independence of the OIG or otherwise impede our capability to conduct this or any other review. Acting Inspectors General have often been called upon to conduct high profile reviews and investigations, and have responded with tough, independent reports containing significant findings and recommendations for the affected agencies.¹ I can assure you that under my leadership the OIG will continue to conduct hard-hitting and vigilant investigations in carrying out our important oversight responsibilities.

The second concern you raised is that the OIG was "aware of the allegations long before the Attorney General's request and did nothing." I first learned of the allegations about Operation Fast and Furious when a member of your staff contacted me on January 27, 2011. I immediately looked into the concerns raised by your staff member and found that the OIG had no record of receiving a complaint on this matter. I gave your staff member the contact information for an individual in the OIG front office to convey to any complainant who wanted to contact us about this matter. We subsequently were contacted by an ATF Special Agent and promptly followed up by interviewing the agent regarding the agent's concerns about Operation Fast and Furious.²

The third concern you raised as a basis for the OIG's recusal is your understanding that ATF officials have cited an OIG report on Project Gunrunner as one of the factors that prompted the ATF to "shift to a riskier strategy of letting guns be trafficked rather than arresting straw buyers." The report you reference, *A Review of Project Gunrunner*, was issued by our office in November 2010. We did not recommend in that report that ATF shift its strategy to "letting guns be trafficked rather than arresting straw buyers."

¹ For example, our previous Inspector General, Glenn Fine, served as Acting Inspector General prior to his confirmation as the Inspector General and issued several important reports during his tenure as Acting Inspector General. See, e.g., *An Investigation of the Immigration and Naturalization Service's Citizenship USA Initiative*, July 2000; *An Investigation of Misconduct and Mismanagement at ICITAP, OPDAT, and the Criminal Divisions Office of Administration*, September 2000.

² The OIG's public webpage at <http://www.justice.gov/oig/> provides several means of reporting allegations of waste, fraud, abuse, or misconduct, including a hotline number, an e-mail address, an on-line submission form, and a fax number. We discussed with the ATF Special Agent the efforts made to contact our office so that we could identify and correct any deficiencies in our intake process.

Rather, the OIG made a total of 15 recommendations in that report to help ATF improve its implementation of Project Gunrunner, including a recommendation that ATF focus on developing more complex conspiracy cases against higher level gun traffickers and gun trafficking conspirators. Our report also recommended that ATF send guidance to field management, agents, and intelligence staff encouraging them to participate in and exploit the resources and tools of the Organized Crime Drug Enforcement Task Force, as directed in the Deputy Attorney General's cartel strategy.

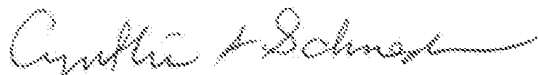
Our report, however, did not review what strategies ATF should employ in pursuing more complex cases, nor did it address what internal controls the ATF should have in place to minimize the risk associated with its investigative strategies. Thus, while our prior work gives us familiarity with Project Gunrunner that we will draw upon, it did not address the issues that we will examine in our review of Operation Fast and Furious.

In addition, ATF first became aware of our findings and recommendations in the Project Gunrunner review on September 3, 2010, when we provided a draft of the report to ATF for factual accuracy and sensitivity review prior to publication. Our understanding is that Operation Fast and Furious was initiated in late 2009 and that the investigative strategy employed in this operation was implemented shortly thereafter, well before the OIG began to formulate any recommendations relating to Project Gunrunner.

For all of these reasons, I believe the DOJ OIG is best situated to conduct a thorough, objective, and independent review of Operation Fast and Furious. I expect that we will address many of the important issues you have raised, and at the same time provide guidance to the Department about the conduct of this operation and how to address any deficiencies we identify.

If you have any questions about this letter or these issues, please contact me or Senior Counsel Jay Lerner at (202) 514-3435.

Sincerely,



Cynthia A. Schnedar
Acting Inspector General

UNITED STATES of America,
Plaintiff-Appellee,

v.

Mary Peggy MOORE, Defendant-
Appellant.

UNITED STATES of America,
Plaintiff-Appellee,

v.

Lee Roy WILEY, Defendant-Appellant.

Nos. 94-30453, 94-30454.

United States Court of Appeals,
Ninth Circuit.

Argued and Submitted Jan. 23, 1997.

Decided March 31, 1997.

Defendant-neighbor, who purchased firearm for 14-year-old, and defendant-mother, who facilitated transaction, were convicted in the United States District Court for the District of Idaho, Justin L. Quackenbush, J., of making false statement in connection with purchase of firearm and conspiracy to violate Gun Control Act, respectively. Defendants appealed. The Court of Appeals, Tashima, Circuit Judge, 84 F.3d 1567, reversed. On rehearing en banc, the Court of Appeals, Trott, Circuit Judge, held that: (1) evidence supported convictions; (2) jury instruction did not impermissibly remove materiality issue from jury's consideration; (3) Gun Control Act was not unconstitutionally vague on its face, or as applied; and (4) mother was not entitled to favorable adjustment of offense level for acceptance of responsibility.

District court decision affirmed.

Tashima, Circuit Judge, dissented and filed opinion, in which Pregerson and Reinhardt, Circuit Judges, joined.

1. Weapons ⇌4

Under Gun Control Act, 14-year-old was ineligible to purchase firearm from federally licensed dealer. 18 U.S.C.A. § 922(b)(1).

2. Weapons ⇌4

"Straw man" doctrine holds that person violates Gun Control Act by acting as intermediary or agent of someone who is ineligible to obtain firearm from licensed dealer and making false statement that enables ineligible principal to obtain firearm. 18 U.S.C.A. § 922(a)(6).

See publication Words and Phrases for other judicial constructions and definitions.

3. Weapons ⇌4

Sham or "straw man" purchases occur, for purposes of Gun Control Act, when lawful purchaser buys firearm for unlawful one. 18 U.S.C.A. § 922(a)(6).

4. Weapons ⇌3

Primary purpose of Gun Control Act is to make it possible to keep firearms out of hands of those not legally entitled to possess them because of age, criminal background, or incompetency. 18 U.S.C.A. § 922.

5. Conspiracy ⇌47(3.1)

Weapons ⇌17(4)

Neighbor's conviction for making materially false statement in connection with "straw man" purchase of firearm for 14-year-old, and mother's conviction for conspiracy to violate Gun Control Act, were supported by evidence that they falsely stated that neighbor was minor's grandfather, who intended to purchase and hold firearm for minor until he was 21 years old; mother's claim that she consented to transaction, and that transfer of weapon to minor was therefore legal under Idaho law, did not establish defense to "straw man" doctrine, as it did not address materially false statements. 18 U.S.C.A. § 922(a)(6); I.C. § 18-3302A.

6. Criminal Law ⇌1038.1(2)

Objection to jury instruction would be reviewed for plain error, where defense did not raise it at trial. Fed.Rules Cr.Proc.Rule 52(b), 18 U.S.C.A.

7. Criminal Law ⇌1038.1(2)

If constitutional error occurs in jury instruction because defendant's right to have jury decide issue is infringed, error is both

Cite as 109 F.3d 1456 (9th Cir. 1997)

structural and plain and, therefore, requires reversal of conviction.

8. Weapons ⇨17(6)

Jury instruction in prosecution for making materially false statement in connection with purchase of firearm did not impermissibly withhold materiality element from jury's consideration, as court expressly instructed jury that materiality was element of charged offense and that government had to prove it beyond reasonable doubt. 18 U.S.C.A. § 922(a)(6).

9. Criminal Law ⇨823(5)

Jurors in prosecution for making materially false statement in connection with purchase of firearm were not misled or confused by language of jury instruction regarding materiality element, where judge answered jurors' question inquiring about interplay in instructions between intent and materiality by setting forth four separate elements which government was required to prove beyond reasonable doubt, including materiality of alleged false statements. 18 U.S.C.A. § 922(a)(6).

10. Criminal Law ⇨1038.1(4)

Any error in trial court's instruction in prosecution for making materially false statement in connection with purchase of firearm, which advised that if minor was true purchaser of firearm, then neighbor who purchased gun on minor's behalf had made false statement in connection with purchase, was harmless, rather than plain, as disputed instruction did not affect any substantial rights, in light of evidence, substance of defense, and verdict. 18 U.S.C.A. § 922(a)(6).

11. Constitutional Law ⇨258(3.1)

Weapons ⇨3

Gun Control Act provision prohibiting person from making false statement in connection with purchase of firearm was not unconstitutionally vague, on its face, as it unmistakably rendered juvenile ineligible to buy firearm from a federally licensed dealer, and made it crime to make any false statement in connection with such purchase. 18 U.S.C.A. § 922(a)(6).

12. Constitutional Law ⇨258(3.1)

Weapons ⇨3

Gun Control Act provision prohibiting person from making false statement in connection with purchase of firearm was not unconstitutionally vague, as applied to neighbor who purchased gun for 14-year-old and mother who facilitated transaction, notwithstanding Idaho law that allowed transfer of weapon to minor with parent's consent, as neighbor and mother understood legal obligations under Act, although they sought to work around them. 18 U.S.C.A. § 922(a)(6); I.C. § 18-3302A.

13. Criminal Law ⇨1252

Mother, who conspired with neighbor to illegally purchase gun for her 14-year-old son, was not entitled to reduction in offense level for acceptance of responsibility, as mother initially lied to law enforcement about her involvement in acquisition of firearm and denied that she told clerk that neighbor was her son's grandfather and that he would hold gun until son was 21 years old. 18 U.S.C.A. § 922(a)(6); U.S.S.G. § 3E1.1, 18 U.S.C.A.

14. Criminal Law ⇨1158(1)

Findings of sentencing judge as to acceptance of responsibility are entitled to considerable weight, and Court of Appeals will review denial of reduction in offense level for acceptance of responsibility under clearly erroneous standard. U.S.S.G. § 3E1.1, 18 U.S.C.A.

Thomas J. McCabe, Westberg, McCabe & Collins, Boise, ID, for Defendant-Appellant Lee Roy Wiley.

David Z. Nevin, Nevin, Kofoed & Herzfeld, Boise, ID, for Defendant-Appellant Mary Peggy Moore.

George W. Breitsameter, Assistant United States Attorney, Boise, ID, (on the briefs) and Joseph Douglas Wilson, United States Department of Justice, Washington, DC (argued), for Plaintiff-Appellee.

Appeals from the United States District Court for the District of Idaho, Justin L. Quackenbush, District Judge, Presiding, D.C. No. CR-94-0018-JLQ.

Before: HUG, Chief Judge,
 PREGERSON, REINHARDT, BRUNETTI,
 KOZINSKI, THOMPSON, O'SCANNLAIN,
 TROTT, RYMER, KLEINFELD, and
 TASHIMA, Circuit Judges.

TROTT, Circuit Judge.

Mary Peggy Moore ("Mrs. Moore") and Lee Roy Wiley ("Wiley") appeal their respective convictions for conspiracy and for making a material false statement in connection with the purchase of a firearm. Wiley allegedly bought a firearm as a "straw man" on behalf of Mrs. Moore's fourteen-year-old son, Bobby Moore ("Bobby"). Mrs. Moore allegedly was liable as Wiley's aider and abettor and coconspirator in his making of the false statement.

In an attempt to overturn their convictions, Mrs. Moore and Wiley tender three arguments. First, they contend that Mrs. Moore as Bobby's parent consented to the acquisition of the firearm, thereby rendering the government's proof insufficient as a matter of law either to constitute a violation of 18 U.S.C. § 922(a)(6) or to establish the existence of an unlawful conspiracy.

Second, they argue that the district court failed adequately to submit for the jury's determination the question of whether the alleged false statement was material, advising the jury instead that if Bobby and not Wiley was the true purchaser of the firearm, then Wiley had made a material false statement in connection with its purchase. In support of this contention, the appellants direct us to *United States v. Gaudin*, — U.S. —, 115 S.Ct. 2310, 132 L.Ed.2d 444 (1995), in which the Supreme Court held that the materiality of a false statement offense must be decided by the jury, not by the court.

Third, the appellants assert that the Gun Control Act as it relates to this case is constitutionally vague (1) on its face, or (2) as applied.

Mrs. Moore alleges separately that the district court erred at sentencing in refusing to give her a favorable adjustment for acceptance of responsibility.

1. The opinions of the three-judge panel are re-

ported at 84 F.3d 1567 (9th Cir.1996).
 Because we conclude that these claims have no merit, we affirm the district court.¹

I

A.

The Facts

On September 2, 1993, fourteen-year-old Bobby Moore saw a .25 caliber handgun in a pawnshop which had a federal license to sell firearms. When he showed interest in the weapon, a clerk shooped him off the premises because his age rendered him ineligible under federal law to buy it. Undaunted, Bobby set out to find a way to acquire the handgun for himself. He approached his mother to buy it for him, but she turned him down. Bobby's friend Jason Marks witnessed this discussion. Jason's unchallenged testimony about the discussion established not only that Mrs. Moore refused to buy the gun on behalf of her son, but that she explicitly told him he would have to "get someone else" to get it for him because she "didn't want her name on the papers":

A. (By Jason Marks) Well, we [Bobby and Jason] left the pawn shop and we were trying to figure out a way that *he* could get the money to get the gun.

* * * * *

Q. (By the prosecutor) So what did you do as far as trying to get the money?

A. Well, we walked back to his house and I sat down and he was looking around his house at stuff that he could sell or get rid of to get some money.

* * * * *

Q. Okay. When [Bobby] first talked to Mrs. Moore, he was there looking for something to sell, looking at the boom box. When he first talked to his mom, what did he say? What did he ask her?

A. He asked if she would pawn this for him, and she said, no, and they got in an argument.

Q. Okay, and tell us what else was said.

A. Then Bob said why he wanted to pawn it and stuff, and—

ported at 84 F.3d 1567 (9th Cir.1996).

Q. Did [Bobby] ask her to pawn it or hawk it for anything particular?

A. Yeah, for the gun.

Q. What? For the gun?

A. Yeah, and Bob's mom said she didn't want to do it because she didn't want her name on the papers and he could hurt somebody and she didn't think he needed a gun. But Bob has a way of talking people into things, and so he kind of threw a tantrum and got all mad, and finally his mom said that she would do it.

Q. Said she would do what?

A. Pawn the CD Player.

Q. Did she say she would pawn the CD player for the gun, or just pawn the CD player?

A. *Just pawn the CD player and he would have to figure out a different way of getting the gun because she didn't want her name on the papers.*

Q. That's what he told her; is that correct? *He would have to get someone else to get the gun?*

A. *Yeah.*

(emphasis added).

Mrs. Moore then pawned Bobby's CD player and gave him the cash she received from the transaction. She did so knowing that he intended to use it to purchase a firearm.

The next day, Bobby went looking for someone else to help him acquire the weapon, as suggested by his mother. He took the cash to Wiley's residence to see if Wiley would assist him. The neighborhood knew Wiley as "Grandpa," and he frequently did favors for the neighborhood children. The record reflects that Wiley is a man of limited intelligence. Wiley was neither Bobby's parent nor guardian, nor was he related to him in any respect whatsoever.

Wiley balked at first, but Bobby persisted; and with the promise of money as a sweetener, Wiley relented and agreed to purchase the gun on Bobby's behalf.

Mrs. Moore then drove Wiley, Bobby, and Jason to the pawnshop. During this trip, Wiley asked Mrs. Moore if the purchase of

the gun was all right with her, to which she replied that it was fine.

When the group arrived at the pawnshop, Mrs. Moore waited in the car while Wiley, Bobby, and Jason went inside. Wiley asked the clerk to see the handgun Bobby had spotted on his earlier visit. Because the two boys were present, the clerk inquired for whom Wiley wanted to purchase the gun. Wiley responded that the gun was for Bobby, but that he Wiley was Bobby's grandfather, and that he was going to hold it for Bobby until Bobby was 21 years of age. Both of these statements were false and were intended to facilitate the transaction. On cross-examination, Wiley conceded that the only reason he was in the pawnshop was "to stand in for Bobby to get that gun."

The clerk responded to Wiley's representations with an inquiry about Bobby's parents and whether they knew about this purchase. Bobby said that his mother was outside, and he went to get her. In short order, Mrs. Moore appeared briefly in the doorway and, without prompting by Wiley, said to the clerk, "His grandfather is buying a gun for him. He's going to hold it until he's 21, and everything is fine with me."

Satisfied by Mrs. Moore's representations, the clerk had Wiley sign BATF Form 4473 as the "transferee (buyer)," accepted the cash Bobby had given to Wiley for the transaction, and turned the gun over to Wiley. Back in the car, and contrary to the intentions he expressed to the clerk, Wiley gave the gun to Mrs. Moore, expecting that it would go to Bobby. As Bobby intended from the start, he then took the firearm as his own possession.

Mrs. Moore's reluctance to buy this weapon for her son and to put her name on the papers was well founded, and her worry about Bobby hurting someone with it was prescient. On January 20, 1994, Bobby used it to shoot Ronald Wade Feldner, a New Plymouth, Idaho police officer, in the face. Officer Feldner died, leaving behind a wife and minor children.

B.

The False Statement

[1] In 18 U.S.C. § 922(a)(6), Congress made it a federal offense

for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter.

In the same statute, Congress also rendered it illegal for a licensed firearms dealer to sell or deliver "any firearm or ammunition to any individual who the licensee knows or has reasonable cause to believe is less than eighteen years of age," or to sell or deliver a handgun to anyone less than twenty-one years of age. 18 U.S.C. § 922(b)(1). Thus, federal law made Bobby Moore ineligible to purchase a firearm from a federally-licensed dealer.

The government's theory of its case against Wiley, and against Mrs. Moore as an aider and abettor and coconspirator, is straightforward and simple. As charged in the indictment and as explained to the jurors in the jury instructions, the government alleges that the true buyer of the .25 caliber handgun was the ineligible Bobby Moore, and that Wiley acted merely as his disguised agent-in the parlance, as a "straw man" purchaser. Thus, goes the government's argument, when Wiley the straw man agent signed his name on Form 4473 as the "transferee (buyer)," he made a false statement because the buyer was not Wiley, but Bobby himself. The manifest materiality of this false statement, says the government, stems from the law's prohibition against Bobby buying a firearm.

The appellants, on the other hand, contend that Mrs. Moore consented to the acquisition of this firearm by Wiley on behalf of her son.

2. At the time this firearm was purchased, Idaho law did not prohibit the sale of a firearm to a minor so long as the minor had the consent of a parent or a guardian. Idaho Code § 18-3302A (1990). Since these events, the Idaho Legislature amended section 18-3302A to require the

They argue here, as they did to the trial court and to the jury, that such consent rendered the sale lawful per se, and accordingly, that any false statements that Wiley and Mrs. Moore made to the clerk were flatly immaterial. To support this argument, the appellants assert that, at the time of sale, transferring firearms to minors was legal in Idaho, so long as the minor's parents gave consent.²

The respective positions of the government and the appellants were carefully set forth by the district court in its instructions to the jury:

The government contends that Mary Peggy Moore is not charged with any unlawful transfer of the firearm to her son, but rather is *charged with aiding and abetting Lee Roy Wiley or being a principal in a straw man purchase* of a firearm in the place of the prohibited minor, James Robert Lee Moore, who the government contends was the true purchaser. *The defendant Mary Peggy Moore denies that she participated in a straw man purchase, or that a straw man purchase took place.*

* * * * *

[T]he defendants Lee Roy Wiley and Mary Peggy Moore cannot be found guilty of any charge pending against them in this case solely because they may have delivered the firearm to James Robert Lee Moore.

The limited charges against the defendants in Count 1 and 2 are that *James Robert Lee Moore was the true purchaser of the firearm and that the defendants served merely as straw men* for the purchase of the firearm in the place of James Robert Lee Moore.

(emphasis added).

C.

The Straw Man Doctrine

[2, 3] The straw man doctrine, which is nothing more than a long-standing construc-

written permission of a parent or a guardian. The Gun Control Act has also been amended to make it illegal for a juvenile to possess a handgun without a parent's or guardian's written consent. 18 U.S.C. §§ 922(x)(1)(A) & 922(x)(3)(A)(iii) (1994).

Cite as 109 F.3d 1456 (9th Cir. 1997)

tion of the relevant statutes, holds that a person violates section 922(a)(6) by acting as an intermediary or agent of someone who is ineligible to obtain a firearm from a licensed dealer and making a false statement that enables the ineligible principal to obtain a firearm. As we said in *Perri v. Department of the Treasury*, 637 F.2d 1332, 1336 (9th Cir.1981), "sham or 'strawman'" purchases occur "when a lawful purchaser buys for an unlawful one." See *United States v. Lawrence*, 680 F.2d 1126, 1127-28 (6th Cir.1982) (defendants who purchase firearms for ineligible foreign citizens violate section 922(a)(6)); *United States v. Ortiz-Loya*, 777 F.2d 973, 978 (5th Cir.1985) (same). In *Lawrence*, for example, the Sixth Circuit found determinative of straw man status that, like Wiley, the transferee (1) acted under the direction and control of the ineligible buyer, (2) purchased weapons selected by the ineligible buyer with the buyer's money, (3) took a commission that showed agency, and (4) had no intention of keeping the gun for himself. 680 F.2d at 1128; see also *United States v. Howell*, 37 F.3d 1197 (7th Cir.1994) ("The jury was entitled to conclude, beyond a reasonable doubt, that Mrs. Howell was no more than a straw purchaser, an eligible purchaser who is acting as an agent, intermediary, or straw purchaser for someone who is ineligible to purchase the firearm directly.") (internal quotations omitted).

[4] In effect, this doctrine is merely an application of a principle that dates back to the time when the legal profession relied regularly on maxims expressed in Latin to illuminate the law: "Qui facit per alium facit per se," or "He who acts through another acts himself." In this context, it is a construction of the statute that directly serves the primary purpose of the Gun Control Act, which is "to make it possible to keep firearms out of the hands of those not legally entitled to possess them because of age, criminal background, or incompetency." *Barrett v. United States*, 423 U.S. 212, 220, 96 S.Ct. 498, 503, 46 L.Ed.2d 450 (1976) (quoting S.Rep. No. 1501, 90th Cong., 2d Sess. 22 (1968) U.S. Code Cong. & Admin. News 1968 p. 4410).

3. Lawrence died during the pendency of the ap-

D.

Analysis

In an attempt to avoid the implications of the straw man doctrine, the appellants' sole defense was that Mrs. Moore consented to the purchase, and that because of her consent, Wiley and Mrs. Moore committed no crime, period. The defense argued that Wiley was *her* lawful agent implementing *her* lawful decision; he was not a straw man, and thus, Wiley and Mrs. Moore did not violate the statute. In the defense's view, the grandfather ruse was immaterial and irrelevant.

[5] Whether the defense is correct, of course, depends entirely on the facts. It was for the jury to decide whose agent Wiley was and whether Bobby was the actual buyer of the gun. If the jurors had a reasonable doubt about whether the buyer was Bobby, they would have acquitted. They did not. Read in the light of the indictment and the instructions, the jury verdict establishes conclusively that Bobby was the buyer, not Wiley, and that Wiley was merely Bobby's straw man agent for the purchase. Clearly, the jury attached no factual merit to the claim that Wiley was the buyer of the gun.

The appellants' argument echoes the failed argument of defendant Somogye in the *Lawrence* case.³ 680 F.2d at 1127. Somogye admitted that he and Lawrence knowingly purchased guns for an individual who could not legally buy them in his own name, but claimed that because they entered the store and paid for the weapons, as a matter of law they did not lie when they registered themselves on the transaction form as the buyers of the weapons. The Sixth Circuit dismissed this now familiar argument as novel, but "specious." *Id.* at 1127. The court explained that:

The foundation of Somogye's argument is that he and Lawrence were not agents of Hajjan but were instead middlemen who purchased the guns for resale to Hajjan. Hence, as principles, they were in fact the buyers of the weapons. *This argument*

peal rendering moot the case against him.

does not, however, conform to the facts of the case. Lawrence and Somogye were at all relevant times acting under the control and direction of Hajjan. They purchased the guns designated by Hajjan and did so with his money. The fixed commission they received further evidenced their role as agents. Therefore Lawrence and Somogye were not buyers and their statements on the forms were false in violation of 18 U.S.C. § 922(a)(6).

Id. at 1128 (emphasis added).

In the instant case, the uncontested facts presented to the jury did not as a matter of law establish a defense to the straw man doctrine. Nothing in the statute, the case law, or the rules of statutory construction suggests that a parent can either (1) render an unlawful straw man purchase legal by consenting to it, or (2) override the clear prohibition against making material false statements in a firearms transaction. Appellants ignore the specific rules that apply when someone purchases a firearm from a federally licensed dealer. Their suggestion that Idaho Code § 18-3302A "empowers" a parent to arm a child is misleading and a non sequitur. The fact that Idaho law permits a weapons transfer to a minor under 16 years of age with parental consent does not "empower" a juvenile to purchase a firearm from a federal dealer through an intermediary who falsely identifies himself as the buyer. The gravamen of the charge against Mrs. Moore and Wiley was the allegation that they made a material false statement. The district court properly explained the charge in denying the appellants' motion to dismiss:

The Court: But [parental authority to give a weapon to a child is] not what we are here about. What we are here about is whether or not false statements were made in connection with the purchase of the firearm, and I don't think the government's case against Mrs. Moore is that she got Wiley to purchase it, who gave it to her, who gave it to her son. I don't think that is an offense. The question being, whether or not she aided and abetted, or engaged in an legal [sic] agreement, conspiracy, to violate the federal law which

prohibits false statements in connection with the purchase of the firearm.

There is, of course, ample evidence in the record to support the jury's verdict and their conclusion that Bobby bought the gun for himself through an intermediary. Mrs. Moore turned down Bobby's request to buy the gun for him and refused to go on the papers. She told him he'd have to find someone else. He found Wiley.

Wiley was an archetypical straw man. He was recruited and compensated for his role because Bobby could not buy the coveted firearm and because his mother would not buy it for him. Wiley testified that the boys asked him to do "a favor for them," that they picked it out, and that Bobby gave him the money for it. Wiley's own testimony is dispositive of his role as a straw man purchaser in this matter:

(By Mr. Lindquist)

Q. Okay. You knew that—you knew why they were asking you to buy the gun, didn't you?

(By Wiley)

A. Yes, I did.

Q. You knew what Bobbie [sic] was asking you to buy the gun, didn't you?

A. What [sic] he wanted to own a gun, as far as I know.

Q. Bobbie wanted a gun?

A. That's right.

Q. And you knew that the reason that they were asking you was because Bobbie couldn't buy that himself, correct?

A. Well, that sounds about right.

Q. And so they were asking you, Bobbie was asking you to buy it in his place, right?

A. Yeah, as far as I know, yeah.

* * * * *

Q. So the person that was really getting that gun was Bobbie, wasn't it?

A. That's right.

Q. And you knew that, didn't you?

A. Yes, I did.

Q. And you knew that the only reason you were there, the only reason that they

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came to you was because Bobbie couldn't get it on his own?

A. That sounds about right.

Q. You weren't interested in getting a gun that day, were you, Mr. Wiley?

A. No, I wasn't.

* * * * *

Q. The only reason that you were there that day was to stand in for Bobbie to get that gun, correct?

A. That sounds about right.

(emphasis added). Wiley's involvement in the transaction is the smoking gun that proves both the illegality of this purchase and the existence of the conspiracy. Under the circumstances and given the jury's verdict, Mrs. Moore's words spoken in the pawnshop in support of the grandfather ruse serve primarily to connect her both to the false statement offense and to the conspiracy, rather than to provide the appellants with a defense. In her cameo appearance in the pawnshop's doorway, she did not reveal what was actually happening. Instead, she lied about the transaction in progress, and by so doing, purposefully enabled Wiley to make a material false statement on BATF Form 4473 and thereby consummate an illegal purchase. Her precise misrepresentation about Wiley's status as Bobby's grandfather and about who was going to control the weapon can hardly be called "consent." What the record demonstrates that she said and did does not square with the appellants' characterization of it. Thus, the appellants' argument that the evidence is insufficient to sustain these verdicts is demonstrably without merit.

In conclusion, we borrow again from the Sixth Circuit in *Lawrence*:

The result we reach here is necessary if the intentions of Congress as revealed in the Gun Control Act of 1968 are to be followed. If sales such as this one were insulated from the law's registration provisions, the effect would be tantamount to a repeal of those provisions. Other courts have upheld convictions for gun registra-

tion violations predicated on sham transactions and we must do so here.

680 F.2d at 1128.

II

The Instructions on Materiality

[6] Moore and Wiley argue that the district judge violated the *Gaudin* rule through its instruction to the jury. See *United States v. Gaudin*, — U.S. —, 115 S.Ct. 2310, 132 L.Ed.2d 444 (1995) (holding that the materiality of a false statement is a matter for the jury to decide). Specifically, they challenge the judge's instruction that:

If the government establishes by proof beyond a reasonable doubt that James Robert Lee Moore was the true purchaser of the handgun and that Lee Roy Wiley was not, then the government has established that Lee Roy Wiley made a material false statement in connection with the purchase of the firearm. But I want you to keep in mind the making of a material false statement is just one of the elements of an offense, and I described those elements to you in the earlier instructions.

Jury Instruction No. 14 (excerpt). Because the defense lodged no objection on *Gaudin* grounds to this instruction, we review for plain error pursuant to Federal Rule of Criminal Procedure 52(b).

Gaudin involved allegations of criminal false statements on federal loan documents in violation of 18 U.S.C. § 1001. The problem in *Gaudin* arose because the district court handled the issue of the materiality of the alleged false statements—which is an element of the crime—as a matter for the court to decide, not the jury. Unlike the instant case, the trial court instructed the jury that "[t]he issue of materiality . . . is not submitted to you for your decision but rather is a matter for the decision of the court. You are instructed that the statements charged in the indictment are material statements." — U.S. at —, 115 S.Ct. at 2313.

[7] The Supreme Court held that such an approach to the issue and such an instruction violated both the Fifth and the Sixth Amendments to the United States Constitution, which together "require criminal convictions

to rest upon a *jury* determination that the defendant is guilty of every element of the crime with which he is charged, beyond a reasonable doubt." *Id.* at —, 115 S.Ct. at 2313 (emphasis added). The Court concluded by saying that "[t]he trial judge's refusal to allow the jury to pass on the 'materiality' of Gaudin's false statements infringed that right [to have a jury decide]." *Id.* at —, 115 S.Ct. at 2320. The rule of this circuit is that if such a constitutional error occurs, it is both "structural" and "plain" and therefore requires reversal. *United States v. Gaudin*, 28 F.3d 943, 952 (9th Cir.1994), *aff'd*, — U.S. —, 115 S.Ct. 2310, 132 L.Ed.2d 444 (1995).

[8] The question we must answer, therefore, is whether the instruction of which the defendants complain withheld the element of materiality from the jury in violation of *Gaudin's* rule. Our answer is that it did not.

Unlike in *Gaudin*, here the court did not withhold the materiality element from the jury. The court expressly instructed the jury that materiality was an element of the charged offense, and that the government had to prove it beyond a reasonable doubt:

In order for a defendant to be found guilty of [making a false statement], the government must prove each of the following four elements beyond a reasonable doubt: . . . ; and third, *that the statement was intended or likely to deceive the firearms dealer with respect to a fact material to the lawfulness of the sale; . . .* If you find that the government has established each of the foregoing elements against a defendant by proof beyond a reasonable doubt, your verdict should be one of guilty against that defendant on this Count 2.

If you find that the government has not established all or any of the four elements by proof beyond a reasonable doubt against a defendant, your verdict should be one of not guilty on Count 2 against that defendant.

(emphasis added). The court also instructed the jury that "[t]he burden is always upon the government to prove guilt by proof beyond a reasonable doubt."

It is also noteworthy that when the court discussed the instructions with counsel before reading them to the jury, no one objected that the instruction now complained of violated the *Gaudin* rule, a rule established first by a three-judge panel of this court on June 22, 1993 and then affirmed en banc on June 21, 1994, more than two months before the trial. Moreover, the district court offered to enhance the instructions on the materiality element by giving an additional instruction offered by Mr. McCabe, counsel for Mr. Wiley, but Mr. McCabe withdrew the instruction. The exchange between court and counsel during this conference sheds light on this issue:

Mr. McCabe: The [instruction] I offered was number twelve, which is Devitt and Blackmar, and it says it is material if it is relevant to the decision and is capable of influencing them, and what I'm concerned with there is *if we leave it wide open like that, even though being a grandparent is not truly material to the transaction, they might decide that the false statement that was material was saying that he was his grandfather.*

The Court: I'm willing to give your number twelve.

Mr. McCabe: I will withdraw it at this time.

The Court: All right. Any other exceptions/failure to give, Mr. McCabe?

Mr. McCabe: I don't believe so, judge.

(emphasis added).

Mr. Nevin, counsel for Mrs. Moore, also addressed Instruction No. 14 in this conference, and he too did not object on *Gaudin* grounds. What he said about the disputed language was not that it withdrew the materiality element from the jury's consideration, but that it was "a comment on the evidence."

From these exchanges and from the transcript of the proceedings, it is clear that no one believed during the trial that the disputed instruction withdrew the hotly disputed element of materiality from the jury.

The *Gaudin* issue arose for the first time in a motion for a new trial after the chosen defense had failed. Counsel for Mr. Wiley argued to the court that "materiality is al-

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ways an issue that needs to be submitted to the jury . . .," to which the court responded, "I did submit it to the jury." To prove his point, the court then read the same instructions to counsel previously quoted in this opinion. Counsel's response was.

I understand, Judge. I concede all of those things. In terms of—and in fact you went further. When the jury came out with a question, you gave them an answer that included, yet again, an instruction to them that the government had to prove beyond a reasonable doubt that, quote, "That the alleged statement was of a nature material to the lawfulness of the sale." I concede all of that, judge.

Nevertheless, counsel made the same point that they make here, namely that the language in Instruction 14 had the effect of withdrawing consideration of this element from the jury's consideration. The court discussed the matter with counsel and then disagreed, denying the motion for a new trial. The record viewed as a whole supports the court's conclusion: the question of materiality remained with the jury.

[9] This leaves us, however, with the question of whether the jurors were misled or confused by the disputed language in Instruction No. 14. They were not. During deliberations they sent a question to the judge inquiring about the interplay in the instructions between intent and materiality. This is the question:

Count 2—Third Element [materiality], Instruction # 11.

"That the statement was intended or likely to deceive the firearms dealer. . . ."

Does the "intention" and "likely to deceive" both need to be met in this element or just one met for this element to be satisfied.

[signed]

One can conclude from this question only that the jury understood that the element of materiality was theirs to decide, and that they were attempting to decide it. There is no sign they believed or did otherwise.

More importantly, however, when the court answered the jurors' question, he told

them again that this essential element was on *their* table for decision:

In response to your question, you are advised that the government has the burden of proving beyond a reasonable doubt that the Defendant under consideration knowingly and wilfully made, or aided and abetted the making of a false statement. The government must also prove beyond a reasonable doubt that the defendant knew the alleged statement was false. *The government must also prove beyond a reasonable doubt that the defendant intended his or her statement to deceive a firearms dealer and that the alleged statement was of a nature material to the lawfulness of the sale and that the alleged statement was of a nature which would deceive the dealer or would likely deceive the dealer.*

. . . This Instruction sets forth four separate elements which the government must prove beyond a reasonable doubt.

(emphasis added). If the earlier statement in Instruction 14 might have been a problem, this certainly cured it.

Thus, when we view the instructions "as a whole in the context of the entire trial to determine if they were misleading or inadequate to guide the jury's deliberation," *United States v. Perez*, 989 F.2d 1111, 1114 (9th Cir.1993), we see clearly that they do not suffer from this defect.

[10] There is an explanation, of course, for Mr. McCabe's withdrawal of his enhanced materiality instruction, as well as for both counsels' disinclination to get too close to the materiality issue as framed by the prosecution. As Mr. McCabe candidly admitted at oral argument before the three-judge panel, he did not want the jury precisely to focus on the materiality of the admittedly false statements made by Mr. Wiley for fear that such a focus would distract the jury from the substance of the defense, which as described earlier in this opinion, was that *none* of the statements made by Wiley and Mrs. Moore could qualify as material false statements because no crime was being committed in that Mrs. Moore approved of the purchase. As Mr. Nevin says in his excellent brief,

As we argue above, Idaho law protected the right of *any* third party to give a gun to a child of *any* age, with the parent's permission. Thus the statements that Mr. Wiley was Bobby's grandfather, and that the gun would be held until Bobby turned 21, were in no way "material to the lawfulness of the sale."

(emphasis in original). This tracks exactly the argument Mr. Nevin made to the jury at the end of the case, demonstrating also that everyone involved in the trial considered the materiality element to be in play and not to have been preempted by the court. In fact, materiality was the essence of both defendants' defense. With this in mind, it is pellucid beyond a reasonable doubt that the court's disputed statement in Instruction No. 14 read in context and measured against (1) the evidence, (2) the substance of the defense, and (3) the verdict, was completely harmless. See *Perez*, 989 F.2d at 1115-1116 (holding that jury instructions were harmless beyond a reasonable doubt where the jury was told that "carrying"—for purposes of establishing the offense of carrying a firearm in relation to a drug trafficking offense—was shown conclusively if the firearm was within the defendant's reach). In context, the error, if any, certainly was not "plain," and the disputed instruction did not affect any substantial rights. See *United States v. Olano*, 507 U.S. 725, 732, 113 S.Ct. 1770, 1776-77, 123 L.Ed.2d 508 (1993).

III

The Constitutionality of the Gun Control Act

Prior to trial, the appellants unsuccessfully moved to dismiss the indictment on the ground that 18 U.S.C. §§ 922(a)(6) and (b)(1) are constitutionally vague. They argued that these sections fail to give adequate and fair notice to a person of ordinary intelligence that certain conduct is unlawful. See *Grazned v. City of Rockford*, 408 U.S. 104, 108, 92 S.Ct. 2294, 2298-99, 33 L.Ed.2d 222 (1972). We review this claim de novo, and we conclude that it has no merit.

[11] The plain language of section 922(b)(1) unmistakably renders a juvenile in-

eligible to buy a firearm from a federally licensed dealer. Section 922(a)(6) makes it a crime to make any false statement in connection with such a purchase. Any ordinary person of reasonable intelligence reading these sections could not help but understand that they prohibit sham straw man transactions designed to obtain a gun for an ineligible juvenile.

[12] The Fifth Circuit rejected an analogous argument that section 922(a)(6) was constitutionally vague as applied to a straw transaction in *United States v. Brooks*, 611 F.2d 614, 617 (5th Cir.1980), *overruled on other grounds*, *United States v. Henry*, 749 F.2d 203 (5th Cir.1984). In *Brooks*, a gun dealer was convicted for an illegal straw sale to a nonresident. The court found the statute's ban on the knowing "sale" to a nonresident to be a sufficiently definite warning of the conduct proscribed by application of the straw transaction doctrine. The court found that the words "sell or deliver . . . to any person who . . . does not reside in the State" gave fair notice that the defendant could not make a sham sale where he knows the ultimate recipient is a nonresident. 611 F.2d at 617.

Here, section 922(b)(1) reads that it shall be unlawful for firearms dealers "to sell or deliver . . . to any individual who . . . is less than eighteen years of age." Under the reasoning of *Brooks*, this practically identical language makes it reasonably clear that sham transactions designed to procure a gun for a minor are unlawful. If Wiley was therefore sufficiently warned that the sham transaction he engaged in was an illegal sale to *Bobby*, he can be charged with the requisite knowledge that his answer on the form was deceitful. See *United States v. Crooks*, 804 F.2d 1441, 1448 (9th Cir.1986), (holding that signature on tax form was sufficient to show knowledge that false statements on return were, in fact, false), *modified*, 826 F.2d 4 (9th Cir.1987).

Appellants reintroduce Idaho Code § 16-3302A (1990) into their void-for-vagueness argument. They claim that the vagueness of the federal statute's ban on straw sales to minors is "compounded" by the Idaho law's sanction of sales and transfers of firearms to

Cite as 109 F.3d 1456 (9th Cir. 1997)

minors under 16 with their parent's permission. As discussed earlier in Part I, Idaho law has no "empowering" effect that alters federal law on the prohibition of the straw sale of firearms to minors. Appellants state that a reasonably intelligent person would be confused about the interplay of federal and Idaho law here, but they cite no authority to reinforce their theory that state law can unconstitutionally "compound" the vagueness of federal law. In this regard, we find the holding of the Supreme Court in *United States v. Powell* to be instructive:

The fact that Congress might, without difficulty, have chosen "[c]learer and more precise language" equally capable of achieving the end which it sought does not mean that the statute which in fact drafted is unconstitutionally vague. *United States v. Petrillo*, 332 U.S. 1, 7, 67 S.Ct. 1538, 1541-42, 91 L.Ed. 1877 (1947).

423 U.S. 87, 94, 96 S.Ct. 316, 321, 46 L.Ed.2d 228 (1975). In *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, the Supreme Court declared:

"[V]agueness challenges to statutes which do not involve First Amendment freedoms must be examined in the light of the facts of the case at hand." [citations omitted]. "One to whose conduct a statute clearly applies may not successfully challenge it for vagueness." *Parker v. Levy*, 417 U.S. 733, 756, 94 S.Ct. 2547, 2562, 41 L.Ed.2d 439 (1974). The rationale is evident: to sustain such a challenge, *the complainant must prove that the enactment is vague "not in the sense that it requires a person to conform his conduct to an imprecise but comprehensive normative standard, but rather in the sense that no standard of conduct is specified at all."* *Coates v. City of Cincinnati*, 402 U.S. 611, 614, 91 S.Ct. 1686, 1688, 29 L.Ed.2d 214 (1971). Such a provision simply has *no core*." *Smith v. Goguen*, 415 U.S. 566, 578, 94 S.Ct. 1242, 1249, 39 L.Ed.2d 605 (1974).

455 U.S. 489, 495 n. 7, 102 S.Ct. 1186, 1191 n. 7, 71 L.Ed.2d 362 (1982) (emphasis added). Here, the extension of the prohibition against the "sale" of firearms to minors to also include straw man purchases for minors is not standardless; it delegates no policy matters

to policemen and juries, and most important, it is normatively comprehensible.

The record shows that both Mrs. Moore and Wiley understood their respective legal obligations in this case, even though they unlawfully sought to work around them. Mrs. Moore knew full well that a purchaser's name went on "papers" and that fulfilling that role entailed grave responsibilities she did not want. Wiley, too, was aware of the unlawful nature of his conduct. He clearly appreciated the legal problems associated with arming a juvenile and used a ruse about his relationship with Bobby to circumvent them. When the clerk tried vainly to warn Wiley, who was employed as a private security guard, about the danger of putting even a supervised firearm in the hands of a juvenile and about the "trouble" that could ensue, Wiley's dismissive response was, "I know the law."

In short, we discern no arbitrary or unfair application of the Gun Control Act in this case, an Act clear on its face and in its impact with respect to false statements and juveniles.

IV

Acceptance of Responsibility

Mrs. Moore contends that the trial court erred by not granting her a two-point reduction in offense level for acceptance of responsibility. She correctly points out that by putting the government to its proof she did not foreclose such a reduction. U.S.S.G. § 3E1.1, comment., n. 2 ("In rare situations a defendant may clearly demonstrate an acceptance of responsibility for [her] criminal conduct even though [she] exercises [her] constitutional right to a trial.>").

[13] The presentence report recommended denying such a reduction, pointing to Mrs. Moore's initial lies to law enforcement about her involvement in the acquisition of the firearm and to her denials post-trial that she told the clerk Wiley was her son's grandfather and that he would hold the gun until Bobby was 21. The district court agreed with the presentence report and found that her situation was not the rare one justifying such a benefit.

[14] The findings of a sentencing judge as to acceptance of responsibility are entitled to considerable weight. *United States v. Scarano*, 975 F.2d 580, 587 (9th Cir.1992). We review such a denial under the "clearly erroneous" standard. *Id.* We do not perceive any defect in the district court's decision in this case. We note that Wiley was awarded such a reduction, but that the trial court determined that Mrs. Moore's conduct did not measure up to the required standard. Such a holding was not clearly erroneous.

AFFIRMED.

TASHIMA, Circuit Judge, with whom PREGERSON and REINHARDT, Circuit Judges, join, dissenting:

For the reasons set forth in the panel majority's opinion, *United States v. Moore*, 84 F.3d 1567 (9th Cir.1996) ("*Moore I*"), I dissent. The majority errs in several major respects. I briefly address these errors *seriatim*.

1. *Mrs. Moore's Consent*

First, the majority refuses to recognize that the uncontradicted evidence establishes that Mrs. Moore consented to her son's purchase of the handgun. That she did consent is demonstrated by "The Facts," Part I.A., *Op.* at 1459, of the majority opinion. According to Bobby's friend, Jason: "But Bob has a way of talking people into things, and so he kind of threw a tantrum and got all mad, and finally his mom said that she would do it." (Emphasis added.) What Mrs. Moore agreed to do was to pawn the CD player.¹ Bobby "would have to figure out a different way of getting the gun because she didn't

1. This action, of pawning the CD player with the foreknowledge of what the money would be used for, also demonstrates Mrs. Moore's consent. Indeed, as a minor, Bobby could not pawn the CD player himself. That is why he importuned his mother to pawn the CD player for him. In the eyes of the law, both the CD player and the money obtained from pawning it belonged to Mrs. Moore.

2. Moreover, as the panel opinion pointed out, Mrs. Moore's conviction for aiding and abetting could not be sustained, unless she acted "knowingly and intentionally," *i.e.*, that she consented

want her name on the papers." As her later actions demonstrate, this was not a prohibition from Bobby purchasing the gun, it was only Mrs. Moore's refusal to have "her name on the papers." For, as the majority's summary of the facts next states:

Mrs. Moore then pawned Bobby's CD player and gave him the cash she received from the transaction. She did so knowing that he intended to use it to purchase a firearm.

The next day, Bobby went looking for someone else to help him acquire the weapon, as suggested by his mother.

Op. at 1459 (emphasis added). As the majority further states, "Mrs. Moore then drove Wiley, Bobby, and Jason to the pawnshop." During that trip, she told Wiley that the purchase of the gun "was all right with her," "it was fine." Finally, Mrs. Moore told the pawn shop clerk, "everything is fine with me."²

Mrs. Moore consented to Wiley's purchase of the handgun for Bobby.³ Short of purchasing the weapon herself, there was little else that Mrs. Moore could have done to facilitate the transaction.

2. *The Parental Consent Exception*

The majority's second error is to ignore Mrs. Moore's consent and, thus, the central issue in this case—the scope of the parental consent exception. The majority ignores Mrs. Moore's consent to the sale because it does not want to deal with the consequences of recognizing it.

Even the Bureau of Alcohol, Tobacco and Firearms ("BATF") agrees that Congress in-

to the transaction. *Moore I*, 84 F.3d at 1573 n. 6.

3. The majority's summary of the facts also shows that Wiley, after purchasing the firearm, did not hand the gun to Bobby, but "gave the gun to Mrs. Moore...." *Op.* at 1460. Thus, not only did Mrs. Moore consent to the purchase of the firearm, according to the majority's summary of the facts (i) the firearm was purchased with her money, (ii) she authorized Wiley to conduct the transaction, (iii) after purchasing the firearm, Wiley handed it to Mrs. Moore, and (iv) it was Mrs. Moore who actually handed over physical possession of the firearm to her son.

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tended that guns purchased for juveniles by their parents be excepted from the Gun Control Act's ("GCA") prohibition, and has administered the GCA to recognize such an exception.⁴ However, the BATF would limit that exception to transactions in which the parent herself or himself is the purchaser—the "Transferee (Buyer)."

As the panel opinion makes clear, there is no justification in the legislative history to construe the parental consent exception as narrowly as does the BATF, particularly when construing a criminal statute. For the reasons stated in Parts III and IV of the panel opinion, *Moore I*, 84 F.3d at 1571-73, the majority errs in failing to recognize Congress' intent that under the GCA, a parent may validly consent to the purchase of a gun for her minor child without being the physical purchaser.

Congress simply did not intend to criminalize acquisition of firearms by minors where the parent knows of and consents to the purchase.

The report of the Senate Judiciary Committee on the GCA listed among the serious national problems addressed by the legislation the acquisition of firearms by "juveniles without the knowledge and consent of their parents or guardians . . ." S.Rep. No. 1097, 90th Cong., 2nd Sess. (1968), reprinted in 1968 U.S.C.C.A.N., 2112, 2114 (emphasis added). The report elaborated:

The *clandestine* acquisition of firearms by juveniles and minors is a most serious problem facing law enforcement and the citizens of this country. The controls proposed in the title are designed to meet this problem and to substantially curtail it.

Id. at 2167 (emphasis added).

The committee report made clear that Congress did not intend to frustrate all gun acquisitions by minors:

4. No party has cited and the court has not found any reported case in which a straw purchaser has been prosecuted for buying a firearm for a juvenile where the straw purchaser is a parent or other close relative of the juvenile.

[U]nder the title, a minor or juvenile would not be restricted from owning or learning the proper usage of the firearm, since any firearm which his parent or guardian desired him to have could be obtained for the minor or juvenile by the parent or guardian.⁵

Id.

There is no indication that Congress intended to limit the exception for the purchase of a firearm for a minor exclusively to purchases made by the parent himself or herself. What the legislative history indicates is that Congress considered parental permission sufficient to allow a third party to purchase the firearm on behalf of a minor. The Senate Judiciary Committee's report clearly indicates that Congress' purpose was only to prohibit those acquisitions of firearms by minors that are "clandestine" or made "without the knowledge and consent of their parents."

Moore I, 84 F.3d at 1571-72 (footnote omitted).

3. *The Jury's Finding*

The majority also errs in pretending that the pivotal issue was fairly presented to and decided by the jury. The majority sets up a straw man and knocks it down. Under the majority's hypothesis, the issue, which "was for the jury to decide," was whether Wiley was Mrs. Moore's agent or Bobby's agent. Part I.D., *Op.* at 1461. That, of course, is not the issue.

As the instructions quoted by the majority show, if Bobby was the "true" purchaser, defendants were guilty as straw purchasers:

The limited charges against the defendants in Count 1 and 2 are that James Robert Lee Moore was the true purchaser of the firearm and that the defendants served merely as straw men for the purchase of the firearm in the place of James Robert Lee Moore.

5. The transaction at issue here meets this description—the firearm was "obtained for the minor" by Mrs. Moore through the arrangements that were made with Wiley with her substantial assistance and consent.

Part I.B., *Op.* at 1460. This instruction completely foreclosed the jury from finding that defendants were not guilty under the parental consent exception, if the jury found that Mrs. Moore had consented to Bobby's purchase of the handgun. Thus, it is disingenuous to say that the issue was submitted to the jury for its determination.

4. No False Statement

According to the government's theory of the case, the only material false statement made was made by Wiley when he signed the BATF form stating that he was the "transferee (buyer)."⁶ This statement was false, according to the government, because Bobby was the "true" purchaser and Wiley was a "straw man." However, even under this theory, under the BATF's own interpretation of what its own forms and regulations require, Wiley was *required* to state that he was the "transferee (buyer)."

According to the testimony of BATF Special Agent Sterling Nixon, when a parent purchases a gun for her child, even with the child's own money, she is *required* to list her own name as the "transferee (buyer)."⁷ BATF Form 4473 simply is not designed to accommodate a straw purchase, whether or not it is lawful.⁸ There was no place on the form where Wiley could have disclosed that he intended immediately to transfer the gun to Mrs. Moore, for eventual transfer to Bobby. Wiley did not make a false statement. He was, in fact, the "transferee (buyer)" and listed himself as such. Because he fully com-

6. The majority never precisely identifies the material false statement charged in this case; however, the government made clear at oral argument that the *only* statement it was relying on as false *and material* was Wiley's identifying himself as the transferee (buyer). This is confirmed by the materiality instruction quoted by the majority. Part II, *Op.* at 1463-64.

Throughout its opinion, the majority implies that Wiley's statements that he was Bobby's grandfather, and that he would hold the firearm until Bobby was 21 were material. However, they clearly were not material to the lawfulness of the sale. First, no one contends that the GCA authorizes a grandparent to act as a straw purchaser for his minor grandchild (absent a parent's consent). Second, neither does anyone contend that a minor may purchase a handgun if he promises that an adult will retain possession of it until he turns 21.

plied with the requirements of the BATF form and the form nowhere required disclosure of the "straw" aspect of the transaction, Wiley did not make a false statement by listing himself as the "transferee (buyer)," unless that action were criminalized by the "straw man" doctrine, discussed below.

Further analysis of the BATF's design⁹ and administration of its Form 4473 demonstrates the "Catch 22" in which straw purchasers are placed. According to BATF Agent Nixon's testimony, straw purchasers are required to list themselves as the "transferee (buyer)," even though they are standing in for the "true" purchaser, *e.g.*, where a parent is purchasing a firearm for her child. Thus, in the BATF's view, straw purchasers are required to make a false statement. The BATF then, in its discretion, determines whether or not that false statement is material, *i.e.*, whether or not Congress intended that transaction to be exempted from the BATF's "true" purchaser requirement. Whatever the merits of such an administration of the GCA for regulatory purposes, it is hardly a fair way to administer the criminal law.

5. The Straw Man Doctrine

Although not directly acknowledging it, the majority seems to recognize that the "straw man" doctrine is a judicially-created gloss on the GCA—it imposes criminal liability where there is none under a plain, strict reading of

7. Agent Nixon further testified that this required listing of the parent's name as transferee (buyer) would be true even if the parent intended immediately to transfer the firearm to her child, and that it would not be a false statement.

8. As noted in the panel opinion, not all straw transactions are illegal. *Moore I*, 84 F.3d at 1570. The paradigmatic straw transaction is, of course, the legal stand-in of a parent for her or his minor child.

9. The contents of the form are controlled by the BATF. See 27 C.F.R. §§ 178.21 (authorizing Director of BATF to prescribe forms), 178.124(f) (prescribing contents of Form 4473). Presumably, therefore, the BATF could require straw purchases, including those for minors with parental consent, to be disclosed on the form. Apparently, it has elected not to do so.

BUDGET RENT-A-CAR, INC. v. HIGASHIGUCHI

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the statute. We agree that it is a proper and useful doctrine. See *Moore I*, 84 F.3d at 1571. Where the majority errs, however, is in the doctrine's application, in deferring to the BATF to dictate its scope in construing the parental consent exception, when the BATF's construction is clearly at odds with Congress' intent. See *Moore I*, 84 F.3d at 1572-73 (Part III).

The application of the straw man doctrine to this case is bizarre and perverse. Mrs. Moore has been convicted of having aided and abetted the acquisition of a firearm by her son. Under 18 U.S.C. § 2, she is liable "as a principal." But, as a principal, as even the government concedes, she had the right to purchase a firearm for her son. Thus, she stands convicted of having aided and abetted an offense for which she could not have been convicted of as a principal.

The majority concludes its defense of applying the straw man doctrine to this case by borrowing from the Sixth Circuit:

The result we reach here is necessary if the intentions of Congress as revealed in the Gun Control Act of 1968 are to be followed.

United States v. Lawrence, 680 F.2d 1126, 1128 (6th Cir.1982)(emphasis added). The majority, however, has pointed to no such intent. Application of the straw man doctrine here does not follow "the intentions of Congress." No reported case has ever applied the straw man doctrine to criminalize the sale of a gun to a minor with a parent's consent. As we have demonstrated, Congressional intent compels exactly the opposite conclusion. The majority's novel application of that doctrine to this case does violence to the intent of Congress.

This court should not default to the BATF, or any other Executive Branch agency, the power to construe our criminal laws in derogation of the intent of Congress. Congress did not intend to criminalize the sale of a firearm to a minor; where the sale is made with the consent of the minor's parent. If, as it should be, the underlying transaction is seen as one within the parental consent exception, then the sale was lawful and any false statement made to facilitate it could not have been of "any fact material to the lawful-

ness of the sale," within the meaning of 18 U.S.C. § 922(a)(6).

For these reasons, I would reverse the convictions. I respectfully dissent.



**BUDGET RENT-A-CAR, INC., Plaintiff-
Counter-Defendant-Appellant,**

v.

George HIGASHIGUCHI; Sharon Higashiguchi, Defendants-Counter-Claimants-Appellees,

v.

Alan STAUBER and Tammie Deponte, Defendants.

Nos. 94-15932, 94-16510.

United States Court of Appeals,
Ninth Circuit.

Argued and Submitted May 9, 1996.

Submission Deferred Jan. 21, 1997.

Resubmitted March 19, 1997.

Decided March 31, 1997.

Self-insured car lessor sought declaratory judgment that it had no duty defend or indemnify lessee and passenger against possible claims by assault victims. The United States District Court for the District of Hawaii, Samuel P. King, J., 849 F.Supp. 743, dismissed for lack of diversity jurisdiction. Lessor appealed. The Court of Appeals, Canby, Circuit Judge, held that potential tort liability of lessee and passenger satisfied amount in controversy necessary for diversity jurisdiction.

Reversed and remanded.

1. Federal Courts ⇨776

Dismissal for lack of subject matter jurisdiction is reviewed de novo.

From: Torres, John A.
Sent: ~~Employee 3~~ Tuesday, March 17, 2011 7:09:19 PM
To: McMahon, William G.
Subject:

2274

Sir - Answer to both questions after asking each group is negative.

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ATF8-001-001-00005401

ATF O 3310.4B
2/8/89
Includes chgs. 1-18

FIREARMS ENFORCEMENT PROGRAM

FOREWORD

To: All Law Enforcement Personnel

1. PURPOSE. This order provides guidelines for the implementation of the Bureau's Firearms Enforcement Program under the Gun Control Act of 1968 (GCA), as amended, and the National Firearms Act (NFA), as amended
2. CANCELLATION. ATF O 3310.4A, Firearms Enforcement Program, dated March 25, 1981; ATF O 7520.1, Procedures for Tracing Firearms, dated August 2, 1976; ATF O 3310.5B, Guidelines Regarding Federal Firearms Licensee Investigations and Investigations at Gun Shows and Flea Markets, dated July 18, 1985; ATF O 7500.1, Firearms Technology Branch Procedures, dated May 16, 1977; ATF O 7540.2, Classification of Belgian FN Light Automatic Carbine (CAL), Caliber 5.56mm (.223), dated June 24, 1982; and ATF O 7540.1A, Classification of Belgian FN Light Semiautomatic Rifle (FAL), Caliber 7.62mm, dated October 29, 1979, are canceled.

Stephen E. Higgins
Director

referral of information to the Chief, Firearms Enforcement Division who will subsequently disseminate this information to the Chief, Firearms and Explosives Regulatory Division.

146. PROJECT LEAD SECURITY. Project LEAD is the exclusive property of ATF. Distribution of Project E-LEAD software outside of ATF is strictly prohibited. All offices are re encouraged to work with and share information/investigative leads with other Federal, State, and local law enforcement agencies; however, Project LEAD software and data extract disks are the property of ATF and cannot be released outside the agency. When Project LEAD disks are not in use, the RAC/GS or Project LEAD coordinator shall ensure all disks are stored in a locked file. Computers with Project LEAD information shall not be left on while unattended for any period of time. Information concerning private individuals is contained in Project LEAD, and this information must be protected against unwarranted dissemination.
147. COORDINATION OF PROJECT LEAD INFORMATION WITH REGULATORY ENFORCEMENT. Project LEAD primarily focuses on recurring trends and patterns that may indicate illegal firearms trafficking activity by unlicensed individuals, however, should any CE operator of Project LEAD discover information concerning licensed firearms dealers that may have value to RE's inspection efforts, this information should be forwarded to the area RE FTC via ATF F 5000.21 as soon as possible. This information may be useful to RE when used in conjunction with more detailed FFL information available through a QMF run.
148. "WEAPONS TRANSFERS".
- a. Considerations. During the course of illegal firearms trafficking investigations, special agents may become aware of, observe, or encounter situations where an individual(s) will take delivery of firearms, or transfer firearm(s) to others. In these instances, the special agent may exercise the following options:
- (1) In cases where probable cause exists to believe a violation of law has occurred and the special agent determines there is a need to intervene in the weapons transfer (e.g., the recipient of the firearms is a known felon; it is known the firearms will be used in crime of violence), the special agent shall do so but should place concerns for public safety and the safety of the involved special agents as the primary determining factor in exercising this option.
 - (2) In other cases, immediate intervention may not be needed or desirable, and the special agent may choose to allow the transfer of firearms to take place in order to further an investigation and allow for the identification of additional coconspirators who would have continued to operate and

illegally traffic firearms in the future, potentially producing more armed crime.

- b. Alternative Intervention Methods. In the event it is determined by the special agent that a weapons transfer should not take place, the special agent may consider alternative methods of intervention other than arrest and/or search warrants that will prevent the culmination of the weapons transfer but allow the investigation to continue undetected. These alternative methods are considered to be a course of action that must be approved by the RAC/GS or SAC as previously noted. These alternative interventions may include, but are not limited to:
- (1) A traffic stop (supported by probable cause to search or supported by a traffic violation allowing for plain view observations) by a State or local marked law enforcement vehicle that would culminate in the discovery and retention of the firearms. This would prevent the weapons transfer from fully occurring and may in turn produce new investigative leads. Should the occupants of the vehicle be new/unknown participants in the organization under investigation, they may be fully identified which in turn will yield additional information for followup investigation. Should the occupants of the vehicle be known participants in the investigation, requesting telephone tolls for these individuals (or if a Penn Register/T-III interception order is in use) for the period shortly after the traffic stop may show calls and yield identifying information relating to the intended receivers of the firearms.
 - (2) If the firearms are being shipped out of the United States via a common carrier via checked luggage or freight, the firearms may be seized/or recovered by the special agents, in coordination with the U.S. Customs Service under border search authority, without detection by the traffickers. This would prevent the weapons transfer from fully occurring and may in turn produce new investigative leads. The investigation may then continue with the traffickers led to believe the shipment of firearms was stolen in transit. Requesting telephone tolls for these individuals (or if a Pen Register/T-III interception order is in use) for the period shortly after the recovery of the firearms may show calls and yield identifying information relating to the intended receivers of the firearms.
 - (3) If the firearms are being shipped via the U.S. mail, coordination with the U.S. postal inspectors will assist the special agents in recovery of the firearms without detection

by the traffickers. This would prevent the weapons transfer from fully occurring and may in turn produce new investigative leads. The investigation may then continue with the traffickers led to believe the shipment of firearms was stolen in transit. Requesting telephone tolls for these individuals (or if a Penn Register/T-III interception order is in use) for the period shortly after the recovery of the firearms may show calls and yield identifying information relating to the intended receivers of the firearms.

- (4) If the special agent chooses to arrest the individual(s) with the firearm(s), the possibility exists that a debriefing of this individual will yield other members of the organization, or the individual(s) will agree to participate in a controlled delivery of the firearm(s) to the original intended receivers.

149. FEDERAL FIREARMS LICENSEES (FFLS). This paragraph sets forth policy and procedures for obtaining licensee warrants and conducting criminal investigations of licensed persons, their agents or employees, and business entities engaged in the firearms business.

- a. In passing the GCA, as amended, Congress declared that the purpose of the act was to provide support to Federal, State, and local law enforcement officials in their fight against crime and violence while not placing undue Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms for lawful activity.
- b. Most persons licensed to engage in the firearms business are pursuing their interests for lawful purposes. It is the policy of ATF to initiate criminal investigations of licensees only when there is reason to believe that they are engaged in criminal activity such as dealing in stolen/contraband firearms or ammunition, knowingly supplying firearms to criminals, terrorists, gang offenders, or juveniles, or engaged in such willful and flagrant violations that it can be reasonably assumed that the firearms will find their way into the hands of criminals, terrorists, gang offenders, or juveniles.
 - (1) The GCA provides misdemeanor penalties for licensees who make false statements or representations with respect to information required in their records (18 U.S.C. § 922(m)). The successful use of misdemeanor charges enhances licensee denials or revocations. In cases of flagrant and willful violations of recordkeeping requirements that can be shown to pose a genuine threat to the public safety, the licensee should be recommended for felony prosecution under 18 U.S.C. § 922(b)(5) and/or 18 U.S.C. § 1001.

- (2) Where evidence supporting prosecution does not meet established prosecutorial thresholds or the violations are minor or technical in nature, the information shall be referred, through the SAC, to the appropriate RE DD for administrative action.
 - (3) Where CE is notified by RE that it has attempted to acquire the records of an FFL who has terminated his/her business, failed to renew his/her license, or failed to respond to official correspondence for license renewal, CE efforts should be made and coordinated with RE to obtain the FFL's records and forward them to the NTC Out-of-Business Records Center in Falling Waters, West Virginia.
- c. Most licensees cooperate with ATF in exercising lawful inspection access to their premises. When a licensee refuses voluntary inspection and requires a warrant, the special agent shall obtain one in conformance with this chapter. If, after the warrant is obtained, the licensee continues to refuse ATF access to records and inventory, the special agent shall advise the licensee of the following statutes:
- (1) 18 U.S.C. § 1509 Obstruction of court orders (misdemeanor).
 - (2) 18 U.S.C. § 111 Obstruction of a Federal agent (felony).
 - (3) 18 U.S.C. §§ 923(g)(1)(B) and 924(a)(1)(D) Obstructing the examination of inventory and records (felony).
- d. Where the licensee continues to refuse admittance to the business premises, the special agent is precluded from using force to gain entrance under an Inspection or Reasonable Cause Warrant. However, the special agent may summarily arrest the licensee or choose to initiate contempt proceedings and/or coordinate a licensee revocation with RE at a later date. The possibility of summary arrest must be discussed with the SAC prior to execution of an Inspection or Reasonable Cause Warrant.

150. WARRANTLESS INSPECTIONS.

- a. The GCA places certain restrictions on ATF's ability to inspect the inventory and records of a licensee, whether at the licensed premises or authorized gun shows. A warrant is required to conduct an inspection EXCEPT under the following conditions:
- (1) Inspection to Ensure Compliance With the Recordkeeping Requirement. This inspection may be conducted without prior notice, but ATF is limited to only ONE INSPECTION FOR ANY 12-MONTH PERIOD DURING BUSINESS HOURS.

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on 1/25/11

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

CR 11 - 126 PHX JAT (LOA)

United States of America,

Plaintiff,

v.

1. Jaime Avila, Jr.,
(Counts 1, 2, 7-9)
2. Hector Rolando Carlon,
(Counts 1, 2)
3. Julio Jose Carrillo,
(Counts 1, 2, 10, 42, 43,)
4. Alfredo Celis,
(Counts 1, 2, 11, 12, 42, 52)
5. Manuel Fabian Celis-Acosta ★
(Counts 1-42)
6. Jacob Wayne Chambers,
(Counts 1, 2, 13, 14)
7. Erick Avila Davila,
(Counts 1, 2, 15, 16)
8. Jonathan Earvin Fernandez,
(Counts 1, 2, 17, 18)
9. Dejan Hercegovac
(Counts 1, 2, 19)
10. Kristi Gail Ireland,
(Counts 1, 2, 42, 46)

INDICTMENT

VIO: 18 U.S.C. § 371
(Conspiracy)
Count 1

18 U.S.C. § 922(a)(1)(A)
(Dealing in Firearms Without a
License)
Count 2

21 U.S.C. § 846
(Conspiracy to Possess Controlled
Substance with Intent to
Distribute)
Count 3

21 U.S.C. §§ 841(a)(1) &
841(b)(1)(D)
(Possession with Intent to
Distribute Marijuana, a Controlled
Substance)
Count 4

21 U.S.C. §§ 841(a)(1) &
841(b)(1)(B)(vii)
(Possession with Intent to
Distribute Marijuana, a Controlled
Substance)
Count 5

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- 11. Juan Jose Martinez-Gonzalez,
(Counts 1, 2)
 - 12. Jacob Anthony Montelongo,
(Counts 1, 2, 20, 21, 42, 44)
 - 13. Joshua David Moore,
(Counts 1, 2, 22, 23, 42, 45)
 - 14. Danny Cruz Morones,
(Counts 1, 2, 24, 25)
 - 15. Uriel Patino,
(Counts 1-6, 26-35, 42, 46-48, 50, 53)
 - 16. Jose Angel Polanco
(Counts 1, 2, 41)
 - 17. Francisco Javier Ponce,
(Counts 1, 2, 33, 34,)
 - 18. John William Rowland,
(Counts 3&4)
 - 19. Sean Christopher Steward,
(Counts 1, 2, 36-40, 42, 49, 51)
 - 20. Kenneth James Thompson,
(Counts 1, 2)
- Defendants.

18 U.S.C. §924(o)
(Conspiracy to Possess a Firearm
in Furtherance of a Drug
Trafficking Offense)
Count 6

18 U.S.C. § 924(a)(1)(A)
(False Statements in Connection
With the Acquisition of Firearms)
Count 7 through 41

18 U.S.C. § 1956(h)
Conspiracy to Commit Money
Laundering
Count 42

18 U.S.C. § 1956(a)(1)(B)(i)
Money Laundering
Counts 43 through 53

18 U.S.C. § 2
(Aid and Abet)
Counts 2, 4, 5, 7-41, 43-53

18 U.S.C. §924(d)
21 U.S.C. §853
28 U.S.C. §2461
18 U.S.C. §982(a)(1)
(Forfeiture Allegations)

THE GRAND JURY CHARGES:

INTRODUCTION

1. Drug Trafficking Organizations rely upon the use of firearms to protect their supply of drugs, supply routes, profits, and distribution territory from both law enforcement agents and threats from competing Drug Trafficking Organizations.
2. Drug Trafficking Organizations operating in Mexico represent a ready market for firearms from the United States. These Drug Trafficking Organizations prefer certain makes, models, and caliber of firearms. These "weapons of choice" are generally semi-automatic versions of military type rifles and pistols. These include the AR-15/M-16 type rifles, AK-47

1 type rifles, AK-47 type pistols (resembling AK-47 type rifles with shorter barrels and without
2 a rear stock), 9mm pistols, 5.7mm pistols, Colt .38 Super Automatic ("38 Super") caliber
3 pistols, as well as heavy .50 caliber belt-fed rifles, and .50 caliber sniper rifles.

4 3. These firearms are not available in Mexico through regular commercial retail
5 channels, but are available in the United States through licensed retail gun shops. Firearms dealt
6 illegally by firearms traffickers are commonly purchased from licensed retail gun shops.

7 4. When a firearm purchaser buys a firearm from a Federal Firearms Licensee (FFL), a
8 business licensed under Chapter 44 of Title 18, United States Code to engage in the business of
9 dealing in firearms, that buyer must fill out Bureau of Alcohol, Tobacco, Firearms, and
10 Explosives (ATF) Form 4473, Firearms Transaction Record, listing the buyer's true name,
11 current residential address, and other identifying information. The information on the Form
12 4473 makes it possible to trace a firearm back to its retail purchaser. Federal Firearms Licensees
13 are required by Chapter 44 of Title 18, United State Code, to maintain these forms in their
14 records.

15 5. In addition, Form 4473 asks the purchaser: "Are you the actual transferee/buyer of the
16 firearm(s) listed on this form? Warning: You are not the actual buyer if you are acquiring the
17 firearm(s) on behalf of another person. If you are not the actual buyer, the dealer cannot transfer
18 the firearm(s) to you. . ."

19 6. Firearms traffickers often employ a number of "straw purchasers" to buy firearms
20 from licensed gun dealers. These "straw purchasers" falsely claim on the 4473 that they are
21 buying the firearm(s) for themselves, when in fact they are purchasing on behalf of another.

22 7. Firearms traffickers commonly acquire firearms through "straw purchasers" to avoid
23 firearms being traceable back to the firearms trafficker himself. Firearms purchased in
24 furtherance of a firearms trafficking conspiracy are usually purchased in cash to further conceal
25 the true buyer and source of funds.

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1 8. Firearms traffickers commonly employ multiple straw purchasers to supply them with
2 their firearms, ensuring that they have more than one source of firearms for distribution to the
3 buyers

4 9. Only licensed firearms importers, manufacturers, or dealers may engage in the
5 business of dealing in firearms or in the course of such business may ship or transport firearms
6 in interstate or foreign commerce.

7 10. At all times relevant to this indictment, JAIME AVILA, JR., JULIO CARRILLO,
8 HECTOR ROLANDO CARLON, ALFREDO CELIS, MANUEL FABIAN CELIS-ACOSTA, JACOB
9 WAYNE CHAMBERS, ERICK AVILA DAVILA, JONATHAN EARVIN FERNANDEZ, DEJAN
10 HERCEGOVAC, KRISTI GAIL IRELAND, JUAN JOSE MARTINEZ-GONZALEZ, JACOB
11 ANTHONY MONTELONGO, JOSHUA DAVID MOORE, DANNY CRUZ MORONES, URIEL
12 PATINO, JOSE ANGEL POLANCO, FRANCISCO JAVIER PONCE, JOHN WILLIAM ROWLAND,
13 SEAN CHRISTOPHER STEWARD, and KENNETH JAMES THOMPSON are not and have never
14 been licensed under the provisions of Chapter 44 of Title 18 as firearms importers,
15 manufacturers, and dealers.

16 11. At all times relevant to this indictment, American Gunshop, Inc.; Bear Arms; Gunner,
17 Lone Wolf Trading Company; J&G Sales; Olsen Firearms, LLC; and Scottsdale Gun Club were
18 and are each a Federal Firearms Licensee (FFL), a business licensed under the provisions of
19 Chapter 44 of Title 18, United States Code to deal in firearms.

20 COUNT 1

21 CONSPIRACY

22 (18 U.S.C. §371)

23 12. Beginning on or about September of 2009, and continuing through on or about December,
24 2010, in the District of Arizona and elsewhere, defendants JAIME AVILA, JR., JULIO CARRILLO,
25 HECTOR CARLON, ALFREDO CELIS, MANUEL FABIAN CELIS-ACOSTA, JACOB WAYNE
26 CHAMBERS, ERICK AVILA DAVILA, JONATHAN EARVIN FERNANDEZ, DEJAN
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1 HERCEGOVAC, KRISTI GAIL IRELAND, JUAN MARTINEZ-GONZALEZ, JACOB
2 MONTELONGO, JOSHUA DAVID MOORE, DANNY MORONES, URIEL PATINO, JOSE ANGEL
3 POLANCO, FRANCISCO JAVIER PONCE, SEAN CHRISTOPHER STEWARD, and KENNETH
4 THOMPSON, did willfully, knowingly and unlawfully combine, conspire, confederate and agree
5 together and with each other and with others known and unknown to the grand jury, to commit
6 the following offenses against the United States:

- 7 (1) Title 18, United States Code, Section 922(a)(1)(A) (Dealing in Firearms Without a
8 License);
9 (2) Title 18, United States Code, Section 924(a)(1)(A) (Making False Statements in
10 Connection with the Acquisition of a Firearm)
11 (3) Title 18, United States Code, Section 554 (Smuggling Goods from the United States);
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13 **MEANS AND METHODS OF THE CONSPIRACY**

14 13. The means and methods employed by defendants to effect the object of the conspiracy
15 were as follows:

16 14. Between September of 2009 and December of 2010, defendants willfully engaged in
17 the business of dealing in firearms even though none of the defendants were a licensed firearms
18 importer, manufacturer, and dealer, under the provisions of Title 18, United States Code,
19 Section 923, and in the course of such business did ship and transport firearms in interstate and
20 foreign commerce.

21 15. Between September of 2009 and through December of 2010, defendants fraudulently
22 and knowingly exported and sent firearms from the United States to Mexico contrary to the laws
23 and regulations of the United States.

24 16. Between September of 2009 and through December of 2010, defendants fraudulently
25 and knowingly received, concealed, bought, sold, and facilitated the transportation, concealment,
26 and sale of firearms prior to exportation, knowing the firearms were intended for exportation
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1 contrary to the laws and regulations of the United States.

2 17. As part of the conspiracy the defendants acquired the firearms by purchasing them i
3 the District of Arizona from Federal Firearms Licensees (FFLs), licensed under the provisions
4 of Chapter 44 of Title 18, and operating as licensed gun shops.

5 18. As part of the conspiracy, and in the course of purchasing firearms in the District of
6 Arizona, defendants knowingly made false statements and representations with respect to
7 information required by the provisions of Chapter 44 of Title 18, United States Code, to be kept
8 in the records of a business licensed under the provisions of Chapter 44 of Title 18, United States
9 Code, in that defendants executed ATF Forms 4473, Firearms Transaction Records, representing
10 that the defendant executing each form was the actual purchaser of the firearm(s) when in fact
11 they were buying the firearm(s) for others.

12 19. As part of the conspiracy, defendants purchased the firearms with money derived from
13 the illegal distribution of controlled substances.

14 20. As part of the conspiracy, after firearms were purchased from FFLs, they were
15 transferred to other members of the conspiracy both known and unknown to the grand jury
16 be stored, sold, transported.

17 21. As part of the conspiracy, defendants acquired and dealt in the types of firearms for
18 which there was a ready market among the drug trafficking organizations in Mexico and the
19 United States.

20 22. As part of the conspiracy, the firearms were sold and transferred to others known and
21 unknown to the grand jury who were engaged in drug trafficking and possessed in furtherance
22 of drug trafficking.

23 23. As part of the conspiracy, members of the conspiracy both known and unknown to the
24 grand jury shipped, transported, and exported firearms from the United States to Mexico.
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OVERT ACTS

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2 24. As part, and in furtherance of the conspiracy, overt acts were committed in the District
3 of Arizona including, but not limited to, the following:

4 25. On or about January 16, 2010, JAIME AVILA, Jr. purchased three AK-47 type
5 firearms from FFL Lone Wolf Trading Company, Glendale, Arizona, and during the course of
6 such purchase falsely represented on ATF Form 4473 that he was the actual purchaser of the
7 firearms.

8 26. On or about April 24, 2010, JAIME AVILA Jr. purchased two Draco AK-47 type
9 pistols from FFL Gunnet, Peoria, Arizona, and during the course of such purchase falsely
10 represented on ATF Form 4473 that he was the actual purchaser of the firearms.

11 27. On or about June 15, 2010, JAIME AVILA Jr. purchased one Barrett .50 caliber rifle
12 from FFL Scottsdale Gun Club, Scottsdale, Arizona, and during the course of such purchase
13 falsely represented on ATF Form 4473 that he was the actual purchaser of the firearm.

14 28. On or about November 19, 2009, prior to being pulled over by police, HECTOR
15 ROLANDO CARLON attempted to dispose of an FN Herstal 5.7mm pistol purchased on
16 November 17, 2009, by JOSE ANGEL POLANCO.

17 29. On or about June 15, 2010, HECTOR ROLANDO CARLON sent a .50 caliber belt-fed
18 rifle to manufacturer TNW for repair, which rifle had been purchased on June 7, 2010, by
19 another. On or about August 3, 2010, HECTOR ROLANDO CARLON attempted to re-acquire
20 this .50 caliber rifle in furtherance of the conspiracy.

21 30. On or about March 23, 2010, JULIO CARRILLO purchased 10 AK-47 type rifles from
22 FFL Lone Wolf Trading Company, Glendale, Arizona, and during the course of such purchase
23 falsely represented on ATF Form 4473 that he was the actual purchaser of the firearms.

24 31. On or about November 12, 2009, ALFREDO CELIS purchased ten AK-47 type rifles
25 from FFL Lone Wolf Trading Company, Glendale, Arizona, and during the course of such
26 purchase falsely represented on ATF Form 4473 that he was the actual purchaser of the firearms.

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1 Within a month of their purchase four of these firearms were found in Mexico.

2 32. On or about January 20, 2010, ALFREDO CELIS purchased ten AK-47 type rifle
3 from FFL Lone Wolf Trading Company, Glendale, Arizona, and during the course of such
4 purchase falsely represented on ATF Form 4473 that he was the actual purchaser of the firearms.

5 33. On or about June 24, 2010, through on or about June 29, 2010, ALFREDO CELIS
6 purchased 30 AK-47 type rifles from FFL Lone Wolf Trading Company, Glendale, Arizona, and
7 during the course of such purchase falsely represented on ATF Form 4473 that he was the actual
8 purchaser of the firearms.

9 34. On or about June 30, 2010, ALFREDO CELIS purchased 20 AK-47 type rifles from
10 FFL Lone Wolf Trading Company, Glendale, Arizona, and during the course of such purchase
11 falsely represented on ATF Form 4473 that he was the actual purchaser of the firearms.

12 35. On or about July 2, 2010, in a telephone conversation with ALFREDO CELIS,
13 MANUEL FABIAN CELIS-ACOSTA directed ALFREDO CELIS to take steps to recover
14 twenty AK-47 type rifles taken by police on or about June 30, 2010.

15 36. On December 8, 2009, a male caller using a telephone number utilized by MANUEL
16 FABIAN CELIS-ACOSTA called FFL Lone Wolf Trading Company, Glendale, Arizona, to
17 inquire as to the number of AK-47 type rifles in stock. Forty-five minutes after this call, on the
18 morning of December 8, 2009, SEAN CHRISTOPHER STEWARD arrived at Lone Wolf and
19 purchased twenty AK-47 type rifles which he transported to an auto auction business in Phoenix,
20 Arizona, and loaded into another vehicle or vehicles.

21 37. On the evening of December 8, 2009, SEAN CHRISTOPHER STEWARD returned
22 to Lone Wolf Trading Company and purchased an additional twenty AK-47 type rifles. SEAN
23 CHRISTOPHER STEWARD loaded the rifles into a white Nissan Titan in which MANUEL
24 FABIAN CELIS-ACOSTA was a passenger. This vehicle was driven to CELIS ACOSTA's
25 residence where the rifles were unloaded.

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1 38. On or about December 11, 2009, MANUEL FABIAN CELIS-ACOSTA made several
2 telephone calls to direct JACOB WAYNE CHAMBERS' delivery of ten AK-47 type rifles,
3 purchased by CHAMBERS, to another.

4 39. On or about May 20, 2010, MANUEL FABIAN CELIS-ACOSTA directed URIEL
5 PATINO to purchase three FN Herstal 5.7mm pistols for another person and made arrangements
6 to meet with URIEL PATINO to give him money to pay for the purchase.

7 40. On or about May 20, 2010, URIEL PATINO purchased three FN Herstal 5.7mm pistols
8 from FFL Lone Wolf Trading Company.

9 41. On or about July 19, 2010, CELIS ACOSTA loaded approximately 48 pounds of
10 marijuana into a car driven by JOHN WILLIAM ROWLAND.

11 42. On or about October 13, 2009, JACOB WAYNE CHAMBERS purchased three AK-47
12 type rifles from FFL Lone Wolf Trading Company, Glendale, Arizona, and during the course of
13 such purchase falsely represented on ATF Form 4473 that he was the actual purchaser of the
14 firearms.

15 43. On or about October 26, 2009, JACOB WAYNE CHAMBERS purchased three AK-47
16 type firearms from FFL Lone Wolf Trading Company, Glendale, Arizona, and during the course
17 of such purchase falsely represented on ATF Form 4473 that he was the actual purchaser of the
18 firearms.

19 44. On or about December 11, 2009, JACOB WAYNE CHAMBERS purchased ten AK-47
20 type rifles at FFL Lone Wolf Trading Company, Glendale, Arizona, on behalf of MANUEL
21 FABIAN CELIS-ACOSTA, and during the course of such purchase falsely represented on ATF
22 Form 4473 that he was the actual purchaser of the firearms.

23 45. On or about December 11, 2009, MANUEL FABIAN CELIS-ACOSTA made several
24 phone calls to direct JACOB WAYNE CHAMBERS delivery of AK-47 type rifles to another
25 member of the conspiracy.

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1 46. On or about December 11, 2009, at the direction of MANUEL FABIAN CELIS-
2 ACOSTA, JACOB WAYNE CHAMBERS delivered the AK-47 type rifles to another.

3 47. On or about June 12, 2010, ERICK AVILA DAVILA purchased five Ruger 9mm
4 pistols from Lone Wolf Trading Company, and during the course of such purchase falsely
5 represented on ATF Form 4473 that he was the actual purchaser of the firearms.

6 48. On or about July 7, 2010, ERICK AVILA DAVILA purchased one Barrett .50 caliber
7 rifle from FFL Olsen Firearms, LLC, Scottsdale, Arizona, and during the course of such purchase
8 falsely represented on ATF Form 4473 that he was the actual purchaser of the firearms.

9 49. On July 13, 2010, ERICK AVILA DAVILA purchased one TNW .50 caliber belt-fed
10 rifle from manufacturer TNW Firearms, Inc., through Scottsdale Gun Club, Scottsdale, Arizona,
11 and during the course of such purchase falsely represented on ATF Form 4473 that he was the
12 actual purchaser of the firearm.

13 50. On or about August 10, 2010, JONATHAN EARVIN FERNANDEZ purchased ten
14 AK-47 type rifles from Lone Wolf Trading Company, and during the course of such purchase
15 falsely represented on ATF Form 4473 that he was the actual purchaser of the firearms.

16 51. On or about August 19, 2010, JONATHAN EARVIN FERNANDEZ purchased nine
17 AK-47 type rifles from Lone Wolf Trading Company, and during the course of such purchase
18 falsely represented on ATF Form 4473 that he was the actual purchaser of the firearms. After
19 purchasing the firearms, FERNANDEZ and DANNY CRUZ MORONES, riding with
20 FERNANDEZ, attempted to evade agents and officers conducting surveillance.

21 52. On or about November 25, 2009, DEJAN HERCEGOVAC acquired twenty-six AK-47
22 type rifles in a series of transactions from FFL Lone Wolf Trading Company, Glendale, Arizona,
23 and during the course of such transactions falsely represented on ATF Form 4473 that he was the
24 actual purchaser of the firearms. In the course of these transactions DEJAN HERCEGOVAC
25 returned several of these rifles in exchange for others with a different type of folding stock. In

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1 the course of these transactions, DEJAN HERCEGOVAC returned for exchange an AK-47 type
2 rifle purchased the day before, on November 24, 2009, by URIEL PATINO.

3 53. On November 25, 2009, DEJAN HERCEGOVAC delivered rifles he had purchased
4 to the residence of MANUEL FABIAN CELIS-ACOSTA and to the auto shop at 3501 West
5 Lincoln Avenue, Phoenix, Arizona.

6 54. On or about April 14, 2010, KRISTI GAIL IRELAND paid approximately \$18,000 in
7 United States Currency to Lone Wolf Trading Company as a down payment for the purchase of
8 three Barrett .50 rifles. URIEL PATINO retrieved the money for the down payment out of
9 KRISTI GAIL IRELAND's purse to pay for the rifles.

10 55. On or before November 24, 2009, JUAN JOSE MARTINEZ-GONZALEZ and URIEL
11 PATINO introduced JAIME AVILA Jr. into the conspiracy to purchase firearms.

12 56. On or about November 24, 2009, PATINO accompanied JAIME AVILA Jr. into Lone
13 Wolf Trading Company while AVILA Jr. purchased firearms for the conspiracy.

14 57. On or about July 13, 2010, JUAN JOSE MARTINEZ-GONZALEZ possessed sixty-
15 two firearms purchased by ERICK AVILA DAVILA, and others at the auto body shop at 3501
16 W. Lincoln, Phoenix, Arizona.

17 58. On or about March 23, 2010, JACOB ANTHONY MONTELONGO purchased ten
18 AK-47 type rifles from FFL Lone Wolf Trading Company, Glendale, Arizona, and during the
19 course of such purchase falsely represented on ATF Form 4473 that he was the actual purchaser
20 of the firearms.

21 59. On June 11, 2010, JACOB ANTHONY MONTELONGO purchased one Ruger 9mm
22 pistol and one Taurus 9mm pistol at FFL Lone Wolf Trading Company, Glendale, Arizona, and
23 during the course of such purchase falsely represented on ATF Form 4473 that he was the actual
24 purchaser of the firearms.

25 60. On October 31, 2009, JOSHUA DAVID MOORE purchased six AK-47 type rifles
26 from FFL J&G Sales, Prescott, Arizona, and during the course of such purchase falsely
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1 represented on ATF Form 4473 that he was the actual purchaser of the firearms.

2 61. On November 3, 2009, MOORE purchased two AK-47 type rifles from Lone Wolf
3 Trading Company, and during the course of such purchase falsely represented on ATF Form 4473
4 that he was the actual purchaser of the firearms.

5 62. On or about November 10, 2009, JOSHUA DAVID MOORE purchased ten AK-47
6 type rifles from FFL Lone Wolf Trading Company, Glendale, Arizona, and during the course of
7 such purchase falsely represented on ATF Form 4473 that he was the actual purchaser of the
8 firearms.

9 63. On or about November 12, 2009, JOSHUA DAVID MOORE purchased five AK-47
10 type rifles from FFL Lone Wolf Trading Company, Glendale, Arizona, and during the course of
11 such purchase falsely represented on ATF Form 4473 that he was the actual purchaser of the
12 firearms.

13 64. On or about December 10, 2009, MOORE purchased 20 AK-47 type rifles at Lone
14 Wolf Trading Company, and during the course of such purchase falsely represented on ATF
15 Form 4473 that he was the actual purchaser of the firearms.

16 65. On or about March 23, 2010, JOSHUA DAVID MOORE purchased ten AK-47 type
17 rifles from Lone Wolf Trading Company, and during the course of such purchase falsely
18 represented on ATF Form 4473 that he was the actual purchaser of the firearms.

19 66. On or about June 30, 2010, DANNY CRUZ MORONES drove ALFREDO CELIS to
20 FFL Lone Wolf Trading Company, Glendale, Arizona, where ALFREDO CELIS purchased
21 twenty AK-47 type rifles.

22 67. On or about July 2, 2010, in a telephone conversation with ALFREDO CELIS,
23 MANUEL FABIAN CELIS-ACOSTA directed ALFREDO CELIS to take steps to recover
24 twenty AK-47 type rifles seized by police on or about June 30, 2010.

25 68. On or about July 29, 2010, DANNY CRUZ MORONES purchased ten AK-47 type
26 rifles from FFL Lone Wolf Trading Company, Glendale, Arizona. On or about July 30, 2010.

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1 DANNY CRUZ MORONES purchased seven AK-47 type rifles from Lone Wolf Trading
2 Company. During the course of such purchases falsely represented on ATF Form 4473 that he
3 was the actual purchaser of the firearms.

4 69. On or about August 4, 2010, DANNY CRUZ MORONES purchased ten AK-47 type
5 rifles from FFL Lone Wolf Trading Company, Glendale, Arizona, and during the course of such
6 purchase falsely represented on ATF Form 4473 that he was the actual purchaser of the firearms.

7 70. On or about November 2, 2009, URIEL PATINO purchased four FN Herstal 5.7mm
8 pistols from FFL Scottsdale Gun Club, Scottsdale, Arizona. On or about November 23, 2009,
9 URIEL PATINO purchased one FN Herstal 5.7mm pistols from FFL Gunnet, Peoria, Arizona.
10 On or about November 27, 2009, URIEL PATINO purchased one Magnum Research Desert
11 Eagle pistol and six FN Herstal 5.7mm pistols from FFL Lone Wolf Trading Company, Glendale,
12 Arizona. On or about November 28, 2009, URIEL PATINO purchased one Magnum Research
13 Desert Eagle pistol from FFL Scottsdale Gun Club, Scottsdale, Arizona. During the course of
14 such purchases PATINO falsely represented on ATF Form 4473 that he was the actual purchaser
15 of the firearms.

16 71. On or about November 24, 2009, URIEL PATINO purchased five AK-47 type rifles
17 from FFL Lone Wolf Trading Company, Glendale, Arizona, and during the course of such
18 purchase falsely represented on ATF Form 4473 that he was the actual purchaser of the firearms.

19 72. On or about December 11, 2009, URIEL PATINO purchased twenty AK-47 type rifles
20 at FFL Lone Wolf Trading Company, Glendale, Arizona, and during the course of such purchase
21 falsely represented on ATF Form 4473 that he was the actual purchaser of the firearms.

22 73. On or about January 15, 2010, URIEL PATINO purchased 10 AK-47 type rifles from
23 FFL Lone Wolf Trading Company, Glendale, Arizona. On or about February 8, URIEL PATINO
24 purchased five Draco AK-47 type pistols and five AK-47 type rifles from Lone Wolf Trading
25 Company. On or about February 11, 2010, URIEL PATINO purchased three AK-47 type rifles
26 and two Draco AK-47 type pistols from Lone Wolf Trading Company. On or about February 12,

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1 2010, URIEL PATINO purchased two Draco AK-47 type pistols from Lone Wolf Trading
2 Company. On or about February 13, 2010, URIEL PATINO purchases eight AK-47 type rifle
3 and two Draco AK-47 type pistols from Lone Wolf Trading Company. During the course of
4 these purchases PATINO falsely represented on ATF Form 4473 that he was the actual purchaser
5 of the firearms.

6 74. On February 20, 2010, an Isuzu Rodeo was seen on the Tohono O'odham Nation in
7 Arizona driving toward the border between the United States and Mexico. The driver abandoned
8 the vehicle but was later found by law enforcement agents. The Isuzu was loaded with forty-one
9 firearms wrapped in plastic. Thirty-seven of these firearms were AK-47 type rifles and pistols
10 purchased by URIEL PATINO between January 15, 2010, and February 13, 2010.

11 75. On or about January 30, 2010, URIEL PATINO purchased 15 AK-47 type rifles from
12 FFL Lone Wolf Trading Company, Glendale, Arizona, and during the course of such purchase
13 falsely represented on ATF Form 4473 that he was the actual purchaser of the firearms.

14 76. On or about March 15, 2010, URIEL PATINO purchased forty AK-47 type rifles from
15 FFL Lone Wolf Trading Company, Glendale, Arizona, and during the course of such purchase
16 falsely represented on ATF Form 4473 that he was the actual purchaser of the firearms.

17 77. On or about March 25, 2010, URIEL PATINO purchased twenty-six AK-47 type
18 rifles and one Colt .38 Super pistol from FFL Lone Wolf Trading Company, Glendale, Arizona,
19 and during the course of such purchase falsely represented on ATF Form 4473 that he was the
20 actual purchaser of the firearms.

21 78. On or about March 26, 2010, URIEL PATINO purchased six AK-47 type rifles and one
22 Colt .38 Super pistol from FFL Lone Wolf Trading Company, Glendale, Arizona, and during the
23 course of such purchase falsely represented on ATF Form 4473 that he was the actual purchaser
24 of the firearms.

25 79. On or about April 16, 2010, URIEL PATINO received three Barrett .50 caliber rifles
26 from FFL Lone Wolf Trading Company, Glendale, Arizona, that he and KRISTI GAIL
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1 IRELAND had previously paid for on April 14, and 15, 2010. During the course of this
2 transaction, PATINO falsely represented on ATF Form 4473 that he was the actual purchaser of
3 the firearms.

4 80. On or about April 27, 2010, URIEL PATINO purchased ten FN Herstal 5.7mm pistols
5 from FFL Lone Wolf Trading Company, Glendale, Arizona, and during the course of such
6 purchase falsely represented on ATF Form 4473 that he was the actual purchaser of the firearms.

7 81. On or about May 28, 2010, URIEL PATINO received a .308 caliber rifle from FFL
8 Gunnet, Peoria, Arizona, at MANUEL FABIAN CELIS-ACOSTA's instruction, and during the
9 course of such transfer falsely represented on ATF Form 4473 that he was the actual purchaser
10 of the firearms. After receiving the rifle, URIEL PATINO spoke with MANUEL FABIAN
11 CELIS-ACOSTA by phone and MANUEL FABIAN CELIS-ACOSTA instructs URIEL
12 PATINO to deliver the rifle to MANUEL FABIAN CELIS-ACOSTA's residence.

13 82. On or about June 2, 2010, URIEL PATINO purchased ten AK-47 type rifles and one
14 Bushmaster AR-15 type rifle from FFL Lone Wolf Trading Company, Glendale, Arizona, and
15 during the course of such purchase falsely represented on ATF Form 4473 that he was the actual
16 purchaser of the firearms. On June 4, 2010, the Bushmaster rifle was found in the possession of
17 another.

18 83. On or about June 18, 2010, URIEL PATINO purchased nine FN Herstal 5.7mm pistols
19 from FFL Lone Wolf Trading Company, Glendale, Arizona, and during the course of such
20 purchase falsely represented on ATF Form 4473 that he was the actual purchaser of the firearms.

21 84. On or about June 21, 2010, URIEL PATINO purchased one Draco AK-47 type pistol
22 from FFL Bear Arms, Scottsdale, Arizona, and during the course of such purchase falsely
23 represented on ATF Form 4473 that he was the actual purchaser of the firearms.

24 85. On or about June 22, 2010, URIEL PATINO purchased one Draco AK-47 type pistol
25 from FFL Bear Arms, Scottsdale, Arizona, and during the course of such purchase falsely
26 represented on ATF Form 4473 that he was the actual purchaser of the firearms.

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1 86. On or about July 8, 2010, URIEL PATINO purchased sixteen AK-47 type rifles from
2 FFL Lone Wolf Trading Company, Glendale, Arizona, and during the course of such purchas
3 falsely represented on ATF Form 4473 that he was the actual purchaser of the firearms.

4 87. On or about August 5, 2010, URIEL PATINO purchased twelve AK-47 type rifles
5 from FFL Lone Wolf Trading Company, Glendale, Arizona, and during the course of such
6 purchase falsely represented on ATF Form 4473 that he was the actual purchaser of the firearms.
7 Three days later on August 8, 2010, federal agents found all twelve of these rifles concealed in
8 a stove and a television in an attempt to smuggle them into Mexico from the United States
9 through the Lukeville, Arizona, Port of Entry.

10 88. On November 17, 2009, JOSE ANGEL POLANCO purchased one 5.7mm pistol, one
11 5.7 mm rifle, and one AK-47 type rifle from Lone Wolf Trading Company, and during the course
12 of such purchase falsely represented on ATF Form 4473 that he was the actual purchaser of the
13 firearms.

14 89. Between November 16, 2009 and November 20, 2009, JOSE ANGEL POLANCO
15 attempted to purchase firearms at the American Gunshop, Inc., in Prescott, Arizona. POLANCO
16 placed a special order for ten AK-47 type rifles from the FFL.

17 90. On or about April 30, 2010, FRANCISCO JAVIER PONCE purchased one TNW .50
18 caliber rifle from FFL Gunnet, Peoria, Arizona, and during the course of such purchase falsely
19 represented on ATF Form 4473 that he was the actual purchaser of the firearms.

20 91. On or about July 6, 2010, MANUEL FABIAN CELIS-ACOSTA arranged the purchase
21 of firearms by URIEL PATINO for FRANCISCO JAVIER PONCE.

22 92. On or about July 6, 2010, URIEL PATINO purchased ten AK-47 type pistols from FFL
23 Lone Wolf Trading Company, Glendale, Arizona, and during the course of such purchase falsely
24 represented on ATF Form 4473 that he was the actual purchaser of the firearms. After the
25 purchase, MANUEL FABIAN CELIS-ACOSTA provided FRANCISCO JAVIER PONCE with
26 URIEL PATINO's number to facilitate the delivery of the firearms, after which FRANCISCO

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1 JAVIER PONCE and URIEL PATINO meet.

2 93. On or about July 8, 2010, MANUEL FABIAN CELIS-ACOSTA and FRANCISCO
3 JAVIER PONCE spoke on the telephone and MANUEL FABIAN CELIS-ACOSTA arranged
4 an additional straw purchase for FRANCISCO JAVIER PONCE by URIEL PATINO.

5 94. On July 8, 2010, after URIEL PATINO's purchase of sixteen AK-47 type firearms
6 from Lone Wolf Trading Company, FRANCISCO JAVIER PONCE and another met with
7 URIEL PATINO and transferred firearms from URIEL PATINO's vehicle to the vehicle in which
8 FRANCISCO JAVIER PONCE was riding.

9 95. On July 19, 2010, JOHN WILLIAM ROWLAND spoke with CELIS ACOSTA about
10 coming to CELIS ACOSTA's residence to pick something up.

11 96. On July 19, 2010, JOHN WILLIAM ROWLAND followed CELIS ACOSTA from a
12 carwash to CELIS ACOSTA's residence and picked up a load of approximately forty-eight
13 pounds of marijuana.

14 97. On July 19, 2010, after picking up the marijuana, as JOHN WILLIAM ROWLAND
15 was being pulled over by police officers he phoned CELIS ACOSTA to let him know that he was
16 being pulled over.

17 98. On December 7, 2009, SEAN CHRISTOPHER STEWARD purchased ten Draco AK-
18 47 type pistols from J&G Sales in Prescott, Arizona, and during the course of such purchase
19 falsely represented on ATF Form 4473 that he was the actual purchaser of the firearms.

20 99. On December 8, 2009, SEAN CHRISTOPHER STEWARD purchased forty AK-47
21 type rifle from FFL Lone Wolf Trading Company, Glendale, Arizona, and during the course of
22 such purchases falsely represented on ATF Form 4473 that he was the actual purchaser of the
23 firearms. On December 9, 2009, nine of the AK-47 type rifles were found by Douglas, Arizona,
24 police officers in the course of a vehicle stop, concealed in the bumper of a car.

25 100. On December 14, 2009, SEAN CHRISTOPHER STEWARD purchased seven Draco
26 AK-47 type pistols and thirty-six AK-47 type rifles, and during the course of such purchase

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1 falsely represented on ATF Form 4473 that he was the actual purchaser of the firearms.

2 101. On December 24, 2009, SEAN CHRISTOPHER STEWARD purchased 40 AK-47 type
3 rifles from Lone Wolf Trading Company, and during the course of such purchase falsely
4 represented on ATF Form 4473 that he was the actual purchaser of the firearms.

5 102. On January 7, 2010, SEAN CHRISTOPHER STEWARD purchased nineteen AK-47
6 type rifles from Lone Wolf Trading Company, and during the course of such purchase falsely
7 represented on ATF Form 4473 that he was the actual purchaser of the firearms.

8 103. On June 2, 2010, SEAN CHRISTOPHER STEWARD purchased ten AK-47 type rifles
9 and twenty-one pistols of various calibers, including a Taurus .45 caliber pistol, from Lone Wolf
10 Trading Company, and during the course of such purchase falsely represented on ATF Form 4473
11 that he was the actual purchaser of the firearms.

12 104. On June 23, 2010, STEWARD purchased ten AK-47 type rifles from Lone Wolf
13 Trading Company, and during the course of such purchase falsely represented on ATF Form 4473
14 that he was the actual purchaser of the firearms.

15 105. On July 12, 2010, KENNETH JAMES THOMPSON helped transfer twenty AK-47
16 type rifles purchased by another into KENNETH JAMES THOMPSON's vehicle.

17 COUNT 2

18 Dealing in Firearms without a License

19 106. Beginning on or about September, 2009, and continuing through on or about
20 December, 2010, in the District of Arizona and elsewhere, defendants JAIME AVILA, JR.,

21 HECTOR ROLANDO CARLON, JULIO CARRILLO, ALFREDO CELIS, MANUEL FABIAN CELIS-
22 ACOSTA, JACOB WAYNE CHAMBERS, ERICK AVILA DAVILA, JONATHAN EARVIN
23 FERNANDEZ, DEJAN HERCEGOVAC, KRISTI GAIL IRELAND, JUAN JOSE MARTINEZ-
24 GONZALEZ, JACOB ANTHONY MONTELONGO, JOSHUA DAVID MOORE, DANNY CRUZ
25 MORONES, URIEL PATINO, JOSE ANGEL POLANCO, FRANCISCO JAVIER PONCE, SEAN
26 CHRISTOPHER STEWARD, and KENNETH JAMES THOMPSON willfully engaged in the business
27 of dealing in firearms while such defendants were not a licensed firearms dealer under the

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1 provisions of Title 18, United States Code, Section 923.

2 All in violation of Title 18, United States Code, Sections 922(a)(1)(A), 924(a)(1)(D) and 2.

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COUNT 3

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Conspiracy to Distribute Marijuana

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(21 U.S.C. 846)

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8 107. Beginning on or about September 22, 2009, and continuing through on or about
9 December, 2010, in the District of Arizona and elsewhere, defendants, MANUEL FABIAN
10 CELIS-ACOSTA, URIEL PATINO, JOHN WILLIAM ROWLAND, and others both known and
11 unknown to the grand jury, did knowingly and intentionally combine, conspire, confederate, and
12 agree together and with other persons known and unknown to the grand jury, to knowingly and
13 intentionally possess with intent to distribute 100 kilograms or more of a mixture or substance
14 containing a detectable amount of marijuana, a Schedule I Controlled Substance, in violation of
15 Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(B)(vii).

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All in violation of Title 21, United States Code, Section 846.

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COUNT 4

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Possession with Intent to Distribute Marijuana

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(21 U.S.C. §§841(a)(1) & 841(b)(1)(D))

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20 108. On or about July 19, 2010, in the District of Arizona and elsewhere, defendants,
21 MANUEL FABIAN CELIS-ACOSTA, URIEL PATINO, and JOHN WILLIAM ROWLAND,

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22 and others known and unknown to the Grand Jury, did knowingly and intentionally possess with
23 intent to distribute less than 50 kilograms of a mixture or substance containing a detectable
24 amount of marijuana, a Schedule I Controlled Substance.

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25 All in violation of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(D) and Title
26 18, United States Code, Section 2.

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COUNT 5Possession with Intent to Distribute Marijuana

(21 U.S.C. §§841(a)(1) & 841(b)(1)(B)(vii))

109. On or about August 1, 2010, in the District of Arizona and elsewhere, defendants, MANUEL FABIAN CELIS-ACOSTA and URIEL PATINO, and others known and unknown to the Grand Jury, did knowingly and intentionally possess with intent to distribute 100 kilograms or more of a mixture or substance containing a detectable amount of marijuana, a Schedule I Controlled Substance.

All in violation of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(B)(vii) and Title 18, United States Code, Section 2.

COUNT 6Conspiracy to Possess a Firearm in Furtherance of a Drug Trafficking Offense

(18 U.S.C. §924(o))

110. The factual allegations in paragraphs 24 to 105 of the Indictment are incorporated by reference and re-alleged as though fully set forth herein.

111. On or about August 1, 2010, in the District of Arizona, defendants, MANUEL FABIAN CELIS-ACOSTA and URIEL PATINO, and others known and unknown to the Grand Jury, did knowingly, and unlawfully combine, conspire, confederate, and agree together and with each other and with others known and unknown to the grand jury, during and in relation to a drug trafficking offense as defined in Title 18, United States Code, Section 924(c)(2), that is, possession with intent to distribute marijuana, a Schedule I Controlled Substance, in violation of Title 21, United States Code, Sections 841(a)(1), to knowingly use, carry, and possess in furtherance of the drug trafficking offense, a firearm, that is, two Draco, 7.62x39mm pistols, in violation of Title 18, United States Code, Section 924(c).

All in violation of Title 18, United States Code, Section 924(o).

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COUNT 7

Making a False Statement in Connection with the Acquisition of Firearms

(18 U.S.C. §924(a)(1)(A))

112. On or about January 16, 2010, in the District of Arizona, defendants MANUEL FABIAN CELIS-ACOSTA and JAIME AVILA Jr., did knowingly make a false statement and representation with respect to information required by the provisions of Chapter 44 of Title 18, United States Code, to be kept in the records of Lone Wolf Trading Company, a business licensed under the provisions of Chapter 44 of Title 18, United States Code, in that JAIME AVILA Jr. executed a Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) Form 4473, Firearms Transaction Record, representing that he was the actual purchaser of the firearms listed on the form, when in fact he was purchasing the firearms on behalf of another.

In violation of Title 18, United States Code, Sections 924(a)(1)(A) and 2.

COUNT 8

Making a False Statement in Connection with the Acquisition of Firearms

(18 U.S.C. §924(a)(1)(A))

113. On or about April 24, 2010, in the District of Arizona, defendants MANUEL FABIAN CELIS-ACOSTA and JAIME AVILA Jr., did knowingly make a false statement and representation with respect to information required by the provisions of Chapter 44 of Title 18, United States Code, to be kept in the records of Gannet, a business licensed under the provisions of Chapter 44 of Title 18, United States Code, in that JAIME AVILA Jr. executed a Bureau of Alcohol, Tobacco, and Firearms Form 4473, Firearms Transaction Record, representing that he was the actual purchaser of the firearms listed on the form, when in fact he was purchasing the firearms on behalf of another.

In violation of Title 18, United States Code, Sections 924(a)(1)(A) and 2.

COUNT 9Making a False Statement in Connection with the Acquisition of Firearms

(18 U.S.C. §924(a)(1)(A))

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4 114. On or about June 15, 2010, in the District of Arizona, defendants MANUEL FABIAN
5 CELIS-ACOSTA and JAIME AVILA Jr., did knowingly make a false statement and
6 representation with respect to information required by the provisions of Chapter 44 of Title 18,
7 United States Code, to be kept in the records of Scottsdale Gun Club, a business licensed under
8 the provisions of Chapter 44 of Title 18, United States Code, in that JAIME AVILA Jr. executed
9 a Bureau of Alcohol, Tobacco, and Firearms Form 4473, Firearms Transaction Record,
10 representing that he was the actual purchaser of the firearms listed on the form, when in fact he
11 was purchasing the firearms on behalf of another.

12 In violation of Title 18, United States Code, Sections 924(a)(1)(A) and 2.

COUNT 10Making a False Statement in Connection with the Acquisition of Firearms

(18 U.S.C. §924(a)(1)(A))

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17 115. On or about March 23, 2010, in the District of Arizona, defendants MANUEL
18 FABIAN CELIS-ACOSTA and JULIO CARRILLO, did knowingly make a false statement and
19 representation with respect to information required by the provisions of Chapter 44 of Title 18,
20 United States Code, to be kept in the records of Lone Wolf Trading Company, a business licensed
21 under the provisions of Chapter 44 of Title 18, United States Code, in that JULIO CARRILLO
22 executed a Bureau of Alcohol, Tobacco, and Firearms Form 4473, Firearms Transaction Record,
23 representing that he was the actual purchaser of the firearms listed on the form, when in fact he
24 was purchasing the firearms on behalf of another.

25 In violation of Title 18, United States Code, Sections 924(a)(1)(A) and 2.

COUNT 11Making a False Statement in Connection with the Acquisition of Firearms

(18 U.S.C. §924(a)(1)(A))

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4 116. On or about January 20, 2010, in the District of Arizona, defendants MANUEL
5 FABIAN CELIS-ACOSTA and ALFREDO CELIS, did knowingly make a false statement and
6 representation with respect to information required by the provisions of Chapter 44 of Title 18,
7 United States Code, to be kept in the records of Lone Wolf Trading Company, a business licensed
8 under the provisions of Chapter 44 of Title 18, United States Code, in that ALFREDO CELIS
9 executed a Bureau of Alcohol, Tobacco, and Firearms Form 4473, Firearms Transaction Record,
10 representing that he was the actual purchaser of the firearms listed on the form, when in fact he
11 was purchasing the firearms on behalf of another.

12 In violation of Title 18, United States Code, Sections 924(a)(1)(A) and 2.

COUNT 12Making a False Statement in Connection with the Acquisition of Firearms

(18 U.S.C. §924(a)(1)(A))

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17 117. On or about June 30, 2010, in the District of Arizona, defendants MANUEL FABIAN
18 CELIS-ACOSTA and ALFREDO CELIS, did knowingly make a false statement and
19 representation with respect to information required by the provisions of Chapter 44 of Title 18,
20 United States Code, to be kept in the records of Lone Wolf Trading Company, a business licensed
21 under the provisions of Chapter 44 of Title 18, United States Code, in that ALFREDO CELIS
22 executed a Bureau of Alcohol, Tobacco, and Firearms Form 4473, Firearms Transaction Record,
23 representing that he was the actual purchaser of the firearms listed on the form, when in fact he
24 was purchasing the firearms on behalf of another.

25 In violation of Title 18, United States Code, Sections 924(a)(1)(A) and 2.

COUNT 13Making a False Statement in Connection with the Acquisition of Firearms

(18 U.S.C. §924(a)(1)(A))

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4 118. On or about October 26, 2009, in the District of Arizona, defendants MANUEL
5 FABIAN CELIS-ACOSTA and JACOB WAYNE CHAMBERS, did knowingly make a false
6 statement and representation with respect to information required by the provisions of Chapter
7 44 of Title 18, United States Code, to be kept in the records of Lone Wolf Trading Company, a
8 business licensed under the provisions of Chapter 44 of Title 18, United States Code, in that
9 JACOB WAYNE CHAMBERS executed a Bureau of Alcohol, Tobacco, and Firearms Form
10 4473, Firearms Transaction Record, representing that he was the actual purchaser of the firearms
11 listed on the form, when in fact he was purchasing the firearms on behalf of another.

12 In violation of Title 18, United States Code, Sections 924(a)(1)(A) and 2.

COUNT 14Making a False Statement in Connection with the Acquisition of Firearms

(18 U.S.C. §924(a)(1)(A))

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17 119. On or about December 11, 2009, in the District of Arizona, defendants MANUEL
18 FABIAN CELIS-ACOSTA and JACOB WAYNE CHAMBERS, did knowingly make a false
19 statement and representation with respect to information required by the provisions of Chapter
20 44 of Title 18, United States Code, to be kept in the records of Lone Wolf Trading Company, a
21 business licensed under the provisions of Chapter 44 of Title 18, United States Code, in that
22 JACOB WAYNE CHAMBERS executed a Bureau of Alcohol, Tobacco, and Firearms Form
23 4473, Firearms Transaction Record, representing that he was the actual purchaser of the firearms
24 listed on the form, when in fact he was purchasing the firearms on behalf of another.

25 In violation of Title 18, United States Code, Sections 924(a)(1)(A) and 2.

COUNT 15Making a False Statement in Connection with the Acquisition of Firearms

(18 U.S.C. §924(a)(1)(A))

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4 120. On or about June 12, 2010, in the District of Arizona, defendants MANUEL FABIAN
5 CELIS-ACOSTA and ERICK AVILA DAVILA, did knowingly make a false statement and
6 representation with respect to information required by the provisions of Chapter 44 of Title 18,
7 United States Code, to be kept in the records of Lone Wolf Trading Company, a business licensed
8 under the provisions of Chapter 44 of Title 18, United States Code, in that ERICK AVILA
9 DAVILA executed a Bureau of Alcohol, Tobacco, and Firearms Form 4473, Firearms
10 Transaction Record, representing that he was the actual purchaser of the firearms listed on the
11 form, when in fact he was purchasing the firearms on behalf of another.

12 In violation of Title 18, United States Code, Sections 924(a)(1)(A) and 2.

COUNT 16Making a False Statement in Connection with the Acquisition of Firearms

(18 U.S.C. §924(a)(1)(A))

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17 121. On or about July 7, 2010, in the District of Arizona, defendants MANUEL FABIAN
18 CELIS-ACOSTA and ERICK AVILA DAVILA, did knowingly make a false statement and
19 representation with respect to information required by the provisions of Chapter 44 of Title 18,
20 United States Code, to be kept in the records of Olsen Firearms, LLC, a business licensed under
21 the provisions of Chapter 44 of Title 18, United States Code, in that ERICK AVILA DAVILA
22 executed a Bureau of Alcohol, Tobacco, and Firearms Form 4473, Firearms Transaction Record,
23 representing that he was the actual purchaser of the firearms listed on the form, when in fact he
24 was purchasing the firearms on behalf of another.

25 In violation of Title 18, United States Code, Sections 924(a)(1)(A) and 2.

COUNT 17Making a False Statement in Connection with the Acquisition of Firearms

(18 U.S.C. §924(a)(1)(A))

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4 122. On or about August 10, 2010, in the District of Arizona, defendants MANUEL
5 FABIAN CELIS-ACOSTA and JONATHAN EARVIN FERNANDEZ, did knowingly make a
6 false statement and representation with respect to information required by the provisions of
7 Chapter 44 of Title 18, United States Code, to be kept in the records of Lone Wolf Trading
8 Company, a business licensed under the provisions of Chapter 44 of Title 18, United States Code,
9 in that JONATHAN EARVIN FERNANDEZ executed a Bureau of Alcohol, Tobacco, and
10 Firearms Form 4473, Firearms Transaction Record, representing that he was the actual purchaser
11 of the firearms listed on the form, when in fact he was purchasing the firearms on behalf of
12 another.

13 In violation of Title 18, United States Code, Sections 924(a)(1)(A) and 2.

COUNT 18Making a False Statement in Connection with the Acquisition of Firearms

(18 U.S.C. §924(a)(1)(A))

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18 123. On or about August 19, 2010, in the District of Arizona, defendants MANUEL
19 FABIAN CELIS-ACOSTA and JONATHAN EARVIN FERNANDEZ, did knowingly make a
20 false statement and representation with respect to information required by the provisions of
21 Chapter 44 of Title 18, United States Code, to be kept in the records of Lone Wolf Trading
22 Company, a business licensed under the provisions of Chapter 44 of Title 18, United States Code,
23 in that JONATHAN EARVIN FERNANDEZ executed a Bureau of Alcohol, Tobacco, and
24 Firearms Form 4473, Firearms Transaction Record, representing that he was the actual purchaser
25 of the firearms listed on the form, when in fact he was purchasing the firearms on behalf of
26 another.

27 In violation of Title 18, United States Code, Sections 924(a)(1)(A) and 2.

COUNT 19Making a False Statement in Connection with the Acquisition of Firearms

(18 U.S.C. §924(a)(1)(A))

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4 124. On or about November 25, 2009, in the District of Arizona, defendants MANUEL
5 FABIAN CELIS-ACOSTA and DEJAN HERCEGOVAC, did knowingly make a false statement
6 and representation with respect to information required by the provisions of Chapter 44 of Title
7 18, United States Code, to be kept in the records of Lone Wolf Trading Company, a business
8 licensed under the provisions of Chapter 44 of Title 18, United States Code, in that DEJAN
9 HERCEGOVAC executed a Bureau of Alcohol, Tobacco, and Firearms Form 4473, Firearms
10 Transaction Record, representing that he was the actual purchaser of the firearms listed on the
11 form, when in fact he was purchasing the firearms on behalf of another.

12 In violation of Title 18, United States Code, Sections 924(a)(1)(A) and 2.
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COUNT 20Making a False Statement in Connection with the Acquisition of Firearms

(18 U.S.C. §924(a)(1)(A))

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17 125. On or about March 23, 2010, in the District of Arizona, defendants MANUEL
18 FABIAN CELIS-ACOSTA and JACOB ANTHONY MONTELONGO, did knowingly make a
19 false statement and representation with respect to information required by the provisions of
20 Chapter 44 of Title 18, United States Code, to be kept in the records of Lone Wolf Trading
21 Company, a business licensed under the provisions of Chapter 44 of Title 18, United States Code,
22 in that JACOB ANTHONY MONTELONGO executed a Bureau of Alcohol, Tobacco, and
23 Firearms Form 4473, Firearms Transaction Record, representing that he was the actual purchaser
24 of the firearms listed on the form, when in fact he was purchasing the firearms on behalf of
25 another.

26 In violation of Title 18, United States Code, Sections 924(a)(1)(A) and 2.
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COUNT 21Making a False Statement in Connection with the Acquisition of Firearms

(18 U.S.C. §924(a)(1)(A))

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4 126. On or about June 11, 2010, in the District of Arizona, defendants MANUEL FABIAN
5 CELIS-ACOSTA and JACOB ANTHONY MONTELONGO, did knowingly make a false
6 statement and representation with respect to information required by the provisions of Chapter
7 44 of Title 18, United States Code, to be kept in the records of Lone Wolf Trading Company, a
8 business licensed under the provisions of Chapter 44 of Title 18, United States Code, in that
9 JACOB ANTHONY MONTELONGO executed a Bureau of Alcohol, Tobacco, and Firearms
10 Form 4473, Firearms Transaction Record, representing that he was the actual purchaser of the
11 firearms listed on the form, when in fact he was purchasing the firearms on behalf of another.

12 In violation of Title 18, United States Code, Sections 924(a)(1)(A) and 2.

COUNT 22Making a False Statement in Connection with the Acquisition of Firearms

(18 U.S.C. §924(a)(1)(A))

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17 127. On or about November 3, 2009, in the District of Arizona, defendants MANUEL
18 FABIAN CELIS-ACOSTA and JOSHUA DAVID MOORE, did knowingly make a false
19 statement and representation with respect to information required by the provisions of Chapter
20 44 of Title 18, United States Code, to be kept in the records of Lone Wolf Trading Company, a
21 business licensed under the provisions of Chapter 44 of Title 18, United States Code, in that
22 JOSHUA DAVID MOORE executed a Bureau of Alcohol, Tobacco, and Firearms Form 4473,
23 Firearms Transaction Record, representing that he was the actual purchaser of the firearms listed
24 on the form, when in fact he was purchasing the firearms on behalf of another.

25 In violation of Title 18, United States Code, Sections 924(a)(1)(A) and 2.

COUNT 23Making a False Statement in Connection with the Acquisition of Firearms

(18 U.S.C. §924(a)(1)(A))

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4 128. On or about March 23, 2010, in the District of Arizona, defendants MANUEL
5 FABIAN CELIS-ACOSTA and JOSHUA DAVID MOORE, did knowingly make a false
6 statement and representation with respect to information required by the provisions of Chapter
7 44 of Title 18, United States Code, to be kept in the records of Lone Wolf Trading Company,
8 a business licensed under the provisions of Chapter 44 of Title 18, United States Code, in that
9 JOSHUA DAVID MOORE executed a Bureau of Alcohol, Tobacco, and Firearms Form
10 4473, Firearms Transaction Record, representing that he was the actual purchaser of the
11 firearms listed on the form, when in fact he was purchasing the firearms on behalf of another.

12 In violation of Title 18, United States Code, Sections 924(a)(1)(A) and 2.

COUNT 24Making a False Statement in Connection with the Acquisition of Firearms

(18 U.S.C. §924(a)(1)(A))

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17 129. On or about July 30, 2010, in the District of Arizona, defendants MANUEL FABIAN
18 CELIS-ACOSTA and DANNY CRUZ MORONES, did knowingly make a false statement and
19 representation with respect to information required by the provisions of Chapter 44 of Title 18,
20 United States Code, to be kept in the records of Lone Wolf Trading Company, a business licensed
21 under the provisions of Chapter 44 of Title 18, United States Code, in that DANNY CRUZ
22 MORONES executed a Bureau of Alcohol, Tobacco, and Firearms Form 4473, Firearms
23 Transaction Record, representing that he was the actual purchaser of the firearms listed on the
24 form, when in fact he was purchasing the firearms on behalf of another.

25 In violation of Title 18, United States Code, Sections 924(a)(1)(A) and 2.

COUNT 25Making a False Statement in Connection with the Acquisition of Firearms

(18 U.S.C. §924(a)(1)(A))

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4 130. On or about July 29, 2010, in the District of Arizona, defendants MANUEL FABIAN
5 CELIS-ACOSTA and DANNY CRUZ MORONES, did knowingly make a false statement and
6 representation with respect to information required by the provisions of Chapter 44 of Title 18,
7 United States Code, to be kept in the records of Lone Wolf Trading Company, a business licensed
8 under the provisions of Chapter 44 of Title 18, United States Code, in that DANNY MOROMES
9 executed a Bureau of Alcohol, Tobacco, and Firearms Form 4473, Firearms Transaction Record,
10 representing that he was the actual purchaser of the firearms listed on the form, when in fact he
11 was purchasing the firearms on behalf of another.

12 In violation of Title 18, United States Code, Sections 924(a)(1)(A) and 2.

COUNT 26Making a False Statement in Connection with the Acquisition of Firearms

(18 U.S.C. §924(a)(1)(A))

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17 131. On or about November 24, 2009, in the District of Arizona, defendants MANUEL
18 FABIAN CELIS-ACOSTA and URIEL PATINO, did knowingly make a false statement and
19 representation with respect to information required by the provisions of Chapter 44 of Title 18,
20 United States Code, to be kept in the records of Lone Wolf Trading Company, a business licensed
21 under the provisions of Chapter 44 of Title 18, United States Code, in that URIEL PATINO
22 executed a Bureau of Alcohol, Tobacco, and Firearms Form 4473, Firearms Transaction Record,
23 representing that he was the actual purchaser of the firearms listed on the form, when in fact he
24 was purchasing the firearms on behalf of another.

25 In violation of Title 18, United States Code, Sections 924(a)(1)(A) and 2.

COUNT 27Making a False Statement in Connection with the Acquisition of Firearms

(18 U.S.C. §924(a)(1)(A))

132. On or about January 15, 2010, in the District of Arizona, defendants MANUEL FABIAN CELIS-ACOSTA and URIEL PATINO, did knowingly make a false statement and representation with respect to information required by the provisions of Chapter 44 of Title 18, United States Code, to be kept in the records of Lone Wolf Trading Company, a business licensed under the provisions of Chapter 44 of Title 18, United States Code, in that URIEL PATINO executed a Bureau of Alcohol, Tobacco, and Firearms Form 4473, Firearms Transaction Record, representing that he was the actual purchaser of the firearms listed on the form, when in fact he was purchasing the firearms on behalf of another.

In violation of Title 18, United States Code, Sections 924(a)(1)(A) and 2.

COUNT 28Making a False Statement in Connection with the Acquisition of Firearms

(18 U.S.C. §924(a)(1)(A))

133. On or about February 13, 2010, in the District of Arizona, defendants MANUEL FABIAN CELIS-ACOSTA and URIEL PATINO, did knowingly make a false statement and representation with respect to information required by the provisions of Chapter 44 of Title 18, United States Code, to be kept in the records of Lone Wolf Trading Company, a business licensed under the provisions of Chapter 44 of Title 18, United States Code, in that URIEL PATINO executed a Bureau of Alcohol, Tobacco, and Firearms Form 4473, Firearms Transaction Record, representing that he was the actual purchaser of the firearms listed on the form, when in fact he was purchasing the firearms on behalf of another.

In violation of Title 18, United States Code, Sections 924(a)(1)(A) and 2.

COUNT 29Making a False Statement in Connection with the Acquisition of Firearms

(18 U.S.C. §924(a)(1)(A))

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4 134. On or about April 16, 2010, in the District of Arizona, defendants MANUEL FABIAN
5 CELIS-ACOSTA and URIEL PATINO, did knowingly make a false statement and representation
6 with respect to information required by the provisions of Chapter 44 of Title 18, United States
7 Code, to be kept in the records of Lone Wolf Trading Company, a business licensed under the
8 provisions of Chapter 44 of Title 18, United States Code, in that URIEL PATINO executed a
9 Bureau of Alcohol, Tobacco, and Firearms Form 4473, Firearms Transaction Record,
10 representing that he was the actual purchaser of the firearms listed on the form, when in fact he
11 was purchasing the firearms on behalf of another.

12 In violation of Title 18, United States Code, Sections 924(a)(1)(A) and 2.

COUNT 30Making a False Statement in Connection with the Acquisition of Firearms

(18 U.S.C. §924(a)(1)(A))

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16 135. On or about April 27, 2010, in the District of Arizona, defendants MANUEL FABIAN,
17 CELIS-ACOSTA and URIEL PATINO, did knowingly make a false statement and representation
18 with respect to information required by the provisions of Chapter 44 of Title 18, United States
19 Code, to be kept in the records of Lone Wolf Trading Company, a business licensed under the
20 provisions of Chapter 44 of Title 18, United States Code, in that URIEL PATINO executed a
21 Bureau of Alcohol, Tobacco, and Firearms Form 4473, Firearms Transaction Record,
22 representing that he was the actual purchaser of the firearms listed on the form, when in fact he
23 was purchasing the firearms on behalf of another.

24 In violation of Title 18, United States Code, Sections 924(a)(1)(A) and 2.

COUNT 31Making a False Statement in Connection with the Acquisition of Firearms

(18 U.S.C. §924(a)(1)(A))

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4 136. On or about June 2, 2010, in the District of Arizona, defendants MANUEL FABIAN
5 CELIS-ACOSTA and URIEL PATINO, did knowingly make a false statement and representation
6 with respect to information required by the provisions of Chapter 44 of Title 18, United States
7 Code, to be kept in the records of Lone Wolf Trading Company, a business licensed under the
8 provisions of Chapter 44 of Title 18, United States Code, in that URIEL PATINO executed a
9 Bureau of Alcohol, Tobacco, and Firearms Form 4473, Firearms Transaction Record,
10 representing that he was the actual purchaser of the firearms listed on the form, when in fact he
11 was purchasing the firearms on behalf of another.

12 In violation of Title 18, United States Code, Sections 924(a)(1)(A) and 2.

COUNT 32Making a False Statement in Connection with the Acquisition of Firearms

(18 U.S.C. §924(a)(1)(A))

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17 137. On or about June 18, 2010, in the District of Arizona, defendants MANUEL FABIAN
18 CELIS-ACOSTA and URIEL PATINO, did knowingly make a false statement and representation
19 with respect to information required by the provisions of Chapter 44 of Title 18, United States
20 Code, to be kept in the records of Scottsdale Gun Club, a business licensed under the provisions
21 of Chapter 44 of Title 18, United States Code, in that URIEL PATINO executed a Bureau of
22 Alcohol, Tobacco, and Firearms Form 4473, Firearms Transaction Record, representing that he
23 was the actual purchaser of the firearms listed on the form, when in fact he was purchasing the
24 firearms on behalf of another.

25 In violation of Title 18, United States Code, Sections 924(a)(1)(A) and 2.

COUNT 33Making a False Statement in Connection with the Acquisition of Firearms

(18 U.S.C. §924(a)(1)(A))

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4 138. On or about July 6, 2010, in the District of Arizona, defendants MANUEL FABLAN
5 CELIS-ACOSTA, FRANCISCO JAVIER PONCE, and URIEL PATINO, did knowingly make
6 a false statement and representation with respect to information required by the provisions of
7 Chapter 44 of Title 18, United States Code, to be kept in the records of Lone Wolf Trading
8 Company, a business licensed under the provisions of Chapter 44 of Title 18, United States Code,
9 in that URIEL PATINO executed a Bureau of Alcohol, Tobacco, and Firearms Form 4473,
10 Firearms Transaction Record, representing that he was the actual purchaser of the firearms listed
11 on the form, when in fact he was purchasing the firearms on behalf of another.

12 In violation of Title 18, United States Code, Sections 924(a)(1)(A) and 2.

COUNT 34Making a False Statement in Connection with the Acquisition of Firearms

(18 U.S.C. §924(a)(1)(A))

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17 139. On or about July 8, 2010, in the District of Arizona, defendants MANUEL FABLAN
18 CELIS-ACOSTA, FRANCISCO JAVIER PONCE, and URIEL PATINO, did knowingly make
19 a false statement and representation with respect to information required by the provisions of
20 Chapter 44 of Title 18, United States Code, to be kept in the records of Lone Wolf Trading
21 Company, a business licensed under the provisions of Chapter 44 of Title 18, United States Code,
22 in that URIEL PATINO executed a Bureau of Alcohol, Tobacco, and Firearms Form 4473,
23 Firearms Transaction Record, representing that he was the actual purchaser of the firearms listed
24 on the form, when in fact he was purchasing the firearms on behalf of another.

25 In violation of Title 18, United States Code, Sections 924(a)(1)(A) and 2.

COUNT 35Making a False Statement in Connection with the Acquisition of Firearms

(18 U.S.C. §924(a)(1)(A))

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4 140. On or about August 5, 2010, in the District of Arizona, defendants MANUEL FABIAN
5 CELIS-ACOSTA and URIEL PATINO, did knowingly make a false statement and representation
6 with respect to information required by the provisions of Chapter 44 of Title 18, United States
7 Code, to be kept in the records of Lone Wolf Trading Company, a business licensed under the
8 provisions of Chapter 44 of Title 18, United States Code, in that URIEL PATINO executed a
9 Bureau of Alcohol, Tobacco, and Firearms Form 4473, Firearms Transaction Record,
10 representing that he was the actual purchaser of the firearms listed on the form, when in fact he
11 was purchasing the firearms on behalf of another.

12 In violation of Title 18, United States Code, Sections 924(a)(1)(A) and 2.

COUNT 36Making a False Statement in Connection with the Acquisition of Firearms

(18 U.S.C. §924(a)(1)(A))

13
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17 141. On or about December 8, 2009, in the District of Arizona, defendants MANUEL
18 FABIAN CELIS-ACOSTA and SEAN CHRISTOPHER STEWARD, did knowingly make a false
19 statement and representation with respect to information required by the provisions of Chapter
20 44 of Title 18, United States Code, to be kept in the records of Lone Wolf Trading Company, a
21 business licensed under the provisions of Chapter 44 of Title 18, United States Code, in that
22 SEAN CHRISTOPHER STEWARD executed a Bureau of Alcohol, Tobacco, and Firearms Form
23 4473, Firearms Transaction Record, representing that he was the actual purchaser of the firearms
24 listed on the form, when in fact he was purchasing the firearms on behalf of another.

25 In violation of Title 18, United States Code, Sections 924(a)(1)(A) and 2.

COUNT 37Making a False Statement in Connection with the Acquisition of Firearms

(18 U.S.C. §924(a)(1)(A))

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4 142. On or about December 14, 2009, in the District of Arizona, defendants MANUEL
5 FABIAN CELIS-ACOSTA and SEAN CHRISTOPHER STEWARD, did knowingly make a false
6 statement and representation with respect to information required by the provisions of Chapter
7 44 of Title 18, United States Code, to be kept in the records of Lone Wolf Trading Company, a
8 business licensed under the provisions of Chapter 44 of Title 18, United States Code, in that
9 SEAN CHRISTOPHER STEWARD executed a Bureau of Alcohol, Tobacco, and Firearms Form
10 4473, Firearms Transaction Record, representing that he was the actual purchaser of the firearms
11 listed on the form, when in fact he was purchasing the firearms on behalf of another.

12 In violation of Title 18, United States Code, Sections 924(a)(1)(A) and 2.
13

COUNT 38Making a False Statement in Connection with the Acquisition of Firearms

(18 U.S.C. §924(a)(1)(A))

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17 143. On or about December 24, 2009, in the District of Arizona, defendants MANUEL
18 FABIAN CELIS-ACOSTA and SEAN CHRISTOPHER STEWARD, did knowingly make a false
19 statement and representation with respect to information required by the provisions of Chapter
20 44 of Title 18, United States Code, to be kept in the records of Lone Wolf Trading Company, a
21 business licensed under the provisions of Chapter 44 of Title 18, United States Code, in that
22 SEAN CHRISTOPHER STEWARD executed a Bureau of Alcohol, Tobacco, and Firearms Form
23 4473, Firearms Transaction Record, representing that he was the actual purchaser of the firearms
24 listed on the form, when in fact he was purchasing the firearms on behalf of another.

25 In violation of Title 18, United States Code, Sections 924(a)(1)(A) and 2.
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COUNT 39Making a False Statement in Connection with the Acquisition of Firearms

(18 U.S.C. §924(a)(1)(A))

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4 144. On or about June 2, 2010, in the District of Arizona, defendants MANUEL FABIAN
5 CELIS-ACOSTA and SEAN CHRISTOPHER STEWARD, did knowingly make a false
6 statement and representation with respect to information required by the provisions of Chapter
7 44 of Title 18, United States Code, to be kept in the records of Lone Wolf Trading Company, a
8 business licensed under the provisions of Chapter 44 of Title 18, United States Code, in that
9 SEAN CHRISTOPHER STEWARD executed a Bureau of Alcohol, Tobacco, and Firearms Form
10 4473, Firearms Transaction Record, representing that he was the actual purchaser of the firearms
11 listed on the form, when in fact he was purchasing the firearms on behalf of another.

12 In violation of Title 18, United States Code, Sections 924(a)(1)(A) and 2.
13

COUNT 40Making a False Statement in Connection with the Acquisition of Firearms

(18 U.S.C. §924(a)(1)(A))

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17 145. On or about June 23, 2010, in the District of Arizona, defendants MANUEL FABIAN
18 CELIS-ACOSTA and SEAN CHRISTOPHER STEWARD, did knowingly make a false
19 statement and representation with respect to information required by the provisions of Chapter
20 44 of Title 18, United States Code, to be kept in the records of Lone Wolf Trading Company, a
21 business licensed under the provisions of Chapter 44 of Title 18, United States Code, in that
22 SEAN CHRISTOPHER STEWARD executed a Bureau of Alcohol, Tobacco, and Firearms Form
23 4473, Firearms Transaction Record, representing that he was the actual purchaser of the firearms
24 listed on the form, when in fact he was purchasing the firearms on behalf of another.

25 In violation of Title 18, United States Code, Sections 924(a)(1)(A) and 2.
26
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COUNT 41Making a False Statement in Connection with the Acquisition of Firearms

(18 U.S.C. §924(a)(1)(A))

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4 146. On or about November 17, 2009, in the District of Arizona, defendants MANUEL
5 FABIAN CELIS-ACOSTA and JOSE ANGEL POLANCO, did knowingly make a false
6 statement and representation with respect to information required by the provisions of Chapter
7 44 of Title 18, United States Code, to be kept in the records of Lone Wolf Trading Company, a
8 business licensed under the provisions of Chapter 44 of Title 18, United States Code, in that
9 JOSE ANGEL POLANCO executed a Bureau of Alcohol, Tobacco, and Firearms Form 4473,
10 Firearms Transaction Record, representing that he was the actual purchaser of the firearms listed
11 on the form, when in fact he was purchasing the firearms on behalf of another.

12 In violation of Title 18, United States Code, Sections 924(a)(1)(A) and 2.

COUNT 42Conspiracy to Commit Money Laundering

(18 U.S.C. §1956(h))

13
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17 147. The factual allegations in paragraphs 24 to 105, and 107 to 109 of the Indictment
18 are incorporated by reference and re-alleged as though fully set forth herein.

19 148. Beginning on or about September 22, 2009, and continuing through on or about
20 December, 2010, in the District of Arizona and elsewhere, defendants JULIO CARRILLO,
21 ALFREDO CELIS, MANUEL FABIAN CELIS-ACOSTA, KRISTI GAIL IRELAND,
22 JACOB ANTHONY MONTELONGO, JOSHUA DAVID MOORE, URIEL PATINO, and
23 SEAN CHRISTOPHER STEWARD, did knowingly combine, conspire, confederate and
24 agree together, to knowingly conduct and attempt to conduct financial transactions affecting
25 interstate and foreign commerce, which in fact involved the proceeds of specified unlawful
26 activity, that is, the conspiracy to possess and possession with intent to distribute marijuana in
27 violation of Title 21, United States Code, Sections 846 and 841(a)(1), with the intent to

1 promote the carrying on of said specified unlawful activity, and knowing that the transactions
 2 were designed in whole and in part to conceal and disguise the nature, location, source,
 3 ownership and control of the proceeds of said specified unlawful activity, and while knowing
 4 that the property involved in the financial transactions represented the proceeds of some form
 5 of unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(1)(B)(i).

6 All in violation of Title 18, United States Code, Section 1956(h).

7
 8 **COUNTS 43 through 53**

9 **Money Laundering**

10 (18 U.S.C. §§1956(a)(1)(B)(i) and 2

11 149. The factual allegations in paragraphs 24 to 105, and 107 to 109 of the Indictment are
 12 incorporated by reference and re-alleged as though fully set forth herein.

13 150. On or about the dates listed below, in the District of Arizona, and elsewhere,
 14 defendants, as set forth below, did knowingly conduct and attempt to conduct financial
 15 transactions affecting interstate and foreign commerce, as set forth below, which involved the
 16 proceeds of specified unlawful activity, that is, the possession with intent to distribute marijuana
 17 and conspiracy to possess with the intent to distribute marijuana, in violation of Title 21, United
 18 States Code, Sections 841(a)(1) and 846, knowing that the transactions were designed in whole
 19 and in part to conceal and disguise the nature, location, source, ownership and control of the
 20 proceeds of said specified unlawful activity, and while knowing that the property involved in the

21 financial transactions represented the proceeds of some form of unlawful activity, each such
 22 instance being a separate Count of this Indictment.

23 All in violation of Title 18, United States Code, Sections 1956(a)(1)(B)(i) and 2.

24 Count	Date	Defendant(s)	Transaction
25 43	26 March 23, 2010	JULIO CARRILLO	Paid \$6000 in United States 27 currency to Lone Wolf Trading Company for ten (10) AK-47 type rifles

1	44	March 23, 2010	JACOB ANTHONY MONTELONGO	Paid \$6000 in United States currency to Lone Wolf Trading Company for ten (10) AK-47 type rifles
2				
3	45	March 23, 2010	JOSHUA DAVID MOORE	Paid \$6000 in United States currency to Lone Wolf Trading Company for ten (10) AK-47 type rifles
4				
5	46	April 14, 2010	KRISTI GAIL IRELAND and URIEL PATINO	Paid \$18,000 in United States currency to Lone Wolf Trading Company as partial payment for three (3) Barrett .50 caliber rifles
6				
7	47	April 27, 2010	URIEL PATINO	Paid \$11,381 in United States currency to Lone Wolf Trading Company for ten (10) FN Herstal 5.7mm pistols
8				
9	48	June 2, 2010	URIEL PATINO	Paid \$6,640 in United States currency to Lone Wolf Trading Company for ten (10) AK-47 type rifles and one (1) .223 caliber rifle
10				
11	49	June 2, 2010	SEAN CHRISTOPHER STEWARD	Paid \$14,831 in United States currency to Lone Wolf Trading Company for ten (10) AK-47 type rifles and twenty-one (21) pistols
12				
13	50	June 18, 2010	URIEL PATINO	Paid \$10,099 in United States currency to Lone Wolf Trading Company for nine (9) FN Herstal 5.7 mm pistols
14				
15	51	June 23, 2010	SEAN CHRISTOPHER STEWARD	Paid \$5,500 in United States currency to Lone Wolf Trading Company for ten (10) AK-47 type rifles
16				
17	52	June 30, 2010	ALFREDO CELIS	Paid \$11,000 in United States currency to Lone Wolf Trading Company for twenty (20) AK-47 type rifles
18				
19	53	July 8, 2010	URIEL PATINO	Paid \$8,800 in United States currency to Lone Wolf Trading Company for 16 AK-47 type rifles
20				
21				
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23				
24				
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26				
27				
28				

FORFEITURE ALLEGATIONS**Firearms Violations**

1
2
3 Upon conviction of the offenses in violation of Title 18, United States Code, Sections 922
4 and 924, set forth in Counts 1, 2, and 6 through 41, the defendants shall forfeit to the United
5 States pursuant to Title 18, United States Code, Section 924(d) and Title 28, United States Code,
6 Section 2461(c), any firearms and/or ammunition involved in or used in the knowing violation of
7 the statutes set forth above.

8 If any of the property described above, as a result of any act or omission
9 of the defendants:

- 10 (1) cannot be located upon the exercise of due diligence;
11 (2) has been transferred or sold to, or deposited with, a third person;
12 (3) has been placed beyond the jurisdiction of the Court;
13 (4) has been substantially diminished in value; or
14 (5) has been commingled with other property which cannot be subdivided without
15 difficulty,

16 the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21,
17 United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).

18 All pursuant to 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c).
19

Controlled Substances Act Violations

20
21 Upon conviction of the offenses in violation of Title 21, United States Code, set forth in
22 Counts 3, 4, and 5, the defendants shall forfeit to the United States pursuant to Title 21, United
23 States Code, Section 853:

- 24 (1) any property constituting, or derived from, any proceeds obtained, directly or indirectly,
25 as the result of such violations; and
26 (2) any property used, or intended to be used, in any manner or part, to commit, or to facilitate
27 the commission of, such violations.

28

1 If any of the above-described forfeitable property, as a result of any act or omission of the
2 defendants,

- 3 (1) cannot be located upon the exercise of due diligence;
- 4 (2) has been transferred or sold to, or deposited with, a third person;
- 5 (3) has been placed beyond the jurisdiction of the Court;
- 6 (4) has been substantially diminished in value; or
- 7 (5) has been commingled with other property which cannot be subdivided without
8 difficulty.

9 it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to
10 seek forfeiture of any other property of said defendants up to the value of the above forfeitable
11 property.

12 All pursuant to Title 21, United States Code, Section 853, and Title 28, United States Code,
13 Section 2461(c).

14 Money Laundering Violations

15 Upon conviction of the offenses in violation of Title 18, United States Code, Section 1956, r
16 forth in Counts 42 through 53, the defendants shall forfeit to the United States, pursuant to Title
17 18, United States Code, Section 982(a)(1), any property involved in such offenses, and any
18 property traceable to such property. If any of the above-described forfeitable property, as a result
19 of any act or omission of the defendants,

- 20 (1) cannot be located upon the exercise of due diligence;
- 21 (2) has been transferred or sold to, or deposited with, a third person;
- 22 (3) has been placed beyond the jurisdiction of the Court;
- 23 (4) has been substantially diminished in value; or
- 24 (5) has been commingled with other property which cannot be subdivided without
25 difficulty,

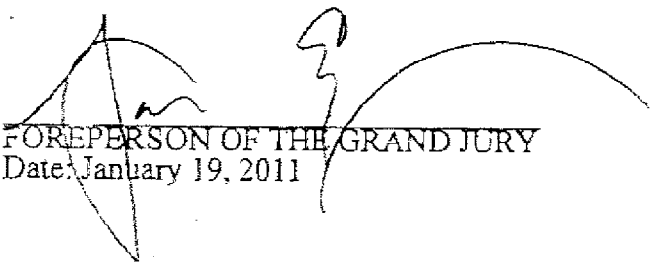
26 it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as
27 incorporated by Title 18, United States Code, Section 982(b)(1) and Title 28, United States Code,

28

1 Section 2461(c), to seek forfeiture of any other property of said defendants up to the value of the
2 above forfeitable property.

3 All pursuant to Title 18, United States Code, Section 982(a)(1), and Title 28, United States
4 Code, Section 2461(c).

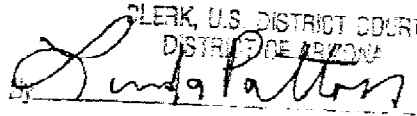
5 A TRUE BILL

6
7
8 
9 FOREPERSON OF THE GRAND JURY
Date: January 19, 2011

10 DENNIS K. BURKE
11 United States Attorney
12 District of Arizona

13 I hereby attest and certify on 1-20-11
14 that the foregoing document is a full, true and correct
15 copy of the original on file in my office and in my custody.

16 
17 EMORY T. HURLEY
18 Assistant U.S. Attorney

19 CLERK, U.S. DISTRICT COURT
20 DISTRICT OF ARIZONA
21 
22 Secretary

Congress of the United States
House of Representatives

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LAWRENCE J. BRADY
STAFF DIRECTOR

March 16, 2011

Mr. Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms and Explosives
99 New York Avenue, NE
Washington, DC 20226

Dear Acting Director Melson:

Recent media reports have raised grave questions about your department's handling of operations involving gun trafficking into Mexico. In the aftermath of the tragic killings of Border Patrol Agent Brian Terry and Immigration and Customs Enforcement Agent Jaime Zapata, it is imperative that you act decisively to assuage the public's deep suspicions that the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has a policy of permitting -- and even encouraging -- the movement of guns into Mexico by straw purchasers. The presence of these guns may have subsequently led to the deaths of hundreds of people on both sides of the border, including Agents Terry and Zapata.¹

It has been brought to my attention that you are not cooperating with congressional inquiries about Project Gunrunner and Operation Fast and Furious. Last week, Senator Charles Grassley expressed frustration at ATF's responsiveness in a letter to the Department of Justice (DOJ): "I'm still asking questions and we're getting the runaround from the Justice Department, [i]they're stonewalling. And the longer the wait, the more they fight, the more egg that they're going to have on their face."²

Operation Fast and Furious is part of ATF's Project Gunrunner program designed to prevent illegal guns from crossing the border into Mexico. ATF implemented the plan in June 2007 and outlined four key areas of Gunrunner: expansion of gun tracing in Mexico, international coordination, domestic activities, and intelligence.

¹ Kim Murphy and Ken Ellingwood, *Mexico Lawmakers Demand Answers about Guns Smuggled under ATF's Watch*, L.A. TIMES, Mar. 11, 2011, <http://www.latimes.com/news/nationworld/nation/la-naw-mexico-guns-20110311,0,6476764,full.story>.

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Senator Grassley requested specific documents about this policy but, thus far, has received nothing from ATF or DOJ. In fact, Special Agent In Charge (SAC) William D. Newell has steadfastly denied that this policy even exists, as has DOJ.¹¹ When confronted by documentary evidence from Senator Grassley’s office, however, Attorney General Holder asked the Justice Department’s Office of Inspector General (DOJ-OIG) to conduct a review. Such a review by the Acting Inspector General, however, is inadequate. As Senator Grassley wrote to Kevin Perkins, Chair of the Integrity Committee of the Council of Inspectors General on Integrity and Efficiency, “the DOJ-OIG does not appear to be completely disinterested in the outcome of its review. Without a greater level of independence, it will be difficult for the public to have faith in the impartiality and integrity of the result.”¹²

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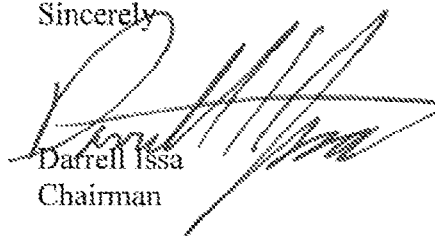
1. Documents and communications relating to the genesis of Project Gunner and Operation Fast and Furious, and any memoranda or reports involving any changes to either program at or near the time of the release of the DOJ-OIG report about Project Gunrunner in November 2010.
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If you have any questions about this request, please contact Ashok Pinto or Henry Kerner of the Committee Staff at (202) 225-5074. Thank you for your attention to this matter.

Sincerely,

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Darrell Issa
Chairman

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6143

Stipendiary (202) 225-6024
Ministry (202) 225-6024

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2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
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14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. The time period covered by this request is included in the attached request. To the extent a time period is not specified, produce relevant documents from January 1, 2009 to the present.
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19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email, regular mail, telexes, releases, or otherwise.
3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might

otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MASSACHUSETTS 2021-225-3074
FACSIMILE 2021-225-3874
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LAWRENCE J. BRADY
STAFF DIRECTOR

March 16, 2011

Mr. Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms and Explosives
99 New York Avenue, NE
Washington, DC 20226

Dear Acting Director Melson:

Recent media reports have raised grave questions about your department's handling of operations involving gun trafficking into Mexico. In the aftermath of the tragic killings of Border Patrol Agent Brian Terry and Immigration and Customs Enforcement Agent Jaime Zapata, it is imperative that you act decisively to assuage the public's deep suspicions that the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has a policy of permitting -- and even encouraging -- the movement of guns into Mexico by straw purchasers. The presence of these guns may have subsequently led to the deaths of hundreds of people on both sides of the border, including Agents Terry and Zapata.¹

It has been brought to my attention that you are not cooperating with congressional inquiries about Project Gunrunner and Operation Fast and Furious. Last week, Senator Charles Grassley expressed frustration at ATF's responsiveness in a letter to the Department of Justice (DOJ): "I'm still asking questions and we're getting the runaround from the Justice Department, [i]they're stonewalling. And the longer the wait, the more they fight, the more egg that they're going to have on their face."²

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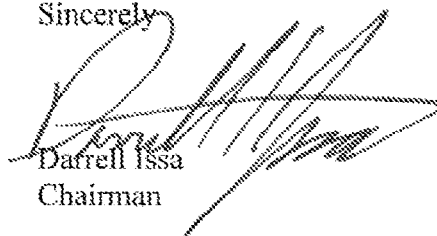
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Darrell Issa
Chairman

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

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19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email, regular mail, telexes, releases, or otherwise.
3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might

otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.

ATF O 3310.4B
2/8/89
Includes chgs. 1-18

FIREARMS ENFORCEMENT PROGRAM

FOREWORD

To: All Law Enforcement Personnel

1. PURPOSE. This order provides guidelines for the implementation of the Bureau's Firearms Enforcement Program under the Gun Control Act of 1968 (GCA), as amended, and the National Firearms Act (NFA), as amended
2. CANCELLATION. ATF O 3310.4A, Firearms Enforcement Program, dated March 25, 1981; ATF O 7520.1, Procedures for Tracing Firearms, dated August 2, 1976; ATF O 3310.5B, Guidelines Regarding Federal Firearms Licensee Investigations and Investigations at Gun Shows and Flea Markets, dated July 18, 1985; ATF O 7500.1, Firearms Technology Branch Procedures, dated May 16, 1977; ATF O 7540.2, Classification of Belgian FN Light Automatic Carbine (CAL), Caliber 5.56mm (.223), dated June 24, 1982; and ATF O 7540.1A, Classification of Belgian FN Light Semiautomatic Rifle (FAL), Caliber 7.62mm, dated October 29, 1979, are canceled.

Stephen E. Higgins
Director

referral of information to the Chief, Firearms Enforcement Division who will subsequently disseminate this information to the Chief, Firearms and Explosives Regulatory Division.

146. PROJECT LEAD SECURITY. Project LEAD is the exclusive property of ATF. Distribution of Project E-LEAD software outside of ATF is strictly prohibited. All offices are re encouraged to work with and share information/investigative leads with other Federal, State, and local law enforcement agencies; however, Project LEAD software and data extract disks are the property of ATF and cannot be released outside the agency. When Project LEAD disks are not in use, the RAC/GS or Project LEAD coordinator shall ensure all disks are stored in a locked file. Computers with Project LEAD information shall not be left on while unattended for any period of time. Information concerning private individuals is contained in Project LEAD, and this information must be protected against unwarranted dissemination.
147. COORDINATION OF PROJECT LEAD INFORMATION WITH REGULATORY ENFORCEMENT. Project LEAD primarily focuses on recurring trends and patterns that may indicate illegal firearms trafficking activity by unlicensed individuals, however, should any CE operator of Project LEAD discover information concerning licensed firearms dealers that may have value to RE's inspection efforts, this information should be forwarded to the area RE FTC via ATF F 5000.21 as soon as possible. This information may be useful to RE when used in conjunction with more detailed FFL information available through a QMF run.
148. "WEAPONS TRANSFERS".
- a. Considerations. During the course of illegal firearms trafficking investigations, special agents may become aware of, observe, or encounter situations where an individual(s) will take delivery of firearms, or transfer firearm(s) to others. In these instances, the special agent may exercise the following options:
- (1) In cases where probable cause exists to believe a violation of law has occurred and the special agent determines there is a need to intervene in the weapons transfer (e.g., the recipient of the firearms is a known felon; it is known the firearms will be used in crime of violence), the special agent shall do so but should place concerns for public safety and the safety of the involved special agents as the primary determining factor in exercising this option.
 - (2) In other cases, immediate intervention may not be needed or desirable, and the special agent may choose to allow the transfer of firearms to take place in order to further an investigation and allow for the identification of additional coconspirators who would have continued to operate and

illegally traffic firearms in the future, potentially producing more armed crime.

- b. Alternative Intervention Methods. In the event it is determined by the special agent that a weapons transfer should not take place, the special agent may consider alternative methods of intervention other than arrest and/or search warrants that will prevent the culmination of the weapons transfer but allow the investigation to continue undetected. These alternative methods are considered to be a course of action that must be approved by the RAC/GS or SAC as previously noted. These alternative interventions may include, but are not limited to:
- (1) A traffic stop (supported by probable cause to search or supported by a traffic violation allowing for plain view observations) by a State or local marked law enforcement vehicle that would culminate in the discovery and retention of the firearms. This would prevent the weapons transfer from fully occurring and may in turn produce new investigative leads. Should the occupants of the vehicle be new/unknown participants in the organization under investigation, they may be fully identified which in turn will yield additional information for followup investigation. Should the occupants of the vehicle be known participants in the investigation, requesting telephone tolls for these individuals (or if a Penn Register/T-III interception order is in use) for the period shortly after the traffic stop may show calls and yield identifying information relating to the intended receivers of the firearms.
 - (2) If the firearms are being shipped out of the United States via a common carrier via checked luggage or freight, the firearms may be seized/or recovered by the special agents, in coordination with the U.S. Customs Service under border search authority, without detection by the traffickers. This would prevent the weapons transfer from fully occurring and may in turn produce new investigative leads. The investigation may then continue with the traffickers led to believe the shipment of firearms was stolen in transit. Requesting telephone tolls for these individuals (or if a Pen Register/T-III interception order is in use) for the period shortly after the recovery of the firearms may show calls and yield identifying information relating to the intended receivers of the firearms.
 - (3) If the firearms are being shipped via the U.S. mail, coordination with the U.S. postal inspectors will assist the special agents in recovery of the firearms without detection

by the traffickers. This would prevent the weapons transfer from fully occurring and may in turn produce new investigative leads. The investigation may then continue with the traffickers led to believe the shipment of firearms was stolen in transit. Requesting telephone tolls for these individuals (or if a Penn Register/T-III interception order is in use) for the period shortly after the recovery of the firearms may show calls and yield identifying information relating to the intended receivers of the firearms.

- (4) If the special agent chooses to arrest the individual(s) with the firearm(s), the possibility exists that a debriefing of this individual will yield other members of the organization, or the individual(s) will agree to participate in a controlled delivery of the firearm(s) to the original intended receivers.

149. FEDERAL FIREARMS LICENSEES (FFLS). This paragraph sets forth policy and procedures for obtaining licensee warrants and conducting criminal investigations of licensed persons, their agents or employees, and business entities engaged in the firearms business.

- a. In passing the GCA, as amended, Congress declared that the purpose of the act was to provide support to Federal, State, and local law enforcement officials in their fight against crime and violence while not placing undue Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms for lawful activity.
- b. Most persons licensed to engage in the firearms business are pursuing their interests for lawful purposes. It is the policy of ATF to initiate criminal investigations of licensees only when there is reason to believe that they are engaged in criminal activity such as dealing in stolen/contraband firearms or ammunition, knowingly supplying firearms to criminals, terrorists, gang offenders, or juveniles, or engaged in such willful and flagrant violations that it can be reasonably assumed that the firearms will find their way into the hands of criminals, terrorists, gang offenders, or juveniles.
 - (1) The GCA provides misdemeanor penalties for licensees who make false statements or representations with respect to information required in their records (18 U.S.C. § 922(m)). The successful use of misdemeanor charges enhances licensee denials or revocations. In cases of flagrant and willful violations of recordkeeping requirements that can be shown to pose a genuine threat to the public safety, the licensee should be recommended for felony prosecution under 18 U.S.C. § 922(b)(5) and/or 18 U.S.C. § 1001.

- (2) Where evidence supporting prosecution does not meet established prosecutorial thresholds or the violations are minor or technical in nature, the information shall be referred, through the SAC, to the appropriate RE DD for administrative action.
 - (3) Where CE is notified by RE that it has attempted to acquire the records of an FFL who has terminated his/her business, failed to renew his/her license, or failed to respond to official correspondence for license renewal, CE efforts should be made and coordinated with RE to obtain the FFL's records and forward them to the NTC Out-of-Business Records Center in Falling Waters, West Virginia.
- c. Most licensees cooperate with ATF in exercising lawful inspection access to their premises. When a licensee refuses voluntary inspection and requires a warrant, the special agent shall obtain one in conformance with this chapter. If, after the warrant is obtained, the licensee continues to refuse ATF access to records and inventory, the special agent shall advise the licensee of the following statutes:
- (1) 18 U.S.C. § 1509 Obstruction of court orders (misdemeanor).
 - (2) 18 U.S.C. § 111 Obstruction of a Federal agent (felony).
 - (3) 18 U.S.C. §§ 923(g)(1)(B) and 924(a)(1)(D) Obstructing the examination of inventory and records (felony).
- d. Where the licensee continues to refuse admittance to the business premises, the special agent is precluded from using force to gain entrance under an Inspection or Reasonable Cause Warrant. However, the special agent may summarily arrest the licensee or choose to initiate contempt proceedings and/or coordinate a licensee revocation with RE at a later date. The possibility of summary arrest must be discussed with the SAC prior to execution of an Inspection or Reasonable Cause Warrant.

150. WARRANTLESS INSPECTIONS.

- a. The GCA places certain restrictions on ATF's ability to inspect the inventory and records of a licensee, whether at the licensed premises or authorized gun shows. A warrant is required to conduct an inspection EXCEPT under the following conditions:
 - (1) Inspection to Ensure Compliance With the Recordkeeping Requirement. This inspection may be conducted without prior notice, but ATF is limited to only ONE INSPECTION FOR ANY 12-MONTH PERIOD DURING BUSINESS HOURS.

United States Senate

WASHINGTON, DC 20510

March 4, 2011

Via Electronic Transmission

Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, NE
Washington, DC 20226

Dear Acting Director Melson:

Due to my inquiry into the ATF's Operation Fast and Furious, I am concerned that the ATF may have employed the same risky strategy of encouraging weapons trafficking that was employed elsewhere by the ATF, beyond the Phoenix Field Office and its Operation "Fast and Furious."

As you know, U.S. Immigration and Customs Enforcement (ICE) Agent Jaime Zapata was murdered in Mexico on February 15. According to a press report based on an unnamed source, the weapon used to kill Zapata "was shipped through Laredo with the possible knowledge of the ATF," and "the feds were already investigating the suspects when the gun was sent to Mexico."¹ According to another report in the Dallas Morning News:

In North Texas . . . ATF agents were conducting another Project Gunrunner surveillance operation involving brothers Otilio and Ranferi Osorio. ATF and Drug Enforcement Administration officials organized the November undercover transfer of about 40 weapons believed to be destined for a Mexican drug cartel. When Immigration and Customs Enforcement Agent Jaime Zapata was gunned down Feb. 15 in Mexico, ballistics tests and a partial serial number linked one weapon used in the shooting to Otilio Osorio.²

In its March 1 press release announcing the arrest of the Osorio brothers as well as their next-door neighbor Kelvin Morrison, the Department of Justice (DOJ) confirmed that all three men were being investigated by the ATF as early as last November. Prior to the 40 weapons referenced above being confiscated in Laredo, the Osorio brothers and Morrison provided the guns to an ATF confidential informant in Dallas in a meeting set up by the ATF. After the delivery of the illegal weapons, the three men were stopped by local police. Why were these traffickers not thereafter arrested in November?

¹ Terry Wallace, "ATF: Gun in US agent's death traced to Texas man," Associated Press, February 28, 2011.

² "Federal gun-smuggling surveillance program backfires," Dallas Morning News, March 3, 2011.

Naturally, this raises questions about whether the ATF strategy of allowing straw purchasers to continue to operate in hopes of making bigger cases may have contributed to the shooting of ICE Agent Jaime Zapata. Please provide written answers to the following questions:

- (1) Although the gun used in the assault on Agent Zapata that has been traced back to the U.S. was purchased on October 10, 2010, how can we know that it did not make its way down to Mexico after the November investigation, when the arrest of these three criminals might have prevented the gun from being trafficked and later used to murder Agent Zapata?
- (2) When did law enforcement first become aware that Morrison purchased the gun?
- (3) Given that the likely recipients of any trafficked guns were so close to the border, did any ATF personnel raise concerns about the possibility of those guns being used against U.S. law enforcement? If so, how did the ATF address those concerns?
- (4) Did any ATF personnel raise concerns about the wisdom of allowing individuals like the Osorio brothers or Morrison to continue their activities after the November weapons transfer? If so, how did the ATF address those concerns?

In addition to answering those questions, please provide all records relating to:

- (5) When law enforcement officials first became aware of the trafficking activities of Otilio and Ranferi Osorio and Kelvin Morrison;
- (6) Surveillance that may have been conducted on the Osorio brothers or Morrison prior to the November transfer of weapons between the ATF's confidential informant and the Osorio brothers and Morrison;
- (7) The November transfer; and
- (8) Any surveillance that law enforcement continued to conduct on the Osorio brothers or Morrison after the November transfer.

Please contact my staff no later than March 7, 2011 to schedule a briefing on this matter. Should you have any questions regarding this letter, please contact Tristan Leavitt at (202) 224-5225.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles E. Grassley", with a stylized flourish at the end.

Charles E. Grassley
Ranking Member

cc: The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

United States Senate

WASHINGTON, DC 20510

January 27, 2011

Via Electronic Transmission

Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, NE
Washington, DC 20226

Dear Acting Director Melson:

It is my understanding that the ATF is continually conducting operations along the southwestern United States border to thwart illegal firearm trafficking. I am specifically writing you concerning an ATF operation called "Project Gunrunner." There are serious concerns that the ATF may have become careless, if not negligent, in implementing the Gunrunner strategy.

Members of the Judiciary Committee have received numerous allegations that the ATF sanctioned the sale of hundreds of assault weapons to suspected straw purchasers, who then allegedly transported these weapons throughout the southwestern border area and into Mexico. According to the allegations, one of these individuals purchased three assault rifles with cash in Glendale, Arizona on January 16, 2010. Two of the weapons were then allegedly used in a firefight on December 14, 2010 against Customs and Border Protection (CBP) agents, killing CBP Agent Brian Terry. These extremely serious allegations were accompanied by detailed documentation which appears to lend credibility to the claims and partially corroborates them.

On Tuesday, according to press reports, the ATF arrested 17 suspects in a Project Gunrunner bust. William Newell, the Special Agent in Charge of the ATF's Phoenix Field Office was quoted as saying, "We strongly believe we took down the entire organization from top to bottom that operated out of the Phoenix area." However, if the 17 individuals were merely straw purchasers of whom the ATF had been previously aware before Agent Terry's death, then that raises a host of serious questions that the ATF needs to address immediately.

As you know, the Department of Justice Office of Inspector General (OIG) released a review of ATF's Project Gunrunner in November of 2010, in which the OIG concluded that Project Gunrunner has been unsuccessful, in large part because:

Project Gunrunner's investigative focus has largely remained on gun dealer inspections and straw purchaser investigations, rather than targeting higher-level traffickers and smugglers. As a result, ATF has not made full use of the

intelligence, technological, and prosecutorial resources that can help ATF's investigations reach into the higher levels of trafficking rings.¹

Therefore, in order to gain a more complete understanding of ATF activities in Project Gunrunner, I request that you arrange for my staff to be briefed by knowledgeable ATF supervisors no later than February 3, 2011. Please contact Jason Foster or Brian Downey at (202) 224-5225 to schedule the briefing. All formal correspondence should be sent electronically in PDF format to Brian_Downey@judiciary-rcp.senate.gov or via facsimile to (202) 224-3799.

Sincerely,



Charles E. Grassley
Ranking Member

¹ *Review of ATF's Project Gunrunner, Evaluation and Inspections Report I-2011-001*, November 2010, available at <http://www.justice.gov/oig/reports/ATF/e1101.pdf>

United States Senate

WASHINGTON, DC 20510

January 31, 2011

Via Electronic Transmission

Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, NE
Washington, DC 20226

Dear Acting Director Melson:

As you know, I wrote to you on Thursday, January 27, regarding serious allegations associated with Project Gunrunner and the death of Customs and Border Protection Agent Brian Terry. Although the staff briefing I requested has not yet been scheduled, it appears that the ATF is reacting in less productive ways to my request. I understand that Assistant Special Agent in Charge (ASAC) George Gillette of the ATF's Phoenix office questioned one of the individual agents who answered my staff's questions about Project Gunrunner. ASAC Gillette allegedly accused the agent of misconduct related to his contacts with the Senate Judiciary Committee. This is exactly the wrong sort of reaction for the ATF. Rather than focusing on retaliating against whistleblowers, the ATF's sole focus should be on finding and disclosing the truth as soon as possible.

Whistleblowers are some of the most patriotic people I know—men and women who labor, often anonymously, to let Congress and the American people know when the Government isn't working so we can fix it. As such, it would be prudent for you to remind ATF management about the value of protected disclosures to Congress and/or Inspectors General in accordance with the whistleblower protection laws. Absent such a clear communication from you, ATF management might be able to intimidate whistleblowers to prevent them from providing information to Congress.

As you may be aware, obstructing a Congressional investigation is a crime.¹ Additionally, denying or interfering with employees' rights to furnish information to

¹ 18 U.S.C. § 1505 states, in pertinent part:

Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress--

Shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both.

Congress is also against the law.² Federal officials who deny or interfere with employees' rights to furnish information to Congress are not entitled to have their salaries paid by taxpayers' dollars.³ Finally, ATF personnel have Constitutional rights to express their concerns to Congress under the First Amendment.

ATF employees have the right to talk to Congress and to provide Congress with information free and clear of agency interference. Further, these employees have the right to be free from fear of retaliation or reprisal for doing so. Please ensure that ATF employees are aware of their rights and whistleblower protections and that ATF managers are accountable for respecting any protected disclosures.

If you have any questions please contact my Committee staff, Jason Foster at (202) 224-5225. Any formal correspondence should be sent electronically in PDF searchable format to Brian_Downey@judiciary-rep.senate.gov.

Sincerely,



Charles E. Grassley
Ranking Member

cc: The Honorable Eric H. Holder, Jr.
Attorney General of the United States

² 5 U.S.C. § 7211 states:

The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.

³ P.L. 111 -117 § 714 states:

No part of any appropriation contained in this or any other Act shall be available for the payment of the salary of any officer or employee of the Federal Government, who -

(1) prohibits or prevents, or attempts or threatens to prohibit or prevent, any other officer or employee of the Federal Government from having any direct oral or written communication or contact with any Member, committee, or subcommittee of the Congress in connection with any matter pertaining to the employment of such other officer or employee or pertaining to the department or agency of such other officer or employee in any way, irrespective of whether such communication or contact is at the initiative of such other officer or employee or in response to the request or inquiry of such Member, committee, or subcommittee; or

(2) removes, suspends from duty without pay, demotes, reduces in rank, seniority, stats, pay, or performance of efficiency rating, denies promotion to, relocates, reassigns, transfers, disciplines, or discriminates in regard to any employment right, entitlement, or benefit, or any term or condition of employment of, any other officer or employee of the Federal Government, or attempts or threatens to commit any of the foregoing actions with respect to such other officer or employee, by reason of any communication or contact of such other officer or employee with any Member, committee, or subcommittee of the Congress as described in paragraph (1).

United States Senate

WASHINGTON, DC 20510

February 16, 2011

Via Electronic Transmission

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Dear Attorney General Holder:

I appreciate the staff briefing that Department of Justice (DOJ) and Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) officials provided on February 10, 2011. However, the briefers focused on general issues related to challenges in successfully prosecuting gun trafficking cases. They refused to answer specific questions about the facts and circumstances that led me to request the briefing.

Specifically, they refused to say whether the approximately 103 weapons seized according to the Jaime Avila indictment were the only seizures related to the nearly 770 weapons mentioned in the indictment. They refused to say whether the third assault rifle purchased by Avila in January 2010—the one not found at the scene of CBP Agent Brian Terry's shooting—has been recovered elsewhere. When asked whether ATF had encouraged any gun dealer to proceed with sales to known or suspected traffickers such as Avila, the briefers said only that they did not have any "personal knowledge" of that.

Therefore, please provide the following documents to the Committee:

- 1) All records relating to communications between the ATF and the Federal Firearms Licensee (FFL) who sold the weapons to Avila, including any Report of Investigation (ROI) or other records relating to the December 17, 2009 meeting "to discuss his role as an FFL during this investigation."
- 2) All records relating to communications between ATF headquarters and Phoenix Special Agent in Charge (SAC) William Newell from December 1, 2010 to the present, including a memorandum, approximately 30 pages long, from SAC Newell to ATF headquarters following the arrest of Jaime Avila and the death of CBP Agent Brian Terry.
- 3) A copy of the presentation, approximately 200 pages long, that the Group 7 Supervisor made to officials at ATF Headquarters in the Spring of 2010.

- 4) Copies of all e-mails related to Operation Fast and Furious, the Jaime Avila case, or the death of CBP Agent Brian Terry sent to or from SAC Newell, Assistant Special Agent in Charge (ASAC) George Gillette, Group 7 Supervisor, or the Case Agent between November 1, 2009 and January 31, 2011.

Please provide documents in batches on a rolling basis as they are identified and located. Also, please prioritize your search for documents and produce them in the following order: (1) documents in response to requests one through three, (2) documents in response to request four dated between December 13, 2010 and January 31, 2011, and (3) documents in response to request four dated between November 1, 2009 and December 13, 2010.

I look forward to receiving your response. Please provide the first set of requested documentation by no later than February 23, 2011. If you have any questions please contact Jason Foster or Brian Downey at (202) 224-5225. All formal correspondence should be sent electronically in PDF format to Brian_Downey@judiciary-rep.senate.gov or via facsimile to (202) 224-3799.

Sincerely,



Charles E. Grassley
Ranking Member

cc: The Honorable Patrick Leahy
Chairman
United States Senate Committee on the Judiciary

The Honorable Robert S. Mueller, III
Director
Federal Bureau of Investigation

Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives

The Honorable Alan D. Bersin
Commissioner
United States Customs and Border Protection



Office of the Assistant Attorney General

Washington, D. C. 20530

February 4, 2011

The Honorable Charles E. Grassley
Ranking Minority Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Grassley:

This responds to your letters, dated January 27, 2011 and January 31, 2011, to Acting Director Kenneth Melson of the Department's Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), regarding Project Gunrunner. We appreciate your strong support for the Department's law enforcement mission.

At the outset, the 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. Indeed, an important goal of Project Gunrunner is to stop the flow of weapons from the United States to drug cartels in Mexico. Since its inception in 2006, Project Gunrunner investigations have seized in excess of 10,000 firearms and 1.1 million rounds of ammunition destined for Mexico. Hundreds of individuals have been convicted of criminal offenses arising from these investigations and many others are on-going. ATF remains committed to investigating and dismantling firearms trafficking organizations, and will continue to pursue those cases vigorously with all available investigative resources.

In this vein, the suggestion that Project Gunrunner focuses simply on straw purchasers is incorrect. The defendants named in the indictments referenced in your January 27 letter include leaders of a sophisticated gun trafficking organization. One of the goals of the investigation that led to those indictments is to dismantle the entire trafficking organization, not merely to arrest straw purchasers.

I also want to assure you that ATF has made no attempt to retaliate against any of its agents regarding this matter. We recognize the importance of protecting employees from retaliation relating to their disclosures of waste, fraud, and abuse. ATF employees receive annual training on their rights under the Whistleblower Protection Act, and those with knowledge of waste, fraud, or abuse are encouraged to communicate directly with the

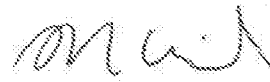
Department's Office of Inspector General. These protections do not negate the Department's legitimate interest in protecting confidential information about pending criminal investigations.

We also want to protect investigations and the law enforcement personnel who directly conduct them from inappropriate political influence. For this reason, we respectfully request that Committee staff not contact law enforcement personnel seeking information about pending criminal investigations, including the investigation into the death of Customs and Border Patrol Agent Brian Terry. Like you, we are deeply concerned by his murder, and we are actively investigating the matter. Please direct any inquiry into his killing to this office.

The Department would be pleased to provide a briefing to Committee staff about Project Gunrunner and ATF's efforts to work with its law enforcement partners to build cases that will disrupt and dismantle criminal organizations. That briefing would not address the on-going criminal investigation referenced in your letter. As you know, the Department has a long-standing policy against the disclosure of non-public information about pending criminal investigations, which protects the independence and effectiveness of our law enforcement efforts as well as the privacy and due process interests of individuals who may or may not ever be charged with criminal offenses.

We hope that this information is helpful and look forward to briefing Committee staff about Project Gunrunner. Please do not hesitate to contact this office if we may provide additional assistance about this or any other matter.

Sincerely,



Ronald Weich
Assistant Attorney General

cc: The Honorable Patrick J. Leahy
Chairman

United States Senate

WASHINGTON, DC 20510

March 4, 2011

Via Electronic Transmission

Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, NE
Washington, DC 20226

Dear Acting Director Melson:

Due to my inquiry into the ATF's Operation Fast and Furious, I am concerned that the ATF may have employed the same risky strategy of encouraging weapons trafficking that was employed elsewhere by the ATF, beyond the Phoenix Field Office and its Operation "Fast and Furious."

As you know, U.S. Immigration and Customs Enforcement (ICE) Agent Jaime Zapata was murdered in Mexico on February 15. According to a press report based on an unnamed source, the weapon used to kill Zapata "was shipped through Laredo with the possible knowledge of the ATF," and "the feds were already investigating the suspects when the gun was sent to Mexico."¹ According to another report in the Dallas Morning News:

In North Texas . . . ATF agents were conducting another Project Gunrunner surveillance operation involving brothers Otilio and Ranferi Osorio. ATF and Drug Enforcement Administration officials organized the November undercover transfer of about 40 weapons believed to be destined for a Mexican drug cartel. When Immigration and Customs Enforcement Agent Jaime Zapata was gunned down Feb. 15 in Mexico, ballistics tests and a partial serial number linked one weapon used in the shooting to Otilio Osorio.²

In its March 1 press release announcing the arrest of the Osorio brothers as well as their next-door neighbor Kelvin Morrison, the Department of Justice (DOJ) confirmed that all three men were being investigated by the ATF as early as last November. Prior to the 40 weapons referenced above being confiscated in Laredo, the Osorio brothers and Morrison provided the guns to an ATF confidential informant in Dallas in a meeting set up by the ATF. After the delivery of the illegal weapons, the three men were stopped by local police. Why were these traffickers not thereafter arrested in November?

¹ Terry Wallace, "ATF: Gun in US agent's death traced to Texas man," Associated Press, February 28, 2011.

² "Federal gun-smuggling surveillance program backfires," Dallas Morning News, March 3, 2011.

Naturally, this raises questions about whether the ATF strategy of allowing straw purchasers to continue to operate in hopes of making bigger cases may have contributed to the shooting of ICE Agent Jaime Zapata. Please provide written answers to the following questions:

- (1) Although the gun used in the assault on Agent Zapata that has been traced back to the U.S. was purchased on October 10, 2010, how can we know that it did not make its way down to Mexico after the November investigation, when the arrest of these three criminals might have prevented the gun from being trafficked and later used to murder Agent Zapata?
- (2) When did law enforcement first become aware that Morrison purchased the gun?
- (3) Given that the likely recipients of any trafficked guns were so close to the border, did any ATF personnel raise concerns about the possibility of those guns being used against U.S. law enforcement? If so, how did the ATF address those concerns?
- (4) Did any ATF personnel raise concerns about the wisdom of allowing individuals like the Osorio brothers or Morrison to continue their activities after the November weapons transfer? If so, how did the ATF address those concerns?

In addition to answering those questions, please provide all records relating to:

- (5) When law enforcement officials first became aware of the trafficking activities of Otilio and Ranferi Osorio and Kelvin Morrison;
- (6) Surveillance that may have been conducted on the Osorio brothers or Morrison prior to the November transfer of weapons between the ATF's confidential informant and the Osorio brothers and Morrison;
- (7) The November transfer; and
- (8) Any surveillance that law enforcement continued to conduct on the Osorio brothers or Morrison after the November transfer.

Please contact my staff no later than March 7, 2011 to schedule a briefing on this matter. Should you have any questions regarding this letter, please contact Tristan Leavitt at (202) 224-5225.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles E. Grassley", is positioned above the typed name.

Charles E. Grassley
Ranking Member

cc: The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 8, 2011

The Honorable Charles E. Grassley
Ranking Minority Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Grassley:

This responds to your letters, dated March 3, 2011, and March 4, 2011, which reiterated your concerns about investigations into weapons trafficking along the Southwest border.

We appreciate your continuing concern about this matter. We have referred your letters and the attached documents to the Department's Office of the Inspector General (OIG). As you know, the Attorney General has asked the Acting Inspector General to evaluate concerns raised about Project Gunrunner, the effort by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) to interdict weapons purchased illegally for transport to Mexican cartels. We urge you to provide the OIG with any additional information that you think would be helpful to its review.

We hope that this information is helpful. Please do not hesitate to contact this office if we may be of assistance in this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald Weich", is positioned above the typed name.

Ronald Weich
Assistant Attorney General

cc: The Honorable Patrick J. Leahy
Chairman

May 2, 2011

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Grassley:

This responds to your letter of April 13, 2011, referencing the allegations you have raised about the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF's) Project Gunrunner and Operation Fast and Furious, and requesting that the Senate Judiciary Committee receive access to the ATF documents reviewed by the House Committee on Oversight and Government Reform.

You have asked whether it remains our view that "ATF did not sanction or otherwise knowingly allow the sale of assault weapons to straw purchasers." In fact, my letter, dated February 4, 2011 said: "At the outset, the 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." It remains our understanding that ATF's Operation Fast and Furious did not knowingly permit straw buyers to take guns into Mexico. You have provided to us documents, including internal ATF emails, which you believe support your allegation. As you know, we have referred these documents and all correspondence and materials received from you related to Operation Fast and Furious to the Acting Inspector General, so that she may conduct a thorough review and resolve your allegations. While we await her findings, the Attorney General has made clear to prosecutors and agents working along the Southwest Border that the Department should never knowingly permit firearms to cross the border.

Your letter also asks whether the Department will provide the Senate Judiciary Committee with access to the documents made available to the House Committee on Oversight and Government Reform. While we appreciate your interest in this matter, the Executive Branch over many Administrations has taken the position that only a chairman can speak for a committee in conducting oversight and we work to accommodate legitimate oversight needs of congressional committees as articulated in letter requests from chairmen. The Department's responses to such requests are sent to both the chairman and the ranking member, and documents made available in response to a chairman's request may be reviewed by all members and staff on that committee. As we explained in our April 18, 2011 letter to Chairman Leahy, a copy of which was provided to you, there are ongoing criminal investigations in Arizona, as well as an indicted criminal case set for trial in June in which 20 people have been charged with gun trafficking, drug trafficking and money laundering crimes. We have received no further requests from Chairman Leahy. We recognize the importance of congressional oversight and have continued to be as responsive as possible to Chairman Issa without jeopardizing important law enforcement efforts that are directed at stemming the violence in the United States and Mexico emanating from the drug cartels in Mexico. We are confident you understand the critical need of

the Department to protect the pending criminal trial and ongoing investigation of alleged gun traffickers, drug traffickers, and money launderers along the Southwest Border.

We hope that this information is helpful. Please do not hesitate to contact this office if we can provide additional assistance regarding this or any other matter.

Sincerely,

Ronald Weich
Assistant Attorney General

cc: The Honorable Patrick Leahy
Chairman

United States Senate

WASHINGTON, DC 20510

March 4, 2011

Via Electronic Transmission

Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, NE
Washington, DC 20226

Dear Acting Director Melson:

Due to my inquiry into the ATF's Operation Fast and Furious, I am concerned that the ATF may have employed the same risky strategy of encouraging weapons trafficking that was employed elsewhere by the ATF, beyond the Phoenix Field Office and its Operation "Fast and Furious."

As you know, U.S. Immigration and Customs Enforcement (ICE) Agent Jaime Zapata was murdered in Mexico on February 15. According to a press report based on an unnamed source, the weapon used to kill Zapata "was shipped through Laredo with the possible knowledge of the ATF," and "the feds were already investigating the suspects when the gun was sent to Mexico."¹ According to another report in the Dallas Morning News:

In North Texas . . . ATF agents were conducting another Project Gunrunner surveillance operation involving brothers Otilio and Ranferi Osorio. ATF and Drug Enforcement Administration officials organized the November undercover transfer of about 40 weapons believed to be destined for a Mexican drug cartel. When Immigration and Customs Enforcement Agent Jaime Zapata was gunned down Feb. 15 in Mexico, ballistics tests and a partial serial number linked one weapon used in the shooting to Otilio Osorio.²

In its March 1 press release announcing the arrest of the Osorio brothers as well as their next-door neighbor Kelvin Morrison, the Department of Justice (DOJ) confirmed that all three men were being investigated by the ATF as early as last November. Prior to the 40 weapons referenced above being confiscated in Laredo, the Osorio brothers and Morrison provided the guns to an ATF confidential informant in Dallas in a meeting set up by the ATF. After the delivery of the illegal weapons, the three men were stopped by local police. Why were these traffickers not thereafter arrested in November?

¹ Terry Wallace, "ATF: Gun in US agent's death traced to Texas man," Associated Press, February 28, 2011.

² "Federal gun-smuggling surveillance program backfires," Dallas Morning News, March 3, 2011.

Naturally, this raises questions about whether the ATF strategy of allowing straw purchasers to continue to operate in hopes of making bigger cases may have contributed to the shooting of ICE Agent Jaime Zapata. Please provide written answers to the following questions:

- (1) Although the gun used in the assault on Agent Zapata that has been traced back to the U.S. was purchased on October 10, 2010, how can we know that it did not make its way down to Mexico after the November investigation, when the arrest of these three criminals might have prevented the gun from being trafficked and later used to murder Agent Zapata?
- (2) When did law enforcement first become aware that Morrison purchased the gun?
- (3) Given that the likely recipients of any trafficked guns were so close to the border, did any ATF personnel raise concerns about the possibility of those guns being used against U.S. law enforcement? If so, how did the ATF address those concerns?
- (4) Did any ATF personnel raise concerns about the wisdom of allowing individuals like the Osorio brothers or Morrison to continue their activities after the November weapons transfer? If so, how did the ATF address those concerns?

In addition to answering those questions, please provide all records relating to:

- (5) When law enforcement officials first became aware of the trafficking activities of Otilio and Ranferi Osorio and Kelvin Morrison;
- (6) Surveillance that may have been conducted on the Osorio brothers or Morrison prior to the November transfer of weapons between the ATF's confidential informant and the Osorio brothers and Morrison;
- (7) The November transfer; and
- (8) Any surveillance that law enforcement continued to conduct on the Osorio brothers or Morrison after the November transfer.

Please contact my staff no later than March 7, 2011 to schedule a briefing on this matter. Should you have any questions regarding this letter, please contact Tristan Leavitt at (202) 224-5225.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles E. Grassley", is positioned above the typed name.

Charles E. Grassley
Ranking Member

cc: The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 8, 2011

The Honorable Charles E. Grassley
Ranking Minority Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Grassley:

This responds to your letters, dated March 3, 2011, and March 4, 2011, which reiterated your concerns about investigations into weapons trafficking along the Southwest border.

We appreciate your continuing concern about this matter. We have referred your letters and the attached documents to the Department's Office of the Inspector General (OIG). As you know, the Attorney General has asked the Acting Inspector General to evaluate concerns raised about Project Gunrunner, the effort by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) to interdict weapons purchased illegally for transport to Mexican cartels. We urge you to provide the OIG with any additional information that you think would be helpful to its review.

We hope that this information is helpful. Please do not hesitate to contact this office if we may be of assistance in this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald Weich".

Ronald Weich
Assistant Attorney General

cc: The Honorable Patrick J. Leahy
Chairman

PATRICK J. LEAHY, VERMONT, CHAIRMAN

HERB KOHL, WISCONSIN
 DIANNE FEINSTEIN, CALIFORNIA
 CHARLES E. SCHUMER, NEW YORK
 RICHARD J. DURBIN, ILLINOIS
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 CHRISTOPHER A. COONS, DELAWARE
 RICHARD BLUMENTHAL, CONNECTICUT

CHARLES E. GRASSLEY, IOWA
 ORRIN G. HATCH, UTAH
 JON KYL, ARIZONA
 JEFF SESSIONS, ALABAMA
 LINDSEY O. GRAHAM, SOUTH CAROLINA
 JOHN CORNYN, TEXAS
 MICHAEL S. LEE, UTAH
 TOM COBURN, OKLAHOMA

United States Senate

COMMITTEE ON THE JUDICIARY
 WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
 KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

April 8, 2011

VIA ELECTRONIC TRANSMISSION

Kenneth E. Melson
 Acting Director
 Bureau of Alcohol, Tobacco, Firearms, and Explosives
 99 New York Avenue, NE
 Washington, DC 20226

Dear Acting Director Melson:

Attached is an email released through the Freedom of Information Act (FOIA).¹ It appears to contain proposed guidance to ATF employees about how to respond to contacts from my office. The guidance instructs ATF employees that they “are in no way obligated to respond” to questions from Congress. It also attempts to prevent direct communications with my office by instructing that ATF employees “should refer congressional staff who seek information from you to the ATF’s office of congressional affairs.” The guidance further attempts to prevent direct communications with my office by claiming that ATF employees “are not authorized to disclose non-public information.”

It is unclear from the email released through FOIA whether this guidance was actually communicated to ATF employees. However, it is of grave concern because, as you know, such attempts to prevent direct communications with Congress are not a lawfully authorized activity of any officer or employee of the United States whose salary is paid with appropriated funds.² Specifically, no officer or employee may attempt to prohibit or prevent “any other officer or employee of the Federal Government from having *direct* oral or written communication or *contact* with any Member, committee, or subcommittee of the Congress” about a matter related to his employment or the

¹ Attachment 1.

² Consolidated Appropriations Act, 2010, P.L. 111-117, 123 Stat. 3034, § 714 (2010), as continued by §101 of continuing resolutions P.L. 111-242, 124 Stat. 2607 (2010) and P.L. 112-6, 125 Stat. 23 (2011)—which extends the funding levels in the 2010 appropriations bills, as well as “the authority and conditions provided in such Acts,” through April 8, 2011.

agency “in any way, *irrespective of whether such communication or contact is at the initiative*” of the employee or Congress (emphasis added).³

I wrote to you on January 31 to ensure you were aware of these provisions and to express concerns that without proper guidance, managers might inappropriately intimidate employees to discourage them from speaking with Congress and thus unlawfully interfere with a Congressional inquiry.⁴ In order for Congress to exercise its oversight authority and act as a check on Executive power, it is crucial that agency employees are free to communicate directly with Members and Committee staff. Direct contact means contacts that do not necessarily involve Congressional liaison or agency management. Without such direct, unfiltered communications, Congress would still be unaware of, and unable to inquire about, the serious allegations involving the death of Border Patrol Agent Brian Terry and the sales of weapons to known and suspected gun traffickers.

I have a long experience of witnessing retaliation against whistleblowers. Sometimes it is explicit and immediate. Often it is subtle and delayed until after public scrutiny has faded. Unfortunately, it is so frequent that employees fear that even truthful answers to direct factual questions from Congress will get them in trouble. That is why I am committed to maintaining the confidentiality of those employees who wish to cooperate with a Congressional inquiry or report problems anonymously. Direct contact with Congress of the sort protected by the law serves as an extra level of protection against retaliation and is obviously essential where an employee seeks confidentiality.

However, in some cases, agency employees choose to disclose their direct contacts with Congress, despite the potential consequences. As I explained in my January 31 letter, one employee chose to disclose his protected contacts with my staff and was immediately questioned about the content of those communications. I was concerned about that because forcing an employee to reveal the details of such communications would intrude on the integrity of the Congressional inquiry and offend the comity between the Branches that flows from the separation of powers under the Constitution.

Now, a second agency employee has chosen to disclose that he has had protected contacts with Congress. George Gillett, through and in conjunction with his legal counsel, is cooperating with this investigation. Mr. Gillett is the Assistant Special Agent in Charge of the ATF’s Phoenix field division, and Committee staff’s direct contacts with him are an essential component of our inquiry. He has participated in two preliminary meetings jointly with Senate Judiciary Committee staff and House Oversight and Government Reform Committee staff. As you know, retaliation for such communications is prohibited by law.

³ *Id.*

⁴ 18 U.S.C. § 1505 (providing criminal penalties for obstructing or impeding the power of Congressional inquiry).

On one previous occasion when an agency sought to compel an individual to disclose the content of his communications with Congress, I was prepared to introduce a resolution authorizing the Senate Legal Counsel to seek legal remedy in the courts. Fortunately, in light of that draft resolution, the Executive Branch withdrew its attempt to compel discovery of communications between a whistleblower and Congress.⁵

In this current inquiry, a similar attempt was also abandoned. The first ATF agent to disclose that he had direct contacts with Congress was ordered to describe the content of his communications in writing. However, shortly after my January 31 letter, I was pleased to learn that the order was withdrawn. I appreciate the agency's willingness to respect Congressional prerogatives and avoid interfering with a Congressional inquiry. Similarly, the agency should avoid intruding into our investigative process by seeking to learn the content of ASAC Gillett's communications with Congress.

In light of the attached email, I have renewed concerns that the guidance being given to employees may be inconsistent with the law.⁶ Therefore, please provide written answers to the following questions:

1. Was the attached guidance distributed, either in writing or otherwise, to ATF field offices or other ATF personnel?
2. Was any guidance on contacts with Congress distributed, either in writing or otherwise, to ATF field offices or other ATF personnel? If so, please provide a copy.
3. What steps have you taken or do you plan to take to ensure that employees are aware of their right to communicate directly with Congress if they so choose?

⁵ See S. PRT. 110-28, § VIII.D.2 "Attempt to Compel Disclosure of Confidential Communications with Congress," p. 103, 641, 652 ("Nothing in this agreement shall require [the production of] any communications with, or documents that were created for, any Senate Committees (or the staff or members thereof)"). See also S. HRG. 109-898, at 39-41, 470-471, responses to questions for the record to Dec. 5, 2006, Senate Judiciary Committee hearing at 8.

⁶ See generally, Government Accountability Office, "Department of Health and Human Services—Chief Actuary's Communications with Congress," B-302911 (Sep. 7, 2004) (discussing the history and background in support of the government-wide prohibition on attempts to prevent direct communications with Congress) (Attachment 2).

Please reply no later than April 14, 2011. If you have any questions about this request, please contact Jason Foster at (202) 225-5225. Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles E. Grassley".

Charles E. Grassley
Ranking Member

Attachments

cc: Chairman Patrick Leahy, Senate Committee on the Judiciary
Chairman Darrell Issa, House Committee on Oversight and Government Reform

Attachment 1

[REDACTED]

From: [REDACTED]
Sent: Saturday, February 05, 2011 12:25 PM
To: Hoover, William J.; [REDACTED]
Subject: Fw: Need quick guidance [REDACTED]

Are/Have we sent some kind of guidance to the Field along these lines?

NOTICE: This e-mail message and any attached files are intended solely for the use of the addressee(s) named above in connection with official business. This communication may contain Controlled Unclassified Information that may be statutorily or otherwise prohibited from being released without appropriate approval. Any review, use, or dissemination of this e-mail message and any attached file(s) in any form outside of ATF or the Department of Justice without express authorization is strictly prohibited.

From: [REDACTED] (SMO)
To: Hoover, William J.; [REDACTED]
Cc: [REDACTED] (SMO); [REDACTED] (SMO); [REDACTED] (OLA); [REDACTED] (CRM); [REDACTED] (USAAZ)
Sent: Thu Feb 03 18:44:26 2011
Subject: FW: Need quick guidance [REDACTED]

I'd recommend something along these lines if agents ask for guidance about how to respond to contacts from Senator's Grassley's staff -

During the last week in January, Senator Grassley wrote to ATF, reporting allegations that ATF had sanctioned the sale of assault weapons to suspected straw purchasers and that these weapons were used in the killing of Customs and Border Protection Agent Brian Terry. The Department has sent a written response to Senator Grassley, advising him that these allegations are not true. In further response to his requests, we expect to schedule a briefing by appropriate ATF representatives with staff for Senator Grassley and other Members of the Senate Judiciary Committee in the near future about Project Gunrunner and ATF's effort to work with its law enforcement partners to build cases that will disrupt and dismantle criminal organizations.

As always, you are in no way obligated to respond to congressional contacts or requests for information and generally, consistent with ATF policy, you should refer congressional staff who seek information from you to ATF's office of congressional affairs. You are not authorized to disclose non-public information about law enforcement matters outside of ATF or the Department of Justice to anyone, including congressional staff. This is important to protect the independence and effectiveness of our law enforcement efforts as well as the privacy and due process interests of individuals who are involved in these investigations.

If you have information about waste, fraud, or abuse within ATF - or any actions by Department employees that you believe constitute professional misconduct, you are encouraged to report that information to your supervisors and/or the Department's Office of Inspector General.

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Attachment 2



United States Government Accountability Office
Washington, DC 20548

B-302911

September 7, 2004

The Honorable Frank R. Lautenberg
The Honorable Tom Daschle
The Honorable Edward M. Kennedy
The Honorable Jack Reed
The Honorable Jon S. Corzine
The Honorable John F. Kerry
The Honorable Patrick J. Leahy
The Honorable Debbie Stabenow
The Honorable Tim Johnson
The Honorable Mark Pryor
The Honorable Maria Cantwell
The Honorable Joseph I. Lieberman
The Honorable Carl Levin
The Honorable Paul Sarbanes
The Honorable Barbara A. Mikulski
The Honorable Charles Schumer
The Honorable John Edwards
The Honorable Hillary Rodham Clinton
United States Senate

Subject: *Department of Health and Human Services—Chief Actuary's
Communications with Congress*

By letter dated March 18, 2004, you asked for our legal opinion regarding a potential violation of the prohibitions in the Consolidated Appropriations Act of 2004 and the Consolidated Appropriations Resolution of 2003 on the use of appropriated funds to pay the salary of a federal official who prohibits another federal employee from communicating with Congress. Pub. L. No. 108-199, Div. F, tit. VI, § 618, 188 Stat. 3, 354 (Jan. 23, 2004); Pub. L. No. 108-7, Div. J, tit. V, § 620, 117 Stat. 11, 468 (Feb. 20, 2003). Specifically, you ask whether alleged threats made by Thomas A. Scully, the former Administrator of the Centers for Medicare & Medicaid Services (CMS), to CMS Chief Actuary Richard S. Foster to terminate his employment if Mr. Foster provided various cost estimates of the then-pending prescription drug legislation to members of Congress and their staff made CMS's appropriation unavailable for the payment of Mr. Scully's salary.

As agreed, this opinion relies on the factual findings of the Office of Inspector General (OIG) for the Department of Health and Human Services (HHS), who conducted an independent investigation into whether Mr. Foster was prohibited from communicating with congressional offices and whether he was threatened with dismissal if he did so.¹ *Tom Scully and Chief Actuary - Information*, Report of the Office of Inspector General, Department of Health and Human Services, July 1, 2004 (OIG Report). The OIG concluded that CMS did not provide information requested by members of Congress and their staff, that Mr. Scully ordered Mr. Foster not to provide information to members and staff, and that Mr. Scully threatened to sanction Mr. Foster if he made any unauthorized disclosures. OIG Report, at 4.

As we explain below, in our opinion, HHS's appropriation, which was otherwise available for payment of Mr. Scully's salary, was unavailable for such purpose because section 618 of the Consolidated Appropriations Act of 2004 and section 620 of the Consolidated Appropriations Resolution of 2003 prohibit the use of appropriated funds to pay the salary of a federal official who prevents another employee from communicating with Congress.² While the HHS Office of General Counsel and the Office of Legal Counsel for the Department of Justice raised constitutional separation of powers concerns regarding the application of section 618, in our view, absent an opinion from a federal court concluding that section 618 is unconstitutional, we will apply it to the facts of this case.

Background

In December 2003, Congress passed and the President signed into law the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, which added a prescription drug benefit to the Medicare program. Pub. L. No. 108-173, 117 Stat. 2066 (Dec. 8, 2003). During the previous summer and fall as Congress debated various proposals, several members of Congress and committee staff asked Mr. Foster, a career civil servant and the Chief Actuary for CMS, to provide estimates of the cost of various provisions of the Medicare bills under debate.³ OIG Report, at 2-3.

¹ We advised your staff that we would, as appropriate, rely on the factual findings of the OIG. Letters to Senator Frank R. Lautenberg and additional requestors from Gary L. Kepplinger, Deputy General Counsel, GAO, April 15, 2004. In addition, the Office of the Inspector General agreed to allow us access to their investigative workpapers. This opinion is based on the factual findings contained in the OIG Report and the supporting workpapers. While this opinion relies on the factual findings of the OIG, it does not adopt or rely upon any legal conclusions reached by the OIG, HHS, or OLC.

² For ease of reference, we will refer to the identical prohibitions in the Consolidated Appropriations Act of 2004 and the Consolidated Appropriations Resolution of 2003 as "section 618."

³ Congress established the position of Chief Actuary in statute in 1997. Balanced Budget Act, Pub. L. No. 105-33, tit. IV, subtitle G, ch. 4, § 4643, 111 Stat. 487 (Aug. 5, 1997) (codified at 42 U.S.C. § 1317). The statute directs the Chief Actuary to carry out his duties "in accordance with the professional standards of actuarial independence." 42 U.S.C. § 1317(b)(1). The Act also directs that the Chief Actuary is to be appointed based on "education, experience [and] superior expertise in the actuarial sciences" and could be removed "only for cause." *Id.* The Balanced Budget Act conference report cites the long history and tradition of a "close and confidential working relationship" between the Social Security and Medicare actuaries and the congressional committees of jurisdiction. H.R. Conf. Rep. No. 105-217, at 837 (1997). The report then states that the "independence of the Office of the

Members and staff also made requests for technical assistance, including requests that Mr. Foster perform analyses of various provisions of the Medicare legislation. *Id.*

Mr. Foster did not respond to several of these requests because Thomas Scully, CMS Administrator and Mr. Foster's supervisor, stated that there would be adverse consequences if he released any information to Congress without Mr. Scully's approval.⁴ *OIG Report*, at 3. Mr. Foster stated that the first time he felt his job was threatened was in May 2003 when he provided information on private insurance plan enrollment rates to the Majority Staff Director of the House Ways and Means Committee and Mr. Scully rebuked him for doing so. *Id.* Later, on June 4, 2003, at Mr. Scully's request, Mr. Scully's special assistant instructed Mr. Foster not to respond to any requests for information from the House Ways and Means Committee and warned him that "the consequences of insubordination are extremely severe." *Id.* Mr. Foster interpreted this statement to mean that Mr. Scully would terminate his employment at CMS if he released any information to Congress without Mr. Scully's approval.⁵ *Id.* at 4.

The *OIG Report* concluded that, because of Mr. Scully's prohibition, Mr. Foster did not respond to several congressional requests for cost estimates and technical assistance, including requests from the minority staff of the House Ways and Means Committee for the total estimated cost of the legislation and for analyses of premium support provisions in the bill, and requests from Senators Mark Dayton and Edward Kennedy for premium estimates.⁶ *Id.* at 2-3.

There is no indication in the *OIG Report* that Mr. Scully objected to Mr. Foster's methodology or to the validity of his estimates. Rather, Mr. Foster testified before the House Ways and Means Committee that Mr. Scully determined which information to release to Congress on a "political basis." *Board of Trustees 2004 Annual Reports: Hearing Before the House Comm. on Ways and Means*, Federal News Service, Mar. 24, 2004. Furthermore, Mr. Scully never objected to Mr. Foster and his staff performing the analyses required to respond to congressional requests; he simply objected to certain analyses being released to Congress. During the same time period, Mr. Foster provided similar analyses to the Office of Management and Budget.

Actuary with respect to providing assistance to the Congress is vital," and that "reforming the Medicare and Medicaid programs is greatly enhanced by the free flow of actuarial information from the Office of the Actuary to the committees of jurisdiction in the Congress." *Id.* at 837-8.

⁴ HHS paid Mr. Scully's salary during this time period from its "Program Management" appropriations account. Pub. L. No. 108-199, Div. E, tit. II, 188 Stat. 3, 244 (Jan. 23, 2004); Pub. L. No. 108-7, Div. G, tit. II, 117 Stat. 11, 316 (Feb. 20, 2003).

⁵ Third parties also confirmed Mr. Scully's threats. For example, Mr. Scully told the Minority Staff Director for the Ways and Means Subcommittee on Health that he would "fire [Foster] so fast his head would spin" if he released certain information to Congress. *OIG Report*, at 3.

⁶ Senator Max Baucus made a similar request for premium estimates. Mr. Foster stated that Mr. Scully directed him to brief Senator Baucus's staff, but he never received approval to respond to Senators Dayton and Kennedy. *OIG Report*, at 2-3.

Discussion

At issue here is the prohibition on using appropriated funds to pay the salary of a federal official who prohibits or prevents another federal employee from communicating with Congress. Specifically, this prohibition states:

“No part of any appropriation contained in this or any other Act shall be available for the payment of the salary of any officer or employee of the Federal Government, who . . . prohibits or prevents, or attempts or threatens to prohibit or prevent, any other officer or employee of the Federal Government from having any direct oral or written communication or contact with any Member, committee, or subcommittee of the Congress in connection with any matter pertaining to the employment of such other officer or employee or pertaining to the department or agency of such other officer or employee in any way, irrespective of whether such communication or contact is at the initiative of such other officer or employee or in response to the request or inquiry of such Member, committee, or subcommittee.”

Pub. L. No. 108-199, Div. F, tit. VI, § 618, 188 Stat. 3, 354 (Jan. 23, 2004); Pub. L. No. 108-7, Div. J, tit. V, § 620, 117 Stat. 11, 468 (Feb. 20, 2003).

Legislative History of Section 618

The governmentwide prohibition on the use of appropriated funds to pay the salary of any federal official who prohibits or prevents or threatens to prohibit or prevent a federal employee from contacting Congress first appeared in the Treasury and General Government Appropriations Act, 1998, Pub. L. No. 105-61, § 640, 111 Stat. 1272, 1318 (1997). In 1997, the Senate passed a prohibition that applied only to the Postal Service, while the House of Representatives passed a governmentwide prohibition.⁷ The conference report adopted the House version, and a governmentwide prohibition has been included in every Treasury-Postal appropriations act since fiscal year 1998. H.R. Conf. Rep. No. 105-284, at 50, 80 (1997).

This provision has its antecedents in several older pieces of legislation, including the Treasury Department Appropriation Act of 1972, the Lloyd-La Follette Act of 1912, and the Civil Service Reform Act of 1978. The legislative history of these antecedents informs our analysis of section 618 because of the similarity of wording of these provisions and the references that the sponsors of later provisions made to earlier acts.

Prior to fiscal year 1998, the Treasury-Postal appropriations acts annually contained a nearly identical prohibition applying only to the Postal Service. This provision first appeared in the fiscal year 1972 Treasury Department Appropriation Act in response

⁷ Compare S. 1023, 105th Cong. § 506 (1997), with H.R. 2378, 105th Cong. § 505 (1997).

to a 1971 Postal Service directive restricting postal employees' communications with Congress. Pub. L. No. 92-49, § 608 (1971). The Postmaster General's directive, which was printed in the *Congressional Record*, stated that, "In order to avoid the possibility for incorrect information and misinterpretation, it is critical that the Postal Service speak to the Congress with only one voice. Accordingly, I am directing that the Congressional Liaison Office be the sole voice of the Postal Service in communicating with the Congress." 117 Cong. Rec. 151 (1971). The directive spelled out specific procedures to implement this order, and directed postal employees to "immediately cease [any] direct or indirect contacts with congressional officers on matters involving the Postal Service," and in the future, forward any congressional communications to the Liaison Office and coordinate any direct contacts with a congressional office with the Liaison. *Id.* The directive ended with the disclaimer that the new procedures "do not affect the right of any employee to petition, as a private citizen, his U.S. Representative or Senators on his own behalf." 117 Cong. Rec. 152 (1971).

Representative William Ford sponsored this prohibition as an amendment to the 1972 appropriations act. 117 Cong. Rec. 22443 (1971). He complained that the directive declared it a violation of the rules of the Postal Service "for any employee either individually or through his organization to contact any member or any committee" of Congress. *Id.* Representative John Saylor also objected to the directive for "cutting the ties between postal employees and their representatives" and for "abridg[ing] a fundamental right of American citizens." 117 Cong. Rec. 151 (1971). Saylor also cited two newspaper editorials about the directive, which called it a "gag rule" and noted the postal union's concern that the directive violated their constitutional rights to petition Congress. 117 Cong. Rec. 152 (1971). One of the editorials cited the conflict between the directive's order that all employees were to cease contacts with members of Congress and the disclaimer that the directive preserved employees' right to petition Congress. *Id.*

Postmaster General Blount discussed this issue at both the House and Senate Appropriations Committee hearings on the Postal Service's fiscal year 1972 budget request. At the House Appropriations Committee hearing, Representative John Myers asked Blount if it was true that postal employees were prohibited from communicating with their member of Congress under any circumstance. Blount responded that was not the case and noted that his directive simply said "that we are going to centralize our communications with Members of Congress." *Treasury, Post Office, and General Government Appropriations for Fiscal Year 1972, Hearing Before the House Comm. on Appropriations, 92nd Cong. 63 (1971).* He stated, "as a matter of operations and technique . . . we will centralize the requests and problems of Congress in our congressional liaison department and we will then be able to control our responsiveness to the Members." *Id.* Blount also mentioned that it was "very clearly spelled out . . . that all the employees have a constitutional right to petition Members of Congress . . . about their own matters but as far as the Postal Service is concerned, if I am going to be held responsible for it by the Members of Congress and by the American public, I have to have control of it." *Id.*

At the Senate Appropriations Committee hearing, Senator Joseph Montoya complained that prior to the directive, members of Congress "could call the Postal

Department on any matter involving a constituent and get a ready answer from the Department . . . [but now] if we have an inquiry to the regional office or to a local postmaster, they must refer it straight to Washington under this regulation and it causes unnecessary delay.” *Treasury, Post Office, and General Government Appropriations for Fiscal Year 1972, Hearing Before the Senate Comm. on Appropriations, 92nd Cong. 1435 (1971)*. Senator Montoya added, “I can call any other department in the Government and call the man in charge, the man at the wheel, and he will give me an answer. But I can’t do this with the Post Office Department.” *Id.* at 1438.

Blount responded to such criticisms, “It is difficult to control our responses [to members of Congress] if these responses go out from some 30,000 post offices around the country.” *Id.* at 1435. He stated that the Post Office “is a vast department . . . and it is difficult to be certain that our replies always comply with the policies of the Postal Service, and that is the reason we took this action.” *Id.* at 1438. Blount emphasized again that the directive “has to do with the official postal matters only . . . and has nothing to do with the employees’ rights to contact Members of Congress. We so stated in the regulation itself . . . [but] it has been misinterpreted by others.” *Id.* at 1435. Senator Montoya concluded his questioning about the directive by stating his intention to add language to the Postal appropriations committee report that would prohibit the Post Office from restricting its employees from communicating with members of Congress. *Id.* at 1439.

In introducing his amendment to the 1972 Treasury Department Appropriation Act, Representative Ford noted that “the law that this amendment attempts to enforce has been on the books . . . since 1912.” 117 Cong. Rec. 22443 (1971). Ford was referring to a provision in the fiscal year 1913 Post Office Appropriation Bill, commonly known as the Lloyd-La Follette Act, that states, “The right of persons employed in the civil service of the United States, either individually or collectively, to petition Congress, or any Member thereof, or to furnish information to either House of Congress, or to any committee or member thereof, shall not be denied or interfered with.” Post Office Appropriation Act, Pub. L. No. 336, ch. 389 § 6, 66 Stat. 539, 540 (Aug. 24, 1912). The committee report accompanying the House version of the bill stated that the provision was intended to “protect employees against oppression and in the right of free speech and the right to consult their Representatives.” H.R. Rep. No. 62-388, at 7 (1912).

Congress enacted the Lloyd-La Follette Act in response to two executive orders issued by Presidents Theodore Roosevelt and Howard Taft. Several congressmen referred to these orders as “gag rules” and quoted the text of the orders in the *Congressional Record*.⁸ Both the House and the Senate had a vigorous floor debate

⁸ See, e.g., 48 Cong. Rec. 4513 (1912). President Roosevelt’s executive order reads as follows: “All officers and employees of the United States of every description, serving in or under any of the executive departments or independent Government establishments, and whether so serving in or out of Washington, are hereby forbidden, either directly or indirectly, individually or through associations, to solicit an increase of pay or to influence or attempt to influence in their own interest any other legislation whatever, either before Congress or its committees, or in any way save through the heads of the departments or independent Government establishments in or under which they serve, on penalty of dismissal from the Government service.” Exec. Order No. 1142 (1906). President Taft’s order reads as follows: “It is hereby ordered that no bureau, office, or division chief, or subordinate in any

on this provision, as well as a related section of the bill allowing postal employees the right to unionize.⁹ The majority of the debate focused on preserving the constitutional rights of federal employees.¹⁰ Representative Thomas Reilly stated his opposition to the gag order because it prevented federal employees from “uttering any word of complaint even against the most outrageous treatment.” 48 Cong. Rec. 4656 (1912). He hoped that the Act would ensure the rights of employees to discuss “conditions of employment, hours of labor, and matters affecting the working and sanitary conditions surrounding their employment” with Congress.¹¹ *Id.*

Members of Congress also raised concerns that the executive orders would foreclose an important source of information for Congress. As Senator James Reed stated, the executive orders instructed federal employees “not [to], even at the demand of Congress or a committee of Congress or a Member of Congress, supply information in regard to the public business.” 48 Cong. Rec. 10673 (1912). Representative James Lloyd argued that the representatives of the American people “should have the right to inquire as to any of the conditions of government and the method of conducting any line of departmental business.” 48 Cong. Rec. 5634 (1912).

Other members of Congress disagreed and argued that the provision would undermine discipline in the Postal Service.¹² However, after a lengthy debate Congress approved the Lloyd-La Follette Act, and the President signed it into law as part of the Post Office Appropriation Act. Pub. L. No. 336, 66 Stat. 539 (Aug. 24,

department of the Government, and no officer of the Army or Navy or Marine Corps stationed in Washington, shall apply to either House of Congress, or to any committee of either House of Congress, or to any Member of Congress, for legislation, or for appropriations, or for congressional action of any kind, except with the consent and knowledge of the head of the department; nor shall any such person respond to any request for information from either House of Congress, or any committee of either House of Congress, or any Member of Congress, except through, or as authorized by, the head of his department.” Exec. Order No. 1514 (1909).

⁹ See 48 Cong. Rec. 4512-3, 4656-7, 4738-9, 5223-4, 5235-6, 5633-6, 10670-7, 10728-33, 10793-804 (1912).

¹⁰ See, e.g., 48 Cong. Rec. 4513 (1912) (statement of Rep. Gregg) (stating that the provision was “intended to protect employees against oppression and in the right of free speech and the right to consult their representatives”); 48 Cong. Rec. 5635 (1912) (statement of Rep. Goldfogle) (stating that “[w]hether the citizen holds office under the Government or not, his right to petition for a redress of grievances should not, and constitutionally speaking, can not be interfered with”).

¹¹ Several congressmen spoke about the dangerous working conditions faced by railway mail clerks and emphasized that the provision would ensure that such conditions were brought to the attention of Congress. See, e.g., 48 Cong. Rec. 10671(1912) (statement of Sen. Ashurst) (quoting an article from *La Follette’s Weekly*); 48 Cong. Rec. 10674 (1912) (statement of Sen. Warren).

¹² See, e.g., 48 Cong. Rec. 100676 (1912) (statement of Senator Bourne) (stating that “the right of the individual employee to go over the head of his superior . . . on matters appertaining to his own particular grievances, or for his own selfish interest, would be detrimental to the service itself . . . [and] would absolutely destroy the discipline necessary for good service”). The Senate Appropriations Committee also disapproved of the provision. S. Rep. No. 62-955, at 21 (1912) (stating that “good discipline and the efficiency of the service requires that [federal employees] present their grievances through the proper administrative channels”).

1912). In 1978, a nearly identical version of the Lloyd-La Follette Act was enacted as part of the Civil Service Reform Act. Pub. L. No. 94-454, 92 Stat. 1138, 1217 (Oct. 13, 1978) (codified at 5 U.S.C. § 7211).¹³

Congress expressed many of the same concerns that surrounded enactment of the Lloyd-La Follette Act during debate surrounding the whistleblower provisions in the Civil Service Reform Act, which prohibit federal agencies from taking any personnel action in response to a federal employee's disclosure of a violation of law, gross mismanagement, a gross waste of funds, an abuse of authority, or a danger to public health or safety. 5 U.S.C. § 2302(b)(8). For example, the Senate Committee on Governmental Affairs noted:

“Federal employees are often the source of information about agency operations suppressed by their superiors. Since they are much closer to the actual working situation than top agency officials, they have testified before Congress, spoken to reporters, and informed the public . . . Mid-level employees provide much of the information Congress needs to evaluate programs, budgets, and overall agency performance.”

Senate Comm. on Governmental Affairs, 95th Cong., *The Whistleblowers*, 40 (Comm. Print 1978). These concerns led to the enactment of the first whistleblower protections and the codification of the Lloyd-La Follette Act. Civil Service Reform Act of 1978, Pub. L. No. 95-454, §§ 2302, 7211, 92 Stat. 1217 (Oct. 13, 1978).

Application of the Prohibition to the Inspector General's Findings

As noted above, section 618 prohibits an agency from paying the salary of any federal officer or employee who prohibits or prevents, or threatens to prohibit or prevent, another officer or employee from communicating with members, committees or subcommittees of Congress. The OIG report concluded that Mr. Scully both prohibited and threatened to prohibit Mr. Foster from communicating with various members of Congress and congressional committees on issues that pertained to his agency and his professional responsibilities. OIG Report, at 4. In May 2003, Mr. Scully rebuked Mr. Foster for providing information requested by the Majority Staff Director for the House Ways and Means Committee. *Id.* at 3. In June 2003, Mr. Scully's special assistant, pursuant to Mr. Scully's direction, instructed Mr. Foster not to respond to any requests for information from the House Ways and Means Committee. Because of Mr. Scully's actions, we view HHS's appropriation as unavailable to pay his salary. Pub. L. No. 108-199, Div. F, tit. VI, § 618, 188 Stat. 3, 354 (Jan. 23, 2004); Pub. L. No. 108-7, Div. J, tit. V, § 620, 117 Stat. 11, 468 (Feb. 20, 2003).

¹³ Section 7211 states: “The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.” There are no federal judicial decisions interpreting section 7211, aside from cases ruling that it does not imply a private cause of action, *Nixon v. Fitzgerald*, 457 U.S. 731 (1981), and that it does not apply to government contractors, *Bordell v. General Electric Co.*, 732 F. Supp. 327 (1990).

As the legislative history of section 618 demonstrates, Congress intended to advance two goals: to preserve the First Amendment rights of federal employees and to ensure that Congress had access to programmatic information from frontline employees. Mr. Scully's actions implicate the latter of these goals. Congressional offices had asked Mr. Foster for information and for technical and analytic assistance that concerned the cost and impact of proposed Medicare legislation under debate in both the House and the Senate. OIG Report, at 2-3. Many members considered such information critical to their consideration of the Medicare Prescription Drug, Improvement, and Modernization Act, a historic piece of legislation with significant implications for federal fiscal policy.¹⁴ This information is a prime example of the programmatic information from frontline federal employees upon which Congress focused in enacting the Lloyd-La Follette Act and its subsequent incarnations.

According to the OIG's findings, congressional offices were interested in the total estimated cost of the legislation, premium estimates, the data underlying certain premium estimates, and a technical analysis of the premium support provisions in the Medicare legislation. OIG Report, at 2-3. This information was typical of the regular, ordinary work product of Mr. Foster and the Office of the Chief Actuary, and as the frontline employee, he was competent to provide the information to Congress. *See* H.R. Conf. Rep. No. 105-217, at 837 (1997) (stating that the actuary has an important role in "developing estimates of the financial effects of potential legislative and administrative changes in the Medicare and Medicaid programs"). Mr. Foster was more knowledgeable about the estimates than other officials within HHS and thus was able to provide information so that Congress could evaluate the Medicare program and budget. *See* Senate Comm. on Governmental Affairs, 95th Cong., *The Whistleblowers*, 40 (Comm. Print 1978).

Thus, the legislative history of section 618 and its predecessors suggest that Mr. Scully's bar on Mr. Foster responding to congressional requests is a prime example of what Congress was attempting to prohibit by those provisions. Accordingly, Mr. Scully's actions fall squarely within section 618, and HHS's appropriation was unavailable for the payment of his salary.

Constitutional Issues Raised by HHS and OLC

While the OIG Report concluded that Mr. Scully had indeed threatened Mr. Foster if he communicated with Congress, it also contained in its attachments, legal opinions by the HHS Office of General Counsel and by the Office of Legal Counsel (OLC) for the Department of Justice. Memo from Katherine M. Drews, Associate General Counsel, HHS, to Lewis Morris, Counsel, HHS OIG, May 12, 2004 (Drews Memo); Letter from Jack L. Goldsmith III, Assistant Attorney General, to Alex M. Azar II, General Counsel, HHS, May 21, 2004 (Goldsmith Letter). These legal opinions state that the application of section 618 to the present case would be unconstitutional. Drews Memo, at 3-5; Goldsmith Letter, at 2-4.

¹⁴ *See, e.g.*, 150 Cong. Rec. S2761 (daily ed. Mar. 12, 2004) (statement of Senator Tom Daschle); 150 Cong. Rec. S3911-2 (daily ed. Apr. 7, 2004) (statement of Senator Bob Graham).

Laws passed by Congress and signed by the President come to us with a heavy presumption in favor of their constitutionality.¹⁵ B-300192, Nov. 13, 2002. We have long observed that it is not our role to adjudicate the constitutionality of duly enacted legislation. B-245028.2, June 4, 1992; B-215863, July 26, 1984. We apply the laws as we find them absent a controlling judicial opinion that such laws are unconstitutional. B-300192, Nov. 13, 2002. Indeed, even in such cases, we will construe a statute narrowly to avoid constitutional issues. *Id.* Here, no court has found section 618 or its predecessors unconstitutional. Likewise, the courts have never held unconstitutional the Whistleblower Protection Act, which authorizes federal employees to disclose violations of law, gross mismanagement, the gross waste of funds, abuses of authority, and threats to public health or safety. 5 U.S.C. § 2302(b)(8).

HHS and OLC first argue that section 618 is unconstitutional because it could force the disclosure of privileged, classified, or deliberative information. Drews Memo, at 4-5; Goldsmith Letter, at 2-3. Constitutional concerns could be raised if Congress were to attempt to force the disclosure of classified or national security information, given the President's role as Commander in Chief.¹⁶ However, Mr. Foster was not asked for classified information.

Similarly, Mr. Foster was not asked for information subject to a claim of deliberative process privilege.¹⁷ To invoke the deliberative process privilege, the material must be both pre-decisional and deliberative, requirements that stem from the privilege's purpose of granting officials the freedom "to debate alternative approaches in private." *In re: Sealed Case*, 121 F.3d 729, 737 (D.C. Cir. 1997). The deliberative process privilege does not apply to the information requested of Mr. Foster because it was neither pre-decisional nor deliberative. The Administration had already formulated its Medicare prescription drug plan and had released it to the public and to the Congress in March 2003. *See Framework to Modernize and Improve Medicare*, White House Fact Sheet, March 4, 2003. Thus, the information requested from Mr. Foster in June through November 2003, which involved cost estimates and data formulated after the Administration's release of its Medicare plan, was not part of the

¹⁵ The Supreme Court also begins with the presumption that a statute is constitutional. *See, e.g., United States v. Morrison*, 529 U.S. 598, 607 (2000) (holding that "due respect for the decisions of a coordinate branch of Government demands that we invalidate a congressional enactment only upon a plain showing that Congress has exceeded its constitutional bounds").

¹⁶ *See Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988) (stating that the Constitution grants the President authority to classify and control access to national security information); *National Fed'n of Fed. Employees v. United States*, 688 F. Supp. 671 (D.D.C. 1988), *vacated and remanded*, *American Foreign Serv. Ass'n v. Garfinkel*, 490 U.S. 153 (1989); Memorandum Opinion for the General Counsel, Central Intelligence Agency, *Access to Classified Information*, OLC Opinion (Nov. 26, 1996) (asserting that granting individual federal employees the right to disclose intelligence and other national security information would threaten the President's constitutional role as Commander in Chief).

¹⁷ Traditionally, courts have allowed the executive branch to withhold documents from the public and in litigation that would reveal advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated. *In re: Sealed Case*, 121 F.3d 729, 737 (D.C. Cir. 1997) (addressing scope of privilege in context of grand jury investigation).

deliberative process for the Administration's proposal. Furthermore, some of the information that Mr. Scully prohibited Mr. Foster from communicating to congressional offices, including the House Ways and Means Committee's request of June 13, 2003, for an analysis of the premium support provisions, was not preexisting data. Such information cannot be considered deliberative because the analysis was not preexisting nor was it tied to any decision-making process at CMS. Thus, HHS's and OLC's arguments that section 618 is unconstitutional because it could force the disclosure of classified or privileged information are inapplicable to the facts of this case.

HHS and OLC also argue that section 618 unconstitutionally limits the President's ability to supervise and control the work of subordinate officers and employees of the executive branch. Drews Memo, at 4-5; Goldsmith Letter, at 2-3. In making this argument, HHS and OLC fail to balance the President's constitutional interest in managing the official communications of the executive branch with Congress's equally important need for information in order to carry out its legislative and oversight responsibilities. As OLC itself has recognized, Congress has "important oversight responsibilities and a corollary interest in receiving information [from federal employees] that enables it to carry out those responsibilities." *Whistleblower Protections For Classified Disclosures: Hearing Before the House Permanent Select Committee on Intelligence*, 105th Cong. (May 20, 1998) (statement of Randolph Moss, Deputy Assistant Attorney General, Office of Legal Counsel). As the Attorney General has pointed out, Congress's interest in obtaining information from the executive branch is strongest when "specific legislative proposals are in question." 43 Op. Att'y Gen. 327 (Oct. 13, 1981).

HHS and OLC have overstated section 618's threat to the President's constitutional prerogatives.¹⁸ Executive agencies have the right to designate official spokesmen for the agency and institute policies and procedures for the release of agency information and positions to Congress and the public.¹⁹ Separation of powers concerns could be raised if Congress, by legislation, were to dictate to the executive branch who should communicate the official positions of the Administration, given the President's constitutional duty to "recommend to [Congress's] consideration such measures as he shall judge necessary and expedient."²⁰ U.S. Const. Art. II, § 3.

¹⁸ Section 618 does not prohibit agencies from requiring their employees to report on their communications with Congress and from requesting that agency congressional liaisons be included in employees' discussions with Congress, nor does it require executive branch employees to initiate congressional contacts or even to respond to congressional inquiries.

¹⁹ For example, section 301 of Title 5, U.S. Code, commonly known as the Housekeeping Statute, delegates to the head of an agency the right to prescribe regulations for "the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property." However, the Housekeeping Statute is explicit in that it does not "authorize withholding information from the public." This second sentence of § 301 was added in 1958 because Congress was concerned that the statute had been "twisted from its original purpose as a 'housekeeping statute' into a claim of authority to keep information from the public and, even, from the Congress." H.R. Rep. No. 85-1461 (1958).

²⁰ See also *Authority of the Special Counsel of the Merit Systems Protection Board to Litigate and Submit Legislation to Congress*, 8 Op. Off. Legal Counsel 30 (Feb. 22, 1984) (asserting that requiring an executive branch agency to submit legislative proposals directly to Congress without Presidential

Federal agencies and employees making separate legislative recommendations to Congress, without coordination with the President, could interfere with the President's constitutional duty, on behalf of the executive branch, to judge which proposals are "necessary and expedient" and make such recommendations to Congress. 8 Op. Off. Legal Counsel 30. Designating an official agency or executive branch spokesman would be entirely appropriate in the case of legislative recommendations or a statement of the Administration's official positions. However, Mr. Foster was not asked for a CMS policy position or legislative recommendation, but rather for specific and limited technical assistance.²¹

Thus, while certain applications of section 618 could raise constitutional concerns, application of section 618 to the facts of this case does not raise such concerns, because Mr. Foster was asked for estimates, technical assistance, and data, rather than any information which could be considered privileged.²² Furthermore, Congress was considering extensive changes to Medicare, and members requested cost estimates and analyses to inform debate on this legislation and to carry out the legislative powers vested by the Constitution. U.S. Const. Art. I, § 1. Indeed, if some of the Chief Actuary's estimates had been disclosed in a timely matter, Congress would have had better information on the magnitude of the legislation it was considering and its possible effect on the nation's fiscal health.²³

Mr. Scully's prohibitions, therefore, made HHS's appropriation, otherwise available for payment of his salary, unavailable for such purpose, because his actions are covered by section 618 of the Consolidated Appropriations Act of 2004 and section 620 of the Consolidated Appropriations Resolution of 2003. Because HHS was prohibited from paying Mr. Scully's salary after he barred Mr. Foster from communicating with Congress, HHS should consider such payments improper.²⁴

review would be unconstitutional); *Constitutionality of Statute Requiring Executive Agency to Report Directly to Congress*, 6 Op. Off. Legal Counsel 632 (Nov. 5, 1982) (asserting that requiring an executive branch agency to submit budget requests or legislative proposals directly to Congress without presidential review would be unconstitutional).

²¹ Indeed, the two OLC opinions cited in the Goldsmith Letter (and cited in the prior footnote) deal with budget or legislative proposals and thus are inapplicable to the present case.

²² OLC admits in its opinion that it did not review the specific information requested of Mr. Foster and thus "cannot opine on the privileged status" of the information.

²³ See, e.g., GAO, *Fiscal Year 2003 U.S. Government Financial Statements: Sustained Improvement in Federal Financial Management Is Crucial to Addressing Our Nation's Future Fiscal Challenges*, GAO-04-477T (March 3, 2004) (describing the drug benefit as "one of the largest unfunded commitments ever undertaken by the federal government").

²⁴ Section 618 and the legislative history surrounding similar provisions provide no guidance as to what time period an agency is prohibited from paying the salary of an official who prohibits a federal employee from contacting Congress. Federal salaries are obligated when earned and are earned on a biweekly pay period basis. See 24 Comp. Gen. 676, 678 (1945) and 5 U.S.C. § 5504. Given the continuing nature of Mr. Scully's prohibition, we recommend that HHS treat as an improper payment Mr. Scully's salary beginning with the pay period when his initial prohibition to Mr. Foster was made until his departure from CMS.

Therefore, we recommend that HHS seek to recover these payments, as required by 31 U.S.C. § 3711.²⁵

Conclusion

As a result of Mr. Scully's prohibition on Mr. Foster providing certain information to Congress, HHS's appropriation was unavailable to pay Mr. Scully's salary because section 618 of the Consolidated Appropriations Act of 2004 and section 620 of the Consolidated Appropriations Resolution of 2003 bar HHS from using appropriated funds to pay the salary of an official who prohibited another federal employee from communicating with Congress on an issue related to his agency. While certain applications of section 618 could raise constitutional concerns, we have applied the prohibition to the present facts, given the narrow scope of information requested and Congress's need for such information in carrying out its legislative duties, as well as the fact that no court has held section 618 unconstitutional.

Sincerely yours,

Anthony H. Gamboa
General Counsel

²⁵ HHS should keep the House and Senate Appropriations Committees, as well as its oversight committees, apprised of the actions it takes to recover these improper payments.

PATRICK J. LEAHY, VERMONT, CHAIRMAN

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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
 KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

April 8, 2011

VIA ELECTRONIC TRANSMISSION

Kenneth E. Melson
 Acting Director
 Bureau of Alcohol, Tobacco, Firearms, and Explosives
 99 New York Avenue, NE
 Washington, DC 20226

Dear Acting Director Melson:

Attached is an email released through the Freedom of Information Act (FOIA).¹ It appears to contain proposed guidance to ATF employees about how to respond to contacts from my office. The guidance instructs ATF employees that they “are in no way obligated to respond” to questions from Congress. It also attempts to prevent direct communications with my office by instructing that ATF employees “should refer congressional staff who seek information from you to the ATF’s office of congressional affairs.” The guidance further attempts to prevent direct communications with my office by claiming that ATF employees “are not authorized to disclose non-public information.”

It is unclear from the email released through FOIA whether this guidance was actually communicated to ATF employees. However, it is of grave concern because, as you know, such attempts to prevent direct communications with Congress are not a lawfully authorized activity of any officer or employee of the United States whose salary is paid with appropriated funds.² Specifically, no officer or employee may attempt to prohibit or prevent “any other officer or employee of the Federal Government from having *direct* oral or written communication or *contact* with any Member, committee, or subcommittee of the Congress” about a matter related to his employment or the

¹ Attachment 1.

² Consolidated Appropriations Act, 2010, P.L. 111-117, 123 Stat. 3034, § 714 (2010), as continued by §101 of continuing resolutions P.L. 111-242, 124 Stat. 2607 (2010) and P.L. 112-6, 125 Stat. 23 (2011)—which extends the funding levels in the 2010 appropriations bills, as well as “the authority and conditions provided in such Acts,” through April 8, 2011.

agency “in any way, *irrespective of whether such communication or contact is at the initiative*” of the employee or Congress (emphasis added).³

I wrote to you on January 31 to ensure you were aware of these provisions and to express concerns that without proper guidance, managers might inappropriately intimidate employees to discourage them from speaking with Congress and thus unlawfully interfere with a Congressional inquiry.⁴ In order for Congress to exercise its oversight authority and act as a check on Executive power, it is crucial that agency employees are free to communicate directly with Members and Committee staff. Direct contact means contacts that do not necessarily involve Congressional liaison or agency management. Without such direct, unfiltered communications, Congress would still be unaware of, and unable to inquire about, the serious allegations involving the death of Border Patrol Agent Brian Terry and the sales of weapons to known and suspected gun traffickers.

I have a long experience of witnessing retaliation against whistleblowers. Sometimes it is explicit and immediate. Often it is subtle and delayed until after public scrutiny has faded. Unfortunately, it is so frequent that employees fear that even truthful answers to direct factual questions from Congress will get them in trouble. That is why I am committed to maintaining the confidentiality of those employees who wish to cooperate with a Congressional inquiry or report problems anonymously. Direct contact with Congress of the sort protected by the law serves as an extra level of protection against retaliation and is obviously essential where an employee seeks confidentiality.

However, in some cases, agency employees choose to disclose their direct contacts with Congress, despite the potential consequences. As I explained in my January 31 letter, one employee chose to disclose his protected contacts with my staff and was immediately questioned about the content of those communications. I was concerned about that because forcing an employee to reveal the details of such communications would intrude on the integrity of the Congressional inquiry and offend the comity between the Branches that flows from the separation of powers under the Constitution.

Now, a second agency employee has chosen to disclose that he has had protected contacts with Congress. George Gillett, through and in conjunction with his legal counsel, is cooperating with this investigation. Mr. Gillett is the Assistant Special Agent in Charge of the ATF’s Phoenix field division, and Committee staff’s direct contacts with him are an essential component of our inquiry. He has participated in two preliminary meetings jointly with Senate Judiciary Committee staff and House Oversight and Government Reform Committee staff. As you know, retaliation for such communications is prohibited by law.

³ *Id.*

⁴ 18 U.S.C. § 1505 (providing criminal penalties for obstructing or impeding the power of Congressional inquiry).

On one previous occasion when an agency sought to compel an individual to disclose the content of his communications with Congress, I was prepared to introduce a resolution authorizing the Senate Legal Counsel to seek legal remedy in the courts. Fortunately, in light of that draft resolution, the Executive Branch withdrew its attempt to compel discovery of communications between a whistleblower and Congress.⁵

In this current inquiry, a similar attempt was also abandoned. The first ATF agent to disclose that he had direct contacts with Congress was ordered to describe the content of his communications in writing. However, shortly after my January 31 letter, I was pleased to learn that the order was withdrawn. I appreciate the agency's willingness to respect Congressional prerogatives and avoid interfering with a Congressional inquiry. Similarly, the agency should avoid intruding into our investigative process by seeking to learn the content of ASAC Gillett's communications with Congress.

In light of the attached email, I have renewed concerns that the guidance being given to employees may be inconsistent with the law.⁶ Therefore, please provide written answers to the following questions:

1. Was the attached guidance distributed, either in writing or otherwise, to ATF field offices or other ATF personnel?
2. Was any guidance on contacts with Congress distributed, either in writing or otherwise, to ATF field offices or other ATF personnel? If so, please provide a copy.
3. What steps have you taken or do you plan to take to ensure that employees are aware of their right to communicate directly with Congress if they so choose?

⁵ See S. PRT. 110-28, § VIII.D.2 "Attempt to Compel Disclosure of Confidential Communications with Congress," p. 103, 641, 652 ("Nothing in this agreement shall require [the production of] any communications with, or documents that were created for, any Senate Committees (or the staff or members thereof)"). See also S. HRG. 109-898, at 39-41, 470-471, responses to questions for the record to Dec. 5, 2006, Senate Judiciary Committee hearing at 8.

⁶ See generally, Government Accountability Office, "Department of Health and Human Services—Chief Actuary's Communications with Congress," B-302911 (Sep. 7, 2004) (discussing the history and background in support of the government-wide prohibition on attempts to prevent direct communications with Congress) (Attachment 2).

Please reply no later than April 14, 2011. If you have any questions about this request, please contact Jason Foster at (202) 225-5225. Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles E. Grassley", with a stylized flourish at the end.

Charles E. Grassley
Ranking Member

Attachments

cc: Chairman Patrick Leahy, Senate Committee on the Judiciary
Chairman Darrell Issa, House Committee on Oversight and Government Reform

Attachment 1

[REDACTED]

From: [REDACTED]
Sent: Saturday, February 05, 2011 12:25 PM
To: Hoover, William J.; [REDACTED]
Subject: Fw: Need quick guidance [REDACTED]

Are/Have we sent some kind of guidance to the Field along these lines?

NOTICE: This e-mail message and any attached files are intended solely for the use of the addressee(s) named above in connection with official business. This communication may contain Controlled Unclassified Information that may be statutorily or otherwise prohibited from being released without appropriate approval. Any review, use, or dissemination of this e-mail message and any attached file(s) in any form outside of ATF or the Department of Justice without express authorization is strictly prohibited.

From: [REDACTED] (SMO)
To: Hoover, William J.; [REDACTED]
Cc: [REDACTED] (SMO); [REDACTED] (SMO); [REDACTED] (OLA); [REDACTED] (CRM); [REDACTED] (USAAZ)
Sent: Thu Feb 03 18:44:26 2011
Subject: FW: Need quick guidance [REDACTED]

I'd recommend something along these lines if agents ask for guidance about how to respond to contacts from Senator's Grassley's staff -

During the last week in January, Senator Grassley wrote to ATF, reporting allegations that ATF had sanctioned the sale of assault weapons to suspected straw purchasers and that these weapons were used in the killing of Customs and Border Protection Agent Brian Terry. The Department has sent a written response to Senator Grassley, advising him that these allegations are not true. In further response to his requests, we expect to schedule a briefing by appropriate ATF representatives with staff for Senator Grassley and other Members of the Senate Judiciary Committee in the near future about Project Gunrunner and ATF's effort to work with its law enforcement partners to build cases that will disrupt and dismantle criminal organizations.

As always, you are in no way obligated to respond to congressional contacts or requests for information and generally, consistent with ATF policy, you should refer congressional staff who seek information from you to ATF's office of congressional affairs. You are not authorized to disclose non-public information about law enforcement matters outside of ATF or the Department of Justice to anyone, including congressional staff. This is important to protect the independence and effectiveness of our law enforcement efforts as well as the privacy and due process interests of individuals who are involved in these investigations.

If you have information about waste, fraud, or abuse within ATF - or any actions by Department employees that you believe constitute professional misconduct, you are encouraged to report that information to your supervisors and/or the Department's Office of Inspector General.

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046

Attachment 2



United States Government Accountability Office
Washington, DC 20548

B-302911

September 7, 2004

The Honorable Frank R. Lautenberg
The Honorable Tom Daschle
The Honorable Edward M. Kennedy
The Honorable Jack Reed
The Honorable Jon S. Corzine
The Honorable John F. Kerry
The Honorable Patrick J. Leahy
The Honorable Debbie Stabenow
The Honorable Tim Johnson
The Honorable Mark Pryor
The Honorable Maria Cantwell
The Honorable Joseph I. Lieberman
The Honorable Carl Levin
The Honorable Paul Sarbanes
The Honorable Barbara A. Mikulski
The Honorable Charles Schumer
The Honorable John Edwards
The Honorable Hillary Rodham Clinton
United States Senate

Subject: *Department of Health and Human Services—Chief Actuary's
Communications with Congress*

By letter dated March 18, 2004, you asked for our legal opinion regarding a potential violation of the prohibitions in the Consolidated Appropriations Act of 2004 and the Consolidated Appropriations Resolution of 2003 on the use of appropriated funds to pay the salary of a federal official who prohibits another federal employee from communicating with Congress. Pub. L. No. 108-199, Div. F, tit. VI, § 618, 188 Stat. 3, 354 (Jan. 23, 2004); Pub. L. No. 108-7, Div. J, tit. V, § 620, 117 Stat. 11, 468 (Feb. 20, 2003). Specifically, you ask whether alleged threats made by Thomas A. Scully, the former Administrator of the Centers for Medicare & Medicaid Services (CMS), to CMS Chief Actuary Richard S. Foster to terminate his employment if Mr. Foster provided various cost estimates of the then-pending prescription drug legislation to members of Congress and their staff made CMS's appropriation unavailable for the payment of Mr. Scully's salary.

As agreed, this opinion relies on the factual findings of the Office of Inspector General (OIG) for the Department of Health and Human Services (HHS), who conducted an independent investigation into whether Mr. Foster was prohibited from communicating with congressional offices and whether he was threatened with dismissal if he did so.¹ *Tom Scully and Chief Actuary - Information*, Report of the Office of Inspector General, Department of Health and Human Services, July 1, 2004 (OIG Report). The OIG concluded that CMS did not provide information requested by members of Congress and their staff, that Mr. Scully ordered Mr. Foster not to provide information to members and staff, and that Mr. Scully threatened to sanction Mr. Foster if he made any unauthorized disclosures. OIG Report, at 4.

As we explain below, in our opinion, HHS's appropriation, which was otherwise available for payment of Mr. Scully's salary, was unavailable for such purpose because section 618 of the Consolidated Appropriations Act of 2004 and section 620 of the Consolidated Appropriations Resolution of 2003 prohibit the use of appropriated funds to pay the salary of a federal official who prevents another employee from communicating with Congress.² While the HHS Office of General Counsel and the Office of Legal Counsel for the Department of Justice raised constitutional separation of powers concerns regarding the application of section 618, in our view, absent an opinion from a federal court concluding that section 618 is unconstitutional, we will apply it to the facts of this case.

Background

In December 2003, Congress passed and the President signed into law the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, which added a prescription drug benefit to the Medicare program. Pub. L. No. 108-173, 117 Stat. 2066 (Dec. 8, 2003). During the previous summer and fall as Congress debated various proposals, several members of Congress and committee staff asked Mr. Foster, a career civil servant and the Chief Actuary for CMS, to provide estimates of the cost of various provisions of the Medicare bills under debate.³ OIG Report, at 2-3.

¹ We advised your staff that we would, as appropriate, rely on the factual findings of the OIG. Letters to Senator Frank R. Lautenberg and additional requestors from Gary L. Kepplinger, Deputy General Counsel, GAO, April 15, 2004. In addition, the Office of the Inspector General agreed to allow us access to their investigative workpapers. This opinion is based on the factual findings contained in the OIG Report and the supporting workpapers. While this opinion relies on the factual findings of the OIG, it does not adopt or rely upon any legal conclusions reached by the OIG, HHS, or OLC.

² For ease of reference, we will refer to the identical prohibitions in the Consolidated Appropriations Act of 2004 and the Consolidated Appropriations Resolution of 2003 as "section 618."

³ Congress established the position of Chief Actuary in statute in 1997. Balanced Budget Act, Pub. L. No. 105-33, tit. IV, subtitle G, ch. 4, § 4643, 111 Stat. 487 (Aug. 5, 1997) (codified at 42 U.S.C. § 1317). The statute directs the Chief Actuary to carry out his duties "in accordance with the professional standards of actuarial independence." 42 U.S.C. § 1317(b)(1). The Act also directs that the Chief Actuary is to be appointed based on "education, experience [and] superior expertise in the actuarial sciences" and could be removed "only for cause." *Id.* The Balanced Budget Act conference report cites the long history and tradition of a "close and confidential working relationship" between the Social Security and Medicare actuaries and the congressional committees of jurisdiction. H.R. Conf. Rep. No. 105-217, at 837 (1997). The report then states that the "independence of the Office of the

Members and staff also made requests for technical assistance, including requests that Mr. Foster perform analyses of various provisions of the Medicare legislation. *Id.*

Mr. Foster did not respond to several of these requests because Thomas Scully, CMS Administrator and Mr. Foster's supervisor, stated that there would be adverse consequences if he released any information to Congress without Mr. Scully's approval.⁴ *OIG Report*, at 3. Mr. Foster stated that the first time he felt his job was threatened was in May 2003 when he provided information on private insurance plan enrollment rates to the Majority Staff Director of the House Ways and Means Committee and Mr. Scully rebuked him for doing so. *Id.* Later, on June 4, 2003, at Mr. Scully's request, Mr. Scully's special assistant instructed Mr. Foster not to respond to any requests for information from the House Ways and Means Committee and warned him that "the consequences of insubordination are extremely severe." *Id.* Mr. Foster interpreted this statement to mean that Mr. Scully would terminate his employment at CMS if he released any information to Congress without Mr. Scully's approval.⁵ *Id.* at 4.

The *OIG Report* concluded that, because of Mr. Scully's prohibition, Mr. Foster did not respond to several congressional requests for cost estimates and technical assistance, including requests from the minority staff of the House Ways and Means Committee for the total estimated cost of the legislation and for analyses of premium support provisions in the bill, and requests from Senators Mark Dayton and Edward Kennedy for premium estimates.⁶ *Id.* at 2-3.

There is no indication in the *OIG Report* that Mr. Scully objected to Mr. Foster's methodology or to the validity of his estimates. Rather, Mr. Foster testified before the House Ways and Means Committee that Mr. Scully determined which information to release to Congress on a "political basis." *Board of Trustees 2004 Annual Reports: Hearing Before the House Comm. on Ways and Means*, Federal News Service, Mar. 24, 2004. Furthermore, Mr. Scully never objected to Mr. Foster and his staff performing the analyses required to respond to congressional requests; he simply objected to certain analyses being released to Congress. During the same time period, Mr. Foster provided similar analyses to the Office of Management and Budget.

Actuary with respect to providing assistance to the Congress is vital," and that "reforming the Medicare and Medicaid programs is greatly enhanced by the free flow of actuarial information from the Office of the Actuary to the committees of jurisdiction in the Congress." *Id.* at 837-8.

⁴ HHS paid Mr. Scully's salary during this time period from its "Program Management" appropriations account. Pub. L. No. 108-199, Div. E, tit. II, 188 Stat. 3, 244 (Jan. 23, 2004); Pub. L. No. 108-7, Div. G, tit. II, 117 Stat. 11, 316 (Feb. 20, 2003).

⁵ Third parties also confirmed Mr. Scully's threats. For example, Mr. Scully told the Minority Staff Director for the Ways and Means Subcommittee on Health that he would "fire [Foster] so fast his head would spin" if he released certain information to Congress. *OIG Report*, at 3.

⁶ Senator Max Baucus made a similar request for premium estimates. Mr. Foster stated that Mr. Scully directed him to brief Senator Baucus's staff, but he never received approval to respond to Senators Dayton and Kennedy. *OIG Report*, at 2-3.

Discussion

At issue here is the prohibition on using appropriated funds to pay the salary of a federal official who prohibits or prevents another federal employee from communicating with Congress. Specifically, this prohibition states:

“No part of any appropriation contained in this or any other Act shall be available for the payment of the salary of any officer or employee of the Federal Government, who . . . prohibits or prevents, or attempts or threatens to prohibit or prevent, any other officer or employee of the Federal Government from having any direct oral or written communication or contact with any Member, committee, or subcommittee of the Congress in connection with any matter pertaining to the employment of such other officer or employee or pertaining to the department or agency of such other officer or employee in any way, irrespective of whether such communication or contact is at the initiative of such other officer or employee or in response to the request or inquiry of such Member, committee, or subcommittee.”

Pub. L. No. 108-199, Div. F, tit. VI, § 618, 188 Stat. 3, 354 (Jan. 23, 2004); Pub. L. No. 108-7, Div. J, tit. V, § 620, 117 Stat. 11, 468 (Feb. 20, 2003).

Legislative History of Section 618

The governmentwide prohibition on the use of appropriated funds to pay the salary of any federal official who prohibits or prevents or threatens to prohibit or prevent a federal employee from contacting Congress first appeared in the Treasury and General Government Appropriations Act, 1998, Pub. L. No. 105-61, § 640, 111 Stat. 1272, 1318 (1997). In 1997, the Senate passed a prohibition that applied only to the Postal Service, while the House of Representatives passed a governmentwide prohibition.⁷ The conference report adopted the House version, and a governmentwide prohibition has been included in every Treasury-Postal appropriations act since fiscal year 1998. H.R. Conf. Rep. No. 105-284, at 50, 80 (1997).

This provision has its antecedents in several older pieces of legislation, including the Treasury Department Appropriation Act of 1972, the Lloyd-La Follette Act of 1912, and the Civil Service Reform Act of 1978. The legislative history of these antecedents informs our analysis of section 618 because of the similarity of wording of these provisions and the references that the sponsors of later provisions made to earlier acts.

Prior to fiscal year 1998, the Treasury-Postal appropriations acts annually contained a nearly identical prohibition applying only to the Postal Service. This provision first appeared in the fiscal year 1972 Treasury Department Appropriation Act in response

⁷ Compare S. 1023, 105th Cong. § 506 (1997), with H.R. 2378, 105th Cong. § 505 (1997).

to a 1971 Postal Service directive restricting postal employees' communications with Congress. Pub. L. No. 92-49, § 608 (1971). The Postmaster General's directive, which was printed in the *Congressional Record*, stated that, "In order to avoid the possibility for incorrect information and misinterpretation, it is critical that the Postal Service speak to the Congress with only one voice. Accordingly, I am directing that the Congressional Liaison Office be the sole voice of the Postal Service in communicating with the Congress." 117 Cong. Rec. 151 (1971). The directive spelled out specific procedures to implement this order, and directed postal employees to "immediately cease [any] direct or indirect contacts with congressional officers on matters involving the Postal Service," and in the future, forward any congressional communications to the Liaison Office and coordinate any direct contacts with a congressional office with the Liaison. *Id.* The directive ended with the disclaimer that the new procedures "do not affect the right of any employee to petition, as a private citizen, his U.S. Representative or Senators on his own behalf." 117 Cong. Rec. 152 (1971).

Representative William Ford sponsored this prohibition as an amendment to the 1972 appropriations act. 117 Cong. Rec. 22443 (1971). He complained that the directive declared it a violation of the rules of the Postal Service "for any employee either individually or through his organization to contact any member or any committee" of Congress. *Id.* Representative John Saylor also objected to the directive for "cutting the ties between postal employees and their representatives" and for "abridg[ing] a fundamental right of American citizens." 117 Cong. Rec. 151 (1971). Saylor also cited two newspaper editorials about the directive, which called it a "gag rule" and noted the postal union's concern that the directive violated their constitutional rights to petition Congress. 117 Cong. Rec. 152 (1971). One of the editorials cited the conflict between the directive's order that all employees were to cease contacts with members of Congress and the disclaimer that the directive preserved employees' right to petition Congress. *Id.*

Postmaster General Blount discussed this issue at both the House and Senate Appropriations Committee hearings on the Postal Service's fiscal year 1972 budget request. At the House Appropriations Committee hearing, Representative John Myers asked Blount if it was true that postal employees were prohibited from communicating with their member of Congress under any circumstance. Blount responded that was not the case and noted that his directive simply said "that we are going to centralize our communications with Members of Congress." *Treasury, Post Office, and General Government Appropriations for Fiscal Year 1972, Hearing Before the House Comm. on Appropriations, 92nd Cong. 63 (1971).* He stated, "as a matter of operations and technique . . . we will centralize the requests and problems of Congress in our congressional liaison department and we will then be able to control our responsiveness to the Members." *Id.* Blount also mentioned that it was "very clearly spelled out . . . that all the employees have a constitutional right to petition Members of Congress . . . about their own matters but as far as the Postal Service is concerned, if I am going to be held responsible for it by the Members of Congress and by the American public, I have to have control of it." *Id.*

At the Senate Appropriations Committee hearing, Senator Joseph Montoya complained that prior to the directive, members of Congress "could call the Postal

Department on any matter involving a constituent and get a ready answer from the Department . . . [but now] if we have an inquiry to the regional office or to a local postmaster, they must refer it straight to Washington under this regulation and it causes unnecessary delay.” *Treasury, Post Office, and General Government Appropriations for Fiscal Year 1972, Hearing Before the Senate Comm. on Appropriations, 92nd Cong. 1435 (1971)*. Senator Montoya added, “I can call any other department in the Government and call the man in charge, the man at the wheel, and he will give me an answer. But I can’t do this with the Post Office Department.” *Id.* at 1438.

Blount responded to such criticisms, “It is difficult to control our responses [to members of Congress] if these responses go out from some 30,000 post offices around the country.” *Id.* at 1435. He stated that the Post Office “is a vast department . . . and it is difficult to be certain that our replies always comply with the policies of the Postal Service, and that is the reason we took this action.” *Id.* at 1438. Blount emphasized again that the directive “has to do with the official postal matters only . . . and has nothing to do with the employees’ rights to contact Members of Congress. We so stated in the regulation itself . . . [but] it has been misinterpreted by others.” *Id.* at 1435. Senator Montoya concluded his questioning about the directive by stating his intention to add language to the Postal appropriations committee report that would prohibit the Post Office from restricting its employees from communicating with members of Congress. *Id.* at 1439.

In introducing his amendment to the 1972 Treasury Department Appropriation Act, Representative Ford noted that “the law that this amendment attempts to enforce has been on the books . . . since 1912.” 117 Cong. Rec. 22443 (1971). Ford was referring to a provision in the fiscal year 1913 Post Office Appropriation Bill, commonly known as the Lloyd-La Follette Act, that states, “The right of persons employed in the civil service of the United States, either individually or collectively, to petition Congress, or any Member thereof, or to furnish information to either House of Congress, or to any committee or member thereof, shall not be denied or interfered with.” Post Office Appropriation Act, Pub. L. No. 336, ch. 389 § 6, 66 Stat. 539, 540 (Aug. 24, 1912). The committee report accompanying the House version of the bill stated that the provision was intended to “protect employees against oppression and in the right of free speech and the right to consult their Representatives.” H.R. Rep. No. 62-388, at 7 (1912).

Congress enacted the Lloyd-La Follette Act in response to two executive orders issued by Presidents Theodore Roosevelt and Howard Taft. Several congressmen referred to these orders as “gag rules” and quoted the text of the orders in the *Congressional Record*.⁸ Both the House and the Senate had a vigorous floor debate

⁸ See, e.g., 48 Cong. Rec. 4513 (1912). President Roosevelt’s executive order reads as follows: “All officers and employees of the United States of every description, serving in or under any of the executive departments or independent Government establishments, and whether so serving in or out of Washington, are hereby forbidden, either directly or indirectly, individually or through associations, to solicit an increase of pay or to influence or attempt to influence in their own interest any other legislation whatever, either before Congress or its committees, or in any way save through the heads of the departments or independent Government establishments in or under which they serve, on penalty of dismissal from the Government service.” Exec. Order No. 1142 (1906). President Taft’s order reads as follows: “It is hereby ordered that no bureau, office, or division chief, or subordinate in any

on this provision, as well as a related section of the bill allowing postal employees the right to unionize.⁹ The majority of the debate focused on preserving the constitutional rights of federal employees.¹⁰ Representative Thomas Reilly stated his opposition to the gag order because it prevented federal employees from “uttering any word of complaint even against the most outrageous treatment.” 48 Cong. Rec. 4656 (1912). He hoped that the Act would ensure the rights of employees to discuss “conditions of employment, hours of labor, and matters affecting the working and sanitary conditions surrounding their employment” with Congress.¹¹ *Id.*

Members of Congress also raised concerns that the executive orders would foreclose an important source of information for Congress. As Senator James Reed stated, the executive orders instructed federal employees “not [to], even at the demand of Congress or a committee of Congress or a Member of Congress, supply information in regard to the public business.” 48 Cong. Rec. 10673 (1912). Representative James Lloyd argued that the representatives of the American people “should have the right to inquire as to any of the conditions of government and the method of conducting any line of departmental business.” 48 Cong. Rec. 5634 (1912).

Other members of Congress disagreed and argued that the provision would undermine discipline in the Postal Service.¹² However, after a lengthy debate Congress approved the Lloyd-La Follette Act, and the President signed it into law as part of the Post Office Appropriation Act. Pub. L. No. 336, 66 Stat. 539 (Aug. 24,

department of the Government, and no officer of the Army or Navy or Marine Corps stationed in Washington, shall apply to either House of Congress, or to any committee of either House of Congress, or to any Member of Congress, for legislation, or for appropriations, or for congressional action of any kind, except with the consent and knowledge of the head of the department; nor shall any such person respond to any request for information from either House of Congress, or any committee of either House of Congress, or any Member of Congress, except through, or as authorized by, the head of his department.” Exec. Order No. 1514 (1909).

⁹ See 48 Cong. Rec. 4512-3, 4656-7, 4738-9, 5223-4, 5235-6, 5633-6, 10670-7, 10728-33, 10793-804 (1912).

¹⁰ See, e.g., 48 Cong. Rec. 4513 (1912) (statement of Rep. Gregg) (stating that the provision was “intended to protect employees against oppression and in the right of free speech and the right to consult their representatives”); 48 Cong. Rec. 5635 (1912) (statement of Rep. Goldfogle) (stating that “[w]hether the citizen holds office under the Government or not, his right to petition for a redress of grievances should not, and constitutionally speaking, can not be interfered with”).

¹¹ Several congressmen spoke about the dangerous working conditions faced by railway mail clerks and emphasized that the provision would ensure that such conditions were brought to the attention of Congress. See, e.g., 48 Cong. Rec. 10671(1912) (statement of Sen. Ashurst) (quoting an article from *La Follette’s Weekly*); 48 Cong. Rec. 10674 (1912) (statement of Sen. Warren).

¹² See, e.g., 48 Cong. Rec. 100676 (1912) (statement of Senator Bourne) (stating that “the right of the individual employee to go over the head of his superior . . . on matters appertaining to his own particular grievances, or for his own selfish interest, would be detrimental to the service itself . . . [and] would absolutely destroy the discipline necessary for good service”). The Senate Appropriations Committee also disapproved of the provision. S. Rep. No. 62-955, at 21 (1912) (stating that “good discipline and the efficiency of the service requires that [federal employees] present their grievances through the proper administrative channels”).

1912). In 1978, a nearly identical version of the Lloyd-La Follette Act was enacted as part of the Civil Service Reform Act. Pub. L. No. 94-454, 92 Stat. 1138, 1217 (Oct. 13, 1978) (codified at 5 U.S.C. § 7211).¹³

Congress expressed many of the same concerns that surrounded enactment of the Lloyd-La Follette Act during debate surrounding the whistleblower provisions in the Civil Service Reform Act, which prohibit federal agencies from taking any personnel action in response to a federal employee's disclosure of a violation of law, gross mismanagement, a gross waste of funds, an abuse of authority, or a danger to public health or safety. 5 U.S.C. § 2302(b)(8). For example, the Senate Committee on Governmental Affairs noted:

“Federal employees are often the source of information about agency operations suppressed by their superiors. Since they are much closer to the actual working situation than top agency officials, they have testified before Congress, spoken to reporters, and informed the public . . . Mid-level employees provide much of the information Congress needs to evaluate programs, budgets, and overall agency performance.”

Senate Comm. on Governmental Affairs, 95th Cong., *The Whistleblowers*, 40 (Comm. Print 1978). These concerns led to the enactment of the first whistleblower protections and the codification of the Lloyd-La Follette Act. Civil Service Reform Act of 1978, Pub. L. No. 95-454, §§ 2302, 7211, 92 Stat. 1217 (Oct. 13, 1978).

Application of the Prohibition to the Inspector General's Findings

As noted above, section 618 prohibits an agency from paying the salary of any federal officer or employee who prohibits or prevents, or threatens to prohibit or prevent, another officer or employee from communicating with members, committees or subcommittees of Congress. The OIG report concluded that Mr. Scully both prohibited and threatened to prohibit Mr. Foster from communicating with various members of Congress and congressional committees on issues that pertained to his agency and his professional responsibilities. OIG Report, at 4. In May 2003, Mr. Scully rebuked Mr. Foster for providing information requested by the Majority Staff Director for the House Ways and Means Committee. *Id.* at 3. In June 2003, Mr. Scully's special assistant, pursuant to Mr. Scully's direction, instructed Mr. Foster not to respond to any requests for information from the House Ways and Means Committee. Because of Mr. Scully's actions, we view HHS's appropriation as unavailable to pay his salary. Pub. L. No. 108-199, Div. F, tit. VI, § 618, 188 Stat. 3, 354 (Jan. 23, 2004); Pub. L. No. 108-7, Div. J, tit. V, § 620, 117 Stat. 11, 468 (Feb. 20, 2003).

¹³ Section 7211 states: “The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.” There are no federal judicial decisions interpreting section 7211, aside from cases ruling that it does not imply a private cause of action, *Nixon v. Fitzgerald*, 457 U.S. 731 (1981), and that it does not apply to government contractors, *Bordell v. General Electric Co.*, 732 F. Supp. 327 (1990).

As the legislative history of section 618 demonstrates, Congress intended to advance two goals: to preserve the First Amendment rights of federal employees and to ensure that Congress had access to programmatic information from frontline employees. Mr. Scully's actions implicate the latter of these goals. Congressional offices had asked Mr. Foster for information and for technical and analytic assistance that concerned the cost and impact of proposed Medicare legislation under debate in both the House and the Senate. *OIG Report*, at 2-3. Many members considered such information critical to their consideration of the Medicare Prescription Drug, Improvement, and Modernization Act, a historic piece of legislation with significant implications for federal fiscal policy.¹⁴ This information is a prime example of the programmatic information from frontline federal employees upon which Congress focused in enacting the Lloyd-La Follette Act and its subsequent incarnations.

According to the *OIG's* findings, congressional offices were interested in the total estimated cost of the legislation, premium estimates, the data underlying certain premium estimates, and a technical analysis of the premium support provisions in the Medicare legislation. *OIG Report*, at 2-3. This information was typical of the regular, ordinary work product of Mr. Foster and the Office of the Chief Actuary, and as the frontline employee, he was competent to provide the information to Congress. *See H.R. Conf. Rep. No. 105-217*, at 837 (1997) (stating that the actuary has an important role in "developing estimates of the financial effects of potential legislative and administrative changes in the Medicare and Medicaid programs"). Mr. Foster was more knowledgeable about the estimates than other officials within HHS and thus was able to provide information so that Congress could evaluate the Medicare program and budget. *See Senate Comm. on Governmental Affairs, 95th Cong., The Whistleblowers*, 40 (Comm. Print 1978).

Thus, the legislative history of section 618 and its predecessors suggest that Mr. Scully's bar on Mr. Foster responding to congressional requests is a prime example of what Congress was attempting to prohibit by those provisions. Accordingly, Mr. Scully's actions fall squarely within section 618, and HHS's appropriation was unavailable for the payment of his salary.

Constitutional Issues Raised by HHS and OLC

While the *OIG Report* concluded that Mr. Scully had indeed threatened Mr. Foster if he communicated with Congress, it also contained in its attachments, legal opinions by the HHS Office of General Counsel and by the Office of Legal Counsel (OLC) for the Department of Justice. Memo from Katherine M. Drews, Associate General Counsel, HHS, to Lewis Morris, Counsel, HHS *OIG*, May 12, 2004 (*Drews Memo*); Letter from Jack L. Goldsmith III, Assistant Attorney General, to Alex M. Azar II, General Counsel, HHS, May 21, 2004 (*Goldsmith Letter*). These legal opinions state that the application of section 618 to the present case would be unconstitutional. *Drews Memo*, at 3-5; *Goldsmith Letter*, at 2-4.

¹⁴ *See, e.g.*, 150 Cong. Rec. S2761 (daily ed. Mar. 12, 2004) (statement of Senator Tom Daschle); 150 Cong. Rec. S3911-2 (daily ed. Apr. 7, 2004) (statement of Senator Bob Graham).

Laws passed by Congress and signed by the President come to us with a heavy presumption in favor of their constitutionality.¹⁵ B-300192, Nov. 13, 2002. We have long observed that it is not our role to adjudicate the constitutionality of duly enacted legislation. B-245028.2, June 4, 1992; B-215863, July 26, 1984. We apply the laws as we find them absent a controlling judicial opinion that such laws are unconstitutional. B-300192, Nov. 13, 2002. Indeed, even in such cases, we will construe a statute narrowly to avoid constitutional issues. *Id.* Here, no court has found section 618 or its predecessors unconstitutional. Likewise, the courts have never held unconstitutional the Whistleblower Protection Act, which authorizes federal employees to disclose violations of law, gross mismanagement, the gross waste of funds, abuses of authority, and threats to public health or safety. 5 U.S.C. § 2302(b)(8).

HHS and OLC first argue that section 618 is unconstitutional because it could force the disclosure of privileged, classified, or deliberative information. Drews Memo, at 4-5; Goldsmith Letter, at 2-3. Constitutional concerns could be raised if Congress were to attempt to force the disclosure of classified or national security information, given the President's role as Commander in Chief.¹⁶ However, Mr. Foster was not asked for classified information.

Similarly, Mr. Foster was not asked for information subject to a claim of deliberative process privilege.¹⁷ To invoke the deliberative process privilege, the material must be both pre-decisional and deliberative, requirements that stem from the privilege's purpose of granting officials the freedom "to debate alternative approaches in private." *In re: Sealed Case*, 121 F.3d 729, 737 (D.C. Cir. 1997). The deliberative process privilege does not apply to the information requested of Mr. Foster because it was neither pre-decisional nor deliberative. The Administration had already formulated its Medicare prescription drug plan and had released it to the public and to the Congress in March 2003. *See Framework to Modernize and Improve Medicare*, White House Fact Sheet, March 4, 2003. Thus, the information requested from Mr. Foster in June through November 2003, which involved cost estimates and data formulated after the Administration's release of its Medicare plan, was not part of the

¹⁵ The Supreme Court also begins with the presumption that a statute is constitutional. *See, e.g., United States v. Morrison*, 529 U.S. 598, 607 (2000) (holding that "due respect for the decisions of a coordinate branch of Government demands that we invalidate a congressional enactment only upon a plain showing that Congress has exceeded its constitutional bounds").

¹⁶ *See Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988) (stating that the Constitution grants the President authority to classify and control access to national security information); *National Fed'n of Fed. Employees v. United States*, 688 F. Supp. 671 (D.D.C. 1988), *vacated and remanded*, *American Foreign Serv. Ass'n v. Garfinkel*, 490 U.S. 153 (1989); Memorandum Opinion for the General Counsel, Central Intelligence Agency, *Access to Classified Information*, OLC Opinion (Nov. 26, 1996) (asserting that granting individual federal employees the right to disclose intelligence and other national security information would threaten the President's constitutional role as Commander in Chief).

¹⁷ Traditionally, courts have allowed the executive branch to withhold documents from the public and in litigation that would reveal advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated. *In re: Sealed Case*, 121 F.3d 729, 737 (D.C. Cir. 1997) (addressing scope of privilege in context of grand jury investigation).

deliberative process for the Administration's proposal. Furthermore, some of the information that Mr. Scully prohibited Mr. Foster from communicating to congressional offices, including the House Ways and Means Committee's request of June 13, 2003, for an analysis of the premium support provisions, was not preexisting data. Such information cannot be considered deliberative because the analysis was not preexisting nor was it tied to any decision-making process at CMS. Thus, HHS's and OLC's arguments that section 618 is unconstitutional because it could force the disclosure of classified or privileged information are inapplicable to the facts of this case.

HHS and OLC also argue that section 618 unconstitutionally limits the President's ability to supervise and control the work of subordinate officers and employees of the executive branch. Drews Memo, at 4-5; Goldsmith Letter, at 2-3. In making this argument, HHS and OLC fail to balance the President's constitutional interest in managing the official communications of the executive branch with Congress's equally important need for information in order to carry out its legislative and oversight responsibilities. As OLC itself has recognized, Congress has "important oversight responsibilities and a corollary interest in receiving information [from federal employees] that enables it to carry out those responsibilities." *Whistleblower Protections For Classified Disclosures: Hearing Before the House Permanent Select Committee on Intelligence*, 105th Cong. (May 20, 1998) (statement of Randolph Moss, Deputy Assistant Attorney General, Office of Legal Counsel). As the Attorney General has pointed out, Congress's interest in obtaining information from the executive branch is strongest when "specific legislative proposals are in question." 43 Op. Att'y Gen. 327 (Oct. 13, 1981).

HHS and OLC have overstated section 618's threat to the President's constitutional prerogatives.¹⁸ Executive agencies have the right to designate official spokesmen for the agency and institute policies and procedures for the release of agency information and positions to Congress and the public.¹⁹ Separation of powers concerns could be raised if Congress, by legislation, were to dictate to the executive branch who should communicate the official positions of the Administration, given the President's constitutional duty to "recommend to [Congress's] consideration such measures as he shall judge necessary and expedient."²⁰ U.S. Const. Art. II, § 3.

¹⁸ Section 618 does not prohibit agencies from requiring their employees to report on their communications with Congress and from requesting that agency congressional liaisons be included in employees' discussions with Congress, nor does it require executive branch employees to initiate congressional contacts or even to respond to congressional inquiries.

¹⁹ For example, section 301 of Title 5, U.S. Code, commonly known as the Housekeeping Statute, delegates to the head of an agency the right to prescribe regulations for "the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property." However, the Housekeeping Statute is explicit in that it does not "authorize withholding information from the public." This second sentence of § 301 was added in 1958 because Congress was concerned that the statute had been "twisted from its original purpose as a 'housekeeping statute' into a claim of authority to keep information from the public and, even, from the Congress." H.R. Rep. No. 85-1461 (1958).

²⁰ See also *Authority of the Special Counsel of the Merit Systems Protection Board to Litigate and Submit Legislation to Congress*, 8 Op. Off. Legal Counsel 30 (Feb. 22, 1984) (asserting that requiring an executive branch agency to submit legislative proposals directly to Congress without Presidential

Federal agencies and employees making separate legislative recommendations to Congress, without coordination with the President, could interfere with the President's constitutional duty, on behalf of the executive branch, to judge which proposals are "necessary and expedient" and make such recommendations to Congress. 8 Op. Off. Legal Counsel 30. Designating an official agency or executive branch spokesman would be entirely appropriate in the case of legislative recommendations or a statement of the Administration's official positions. However, Mr. Foster was not asked for a CMS policy position or legislative recommendation, but rather for specific and limited technical assistance.²¹

Thus, while certain applications of section 618 could raise constitutional concerns, application of section 618 to the facts of this case does not raise such concerns, because Mr. Foster was asked for estimates, technical assistance, and data, rather than any information which could be considered privileged.²² Furthermore, Congress was considering extensive changes to Medicare, and members requested cost estimates and analyses to inform debate on this legislation and to carry out the legislative powers vested by the Constitution. U.S. Const. Art. I, § 1. Indeed, if some of the Chief Actuary's estimates had been disclosed in a timely matter, Congress would have had better information on the magnitude of the legislation it was considering and its possible effect on the nation's fiscal health.²³

Mr. Scully's prohibitions, therefore, made HHS's appropriation, otherwise available for payment of his salary, unavailable for such purpose, because his actions are covered by section 618 of the Consolidated Appropriations Act of 2004 and section 620 of the Consolidated Appropriations Resolution of 2003. Because HHS was prohibited from paying Mr. Scully's salary after he barred Mr. Foster from communicating with Congress, HHS should consider such payments improper.²⁴

review would be unconstitutional); *Constitutionality of Statute Requiring Executive Agency to Report Directly to Congress*, 6 Op. Off. Legal Counsel 632 (Nov. 5, 1982) (asserting that requiring an executive branch agency to submit budget requests or legislative proposals directly to Congress without presidential review would be unconstitutional).

²¹ Indeed, the two OLC opinions cited in the Goldsmith Letter (and cited in the prior footnote) deal with budget or legislative proposals and thus are inapplicable to the present case.

²² OLC admits in its opinion that it did not review the specific information requested of Mr. Foster and thus "cannot opine on the privileged status" of the information.

²³ See, e.g., GAO, *Fiscal Year 2003 U.S. Government Financial Statements: Sustained Improvement in Federal Financial Management Is Crucial to Addressing Our Nation's Future Fiscal Challenges*, GAO-04-477T (March 3, 2004) (describing the drug benefit as "one of the largest unfunded commitments ever undertaken by the federal government").

²⁴ Section 618 and the legislative history surrounding similar provisions provide no guidance as to what time period an agency is prohibited from paying the salary of an official who prohibits a federal employee from contacting Congress. Federal salaries are obligated when earned and are earned on a biweekly pay period basis. See 24 Comp. Gen. 676, 678 (1945) and 5 U.S.C. § 5504. Given the continuing nature of Mr. Scully's prohibition, we recommend that HHS treat as an improper payment Mr. Scully's salary beginning with the pay period when his initial prohibition to Mr. Foster was made until his departure from CMS.

Therefore, we recommend that HHS seek to recover these payments, as required by 31 U.S.C. § 3711.²⁵

Conclusion

As a result of Mr. Scully's prohibition on Mr. Foster providing certain information to Congress, HHS's appropriation was unavailable to pay Mr. Scully's salary because section 618 of the Consolidated Appropriations Act of 2004 and section 620 of the Consolidated Appropriations Resolution of 2003 bar HHS from using appropriated funds to pay the salary of an official who prohibited another federal employee from communicating with Congress on an issue related to his agency. While certain applications of section 618 could raise constitutional concerns, we have applied the prohibition to the present facts, given the narrow scope of information requested and Congress's need for such information in carrying out its legislative duties, as well as the fact that no court has held section 618 unconstitutional.

Sincerely yours,

Anthony H. Gamboa
General Counsel

²⁵ HHS should keep the House and Senate Appropriations Committees, as well as its oversight committees, apprised of the actions it takes to recover these improper payments.

OFFICE OF PUBLIC AND GOVERNMENTAL AFFAIRSFOREWORD

TO: All ATF Employees

1. PURPOSE. This order establishes general guidelines and procedures relative to liaison responsibilities, public contacts, media affairs, congressional affairs, and the library, archive and historical programs within the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).
2. CANCELLATIONS. ATF O 9100.1A, Legislative Liaison Responsibilities, dated 8/3/2001, and ATF O 9000.1, Office of Liaison and Public Information, dated 4/23/2001, are canceled.
3. DISCUSSION. This order reflects the restructuring of the Office of Public and Governmental Affairs, which consists of the Liaison Division, the Public Affairs Division, and the Legislative Affairs Division. This order details each division's mission, functions, and personnel responsibilities.
4. AUTHORITIES AND REFERENCES.
 - a. Critical Incident Management System (CIMS) Manual.
 - b. ATF O 2400.6, Performance Management System.
 - c. ATF O 1250.1, Letters of Agreement, Memoranda of Agreement, and Memoranda of Understanding.
 - d. Title 28, CFR, Part 16, Production or Disclosure of Material or Information.
 - e. Title 28, CFR, Section 50.2, Releasing Information Relating to Criminal and Civil Proceedings.
 - f. Title 5, U.S.C., Section 552, Freedom of Information Act.
 - g. Title 5, U.S.C., Section 552a, Privacy Act.
 - h. Title 26, U.S.C., Section 6103, Restricting the Release of Tax Information.
 - i. Title 18, U.S.C., Section 1905, Disclosure of Confidential Information Generally.
 - j. United States Attorney Manual (U.S.A.M.), Title 1-7.000, Media Relations.
5. QUESTIONS. Questions regarding this order should be directed to the Office of Public and Governmental Affairs at 202-648-8700.

Michael J. Sullivan
Acting Director

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CHAPTER A. GENERAL1. DISCUSSION.

- a. As a publicly funded agency, ATF has a responsibility to inform the public, elected representatives and other Government agency officials of its mission, policies, and activities. It is ATF's policy that every ATF employee be as courteous and helpful as possible when responding to outside inquiries, and that the Bureau actively initiate direct contact with the public, media and Government representatives regarding ATF's mission, policies, and activities.
- b. The Bureau and the public directly benefit from ATF making available accurate and concise information and publicizing its mission, policies and activities, to the extent possible, taking into account law enforcement and privacy concerns. Public knowledge of ATF's mission, policies, and activities promotes understanding and compliance with the laws and regulations enforced by the Bureau, and enables others to identify the Bureau for needed services.
- c. The Bureau's efforts in maintaining a high level of communication with foreign law enforcement, industry, and governmental representatives directly impact the Bureau's ability to fulfill its mission both domestically and internationally. Liaison with these representatives helps to promote mutually beneficial cooperation and relationships.

2. HEADQUARTERS COMPOSITION AND EXECUTIVE LEVEL RESPONSIBILITIES.

- a. The Office of Public and Governmental Affairs (PGA) consists of the Liaison Division, Public Affairs Division, and Legislative Affairs Division. PGA also is responsible for the ATF library, archive, and historical programs.
- b. The Director is responsible for:
 - (1) Setting overall policy and goals for liaison, media, and congressional activities.
 - (2) Delegating responsibilities at all levels to maintain the Bureau's objectives in each of these areas.
 - (3) Ensuring that all Bureau personnel are aware of and carry out their responsibilities, adhering to all restrictions in these program areas.
 - (4) Advising the Attorney General and other Federal agency officials on liaison, media, and disclosure issues that may impact legislative, judicial, or other executive branch agencies.
- c. The Assistant Director (PGA) is responsible for:
 - (1) Providing overall leadership and oversight of PGA, and the successful completion of its duties and assignments.
 - (2) Advising the Director and Executive Staff on communications strategies and challenges.
 - (3) Setting policy for PGA operations.

- (4) Ensuring open communication with the Department of Justice (DOJ).
- (5) Maintaining communication with the Director, Deputy Director, and Executive Staff regarding all matters relevant to liaison, media, and legislative affairs.
- (6) Overseeing the ATF library, archive, and historical programs.
- (7) Serving on boards and committees as assigned by the Director or Deputy Director.
- (8) Reviewing external awards in conjunction with the Office of Management. Upon approval of an award proposal, forwarding to the Office of Professional Responsibility and Security Operations (OPRSO) for clearance.
- (9) Providing the Assistant Director (Field Operations), with input for the performance appraisals of special agents in charge (SACs) insofar as the appraisals pertain to media events and congressional briefings.
- (10) Designating a subordinate employee to act in the event of his or her absence in accordance with ATF O 1150.13, Delegation Order – Designation of Acting Supervisory Officials.

d. The Deputy Assistant Director (PGA) is responsible for:

- (1) Assisting the Assistant Director (PGA) in setting policy with an emphasis on providing guidance designed to ensure the effective operation of the Public Affairs, Liaison, and Legislative Affairs Divisions.
- (2) Managing the resources of PGA to include human resources, budget, and equipment.
- (3) Ensuring all policies and procedures within PGA are communicated and implemented within Headquarters offices and at the field division level.
- (4) Serving as advisor to the Assistant Director (PGA) by providing authoritative analysis on public implications of new or revised Bureau initiatives that have national or international consequences.
- (5) Representing the Bureau at the executive level, formulating interagency cooperative agreements and participating in program performance evaluations that pertain to legislative, liaison and public information projects and programs.
- (6) Performing special assignments, including serving on cross-directorate committees.
- (7) Approving where appropriate particular field requests, such as field requests to issue comments or press releases, conduct press conferences, grant interviews, or deploy or release public information officers (PIOs). See subparagraph 21d for further guidance on these matters.

3. DEFINITIONS.

- a. Public Information. Information that has been made available to a Bureau office by Headquarters or by field divisions for unqualified dissemination (e.g., recruiting brochures, fact sheets, reference information). Any ATF employee may give out this information.
- b. Controlled (Non-public) Information. Information that the Bureau is statutorily prohibited from releasing to the public or that can be released only with approval of the appropriate Headquarters office. Controlled information includes, but is not limited to, national security information; personal information or data subject to the Privacy Act of 1974; tax returns and return information; trace data; and sensitive criminal enforcement, regulatory, and proprietary information. Controlled information may be released only as provided by statutory or regulatory guidelines, as specifically approved by a Headquarters office pursuant to a published routine use for Privacy Act information or by the Office of Chief Counsel or the Disclosure Division.
- c. Discretionary Information. Any information disclosed in accordance with 28 CFR Part 16, Production or Disclosure of Material or Information. It is the responsibility of the official authorized to release the information to ensure that disclosures of discretionary information are in accordance with Bureau policy.

4. GENERAL GUIDELINES FOR RELEASING INFORMATION.

- a. This order provides general guidelines on the release of information, regarding the Bureau, its mission, functions and/or specific activities, which is obtained as a result of an ATF employee's official duties and is communicated to persons outside the Bureau. In some cases, this information may or may not be prohibited from disclosure pursuant to law, regulation, or policy (e.g., Freedom of Information Act; Privacy Act; DOJ policy as stated in U.S.A.M., Title 1-7.000, Media Relations; ATF directive).
- b. Bureau employees should consult with the Disclosure Division and the Associate Chief Counsel (Disclosure and Forfeiture) or applicable field counsel where there is any question about the propriety of a potential disclosure. This consultation is intended to prevent unlawful or erroneous disclosures of information.
- c. Executive branch agencies and employees are restricted by law from lobbying. No employee shall, in their official capacity or under the appearance of their employment with the Bureau, personally advocate for or against existing or proposed legislation enforced by or impacting ATF. This prohibition includes legislation relating to funding and staffing. The Bureau does provide technical advice on pending or proposed legislation in coordination with DOJ. Questions on these issues by the public or a media representative shall be directed to the appropriate PIO and/or public affairs specialist for coordination with the Public Affairs Division and the Legislative Affairs Division for response.
- d. The exchange or release of particular information by the Bureau may be required or restricted by law, regulation, policy, or by reasonable operational considerations. All employees are responsible for complying with all such laws, regulations, policies, and other considerations, and for exercising sound judgment, with respect to disclosing or withholding information. Any unauthorized release of information by an ATF employee may result in disciplinary and/or criminal action. Examples of unauthorized and authorized disclosures are provided below.

- (1) ATF employees shall not provide official Bureau seals, badges, or other indicia to members of the media for use of broadcast or commercial purposes without prior written approval from the Assistant Director (PGA).
- (2) ATF employees shall not publish articles and books, including works of fiction, based on information gained through their employment with ATF, without the authorization of the Assistant Director (PGA) and the Office of Chief Counsel. (See also ATF O 8620.1, Personnel Security, subparagraph 54a.) The Bureau has the right to excise information relating to ongoing investigative matters and operational techniques and procedures. The Bureau also has the right to excise references to classified and other restricted information. (See also 28 CFR, part 16.)
- (3) Disclosure of an ATF employee's personal views, such as a letter to the editor espousing the employee's viewpoint as a member of the public, is generally acceptable. However, no ATF employee shall utilize his/her position, title, or Bureau indicia to express his/her personal opinions to the media or public.

5-10 RESERVED

CHAPTER B. LIAISON DIVISION

11. GENERAL. The Liaison Division:
- a. Is the primary point of contact (POC) with Government agencies at the headquarters level, embassies, professional organizations, and law enforcement associations, and is responsible for maintaining close working relationships with those entities.
 - b. Plans and arranges public and private events hosted by the Office of the Director to include presentations, conferences, and meetings. These internal and external events are designed to recognize, foster, and promote the ATF mission, personnel, and interagency relations.
 - c. Facilitates visits by dignitaries from foreign and domestic entities, ensuring to the greatest extent possible that the goals of the visit are achieved.
 - d. Manages the Director's prepared remarks, personal correspondence, special messages and other written material prepared for the Director's signature, ensuring consistency in message and philosophy, and promoting the ATF mission.
 - e. In coordination with the International Affairs Office (IAO), International Affairs Coordination Group (IACG), and appropriate program offices, as applicable, proactively establishes communication with high-level personnel from foreign and domestic agencies for the purpose of pursuing matters of mutual interest and concern.
 - f. Coordinates the awards process for the Meritorious Award, Memorial Award, Employee of the Year Award, and the Director's Annual Awards. See ATF O 2400.6, chapter K. The external awards program is coordinated and administered by the Office of Management.
 - g. Represents PGA in the coordination and/or administration of Bureau fellowship programs, such as the Police Executive Fellowship Program.
12. RESPONSIBILITIES.
- a. The Chief of the Liaison Division is responsible for:
 - (1) Planning, developing, organizing, and directing working priorities that are reflective of ATF's mission and formulating liaison strategies that enhance ATF programs and initiatives.
 - (2) Serving as the principal advisor to the Director, Assistant Director (PGA), and other members of the Executive Staff on liaison issues.
 - (3) Assuring proper coordination and communication with other agency officials to promote positive interagency cooperation and close working relationships.
 - (4) Coordinating ATF participation in briefings, official visits, or other meetings to ensure appropriate participation and continuity from one visit to the next.
 - b. The Program Managers are responsible for:
 - (1) Assessing, developing, and evaluating program goals, needs, operations and accomplishments.

- (2) Planning, directing, coordinating, and overseeing effective development of division programs and projects and evaluating programs to ensure efficiency and economy of operations.
 - (3) Advising the Chief on significant issues pertaining to division programs, projects, and the impact of new technologies and initiatives; furnishing technical information and advice to provide direction and uniformity in division programs and projects.
 - (4) Representing the Bureau in interagency meetings, conferences, and ad hoc committees on division issues and program initiatives.
 - (5) Coordinating projects and programs within ATF and with officials from DOJ or other Federal, State and local law enforcement agencies.
 - (6) Engaging Federal law enforcement agencies to ensure that the Bureau's policies and positions on a variety of complex issues are clearly communicated and ensuring their perspective is taken into account as ATF policies and programs are discussed and implemented.
 - (7) Engaging law enforcement associations, industry associations, and other organizations to build partnerships and facilitate a free exchange of information. Making assessments and providing general recommendations regarding ATF personnel attendance at conferences hosted by these associations and organizations.
 - (8) Overseeing generalized briefings and facilitating coordination and security of official visits by dignitaries from foreign and domestic entities at ATF facilities around the country. Assisting with the itinerary to ensure the goals of the visit are met.
 - (9) In coordination with the IAO, establishing communication with high-level personnel from foreign and domestic agencies for the purpose of pursuing mutual interests.
 - (10) Coordinating major functions, both public and private, hosted by the Office of the Director, including award ceremonies, presentations, conferences, and meetings.
 - (11) Receiving and assessing requests for services and information from foreign embassies and other representatives of foreign governments, ensuring appropriate directorates are notified of such requests, and coordinating the Bureau's response to such requests.
 - (12) Speaking before local and national organizations, law enforcement entities, and industry groups in support of Bureau activities.
- c. The Project Officers are responsible for:
- (1) Conducting liaison with Federal law enforcement agencies to ensure that the Bureau's policies and positions on a variety of complex issues are clearly communicated to them, as well as making certain that their perspective is taken into account as ATF policies and programs are discussed and implemented.

- (2) Communicating with law enforcement associations, industry associations, and other organizations to build partnerships and facilitate a free exchange of information. Making assessments and providing recommendations regarding ATF personnel attendance at conferences presented by the various associations.
 - (3) Preparing and participating in generalized briefings and facilitating official visits by dignitaries from foreign and domestic entities. Assisting with the itinerary to ensure the goals of the visit are met.
 - (4) Maintaining communication with high-level personnel from foreign and domestic agencies for the purpose of pursuing mutual interest.
 - (5) Assisting with major functions, both public and private, hosted by the Office of the Director, including award ceremonies, presentations, conferences, and meetings.
 - (6) Assisting in the coordination and security of visits by high-ranking dignitaries from other organizations.
 - (7) Speaking before local and national organizations, law enforcement entities, and industry groups in support of Bureau activities.
- d. The Senior Program Analysts are responsible for:
- (1) Organizing most major functions, both public and private, hosted by the Office of the Director, including award ceremonies, conferences, and meetings.
 - (2) Coordinating and communicating within the Bureau on matters related to the Bureau's criminal and regulatory enforcement responsibilities as they may impact other agencies.
 - (3) Coordinating official visits by dignitaries from outside entities, foreign or domestic, to include determining the nature of the visit and developing an itinerary to meet the goals of the visit.
 - (4) Processing requests for information from embassies or other foreign sources and preparing responses to those requests.
- e. The Program Analysts are responsible for:
- (1) Preparing and participating in briefings related to foreign and domestic liaison.
 - (2) Conducting analyses and studies of liaison issues/matters, analyzing and evaluating information from Liaison Division reports, and summarizing this information into single, cohesive documents, highlighting significant facts.
 - (3) Developing recommendations, operating procedures, and staff policies for Liaison Division programs based on analysis of the division's current operations and management's needs.

- (4) Processing requests for information from embassies or other foreign sources and preparing responses to those requests.
 - (5) Planning, participating in, and completing special projects, including large-scale annual events and ceremonies.
- f. The Correspondence Unit Team Leader is responsible for:
- (1) Tracking and supervising the preparation of correspondence in reply to incoming correspondence requiring the Director's signature, as assigned by the Office of the Director and preparing personalized correspondence for the Director as requested, including thank you letters, retirement letters, condolence letters, and congratulatory letters.
 - (2) Reviewing and editing congressional correspondence prepared by others to ensure consistency in content, message, and format.
 - (3) Serving as an expert consultant to ATF staff on the preparation of all forms of correspondence and written communications.
 - (4) Editing correspondence, reports, and other written documents prepared for the Director's signature or release.
- g. The Speechwriter within the Correspondence Unit is responsible for gathering information and preparing talking points, speeches, and other presentations for the Director, ensuring that presentations reflect accurate information, promote the ATF mission, and are in accord with the Director's vision and philosophy.

13. OFFICIAL VISITS.

- a. Visit Requests.
- (1) Requests for official visits by foreign nationals to any ATF facility will be submitted to the Chief, Liaison Division. In the case of official visits to ATF foreign offices, these visits may be handled by the IAO and IAO foreign offices, as appropriate.
 - (2) The Chief, Liaison Division, will designate a member of his or her staff as a Liaison Visit Coordinator who will meet with the ATF POC to gather basic information about the visit and then prepare a visit request assessment and recommendation. The assessment should include clearance checks for all foreign nationals by the Office of Strategic Intelligence and Information (OSII) and OPRSO, the results of which will be forwarded to Physical Security Programs Branch and the Operations Security (OPSEC) Branch. The assessment will also include coordination with IAO and IAO foreign offices, as appropriate.
 - (3) The Chief, Liaison Division, will present the request, assessment and recommendation to the Assistant Director (PGA).

- (4) Upon preliminary approval of the Assistant Director (PGA), the Chief, Liaison Division, will forward an informational synopsis of the visit request to the Chief, IAO via e-mail. ATF directorates having prior or planned contact with the country or domestic entity should indicate their interest in participating in the visit to the Chief, Liaison Division.
 - (5) The Liaison Visit Coordinator will prepare and forward a complete briefing package for the visit to the Assistant Director (PGA), who will then confer with the assistant director of the requesting directorate or his or her delegate to discuss the results of the final assessment and make a decision regarding the visit.
- b. Visit Preparation.
- (1) The assigned Liaison Visit Coordinator will work with the visiting country's POC, and will consult with the appropriate directorate official, including subject matter experts that may have substantive interest in the visit, to prepare an appropriate official briefing package for the visit.
 - (2) The Liaison Visit Coordinator will ensure that all appropriate arrangements are made for the visit, including refreshments (if required), official gifts, transportation, escorts, parking and security guards, and, where necessary, briefings on the applicable cultural customs and general protocol for the visit.
 - (3) Prior to the visit, the Liaison Visit Coordinator will thoroughly brief the Chief, Liaison Division, on the planned itinerary as well as any issues that may affect the success of the visit.
- c. Visit. During the visit, the Liaison Visit Coordinator will be present to ensure, to the greatest extent possible, that the goals of the visitor and ATF are met, and to address any issues that may arise during the course of the visit.
- d. Post Visit.
- (1) After the visit, the Liaison Visit Coordinator will contact the ATF directorate POC(s) as well as a representative of the visiting delegation to ensure that followup issues, if any, have been resolved. Any comments or feedback received during these conversations will be incorporated into an after action report as described below.
 - (2) The Liaison Visit Coordinator will prepare a brief after action report documenting the visit. The report shall include the number of visitors, the stated interests of the visitors, and any issues raised during the visit, to include any followup action items. The Liaison Visit Coordinator will also document the visitor's feedback which will be used in preparing for future visits. In the case of international visitors, the after action report will be timely forwarded to the Chief, IAO, to ensure that any followup action items are handled or resolved by the appropriate parties.

14. SPECIAL EVENTS.

- a. Requests for Special Events generally will be initiated by the Office of the Director, and may include events such as the annual awards ceremony. Requests will be submitted to the Assistant Director (PGA) for action by the Chief, Liaison Division. The Chief will

assign all event requests to a Liaison Event Coordinator, who will meet with the ATF POC to gather specific information about the event and initiate an event tracking log. All proposed contracts for special events will be forwarded to the Office of Chief Counsel for review.

- b. Preparation for Special Events include, but are not limited to, the following:
- (1) Identify a Venue/Location. Factors that will have an impact on identifying the location include applicable DOJ guidelines; availability; cost estimates; the number of expected attendees; traffic or parking considerations; safety concerns/handicap accessibility; Metro accessibility; information on other events prior to, during, or after the event; media presence; catering; indoor vs. outdoor location; availability of holding rooms for ATF executives, official guests, honor guard, band, etc., as applicable; and the security considerations prior to and during the event.
 - (2) Identify Participants. Individuals that should be involved in large events may include personnel from the Executive Protection Branch, Special Operations Branch, etc., as well as the Liaison Event Coordinator, master or mistress of ceremonies, VIPs, sign language interpreter, ATF medic, ATF canine handler, ATF photographer, ATF audiovisual specialist and/or videographer, honor guard, bugler/drummer, taps/rifle team, band or quartet, soloist, ushers and/or VIP hosts, ATF chaplain, and venue POC.
 - (3) Other Items to Consider. Other items that may require consideration for special events include speeches/scripts, program literature, event advertisements, event timeline, briefings, pre-event site walk-through, confirmation of all participants, attendee travel arrangements, transportation to event, conference issues (e.g., hotel rooms, hospitality suite, booth), payment for services, and the use of the Director's Representation Fund.
- c. During the Event. The Liaison Event Coordinator will be present to address any issues that may arise during the event.
- d. Post Event. Within 48 hours of the event, all of the Liaison Division members who participated in the event will meet to discuss the event. The Liaison Event Coordinator will prepare an after action report for the Assistant Director (PGA) within 7 working days of the event's conclusion. The report will include suggestions, photos, constructive criticism, and positive feedback to help prepare for the next event. If required, the Liaison Event Coordinator will provide information to the Correspondence Unit for the purpose of preparing appropriate letters of appreciation for the Director's signature.

15. PROFESSIONAL ASSOCIATIONS.

- a. General Liaison. A program manager or project officer will be assigned to communicate with law enforcement associations and certain industry associations/stakeholders in order to build partnerships and facilitate a free exchange of information.
- b. Conferences. The program manager or project officer will make assessments and provide recommendations regarding Liaison Division and other ATF personnel attendance at conferences presented by the various associations/industries.

16. FEDERAL LAW ENFORCEMENT AGENCIES.

- a. General Liaison. Liaison Division representatives will be assigned to communicate with various law enforcement agencies within each of the departments in the Federal Government at the headquarters level, where ATF does not have dedicated personnel assigned. They will create a bridge for the exchange of information between ATF and the various agencies within each department, in coordination with affected ATF directorates as appropriate.
- b. Field Assistance. The Liaison Division will also provide ATF field personnel with access to sources of information and additional investigative tools and techniques available in other agencies.

17-20 RESERVED

CHAPTER C. PUBLIC AFFAIRS DIVISION21. GENERAL.

- a. The Public Affairs Division is responsible for:
- (1) All nonoperational contact, apart from those processed under the Freedom of Information and Privacy Acts, with individuals, organizations and the news media for the purpose of providing information about the Bureau, its mission, functions, and specific activities. The Public Affairs Division has overall responsibility for coordinating and initiating media contacts on a national and international level, in coordination with affected directorates.
 - (2) Advising the Director, the Assistant Director (PGA), and other members of the Executive Staff on public information/media issues.
 - (3) Coordinating with and supporting other Headquarters directorates and field offices in carrying out their responsibilities in this area. The division is also responsible for evaluating public and media inquiries to the Bureau, and advising the Director, Assistant Director (PGA), and other members of the Executive Staff on developing issues, potential problem areas, and circumstances involving Bureau credibility. The division advises the Assistant Director (PGA) on policy and procedures in its area of responsibility.
- b. The field division SAC is responsible for notifying his or her chain of command and:
- (1) Consulting with the Chief, Public Affairs Division, where an issue may be sensitive or controversial.
 - (2) Obtaining the approval of the Deputy Assistant Director (PGA) in accordance with the following guidelines.
 - (a) If an issue has or is expected to attract national attention, or involves a Critical Incident Management Response Team (CIMRT) or Critical Incident Management Support Team (CIMST) operation, the SAC must obtain the approval of the Deputy Assistant Director (PGA) prior to issuing comments or press releases, conducting press conferences, granting interviews, or deploying or releasing PIOs.
 - (b) If national or international media representatives may be involved, the SAC must obtain the approval of the Deputy Assistant Director (PGA) prior to issuing information or comments, or granting requests for interviews or press conferences.
 - (c) If an issue concerns legislative or funding matters, the SAC must obtain the approval of the Deputy Assistant Director (PGA) prior to issuing comments or press releases, conducting press conferences, or granting interviews. See chapter D, subparagraph 41c, below.
 - (d) For additional guidance on SAC and other field division responsibilities, see paragraph 23, below.

- c. The only employees authorized to release information, pursuant to the guidelines in this order, to local and regional media are SACs, assistant special agents in charge (ASACs), directors of industry operations (DIOs), resident agents in charge (RACs)/group supervisors, area supervisors, and/or PIOs. Where applicable, the SAC may, on a case-by-case basis, delegate the authority to release information to other division employees.
- d. All field divisions, Headquarters directorates, laboratories and any subordinate offices will submit a copy of any printed or filmed material (e.g., public service announcements, billboards, pamphlets) intended for mass distribution within or outside of ATF to the Chief, Public Affairs Division, prior to publication.

22. RESPONSIBILITIES.

- a. The Chief of the Public Affairs Division is responsible for:
 - (1) Planning, developing, organizing, and directing working priorities that are reflective of ATF's mission and formulating media strategies that accurately, truthfully, and comprehensively address ATF's mission, policies and activities.
 - (2) Serving as the principal advisor to the Director, Assistant Director (PGA), and other members of the Executive Staff on public information/media issues.
 - (3) Providing analyses and advice regarding public perception of the Bureau's mission, policies and activities having national or international implications.
 - (4) Serving as the principal official Bureau spokesperson addressing the national and international media.
 - (5) Serving as the primary contact for the DOJ's Office of Public Affairs.
 - (6) Serving as the primary coordinator of public information resources in support of an activation of a CIMST and CIMRT.
 - (7) Responding to all field requests for consultation about sensitive or controversial issues, and assisting the Deputy Assistant Director (PGA) in evaluating field requests for approval of matters as described in subparagraph 21b, above.
 - (8) Coordinating media relations training to new employees and new supervisors in conjunction with the Office of Training and Professional Development (TPD).
 - (9) Maintaining a thorough knowledge of current and developing events within the Bureau, DOJ and the overall law enforcement community, focusing on sensitive, significant and controversial events; providing timely analysis and advice to Bureau leadership regarding such events; and anticipating, assessing and responding to public and media reactions and inquiries regarding such events.
 - (10) Securing review by the Office of Chief Counsel of information proposed for release by the directorate to the media and/or general public where there is any question about the propriety of a potential disclosure.
 - (11) Supervising PIOs while assigned to national media events and inquiries.
 - (12) Serving as a consultant to the entertainment industry to promote the accurate depiction of ATF, ATF employees, and events involving ATF in film, television, books, magazines, and Internet projects.

- (13) Representing the Bureau in interagency meetings, conferences, and ad hoc committees on division issues and program initiatives.

b. The Program Managers are responsible for:

- (1) Serving as the principal Bureau Headquarters POC for field division PIOs and other field division personnel regarding media issues and public inquiries; directly supervising and coordinating resources and recommendations on deployment of PIOs assigned to national media events and inquiries.
- (2) Developing and coordinating talking points, recommendations for responses to the public, and other material during national media events.
- (3) Developing and implementing division policies, practices and procedures and assessing, developing, and evaluating program goals, needs, operations and accomplishments.
- (4) Advising the Chief, Public Affairs Division, on significant issues pertaining to division programs, projects, and the impact of new technologies and initiatives. Furnishing technical information and advice to provide direction and uniformity in division programs and projects.
- (5) Coordinating projects and programs with management officials in other divisions within the directorate, other directorates at Bureau Headquarters, and DOJ or other Federal, State and local law enforcement agencies, particularly on sensitive, controversial or political matters.
- (6) Providing media relations training to new employees and new supervisors, in conjunction with Public Affairs Division staff members and TPD through internal training programs.

c. The Public Affairs Specialists are responsible for:

- (1) Acting as a Bureau Headquarters POC for field division PIOs and other field division personnel regarding media issues and public inquiries.
- (2) Maintaining a thorough knowledge of current and developing events within the Bureau, DOJ and the overall law enforcement community, focusing on sensitive, significant and controversial events; providing timely analysis and advice to Bureau leadership regarding such events; and anticipating, assessing and responding to public and media reactions and inquiries regarding such events.
- (3) Responding to national media inquiries and providing background, statistical information, interviews, and general guidance on news issues relevant to ATF's operations and responding to public inquiries by providing background and statistical information.
- (4) Ensuring the accurate depiction of ATF, ATF employees, and events involving ATF in film, television, books, magazines, and Internet projects, including gathering of historical and statistical data, arranging interviews and demonstrations with appropriate employees, providing advice and direction to ATF employees, and providing other appropriate support.

- (5) Promoting media interest in ATF's mission, policies and activities.
- (6) Developing public service announcements and writing news releases, talking points, key messages, fact sheets, speeches, feature articles, radio and television text, and other materials in support of national initiatives/programs to further the Bureau's mission.
- (7) Establishing and maintaining effective working relationships with public affairs officials of Federal agencies, national and trade media representatives, and representatives of industries and organizations affected by ATF's industry operations.

d. The Public Information Specialists are responsible for:

- (1) Assisting in the management, policy development, and oversight of ATF's Internet and IntraWeb sites.
- (2) Collecting and maintaining news clips, videos, and still photos of news events involving ATF.
- (3) Planning and developing materials that convey information about ATF's programs, policies, and activities for both external and internal audiences; developing and producing briefings using various multimedia tools.
- (4) Producing the employee newsletter Inside ATF, including planning issues; soliciting stories, photographs, and artwork; writing original articles; editing submissions; planning page layouts; and managing its production and distribution.
- (5) Developing and writing news releases, fact sheets, talking points, key messages, speeches, feature articles, and radio and television text for Bureau officials.
- (6) Establishing and maintaining effective working relationships with public affairs representatives of Federal agencies, national and trade media representatives, and representatives of industries and organizations affected by ATF's industry operations.
- (7) Providing answers and direction to inquiries from the official ATF e-mail address accessed by the public, news media, interest groups, and others.

23. OTHER ATF EMPLOYEES' RESPONSIBILITIES.

- a. All ATF employees shall timely apprise their supervisors of matters that receive, or are reasonably expected to receive, media attention (e.g., significant and/or large-scale warrant execution operations; Special Response Team (SRT) and National Response Team (NRT) activations; significant incidents involving Federal firearms licensees, explosives). Employees shall refer all media inquiries to the PIO through their supervisor. For additional information regarding ATF employees' responsibilities on disclosure matters, see paragraph 4, above.
- b. Special Agents in Charge are responsible for responding to all matters involving local or regional public information interests. Many issues, although local in scope, may impact the perception of ATF on a national scale. Whether the issue is a response to a local enforcement or investigative action or the participation in a joint initiative that may receive

media attention, it is incumbent on the SAC to analyze the issue in every circumstance. The SACs or their delegates are responsible for consulting with, or obtaining prior approval of, PGA officials as delineated in subparagraph 21b. When circumstances dictate, the SAC may delegate the responsibility of spokesperson to the division PIO, ASAC, DIO, or first-line supervisor.

- c. Public Information Officers are members of the field division staff under the direct supervision of the SAC and ensure that the public information initiatives reflect Bureau policies and procedures. PIOs are responsible for complying with all applicable guidelines in this order. Among other things, it is essential that PIOs coordinate with members of the field division management staff and the Public Affairs Division on all field division activities related to, responding to, or in anticipation of a media inquiry requesting specific information regarding ATF policy or ATF enforcement operations in their geographical areas of responsibility, reputation or perception issues, or other matters specifically assigned by the SAC. PIOs must be briefed on these inquiries or anticipated inquiries so that they may prepare to address issues with the media should they be made public. PIOs will coordinate the release of all news releases issued by their respective or assigned ATF field office and will provide an information copy to the Public Affairs Division. PIOs or another contact person will be identified on news releases issued by the respective ATF field office and designated as available to answer media questions. PIOs are specifically responsible for the following:
- (1) Acting as the spokesperson for the SAC and responding appropriately to media inquiries made to any employee or office within the field division.
 - (2) Coordinating all news releases and news conferences with the Public Affairs Division prior to the event consistent with the guidelines set forth in this order.
 - (3) Coordinating responses to media inquiries with the SAC and the appropriate members of the management team to ensure consistent response to issues of interest to the public.
 - (4) Maintaining a media contact list with names, addresses, and telephone and facsimile numbers of the wire services, print, radio, and television outlets in the field division's area of responsibility.
 - (5) Advising the Public Affairs Division on media relations issues, recommending media strategies, and assisting in the selection of persons, other than the PIO, to act as ATF spokespersons and interviewees.
 - (6) Preparing news releases, conducting news conferences, and coordinating interviews and other such activities with the appropriate United States Attorney's Office, State and local prosecutors' representatives, and the Public Affairs Division. See subparagraph 21b, above, for applicable procedures.
 - (7) Obtaining and reviewing news releases issued by an agency other than ATF that mention ATF or otherwise relate to ATF activities, and distributing such news releases to the division management team and the Public Affairs Division.
 - (8) In accordance with paragraph 30, below, maintaining subscriptions, monitoring media coverage, and submitting copies of ATF-generated media material to the Public Affairs Division.

- (9) As assigned by the SAC and required by paragraphs 43 and 44, below, participating in and coordinating field congressional visits in consultation with the Public Affairs and Legislative Affairs Divisions.
 - (10) Serving on the CIMRT and discharging all media responsibilities, as set forth in the Critical Incident Management System (CIMS) Manual.
 - (11) Conducting a press conference, media roundtable, or other media event at least once a month to ensure that the field division is proactive with the media. Supplemental or additional funding for such events as may be necessary may be requested from PGA.
 - (12) Submitting monthly reports to the Public Affairs Division that include the following: significant media events; any congressional visits; community outreach activities (e.g., presentations at schools and to the general public to promote public safety and prevent violence); partnership efforts with industry members and law enforcement organizations to meet common goals; training provided to other Federal, State, local and international agencies; and other initiatives such as Project Safe Neighborhoods in furtherance of ATF's mission.
- d. Team Leader Public Information Officers are members of the field division staff under the direct supervision of the SAC. Team leader PIOs are responsible for complying with all applicable guidelines in this order (e.g., paragraph 21, above). In addition to the duties of the PIO, the team leader PIO's duties include the following:
- (1) Responding to critical incidents as member of a CIMRT; planning, directing, executing, and monitoring campaigns (often national) to convey complex information pertaining to CIMRT responses. Prior to release from CIMRT, conducting post-briefing with the media, coordinating and participating in legislative visits with the concurrence of PGA, and executing other post-CIMRT activities as applicable.
 - (2) Serving as a principal media affairs advisor to the SAC in national or regional crisis incidents; making recommendations regarding media resources needed from ATF Headquarters and field components, the United States Attorney's Office, and other government agencies; and identifying and developing a media affairs plan of action for any critical event.
 - (3) Developing national, regional, and local public media strategies and objectives; providing leadership and support for development and delivery of agency commentary on events and breaking news stories of significance around the country in accordance with applicable guidelines in this order.
 - (4) When requested by PGA, initiating contact and outreach efforts with national media, and ensuring that the media has accurate information regarding the Bureau's mission, policies and activities.
 - (5) Ensuring that information disclosed by ATF officials is consistent within ATF and with information expressed by DOJ and other government agencies; identifying and resolving instances in which such information is not being expressed in a consistent manner.
 - (6) Leading and coordinating the activities of media response teams, to include providing onsite public information and assistance for sensitive, significant and/or controversial ATF investigations having national and international implications.

- (7) Maintaining a thorough knowledge of current and developing events within the Bureau, and the overall law enforcement community, focusing on sensitive, significant and controversial events; providing timely analysis and advice to Bureau leadership regarding such events; and anticipating, assessing and responding to public and media reactions and inquiries regarding such events.
 - (8) Providing leadership and guidance to field PIOs and field managers on impact and implementation of new developments, trends, technology and other matters affecting the Bureau. Supervising detailed PIOs and Information Services Division (ISD) staff members on national media and legislative events.
 - (9) Preparing and presenting media relations training for field PIOs and supervisors and other ATF personnel.
- e. First-line Supervisors are authorized to speak on behalf of ATF and make appropriate releases of public information or discretionary information when they receive inquiries from their local media under the guidelines set forth in this order. First-line supervisors may be the first responders to a critical incident and, as such, may act as the ATF spokesperson. During the initial phases of a critical incident or other fast-breaking situation that may involve reputation or perception issues, sensitive and/or significant investigative matters, or matters of potential regional, national, or international interest, the first-line supervisor may be initially required to handle media inquiries until assistance from the PIO or another supervisor can be provided. In these situations, first-line supervisors shall advise the affected SAC, ASAC, or DIO before conducting media interviews, and, if possible, first consult with the PIO. Among other things, first-line supervisors are responsible for the following:
- (1) Delivering to the PIO copies of indictments, search warrants, arrest warrants, and their supporting affidavits, indicating which such documents, if any, are sealed under court order, and providing an overview of the operation, in advance of law enforcement or industry operations in which media interest is expected or reasonably foreseeable.
 - (2) Speaking at public events in their field office area of responsibility and/or assigning such presentations to appropriate employees in their field office, and notifying the PIO of such speaking engagements.
 - (3) Conducting outreach activities with industry and government associations as appropriate.
 - (4) Timely forwarding original news media material in accordance with paragraph 30, below.

24. RELEASING INFORMATION ABOUT CRIMINAL ENFORCEMENT ACTIONS.

- a. Releasable and Non-releasable Information. The decision whether to release information in a criminal matter requires striking a fair balance between the protection of individuals accused of crime and the public's understanding of the problems of controlling crime and administering government. DOJ policy is that its regulations, for the release of information by DOJ personnel relating to criminal and civil proceedings, are subject to continuing review and consideration. See 28 CFR § 50.2(a)(4). All ATF employees, and in particular PIOs and supervisors, are responsible for knowing and complying with current DOJ policy when releasing information regarding criminal enforcement actions.

As of the date of this order, DOJ policy is set out at 28 CFR § 50.2 and U.S.A.M. § 1-7.500 – 1-7.550. When there is any doubt as to the legality of a potential disclosure, employees should consult with their appropriate field counsel.

b. Coordination on Releases of Information.

- (1) All orders of Federal judges and magistrates on the release of information to the media, including standing orders and local rules, shall be followed.
- (2) In instances where a PIO or supervisor plans to issue a news release, schedule a news conference or make contact with a member of the media relating to any case or matter which may be or is being prosecuted by the United States Attorney's Office, such release, scheduling of a news conference or other media contact shall be approved by the United States Attorney. See U.S.A.M. § 1-7.400. See also subparagraph 21b, above, for additional guidance.
- (3) News releases and news conferences also shall be coordinated with State or local prosecutors, and other agencies participating in criminal enforcement actions. The release of information, however, is not dependent upon another agency's approval, and circumstances may dictate that a release be disseminated without such approval or coordination. However, any release made by ATF shall cite the efforts of cooperating and participating agencies, unless they specifically request to be excluded.
- (4) In formal task force situations, agreements and guidelines on joint news releases and other releases of information shall be developed when the task force is established and incorporated in the memorandum of understanding (MOU) or memorandum of agreement (MOA) between the participating agencies. When written guidelines are developed, they shall be submitted to the appropriate SAC, via the PIO, for approval before formalizing the MOU/MOA (see also ATF O 1250.1, Letters of Agreement, Memoranda of Agreement, and Memoranda of Understanding). Any MOU/MOA with a State and/or local law enforcement agency should provide that any ATF information shared shall remain the property of ATF and that this information may not be made public without ATF authorization or in any manner contrary to Federal law.

25. RELEASING INFORMATION ABOUT INDUSTRY OPERATIONS ADMINISTRATIVE ACTIONS.

- a. Releasable Information. Information regarding final administrative actions, such as settlement agreements, revocations, suspensions or fines, including the name of the person (including a company, partnership or other non-natural person) involved in the action, the facts surrounding the action, and details of all allegations to which the person has admitted, generally may be released unless otherwise prohibited by law.
- b. Non-releasable Information.
 - (1) Information may not be disclosed in violation of any statutory prohibition or restriction, such as 26 U.S.C. § 6103 (relating to tax return information) and 18 U.S.C. § 1905 (relating to trade secrets and other confidential information).
 - (2) Information on administrative actions that are not final (e.g., settlement negotiations or a revocation that is being appealed) may not be disclosed.
 - (3) Trace data.

- c. Other. When ATF takes administrative action against a firearms or explosives permittee or licensee, any release of information shall be coordinated with the SAC, DIO, and associate chief counsel or division counsel through the PIO.

26. RELEASING INFORMATION ABOUT BUREAU EMPLOYEES TO THIRD PARTIES.

- a. Information about Bureau employees is generally prohibited from release to the public. A request for information about an ATF employee must be treated as a Freedom of Information Act (FOIA) request and be referred to the Disclosure Division, except as provided below.
- b. At the request of an ATF employee, the Chief, Human Resources Division (HRD), or an authorized official, may release employment information to assist that employee in obtaining a loan or credit, or for a similar purpose. It is the responsibility of the Chief, HRD, or the authorized official to establish procedures for verification of the authenticity of such a request. The Chief, HRD, or the authorized official should refer any request for information to the Disclosure Division if it appears that the requested information is protected from disclosure under any statute, regulation or policy, or if there is reason to question whether the employee has authorized the release or whether the request is legitimate. Any release of information under this subsection should also be coordinated with the Associate Chief Counsel (Disclosure and Forfeiture Division).
- c. Employees may allow prospective creditors to immediately verify salary and employment data through the National Finance Center (NFC). For further information, contact HRD.

27. CRITICAL INCIDENT OPERATIONS.

- a. A critical incident is an event or series of events, either planned or unplanned, arising from a criminal act, natural disaster, or civil disorder that may require a significant mobilization of ATF resources to increase public safety and effectively resolve the incident. Critical incidents may receive large-scale media attention. The SAC must adhere to all applicable guidelines specified in this order. Additionally, the SAC must evaluate all critical incidents and assess whether additional PIOs are needed to properly address media and public affairs issues.
- b. In the case of planned operations, the SAC shall evaluate the anticipated media and public affairs requirements in advance. If the SAC anticipates that the scheduled activity will generate large-scale media attention (i.e., numerous national and/or international media inquiries) beyond the capabilities of the affected field division, additional resources may be requested.
- c. Activation of a CIMRT requires the deployment of additional media and public affairs resources. The Public Affairs Division, the CIMRT team leader PIOs, and assisting field PIOs will have responsibilities and duties as set out in the CIMS Manual and assigned by the CIMRT commander. In the event of a critical incident, the SAC shall monitor ATF media and public affairs activities.
- d. In incidents involving NRT or SRT activations, the SAC shall similarly assess ATF media and public affairs activities and request additional resources, if needed.

28. REQUESTING PUBLIC AFFAIRS DIVISION SUPPORT.

- a. Where the SAC deems appropriate, the SAC should advise the Chief, Public Affairs Division, of any need for additional personnel (e.g., PIO, Public Affairs Division

representatives) for detail to the affected field division. If a field division PIO is to be detailed, the Chief, Public Affairs Division, will contact the SAC of the PIO selected for the detail and with his or her concurrence, temporarily detail the PIO to the affected field division. The Chief, Public Affairs Division, will coordinate the detail with the SACs. Please refer to guidelines in paragraph 21, above, for proper procedures where approval of the Deputy Assistant Director (PGA) may be required.

- b. While on detail, the PIO's activities will be directed by the SAC of the affected field division. The detailed PIO will also be expected to apprise the public affairs specialist assigned as the POC of significant media matters as they develop and comply with all other guidelines as set forth in this order. Deployment and release of PIOs will be approved by the Public Affairs Division.
29. WRITTEN MEDIA AGREEMENTS. At no time shall any field personnel of ATF enter into a written agreement (e.g., designating a multi-agency spokesperson) with any agency or other entity concerning the release of information without the prior approval of the Assistant Director (PGA), who will ensure all appropriate coordination with the Office of Chief Counsel, the Office of Field Operations, and DOJ.
30. SUBMISSION OF CLIPPINGS, PHOTOGRAPHS, AND TAPES.
- a. PIOs shall subscribe to the major local newspapers in their area of responsibility and to Cable News Network (CNN) or another comparable television news network.
 - b. PIOs must monitor media coverage of regional and local events. PIOs also must submit to the Public Affairs Division photographs and video/audio tapes produced by field personnel showing employees in action that are used in slide shows, brochures, and video presentations.
 - c. Field supervisors must timely forward original news articles, photographs, and video/audio tapes from within their field office area to the PIO for distribution to the affected Headquarters office and the Public Affairs Division. (In larger cities with major daily newspapers, this may be accomplished by downloading news articles involving ATF from the Internet and forwarding them to the Public Affairs Division, or by providing relevant information to the public affairs specialist assigned to the field division.)
31. MEDIA ATTENDANCE AT ENFORCEMENT OPERATIONS.
- a. The practice of law enforcement officers inviting or allowing news reporters to attend the execution of search and arrest warrants in private dwellings was held to violate rights protected by the Fourth Amendment in Wilson v. Layne, 526 U.S. 603 (1999).
 - b. In cases in which a search warrant or arrest warrant is to be executed, no advance information will be provided to the news media about actions to be taken by enforcement operations personnel, nor shall media representatives be solicited or invited to be present. This prohibition will also apply to operations in preparation for the execution of warrants, and to any multiagency action in which ATF personnel participate. Exceptions to the above policy may be granted in extraordinary circumstances by the SAC and the Assistant Director (PGA), with concurrence of the Assistant Director (Field Operations) and the Office of Chief Counsel, with the approval of DOJ. If news media representatives are present, ATF personnel may request them to withdraw if their presence puts the operations or the safety of individuals in jeopardy. (Refer to DOJ policy concerning media coverage of law enforcement operations. For further guidance, see 28 CFR § 50.2.)

32. DEATH NOTIFICATIONS.

- a. Field division PIOs are responsible for notifying the Correspondence Unit of incidents involving line-of-duty deaths of law enforcement officers/agents and of firefighters within their divisions.
- b. The PIO will transmit the name and age of the deceased, his/her department name and address, the name of the department head, the names and addresses of survivors (spouse or next of kin), children's names (if available), and a brief summary of the circumstances surrounding the incident. When available, news clippings of the incident should be attached.
- c. The field division PIO will be the POC for any additional information needed by the Correspondence Unit for preparation of condolence letters from the Director.
- d. Affected Headquarters directorate offices shall use similar procedures to notify the Correspondence Unit of deaths in the affected directorate.

33-40 RESERVED

CHAPTER D. LEGISLATIVE AFFAIRS DIVISION41. GENERAL.

- a. The Legislative Affairs Division has overall responsibility for coordinating and initiating congressional contacts on a national level; coordinating with and supporting other headquarters and field entities in carrying out their responsibilities related to congressional contacts; evaluating congressional inquiries directed at the Bureau; and advising the Assistant Director (PGA) on developing issues, potential problem areas, and circumstances involving Bureau jurisdiction and appropriations. In addition, the Chief, Legislative Affairs Division, advises the Assistant Director (PGA) on Legislative Affairs Division policy and procedures.
- b. The field divisions are responsible for coordinating and initiating congressional contacts within their geographical area. These field visits concentrate on local ATF operations within a particular congressional district for U.S. representatives or a State for U.S. senators. These field visits generally should not address funding issues or pending legislation. All field visits must be conducted consistent with paragraphs 43 and 44, below.
- c. The field divisions, via the SAC, must obtain the approval of the Deputy Assistant Director (PGA), prior to issuing press releases, conducting press conferences, or granting interviews concerning legislative or funding issues, consistent with subparagraph 21b(2)(c), above.

42. RESPONSIBILITIES.

- a. The Chief of the Legislative Affairs Division is responsible for:
 - (1) Managing the resources of the division.
 - (2) Planning, developing, organizing, and directing working priorities that are reflective of ATF's mission.
 - (3) Formulating legislative strategies that accurately, truthfully, and comprehensively provide information regarding ATF's mission, policies and activities to Members of Congress, congressional committees and staff.
 - (4) Serving as the principal advisor to the Director, Assistant Director (PGA) and other members of the Executive Staff regarding legislative issues.
 - (5) Establishing and maintaining contact with Members of Congress and their staff, particularly those on committees and subcommittees involved with Bureau oversight.
- b. The Deputy Chief of the Legislative Affairs Division is responsible for:
 - (1) Assisting the Chief, Legislative Affairs Division, in managing division resources, and in executing the Chief's other responsibilities as described above.
 - (2) Coordinating and facilitating the work of the program managers/congressional liaison officers, legislative affairs specialists, and management analysts as described below.

- c. The Program Managers/Congressional Liaison Officers are responsible for:
- (1) Assisting the Chief in managing Legislative Affairs Division resources and work priorities, and in executing the Chief's other responsibilities as described above.
 - (2) Developing and implementing Legislative Affairs Division policies, practices and procedures.
 - (3) Assessing, developing, and evaluating program goals, needs, operations and accomplishments.
 - (4) Planning, directing, coordinating, and overseeing effective development of Legislative Affairs Division programs and projects, as well as studies and surveys to evaluate Legislative Affairs Division programs to ensure efficiency and economy of operations. Submitting recommendations and decisions that reflect effective analysis of pertinent material to include laws and regulations, budgets, work studies, and strategic, operating and staffing plans.
 - (5) Advising the Chief, Legislative Affairs Division, on significant issues pertaining to legislative programs, projects, and the impact of new technologies and initiatives. Furnishing technical information and advice to provide direction and uniformity in Legislative Affairs Division programs and projects.
 - (6) Representing the Bureau in interagency meetings, conferences, and ad hoc committees on division legislative issues and program initiatives with policy officials at DOJ.
 - (7) Coordinating projects and programs with management officials in other divisions within the directorate, other directorates at Bureau Headquarters, and with officials from DOJ or other Federal, State and local law enforcement agencies.
 - (8) Building and maintaining relationships with congressional staff members and appropriate DOJ officials.
 - (9) Coordinating meetings between congressional offices and Bureau representatives.
 - (10) Planning and executing staff tours of ATF facilities throughout the country and briefings for Members of Congress and their staff. To the extent Members of Congress and their staff may make official visits to ATF foreign offices, coordinating such visits with the Liaison Division and IAO.
 - (11) Responding to or coordinating the response to inquiries to congressional offices.
- d. The Legislative Affairs Specialists are responsible for:
- (1) Advising the Chief, Legislative Affairs Division, and congressional liaison officers on procedural, protocol, and cultural matters relating to Congress.
 - (2) Performing legislative research and maintaining office records relating to legislation of interest to ATF.
 - (3) Assisting in the preparation of responses to inquiries from Congress.
 - (4) Assisting in staff tours and briefings.

- (5) Building and maintaining relationships with congressional staff members and DOJ officials.
 - e. The Management Analysts are responsible for:
 - (1) Maintaining and tracking the office record system to include copies of relevant congressional records and workpapers relating to hearings and other congressional inquiries and the administrative requirements of the division.
 - (2) Assisting in the preparation of briefing materials and other reports.
 - (3) Assisting the Chief, Legislative Affairs Division, with office administrative and budget functions.
43. CONGRESSIONAL VISITS. Official visits by the field divisions to congressional staff of House or Senate Members, or the Members if available, in the division's particular geographic area will be conducted as follows:
 - a. Biannual Visits. Congressional staff of Members of Congress who are assigned to the appropriations and judiciary subcommittees with jurisdiction over ATF, or the Member, if available, will be visited by the SAC/ASAC and DIO twice a year, preferably in the late spring or early summer to coincide with the annual appropriations process.
 - b. Annual Visits. If the Member of Congress is not on a subcommittee as identified in subparagraph 43a, then his or her staff will be visited by the field division SAC/ASAC and DIO at least once every 2 years. On the alternate years (i.e., any year the SAC/ASAC and DIO does not visit the Member), the SAC's designee(s) will visit these Members. If the Member is available, then the SAC/ASAC and DIO or SAC designee will visit with the Member.
 - c. SAC or Designee Visits to Members of Congress in Washington, DC. When a SAC or his or her designee may have the opportunity to travel to Washington, DC, to visit Members of Congress or staff, he or she is to notify the Chief, Legislative Affairs Division, providing as much advance notice as possible. With the approval of the Assistant Director (PGA), the Chief, Legislative Affairs Division, will schedule and coordinate congressional visits for the SACs in Washington, DC. The Assistant Director (PGA), Deputy Assistant Director (PGA), or Chief, Legislative Affairs Division, will accompany the SAC on all such visits.
 - d. Other Visits. Congressional visits by other division personnel (supervisors and PIOs) must have the approval of the SAC or his or her designee. Division personnel selected to make official visits must be familiar with ATF offices, operations and personnel present in the applicable congressional district or State, and must be able to articulately and accurately discuss those offices, operations and personnel. Priority will also be given to visiting newly elected Members of Congress or their staff during their first year in office. Division personnel must contact the Legislative Affairs Division to notify them of the visits, and provide the topics that will be discussed.
44. GUIDELINES FOR CONGRESSIONAL VISITS. Field divisions will develop an annual plan for visits, in accordance with subparagraphs 43a and 43b, and in consultation with the appropriate Legislative Affairs Division Program Manager and the PIO. During the visit, Members of Congress and their staff shall be briefed on all local ATF initiatives and accomplishments.

- a. The Chief, Legislative Affairs Division is responsible for reviewing the visit plan prepared by the PIO and ensuring that the PIO and other participating ATF personnel are briefed on current ATF legislative issues and proposals.
- b. The Legislative Affairs Specialists are responsible for researching, analyzing and summarizing the issues and proposals appropriate to the congressional office being visited, and providing this information to the Chief, Legislative Affairs Division.
- c. The PIOs are responsible for coordinating and/or participating in all field congressional visits. Among other things, the PIOs shall:
 - (1) Identify all Members of Congress in their geographic area, including the local office addresses, phone numbers and staff; providing and updating telephone numbers and addresses of each ATF office within each Member's congressional district (for Representatives) or State (for Senators). Each local congressional office should also be provided with the telephone number and address of the Legislative Affairs Division in Headquarters.
 - (2) Submit to the Chief, Legislative Affairs Division, the plan for each congressional visit, including an itinerary for the visit and a list of all participants. Should visits arise that are not included in the annual congressional visit plan, sufficient notice of the meeting should be provided to the Chief, Legislative Affairs Division, to permit the Legislative Affairs Division to research and summarize issues appropriate for discussion with the office being visited.
 - (3) Prepare a congressional field information packet for the Member of Congress and his or her staff consisting of documents or pamphlets regarding programs or operations in the Member's State/district. The information packet should include only those documents designated or approved in advance by the Chief, Legislative Affairs Division.
 - (4) Coordinate the official visit plan to the Member's office with the supervisors of other ATF offices who have operational responsibility in the same area.
 - (5) Following each visit, contact the Chief, Legislative Affairs Division, by phone or e-mail during or after the visit if there are issues or questions that require an immediate response.
 - (6) Prepare a detailed report submitted by e-mail to the Chief, Legislative Affairs Division, describing the visit, all comments and questions from the Member and/or the staff, and any additional matters requiring followup.

45. NEWS RELEASES AND ARTICLES.

- a. The PIOs will supply a copy of all local news releases relating to their areas of jurisdiction to appropriate local congressional offices as events occur. News articles highlighting ATF actions may be supplied as well.

- b. The Legislative Affairs Division will forward newspaper articles with ATF significance to appropriate congressional offices, in coordination with the Public Affairs Division and PIOs. If a field office wants to clarify an erroneous article on ATF with a congressional field office, the appropriate field personnel will contact the Chief, Legislative Affairs Division, prior to initiating any contact with the congressional office.

46. CONGRESSIONAL CORRESPONDENCE.

- a. All congressional correspondence received by field offices or other ATF offices will be immediately sent by facsimile or otherwise forwarded to the Legislative Affairs Division. Written responses to congressional offices will be coordinated by the Legislative Affairs Division with PGA having primary responsibility for the issue.
- b. Upon receipt of a written congressional inquiry, the Legislative Affairs Division will review and determine if a written response is necessary or appropriate. On all matters requiring a written response, the division will assign a due date and route to the ATF office with subject matter expertise.
- c. The Legislative Affairs Division will track and supervise the preparation of ATF responses to letters from Members of Congress. Routine responses to congressional inquiries are signed by the Assistant Director (PGA) or his/her designee. Responses of a particularly sensitive nature will be prepared for the signature of the Director.
- d. The Legislative Affairs Division will dispatch and file all signed congressional correspondence and maintain the filing and tracking systems necessary to manage congressional correspondence.

47. INFORMATION RESTRICTIONS. Information provided to congressional offices is governed by the legal and policy restrictions similar to those applicable to the release of information to the public. If a congressional inquiry requests, or appears to request, restricted information, the matter will be referred to the Legislative Affairs Division, which will coordinate the matter with the Office of Chief Counsel.

48-50 RESERVED

CHAPTER E. ATF LIBRARY, ARCHIVE AND HISTORICAL PROGRAMS

51. GENERAL. The ATF library, archive and historical programs collect, preserve and protect reference and historical documents, objects and information, provide access to such materials, and exhibit such materials in support of ATF's mission.
52. RESPONSIBILITIES.
- a. The Librarian is responsible for:
- (1) Collecting, cataloging and maintaining documents, records and reference materials related to the Bureau's mission, programs and operations.
 - (2) Operating, maintaining, and managing the ATF Reference Library, the functions of acquisition, cataloging, circulation, conservation, display, evaluation, indexing, organization, promotion, research, review, and preservation or elimination of materials in the collection.
 - (3) Providing technical advice on the conversion of information between media, such as microform and electronic formats.
- b. The Archivist is responsible for:
- (1) Collecting, authenticating, cataloging and maintaining historical objects related to the history of the Bureau.
 - (2) Organizing and storing ATF historical objects, including attending to proper preservation, physical security, fire protection, environmental controls, access control and research conditions.
 - (3) Studying and assessing the significance and value of historical objects, reporting on archival value, and making recommendations on retention and disposal. Develops and implements a program of preventive conservation for ATF historical objects.
 - (4) Planning and preparing exhibitions of ATF historical objects.
- c. The Historian is responsible for:
- (1) Researching, analyzing, preserving and presenting accurate information about the Bureau and its policies and programs, major events in ATF history, individuals who played a significant role in ATF, statistical data regarding the Bureau's operations, the role of ATF in domestic and international law enforcement, and the impact of the Bureau on preventing terrorism, reducing violent crime and protecting the public and its other past and current missions.
 - (2) Drafting, publishing and updating a concise general history of ATF for general use in ATF publications and other communications.

53-60 RESERVED

PRESERVATION DIRECTIVE FOR RECORDS RELATED TO ATF PROJECT GUNRUNNER

This is in reference to the House of Representatives Committee on Oversight and Government Reform's review of ATF's firearms trafficking enforcement strategy known as Project Gunrunner. The requirements of this preservation directive are *in addition* to the requirements of the Preservation Directive issued on March 28, 2011 related to Operation Fast and Furious.

Pursuant to ATF Order 1340.4, **please identify and preserve any relevant documents and materials within your custody which may be relevant to this matter.** Relevant documents and materials include all records and evidence, **including electronic files and email**, relating in any way to Project Gunrunner. This requires a search of relevant documents and materials under your control that may include, but are not limited to, the following: Reports, any formal and informal documents (*e.g.*, memoranda, hand written notes), correspondence, telephone log entries, e-mail, word processing documents, internet usage files, systems manuals, and network access information. Please note that your preservation of Project Gunrunner documents should include any information related to the fatal shooting of Border Patrol Agent Brian Terry, this includes any property (*i.e.*, firearms and ammunition) in ATF custody relating to this incident.

Relevant documents and materials may include not only hard-copy documents, but all electronically-stored information ("ESI") created, received, and/or maintained by ATF on computer systems and elsewhere. Sources of information may include hard-copy files, computer hard drives, removable media (*e.g.* CDs, DVDs), laptop computers, PDAs, BlackBerry devices, telephones and pagers. All ESI should be preserved in its originally-created or "native" format. Please keep in mind that this is not an exhaustive list of date types or sources.

At this time, please –

- **Identify and preserve all documents and materials which may be relevant to Project Gunrunner. The relevant time period would begin July 1, 2009 until the present.**

If you have any documents or materials that fall within this directive, please place the hard copies in a separate file marked "PRESERVATION OF DOCUMENTS FOR PROJECT GUNRUNNER." Retain the file in a place where you can readily locate it upon request. E-mails should be retained in a PRESERVATION folder on Outlook, and Word and other documents in electronic format (*e.g.*, PowerPoint, Excel, Adobe Acrobat) should be identified and moved to a separate PRESERVATION folder in your personal library.

- **Assign a point of contact (POC) from the following Field Divisions in order to coordinate the preservation of relevant documents and materials:**
 - **Houston Field Division**
 - **Dallas Field Division**
 - **Los Angeles Field Division**

Please provide the POC's name to Assistant Director Melanie Stinnett by COB on Friday April 15, 2011.

- **In connection with the IG's review of Operation Fast and Furious, Assistant Director Stinnett has already established POCs in the other necessary Divisions and Offices. Unless you provide a second POC to Assistant Director Stinnett by April 15, 2011, she will assume that the same POC will be used for both the IG review and the House of Representatives Committee review.**

The POC is to ensure that all persons who may have information or a need to know about this directive are appropriately notified and instructed on their responsibility in a timely fashion. Also, the POC has the responsibility to notify Assistant Director Stinnett if (1) any additional ESI related to Project Gunrunner is discovered; (2) personnel involved in this directive are leaving the division, office or directorate; (3) the division, office or directorate will perform imminent data destruction; (4) the directorate will replace or discard equipment preserving ESI in this matter.

Of particular importance will be ensuring that no ESI is erased through routine destruction. If any ESI relating to Project Gunrunner has been purged as a result of routine destruction (*i.e.*, the aging process, separation from employment, etc) please, to the extent possible, find the dates of such purge and the information which would have been subject to destruction.

Please note that the failure to comply with this directive and/or the failure to maintain records, documents and information could negatively impact the Bureau, therefore please err on the side of retaining documents and information. Employees who fail to comply with their duties as outlined above will be subject to disciplinary action up to and including removal. Please note that this directive is in effect until you are notified that the hold has been terminated.

Thank you for your attention to this matter. If you have any questions concerning this directive, please contact Assistant Director Melanie Stinnett.

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Thank you for your attention to this matter. If you have any questions concerning this directive, please contact Assistant Director Melanie Stinnett.

DAVID BURTON, INDIANA
JOHN L. MICA, FLORIDA
FOOD HUBBELL PLATTS, PENNSYLVANIA
MICHAEL R. TURNER, OHIO
PATRICK MICHELYN, NORTH CAROLINA
JIM JORDAN, OHIO
JASON CHAFFETZ, UTAH
LINDSEY OHLERT, ILLINOIS
TIM WALBERG, MICHIGAN
JAMES LANKFORD, OKLAHOMA
JUSTIN AMode, MINNESOTA
ANN MARIE BERRY, NEW YORK
PAUL R. GOSAR, D.D., ARIZONA
RAGE R. LARABEE, TEXAS
PATRICK MEEHAN, PENNSYLVANIA
SCOTT DODD, ARIZONA
JOE WALSH, ILLINOIS
TREV COONDY, SOUTH CAROLINA
DENNIS A. ROSE, FLORIDA
FRANK C. RAYBURN, NEW HAMPSHIRE
BLAKE FARENTHOLD, TEXAS
MIKE KELLY, PENNSYLVANIA

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

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<http://www.house.gov>

April 8, 2011

LAWRENCE J. BRADY
STAFF DIRECTOR

EDGAR SNOW, NEW YORK
LARRY B. MALONEY, NEW YORK
FRANCO MURPHY, NORTH CAROLINA
GUYTON D. COLEMAN, MISSISSIPPI
DENNIS J. ROHRER, OHIO
JOHN F. TERRY, MASSACHUSETTS
DR. LARRY CLAY, MISSOURI
STEPHEN F. LYNCH, MASSACHUSETTS
JIM COOPER, TENNESSEE
GERALD E. CONNOLLY, VIRGINIA
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CHRIS TOFFER, CONNECTICUT
JACKIE SPOHR, CALIFORNIA

Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, N.E.
Washington, DC 20226

Dear Acting Director Melson:

Recent media reports have given rise to grave concerns over Project Gunrunner and Operation Fast and Furious, conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). Over the past few months, Senator Charles Grassley, the Ranking Member of the Senate Judiciary Committee, wrote you multiple letters asking for documents and information about these programs. I wrote to you on March 16, 2011, requesting substantially similar information by March 30, 2011. You failed to comply with the March 30th deadline, and on March 31, 2011, the Committee issued a subpoena for those documents.

The public deserves assurances that its government is not allowing guns bought by Mexican drug cartels to be "walked" across the border into Mexico. To determine whether this occurred, the Committee is entitled to receive all relevant materials that would aid its investigation. At present, I am not confident that ATF will produce all documents of probative value to enable the Committee to exercise its legitimate oversight responsibilities.

Therefore, I now request that all types of documents and essential communications between and among ATF employees related to the planning and implementation of Project Gunrunner and Operation Fast and Furious be preserved. So that ATF can produce a full and complete record of those documents to the Committee in response to current and future document requests, please take the following steps:

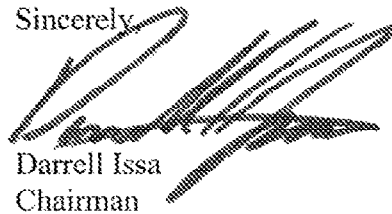
1. Preserve all documents and records, including e-mail, electronic documents, and data ("electronic records") **created since July 1, 2009** related to the planning and implementation of Project Gunrunner and Operation Fast and Furious. For the purposes of this request, "preserve" means taking reasonable steps to prevent the partial or full destruction, alteration, testing, deletion, shredding, incineration, wiping, relocation, migration, theft, or mutation of electronic records, as well as negligent or intentional handling that would make such records incomplete or inaccessible;

2. Exercise reasonable efforts to identify and notify former employees and contractors, subcontractors and consultants who may have access to such electronic records that they are to be preserved; and
3. If it is the routine practice of any agency employee or contractor to destroy or otherwise alter such electronic records, either halt such practices or arrange for the preservation of complete and accurate duplicates or copies of such records, suitable for production if requested.

I request that you respond in writing **no later than April 18, 2011**, to confirm receipt of this letter. Your response should also advise the Committee of actions ATF has taken and will take to comply with the Committee's subpoena and this document preservation request. I am skeptical about ATF's response to the subpoena because I understand that individuals who likely have documents responsive to the subpoena have not been contacted or instructed to gather and forward these documents. A copy of the schedule of documents is attached. Please note that you should take no action related to the documents of the Office of the Inspector General in responding to this request.

If you have any questions, please contact Ashok Pinto or Henry Kerner of the Committee staff at (202) 225-5074. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Darrell Issa', written over a series of horizontal lines.

Darrell Issa
Chairman

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member

The Honorable Charles E. Grassley, Ranking Member
U. S. Senate Committee on the Judiciary

SCHEDULE

In accordance with the attached schedule instructions, produce all documents in unredacted form described below:

1. Documents and communications relating to the genesis of Project Gunrunner and Operation Fast and Furious, and any memoranda or reports involving any changes to either program at or near the time of the release of the Department of Justice (DOJ) Office of the Inspector General report about Project Gunrunner in November 2010.
2. Documents and communications relating to individuals responsible for authorizing the decision to "walk" guns to Mexico in order to follow them and capture a "bigger fish."
3. Documents and communications relating to any investigations conducted by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) or any other DOJ component following the fatal shooting of Agent Brian Terry, including information pertaining to two guns found at the crime scene that may have been connected to Project Gunrunner.
4. Documents and communications relating to any weapons recovered at the crime scene or during the investigation into the death of Agent Brian Terry.
5. Documents and communications between ATF and the Federal Firearms Licensee (FFL) who sold weapons to Jaime Avila, including any Report of Investigation (ROI) or other records relating to a December 17, 2009 meeting "to discuss his role as an FFL during this investigation."
6. A copy of the presentation, approximately 200 pages long, that the Group 7 Supervisor made to officials at ATF headquarters in the spring of 2010.
7. Documents and communications relating to Operation Fast and Furious between and among ATF headquarters and Special Agent in Charge William D. Newell, Assistant Special Agents in Charge Jim Needles and George Gillette, Group Supervisor David Voth, or any Case Agent from November 1, 2009 to the present. The response to this component of the subpoena shall include a memorandum, approximately 30 pages long, from SAC Newell to ATF headquarters following the arrest of Jaime Avila and the death of Agent Brian Terry.
8. Documents and communications relating to complaints or objections by ATF agents about: (1) encouraging, sanctioning, or otherwise allowing FFLs to sell firearms to known or suspected straw buyers, (2) failure to maintain surveillance on known or suspected straw buyers, (3) failure to maintain operational control over weapons purchased by known or suspected straw buyers, or (4) letting known or suspected straw buyers with American guns enter Mexico.

**Statement of William Newell, Special Agent in Charge
Phoenix Field Division
Bureau of Alcohol, Tobacco, Firearms and Explosives
Before the United States House of Representatives
Committee on Appropriations
Subcommittee on Commerce, Justice, Science and Related Agencies
March 24, 2009**

Chairman Mollohan, Representative Wolf and distinguished Members of the Subcommittee, I am William Newell of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). As Special Agent in Charge of the Bureau's Phoenix field division, I oversee all ATF operations in the States of Arizona and New Mexico, which includes 552 miles of the U.S.-Mexico border. I am honored to appear before you today to discuss ATF's ongoing role in preventing firearms from being illegally trafficked from the United States (U.S.) into Mexico, and working to reduce the associated violence along the border.

That violence, which is fueled by Mexico's drug cartels, poses a serious challenge for U.S. and Mexican law enforcement and threatens the safety of innocent citizens on both sides of the border. Reports indicate that the drug war has left as many as 6,200 dead last year and 1,000 dead, so far, this year. The U.S. Department of State has cautioned U.S. citizens who work and travel in Mexico to be wary of the ongoing danger. Mexican President Calderon and Mexican Attorney General Medina Mora have identified cartel-related violence as a top priority and proclaimed the illegal trafficking of U.S.-source firearms the "number one" crime problem affecting the security of Mexico.

Not a day goes by without the media reporting on murders, kidnappings and home invasions along the border. For instance, an Associated Press article appearing in the Washington Post on March 5th reported that American professionals living along the border, including doctors, lawyers and factory owners, feel so threatened by the murders and kidnappings that they are having armor plating and bullet-proof glass installed in their cars and pickup trucks. According to the Post, one San Antonio company specializing in bulletproofing cars says that it expects a 50% increase in business this year. Clearly we need to take action now to protect our citizens and their property from harm.

ATF Expertise

For over 30 years ATF has been protecting our citizens and communities from violent criminals and criminal organizations by safeguarding them from the illegal use of firearms and explosives. We are responsible for both regulating the firearms and explosives industries and enforcing criminal laws relating to those commodities. ATF has the experience, expertise, tools, and commitment to investigate and disrupt groups and individuals who obtain guns in the U.S. and illegally traffic them into Mexico in facilitation of the drug trade.

The synergy of ATF's crime-fighting expertise, regulatory authority, analytical capability, and strategic partnerships is used to combat firearms trafficking both along the U.S. borders and throughout the nation. For instance, from Fiscal Year 2004 through February 17th of this year, Project Gunrunner—ATF's strategy for disrupting the flow of firearms to Mexico—has referred for prosecution 795 cases involving 1,658 defendants; those cases include 382 firearms trafficking cases involving 1,035 defendants and an estimated 12,835 guns.

Defining the Problem

The southwest border is the principal arrival zone for most illicit drugs trafficked into the U.S., as well as the predominant staging area for the subsequent distribution of these drugs throughout the U.S. Illegally trafficked firearms are an integral part of these criminal enterprises; they are the "tools of the trade". Drug traffickers routinely use firearms against each other as well as against the Mexican military, law enforcement officials, and civilians. Because firearms are not readily available in Mexico, drug traffickers have aggressively turned to the U.S. as their primary source. Firearms are now routinely being transported from the U.S. into Mexico in violation of both U.S. and Mexican law. In fact, 90% of the firearms recovered in Mexico, and which are then successfully traced, were determined to have originated from various sources within the continental U.S.

The rising incidences of trafficking U.S.-sourced firearms into Mexico is influenced by a number of factors, including increased demand for firearms by drug trafficking organizations, and the strictly regulated and generally prohibited possession and manufacturing of firearms in Mexico. Drug traffickers are able to obtain firearms and ammunition more easily in the U.S., including sources in the secondary market such as gun shows and flea markets. Depending on State law, the private sale of firearms at those venues often does not require record keeping or background checks prior to the sale.

In addition, drug traffickers frequently resort to using "straw purchasers" to obtain firearms from federally licensed gun dealers in the U.S.; these dealers are often unwitting participants in these schemes. Straw purchases refer to instances wherein an individual purchases a firearm for someone who is either prohibited by law from possessing one, such as a convicted felon, or who does not want his or her name associated with the transaction. In other words, a straw purchase takes place when a "straw" falsely poses as the buyer of a firearm to help the true purchaser circumvent the law and create an inaccurate paper trail. These illegal purchases, a key source and supply of firearms for drug traffickers and criminals in the U.S., corrupt the ATF firearms tracing process by creating false leads for agents trying to determine the actual purchaser of firearms recovered at crime scenes. In addition, straw purchasers may be difficult to identify because they may make numerous purchases of one to two firearms that are separated by place and time. As an example, a single ATF investigation of straw purchases of firearms shipped to Mexico involved a network of twenty-two individuals who trafficked

at least 328 firearms valued at over \$350,000. These firearms were sold to the Gulf Cartel in Mexico and were traced by ATF following their use in assassinations of Mexican police officials, citizens, and others. This type of case shows the sophistication of the firearms trafficking networks, using the same methods to traffic firearms south that they use to traffic narcotics north.

A comprehensive analysis of firearms trace data over the past three years indicates that Texas, Arizona and California are the three largest source States, respectively, for firearms illegally trafficked to Mexico. In FY 2008 alone, 2,514 firearms seized in Mexico were traced to sources in Texas, Arizona and California. The remaining 47 States accounted for 1,053 traces in FY 2007.

Although the greatest proportion of firearms trafficked to Mexico originate out of the U.S. States along the southwest border the problem is national. ATF trace data has established that drug traffickers are also acquiring firearms from other States as far east as Florida and as far north and west as Washington State. A case from April 2008 involving the Arellano Felix Organization illustrates this point. A violent dispute between elements of this drug trafficking organization left 13 members dead and 5 wounded. ATF assisted Mexican authorities trace 60 firearms recovered at the crime scene in Tijuana. As a result, leads have been forwarded to ATF field divisions in Denver, Houston, Los Angeles, Philadelphia, Phoenix, San Francisco and Seattle to interview the first known purchasers of the firearms. These investigations are ongoing.

Chairman Mollohan, I brought with me today an ATF diagram, based on trace data, which goes into more detail on this issue and, with your permission, I would like to submit it for the Record. This chart illustrates that guns are obtained from all across the U.S. and then transported into Mexico along three major trafficking corridors: from Illinois, Georgia, Florida and Texas into eastern Mexico; from Washington State, Oregon and California down into western Mexico; and from Colorado and Arizona into central Mexico.

Until recently drug traffickers' "weapon of choice" had been .38 caliber handguns. However, they now have developed a preference for more powerful weapons, such as the .233 semi-automatic rifle, the AK-47 variant rifle, 5.57 caliber pistols, and .50 caliber rifles; ATF has seized each of these types of weapons as those weapons en route to Mexico. ATF also has seized large quantities of ammunition for use in these high-caliber weapons. An April 2006 joint ATF, FBI and Tucson Police Department investigation illustrates efforts by Mexican drug trafficking organization's to obtain high-power weaponry. The Tucson investigation led to the arrest and conviction of three members of the Arellano Felix Organization who attempted to purchase machineguns and hand grenades from undercover agents. One of the defendants, a Mexican citizen, was sentenced to 70 months in Federal prison while the other two, both U.S. citizens, were sentenced to 87 months.

The Tucson investigation case also demonstrates that drug traffickers are supplementing their firearms caches with explosives and the need for ATF's expertise

with explosives in the fight against drug cartels. For the past 18 months ATF has been working closely with Mexican law enforcement and military personnel by quickly responding to grenade seizures in Mexico in order to positively identify and trace a variety of these explosives. Unfortunately, in the past six months we have noted a troubling increase in the number of grenades seized from or used by drug traffickers, and we are concerned about the possibility of explosives-related violence spilling into U.S. border towns.

We appear to have had at least one such incident. In late January, a fragmentation hand grenade was thrown into a crowd of 20 patrons at a club in San Juan, Texas. Fortunately, although the grenade was a live device, it did not detonate and no one was injured. Investigation to date indicates this incident is linked to a Mexican drug cartel. ATF has identified the source of the grenade and believes that grenades from the same source were used during an attack on the U.S. Consulate in Monterrey, Mexico.

ATF's Strategy

Through its experience with combating violent crime along the southwest border, ATF has learned that merely seizing firearms through interdiction will not, by itself, stop firearms trafficking to Mexico. We must identify, investigate and eliminate the sources of these illicitly trafficked firearms, and networks that transport them to Mexico. Thus, ATF has developed and implemented Project Gunrunner, a comprehensive strategy to combat firearms-related violence perpetrated by warring drug traffickers in border cities such as Laredo, Texas, and Nuevo Laredo, Mexico. It includes approximately 148 special agents dedicated full-time to investigating firearms trafficking along the Southwest border and 59 industry operations investigators (IOIs) responsible for conducting regulatory inspections of federally licensed gun dealers in this region. .

As the sole agency that regulates federally licensed gun dealers (known as Federal Firearms Licensees or FFLs), ATF has the statutory authority to inspect the records of licensees, examine those records for firearms trafficking trends and patterns, and revoke the licenses of those who are complicit in firearm trafficking. Roughly 6,700 FFLs are located along the Southwest border. As part of Project Gunrunner, IOIs work to identify and prioritize for inspection those FFLs with a history of noncompliance that represents a risk to public safety. They also focus on those primary retailers and pawnbrokers who sell the weapons of choice that are the preferred firearms being trafficked in this region. Moreover, utilizing ATF trace data analyses, IOIs prioritize for inspection those FFLs with numerous unsuccessful traces and a large volume of firearms recoveries in the targeted high-crime areas. This focused inspection effort assists in the identification and investigation of straw purchasers and the traffickers who employ them. In FY 2007 ATF inspected 1,775 of FFLs along the border and in FY 2008 we inspected 1,884.

In addition to inspections, the IOIs work to improve relations with firearms industry members, enhance voluntary compliance, and promote licensees' assistance in preventing firearms diversion by conducting training and outreach activities with FFLs in

the targeted areas. One such outreach effort is the “Don’t Lie for the Other Guy” program, a joint endeavor between ATF and the National Shooting Sports Foundation (NSSF), the trade association for the shooting, hunting and firearms industry. The program was developed in 2000 to aid firearm retailers in recognizing potential illegal firearm purchases in order to deter those purchases, and has since expanded to include a public-awareness component regarding the serious nature and illegality of straw purchases of firearms.

An example of ATF utilizing its regulatory authority to review FFL records to identify firearms traffickers occurred in El Paso, Texas. The case led to the arrest of 12 individuals in November 2007. The subjects purchased 75 firearms that were sold to corrupt local, federal and military officials in Mexico. Sentences for these defendants range from 36 months to two years.

While on the subject of FFLs, I would like to note that the vast majority of gun dealers are in compliance with firearms regulations and are genuinely interested in keeping guns out of the hands of criminals. For example, in 2007, a tip from an FFL involving a firearms trafficker purchasing two .50 caliber rifles, as well as other firearms recovered in Mexico, prompted an undercover ATF operation. That investigation led to the arrest of the leader and his two coconspirators for attempting to purchase several handguns and a fully automatic M-60 machine gun. In September 2008, the leader was sentenced to 30 months incarceration and 84 months of supervised release.

An essential component of ATF’s strategy to curtail firearms trafficking to Mexico is the tracing of firearms seized in both countries. When a firearm is traced, specific identifying information—including the make, model and serial number—is entered in the ATF Firearms Tracing System. Using this information, ATF can establish the identity of the first retail purchaser of the firearm and possibly learn pertinent information, such as how the gun came to be used in the facilitation of crime or how it came to be located in Mexico. Furthermore, analyses of aggregate trace data can reveal trafficking trends and networks, showing where the guns are being purchased, who is purchasing them, and how they flow across the border. Accordingly, ATF is working with Mexican officials to increase their current usage of ATF’s tracing system by means of eTrace, a web based application for accessing ATF’s Firearms Tracing System. Our goal is to deploy eTrace to all thirty-one states within the Republic of Mexico. We can report that our efforts are paying off. Mexico has increased the number of firearms it has submitted for tracing from 3,312 in FY 2007, to 7,743 in FY 2008, and over 7,500 to date this fiscal year.

ATF also has increased its presence at the El Paso Intelligence Center (EPIC), which is the central repository and clearinghouse for all weapons-related intelligence collected and developed not only by ATF’s field and Mexico offices and attaches, but also by all other Federal, State and local law enforcement entities involved in narcotics interdiction and investigation along the U.S.-Mexico border. Our increased staffing levels at EPIC allow ATF to expand our intelligence activities with our law enforcement partners stationed there, including the Federal Bureau of Investigation (FBI), the Drug

Enforcement Administration (DEA), Immigration and Customs Enforcement (ICE), Customs and Border Patrol (CBP) and the Texas and Arizona Departments of Public Safety. ATF also works closely with these agencies' taskforces that operate along the southwest border, sharing intelligence and conducting joint investigations.

Further, ATF participates in the Organized Crime Drug Enforcement Task Force (OCDETF) Fusion Center, a multi-agency intelligence center that provides operational intelligence in drug investigations. Through the Fusion Center, ATF shares information with other federal law enforcement agencies involved in drug enforcement, and helps to build large-scale operations targeting these violent Mexican drug trafficking organizations.

Internationally, ATF enjoys a strong collaborative relationship with Mexican law enforcement and other government agencies within Mexico. Over the last 15 years, ATF has had special agents permanently assigned to the U.S. Embassy in Mexico City. These agents engage in full-time intelligence sharing with the Mexican government to gather real time information on significant seizures of firearms that originated from within the U.S. Moreover, through bilateral forums, such as the annual Senior Law Enforcement Plenary sessions with Mexico, ATF and the Mexican Government jointly develop operational strategies and policies to minimize the firearms-related violence afflicting communities on both sides of the border. ATF would not have achieved the success it's had, particularly with regard to tracing, had it not been for the remarkable support of the Mexican government.

Recommendation

As noted, ATF's Project Gunrunner has experienced numerous successes, referring for prosecution 795 cases since October 1st, 2003, involving 1,685 defendants, including 1,035 defendants who trafficked an estimated 12,835 guns. Still, there is obviously much work to be done. Accordingly, Congress recently provided ATF with funding to continue and expand our efforts along the southwest border.

The American Recovery and Reinvestment Act, commonly referred to as the stimulus bill (P.L.111-5), provides ATF with \$10 million for Project Gunrunner. Those funds will allow ATF to establish new firearms trafficking teams in McAllen, Texas, El Centro, California and Las Cruces, New Mexico. The funds also will allow ATF to assign personnel to U.S. Consulates in Mexico where they can share intelligence, assist in investigations and train Mexican authorities on how to conduct firearms traces. Specifically, the funds are providing 37 total positions which include 21 agents in domestic offices, four agents in Mexican offices, six IOIs, three intelligence research specialists (IRSSs) and three investigative analysts (IAs).

In addition, the FY 2009 Omnibus Appropriations Act provides ATF with an additional \$5 million for Project Gunrunner. The FY 2009 appropriation includes funding for two additional firearms trafficking teams, including 21 agents, four IOIs and two IAs.

While ATF has achieved numerous successes in recent years with its limited resources, additional assets and personnel will undoubtedly produce even greater results. Increased funding for Project Gunrunner, as provided by the stimulus bill is an important investment in the security of our nation and protection of our citizens.

Conclusion

Chairman Mollohan, Representative Wolf, distinguished Members of the Subcommittee, on behalf of the men and women of ATF, I thank you and your staffs for your support of our crucial work. We recognize and are grateful for your commitment and contributions to the law enforcement community. With the backing of this Subcommittee, ATF can continue to build on our accomplishments, making our nation even more secure. We look forward to working with you in pursuit of our shared goals.

PATRICK J. LEAHY, VERMONT, CHAIRMAN

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United States Senate

COMMITTEE ON THE JUDICIARY
 WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
 KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

April 8, 2011

VIA ELECTRONIC TRANSMISSION

Kenneth E. Melson
 Acting Director
 Bureau of Alcohol, Tobacco, Firearms, and Explosives
 99 New York Avenue, NE
 Washington, DC 20226

Dear Acting Director Melson:

Attached is an email released through the Freedom of Information Act (FOIA).¹ It appears to contain proposed guidance to ATF employees about how to respond to contacts from my office. The guidance instructs ATF employees that they “are in no way obligated to respond” to questions from Congress. It also attempts to prevent direct communications with my office by instructing that ATF employees “should refer congressional staff who seek information from you to the ATF’s office of congressional affairs.” The guidance further attempts to prevent direct communications with my office by claiming that ATF employees “are not authorized to disclose non-public information.”

It is unclear from the email released through FOIA whether this guidance was actually communicated to ATF employees. However, it is of grave concern because, as you know, such attempts to prevent direct communications with Congress are not a lawfully authorized activity of any officer or employee of the United States whose salary is paid with appropriated funds.² Specifically, no officer or employee may attempt to prohibit or prevent “any other officer or employee of the Federal Government from having *direct* oral or written communication or *contact* with any Member, committee, or subcommittee of the Congress” about a matter related to his employment or the

¹ Attachment 1.

² Consolidated Appropriations Act, 2010, P.L. 111-117, 123 Stat. 3034, § 714 (2010), as continued by §101 of continuing resolutions P.L. 111-242, 124 Stat. 2607 (2010) and P.L. 112-6, 125 Stat. 23 (2011)—which extends the funding levels in the 2010 appropriations bills, as well as “the authority and conditions provided in such Acts,” through April 8, 2011.

agency “in any way, *irrespective of whether such communication or contact is at the initiative*” of the employee or Congress (emphasis added).³

I wrote to you on January 31 to ensure you were aware of these provisions and to express concerns that without proper guidance, managers might inappropriately intimidate employees to discourage them from speaking with Congress and thus unlawfully interfere with a Congressional inquiry.⁴ In order for Congress to exercise its oversight authority and act as a check on Executive power, it is crucial that agency employees are free to communicate directly with Members and Committee staff. Direct contact means contacts that do not necessarily involve Congressional liaison or agency management. Without such direct, unfiltered communications, Congress would still be unaware of, and unable to inquire about, the serious allegations involving the death of Border Patrol Agent Brian Terry and the sales of weapons to known and suspected gun traffickers.

I have a long experience of witnessing retaliation against whistleblowers. Sometimes it is explicit and immediate. Often it is subtle and delayed until after public scrutiny has faded. Unfortunately, it is so frequent that employees fear that even truthful answers to direct factual questions from Congress will get them in trouble. That is why I am committed to maintaining the confidentiality of those employees who wish to cooperate with a Congressional inquiry or report problems anonymously. Direct contact with Congress of the sort protected by the law serves as an extra level of protection against retaliation and is obviously essential where an employee seeks confidentiality.

However, in some cases, agency employees choose to disclose their direct contacts with Congress, despite the potential consequences. As I explained in my January 31 letter, one employee chose to disclose his protected contacts with my staff and was immediately questioned about the content of those communications. I was concerned about that because forcing an employee to reveal the details of such communications would intrude on the integrity of the Congressional inquiry and offend the comity between the Branches that flows from the separation of powers under the Constitution.

Now, a second agency employee has chosen to disclose that he has had protected contacts with Congress. George Gillett, through and in conjunction with his legal counsel, is cooperating with this investigation. Mr. Gillett is the Assistant Special Agent in Charge of the ATF’s Phoenix field division, and Committee staff’s direct contacts with him are an essential component of our inquiry. He has participated in two preliminary meetings jointly with Senate Judiciary Committee staff and House Oversight and Government Reform Committee staff. As you know, retaliation for such communications is prohibited by law.

³ *Id.*

⁴ 18 U.S.C. § 1505 (providing criminal penalties for obstructing or impeding the power of Congressional inquiry).

On one previous occasion when an agency sought to compel an individual to disclose the content of his communications with Congress, I was prepared to introduce a resolution authorizing the Senate Legal Counsel to seek legal remedy in the courts. Fortunately, in light of that draft resolution, the Executive Branch withdrew its attempt to compel discovery of communications between a whistleblower and Congress.⁵

In this current inquiry, a similar attempt was also abandoned. The first ATF agent to disclose that he had direct contacts with Congress was ordered to describe the content of his communications in writing. However, shortly after my January 31 letter, I was pleased to learn that the order was withdrawn. I appreciate the agency's willingness to respect Congressional prerogatives and avoid interfering with a Congressional inquiry. Similarly, the agency should avoid intruding into our investigative process by seeking to learn the content of ASAC Gillett's communications with Congress.

In light of the attached email, I have renewed concerns that the guidance being given to employees may be inconsistent with the law.⁶ Therefore, please provide written answers to the following questions:

1. Was the attached guidance distributed, either in writing or otherwise, to ATF field offices or other ATF personnel?
2. Was any guidance on contacts with Congress distributed, either in writing or otherwise, to ATF field offices or other ATF personnel? If so, please provide a copy.
3. What steps have you taken or do you plan to take to ensure that employees are aware of their right to communicate directly with Congress if they so choose?

⁵ See S. PRT. 110-28, § VIII.D.2 "Attempt to Compel Disclosure of Confidential Communications with Congress," p. 103, 641, 652 ("Nothing in this agreement shall require [the production of] any communications with, or documents that were created for, any Senate Committees (or the staff or members thereof)"). See also S. HRG. 109-898, at 39-41, 470-471, responses to questions for the record to Dec. 5, 2006, Senate Judiciary Committee hearing at 8.

⁶ See generally, Government Accountability Office, "Department of Health and Human Services—Chief Actuary's Communications with Congress," B-302911 (Sep. 7, 2004) (discussing the history and background in support of the government-wide prohibition on attempts to prevent direct communications with Congress) (Attachment 2).

Please reply no later than April 14, 2011. If you have any questions about this request, please contact Jason Foster at (202) 225-5225. Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles E. Grassley".

Charles E. Grassley
Ranking Member

Attachments

cc: Chairman Patrick Leahy, Senate Committee on the Judiciary
Chairman Darrell Issa, House Committee on Oversight and Government Reform

Attachment 1

[REDACTED]

From: [REDACTED]
Sent: Saturday, February 05, 2011 12:25 PM
To: Hoover, William J.; [REDACTED]
Subject: Fw: Need quick guidance [REDACTED]

Are/Have we sent some kind of guidance to the Field along these lines?

NOTICE: This e-mail message and any attached files are intended solely for the use of the addressee(s) named above in connection with official business. This communication may contain Controlled Unclassified Information that may be statutorily or otherwise prohibited from being released without appropriate approval. Any review, use, or dissemination of this e-mail message and any attached file(s) in any form outside of ATF or the Department of Justice without express authorization is strictly prohibited.

From: [REDACTED] (SMO)
To: Hoover, William J.; [REDACTED]
Cc: [REDACTED] (SMO); [REDACTED] (SMO); [REDACTED] (OLA); [REDACTED] (CRM); [REDACTED] (USAAZ)
Sent: Thu Feb 03 18:44:26 2011
Subject: FW: Need quick guidance [REDACTED]

I'd recommend something along these lines if agents ask for guidance about how to respond to contacts from Senator's Grassley's staff -

During the last week in January, Senator Grassley wrote to ATF, reporting allegations that ATF had sanctioned the sale of assault weapons to suspected straw purchasers and that these weapons were used in the killing of Customs and Border Protection Agent Brian Terry. The Department has sent a written response to Senator Grassley, advising him that these allegations are not true. In further response to his requests, we expect to schedule a briefing by appropriate ATF representatives with staff for Senator Grassley and other Members of the Senate Judiciary Committee in the near future about Project Gunrunner and ATF's effort to work with its law enforcement partners to build cases that will disrupt and dismantle criminal organizations.

As always, you are in no way obligated to respond to congressional contacts or requests for information and generally, consistent with ATF policy, you should refer congressional staff who seek information from you to ATF's office of congressional affairs. You are not authorized to disclose non-public information about law enforcement matters outside of ATF or the Department of Justice to anyone, including congressional staff. This is important to protect the independence and effectiveness of our law enforcement efforts as well as the privacy and due process interests of individuals who are involved in these investigations.

If you have information about waste, fraud, or abuse within ATF - or any actions by Department employees that you believe constitute professional misconduct, you are encouraged to report that information to your supervisors and/or the Department's Office of Inspector General.

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Attachment 2



United States Government Accountability Office
Washington, DC 20548

B-302911

September 7, 2004

The Honorable Frank R. Lautenberg
The Honorable Tom Daschle
The Honorable Edward M. Kennedy
The Honorable Jack Reed
The Honorable Jon S. Corzine
The Honorable John F. Kerry
The Honorable Patrick J. Leahy
The Honorable Debbie Stabenow
The Honorable Tim Johnson
The Honorable Mark Pryor
The Honorable Maria Cantwell
The Honorable Joseph I. Lieberman
The Honorable Carl Levin
The Honorable Paul Sarbanes
The Honorable Barbara A. Mikulski
The Honorable Charles Schumer
The Honorable John Edwards
The Honorable Hillary Rodham Clinton
United States Senate

Subject: *Department of Health and Human Services—Chief Actuary's
Communications with Congress*

By letter dated March 18, 2004, you asked for our legal opinion regarding a potential violation of the prohibitions in the Consolidated Appropriations Act of 2004 and the Consolidated Appropriations Resolution of 2003 on the use of appropriated funds to pay the salary of a federal official who prohibits another federal employee from communicating with Congress. Pub. L. No. 108-199, Div. F, tit. VI, § 618, 188 Stat. 3, 354 (Jan. 23, 2004); Pub. L. No. 108-7, Div. J, tit. V, § 620, 117 Stat. 11, 468 (Feb. 20, 2003). Specifically, you ask whether alleged threats made by Thomas A. Scully, the former Administrator of the Centers for Medicare & Medicaid Services (CMS), to CMS Chief Actuary Richard S. Foster to terminate his employment if Mr. Foster provided various cost estimates of the then-pending prescription drug legislation to members of Congress and their staff made CMS's appropriation unavailable for the payment of Mr. Scully's salary.

As agreed, this opinion relies on the factual findings of the Office of Inspector General (OIG) for the Department of Health and Human Services (HHS), who conducted an independent investigation into whether Mr. Foster was prohibited from communicating with congressional offices and whether he was threatened with dismissal if he did so.¹ *Tom Scully and Chief Actuary - Information*, Report of the Office of Inspector General, Department of Health and Human Services, July 1, 2004 (OIG Report). The OIG concluded that CMS did not provide information requested by members of Congress and their staff, that Mr. Scully ordered Mr. Foster not to provide information to members and staff, and that Mr. Scully threatened to sanction Mr. Foster if he made any unauthorized disclosures. OIG Report, at 4.

As we explain below, in our opinion, HHS's appropriation, which was otherwise available for payment of Mr. Scully's salary, was unavailable for such purpose because section 618 of the Consolidated Appropriations Act of 2004 and section 620 of the Consolidated Appropriations Resolution of 2003 prohibit the use of appropriated funds to pay the salary of a federal official who prevents another employee from communicating with Congress.² While the HHS Office of General Counsel and the Office of Legal Counsel for the Department of Justice raised constitutional separation of powers concerns regarding the application of section 618, in our view, absent an opinion from a federal court concluding that section 618 is unconstitutional, we will apply it to the facts of this case.

Background

In December 2003, Congress passed and the President signed into law the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, which added a prescription drug benefit to the Medicare program. Pub. L. No. 108-173, 117 Stat. 2066 (Dec. 8, 2003). During the previous summer and fall as Congress debated various proposals, several members of Congress and committee staff asked Mr. Foster, a career civil servant and the Chief Actuary for CMS, to provide estimates of the cost of various provisions of the Medicare bills under debate.³ OIG Report, at 2-3.

¹ We advised your staff that we would, as appropriate, rely on the factual findings of the OIG. Letters to Senator Frank R. Lautenberg and additional requestors from Gary L. Kepplinger, Deputy General Counsel, GAO, April 15, 2004. In addition, the Office of the Inspector General agreed to allow us access to their investigative workpapers. This opinion is based on the factual findings contained in the OIG Report and the supporting workpapers. While this opinion relies on the factual findings of the OIG, it does not adopt or rely upon any legal conclusions reached by the OIG, HHS, or OLC.

² For ease of reference, we will refer to the identical prohibitions in the Consolidated Appropriations Act of 2004 and the Consolidated Appropriations Resolution of 2003 as "section 618."

³ Congress established the position of Chief Actuary in statute in 1997. Balanced Budget Act, Pub. L. No. 105-33, tit. IV, subtitle G, ch. 4, § 4643, 111 Stat. 487 (Aug. 5, 1997) (codified at 42 U.S.C. § 1317). The statute directs the Chief Actuary to carry out his duties "in accordance with the professional standards of actuarial independence." 42 U.S.C. § 1317(b)(1). The Act also directs that the Chief Actuary is to be appointed based on "education, experience [and] superior expertise in the actuarial sciences" and could be removed "only for cause." *Id.* The Balanced Budget Act conference report cites the long history and tradition of a "close and confidential working relationship" between the Social Security and Medicare actuaries and the congressional committees of jurisdiction. H.R. Conf. Rep. No. 105-217, at 837 (1997). The report then states that the "independence of the Office of the

Members and staff also made requests for technical assistance, including requests that Mr. Foster perform analyses of various provisions of the Medicare legislation. *Id.*

Mr. Foster did not respond to several of these requests because Thomas Scully, CMS Administrator and Mr. Foster's supervisor, stated that there would be adverse consequences if he released any information to Congress without Mr. Scully's approval.⁴ *OIG Report*, at 3. Mr. Foster stated that the first time he felt his job was threatened was in May 2003 when he provided information on private insurance plan enrollment rates to the Majority Staff Director of the House Ways and Means Committee and Mr. Scully rebuked him for doing so. *Id.* Later, on June 4, 2003, at Mr. Scully's request, Mr. Scully's special assistant instructed Mr. Foster not to respond to any requests for information from the House Ways and Means Committee and warned him that "the consequences of insubordination are extremely severe." *Id.* Mr. Foster interpreted this statement to mean that Mr. Scully would terminate his employment at CMS if he released any information to Congress without Mr. Scully's approval.⁵ *Id.* at 4.

The *OIG Report* concluded that, because of Mr. Scully's prohibition, Mr. Foster did not respond to several congressional requests for cost estimates and technical assistance, including requests from the minority staff of the House Ways and Means Committee for the total estimated cost of the legislation and for analyses of premium support provisions in the bill, and requests from Senators Mark Dayton and Edward Kennedy for premium estimates.⁶ *Id.* at 2-3.

There is no indication in the *OIG Report* that Mr. Scully objected to Mr. Foster's methodology or to the validity of his estimates. Rather, Mr. Foster testified before the House Ways and Means Committee that Mr. Scully determined which information to release to Congress on a "political basis." *Board of Trustees 2004 Annual Reports: Hearing Before the House Comm. on Ways and Means*, Federal News Service, Mar. 24, 2004. Furthermore, Mr. Scully never objected to Mr. Foster and his staff performing the analyses required to respond to congressional requests; he simply objected to certain analyses being released to Congress. During the same time period, Mr. Foster provided similar analyses to the Office of Management and Budget.

Actuary with respect to providing assistance to the Congress is vital," and that "reforming the Medicare and Medicaid programs is greatly enhanced by the free flow of actuarial information from the Office of the Actuary to the committees of jurisdiction in the Congress." *Id.* at 837-8.

⁴ HHS paid Mr. Scully's salary during this time period from its "Program Management" appropriations account. Pub. L. No. 108-199, Div. E, tit. II, 188 Stat. 3, 244 (Jan. 23, 2004); Pub. L. No. 108-7, Div. G, tit. II, 117 Stat. 11, 316 (Feb. 20, 2003).

⁵ Third parties also confirmed Mr. Scully's threats. For example, Mr. Scully told the Minority Staff Director for the Ways and Means Subcommittee on Health that he would "fire [Foster] so fast his head would spin" if he released certain information to Congress. *OIG Report*, at 3.

⁶ Senator Max Baucus made a similar request for premium estimates. Mr. Foster stated that Mr. Scully directed him to brief Senator Baucus's staff, but he never received approval to respond to Senators Dayton and Kennedy. *OIG Report*, at 2-3.

Discussion

At issue here is the prohibition on using appropriated funds to pay the salary of a federal official who prohibits or prevents another federal employee from communicating with Congress. Specifically, this prohibition states:

“No part of any appropriation contained in this or any other Act shall be available for the payment of the salary of any officer or employee of the Federal Government, who . . . prohibits or prevents, or attempts or threatens to prohibit or prevent, any other officer or employee of the Federal Government from having any direct oral or written communication or contact with any Member, committee, or subcommittee of the Congress in connection with any matter pertaining to the employment of such other officer or employee or pertaining to the department or agency of such other officer or employee in any way, irrespective of whether such communication or contact is at the initiative of such other officer or employee or in response to the request or inquiry of such Member, committee, or subcommittee.”

Pub. L. No. 108-199, Div. F, tit. VI, § 618, 188 Stat. 3, 354 (Jan. 23, 2004); Pub. L. No. 108-7, Div. J, tit. V, § 620, 117 Stat. 11, 468 (Feb. 20, 2003).

Legislative History of Section 618

The governmentwide prohibition on the use of appropriated funds to pay the salary of any federal official who prohibits or prevents or threatens to prohibit or prevent a federal employee from contacting Congress first appeared in the Treasury and General Government Appropriations Act, 1998, Pub. L. No. 105-61, § 640, 111 Stat. 1272, 1318 (1997). In 1997, the Senate passed a prohibition that applied only to the Postal Service, while the House of Representatives passed a governmentwide prohibition.⁷ The conference report adopted the House version, and a governmentwide prohibition has been included in every Treasury-Postal appropriations act since fiscal year 1998. H.R. Conf. Rep. No. 105-284, at 50, 80 (1997).

This provision has its antecedents in several older pieces of legislation, including the Treasury Department Appropriation Act of 1972, the Lloyd-La Follette Act of 1912, and the Civil Service Reform Act of 1978. The legislative history of these antecedents informs our analysis of section 618 because of the similarity of wording of these provisions and the references that the sponsors of later provisions made to earlier acts.

Prior to fiscal year 1998, the Treasury-Postal appropriations acts annually contained a nearly identical prohibition applying only to the Postal Service. This provision first appeared in the fiscal year 1972 Treasury Department Appropriation Act in response

⁷ Compare S. 1023, 105th Cong. § 506 (1997), with H.R. 2378, 105th Cong. § 505 (1997).

to a 1971 Postal Service directive restricting postal employees' communications with Congress. Pub. L. No. 92-49, § 608 (1971). The Postmaster General's directive, which was printed in the *Congressional Record*, stated that, "In order to avoid the possibility for incorrect information and misinterpretation, it is critical that the Postal Service speak to the Congress with only one voice. Accordingly, I am directing that the Congressional Liaison Office be the sole voice of the Postal Service in communicating with the Congress." 117 Cong. Rec. 151 (1971). The directive spelled out specific procedures to implement this order, and directed postal employees to "immediately cease [any] direct or indirect contacts with congressional officers on matters involving the Postal Service," and in the future, forward any congressional communications to the Liaison Office and coordinate any direct contacts with a congressional office with the Liaison. *Id.* The directive ended with the disclaimer that the new procedures "do not affect the right of any employee to petition, as a private citizen, his U.S. Representative or Senators on his own behalf." 117 Cong. Rec. 152 (1971).

Representative William Ford sponsored this prohibition as an amendment to the 1972 appropriations act. 117 Cong. Rec. 22443 (1971). He complained that the directive declared it a violation of the rules of the Postal Service "for any employee either individually or through his organization to contact any member or any committee" of Congress. *Id.* Representative John Saylor also objected to the directive for "cutting the ties between postal employees and their representatives" and for "abridg[ing] a fundamental right of American citizens." 117 Cong. Rec. 151 (1971). Saylor also cited two newspaper editorials about the directive, which called it a "gag rule" and noted the postal union's concern that the directive violated their constitutional rights to petition Congress. 117 Cong. Rec. 152 (1971). One of the editorials cited the conflict between the directive's order that all employees were to cease contacts with members of Congress and the disclaimer that the directive preserved employees' right to petition Congress. *Id.*

Postmaster General Blount discussed this issue at both the House and Senate Appropriations Committee hearings on the Postal Service's fiscal year 1972 budget request. At the House Appropriations Committee hearing, Representative John Myers asked Blount if it was true that postal employees were prohibited from communicating with their member of Congress under any circumstance. Blount responded that was not the case and noted that his directive simply said "that we are going to centralize our communications with Members of Congress." *Treasury, Post Office, and General Government Appropriations for Fiscal Year 1972, Hearing Before the House Comm. on Appropriations, 92nd Cong. 63 (1971).* He stated, "as a matter of operations and technique . . . we will centralize the requests and problems of Congress in our congressional liaison department and we will then be able to control our responsiveness to the Members." *Id.* Blount also mentioned that it was "very clearly spelled out . . . that all the employees have a constitutional right to petition Members of Congress . . . about their own matters but as far as the Postal Service is concerned, if I am going to be held responsible for it by the Members of Congress and by the American public, I have to have control of it." *Id.*

At the Senate Appropriations Committee hearing, Senator Joseph Montoya complained that prior to the directive, members of Congress "could call the Postal

Department on any matter involving a constituent and get a ready answer from the Department . . . [but now] if we have an inquiry to the regional office or to a local postmaster, they must refer it straight to Washington under this regulation and it causes unnecessary delay.” *Treasury, Post Office, and General Government Appropriations for Fiscal Year 1972, Hearing Before the Senate Comm. on Appropriations, 92nd Cong. 1435 (1971)*. Senator Montoya added, “I can call any other department in the Government and call the man in charge, the man at the wheel, and he will give me an answer. But I can’t do this with the Post Office Department.” *Id.* at 1438.

Blount responded to such criticisms, “It is difficult to control our responses [to members of Congress] if these responses go out from some 30,000 post offices around the country.” *Id.* at 1435. He stated that the Post Office “is a vast department . . . and it is difficult to be certain that our replies always comply with the policies of the Postal Service, and that is the reason we took this action.” *Id.* at 1438. Blount emphasized again that the directive “has to do with the official postal matters only . . . and has nothing to do with the employees’ rights to contact Members of Congress. We so stated in the regulation itself . . . [but] it has been misinterpreted by others.” *Id.* at 1435. Senator Montoya concluded his questioning about the directive by stating his intention to add language to the Postal appropriations committee report that would prohibit the Post Office from restricting its employees from communicating with members of Congress. *Id.* at 1439.

In introducing his amendment to the 1972 Treasury Department Appropriation Act, Representative Ford noted that “the law that this amendment attempts to enforce has been on the books . . . since 1912.” 117 Cong. Rec. 22443 (1971). Ford was referring to a provision in the fiscal year 1913 Post Office Appropriation Bill, commonly known as the Lloyd-La Follette Act, that states, “The right of persons employed in the civil service of the United States, either individually or collectively, to petition Congress, or any Member thereof, or to furnish information to either House of Congress, or to any committee or member thereof, shall not be denied or interfered with.” Post Office Appropriation Act, Pub. L. No. 336, ch. 389 § 6, 66 Stat. 539, 540 (Aug. 24, 1912). The committee report accompanying the House version of the bill stated that the provision was intended to “protect employees against oppression and in the right of free speech and the right to consult their Representatives.” H.R. Rep. No. 62-388, at 7 (1912).

Congress enacted the Lloyd-La Follette Act in response to two executive orders issued by Presidents Theodore Roosevelt and Howard Taft. Several congressmen referred to these orders as “gag rules” and quoted the text of the orders in the *Congressional Record*.⁸ Both the House and the Senate had a vigorous floor debate

⁸ See, e.g., 48 Cong. Rec. 4513 (1912). President Roosevelt’s executive order reads as follows: “All officers and employees of the United States of every description, serving in or under any of the executive departments or independent Government establishments, and whether so serving in or out of Washington, are hereby forbidden, either directly or indirectly, individually or through associations, to solicit an increase of pay or to influence or attempt to influence in their own interest any other legislation whatever, either before Congress or its committees, or in any way save through the heads of the departments or independent Government establishments in or under which they serve, on penalty of dismissal from the Government service.” Exec. Order No. 1142 (1906). President Taft’s order reads as follows: “It is hereby ordered that no bureau, office, or division chief, or subordinate in any

on this provision, as well as a related section of the bill allowing postal employees the right to unionize.⁹ The majority of the debate focused on preserving the constitutional rights of federal employees.¹⁰ Representative Thomas Reilly stated his opposition to the gag order because it prevented federal employees from “uttering any word of complaint even against the most outrageous treatment.” 48 Cong. Rec. 4656 (1912). He hoped that the Act would ensure the rights of employees to discuss “conditions of employment, hours of labor, and matters affecting the working and sanitary conditions surrounding their employment” with Congress.¹¹ *Id.*

Members of Congress also raised concerns that the executive orders would foreclose an important source of information for Congress. As Senator James Reed stated, the executive orders instructed federal employees “not [to], even at the demand of Congress or a committee of Congress or a Member of Congress, supply information in regard to the public business.” 48 Cong. Rec. 10673 (1912). Representative James Lloyd argued that the representatives of the American people “should have the right to inquire as to any of the conditions of government and the method of conducting any line of departmental business.” 48 Cong. Rec. 5634 (1912).

Other members of Congress disagreed and argued that the provision would undermine discipline in the Postal Service.¹² However, after a lengthy debate Congress approved the Lloyd-La Follette Act, and the President signed it into law as part of the Post Office Appropriation Act. Pub. L. No. 336, 66 Stat. 539 (Aug. 24,

department of the Government, and no officer of the Army or Navy or Marine Corps stationed in Washington, shall apply to either House of Congress, or to any committee of either House of Congress, or to any Member of Congress, for legislation, or for appropriations, or for congressional action of any kind, except with the consent and knowledge of the head of the department; nor shall any such person respond to any request for information from either House of Congress, or any committee of either House of Congress, or any Member of Congress, except through, or as authorized by, the head of his department.” Exec. Order No. 1514 (1909).

⁹ See 48 Cong. Rec. 4512-3, 4656-7, 4738-9, 5223-4, 5235-6, 5633-6, 10670-7, 10728-33, 10793-804 (1912).

¹⁰ See, e.g., 48 Cong. Rec. 4513 (1912) (statement of Rep. Gregg) (stating that the provision was “intended to protect employees against oppression and in the right of free speech and the right to consult their representatives”); 48 Cong. Rec. 5635 (1912) (statement of Rep. Goldfogle) (stating that “[w]hether the citizen holds office under the Government or not, his right to petition for a redress of grievances should not, and constitutionally speaking, can not be interfered with”).

¹¹ Several congressmen spoke about the dangerous working conditions faced by railway mail clerks and emphasized that the provision would ensure that such conditions were brought to the attention of Congress. See, e.g., 48 Cong. Rec. 10671(1912) (statement of Sen. Ashurst) (quoting an article from *La Follette’s Weekly*); 48 Cong. Rec. 10674 (1912) (statement of Sen. Warren).

¹² See, e.g., 48 Cong. Rec. 100676 (1912) (statement of Senator Bourne) (stating that “the right of the individual employee to go over the head of his superior . . . on matters appertaining to his own particular grievances, or for his own selfish interest, would be detrimental to the service itself . . . [and] would absolutely destroy the discipline necessary for good service”). The Senate Appropriations Committee also disapproved of the provision. S. Rep. No. 62-955, at 21 (1912) (stating that “good discipline and the efficiency of the service requires that [federal employees] present their grievances through the proper administrative channels”).

1912). In 1978, a nearly identical version of the Lloyd-La Follette Act was enacted as part of the Civil Service Reform Act. Pub. L. No. 94-454, 92 Stat. 1138, 1217 (Oct. 13, 1978) (codified at 5 U.S.C. § 7211).¹³

Congress expressed many of the same concerns that surrounded enactment of the Lloyd-La Follette Act during debate surrounding the whistleblower provisions in the Civil Service Reform Act, which prohibit federal agencies from taking any personnel action in response to a federal employee's disclosure of a violation of law, gross mismanagement, a gross waste of funds, an abuse of authority, or a danger to public health or safety. 5 U.S.C. § 2302(b)(8). For example, the Senate Committee on Governmental Affairs noted:

“Federal employees are often the source of information about agency operations suppressed by their superiors. Since they are much closer to the actual working situation than top agency officials, they have testified before Congress, spoken to reporters, and informed the public . . . Mid-level employees provide much of the information Congress needs to evaluate programs, budgets, and overall agency performance.”

Senate Comm. on Governmental Affairs, 95th Cong., *The Whistleblowers*, 40 (Comm. Print 1978). These concerns led to the enactment of the first whistleblower protections and the codification of the Lloyd-La Follette Act. Civil Service Reform Act of 1978, Pub. L. No. 95-454, §§ 2302, 7211, 92 Stat. 1217 (Oct. 13, 1978).

Application of the Prohibition to the Inspector General's Findings

As noted above, section 618 prohibits an agency from paying the salary of any federal officer or employee who prohibits or prevents, or threatens to prohibit or prevent, another officer or employee from communicating with members, committees or subcommittees of Congress. The OIG report concluded that Mr. Scully both prohibited and threatened to prohibit Mr. Foster from communicating with various members of Congress and congressional committees on issues that pertained to his agency and his professional responsibilities. OIG Report, at 4. In May 2003, Mr. Scully rebuked Mr. Foster for providing information requested by the Majority Staff Director for the House Ways and Means Committee. *Id.* at 3. In June 2003, Mr. Scully's special assistant, pursuant to Mr. Scully's direction, instructed Mr. Foster not to respond to any requests for information from the House Ways and Means Committee. Because of Mr. Scully's actions, we view HHS's appropriation as unavailable to pay his salary. Pub. L. No. 108-199, Div. F, tit. VI, § 618, 188 Stat. 3, 354 (Jan. 23, 2004); Pub. L. No. 108-7, Div. J, tit. V, § 620, 117 Stat. 11, 468 (Feb. 20, 2003).

¹³ Section 7211 states: “The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.” There are no federal judicial decisions interpreting section 7211, aside from cases ruling that it does not imply a private cause of action, *Nixon v. Fitzgerald*, 457 U.S. 731 (1981), and that it does not apply to government contractors, *Bordell v. General Electric Co.*, 732 F. Supp. 327 (1990).

As the legislative history of section 618 demonstrates, Congress intended to advance two goals: to preserve the First Amendment rights of federal employees and to ensure that Congress had access to programmatic information from frontline employees. Mr. Scully's actions implicate the latter of these goals. Congressional offices had asked Mr. Foster for information and for technical and analytic assistance that concerned the cost and impact of proposed Medicare legislation under debate in both the House and the Senate. OIG Report, at 2-3. Many members considered such information critical to their consideration of the Medicare Prescription Drug, Improvement, and Modernization Act, a historic piece of legislation with significant implications for federal fiscal policy.¹⁴ This information is a prime example of the programmatic information from frontline federal employees upon which Congress focused in enacting the Lloyd-La Follette Act and its subsequent incarnations.

According to the OIG's findings, congressional offices were interested in the total estimated cost of the legislation, premium estimates, the data underlying certain premium estimates, and a technical analysis of the premium support provisions in the Medicare legislation. OIG Report, at 2-3. This information was typical of the regular, ordinary work product of Mr. Foster and the Office of the Chief Actuary, and as the frontline employee, he was competent to provide the information to Congress. *See* H.R. Conf. Rep. No. 105-217, at 837 (1997) (stating that the actuary has an important role in "developing estimates of the financial effects of potential legislative and administrative changes in the Medicare and Medicaid programs"). Mr. Foster was more knowledgeable about the estimates than other officials within HHS and thus was able to provide information so that Congress could evaluate the Medicare program and budget. *See* Senate Comm. on Governmental Affairs, 95th Cong., *The Whistleblowers*, 40 (Comm. Print 1978).

Thus, the legislative history of section 618 and its predecessors suggest that Mr. Scully's bar on Mr. Foster responding to congressional requests is a prime example of what Congress was attempting to prohibit by those provisions. Accordingly, Mr. Scully's actions fall squarely within section 618, and HHS's appropriation was unavailable for the payment of his salary.

Constitutional Issues Raised by HHS and OLC

While the OIG Report concluded that Mr. Scully had indeed threatened Mr. Foster if he communicated with Congress, it also contained in its attachments, legal opinions by the HHS Office of General Counsel and by the Office of Legal Counsel (OLC) for the Department of Justice. Memo from Katherine M. Drews, Associate General Counsel, HHS, to Lewis Morris, Counsel, HHS OIG, May 12, 2004 (Drews Memo); Letter from Jack L. Goldsmith III, Assistant Attorney General, to Alex M. Azar II, General Counsel, HHS, May 21, 2004 (Goldsmith Letter). These legal opinions state that the application of section 618 to the present case would be unconstitutional. Drews Memo, at 3-5; Goldsmith Letter, at 2-4.

¹⁴ *See, e.g.*, 150 Cong. Rec. S2761 (daily ed. Mar. 12, 2004) (statement of Senator Tom Daschle); 150 Cong. Rec. S3911-2 (daily ed. Apr. 7, 2004) (statement of Senator Bob Graham).

Laws passed by Congress and signed by the President come to us with a heavy presumption in favor of their constitutionality.¹⁵ B-300192, Nov. 13, 2002. We have long observed that it is not our role to adjudicate the constitutionality of duly enacted legislation. B-245028.2, June 4, 1992; B-215863, July 26, 1984. We apply the laws as we find them absent a controlling judicial opinion that such laws are unconstitutional. B-300192, Nov. 13, 2002. Indeed, even in such cases, we will construe a statute narrowly to avoid constitutional issues. *Id.* Here, no court has found section 618 or its predecessors unconstitutional. Likewise, the courts have never held unconstitutional the Whistleblower Protection Act, which authorizes federal employees to disclose violations of law, gross mismanagement, the gross waste of funds, abuses of authority, and threats to public health or safety. 5 U.S.C. § 2302(b)(8).

HHS and OLC first argue that section 618 is unconstitutional because it could force the disclosure of privileged, classified, or deliberative information. Drews Memo, at 4-5; Goldsmith Letter, at 2-3. Constitutional concerns could be raised if Congress were to attempt to force the disclosure of classified or national security information, given the President's role as Commander in Chief.¹⁶ However, Mr. Foster was not asked for classified information.

Similarly, Mr. Foster was not asked for information subject to a claim of deliberative process privilege.¹⁷ To invoke the deliberative process privilege, the material must be both pre-decisional and deliberative, requirements that stem from the privilege's purpose of granting officials the freedom "to debate alternative approaches in private." *In re: Sealed Case*, 121 F.3d 729, 737 (D.C. Cir. 1997). The deliberative process privilege does not apply to the information requested of Mr. Foster because it was neither pre-decisional nor deliberative. The Administration had already formulated its Medicare prescription drug plan and had released it to the public and to the Congress in March 2003. *See Framework to Modernize and Improve Medicare*, White House Fact Sheet, March 4, 2003. Thus, the information requested from Mr. Foster in June through November 2003, which involved cost estimates and data formulated after the Administration's release of its Medicare plan, was not part of the

¹⁵ The Supreme Court also begins with the presumption that a statute is constitutional. *See, e.g., United States v. Morrison*, 529 U.S. 598, 607 (2000) (holding that "due respect for the decisions of a coordinate branch of Government demands that we invalidate a congressional enactment only upon a plain showing that Congress has exceeded its constitutional bounds").

¹⁶ *See Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988) (stating that the Constitution grants the President authority to classify and control access to national security information); *National Fed'n of Fed. Employees v. United States*, 688 F. Supp. 671 (D.D.C. 1988), *vacated and remanded*, *American Foreign Serv. Ass'n v. Garfinkel*, 490 U.S. 153 (1989); Memorandum Opinion for the General Counsel, Central Intelligence Agency, *Access to Classified Information*, OLC Opinion (Nov. 26, 1996) (asserting that granting individual federal employees the right to disclose intelligence and other national security information would threaten the President's constitutional role as Commander in Chief).

¹⁷ Traditionally, courts have allowed the executive branch to withhold documents from the public and in litigation that would reveal advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated. *In re: Sealed Case*, 121 F.3d 729, 737 (D.C. Cir. 1997) (addressing scope of privilege in context of grand jury investigation).

deliberative process for the Administration's proposal. Furthermore, some of the information that Mr. Scully prohibited Mr. Foster from communicating to congressional offices, including the House Ways and Means Committee's request of June 13, 2003, for an analysis of the premium support provisions, was not preexisting data. Such information cannot be considered deliberative because the analysis was not preexisting nor was it tied to any decision-making process at CMS. Thus, HHS's and OLC's arguments that section 618 is unconstitutional because it could force the disclosure of classified or privileged information are inapplicable to the facts of this case.

HHS and OLC also argue that section 618 unconstitutionally limits the President's ability to supervise and control the work of subordinate officers and employees of the executive branch. Drews Memo, at 4-5; Goldsmith Letter, at 2-3. In making this argument, HHS and OLC fail to balance the President's constitutional interest in managing the official communications of the executive branch with Congress's equally important need for information in order to carry out its legislative and oversight responsibilities. As OLC itself has recognized, Congress has "important oversight responsibilities and a corollary interest in receiving information [from federal employees] that enables it to carry out those responsibilities." *Whistleblower Protections For Classified Disclosures: Hearing Before the House Permanent Select Committee on Intelligence*, 105th Cong. (May 20, 1998) (statement of Randolph Moss, Deputy Assistant Attorney General, Office of Legal Counsel). As the Attorney General has pointed out, Congress's interest in obtaining information from the executive branch is strongest when "specific legislative proposals are in question." 43 Op. Att'y Gen. 327 (Oct. 13, 1981).

HHS and OLC have overstated section 618's threat to the President's constitutional prerogatives.¹⁸ Executive agencies have the right to designate official spokesmen for the agency and institute policies and procedures for the release of agency information and positions to Congress and the public.¹⁹ Separation of powers concerns could be raised if Congress, by legislation, were to dictate to the executive branch who should communicate the official positions of the Administration, given the President's constitutional duty to "recommend to [Congress's] consideration such measures as he shall judge necessary and expedient."²⁰ U.S. Const. Art. II, § 3.

¹⁸ Section 618 does not prohibit agencies from requiring their employees to report on their communications with Congress and from requesting that agency congressional liaisons be included in employees' discussions with Congress, nor does it require executive branch employees to initiate congressional contacts or even to respond to congressional inquiries.

¹⁹ For example, section 301 of Title 5, U.S. Code, commonly known as the Housekeeping Statute, delegates to the head of an agency the right to prescribe regulations for "the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property." However, the Housekeeping Statute is explicit in that it does not "authorize withholding information from the public." This second sentence of § 301 was added in 1958 because Congress was concerned that the statute had been "twisted from its original purpose as a 'housekeeping statute' into a claim of authority to keep information from the public and, even, from the Congress." H.R. Rep. No. 85-1461 (1958).

²⁰ See also *Authority of the Special Counsel of the Merit Systems Protection Board to Litigate and Submit Legislation to Congress*, 8 Op. Off. Legal Counsel 30 (Feb. 22, 1984) (asserting that requiring an executive branch agency to submit legislative proposals directly to Congress without Presidential

Federal agencies and employees making separate legislative recommendations to Congress, without coordination with the President, could interfere with the President's constitutional duty, on behalf of the executive branch, to judge which proposals are "necessary and expedient" and make such recommendations to Congress. 8 Op. Off. Legal Counsel 30. Designating an official agency or executive branch spokesman would be entirely appropriate in the case of legislative recommendations or a statement of the Administration's official positions. However, Mr. Foster was not asked for a CMS policy position or legislative recommendation, but rather for specific and limited technical assistance.²¹

Thus, while certain applications of section 618 could raise constitutional concerns, application of section 618 to the facts of this case does not raise such concerns, because Mr. Foster was asked for estimates, technical assistance, and data, rather than any information which could be considered privileged.²² Furthermore, Congress was considering extensive changes to Medicare, and members requested cost estimates and analyses to inform debate on this legislation and to carry out the legislative powers vested by the Constitution. U.S. Const. Art. I, § 1. Indeed, if some of the Chief Actuary's estimates had been disclosed in a timely matter, Congress would have had better information on the magnitude of the legislation it was considering and its possible effect on the nation's fiscal health.²³

Mr. Scully's prohibitions, therefore, made HHS's appropriation, otherwise available for payment of his salary, unavailable for such purpose, because his actions are covered by section 618 of the Consolidated Appropriations Act of 2004 and section 620 of the Consolidated Appropriations Resolution of 2003. Because HHS was prohibited from paying Mr. Scully's salary after he barred Mr. Foster from communicating with Congress, HHS should consider such payments improper.²⁴

review would be unconstitutional); *Constitutionality of Statute Requiring Executive Agency to Report Directly to Congress*, 6 Op. Off. Legal Counsel 632 (Nov. 5, 1982) (asserting that requiring an executive branch agency to submit budget requests or legislative proposals directly to Congress without presidential review would be unconstitutional).

²¹ Indeed, the two OLC opinions cited in the Goldsmith Letter (and cited in the prior footnote) deal with budget or legislative proposals and thus are inapplicable to the present case.

²² OLC admits in its opinion that it did not review the specific information requested of Mr. Foster and thus "cannot opine on the privileged status" of the information.

²³ See, e.g., GAO, *Fiscal Year 2003 U.S. Government Financial Statements: Sustained Improvement in Federal Financial Management Is Crucial to Addressing Our Nation's Future Fiscal Challenges*, GAO-04-477T (March 3, 2004) (describing the drug benefit as "one of the largest unfunded commitments ever undertaken by the federal government").

²⁴ Section 618 and the legislative history surrounding similar provisions provide no guidance as to what time period an agency is prohibited from paying the salary of an official who prohibits a federal employee from contacting Congress. Federal salaries are obligated when earned and are earned on a biweekly pay period basis. See 24 Comp. Gen. 676, 678 (1945) and 5 U.S.C. § 5504. Given the continuing nature of Mr. Scully's prohibition, we recommend that HHS treat as an improper payment Mr. Scully's salary beginning with the pay period when his initial prohibition to Mr. Foster was made until his departure from CMS.

Therefore, we recommend that HHS seek to recover these payments, as required by 31 U.S.C. § 3711.²⁵

Conclusion

As a result of Mr. Scully's prohibition on Mr. Foster providing certain information to Congress, HHS's appropriation was unavailable to pay Mr. Scully's salary because section 618 of the Consolidated Appropriations Act of 2004 and section 620 of the Consolidated Appropriations Resolution of 2003 bar HHS from using appropriated funds to pay the salary of an official who prohibited another federal employee from communicating with Congress on an issue related to his agency. While certain applications of section 618 could raise constitutional concerns, we have applied the prohibition to the present facts, given the narrow scope of information requested and Congress's need for such information in carrying out its legislative duties, as well as the fact that no court has held section 618 unconstitutional.

Sincerely yours,

Anthony H. Gamboa
General Counsel

²⁵ HHS should keep the House and Senate Appropriations Committees, as well as its oversight committees, apprised of the actions it takes to recover these improper payments.

PATRICK J. LEAHY, VERMONT, CHAIRMAN

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United States Senate

COMMITTEE ON THE JUDICIARY
 WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
 KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

April 8, 2011

VIA ELECTRONIC TRANSMISSION

Kenneth E. Melson
 Acting Director
 Bureau of Alcohol, Tobacco, Firearms, and Explosives
 99 New York Avenue, NE
 Washington, DC 20226

Dear Acting Director Melson:

Attached is an email released through the Freedom of Information Act (FOIA).¹ It appears to contain proposed guidance to ATF employees about how to respond to contacts from my office. The guidance instructs ATF employees that they “are in no way obligated to respond” to questions from Congress. It also attempts to prevent direct communications with my office by instructing that ATF employees “should refer congressional staff who seek information from you to the ATF’s office of congressional affairs.” The guidance further attempts to prevent direct communications with my office by claiming that ATF employees “are not authorized to disclose non-public information.”

It is unclear from the email released through FOIA whether this guidance was actually communicated to ATF employees. However, it is of grave concern because, as you know, such attempts to prevent direct communications with Congress are not a lawfully authorized activity of any officer or employee of the United States whose salary is paid with appropriated funds.² Specifically, no officer or employee may attempt to prohibit or prevent “any other officer or employee of the Federal Government from having *direct* oral or written communication or *contact* with any Member, committee, or subcommittee of the Congress” about a matter related to his employment or the

¹ Attachment 1.

² Consolidated Appropriations Act, 2010, P.L. 111-117, 123 Stat. 3034, § 714 (2010), as continued by §101 of continuing resolutions P.L. 111-242, 124 Stat. 2607 (2010) and P.L. 112-6, 125 Stat. 23 (2011)—which extends the funding levels in the 2010 appropriations bills, as well as “the authority and conditions provided in such Acts,” through April 8, 2011.

agency “in any way, *irrespective of whether such communication or contact is at the initiative*” of the employee or Congress (emphasis added).³

I wrote to you on January 31 to ensure you were aware of these provisions and to express concerns that without proper guidance, managers might inappropriately intimidate employees to discourage them from speaking with Congress and thus unlawfully interfere with a Congressional inquiry.⁴ In order for Congress to exercise its oversight authority and act as a check on Executive power, it is crucial that agency employees are free to communicate directly with Members and Committee staff. Direct contact means contacts that do not necessarily involve Congressional liaison or agency management. Without such direct, unfiltered communications, Congress would still be unaware of, and unable to inquire about, the serious allegations involving the death of Border Patrol Agent Brian Terry and the sales of weapons to known and suspected gun traffickers.

I have a long experience of witnessing retaliation against whistleblowers. Sometimes it is explicit and immediate. Often it is subtle and delayed until after public scrutiny has faded. Unfortunately, it is so frequent that employees fear that even truthful answers to direct factual questions from Congress will get them in trouble. That is why I am committed to maintaining the confidentiality of those employees who wish to cooperate with a Congressional inquiry or report problems anonymously. Direct contact with Congress of the sort protected by the law serves as an extra level of protection against retaliation and is obviously essential where an employee seeks confidentiality.

However, in some cases, agency employees choose to disclose their direct contacts with Congress, despite the potential consequences. As I explained in my January 31 letter, one employee chose to disclose his protected contacts with my staff and was immediately questioned about the content of those communications. I was concerned about that because forcing an employee to reveal the details of such communications would intrude on the integrity of the Congressional inquiry and offend the comity between the Branches that flows from the separation of powers under the Constitution.

Now, a second agency employee has chosen to disclose that he has had protected contacts with Congress. George Gillett, through and in conjunction with his legal counsel, is cooperating with this investigation. Mr. Gillett is the Assistant Special Agent in Charge of the ATF’s Phoenix field division, and Committee staff’s direct contacts with him are an essential component of our inquiry. He has participated in two preliminary meetings jointly with Senate Judiciary Committee staff and House Oversight and Government Reform Committee staff. As you know, retaliation for such communications is prohibited by law.

³ *Id.*

⁴ 18 U.S.C. § 1505 (providing criminal penalties for obstructing or impeding the power of Congressional inquiry).

On one previous occasion when an agency sought to compel an individual to disclose the content of his communications with Congress, I was prepared to introduce a resolution authorizing the Senate Legal Counsel to seek legal remedy in the courts. Fortunately, in light of that draft resolution, the Executive Branch withdrew its attempt to compel discovery of communications between a whistleblower and Congress.⁵

In this current inquiry, a similar attempt was also abandoned. The first ATF agent to disclose that he had direct contacts with Congress was ordered to describe the content of his communications in writing. However, shortly after my January 31 letter, I was pleased to learn that the order was withdrawn. I appreciate the agency's willingness to respect Congressional prerogatives and avoid interfering with a Congressional inquiry. Similarly, the agency should avoid intruding into our investigative process by seeking to learn the content of ASAC Gillett's communications with Congress.

In light of the attached email, I have renewed concerns that the guidance being given to employees may be inconsistent with the law.⁶ Therefore, please provide written answers to the following questions:

1. Was the attached guidance distributed, either in writing or otherwise, to ATF field offices or other ATF personnel?
2. Was any guidance on contacts with Congress distributed, either in writing or otherwise, to ATF field offices or other ATF personnel? If so, please provide a copy.
3. What steps have you taken or do you plan to take to ensure that employees are aware of their right to communicate directly with Congress if they so choose?

⁵ See S. PRT. 110-28, § VIII.D.2 "Attempt to Compel Disclosure of Confidential Communications with Congress," p. 103, 641, 652 ("Nothing in this agreement shall require [the production of] any communications with, or documents that were created for, any Senate Committees (or the staff or members thereof)"). See also S. HRG. 109-898, at 39-41, 470-471, responses to questions for the record to Dec. 5, 2006, Senate Judiciary Committee hearing at 8.

⁶ See generally, Government Accountability Office, "Department of Health and Human Services—Chief Actuary's Communications with Congress," B-302911 (Sep. 7, 2004) (discussing the history and background in support of the government-wide prohibition on attempts to prevent direct communications with Congress) (Attachment 2).

Please reply no later than April 14, 2011. If you have any questions about this request, please contact Jason Foster at (202) 225-5225. Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles E. Grassley".

Charles E. Grassley
Ranking Member

Attachments

cc: Chairman Patrick Leahy, Senate Committee on the Judiciary
Chairman Darrell Issa, House Committee on Oversight and Government Reform

Attachment 1

[REDACTED]

From: [REDACTED]
Sent: Saturday, February 05, 2011 12:25 PM
To: Hoover, William J.; [REDACTED]
Subject: Fw: Need quick guidance [REDACTED]

Are/Have we sent some kind of guidance to the Field along these lines?

NOTICE: This e-mail message and any attached files are intended solely for the use of the addressee(s) named above in connection with official business. This communication may contain Controlled Unclassified Information that may be statutorily or otherwise prohibited from being released without appropriate approval. Any review, use, or dissemination of this e-mail message and any attached file(s) in any form outside of ATF or the Department of Justice without express authorization is strictly prohibited.

From: [REDACTED] (SMO)
To: Hoover, William J.; [REDACTED]
Cc: [REDACTED] (SMO); [REDACTED] (SMO); [REDACTED] (OLA); [REDACTED] (CRM); [REDACTED] (USAAZ)
Sent: Thu Feb 03 18:44:26 2011
Subject: FW: Need quick guidance [REDACTED]

I'd recommend something along these lines if agents ask for guidance about how to respond to contacts from Senator's Grassley's staff -

During the last week in January, Senator Grassley wrote to ATF, reporting allegations that ATF had sanctioned the sale of assault weapons to suspected straw purchasers and that these weapons were used in the killing of Customs and Border Protection Agent Brian Terry. The Department has sent a written response to Senator Grassley, advising him that these allegations are not true. In further response to his requests, we expect to schedule a briefing by appropriate ATF representatives with staff for Senator Grassley and other Members of the Senate Judiciary Committee in the near future about Project Gunrunner and ATF's effort to work with its law enforcement partners to build cases that will disrupt and dismantle criminal organizations.

As always, you are in no way obligated to respond to congressional contacts or requests for information and generally, consistent with ATF policy, you should refer congressional staff who seek information from you to ATF's office of congressional affairs. You are not authorized to disclose non-public information about law enforcement matters outside of ATF or the Department of Justice to anyone, including congressional staff. This is important to protect the independence and effectiveness of our law enforcement efforts as well as the privacy and due process interests of individuals who are involved in these investigations.

If you have information about waste, fraud, or abuse within ATF - or any actions by Department employees that you believe constitute professional misconduct, you are encouraged to report that information to your supervisors and/or the Department's Office of Inspector General.

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Attachment 2



United States Government Accountability Office
Washington, DC 20548

B-302911

September 7, 2004

The Honorable Frank R. Lautenberg
The Honorable Tom Daschle
The Honorable Edward M. Kennedy
The Honorable Jack Reed
The Honorable Jon S. Corzine
The Honorable John F. Kerry
The Honorable Patrick J. Leahy
The Honorable Debbie Stabenow
The Honorable Tim Johnson
The Honorable Mark Pryor
The Honorable Maria Cantwell
The Honorable Joseph I. Lieberman
The Honorable Carl Levin
The Honorable Paul Sarbanes
The Honorable Barbara A. Mikulski
The Honorable Charles Schumer
The Honorable John Edwards
The Honorable Hillary Rodham Clinton
United States Senate

Subject: *Department of Health and Human Services—Chief Actuary's
Communications with Congress*

By letter dated March 18, 2004, you asked for our legal opinion regarding a potential violation of the prohibitions in the Consolidated Appropriations Act of 2004 and the Consolidated Appropriations Resolution of 2003 on the use of appropriated funds to pay the salary of a federal official who prohibits another federal employee from communicating with Congress. Pub. L. No. 108-199, Div. F, tit. VI, § 618, 188 Stat. 3, 354 (Jan. 23, 2004); Pub. L. No. 108-7, Div. J, tit. V, § 620, 117 Stat. 11, 468 (Feb. 20, 2003). Specifically, you ask whether alleged threats made by Thomas A. Scully, the former Administrator of the Centers for Medicare & Medicaid Services (CMS), to CMS Chief Actuary Richard S. Foster to terminate his employment if Mr. Foster provided various cost estimates of the then-pending prescription drug legislation to members of Congress and their staff made CMS's appropriation unavailable for the payment of Mr. Scully's salary.

As agreed, this opinion relies on the factual findings of the Office of Inspector General (OIG) for the Department of Health and Human Services (HHS), who conducted an independent investigation into whether Mr. Foster was prohibited from communicating with congressional offices and whether he was threatened with dismissal if he did so.¹ *Tom Scully and Chief Actuary - Information*, Report of the Office of Inspector General, Department of Health and Human Services, July 1, 2004 (OIG Report). The OIG concluded that CMS did not provide information requested by members of Congress and their staff, that Mr. Scully ordered Mr. Foster not to provide information to members and staff, and that Mr. Scully threatened to sanction Mr. Foster if he made any unauthorized disclosures. OIG Report, at 4.

As we explain below, in our opinion, HHS's appropriation, which was otherwise available for payment of Mr. Scully's salary, was unavailable for such purpose because section 618 of the Consolidated Appropriations Act of 2004 and section 620 of the Consolidated Appropriations Resolution of 2003 prohibit the use of appropriated funds to pay the salary of a federal official who prevents another employee from communicating with Congress.² While the HHS Office of General Counsel and the Office of Legal Counsel for the Department of Justice raised constitutional separation of powers concerns regarding the application of section 618, in our view, absent an opinion from a federal court concluding that section 618 is unconstitutional, we will apply it to the facts of this case.

Background

In December 2003, Congress passed and the President signed into law the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, which added a prescription drug benefit to the Medicare program. Pub. L. No. 108-173, 117 Stat. 2066 (Dec. 8, 2003). During the previous summer and fall as Congress debated various proposals, several members of Congress and committee staff asked Mr. Foster, a career civil servant and the Chief Actuary for CMS, to provide estimates of the cost of various provisions of the Medicare bills under debate.³ OIG Report, at 2-3.

¹ We advised your staff that we would, as appropriate, rely on the factual findings of the OIG. Letters to Senator Frank R. Lautenberg and additional requestors from Gary L. Kepplinger, Deputy General Counsel, GAO, April 15, 2004. In addition, the Office of the Inspector General agreed to allow us access to their investigative workpapers. This opinion is based on the factual findings contained in the OIG Report and the supporting workpapers. While this opinion relies on the factual findings of the OIG, it does not adopt or rely upon any legal conclusions reached by the OIG, HHS, or OLC.

² For ease of reference, we will refer to the identical prohibitions in the Consolidated Appropriations Act of 2004 and the Consolidated Appropriations Resolution of 2003 as "section 618."

³ Congress established the position of Chief Actuary in statute in 1997. Balanced Budget Act, Pub. L. No. 105-33, tit. IV, subtitle G, ch. 4, § 4643, 111 Stat. 487 (Aug. 5, 1997) (codified at 42 U.S.C. § 1317). The statute directs the Chief Actuary to carry out his duties "in accordance with the professional standards of actuarial independence." 42 U.S.C. § 1317(b)(1). The Act also directs that the Chief Actuary is to be appointed based on "education, experience [and] superior expertise in the actuarial sciences" and could be removed "only for cause." *Id.* The Balanced Budget Act conference report cites the long history and tradition of a "close and confidential working relationship" between the Social Security and Medicare actuaries and the congressional committees of jurisdiction. H.R. Conf. Rep. No. 105-217, at 837 (1997). The report then states that the "independence of the Office of the

Members and staff also made requests for technical assistance, including requests that Mr. Foster perform analyses of various provisions of the Medicare legislation. *Id.*

Mr. Foster did not respond to several of these requests because Thomas Scully, CMS Administrator and Mr. Foster's supervisor, stated that there would be adverse consequences if he released any information to Congress without Mr. Scully's approval.⁴ *OIG Report*, at 3. Mr. Foster stated that the first time he felt his job was threatened was in May 2003 when he provided information on private insurance plan enrollment rates to the Majority Staff Director of the House Ways and Means Committee and Mr. Scully rebuked him for doing so. *Id.* Later, on June 4, 2003, at Mr. Scully's request, Mr. Scully's special assistant instructed Mr. Foster not to respond to any requests for information from the House Ways and Means Committee and warned him that "the consequences of insubordination are extremely severe." *Id.* Mr. Foster interpreted this statement to mean that Mr. Scully would terminate his employment at CMS if he released any information to Congress without Mr. Scully's approval.⁵ *Id.* at 4.

The *OIG Report* concluded that, because of Mr. Scully's prohibition, Mr. Foster did not respond to several congressional requests for cost estimates and technical assistance, including requests from the minority staff of the House Ways and Means Committee for the total estimated cost of the legislation and for analyses of premium support provisions in the bill, and requests from Senators Mark Dayton and Edward Kennedy for premium estimates.⁶ *Id.* at 2-3.

There is no indication in the *OIG Report* that Mr. Scully objected to Mr. Foster's methodology or to the validity of his estimates. Rather, Mr. Foster testified before the House Ways and Means Committee that Mr. Scully determined which information to release to Congress on a "political basis." *Board of Trustees 2004 Annual Reports: Hearing Before the House Comm. on Ways and Means*, Federal News Service, Mar. 24, 2004. Furthermore, Mr. Scully never objected to Mr. Foster and his staff performing the analyses required to respond to congressional requests; he simply objected to certain analyses being released to Congress. During the same time period, Mr. Foster provided similar analyses to the Office of Management and Budget.

Actuary with respect to providing assistance to the Congress is vital," and that "reforming the Medicare and Medicaid programs is greatly enhanced by the free flow of actuarial information from the Office of the Actuary to the committees of jurisdiction in the Congress." *Id.* at 837-8.

⁴ HHS paid Mr. Scully's salary during this time period from its "Program Management" appropriations account. Pub. L. No. 108-199, Div. E, tit. II, 188 Stat. 3, 244 (Jan. 23, 2004); Pub. L. No. 108-7, Div. G, tit. II, 117 Stat. 11, 316 (Feb. 20, 2003).

⁵ Third parties also confirmed Mr. Scully's threats. For example, Mr. Scully told the Minority Staff Director for the Ways and Means Subcommittee on Health that he would "fire [Foster] so fast his head would spin" if he released certain information to Congress. *OIG Report*, at 3.

⁶ Senator Max Baucus made a similar request for premium estimates. Mr. Foster stated that Mr. Scully directed him to brief Senator Baucus's staff, but he never received approval to respond to Senators Dayton and Kennedy. *OIG Report*, at 2-3.

Discussion

At issue here is the prohibition on using appropriated funds to pay the salary of a federal official who prohibits or prevents another federal employee from communicating with Congress. Specifically, this prohibition states:

“No part of any appropriation contained in this or any other Act shall be available for the payment of the salary of any officer or employee of the Federal Government, who . . . prohibits or prevents, or attempts or threatens to prohibit or prevent, any other officer or employee of the Federal Government from having any direct oral or written communication or contact with any Member, committee, or subcommittee of the Congress in connection with any matter pertaining to the employment of such other officer or employee or pertaining to the department or agency of such other officer or employee in any way, irrespective of whether such communication or contact is at the initiative of such other officer or employee or in response to the request or inquiry of such Member, committee, or subcommittee.”

Pub. L. No. 108-199, Div. F, tit. VI, § 618, 188 Stat. 3, 354 (Jan. 23, 2004); Pub. L. No. 108-7, Div. J, tit. V, § 620, 117 Stat. 11, 468 (Feb. 20, 2003).

Legislative History of Section 618

The governmentwide prohibition on the use of appropriated funds to pay the salary of any federal official who prohibits or prevents or threatens to prohibit or prevent a federal employee from contacting Congress first appeared in the Treasury and General Government Appropriations Act, 1998, Pub. L. No. 105-61, § 640, 111 Stat. 1272, 1318 (1997). In 1997, the Senate passed a prohibition that applied only to the Postal Service, while the House of Representatives passed a governmentwide prohibition.⁷ The conference report adopted the House version, and a governmentwide prohibition has been included in every Treasury-Postal appropriations act since fiscal year 1998. H.R. Conf. Rep. No. 105-284, at 50, 80 (1997).

This provision has its antecedents in several older pieces of legislation, including the Treasury Department Appropriation Act of 1972, the Lloyd-La Follette Act of 1912, and the Civil Service Reform Act of 1978. The legislative history of these antecedents informs our analysis of section 618 because of the similarity of wording of these provisions and the references that the sponsors of later provisions made to earlier acts.

Prior to fiscal year 1998, the Treasury-Postal appropriations acts annually contained a nearly identical prohibition applying only to the Postal Service. This provision first appeared in the fiscal year 1972 Treasury Department Appropriation Act in response

⁷ Compare S. 1023, 105th Cong. § 506 (1997), with H.R. 2378, 105th Cong. § 505 (1997).

to a 1971 Postal Service directive restricting postal employees' communications with Congress. Pub. L. No. 92-49, § 608 (1971). The Postmaster General's directive, which was printed in the *Congressional Record*, stated that, "In order to avoid the possibility for incorrect information and misinterpretation, it is critical that the Postal Service speak to the Congress with only one voice. Accordingly, I am directing that the Congressional Liaison Office be the sole voice of the Postal Service in communicating with the Congress." 117 Cong. Rec. 151 (1971). The directive spelled out specific procedures to implement this order, and directed postal employees to "immediately cease [any] direct or indirect contacts with congressional officers on matters involving the Postal Service," and in the future, forward any congressional communications to the Liaison Office and coordinate any direct contacts with a congressional office with the Liaison. *Id.* The directive ended with the disclaimer that the new procedures "do not affect the right of any employee to petition, as a private citizen, his U.S. Representative or Senators on his own behalf." 117 Cong. Rec. 152 (1971).

Representative William Ford sponsored this prohibition as an amendment to the 1972 appropriations act. 117 Cong. Rec. 22443 (1971). He complained that the directive declared it a violation of the rules of the Postal Service "for any employee either individually or through his organization to contact any member or any committee" of Congress. *Id.* Representative John Saylor also objected to the directive for "cutting the ties between postal employees and their representatives" and for "abridg[ing] a fundamental right of American citizens." 117 Cong. Rec. 151 (1971). Saylor also cited two newspaper editorials about the directive, which called it a "gag rule" and noted the postal union's concern that the directive violated their constitutional rights to petition Congress. 117 Cong. Rec. 152 (1971). One of the editorials cited the conflict between the directive's order that all employees were to cease contacts with members of Congress and the disclaimer that the directive preserved employees' right to petition Congress. *Id.*

Postmaster General Blount discussed this issue at both the House and Senate Appropriations Committee hearings on the Postal Service's fiscal year 1972 budget request. At the House Appropriations Committee hearing, Representative John Myers asked Blount if it was true that postal employees were prohibited from communicating with their member of Congress under any circumstance. Blount responded that was not the case and noted that his directive simply said "that we are going to centralize our communications with Members of Congress." *Treasury, Post Office, and General Government Appropriations for Fiscal Year 1972, Hearing Before the House Comm. on Appropriations, 92nd Cong. 63 (1971).* He stated, "as a matter of operations and technique . . . we will centralize the requests and problems of Congress in our congressional liaison department and we will then be able to control our responsiveness to the Members." *Id.* Blount also mentioned that it was "very clearly spelled out . . . that all the employees have a constitutional right to petition Members of Congress . . . about their own matters but as far as the Postal Service is concerned, if I am going to be held responsible for it by the Members of Congress and by the American public, I have to have control of it." *Id.*

At the Senate Appropriations Committee hearing, Senator Joseph Montoya complained that prior to the directive, members of Congress "could call the Postal

Department on any matter involving a constituent and get a ready answer from the Department . . . [but now] if we have an inquiry to the regional office or to a local postmaster, they must refer it straight to Washington under this regulation and it causes unnecessary delay.” *Treasury, Post Office, and General Government Appropriations for Fiscal Year 1972, Hearing Before the Senate Comm. on Appropriations*, 92nd Cong. 1435 (1971). Senator Montoya added, “I can call any other department in the Government and call the man in charge, the man at the wheel, and he will give me an answer. But I can’t do this with the Post Office Department.” *Id.* at 1438.

Blount responded to such criticisms, “It is difficult to control our responses [to members of Congress] if these responses go out from some 30,000 post offices around the country.” *Id.* at 1435. He stated that the Post Office “is a vast department . . . and it is difficult to be certain that our replies always comply with the policies of the Postal Service, and that is the reason we took this action.” *Id.* at 1438. Blount emphasized again that the directive “has to do with the official postal matters only . . . and has nothing to do with the employees’ rights to contact Members of Congress. We so stated in the regulation itself . . . [but] it has been misinterpreted by others.” *Id.* at 1435. Senator Montoya concluded his questioning about the directive by stating his intention to add language to the Postal appropriations committee report that would prohibit the Post Office from restricting its employees from communicating with members of Congress. *Id.* at 1439.

In introducing his amendment to the 1972 Treasury Department Appropriation Act, Representative Ford noted that “the law that this amendment attempts to enforce has been on the books . . . since 1912.” 117 Cong. Rec. 22443 (1971). Ford was referring to a provision in the fiscal year 1913 Post Office Appropriation Bill, commonly known as the Lloyd-La Follette Act, that states, “The right of persons employed in the civil service of the United States, either individually or collectively, to petition Congress, or any Member thereof, or to furnish information to either House of Congress, or to any committee or member thereof, shall not be denied or interfered with.” Post Office Appropriation Act, Pub. L. No. 336, ch. 389 § 6, 66 Stat. 539, 540 (Aug. 24, 1912). The committee report accompanying the House version of the bill stated that the provision was intended to “protect employees against oppression and in the right of free speech and the right to consult their Representatives.” H.R. Rep. No. 62-388, at 7 (1912).

Congress enacted the Lloyd-La Follette Act in response to two executive orders issued by Presidents Theodore Roosevelt and Howard Taft. Several congressmen referred to these orders as “gag rules” and quoted the text of the orders in the *Congressional Record*.⁸ Both the House and the Senate had a vigorous floor debate

⁸ See, e.g., 48 Cong. Rec. 4513 (1912). President Roosevelt’s executive order reads as follows: “All officers and employees of the United States of every description, serving in or under any of the executive departments or independent Government establishments, and whether so serving in or out of Washington, are hereby forbidden, either directly or indirectly, individually or through associations, to solicit an increase of pay or to influence or attempt to influence in their own interest any other legislation whatever, either before Congress or its committees, or in any way save through the heads of the departments or independent Government establishments in or under which they serve, on penalty of dismissal from the Government service.” Exec. Order No. 1142 (1906). President Taft’s order reads as follows: “It is hereby ordered that no bureau, office, or division chief, or subordinate in any

on this provision, as well as a related section of the bill allowing postal employees the right to unionize.⁹ The majority of the debate focused on preserving the constitutional rights of federal employees.¹⁰ Representative Thomas Reilly stated his opposition to the gag order because it prevented federal employees from “uttering any word of complaint even against the most outrageous treatment.” 48 Cong. Rec. 4656 (1912). He hoped that the Act would ensure the rights of employees to discuss “conditions of employment, hours of labor, and matters affecting the working and sanitary conditions surrounding their employment” with Congress.¹¹ *Id.*

Members of Congress also raised concerns that the executive orders would foreclose an important source of information for Congress. As Senator James Reed stated, the executive orders instructed federal employees “not [to], even at the demand of Congress or a committee of Congress or a Member of Congress, supply information in regard to the public business.” 48 Cong. Rec. 10673 (1912). Representative James Lloyd argued that the representatives of the American people “should have the right to inquire as to any of the conditions of government and the method of conducting any line of departmental business.” 48 Cong. Rec. 5634 (1912).

Other members of Congress disagreed and argued that the provision would undermine discipline in the Postal Service.¹² However, after a lengthy debate Congress approved the Lloyd-La Follette Act, and the President signed it into law as part of the Post Office Appropriation Act. Pub. L. No. 336, 66 Stat. 539 (Aug. 24,

department of the Government, and no officer of the Army or Navy or Marine Corps stationed in Washington, shall apply to either House of Congress, or to any committee of either House of Congress, or to any Member of Congress, for legislation, or for appropriations, or for congressional action of any kind, except with the consent and knowledge of the head of the department; nor shall any such person respond to any request for information from either House of Congress, or any committee of either House of Congress, or any Member of Congress, except through, or as authorized by, the head of his department.” Exec. Order No. 1514 (1909).

⁹ See 48 Cong. Rec. 4512-3, 4656-7, 4738-9, 5223-4, 5235-6, 5633-6, 10670-7, 10728-33, 10793-804 (1912).

¹⁰ See, e.g., 48 Cong. Rec. 4513 (1912) (statement of Rep. Gregg) (stating that the provision was “intended to protect employees against oppression and in the right of free speech and the right to consult their representatives”); 48 Cong. Rec. 5635 (1912) (statement of Rep. Goldfogle) (stating that “[w]hether the citizen holds office under the Government or not, his right to petition for a redress of grievances should not, and constitutionally speaking, can not be interfered with”).

¹¹ Several congressmen spoke about the dangerous working conditions faced by railway mail clerks and emphasized that the provision would ensure that such conditions were brought to the attention of Congress. See, e.g., 48 Cong. Rec. 10671(1912) (statement of Sen. Ashurst) (quoting an article from *La Follette’s Weekly*); 48 Cong. Rec. 10674 (1912) (statement of Sen. Warren).

¹² See, e.g., 48 Cong. Rec. 100676 (1912) (statement of Senator Bourne) (stating that “the right of the individual employee to go over the head of his superior . . . on matters appertaining to his own particular grievances, or for his own selfish interest, would be detrimental to the service itself . . . [and] would absolutely destroy the discipline necessary for good service”). The Senate Appropriations Committee also disapproved of the provision. S. Rep. No. 62-955, at 21 (1912) (stating that “good discipline and the efficiency of the service requires that [federal employees] present their grievances through the proper administrative channels”).

1912). In 1978, a nearly identical version of the Lloyd-La Follette Act was enacted as part of the Civil Service Reform Act. Pub. L. No. 94-454, 92 Stat. 1138, 1217 (Oct. 13, 1978) (codified at 5 U.S.C. § 7211).¹³

Congress expressed many of the same concerns that surrounded enactment of the Lloyd-La Follette Act during debate surrounding the whistleblower provisions in the Civil Service Reform Act, which prohibit federal agencies from taking any personnel action in response to a federal employee's disclosure of a violation of law, gross mismanagement, a gross waste of funds, an abuse of authority, or a danger to public health or safety. 5 U.S.C. § 2302(b)(8). For example, the Senate Committee on Governmental Affairs noted:

“Federal employees are often the source of information about agency operations suppressed by their superiors. Since they are much closer to the actual working situation than top agency officials, they have testified before Congress, spoken to reporters, and informed the public . . . Mid-level employees provide much of the information Congress needs to evaluate programs, budgets, and overall agency performance.”

Senate Comm. on Governmental Affairs, 95th Cong., *The Whistleblowers*, 40 (Comm. Print 1978). These concerns led to the enactment of the first whistleblower protections and the codification of the Lloyd-La Follette Act. Civil Service Reform Act of 1978, Pub. L. No. 95-454, §§ 2302, 7211, 92 Stat. 1217 (Oct. 13, 1978).

Application of the Prohibition to the Inspector General's Findings

As noted above, section 618 prohibits an agency from paying the salary of any federal officer or employee who prohibits or prevents, or threatens to prohibit or prevent, another officer or employee from communicating with members, committees or subcommittees of Congress. The OIG report concluded that Mr. Scully both prohibited and threatened to prohibit Mr. Foster from communicating with various members of Congress and congressional committees on issues that pertained to his agency and his professional responsibilities. OIG Report, at 4. In May 2003, Mr. Scully rebuked Mr. Foster for providing information requested by the Majority Staff Director for the House Ways and Means Committee. *Id.* at 3. In June 2003, Mr. Scully's special assistant, pursuant to Mr. Scully's direction, instructed Mr. Foster not to respond to any requests for information from the House Ways and Means Committee. Because of Mr. Scully's actions, we view HHS's appropriation as unavailable to pay his salary. Pub. L. No. 108-199, Div. F, tit. VI, § 618, 188 Stat. 3, 354 (Jan. 23, 2004); Pub. L. No. 108-7, Div. J, tit. V, § 620, 117 Stat. 11, 468 (Feb. 20, 2003).

¹³ Section 7211 states: “The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.” There are no federal judicial decisions interpreting section 7211, aside from cases ruling that it does not imply a private cause of action, *Nixon v. Fitzgerald*, 457 U.S. 731 (1981), and that it does not apply to government contractors, *Bordell v. General Electric Co.*, 732 F. Supp. 327 (1990).

As the legislative history of section 618 demonstrates, Congress intended to advance two goals: to preserve the First Amendment rights of federal employees and to ensure that Congress had access to programmatic information from frontline employees. Mr. Scully's actions implicate the latter of these goals. Congressional offices had asked Mr. Foster for information and for technical and analytic assistance that concerned the cost and impact of proposed Medicare legislation under debate in both the House and the Senate. OIG Report, at 2-3. Many members considered such information critical to their consideration of the Medicare Prescription Drug, Improvement, and Modernization Act, a historic piece of legislation with significant implications for federal fiscal policy.¹⁴ This information is a prime example of the programmatic information from frontline federal employees upon which Congress focused in enacting the Lloyd-La Follette Act and its subsequent incarnations.

According to the OIG's findings, congressional offices were interested in the total estimated cost of the legislation, premium estimates, the data underlying certain premium estimates, and a technical analysis of the premium support provisions in the Medicare legislation. OIG Report, at 2-3. This information was typical of the regular, ordinary work product of Mr. Foster and the Office of the Chief Actuary, and as the frontline employee, he was competent to provide the information to Congress. See H.R. Conf. Rep. No. 105-217, at 837 (1997) (stating that the actuary has an important role in "developing estimates of the financial effects of potential legislative and administrative changes in the Medicare and Medicaid programs"). Mr. Foster was more knowledgeable about the estimates than other officials within HHS and thus was able to provide information so that Congress could evaluate the Medicare program and budget. See Senate Comm. on Governmental Affairs, 95th Cong., *The Whistleblowers*, 40 (Comm. Print 1978).

Thus, the legislative history of section 618 and its predecessors suggest that Mr. Scully's bar on Mr. Foster responding to congressional requests is a prime example of what Congress was attempting to prohibit by those provisions. Accordingly, Mr. Scully's actions fall squarely within section 618, and HHS's appropriation was unavailable for the payment of his salary.

Constitutional Issues Raised by HHS and OLC

While the OIG Report concluded that Mr. Scully had indeed threatened Mr. Foster if he communicated with Congress, it also contained in its attachments, legal opinions by the HHS Office of General Counsel and by the Office of Legal Counsel (OLC) for the Department of Justice. Memo from Katherine M. Drews, Associate General Counsel, HHS, to Lewis Morris, Counsel, HHS OIG, May 12, 2004 (Drews Memo); Letter from Jack L. Goldsmith III, Assistant Attorney General, to Alex M. Azar II, General Counsel, HHS, May 21, 2004 (Goldsmith Letter). These legal opinions state that the application of section 618 to the present case would be unconstitutional. Drews Memo, at 3-5; Goldsmith Letter, at 2-4.

¹⁴ See, e.g., 150 Cong. Rec. S2761 (daily ed. Mar. 12, 2004) (statement of Senator Tom Daschle); 150 Cong. Rec. S3911-2 (daily ed. Apr. 7, 2004) (statement of Senator Bob Graham).

Laws passed by Congress and signed by the President come to us with a heavy presumption in favor of their constitutionality.¹⁵ B-300192, Nov. 13, 2002. We have long observed that it is not our role to adjudicate the constitutionality of duly enacted legislation. B-245028.2, June 4, 1992; B-215863, July 26, 1984. We apply the laws as we find them absent a controlling judicial opinion that such laws are unconstitutional. B-300192, Nov. 13, 2002. Indeed, even in such cases, we will construe a statute narrowly to avoid constitutional issues. *Id.* Here, no court has found section 618 or its predecessors unconstitutional. Likewise, the courts have never held unconstitutional the Whistleblower Protection Act, which authorizes federal employees to disclose violations of law, gross mismanagement, the gross waste of funds, abuses of authority, and threats to public health or safety. 5 U.S.C. § 2302(b)(8).

HHS and OLC first argue that section 618 is unconstitutional because it could force the disclosure of privileged, classified, or deliberative information. Drews Memo, at 4-5; Goldsmith Letter, at 2-3. Constitutional concerns could be raised if Congress were to attempt to force the disclosure of classified or national security information, given the President's role as Commander in Chief.¹⁶ However, Mr. Foster was not asked for classified information.

Similarly, Mr. Foster was not asked for information subject to a claim of deliberative process privilege.¹⁷ To invoke the deliberative process privilege, the material must be both pre-decisional and deliberative, requirements that stem from the privilege's purpose of granting officials the freedom "to debate alternative approaches in private." *In re: Sealed Case*, 121 F.3d 729, 737 (D.C. Cir. 1997). The deliberative process privilege does not apply to the information requested of Mr. Foster because it was neither pre-decisional nor deliberative. The Administration had already formulated its Medicare prescription drug plan and had released it to the public and to the Congress in March 2003. *See Framework to Modernize and Improve Medicare*, White House Fact Sheet, March 4, 2003. Thus, the information requested from Mr. Foster in June through November 2003, which involved cost estimates and data formulated after the Administration's release of its Medicare plan, was not part of the

¹⁵ The Supreme Court also begins with the presumption that a statute is constitutional. *See, e.g., United States v. Morrison*, 529 U.S. 598, 607 (2000) (holding that "due respect for the decisions of a coordinate branch of Government demands that we invalidate a congressional enactment only upon a plain showing that Congress has exceeded its constitutional bounds").

¹⁶ *See Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988) (stating that the Constitution grants the President authority to classify and control access to national security information); *National Fed'n of Fed. Employees v. United States*, 688 F. Supp. 671 (D.D.C. 1988), *vacated and remanded*, *American Foreign Serv. Ass'n v. Garfinkel*, 490 U.S. 153 (1989); Memorandum Opinion for the General Counsel, Central Intelligence Agency, *Access to Classified Information*, OLC Opinion (Nov. 26, 1996) (asserting that granting individual federal employees the right to disclose intelligence and other national security information would threaten the President's constitutional role as Commander in Chief).

¹⁷ Traditionally, courts have allowed the executive branch to withhold documents from the public and in litigation that would reveal advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated. *In re: Sealed Case*, 121 F.3d 729, 737 (D.C. Cir. 1997) (addressing scope of privilege in context of grand jury investigation).

deliberative process for the Administration's proposal. Furthermore, some of the information that Mr. Scully prohibited Mr. Foster from communicating to congressional offices, including the House Ways and Means Committee's request of June 13, 2003, for an analysis of the premium support provisions, was not preexisting data. Such information cannot be considered deliberative because the analysis was not preexisting nor was it tied to any decision-making process at CMS. Thus, HHS's and OLC's arguments that section 618 is unconstitutional because it could force the disclosure of classified or privileged information are inapplicable to the facts of this case.

HHS and OLC also argue that section 618 unconstitutionally limits the President's ability to supervise and control the work of subordinate officers and employees of the executive branch. Drews Memo, at 4-5; Goldsmith Letter, at 2-3. In making this argument, HHS and OLC fail to balance the President's constitutional interest in managing the official communications of the executive branch with Congress's equally important need for information in order to carry out its legislative and oversight responsibilities. As OLC itself has recognized, Congress has "important oversight responsibilities and a corollary interest in receiving information [from federal employees] that enables it to carry out those responsibilities." *Whistleblower Protections For Classified Disclosures: Hearing Before the House Permanent Select Committee on Intelligence*, 105th Cong. (May 20, 1998) (statement of Randolph Moss, Deputy Assistant Attorney General, Office of Legal Counsel). As the Attorney General has pointed out, Congress's interest in obtaining information from the executive branch is strongest when "specific legislative proposals are in question." 43 Op. Att'y Gen. 327 (Oct. 13, 1981).

HHS and OLC have overstated section 618's threat to the President's constitutional prerogatives.¹⁸ Executive agencies have the right to designate official spokesmen for the agency and institute policies and procedures for the release of agency information and positions to Congress and the public.¹⁹ Separation of powers concerns could be raised if Congress, by legislation, were to dictate to the executive branch who should communicate the official positions of the Administration, given the President's constitutional duty to "recommend to [Congress's] consideration such measures as he shall judge necessary and expedient."²⁰ U.S. Const. Art. II, § 3.

¹⁸ Section 618 does not prohibit agencies from requiring their employees to report on their communications with Congress and from requesting that agency congressional liaisons be included in employees' discussions with Congress, nor does it require executive branch employees to initiate congressional contacts or even to respond to congressional inquiries.

¹⁹ For example, section 301 of Title 5, U.S. Code, commonly known as the Housekeeping Statute, delegates to the head of an agency the right to prescribe regulations for "the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property." However, the Housekeeping Statute is explicit in that it does not "authorize withholding information from the public." This second sentence of § 301 was added in 1958 because Congress was concerned that the statute had been "twisted from its original purpose as a 'housekeeping statute' into a claim of authority to keep information from the public and, even, from the Congress." H.R. Rep. No. 85-1461 (1958).

²⁰ See also *Authority of the Special Counsel of the Merit Systems Protection Board to Litigate and Submit Legislation to Congress*, 8 Op. Off. Legal Counsel 30 (Feb. 22, 1984) (asserting that requiring an executive branch agency to submit legislative proposals directly to Congress without Presidential

Federal agencies and employees making separate legislative recommendations to Congress, without coordination with the President, could interfere with the President's constitutional duty, on behalf of the executive branch, to judge which proposals are "necessary and expedient" and make such recommendations to Congress. 8 Op. Off. Legal Counsel 30. Designating an official agency or executive branch spokesman would be entirely appropriate in the case of legislative recommendations or a statement of the Administration's official positions. However, Mr. Foster was not asked for a CMS policy position or legislative recommendation, but rather for specific and limited technical assistance.²¹

Thus, while certain applications of section 618 could raise constitutional concerns, application of section 618 to the facts of this case does not raise such concerns, because Mr. Foster was asked for estimates, technical assistance, and data, rather than any information which could be considered privileged.²² Furthermore, Congress was considering extensive changes to Medicare, and members requested cost estimates and analyses to inform debate on this legislation and to carry out the legislative powers vested by the Constitution. U.S. Const. Art. I, § 1. Indeed, if some of the Chief Actuary's estimates had been disclosed in a timely matter, Congress would have had better information on the magnitude of the legislation it was considering and its possible effect on the nation's fiscal health.²³

Mr. Scully's prohibitions, therefore, made HHS's appropriation, otherwise available for payment of his salary, unavailable for such purpose, because his actions are covered by section 618 of the Consolidated Appropriations Act of 2004 and section 620 of the Consolidated Appropriations Resolution of 2003. Because HHS was prohibited from paying Mr. Scully's salary after he barred Mr. Foster from communicating with Congress, HHS should consider such payments improper.²⁴

review would be unconstitutional); *Constitutionality of Statute Requiring Executive Agency to Report Directly to Congress*, 6 Op. Off. Legal Counsel 632 (Nov. 5, 1982) (asserting that requiring an executive branch agency to submit budget requests or legislative proposals directly to Congress without presidential review would be unconstitutional).

²¹ Indeed, the two OLC opinions cited in the Goldsmith Letter (and cited in the prior footnote) deal with budget or legislative proposals and thus are inapplicable to the present case.

²² OLC admits in its opinion that it did not review the specific information requested of Mr. Foster and thus "cannot opine on the privileged status" of the information.

²³ See, e.g., GAO, *Fiscal Year 2003 U.S. Government Financial Statements: Sustained Improvement in Federal Financial Management Is Crucial to Addressing Our Nation's Future Fiscal Challenges*, GAO-04-477T (March 3, 2004) (describing the drug benefit as "one of the largest unfunded commitments ever undertaken by the federal government").

²⁴ Section 618 and the legislative history surrounding similar provisions provide no guidance as to what time period an agency is prohibited from paying the salary of an official who prohibits a federal employee from contacting Congress. Federal salaries are obligated when earned and are earned on a biweekly pay period basis. See 24 Comp. Gen. 676, 678 (1945) and 5 U.S.C. § 5504. Given the continuing nature of Mr. Scully's prohibition, we recommend that HHS treat as an improper payment Mr. Scully's salary beginning with the pay period when his initial prohibition to Mr. Foster was made until his departure from CMS.

Therefore, we recommend that HHS seek to recover these payments, as required by 31 U.S.C. § 3711.²⁵

Conclusion

As a result of Mr. Scully's prohibition on Mr. Foster providing certain information to Congress, HHS's appropriation was unavailable to pay Mr. Scully's salary because section 618 of the Consolidated Appropriations Act of 2004 and section 620 of the Consolidated Appropriations Resolution of 2003 bar HHS from using appropriated funds to pay the salary of an official who prohibited another federal employee from communicating with Congress on an issue related to his agency. While certain applications of section 618 could raise constitutional concerns, we have applied the prohibition to the present facts, given the narrow scope of information requested and Congress's need for such information in carrying out its legislative duties, as well as the fact that no court has held section 618 unconstitutional.

Sincerely yours,

Anthony H. Gamboa
General Counsel

²⁵ HHS should keep the House and Senate Appropriations Committees, as well as its oversight committees, apprised of the actions it takes to recover these improper payments.

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United States Senate

COMMITTEE ON THE JUDICIARY
 WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
 KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

April 8, 2011

VIA ELECTRONIC TRANSMISSION

Kenneth E. Melson
 Acting Director
 Bureau of Alcohol, Tobacco, Firearms, and Explosives
 99 New York Avenue, NE
 Washington, DC 20226

Dear Acting Director Melson:

Attached is an email released through the Freedom of Information Act (FOIA).¹ It appears to contain proposed guidance to ATF employees about how to respond to contacts from my office. The guidance instructs ATF employees that they “are in no way obligated to respond” to questions from Congress. It also attempts to prevent direct communications with my office by instructing that ATF employees “should refer congressional staff who seek information from you to the ATF’s office of congressional affairs.” The guidance further attempts to prevent direct communications with my office by claiming that ATF employees “are not authorized to disclose non-public information.”

It is unclear from the email released through FOIA whether this guidance was actually communicated to ATF employees. However, it is of grave concern because, as you know, such attempts to prevent direct communications with Congress are not a lawfully authorized activity of any officer or employee of the United States whose salary is paid with appropriated funds.² Specifically, no officer or employee may attempt to prohibit or prevent “any other officer or employee of the Federal Government from having *direct* oral or written communication or *contact* with any Member, committee, or subcommittee of the Congress” about a matter related to his employment or the

¹ Attachment 1.

² Consolidated Appropriations Act, 2010, P.L. 111-117, 123 Stat. 3034, § 714 (2010), as continued by §101 of continuing resolutions P.L. 111-242, 124 Stat. 2607 (2010) and P.L. 112-6, 125 Stat. 23 (2011)—which extends the funding levels in the 2010 appropriations bills, as well as “the authority and conditions provided in such Acts,” through April 8, 2011.

agency “in any way, *irrespective of whether such communication or contact is at the initiative*” of the employee or Congress (emphasis added).³

I wrote to you on January 31 to ensure you were aware of these provisions and to express concerns that without proper guidance, managers might inappropriately intimidate employees to discourage them from speaking with Congress and thus unlawfully interfere with a Congressional inquiry.⁴ In order for Congress to exercise its oversight authority and act as a check on Executive power, it is crucial that agency employees are free to communicate directly with Members and Committee staff. Direct contact means contacts that do not necessarily involve Congressional liaison or agency management. Without such direct, unfiltered communications, Congress would still be unaware of, and unable to inquire about, the serious allegations involving the death of Border Patrol Agent Brian Terry and the sales of weapons to known and suspected gun traffickers.

I have a long experience of witnessing retaliation against whistleblowers. Sometimes it is explicit and immediate. Often it is subtle and delayed until after public scrutiny has faded. Unfortunately, it is so frequent that employees fear that even truthful answers to direct factual questions from Congress will get them in trouble. That is why I am committed to maintaining the confidentiality of those employees who wish to cooperate with a Congressional inquiry or report problems anonymously. Direct contact with Congress of the sort protected by the law serves as an extra level of protection against retaliation and is obviously essential where an employee seeks confidentiality.

However, in some cases, agency employees choose to disclose their direct contacts with Congress, despite the potential consequences. As I explained in my January 31 letter, one employee chose to disclose his protected contacts with my staff and was immediately questioned about the content of those communications. I was concerned about that because forcing an employee to reveal the details of such communications would intrude on the integrity of the Congressional inquiry and offend the comity between the Branches that flows from the separation of powers under the Constitution.

Now, a second agency employee has chosen to disclose that he has had protected contacts with Congress. George Gillett, through and in conjunction with his legal counsel, is cooperating with this investigation. Mr. Gillett is the Assistant Special Agent in Charge of the ATF’s Phoenix field division, and Committee staff’s direct contacts with him are an essential component of our inquiry. He has participated in two preliminary meetings jointly with Senate Judiciary Committee staff and House Oversight and Government Reform Committee staff. As you know, retaliation for such communications is prohibited by law.

³ *Id.*

⁴ 18 U.S.C. § 1505 (providing criminal penalties for obstructing or impeding the power of Congressional inquiry).

On one previous occasion when an agency sought to compel an individual to disclose the content of his communications with Congress, I was prepared to introduce a resolution authorizing the Senate Legal Counsel to seek legal remedy in the courts. Fortunately, in light of that draft resolution, the Executive Branch withdrew its attempt to compel discovery of communications between a whistleblower and Congress.⁵

In this current inquiry, a similar attempt was also abandoned. The first ATF agent to disclose that he had direct contacts with Congress was ordered to describe the content of his communications in writing. However, shortly after my January 31 letter, I was pleased to learn that the order was withdrawn. I appreciate the agency's willingness to respect Congressional prerogatives and avoid interfering with a Congressional inquiry. Similarly, the agency should avoid intruding into our investigative process by seeking to learn the content of ASAC Gillett's communications with Congress.

In light of the attached email, I have renewed concerns that the guidance being given to employees may be inconsistent with the law.⁶ Therefore, please provide written answers to the following questions:

1. Was the attached guidance distributed, either in writing or otherwise, to ATF field offices or other ATF personnel?
2. Was any guidance on contacts with Congress distributed, either in writing or otherwise, to ATF field offices or other ATF personnel? If so, please provide a copy.
3. What steps have you taken or do you plan to take to ensure that employees are aware of their right to communicate directly with Congress if they so choose?

⁵ See S. PRT. 110-28, § VIII.D.2 "Attempt to Compel Disclosure of Confidential Communications with Congress," p. 103, 641, 652 ("Nothing in this agreement shall require [the production of] any communications with, or documents that were created for, any Senate Committees (or the staff or members thereof)"). See also S. HRG. 109-898, at 39-41, 470-471, responses to questions for the record to Dec. 5, 2006, Senate Judiciary Committee hearing at 8.

⁶ See generally, Government Accountability Office, "Department of Health and Human Services—Chief Actuary's Communications with Congress," B-302911 (Sep. 7, 2004) (discussing the history and background in support of the government-wide prohibition on attempts to prevent direct communications with Congress) (Attachment 2).

Please reply no later than April 14, 2011. If you have any questions about this request, please contact Jason Foster at (202) 225-5225. Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles E. Grassley", with a stylized flourish at the end.

Charles E. Grassley
Ranking Member

Attachments

cc: Chairman Patrick Leahy, Senate Committee on the Judiciary
Chairman Darrell Issa, House Committee on Oversight and Government Reform

Attachment 1

[REDACTED]

From: [REDACTED]
Sent: Saturday, February 05, 2011 12:25 PM
To: Hoover, William J.; [REDACTED]
Subject: Fw: Need quick guidance [REDACTED]

Are/Have we sent some kind of guidance to the Field along these lines?

NOTICE: This e-mail message and any attached files are intended solely for the use of the addressee(s) named above in connection with official business. This communication may contain Controlled Unclassified Information that may be statutorily or otherwise prohibited from being released without appropriate approval. Any review, use, or dissemination of this e-mail message and any attached file(s) in any form outside of ATF or the Department of Justice without express authorization is strictly prohibited.

From: [REDACTED] (SMO)
To: Hoover, William J.; [REDACTED]
Cc: [REDACTED] (SMO); [REDACTED] (SMO); [REDACTED] (OLA); [REDACTED] (CRM); [REDACTED] (USAAZ)
Sent: Thu Feb 03 18:44:26 2011
Subject: FW: Need quick guidance [REDACTED]

I'd recommend something along these lines if agents ask for guidance about how to respond to contacts from Senator's Grassley's staff -

During the last week in January, Senator Grassley wrote to ATF, reporting allegations that ATF had sanctioned the sale of assault weapons to suspected straw purchasers and that these weapons were used in the killing of Customs and Border Protection Agent Brian Terry. The Department has sent a written response to Senator Grassley, advising him that these allegations are not true. In further response to his requests, we expect to schedule a briefing by appropriate ATF representatives with staff for Senator Grassley and other Members of the Senate Judiciary Committee in the near future about Project Gunrunner and ATF's effort to work with its law enforcement partners to build cases that will disrupt and dismantle criminal organizations.

As always, you are in no way obligated to respond to congressional contacts or requests for information and generally, consistent with ATF policy, you should refer congressional staff who seek information from you to ATF's office of congressional affairs. You are not authorized to disclose non-public information about law enforcement matters outside of ATF or the Department of Justice to anyone, including congressional staff. This is important to protect the independence and effectiveness of our law enforcement efforts as well as the privacy and due process interests of individuals who are involved in these investigations.

If you have information about waste, fraud, or abuse within ATF - or any actions by Department employees that you believe constitute professional misconduct, you are encouraged to report that information to your supervisors and/or the Department's Office of Inspector General.

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Attachment 2



United States Government Accountability Office
Washington, DC 20548

B-302911

September 7, 2004

The Honorable Frank R. Lautenberg
The Honorable Tom Daschle
The Honorable Edward M. Kennedy
The Honorable Jack Reed
The Honorable Jon S. Corzine
The Honorable John F. Kerry
The Honorable Patrick J. Leahy
The Honorable Debbie Stabenow
The Honorable Tim Johnson
The Honorable Mark Pryor
The Honorable Maria Cantwell
The Honorable Joseph I. Lieberman
The Honorable Carl Levin
The Honorable Paul Sarbanes
The Honorable Barbara A. Mikulski
The Honorable Charles Schumer
The Honorable John Edwards
The Honorable Hillary Rodham Clinton
United States Senate

Subject: *Department of Health and Human Services—Chief Actuary's
Communications with Congress*

By letter dated March 18, 2004, you asked for our legal opinion regarding a potential violation of the prohibitions in the Consolidated Appropriations Act of 2004 and the Consolidated Appropriations Resolution of 2003 on the use of appropriated funds to pay the salary of a federal official who prohibits another federal employee from communicating with Congress. Pub. L. No. 108-199, Div. F, tit. VI, § 618, 188 Stat. 3, 354 (Jan. 23, 2004); Pub. L. No. 108-7, Div. J, tit. V, § 620, 117 Stat. 11, 468 (Feb. 20, 2003). Specifically, you ask whether alleged threats made by Thomas A. Scully, the former Administrator of the Centers for Medicare & Medicaid Services (CMS), to CMS Chief Actuary Richard S. Foster to terminate his employment if Mr. Foster provided various cost estimates of the then-pending prescription drug legislation to members of Congress and their staff made CMS's appropriation unavailable for the payment of Mr. Scully's salary.

As agreed, this opinion relies on the factual findings of the Office of Inspector General (OIG) for the Department of Health and Human Services (HHS), who conducted an independent investigation into whether Mr. Foster was prohibited from communicating with congressional offices and whether he was threatened with dismissal if he did so.¹ *Tom Scully and Chief Actuary - Information*, Report of the Office of Inspector General, Department of Health and Human Services, July 1, 2004 (OIG Report). The OIG concluded that CMS did not provide information requested by members of Congress and their staff, that Mr. Scully ordered Mr. Foster not to provide information to members and staff, and that Mr. Scully threatened to sanction Mr. Foster if he made any unauthorized disclosures. OIG Report, at 4.

As we explain below, in our opinion, HHS's appropriation, which was otherwise available for payment of Mr. Scully's salary, was unavailable for such purpose because section 618 of the Consolidated Appropriations Act of 2004 and section 620 of the Consolidated Appropriations Resolution of 2003 prohibit the use of appropriated funds to pay the salary of a federal official who prevents another employee from communicating with Congress.² While the HHS Office of General Counsel and the Office of Legal Counsel for the Department of Justice raised constitutional separation of powers concerns regarding the application of section 618, in our view, absent an opinion from a federal court concluding that section 618 is unconstitutional, we will apply it to the facts of this case.

Background

In December 2003, Congress passed and the President signed into law the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, which added a prescription drug benefit to the Medicare program. Pub. L. No. 108-173, 117 Stat. 2066 (Dec. 8, 2003). During the previous summer and fall as Congress debated various proposals, several members of Congress and committee staff asked Mr. Foster, a career civil servant and the Chief Actuary for CMS, to provide estimates of the cost of various provisions of the Medicare bills under debate.³ OIG Report, at 2-3.

¹ We advised your staff that we would, as appropriate, rely on the factual findings of the OIG. Letters to Senator Frank R. Lautenberg and additional requestors from Gary L. Kepplinger, Deputy General Counsel, GAO, April 15, 2004. In addition, the Office of the Inspector General agreed to allow us access to their investigative workpapers. This opinion is based on the factual findings contained in the OIG Report and the supporting workpapers. While this opinion relies on the factual findings of the OIG, it does not adopt or rely upon any legal conclusions reached by the OIG, HHS, or OLC.

² For ease of reference, we will refer to the identical prohibitions in the Consolidated Appropriations Act of 2004 and the Consolidated Appropriations Resolution of 2003 as "section 618."

³ Congress established the position of Chief Actuary in statute in 1997. Balanced Budget Act, Pub. L. No. 105-33, tit. IV, subtitle G, ch. 4, § 4643, 111 Stat. 487 (Aug. 5, 1997) (codified at 42 U.S.C. § 1317). The statute directs the Chief Actuary to carry out his duties "in accordance with the professional standards of actuarial independence." 42 U.S.C. § 1317(b)(1). The Act also directs that the Chief Actuary is to be appointed based on "education, experience [and] superior expertise in the actuarial sciences" and could be removed "only for cause." *Id.* The Balanced Budget Act conference report cites the long history and tradition of a "close and confidential working relationship" between the Social Security and Medicare actuaries and the congressional committees of jurisdiction. H.R. Conf. Rep. No. 105-217, at 837 (1997). The report then states that the "independence of the Office of the

Members and staff also made requests for technical assistance, including requests that Mr. Foster perform analyses of various provisions of the Medicare legislation. *Id.*

Mr. Foster did not respond to several of these requests because Thomas Scully, CMS Administrator and Mr. Foster's supervisor, stated that there would be adverse consequences if he released any information to Congress without Mr. Scully's approval.⁴ *OIG Report*, at 3. Mr. Foster stated that the first time he felt his job was threatened was in May 2003 when he provided information on private insurance plan enrollment rates to the Majority Staff Director of the House Ways and Means Committee and Mr. Scully rebuked him for doing so. *Id.* Later, on June 4, 2003, at Mr. Scully's request, Mr. Scully's special assistant instructed Mr. Foster not to respond to any requests for information from the House Ways and Means Committee and warned him that "the consequences of insubordination are extremely severe." *Id.* Mr. Foster interpreted this statement to mean that Mr. Scully would terminate his employment at CMS if he released any information to Congress without Mr. Scully's approval.⁵ *Id.* at 4.

The *OIG Report* concluded that, because of Mr. Scully's prohibition, Mr. Foster did not respond to several congressional requests for cost estimates and technical assistance, including requests from the minority staff of the House Ways and Means Committee for the total estimated cost of the legislation and for analyses of premium support provisions in the bill, and requests from Senators Mark Dayton and Edward Kennedy for premium estimates.⁶ *Id.* at 2-3.

There is no indication in the *OIG Report* that Mr. Scully objected to Mr. Foster's methodology or to the validity of his estimates. Rather, Mr. Foster testified before the House Ways and Means Committee that Mr. Scully determined which information to release to Congress on a "political basis." *Board of Trustees 2004 Annual Reports: Hearing Before the House Comm. on Ways and Means*, Federal News Service, Mar. 24, 2004. Furthermore, Mr. Scully never objected to Mr. Foster and his staff performing the analyses required to respond to congressional requests; he simply objected to certain analyses being released to Congress. During the same time period, Mr. Foster provided similar analyses to the Office of Management and Budget.

Actuary with respect to providing assistance to the Congress is vital," and that "reforming the Medicare and Medicaid programs is greatly enhanced by the free flow of actuarial information from the Office of the Actuary to the committees of jurisdiction in the Congress." *Id.* at 837-8.

⁴ HHS paid Mr. Scully's salary during this time period from its "Program Management" appropriations account. Pub. L. No. 108-199, Div. E, tit. II, 188 Stat. 3, 244 (Jan. 23, 2004); Pub. L. No. 108-7, Div. G, tit. II, 117 Stat. 11, 316 (Feb. 20, 2003).

⁵ Third parties also confirmed Mr. Scully's threats. For example, Mr. Scully told the Minority Staff Director for the Ways and Means Subcommittee on Health that he would "fire [Foster] so fast his head would spin" if he released certain information to Congress. *OIG Report*, at 3.

⁶ Senator Max Baucus made a similar request for premium estimates. Mr. Foster stated that Mr. Scully directed him to brief Senator Baucus's staff, but he never received approval to respond to Senators Dayton and Kennedy. *OIG Report*, at 2-3.

Discussion

At issue here is the prohibition on using appropriated funds to pay the salary of a federal official who prohibits or prevents another federal employee from communicating with Congress. Specifically, this prohibition states:

“No part of any appropriation contained in this or any other Act shall be available for the payment of the salary of any officer or employee of the Federal Government, who . . . prohibits or prevents, or attempts or threatens to prohibit or prevent, any other officer or employee of the Federal Government from having any direct oral or written communication or contact with any Member, committee, or subcommittee of the Congress in connection with any matter pertaining to the employment of such other officer or employee or pertaining to the department or agency of such other officer or employee in any way, irrespective of whether such communication or contact is at the initiative of such other officer or employee or in response to the request or inquiry of such Member, committee, or subcommittee.”

Pub. L. No. 108-199, Div. F, tit. VI, § 618, 188 Stat. 3, 354 (Jan. 23, 2004); Pub. L. No. 108-7, Div. J, tit. V, § 620, 117 Stat. 11, 468 (Feb. 20, 2003).

Legislative History of Section 618

The governmentwide prohibition on the use of appropriated funds to pay the salary of any federal official who prohibits or prevents or threatens to prohibit or prevent a federal employee from contacting Congress first appeared in the Treasury and General Government Appropriations Act, 1998, Pub. L. No. 105-61, § 640, 111 Stat. 1272, 1318 (1997). In 1997, the Senate passed a prohibition that applied only to the Postal Service, while the House of Representatives passed a governmentwide prohibition.⁷ The conference report adopted the House version, and a governmentwide prohibition has been included in every Treasury-Postal appropriations act since fiscal year 1998. H.R. Conf. Rep. No. 105-284, at 50, 80 (1997).

This provision has its antecedents in several older pieces of legislation, including the Treasury Department Appropriation Act of 1972, the Lloyd-La Follette Act of 1912, and the Civil Service Reform Act of 1978. The legislative history of these antecedents informs our analysis of section 618 because of the similarity of wording of these provisions and the references that the sponsors of later provisions made to earlier acts.

Prior to fiscal year 1998, the Treasury-Postal appropriations acts annually contained a nearly identical prohibition applying only to the Postal Service. This provision first appeared in the fiscal year 1972 Treasury Department Appropriation Act in response

⁷ Compare S. 1023, 105th Cong. § 506 (1997), with H.R. 2378, 105th Cong. § 505 (1997).

to a 1971 Postal Service directive restricting postal employees' communications with Congress. Pub. L. No. 92-49, § 608 (1971). The Postmaster General's directive, which was printed in the *Congressional Record*, stated that, "In order to avoid the possibility for incorrect information and misinterpretation, it is critical that the Postal Service speak to the Congress with only one voice. Accordingly, I am directing that the Congressional Liaison Office be the sole voice of the Postal Service in communicating with the Congress." 117 Cong. Rec. 151 (1971). The directive spelled out specific procedures to implement this order, and directed postal employees to "immediately cease [any] direct or indirect contacts with congressional officers on matters involving the Postal Service," and in the future, forward any congressional communications to the Liaison Office and coordinate any direct contacts with a congressional office with the Liaison. *Id.* The directive ended with the disclaimer that the new procedures "do not affect the right of any employee to petition, as a private citizen, his U.S. Representative or Senators on his own behalf." 117 Cong. Rec. 152 (1971).

Representative William Ford sponsored this prohibition as an amendment to the 1972 appropriations act. 117 Cong. Rec. 22443 (1971). He complained that the directive declared it a violation of the rules of the Postal Service "for any employee either individually or through his organization to contact any member or any committee" of Congress. *Id.* Representative John Saylor also objected to the directive for "cutting the ties between postal employees and their representatives" and for "abridg[ing] a fundamental right of American citizens." 117 Cong. Rec. 151 (1971). Saylor also cited two newspaper editorials about the directive, which called it a "gag rule" and noted the postal union's concern that the directive violated their constitutional rights to petition Congress. 117 Cong. Rec. 152 (1971). One of the editorials cited the conflict between the directive's order that all employees were to cease contacts with members of Congress and the disclaimer that the directive preserved employees' right to petition Congress. *Id.*

Postmaster General Blount discussed this issue at both the House and Senate Appropriations Committee hearings on the Postal Service's fiscal year 1972 budget request. At the House Appropriations Committee hearing, Representative John Myers asked Blount if it was true that postal employees were prohibited from communicating with their member of Congress under any circumstance. Blount responded that was not the case and noted that his directive simply said "that we are going to centralize our communications with Members of Congress." *Treasury, Post Office, and General Government Appropriations for Fiscal Year 1972, Hearing Before the House Comm. on Appropriations, 92nd Cong. 63 (1971).* He stated, "as a matter of operations and technique . . . we will centralize the requests and problems of Congress in our congressional liaison department and we will then be able to control our responsiveness to the Members." *Id.* Blount also mentioned that it was "very clearly spelled out . . . that all the employees have a constitutional right to petition Members of Congress . . . about their own matters but as far as the Postal Service is concerned, if I am going to be held responsible for it by the Members of Congress and by the American public, I have to have control of it." *Id.*

At the Senate Appropriations Committee hearing, Senator Joseph Montoya complained that prior to the directive, members of Congress "could call the Postal

Department on any matter involving a constituent and get a ready answer from the Department . . . [but now] if we have an inquiry to the regional office or to a local postmaster, they must refer it straight to Washington under this regulation and it causes unnecessary delay.” *Treasury, Post Office, and General Government Appropriations for Fiscal Year 1972, Hearing Before the Senate Comm. on Appropriations*, 92nd Cong. 1435 (1971). Senator Montoya added, “I can call any other department in the Government and call the man in charge, the man at the wheel, and he will give me an answer. But I can’t do this with the Post Office Department.” *Id.* at 1438.

Blount responded to such criticisms, “It is difficult to control our responses [to members of Congress] if these responses go out from some 30,000 post offices around the country.” *Id.* at 1435. He stated that the Post Office “is a vast department . . . and it is difficult to be certain that our replies always comply with the policies of the Postal Service, and that is the reason we took this action.” *Id.* at 1438. Blount emphasized again that the directive “has to do with the official postal matters only . . . and has nothing to do with the employees’ rights to contact Members of Congress. We so stated in the regulation itself . . . [but] it has been misinterpreted by others.” *Id.* at 1435. Senator Montoya concluded his questioning about the directive by stating his intention to add language to the Postal appropriations committee report that would prohibit the Post Office from restricting its employees from communicating with members of Congress. *Id.* at 1439.

In introducing his amendment to the 1972 Treasury Department Appropriation Act, Representative Ford noted that “the law that this amendment attempts to enforce has been on the books . . . since 1912.” 117 Cong. Rec. 22443 (1971). Ford was referring to a provision in the fiscal year 1913 Post Office Appropriation Bill, commonly known as the Lloyd-La Follette Act, that states, “The right of persons employed in the civil service of the United States, either individually or collectively, to petition Congress, or any Member thereof, or to furnish information to either House of Congress, or to any committee or member thereof, shall not be denied or interfered with.” Post Office Appropriation Act, Pub. L. No. 336, ch. 389 § 6, 66 Stat. 539, 540 (Aug. 24, 1912). The committee report accompanying the House version of the bill stated that the provision was intended to “protect employees against oppression and in the right of free speech and the right to consult their Representatives.” H.R. Rep. No. 62-388, at 7 (1912).

Congress enacted the Lloyd-La Follette Act in response to two executive orders issued by Presidents Theodore Roosevelt and Howard Taft. Several congressmen referred to these orders as “gag rules” and quoted the text of the orders in the *Congressional Record*.⁸ Both the House and the Senate had a vigorous floor debate

⁸ See, e.g., 48 Cong. Rec. 4513 (1912). President Roosevelt’s executive order reads as follows: “All officers and employees of the United States of every description, serving in or under any of the executive departments or independent Government establishments, and whether so serving in or out of Washington, are hereby forbidden, either directly or indirectly, individually or through associations, to solicit an increase of pay or to influence or attempt to influence in their own interest any other legislation whatever, either before Congress or its committees, or in any way save through the heads of the departments or independent Government establishments in or under which they serve, on penalty of dismissal from the Government service.” Exec. Order No. 1142 (1906). President Taft’s order reads as follows: “It is hereby ordered that no bureau, office, or division chief, or subordinate in any

on this provision, as well as a related section of the bill allowing postal employees the right to unionize.⁹ The majority of the debate focused on preserving the constitutional rights of federal employees.¹⁰ Representative Thomas Reilly stated his opposition to the gag order because it prevented federal employees from “uttering any word of complaint even against the most outrageous treatment.” 48 Cong. Rec. 4656 (1912). He hoped that the Act would ensure the rights of employees to discuss “conditions of employment, hours of labor, and matters affecting the working and sanitary conditions surrounding their employment” with Congress.¹¹ *Id.*

Members of Congress also raised concerns that the executive orders would foreclose an important source of information for Congress. As Senator James Reed stated, the executive orders instructed federal employees “not [to], even at the demand of Congress or a committee of Congress or a Member of Congress, supply information in regard to the public business.” 48 Cong. Rec. 10673 (1912). Representative James Lloyd argued that the representatives of the American people “should have the right to inquire as to any of the conditions of government and the method of conducting any line of departmental business.” 48 Cong. Rec. 5634 (1912).

Other members of Congress disagreed and argued that the provision would undermine discipline in the Postal Service.¹² However, after a lengthy debate Congress approved the Lloyd-La Follette Act, and the President signed it into law as part of the Post Office Appropriation Act. Pub. L. No. 336, 66 Stat. 539 (Aug. 24,

department of the Government, and no officer of the Army or Navy or Marine Corps stationed in Washington, shall apply to either House of Congress, or to any committee of either House of Congress, or to any Member of Congress, for legislation, or for appropriations, or for congressional action of any kind, except with the consent and knowledge of the head of the department; nor shall any such person respond to any request for information from either House of Congress, or any committee of either House of Congress, or any Member of Congress, except through, or as authorized by, the head of his department.” Exec. Order No. 1514 (1909).

⁹ See 48 Cong. Rec. 4512-3, 4656-7, 4738-9, 5223-4, 5235-6, 5633-6, 10670-7, 10728-33, 10793-804 (1912).

¹⁰ See, e.g., 48 Cong. Rec. 4513 (1912) (statement of Rep. Gregg) (stating that the provision was “intended to protect employees against oppression and in the right of free speech and the right to consult their representatives”); 48 Cong. Rec. 5635 (1912) (statement of Rep. Goldfogle) (stating that “[w]hether the citizen holds office under the Government or not, his right to petition for a redress of grievances should not, and constitutionally speaking, can not be interfered with”).

¹¹ Several congressmen spoke about the dangerous working conditions faced by railway mail clerks and emphasized that the provision would ensure that such conditions were brought to the attention of Congress. See, e.g., 48 Cong. Rec. 10671(1912) (statement of Sen. Ashurst) (quoting an article from *La Follette’s Weekly*); 48 Cong. Rec. 10674 (1912) (statement of Sen. Warren).

¹² See, e.g., 48 Cong. Rec. 100676 (1912) (statement of Senator Bourne) (stating that “the right of the individual employee to go over the head of his superior . . . on matters appertaining to his own particular grievances, or for his own selfish interest, would be detrimental to the service itself . . . [and] would absolutely destroy the discipline necessary for good service”). The Senate Appropriations Committee also disapproved of the provision. S. Rep. No. 62-955, at 21 (1912) (stating that “good discipline and the efficiency of the service requires that [federal employees] present their grievances through the proper administrative channels”).

1912). In 1978, a nearly identical version of the Lloyd-La Follette Act was enacted as part of the Civil Service Reform Act. Pub. L. No. 94-454, 92 Stat. 1138, 1217 (Oct. 13, 1978) (codified at 5 U.S.C. § 7211).¹³

Congress expressed many of the same concerns that surrounded enactment of the Lloyd-La Follette Act during debate surrounding the whistleblower provisions in the Civil Service Reform Act, which prohibit federal agencies from taking any personnel action in response to a federal employee's disclosure of a violation of law, gross mismanagement, a gross waste of funds, an abuse of authority, or a danger to public health or safety. 5 U.S.C. § 2302(b)(8). For example, the Senate Committee on Governmental Affairs noted:

“Federal employees are often the source of information about agency operations suppressed by their superiors. Since they are much closer to the actual working situation than top agency officials, they have testified before Congress, spoken to reporters, and informed the public . . . Mid-level employees provide much of the information Congress needs to evaluate programs, budgets, and overall agency performance.”

Senate Comm. on Governmental Affairs, 95th Cong., *The Whistleblowers*, 40 (Comm. Print 1978). These concerns led to the enactment of the first whistleblower protections and the codification of the Lloyd-La Follette Act. Civil Service Reform Act of 1978, Pub. L. No. 95-454, §§ 2302, 7211, 92 Stat. 1217 (Oct. 13, 1978).

Application of the Prohibition to the Inspector General's Findings

As noted above, section 618 prohibits an agency from paying the salary of any federal officer or employee who prohibits or prevents, or threatens to prohibit or prevent, another officer or employee from communicating with members, committees or subcommittees of Congress. The OIG report concluded that Mr. Scully both prohibited and threatened to prohibit Mr. Foster from communicating with various members of Congress and congressional committees on issues that pertained to his agency and his professional responsibilities. OIG Report, at 4. In May 2003, Mr. Scully rebuked Mr. Foster for providing information requested by the Majority Staff Director for the House Ways and Means Committee. *Id.* at 3. In June 2003, Mr. Scully's special assistant, pursuant to Mr. Scully's direction, instructed Mr. Foster not to respond to any requests for information from the House Ways and Means Committee. Because of Mr. Scully's actions, we view HHS's appropriation as unavailable to pay his salary. Pub. L. No. 108-199, Div. F, tit. VI, § 618, 188 Stat. 3, 354 (Jan. 23, 2004); Pub. L. No. 108-7, Div. J, tit. V, § 620, 117 Stat. 11, 468 (Feb. 20, 2003).

¹³ Section 7211 states: “The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.” There are no federal judicial decisions interpreting section 7211, aside from cases ruling that it does not imply a private cause of action, *Nixon v. Fitzgerald*, 457 U.S. 731 (1981), and that it does not apply to government contractors, *Bordell v. General Electric Co.*, 732 F. Supp. 327 (1990).

As the legislative history of section 618 demonstrates, Congress intended to advance two goals: to preserve the First Amendment rights of federal employees and to ensure that Congress had access to programmatic information from frontline employees. Mr. Scully's actions implicate the latter of these goals. Congressional offices had asked Mr. Foster for information and for technical and analytic assistance that concerned the cost and impact of proposed Medicare legislation under debate in both the House and the Senate. OIG Report, at 2-3. Many members considered such information critical to their consideration of the Medicare Prescription Drug, Improvement, and Modernization Act, a historic piece of legislation with significant implications for federal fiscal policy.¹⁴ This information is a prime example of the programmatic information from frontline federal employees upon which Congress focused in enacting the Lloyd-La Follette Act and its subsequent incarnations.

According to the OIG's findings, congressional offices were interested in the total estimated cost of the legislation, premium estimates, the data underlying certain premium estimates, and a technical analysis of the premium support provisions in the Medicare legislation. OIG Report, at 2-3. This information was typical of the regular, ordinary work product of Mr. Foster and the Office of the Chief Actuary, and as the frontline employee, he was competent to provide the information to Congress. *See* H.R. Conf. Rep. No. 105-217, at 837 (1997) (stating that the actuary has an important role in "developing estimates of the financial effects of potential legislative and administrative changes in the Medicare and Medicaid programs"). Mr. Foster was more knowledgeable about the estimates than other officials within HHS and thus was able to provide information so that Congress could evaluate the Medicare program and budget. *See* Senate Comm. on Governmental Affairs, 95th Cong., *The Whistleblowers*, 40 (Comm. Print 1978).

Thus, the legislative history of section 618 and its predecessors suggest that Mr. Scully's bar on Mr. Foster responding to congressional requests is a prime example of what Congress was attempting to prohibit by those provisions. Accordingly, Mr. Scully's actions fall squarely within section 618, and HHS's appropriation was unavailable for the payment of his salary.

Constitutional Issues Raised by HHS and OLC

While the OIG Report concluded that Mr. Scully had indeed threatened Mr. Foster if he communicated with Congress, it also contained in its attachments, legal opinions by the HHS Office of General Counsel and by the Office of Legal Counsel (OLC) for the Department of Justice. Memo from Katherine M. Drews, Associate General Counsel, HHS, to Lewis Morris, Counsel, HHS OIG, May 12, 2004 (Drews Memo); Letter from Jack L. Goldsmith III, Assistant Attorney General, to Alex M. Azar II, General Counsel, HHS, May 21, 2004 (Goldsmith Letter). These legal opinions state that the application of section 618 to the present case would be unconstitutional. Drews Memo, at 3-5; Goldsmith Letter, at 2-4.

¹⁴ *See, e.g.*, 150 Cong. Rec. S2761 (daily ed. Mar. 12, 2004) (statement of Senator Tom Daschle); 150 Cong. Rec. S3911-2 (daily ed. Apr. 7, 2004) (statement of Senator Bob Graham).

Laws passed by Congress and signed by the President come to us with a heavy presumption in favor of their constitutionality.¹⁵ B-300192, Nov. 13, 2002. We have long observed that it is not our role to adjudicate the constitutionality of duly enacted legislation. B-245028.2, June 4, 1992; B-215863, July 26, 1984. We apply the laws as we find them absent a controlling judicial opinion that such laws are unconstitutional. B-300192, Nov. 13, 2002. Indeed, even in such cases, we will construe a statute narrowly to avoid constitutional issues. *Id.* Here, no court has found section 618 or its predecessors unconstitutional. Likewise, the courts have never held unconstitutional the Whistleblower Protection Act, which authorizes federal employees to disclose violations of law, gross mismanagement, the gross waste of funds, abuses of authority, and threats to public health or safety. 5 U.S.C. § 2302(b)(8).

HHS and OLC first argue that section 618 is unconstitutional because it could force the disclosure of privileged, classified, or deliberative information. Drews Memo, at 4-5; Goldsmith Letter, at 2-3. Constitutional concerns could be raised if Congress were to attempt to force the disclosure of classified or national security information, given the President's role as Commander in Chief.¹⁶ However, Mr. Foster was not asked for classified information.

Similarly, Mr. Foster was not asked for information subject to a claim of deliberative process privilege.¹⁷ To invoke the deliberative process privilege, the material must be both pre-decisional and deliberative, requirements that stem from the privilege's purpose of granting officials the freedom "to debate alternative approaches in private." *In re: Sealed Case*, 121 F.3d 729, 737 (D.C. Cir. 1997). The deliberative process privilege does not apply to the information requested of Mr. Foster because it was neither pre-decisional nor deliberative. The Administration had already formulated its Medicare prescription drug plan and had released it to the public and to the Congress in March 2003. *See Framework to Modernize and Improve Medicare*, White House Fact Sheet, March 4, 2003. Thus, the information requested from Mr. Foster in June through November 2003, which involved cost estimates and data formulated after the Administration's release of its Medicare plan, was not part of the

¹⁵ The Supreme Court also begins with the presumption that a statute is constitutional. *See, e.g., United States v. Morrison*, 529 U.S. 598, 607 (2000) (holding that "due respect for the decisions of a coordinate branch of Government demands that we invalidate a congressional enactment only upon a plain showing that Congress has exceeded its constitutional bounds").

¹⁶ *See Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988) (stating that the Constitution grants the President authority to classify and control access to national security information); *National Fed'n of Fed. Employees v. United States*, 688 F. Supp. 671 (D.D.C. 1988), *vacated and remanded*, *American Foreign Serv. Ass'n v. Garfinkel*, 490 U.S. 153 (1989); Memorandum Opinion for the General Counsel, Central Intelligence Agency, *Access to Classified Information*, OLC Opinion (Nov. 26, 1996) (asserting that granting individual federal employees the right to disclose intelligence and other national security information would threaten the President's constitutional role as Commander in Chief).

¹⁷ Traditionally, courts have allowed the executive branch to withhold documents from the public and in litigation that would reveal advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated. *In re: Sealed Case*, 121 F.3d 729, 737 (D.C. Cir. 1997) (addressing scope of privilege in context of grand jury investigation).

deliberative process for the Administration's proposal. Furthermore, some of the information that Mr. Scully prohibited Mr. Foster from communicating to congressional offices, including the House Ways and Means Committee's request of June 13, 2003, for an analysis of the premium support provisions, was not preexisting data. Such information cannot be considered deliberative because the analysis was not preexisting nor was it tied to any decision-making process at CMS. Thus, HHS's and OLC's arguments that section 618 is unconstitutional because it could force the disclosure of classified or privileged information are inapplicable to the facts of this case.

HHS and OLC also argue that section 618 unconstitutionally limits the President's ability to supervise and control the work of subordinate officers and employees of the executive branch. Drews Memo, at 4-5; Goldsmith Letter, at 2-3. In making this argument, HHS and OLC fail to balance the President's constitutional interest in managing the official communications of the executive branch with Congress's equally important need for information in order to carry out its legislative and oversight responsibilities. As OLC itself has recognized, Congress has "important oversight responsibilities and a corollary interest in receiving information [from federal employees] that enables it to carry out those responsibilities." *Whistleblower Protections For Classified Disclosures: Hearing Before the House Permanent Select Committee on Intelligence*, 105th Cong. (May 20, 1998) (statement of Randolph Moss, Deputy Assistant Attorney General, Office of Legal Counsel). As the Attorney General has pointed out, Congress's interest in obtaining information from the executive branch is strongest when "specific legislative proposals are in question." 43 Op. Att'y Gen. 327 (Oct. 13, 1981).

HHS and OLC have overstated section 618's threat to the President's constitutional prerogatives.¹⁸ Executive agencies have the right to designate official spokesmen for the agency and institute policies and procedures for the release of agency information and positions to Congress and the public.¹⁹ Separation of powers concerns could be raised if Congress, by legislation, were to dictate to the executive branch who should communicate the official positions of the Administration, given the President's constitutional duty to "recommend to [Congress's] consideration such measures as he shall judge necessary and expedient."²⁰ U.S. Const. Art. II, § 3.

¹⁸ Section 618 does not prohibit agencies from requiring their employees to report on their communications with Congress and from requesting that agency congressional liaisons be included in employees' discussions with Congress, nor does it require executive branch employees to initiate congressional contacts or even to respond to congressional inquiries.

¹⁹ For example, section 301 of Title 5, U.S. Code, commonly known as the Housekeeping Statute, delegates to the head of an agency the right to prescribe regulations for "the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property." However, the Housekeeping Statute is explicit in that it does not "authorize withholding information from the public." This second sentence of § 301 was added in 1958 because Congress was concerned that the statute had been "twisted from its original purpose as a 'housekeeping statute' into a claim of authority to keep information from the public and, even, from the Congress." H.R. Rep. No. 85-1461 (1958).

²⁰ See also *Authority of the Special Counsel of the Merit Systems Protection Board to Litigate and Submit Legislation to Congress*, 8 Op. Off. Legal Counsel 30 (Feb. 22, 1984) (asserting that requiring an executive branch agency to submit legislative proposals directly to Congress without Presidential

Federal agencies and employees making separate legislative recommendations to Congress, without coordination with the President, could interfere with the President's constitutional duty, on behalf of the executive branch, to judge which proposals are "necessary and expedient" and make such recommendations to Congress. 8 Op. Off. Legal Counsel 30. Designating an official agency or executive branch spokesman would be entirely appropriate in the case of legislative recommendations or a statement of the Administration's official positions. However, Mr. Foster was not asked for a CMS policy position or legislative recommendation, but rather for specific and limited technical assistance.²¹

Thus, while certain applications of section 618 could raise constitutional concerns, application of section 618 to the facts of this case does not raise such concerns, because Mr. Foster was asked for estimates, technical assistance, and data, rather than any information which could be considered privileged.²² Furthermore, Congress was considering extensive changes to Medicare, and members requested cost estimates and analyses to inform debate on this legislation and to carry out the legislative powers vested by the Constitution. U.S. Const. Art. I, § 1. Indeed, if some of the Chief Actuary's estimates had been disclosed in a timely matter, Congress would have had better information on the magnitude of the legislation it was considering and its possible effect on the nation's fiscal health.²³

Mr. Scully's prohibitions, therefore, made HHS's appropriation, otherwise available for payment of his salary, unavailable for such purpose, because his actions are covered by section 618 of the Consolidated Appropriations Act of 2004 and section 620 of the Consolidated Appropriations Resolution of 2003. Because HHS was prohibited from paying Mr. Scully's salary after he barred Mr. Foster from communicating with Congress, HHS should consider such payments improper.²⁴

review would be unconstitutional); *Constitutionality of Statute Requiring Executive Agency to Report Directly to Congress*, 6 Op. Off. Legal Counsel 632 (Nov. 5, 1982) (asserting that requiring an executive branch agency to submit budget requests or legislative proposals directly to Congress without presidential review would be unconstitutional).

²¹ Indeed, the two OLC opinions cited in the Goldsmith Letter (and cited in the prior footnote) deal with budget or legislative proposals and thus are inapplicable to the present case.

²² OLC admits in its opinion that it did not review the specific information requested of Mr. Foster and thus "cannot opine on the privileged status" of the information.

²³ See, e.g., GAO, *Fiscal Year 2003 U.S. Government Financial Statements: Sustained Improvement in Federal Financial Management Is Crucial to Addressing Our Nation's Future Fiscal Challenges*, GAO-04-477T (March 3, 2004) (describing the drug benefit as "one of the largest unfunded commitments ever undertaken by the federal government").

²⁴ Section 618 and the legislative history surrounding similar provisions provide no guidance as to what time period an agency is prohibited from paying the salary of an official who prohibits a federal employee from contacting Congress. Federal salaries are obligated when earned and are earned on a biweekly pay period basis. See 24 Comp. Gen. 676, 678 (1945) and 5 U.S.C. § 5504. Given the continuing nature of Mr. Scully's prohibition, we recommend that HHS treat as an improper payment Mr. Scully's salary beginning with the pay period when his initial prohibition to Mr. Foster was made until his departure from CMS.

Therefore, we recommend that HHS seek to recover these payments, as required by 31 U.S.C. § 3711.²⁵

Conclusion

As a result of Mr. Scully's prohibition on Mr. Foster providing certain information to Congress, HHS's appropriation was unavailable to pay Mr. Scully's salary because section 618 of the Consolidated Appropriations Act of 2004 and section 620 of the Consolidated Appropriations Resolution of 2003 bar HHS from using appropriated funds to pay the salary of an official who prohibited another federal employee from communicating with Congress on an issue related to his agency. While certain applications of section 618 could raise constitutional concerns, we have applied the prohibition to the present facts, given the narrow scope of information requested and Congress's need for such information in carrying out its legislative duties, as well as the fact that no court has held section 618 unconstitutional.

Sincerely yours,

Anthony H. Gamboa
General Counsel

²⁵ HHS should keep the House and Senate Appropriations Committees, as well as its oversight committees, apprised of the actions it takes to recover these improper payments.

From: Torres, John A.
Sent: ~~Employee 3~~ Tuesday, March 17, 2011 7:09:19 PM
To: McMahon, William G.
Subject:

6274

Sir - Answer to both questions after asking each group is negative.

NOTICE: This e-mail message and any attached files are intended solely for the use of the addressee(s) named above in connection with official business. This communication may contain Sensitive But Unclassified information that may be statutorily or otherwise prohibited from being released without appropriate approval. Any review, use, or dissemination of this e-mail message and any attached file(s) in any form outside of the Bureau of Alcohol, Tobacco, Firearms & Explosives or the Department of Justice without express authorization is strictly prohibited.

ATF8-001-001-00019408

SUBPOENA

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA

Kenneth E. Melson, Acting Director, Bureau of Alcohol, Tobacco, Firearms and Explosives *SERVE: Faith To*
Burton, U.S. Dep't of Justice

You are hereby commanded to be and appear before the Committee on Oversight and Government Reform

of the House of Representatives of the United States at the place, date and time specified below.

- to testify touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____		
Date: _____	Time: _____	

- to produce the things identified on the attached schedule touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production: <u>2157 Rayburn House Office Building, Washington, DC 20515</u>		
Date: <u>April 13, 2011</u>	Time: <u>5:00 p.m.</u>	

To Any authorized staff member

_____ to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States,
at the city of Washington, this 31st day of March, 2011.

Attest: Karen P. New
Clerk

[Signature]
Chairman or Authorized Member

PROOF OF SERVICE

Subpoena for Kenneth E. Melson, Acting Director, Bureau of Alcohol, Tobacco, Firearms and Explosives SERVE: Faith Burton, U.S. Dep't of Justice

Address U.S. Department of Justice, 950 Pennsylvania Avenue, NW

Washington, DC 20530

before the Committee on Oversight and Government Reform

U.S. House of Representatives
112th Congress

Served by (print name) Steve Castor

Title Chief Counsel, Investigations

Manner of service _____

Date _____

Signature of Server _____

Address 2157 Rayburn House Office Building

Washington, DC 20515

SCHEDULE

In accordance with the attached schedule instructions, produce all documents in unredacted form described below:

1. Documents and communications relating to the genesis of Project Gunrunner and Operation Fast and Furious, and any memoranda or reports involving any changes to either program at or near the time of the release of the Department of Justice (DOJ) Office of the Inspector General report about Project Gunrunner in November 2010.
2. Documents and communications relating to individuals responsible for authorizing the decision to “walk” guns to Mexico in order to follow them and capture a “bigger fish.”
3. Documents and communications relating to any investigations conducted by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) or any other DOJ component following the fatal shooting of Agent Brian Terry, including information pertaining to two guns found at the crime scene that may have been connected to Project Gunrunner.
4. Documents and communications relating to any weapons recovered at the crime scene or during the investigation into the death of Agent Brian Terry.
5. Documents and communications between ATF and the Federal Firearms Licensee (FFL) who sold weapons to Jaime Avila, including any Report of Investigation (ROI) or other records relating to a December 17, 2009 meeting “to discuss his role as an FFL during this investigation.”
6. A copy of the presentation, approximately 200 pages long, that the Group 7 Supervisor made to officials at ATF headquarters in the spring of 2010.
7. Documents and communications relating to Operation Fast and Furious between and among ATF headquarters and Special Agent in Charge William D. Newell, Assistant Special Agents in Charge Jim Needles and George Gillette, Group Supervisor David Voth, or any Case Agent from November 1, 2009 to the present. The response to this component of the subpoena shall include a memorandum, approximately 30 pages long, from SAC Newell to ATF headquarters following the arrest of Jaime Avila and the death of Agent Brian Terry.
8. Documents and communications relating to complaints or objections by ATF agents about: (1) encouraging, sanctioning, or otherwise allowing FFLs to sell firearms to known or suspected straw buyers, (2) failure to maintain surveillance on known or suspected straw buyers, (3) failure to maintain operational control over weapons purchased by known or suspected straw buyers, or (4) letting known or suspected straw buyers with American guns enter Mexico.

Schedule Instructions

1. In complying with this subpoena, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Subpoenaed records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this subpoena has been, or is also known by any other name than that herein denoted, the subpoena shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this subpoena shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the subpoena was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.

10. If any of the subpoenaed information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the subpoena cannot be made in full, compliance shall be made to the extent possible and shall include an explanation of why full compliance is not possible.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this subpoena was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this subpoena referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the subpoena, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
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5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
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Office of the Attorney General
Washington, D. C. 20530

May 17, 2000

The Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This responds to the Committee's subpoena, received on May 12, 2000, seeking certain Department records relating to Loral Space and Communications Ltd. ("Loral") and Hughes Electronics Corporation ("Hughes"). We intend to cooperate fully with the part of the subpoena seeking documents on the *closed* investigation of the Campaign Finance Task Force ("CFTC") regarding the Presidential waiver in 1998 to permit Loral to export a satellite to the Peoples' Republic of China ("PRC"). We cannot, however, comply with the part of the subpoena seeking the files of the United States Attorney's Office for the District of Columbia ("U.S. Attorney's Office") for its *open* criminal investigation into the separate matter of the role Loral and Hughes played in a possible technology transfer to the PRC in 1996 following the failure of a satellite launch from the PRC earlier that year.*

Providing *open* criminal investigative files to Congress would undermine public and judicial confidence in the criminal justice process and would be in complete contravention of the Department's policy of declining congressional requests for non-public information about pending investigations. This policy is neither new nor partisan. It is based on the longstanding belief of top Department officials, both Democrat and Republican alike, that the Department's ability to discharge its responsibilities for the fair administration of justice would

* The closed CFTC investigation and the open U.S. Attorney's Office investigation have always been completely separate. The U.S. Attorney's investigation is directed only towards the possible technology transfer in 1996 and not to any matters concerning the 1998 waiver or the possible impact of campaign contributions on the granting of waivers to launch satellites or on which agency should have jurisdiction over licensing decisions for satellite launches. The Department has already provided the Committee with more than 400 pages of documents relating to the CFTC investigation, including all documents we have identified that are responsive to subparagraph B of the Committee's subpoena, and we are continuing to search for responsive documents.

be compromised by the disclosure to Congress of open investigative files. Almost 60 years ago, Attorney General Robert H. Jackson, relying on positions taken by many of his predecessors, informed Congress that:

It is the position of the Department, restated now with the approval of and at the direction of the President, that all investigative reports are confidential documents of the executive department of the Government, to aid in the duty laid upon the President by the Constitution to "take care that the Laws be faithfully executed," and that congressional or public access to them would not be in the public interest.

Position of the Executive Department Regarding Investigative Reports, 40 Op. Att'y. Gen. 45, 46 (1941) ("Jackson Op.").

The rationale underlying this policy was further explicated in a 1986 published opinion of the Office of Legal Counsel ("OLC") issued by Charles J. Cooper, OLC's Assistant Attorney General during part of the Reagan Administration. See Response to Congressional Requests for Information Regarding Decisions made Under the Independent Counsel Act, 10 Op. O.L.C. 68, 76-77 (1986). Mr. Cooper noted in his opinion that providing a congressional committee with confidential information about active criminal investigations would place the Congress in a position to exert pressure or attempt to influence the prosecution of criminal cases. *Id.* at 76, citing Memorandum for Edward L. Morgan, Deputy Counsel to the President, from Thomas E. Kauper, Deputy Assistant Attorney General, OLC, Re: Submission of Open CID Investigation Files, at 2 (Dec. 19, 1969) ("[T]he Executive cannot effectively investigate if Congress is, in a sense, a partner in the investigation. If a congressional committee is fully apprised of all details of an investigation as the investigation proceeds, there is a substantial danger that congressional pressures will influence the course of the investigation."). Moreover, providing open investigative files in response to a congressional subpoena could give rise to a claim, by defense counsel or others, of improper congressional influence over the criminal justice process should it turn out that an indictment was returned in the matter after Congress had obtained access to the files.

The danger of such congressional influence was one of the principal reasons the Framers of the Constitution enshrined the concept of the separation of powers in the Constitution. The Framers of the Constitution regarded the combination of the powers of government as "the very definition of tyranny." *The Federalist No. 47*, at 301 (Madison) (Clinton Rossiter ed., 1961). They were particularly concerned about the threat of combining the power to legislate and the power to execute the law. They agreed with Montesquieu that "there can be no liberty" "[w]hen the legislative and executive powers are united in the same person or body." *Id.* at 303.

The disclosure of the files of the U.S. Attorney's Office's open criminal investigation, which is apparently what is sought by the Committee's subpoena, would be extremely damaging

from a law enforcement perspective as well. Such a disclosure would reveal the investigative reports and other evidence that has been collected in the investigation, as well as the internal documents setting out investigative strategies and plans. These materials would provide a "road map" of the ongoing investigation to the targets of the investigation and to anyone else with access to them. As Attorney General Jackson observed:

Disclosure of the [law enforcement] reports could not do otherwise than seriously prejudice law enforcement. Counsel for a defendant or a prospective defendant, could have no greater help than to know how much or how little information the Government has, and what witnesses or sources of information it can rely upon. This is exactly what these reports are intended to contain.

Jackson Op. at 46.

The Committee's subpoena would also require the Department to produce grand jury material covered by the non-disclosure provision of Rule 6(e) of the Federal Rules of Criminal Procedure. As you know, the production of any such material would be in violation of the law. Thus, while we would obviously remove grand jury material from the scope of any production, the remaining documents that were responsive to the Committee's subpoena would still provide a "road map" of a portion of the Department's criminal investigation.

We have received no statement on behalf of the Committee as to why it believes it has a need for documents relating to this ongoing criminal investigation. We understand that proponents of the subpoena may contend that the U.S. Attorney's Office is not investigating quickly enough, or that it does not intend to seek an indictment even if the evidence and Principles of Federal Prosecution support one. This speculation is entirely without merit, as the U.S. Attorney's letters to Senator Specter, dated April 21 and May 10, 2000, have previously explained. In any event, the Framers sought to avoid such contemporaneous second-guessing of the executive branch by the legislative branch through the separation of powers principle. In light of that principle and the dangers to the criminal justice system it is designed to forestall, we cannot conceive of any interest that would justify providing the files of an ongoing criminal investigation to Congress.

In closing, I appreciate the fact that you have expressed a willingness to consider an accommodation "for structuring the production of the open case materials so as to have as little impact on the open case as possible." When it comes to *ongoing* criminal investigations, however, I do not believe that an accommodation along the lines you might envision is possible

that would not do violence to the paramount interests set forth above. Nonetheless, as always, I would be happy to discuss this matter with you further and consider alternative ways of satisfying your oversight needs.

Sincerely,

A handwritten signature in black ink, appearing to read "Janet Reno", written in a cursive style.

Janet Reno

cc: Honorable Arlen Specter
Honorable Robert G. Torricelli
Honorable Charles E. Grassley

SUBPOENA

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA

Kenneth E. Melson, Acting Director, Bureau of Alcohol, Tobacco, Firearms and Explosives *SERVE: Faith*
To Burton, U.S. Dep't of Justice

You are hereby commanded to be and appear before the Committee on Oversight and Government Reform

of the House of Representatives of the United States at the place, date and time specified below.

- to testify** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____		
Date: _____	Time: _____	

- to produce the things identified on the attached schedule** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production: <u>2157 Rayburn House Office Building, Washington, DC 20515</u>		
Date: <u>April 13, 2011</u>	Time: <u>5:00 p.m.</u>	

To Any authorized staff member

_____ to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States,
at the city of Washington, this 31st day of March, 2011.

Attest: *Karen P. New*
Clerk

[Signature]
Chairman or Authorized Member

PROOF OF SERVICE

Subpoena for Kenneth E. Melson, Acting Director, Bureau of Alcohol, Tobacco, Firearms and Explosives SERVE: Faith Burton, U.S. Dep't of Justice

Address U.S. Department of Justice, 950 Pennsylvania Avenue, NW

Washington, DC 20530

before the Committee on Oversight and Government Reform

U.S. House of Representatives
112th Congress

Served by (print name) Steve Castor

Title Chief Counsel, Investigations

Manner of service _____

Date _____

Signature of Server _____

Address 2157 Rayburn House Office Building

Washington, DC 20515

SCHEDULE

In accordance with the attached schedule instructions, produce all documents in unredacted form described below:

1. Documents and communications relating to the genesis of Project Gunrunner and Operation Fast and Furious, and any memoranda or reports involving any changes to either program at or near the time of the release of the Department of Justice (DOJ) Office of the Inspector General report about Project Gunrunner in November 2010.
2. Documents and communications relating to individuals responsible for authorizing the decision to “walk” guns to Mexico in order to follow them and capture a “bigger fish.”
3. Documents and communications relating to any investigations conducted by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) or any other DOJ component following the fatal shooting of Agent Brian Terry, including information pertaining to two guns found at the crime scene that may have been connected to Project Gunrunner.
4. Documents and communications relating to any weapons recovered at the crime scene or during the investigation into the death of Agent Brian Terry.
5. Documents and communications between ATF and the Federal Firearms Licensee (FFL) who sold weapons to Jaime Avila, including any Report of Investigation (ROI) or other records relating to a December 17, 2009 meeting “to discuss his role as an FFL during this investigation.”
6. A copy of the presentation, approximately 200 pages long, that the Group 7 Supervisor made to officials at ATF headquarters in the spring of 2010.
7. Documents and communications relating to Operation Fast and Furious between and among ATF headquarters and Special Agent in Charge William D. Newell, Assistant Special Agents in Charge Jim Needles and George Gillette, Group Supervisor David Voth, or any Case Agent from November 1, 2009 to the present. The response to this component of the subpoena shall include a memorandum, approximately 30 pages long, from SAC Newell to ATF headquarters following the arrest of Jaime Avila and the death of Agent Brian Terry.
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2. In the event that any entity, organization or individual denoted in this subpoena has been, or is also known by any other name than that herein denoted, the subpoena shall be read also to include that alternative identification.
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SUBPOENA

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To Burton, U.S. Dep't of Justice

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Witness my hand and the seal of the House of Representatives of the United States,
at the city of Washington, this 31st day of March, 2011.

Attest: Karen P. Shaw
Clerk

[Signature]
Chairman or Authorized Member

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Address U.S. Department of Justice, 950 Pennsylvania Avenue, NW

Washington, DC 20530

before the Committee on Oversight and Government Reform

U.S. House of Representatives
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Served by (print name) Steve Castor

Title Chief Counsel, Investigations

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4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.

SUBPOENA

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA

Kenneth E. Melson, Acting Director, Bureau of Alcohol, Tobacco, Firearms and Explosives *SERVE: Faith To*
Burton, U.S. Dep't of Justice

You are hereby commanded to be and appear before the Committee on Oversight and Government Reform

of the House of Representatives of the United States at the place, date and time specified below.

- to testify touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____
Date: _____ Time: _____

- to produce the things identified on the attached schedule touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production: 2157 Rayburn House Office Building, Washington, DC 20515
Date: April 13, 2011 Time: 5:00 p.m.

To Any authorized staff member

_____ to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States,
at the city of Washington, this 31st day of March, 2011.

Attest: Karen P. New
Clerk

[Signature]
Chairman or Authorized Member

PROOF OF SERVICE

Subpoena for Kenneth E. Melson, Acting Director, Bureau of Alcohol, Tobacco, Firearms and Explosives SERVE: Faith Burton, U.S. Dep't of Justice

Address U.S. Department of Justice, 950 Pennsylvania Avenue, NW

Washington, DC 20530

before the Committee on Oversight and Government Reform

U.S. House of Representatives
112th Congress

Served by (print name) Steve Castor

Title Chief Counsel, Investigations

Manner of service _____

Date _____

Signature of Server _____

Address 2157 Rayburn House Office Building

Washington, DC 20515

SCHEDULE

In accordance with the attached schedule instructions, produce all documents in unredacted form described below:

1. Documents and communications relating to the genesis of Project Gunrunner and Operation Fast and Furious, and any memoranda or reports involving any changes to either program at or near the time of the release of the Department of Justice (DOJ) Office of the Inspector General report about Project Gunrunner in November 2010.
2. Documents and communications relating to individuals responsible for authorizing the decision to “walk” guns to Mexico in order to follow them and capture a “bigger fish.”
3. Documents and communications relating to any investigations conducted by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) or any other DOJ component following the fatal shooting of Agent Brian Terry, including information pertaining to two guns found at the crime scene that may have been connected to Project Gunrunner.
4. Documents and communications relating to any weapons recovered at the crime scene or during the investigation into the death of Agent Brian Terry.
5. Documents and communications between ATF and the Federal Firearms Licensee (FFL) who sold weapons to Jaime Avila, including any Report of Investigation (ROI) or other records relating to a December 17, 2009 meeting “to discuss his role as an FFL during this investigation.”
6. A copy of the presentation, approximately 200 pages long, that the Group 7 Supervisor made to officials at ATF headquarters in the spring of 2010.
7. Documents and communications relating to Operation Fast and Furious between and among ATF headquarters and Special Agent in Charge William D. Newell, Assistant Special Agents in Charge Jim Needles and George Gillette, Group Supervisor David Voth, or any Case Agent from November 1, 2009 to the present. The response to this component of the subpoena shall include a memorandum, approximately 30 pages long, from SAC Newell to ATF headquarters following the arrest of Jaime Avila and the death of Agent Brian Terry.
8. Documents and communications relating to complaints or objections by ATF agents about: (1) encouraging, sanctioning, or otherwise allowing FFLs to sell firearms to known or suspected straw buyers, (2) failure to maintain surveillance on known or suspected straw buyers, (3) failure to maintain operational control over weapons purchased by known or suspected straw buyers, or (4) letting known or suspected straw buyers with American guns enter Mexico.

Schedule Instructions

1. In complying with this subpoena, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Subpoenaed records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this subpoena has been, or is also known by any other name than that herein denoted, the subpoena shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this subpoena shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the subpoena was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.

10. If any of the subpoenaed information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the subpoena cannot be made in full, compliance shall be made to the extent possible and shall include an explanation of why full compliance is not possible.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this subpoena was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this subpoena referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the subpoena, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. This subpoena is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
16. All documents shall be Bates-stamped sequentially and produced sequentially.
17. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.
18. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Schedule Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email, regular mail, telexes, releases, or otherwise.
3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this subpoena any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
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6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MASSACHUSETTS 2021-225-3074
FACSIMILE 2021-225-3874
TELEPHONE 2021-225-3031

http://oversight.house.gov

EGGPLINUS TOWNS, NEW YORK
CARELYN B. MALONEY, NEW YORK
HEATHER HIGGINS NORTON,
DEPT OF COLUMBIA
DENNIS J. KUCINICH, OHIO
JOHN F. TERRY, MASSACHUSETTS
WILLIAM L. CLAY, MISSOURI
STEPHEN F. LYNDEN, MASSACHUSETTS
JIM COOPER, TENNESSEE
GERALD E. CONNOLLY, VIRGINIA
KIPPE GIBBLETT, KENTUCKY
DANNY K. DAVIS, ILLINOIS
BRUCE L. HARVEY, IOWA
PETER WELCH, VERMONT
JOHN A. YARMOUTH, KENTUCKY
CHRISTOPHER S. MURPHY, CONNECTICUT
JACKIE SPEER, CALIFORNIA

DAN BURTON, INDIANA
JOHN L. MCCAIN, FLORIDA
TODD HUSSELL PLATT, PENNSYLVANIA
MICHAEL R. TURNER, OHIO
PATRICK MICHELYN, NORTH CAROLINA
JIM JORDAN, OHIO
JASON CHAFFETZ, UTAH
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SCOTT DESJARLAIS, M.D., TENNESSEE
JED HUGHES, ILLINOIS
THEY GOMBS, SOUTH CAROLINA
DENNIS A. ROSE, FLORIDA
FRANK C. LUCAS, NEW HAMPSHIRE
BLAKE FARENHOLD, TEXAS
BOB NELLY, PENNSYLVANIA

LAWRENCE J. BRADY
STAFF DIRECTOR

March 16, 2011

Mr. Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms and Explosives
99 New York Avenue, NE
Washington, DC 20226

Dear Acting Director Melson:

Recent media reports have raised grave questions about your department's handling of operations involving gun trafficking into Mexico. In the aftermath of the tragic killings of Border Patrol Agent Brian Terry and Immigration and Customs Enforcement Agent Jaime Zapata, it is imperative that you act decisively to assuage the public's deep suspicions that the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has a policy of permitting -- and even encouraging -- the movement of guns into Mexico by straw purchasers. The presence of these guns may have subsequently led to the deaths of hundreds of people on both sides of the border, including Agents Terry and Zapata.¹

It has been brought to my attention that you are not cooperating with congressional inquiries about Project Gunrunner and Operation Fast and Furious. Last week, Senator Charles Grassley expressed frustration at ATF's responsiveness in a letter to the Department of Justice (DOJ): "I'm still asking questions and we're getting the runaround from the Justice Department, [i]they're stonewalling. And the longer the wait, the more they fight, the more egg that they're going to have on their face."²

Operation Fast and Furious is part of ATF's Project Gunrunner program designed to prevent illegal guns from crossing the border into Mexico. ATF implemented the plan in June 2007 and outlined four key areas of Gunrunner: expansion of gun tracing in Mexico, international coordination, domestic activities, and intelligence.

¹ Kim Murphy and Ken Ellingwood, *Mexico Lawmakers Demand Answers about Guns Smuggled under ATF's Watch*, L.A. TIMES, Mar. 11, 2011, <http://www.latimes.com/news/nationworld/nation/la-naw-mexico-guns-20110311,0,6476764,full.story>.

² William Lajeunesse, *ATF, DOJ Launch Damage Control Effort over Growing Project Gunrunner Scandal*, FOXNEWS, Mar. 9, 2011, [http://www.foxnews.com/us/2011/03/09/project-gun-runner-scandal-border/?test=latestnewsrunner Scandal](http://www.foxnews.com/us/2011/03/09/project-gun-runner-scandal-border/?test=latestnewsrunner%20scandal).

A November 2010 DOJ Office of the Inspector General (OIG) report detailed many shortcomings with the program, especially its inability to find and arrest higher-level traffickers.³ With direct approval from ATF headquarters in Washington, a special ATF strike force let federally licensed gun shops sell about 1765 firearms to straw buyers for the drug cartels over a 15 month span beginning in October 2009.⁴ Some 797 of the guns were recovered as a result of criminal activity on both sides of the border, including two at the site of the killing of Agent Terry.

At the same time of the release of the OIG report – and perhaps influenced by it – ATF formalized its policy of letting American guns reach the drug cartels.⁵ Field agents vociferously objected, aghast at the prospect of high-caliber weapons being allowed to enter Mexico.⁶ Senior Agent John Dodson was one of those agents who came forward to complain that the ATF had allowed the guns to be “walked” into Mexico.⁷ ATF even videotaped suspected drug cartel suppliers as they loaded AK-47 type assault rifles into their cars and permitted them to transport those firearms across the border.⁸ ATF officials failed to report this to Mexican authorities⁹ and eventually lost track of hundreds of these guns.¹⁰ Unsurprisingly, these weapons began showing up at crime scenes both in Mexico and the U.S. Notably on December 14, 2010, two “walked” rifles turned up at Agent Terry’s murder site.

Senator Grassley requested specific documents about this policy but, thus far, has received nothing from ATF or DOJ. In fact, Special Agent In Charge (SAC) William D. Newell has steadfastly denied that this policy even exists, as has DOJ.¹¹ When confronted by documentary evidence from Senator Grassley’s office, however, Attorney General Holder asked the Justice Department’s Office of Inspector General (DOJ-OIG) to conduct a review. Such a review by the Acting Inspector General, however, is inadequate. As Senator Grassley wrote to Kevin Perkins, Chair of the Integrity Committee of the Council of Inspectors General on Integrity and Efficiency, “the DOJ-OIG does not appear to be completely disinterested in the outcome of its review. Without a greater level of independence, it will be difficult for the public to have faith in the impartiality and integrity of the result.”¹²

³ Department of Justice Office of Inspector General, Review of ATF’s Project Gunrunner, Evaluation and Inspection Report 1-2011-001(Nov. 2010), <http://www.justice.gov/oig/reports/ATF/e1101.pdf>.

⁴ John Solomon, David Heath, and Gordon Whitkin, *ATF Let Hundreds of U.S. Weapons Fall into Hands of Suspected Mexican Gunrunners*, CENTER FOR PUBLIC INTEGRITY, Mar 3, 2011, <http://www.publicintegrity.org/articles/entry/2976/>.

⁵ *Id.*

⁶ *Id.*

⁷ Sharyl Atkisson, *Agent: I Was Ordered To Let U.S. Guns into Mexico*, CBS NEWS, Mar. 3, 2011, <http://www.cbsnews.com/stories/2011/03/03/eveningnews/main20039031.shtml>.

⁸ *Id.*

⁹ *Id.*

¹⁰ Murphy & Ellingwood, *supra* note 1.

¹¹ Solomon, *et al.*, *supra* note 4.

¹² Letter from Sen. Charles Grassley, Ranking Member, S. Jud. Comm., to Kevin L. Perkins, Chair, Integrity Comm., Council of Inspectors General on Integrity and Efficiency (Mar. 8, 2011).

I wholeheartedly agree with this sentiment. Given the entanglement of the DOJ-OIG report with the policy change, it has become clear that the Acting Inspector General cannot conduct an objective and independent inquiry sufficient to foster public confidence. Only a full congressional investigation can achieve this result and restore the public's faith in the workings of the ATF. Therefore, I am requesting that you provide the following documents and information:

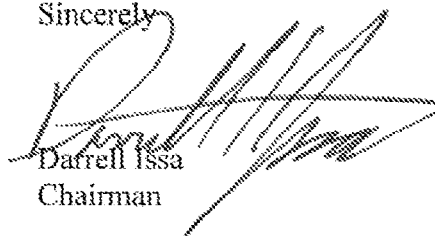
1. Documents and communications relating to the genesis of Project Gunner and Operation Fast and Furious, and any memoranda or reports involving any changes to either program at or near the time of the release of the DOJ-OIG report about Project Gunrunner in November 2010.
2. A list of individuals responsible for authorizing the decision to "walk" guns to Mexico in order to follow them and capture a "bigger fish."
3. Following the fatal shooting of Agent Brian Terry, did ATF conduct an investigation of the circumstances of his killing? Did you determine whether the two guns found at the crime scene were permitted to cross into Mexico?
4. Is ATF aware what weapon was responsible for the death of Agent Brian Terry?
5. All documents, including e-mails, relating to communications between the ATF and the Federal Firearms Licensee (FFL) who sold weapons to Jaime Avila, including any Report of Investigation (ROI) or other records relating to a December 17, 2009 meeting "to discuss his role as an FFL during this investigation."
6. A copy of the presentation, approximately 200 pages long, that the Group 7 Supervisor made to officials at ATF headquarters in the spring of 2010.
7. All documents, including e-mails, relating to communications regarding Operation Fast and Furious between ATF headquarters and Special Agent in Charge (SAC) William D. Newell, Assistant Special Agents in Charge Jim Needles and George Gillette, Group Supervisor David Voth, or any Case Agent from November 1, 2009 to the present. The response to this request should include a memorandum, approximately 30 pages long, from SAC Newell to ATF headquarters following the arrest of Jaime Avila and the death of Agent Brian Terry.
8. All documents and communications related to complaints or objections by ATF agents in Phoenix about letting straw buyers with American guns enter Mexico.

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

We request that you provide the requested documents and information as soon as possible, but no later than 5:00 p.m. on March 30, 2011. When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format. An attachment to this letter provides additional information about responding to the Committee's request.

If you have any questions about this request, please contact Ashok Pinto or Henry Kerner of the Committee Staff at (202) 225-5074. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Darrell Issa', written over a horizontal line. The signature is stylized and cursive.

Darrell Issa
Chairman

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6143

Stipendiary (2002) 225-6024
Ministry (2002) 225-6024

Responding to Committee Document Requests

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
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6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
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8. When you produce documents, you should identify the paragraph in the Committee's request to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full, compliance shall be made to the extent possible and shall include an explanation of why full compliance is not possible.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. The time period covered by this request is included in the attached request. To the extent a time period is not specified, produce relevant documents from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

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otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

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5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.

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7. All documents, including e-mails, relating to communications regarding Operation Fast and Furious between ATF headquarters and Special Agent in Charge (SAC) William D. Newell, Assistant Special Agents in Charge Jim Needles and George Gillette, Group Supervisor David Voth, or any Case Agent from November 1, 2009 to the present. The response to this request should include a memorandum, approximately 30 pages long, from SAC Newell to ATF headquarters following the arrest of Jaime Avila and the death of Agent Brian Terry.
8. All documents and communications related to complaints or objections by ATF agents in Phoenix about letting straw buyers with American guns enter Mexico.

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- Phoenix VII
- My Documents
- My Computer
- My Network Places

AGENT CASHIER	File Folder		10/20/2010 5:53 PM
AUTOTRACK	File Folder		6/17/2010 8:27 PM
CELLPHONE SW DOCS	File Folder		2/11/2010 9:20 PM
CHARTS	File Folder		11/23/2010 7:16 AM
N-QUIRE	File Folder		12/17/2010 11:28 AM
OCDETF	File Folder		2/28/2011 8:57 AM
(b) (7)(E)	File Folder		5/13/2010 11:13 AM
(b) (7)(E)	File Folder		1/13/2011 4:56 PM
PHOTOS	File Folder		3/29/2010 2:47 PM
Power Points	File Folder		1/24/2011 7:00 AM
RECEIPTS	File Folder		2/19/2010 6:52 PM
Sources of Info (SIs)	File Folder		2/14/2011 9:56 AM
(b) (7)(E)	File Folder		1/20/2011 10:41 AM
162050-10-0001 - Case Listing.xls	Microsoft Office Excel 97-2003 Worksheet	3 KB	4/19/2010 1:56 PM
(b) (7)(E)	Adobe Acrobat Document	2,191 KB	2/26/2010 12:10 PM
(b) (7)(E)	Microsoft Office Excel 97-2003 Worksheet	856 KB	2/26/2010 12:08 PM
Checklist.docx	Microsoft Office Word Document	15 KB	12/17/2009 5:34 PM
(b) (7)(C)	Microsoft Office Word 97 - 2003 Document	999 KB	2/25/2010 8:59 AM
FIREARM PURCHASES - FINANCIAL.xls	Microsoft Office Excel 97-2003 Worksheet	972 KB	4/19/2010 11:52 AM
FIREARM SPREADSHEET.xls	Microsoft Office Excel 97-2003 Worksheet	2,479 KB	2/22/2011 9:58 AM
(b) (7)(C) A spreadsheet.xls	Microsoft Office Excel 97-2003 Worksheet	936 KB	9/20/2010 7:17 AM
(b) (7)(C) .pdf	Adobe Acrobat Document	388 KB	2/25/2010 9:02 AM
(b) (7)(C) Case Listing.xls	Microsoft Office Excel 97-2003 Worksheet	6 KB	4/19/2010 10:28 AM
(b) (7)(C) ROI.xls	Microsoft Office Excel 97-2003 Worksheet	4 KB	5/25/2010 3:25 PM
PHONE LIST.xls	Microsoft Office Excel 97-2003 Worksheet	27 KB	3/16/2010 3:16 PM
Phone Number Log.xls	Microsoft Office Excel 97-2003 Worksheet	36 KB	12/2/2009 8:51 PM
(b) (7)(E)	Microsoft Office Excel 97-2003 Worksheet	37 KB	4/22/2010 7:36 PM
(b) (7)(E)	Microsoft Office Excel 97-2003 Worksheet	63 KB	12/9/2010 8:10 AM
(b) (7)(E)	Adobe Acrobat Document	48 KB	11/27/2009 9:31 PM
(b) (7)(E)	Outlook Item	89 KB	2/16/2010 9:39 AM

AGENT CASHIER

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My Documents

My Computer

My Network Places

Report of Expenditure - 7-22-2010.pdf	Adobe Acrobat Document	30 KB	7/29/2010 3:33 PM
AC Spreadsheet.xlsx	Microsoft Office Excel Worksheet	11 KB	7/29/2010 3:25 PM
Report of Expenditure - 7-1-2010.pdf	Adobe Acrobat Document	44 KB	7/1/2010 4:29 PM
Report of Expenditure 04-19-10 (b) (7)(E)	Adobe Acrobat Document	30 KB	4/19/2010 10:30 AM
AC request 04-16-2010 - (b) (7)(E)	Adobe Acrobat Document	87 KB	4/19/2010 10:20 AM
Report of Expenditure 03-29-10 (b) (7)(E)	Adobe Acrobat Document	30 KB	3/31/2010 10:06 AM
AC request (b) (7)(E)	Adobe Acrobat Document	81 KB	3/30/2010 7:25 PM
AC request (b) (7)(E)	Adobe Acrobat Document	79 KB	3/19/2010 8:22 AM
Report of Expenditure 03-04-10 - (b) (7)(E)	Adobe Acrobat Document	30 KB	3/4/2010 11:08 AM
AC request 03-03-2010 - (b) (7)(E)	Adobe Acrobat Document	81 KB	3/3/2010 7:38 PM
expenditures01092010.doc	Microsoft Office Word 97 - 2003 Document	34 KB	1/9/2010 12:17 PM
funds request 01072010.pdf	Adobe Acrobat Document	81 KB	1/9/2010 12:02 PM

AUTOTRACK

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(b) (7)(C)

- 785115-10-0004
- My Documents
- My Computer
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Adobe Acrobat Document	206 KB	6/17/2010 8:27 PM
Adobe Acrobat Document	51 KB	12/3/2009 3:32 PM
Adobe Acrobat Document	52 KB	12/3/2009 3:20 PM
Adobe Acrobat Document	44 KB	12/3/2009 3:20 PM
Adobe Acrobat Document	108 KB	12/3/2009 3:18 PM
Adobe Acrobat Document	111 KB	12/3/2009 3:17 PM
Adobe Acrobat Document	89 KB	12/3/2009 3:10 PM
Adobe Acrobat Document	111 KB	12/3/2009 3:09 PM
Adobe Acrobat Document	93 KB	12/3/2009 3:05 PM

CELLPHONE SW DOCS

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Preservation Letters

File Folder

3/29/2010 10:34 AM

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My Documents

My Computer

My Network Places

Preservation Letters

S:\Phoenix VII\785115-10-0004\CELLPHONE SW DOCS\Preservation Letters				
	(b) (7)(C) Preservation Letter 0450 03-29-2010.doc	Microsoft Office Word 97 - 2003 Document	26 KB	3/29/2010 10:28 AM
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	(b) (7)(C) Preservation Letter 0450 03-23-2010.doc	Microsoft Office Word 97 - 2003 Document	26 KB	3/23/2010 1:34 PM
	(b) (7)(C) Preservation Letter 03-23-2010.doc	Microsoft Office Word 97 - 2003 Document	27 KB	3/23/2010 1:23 PM
	(b) (7)(C) Preservation Letter 0450 03-17-2010.doc	Microsoft Office Word 97 - 2003 Document	26 KB	3/17/2010 12:05 PM
	(b) (7)(C) Preservation Letter 03-17-2010.doc	Microsoft Office Word 97 - 2003 Document	27 KB	3/17/2010 12:01 PM
	(b) (7)(C) Preservation Letter 0450.doc	Microsoft Office Word 97 - 2003 Document	26 KB	2/11/2010 9:30 PM
	(b) (7)(C) Preservation Letter.doc	Microsoft Office Word 97 - 2003 Document	26 KB	2/11/2010 9:28 PM
	(b) (7)(C) preservation letter II.doc	Microsoft Office Word 97 - 2003 Document	26 KB	2/11/2010 9:27 PM
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CHARTS



S:\Phoenix VII\785115-10-0004\CHARTS

- 785115-10-0004
- My Documents
- My Computer
- My Network Places

i2	File Folder		5/18/2010 2:10 PM
(b) (7)(C) American Auto Body.pdf	Adobe Acrobat Document	337 KB	1/27/2010 11:50 AM
(b) (7)(E) chart 1.pdf	Adobe Acrobat Document	39 KB	1/27/2010 9:45 AM
(b) (7)(C) chart 1.pdf	Adobe Acrobat Document	80 KB	12/17/2009 1:56 PM
(b) (7)(C) chart 2.pdf	Adobe Acrobat Document	222 KB	1/25/2010 4:31 PM
LA 2.anb	i2 Analyst's Notebook Chart	681 KB	7/29/2010 8:25 PM
lsprst7.dll	Application Extension	1 KB	11/23/2010 7:16 AM
lsprst7.tgz	WinZip File	1 KB	11/23/2010 7:16 AM
(b) (7)(C) 08162010.anb	i2 Analyst's Notebook Chart	3,050 KB	8/17/2010 5:01 AM
sysprs7.dll	Application Extension	2 KB	11/23/2010 7:16 AM
sysprs7.tgz	WinZip File	2 KB	11/23/2010 7:16 AM

i2

S:\Phoenix VII\785115-10-0004\CHARTS\i2

(b) (7)(E)	chart 1.anb	i2 Analyst's Notebook Chart	1,435 KB	1/27/2010 11:23 AM
(b) (7)(C)	chart 2.anb	i2 Analyst's Notebook Chart	3,064 KB	1/27/2010 9:50 AM
(b) (7)(C)	chart 1.anb	i2 Analyst's Notebook Chart	925 KB	12/17/2009 2:58 PM
(b) (7)(C)	anb	i2 Analyst's Notebook Chart	8,306 KB	12/3/2009 3:18 PM

- CHARTS
- My Documents
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N-QUIRE



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Firearm Recoveries.pdf	Adobe Acrobat Document	24 KB	12/17/2010 11:28 AM
Timeline.pdf	Adobe Acrobat Document	151 KB	7/21/2010 10:44 AM
Border Crossing Persons Report.pdf	Adobe Acrobat Document	87 KB	6/11/2010 4:31 PM
Border Crossings .pdf	Adobe Acrobat Document	64 KB	6/9/2010 3:58 PM

OCDETF

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	OCDETF SWAZP-0496 Addtl. Funding Memo II.doc	Microsoft Office Word 97 - 2003 Document	35 KB	2/28/2011 8:55 AM
	Fast and Furious Interim Report 02-16-11 OCDETF Form S-3.pdf	Adobe Acrobat Document	75 KB	2/16/2011 10:45 PM
	Fast and Furious Interim Report 02-16-11 Draft.pdf	Adobe Acrobat Document	789 KB	2/16/2011 10:44 PM
	The Fast and The Furious (SW-AZ-0496) Interim Report Narrative 02-16-11.doc	Microsoft Office Word 97 - 2003 Document	63 KB	2/16/2011 10:42 PM
	Fast and Furious Interim Report 02-16-11.pdf	Adobe Acrobat Document	3,900 KB	2/16/2011 10:42 PM
	OCDETF SWAZP-0496 Addtl. Funding Memo.doc	Microsoft Office Word 97 - 2003 Document	34 KB	10/12/2010 5:07 PM
	The Fast and The Furious (SW-AZ-0496) Interim Report Narrative.doc	Microsoft Office Word 97 - 2003 Document	57 KB	8/23/2010 11:13 PM
	Fast and Furious Interim Report 08-23-10.pdf	Adobe Acrobat Document	861 KB	8/23/2010 11:07 PM
	Fast and Furious Interim Report 08-16-10 V2.pdf	Adobe Acrobat Document	872 KB	8/17/2010 11:01 AM
	Fast and Furious Interim Report 08-16 V2.pdf	Adobe Acrobat Document	192 KB	8/16/2010 6:21 PM
	Fast and Furious Interim Report 08-16-10.pdf	Adobe Acrobat Document	856 KB	8/16/2010 6:04 PM
	Fast and Furious Interim Report 08-16.pdf	Adobe Acrobat Document	192 KB	8/16/2010 6:02 PM
	OCDETF SWAZP-0496 Funding Memo.doc	Microsoft Office Word 97 - 2003 Document	35 KB	2/24/2010 6:49 PM
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	OCDETF_Invest_Initiation-The Fast and The Furious.doc	Microsoft Office Word 97 - 2003 Document	553 KB	1/22/2010 7:23 AM
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	Addtl fusion center names.docx	Microsoft Office Word Document	13 KB	1/12/2010 7:02 PM
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	OFC Request Form #5.pdf	Adobe Acrobat Document	486 KB	1/12/2010 6:51 PM
	OFC Request Form #4.pdf	Adobe Acrobat Document	486 KB	1/12/2010 6:51 PM
	OFC Request Form #2.pdf	Adobe Acrobat Document	486 KB	1/12/2010 6:47 PM
	OFC Request Form #3.pdf	Adobe Acrobat Document	486 KB	1/12/2010 6:46 PM
	OFC Request Form #1.pdf	Adobe Acrobat Document	486 KB	1/12/2010 6:43 PM
	OCDETF form.docx	Microsoft Office Word Document	126 KB	12/12/2009 7:09 PM

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(b) (7)(E)

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- 785115-10-0004
- My Documents
- My Computer
- My Network Places

(b) (7)(E)

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WordPerfect X3 Document	58 KB	5/11/2010 12:48 PM
WordPerfect X3 Document	56 KB	5/11/2010 12:48 PM
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Adobe Acrobat Document	313 KB	3/15/2010 9:19 AM
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Adobe Acrobat Document	295 KB	3/15/2010 9:07 AM
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Adobe Acrobat Document	28 KB	3/12/2010 11:06 AM
Adobe Acrobat Document	28 KB	3/12/2010 11:05 AM
Adobe Acrobat Document	29 KB	3/12/2010 11:04 AM
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Adobe Acrobat Document	335 KB	1/13/2010 6:04 PM
Adobe Acrobat Document	310 KB	1/13/2010 6:01 PM
Adobe Acrobat Document	329 KB	1/13/2010 5:55 PM
Adobe Acrobat Document	327 KB	1/13/2010 5:44 PM
WordPerfect X3 Document	53 KB	1/13/2010 2:03 PM
WordPerfect X3 Document	53 KB	1/13/2010 2:03 PM
WordPerfect X3 Document	53 KB	1/13/2010 2:03 PM
WordPerfect X3 Document	54 KB	1/13/2010 2:03 PM
WordPerfect X3 Document	52 KB	1/13/2010 2:03 PM

(b) (7)(E)

S:\Phoenix VII\785115-10-000-(b) (7)(E)

(b) (7)(C)	DOCS	File Folder		3/19/2010 12:28 PM
(b) (7)(E)	ARCHIVES	File Folder		6/23/2010 10:51 AM
(b) (7)(E)	Charts	File Folder		8/17/2010 11:19 AM
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(b) (7)(E)	NEEDS TO BE PRINTED	File Folder		3/4/2011 6:06 PM
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(b) (7)(E)		File Folder		1/13/2011 4:41 PM
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(b) (7)(E)	2009-272294-0001.RTF	Microsoft Office Excel Worksheet	10 KB	4/24/2010 12:05 PM
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(b) (7)(C)		Microsoft Office Document Imaging File	44 KB	12/17/2009 2:40 PM
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(b) (7)(E)		Adobe Acrobat Document	356 KB	4/30/2010 4:39 PM

(b) (7)(C) NEW PHONE DOCS

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2010-072483-0002.xls	Microsoft Office Excel 97-2003 Worksheet	71 KB	3/19/2010 12:28 PM

(b) (7)(E)

- My Documents
- My Computer
- My Network Places

ARCHIVES



S:\Phoenix \D\785115-10-0004 (b) (7)(E)

(b) (7)(E)

- My Documents
- My Computer
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(b) (7)(E)

WinZip File	284 KB	6/23/2010 10:51 AM
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(b) (7)(E)

S:\Phoenix VII\785115-10-0004 (b) (7)(E)

- (b) (7)(E)
- My Documents
- My Computer
- My Network Places

(b) (7)(E)

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Adobe Acrobat Document	46 KB	7/23/2010 10:34 AM
Microsoft Office Word Docu...	64 KB	7/1/2010 8:18 PM
Adobe Acrobat Document	20 KB	7/1/2010 8:18 PM
Adobe Acrobat Document	60 KB	7/1/2010 4:17 PM
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Adobe Acrobat Document	21 KB	1/14/2010 10:56 AM

Charts

S:\Phoenix VII\785115-10-0004(b) (7)(E)

Picture Tasks

- Get pictures from camera or scanner
- View as a slide show
- Print pictures
- Copy all items to CD

(b) (7)(C), (b) (7)(E)

BMP File	3,407 KB	12/30/2009 11:34 AM
EMF Image	53 KB	1/21/2010 11:29 AM
PLC File	20 KB	1/21/2010 11:33 AM
PLC File	8 KB	1/21/2010 3:43 PM
i2 Analyst's Notebook Chart	220 KB	3/9/2010 5:12 PM
i2 Analyst's Notebook Chart	230 KB	4/23/2010 6:06 PM
Adobe Acrobat Document	11 KB	5/17/2010 9:28 PM
Microsoft Office Excel Comma Separated Values File	117 KB	5/21/2010 3:57 PM
Microsoft Office Excel Worksheet	79 KB	5/21/2010 5:56 PM
PLC File	23 KB	6/17/2010 4:41 PM
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PLC File	25 KB	6/18/2010 4:23 PM
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Microsoft Office Excel Comma Separated Values File	8 KB	6/23/2010 2:31 PM
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Adobe Acrobat Document	11 KB	7/8/2010 9:59 AM
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PLC File	22 KB	7/21/2010 5:03 PM
PLC File	17 KB	7/23/2010 4:12 PM

COURT ORDERS

← → ↻ ↺ ⌂

S:\Phoenix VII\785115-10-0004 (b) (7)(E)

(b) (7)(E)

(b) (7)(E)

- My Documents
- My Computer
- My Network Places

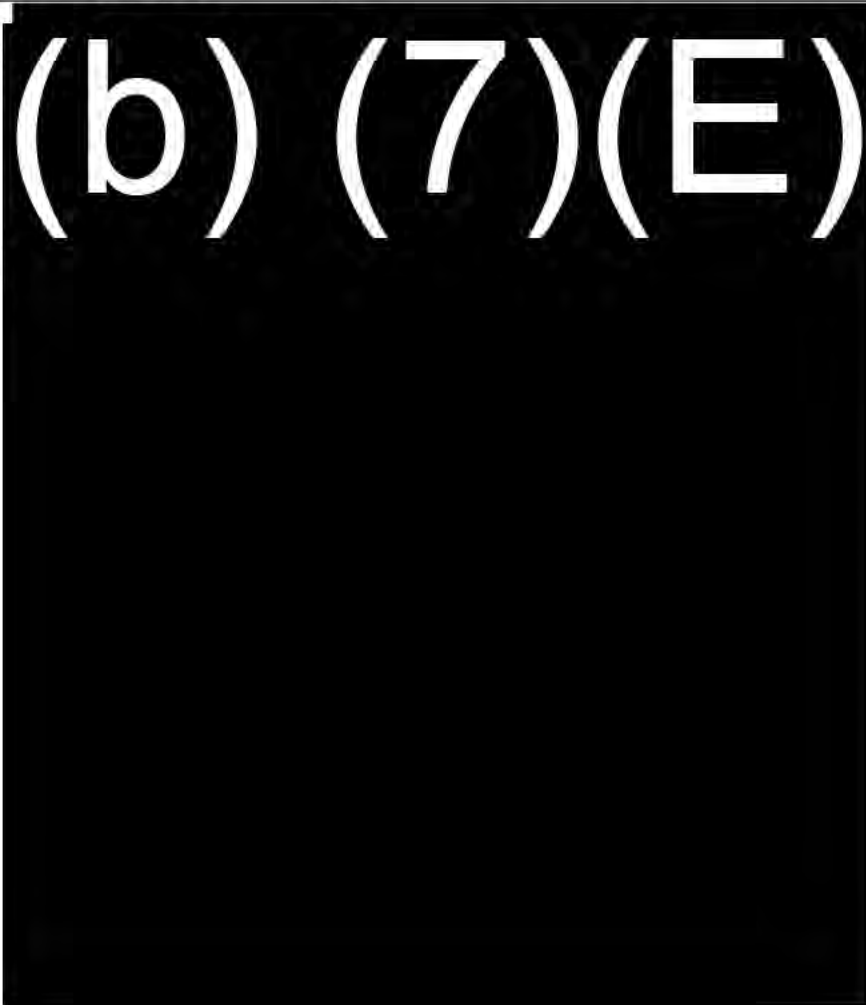
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Adobe Acrobat Document	3,452 KB	7/1/2010 8:18 PM
Outlook Item	230 KB	6/28/2010 12:08 PM
Adobe Acrobat Document	3,665 KB	6/24/2010 4:50 PM
Adobe Acrobat Document	152 KB	6/23/2010 11:47 AM
Adobe Acrobat Document	330 KB	5/20/2010 1:29 PM
Adobe Acrobat Document	329 KB	5/20/2010 1:27 PM
Adobe Acrobat Document	330 KB	5/20/2010 1:23 PM
Adobe Acrobat Document	329 KB	5/20/2010 11:14 AM
Adobe Acrobat Document	710 KB	4/19/2010 6:04 PM
Adobe Acrobat Document	179 KB	3/19/2010 4:43 PM

DATA RECEIVED



(b) (7)(E)

- My Documents
- My Computer
- My Network Places



Outlook Item	63 KB	2/10/2011 4:33 PM
Outlook Item	60 KB	2/10/2011 4:33 PM
Outlook Item	70 KB	2/10/2011 4:33 PM
Outlook Item	33 KB	2/10/2011 4:32 PM
Outlook Item	807 KB	2/10/2011 4:30 PM
Outlook Item	1,859 KB	2/10/2011 4:18 PM
Outlook Item	660 KB	1/13/2011 10:29 PM
Outlook Item	949 KB	1/13/2011 10:29 PM
Outlook Item	136 KB	5/22/2010 6:17 PM
Outlook Item	64 KB	5/22/2010 6:16 PM
WinZip File	110 KB	4/26/2010 3:08 PM
Outlook Item	161 KB	4/2/2010 3:11 PM
Text Document	36 KB	4/2/2010 2:06 PM
Text Document	183 KB	4/1/2010 9:31 PM
Text Document	71 KB	4/1/2010 4:20 PM
Text Document	318 KB	4/1/2010 4:18 PM
Outlook Item	120 KB	3/26/2010 11:17 AM
Outlook Item	90 KB	3/26/2010 11:17 AM
Outlook Item	5,263 KB	3/26/2010 11:17 AM
Outlook Item	4,098 KB	3/26/2010 11:13 AM
Outlook Item	41 KB	3/26/2010 11:13 AM
Outlook Item	33 KB	3/26/2010 11:13 AM
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Outlook Item	78 KB	3/26/2010 9:53 AM
Outlook Item	77 KB	3/26/2010 9:52 AM
Outlook Item	76 KB	3/26/2010 9:52 AM
Outlook Item	77 KB	3/26/2010 9:52 AM
Outlook Item	78 KB	3/26/2010 9:52 AM
Outlook Item	80 KB	3/26/2010 9:52 AM
Outlook Item	297 KB	3/26/2010 9:52 AM
Outlook Item	294 KB	3/26/2010 9:48 AM
Outlook Item	298 KB	3/26/2010 9:47 AM
Outlook Item	294 KB	3/26/2010 9:47 AM

NEEDS TO BE PRINTED



S:\Phoenix VII\785115-10-0004 (b) (7)(E)

(b) (7)(E)

Adobe Acrobat Document	68 KB	1/11/2010 2:00 PM
Adobe Acrobat Document	69 KB	1/11/2010 1:59 PM

(b) (7)(E)

- My Documents
- My Computer
- My Network Places

REPORTS

S:\Phoentix VII\785115-10-0004 (b) (7)(E)

(b) (7)(E)

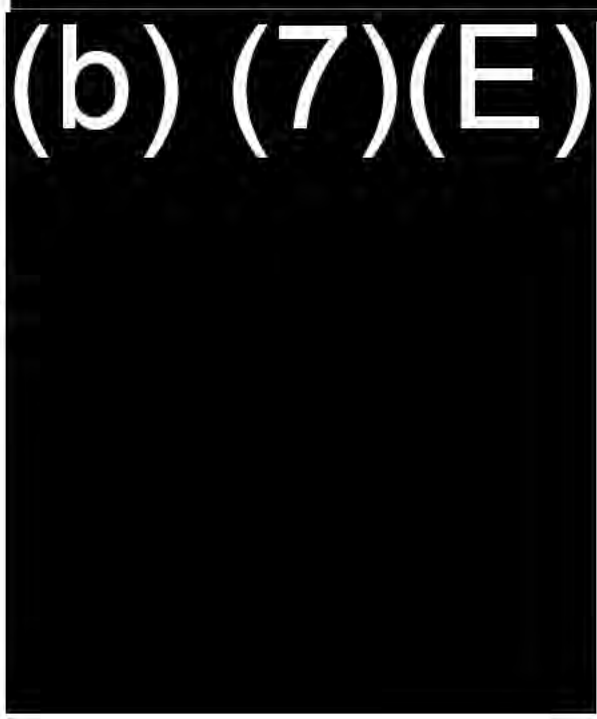
Microsoft Office Excel Comma Separated Values File	11 KB	2/10/2011 4:50 PM
Adobe Acrobat Document	11 KB	1/18/2011 5:13 PM
Adobe Acrobat Document	13 KB	1/18/2011 5:11 PM
Adobe Acrobat Document	74 KB	1/18/2011 2:58 PM
Adobe Acrobat Document	11 KB	1/18/2011 2:57 PM
Microsoft Office Excel Comma Separated Values File	76 KB	1/14/2011 4:02 PM
Microsoft Office Excel Comma Separated Values File	1 KB	11/17/2010 11:12 AM
Microsoft Office Excel Comma Separated Values File	1 KB	11/17/2010 11:02 AM
Adobe Acrobat Document	12 KB	6/21/2010 3:51 PM
Adobe Acrobat Document	11 KB	6/21/2010 10:02 AM
Adobe Acrobat Document	16 KB	6/21/2010 10:01 AM
Adobe Acrobat Document	12 KB	6/11/2010 4:16 PM
Adobe Acrobat Document	47 KB	6/9/2010 2:38 PM
Outlook Item	506 KB	4/2/2010 3:10 PM
Outlook Item	38 KB	4/2/2010 3:09 PM
Microsoft Office Excel Comma Separated Values File	165 KB	3/26/2010 5:30 PM
Microsoft Office Excel Comma Separated Values File	5 KB	3/26/2010 3:25 PM
Microsoft Office Excel Worksheet	50 KB	3/23/2010 6:18 PM
Microsoft Office Excel Comma Separated Values File	130 KB	3/23/2010 6:16 PM
Adobe Acrobat Document	11 KB	3/23/2010 12:00 PM
Microsoft Office Excel Worksheet	35 KB	3/11/2010 10:57 PM
Microsoft Office Excel Comma Separated Values File	262 KB	3/11/2010 9:33 PM
Microsoft Office Excel Comma Separated Values File	107 KB	2/23/2010 10:37 PM
Adobe Acrobat Document	6,264 KB	12/30/2009 10:42 AM

SUBPOENA REQUEST FORMS



(b) (7)(E)

- My Documents
- My Computer
- My Network Places



Microsoft Office Word Document	15 KB	5/12/2010 12:23 PM
Microsoft Office Word Document	15 KB	5/12/2010 12:17 PM
Microsoft Office Word Document	15 KB	5/12/2010 10:59 AM
Outlook Item	41 KB	4/2/2010 3:13 PM
Outlook Item	52 KB	4/2/2010 3:11 PM
Microsoft Office Word Document	15 KB	3/23/2010 5:26 PM
Microsoft Office Word Document	15 KB	3/23/2010 4:59 PM
Microsoft Office Word Document	15 KB	3/19/2010 1:17 PM
Microsoft Office Word Document	15 KB	3/8/2010 11:42 AM
Microsoft Office Word Document	15 KB	3/8/2010 11:41 AM
Microsoft Office Word Document	15 KB	1/13/2010 1:40 PM
Microsoft Office Word Document	15 KB	1/13/2010 9:35 AM
Microsoft Office Word Document	15 KB	1/11/2010 2:27 PM
Microsoft Office Word Document	15 KB	1/11/2010 2:24 PM
Microsoft Office Word Document	15 KB	1/7/2010 4:19 PM
Microsoft Office Word Document	15 KB	12/30/2009 11:38 AM
Microsoft Office Word Document	15 KB	12/30/2009 11:35 AM
Microsoft Office Word Document	15 KB	12/23/2009 3:05 PM
Microsoft Office Word Document	15 KB	12/23/2009 3:04 PM
Microsoft Office Word Document	15 KB	12/4/2009 2:06 PM
Microsoft Office Word Document	15 KB	12/4/2009 12:35 PM
Microsoft Office Word Document	14 KB	12/4/2009 12:19 PM
Microsoft Office Word Document	15 KB	12/3/2009 7:29 AM
Microsoft Office Word Document	15 KB	12/3/2009 7:28 AM
Microsoft Office Word Document	14 KB	12/3/2009 7:27 AM
Microsoft Office Word Document	15 KB	12/3/2009 7:26 AM

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S:\Phoenix VII\785115-10-0004 (b) (7)(E)

(b) (7)(E)

Microsoft Office Word Document	14 KB	11/23/2009 2:51 PM
Outlook Item	210 KB	11/23/2009 3:41 PM
Microsoft Office Word 97 - 2003 Document	27 KB	11/23/2009 4:36 PM
Microsoft Office Word Document	14 KB	11/23/2009 4:39 PM
Microsoft Office Excel Comma Separated Values File	1 KB	12/2/2009 7:25 PM
Adobe Acrobat Document	68 KB	12/2/2009 7:33 PM
Adobe Acrobat Document	68 KB	12/2/2009 7:33 PM
Adobe Acrobat Document	68 KB	12/2/2009 7:35 PM
Adobe Acrobat Document	68 KB	12/2/2009 7:36 PM
Adobe Acrobat Document	68 KB	12/2/2009 7:37 PM
Adobe Acrobat Document	68 KB	12/2/2009 11:40 PM
Outlook Item	233 KB	12/3/2009 12:02 AM
Microsoft Office Excel Worksheet	31 KB	3/13/2010 7:33 PM
Microsoft Office Excel Comma Separated Values File	24 KB	3/13/2010 7:38 PM

My Documents
My Computer
My Network Places

(b) (7)(E)

S:\Phoenix VII\785115-10-0004 (b) (7)(E)

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Microsoft Office Excel Comma Separated Values File	8 KB	3/10/2010 5:59 PM
Microsoft Office Excel Comma Separated Values File	4 KB	5/26/2010 12:35 PM
Microsoft Office Excel Comma Separated Values File	1 KB	5/26/2010 2:07 PM
Microsoft Office Excel Worksheet	9 KB	5/26/2010 1:46 PM
Microsoft Office Word 97 - 2003 Document	130 KB	3/19/2010 9:57 AM
Rich Text Format	115 KB	5/27/2010 4:40 PM
Microsoft Office Word Document	11 KB	5/26/2010 12:50 PM
Adobe Acrobat Document	26 KB	8/17/2010 10:51 AM

(b) (7)(E)

- My Documents
- My Computer
- My Network Places

(b) (7)(E)

S:\Phoenix VII\785115-10-000 (b) (7)(E)

(b) (7)(E)

Microsoft Office Excel Comma Separated Values File	16 KB	7/8/2010 11:25 AM
Microsoft Office Excel Worksheet	32 KB	7/8/2010 11:00 AM
Microsoft Office Excel Comma Separated Values File	43 KB	4/9/2010 1:09 PM
Microsoft Office Excel Comma Separated Values File	22 KB	3/8/2010 9:15 PM
Microsoft Office Excel Comma Separated Values File	104 KB	3/8/2010 8:17 PM
Microsoft Office Excel Comma Separated Values File	9 KB	3/8/2010 8:06 PM
Microsoft Office Excel Comma Separated Values File	52 KB	3/8/2010 8:01 PM
Microsoft Office Excel Comma Separated Values File	5 KB	2/23/2010 11:33 AM
Microsoft Office Excel Comma Separated Values File	2 KB	2/23/2010 11:11 AM
Microsoft Office Excel Comma Separated Values File	4 KB	2/23/2010 9:58 AM
Microsoft Office Excel Comma Separated Values File	7 KB	2/23/2010 10:37 PM
Microsoft Office Excel Comma Separated Values File	12 KB	2/15/2010 12:40 PM
Microsoft Office Excel Comma Separated Values File	24 KB	2/15/2010 12:25 PM
Microsoft Office Excel Comma Separated Values File	3 KB	2/15/2010 12:20 PM
Microsoft Office Excel Comma Separated Values File	14 KB	2/15/2010 12:14 PM
Microsoft Office Excel Comma Separated Values File	5 KB	2/5/2010 2:52 PM
Microsoft Office Excel Comma Separated Values File	44 KB	2/4/2010 4:32 PM
Microsoft Office Excel Comma Separated Values File	94 KB	2/4/2010 10:02 AM
Microsoft Office Excel Comma Separated Values File	10 KB	2/4/2010 9:49 AM
Microsoft Office Excel Comma Separated Values File	55 KB	2/4/2010 9:28 AM
PLC File	29 KB	1/29/2010 4:48 PM
Microsoft Office Excel Comma Separated Values File	71 KB	1/29/2010 12:11 PM
Microsoft Office Excel Comma Separated Values File	135 KB	1/29/2010 10:23 AM
Microsoft Office Excel Comma Separated Values File	14 KB	1/29/2010 10:14 AM
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Microsoft Office Excel Comma Separated Values File	209 KB	1/20/2010 3:30 PM
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Microsoft Office Excel Comma Separated Values File	16 KB	1/20/2010 1:39 PM
Microsoft Office Excel Comma Separated Values File	2 KB	1/20/2010 1:38 PM
Microsoft Office Excel Comma Separated Values File	20 KB	1/20/2010 1:14 PM
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Microsoft Office Excel Comma Separated Values File	8 KB	1/5/2010 11:48 AM
Microsoft Office Excel Comma Separated Values File	41 KB	1/5/2010 11:32 AM
Microsoft Office Excel Comma Separated Values File	96 KB	12/29/2009 5:05 PM
Microsoft Office Excel Comma Separated Values File	158 KB	12/29/2009 11:05 AM
Microsoft Office Excel Comma Separated Values File	13 KB	12/29/2009 10:28 AM
Microsoft Office Excel Comma Separated Values File	2 KB	12/3/2009 12:29 AM
Microsoft Office Excel Comma Separated Values File	1 KB	12/3/2009 12:22 AM
Microsoft Office Excel Worksheet	8 KB	12/3/2009 12:19 AM

(b) (7)(E)

S:\Phoenix VII\785115-10-0004 (b) (7)(E)

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My Documents
My Computer
My Network Places

Outlook Item	183 KB	7/21/2010 10:03 AM
Outlook Item	190 KB	7/19/2010 8:33 AM
Outlook Item	190 KB	7/19/2010 8:33 AM
Outlook Item	361 KB	6/10/2010 10:09 PM
Outlook Item	166 KB	6/3/2010 12:14 PM
Outlook Item	168 KB	5/22/2010 6:17 PM
Outlook Item	188 KB	5/16/2010 8:40 PM
Microsoft Office Excel Comma Separated Values File	224 KB	4/9/2010 4:16 PM
Microsoft Office Excel Comma Separated Values File	4 KB	4/9/2010 1:01 PM
Microsoft Office Excel Comma Separated Values File	22 KB	4/9/2010 12:44 PM
Outlook Item	166 KB	3/24/2010 8:09 AM
Outlook Item	166 KB	3/24/2010 8:08 AM
Outlook Item	945 KB	3/24/2010 7:57 AM
Outlook Item	166 KB	3/17/2010 12:56 AM
Outlook Item	2,291 KB	3/13/2010 8:36 PM
Microsoft Office Excel Worksheet	153 KB	3/13/2010 8:34 PM
Microsoft Office Word Document	12 KB	3/13/2010 4:56 PM
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Outlook Item	165 KB	3/13/2010 4:34 PM
Outlook Item	165 KB	3/13/2010 4:34 PM
Outlook Item	166 KB	3/13/2010 4:34 PM
Adobe Acrobat Document	182 KB	3/11/2010 6:22 PM
Outlook Item	52 KB	3/10/2010 9:54 PM
Outlook Item	879 KB	3/10/2010 9:43 PM
Microsoft Office Excel Comma Separated Values File	22 KB	3/10/2010 9:40 PM
Microsoft Office Excel Comma Separated Values File	6 KB	3/10/2010 9:21 PM
Microsoft Office Excel Comma Separated Values File	48 KB	3/10/2010 9:00 PM
Microsoft Office Word 97 - 2003 Document	130 KB	3/9/2010 11:40 AM
Outlook Item	220 KB	2/5/2010 11:45 AM
Microsoft Office Excel Comma Separated Values File	1 KB	2/4/2010 10:28 AM
Microsoft Office Word Document	87 KB	2/3/2010 10:08 AM
Outlook Item	188 KB	2/1/2010 10:27 AM
Outlook Item	166 KB	2/1/2010 10:27 AM
Outlook Item	184 KB	1/13/2010 3:21 PM
Outlook Item	188 KB	1/3/2010 7:09 PM
Microsoft Office Excel Comma Separated Values File	1 KB	12/30/2009 11:17 AM
Outlook Item	166 KB	12/23/2009 3:00 PM
Outlook Item	188 KB	12/4/2009 1:05 PM
Microsoft Office Word 97 - 2003 Document	198 KB	12/3/2009 12:01 AM

PHOTOS

S:\Phoenix VII\785115-10-0004\PHOTOS

- 785115-10-0004
- My Documents
- My Computer
- My Network Places

(b) (7)(C), (b) (7)(E)



- Mexicali Firearms Recovery Pics
- Mexicali Pics
- Nogales Firearms Recovery on 12-3-09, Atf custody 12-11-09 (b) (7)(C)
- Nogales Recovery Dec 3rd
- (b) (7)(C), (b) (7)(E)
- (b) (7)(C) Myspace Photos.zip

File Folder		3/20/2010 1:21 PM
File Folder		3/20/2010 4:28 PM
File Folder		3/29/2010 2:38 PM
File Folder		3/29/2010 2:43 PM
File Folder		3/29/2010 2:45 PM
File Folder		12/30/2009 2:36 PM
File Folder		11/27/2009 3:20 PM
File Folder		11/28/2009 12:07 AM
File Folder		12/7/2009 10:42 AM
File Folder		2/24/2010 11:53 AM
File Folder		12/9/2009 10:52 AM
File Folder		12/9/2009 10:30 AM
File Folder		1/15/2011 11:25 AM
File Folder		12/10/2009 1:43 PM
File Folder		12/10/2009 1:52 PM
File Folder		12/17/2009 5:12 PM
File Folder		12/7/2009 10:59 AM
File Folder		12/7/2009 10:51 AM
File Folder		12/7/2009 10:55 AM
File Folder		1/26/2010 1:42 PM
File Folder		1/5/2010 7:44 PM
File Folder		12/14/2009 9:26 AM
File Folder		12/12/2009 9:19 PM
Video Clip	135,118 KB	11/19/2009 1:08 PM
WinZip File	335 KB	3/26/2010 11:10 AM

Power Points

Navigation bar with icons for back, forward, search, and other file management functions. The address bar shows the path: S:\Phoenix VII\785115-10-0004\Power Points

- 785115-10-0004
- My Documents
- My Computer
- My Network Places

 round-up brief.pptx	Microsoft Office Po...	12,305 KB	1/21/2011 3:44 PM
 Fast & Furious.pptx	Microsoft Office Po...	6,716 KB	1/21/2011 3:41 PM

RECEIPTS



S:\Phoenix VII\785115-10-0004\RECEIPTS

- 785115-10-0004
- My Documents
- My Computer
- My Network Places

(b) (7)(C)

File Folder	2/19/2010 6:53 PM
File Folder	12/14/2009 10:04 AM
File Folder	1/9/2010 5:24 PM
File Folder	1/9/2010 5:30 PM
File Folder	12/12/2009 9:04 PM
File Folder	1/9/2010 5:30 PM
File Folder	2/19/2010 6:17 PM
File Folder	1/12/2010 6:00 PM
File Folder	1/9/2010 5:22 PM

(b) (7)(C)



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(b) (7)(C)

Adobe Acrobat Document

253 KB 2/19/2010 6:53 PM

- RECEIPTS
- My Documents
- My Computer
- My Network Places

(b) (7)(C)

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- RECEIPTS
- My Documents
- My Computer
- My Network Places

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(b) (7)(C) Adobe Acrobat Document 128 KB 1/9/2010 5:24 PM

- RECEIPTS
- My Documents
- My Computer
- My Network Places

(b) (7)(C)



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(b) (7)(C)

Adobe Acrobat Document

84 KB 1/9/2010 5:19 PM

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- My Documents
- My Computer
- My Network Places

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S:\Phoenix VII\785115-10-0004\RECEIPTS (b) (7)(C)

(b) (7)(C) Adobe Acrobat Document 502 KB 12/12/2009 9:04 PM

- RECEIPTS
- My Documents
- My Computer
- My Network Places

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S:\Phoenix VII\785115-10-0004\RECEIPTS (b) (7)(C)

(b) (7)(C) Adobe Acrobat Document 83 KB 1/9/2010 5:21 PM

- RECEIPTS
- My Documents
- My Computer
- My Network Places

(b) (7)(C)

S:\Phoenix VII\785115-10-0004\RECEIPTS (b) (7)(C)

(b) (7)(C)		
Adobe Acrobat Document	493 KB	2/19/2010 6:17 PM
Adobe Acrobat Document	248 KB	12/12/2009 10:55 PM
Adobe Acrobat Document	196 KB	12/12/2009 10:26 PM
Adobe Acrobat Document	748 KB	12/12/2009 8:20 PM

- RECEIPTS
- My Documents
- My Computer
- My Network Places

(b) (7)(C)

S:\Phoenix VII\785115-10-0004\RECEIPTS (b) (7)(C)

Adobe Acrobat Document 452 KB 1/12/2010 6:00 PM

- RECEIPTS
- My Documents
- My Computer
- My Network Places

(b) (7)(C)



S:\Phoenix VII\785115-10-0004\RECEIPTS (b) (7)(C)

(b) (7)(C)

Adobe Acrobat Document	82 KB	1/9/2010 5:22 PM
Adobe Acrobat Document	206 KB	1/8/2010 9:12 PM
Adobe Acrobat Document	1,003 KB	12/12/2009 11:35 PM
Adobe Acrobat Document	513 KB	12/12/2009 11:34 PM
Adobe Acrobat Document	654 KB	12/9/2009 4:48 PM

- RECEIPTS
- My Documents
- My Computer
- My Network Places

Sources of Info (SIs)

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S:\Phoenix VII\785115-10-0004\Sources of Info (SIs)

	Sources of Information.docx	Microsoft Office Word Document	11 KB	2/14/2011 9:56 AM
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- 785115-10-0004
- My Documents
- My Computer
- My Network Places

Surveillance - Suspect PPT

S:\Phoenix VII\785115-10-0004\Surveillance - Suspect PPT

Surveillance - Suspect Info.pptx	Microsoft Office PowerPoint Presentation	1,329 KB	2/24/2010 2:06 PM
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- 785115-10-0004
- My Documents
- My Computer
- My Network Places

From: (b) (7)(C)**Sent:** Tuesday, March 22, 2011 10:59 AM**To:** (b) (7)(C)**Subject:** FW:**Attachments:** Untitled; Detroit Field Division; Untitled; Firearms Trafficking; International Border Questions; Untitled; Answer to questions; Mexico FA Trafficking SPFD

I do not see Detroit ROI but will get it.

(b) (7)(C)

Chief, Firearms Operations Division

ATF HQ - Room 6.S.129

202.648 (b) (7)(C) Cell (b) (7)(C)

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From: McMahon, William G.**Sent:** Tuesday, March 22, 2011 10:23 AM**To:** (b) (7)(C)**Subject:** FW:

Central's responses. Detroit was yes to the controlled delivery of firearms to Canada. The UI is attached to their response. Also, see Boxler's comment below.

William G. McMahon

Deputy Assistant Director (West)

Office of Field Operations

Office - (202) 648 (b) (7)(C)

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appropriate approval. Any review, use, or dissemination of this e-mail message and any attached file(s) in any form outside of the Bureau of Alcohol, Tobacco, Firearms & Explosives or the Department of Justice without express authorization is strictly prohibited.

From: Boxler, Michael B.
Sent: Tuesday, March 22, 2011 10:19 AM
To: McMahon, William G.
Subject:

Still waiting to hear from Kansas City. Verbally they told the AD no.

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778065-09-0050 OPERATION: BIG MUSKY CASE TIMELINE

January 2009 Mexican Government Officials turns over to ATF firearm data for approximately 11,900 firearms for tracing.

February 13, 2009 Firearm Trace on a Ruger P89 is initiated by ATF. The Ruger is one of the 11,900 firearms submitted for tracing.

February 19, 2009 The Ruger is traced back to (b) (3) (P.L. 111-117), (b) (7)(C) (b) (3) (P.L. 111-117)

February 23, 2009 (b) (3) (P.L. 111-117)

February 25, 2009 (b) (3) (P.L. 111-117), (b) (7)(C)

March 2, 2009 (b) (7)(C) begins investigation.

March 3, 2009 Case opened in N-Force.

March 3, 2009 USAO briefed.

March 19, 2009 (b) (7)(C), (b) (7)(E)

April 14, 2009 (b) (7)(C) is interviewed by Minnesota State Patrol where he relates he brings items (cars, clothes, and appliances) to Mexico to sell.

May 13, 2009 (b) (7)(E)

June 1, 2009 (b) (7)(E)

June 3, 2009 (b) (7)(E)

June 16, 2009 (b) (7)(E)

July 7, 2009 (b) (7)(E)

July 8, 2009 OCDETF approved.

July 9, 2009 (b) (7)(C), (b) (7)(E)

July 15, 2009 (b) (7)(C), (b) (7)(E)

August 14, 2009

(b) (7)(C), (b) (7)(E)

August 27- October 19, 2009

(b) (7)(C), (b) (7)(E)

October 1, 2009

(b) (7)(E)

October 2, 2009

(b) (7)(E)

October 15, 2009

(b) (7)(E)

October 20, 2009

(b) (7)(E)

October 21, 2009

(b) (7)(E)

November 1-15, 2009

(b) (7)(C), (b) (7)(E)

November 16, 2009

(b) (7)(C) arrested in Laredo, TX with firearms bound for Mexico.

From: Hoover, William J.

Sent: Friday, February 25, 2011 11:37 AM

To: Melson, Kenneth E.

CC: (b) (7)(C)

Chait, Mark R.; McMahon, William G. (b) (7)(C)

Subject: FW: RIOCC

Attachments: PDSS Executive Summary.doc; PDSS RIOCC 11-14 Jan 11.docx

Ken,

We will discuss the attached Monday morning along with the Mexico get backs. We will also include a briefing on the ICE homicide, staffing issues, and firearms carry in MX.

Newell will be on the phone for this meeting.

Billy

William J. Hoover

Deputy Director

Bureau of Alcohol, Tobacco, Firearms & Explosives

O) 202-648-8710

***** NOTICE: This electronic transmission is confidential and intended only for the person(s) to whom it is addressed. If you have received this transmission in error, please notify the sender by return e-mail and destroy this message in its entirety (including all attachments).

From: McMahon, William G.

Sent: Friday, February 25, 2011 11:19 AM

To: Hoover, William J.

Subject: Fw: RIOCC

FYI

NOTICE: This e-mail message and any attached files are intended solely for the use of the addressee(s) named above in connection with official business. This communication may contain Sensitive But Unclassified information that may be statutorily or otherwise prohibited from being released without appropriate approval. Any review, use, or dissemination of this e-mail message and any attached file(s) in any form outside of the Bureau of Alcohol, Tobacco, Firearms & Explosives or the Department of Justice without express authorization is strictly prohibited.

From: (b) (7)(C)

To: Chait, Mark R.; McMahon, William G.

Sent: Fri Feb 25 09:01:03 2011

Subject: FW: RIOCC

RIOCC site survey

(b) (7)(C)

Chief
Office of International Affairs

Bureau of Alcohol, Tobacco, Firearms and Explosives
ATF National Headquarters
99 New York Avenue
Washington, DC 20006
office (202) 648-(b) (7)(C)
mobile (b) (7)(C)

From: Knierim, Paul E. [mailto:Paul.E.Knierim@usdoj.gov]

Sent: Monday, January 24, 2011 1:14 PM

To: (b) (7)(C)

(b) (7)(C)

Cc: (b) (7)(C)

Subject: RIOCC

Gentlemen,

In order to keep you informed of the progress of the RIOCC, I am attaching an Executive Summary and Pre-Deployment Site Survey (PDSS) After Action Report. The site survey was very encouraging. The facilities are outstanding and will provide a positive working environment. The GOM is already at the site, with the exception of one agency as you will note in the summary. It is anticipated that they will arrive this week.

We are working through some issues with regard to communications. In this regard, we will be under the auspices of the Regional Security Office and will be in compliance with State Department regulations regarding secure comms.

As far as timeframe for implementation goes, it is still uncertain. One of the recommendations made is that we be allowed to engage as soon as possible to assist the GOM participants with processes and protocols and the utilization of the information available at this time. We may be in a position to have a small team deploy soon to begin this engagement. I will keep you informed of this and other items as they develop.

I really appreciate your continued support. If you have any questions or concerns please don't hesitate to contact me. I can also be reached on my cell at 202-486-6459.

Thank you

Paul

<<PDSS Executive Summary.doc>> <<PDSS RIOCC 11-14 Jan 11.doc>>

From: (b) (7)(C)
Sent: Employee 3 September 13, 2010 5:05:06 PM
To: (b) (7)(C)
CC: (b) (7)(C)
Subject: FW: SIR - Firearms

2277

(b) (7)(C)- (possible) but this was stop using Phoenix PD.

(b) (7)(C)

Chief, Firearms Operations Division
ATF HQ - Room 6.S.129
202.648 (b) (7)(C) Cell (b) (7)(C)

Original Message

From: (b) (7)(C)
Sent: Wednesday, July 07, 2010 11:22 AM
To: (b) (7)(C)
Subject: FW: SIR - Firearms

(b) (7)(C)

Chief, Firearms Operations Division
ATF HQ - Room 6.S.129
202.648 (b) (7)(C) Cell (b) (7)(C)

-----Original Message-----

From: Needles, James R.
Sent: Thursday, July 01, 2010 3:52 PM
To: SAR/SIR Message Delivery
Cc: Nowell, William D.; Mangan, Thomas C.
Subject: FW: SIR - Firearms

DEPARTMENT OF JUSTICE - BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES
SIGNIFICANT INFORMATION REPORT

DATE: July 01, 2010
FROM: Phoenix Field Division
FIELD OFFICE: Phoenix VII Field Office

CASE INFORMATION

CASE NUMBER: 785115-10-0004
CASE TITLE: (b) (7)(C)
SPECIAL AGENT: (b) (7)(C)
TELEPHONE NUMBER: (b) (7)(C)

SYNOPSIS OF INCIDENT/ACTIVITY:

Recovery of twenty (20) AK 47 style firearms.

NARRATIVE OF INCIDENT/ACTIVITY:

On June 30, 2010 as part of an ongoing OCDETF T-III investigation into Southwest Border Firearms Trafficking activity ATF Phoenix Group VII agents assisted by the Phoenix Police

ATF8-001-001-00006241

Department conducted a traffic stop on (b) (7)(C) had ~~Employee 3~~ purchased twenty (20) Century International Arms, WASR-10, 7.62 caliber 2278es (an AK-47 variant) from a local Phoenix FFL. (b) (7)(C) was traveling in a motor vehicle for which the license plate was not valid in the State of Arizona. The vehicle was towed for impound and the above firearms were taken into ATF custody as part of this ongoing investigation. Also recovered from inside the vehicle and purchased by (b) (7)(C) were twenty (20) 7.62 caliber high capacity magazines. (b) (7)(C) paid a total of \$11,000.00 cash for the above items. ATF utilized a Phoenix Police Department narcotics detection canine (K 9) which alerted on the \$11,000.00 cash as being positive for the presence of narcotics residue.

From: (b) (7)(C)
Sent: Wednesday, March 23, 2011 2:06 PM
To: Axelrod, Matthew (ODAG) (SMO)
Subject: The President Speaks On Fast and Furious

Interview with Univision (link below) in case you have not seen it.

http://www.cbsnews.com/8301-31727_162-20046151-10391695.html

(b) (7)(C)
Acting Chief of Staff
Office of the Director
O: 202-648-(b) (7)(C)
C: (b) (7)(C)
HQ Room 5 S 100

From: (b) (7)(C)
Sent: Wednesday, March 23, 2011 1:56 PM
To: Axelrod, Matthew (ODAG) (SMO)
Subject: ODAG's Strategy for Combatting Mexican Cartels
Attachments: Strategy for Combatting the Mexican Cartels.pdf

Matt:

I missed this in the last group of documents I sent to you.

(b) (7)(C)
Acting Chief of Staff
Office of the Director
O: 202-648-(b) (7)(C)
C: (b) (7)(C)
HQ Room 5 S 100

From: (b) (7)(C)
Sent: Tuesday, March 22, 2011 8:27 AM
To: Axelrod, Matthew (ODAG) (SMO)
Subject: ROI 205 WITH DEA 6
Attachments: ROI 205 WITH DEA 6.PDF

I HAVE ALL OF THIS PRINTED FOR YOU. YOU CAN PICK IT UP TODAY AT THE MEETING.

(b) (7)(C)
Acting Chief of Staff
Office of the Director
O: 202-648
C:
HQ Room 5 S 100

From: (b) (7)(C)
Sent: Tuesday, March 22, 2011 8:26 AM
To: Axelrod, Matthew (ODAG) (SMO)
Subject: COMPLETE COPY OF ROI 272
Attachments: ROI 272.pdf

I HAVE ALL OF THIS PRINTED FOR YOU. YOU CAN PICK IT UP TODAY AT THE MEETING.

(b) (7)(C)
Acting Chief of Staff
Office of the Director
O: 202-648-(b) (7)(C)
C: (b) (7)(C)
HQ Room 5 S 100

Title of Investigation: (b) (7)(C)	Investigation Number: 785115-10-0004	Report Number: 272
---------------------------------------	---	-----------------------

SYNOPSIS:

CANINE ASSISTANCE: On June 3, 2010, Phoenix Police Department (PPD) K-9 Officer (b) (7)(C) and his K-9 partner, Zeke, assisted Alcohol, Tobacco, Firearms and Explosives (ATF) Special Agent (S/A) (b) (7)(C) with the detection of narcotics on U.S. currency located at Federal Firearms Licensee (FFL) (b) (7)(C) (b) (7)(C)

NARRATIVE:

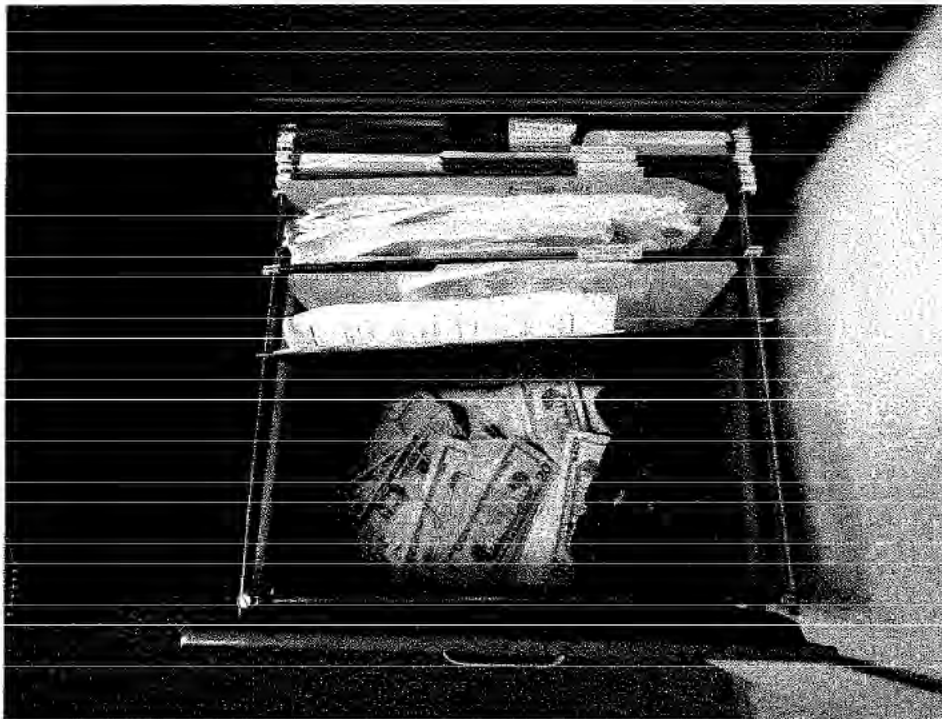
1. On June 3, 2010, PPD Officer (b) (7)(C) and his K-9 partner "Zeke" assisted ATF S/A (b) (7)(C) with the detection of narcotics on U.S. currency received by (b) (7)(C) from the purchase of firearms by (b) (7)(C) and (b) (7)(C) in (b) (7)(C) (b) (7)(C) as instructed by ATF, kept the currency from (b) (7)(C) and (b) (7)(C) purchases separate until the next morning, when S/A (b) (7)(C) and PPD K-9 Officer (b) (7)(C) arrived at approximately 0750 hours.
2. Upon arrival (b) (7)(C) provided ATF S/A (b) (7)(C) a black plastic bag containing \$15,400.00 in U.S. currency from two separate purchases totaling (b) (7)(C) also provided S/A (b) (7)(C) \$6,640.00 in U.S. currency from one purchase totaling (b) (7)(C) on (b) (7)(C) Prior to PPD officer (b) (7)(C) arrival, the plastic bag from (b) (7)(C) purchase remained sealed.
3. At approximately 0755 hours, Officer (b) (7)(C) arrived and conducted a search of the interior of the business where the currency was to be placed. According to Officer (b) (7)(C) upon completion of this search K-9 Zeke had no alerts or final responses to any areas.
4. Upon instruction by PPD Officer (b) (7)(C) ATF S/A (b) (7)(C) using gloved hands, removed the \$15,400.00 in U.S. currency money from the plastic bag and placed the currency in the third drawer of a file cabinet located in the office area of the business. The U.S. Currency in the amount of \$6,640.00 from (b) (7)(C) purchase was placed inside a closed cardboard box in the rear area of the store.
5. Once the currency had been placed in the abovementioned locations, Officer (b) (7)(C) returned with K-9, Zeke

Prepared by: (b) (7)(C)	Title: Special Agent, Phoenix VII Field Office	Signature:	Date:
Authorized by: (b) (7)(C)	Title: Group Supervisor, Phoenix VII Field Office	Signature:	Date:
Second level reviewer (optional): William D. Newell	Title: Special Agent in Charge, Phoenix Field Division	Signature:	Date:

approximately 30 minutes later. Office (b) (7)(C) and S/A (b) (7)(C) observed K-9 Zeke slow his search pattern, display a breathing change, and scratch both the file cabinet door and the cardboard box where the currency was placed. No additional similar behaviors were observed at any other time.

6. Upon completion of the search, ATF S/A's (b) (7)(C) took photographs and documented the U.S. Currency from both purchases. S/A (b) (7)(C) recorded the denominations of the \$15,400.00 in U.S. currency as, 93-\$100.00, and 305-\$20.00 bills from (b) (7)(C) purchase. S/A (b) (7)(C) recorded the denominations of the \$6,400.00 as, 8-\$100.00, 26-\$50.00, 215-\$20.00, 19-\$10.00.
7. Office (b) (7)(C) provided the following certifications for K-9 Zeke,
 - NNDDA certification received in 2009
 - NPCA certification received in 2010
8. This investigation is ongoing, below are the four photographs pertaining to this report.







From: (b) (7)(C)

Sent: Tuesday, March 22, 2011 8:21 AM

To: Axelrod, Matthew (ODAG) (SMO)

Subject: ATTACHMENTS TO ROI 109 PART 3 OF 3

Attachments: ROI 109 ATTACHMENTS 7.pdf; ROI 109 ATTACHMENTS 5.pdf; ROI 109 ATTACHMENTS 6.pdf

I HAVE ALL OF THIS PRINTED FOR YOU. YOU CAN PICK IT UP TODAY AT THE MEETING.

(b) (7)(C)

Acting Chief of Staff

Office of the Director

O: 202-648 (b) (7)(C)

C: (b) (7)(C)

HQ Room 5 S 100

(b) (7)(C)

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(b) (7)(C)



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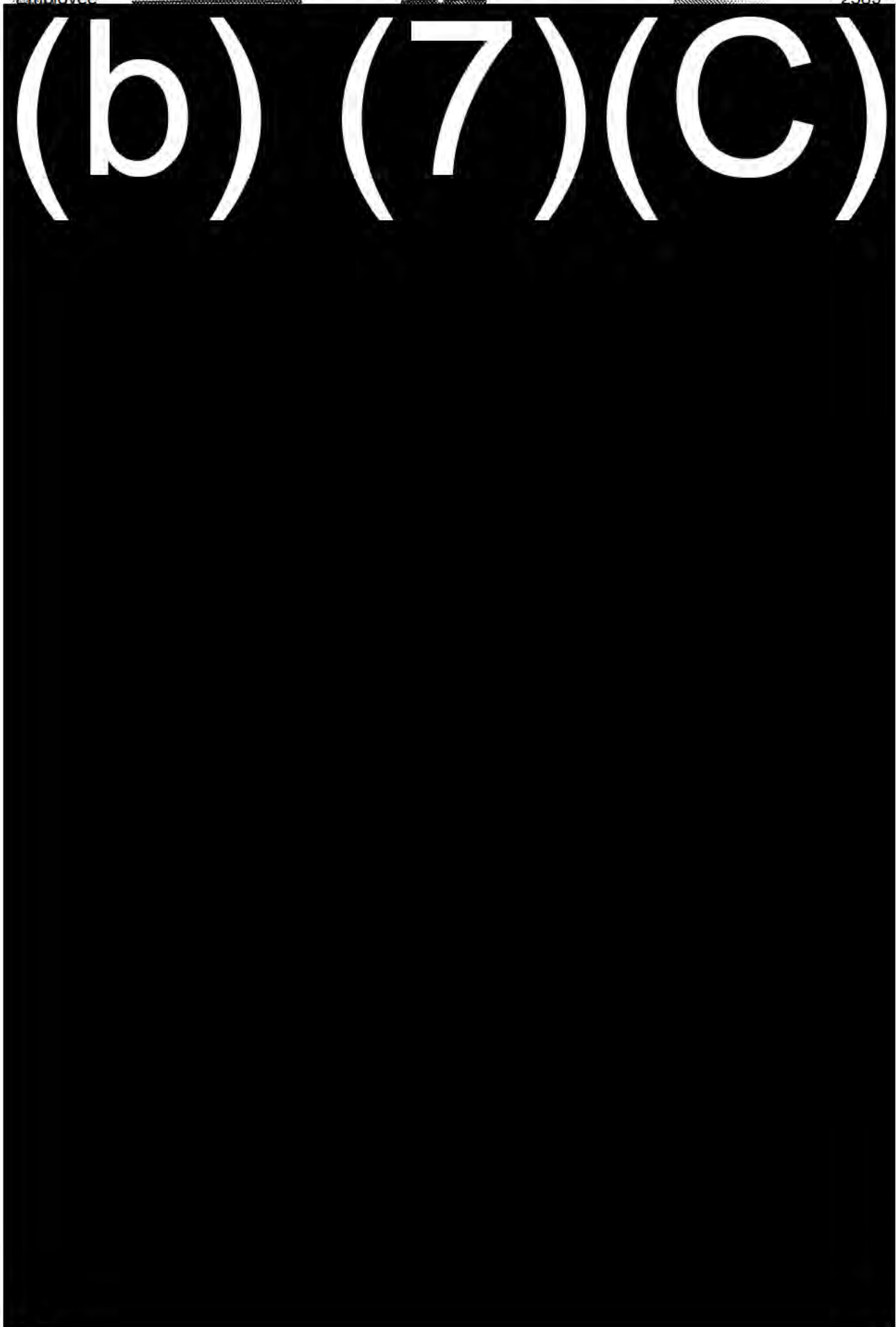
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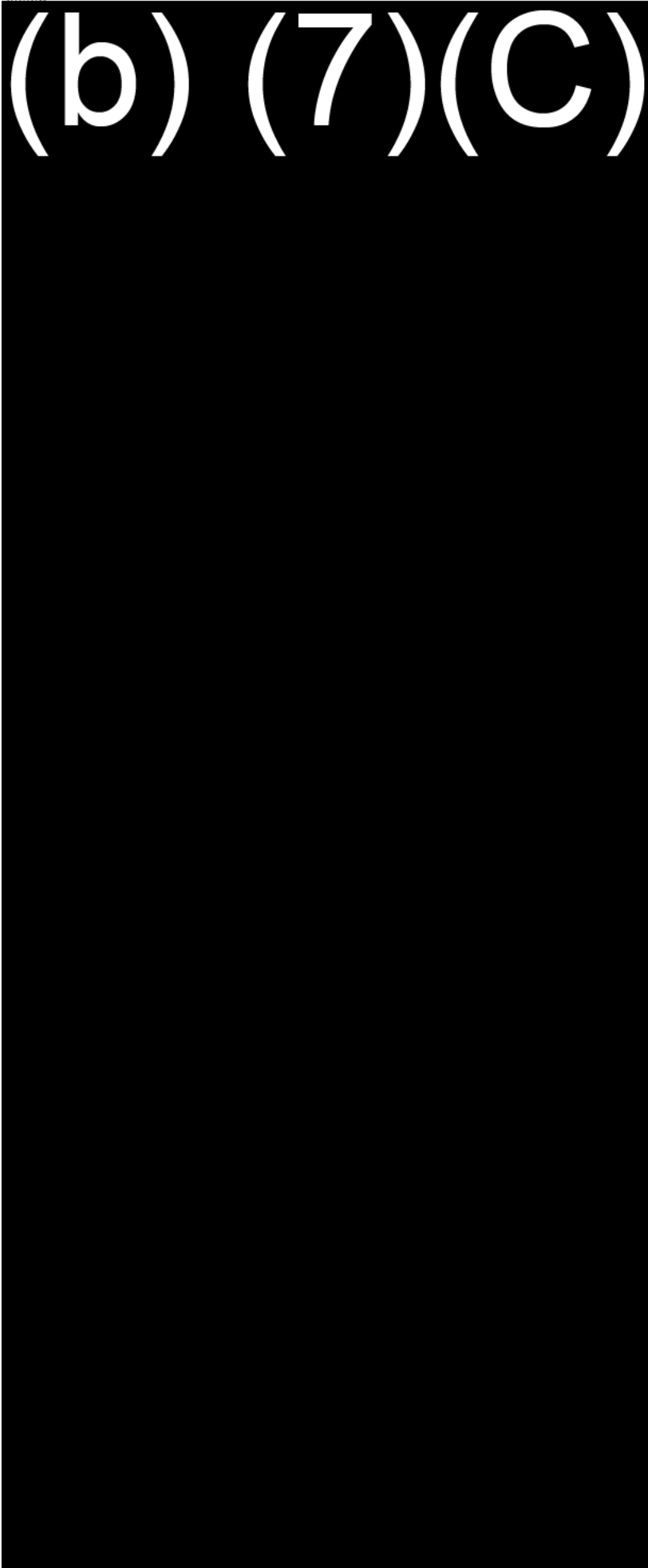
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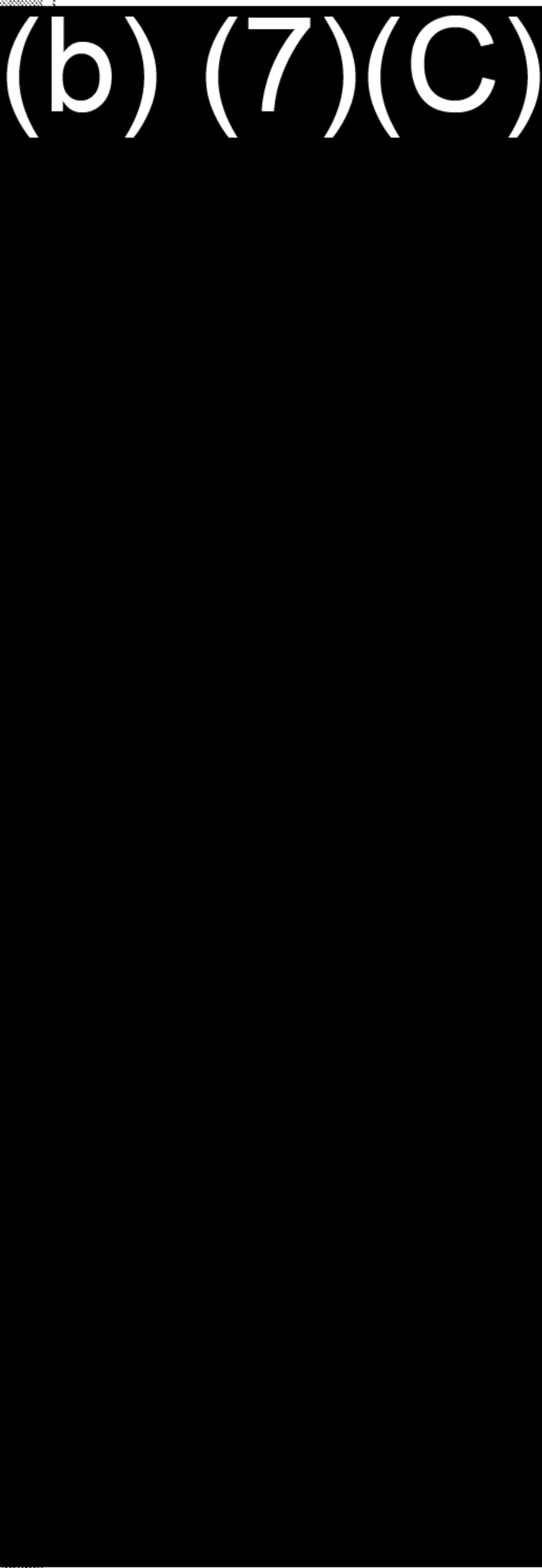
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Listing 1-40 of 49



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Page 3 of 3

Listing 41-49 of 49

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(b) (7)(C)

(b) (7)(C)

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(b) (7)(C)



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Page 1-36 of 37

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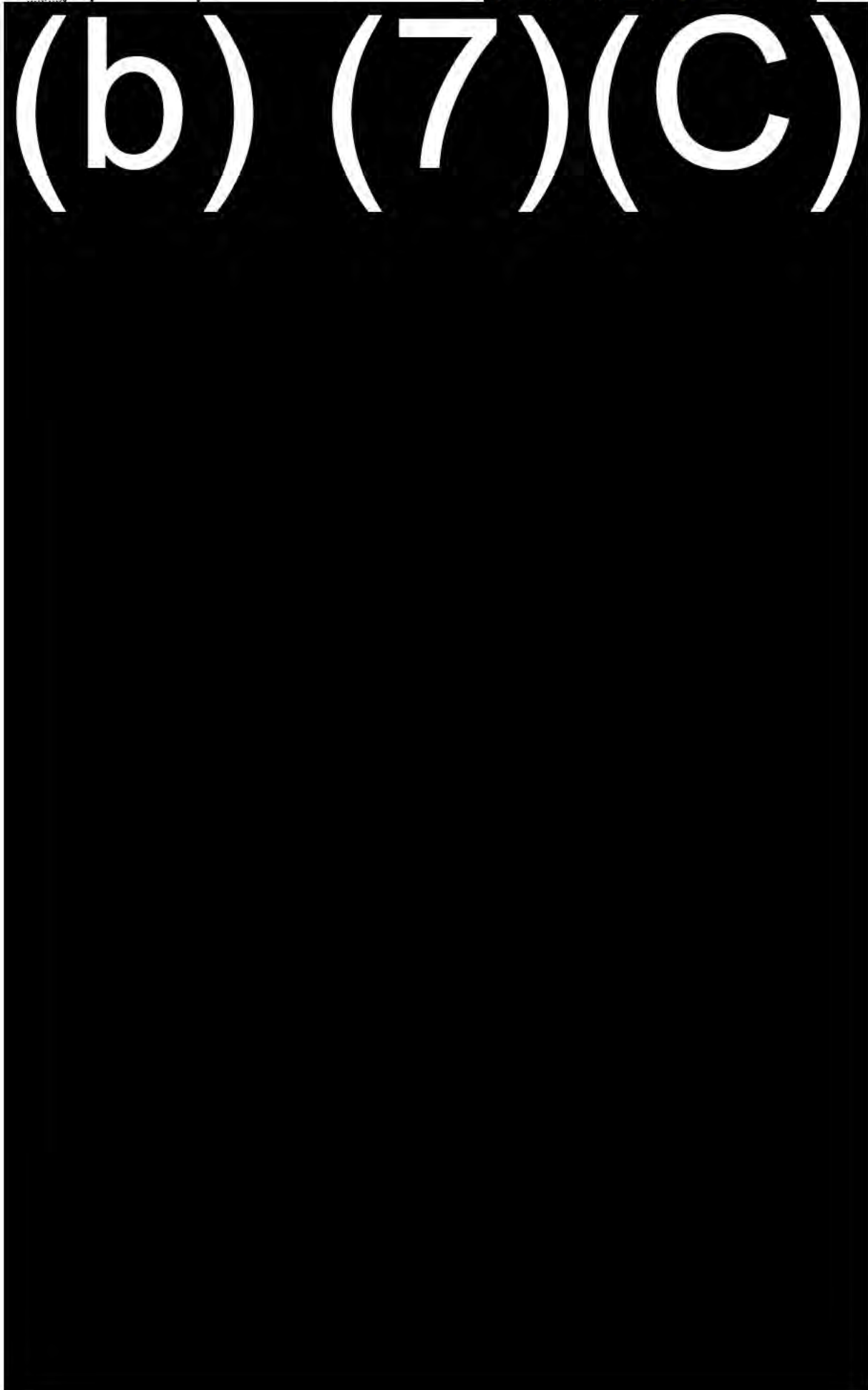


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Address

Add Comment

(b) (7)(C)

Address

From: (b) (7)(C)

Sent: Tuesday, March 22, 2011 8:20 AM

To: Axelrod, Matthew (ODAG) (SMO)

Subject: ATTACHMENTS TO ROI 109 PART 2

Attachments: ROI 109 ATTACHMENTS 4.pdf; ROI 109 ATTACHMENTS 3.pdf

I HAVE ALL OF THIS PRINTED FOR YOU. YOU CAN PICK IT UP TODAY AT THE MEETING.

(b) (7)(C)

Acting Chief of Staff

Office of the Director

O: 202-648 (b) (7)(C)

C: (b) (7)(C)


HQ Room 5 S 100

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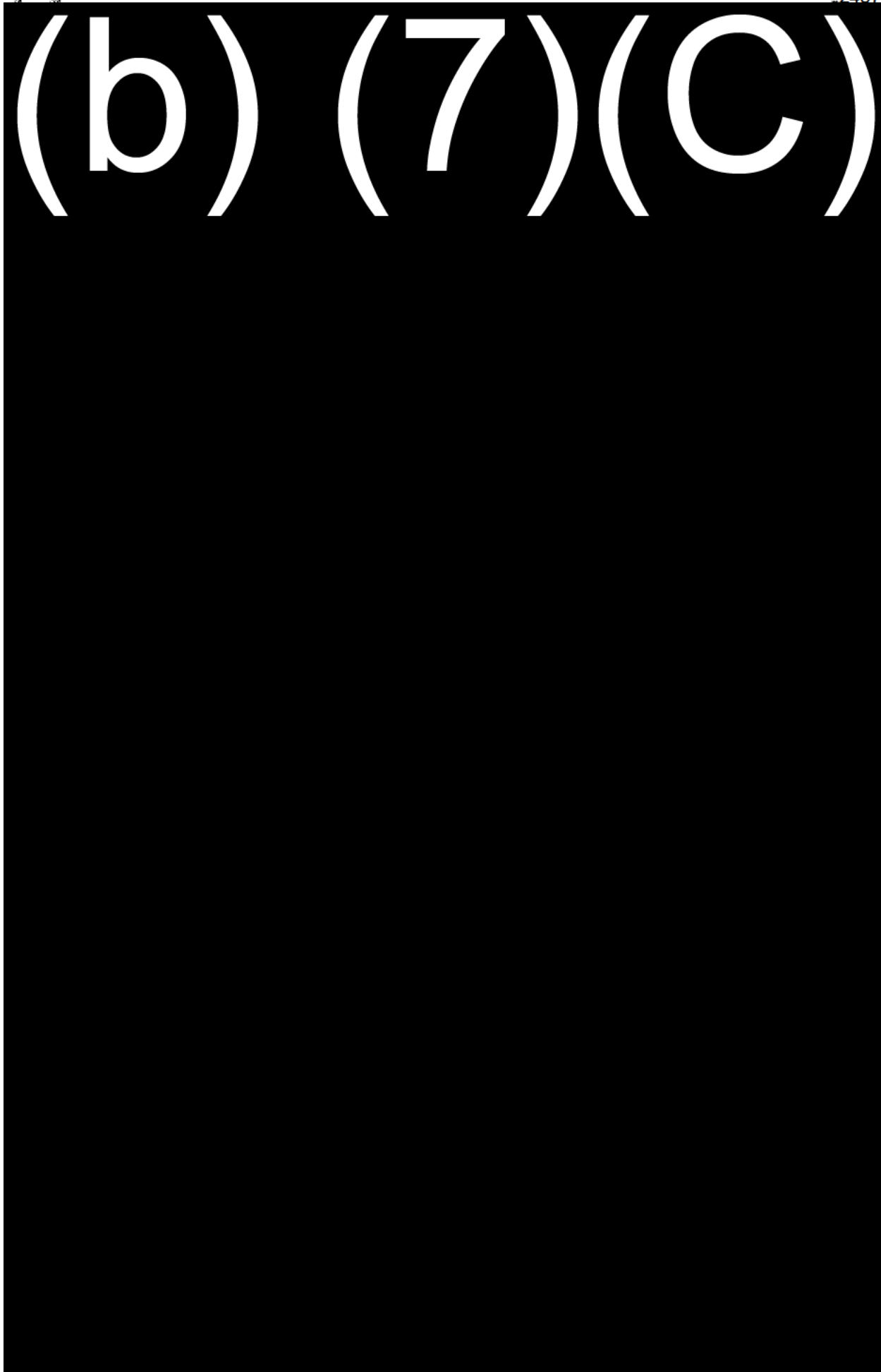
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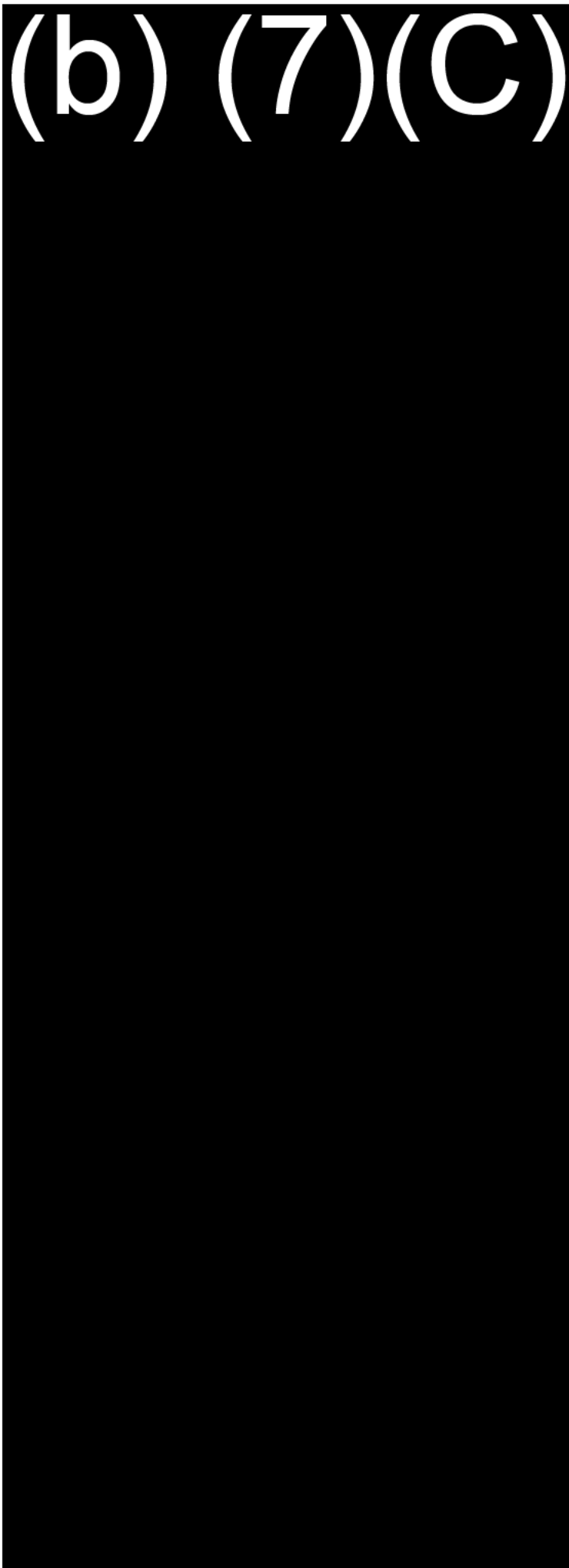
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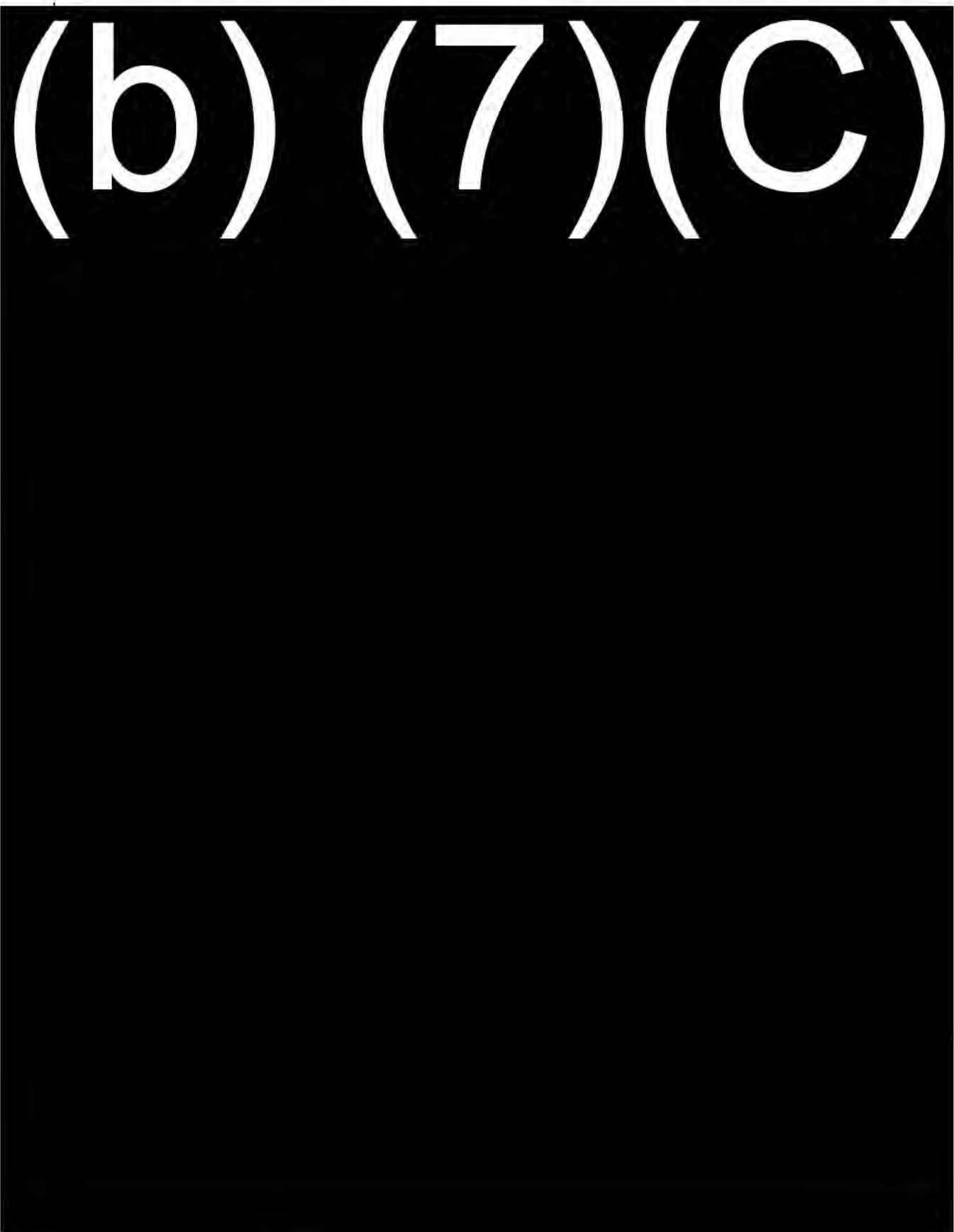


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(b) (7) (C)

(b) (7)(C)



From: (b) (7)(C)
Sent: Tuesday, March 22, 2011 8:19 AM
To: Axelrod, Matthew (ODAG) (SMO)
Subject: FAST AND FURIOUS COPIES OF ATTACHMENTS TO ROI 109
Attachments: ROI 109 ATTACHMENTS 2.pdf, ROI 109 ATTACHMENTS 1.pdf

I HAVE ALL OF THIS PRINTED FOR YOU. YOU CAN PICK IT UP TODAY AT THE MEETING.

(b) (7)(C)
Acting Chief of Staff
Office of the Director
O: 202-648-(b) (7)(C)
C: (b) (7)(C)
HQ Room 5 S 100

Report of Investigation

Title of Investigation: (b) (7)(C)		Investigation Number: 785115-10-0004	Report Number: 109
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SUMMARY OF EVENT:


Receipt of Information: On February 24, 2010, Alcohol, Tobacco, Firearms and Explosives (ATF) Special Agent (b) (7)(C) received information from ATF Digital Investigations and Cybercrime Branch (DCIB) regarding information associated with subjects of interest involved in this investigation (ATF UI #785115-10-0004.)

NARRATIVE:

- On February 24, 2010, ATF S/A (b) (7)(C) received information from ATF DCIB Information Technology Specialist (b) (7)(C) regarding information associated with subjects believed to be involved in trafficking firearms from the United States into Mexico. The results of Specialist (b) (7)(C) research are attached.

ATTACHMENTS:

ATF DCIB Memo
My Space cross reference chart
Public Access Research Results

Prepared by: (b) (7)(C)	Title: Special Agent, Phoenix VII Field Office	(b) (7)(C)	Date: 3-4-2010
Reviewed by: (b) (7)(C)	Title: Group Supervisor, Phoenix VII Field Office	(b) (7)(C)	Date: 3-5-10
Field level reviewer (optional): Sam D. Newell	Title: Special Agent in Charge, Phoenix Field Division	Signature: 	Date:

FILE COPY



Bureau of Alcohol, Tobacco, Firearms & Explosives
Office of Field Operations, Special Operations Division
Digital Investigations and Cybercrime Branch

Request for Assistance

Phone: (703) 948-2830

Fax: (703) 948-2831

February 24, 2010

TO: (b) (7)(C) Group Supervisor
Phoenix VII Field Office

THRU: (b) (7)(C) SAC
Digital Investigations and Cybercrime Branch

FROM: (b) (7)(C) IT Specialist
Digital Investigations and Cybercrime Branch

SUBJECT: Request for Assistance RE: SWB Firearms Traffickers
DICB # 100017

At the request of Group Supervisor (b) (7)(C) the Digital Investigations and Cybercrime Branch has searched the Internet for information associated with subjects of interest involved in NForce firearms trafficking investigation #785115-10-0004. The results of that examination are forwarded for your consideration and appropriate action.

Synopsis

A request was received from Group Supervisor (b) (7)(C) Phoenix VII Field Office, for assistance in searching the Internet for information associated with subjects of interest involved in NForce firearms trafficking investigation #785115-10-0004 with particular emphasis on associations between the subjects on the MySpace social networking website. A number of MySpace associations were found, some of which may represent new investigative leads.

Law Enforcement Sensitive

Primary Subject

Name: See attached chart

Narrative

A request was received from Group Supervisor (b) (7)(C) Phoenix VII Field Office, for assistance in searching the Internet for information associated with 26 subjects of interest involved in NForce firearms trafficking investigation #785115-10-0004 with particular emphasis on associations between the subjects on the MySpace social networking website.

(b) (7)(E)

(b) (7)(E)

Though it is clear that most of the subjects are interested in automobiles and racing and that some of them (b) (7)(C) could not even be positively determined from their accounts. No meaningful reference to firearms was found in the accounts and nothing at all was found related to firearms trafficking.

(b) (7)(E)

(b) (7)(E)

Law Enforcement Sensitive

*Bureau of Alcohol, Tobacco, Firearms and Explosives,
Office of Field Operations, Special Operations Division
Digital Investigations and Cybercrime Branch*

2471

WARNING: It is suggested that the website contained in this referral not be viewed by equipment connected to the ATF network.

If you have any questions, please contact IT Specialist (b) (7)(C) at (b) (7)(C)

Law Enforcement Sensitive

ATF8-001-001-00008786

Name	Username	DOB	SSN	Linked To	Linked To Username
(b) (7) (C)					

(b) (7)(C)

Name	Username	DOB	SSN	Linked To	Linked To Username
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(b) (7)(C)

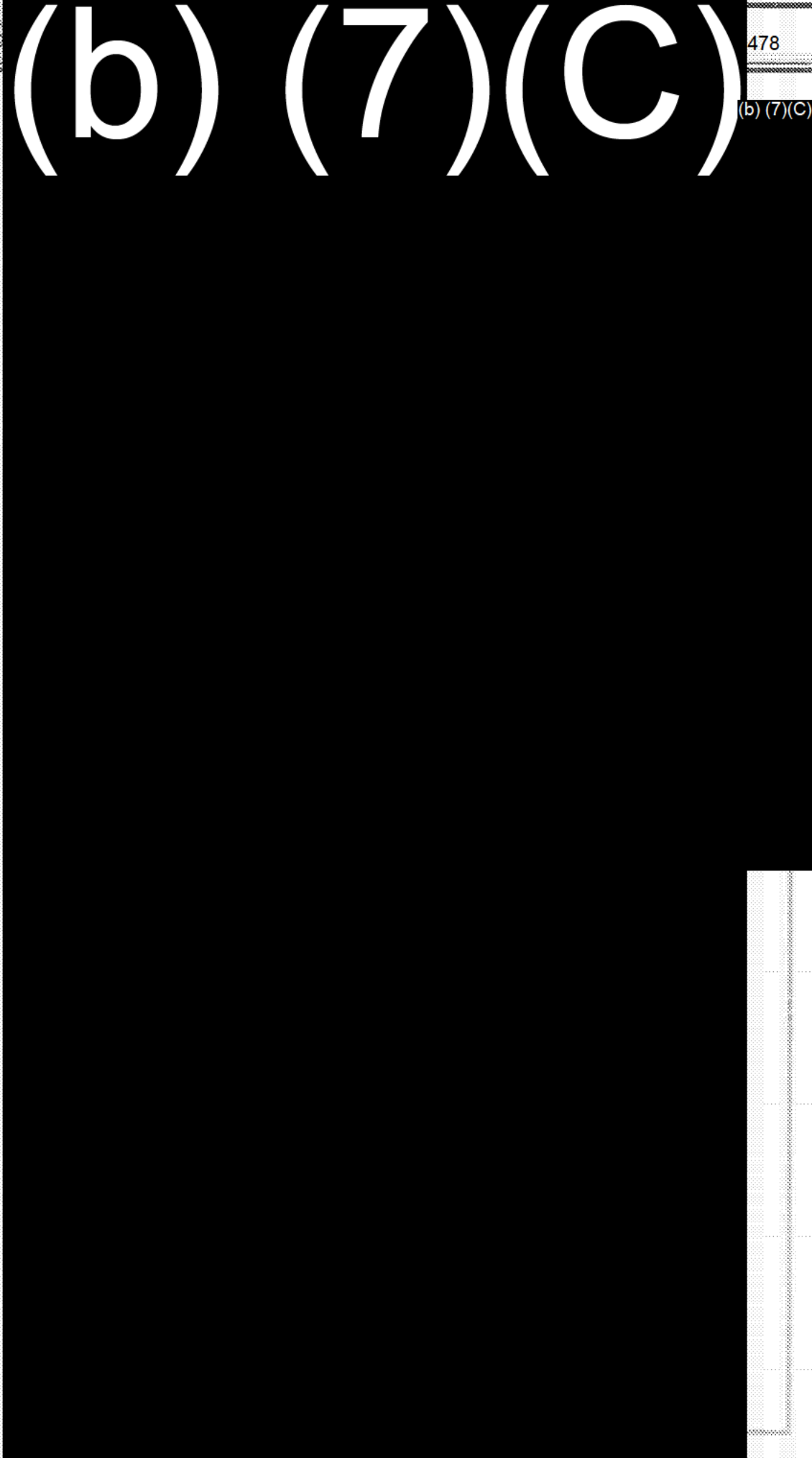
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