

From: [REDACTED]
Sent: Friday, March 18, 2011 6:44 PM
To: [REDACTED]
Subject: FW: Two more after this one.
Attachments: TT # 5, Affidavit.pdf; TT # 5, Application and Order.pdf

[REDACTED]
Chief, Firearms Operations Division
ATF HQ - Room 6.S.129
202 [REDACTED] Cell [REDACTED]

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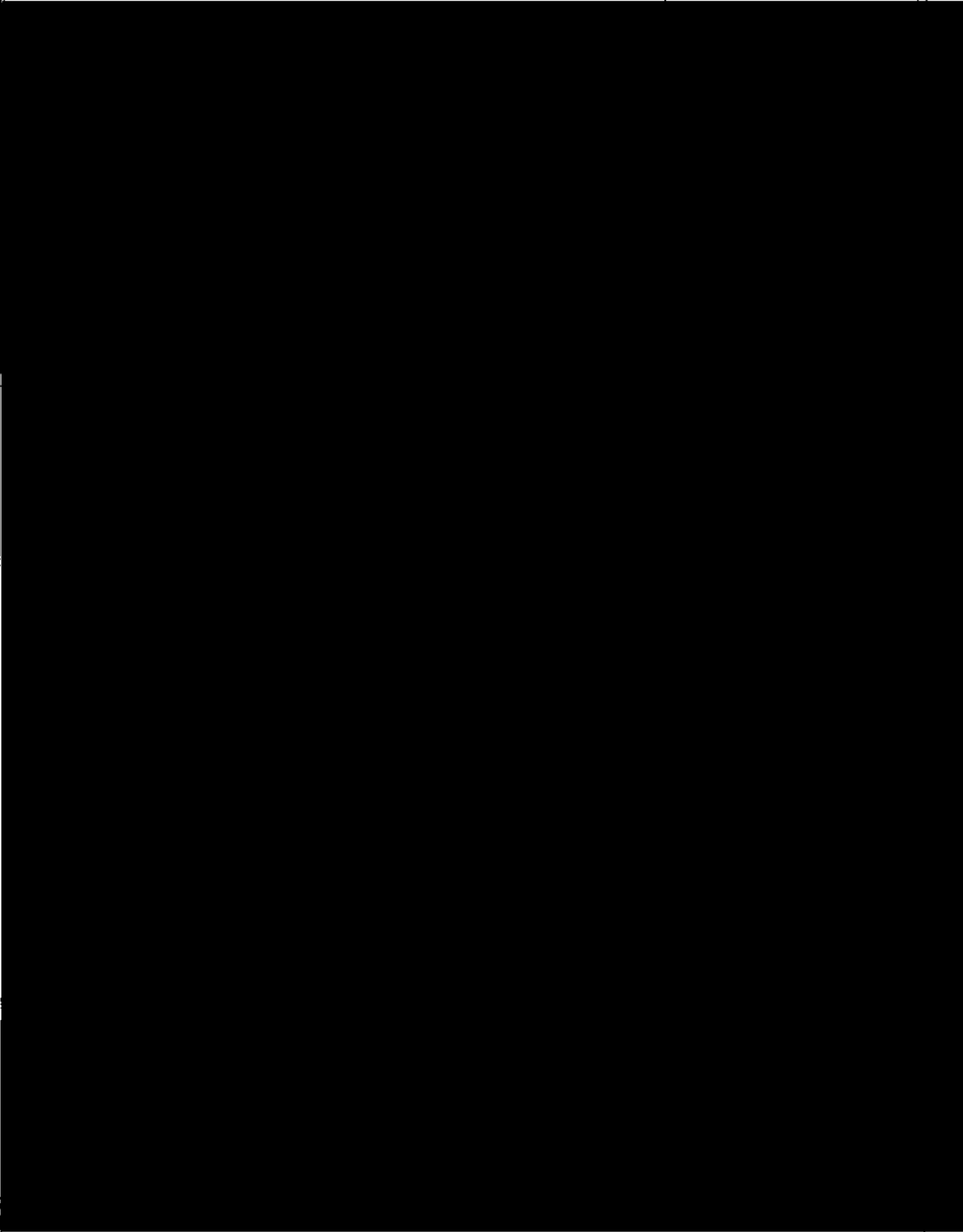
From: [REDACTED]
Sent: Friday, March 18, 2011 6:17 PM
To: Needles, James R.; [REDACTED]
Subject: Two more after this one.

[REDACTED]
Group Supervisor
Phoenix Group VII
[REDACTED]

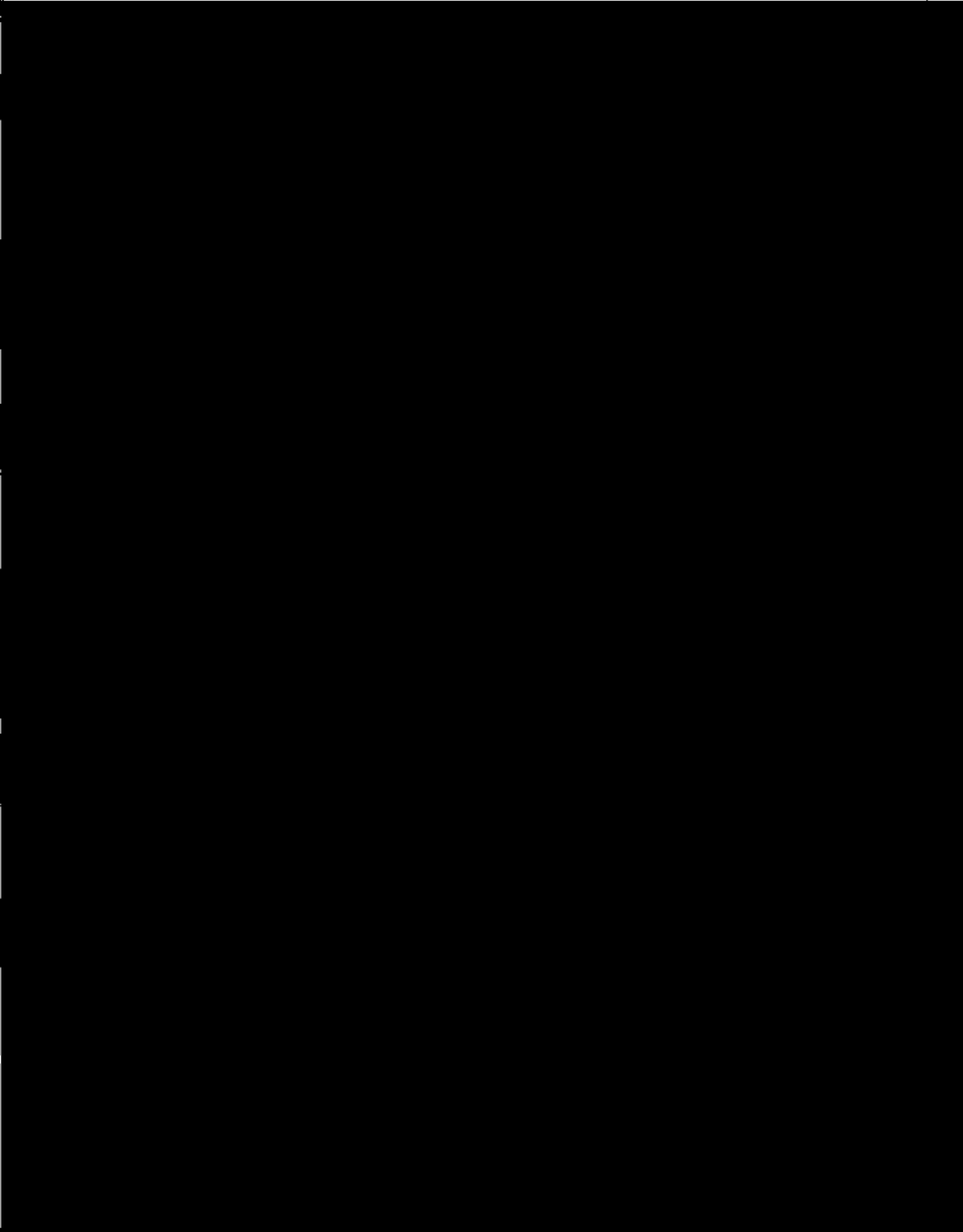
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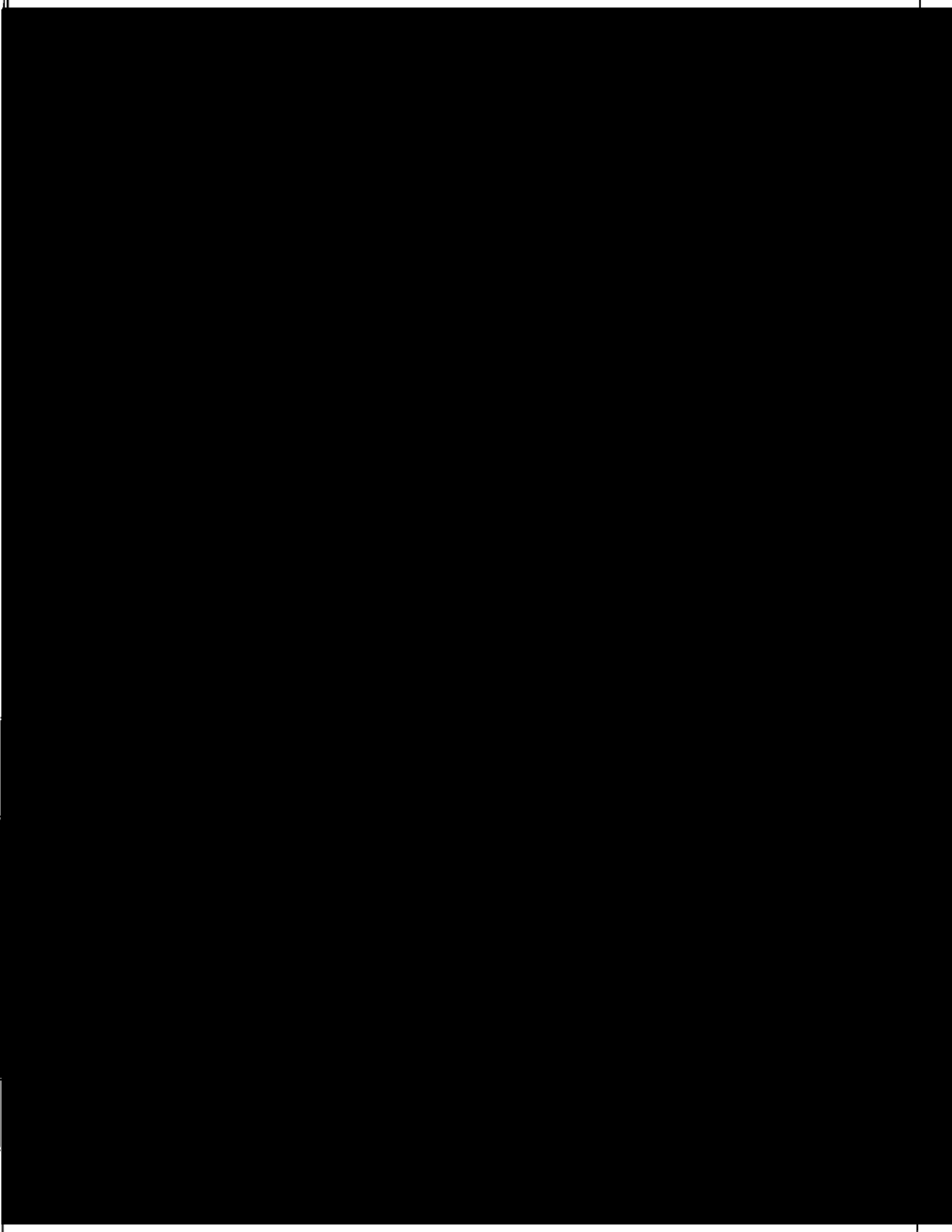
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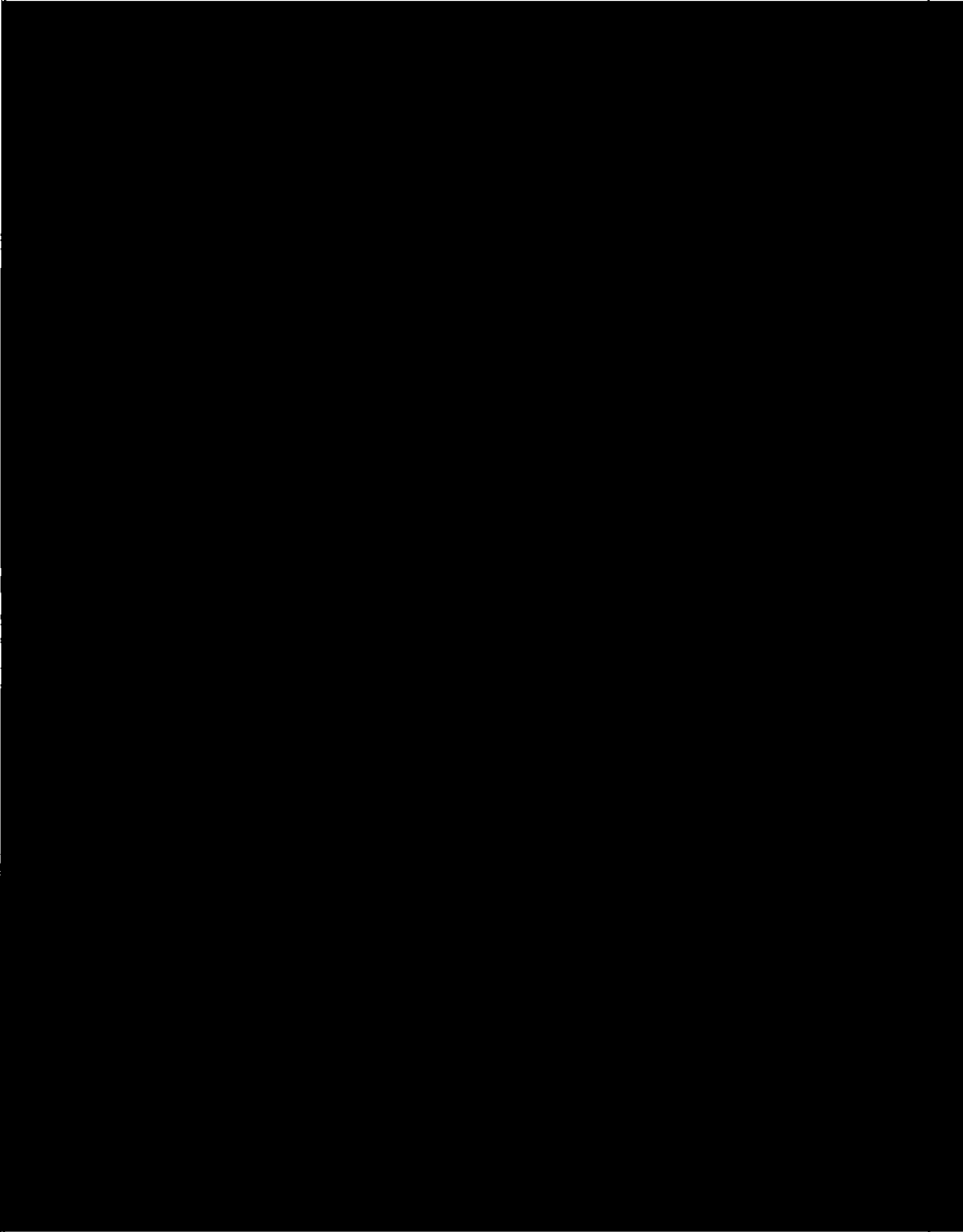
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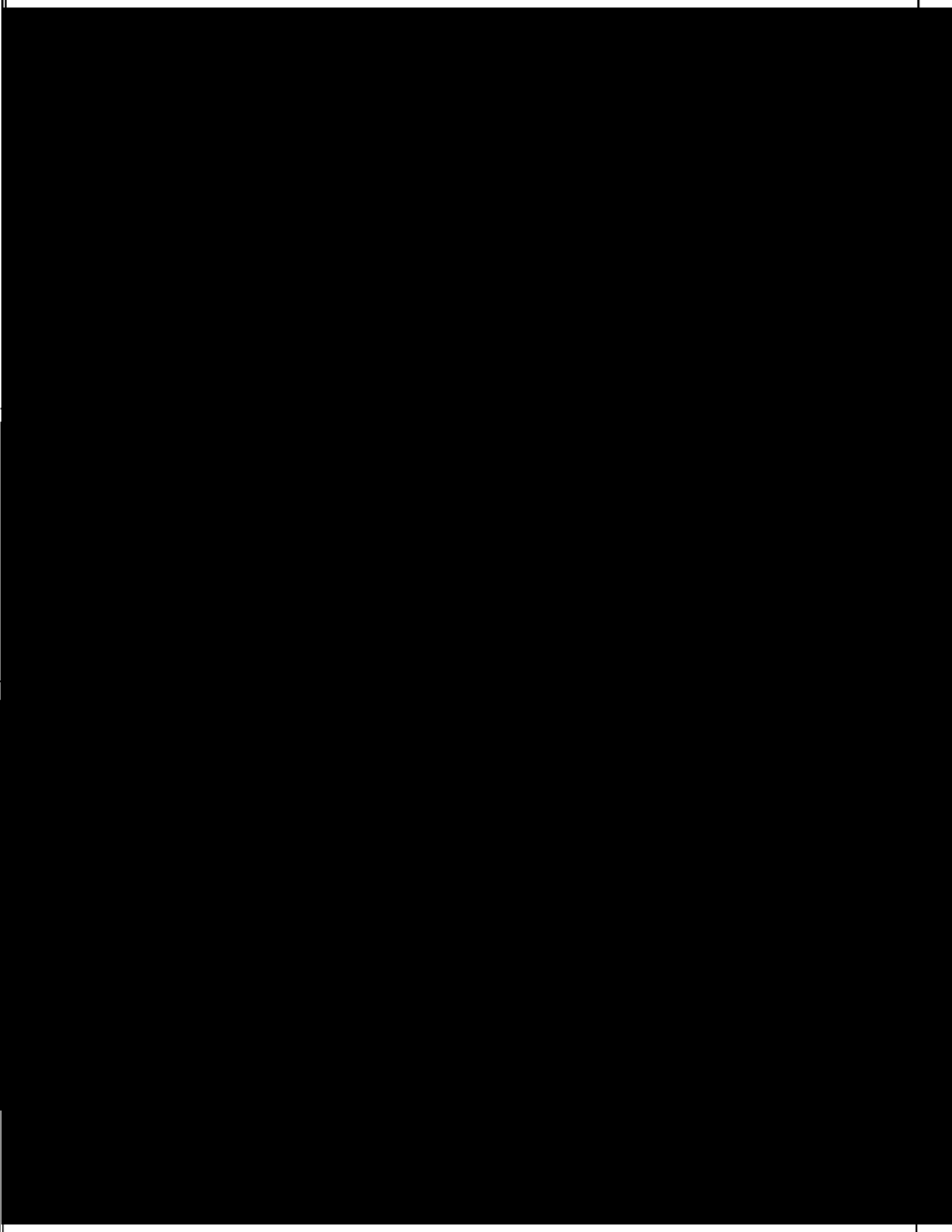
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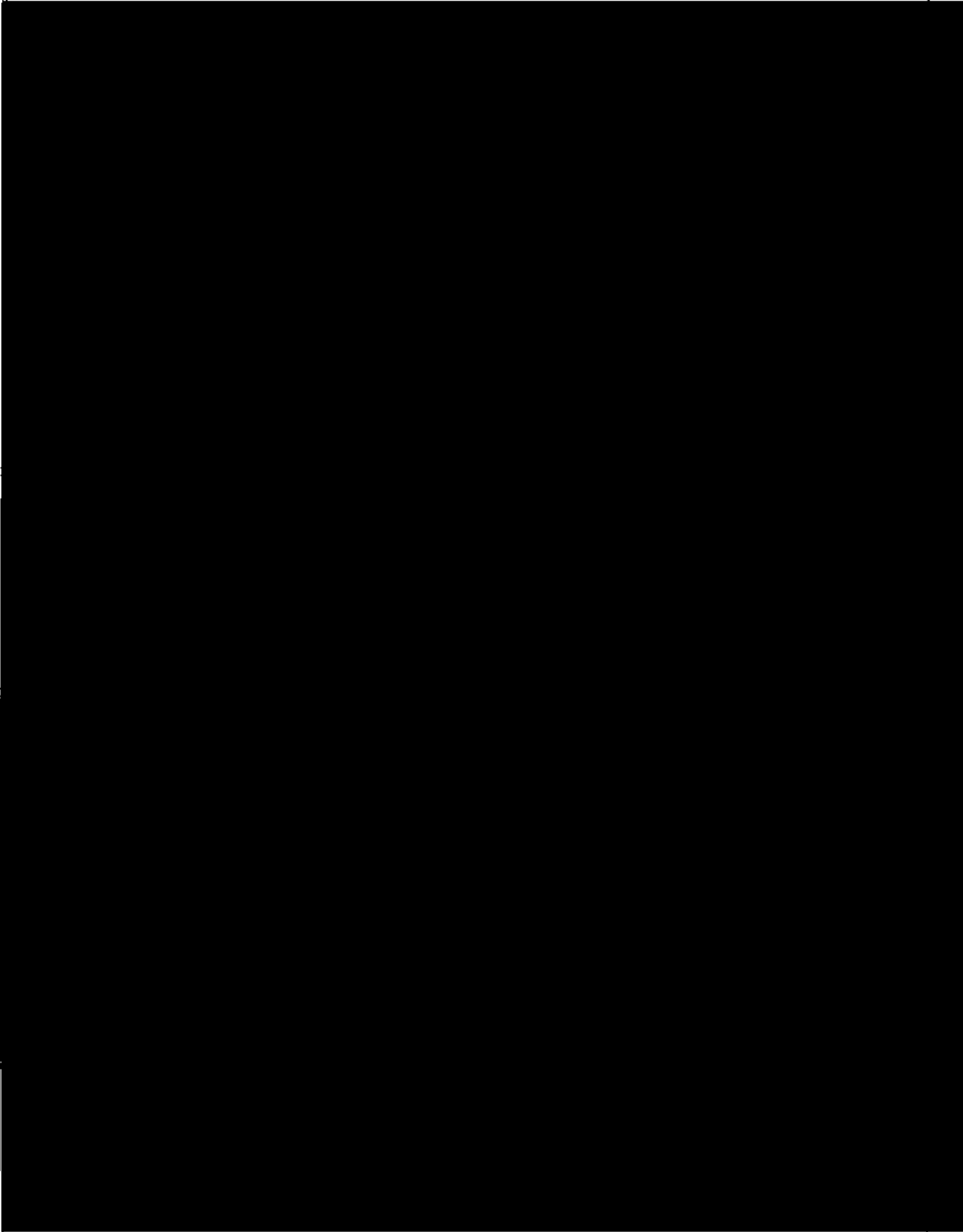
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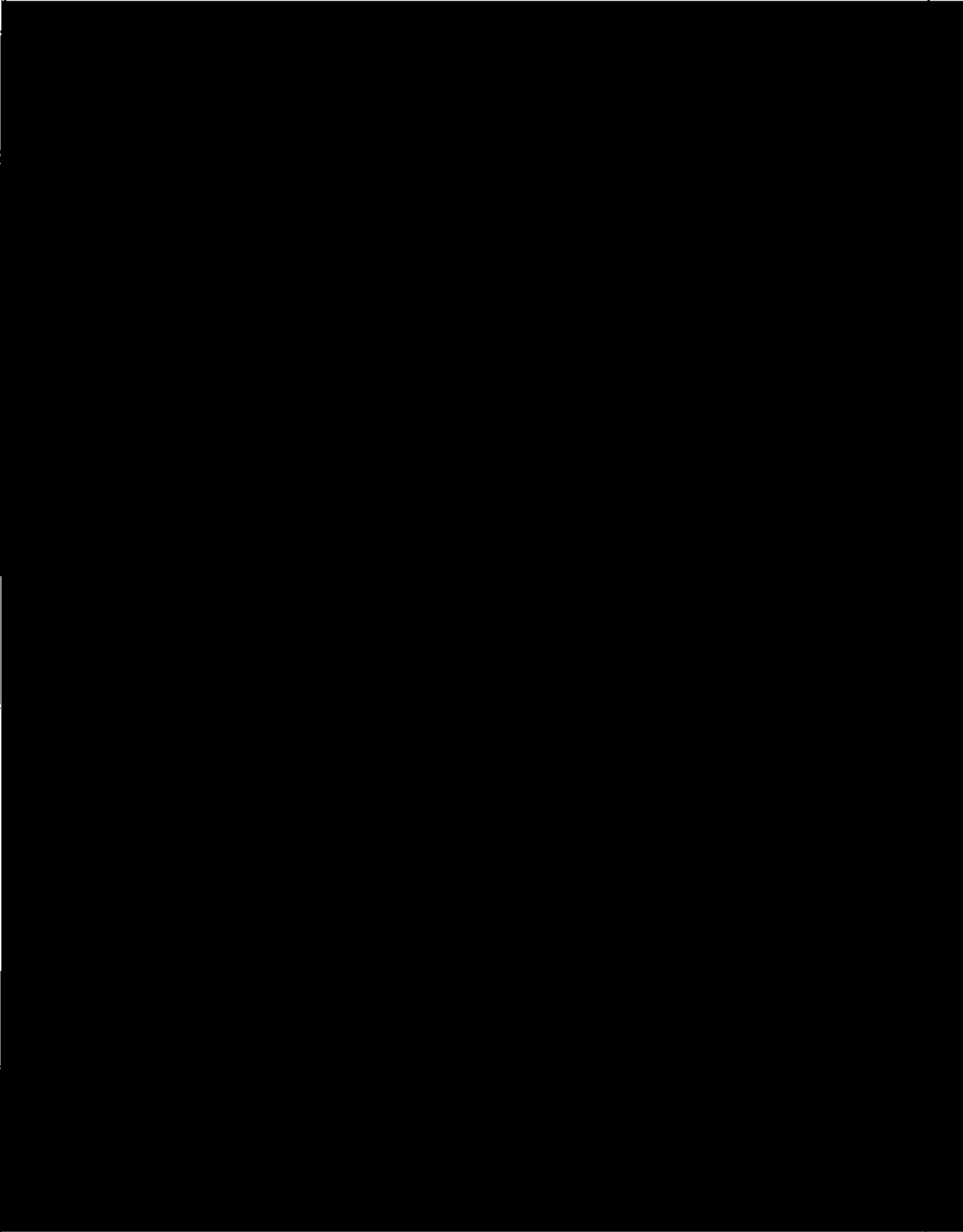
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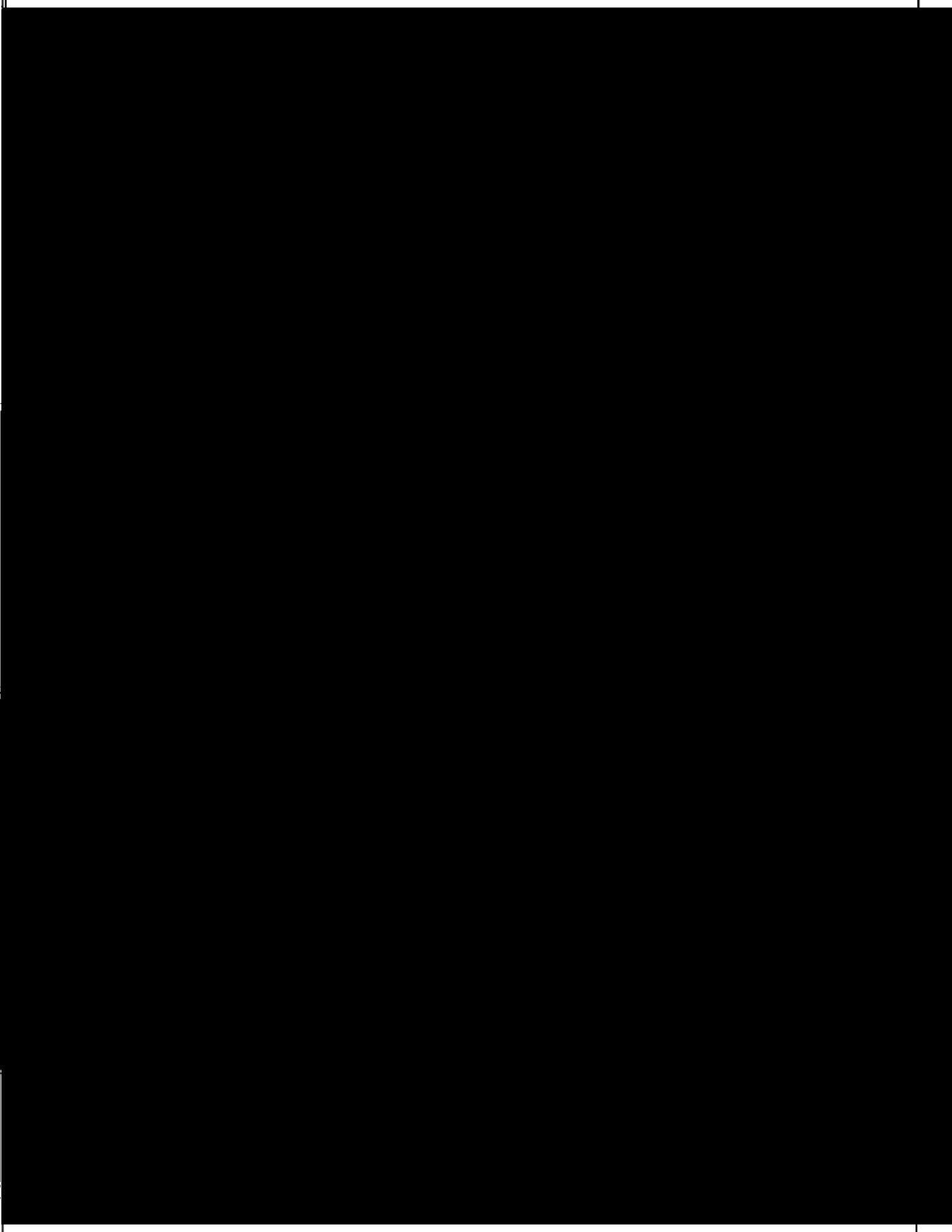
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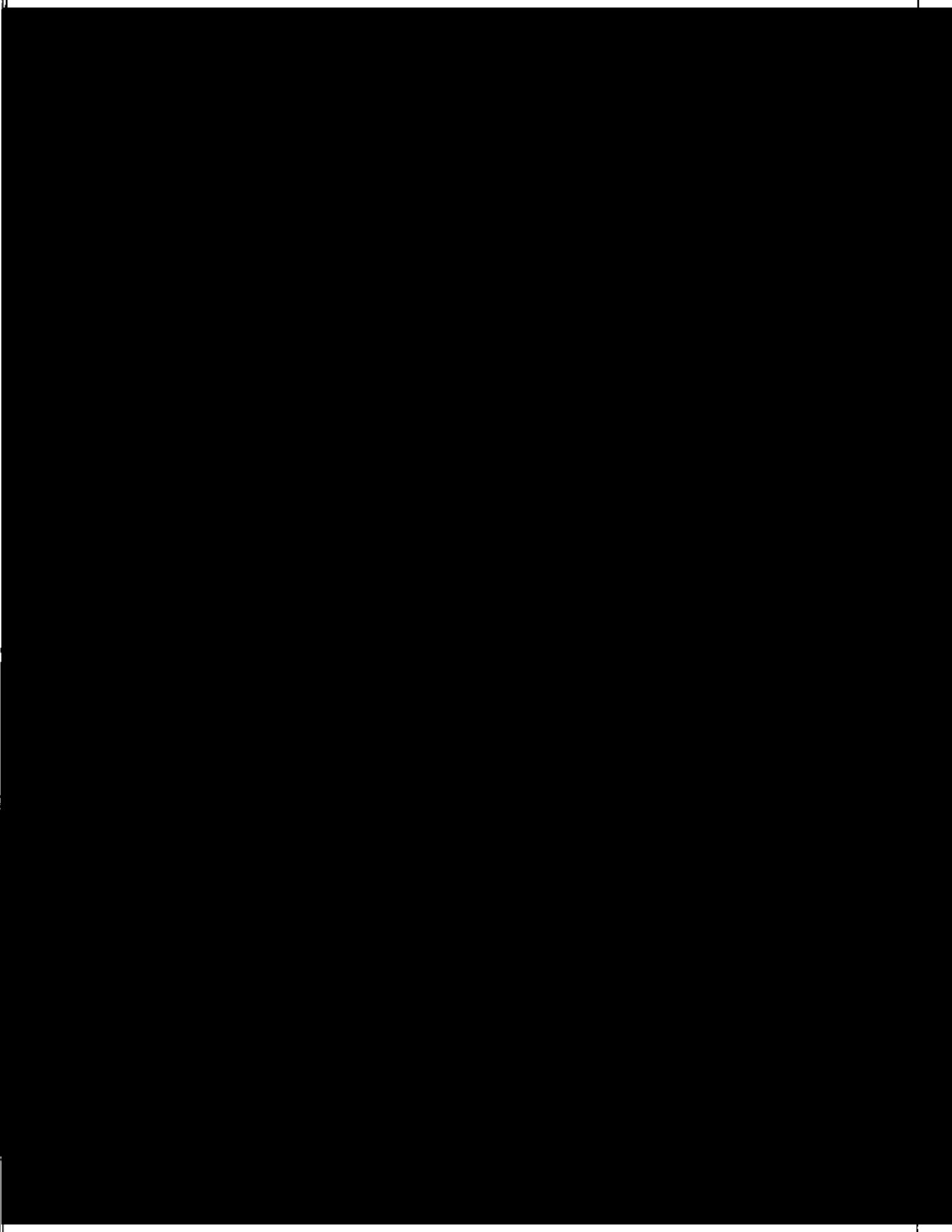
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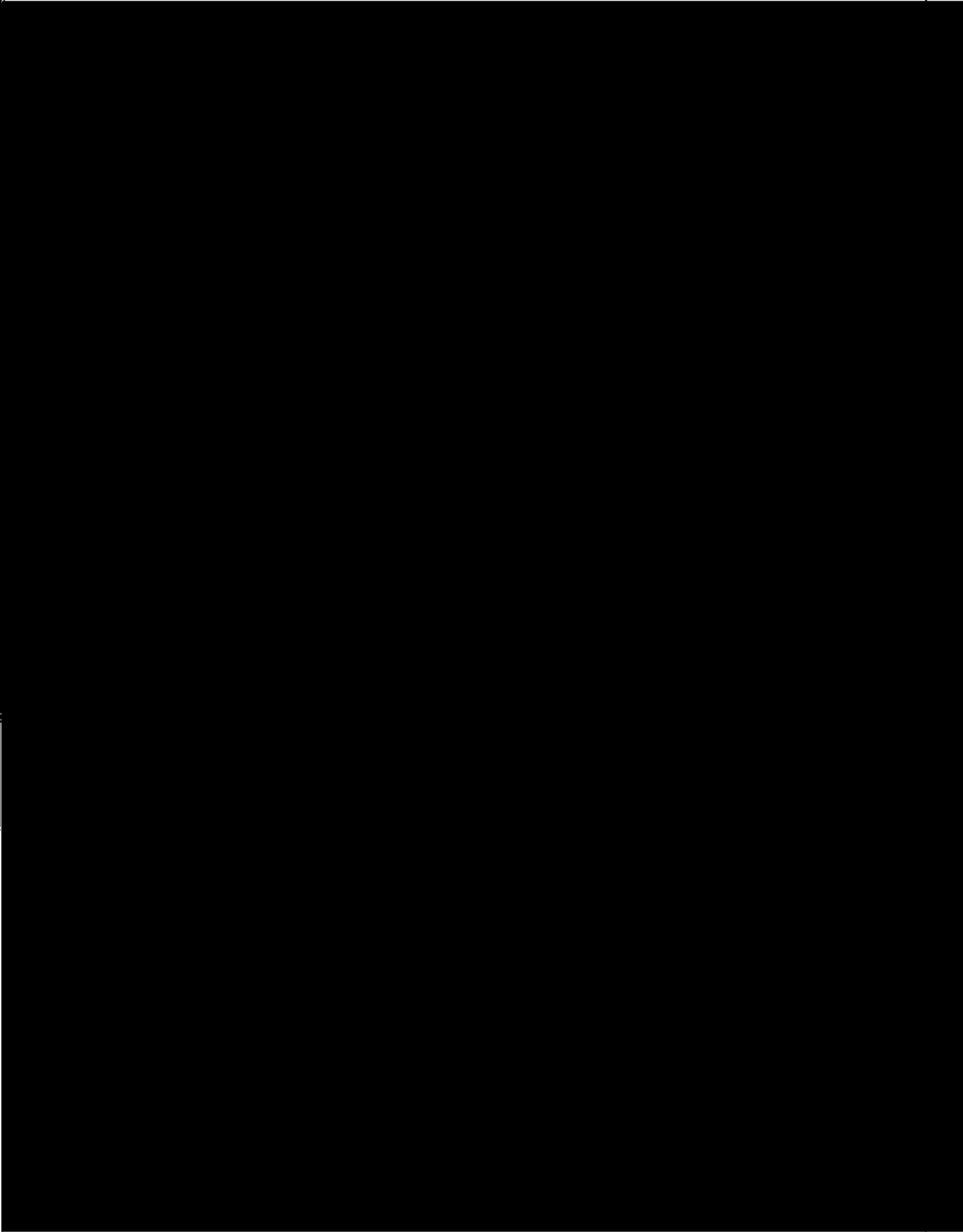
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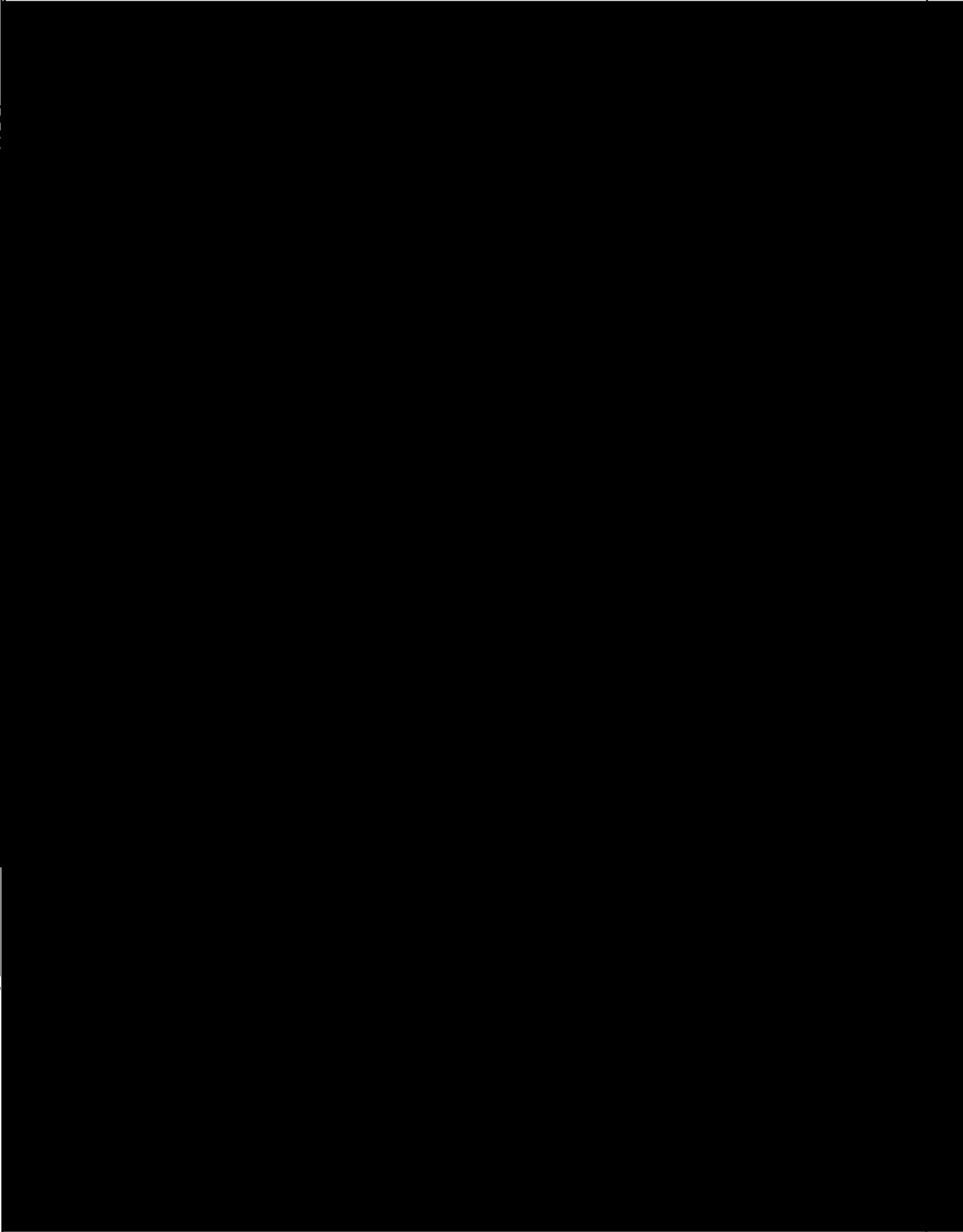
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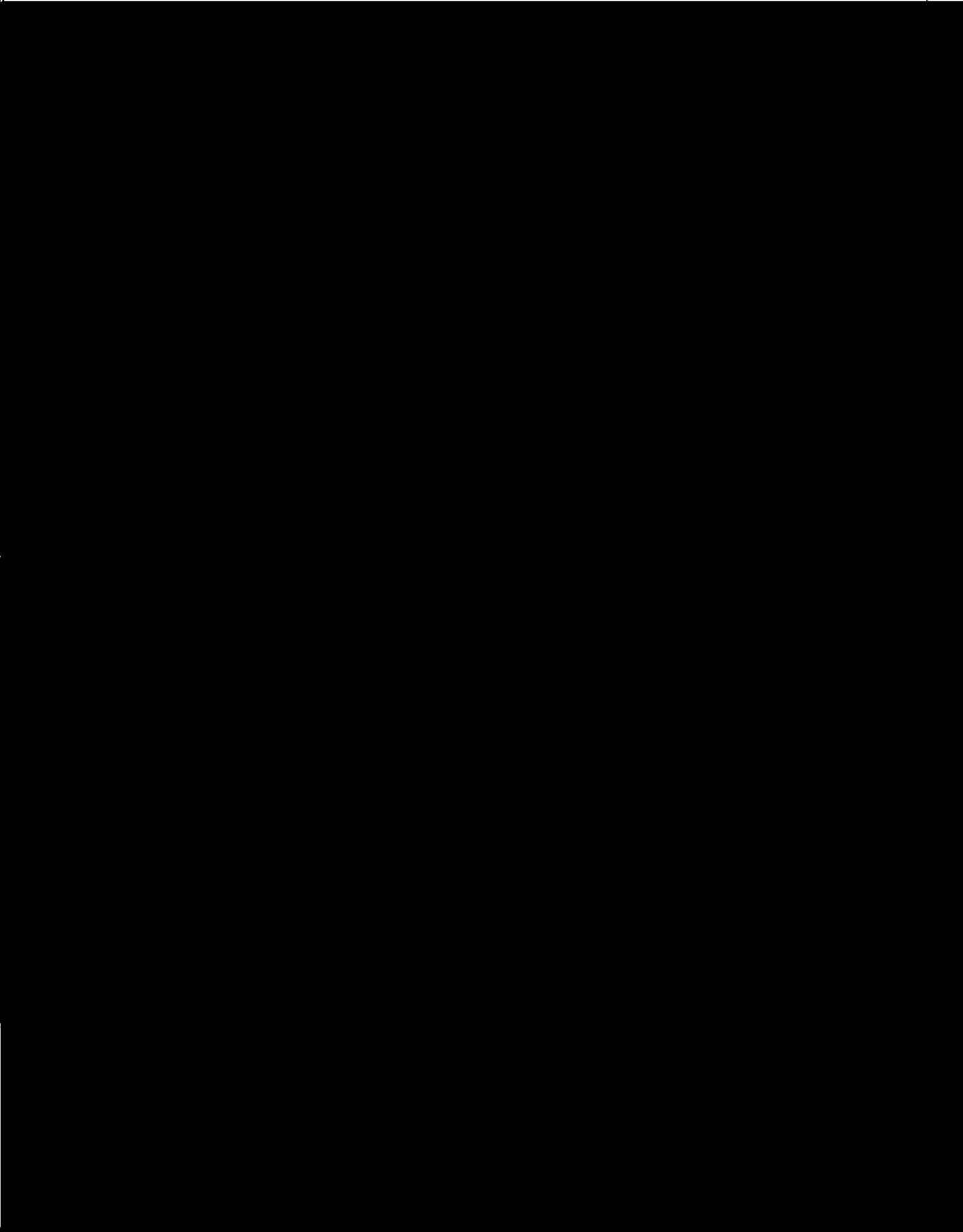
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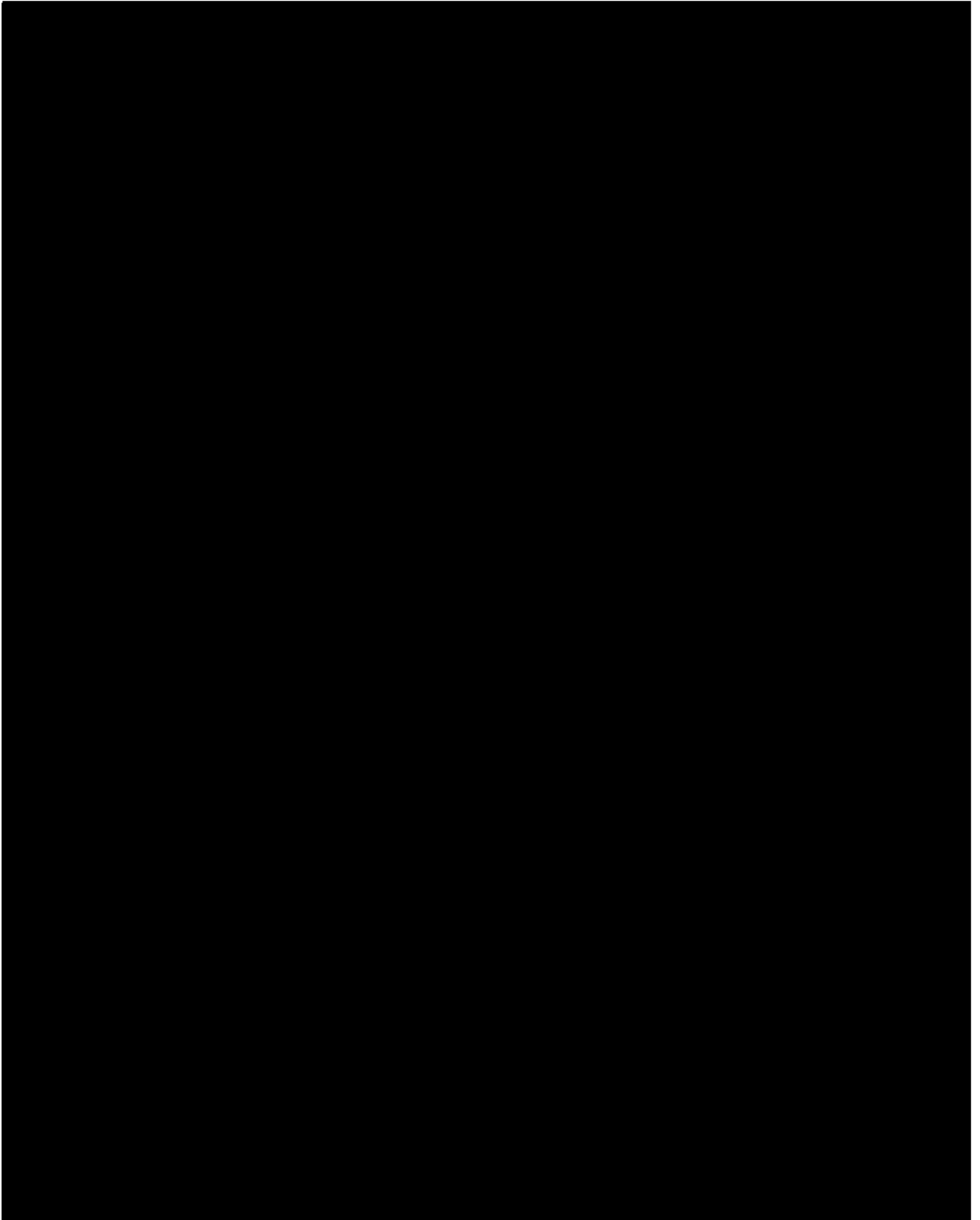


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EXHIBIT A

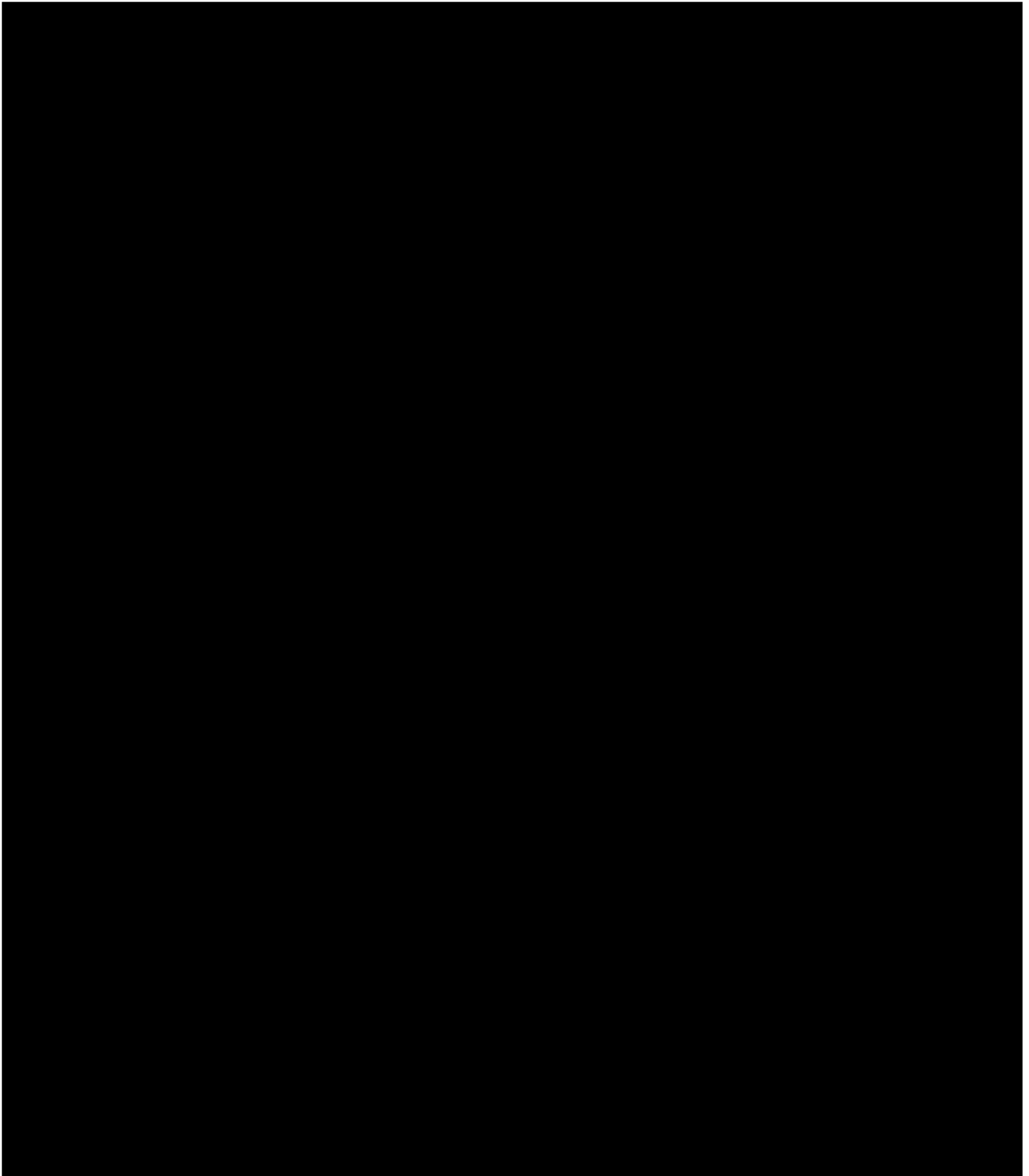


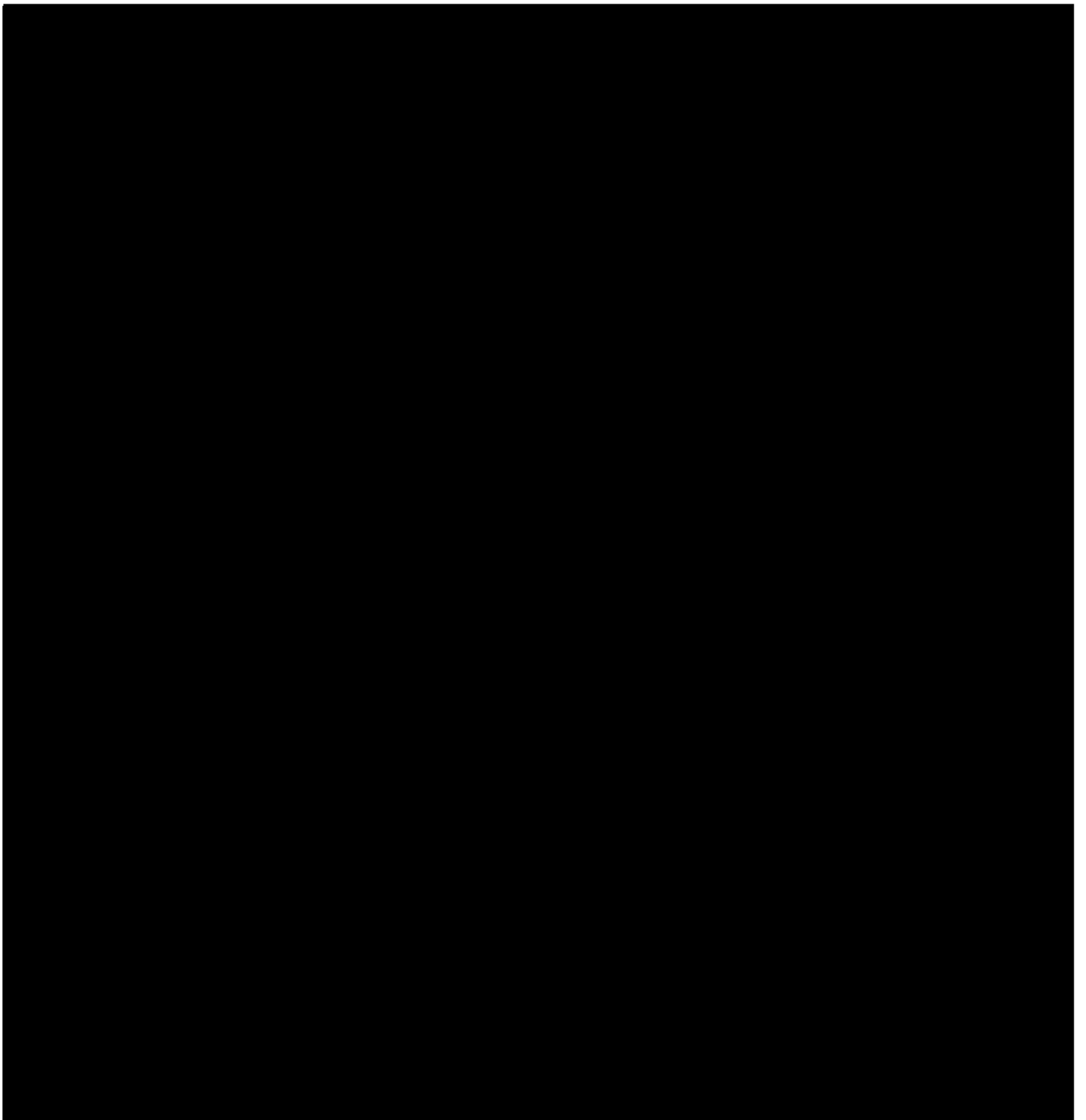


U.S. Department of Justice

Criminal Division

Washington, D. C. 20530

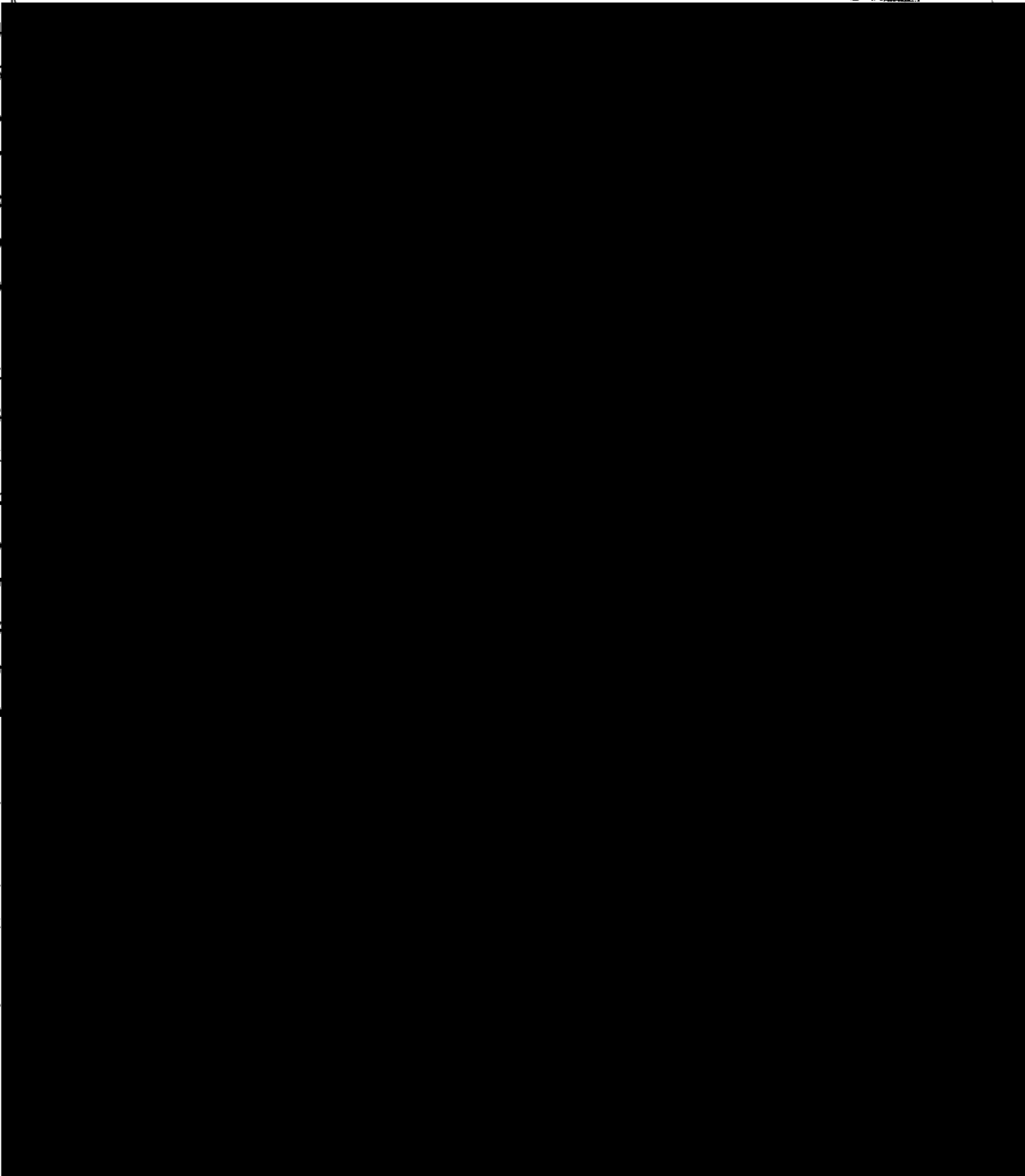




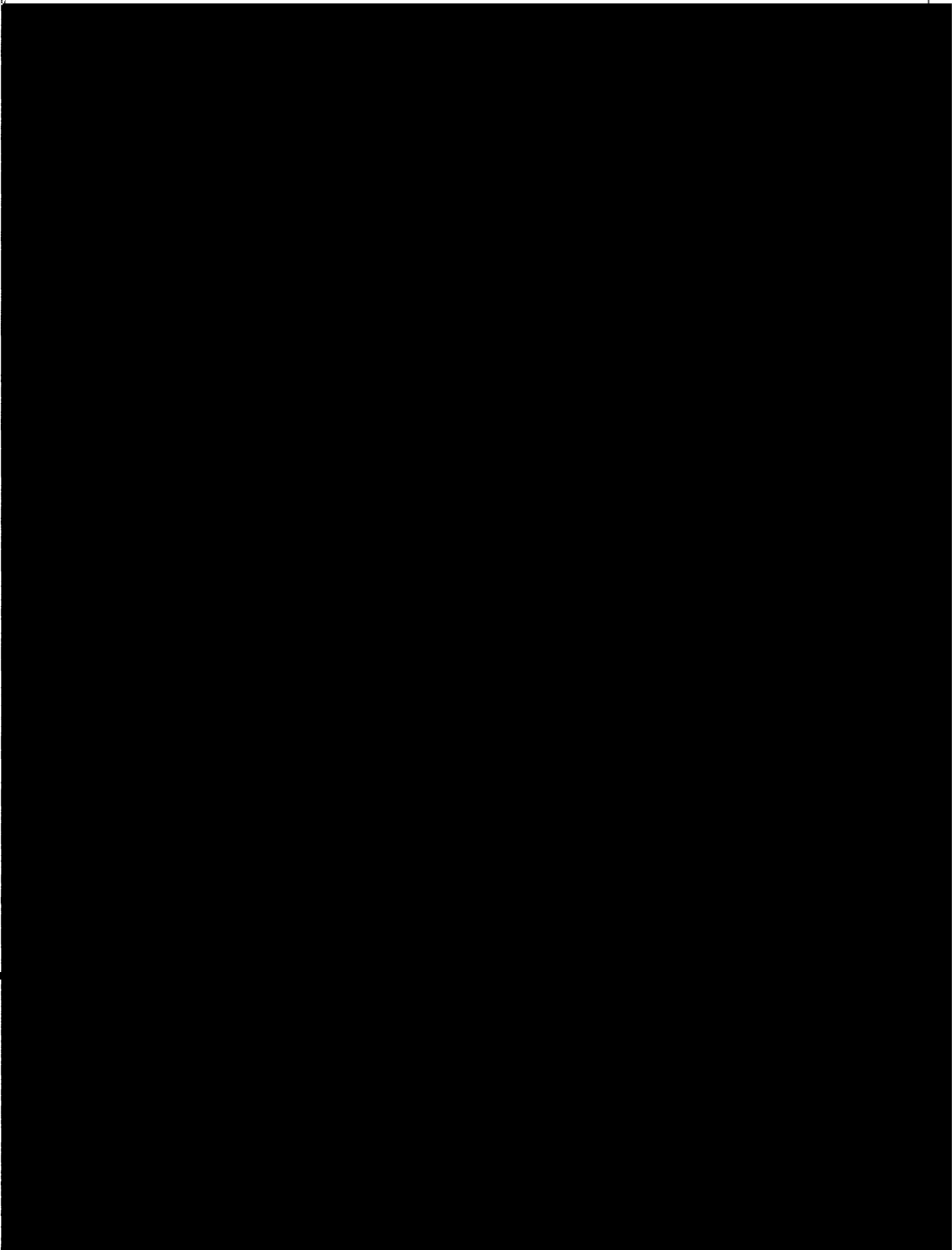
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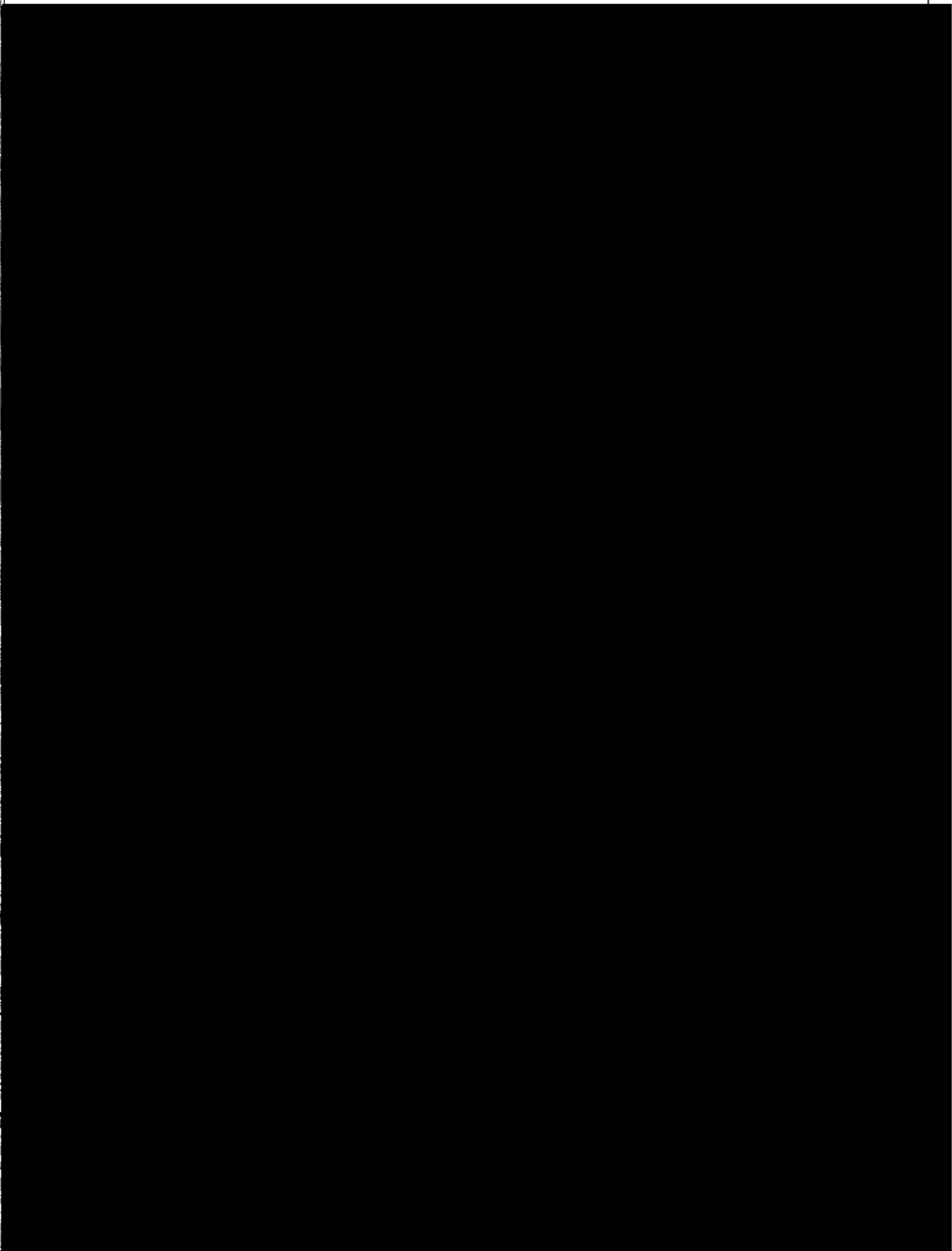
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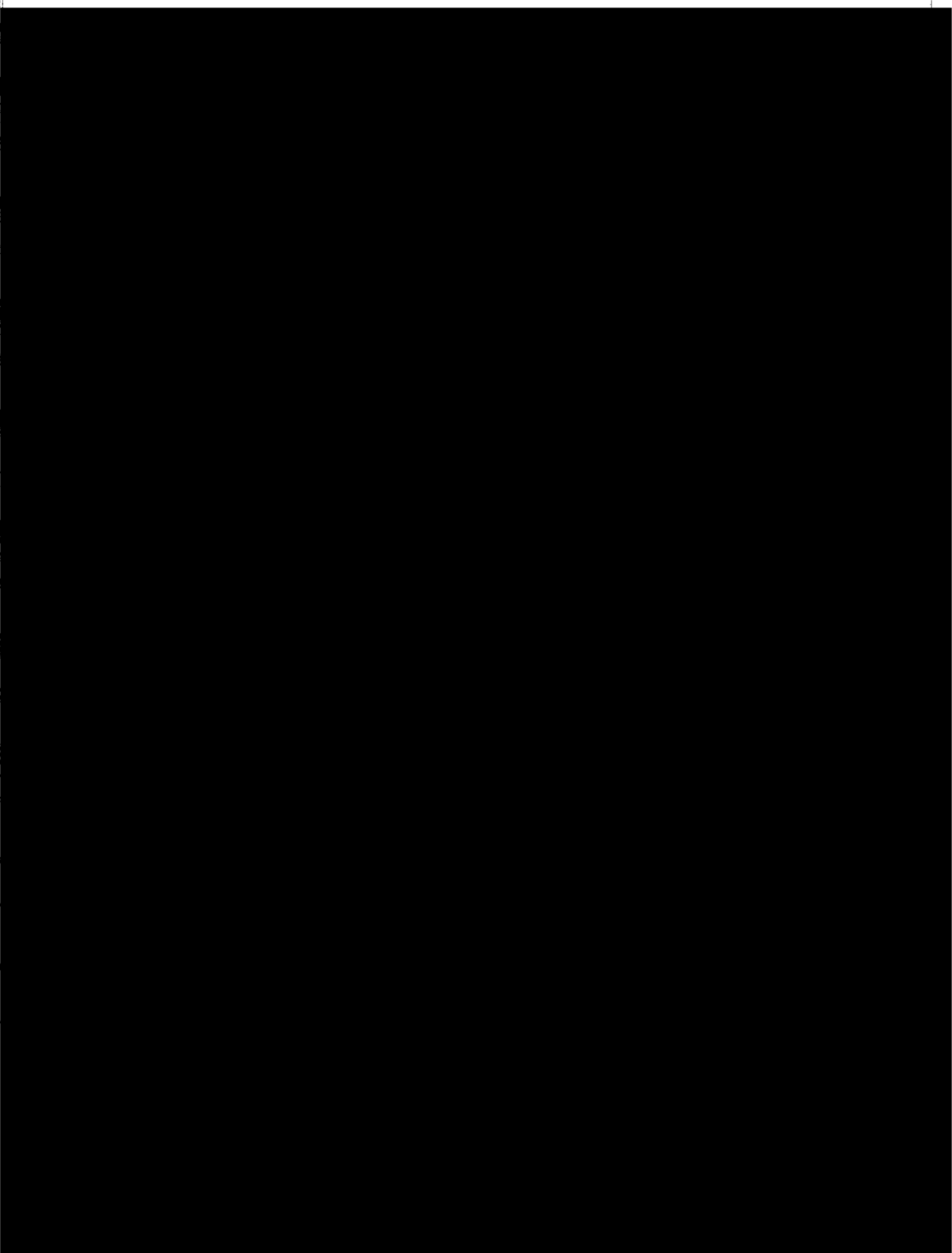
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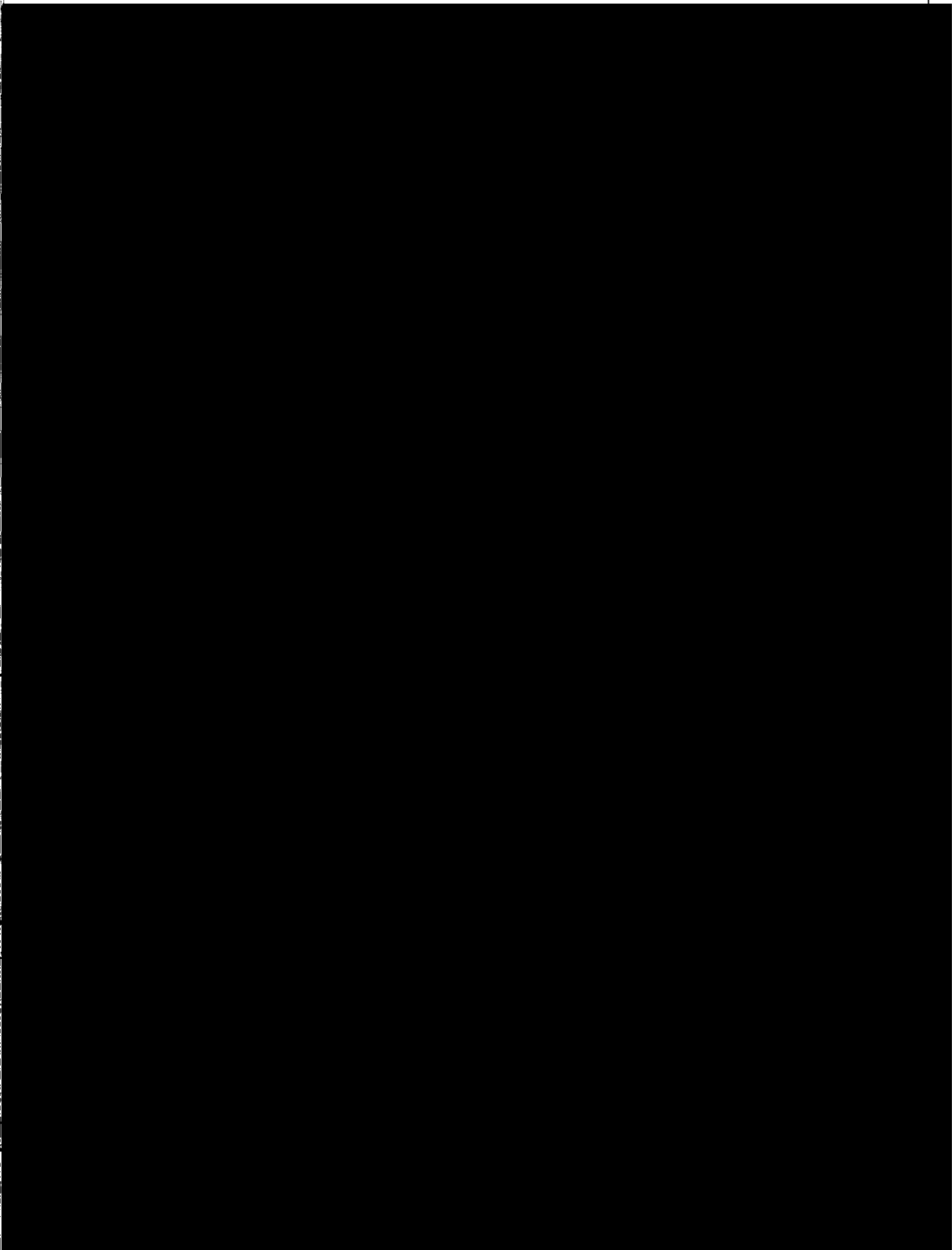
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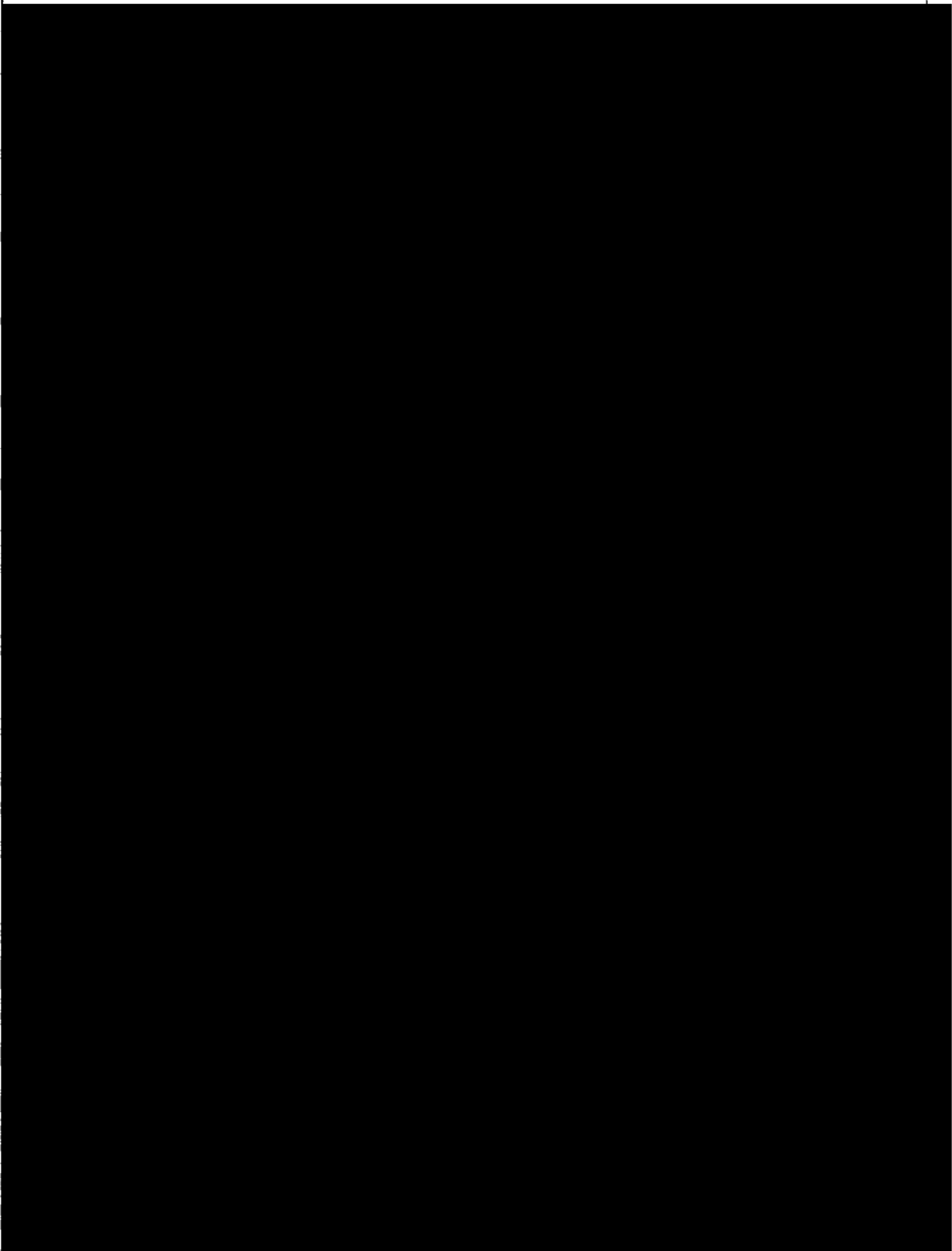
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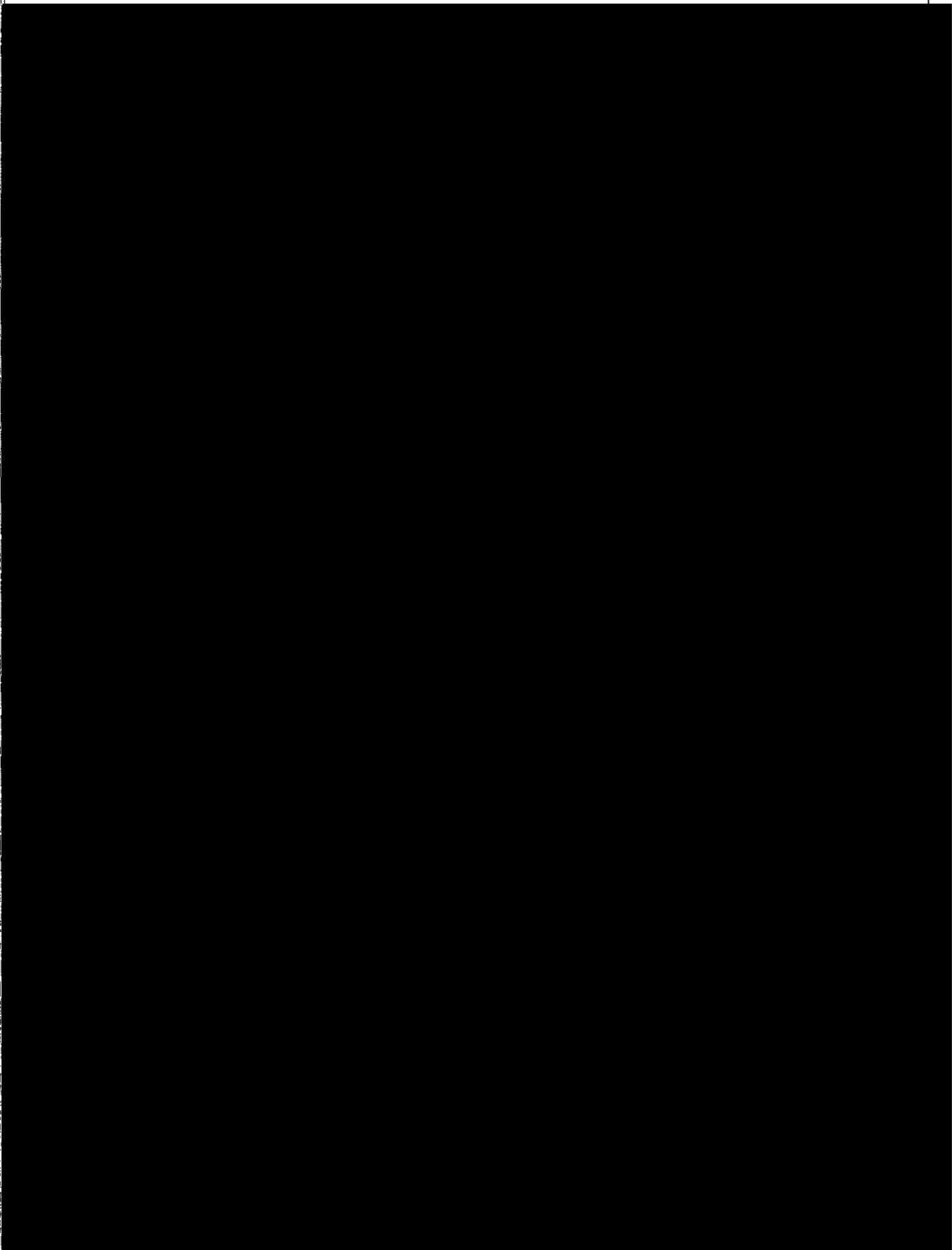
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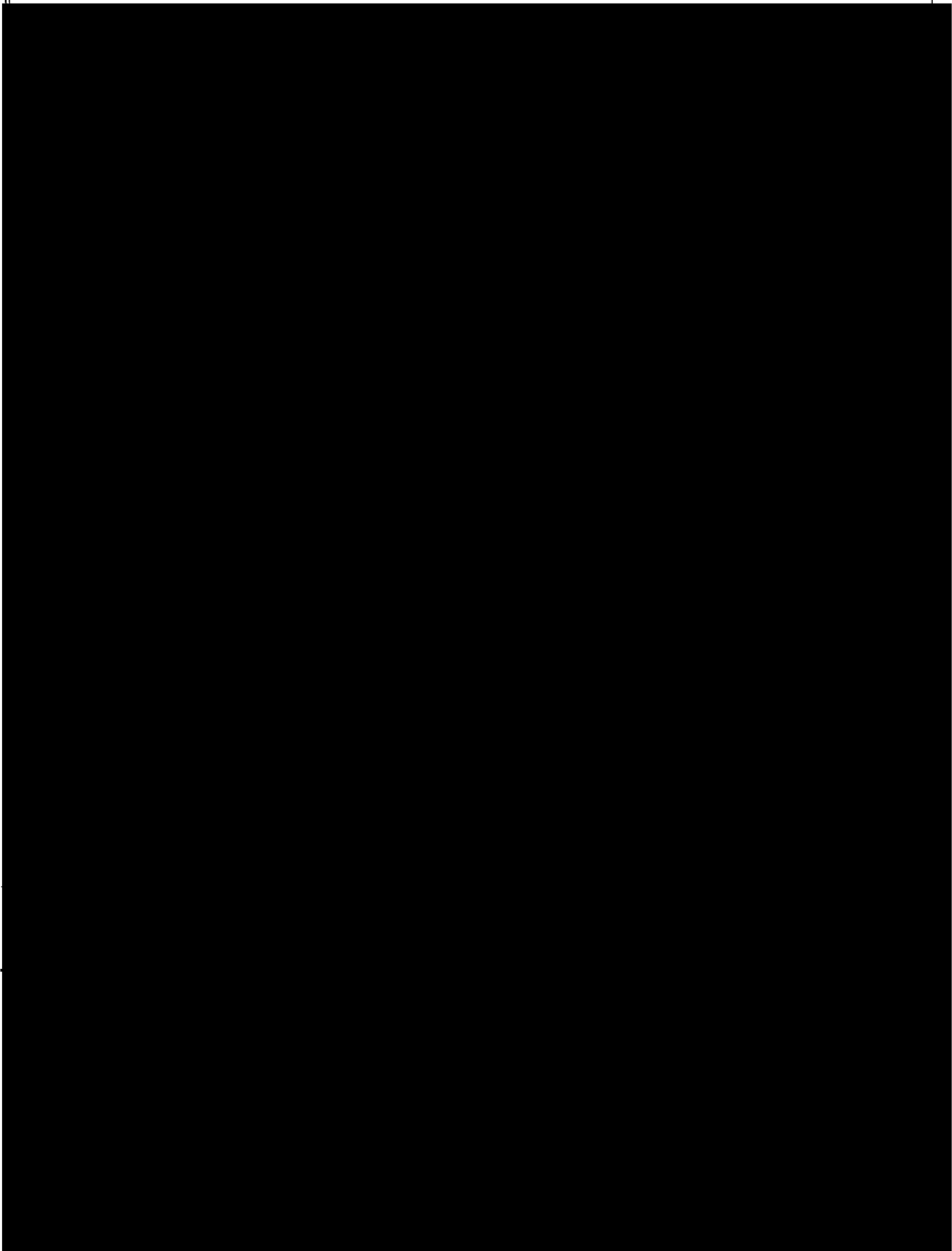
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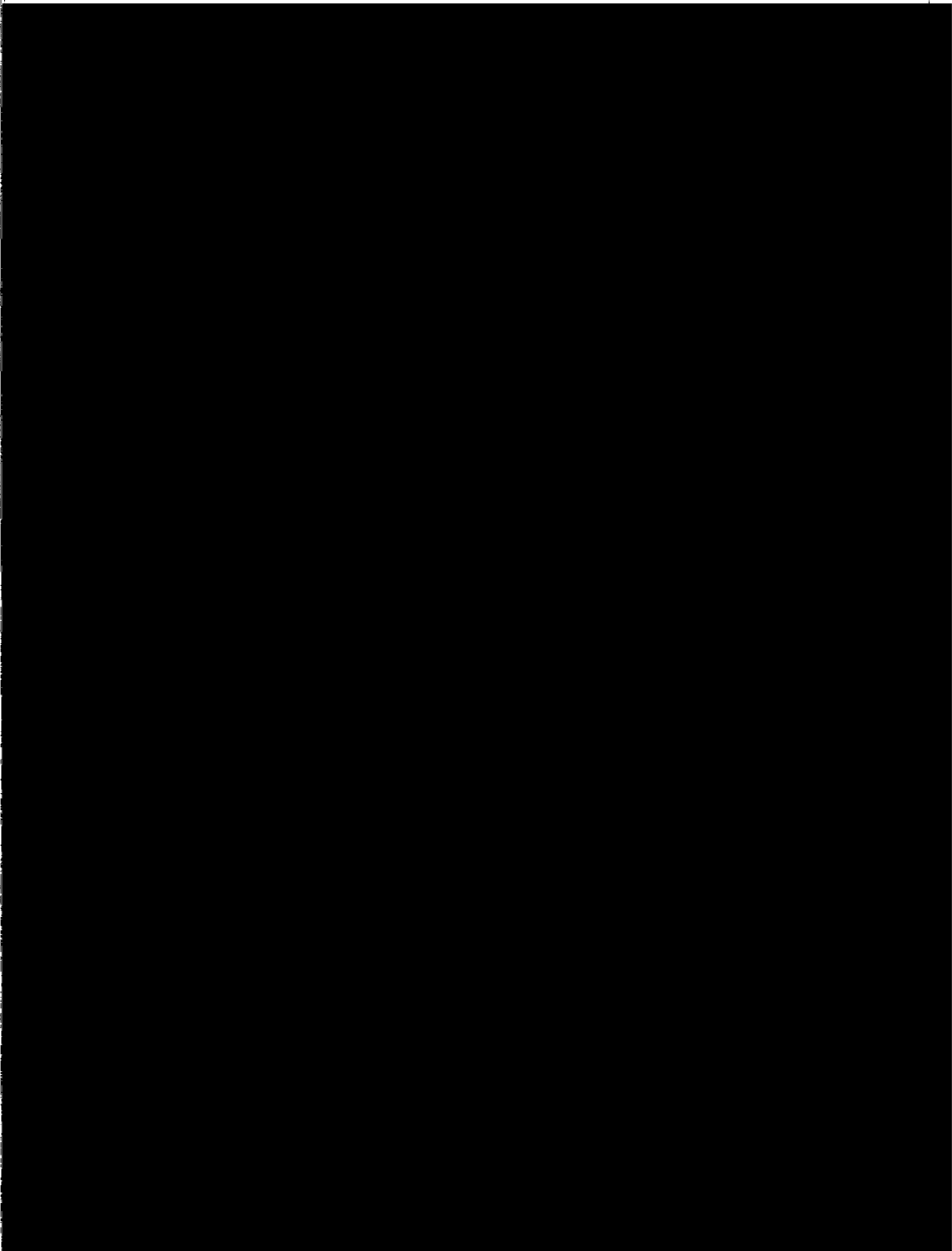
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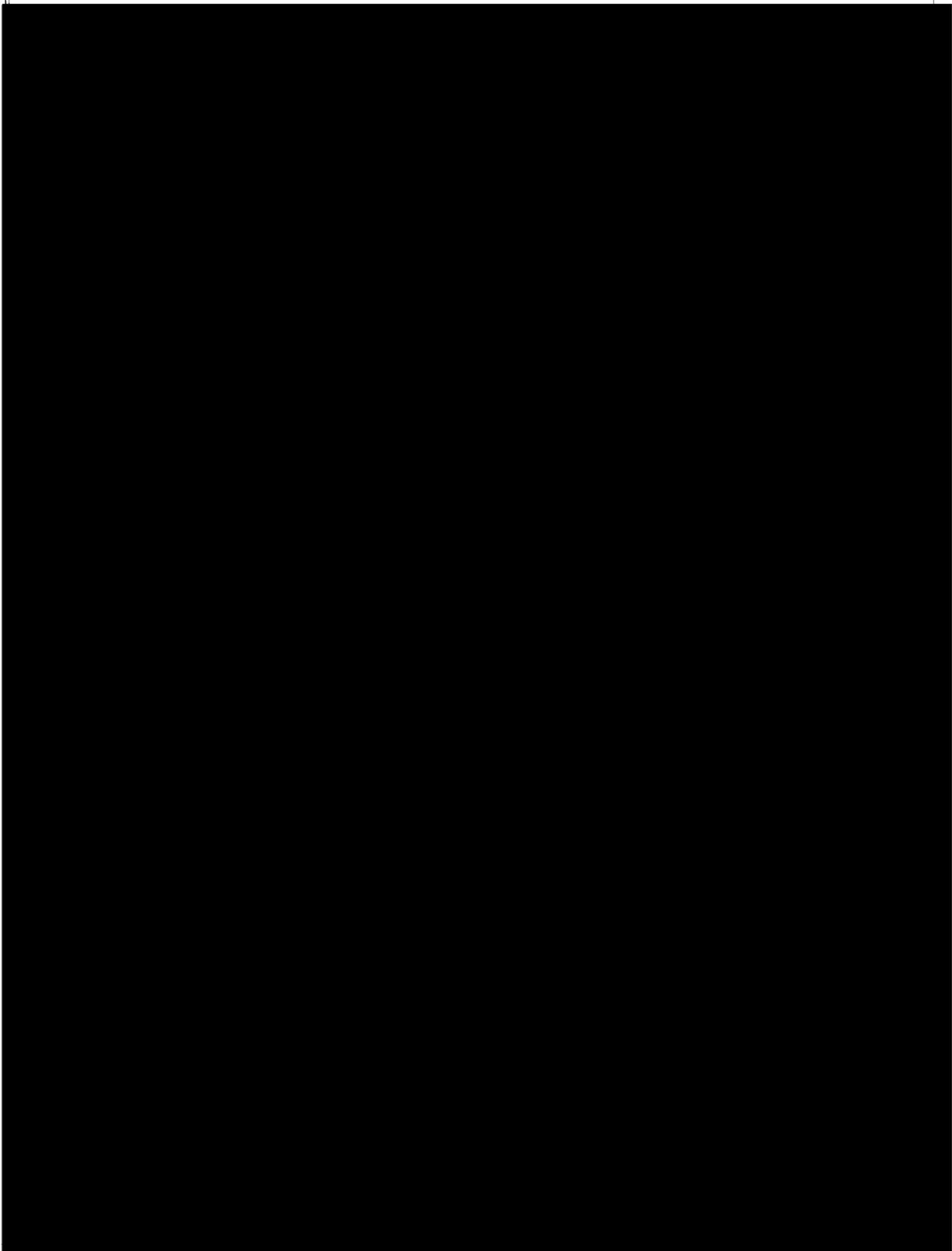
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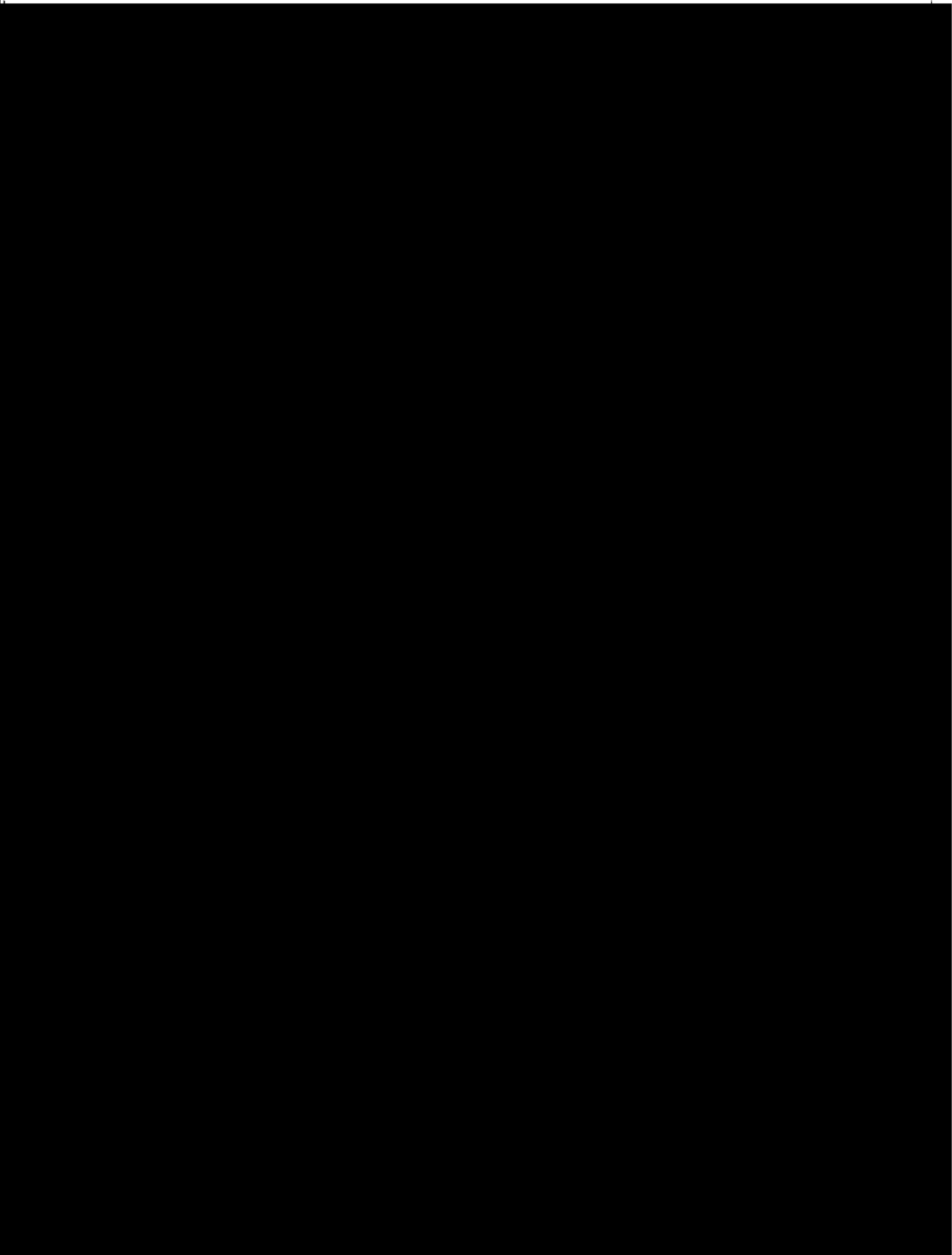
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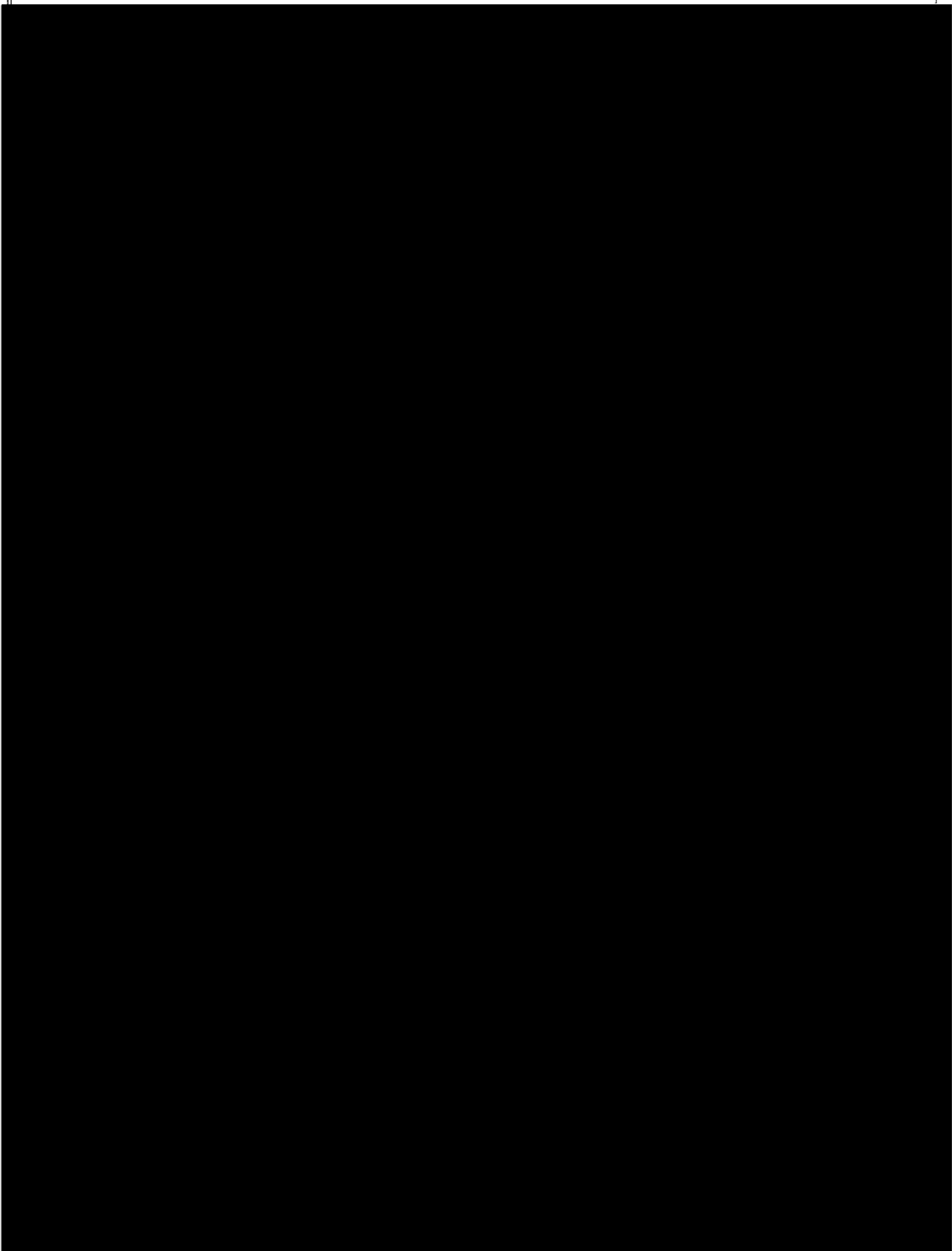
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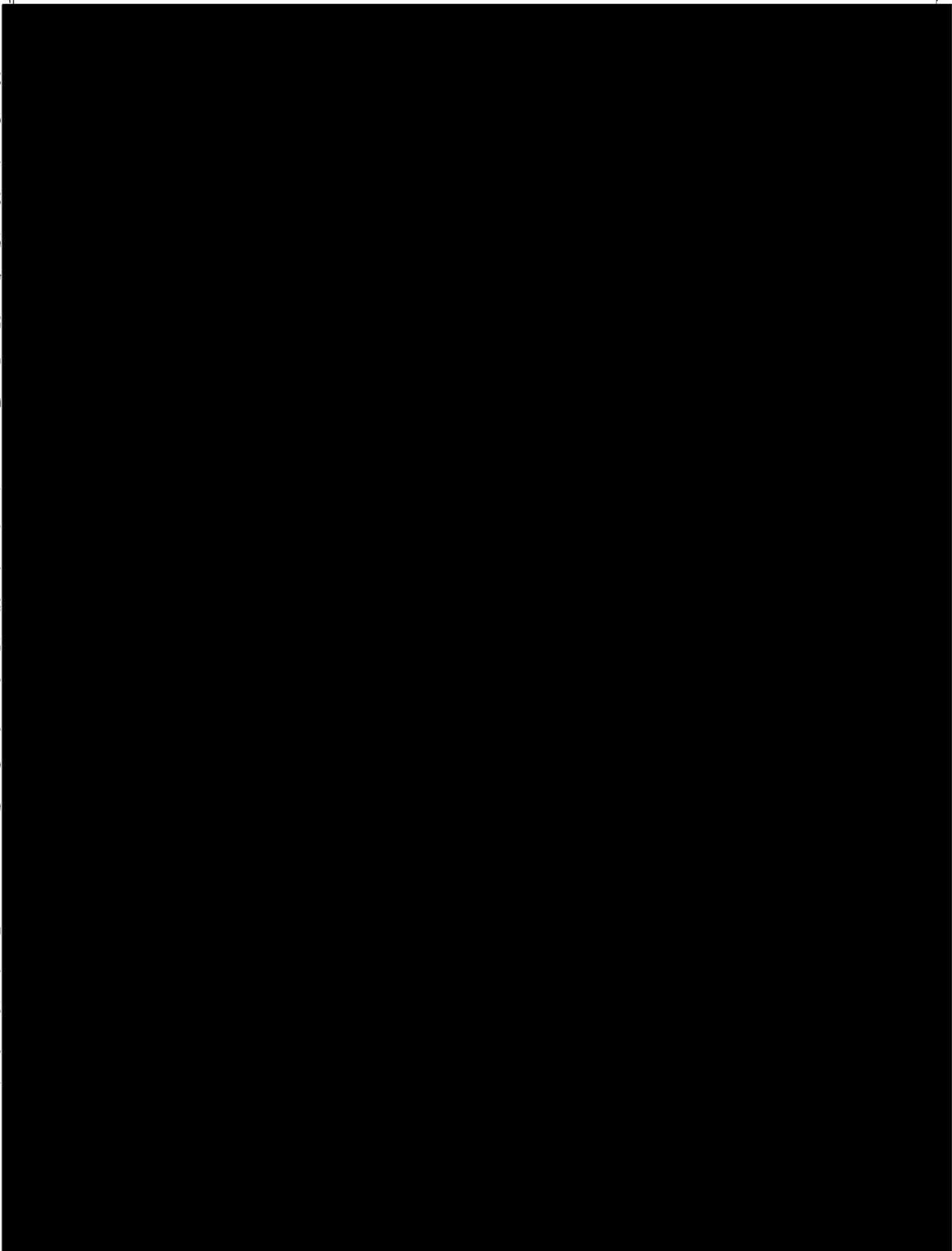
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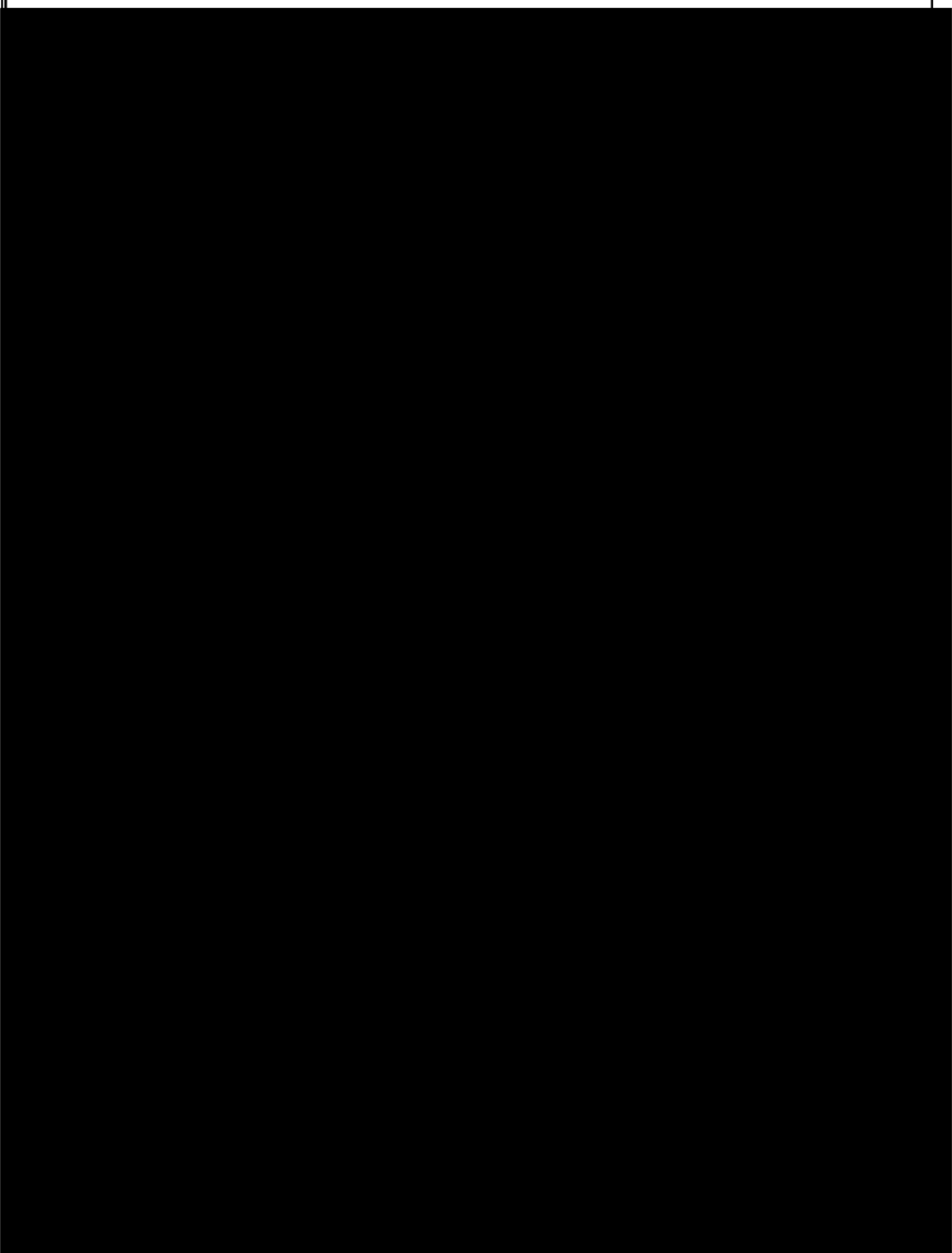
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Bureau of Alcohol, Tobacco,
Firearms and Explosives

Assistant Director

Washington, DC 20226
www.atf.gov



MEMORANDUM TO: All Special Agents
Office of Field Operations

FROM: Assistant Director
(Field Operations)

SUBJECT: Guidance on Firearms Trafficking Investigations

This memo serves to reinforce the importance of adhering to Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and Department of Justice (DOJ) policy on firearms trafficking investigations and to reiterate the DOJ-wide position that component law enforcement agencies must not plan or conduct undercover operations in which firearms are crossing the U.S. border. DOJ guidance further requires that if a law enforcement official has any knowledge that guns are about to cross the border, he/she must take immediate action to prevent that from occurring, even if doing so will jeopardize an investigation.

ATF guidance is contained in the Firearms Enforcement Program Order, ATF O 3310.4B; in the Firearms Trafficking Investigation Guide, ATF P 3317.1; and in the September 2010 document entitled "Project Gunrunner - A Cartel Focused Strategy." ATF O 3310.4B outlines policy and discusses a number of investigative techniques consistent with the DOJ-wide guidance. ATF P 3317.1 contains, among other resources, an investigative checklist for international trafficking-in-arms cases in Section X, as well as a detailed outline of firearms trafficking indicators in Section V. "Project Gunrunner - A Cartel Focused Strategy" notes practical considerations that may require bringing investigations to a conclusion or dictate a change in investigative tactics prior to the identification of persons directly affiliated with drug trafficking organizations. Field Special Agents in Charge are also reminded that they must closely monitor and approve high volume trafficking investigations and must assess the associated risks. Lastly, field divisions should continue to coordinate with the U.S. Attorney's Offices for the districts in which they conduct operations to ensure a mutual understanding of the criteria for both prosecutions and seizures.

Mark R. Chait

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From: [REDACTED]
Sent: Friday, March 18, 2011 12:59 PM
To: Serres, Greg
Subject: Re: Questions from Matt Axelrod

Thanks

[REDACTED]
Chief, Firearms Operations Division
202-[REDACTED] Cell [REDACTED]

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From: Serres, Greg
To: [REDACTED]
Sent: Fri Mar 18 12:47:35 2011
Subject: RE: Questions from Matt Axelrod

Got them. Thanks.

Greg Serres
Acting Deputy Chief Counsel
Bureau of Alcohol, Tobacco, Firearms & Explosives
202-[REDACTED]

From: [REDACTED]
Sent: Friday, March 18, 2011 12:18 PM
To: [REDACTED]
Subject: Re: Questions from Matt Axelrod

I dropped (3) 6e letters on your chair.

[REDACTED]
Chief, Firearms Operations Division
202-[REDACTED] Cell [REDACTED]

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From: Serres, Greg
To: [REDACTED]

Sent: Fri Mar 18 07:56:43 2011
Subject: RE: Questions from Matt Axelrod
OK

Greg Serres
Acting Deputy Chief Counsel
Bureau of Alcohol, Tobacco, Firearms & Explosives
202 [REDACTED]

From: [REDACTED]
Sent: Friday, March 18, 2011 7:34 AM
To: Serres, Greg
Subject: Fw: Questions from Matt Axelrod

Fyi. We (Chait, [REDACTED] Needles, [REDACTED] Melson and I) had a discussion on 6(e) and document creation issues last night. I'll come by to discuss with you this morning.

[REDACTED]
Chief, Firearms Operations Division
202 [REDACTED], Cell [REDACTED]

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From: Melson, Kenneth E.
To: [REDACTED] Hoover, William J.; Chait, Mark R.; Needles, James R.; [REDACTED]
Sent: Thu Mar 17 19:28:23 2011
Subject: RE: Questions from Matt Axelrod
I assume you will provide a copy of all to me as well. Thanks. Ken.

From: [REDACTED]
Sent: Thursday, March 17, 2011 5:36 PM
To: Hoover, William J.; Chait, Mark R.; Needles, James R.; [REDACTED]
Cc: Melson, Kenneth E.
Subject: Questions from Matt Axelrod

All:

As we discussed, here are the questions Matt is asking at the moment. Some of this is done.



DP

██████████
Acting Chief of Staff
Office of the Director
O: 202-██████████
C: ██████████
HQ Room 5 S 100

From: [REDACTED]
Sent: Friday, March 18, 2011 12:18 PM
To: Serres, Greg
Subject: Re: Questions from Matt Axelrod

I dropped (3) 6e letters on your chair.

[REDACTED]
Chief, Firearms Operations Division
202-[REDACTED] Cell [REDACTED]

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From: Serres, Greg
To: [REDACTED]
Sent: Fri Mar 18 07:56:43 2011
Subject: RE: Questions from Matt Axelrod

OK

Greg Serres
Acting Deputy Chief Counsel
Bureau of Alcohol, Tobacco, Firearms & Explosives
202-[REDACTED]

From: [REDACTED]
Sent: Friday, March 18, 2011 7:34 AM
To: Serres, Greg
Subject: Fw: Questions from Matt Axelrod

Fyi. We (Chait, [REDACTED] Needles, [REDACTED] Melson and I) had a discussion on 6(e) and document creation issues last night. I'll come by to discuss with you this morning.

[REDACTED]
Chief, Firearms Operations Division
202-[REDACTED] Cell [REDACTED]

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From: Melson, Kenneth E.

To: [REDACTED]; Hoover, William J.; Chait, Mark R.; Needles, James R.; [REDACTED]

Sent: Thu Mar 17 19:28:23 2011

Subject: RE: Questions from Matt Axelrod

I assume you will provide a copy of all to me as well. Thanks. Ken.

From: [REDACTED]

Sent: Thursday, March 17, 2011 5:36 PM

To: Hoover, William J.; Chait, Mark R.; Needles, James R.; [REDACTED]

Cc: Melson, Kenneth E.

Subject: Questions from Matt Axelrod

All:

As we discussed, here are the questions Matt is asking at the moment. Some of this is done.



[REDACTED]
Acting Chief of Staff
Office of the Director
O: 202 [REDACTED]
C: [REDACTED]
HQ Room 5 S 100

MEMORANDUM TO: All Special Agents
Office of Field Operations

FROM: Assistant Director
(Field Operations)

SUBJECT: Guidance on Firearms Trafficking Investigations

This memo serves to reinforce the importance of adhering to Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and Department of Justice (DOJ) policy on firearms trafficking investigations and to reiterate the DOJ-wide position that component law enforcement agencies must not plan or conduct undercover operations in which firearms are crossing the U.S. border. DOJ guidance further requires that if a law enforcement official has any knowledge that guns are about to cross the border, he/she must take immediate action to prevent that from occurring, even if doing so will jeopardize an investigation.

ATF guidance is contained in the Firearms Enforcement Program Order, ATF O 3310.4B; in the Firearms Trafficking Investigation Guide, ATF P 3317.1; and in the September 2010 document entitled "Project Gunrunner – A Cartel Focused Strategy." ATF O 3310.4B outlines policy and discusses a number of investigative techniques consistent with the DOJ-wide guidance. ATF P 3317.1 contains, among other resources, an investigative checklist for international trafficking-in-arms cases in Section X, as well as a detailed outline of firearms trafficking indicators in Section V. "Project Gunrunner – A Cartel Focused Strategy" notes practical considerations that may require bringing investigations to a conclusion or dictate a change in investigative tactics prior to the identification of persons directly affiliated with drug trafficking organizations. Field Special Agents in Charge are also reminded that they must closely monitor and approve high volume trafficking investigations and must assess the associated risks. Lastly, field divisions should continue to coordinate with the U.S. Attorney's Offices for the districts in which they conduct operations to ensure a mutual understanding of the criteria for both prosecutions and seizures.

Mark R. Chait

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From: [REDACTED]
Sent: Friday, March 11, 2011 4:09 PM
To: [REDACTED]
Subject: FW: Materials For Bill Newell and ATF in DC

Importance: High

FYI -- I'll be right down.

[REDACTED]
Chief, Firearms Operations Division
ATF HQ - Room 6.5.129
202. [REDACTED] Cell [REDACTED]

From: Newell, William D.
Sent: Sunday, March 06, 2011 7:14 PM
To: [REDACTED]
Subject: Fw: Materials For Bill Newell and ATF in DC
Importance: High

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From: Cunningham, Patrick (USAAZ)
To: Newell, William D.; Needles, James R.
Cc: Burke, Dennis (USAAZ) ; Scheel, Ann (USAAZ) ; Hernandez, Rachel (USAAZ) ; Morrissey, Mike (USAAZ) ; Hurley, Emory (USAAZ) ; Kelly, Kristen (USAAZ) 6
Sent: Sun Mar 06 18:20:55 2011
Subject: Materials For Bill Newell and ATF in DC

Bill and Jim:

As you work in DC today to prepare with ATF Leadership, enclosed below are some issues and our answers we have compiled. Issues are in Green and proposed answers are in black.

Hope they are helpful. Thanks. PJC

A. On the Status of F and F lead indictment. [REDACTED]

Questions: Whether [REDACTED] is in custody, what's his plea, next steps?

Answer:

Under 9th Circuit law offenses committed by "straw purchasers" are not considered crimes of violence for which a person can be detained pending trial. As to the only other basis for pretrial detention – flight risk – [REDACTED] is a US citizen and the Bail Reform Act requires the court to impose the least

restrictive conditions that will reasonably assure his appearance and the safety of the community. Here, [REDACTED] was released on conditions pending Trial by the Magistrate Court. His release conditions include reporting as directed to U.S. Pretrial Services, surrendering any passport, not traveling outside the district of Arizona, having no contact with the other defendants, and not possessing a firearm or other dangerous weapon.

Regarding the treatment of "straw purchasers" by the Criminal Justice System, the five Southwest Border United States Attorneys from Arizona, Texas, California and New Mexico recently sent the enclosed letter (pdf enclosed) to the United States Sentencing Commission urging that the prison sentences for "straw purchasers" be strengthened because of their role in the trafficking and illegal export of weapons." The letter states in part:

'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 addressed together.'

Regarding [REDACTED] plea and next steps, he has entered a plea of Not Guilty and the current schedule for the case is as follows:

CR-11-126-PHX-JAT ([REDACTED])-

Motions Deadline -4/22/11

Jury Trial- 06/07/2011 at 09:00 AM

B. On the issue of "sanctioning" or "encouraging" gun sales:

ATF Agents and Lawyers from the US Attorney's Office did not "encourage" any FFL to "keep selling guns to known straw buyers." In the two meetings with FFLs, attorneys and agents advised the FFLs that the Government cannot advise them to sell multiple guns or advise not to sell multiple guns. The FFLs were advised that those decisions were up to FFLs as are all decisions to sell left up to the FFL to evaluate the sale and determine whether it is lawful. In short, the FFLs were advised that the Government cannot advise FFLs to halt a sale that appears lawful and we cannot authorize a sale that appears unlawful. There was no mistake as to the clarity of the Agents' and Attorneys' message.

FFLs need no encouragement to sell guns as that is their actual business, selling guns. By the time that the government met with the owners, they had made many multiple sales and the guns were gone.

The FFLs wanted to know that the information that they provided was actually useful, and that they were not unwittingly implicating themselves in some criminal activity of which they weren't aware. As we have said so many times before, they were told that ATF could not authorize illegal sales to be made any more than they could prohibit lawful sales, however, ATF appreciated their cooperation and willingness to voluntarily provide information to ATF including notice of multiple long gun purchases and notice of single gun sales of certain types of firearm or sales to particular individuals. No one

discussed civil liability. The FFLs were providing information to ATF regarding transactions that the FFL must have viewed as lawful, having no knowledge or reason to know that the transfers were unlawful.]

Main Justice position on the issue of Sanctioning or encouraging arms sales, the Quote of Assistant Attorney General Ronald Weich in his February 4, 2011 letter:

“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.”

C. On the issue of “walking guns” or the timely seizure of guns:

Neither the USAO nor ATF was engaged in an effort “to let guns flow to straw buyers” or to “walk” guns that could have been seized under any lawful theory with available facts to prove the theory.

The guns flow FROM straw buyers and until agents observe illegal conduct they cannot treat them as anything other than ordinary buyers. At the time of transfer of the firearms from the FFL to the straw purchaser based upon the facts available to the FFL at the time of the sale, the sales to the “straw purchasers” are lawful; and seizure of the weapons in the hands of those purchasers without evidence of criminality would violate the United States Constitution and would be an unlawful seizure and deprivation of property rights without cause. (Fourth and Fifth Amendments).

In these investigations, there may come a point over the course of an investigation where ATF believes, though it is well short of proof beyond a reasonable doubt required in criminal cases, that they can prove that a particular person only buys guns for the purposes of illegal trafficking. However, seizure of the guns at that point may not be legal because purchasing multiple long guns in Arizona is lawful, transferring them to another is lawful and even sale or barter of the guns to another is lawful unless the United States can prove by clear and convincing evidence that the firearm is intended to be used to commit a crime. (18 USC 924 (d))

In short, the law does not permit agents to take guns away from anyone who buys ten AKs at a time solely because they bought multiple guns.

D. When weapons sales were monitored and those guns later turned up in crime scenes, had ATF somehow “authorized” the sales that ATF could have ordered stopped, or did ATF somehow not seize the guns appropriately or in a timely fashion?:

The number one concern for DOJ is interdicting guns that are unlawfully transferred to persons in the United States and in Mexico who will then commit crimes with those guns. The purpose of this investigation was to locate those guns, interdict those guns and bring those responsible for their unlawful purchase, transfer, finance and use to justice.

The full array of rights available to indicted defendants is also available to those persons suspected of committing gun crimes, and the government cannot violate legitimate gun owners rights by prematurely seizing their guns.

DOJ’s goals of the investigation were two-fold: 1. Interdiction of the weapons that were purchased or possessed in furtherance of the unlawful trafficking conspiracy; and 2. Investigation with an emphasis on discovering other members of the trafficking organization, particularly the leaders of the organization who procure the guns from straw purchasers and have them smuggled into Mexico to the

Cartels. There seems to be some misconception on the part of the press and members of congress that the minute that ATF suspects that someone is a straw purchaser, agents can arrest that person and seize all of their guns. As explained above, that seizure would be unlawful, and ATF may only seize when a lawful basis for seizure can be proven under the US Constitution and statues passed by Congress.

The question seems to connote that ATF can promulgate a “No Sell” list like a “No Fly List”, under which FLLs would be prohibited from selling any guns to any person on the list. ATF has no such power and ATF cannot interfere with the operation of commerce and prohibit a gun store from making a lawful sale to lists of suspects based upon nothing more than mere suspicion. These lists might well be long and would curtail a person’s rights to purchase arms without any due process.

How is it that a person becomes a suspect in a straw purchase investigation? If they are buying multiple handguns, it could be because of multiple sales reports to ATF, notifying the bureau that a suspect is buying large quantities of handguns. If they are buying only long guns, they may not become a suspect until guns they have purchased can be traced after being recovered at a crime scene, or an FFL voluntarily notifies ATF of an unusually large purchase. But a multiple purchase by itself, or the recovery of a firearm at a crime scene does not establish that the original buyer of the gun is an “unlawful straw purchaser.” If it did, then when a person buys a gun and then decides they don’t shoot it well, or it recoils too much, or they really can’t afford the ammunition, and sells it, out of the paper, or a gun show, or to a friend, if the next owner of the gun commits a crime with it, the original purchaser would become a suspect as an “unlawful straw purchaser” and a suspect in a gun trafficking case.

And your question presupposes that ATF agents should never let mere suspects possess a firearm. Your question seems to presume that once ATF identifies a suspect, they can treat that suspect as though they were a “prohibited person”, never again allowed to possess a firearm, regardless of the fact that they have not been convicted of a crime. If this were the case, ATF could stop any person they label a suspect and take any gun they have away from them. This means that if you (1) bought two 5.7 mm pistols because you wanted one for the home and one for the office, or (2) bought three AR type rifles for you and your two sons to target shoot, or (3) you sold one of your guns to your brother in law, who resold it to a co-worker who took it into Mexico and got caught with it, then you are an “unlawful straw purchaser” suspect and the next time you buy a gun, with your own money, for a hunting trip, ATF should take it away from you.

- E. Regarding the question “In regards to the guns recovered in Rio Rico after the Terry shooting, when they were purchased from [REDACTED] was there surveillance going on in conjunction with Operation Fast and Furious, or did ATF only become aware after the fact and link it [REDACTED] after the fact?”

Answer: There was no surveillance going on and the ATF did not learn of the sale until three days after it took place and the weapons were gone.

- F. Regarding the LA Times and CBS News stories, they do not account for the fact, or rebut in any way, that this District is actively prosecuting unlawful weapons and ammunition traffickers.

In just two recent investigations in Phoenix, 51 defendants in 10 indictments have been charged.

In Fast and Furious announced on January 25 (Press release link below) 34 defendants in five indictments were announced. The trials are set for these dates:

Fast and Furious

CR-11-126-PHX-JAT [REDACTED] al.)- Motions Deadline -4/22/11
 Jury Trial- 06/07/2011 at 09:00 AM

CR-11-013-PHX-SRB [REDACTED] Motions Deadline- 2/25/11
 Jury Trial- 04/05/2011 at 09:00 AM

CR-10-1187-PHX-ROS [REDACTED] al.)- Motions Deadline ([REDACTED]) 4/11
 Motions Deadline (dft: [REDACTED])
 2/4/11
 Jury Trial(dft: [REDACTED])
 [REDACTED] 04/05/2011 at 08:30 AM

CR-10-1607-PHX-NVW [REDACTED] Motions Deadline- 3/11/11
 Change of Plea Hearing- 3/23/11
 Jury Trial- 04/05/2011 at 09:00 AM

CR-10-1831-PHX-FJM [REDACTED] al.)- Motions Deadline (dft: [REDACTED])
 [REDACTED]
 [REDACTED] - 3/18/11
 Jury Trial (dft: [REDACTED])
 [REDACTED]
 [REDACTED] 05/03/2011 at 09:00 AM

Press Release at:

http://www.justice.gov/usao/az/press_releases/2011/PR_02172011_Macedo_Saucedo-Cuevas%20ct%20al.pdf

Links to Indictments:

http://www.justice.gov/usao/az/news_archive_2011.html

In the Too Hot to Handle set of cases announced on February 17, 2011, 17 defendants in five indictments were announced. The trials are set for these dates:

Too Hot to Handle

CR-10-00961-PHX-NVW (U.S. v. [REDACTED] al.) Motions Deadline (dft: [REDACTED])
 [REDACTED] - 03/07/11
 Motions Deadline (dft: [REDACTED])
 [REDACTED] -3/11/11
 Jury Trial (dft: [REDACTED])
 [REDACTED] - 04/05/2011 at 09:00 AM

CR-11-00231-PHX-JAT (U.S. v. [REDACTED]) Motions Deadline (dft: [REDACTED])
 [REDACTED] -3/7/11
 Motions Deadline (dft: [REDACTED]) 3/16/11
 Status Conference (dft: [REDACTED])
 [REDACTED]

[REDACTED] - 03/16/2011 at 11:15 AM Jury Trial
 (dft: [REDACTED])
 [REDACTED]
 [REDACTED] - 04/05/2011 at 09:00 AM
 Jury Trial (dft: [REDACTED]) 04/05/2011 at 09:00 AM

CR-10-01129-PHX-NVW (U.S. v. [REDACTED] al.) Motions Deadline (both defendants)- 05/13/2011
 Jury Trial (both defendants)- 06/07/2011 at 09:00 AM

CR-11-00245-PHX-ROS (U.S. v. [REDACTED] al.)

Motions Deadline (both defendants)- 03/03/2011
Jury Trial- 04/05/2011 at 09:00 AM

CR-10-01296-PHX-ROS (U.S. v. [REDACTED])-

Motions Deadline-02/19/2011
Jury Trial- 05/03/2011 at 08:30 AM

Press Release at:

http://www.justice.gov/usao/az/press_releases/2011/PR_02172011_Macedo_Saucedo-Cuevas%20et%20al.pdf

Indictments as:

http://www.justice.gov/usao/az/press_releases/2011/US_v_Resa_Indictment.pdf

In the Tucson Office alone there are currently five (5) pending indictments charging 23 defendants with attempting to export thousands of rounds of ammunition to Mexico and with weapons offenses. Those indictments are enclosed in PDFs.

From: [REDACTED]
Sent: Tuesday, March 08, 2011 2:37 PM
To: Newell, William D.
Subject: FW: New ATF Allegations / CBS request

Bill -- Not sure if anyone called you on this. Do you have background/BPs on either of the references cases below? I'm checking around here, but as you know Bill McM is out... if not, can i get the IN's? Thanks

"A number of sources have described instances prior to Fast and Furious in which ATF allegedly knowingly allowed weapons to get into the hands of suspected cartel suppliers similar to the allegations in Fast and Furious. One such example provided is the Operation known as "Wide Receiver." Others are the cases against defendants Medrano, Ramos, et.al. Final sentencing in that case was Aug. 10, 2010. The US Attorneys were Dennis Burke, Diane Humetewa and Joelyn Marlowe."

[REDACTED]
 Chief, Firearms Operations Division
 ATF HQ - Room 6.S.129
 202 [REDACTED] Cell [REDACTED]

From: Chait, Mark R.
Sent: Tuesday, March 08, 2011 11:32 AM
To: [REDACTED]
Subject: Fw: New ATF Allegations / CBS request

[REDACTED] can you pull this case.

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From: [REDACTED]
To: Chait, Mark R.
Cc: [REDACTED] Hoover, William J.; [REDACTED]
Sent: Tue Mar 08 11:09:57 2011
Subject: FW: New ATF Allegations / CBS request
 Mark,

Not that we are commenting on this but can we get a quick brief on the below cases/defendants as I am sure OPA will be asking in us form more details today.

Thanks

[REDACTED]
 [REDACTED]
 Chief

ATF Public Affairs Division
 Washington, DC
 Desk 202- [REDACTED]
 Cell [REDACTED]

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From: Schmaler, Tracy (SMO) [mailto:(b) (7)(C) [REDACTED]]
Sent: Tuesday, March 08, 2011 10:56 AM
To: [REDACTED]
Subject: FW: New ATF Allegations / CBS request

Have you guys heard about the latest? See below. The allegations are bit broad, [REDACTED] DP [REDACTED]
 [REDACTED]
 [REDACTED]

From: Attkisson, Sharyl [mailto:SAC@cbsnews.com]
Sent: Tuesday, March 08, 2011 10:15 AM
To: Schmaler, Tracy (SMO)
Cc: Scholl, Chris; Attkisson, Sharyl
Subject: New Info/Iview Request

Tracy:

A number of sources have described instances prior to Fast and Furious in which ATF allegedly knowingly allowed weapons to get into the hands of suspected cartel suppliers similar to the allegations in Fast and Furious. One such example provided is the Operation known as "Wide Receiver." Others are the cases against defendants Medrano, Ramos, et.al. Final sentencing in that case was Aug. 10, 2010. The US Attorneys were Dennis Burke, Diane Humetewa and Joelyn Marlowe.

We'd like an on camera to ask about these allegations, but I know you have said pending the IG investigation you aren't doing any. If that's still the case, can you provide us with any sort of comment via email at least? **We need it by approximately noon today** so we can do some further reporting on whatever your position is.

Will you also pass along the following interview requests to the appropriate people at ATF (they have deferred to DOJ on some requests), including the subjects themselves: We'd like to interview Mr. Newell and [REDACTED] with the Phoenix office (in addition to the standing requests we have). We believe these men have knowledge and information that could shed light on the allegations.

Thanks so much.

Sharyl

From: [REDACTED]
Sent: Tuesday, March 08, 2011 12:20 PM
To: [REDACTED]
Subject: FW: TPs for your consideration
Attachments: sjc atf briefing tps.docx

This is Weinstein's draft that was amended by Burton that day before we went.

[REDACTED]
Chief, Firearms Operations Division
ATF HQ - Room 6.S.129
202. [REDACTED] Cell [REDACTED]

From: Burton, Faith (SMO) [mailto:[REDACTED]]
Sent: Thursday, February 10, 2011 12:38 PM
To: Weinstein, Jason (CRM); [REDACTED] Chait, Mark R.; Burke, Dennis (USAAZ)
Subject: RE: TPs for your consideration

Please see the redlined version here. Based upon the letter we received from Grassley last night, I think [REDACTED] DP
[REDACTED]
[REDACTED] likely. Jason, thanks for taking the lead here - [REDACTED] DP - expect that
everything you say will be scrutinized and cross-examined - [REDACTED] DP See you soon. FB

From: Weinstein, Jason (CRM)
Sent: Thursday, February 10, 2011 11:56 AM
To: Burton, Faith (SMO); Weich, Ron (SMO) [REDACTED] (ATF); Chait, Mark R. (ATF); Burke, Dennis (USAAZ)
Subject: TPs for your consideration

Sorry for lateness in getting these to you.

Jason M. Weinstein
Deputy Assistant Attorney General
Criminal Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
Office: (202) 305-9827
Cell: (202) 330-1514

Title of Investigation: [REDACTED]	Investigation Number: 785115-10-0004	Report Number: 482
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SUMMARY OF EVENT:

ARREST/INTERVIEW: [REDACTED]

NARRATIVE:

1. [REDACTED]

2. [REDACTED]

Prepared by: [REDACTED]	Title: Special Agent, Phoenix VII Field Office	Signature:	Date:
Authorized by: [REDACTED]	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:

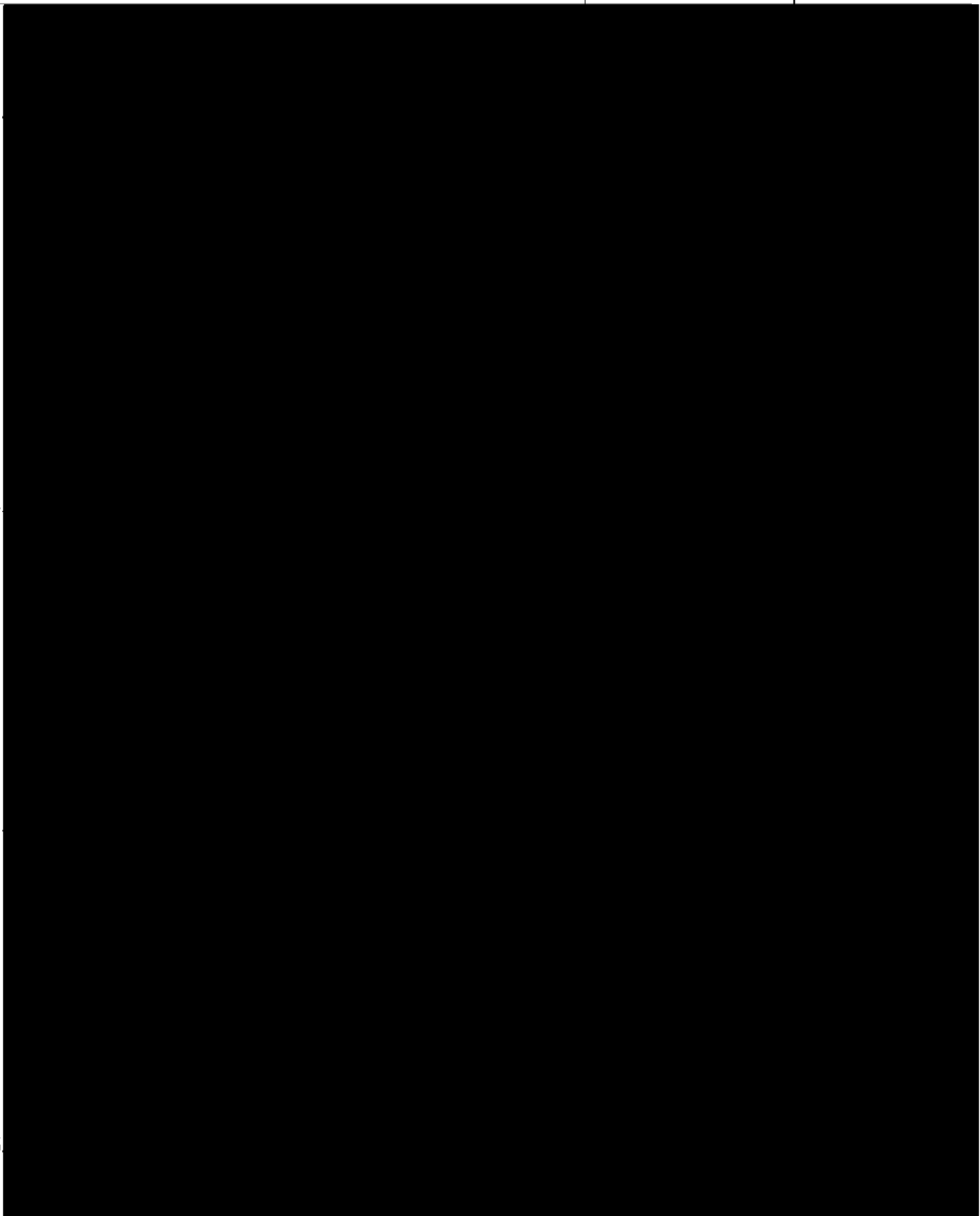


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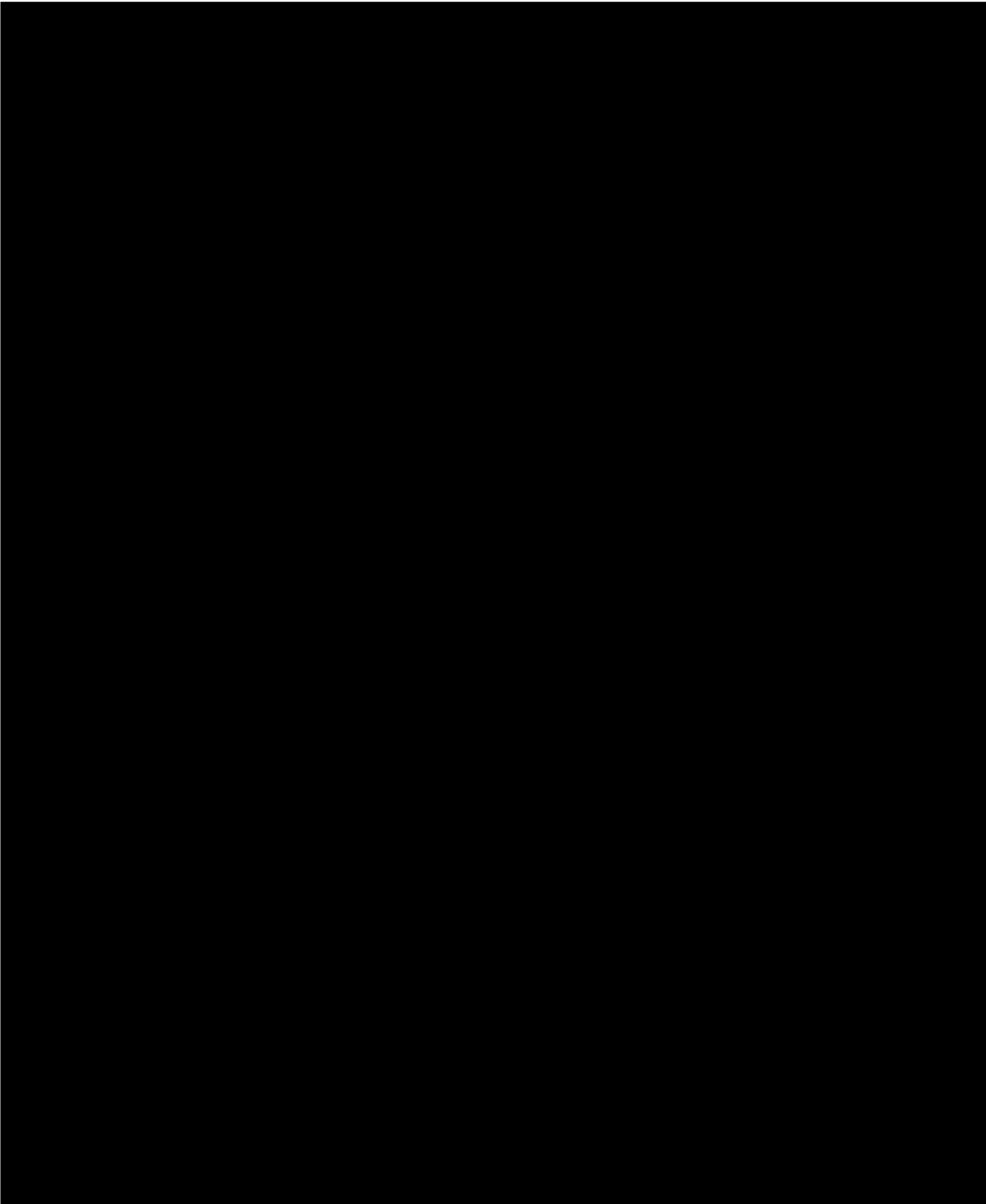




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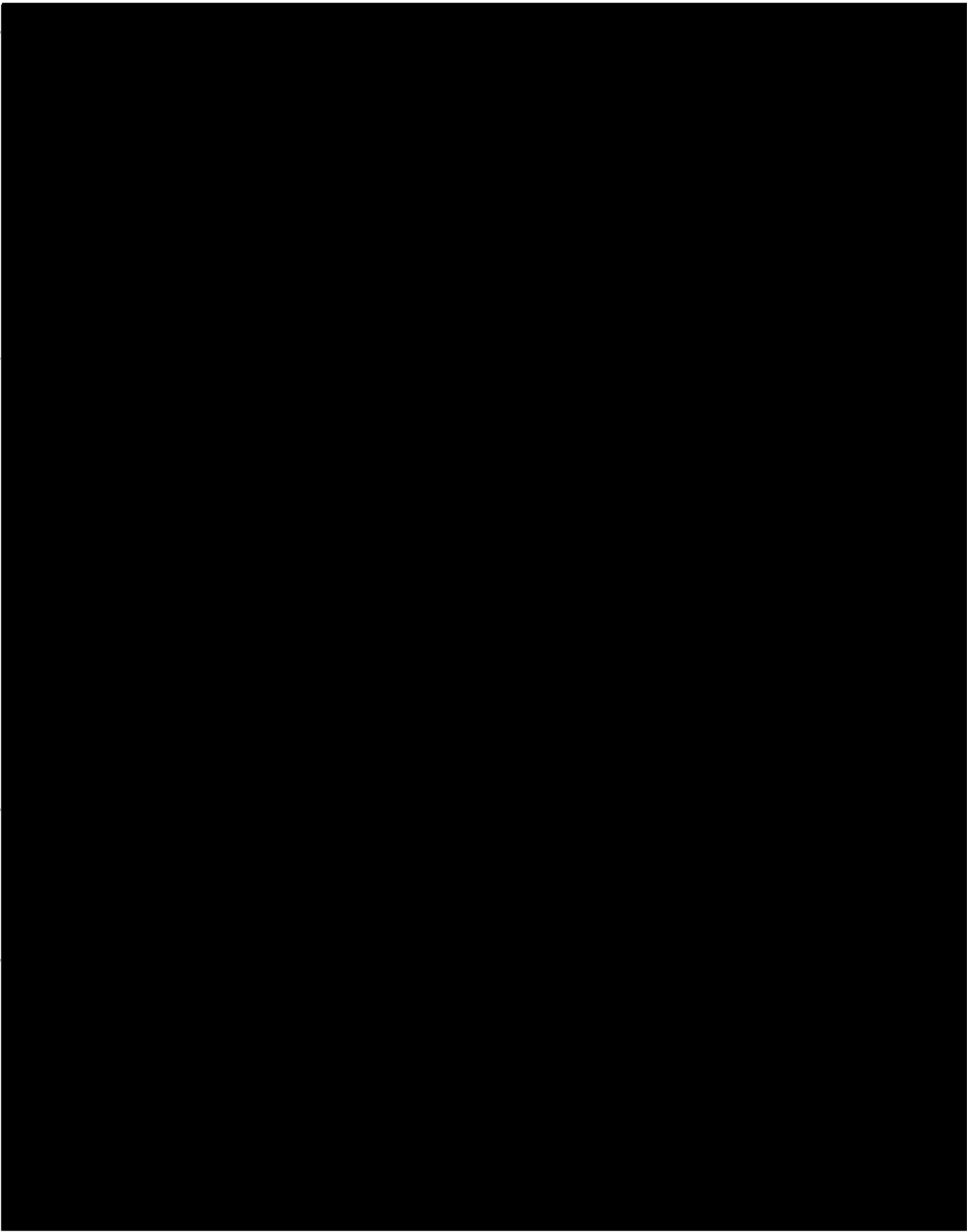


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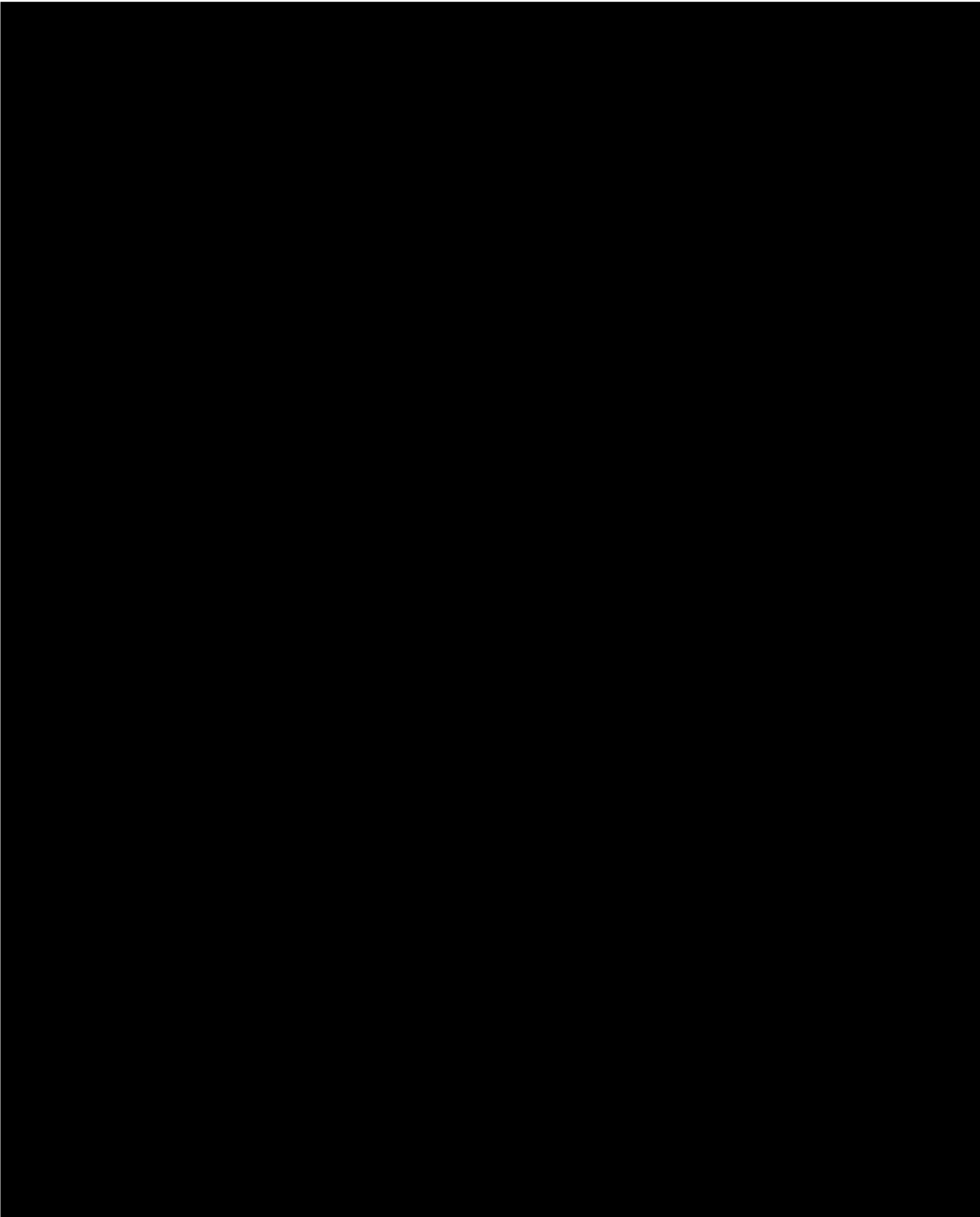
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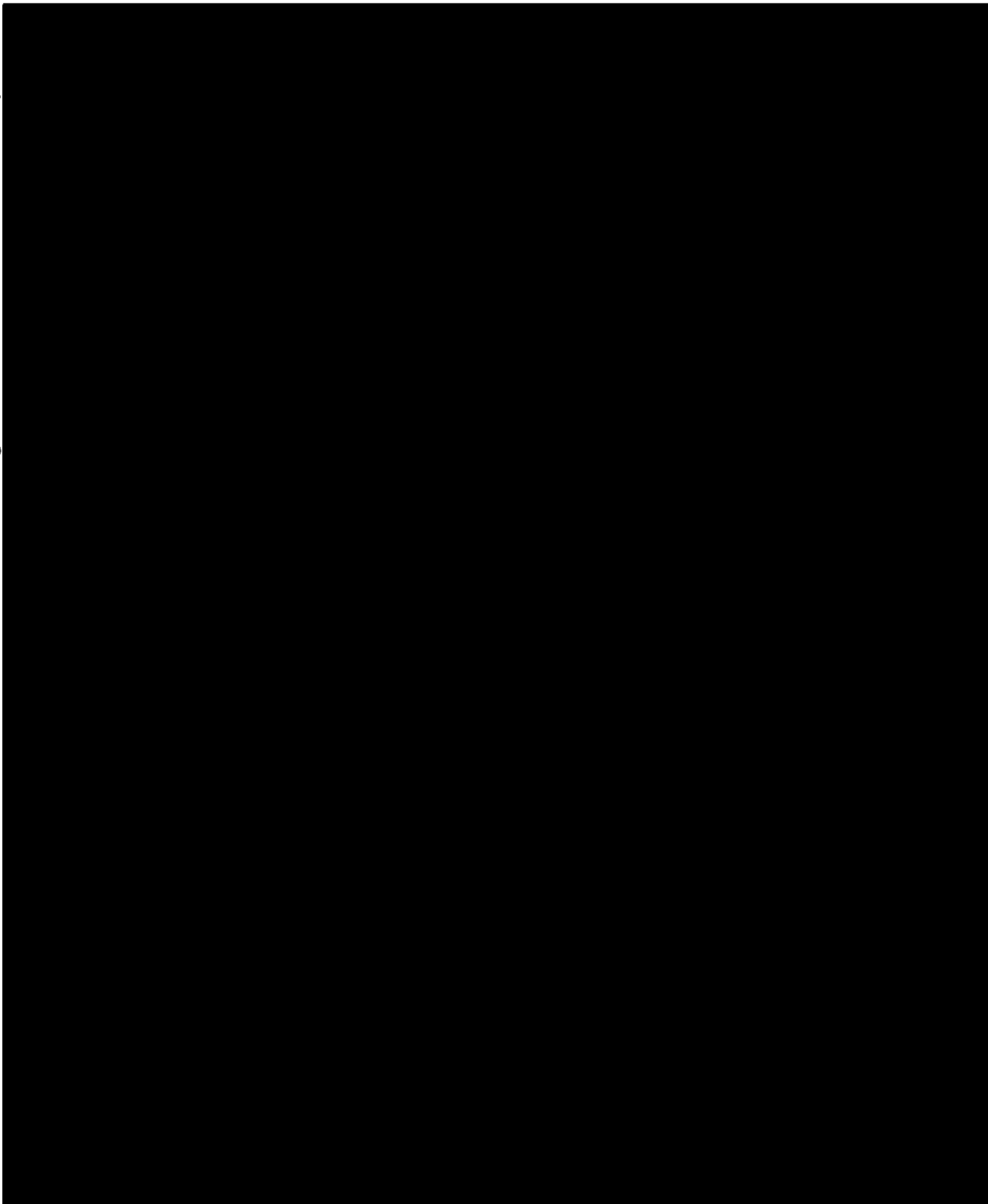




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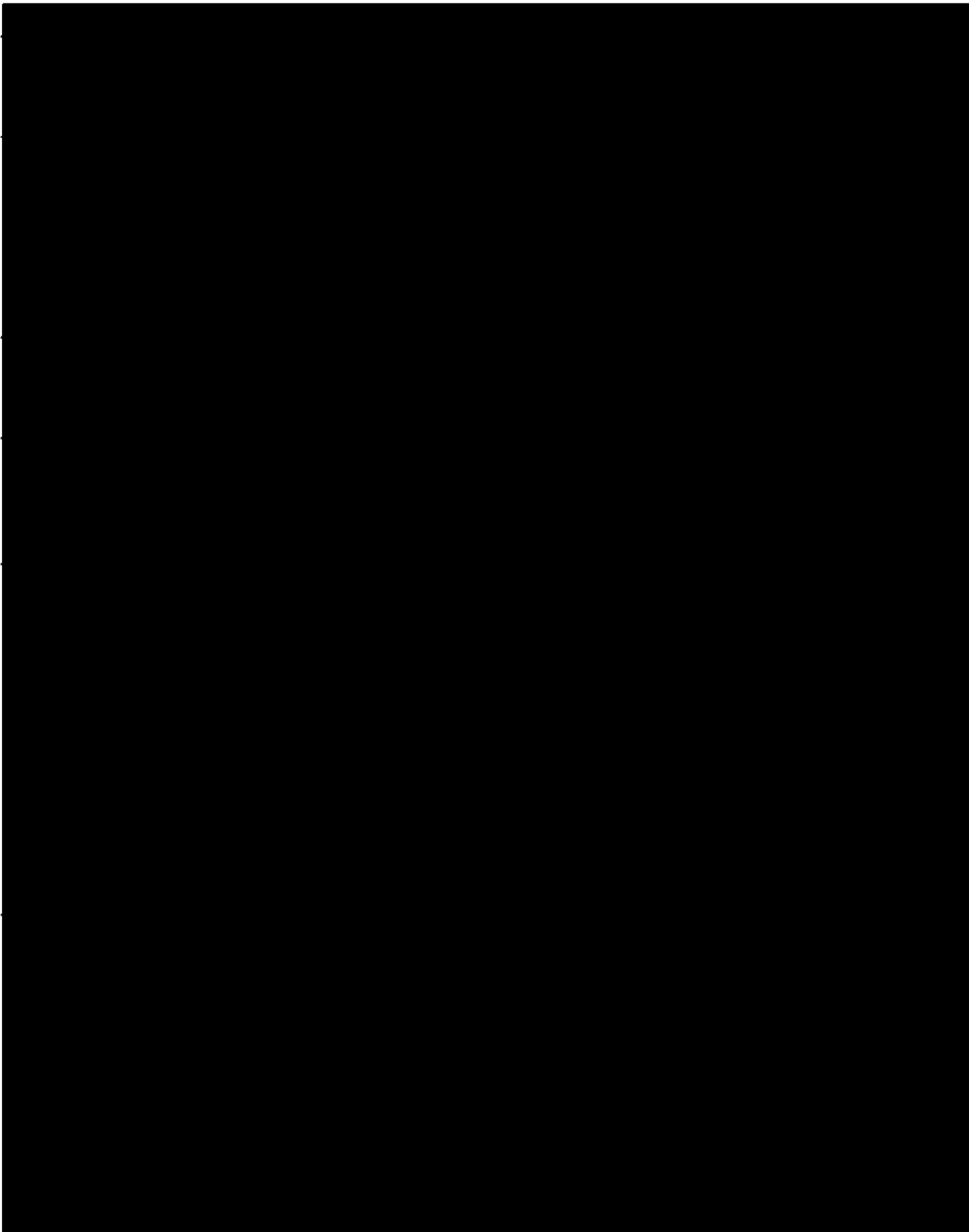
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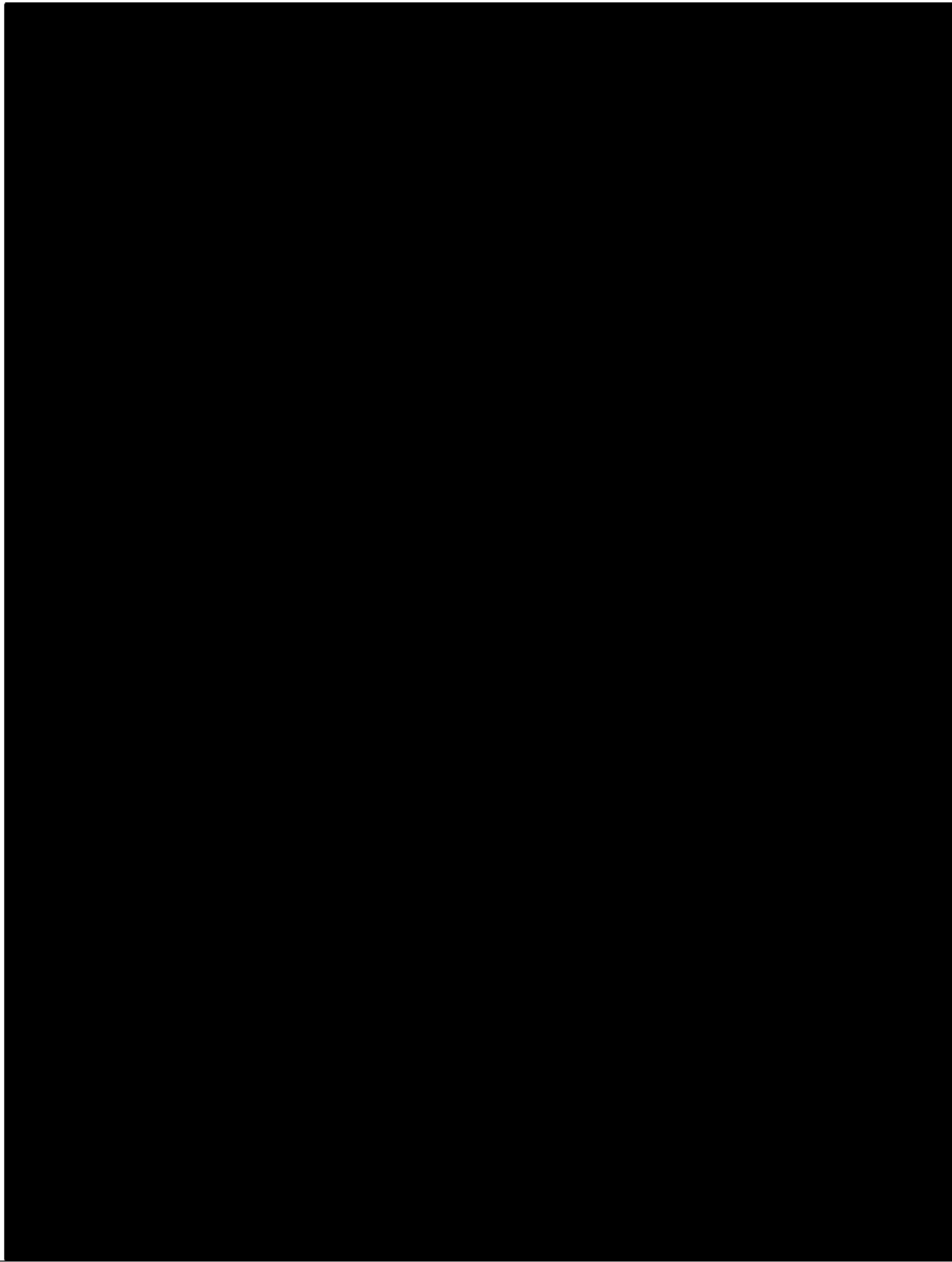
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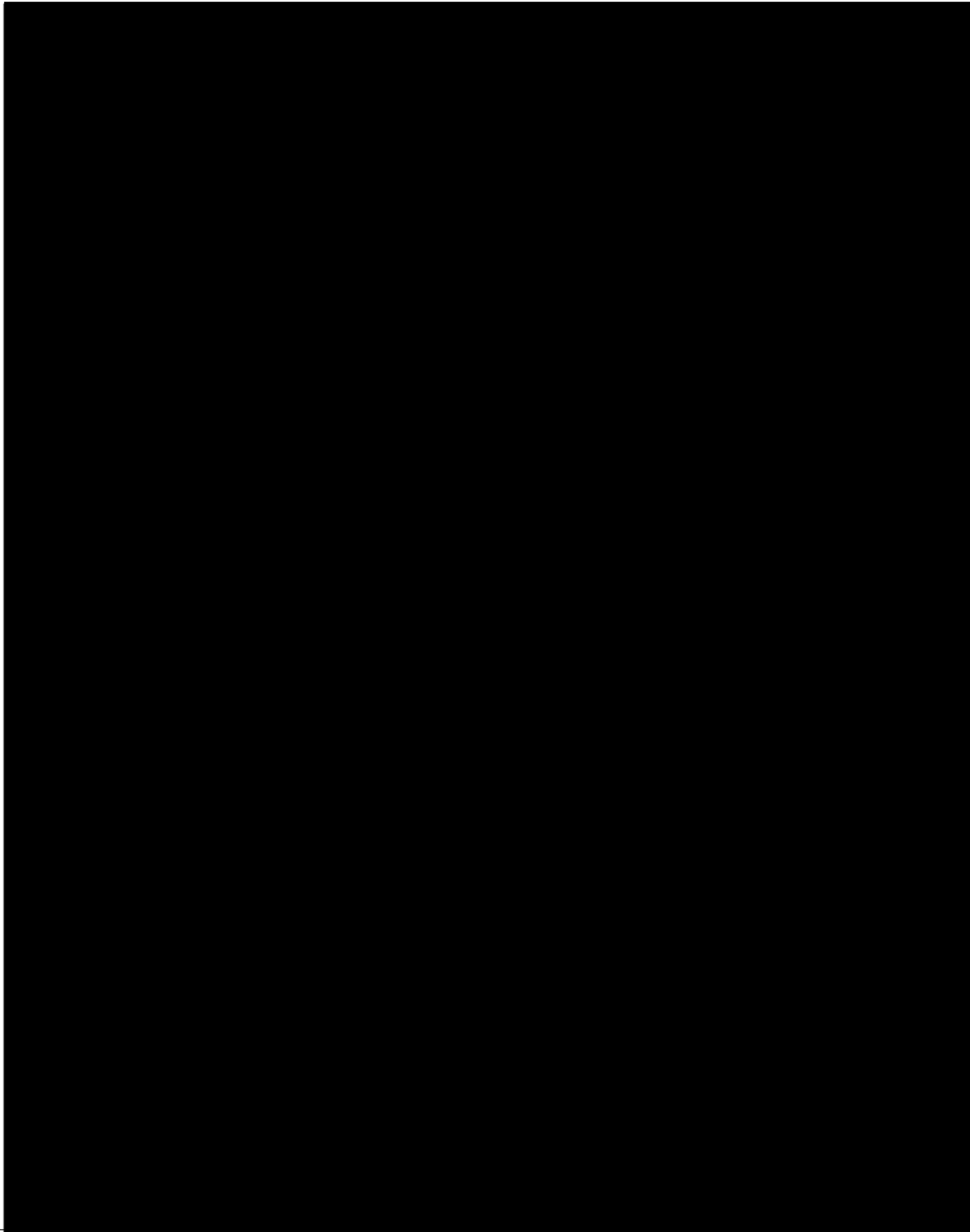
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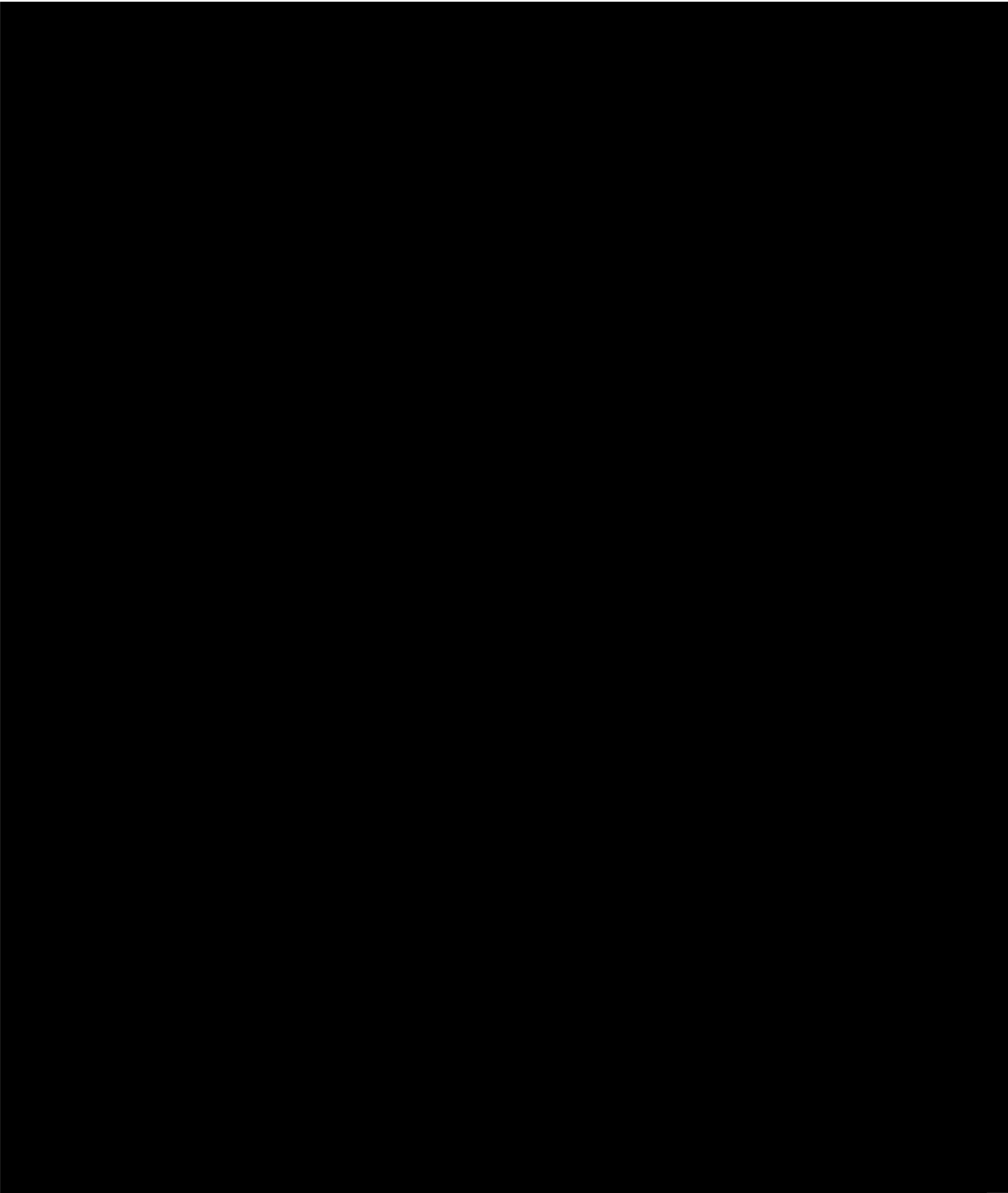
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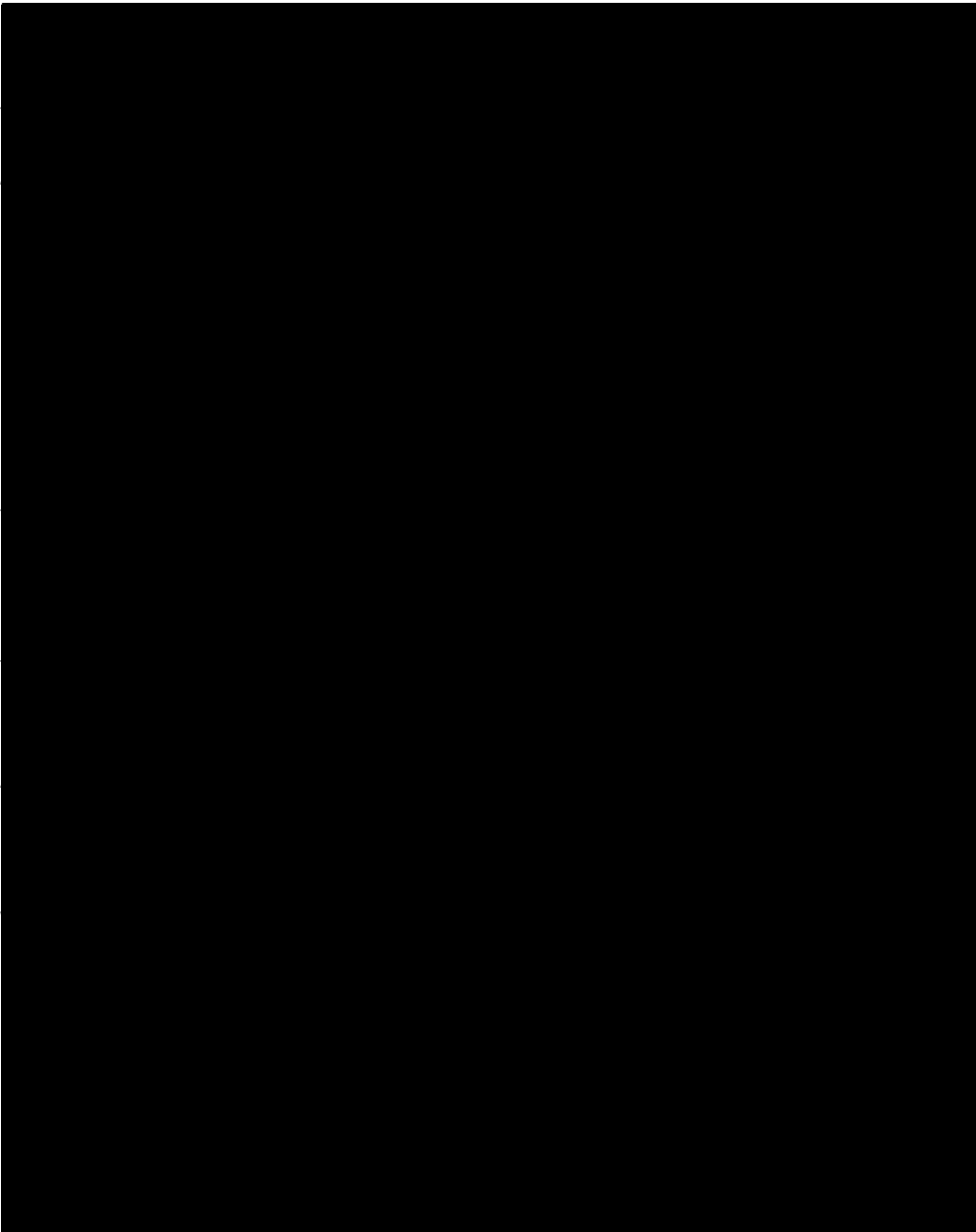
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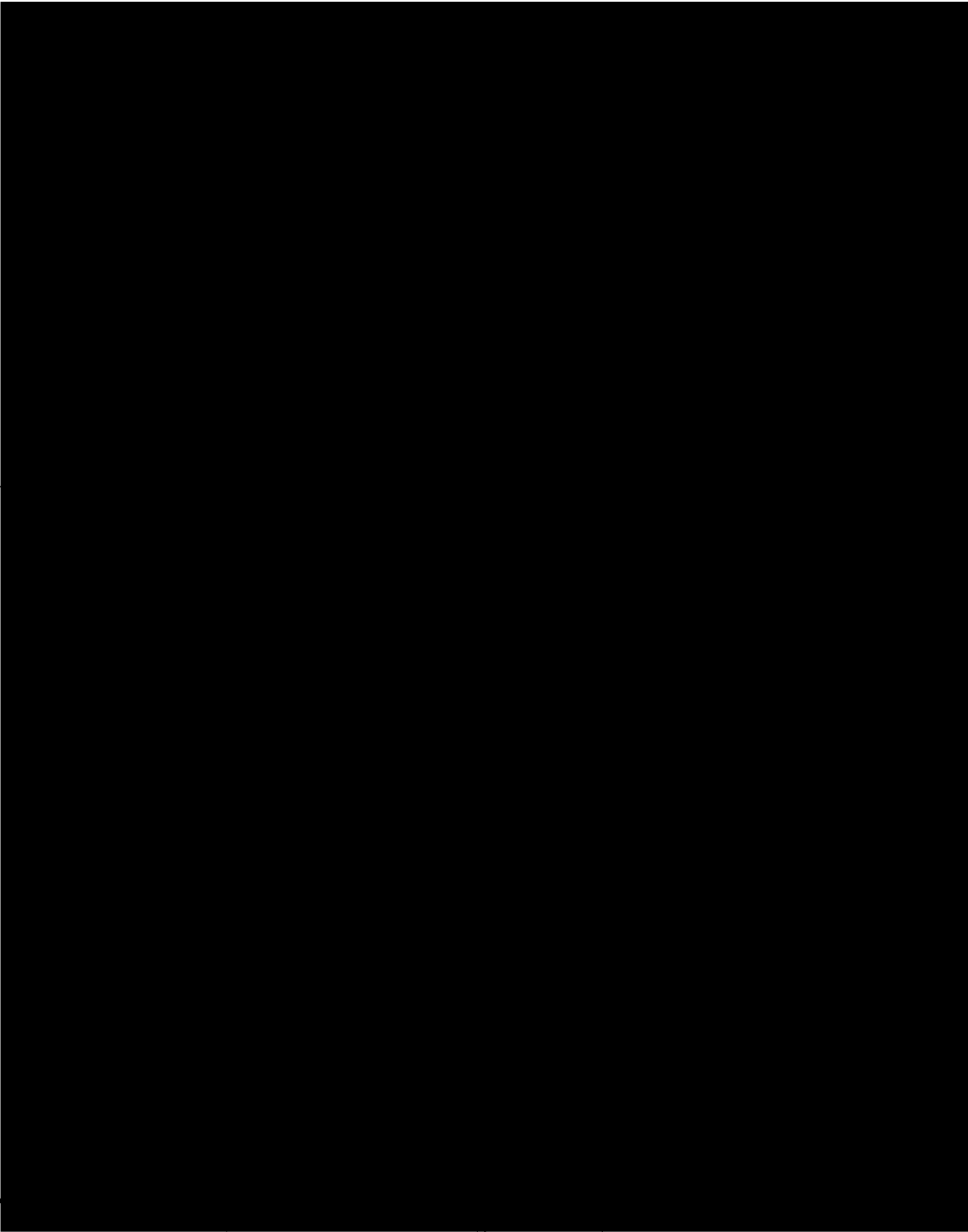




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ATTACHMENTS:



Title of Investigation: [REDACTED]	Investigation Number: 785115-10-0004	Report Number: 482
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SUMMARY OF EVENT:

ARREST/INTERVIEW: [REDACTED]

NARRATIVE:

1. [REDACTED]

2. [REDACTED]

Prepared by: [REDACTED]	Title: Special Agent, Phoenix VII Field Office	Signature:	Date:
Authorized by: [REDACTED]	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:

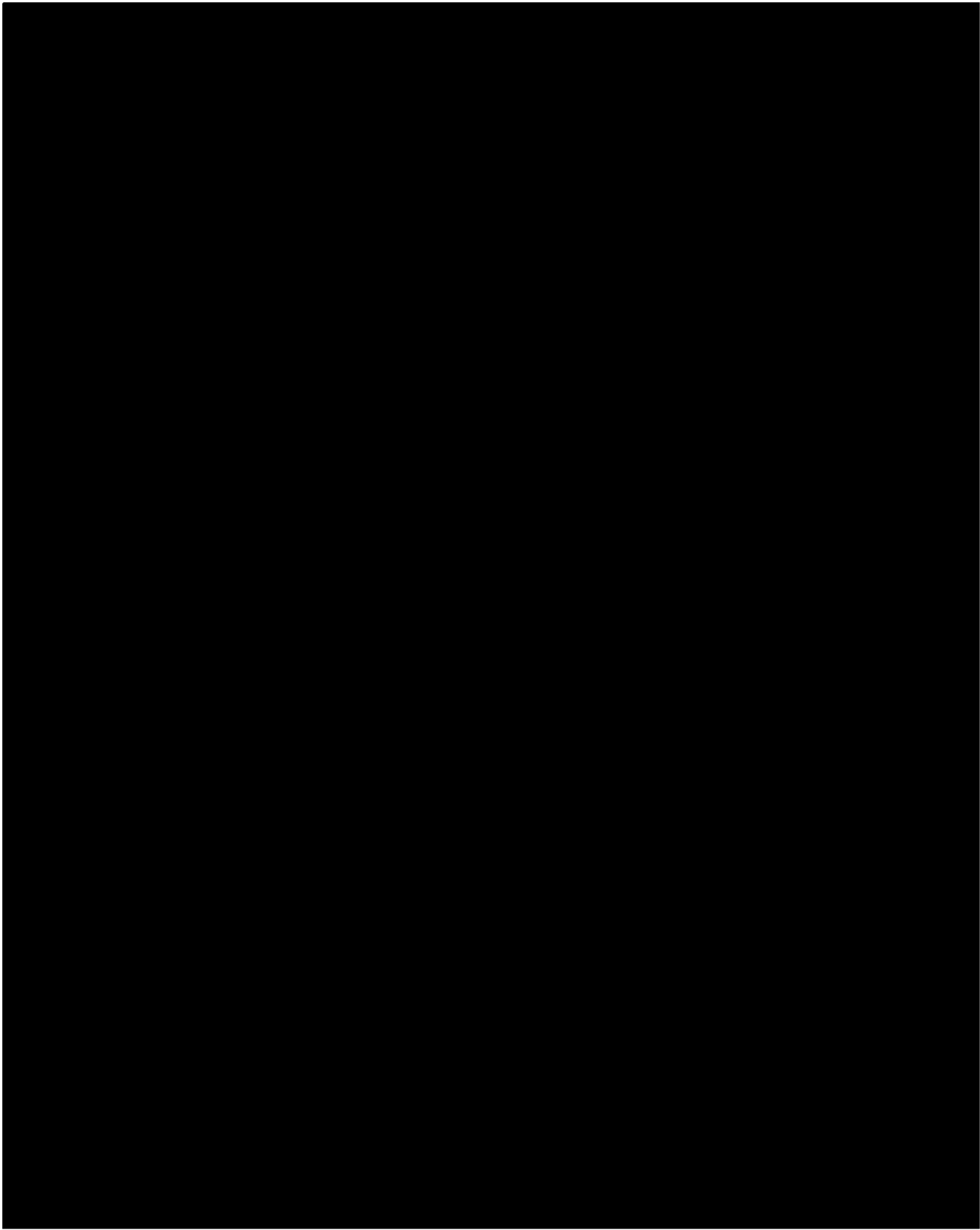


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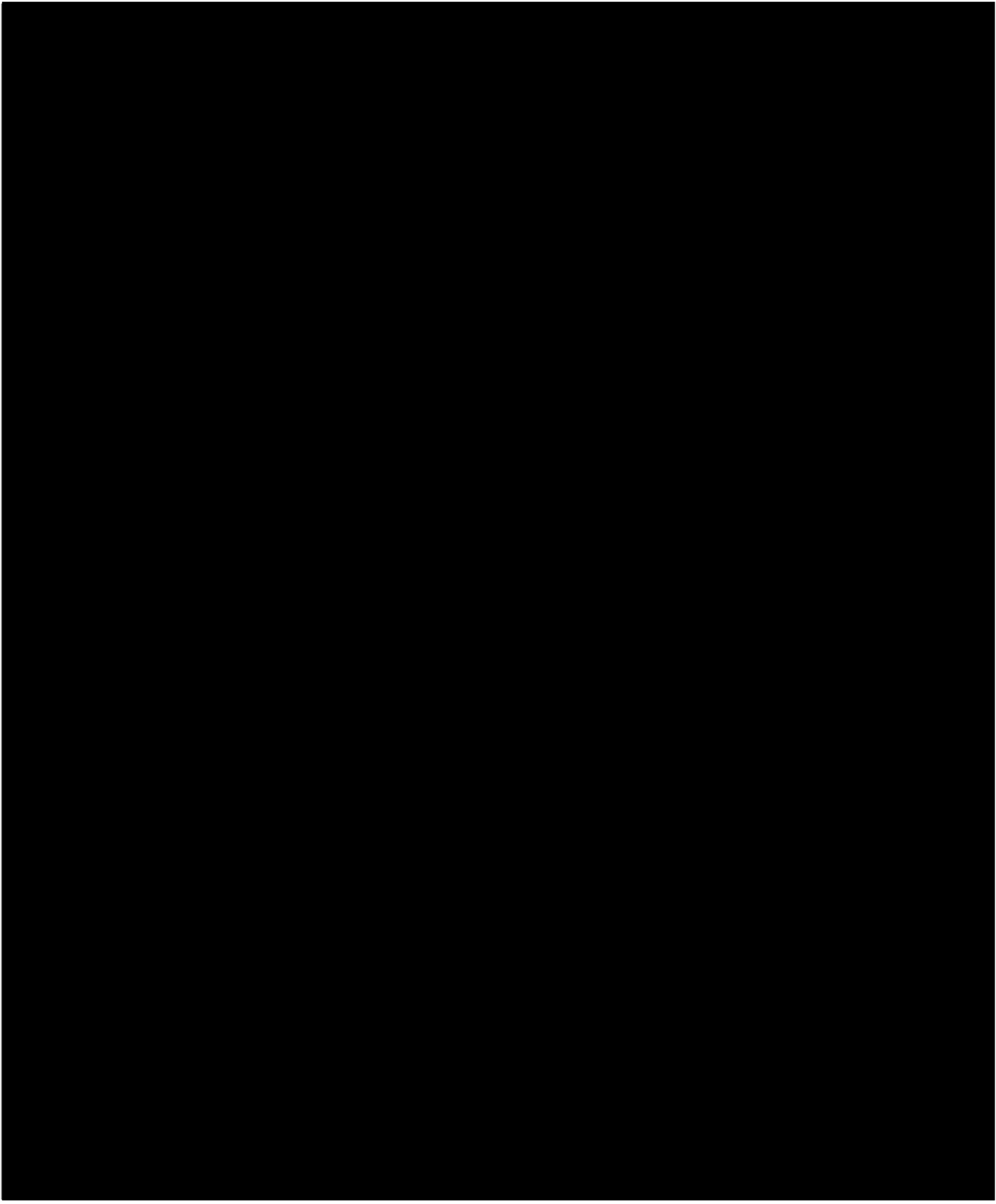




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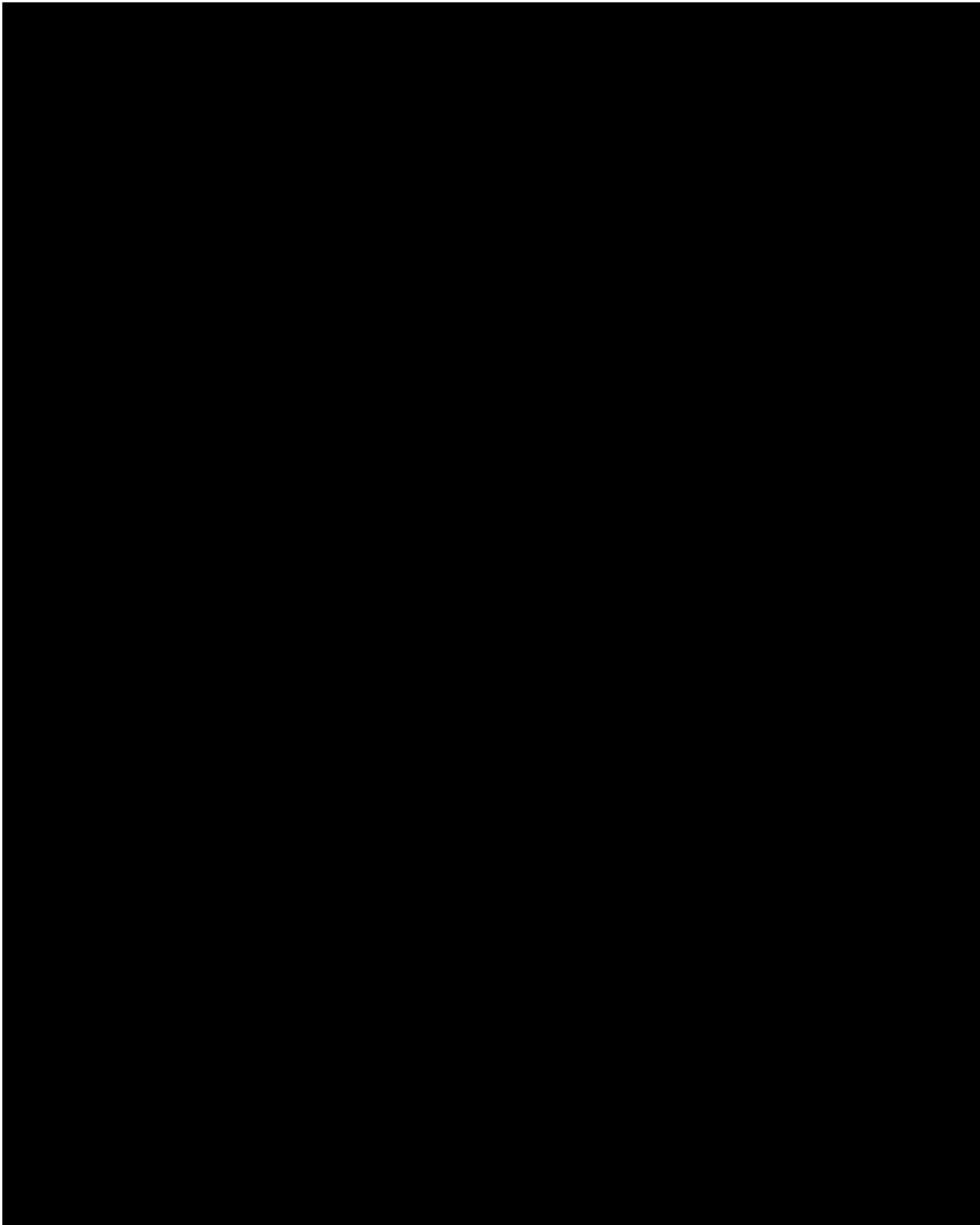


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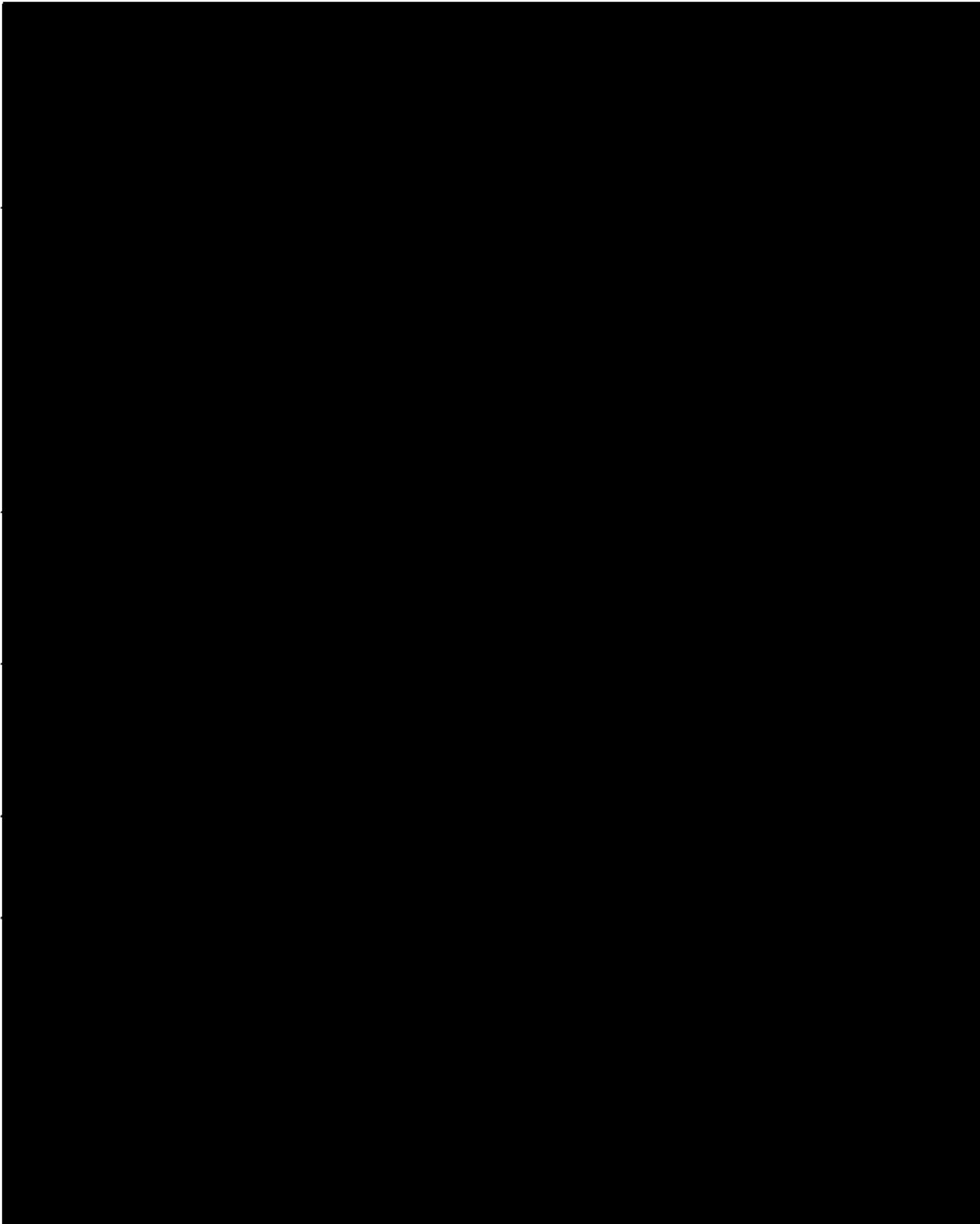
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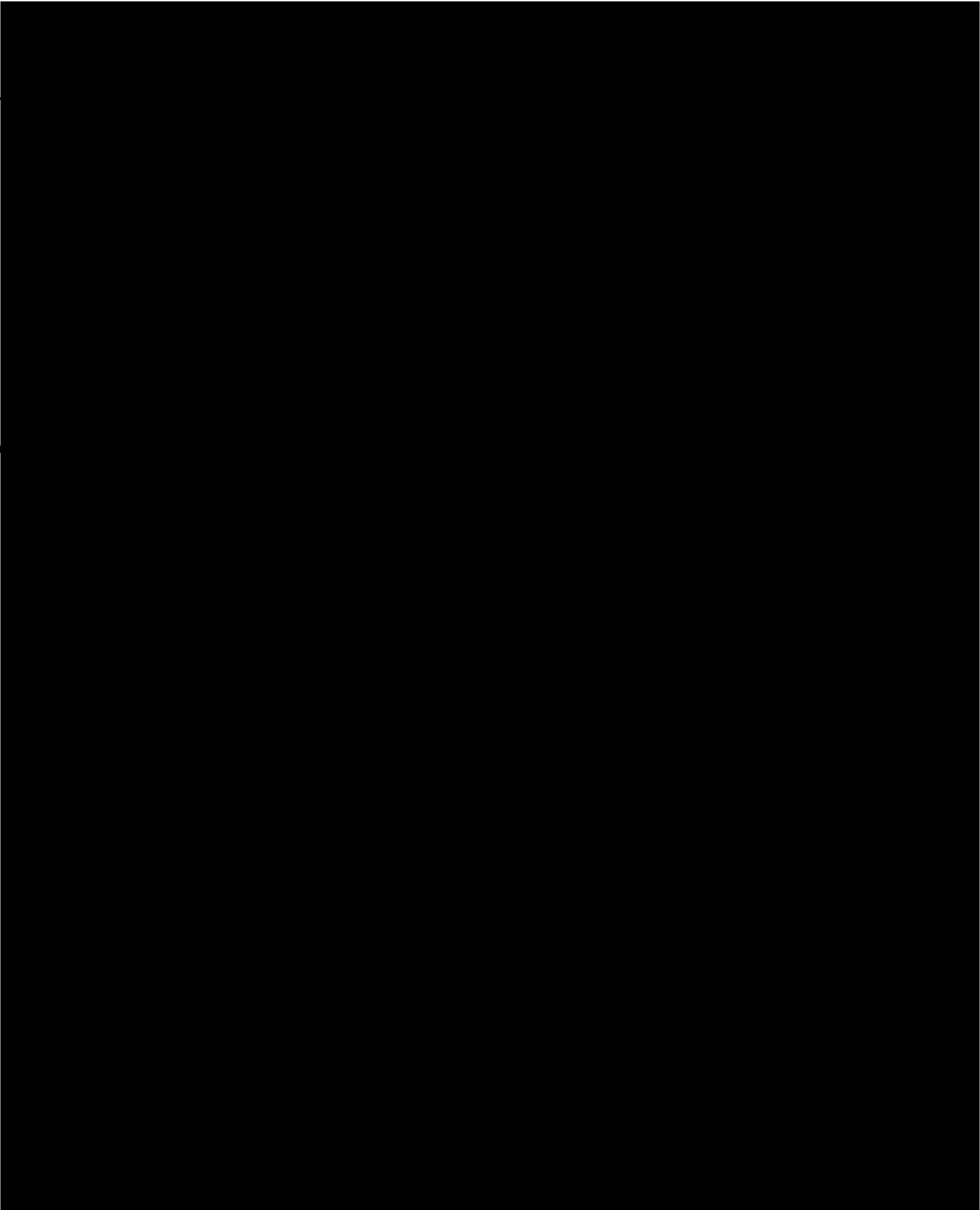




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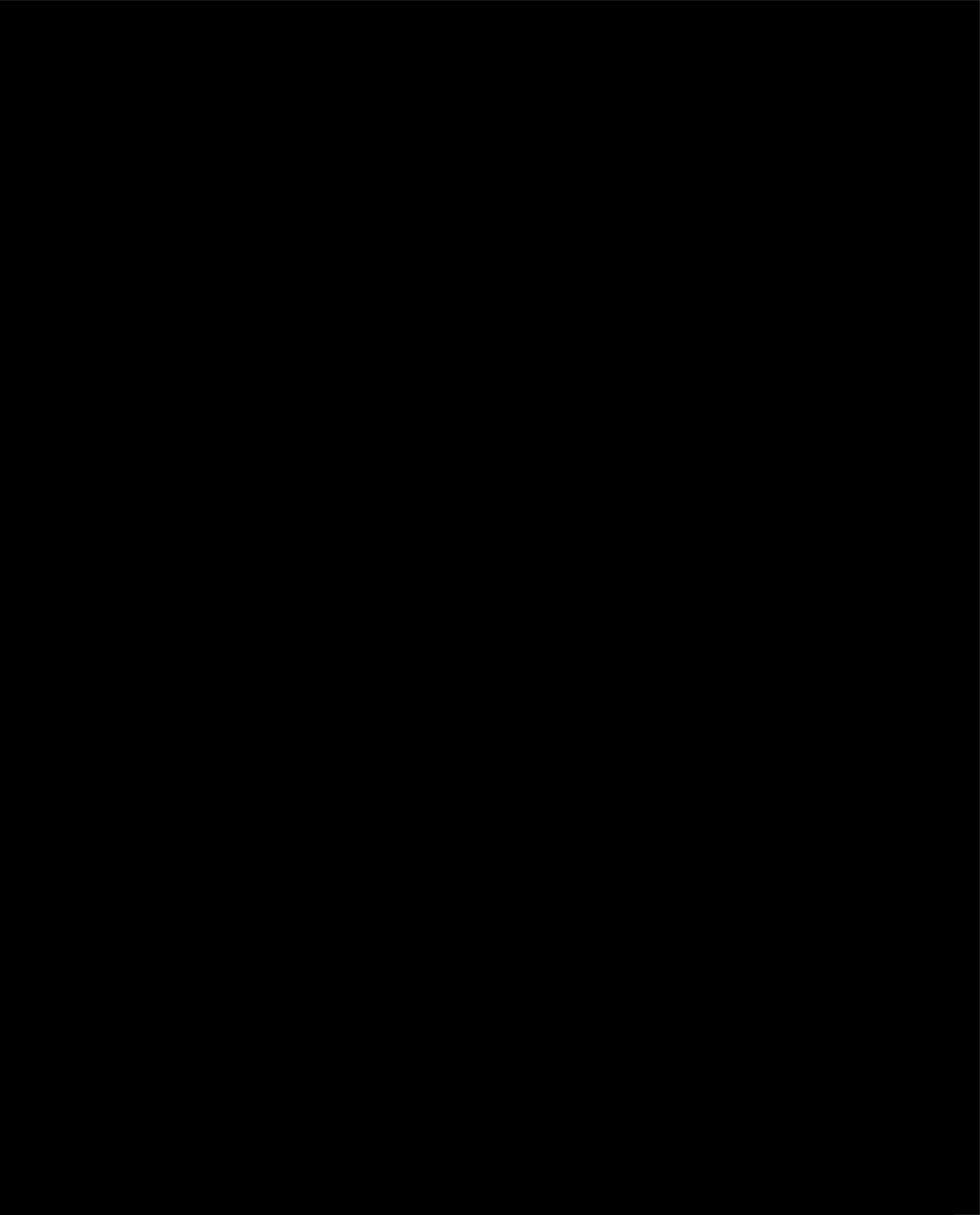
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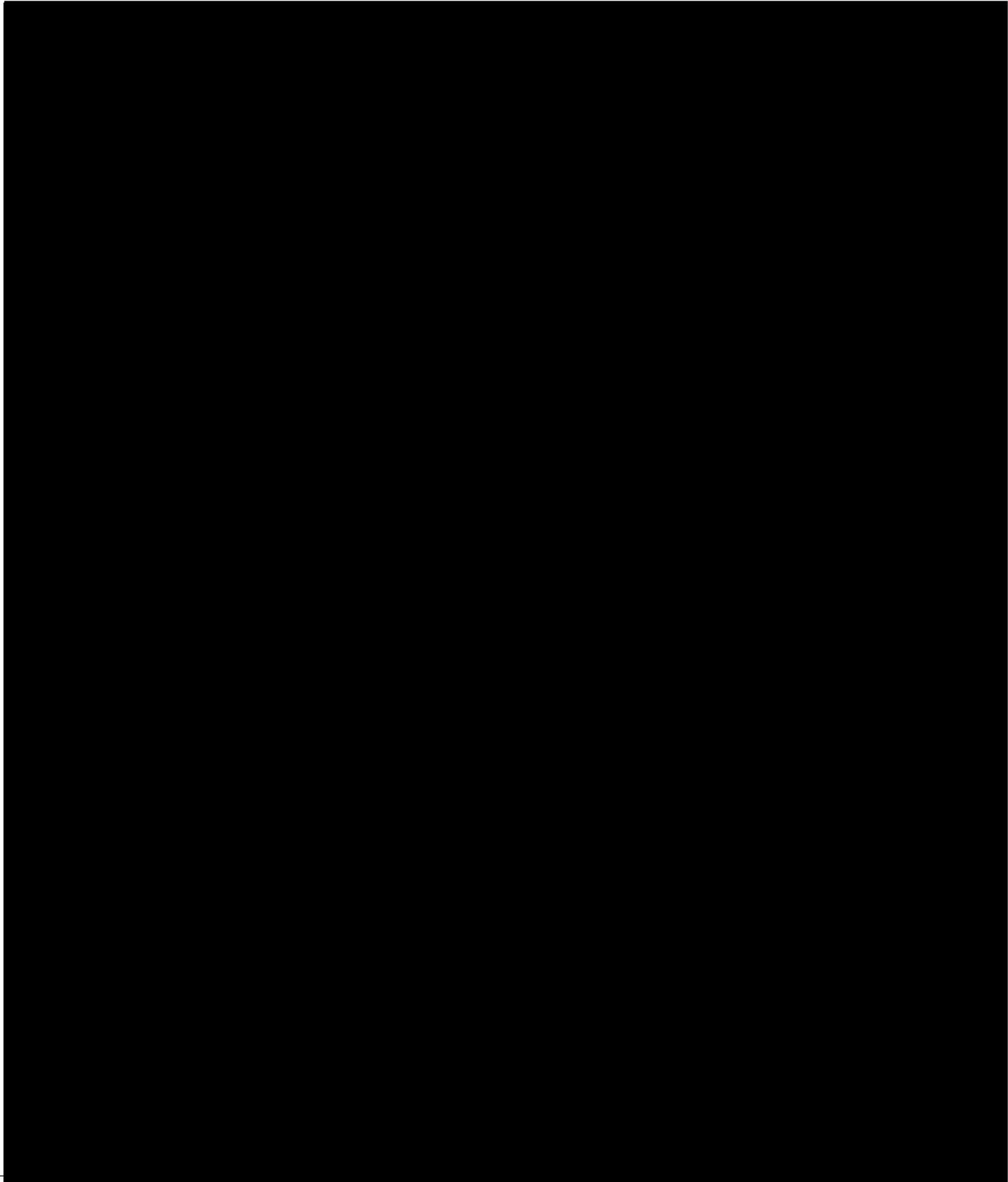
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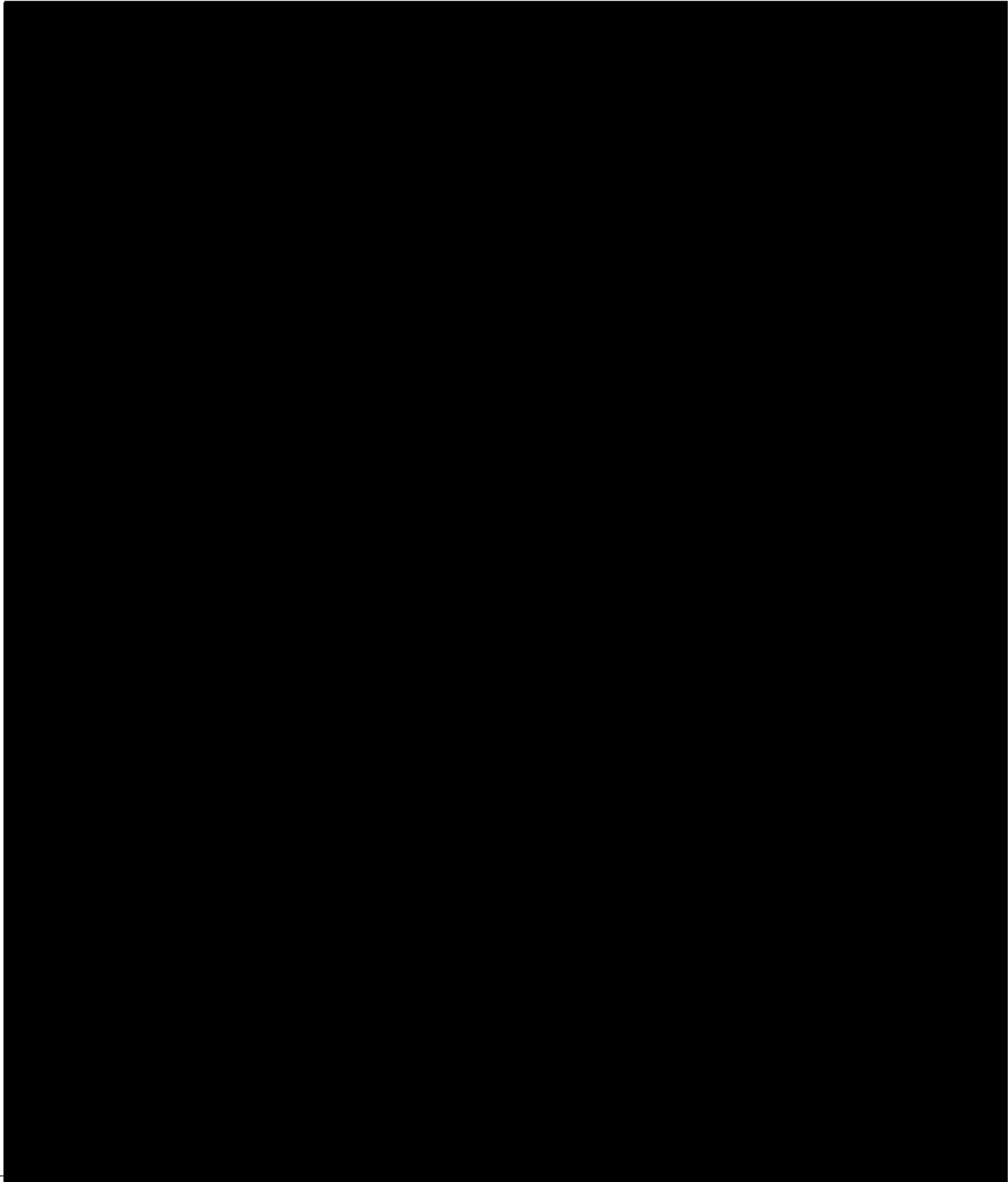
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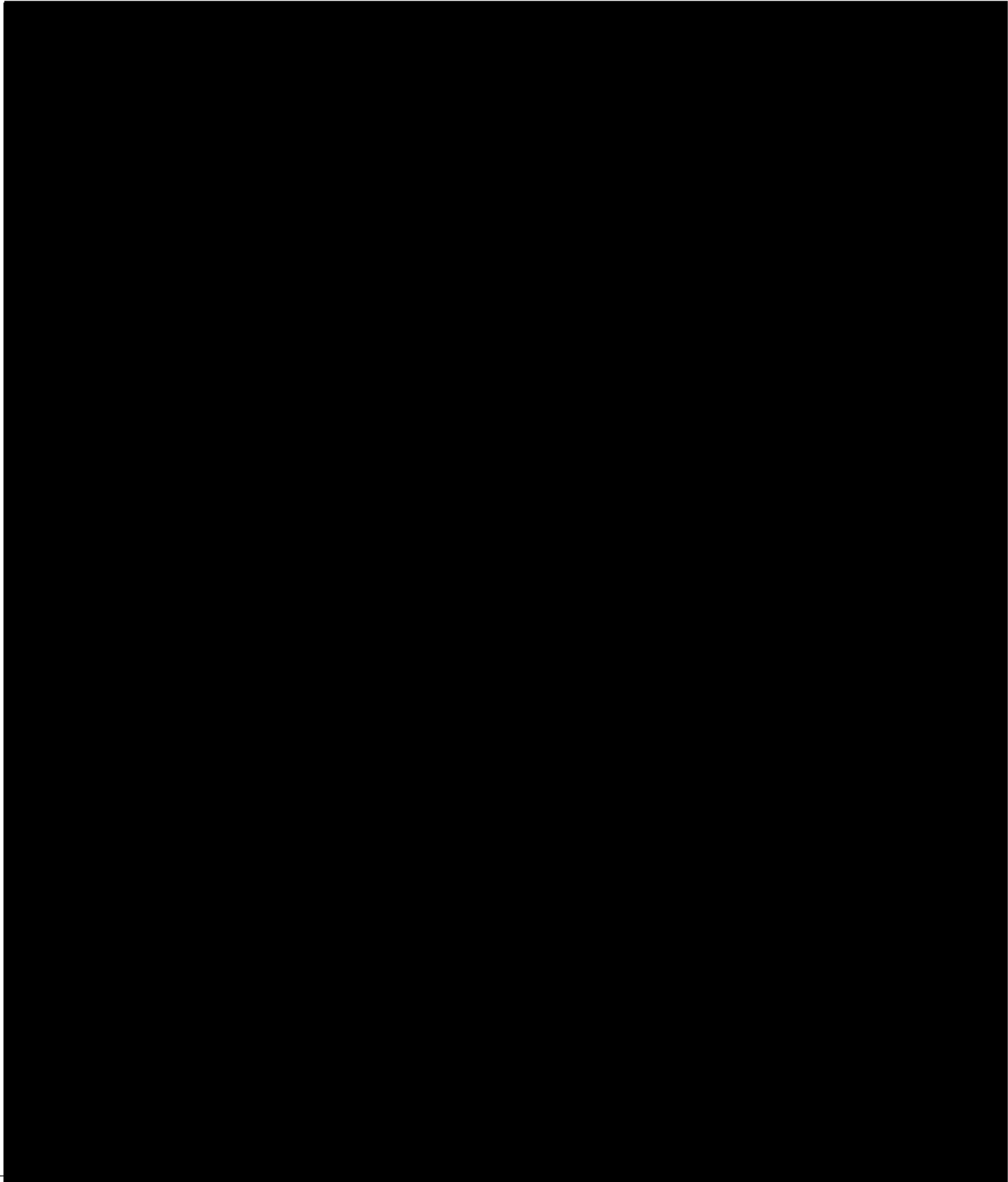
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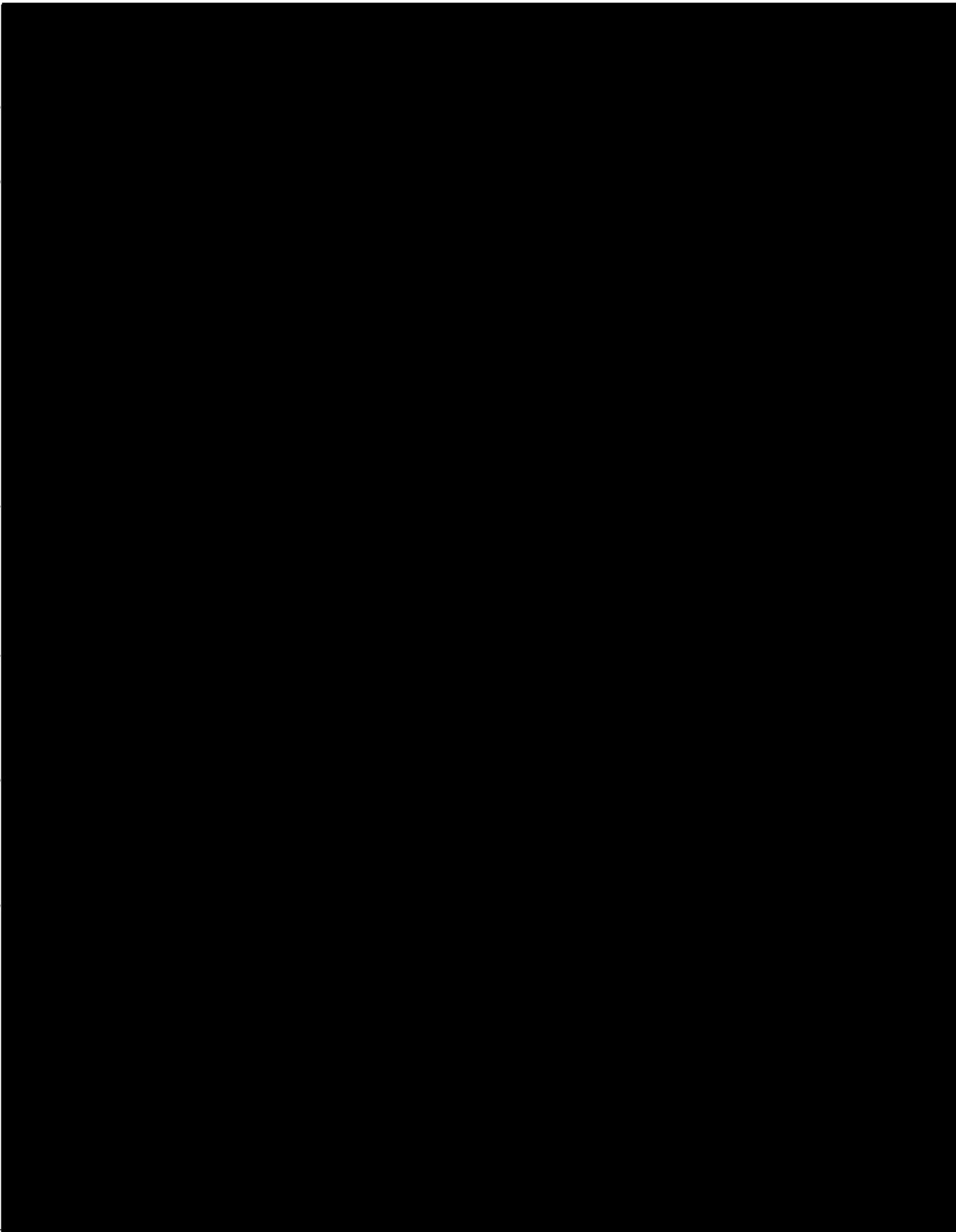
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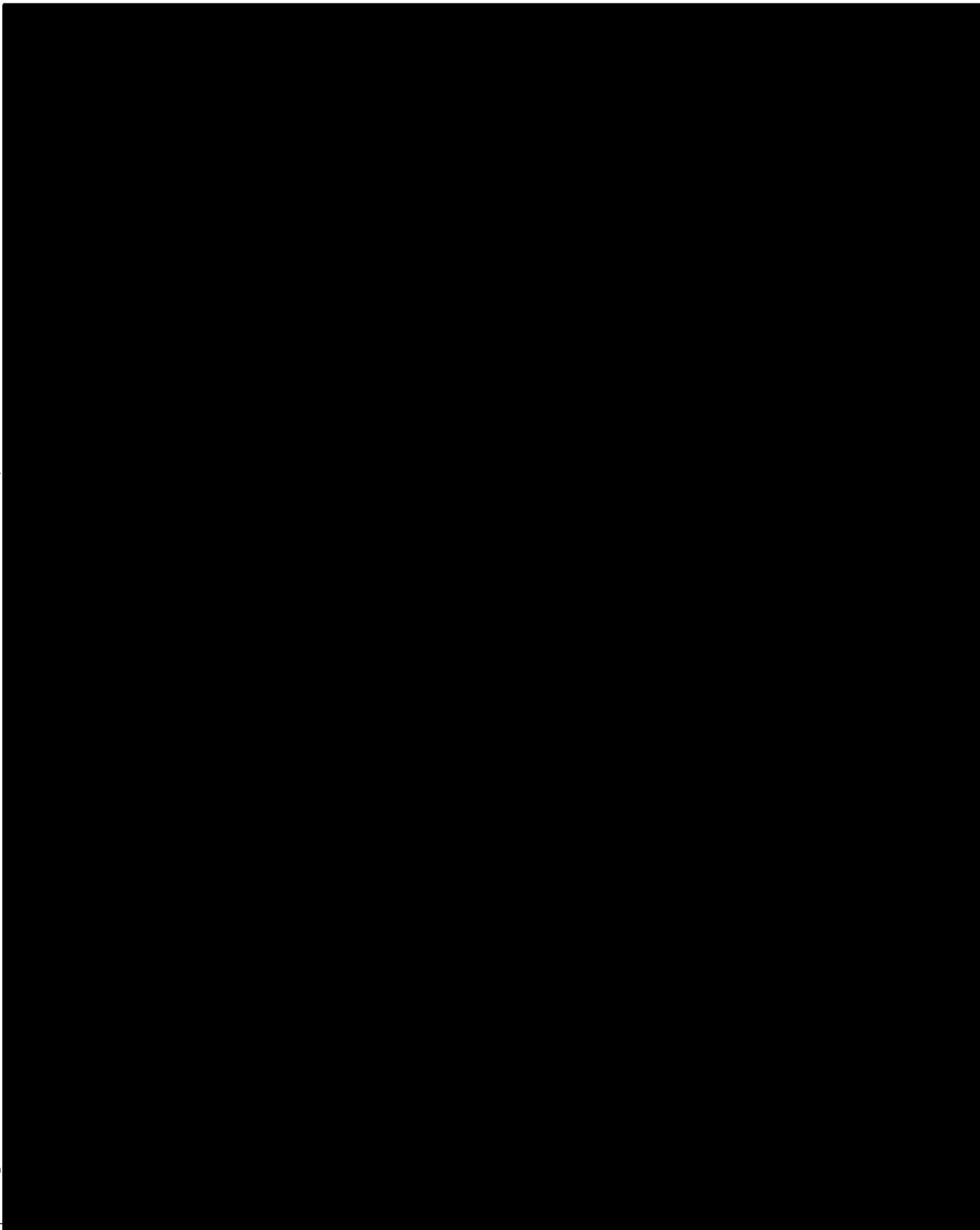




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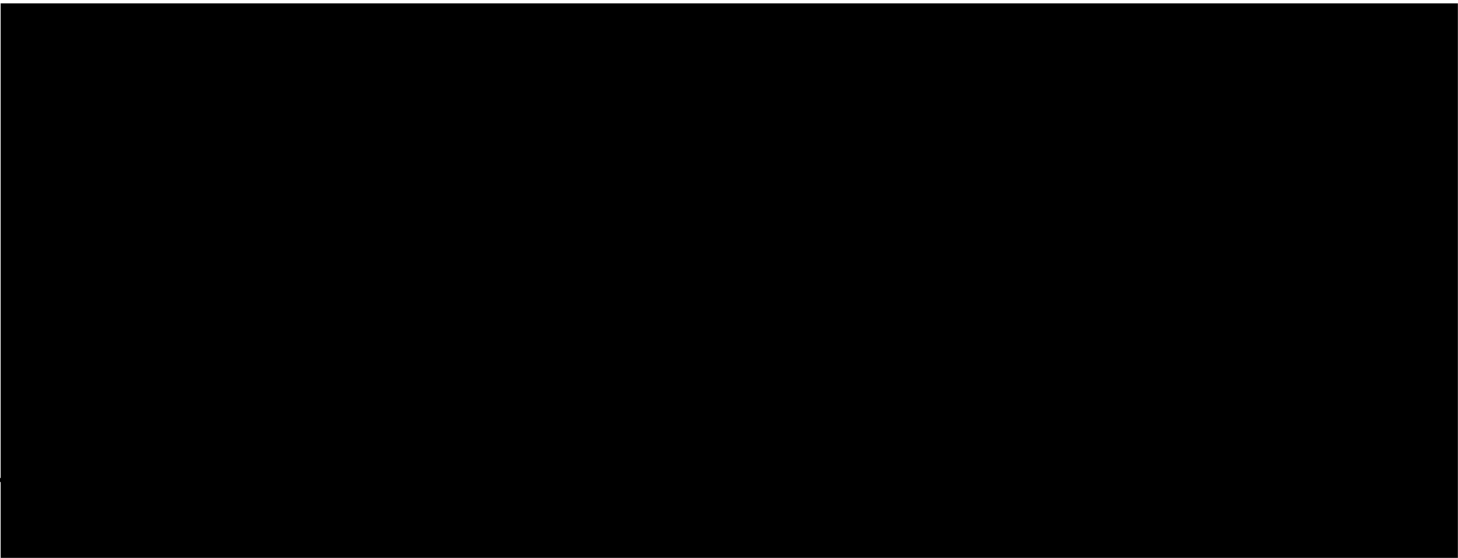




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ATTACHMENTS:



From:
To: Chait, Mark R.
Subject: RE: Start of Fast and Furious

Axelrod's questions/comments:



DP

██████████
Chief, Firearms Operations Division
ATF HQ - Room 6.S.129
202.██████████ Cell ██████████

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authorization is strictly prohibited.

From: Chait, Mark R.
Sent: Tuesday, April 26, 2011 3:59 PM
To: [REDACTED]
Subject: FW: Start of Fast and Furious

Please obtain this info. thx

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From: Hoover, William J.
Sent: Tuesday, April 26, 2011 3:30 PM
To: Chait, Mark R.
Subject: Fw: Start of Fast and Furious

Mark,

Can you get me answers to the questions below?

Thank you!!

Billy

William J. Hoover
 Deputy Director
 Bureau of Alcohol, Tobacco, Firearms & Explosives
 O) 202-648-8710

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From: Axelrod, Matthew (ODAG)
To: Hoover, William J.
Sent: Tue Apr 26 15:18:22 2011
Subject: Start of Fast and Furious

Billy,



DP

Matt

Matthew S. Axelrod

Associate Deputy Attorney General

Office of the Deputy Attorney General

U.S. Department of Justice

Desk (202) 305-0273

Cell (202) 532-3087

To: Hurley, Emory (USAAZ)
Subject: Additions to 6(e) list - "Fast/Furious"

Please add the following ATF personnel below to this GI disclosure list:

SA

Executive Assistant [REDACTED],

[REDACTED] will be assisting me in HQ. You may forward any correspondence to them via ATF e-mail or mail/FedEx to them at my address below.

[REDACTED]
Chief, Firearms Operations Division
ATF HQ - Room 6.5.129
202 [REDACTED] Cell [REDACTED]

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From: Stinnett, Melanie S.
Sent: Friday, April 29, 2011 9:19 AM
To: [REDACTED]
Subject: RE: (Axelrod) Start of Fast and Furious

Thank you. I've given Counsel a heads up [REDACTED] DP. Counsel has drafted all of the preservation directives.

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From: [REDACTED]
Sent: Thursday, April 28, 2011 7:47 PM
To: Stinnett, Melanie S.
Subject: Fw: (Axelrod) Start of Fast and Furious

Fyi

[REDACTED], Division Chief Firearms Operations Division
 202-[REDACTED], Cell [REDACTED]

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From: Axelrod, Matthew (ODAG)
To: Hoover, William J.
Cc: Melson, Kenneth E.; [REDACTED]
Sent: Thu Apr 28 19:10:48 2011
Subject: RE: (Axelrod) Start of Fast and Furious

Can we talk about this tomorrow? [REDACTED]

DP

DP

DP

From: Hoover, William J. (ATF)
Sent: Wednesday, April 27, 2011 6:30 AM
To: Axelrod, Matthew (ODAG)
Cc: Melson, Kenneth E. (ATF); [REDACTED]
Subject: FW: (Axelrod) Start of Fast and Furious

Matt,

Please see our answers to your questions below. I will give you a call later this morning to discuss.

Billy

William J. Hoover
Deputy Director
Bureau of Alcohol, Tobacco, Firearms & Explosives
O) 202-648-8710

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From: Lowrey, Stuart L.
Sent: Tuesday, April 26, 2011 6:50 PM
To: Chait, Mark R.; Hoover, William J.; McMahon, William G.
Subject: RE: (Axelrod) Start of Fast and Furious

ADAG Axelrod's questions/comments:

DP

DP

██████████
Chief, Firearms Operations Division
ATF HQ - Room 6.5.129
202.██████████ Cell ██████████

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From: Chait, Mark R.
Sent: Tuesday, April 26, 2011 3:59 PM

To: [REDACTED]
Subject: FW: Start of Fast and Furious

Please obtain this info. thx

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Sent: Tuesday, April 26, 2011 3:30 PM
To: Chait, Mark R.
Subject: Fw: Start of Fast and Furious

Mark,

Can you get me answers to the questions below?

Thank you!!

Billy

William J. Hoover
Deputy Director
Bureau of Alcohol, Tobacco, Firearms & Explosives
O) 202-648-8710

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

From: Axelrod, Matthew (ODAG)
To: Hoover, William J.
Sent: Tue Apr 26 15:18:22 2011
Subject: Start of Fast and Furious

Billy,

A large, bold, white graphic consisting of the letters 'D' and 'P' in a sans-serif font, centered on a solid black rectangular background.

Matt

Matthew S. Axelrod

Associate Deputy Attorney General

Office of the Deputy Attorney General

U.S. Department of Justice

Desk (202) 305-0273

Cell (202) 532-3087

From: [REDACTED]
Sent: Thursday, April 28, 2011 3:48 PM
To: [REDACTED]
Subject: FW: Project Gunrunner - A Cartel Focused Strategy (3317)
Attachments: Cartel Strategy NFORCE screens 091610.pptx; Cartel Strategy 9-7-10.docx; Cartel Strategy ADFO Memo 090810 scan.pdf

All I have.

[REDACTED]
 ATF National Coordinator
 Southwest Border/Project Gunrunner

(202) [REDACTED]
 [REDACTED] cell

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From: [REDACTED]
Sent: Thursday, September 16, 2010 3:24 PM
To: All Special Agents in Charge
Cc: Shoemaker, Stephanie R.; Firearms Operations Division (FOD); Kumor, Daniel J.; Vidoli, Marino F.; Riehl, Joseph M.; Chait, Mark R.; McMahon, William G.; Torres, Julie M; Boxler, Michael B.; McCabe, Harry L.
Subject: Project Gunrunner - A Cartel Focused Strategy (3317)

All Special Agents in Charge:

Attached is a memorandum from the Assistant Director (Field Operations) discussing and transmitting a document entitled *Project Gunrunner – A Cartel Focused Strategy*. The memorandum and the strategy document outline our increased national emphasis on firearms trafficking enforcement related to the Southwest border, as well as the importance of identifying and prioritizing those investigations in which a nexus to Mexican drug trafficking organizations and cartels may be established.

Initially implemented in our four Southwest border field divisions, Project Gunrunner has evolved into a national strategy as we have seen cartels reach further into the interior of the U.S. to acquire firearms in support of their lucrative drug trafficking operations. The revised strategy acknowledges and incorporates an investigative approach already implemented by several ATF field divisions and reiterates the primary responsibility of the field special agents in charge for implementation of the strategy. This document recognizes that Project Gunrunner is both an ATF strategy and a component of a larger U.S. Government counternarcotics strategy. Our success is contingent upon the effective use of our regulatory, investigative, technical, intelligence, training, liaison, and public/industry outreach capabilities. The success of Gunrunner is also dependent on our ability to secure prosecutions appropriate to the criminal conduct. It is imperative that comprehensive, complex criminal investigations that link

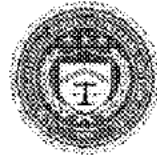
firearms traffickers to violent drug trafficking organizations and operations be conducted in order to leverage the prosecutorial advantages afforded by a wider array of criminal and civil statutes.

Vital to our ability to track and report our efforts is the timely and accurate reporting of information in our case management system (e.g., N-Force and N-Spect). The Cartel Strategy document and the attachments to this memorandum provide detailed guidance for agents and industry operations investigators on coding investigative activity in N-Force and N-Spect. Recent enhancements to N-Force allow us to document investigations involving specific Mexican cartels in the same manner as U.S. street gangs and outlaw motorcycle organizations. All special agents and industry operations investigators should be familiar with these procedures.

Please review and internally disseminate the memorandum, the *Project Gunrunner – A Cartel Focused Strategy* document, and other attachments to ensure complete understanding and proper implementation of our revised priorities. Please address any questions about this material to [REDACTED], ATF Southwest Border National Coordinator at [REDACTED] or [REDACTED], Chief, Firearms Operations Division at [REDACTED]

[REDACTED]
Chief, Firearms Operations Division
ATF HQ - Room 6.S.129
[REDACTED] Cell [REDACTED]

U.S. Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives
Office of Field Operations



PROJECT GUNRUNNER

A Cartel Focused Strategy

September 2010



Table of Contents

EXECUTIVE SUMMARY	2
BACKGROUND	5
STRATEGY VERSUS PROGRAMS AND INITIATIVES	6
PURPOSE AND SCOPE	7
CURRENT STRATEGIES	9
CARTEL FOCUSED STRATEGY	11
MEXICAN CARTELS	13
OCDETF	15
HEADQUARTERS OVERSIGHT/COORDINATION	17
MEXICO COUNTRY OFFICE	18
BORDER LIAISON AND EXPLOSIVES ENFORCEMENT OFFICERS	20
BORDER VIOLENCE, VCIT AND GANGS	21
INFORMATION COLLECTION, MANAGEMENT AND EXPLOITATION	22
STATE AND LOCAL LAW ENFORCEMENT ASSISTANCE	24
DOJ ASSISTANCE AND PROSECUTION STRATEGY	25
PERFORMANCE GOALS/PERFORMANCE INDICATORS	26
SUMMARY OF KEY ELEMENTS OF CARTEL FOCUSED STRATEGY	27

EXECUTIVE SUMMARY

ATF has a long and successful history of combating firearms-related violent crime. Key to this success has been our ability to effectively regulate the firearms industry and identify and investigate the illegal diversion of firearms from lawful commerce. Perhaps at no time in our history has the investigation of firearms trafficking schemes and networks been more important to public safety, and increasingly to national security, than now.

In response to the increased trafficking of firearms from the United States to Mexico, ATF developed Project Gunrunner, a firearms trafficking and firearms-related border violence strategy designed to deny drug trafficking organizations access to U.S. firearms. Initially implemented in our four primary Southwest border field divisions, Project Gunrunner has evolved into a national strategy as we have seen Mexican cartels reach further into the interior of the United States to acquire firearms in support of their lucrative drug trafficking operations.

It is important to note that this revised strategy does not replace Project Gunrunner. It is intended to complement Project Gunrunner and where appropriate clarify and expand Gunrunner capabilities and tactics.

This document is not intended to provide detailed guidance concerning how to conduct cross border trafficking investigations; but rather is intended to be used by ATF personnel to ensure that investigative activity aligns with ATF strategic goals. Personnel should refer to ATF orders and publications, such as the recently revised Firearms Trafficking Guide, as well as training provided by the Office of Training and Professional Development for specific tactical and investigative guidance.

Since 2006, there has been a significant increase in drug and firearms-related violence in Mexico and increasingly along our Southwest border. Governments on both sides of the border have begun to view the evolution of cartel inspired violence in terms of criminal activity that increasingly threatens the stability of the Mexican state. Impacting this trend along our Southwest border, particularly in the post-9/11 world, requires new energy, vision and creativity. Over the past few years the White House, the Departments of Justice and Homeland Security and even the U.S. Northern Command have developed various strategies and policies designed to leverage the full capabilities of the U.S. Government in this effort. It is essential that our efforts support the strategies and policies of the President and the Attorney General and where possible, complement the strategies of other agencies.

In response to the evolving nature of firearms and explosives trafficking and related violence along and across our Southwest border we have increased our resources along the border and in Mexico and placed greater national emphasis on suppressing the trafficking of firearms and explosives to Mexico. Additionally, we have increased our efforts to partner with the Government of Mexico and other law enforcement and intelligence agencies with shared responsibilities. As part of this process, we have deemed it necessary to revise both our Gunrunner strategy and the manner in which ATF headquarters monitors and supports certain field investigations.

Project Gunrunner– A Cartel Focused Strategy

While our strategy will remain multi-faceted and continue to include the inspection of licensed gun dealers and the targeting and arresting of straw purchasers, our revised approach will place greater emphasis on investigations that target specific cartels and the persons responsible for organizing and directing firearms trafficking operations in the United States. We have come to understand that we can best impact firearms trafficking to Mexico and Southwest border violence by linking our investigations to drug trafficking organizations and where possible to specific Mexican cartels. Our efforts will also be enhanced through increased coordination with our Federal counterparts.

Through analysis of Mexican crime gun traces and other intelligence data, it has been determined that the Gulf, the Zetas (once aligned with the Gulf Cartel), and the Sinaloa cartels are the criminal organizations most responsible for acquiring firearms in the United States to support their drug trafficking operations and where ATF can potentially have the greatest impact. Therefore, ATF Southwest border enforcement operations will place particular emphasis on the investigation of firearms and explosives trafficking operations organized, directed, and financed by these particular cartels.

Based on the areas in Mexico controlled by the Gulf, Zetas, and Sinaloa cartels; the locations of U.S.-sourced firearm recoveries in Mexico; and the U.S. locations where firearms recovered in Mexico are most often acquired, the Houston and Phoenix Field Divisions will be primarily responsible for investigating trafficking schemes associated with these cartels. **However, this strategy is not intended to limit the initiative of any ATF field division and in fact recognizes the increasingly important role played by non-Southwest border field divisions in combating firearms and explosives trafficking to Mexico.** As a result, all ATF field divisions are expected to initiate investigations on cartels and/or their surrogates operating in their geographic areas of responsibility; however, investigations pertaining to the Gulf, Zetas, and Sinaloa cartels must be deconflicted and closely coordinated with the Houston and Phoenix Field Divisions.

This approach requires conducting our border-related firearms and explosives investigations in a more creative and comprehensive manner by fully incorporating our agency's regulatory, investigative, analytical, technical, and legal capabilities and resources, as well as those available from other law enforcement agencies, particularly DEA. At the heart of this increased emphasis on cartel focused investigations is greater use of the Organized Crime Drug Enforcement Task Force (OCDETF) program and intelligence capabilities available from the El Paso Intelligence Center (EPIC) and the DEA Special Operations Division. Recent changes to OCDETF program policy encourage the use of OCDETF in firearms trafficking cases provided there is a nexus to high value drug trafficking targets.

Effective implementation (and documentation) of this strategy will enhance public safety and provide essential evidence of performance and accomplishments necessary to the continued growth and reputation of our agency. Although ATF headquarters possesses resources and capabilities necessary to the success of this strategy, success ultimately rests with the vigorous implementation of this strategy by field division and Mexico Country Office personnel at the front line of these operations.

Project Gunrunner– A Cartel Focused Strategy

Properly implemented, this revised strategy will improve data collection, analysis, and exploitation of information; employ a greater array of investigative resources, including greater utilization of the OCDETF program; improve sharing and leveraging of information available from other law enforcement agencies; improve investigative coordination and information sharing with the Government of Mexico; and place greater emphasis on multi-defendant conspiratorial cases that focus on persons who organize, direct, and finance cartel-related firearms and explosives trafficking operations.

BACKGROUND

It is generally accepted that much of the firearms violence in Mexico and along the Southwest border is perpetrated by, or on behalf of, Mexican drug trafficking organizations (DTO). DTOs continue to vie for control of drug trafficking routes to the United States and in so doing, engage in acts of violence that are often perpetrated with firearms and ammunition acquired from the United States.

While the United States is not the only source of firearms and munitions used by the cartels, it has been established that a significant percentage of their firearms originate from gun stores and other sources in the U.S. Improvised explosive devices, military ordnance, and counterfeit firearms manufactured in clandestine facilities play an increasingly important role in emboldening Mexican cartels. Intelligence indicates these criminal organizations have tasked their money laundering, drug distribution, and transportation infrastructures with reaching into the United States to acquire firearms, ammunition, and the components necessary to modify firearms and/or construct improvised explosive devices. It is also well-established that firearms traffickers often use the same routes as drug traffickers. Increasingly, we find that Mexican cartels transport firearms and munitions into Mexico from Guatemala, situated on Mexico's southern border.

The analysis of trends based on seizures and human intelligence have provided some meaningful insights into the methods of acquisition and transportation utilized by the Mexican cartels. Furthermore, over the past few months enforcement strategies (and other guidance) that address firearms trafficking to Mexican cartels have been developed and released by the White House and the Department of Justice. It is essential that ATF efforts support strategies promoted by the White House and Department of Justice. An examination of these and other strategies reveals similarities among the strategies, but also suggests that some revisions to ATF's current strategy are necessary.

STRATEGY VERSUS PROGRAMS AND INITIATIVES

ATF has over time initiated a variety of enforcement programs, operations, and initiatives related to our overall efforts to suppress firearms and explosives trafficking across the U.S.-Mexico border. However, it is worth noting that these programs, operations, and initiatives are intended to advance the objectives of our Southwest border strategy---they are not in and of themselves strategies.

A recent example of an investigative initiative developed in support of Project Gunrunner (strategy) is the April 2009 Gunrunner Impact Team (GRIT) initiative. The GRIT, largely intelligence driven and investigative in nature, involved the deployment of approximately 100 investigative (special agents and industry operations investigators), analytical, and administrative personnel to Texas to target the persons, groups, and organizations responsible for the trafficking of firearms to Mexico from the Houston Field Division area of responsibility. Other important elements of GRIT included the inspection of numerous Southwest border FFLs and public service announcements designed to discourage the unlawful acquisition of firearms by straw purchasers.

An effective strategy should coordinate and direct all the resources of the organization toward the attainment of one or more specific goals. In this particular case, the goal of our Southwest border strategy is the suppression of firearms and explosives trafficking across the U.S.-Mexico border and firearms-related border violence.

Essential components of an effective strategy include a statement of the purpose and scope of the overall objectives, as well as a discussion of problems, risks, and threats the plan is intended to address. A strategy's effectiveness is also enhanced by a description of the agency's mission, key capabilities, and means of evaluating progress made against performance goals and measures.

PURPOSE AND SCOPE

ATF has been investigating firearms trafficking involving Mexico for many years; however, a detailed written strategy was not released until June 2007. The principal purpose of the strategy, known as Project Gunrunner, is the suppression of firearms and explosives-related violence in Mexico and along the Southwest border resulting from the illegal acquisition and movement of firearms, explosives, and improvised explosive devices from the United States.

The purpose of this document is to reiterate ATF's commitment to Project Gunrunner while directing a more focused investigative approach. Specifically, with this document ATF will emphasize targeting the drug cartels principally responsible for the illegal acquisition and trafficking of firearms from the United States to Mexico. This document is not intended to replace Project Gunrunner; nor is it intended to provide a comprehensive tactical blueprint for the investigation of cross border firearms trafficking schemes. Project Gunrunner is incorporated into this document in its entirety unless a specific portion is deleted or amended herein. Specific ATF capabilities and/or responsibilities are mentioned to highlight their importance to our efforts to suppress firearms and explosives trafficking to Mexico and to better leverage ATF capabilities.

This revised strategy acknowledges and incorporates an investigative approach already being implemented by several ATF field divisions and reiterates the primary responsibility of the field special agents in charge for effective implementation of the strategy. This document recognizes that Project Gunrunner is both an ATF strategy and a component of a larger U.S. Government counternarcotics strategy. Our success is contingent on the use of all appropriate regulatory, investigative, technical, intelligence, training, liaison, and public/industry outreach capabilities. However, the success of Gunrunner is also dependent on our ability to secure prosecution and sentences appropriate to the criminal conduct. Recognizing the nuances of current Federal firearms statutes and related sentencing guidelines, it is imperative that comprehensive, complex criminal investigations that link firearms trafficking organizations to drug trafficking activities and organizations be conducted in order to leverage the prosecutorial advantages afforded by a wider array of criminal and civil statutes.

Like ATF's national firearms trafficking strategy, Gunrunner envisioned achieving our goals by focusing on both market and source areas of firearms. However, insufficient ATF resources in Mexico; the difficulty of obtaining comprehensive and timely firearm recovery data; limited access to recovered firearms and persons arrested in Mexico; and the fact that trafficking scheme organizers frequently reside outside the United States, caused ATF to primarily focus limited investigative resources on persons who purchase firearms in the United States that are subsequently recovered in drug related incidents in Mexico. However, experience has taught that straw purchasers are infrequently prosecuted, receive sentences insufficient to deter others when prosecuted, and are easily replaced by scheme organizers.

While our strategy will continue to include targeting persons who acquire firearms in a suspicious and/or unlawful manner, additional ATF investigative resources; improved

information sharing and data analysis capabilities; improved interagency cooperation (both domestic and international); and improved technology have resulted in our ability to place greater emphasis on the end users of trafficked firearms in the market area---the cartels and their confederates who organize the trafficking schemes and facilitate the movement of firearms across the U.S. Southwest border.

The primary goal of ATF's Southwest border firearms trafficking strategy remains unchanged---to disrupt and dismantle the firearms trafficking organizations and networks responsible for trafficking firearms to Mexican cartels and cartel-related border violence.

CURRENT CARTEL AND FIREARMS TRAFFICKING STRATEGIES

The following identifies and summarizes key U.S. Government strategies intended to address firearms trafficking to Mexican drug cartels. They are listed and summarized in this document because it is essential that ATF's Southwest border strategy support and complement direction enunciated by the Department of Justice and the White House.

As previously indicated, ATF formally initiated Project Gunrunner in June 2007. Project Gunrunner called for increased collaboration and coordination with the Government of Mexico and U.S. law enforcement agencies; increased use of tracing and other sources of information; increased training to Mexican law enforcement agencies; a comprehensive plan for the inspection of licensed firearms dealers; closer investigative collaboration with Organized Crime Drug Enforcement Task Forces (OCDETF), OCDETF strike forces, and High Intensity Drug Trafficking Area (HIDTA) task forces; and FFL and public outreach/education.

On April 27, 2009, the Department of Justice released guidelines for the consideration of OCDETF designation in firearms related cases involving Mexican cartels. The memorandum identified firearms trafficking from the United States to Mexico as contributing to the escalating levels of cartel-related violence and as a particular concern for law enforcement on both sides of the border. The memorandum emphasized the important role that the OCDETF program plays in connection with the United States' government-wide efforts to stem the southbound smuggling of arms to Mexican drug trafficking organizations and stated that investigations principally targeting firearms trafficking are eligible for OCDETF designation if there is a sufficient nexus between the firearms and a major Mexican drug trafficking organization. It is not necessary that every OCDETF prosecution include specific drug charges, but every OCDETF prosecution must be drug-related. The specific charges may be firearms, explosives, or other non-drug violations as long as the targets have been identified as major drug violators and otherwise meet OCDETF standards.

In June 2009, the Office of National Drug Control Policy (ONDCP) released its National Southwest Border Counternarcotics Strategy. The strategy represents another key contribution to the U.S. response to the threat along the Southwest border. The strategy acknowledges the close link between drug trafficking and firearms trafficking and the increasing powerful nature and sophistication of the firearms acquired and used by Mexican drug trafficking organizations. In fact, Chapter 7 of the strategy is devoted to weapons and contains significant language pertaining to ATF investigative responsibilities and enforcement programs. The strategy includes the goals of improving intelligence and information sharing relating to weapons trafficking among Federal, State, local, and tribal law enforcement partners; increasing interdiction of illegal weapons shipments destined for Mexico; enhancing cooperation with international partners in weapons investigations; strengthening domestic coordination on weapons investigations and increasing the likelihood of successful Federal prosecution of weapons cases.

Project Gunrunner– A Cartel Focused Strategy

On June 25, 2009, ATF released a memorandum detailing a revised national firearms trafficking enforcement strategy focusing on among other things the identification and investigation of specific domestic trafficking corridors. While not a Southwest border focused document, the national firearms trafficking enforcement plan makes reference to Project Gunrunner and firearms trafficking cases with an international nexus. The document is referenced here since it provides guidance for conducting firearms trafficking investigations generally and may include information pertaining to investigative, technical, and preventive tactics that may be applicable when investigating matters related to the Southwest border.

On January 7, 2010, the Department of Justice reemphasized its commitment to combating firearms trafficking to Mexican cartels and the use of the OCDETF program as a means of disrupting the cartels by releasing its own strategy. The strategy is premised on the notion that a significant share of the violence, drug trafficking and corruption along the Southwest border is perpetrated by a relatively small number of hierarchical criminal organizations. The DOJ strategy concludes that “the most effective mechanism to attack those organizations is the use of intelligence-based, prosecutor-led multi-agency task forces that attack all levels of, and all criminal activities of, the operations of the organizations.” A significant component of the DOJ strategy pertains to attacking the southbound flow of firearms. The strategy states that “given the national scope of this issue, merely seizing firearms through interdiction will not stop firearms trafficking to Mexico. We must identify, investigate, and eliminate the sources of illegally trafficked firearms and the networks that transport them.” The DOJ strategy calls for closer collaboration between ATF and the efforts of multi-agency drug task forces along the border, including OCDETF strike forces. All ATF field divisions with an OCDETF strike force must consider assigning a complement of special agents to the multi-agency strike force and/or establishing a collocated ATF-led OCDETF group within the strike force.

Lastly, ATF’s 2010-2016 Strategic Plan provides broad direction intended to guide ATF operations over the next few years and includes information regarding ATF’s efforts to combat firearms trafficking, to include trafficking along and across the Southwest border. The document reiterates that one of ATF’s fundamental responsibilities is addressing the threat posed by firearms violence associated with drug trafficking and specifically the threat posed by Mexican based drug trafficking organizations that acquire firearms from the United States. The document summarizes a wide variety of ATF capabilities useful in suppressing firearms trafficking across the U.S.-Mexico border.

Additionally, in June 2009, ATF and Immigration and Customs Enforcement (ICE) initiated a Memorandum of Understanding (MOU) intended to address areas of mutual concern and responsibility. To the extent possible, this revised cartel focused strategy will conform to agreements between ATF and ICE and other law enforcement partners that may exist.

A CARTEL FOCUSED STRATEGY

Historically, ATF has placed much emphasis on the roles of the straw purchaser and the Federal firearms licensee in identifying and disrupting firearms trafficking schemes. However, straw purchasers by definition lack serious criminal records and therefore are frequently viewed as undesirable targets for criminal prosecution. Straw purchasers are also an easily replaced component of the trafficking scheme and the criminal laws that ATF generally relies upon to investigate and prosecute straw purchasers do not expose these violators to significant criminal penalties. This is particularly true when straw purchaser cases are presented for prosecution individually and not as part of a multi-defendant trafficking conspiracy case; or when there is little or no evidence that their unlawful acquisitions were financed by and intended to support a DTO.

Therefore, to more effectively disrupt firearms trafficking operations and to make our cases more appealing for criminal prosecution, greater emphasis will be placed on targeting the persons with greater responsibility for the trafficking schemes. In furtherance of this goal, we will attempt to conduct investigations focusing greater attention on the cartels that finance and direct these trafficking operations.

Straw purchasers will continue to be investigated and prosecuted according to their overall level of culpability and cooperation. Straw purchasers must be held accountable for their conduct and made ineligible to purchase or possess firearms in the future. However, straw purchasers should more frequently be viewed as persons whose conduct should be investigated as part of a larger conspiracy and as persons whose information, cooperation, and assistance should be exploited to the extent possible in furtherance of the ultimate goal of identifying key members of the trafficking enterprise and disrupting and/or dismantling of the trafficking operation.

FFLs remain both an important source of firearms (often unwittingly) to firearms traffickers and an investigative source of information. On occasion, FFLs become targets of criminal investigation and prosecution. When criminal wrongdoing by FFLs is suspected they will be aggressively investigated and recommended for prosecution. Corrupt FFLs constitute high-value targets due to the damage they cause and the special responsibility they hold to ensure that firearms are not illegally diverted from lawful commerce. The potential damage to public safety caused by even one corrupt FFL is difficult to calculate. In the meantime, we will continue to inspect FFLs who serve as a source of firearms to Mexican cartels according to an intelligence driven inspection plan and actively pursue investigative leads developed by industry operations investigators.

Additionally, we must not overlook the fact that firearms traffickers and other violent criminals also obtain firearms from secondary sources. While disrupting and/or dismantling secondary sources of crime guns present unique challenges, we should not overlook the benefits of doing so. Analysis of source location trace data for specific market areas, when adjusted for time-to-crime, may not only reveal actionable investigative leads, but also that secondary sources (e.g., gun shows, thefts and private sales) are a greater source of trafficked crime guns than licensed dealers.

Project Gunrunner– A Cartel Focused Strategy

This strategy will present certain challenges as some of the persons we seek to investigate, indict, and apprehend will reside outside the United States and/or may be priority targets of other U.S. law enforcement agencies. When appropriate, this strategy envisions that ATF will refer information and actionable intelligence to the Government of Mexico and/or other U.S. law enforcement agencies.

There are also practical considerations that may require bringing investigations to a conclusion or dictate a change in investigative tactics prior to the identification of persons directly affiliated with the DTOs. Examples include high volume trafficking investigations in which numerous diverted firearms identifiable with one or more purchasers are being used in violent crimes and recovered by law enforcement, and high volume trafficking investigations in which over an extended period ATF cannot reasonably determine where or to whom such firearms are being trafficked. SACs must closely monitor and approve such investigations, assessing the risks associated with prolonged investigation with limited or delayed interdiction. In some instances, the best answer may be to provide actionable intelligence to other law enforcement agencies and/or the Government of Mexico.

Our renewed efforts will require greater collaboration between ATF field divisions and other law enforcement and intelligence agencies and make greater use of the technical and analytical capabilities of DEA, EPIC, and others. While interviewing remains one of the most important investigative and information gathering techniques available to law enforcement, we must consider the benefits of making financial and telephone numbers/records analysis a regular part of our trafficking investigations.

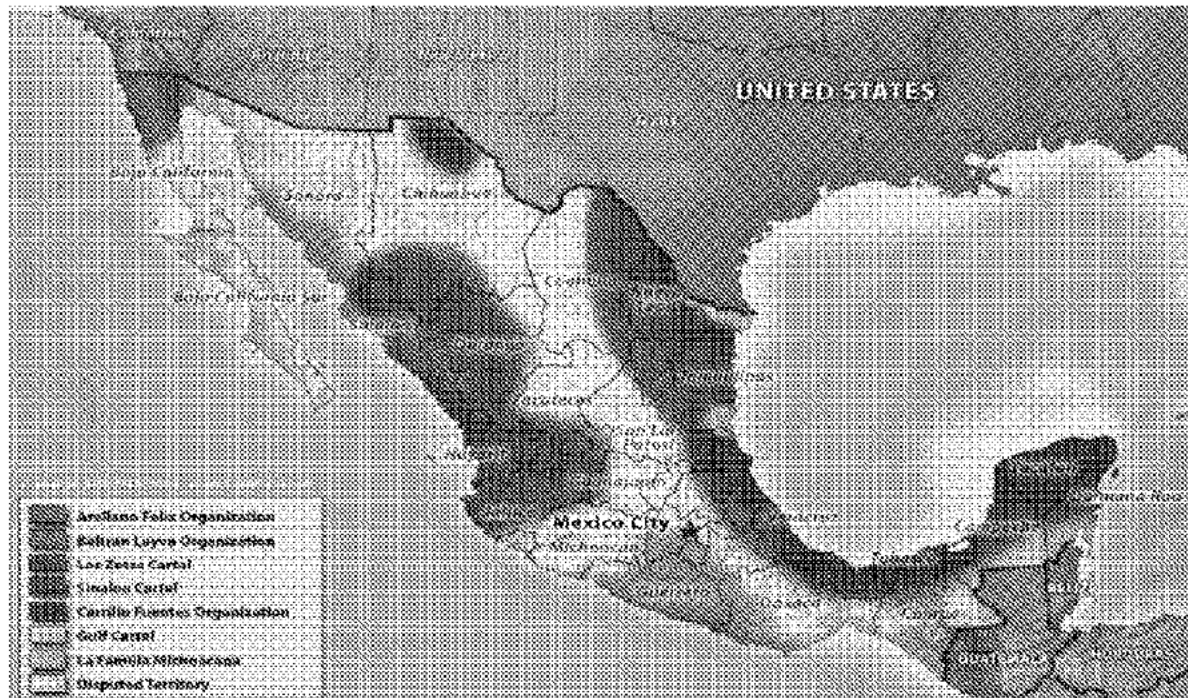
MEXICAN CARTELS

This document is not intended to provide a detailed examination of the organizational structure or activities of the various Mexican DTOs. Numerous documents on this subject have been prepared by both U.S. Government agencies and non-governmental organizations, including ATF, over the past few years. The ATF (OSII) 2009 Project Gunrunner assessment of arms trafficking to Mexico includes detailed analysis of the significant activities of several DTOs, including notable seizure events. Given the fact that this revised strategy is intended to focus more attention on the persons and organizations with greatest responsibility for cross border firearms and explosives trafficking, a brief summary of the most significant cartels' activities is beneficial.

The status and viability of the major cartels has been impacted by the aggressive enforcement actions of the Mexican Government since the election of President Calderon, as well as the fighting among rival cartels over lucrative drug trafficking routes to the United States. It is a constant challenge to maintain an accurate picture of the cartels and the areas they control because their leaders are frequently arrested and killed, alliances are made and broken between cartels, and leaders within the organizations are challenged for control of the enterprise. Most credible sources, however, believe there are currently 6 or 7 major cartels. These are the Sinaloa cartel; the Gulf cartel; the Beltran Leyva cartel; the Arellano Felix cartel (Tijuana cartel); Vicente Carrillo Fuentes cartel (Juarez cartel); the Los Zetas cartel (which began as an enforcement arm for the Gulf cartel) and La Familia Michoacána cartel.

The OSII Southwest Border Field Intelligence Support Team (FIST) and EPIC have identified over 300 Mexican seizure events in 2009 that were linked to specific DTOs based upon reporting from open source and Mexican Governmental agencies. (It should be noted that information from these sources routinely contains conflicting data.) Texas was the top U.S. source state in 2009, with the purchase of 163 DTO-related firearms attributed to retail purchasers. Reporting identified the Gulf and Los Zetas cartels involvement in 117 Mexican seizure events in which they were named separately (Zetas 70%, Gulf 30%) and together with 892 firearms and 782 grenades recovered. Reporting identified the Sinaloa cartel's involvement in 45 seizure events in Mexico with 578 firearms and 60 grenades recovered; the Juarez cartel (including La Linea and Barrio Azteca) involvement in 24 seizure events with 64 firearms and 6 grenades recovered; the Tijuana cartel (and the El Teo component) involvement in 34 seizure events with 259 firearms and 4 grenades recovered; La Familia's involvement in 53 seizure events with 339 firearms and 68 grenades recovered; and the Beltran-Leyva Organization involvement in 30 seizure events in Mexico with 349 firearms and 78 grenades recovered.

AREAS OF CARTEL INFLUENCES IN MEXICO



The previously mentioned GRIT initiative uncovered numerous firearms trafficking operations connected to the Gulf and Zetas cartels. The rings typically involved one or more individuals recruiting several straw purchasers to acquire large quantities of firearms from multiple FFLs or gun shows with the intention of trafficking the firearms to Mexico. In some cases the individuals participating in these schemes did so with the knowledge and cooperation of a corrupt FFL.

Based on the preceding analysis and other considerations, including the alignment of the areas controlled by the cartels with the four ATF Southwest border field divisions and overall trace data, the primary targets of this strategy will be the Gulf, Zetas, and Sinaloa cartels.

ORGANIZED CRIME DRUG ENFORCEMENT TASK FORCES

This strategy requires that firearms trafficking investigations be conducted in a thorough and comprehensive manner. A key component of this strategy is to make greater use of the OCDEF program as indicated in the Associate Deputy Attorney General's memorandum of April 27, 2009; the June 2009 ONDCP National Southwest Border Counternarcotics Strategy and the January 7, 2010 Department of Justice strategy.

Firearms related OCDEF cases will by their very nature require the support and participation of other law enforcement agencies, particularly DEA, and involve priority/high-value drug trafficking targets; be conspiratorial in nature; involve multiple suspects and a reasonably large number of known or suspected trafficked firearms. However, to ensure that the OCDEF program remains an investigative tool available to conduct firearms related investigations, it should only be utilized when appropriate.

Firearms trafficking investigations involving Mexican cartels often originate as a result of seizure events in Mexico and/or at the border. Relevant sources of information and investigative leads involving firearms trafficked to Mexican cartels include the ATF Mexico Country Office; ATF Border Liaison Officers; the Government of Mexico; FFLs; [REDACTED] the National Tracing Center; the Violent Crime Analysis Branch; EPIC; OSII and Field Intelligence Groups; other law enforcement agencies and open source information. All deconfliction systems, including those managed by regional IIDTAs and State Fusion Centers, should be aggressively utilized to ensure proper coordination with other law enforcement agencies.

When firearms recoveries, seizures and purchase data reveal common and/or significant sources of trafficked firearms, particularly over a relatively short period of time, every effort should be made to investigate the persons responsible for directing, financing, acquiring and transporting the firearms as part of a single investigation. Some trafficking schemes cross ATF field division areas of responsibility and therefore will require greater inter-division communication, coordination, and cooperation. Timely and rigorous deconfliction protocols must be observed to identify and/or avoid more than one ATF field division actively investigating the same target(s). Absent unique circumstances, such investigations should be consolidated. Such decisions should be made by mutual agreement of field special agents in charge after consultation with Federal prosecutors. In limited instances, ATF headquarters (Field Operations) will recommend or direct the consolidation and lead division of such cases in the best interest of a particular investigation, prosecution strategy, or multi-agency/bilateral enforcement initiative.

This strategy is not intended to limit the investigative initiative of any ATF field division. In fact, this strategy recognizes the important role played by all ATF field divisions in combating firearms trafficking generally and the increasingly important role played by a number of non-Southwest border field divisions in reducing firearms and explosives trafficking across the U.S.-Mexico border. However, this strategy recognizes the fact that the Gulf, Zetas, and Sinaloa cartels are the primary recipients of firearms unlawfully acquired in the United States, and the leading roles played by the Houston and Phoenix Field Divisions in combating cross border

firearms trafficking by concentrating their investigative efforts on firearms and explosives trafficking and violent crime investigations involving the Gulf, Zetas, and Sinaloa cartels.

All field divisions are encouraged to initiate firearms related OCDETF investigations targeting Mexican cartels; however, investigations involving the Gulf, Zetas, and Sinaloa cartels shall be deconflicted and closely coordinated with the Houston and Phoenix Field Divisions. As previously indicated, when multiple division investigations of Mexican cartels are sufficiently related, the cases should be consolidated. The field division deemed to be in the best position to bring the case to a successful conclusion should lead the consolidated investigation.

The success of this strategy will require cooperation and coordination among the various field divisions.

HEADQUARTERS OVERSIGHT AND COORDINATION

ATF is in the process of revising Bureau policy pertaining to cases deemed significant/sensitive and those with national implication. Existing criteria for such cases include investigations with potential for diplomatic or international implications and investigations that are likely to cause contact with headquarters by the news media and/or a major political figure. Clearly, many cases involving firearms trafficking to Mexican drug cartels meet these criteria. Additionally, current ATF policy recognizes that some investigations may be national and therefore inter-divisional in scope.

To ensure that this strategy is properly implemented and coordinated, ATF headquarters is establishing a mechanism to monitor and, where appropriate, coordinate investigations targeting Mexican cartels. Given the large number of Southwest border investigations that are active at any given time, ATF headquarters will only monitor those deemed significant or sensitive. OCDETF investigations, investigations that target specific cartels or significant elements of cartel-related firearms trafficking organizations, and/or investigations that involve the use of court authorized monitoring of conversations or other potentially sensitive investigative techniques will be designated significant/sensitive. As such, the headquarters program manager will be given full access to monitored investigations in the ATF case management system, to include cases governed by Rule 6 of the Federal Rules of Criminal Procedure.

The monitoring and coordinating of Southwest border investigations will be the responsibility of the recently established Firearms Operations Division. Additional responsibilities include reviewing investigative and significant incident reports; assisting in the identification of other ATF field divisions that may have an interest in the monitored investigation; communicating with field divisions and headquarters offices, particularly OSII and the Office of International Affairs; serving as a conduit for the sharing of investigative reports and information; and providing written and/or oral briefings for Field Operations executives and other members of the ATF executive staff.

OSII will be responsible for the oversight of the intelligence component of this strategy and will work closely with the Firearms Operations Division regarding the analysis and dissemination of information. Likewise, the Office of International Affairs will remain responsible for supervising ATF operations in Mexico.

In short, the Firearms Operations Division will serve as the primary headquarters point of contact and resource for monitored Southwest border cartel related investigations.

THE MEXICO COUNTRY OFFICE

The ATF Mexico Country Office (MCO), a component of the Office of International Affairs (IAO), is an essential element of the Gunrunner strategy. The MCO, headquartered in the U.S. [REDACTED] Consulates in [REDACTED] and is the primary point of information collection and analysis, coordination, and liaison for ATF activities in Mexico.

Recently, the Office of International Affairs developed an operations plan for the MCO. Stated goals include increasing the number of timely, complete, and accurate firearms traces initiated by the Government of Mexico; participation in a vetted unit program sponsored by the DEA; improved coordination, communication, and intelligence sharing concerning firearms seizures between ATF and Mexican law enforcement authorities; improved coordination and documentation of investigations, training, and other assistance to Mexican law enforcement authorities; and reorganization and expansion of the Mexico Country Office.

No ATF activity shall be conducted in Mexico without prior headquarters IAO approval and coordination with the MCO. The controlled movement of firearms, ammunition, explosives, explosives devices, and/or components or non-functional “props” of such items across the U.S.-Mexico border from the United States shall be coordinated with and approved in advance by Bureau headquarters and the MCO.

The MCO in turn shall ensure that ATF headquarters and the principal Southwest border field divisions are kept apprised of significant events occurring in Mexico related to ATF jurisdiction. The MCO is responsible for facilitating requests for information, evidence, and/or assistance between ATF domestic offices and the Government of Mexico. However, requests for documents or other evidence from Mexican authorities required for prosecution in the United States shall be submitted through the Mutual Legal Assistance Treaty. Such requests shall be initiated by the local United States Attorney’s Office and be processed through the Department’s Office of International Affairs.

In support of this strategy, while the MCO will continue to facilitate the exchange of investigative information to Bureau headquarters and domestic ATF offices on all criminal organizations in Mexico, it will focus on the activities of the Gulf, Zetas, and Sinaloa cartels and provide information as appropriate concerning these organizations to Bureau headquarters and the Houston and Phoenix Field Divisions.

As a result of the increased use of explosives by the DTOs against the Mexican military and Mexican law enforcement, in July 2009, ATF and the Government of Mexico entered into a trial mutual assistance protocol to create the Combined Explosive Investigative Team (CEIT). ATF’s partnership with PGR, CENAPI, SEDENA, SEMAR, and the U.S. Defense Attaches’ Office assists the Government of Mexico with its responses to seizures of military and homemade grenades to determine the source, identify suspects, and to provide assistance with post-blast investigations. ATF has assisted Mexico in identifying foreign military ordnance recovered from and used by DTOs and cartels in Mexico. Prior to such assistance, most of the recovered

military ordnance were incorrectly identified by Mexico as coming directly from the U.S., when in fact most have come from Central American countries and much is of non-U.S. manufacture. When requested, explosives evidence is shipped to the ATF National Laboratory for examination. ATF is also providing Mexican officials training in explosives identification, evidence collection, and post-blast investigation.

BORDER LIAISON AND EXPLOSIVES ENFORCEMENT OFFICERS

ATF currently deploys Border Liaison Officers (BLO) and Explosives Enforcement Officers in the four principal Southwest border field divisions. BLOs work under the supervision of the special agent in charge and are an essential component of ATF information collection and analysis capabilities and the dissemination of actionable intelligence. ATF has established BLOs in the following field offices for the respective points of entry: [REDACTED]

In coordination with the Mexico Country Office, BLOs are permitted to operate in Mexico and often respond to the scene of firearm and explosive recovery incidents and arrests. In some instances, BLOs serve as a force multiplier for the MCO and may be the first ATF responder to recovery and arrest incidents, thus providing timely and essential investigative and technical assistance to Mexican law enforcement and/or military authorities. The BLOs additionally serve as ATF's principal liaison to other key U.S. law enforcement agencies operating in the vicinity of the Southwest border and provide training to counterparts in Mexico. Due to the increasing importance of the BLO position, each field division with a BLO will ensure that an alternate or backup BLO is selected and trained.

BLO activities in Mexico shall be coordinated with the MCO. Information collected by BLOs shall be disseminated to both the MCO and appropriate field intelligence groups.

EEOs work for the Arson and Explosives Program Division, Explosives Technology Branch and provide vital explosives technical assistance to domestic and international investigative operations. Given the significant increase in incidents pertaining to the use, recovery, and trafficking of explosives; improvised explosive devices; and IED components it is essential that EEO capabilities be more fully incorporated into Southwest border operations. An EEO has been assigned to the MCO in Mexico City. At this time, Southwest border area EEOs are designated to support Mexican authorities and the MCO in relation to explosives investigations, including participation on Combined Explosive Investigative Teams.

BORDER VIOLENCE, VCITS AND GANGS

Sometimes overlooked in our efforts to suppress firearms and explosives trafficking across the U.S.-Mexico border is that a key component of Project Gunrunner is the investigation and suppression of drug related border violence. ATF has been involved in a number of successful border violence enforcement initiatives, including those designed to combat gang violence, kidnappings, and home invasions fueled by the presence of drugs trafficked from Mexico and/or perpetrated by gangs affiliated with Mexican drug cartels. Examples include ATF participation in OCDETF strike force groups in Houston and Phoenix, and ATF's Project Gideon, a proactive home invasion/robbery undercover scenario targeting armed violent offenders and criminal groups. These efforts should continue and be expanded as part of this revised strategy.

Related to our efforts to suppress border related violence is our Violent Crime Impact Team (VCIT) initiative. Our VCIT initiative appears prominently in the ONDCP National Southwest Border Counternarcotics Strategy. VCITs are designed to proactively target the persons and gangs most responsible for firearms-related violent crime in select neighborhoods or sections of communities experiencing an increase in such criminal activity. VCIT groups have been established in thirty-one locations, including Houston and Laredo, Texas; and Tucson and Mesa, Arizona.

Integration of our gang enforcement activities with the drug-related border violence reduction component of our Gunrunner strategy is essential to achieving our strategic goals. Recent reports issued by the National Drug Intelligence Center (NDIC) and the National Gang Intelligence Center (NGIC) reveal a growing association between U.S.-based gangs and Mexican drug trafficking organizations. Mexican DTO's are increasingly using this association to support their drug and firearms trafficking operations. According to the NDIC, gangs recruited by DTO's to transport and distribute drugs are increasingly being used to acquire and transport firearms on their behalf and to protect their drug shipments. Some of these U.S.-based gangs have known associations with a number of Mexican cartels including the Gulf, Zetas, and Sinaloa cartels.

Although our VCIT initiative is not a pure gang enforcement strategy, it is flexible enough to include the targeting of violent gangs as a performance goal provided other VCIT guidance is met. Where VCIT enforcement groups exist along the Southwest border every effort should be made to ensure that the persons, gangs, and activities targeted are related to the activities of Mexican drug cartels. Likewise, in areas where VCIT groups do not exist, special agents in charge are strongly encouraged to target street gangs with a nexus to Mexican cartels, particularly the Sinaloa, Gulf, and Zetas. Where resources are an obstacle, SACs are encouraged to establish or participate in cartel related border violence task forces.

Future decisions about the establishment of VCIT groups along the Southwest border will be based on proposals to reduce firearms-related violence associated with Mexican drug cartels.

INFORMATION COLLECTION, MANAGEMENT AND EXPLOITATION

ATF's investigative efforts are largely intelligence driven. Directly related to our ability to identify cartel members and other persons with greater responsibility for trafficking firearms to Mexico is our ability to capture, exploit, and share information. The thoroughness with which we collect and document information is also vital to our ability to properly analyze data and produce timely investigative leads. Properly populating data fields in the ATF case management system is equally vital to our success.

Understanding the manner in which information flow should normally occur and the variety of intelligence resources available to ATF is also essential to our ability to properly address cross border firearms trafficking and related border violence.

Although ATF will continue to exploit a variety of sources of information, our most vital collection source remains our investigative personnel. As a result, it is essential that information be collected in accordance with the OSII collection plan and that case information be documented in accordance with Bureau policy. Proper documentation of investigative findings allows ATF to report to a variety of agencies with oversight responsibility and provides Bureau headquarters with vital statistical data for inclusion in budgetary and other documents. However, most importantly our investigative reports are essential to the successful prosecution of defendants and allows for the sharing and exploitation of information in our possession.

Information impacting our operations in Mexico shall be shared with the MCO. In most cases, information collected in Mexico will originate with the MCO. Information collected by BLO's responding to incidents in Mexico or obtained as a result of their liaison duties with counterparts in Mexico shall be shared with the MCO and OSII in a timely manner.

The division field intelligence group (FIG) is responsible for managing the flow of information/intelligence into and out of the field division (laterally to offices within the division, through the chain-of-command to ATF Headquarters, and externally to other domestic law enforcement and intelligence partners). FIGs analyze, disseminate, track and audit information and intelligence inside and outside the division and function as a clearinghouse for information from numerous ATF enforcement programs (e.g., NICS/Brady, NIBIN, NTC trace and multiple sale data, thefts and recoveries involving FFLs and FELs, etc). FIGs additionally establish and maintain partnerships with Federal, State, and local law enforcement partner intelligence components within their geographical areas of responsibility (to include regional information sharing systems and fusion centers) in support of the Bureau's mission.

Actionable information obtained by the MCO, BLOs or other Bureau components shall be immediately shared with the appropriate field division, enforcement group, and FIG. The MCO and/or BLO shall also provide information of a non-urgent nature to the appropriate FIG, OSII, and EPIC.

Project Gunrunner– A Cartel Focused Strategy

Information collected and analyzed by field intelligence groups shall be shared with OSII's Field Intelligence Support Branch and other field intelligence groups.

Information obtained and analyzed by OSII shall be disseminated to field components and the MCO as appropriate.

This revised strategy calls for greater use of underutilized intelligence and analytical resources such as EPIC, the OCDETF Fusion Center, and the DEA Special Operations Division.

In support Southwest border strategies, ATF is significantly increasing its staffing at the El Paso Intelligence Center (EPIC). As of July 6, 2010, ATF is leading EPIC's newly formed Firearms and Explosives Trafficking (FET) Unit and awaiting dedicated personnel from DEA, CBP, and ICE. ATF's mission at EPIC is now two-fold; run the traditional Gun Desk and provide collection management and analysis of firearms and explosives seizure data from Mexico. EPIC's FET Unit essentially functions as the U.S. Government's clearinghouse of information pertaining to known or suspected trafficked firearms to Mexico. It conducts suspect criminal history and other data base inquiries; initiates and accesses firearms trace requests/results; analyzes and disseminates open source information; receives and disseminates information to other agencies with drug trafficking and/or Southwest border responsibilities; and conducts limited regional analysis. It facilitates connectivity to all other EPIC investigative, technical, and analytical capabilities. ATF is expanding its mission to include tactical support to operations, with a special agent being assigned to the EPIC TACOPS Unit, to coordinate ground tracking, aviation tracking, and communications intercepts.

The OCDETF Fusion Centers gather, store, and analyze all-source drug and drug-related financial investigative information and intelligence to support coordinated, multijurisdictional investigations. ATF both staffs and contributes information in the form of investigative reports pertaining to OCDETF and drug-related investigations to the OCDETF Fusion Center. As a result, the Fusion Center allows for the searching of ATF and other participating agency investigative reports for information pertaining to specific targets. In an effort to better leverage the analytical capabilities of the Fusion Center and contribute information that may be used by other participating law enforcement agencies, all ATF investigations pertaining to the Southwest border will be shared with the OCDETF Fusion Center, regardless of whether the ATF case qualifies as a significant/sensitive investigation.

The DEA Special Operations Division is primarily responsible for exploiting signal intelligence (i.e. telephone toll records). Given the number of DEA [REDACTED] in existence at any given time and the relationship between drug and firearms along the Southwest border, there is a high probability that information developed during an ATF investigation will connect in some fashion to an existing DEA investigation. Therefore, telephone numbers developed during the course of an ATF investigation (e.g., pen register; subpoena; [REDACTED] phone data; witness information) should be provided to the DEA SOD through the appropriate ATF field intelligence group in an effort to determine their possible relationship to other on-going drug-related investigations.

STATE AND LOCAL LAW ENFORCEMENT ASSISTANCE

The cooperation and assistance of State and local law enforcement agencies, particularly those responsible for patrolling key interstate highways that connect firearm source locations and the Southwest border, is another important component of this comprehensive strategy. In fact, effective collaboration with State and local law enforcement agencies on a variety of ATF responsibilities is one of the historical cornerstones of our success as an agency. This is no less true when considering our ability to suppress firearms trafficking, generally and cross border firearms trafficking, specifically. State and local police officers properly trained in ATF jurisdiction; firearms trafficking schemes, including information pertaining to methods of acquisition, transportation and concealment; trafficking corridors; and firearms specific interviewing techniques would likely provide vital intelligence and investigative leads.

The lawful detention of trafficking participants and their subsequent and timely interview by ATF would likely result in increased seizure of firearms and ammunition intended for Mexican drug cartels; assist with narrowing current intelligence gaps by achieving a better understanding of trafficking trends and methods of operation; and serve as the predicate for initiating trafficking investigations that may otherwise go unaddressed. In fact, ATF has already benefited from partnering with State and local law enforcement agencies in cross border firearms trafficking enforcement operations and from the referral of information derived from vehicle stops unrelated to a particular ATF investigation.

Special agents in charge are strongly encouraged to work with State and local law enforcement agencies in their areas of operations as discussed above and to incorporate State and local law enforcement agencies into investigative and enforcement operations when appropriate.

ATF headquarters elements will be responsible for developing more comprehensive and formal State and local training programs, such as complex investigations and Southwest border oriented firearms trafficking seminars in partnership with other Federal law enforcement agencies and organizations such as the International Association of Chiefs of Police. ATF is currently developing a comprehensive ATF task force officer training course related to our DOJ asset forfeiture funded Joint Law Enforcement Operations program.

DOJ ASSISTANCE AND PROSECUTION STRATEGY

Although it is expected that cases investigated as part of this strategy will be prosecuted by the appropriate local United States Attorney, DOJ has shown interest and support of the approach outlined in this document and has designated a Criminal Division attorney to serve as the Department's liaison to ATF. In some cases, the Criminal Division may become directly involved in the prosecution of OCDETF and cartel focused cases.

Whenever feasible, we will seek to prosecute defendants in the United States and when necessary, we will attempt to secure the presence of Mexican nationals in the United States through extradition. However, it is reasonable to assume that the extradition process, once begun, may take many months to conclude and that in some cases the U.S. Government will not be able to secure the presence of Mexican nationals in the United States for trial. As a result, prosecution under Article IV of the Mexican Federal Penal Code may be the best option available. Article IV allows for the prosecution of Mexican nationals who commit crimes outside the national borders of Mexico. In order to be prosecuted under this provision of Mexican law, the accused must be in the Republic of Mexico, the accused cannot have been tried in the country where the criminal offense was committed, and the crime committed in the United States must also be a crime in the Republic of Mexico. The Mexican system of criminal justice is very different than that in the United States. No trial by jury system exists and witnesses are seldom called to testify. Trial judges make decisions based on a careful study of the evidence presented.

The States Attorney Generals for Texas, California, New Mexico, and Arizona have established Article IV units and may serve as a resource should Article IV prosecutions be contemplated. A potential Article IV prosecution may require that U.S. law enforcement agents collect evidence in a manner somewhat different than is customary in the United States. Any consideration of prosecution of Mexican nationals under Article IV will require close coordination with ATF headquarters and the U.S. Department of Justice.

PERFORMANCE GOALS AND PERFORMANCE INDICATORS

Effective strategies set clear goals and performance measures. The ATF 2010-2016 Strategic Plan lists Interdiction and Prevention of Firearms Trafficking and the Advancement of Firearms Trafficking Intelligence Capabilities as Strategic Goals in our efforts to reduce the risk to public safety caused by firearms trafficking. Several performance indicators are also listed as a means of measuring our performance toward achieving our strategic goals. While performance indicators reflect a level of ATF efficiency and effectiveness, our overall value as a law enforcement agency will be reflected by our ability to reduce the frequency of gun trafficking to Mexico by disrupting and dismantling the firearms trafficking organizations that provide firearms to targeted drug trafficking organizations.

Vital to our ability to track and report our progress is the timely and accurate reporting of information in our case management system (i.e. N-Force and N-Spect). A brief instructional document entitled, "Procedures for Incorporating Project Gunrunner References into N-Force Cases" dated April 10, 2007, can be accessed on the ATF Portal/Intraweb, via About ATF/OSTI/Intelligence Information Systems Division/NFOCIS/Resources/Publications/P/Project Gunrunner – Case Maintenance.pdf. This document includes instructions and N-Force screen shots depicting methods to properly designate Southwest border and Gunrunner investigations, reports of investigations, suspects and defendants, significant incident reports, and firearms traces in N-Force. In addition to following the instructions in the referenced N-Force document, special agents should ensure that firearms trafficking investigations are properly reflected in General Case Information, Firearms tab, to include source state and country, and target (market) state and/or country. Planned enhancements to N-Force will allow us to document investigations involving specific Mexican cartels in the same manner as U.S. street gangs.

In addition, all special agents are encouraged to identify Southwest border firearms trafficking investigation suspects in TECS, including case agent contact information, in order to gain intelligence information concerning border crossings, etc.

All special agents and IOIs, but particularly those involved in Southwest border firearms trafficking and cartel related investigations and inspections, should be familiar with these reporting procedures.

SUMMARY OF KEY ELEMENTS OF CARTEL FOCUSED STRATEGY

With diligent implementation of this revised strategy and adherence to its key elements, ATF should achieve greater success in our efforts to reduce cross border firearms trafficking and related border violence.

Specifically, this strategy is designed to achieve:

- Improved collection, analyses, sharing, and exploitation of intelligence information.
- Improved prioritization of investigative leads.
- Greater use of intelligence that links seizure events, purchase transactions, and other unlawful or suspicious activity with specific DTOs.
- Employment of a greater array of investigative resources, techniques, and criminal statutes.
- Improved investigative coordination and intelligence sharing with the Government of Mexico and other law enforcement partners.
- Improved communication and coordination between ATF field divisions and between field divisions, ATF headquarters and the Mexico Country Office.
- More effective alignment of ATF enforcement programs.
- Increased use of OCDETF program.
- Closer coordination with DEA and other law enforcement partners.
- Greater emphasis on multi-defendant conspiratorial trafficking cases that more often focus on facilitators; organizers and persons with greater responsibility for trafficking operations.
- The new Firearms Operations Division (FOD) in the Office of Field Operations will monitor cartel focused investigations and where appropriate, help coordinate multi-division, multi-agency, and multi-national investigative efforts. These FOD activities will be led by the Southwest Border National Coordinator, who will communicate with senior leadership, field management, and ATF intelligence assets based on linkages between seemingly unrelated cases or fragments of intelligence pertaining to firearms trafficking and border violence by targeted DTOs.
- Improved understanding of Southwest border challenges and intelligence gaps.
- Ultimately enhance the effectiveness of our cross border trafficking and related border violence investigations and operations.



Bureau of Alcohol, Tobacco,
Firearms and Explosives

Assistant Director

Washington, DC 20226

SEP 8 2010

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MEMORANDUM TO: All Assistant Directors
All Field Operations Personnel

FROM: Assistant Director
(Field Operations)

SUBJECT: Project Gunrunner – A Cartel Focused Strategy

This serves to inform you that the Office of Field Operations, in partnership with other directorates, including the Office of Strategic Intelligence and Information (OSII), has developed the attached document, *Project Gunrunner – A Cartel Focused Strategy (September 2010)*, to reflect our increased national emphasis on firearms trafficking enforcement related to the Southwest Border, as well as the importance of identifying and prioritizing those trafficking investigations in which a nexus to Mexican Drug Trafficking Organizations (DTOs) and cartels may be established.

ATF has a long and successful history of combating firearms-related violent crime. Key to this success has been our ability to effectively regulate the firearms industry and identify and investigate the illegal diversion of firearms from lawful commerce. Perhaps at no time in our history has the investigation of firearms trafficking schemes and networks been more important to public safety, and increasingly to national security, than now.

In response to the increased trafficking of firearms from the United States to Mexico, ATF developed Project Gunrunner, a firearms trafficking and border violence reduction strategy designed to deny drug trafficking organizations access to U.S. firearms. Initially implemented in our four primary Southwest border field divisions, Project Gunrunner has evolved into a national strategy as we have seen Mexican cartels reach further into the interior of the United States to acquire firearms in support of their lucrative drug trafficking operations.

While our multi-faceted strategy continues to include the inspection of licensed gun dealers and the investigation of straw purchasers and illegal traffickers, our revised approach places greater emphasis on investigations that target specific cartels and the persons responsible for organizing and directing firearms trafficking operations in the United States. We have come to understand that we can best impact firearms trafficking to Mexico and Southwest border violence by linking our investigations to drug trafficking organizations and when possible, to specific Mexican

All Assistant Directors
All Field Operations Personnel

-2-

cartels. Our efforts will also be enhanced through increased coordination with our Federal counterparts.

This approach requires conducting our border-related firearms and explosives investigations in a more creative and comprehensive manner by fully incorporating our agency's unique regulatory, investigative, and analytical capabilities and resources, as well as those available from other law enforcement agencies, particularly DEA. At the heart of our increased emphasis on cartel focused investigations is greater use of the Organized Crime Drug Enforcement Task Force (OCDETF) program and intelligence capabilities available from the El Paso Intelligence Center (EPIC) and the DEA Special Operations Division. Recent changes to OCDETF policy encourage the use of OCDETF in firearms trafficking cases provided there is a nexus to high value drug trafficking targets.

Properly implemented, this revised strategy will improve data collection, analysis, and exploitation of information; employ a greater array of investigative resources, including greater utilization of the OCDETF program; improve sharing and leveraging of information available from other law enforcement agencies; improve investigative coordination and information sharing with the Government of Mexico; and place greater emphasis on multi-defendant conspiratorial cases that focus on persons who organize, direct, and finance cartel-related firearms and explosives trafficking operations.

This revised strategy acknowledges and incorporates an investigative approach already implemented by several ATF field divisions and reiterates the primary responsibility of the field special agents in charge for implementation of the strategy. This document recognizes that Project Gunrunner is both an ATF strategy and a component of a larger U.S. Government counternarcotics strategy. Our success is contingent on the effective use of our regulatory, investigative, technical, intelligence, training, liaison, and public/industry outreach capabilities. However, the success of Gunrunner is also dependent on our ability to secure prosecution and sentences appropriate to the criminal conduct. Recognizing the nuances of current Federal firearms statutes and related sentencing guidelines, it is imperative that comprehensive, complex criminal investigations that link firearms trafficking organizations to drug trafficking activities and organizations be conducted in order to leverage the prosecutorial advantages afforded by a wider array of criminal and civil statutes.

Effective strategies set clear goals and performance measures. The ATF 2010-2016 Strategic Plan lists Interdiction and Prevention of Firearms Trafficking and the Advancement of Firearms Trafficking Intelligence Capabilities as Strategic Goals in our efforts to reduce the risk to public safety caused by firearms trafficking. Several performance indicators are also listed as a means of measuring our performance toward achieving our strategic goals. While performance indicators reflect a level of ATF efficiency and effectiveness, our overall value as a law enforcement agency will be reflected by our ability to reduce the frequency of gun

All Assistant Directors
All Field Operations Personnel

-3-

trafficking to Mexico by disrupting and dismantling the firearms trafficking organizations that provide firearms to targeted drug trafficking organizations.

Vital to our ability to track and report our progress is the timely and accurate reporting of information in our case management system (e.g., N-Force and N-Spect). The Cartel Strategy document and the attachments to this memorandum provide guidance on coding investigative activity in N-Force and N-Spect. Recent enhancements to N-Force allow us to document investigations involving Mexican cartels in the same manner as U.S. street gangs and outlaw motorcycle organizations. All special agents and industry operations investigators, but particularly those currently involved in Southwest border firearms trafficking and cartel related investigations and inspections, should be familiar with these procedures.

In addition, all special agents are encouraged to identify Southwest border firearms trafficking suspects in TECS, including case agent contact information, in order to gain intelligence information concerning border crossings, etc.

As a reminder, the June 25, 2009 memorandum entitled, "National Firearms Trafficking Enforcement Implementation Plan," pages 4 and 5, provided guidance and requirements regarding the proper documentation and supervisory review of all firearms trafficking investigations in N-Force. Field division management must ensure that these requirements are met on a continuing basis.

Please review the *Project Gunrunner - A Cartel Focused Strategy* document to ensure complete understanding of our revised priorities. Please address any questions about this material to the attention of Special Agent [REDACTED], ATF's Southwest Border National Coordinator at (202) 648-7162 or [REDACTED], Chief, Firearms Operations Division at (202) 648-[REDACTED]



Mark R. Chait

Attachments

N-FORCE AND N-SPECT: CODING SOUTHWEST BORDER ACTIVITIES

In N-Force, in addition to any other appropriate profiles:

- Select the program code most appropriate to the case.
- Users must select the “Project Gunrunner (SWB-Southwest Border Project)” profile on the Investigative Profile Section in the Violent Crime / Investigative Profile tab in the General Case Information Folder. This case level profile should be used by all field offices where a link to the southwest border has been established.
- If the case has established a nexus to a Mexican Drug Cartel, the appropriate cartel should be selected in the Violent Crime section.
 - Cartel Related-Gulf Cartel
 - Cartel Related-Los Zetas
 - Cartel Related-Sinaloa Cartel
 - Cartel Related-La Familia Michoacana (La Familia)
 - Cartel Related-Juarez Cartel ([REDACTED])
 - Cartel Related-Tijuana Cartel (Arellano Felix Organization)
 - Cartel Related-Beltran Leyva Organization
- If the case has a nexus to criminal activity in furtherance of a U.S. based street gang or drug activity, the “Gang Related” and/or “Drug Related” profiles should be selected in the Violent Crime Section on the same tab.
- If the case involves firearms trafficking to a cartel, “To Mexican Cartel” should be selected on the Firearms Tab in the Firearms Trafficking Section. Accurate reporting on source and target state and country is essential. As a reminder, the estimated number of firearms believed trafficked should be supported by facts uncovered in the investigation.
- If the case involves explosive trafficking to a cartel, “Explosives: Traffic to Mexican Cartel” should be selected on the Arson/Explosive Tab/Section. Accurate reporting on source and target state and country is essential.
- If specific information linking a suspect or defendant to a cartel is established, the cartel affiliation should be reported on the Charges tab in the Suspects / Defendants section in the Affiliation Field.

In N-Spect:

- Select the program Code most appropriate to the inspection.
- Select the appropriate Tier 3 value when establishing the assignment:
 - Southwest Border DE Non VCIT
 - Southwest Border DE VCIT
 - Southwest Border VCIT Recall Full
 - Southwest Border Non VCIT Recall Full
 - Southwest Border Full Recall
 - Southwest Border Assist CE
 - Southwest Border (Gunrunner Team)

From: Chait, Mark R.
Sent: Tuesday, April 26, 2011 3:59 PM
To: [REDACTED]
Subject: FW: Start of Fast and Furious

Please obtain this info. thx

0 UN511&K0W
\$VDAACW IHFVRO
) IHD 2 SHLDRCU
| | | | | | | | | |

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From: Hoover, William J.
Sent: Tuesday, April 26, 2011 3:30 PM
To: Chait, Mark R.
Subject: Fw: Start of Fast and Furious

Mark,

Can you get me answers to the questions below?

Thank you!!

Billy

William J. Hoover
Deputy Director
Bureau of Alcohol, Tobacco, Firearms & Explosives
O) 202-648-8710

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From: Axelrod, Matthew (ODAG)
To: Hoover, William J.
Sent: Tue Apr 26 15:18:22 2011
Subject: Start of Fast and Furious

Billy,



DP

Matt

Matthew S. Axelrod

Associate Deputy Attorney General

Office of the Deputy Attorney General

U.S. Department of Justice

Desk (202) 305-0273

Cell (202) 532-3087

From: [REDACTED]

Sent: Tuesday, April 05, 2011 6:01 PM

To: [REDACTED]

CC: Holgate, Rick; Stinnett, Melanie S.; Rubenstein, Steve R.; Serres, Greg [REDACTED]

Subject: ESI Preservation Directive / Review of Firearms Trafficking Investigation

Attachments: ESI Preservation Directive Fast & Furious.docx

ESI PRESERVATION DIRECTIVE FOR ATF OPERATION FAST AND FURIOUS

Pursuant to ATF Order 1340.4 (Preserving and Producing Bureau Records, Documents and Information Subject to the Legal Process) and the Preservation Directive issued on March 28, 2011, the Office of Chief Counsel (Litigation) requests your assistance in locating and retaining electronically stored information (ESI) relevant to ATF's firearms trafficking investigation known as Operation Fast and Furious.

Information that is relevant to the operation includes, but is not limited to: (1) N-FORCE records relating to Operation Fast and Furious, case number 785115-10-0004; (2) N-SPECT records relating to Operation Fast and Furious and the following Federal Firearms Licensees: [REDACTED], [REDACTED], [REDACTED]; (3) E-TRACE records relating to Operation Fast and Furious; (4) Firearms Tracing System records relating to Operation Fast and Furious; and (5) Any emails to/from the work accounts of all ATF Headquarters and Phoenix Field Division personnel regarding Operation Fast and Furious, from the time period October 1, 2009 until the present.

Any identifiable data on network drives (e.g., U:\drive; G:\drive; S:\drive) should be captured immediately and copied to another drive for preservation. Three weeks from the date of this Directive, please once again capture and copy this data to another drive for preservation. This material does not replace any material that may have been previously captured and should be identifiable by date that it was captured.

Of particular importance will be ensuring that no ESI is erased through routine destruction. If any ESI related to the individuals named above and/or case number 785115-10-0004 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.

Note that this directive is in effect until the Office of Chief Counsel notifies you that the hold has been terminated.

Thank you for your assistance in this matter. If you have any questions or concerns, please contact Assistant Director Melanie Stinnett.

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without express authorization is strictly prohibited.

ESI PRESERVATION DIRECTIVE FOR ATF OPERATION FAST AND FURIOUS**To:** [REDACTED]
[REDACTED]
[REDACTED]

Pursuant to ATF Order 1340.4 (Preserving and Producing Bureau Records, Documents and Information Subject to the Legal Process) and the Preservation Directive issued on March 28, 2011, the Office of Chief Counsel (Litigation) requests your assistance in locating and retaining electronically stored information (ESI) relevant to ATF's firearms trafficking investigation known as Operation Fast and Furious.

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[REDACTED]
[REDACTED]; (3) E-TRACE records relating to Operation Fast and Furious; (4) Firearms Tracing System records relating to Operation Fast and Furious; and (5) Any emails to/from the work accounts of all ATF Headquarters and Phoenix Field Division personnel regarding Operation Fast and Furious, from the time period October 1, 2009 until the present.

Any identifiable data on network drives (e.g., U:\drive; G:\drive; S:\drive) should be captured immediately and copied to another drive for preservation. Three weeks from the date of this Directive, please once again capture and copy this data to another drive for preservation. This material does not replace any material that may have been previously captured and should be identifiable by date that it was captured.

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Note that this directive is in effect until the Office of Chief Counsel notifies you that the hold has been terminated.

Thank you for your assistance in this matter. If you have any questions or concerns, please contact Assistant Director Melanie Stinnett.

**PRESERVATION DIRECTIVE FOR RECORDS
RELATED TO ATF OPERATION FAST AND FURIOUS**

This is in reference to the Office of the Inspector General's review of ATF's firearms trafficking investigation known as Operation Fast and Furious. The requirements of this preservation directive are *in addition* to the requirements of Assistant Director Stinnett's request for documents and information.

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 Operation Fast and Furious. This requires a search of relevant documents and materials under your control and/or maintained by the Phoenix Field Division or ATF Headquarters 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. In addition, please identify and preserve all **property** (*i.e.*, firearms and ammunition) in ATF custody relating to the firearms trafficking investigation.

Please note that 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 Operation Fast and Furious. The relevant time period would begin October 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 OPERATION FAST AND FURIOUS." 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 in order to coordinate the preservation of relevant documents and materials:**
 - **Phoenix Field Division**
 - **Office of the Director**

- **Office of Field Operations**
- **Office of Enforcement Programs and Services**
- **Office of Public and Governmental Affairs**
- **Office of Strategic Intelligence and Information**
- **Office of Professional Responsibility and Security Operations**
- **Office of Management**
- **Office of Science and Technology**
- **Office of Professional Responsibility and Security Operations**
- **Office of Chief Counsel**
- **Office of Training and Professional Development**

Please provide the POC's name to Assistant Director Melanie Stinnett by COB on Friday April 1, 2011.

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 this investigation is discovered; (2) personnel involved in this directive are leaving the division, office, directorate or ATF; (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 Operation Fast and Furious 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.

From: Stinnett, Melanie S.
Sent: Wednesday, April 13, 2011 3:11 PM
To: All Assistant Directors; All Deputy Assistant Directors; All Special Agents in Charge
CC: Hoover, William J.; [REDACTED]
Subject: Preservation Directive relative to Project Gunrunner
Attachments: Preservation Directive (Project Gunrunner).docx

On March 31, 2011 the House Committee on Oversight and Government Reform (HCOGR) issued a subpoena for documents related to Operation Fast and Furious and the FBI investigation into the death of Border Patrol Agent Brian Terry. The subpoena also seeks documents and communications relating to Project Gunrunner. On April 8, 2011, Acting Director received a letter from Chairman Issa requesting that ATF 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.

As you may recall, on March 28, 2011, I issued a Preservation Directive relative to Operation Fast and Furious which remains in effect until further notice. Additionally, I am issuing a second Preservation Directive relative to Project Gunrunner which is attached to this e-mail. I ask that you read this directive carefully, especially since it contains a provision related to seized property. Please make sure that each employee in your directorate or field division complies with this directive. Finally, I need the name of POCs, as set forth in the directive, by COB Friday, April 15, 2011.

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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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LAWRENCE J. BRADY
STAFF DIRECTOR

April 20, 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:

The Committee on Oversight and Government Reform issued a subpoena to you on March 31, 2011. The subpoena instructed you to produce documents pertaining to Project Gunrunner and Operation Fast and Furious, conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). I wrote to you on April 11, 2011 to reiterate that, “[a]bsent a valid assertion of executive privilege over the materials sought, I expect you to produce the things identified in the March 31, 2011, subpoena’s schedule by the return date.”¹ The April 13, 2011 deadline for compliance has passed without production of any documents.

I am disappointed that you have failed to produce any documents that would meet your legal obligations by the subpoena’s April 13th deadline. Instead of documents, after the deadline passed, I received a letter from Assistant Attorney General Ronald Weich. Mr. Weich did not assert a claim of executive privilege in withholding all documents from the Committee. Instead, the Department’s response again restated its lack of production was due solely to the Department’s internal policy relating to “ongoing law enforcement investigations,” “pending criminal investigations,” “on-going criminal investigations,” and “open criminal investigative files.”² Absent a claim of executive privilege, these vague assertions are not a valid basis for your decision to withhold documents.

¹ Letter from Rep. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov’t Reform (OGR), to Kenneth E. Melson, Acting Director, ATF (Apr. 11, 2011).

² Letter from Ronald Weich, Assistant Attorney General, DOJ, to Rep. Darrell E. Issa, OGR Chairman (Apr. 13, 2011) (hereinafter Weich Letter).

Mr. Weich's April 13, 2011 letter focuses almost exclusively on a general Department policy regarding pending criminal investigations. It is unclear to which specific criminal investigations Mr. Weich is referring. Such a blanket prohibition, if accepted, would conceal the entirety of Project Gunrunner and Operation Fast and Furious from legitimate congressional scrutiny. This is unacceptable. As a co-equal branch of government, Congress has a right, even a constitutional obligation, to conduct oversight of the Executive Branch, including the Department of Justice.

Over the past 85 years, the U.S. Supreme Court has consistently ruled the investigatory power of Congress is essential to the legislative function,³ and the Court has gradually expanded that power.⁴ Pointedly, the Supreme Court has also weighed in on the Department of Justice's internal policy of withholding documents to Congress that pertain to open criminal investigations:

It may be conceded that Congress is without authority to compel disclosure for the purpose of aiding the prosecution of pending suits; but the authority of that body, directly or through its committees to require pertinent disclosures in aid of its own constitutional power is not abridged because the information sought to be elicited may also be of use in such suits.⁵

The Department's internal policy to withhold documents from what it labels pending criminal investigations may not deprive Congress from obtaining those same documents if they are pertinent to a congressional investigation – particularly in a matter involving allegations that reckless and inappropriate decisions by top Justice Department officials may have contributed to the deaths of U.S. and Mexican citizens.

Let me be clear. The Committee is not seeking these documents from the Department of Justice in furtherance of the prosecution of pending suits. Rather, we are seeking these documents in furtherance of the proper use of our constitutional authority. Sometimes, we may take a deferential approach to the Department when we are both investigating a third-party's wrongdoing. Here, however, we are not conducting a concurrent investigation *with* the Department of Justice, but rather an independent investigation *of* the Department of Justice – specifically, of allegations that the reckless and inappropriate decisions of Department officials have created a serious public safety hazard. We are asking for documents that relate to decisions such officials made. Congress is legally entitled to all of these documents.

There are several prominent examples of Congress investigating the conduct of the Department of Justice while the Department proceeded simultaneously with criminal or civil probes:

³ *McGrain v. Daugherty*, 273 U.S. 135 (1927).

⁴ *Watkins v. United States*, 354 U.S. 178 (1957); *Barenblatt v. United States*, 360 U.S. 109 (1959).

⁵ *Sinclair v. United States*, 279 U.S. 263 (1929).

- Starting in 1922, Congress investigated “charges of misfeasance and nonfeasance in the Department of Justice”⁶ at the same time that the Department of Justice failed to prosecute meritorious cases against Department of Interior employees stemming from the Teapot Dome Scandal.
- In 1992, a House subcommittee investigated a Department of Justice plea bargain regarding environmental crimes committed by the company that managed the Rocky Flats nuclear weapons facility.⁷
- In 2004, the House Committee on Government Reform investigated allegations that agents in the FBI’s Boston regional office knowingly permitted informants to commit nearly two dozen murders while they were acting as informants. At the time of the congressional investigation, cases were still pending against the Department of Justice.⁸

In each of these instances, Congress was able to obtain a substantial amount of responsive documents to aid its investigation. There is no constitutional, statutory, or case law authority that permits the Department of Justice to withhold documents from Congress due to the pendency of a criminal probe.

Assistant Attorney General Weich’s most recent letter also noted that the Department of Justice “made available documents for review prior to [the subpoena deadline].”⁹ This statement, however, is misleading. The Department made only four documents available for an *in camera* review at Department of Justice headquarters. The viewing consisted of the following materials:

1. Southwest Border Initiative Project Gunrunner, December 2007.
2. ATF’s Project Gunrunner and OCDETF (Organized Crime Drug Enforcement Task Force).
3. Memorandum to all ADs and all Field Ops Personnel, from AD Field Ops.
4. Project Gunrunner – A Cartel Focused Strategy, September 2010.

These documents were quite general and largely unhelpful as none of them directly pertain to Operation Fast and Furious. This is not surprising considering that the Department of Justice believes it is “not in a position to disclose such documents, nor can [DOJ] confirm or deny the

⁶ *McGrain*, 273 U.S. at 151.

⁷ See *Environmental Crimes at the Rocky Flats Nuclear Weapons Facility: Hearings before the Subcomm. on Investigations and Oversight of the House Committee on Science, Space, and Technology*, 102nd Cong., 2d Sess., Vols. I and II (1992).

⁸ *Everything Secret Degenerates: The FBI’s Use of Murderers as Informants*, H. Rept. 108-414, 108th Cong., 2d Sess. (2004).

⁹ Weich Letter, *supra* note 2.

existence of records in [its] ongoing investigative files.”¹⁰ Undeterred by the Department’s refusal to produce documents, the Committee has been able to confirm independently that such documents do in fact exist. Attached to this letter are several documents the Committee has obtained indicating not only that the Department and ATF were aware that straw purchasers were consistently and illegally buying assault rifles and other weapons, but that they also failed to prevent their disappearance. Tragically, some of these weapons ATF represented it was tracking ended up at crime scenes, including at the locations of the murders of Border Patrol Agent Brian Terry and Immigrations and Customs Enforcement Officer Jaime Zapata.

Attachment 1 is a January 13, 2010 e-mail from an ATF employee containing a list of 42 names added to the Suspect Person Database. One of these names is Jaime Avila. Attachment 2 shows a Suspect Gun Summary for three WASR-10 rifles that Jaime Avila bought just three days later, on January 16, 2010. These guns were entered into ATF’s database on January 19, 2010. Attachment 3 is a Significant Information Report regarding the murder of Brian Terry. The Report states that “[t]wo (2) of the AK-47 variant rifles purchased by AVILA on 01/16/2010 were recovered in the area during” the search after Terry’s murder. This document demonstrates that ATF knew straw purchasers were acquiring weapons and failed to track those weapons. As an apparent result, a U.S. federal agent lost his life.

Attachment 4 shows the results of three Firearms Trace Summaries for Ranferi Osorio and Kelvin Morrison, his neighbor. One of the weapons recovered at the murder scene of Jaime Zapata was traced to a purchase made by Otilio Osorio, Ranferi’s brother.¹¹ The Attachment shows that not only did Ranferi Osorio and Kelvin Morrison purchase assault rifles, but these weapons had shown up at crime scenes, as indicated by the “Time to Crime” section of the Firearms Trace Summary. Both the Department and ATF knew that weapons were turning up at crime scenes, yet did not act. This is even more egregious when read in conjunction with an e-mail from Group VII Supervisor David Voth, as shown in Attachment 5. In the e-mail, Voth says:

[W]ithout being dramatic we have a sense of urgency with regards to this investigation. Our subjects purchased 359 firearms during the month of March alone, to include numerous Barrett .50 caliber rifles. I believe we are righteous in our plan to dismantle this entire organization and to rush in to arrest any one person without taking in to account the entire scope of the conspiracy would be ill advised to the overall good of the mission.

As a result of this “plan,” another U.S. federal agent may have also lost his life.

Attachment 6 presents a summary of the number of firearms purchased with ATF’s knowledge during the pendency of Operation Fast and Furious. The amount of firearms is a staggering 1,500 (minimum) heavy-duty weapons. Attachment 7 is an e-mail exchange between a Federal Firearms Licensee (FFL) and ATF in which the FFL expresses concern over the

¹⁰ Letter from Assistant Attorney General Ronald Weich to OGR Chairman Darrell E. Issa (Apr. 8, 2011).

¹¹ See Press Release, Department of Justice, Three Dallas-Area Men Arrested on Federal Firearms Charges Related to Trafficking Firearms to a Mexican Drug Cartel (Mar. 1, 2011).

frequency of guns sold, and the strong possibility guns sold to straw purchasers would end up in Mexico or "in the hands of bad guys." ATF, in conjunction with the Department of Justice, assures the FFL that there are safeguards in place to prevent this from happening. This claim is belied, however, by an e-mail (Attachment 8) showing that ATF knew that many of these 1,500 firearms would "eventually be used in criminal activity." As clearly seen in Attachment 9, the Group VII Supervisor was fully aware that violence in Mexico was extremely high, yet failed to alter ATF's approach. Attachment 10 is a forceful e-mail indicating that officials at ATF headquarters were "paying close attention" to Fast and Furious. Contained in Attachment 11 are detailed Reports of Investigation tracking suspected straw purchasers as part of Fast and Furious. These reports preceded the murders of Brian Terry and Jaime Zapata by several months.

It is nearly unfathomable that our government would allow straw purchasers to illegally acquire automatic weapons and transport them into Mexico, in furtherance of an ATF-led and -inspired investigation. As I understand Department of Justice operations, such programs would require the approval of top officials. The Committee's experience in dealing with the Department is that it is a deliberate, methodical organization and is not agile. As such, officials at the highest levels of the Department more than likely made these decisions – with all due, if misguided, consideration.

Efforts by the Department of Justice and ATF to stonewall the Committee in its investigation by erroneously, but matter-of-factly, citing an internal department policy as a preventative measure for denying access to documents have only enhanced suspicions that such officials have played a role in reckless decisions that have put lives at risk. The Committee continues to pursue this matter vigorously, in part, because concerned individuals have indicated they do not have confidence in the Department's ability to review the actions of its own top officials. The attachments to this letter represent but a small sample of myriad relevant and responsive documents.

The Committee's request for documents has been pending since March 16, 2011. Senator Charles Grassley's requests have been pending since January. Even if a legal basis did exist for withholding documents, the first step in evaluating this argument and the basis for a meaningful conversation between the Committee and the Department of Justice would be the production of a log of documents responsive to the subpoena with a specific explanation as to why you cannot produce each document. The Department has failed to provide any such log. Without such a log, the Committee is unable to consider the validity of any potential claim of privilege.

While I am certainly sensitive to protecting the integrity of pending criminal investigations, the Department has not provided information to substantiate its claims or produced other documents unrelated to specific cases. Therefore, I am hereby informing you that the Committee intends to enforce the subpoena issued to you on March 31, 2011. If you do not comply with the subpoena, the Committee will be forced to commence contempt proceedings.

Employee 4
Mr. Kenneth E. Melson
April 20, 2011
Page 6

2709

If you have any questions about this matter, please contact Ashok Pinto or Henry Kerner of the Committee staff at (202) 225-5074.

Sincerely,

A handwritten signature in black ink, appearing to read "Darrell Issa", written over a horizontal line.

Darrell Issa
Chairman

Enclosures

cc: The Honorable Elijah E. Cummings, Ranking Member

The Honorable Charles E. Grassley, Ranking Member,
U.S. Senate, Committee on the Judiciary

ATTACHMENT 1

From: [REDACTED]
 Sent: Wednesday, January 13, 2010 10:39 AM
 To: [REDACTED]
 Cc: [REDACTED]
 Subject: Suspect Person Entries - IN# 785115-10-[REDACTED] (VCAB# [REDACTED])
 Attachments: Suspect Person Entries - IN# 785115-10-[REDACTED] (VCAB# [REDACTED]).pdf; FTS Queries - IN# 785115-10-[REDACTED] (VCAB# [REDACTED]).pdf; OSII-Survey Form (3) (2).pdf; FIREARMSDATA RESTRICTIONS - FY08.pdf

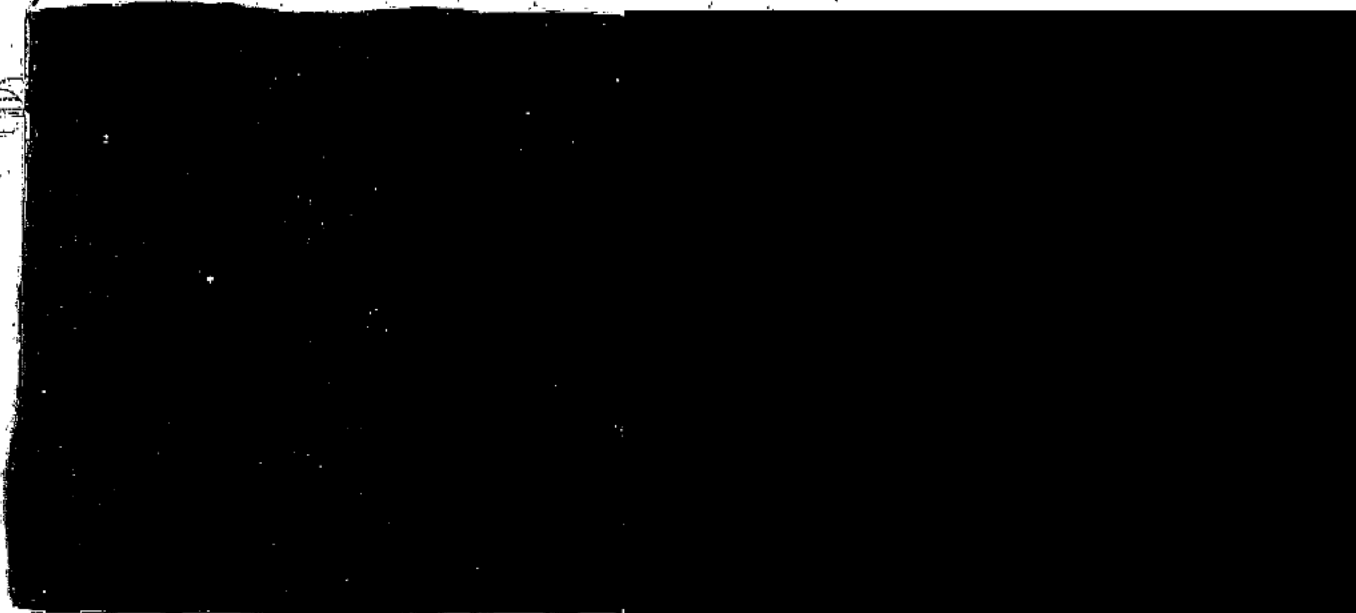
Dear [REDACTED]

Per your request, 42 subjects have been added to the Suspect Person Database for IN# 785115-10-[REDACTED]. Attached are PDF files based on queries executed in the Firearms Tracing System (FTS), and a Suspect Person Information Report revealing the information currently entered into the Suspect Person Database for this investigation. Please see below for a summary of the information found within the FTS.

By entering these subjects into the Suspect Person Database, queries of the FTS will be conducted on a monthly basis and any new associations will be forwarded to you. If you should have any questions or need assistance, please feel free to contact me at the number below.

When information is provided by e-mail, a copy is also provided to the Intelligence Group Supervisor and designated FIST (Field Intelligence Support Team) member.

Last Name	First Name	Middle Name	DOB	Traces	Multiple Sale Reports	# of firearms in N/A	Suspect Gun Reports	# of Suspect Guns
[REDACTED]								



Please be advised that the Consolidated Appropriations Act of 2009, Public L. 111-8, which became effective on March 12, 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, tribal, or foreign law enforcement agency, or a Federal, State, or local prosecutor, 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; or the publication of statistical aggregate data regarding firearms traffickers and trafficking channels, firearms misuse, felons, and trafficking investigations. 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.

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".

Sincerely,

[Redacted]
Program Analyst
Bureau of Alcohol, Tobacco, Firearms and Explosives
Office of Strategic Intelligence and Information
Violent Crime Intelligence Division
Violent Crime Analysis Branch
Main Office #: (304) [Redacted]
Direct #: (304) [Redacted]
Fax #: (304) [Redacted]

ATTACHMENT 2

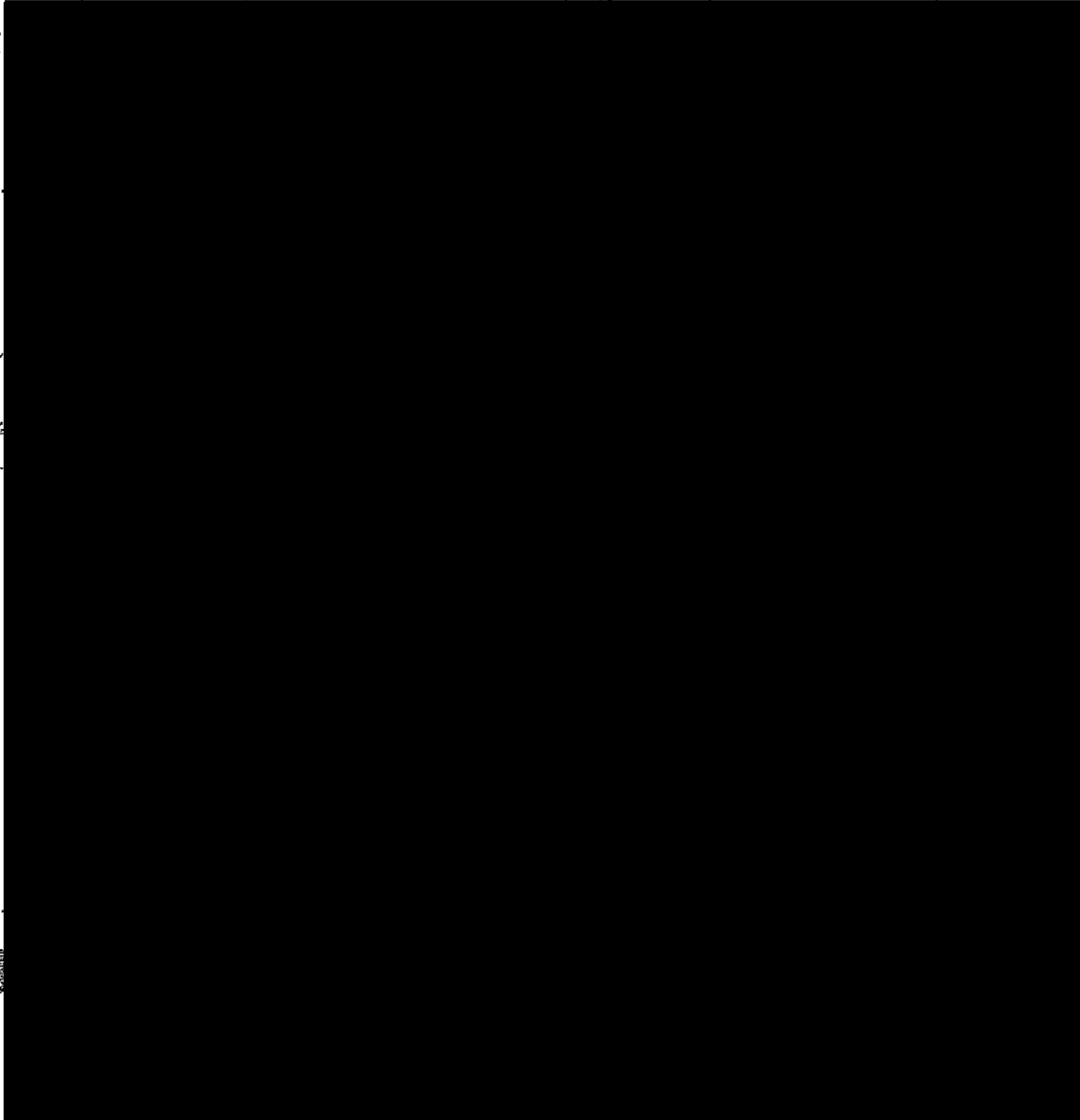
DEPARTMENT OF JUSTICE
BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES
NATIONAL TRACING CENTER



Phone: (800) [REDACTED] Fax: (800) [REDACTED]
Print Page

SUSPECT GUN SUMMARY

Suspect Gun Number: S2010000088 Entered Date: January 19, 2010



ATTACHMENT 3

U.S. Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives

Significant Information Report

DATE: 12/16/2010

FROM: Phoenix Field Division

FIELD OFFICE: Phoenix VII Field Office

CASE INFORMATION

CASE NUMBER: 785115-10-██████████

CASE TITLE: ██████████

SPECIAL AGENT: ██████████

TELEPHONE NUMBER: ██████████

(602) ██████████

SYNOPSIS OF INCIDENT/ACTIVITY

Arrest of Jaime ██████████

NARRATIVE OF INCIDENT/ACTIVITY

On January 16, 2010 ██████████ purchased three (3) AK-47 variant rifles from a Phoenix area PPL. On December 15, 2010, after the shooting death of a U.S. Border Patrol agent in Southern Arizona, law enforcement officials agents conducted a search of the area. Two (2) of the AK-47 variant rifles purchased ██████████ 01/16/2010 were recovered in the area during this search.

On December 15, 2010, ATF agents located ██████████ and subsequently interviewed and arrested him on charges stemming from this January 16, 2010, firearm purchase. In summary ██████████ admitted to ATF agents that he straw purchased these firearms for an unidentified Hispanic male.

██████████ was held overnight and ATF agents have prepared a criminal complaint ██████████ on firearm charges relating to the straw purchase of so three (3) AK-47 variant rifles on 01/16/2010 and are presenting it to a Federal Magistrate today (12/16/10).

ATTACHMENT 4

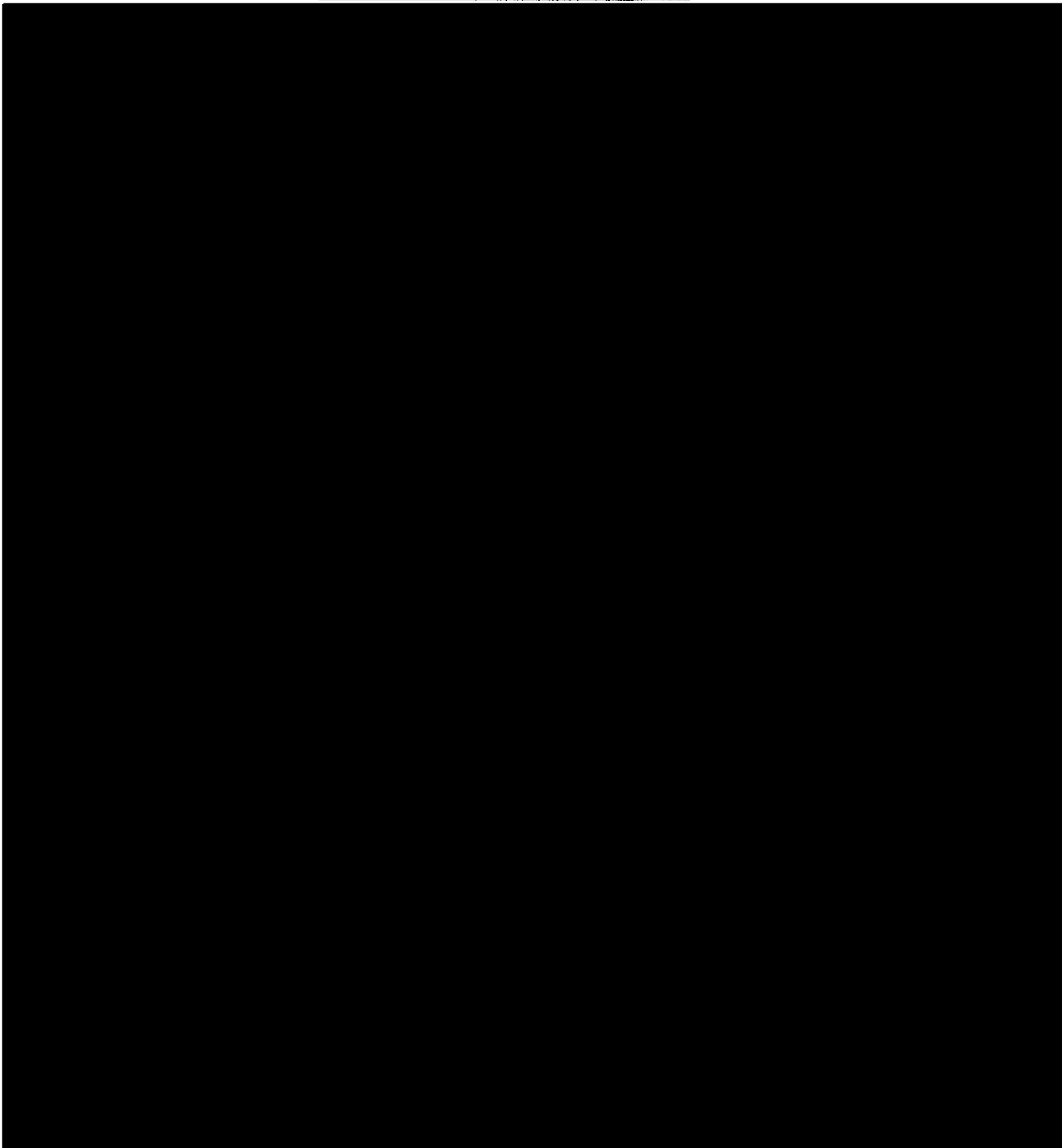
DEPARTMENT OF JUSTICE
BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES
NATIONAL TRACING CENTER



Phone:(800) [REDACTED] Fax:(800) [REDACTED]

Print Date: [REDACTED]

FIREARMS TRACE SUMMARY



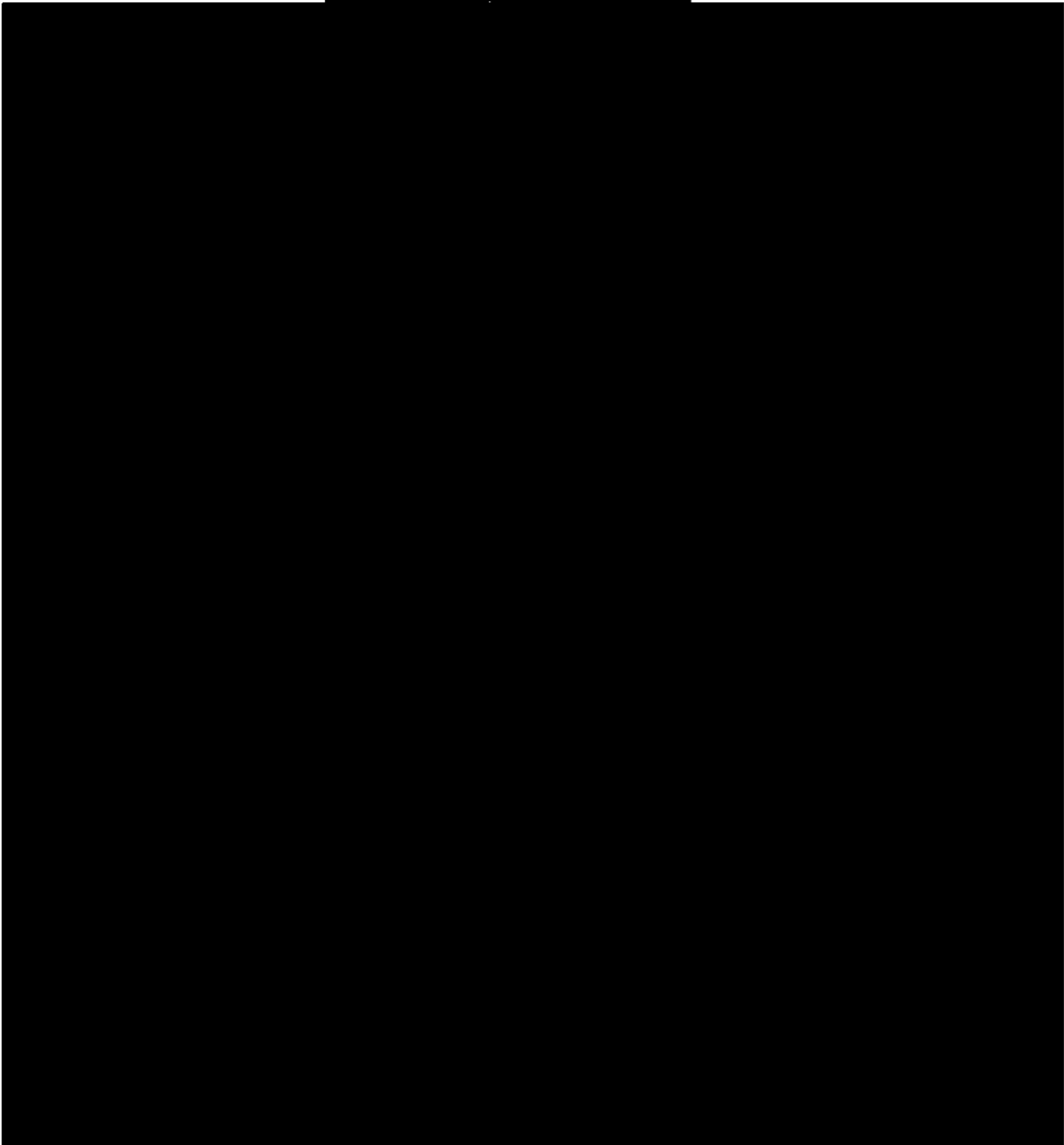
DEPARTMENT OF JUSTICE
BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES
NATIONAL TRACING CENTER

Phone:(800) [REDACTED] Fax:(800) [REDACTED]

Print Date: [REDACTED]



FIREARMS TRACE SUMMARY



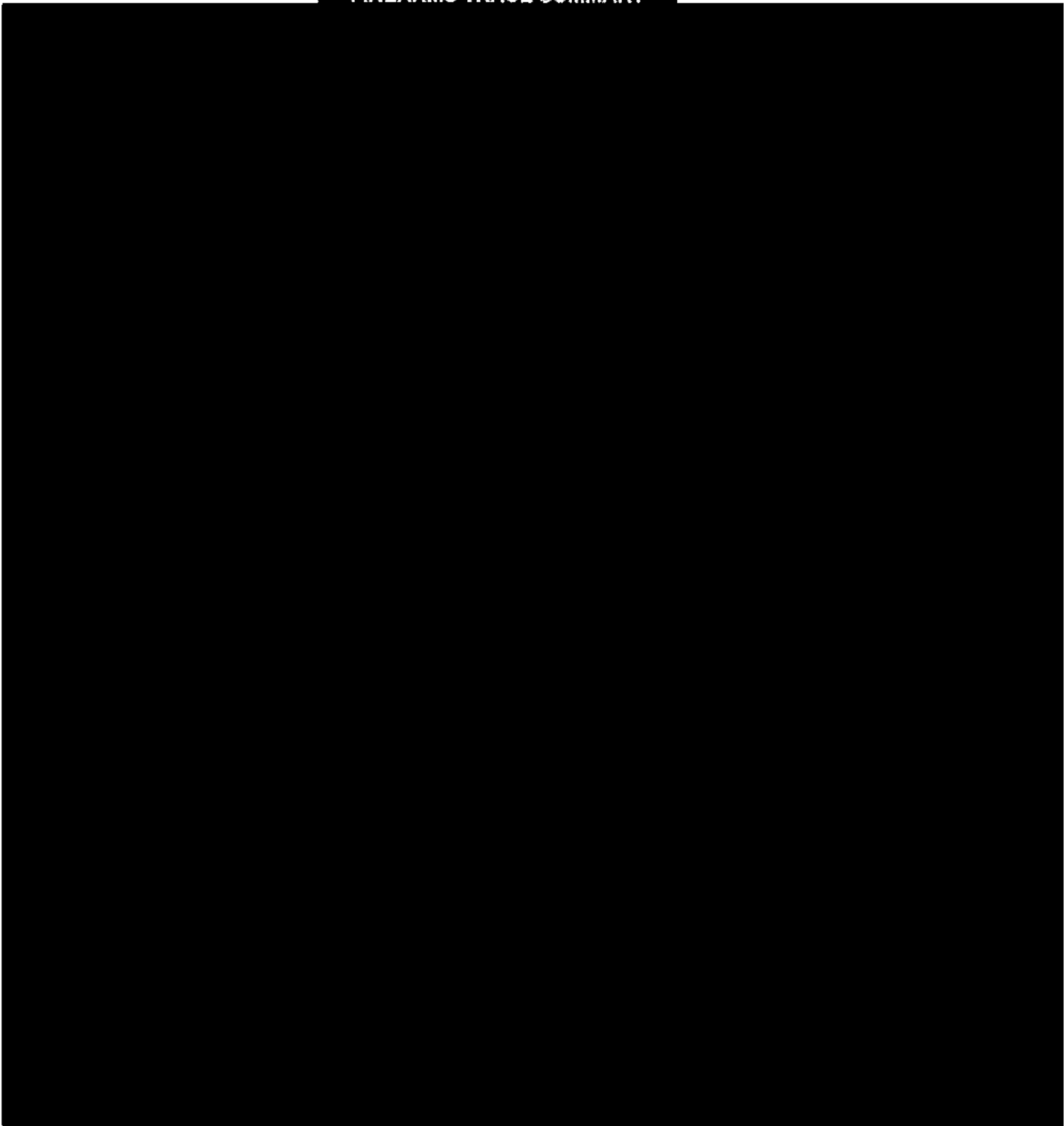
DEPARTMENT OF JUSTICE
BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES
NATIONAL TRACING CENTER

Phone: (800) [REDACTED] Fax: (800) [REDACTED]

Print Date: [REDACTED]



FIREARMS TRACE SUMMARY



ATTACHMENT 5

[REDACTED]

From: [REDACTED]
Sent: Friday, April 02, 2010 10:31 AM
To: Hurley, Emory (USAAZ); Gillett, George T. Jr.
Cc: Phoe-Group VII
Subject: No pressure but perhaps an increased sense of urgency...

RE: [REDACTED]

958 killed in March 2010 (Most violent month since 2005)

937 killed in January 2010

842 killed in December 2009

RE: [REDACTED]

187 murders in March, including 11 policemen

I hope this e-mail is well received in that it is not intended to imply anything other than that the violence in Mexico is severe and without being dramatic we have a sense of urgency with regards to this investigation. Our subjects purchased 359 firearms during the month of March alone, to include numerous Barrett .50 caliber rifles. I believe we are righteous in our plan to dismantle this entire organization and to rush in to arrest any one person without taking in to account the entire scope of the conspiracy would be ill advised to the overall good of the mission. I acknowledge that we are all in agreement that to do so properly requires patience and planning. In the event however that there is anything we can do to facilitate a timely response or turnaround by others we should communicate our sense of urgency with regard to this matter.

Thanks for everyone's continued support in this endeavor,

[REDACTED]
Group Supervisor
Phoenix Group VII
602 [REDACTED]

ATTACHMENT 6

Phoenix Group VII

(GRIT/SWB Firearms Trafficking)

785115-10-0004, Operation East and Furious: This OCDETF case is a large scale firearms trafficking case with the firearms being recovered either in the Republic of Mexico or on/near the US/Mexico border (El Paso, TX, Nogales, AZ, Douglas, AZ, etc.) To date over 1,500 firearms have been purchased since October 2009 for over one million (\$1,000,000.00) cash in over-the-counter transactions at various Phoenix area FFL's.

[REDACTED]

case against various individuals but more specifically to make the bigger connection to the Mexican Cartel/Drug Trafficking Organization (DTO) obtaining these firearms for the best possible case and the most severe charges when it is time to indict this case.

[REDACTED]

[REDACTED]

[REDACTED]

ATTACHMENT 7

Ongoing ATF investigation

6 messages

[Redacted] @usdoj.gov> Tue, Apr 13, 2010 at 9:24 AM

To: [Redacted]

Cc: ATF Agent [Redacted] @usdoj.gov>, ATF Agent [Redacted] @usdoj.gov>, ATF Agent [Redacted] @usdoj.gov>

I understand that the frequency with which some individuals under investigation by our office have been purchasing firearms from your business has caused concerns for you. I totally understand and am not in a position to tell you how to run your business. However, if it helps put you at ease we (ATF) are continually monitoring these suspects using a variety of investigative techniques which I cannot go into detail. We are working in conjunction with the United States Attorney's Office (Federal Prosecutors) to secure the most comprehensive case involving the different facets of this organization. If it puts you at ease I can schedule a meeting with the Attorney handling the case and myself to further discuss this issue. Just know that we cannot instruct you on how to run your business but your continued cooperation with our office has greatly aided the investigation thus far.

Thanks again and please let me know how I can be of service to you.

Respectfully,

[Redacted]

Group Supervisor

Phoenix Group VII

602-[Redacted]

[Redacted] Tue, Apr 13, 2010 at 1:29 PM

[Redacted] @usdoj.gov> ATF Agent [Redacted] ATF Agent [Redacted] @usdoj.gov>, ATF Agent [Redacted] @usdoj.gov>

[Redacted]

[REDACTED]

Let me start by saying thank you for the email and as always we will do what we can to continue to work with you and the ATF on Project Gun Runner. Our goal is to develop a system to get you (ATF) what you need in the most efficient manner possible. For us, we were hoping to put together something like a letter of understanding to alleviate concerns of some type of recourse against us down the road for selling these items. We just want to make sure we are cooperating with ATF and that we are not viewed as selling to bad guys. If you and the case Attorney are free to meet some time this week or next, that would be great. I am out of town Friday of this week and have meetings Thursday afternoon but am open other than that and I am open next week. Please let me know what would work best for you.

Thank you again and I look forward to meeting.

Respectfully,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Mail Delivery Subsystem <mailer-daemon@googlemail.com> Tue, Apr 13, 2010 at 1:29 PM
 To: [REDACTED]

Delivery to the following recipient failed permanently:

[REDACTED]

Technical details of permanent failure:
 Message rejected. Please visit http://www.google.com/mail/help/bulk_mail.html to review our Bulk Email Senders Guidelines.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Tue, Apr 13, 2010 at 1:31 PM

----- Forwarded message -----

From: [Redacted]

Date: Tue, Apr 13, 2010 at 1:29 PM

Subject: Re: Ongoing ATF Investigation

To: [Redacted] <[Redacted]@usdoj.gov>

Cc: [Redacted] ATF Agent <[Redacted]@usdoj.gov>, [Redacted] ATF Agent

<[Redacted]@usdoj.gov>, [Redacted] ATF Agent <[Redacted]@usdoj.gov>, [Redacted]

[Redacted]

[Redacted] <[Redacted]@usdoj.gov>

Thu, Apr 15, 2010 at 9:23 AM

To: [Redacted]

Cc: [Redacted] ATF Agent <[Redacted]@usdoj.gov>, [Redacted] ATF Agent

<[Redacted]@usdoj.gov>, [Redacted] ATF Agent <[Redacted]@usdoj.gov>

[Redacted]

We at ATF consider [Redacted] to be our ally in Project Gunrunner SWB Initiative and appreciate your cooperation with us in regards to this (and all) law enforcement matters. I have inquired from the Assistant United States Attorney (AUSA) handling this case as to his availability to meet with you next week. He is checking his schedule and I expect to hear from him soon.

Thanks again and please contact me any time with questions or concerns,

[REDACTED]
Group Supervisor

Phoenix Group VII

602-[REDACTED]

From: [REDACTED]
Sent: Tuesday, April 13, 2010 1:30 PM
To: [REDACTED]
Cc: [REDACTED] ATF Agent [REDACTED] ATF Agent [REDACTED] ATF Agent [REDACTED]
Subject: Re: Ongoing ATF Investigation

[REDACTED]
[REDACTED]
[REDACTED] Thu, Apr 15, 2010 at 10:39 AM

To: [REDACTED]@usdoj.gov>
Cc: [REDACTED] ATF Agent [REDACTED]@usdoj.gov>, [REDACTED] ATF Agent [REDACTED]@usdoj.gov>, [REDACTED] ATF Agent [REDACTED]@usdoj.gov>

Thank you for the kind words and the continued support. We will continue handling the transactions as we have in the past until we meet. If there is anything you need in the interim please don't hesitate to ask.

See you soon.

Respectfully,

Fox News report

3 messages

Thu, Jun 17, 2010 at 11:56 AM

<[redacted]@usdoj.gov>

I hope this email finds you well.

As per our discussion about over communicating I wanted to share some concerns that came up. Tuesday night I watched a segment of a Fox News report about firearms and the border. The segment, if the information was correct, is disturbing to me. When you, Emory and I met on May 13th I shared my concerns with you guys that I wanted to make sure that none of the firearms that were sold per our conversation with you and various ATF agents could or would ever end up south of the border or in the hands of the bad guys. I guess I am looking for a bit of reassurance that the guns are not getting south or in the wrong hands. I know it is an ongoing investigation so there is limited information you can share with me. But as I said in our meeting, I want to help ATF with its investigation but not at the risk of agents safety because I have some very close friends that are US Border Patrol agents in southern AZ as well as my concern for all the agents safety that protect our country. If possible please email me back and share with me any reassurances that you can.

As always thank you for your time and I send this email with all respect and a hart felt concern to do the right thing.

Respectfully,

[redacted signature block]

[redacted signature block]

@usdoj.gov>

Fri, Jun 18, 2010 at 2:25 PM

[redacted footer]

Thanks for reaching out to me with your concerns. I would be happy to stop by and speak with you. If possible I have [redacted] in [redacted] next Tuesday, June 22, 2010. Any chance you are available that day around 10:00-10:30 am?

Thanks,

From: [redacted]
Sent: Thursday, June 17, 2010 11:39 AM
To: [redacted]
Subject: Fox News report

Mon, Jun 21, 2010 at 9:34 PM

Reply-To: [redacted]
To: [redacted]@usdoj.gov>

I am back intown. If you are still free to meet on the 22nd [redacted] around 10 and there for a few hours. Please stop by if you are available, if not let me know when we can reschedule.

Thank you,

Sent from my Verizon Wireless BlackBerry

From: [redacted]@usdoj.gov>
Date: Mon, 18 Jun 2010 17:25:25 -0400
To: [redacted]
Subject: RE: Fox News report

ATTACHMENT 8

From: [REDACTED]
 Sent: Thursday, June 17, 2010 8:00 AM
 To: [REDACTED]
 Cc: [REDACTED]
 Subject: RE: Suspect Databases #LE1001715
 Attachments: SGF33171.pdf; Suspect Person.doc

Good Morning, [REDACTED]

I am not sure if you received an answer to your inquiry as to the "SUSPECT" Databases.

The Suspect Person Database, this is handled by the Violent Crime Analysis Branch (VCAB). I have attached a copy of both submission forms for your review and completion. For additional information on Suspect "Person", please contact [REDACTED] or [REDACTED] for additional assistance at VCAB; phone 304-[REDACTED].

Suspect Gun - Entries made to this program are firearms that have "NOT" been recovered by law enforcement but suspected to eventually be used in criminal activity.

Once the firearms are entered in the system, you will receive a report, representative of the firearm information that was provided. For the trace to be a "hit", all of the weapon information must match; that is, the manufacturer, weapon type, caliber and serial number. If the NTC receives a Trace request for any of the firearms submitted, the Suspect Gun Program will advise you upon email notification to include Requestor information. It is part of our procedures of Suspect Gun to obtain the Suspect Gun Case Status when an incoming Trace is submitted to the NTC on an Active Suspect Gun Case, regardless of the Trace requestor. At this point the trace will be held pending upon written verification from the Suspect Gun case agent.

The Suspect Gun Database is beneficial to the law enforcement in providing investigative leads when dealing with firearms trafficking and straw purchasers. This information can also be shared between law enforcement agencies for comparing records or ongoing investigations. Checking trace requests against the Suspect Gun Database also saves valuable time in processing trace requests.

If you are submitting a large list of firearms it would be best to have an attached Word or Excel document detailing the FFL, identifying each firearm (complete weapon description), include the purchaser (if available), purchase date (if available) and FFL involved (if available) for the purchase.

Please be advised that the Suspect Gun Program requires an active ATF investigation number for entry into the Suspect Gun Database. Gun Database (general IN numbers, case 765065-07-[REDACTED], are no longer accepted). Also indicate whether or not the National Tracing Center (NTC) can release Trace history to other requestors.

Please note that an updated Suspect Gun Submission Form has been attached for future submissions which can be faxed to 800-[REDACTED] or emailed directly to our Suspect Gun email box through outlook at [REDACTED].

All information regarding this Theft, Multiple Sale and/or any other Trace requests can be obtained by using eTrace. In the event that you do not have access, access can be requested by contacting the e-Trace Administrator at 304-[REDACTED] or via email at [REDACTED]. In the event that you do not have access, access can be requested by contacting the Law Enforcement Support Branch at 304-[REDACTED] or 800-[REDACTED].

ATTACHMENT 9

[REDACTED]

From: [REDACTED]
Sent: Monday, May 03, 2010 11:13 AM
To: Phoe-Group VII
Subject: Just an FYI...

➤ April was the second most violent month during the Calderon administration with 1,231 executions. This is more than twice that accumulated in the same month in 2009 (560 dead) and five times that of 2008 (270).

[REDACTED]
Group Supervisor
Phoenix Group VII
602-[REDACTED]

ATTACHMENT 10

[REDACTED]

From: [REDACTED]
Sent: Friday, March 12, 2010 7:34 PM
To: Phoenix Group VII
Subject: Monday Morning Meeting, Strike force 9:30am

To all;

It has been brought to my attention that there may be a schism developing amongst the group. This is the time we all need to pull together not drift apart. We are all entitled to our respective (albeit different) opinions however we all need to get along and realize that we have a mission to accomplish.

I am thrilled and proud that our Group is the first ATF Southwest Border Group in the country to be [REDACTED]. On that note I thank everyone for their efforts thus far and applaud the results we have achieved in a short amount of time.

Whether you care or not people of rank and authority at HQ are paying close attention to this case and they also believe we (Phoenix Group VII) are doing what they envisioned the Southwest Border Groups doing. It may sound cheesy but we are "The tip of the ATF spear" when it comes to Southwest Border Firearms Trafficking.

We need to resolve our issues at this meeting. I will be damned if this case is going to suffer due to petty arguing, rumors or other adolescent behavior.

I don't know what all the issues are but we are all adults, we are all professionals, and we have a exciting opportunity to use the biggest tool in our law enforcement tool box. If you don't think this is fun you're in the wrong line of work - period! This is the pinnacle of domestic U.S. law enforcement techniques. After this the tool box is empty. Maybe the Maricopa County Jail is hiring detention officers and you can get paid \$30,000 (instead of \$100,000) to serve lunch to inmates all day.

One last point is that we have many of our brother and sister ATF agents coming into town to assist us on this case. We have to put our best effort forward and lead by example. No one wants to leave their families behind, or leave their case work behind to come help someone who does even appreciate their sacrifice.

We need to get over this bump in the road once and for all and get on with the mission at hand. This can be the most fun you have with ATF, the only one limiting the amount of fun we have is you!

[REDACTED]
Group Supervisor
Phoenix Group VII
GOC [REDACTED]

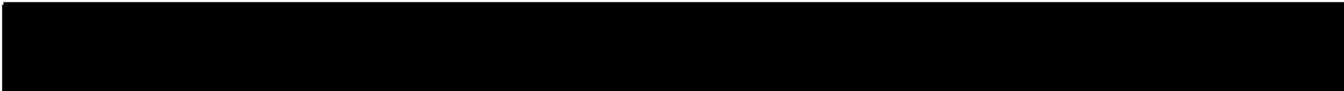
ATTACHMENT 11

U.S. Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives

Report of Investigation

Title of investigation: [REDACTED]	Investigation Number: 735115-10-[REDACTED]	Report Number: 1
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SUMMARY OF EVENTS:

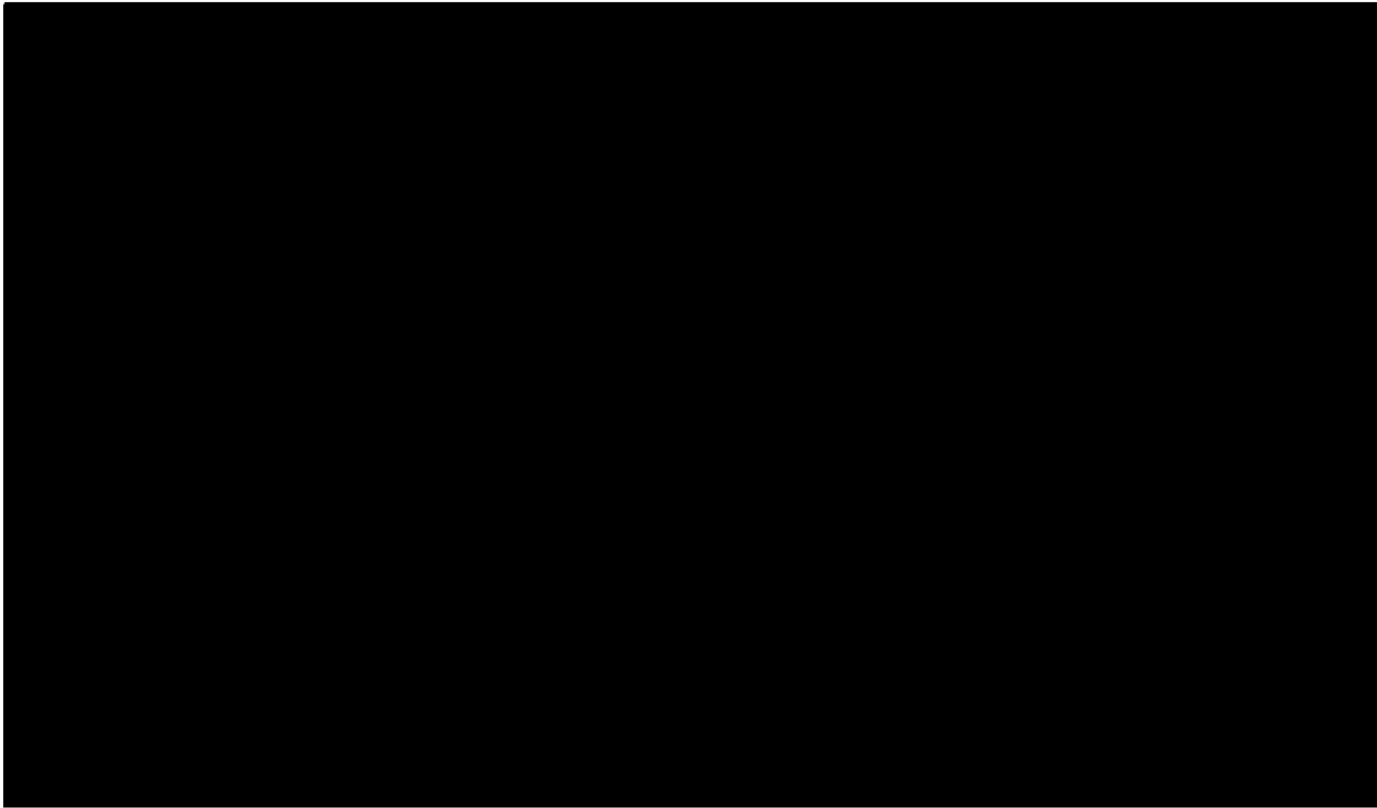


NARRATIVE:

1.

2.

3.



Prepared by: [REDACTED]	Title: Special Agent, Phoenix VII Field Office	Signature:	Date:
Authorized by: [REDACTED]	Title: Group Supervisor, Phoenix VII Field Office	Signature:	Date:
Second level reviewer (optional): William D. Nowell	Title: Special Agent in Charge, Phoenix Field Division	Signature:	Date:

Title of Investigation: [REDACTED]	Investigation Number: 785415-10-[REDACTED]	Report Number: [REDACTED]
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4 [REDACTED]

5 [REDACTED]

ATTACHMENTS:

1. [REDACTED]
2. [REDACTED]

EXHIBITS:

1. [REDACTED]

U.S. Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives

Report of Investigation

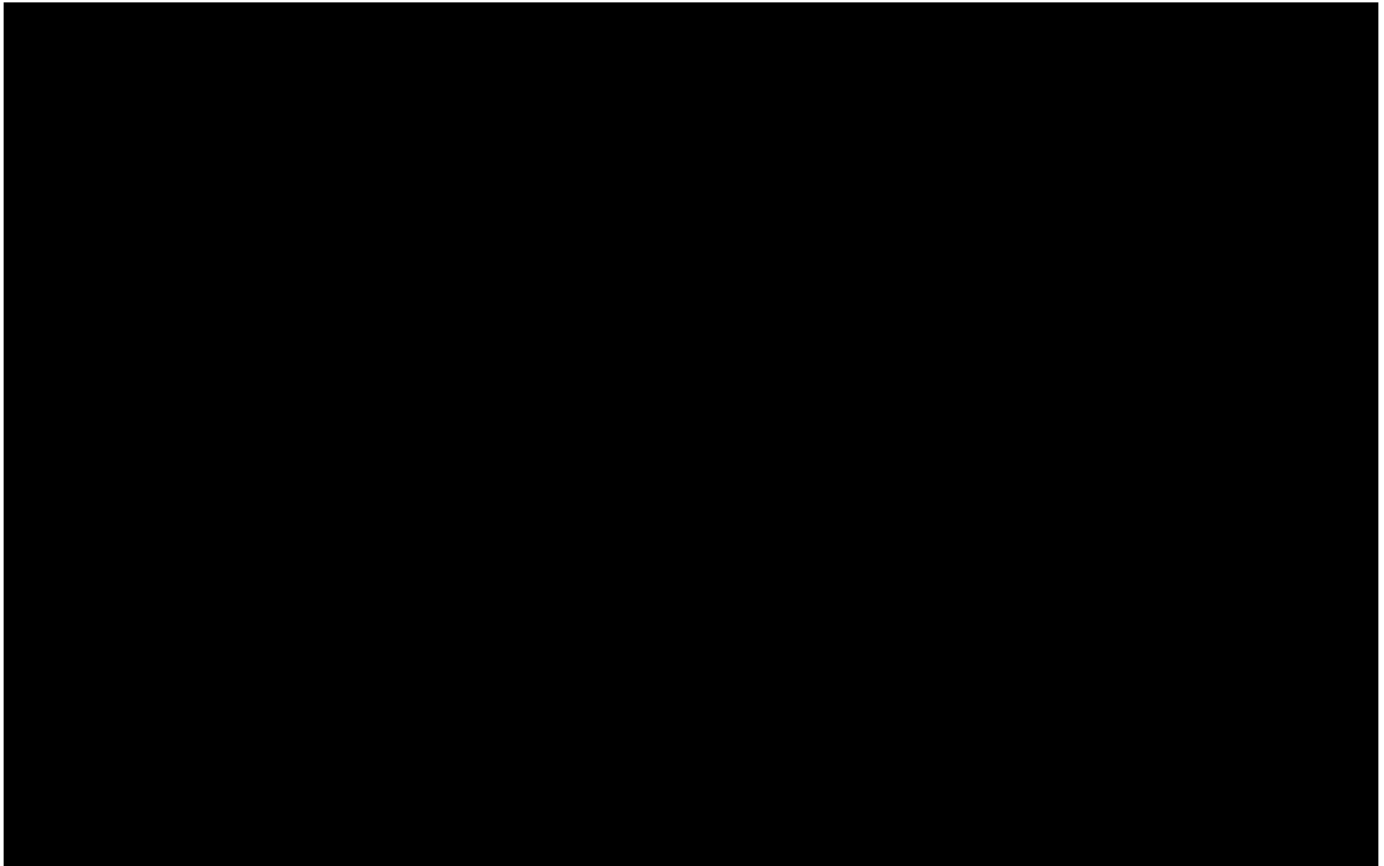
Title of Investigation: [REDACTED]	Investigation Number: 785115-10 [REDACTED]	Report Number: [REDACTED]
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SUMMARY OF EVENT:



NARRATIVE:

- 1.
- 2.
- 3.
- 4.



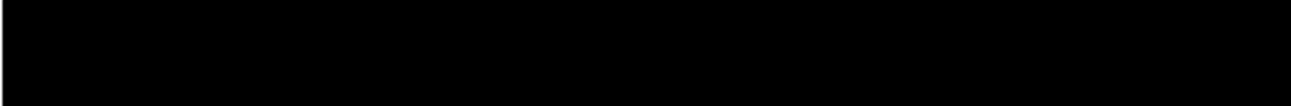
Prepared by: [REDACTED]	Title: Special Agent, Phoenix VII Field Office	Signature:	Date:
Reviewed by: [REDACTED]	Title: Group Supervisor, Phoenix VII Field Office	Signature:	Date:
Second level reviewer (optional): William D. Nowell	Title: Special Agent in Charge, Phoenix Field Division	Signature:	Date:

Title of Investigation: [REDACTED]	Investigation Number: 705115-10 [REDACTED]	Report Number: [REDACTED]
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ATTACHMENTS:

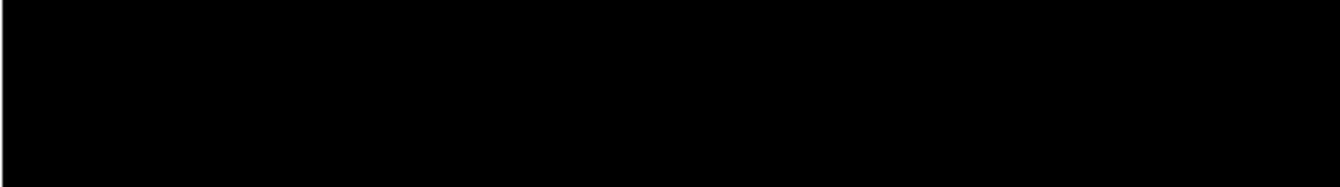
1.



EXHIBITS:

2.

3.

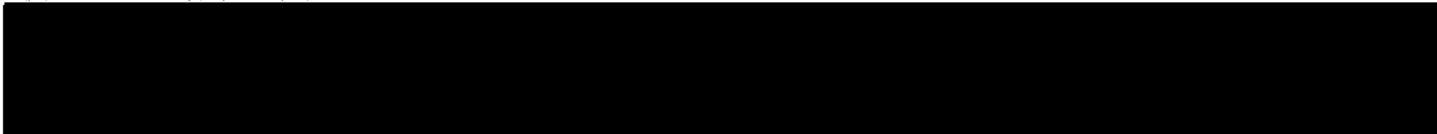


U.S. Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives

Report of Investigation

Title of investigation: [REDACTED]	Investigation Number: 785115-10-[REDACTED]	Report Number: 1
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SUMMARY OF EVENT:

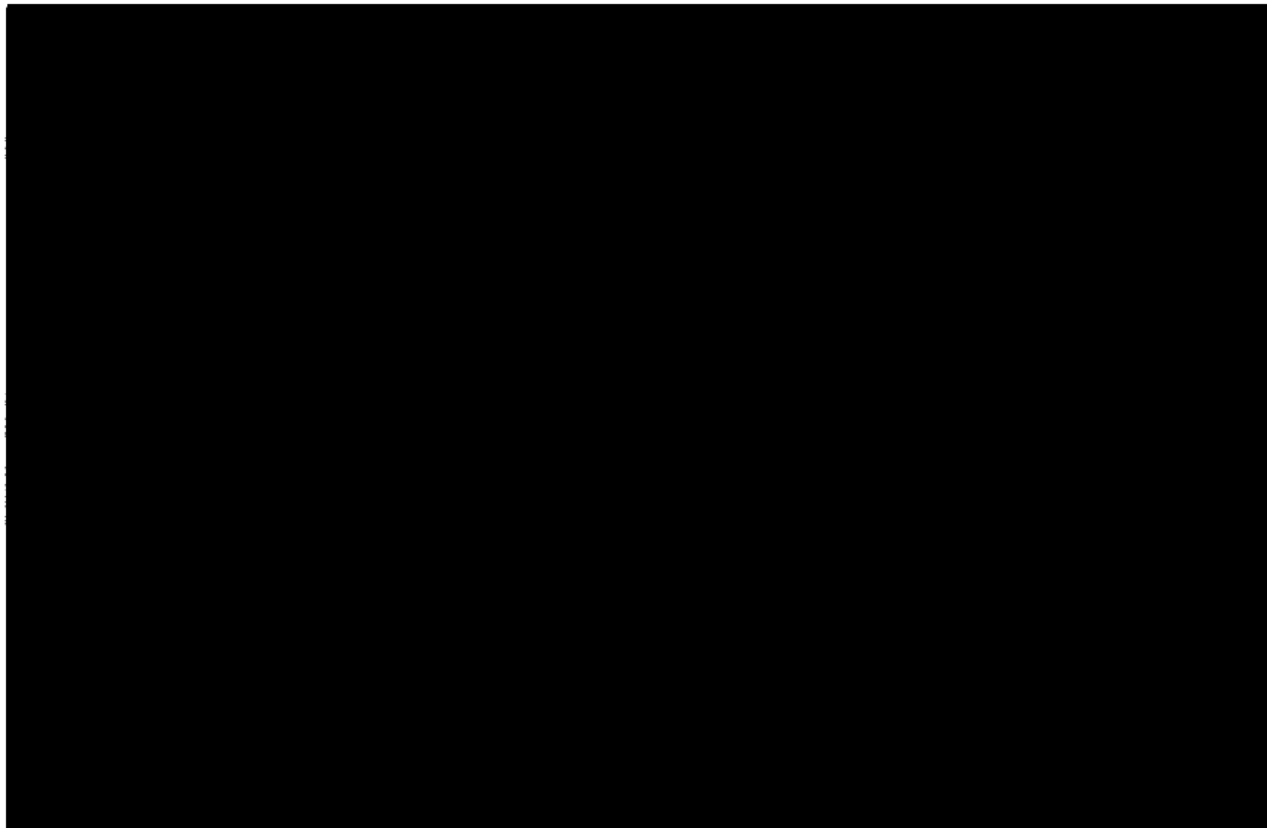


NARRATIVE:

1.

2.

3.



Prepared by: [REDACTED]	Title: Special Agent, Phoenix VA Field Office	Signature:	Date:
Authorized by: [REDACTED]	Title: Group Supervisor, Phoenix VA Field Office	Signature:	Date:
Second level reviewer (optional): William D. Newell	Title: Special Agent in Charge, Phoenix Field Division	Signature:	Date:

Title of Investigation: [REDACTED]	Investigation Number: 786115-10 [REDACTED]	Report Number: 1
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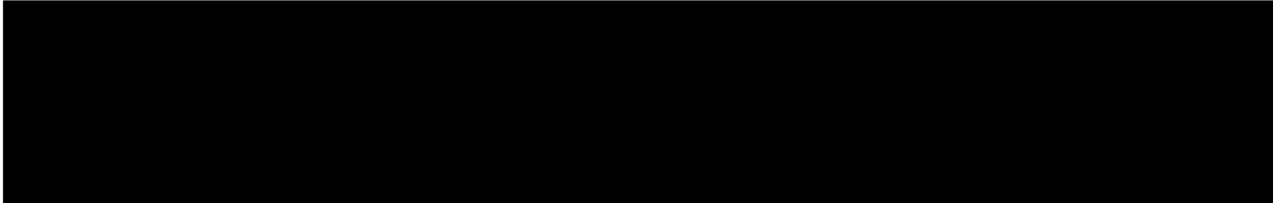


ATTACHMENTS:

I. [REDACTED]

EXHIBITS:

*
*



From: [REDACTED]
Sent: Friday, April 29, 2011 7:03 PM
To: [REDACTED] elson, Kenneth E.; [REDACTED]
[REDACTED] Chait, Mark R.
Subject: Fw: March 4th 2011 Letter from Senator Grassley

Fyi.

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From: [REDACTED]
To: Burton, Faith (SMO); Hoover, William J.
Cc: Gaston, Molly (SMO); Axelrod, Matthew (ODAG) (SMO); [REDACTED]
Sent: Fri Apr 29 19:02:05 2011
Subject: Re: March 4th 2011 Letter from Senator Grassley

It is my understanding that, with the exception of two very recent requests (one each from Issa and Grassley), OLA has the pen on all of these requests. If that is no longer the case, we'd be more than happy to craft responses.

From: Burton, Faith (SMO)
To: Hoover, William J.; [REDACTED]
Cc: Gaston, Molly (SMO); Axelrod, Matthew (ODAG) (SMO)
Sent: Fri Apr 29 17:38:39 2011
Subject: FW: March 4th 2011 Letter from Senator Grassley

Have you all prepared a response to this and/or do you have responsive information?

DP [REDACTED]

DP [REDACTED]

DP [REDACTED]

Please advise. Thanks. Faith

From: Downey, Brian (Judiciary-Rep) [mailto:Brian_Downey@judiciary-rep.senate.gov]
Sent: Friday, April 29, 2011 4:19 PM
To: Gaston, Molly (SMO); Burton, Faith (SMO)
Cc: [REDACTED]; Hoover, William J. (ATF); Leavitt, Tristan (Judiciary-Rep); CEG (Judiciary-Rep)
Subject: March 4th 2011 Letter from Senator Grassley
Importance: High

Will Senator Grassley be receiving any response or documents to his March 4th letter besides the March 8th letter from the Department of Justice?

Thank you,

Brian

Brian M. Downey
Investigator
Ranking Member Charles E. Grassley
U.S. Senate Committee on the Judiciary
Washington, DC
(P) 202-224-5225
(F) 202-224-3799

From: [REDACTED]
Sent: Tuesday, April 26, 2011 9:21 PM
To: Needles, James R.
Subject: Fw: (Axelrod) Start of Fast and Furious

Fyi

[REDACTED] Division Chief Firearms Operations Division
202 [REDACTED] Cell [REDACTED]

From: [REDACTED]
To: Chait, Mark R.; Hoover, William J.; McMahon, William G.
Sent: Tue Apr 26 18:49:52 2011
Subject: RE: (Axelrod) Start of Fast and Furious

ADAG Axelrod's questions/comments:



DP

DP

██████████
Chief, Firearms Operations Division
ATF HQ - Room 6.S.129
202 ██████████, Cell ██████████

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From: Chait, Mark R.
Sent: Tuesday, April 26, 2011 3:59 PM
To: ██████████
Subject: FW: Start of Fast and Furious

Please obtain this info. thx

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From: Hoover, William J.
Sent: Tuesday, April 26, 2011 3:30 PM
To: Chait, Mark R.
Subject: Fw: Start of Fast and Furious

Mark,

Can you get me answers to the questions below?

Thank you!!

Billy

William J. Hoover
Deputy Director
Bureau of Alcohol, Tobacco, Firearms & Explosives
O) 202-648-8710

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From: Axelrod, Matthew (ODAG)
To: Hoover, William J.
Sent: Tue Apr 26 15:18:22 2011
Subject: Start of Fast and Furious

Billy,



DP

Matt

Matthew S. Axelrod

Employee 4

3280

Associate Deputy Attorney General

Office of the Deputy Attorney General

U.S. Department of Justice

Desk (202) 305-0273

Cell (202) 532-3087

From: [REDACTED]

Sent: Tuesday, April 26, 2011 6:49 PM

To: Chait, Mark R.; Hoover, William J.; McMahon, William G.

Subject: RE: (Axelrod) Start of Fast and Furious

ADAG Axelrod's questions/comments:



DP

ATF HQ - Room 6.S.129

202. [REDACTED], Cell [REDACTED]

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From: Chait, Mark R.
Sent: Tuesday, April 26, 2011 3:59 PM
To: [REDACTED]
Subject: FW: Start of Fast and Furious

Please obtain this info. thx

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From: Hoover, William J.
Sent: Tuesday, April 26, 2011 3:30 PM
To: Chait, Mark R.
Subject: Fw: Start of Fast and Furious

Mark,

Can you get me answers to the questions below?

Thank you!!

Billy

William J. Hoover

Employee 4
Deputy Director
Bureau of Alcohol, Tobacco, Firearms & Explosives
O) 202-648-8710

3284

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From: Axelrod, Matthew (ODAG)
To: Hoover, William J.
Sent: Tue Apr 26 15:18:22 2011
Subject: Start of Fast and Furious

Billy,



DP

Matt

Matthew S. Axelrod

Associate Deputy Attorney General

Office of the Deputy Attorney General

U.S. Department of Justice

Desk (202) 305-0273

Cell (202) 532-3087

From: [REDACTED]
Sent: Thursday, April 28, 2011 7:47 PM
To: Stinnett, Melanie S.
Subject: Fw: (Axelrod) Start of Fast and Furious

Fyi

[REDACTED], Division Chief Firearms Operations Division
202-[REDACTED] Cell [REDACTED]

From: Axelrod, Matthew (ODAG)
To: Hoover, William J.
Cc: Melson, Kenneth E.; [REDACTED]
Sent: Thu Apr 28 19:10:48 2011
Subject: RE: (Axelrod) Start of Fast and Furious

Can we talk about this tomorrow?

DP

DP

From: Hoover, William J. (ATF)
Sent: Wednesday, April 27, 2011 6:30 AM
To: Axelrod, Matthew (ODAG)
Cc: Melson, Kenneth E. (ATF); [REDACTED]
Subject: FW: (Axelrod) Start of Fast and Furious

Matt,

Please see our answers to your questions below. I will give you a call later this morning to discuss.

Billy

William J. Hoover
Deputy Director
Bureau of Alcohol, Tobacco, Firearms & Explosives
O) 202-648-8710

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From: [REDACTED]
Sent: Tuesday, April 26, 2011 6:50 PM
To: Chait, Mark R.; Hoover, William J.; McMahon, William G.
Subject: RE: (Axelrod) Start of Fast and Furious

ADAG Axelrod's questions/comments:



DP

202. [REDACTED], Cell [REDACTED]

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From: Chait, Mark R.
Sent: Tuesday, April 26, 2011 3:59 PM
To: [REDACTED]
Subject: FW: Start of Fast and Furious

Please obtain this info. thx

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From: Hoover, William J.
Sent: Tuesday, April 26, 2011 3:30 PM
To: Chait, Mark R.

Subject: Fw: Start of Fast and Furious

Mark,

Can you get me answers to the questions below?

Thank you!!

Billy

William J. Hoover
Deputy Director
Bureau of Alcohol, Tobacco, Firearms & Explosives
O) 202-648-8710

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From: Axelrod, Matthew (ODAG)
To: Hoover, William J.
Sent: Tue Apr 26 15:18:22 2011
Subject: Start of Fast and Furious

Billy,



DP

Matt

Matthew S. Axelrod

Employee 4

3319

Associate Deputy Attorney General

Office of the Deputy Attorney General

U.S. Department of Justice

Desk (202) 305-0273

Cell (202) 532-3087

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

Maneuver (202) 225-3074
Facsimile (202) 225-3874
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<http://oversight.house.gov>

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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, [t]hey'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.

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 I-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 Attkisson, *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



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

Reprint (202) 225-8024
Minority (202) 225-8034

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.
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 request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when they were requested.
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

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.

PATRICK J. LEAHY, VERMONT, CHAIRMAN

HERB KOHL, WISCONSIN
 DIANNE FEINSTEIN, CALIFORNIA
 CHARLES E. SCHUMER, NEW YORK
 RICHARD J. DURBIN, ILLINOIS
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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 Michele M. Leonhart
 Administrator
 U.S. Drug Enforcement Administration
 U.S. Department of Justice
 700 Army Navy Drive
 Arlington, VA 22202

Dear Administrator Leonhart:

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 for resale to Mexican cartels.

I understand from documents and other information provided that Drug Enforcement Administration (DEA) Agents were aware of Operation Fast and Furious and possibly deeply involved in the operation. Reportedly, DEA funds were used to facilitate operations in ATF’s Operation Fast and Furious.

Accordingly, in order to get a better understanding of DEA’s involvement with Operation Fast and Furious please provide all records relating to communications between supervisors and DEA headquarters regarding DEA’s involvement. Additionally, I request that you arrange for knowledgeable DEA supervisors to brief members of my staff no later than March 25, 2011.

I would appreciate a response to this letter 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 Eric H. Holder, Jr.
 Attorney General, United States Department of Justice

PATRICK J. LEAHY, VERMONT, CHAIRMAN

HERB KOHL, WISCONSIN
DIANNE FEINSTEIN, CALIFORNIA
CHARLES E. SCHUMER, NEW YORK
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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 9, 2011

The Honorable Eric Holder Jr.
Attorney General
United States Department of Justice
950 Pennsylvania Ave, N.W.
Washington, DC 20001

Dear Attorney General Holder:

I forward to you the enclosed letter from the National Rifle Association requesting examination of the Bureau of Alcohol, Tobacco, and Firearms (ATF) activities related to "Project Gunrunner." I understand that Senator Grassley has been making inquiries, as well. He raised the matter today in an oversight hearing with Secretary Napolitano.

I write to ask whether components of the Department have reviewed this matter and the status of any such inquiries. I also inquire with respect to the operation and whether it remains ongoing.

Sincerely,


PATRICK LEAHY
Chairman

From: (b) (7)(C)
Sent: Wednesday, March 09, 2011 3:29:46 PM
To: Melson, Kenneth E.; Hoover, William J.; McDermond, James E.
CC: (b) (7)(C)
Subject: HJC

fyi

March 9, 2011

The Hon. Lamar Smith
Chairman
House Committee on the Judiciary
2138 Rayburn Building
Washington, DC 20515

The Hon. John Conyers, Jr.
Ranking Member
House Committee on the Judiciary
2142 Rayburn Building
Washington, DC 20515

Dear Chairman Smith and Ranking Member Conyers:

I am writing to ask you to conduct expedited hearings on firearms trafficking enforcement tactics used by the Bureau of Alcohol, Tobacco, Firearms and Explosives.

As the nation's oldest and largest group dedicated to the civil rights of firearms owners, we have felt firsthand the effects of recent violence along the Mexican border. Among the victims of the bloodshed was NRA Life member Robert Krentz, murdered on his Arizona ranch by border-crossing criminals. We've also seen the violence exploited as an excuse for promoting many gun control proposals, most of which had been suggested earlier as "solutions" to other problems.

Law enforcement agencies have sufficient laws at their disposal to address this crisis. Among the relevant laws are those outlawing transfers to prohibited persons such as illegal aliens and nonimmigrant aliens, transfers for use in violent and drug trafficking crimes, and illegal exportation of firearms and ammunition. Current and proposed laws that simply affect honest Americans shouldn't be any part of that plan.

To be clear, the National Rifle Association strongly supports the efforts of federal, state and local law enforcement officials to disrupt criminal enterprises, and thousands of our members proudly serve in those agencies. However, the Department of Justice's Inspector General has criticized the BATFE for focusing on investigations of straw purchasers "rather than on higher-level traffickers, smugglers, and the ultimate recipients of the trafficked guns." And more recent national media reports have raised very serious allegations that even while the Inspector General's review was going on, BATFE leaders

were undertaking a new approach to the issue—an approach that can only be called wrongheaded, foolish and reportedly deadly.

Their project—known as “Fast and Furious” and apparently conducted over the strong objections of rank and file agents—reportedly allowed over 2,000 firearms to be sold to individuals already linked to Mexican drug cartels. Many of those transactions were reported as suspicious by the licensed firearms dealers themselves, but BATFE reportedly encouraged them to proceed with these sales, which the dealers would otherwise have turned down. Hundreds of those guns have reportedly been traced to criminal activity so far, including two that were discovered at the scene of a shootout that claimed the life of a U.S. Border Patrol agent.

It’s tragically ironic that while this plan was apparently unraveling, the BATFE was also seeking White House approval to demand reporting of certain multiple rifle sales. That reporting requirement would flood the agency with even more reports of legal transactions, while likely driving criminal traffickers further underground.

We are clearly at a critical point on this issue. Without aggressive enforcement of existing laws, the situation on the border will continue to deteriorate, claiming the lives of innocent citizens and law enforcement personnel alike. Yet reckless enforcement tactics may already have cost lives, while ineffective regulatory requirements would waste scarce resources and undermine Americans’ Second Amendment rights.

Oversight of these serious problems should not be conducted by the very agencies that reportedly created them. Therefore, we respectfully urge you to use every power at your disposal to review the BATFE’s investigative tactics and regulatory proposals with respect to southwest border issues.

The investigation should consider the effectiveness of past BATFE enforcement tactics, as well as the conduct of the “Fast and Furious” operation and the bureau’s response to internal criticism of that initiative. Any investigation should also examine the responses by the BATFE and the Department of Justice to earlier congressional inquiries about the “Fast and Furious” program. (In particular, there seems to be good reason to question the Justice Department’s statement on February 4 that the BATFE never sanctioned the sale of guns “to a straw purchaser who then transported them into Mexico.”)

We greatly appreciate your attention to this issue. If you have any questions, please don’t hesitate to contact me personally.

Sincerely,

Chris W. Cox
Executive Director
NRA Institute for Legislative Action

(b) (7)(C)

*DOJ- Bureau of Alcohol, Tobacco, Firearms & Explosives
Chief - Office of Legislative Affairs*

(b) (7)(C) (mobile1)

(b) (7)(C) (mobile2)
(office)
202.648.9708 (fax)

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", positioned above the printed 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

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:

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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?

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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".

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

This letter responds to your request for information concerning Operation Fast and Furious, an ongoing criminal investigation ~~into~~ of an extensive gun-trafficking enterprise. Operation Fast and Furious is ~~a~~ part of ~~ATF's initiative Project Gunrunner, which deal with weapons trafficking along the U.S. Southwest Border. Project Gunrunner, a broad ATF initiative to deal with weapons trafficking along the Southwest Border.~~ As of March 2010, Project Gunrunner had led to the arrest of 1,397 defendants ~~—~~ 850 of which had been convicted ~~—~~ and the seizure of ~~more than~~ ~~over~~ 6,688 firearms.

~~The~~ Operation Fast and Furious ~~investigation~~ was opened over a year ago and approved by the ATF Phoenix Field ~~Division~~ Office and the United States Attorney's Office for the District of Arizona, consistent with established procedures for such matters. The investigation was subsequently approved by the multi-agency Organized Crime and Drug Enforcement Task Force Program. The purpose of the investigation is to dismantle a transnational organization believed to be responsible for trafficking weapons into Mexico, in part by prosecuting its leadership. The investigation is led by a dedicated team of ~~F~~ederal prosecutors and ATF agents. To date, this investigation has resulted in an indictment charging 20 defendants with conspiracy to purchase hundreds of firearms from September 2009 to December 2010.

Allegations in the media and elsewhere suggest that Operation Fast and Furious was a failed effort. To the contrary, the investigation has dismantled a large, complex, international ~~firearms trafficking organization~~ ~~case,~~ and the investigation ~~is still ongoing~~ ~~has not concluded.~~ Without the perseverance of this multi-agency task force, this sophisticated criminal network would still be trafficking hundreds of weapons into Mexico today and in the future.

Operation Fast and Furious neither involved a "sting" in Mexico nor any "controlled deliveries" of weapons into Mexico. At no time did ATF agents observe weapons from Operation Fast and Furious cross into Mexico. There were no undercover law enforcement officers involved in Operation Fast and Furious and ATF did not provide weapons to suspects in that investigation.

The Department of Justice has a long standing policy against the disclosure of non-public information about ongoing criminal investigations. This policy is based, in part, on the strong interest in protecting the effectiveness of ongoing law enforcement efforts. Therefore, I am unable to share with you any ~~of the~~ particular details of Operation Fast and Furious.



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 4, 2011

The Honorable Lamar Smith
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This responds to your letter, dated March 9, 2011, which asked a number of questions about the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) investigation known as Operation Fast and Furious. An identical letter has been sent to all signatories of your letter.

Mexican drug cartels are a significant organized crime threat, both to the United States and to Mexico. According to the Department's 2010 National Drug Threat Assessment, these cartels present the single greatest drug trafficking threat to the United States. Mexican cartels use violence to control drug trafficking corridors, through which drugs flow north into the United States while guns and cash flow south to Mexico. For calendar year 2009, the Mexican government reported 9,635 murders in Mexico resulting from organized crime and drug trafficking -- an increase of 50% from the number of murders in 2008 and three times the 2,837 killed in 2007. In part because Mexican law severely restricts gun ownership, Mexico's drug traffickers routinely smuggle weapons purchased in the United States into Mexico.

Stopping the flow of weapons across the border into Mexico is a challenging task given the resources of the cartels and the cartels' use of sophisticated trafficking organizations to move firearms across the border. These trafficking organizations typically involve the use of straw purchasers, who purchase the weapons not for themselves, but with the purpose of transferring them to others who then facilitate their movement across the border to the cartels. Among the challenges in investigating a trafficking organization is developing sufficient evidence to prove that particular firearm purchases are, in fact, unlawful straw purchases. As you know, it is legal for a non-prohibited person to purchase an unlimited number of firearms from a licensed gun dealer and then to sell or barter those firearms to another person.

Operation Fast and Furious is an ongoing criminal investigation of an extensive gun-trafficking enterprise.¹ It was opened over a year ago and approved by the ATF Phoenix Field Office and the United States Attorney's Office for the District of Arizona (USAO) in the normal

¹ Operation Fast and Furious, which is one law enforcement investigation, should not be confused with Project Gunrunner, which is the broader initiative to deal with weapons trafficking along the Southwest Border generally. As was recently noted by the Congressional Research Service, "[a]s of March 2010, Project Gunrunner had led to the arrest of 1,397 defendants -- 850 of which had been convicted -- and the seizure of over 6,688 firearms." Congressional Research Service Report RL32724, *Mexico-U.S. Relations: Issues for Congress*, February 15, 2011, at 19.

The Honorable Lamar Smith

Page Two

course, consistent with established procedures for such matters. The investigation was subsequently approved by the multi-agency Organized Crime and Drug Enforcement Task Force (OCDETF) Program. The purpose of the investigation is to dismantle a transnational organization believed to be responsible for trafficking weapons into Mexico, in part by prosecuting its leadership. The investigation is led by a dedicated team of USAO prosecutors and ATF agents. With regard to your question about the results and status of the investigation, to date, these efforts have resulted in an indictment charging 20 defendants with federal firearms offenses and the investigation is continuing.

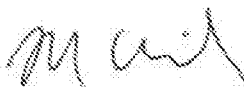
Allegations have been raised about how this investigation was structured and conducted. As you note, at the request of the Attorney General, the Acting Inspector General is now investigating those allegations. The Attorney General has also made it clear to the law enforcement agencies and prosecutors working along the Southwest Border that the Department should never knowingly permit firearms to cross the border.

You have also asked for information about eTrace, an important tool in ATF's work to dismantle gun trafficking. eTrace is an Internet-based system that allows participating law enforcement agencies to submit firearm traces to the ATF National Tracing Center. Authorized users can receive firearm trace results electronically, search a database of all firearm traces submitted by their individual agency, and perform analyses. In the last year, eTrace has gained strong new features. eTrace now accommodates data in Spanish, gives translations, and allows users to better sort and search additional data elements and images to improve weapons tracing. In the next 24 months, planned enhancements to eTrace will improve ATF's ability to monitor and map gun tracing data in real time and to share information with other federal agencies, as well as with state and local law enforcement.

Unfortunately, at this time, we are not in a position to answer your questions in greater detail. The Department has a long standing policy against the disclosure of non-public information about ongoing criminal investigations. This policy is based on our strong interest in protecting the independence and effectiveness of ongoing law enforcement efforts. We are, however, in the process of working with Chairman Issa to provide documents concerning this matter and would be willing to work with you and your staff in the same manner. Through this process we hope to find ways to be responsive to your needs that are consistent with the Department's need to maintain the confidentiality of ongoing investigations.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this, or any other matter.

Sincerely,



Ronald Weich
Assistant Attorney General

cc: The Honorable John Conyers, Jr.
Ranking Minority Member



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 13, 2011

The Honorable Darrell Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This responds to your letter to Kenneth Melson, Acting Director of the Department's Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), dated April 11, 2011, which states that you expect production of the documents today, which is the subpoena's return date, unless there is an assertion of executive privilege. Your subpoena calls for a wide ranging group of documents, and as we have previously advised you, our search for responsive documents is continuing and some of the subpoenaed documents relate to ongoing law enforcement investigations, including our investigation of the murder of a federal law enforcement agent. We trust that you will await the results of our continuing document search and appreciate the risks to our law enforcement efforts that are presented by demands for documents from pending criminal investigations. We are continuing to confer with your staff in an effort to accommodate your oversight needs for information, consistent with our law enforcement responsibilities. Indeed, we made available documents for review prior to today's return date.

Our letter of April 8th offered Committee staff access to law enforcement sensitive documents responsive to your letter, and they have now reviewed the documents we have located to date. As our letter further explained, we are not in a position to disclose non-public information or documents relating to on-going criminal investigations, based upon the Department's long-standing policy relating to such matters. This policy is essential to our law enforcement mission and based on our strong interest in protecting both the independence and effectiveness of our law enforcement efforts. The letter enclosed with our last response, from Attorney General Reno to Senator Hatch, then-Chairman of the Senate Judiciary Committee, provides a fuller statement of the rationale for our policy, as well as its lengthy and nonpartisan history. The letter reads, in part:

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

The Honorable Darrell Issa

Page 2

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 be compromised by the disclosure to Congress of open investigative files. . . .

.....

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.

Letter from Attorney General Reno to Chairman Hatch, dated May 17, 2000.

In addition to the foregoing concerns, we believe that the disclosure of non-public information about the pending investigations here presents risks to those specific law enforcement efforts and to individuals involved in them. Your subpoena encompasses records that would identify individuals who are assisting in the investigation and whose cooperation may never become public. The risk of their identification -- even the knowledge that the information they provide may be disclosed -- discourages cooperation by them and others whose assistance is important to the success of our law enforcement efforts. Similarly, records requested by you would identify sources and investigative techniques that have not yet been disclosed. Disclosure of these types of information may present risks to individual safety in the violent environment of firearms trafficking activities. Disclosure also may prematurely inform subjects and targets about our investigation in a manner that permits them to evade and obstruct our prosecutorial efforts. We realize that the Committee does not intend these results, but these are serious risks, and we have already observed effects on these investigations.

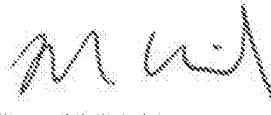
The Honorable Darrell Issa

Page 3

Based upon conversations with Committee staff, we want to explore other options for accommodating your interests in strategic and policy decisions relating to our law enforcement efforts along the Southwest Border. While our search for responsive documents is continuing, we remain ready and willing to confer further with staff about possibilities for meeting your oversight needs, consistent with our law enforcement interests and long-standing policy. We request that you defer the issue of subpoena compliance while we explore these options and continue our search for documents.

Please do not hesitate to contact this office if we may provide additional assistance regarding this, or any other matter.

Sincerely,



Ronald Weich
Assistant Attorney General

cc: The Honorable Elijah E. Cummings
Ranking Minority Member



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 13, 2011

The Honorable Darrell Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This responds to your letter to Kenneth Melson, Acting Director of the Department's Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), dated April 11, 2011, which states that you expect production of the documents today, which is the subpoena's return date, unless there is an assertion of executive privilege. Your subpoena calls for a wide ranging group of documents, and as we have previously advised you, our search for responsive documents is continuing and some of the subpoenaed documents relate to ongoing law enforcement investigations, including our investigation of the murder of a federal law enforcement agent. We trust that you will await the results of our continuing document search and appreciate the risks to our law enforcement efforts that are presented by demands for documents from pending criminal investigations. We are continuing to confer with your staff in an effort to accommodate your oversight needs for information, consistent with our law enforcement responsibilities. Indeed, we made available documents for review prior to today's return date.

Our letter of April 8th offered Committee staff access to law enforcement sensitive documents responsive to your letter, and they have now reviewed the documents we have located to date. As our letter further explained, we are not in a position to disclose non-public information or documents relating to on-going criminal investigations, based upon the Department's long-standing policy relating to such matters. This policy is essential to our law enforcement mission and based on our strong interest in protecting both the independence and effectiveness of our law enforcement efforts. The letter enclosed with our last response, from Attorney General Reno to Senator Hatch, then-Chairman of the Senate Judiciary Committee, provides a fuller statement of the rationale for our policy, as well as its lengthy and nonpartisan history. The letter reads, in part:

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

The Honorable Darrell Issa

Page 2

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 be compromised by the disclosure to Congress of open investigative files. . . .

.....

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.

Letter from Attorney General Reno to Chairman Hatch, dated May 17, 2000.

In addition to the foregoing concerns, we believe that the disclosure of non-public information about the pending investigations here presents risks to those specific law enforcement efforts and to individuals involved in them. Your subpoena encompasses records that would identify individuals who are assisting in the investigation and whose cooperation may never become public. The risk of their identification -- even the knowledge that the information they provide may be disclosed -- discourages cooperation by them and others whose assistance is important to the success of our law enforcement efforts. Similarly, records requested by you would identify sources and investigative techniques that have not yet been disclosed. Disclosure of these types of information may present risks to individual safety in the violent environment of firearms trafficking activities. Disclosure also may prematurely inform subjects and targets about our investigation in a manner that permits them to evade and obstruct our prosecutorial efforts. We realize that the Committee does not intend these results, but these are serious risks, and we have already observed effects on these investigations.

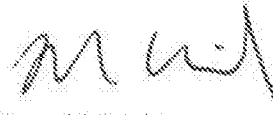
The Honorable Darrell Issa

Page 3

Based upon conversations with Committee staff, we want to explore other options for accommodating your interests in strategic and policy decisions relating to our law enforcement efforts along the Southwest Border. While our search for responsive documents is continuing, we remain ready and willing to confer further with staff about possibilities for meeting your oversight needs, consistent with our law enforcement interests and long-standing policy. We request that you defer the issue of subpoena compliance while we explore these options and continue our search for documents.

Please do not hesitate to contact this office if we may provide additional assistance regarding this, or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'R Weich', is positioned above the typed name.

Ronald Weich
Assistant Attorney General

cc: The Honorable Elijah E. Cummings
Ranking Minority Member

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April 8, 2011

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,



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.

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

TABLE OF CONTENTS

<u>CHAPTER A. GENERAL</u>	<u>Page</u>
1. Discussion	A - 1
2. Headquarters Composition and Executive Level Responsibilities	A - 1
3. Definitions	A - 3
4. General Guidelines for Releasing Information	A - 3
5-10 Reserved	
 <u>CHAPTER B. LIAISON DIVISION</u>	
11. General	B - 1
12. Responsibilities	B - 1
13. Official Visits	B - 4
14. Special Events	B - 5
15. Professional Associations	B - 6
16. Federal Law Enforcement Agencies	B - 7
17-20 Reserved	
 <u>CHAPTER C. PUBLIC AFFAIRS DIVISION</u>	
21. General	C - 1
22. Responsibilities	C - 2
23. Other ATF Employees' Responsibilities	C - 4
24. Releasing Information about Criminal Enforcement Actions	C - 7
25. Releasing Information about Industry Operations Administrative Actions	C - 8
26. Releasing Information about Bureau Employees to Third Parties	C - 9
27. Critical Incident Operations	C - 9
28. Requesting Public Affairs Division Support	C - 9
29. Written Media Agreements	C - 10
30. Submission of Clippings, Photographs, and Tapes	C - 10
31. Media Attendance at Enforcement Operations	C - 10
32. Death Notifications	C - 11
33-40 Reserved	
 <u>CHAPTER D. LEGISLATIVE AFFAIRS DIVISION</u>	
41. General	D - 1
42. Responsibilities	D - 1
43. Congressional Visits	D - 3
44. Guidelines for Congressional Visits	D - 3
45. News Releases and Articles	D - 4
46. Congressional Correspondence	D - 5
47. Information Restrictions	D - 5
48-50 Reserved	
 <u>CHAPTER E. ATF LIBRARY, ARCHIVE AND HISTORICAL PROGRAMS</u>	
51. General	E - 1
52. Responsibilities	E - 1
53-60 Reserved	

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 DIVISION11. 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.

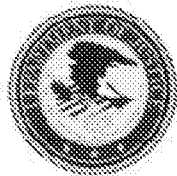
47. INFORMATION RESTRICTIONS. Information provided to congressional offices is governed by the legal and policy restrictions similar to those applicable to the release of information to the public. If a congressional inquiry requests, or appears to request, restricted information, the matter will be 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

**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 8, 2011

The Honorable Darrell Issa
Chairman
Committee on Oversight and Government Reform
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This responds to your letter dated March 16, 2011, and your subpoena issued on March 31, 2011, to Kenneth Melson, Acting Director of the Department's Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). Your letter and subpoena requested documents and other information concerning, among other things, the pending criminal investigation undertaken by ATF known as Operation Fast and Furious and the pending criminal investigation into the shooting death of Customs and Border Protection (CBP) Agent Brian Terry.

To date, our search has located several law enforcement sensitive documents responsive to the requests in your letter and the subpoena. We have substantial confidentiality interests in these documents because they contain information about ATF strategies and procedures that could be used by individuals seeking to evade our law enforcement efforts. We are prepared to make these documents, with some redactions, available for review by Committee staff at the Department. They will bear redactions to protect information about ongoing criminal investigations, investigative targets, internal deliberations about law enforcement options, and communications with foreign government representatives. In addition, we notified Committee staff that we have identified certain publicly available documents that are responsive. Committee staff informed us that, for now, they do not want us to produce such documents. Our search for records responsive to your letter and the subpoena is continuing and we will supplement this response when additional information becomes available.

While our efforts to identify responsive documents are continuing, many of your requests seek records relating to ongoing criminal investigations. Based upon the Department's long-standing policy regarding the confidentiality of ongoing criminal investigations, we are not in a position to disclose such documents, nor can we confirm or deny the existence of records in our ongoing investigative files. This policy is based on our strong need to protect the independence and effectiveness of our law enforcement efforts. The enclosed May 17, 2000 letter from Attorney General Reno to Senator Hatch, then-Chairman of the Senate Judiciary Committee, provides a fuller statement of the rationale for this policy, as well as its lengthy and nonpartisan

The Honorable Darrell Issa

Page 2

history. Within those constraints, we would appreciate the opportunity to confer with Committee staff to explore other options to accommodate your interests and look forward to working with you regarding the information you seek.

Your letter also asks certain questions, and reflects certain assumptions, concerning Operation Fast and Furious that we are presently unable to address because they relate directly to an ongoing investigation. We can say, however, that Operation Fast and Furious is a criminal investigation of an extensive gun-trafficking enterprise.¹ The purpose of the investigation is to dismantle a transnational organization believed to be responsible for trafficking weapons into Mexico, in part by prosecuting its leadership. The investigation is led by a dedicated team of United States Attorney's Office prosecutors and ATF agents. These efforts have already resulted in an indictment charging 20 defendants with federal firearms offenses, and the investigation is continuing.

Mexican drug cartels are a significant organized crime threat, both to the United States and to Mexico. According to the Department's 2010 National Drug Threat Assessment, these cartels present the single greatest drug trafficking threat to the United States. Mexican cartels use violence to control drug trafficking corridors, through which drugs flow north into the United States, while guns and cash flow south to Mexico. Drug-related violence in Mexico was increasing at an alarming rate well before the inception of Operation Fast and Furious. For calendar year 2009, the Mexican government reported 9,635 murders in Mexico resulting from organized crime and drug trafficking – an increase of 50 percent from the number of murders in 2008 and three times the 2,837 killed in 2007. In part because Mexican law severely restricts gun ownership, Mexico's drug traffickers routinely smuggle weapons purchased in the United States into Mexico.

Stopping the flow of weapons across the border into Mexico is a challenging task given the resources of the cartels and the cartels' use of sophisticated trafficking organizations to move firearms across the border. These trafficking organizations typically involve the use of straw purchasers, who purchase the weapons not for themselves, but with the purpose of transferring them to others who then facilitate their movement across the border to the cartels. Among the challenges in investigating a trafficking organization is developing sufficient evidence to prove that particular firearm purchases are, in fact, unlawful straw purchases. As you know, it is legal for a non-prohibited person to purchase an unlimited number of firearms from a licensed gun dealer and then to sell or barter those firearms to another person.

Allegations have been raised about how Operation Fast and Furious was structured and conducted. As you note, at the request of the Attorney General, the Department of Justice's Office of the Inspector General (DOJ-OIG) is now investigating those allegations. Your letter asks about DOJ-OIG's ability to handle this inquiry in an independent and objective manner.

¹ Operation Fast and Furious, which is one law enforcement investigation, should not be confused with Project Gunrunner, which is the broader initiative to deal with weapons trafficking along the Southwest Border generally. As was recently noted by the Congressional Research Service, "[a]s of March 2010, Project Gunrunner had led to the arrest of 1,397 defendants – 850 of which had been convicted – and the seizure of over 6,688 firearms." Congressional Research Service Report RL32724, *Mexico-U.S. Relations: Issues for Congress*, February 15, 2011, at 19.

The Honorable Darrell Issa

Page 3

The enclosed letter to Senator Grassley, dated March 16, 2011, from the acting Chairperson of the Integrity Committee of the Council of Inspectors General on Integrity and Efficiency (CIGIE), responds to similar questions raised by Senator Grassley. CIGIE's response to Senator Grassley describes DOJ-OIG as "a model of independence, objectivity, and above all, integrity in every aspect of its daily pursuits." The response goes on to state that DOJ-OIG has "fully earned an unquestioned reputation for successfully addressing highly difficult and sensitive cases, and deserves the trust and confidence of the public. Further, its prior involvement in a review of a portion of the same ATF program can properly be viewed, not as an impediment to objectivity, but rather as an opportunity for the DOJ-OIG staff to have obtained familiarity with the subject-matter and working environment that would be used advantageously in the investigation requested by the Attorney General."

Finally, your letter asks about the shooting death of CBP Agent Brian Terry. The Department, with the Federal Bureau of Investigation leading the effort, is investigating the shooting death of Agent Terry. ATF has assisted in that investigation and the United States Attorney's Office has assigned senior prosecutors to the case. We are dedicated to holding Agent Terry's killer or killers responsible through the criminal justice process that is currently underway, but we are not in a position to provide additional information at this time regarding this active criminal investigation for the reasons set forth above and in the enclosed Attorney General Reno letter.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional information regarding this, or any other, matter.

Sincerely,



Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Elijah E. Cummings
Ranking Minority Member



Office of the
Inspector General

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

March 16, 2011

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Grassley:

This is in response to your letter of March 8, 2011, to Kevin L. Perkins, in his capacity as Chair of the Integrity Committee of the Council of Inspectors General on Integrity and Efficiency (CIGIE). You expressed concern that the Department of Justice's Office of Inspector General would not be able to apply a publicly acceptable level of independence and objectivity in carrying out a review that the Attorney General had requested it to perform regarding an operation of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF).

In accordance with the Integrity Committee's rules, because this matter involved the DOJ-OIG, Mr. Perkins, as an official of the FBI and other Justice Department staff recused themselves from any involvement in this matter. Accordingly, as the Committee's senior member, I am acting as Chairperson for this case.

At a special meeting called on March 14, 2011, to consider the issues identified in your letter, the membership concluded unanimously that neither the Committee's authorizing statute nor its internal rules and procedures apply to the matters you identified. The Committee's jurisdiction, as defined by section 7(d)(1) of the Inspector General Reform Act of 2008 (Public Law 110-409, October 14, 2008), is to "receive, review, and refer for investigation allegations of wrongdoing that are made against Inspectors General and staff members." In this context, the Committee has consistently interpreted its mandate to extend only to questions of improper or wrongful conduct on the part of individuals occupying positions of significant responsibility in Inspector General offices, and then, as required by the statute, make recommendations, where appropriate, to the Chair of the CIGIE. However, your statement of reasons why "the public may be unable to trust that the DOJ-OIG is completely disinterested and independent" appears to involve concerns of an institutional or organizational nature, about which the Committee is not empowered to act. Furthermore, the IC has no authority to mandate the recusal of an Office of Inspector General.

However, as the name Integrity Committee implies, scenarios may occur from time to time that cause the membership to comment in a manner that goes beyond the chartered structure. Your stated reservations about the suitability of the DOJ-OIG to properly investigate the Project Gunrunner case present one of those instances.

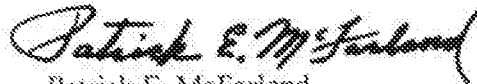
Honorable Charles E. Grassley

2

While that office is currently headed by an acting Inspector General, the organization, managed for many years by former Inspector General Glenn Fine, has established itself as a model of independence, objectivity, and above all, integrity in every aspect of its daily pursuits. It fully earned an unquestioned reputation for successfully addressing highly difficult and sensitive cases, and deserves the trust and confidence of the public. Further, its prior involvement in a review of a portion of the same ATF program can properly be viewed, not as an impediment to objectivity, but rather as an opportunity for the DOJ-OIG staff to have obtained familiarity with the subject-matter and working environment that would be used advantageously in the investigation requested by the Attorney General. Thus, although an Inspector General from another agency could feasibly conduct this work, it would face a learning curve that might involve some delay in completing the assignment. Finally, it appears that the belief DOJ-OIG was not responsive to disclosures made by an ATF agent may have been initially reached without obtaining information from that office.

If you have any questions or need further information, please do not hesitate to contact me on (202) 606-1200.

Sincerely,



Patrick E. McFarland
Inspector General



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 cursive script, appearing to read "Janet Reno".

Janet Reno

cc: Honorable Arlen Specter
Honorable Robert G. Torricelli
Honorable Charles E. Grassley

DARRELL E. ISSA **Employee 5**
CHAIRMAN

ONE HUNDRED TWELFTH CONGRESS

ELIJAH E. CUMMINGS **538**/LAND
RANKING MEMBER

Congress of the United States
House of Representatives

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ANN MARIE BOURKE, NEW YORK
PAUL A. GOSAR, D.D.'S, ARIZONA
RAUL R. LABRADOR, IDAHO
PATRICK MCGAN, PENNSYLVANIA
SCOTT GILJEAN AIS, M.D., TENNESSEE
JOE WALSH, ILLINOIS
TRE F. COWDY, SOUTH CAROLINA
DENNIS A. ROSS, FLORIDA
FRANK C. GUINTA, NEW HAMPSHIRE
BLAKE PARENTFIELD, TEXAS
MIKE KELLY, PENNSYLVANIA

LAWRENCE J. SHADY
STAFF DIRECTOR

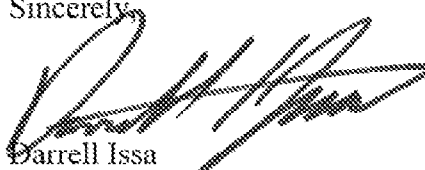
April 11, 2011

Mr. 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:

We received the Department's letter dated April 8, 2011, regarding the Committee's investigation of Project Gunrunner and Operation Fast and Furious. Absent a valid assertion of executive privilege over the materials sought, I expect you to produce the things identified in the March 31, 2011, subpoena's schedule by the return date.

Sincerely,


Darrell Issa
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Member

The Honorable Charles E. Grassley, Ranking Member,
U.S. Senate, Committee on the Judiciary

PATRICK J. LEAHY, VERMONT, CHAIRMAN

HERB KOHL, WISCONSIN
 DIANNE FEINSTEIN, CALIFORNIA
 CHARLES E. SCHUMER, NEW YORK
 RICHARD J. DURBIN, ILLINOIS
 SHELDON WHITEHOUSE, RHODE ISLAND
 AMY KLOBUCHAR, MINNESOTA
 AL FRANKEN, MINNESOTA
 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", with a horizontal line extending to the right.

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



G A O

Accountability * Integrity * Reliability

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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Attachment 2



G A O

Accountability * Integrity * Reliability

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: Schmalzer, Tracy (SMO) (b) (7)(C)
Sent: Friday, February 25, 2011 3:50 PM
To: (b) (7)(C); Sweeney, Laura (SMO)
CC: (b) (7)(C)
Subject: RE: Gunrunner statement

thanks (b) (7)(C) hold off on anything for now -- we're finalizing the grassley letter and we'll want to make sure they comport. if you get any inquiries let us know -- i haven't had a one, which was a bit surprising.

From: (b) (7)(C) (ATF)
Sent: Friday, February 25, 2011 3:45 PM
To: Sweeney, Laura (SMO); Schmalzer, Tracy (SMO)
Cc: (b) (7)(C) (ATF)
Subject: Gunrunner statement

Ladies,

Here is the statement we would like to keep in our back pocket in case we need to respond to additional media queries associated with the Phoenix case that was recently highlighted in the media on CBS.

It would be issued as a statement from either the director, deputy director or myself.

I am forwarding to you all for concurrence.

Let me know

(b) (7)(C)

(b) (7)(C)
Chief
ATF Public Affairs Division
Washington, DC
Desk 202-648-(b) (7)(C)
Cell (b) (7)(C)

From: Chait, Mark R.

Sent: Tuesday, March 22, 2011 12:51 PM

To: (b) (7)(C); McMahon, William G.; (b) (7)(C)

CC: Hoover, William J.

Subject: Re: Draft response to HJC Chairman Smith's letter of 3/9/11 re Gunrunner/ Fast & Furious allegations - for comment asap. Thanks. FB

In 3rd last para., after gunrunner program add: a high level strategy (30,000 feet) that does not pre identify field tactics or methods on any one investigation. Thanks

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From: (b) (7)(C)

To: Chait, Mark R.; McMahon, William G. (b) (7)(C)

Sent: Tue Mar 22 12:26:58 2011

Subject: Fw: Draft response to HJC Chairman Smith's letter of 3/9/11 re Gunrunner/ Fast & Furious allegations - for comment asap. Thanks. FB

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From: Burton, Faith (SMO)

To: (b) (7)(C); McDermond, James E. (b) (7)(C); Hoover, William J.; Melson, Kenneth E.

Cc: Gaston, Molly (SMO); Burke, Dennis (USAAZ); Weinstein, Jason (CRM); Cunningham, Patrick (USAAZ)

Sent: Tue Mar 22 11:57:09 2011

Subject: Draft response to HJC Chairman Smith's letter of 3/9/11 re Gunrunner/ Fast & Furious allegations - for comment asap. Thanks. FB

<<smith gunrunner clean.docx>>

From: (b) (7)(C)
Sent: Friday, March 18, 2011 12:21 PM
To: (b) (7)(C) (b) (7)(C)
Subject: Reporter: Andrew Ramonas MainJustice.com - 202-654-7050

Importance: High

Andrew Ramonas from Main Justice.com is looking for someone to go on record regarding the Congressman Issa request for information on Project Gunrunner/Fast and Furious. He would like to know:

- Is ATF is going to provide the requested information?
- Is ATF going to answer his questions and if so, what are the answers?
- Does ATF have a comment on the inquiry?

(b) (7)(C)

Special Agent/Program Manager
Public Affairs Division
ATF Headquarters
Washington D.C.

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From: (b) (7)(C)
Sent: Wednesday, March 09, 2011 5:15 PM
To: (b) (7)(C) (b) (7)(C)
Subject: AG Approps Q and As
Attachments: AG Approps Q and As.docx

From: (b) (7)(C)
 Sent: Saturday, March 05, 2011 2:36:12 PM
 To: (b) (7)(C); (b) (7)(C)
 CC: McDermond, James E.
 Subject: Re: Sunday Briefing Plans

Looping in Jim. Grassley letters are at my office. Will get them for you in the morning.

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

From: (b) (7)(C)
 To: (b) (7)(C); (b) (7)(C)
 Sent: Sat Mar 05 14:11:35 2011
 Subject: Fw: Sunday Briefing Plans

Can you guys answer paragraph 2?

(b) (7)(C)

Acting Chief of Staff
 ATF Office of the Director
 O: 202-648-(b) (7)(C)
 C: (b) (7)(C)

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

From: (b) (7)(C)
 To: Melson, Kenneth E.
 Sent: Sat Mar 05 13:15:06 2011
 Subject: Re: Sunday Briefing Plans

We are on it.

(b) (7)(C)

Acting Chief of Staff
 ATF Office of the Director
 O: 202-648-(b) (7)(C)
 C: (b) (7)(C)

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

From: Melson, Kenneth E.
To: (b) (7)(C)
Sent: Sat Mar 05 12:56:47 2011
Subject: Re: Sunday Briefing Plans

Please have Melanie contact her POC at OIG and ask them to provide us with the date (b) (7)(C) filed his Whistle blower complaints with them, for both the web filing and the telephonic filing, and if they can, the substance of the filings. Need to know how the complaint morphed over time.

Also, I need a chronology of when we first heard about his complaint (at HQ) and the dates of each Fox and CBS airing of the complaint and the dates of each Grassley letter and each of DOJ's responses and the date of our briefing to the sjc staff.

Did I already ask for a chronology of Fast and Furious from opening to closing, each application for (b) (7)(E) when the case went to the USAO and the date of the indictment and the guns purchased after we sent it to the USAO for indictment. Thanks

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

From: (b) (7)(C)
To: Melson, Kenneth E.
Sent: Sat Mar 05 12:35:31 2011
Subject: Fw: Sunday Briefing Plans

As requested

(b) (7)(C)
Acting Chief of Staff
ATF Office of the Director
O: 202-648-(b) (7)(C)
C: (b) (7)(C)

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

From: Stinnett, Melanie S.
To: (b) (7)(C)
Sent: Sat Mar 05 12:28:43 2011
Subject: Re: Sunday Briefing Plans

According to Bob, the OIG has not notified our office of a compliant by (b) (7)(C)

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

From: (b) (7)(C)
To: Stinnett, Melanie S.
Sent: Sat Mar 05 12:10:30 2011
Subject: Fw: Sunday Briefing Plans

Mel:

Need an answer to director's question today please

(b) (7)(C)
Acting Chief of Staff
ATF Office of the Director
O: 202-648-(b) (7)(C)
C: (b) (7)(C)

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

From: Melson, Kenneth E.
To: (b) (7)(C)
Sent: Sat Mar 05 12:07:54 2011
Subject: Re: Sunday Briefing Plans

Would you have someone contact Melanie and ask her to check her staff to see if the DOJ OIG ever notified us in any way (b) (7)(C) complaint to OIG. Thanks. Ken

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

From: (b) (7)(C)
To: Melson, Kenneth E.
Sent: Fri Mar 04 22:42:47 2011
Subject: Fw: Sunday Briefing Plans

Fyi

(b) (7)(C)
Acting Chief of Staff
ATF Office of the Director
O: 202-648-(b) (7)(C)
C: (b) (7)(C)

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

From: Chait, Mark R.

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

Cc: Hoover, William J.

Sent: Fri Mar 04 22:19:02 2011

Subject: Sunday Briefing Plans

12 noon - FO and Dir. Off. Prep all Cases with Case SAs.

2p - Murder board Texas Cases with SAs (b) (7)(C) (b) (7)(C) and (b) (7)(C)

4:45 - Murder board Phoenix case with Newell, Needles, (b) (7)(C)

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From: Chait, Mark R.
Sent: Wednesday, March 02, 2011 11:32:29 AM
To: McDermond, James E.; (b) (7)(C)
Subject: FW: As requested

76

Attachments: 20110302080448614.pdf

Mark R. Chait
Assistant Director
Field Operations
202-648-8410

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

From: Newell, William D.
Sent: Wednesday, March 02, 2011 11:22 AM
To: Chait, Mark R.
Subject: As requested

Just got back from mtng at Group VII with GS (b) (7)(C). Attached is the only e-mail we could find reference a "memo to the Group". First, there were no memos. Second, this e-mail followed complaints from the same two 13s we discussed yesterday (b) (7)(E). These complaints were not made to GS (b) (7)(C) directly at first but were "gripes" made to other agents. GS (b) (7)(C) called a meeting to discuss the fact that ALL Group VII agents, regardless of grade, (b) (7)(E). His e-mail to the group was an attempt to "clear the air" and bring everyone together as a team. After his meeting with the group ASAC Gillett came over and had another meeting to "clear the air". At no time during this meeting were any "concerns about the case" raised. Again, this was more about griping by senior SAs being asked to (b) (7)(E) and their unprofessional way in how they communicated this.

Also attached is an example of (b) (7)(E) that GS (b) (7)(C) during this investigation. This was pre-GRIT and as you can see we were pulling in agents from other groups in Phoenix to assist. (b) (7)(C) and you can see he pulled his fair share (b) (7)(E) during this period. (b) (7)(C) was an SA from Tucson (now in Flagstaff); (b) (7)(C) was an SA from Tucson (now in Phoenix); (b) (7)(C) is an SA in Phoenix Group V (A/E); (b) (7)(C) is an SA in Phoenix Group II; (b) (7)(C) are Phoenix PD detectives who assisted on surveillance. Again, this is just a two week snapshot of the amount of planning and resources that went into not only (b) (7)(E). If you recall one of the SAs who talked to Sen Grassley's staffer (b) (7)(C) supposedly stated that "it was unheard off to not have agents (b) (7)(E). As you can see he's wrong, very wrong. Lastly, AT NO TIME DURING ANY OF THESE SURVEILLANCES DID OUR FOLKS, OR TFOs, WITNESS GUNS GOING TO MEXICO.

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

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

From: Bill Newell [mailto:(b) (7)(C)]
Sent: Wednesday, March 02, 2011 6:05 AM
To: Newell, William D.

Subject:

77

This E-mail was sent from "RNPBCD8A4" (Aficio MP 3010).

Scan Date: 03.02.2011 08:04:48 (-0500)

Queries to: Richol@atf.gov

From: (b) (7)(C)
Sent: Wednesday, March 02, 2011 11:25 AM
To: Chait, Mark R.; (b) (7)(C)
Subject: FW: NEWELLS.OCDETF and GUNRUNNER.pptx
Attachments: NEWELLS.OCDETF and GUNRUNNER.pptx

Password – (b) (2)

(b) (7)(C)

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

From: Chait, Mark R.
Sent: Wednesday, March 02, 2011 11:11 AM
To: (b) (7)(C)
Subject: FW: NEWELLS.OCDETF and GUNRUNNER.pptx

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From: Newell, William D.
Sent: Wednesday, March 02, 2011 9:41 AM
To: Chait, Mark R.
Subject: FW: NEWELLS.OCDETF and GUNRUNNER.pptx

Show the reporter this. These are the types of guns being actively being purchased by DTOs via straw purchases in the U.S. These guns we SEIZED prior to being trafficked to Mexico, along with many others.

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: Newell, William D.
Sent: Wednesday, January 05, 2011 8:01 AM

To: McMahon, William G.

Subject: NEWELLS.OCDETF and GUNRUNNER.pptx

Another reason I want to link the GRIT press conference topics with the points we want to make at the upcoming press conference on the Group VII cases (including Fast and Furious) is that on the very day that we held the GRIT press conference Group VII agents seized another .50 caliber rifle (second slide). At the GRIT press conference we had the .50 caliber in the first slide on display and it was by far the “hit” of the press conference with the media.

From: Chait, Mark R.
Sent: Wednesday, March 02, 2011 11:11 AM
To: (b) (7)(C)
Subject: FW: NEWELLS.OCDETF and GUNRUNNER.pptx
Attachments: NEWELLS.OCDETF and GUNRUNNER.pptx

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From: Newell, William D.
Sent: Wednesday, March 02, 2011 9:41 AM
To: Chait, Mark R.
Subject: FW: NEWELLS.OCDETF and GUNRUNNER.pptx

Show the reporter this. These are the types of guns being actively being purchased by DTOs via straw purchases in the U.S. These guns we SEIZED prior to being trafficked to Mexico, along with many others.

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: Newell, William D.
Sent: Wednesday, January 05, 2011 8:01 AM
To: McMahon, William G.
Subject: NEWELLS.OCDETF and GUNRUNNER.pptx

Another reason I want to link the GRIT press conference topics with the points we want to make at the upcoming press conference on the Group VII cases (including Fast and Furious) is that on the very day that we held the GRIT press conference Group VII agents seized another .50 caliber rifle (second slide). At the GRIT press conference we had the .50 caliber in the first slide on display and it was by far the "hit" of the press conference with the media.

From: (b) (7)(C)
Sent: Wednesday, February 23, 2011 5:13 PM
To: (b) (7)(C) McDermond, James E.;
McMahon, William G.; (b) (7)(C) Chait, Mark R.
Subject: Re: Fast & Furious

We need to update with Grassley materials. AG is audience. Anticipate Qs from Appropriators on Tuesday.

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From: (b) (7)(C)
To: (b) (7)(C)
Sent: Wed Feb 23 17:09:22 2011
Subject: Fast & Furious

As per your request.

Special Agent (b) (7)(C)
Program Manager
ATF Headquarters
Public Affairs Division
202-648-(b) (7)(C) desk)
202-648-9750 (fax)
(b) (7)(C) cell)
(b) (7)(C)

I hope that when you are my age, you will be able to say as I have been able to say: We lived in freedom. We lived lives that were a statement, not an apology. - Ronald Reagan

From: Melson, Kenneth E.
Sent: Tuesday, February 22, 2011 7:57 PM
To: (b) (7)(C) McDermond, James E.
CC: Hoover, William J.; Chait, Mark R.; McMahon, William G.
Subject: Re: ATF indicted in Fox News Channel story (not about Traver)

There are several factual mistakes, such as their assertion that the gun was used to kill the agent. Another is the "dry shooting" concept. Is there a way to correct those mistakes? Also, do you think we should consider talking to the family?

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From: (b) (7)(C)
To: McDermond, James E.
Cc: Hoover, William J.; Melson, Kenneth E.; Chait, Mark R.; McMahon, William G.
Sent: Tue Feb 22 17:06:29 2011
Subject: FW: ATF indicted in Fox News Channel story (not about Traver)

FYI this is on the Agent Terry death from today on Fox news

(b) (7)(C)

Chief

ATF Public Affairs Division

Washington, DC

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

Cell (b) (7)(C)

From: (b) (7)(C)
Sent: Tuesday, February 22, 2011 4:54 PM
To: (b) (7)(C)
Subject: ATF indicted in Fox News Channel story (not about Traver)

See this online story: http://video.foxnews.com/#/v/4550036/exclusive-family-of-murdered-border-agent-speaks-out/?playlist_id=87937. It's from today.

(b) (7)(C)

(b) (7)(C)

Deputy Chief

ATF - Public Affairs Division

(b) (7)(C)

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

Mobile) (b) (7)(C)

Main) 202-648-8500

From: (b) (7)(C)
 Sent: Wednesday, March 23, 2011 9:42 AM
 To: (b) (7)(C)
 Subject: FW: Guidance on Firearms Trafficking Investigations
 Attachments: Guidance on FT Inv..jpg

FYI

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From: (b) (7)(C)
 Sent: Thursday, March 17, 2011 4:57 PM
 To: Priority Items - Field Operations Public Folders; All Special Agents in Charge
 Subject: Guidance on Firearms Trafficking Investigations

THIS E-MAIL IS APPROVED AND AT THE DIRECTION OF THE ASSISTANT DIRECTOR – FIELD OPERATIONS

Attached you will find a memorandum reinforcing ATF's policy regarding firearms trafficking investigations. Please review this document and ensure that it is provided to all special agents in your respective field divisions.

If you have any questions, please contact the AD/FO's office.

(b) (7)(C)

Chief of Staff

Field Management Staff

Desk: 202-648 (b) (7)(C) Cellular: (b) (7)(C)

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From: (b) (7)(C)
Sent: Friday, March 11, 2011 3:20 PM
To: (b) (7)(C)
Subject: Question needed for today

(b) (7)(C)

Can you have (b) (7)(C) and/or (b) (7)(C) compile three to five cases in which there are adjudicated cases involving firearms trafficking cells that were investigated by both Mexican LE and ATF jointly.

I need it today.

Thank you

(b) (7)(C)

Chief

ATF Public Affairs Division

Washington, DC

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

Cell (b) (7)(C)

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From: (b) (7)(C)
Sent: Friday, March 11, 2011 2:18 PM
To: (b) (7)(C)
Subject: what do you think?

ATF did not authorize the transfer of firearms from Arizona to Mexico in the fast and Furious investigation and sought to identify, disrupt and dismantle a very active firearms trafficking cell of a violent cartel while being ever cognizant of US citizens second amendment right.

(b) (7)(C)

Chief

ATF Public Affairs Division

Washington, DC

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

Cell (b) (7)(C)

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From: (b) (7)(C)
Sent: Thursday, March 10, 2011 5:27 PM
To: (b) (7)(C)
Subject: Fw: as you requested

(b) (7)(C)
Chief
ATF Public Affairs Division

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From: (b) (7)(C)
To: Melson, Kenneth E.
Sent: Thu Mar 10 15:39:06 2011
Subject: as you requested

ATF did not authorize the transfer of firearms from Arizona to Mexico in the fast and Furious investigation and sought to identify, disrupt and dismantle a very active firearms trafficking cell of a violent cartel while being ever cognizant of US citizens second amendment right.

<http://www.scp.org/programs/airtalk/2011/03/09/gun-tracing-op/>

(b) (7)(C)
Chief
ATF Public Affairs Division
Washington, DC
Desk 202-648 (b) (7)(C)
Cell (b) (7)(C)

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From: (b) (7)(C)
Sent: Thursday, March 10, 2011 3:39 PM
To: Melson, Kenneth E.
Subject: as you requested

ATF did not authorize the transfer of firearms from Arizona to Mexico in the fast and Furious investigation and sought to identify, disrupt and dismantle a very active firearms trafficking cell of a violent cartel while being ever cognizant of US citizens second amendment right.

<http://www.sopr.org/programs/airtalk/2011/03/09/gun-tracing-op/>

(b) (7)(C)
Chief
ATF Public Affairs Division
Washington, DC
Desk 202-648 (b) (7)(C)
Cell (b) (7)(C)

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From: (b) (7)(C)
Sent: Thursday, March 10, 2011 12:00 PM
To: (b) (7)(C)
Subject: FYI

This was given to a large group after conversation with Bill Newell yesterday afternoon around 2 pm

Take out the any statement regarding the crossing of guns in Mexico, as there are three known incidents in Arizona. In two incidents, ATF coordinated with U.S. law enforcement partners and intended to take off guns before they crossed the border, but lost surveillance in congestion nearing the international border. In another incident, ATF coordinated fully with U.S. and Mexico law enforcement partners and intended to have the guns and suspects detained after crossing into Mexico, but guns were lost on the Mexico side of the border.

If we speak to these incidents, please keep comments very general.

(b) (7)(C)

(b) (7)(C)

Chief

ATF Public Affairs Division

Washington, DC

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

Cell (b) (7)(C)

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From: (b) (7)(C)
Sent: Thursday, March 10, 2011 9:29 AM
To: (b) (7)(C)
Subject: FW:
Attachments: ChampionDallas03082011.docx

(b) (7)(C)

Chief
ATF Public Affairs Division
Washington, DC
Desk 202-648 (b) (7)(C)
Cell (b) (7)(C)

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From: (b) (7)(C)
Sent: Thursday, March 10, 2011 9:13 AM
To: (b) (7)(C)
Subject:

(b) (7)(C)

Chief
ATF Public Affairs Division
Washington, DC
Desk 202-648 (b) (7)(C)
Cel (b) (7)(C)

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Firearms are a constitutionally protected commodity. Therefore, conducting an investigation into the trafficking of firearms is never as clear cut or well defined as an investigation into the trafficking of contraband, such as Cocaine. Additionally, the investigative and prosecutorial priorities of each law enforcement agency and United States Attorney vary greatly based on the types of crime committed within a specific judicial district. As a result, these investigative priorities play a big part in what information is shared with or acted on by ATF.

The recent firearms trafficking investigation conducted by the Dallas field division is not connected to the investigations recently conducted by the Phoenix field divisions. The firearm that was linked to murder of Agent Zapata and subsequently traced back to Dallas was purchased thirty days prior to ATF's knowledge of the transaction or initial contact with the straw purchaser.

From: (b) (7)(C)
Sent: Thursday, March 10, 2011 9:13 AM
To: (b) (7)(C)
Subject:
Attachments: ChampionDallas03082011.docx

(b) (7)(C)

Chief

ATF Public Affairs Division

Washington, DC

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

Cell (b) (7)(C)

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From: (b) (7)(C)

Sent: Wednesday, March 09, 2011 8:41 AM

To: Champion, Robert R.

CC: (b) (7)(C)

Subject: ChampionDallas03082011.docx

Attachments: ChampionDallas03082011.docx

Bobby,

Please review the statement and let me know what you think.....we would hold it in our hip pocket and use if it comes up.....but I want to have a game plan prior to the game beginning in Dallas.

(b) (7)(C)

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From: (b) (7)(C)
Sent: Friday, March 04, 2011 5:27 PM
To: McDermond, James E.; Hoover, William J.; Chait, Mark R.
CC: (b) (7)(C)
Subject: Fw: Congressional Contact

Fyi below.

(b) (7)(C)
Chief
ATF Public Affairs Division

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From: Sweetow, Scott D.
To: (b) (7)(C)
Sent: Fri Mar 04 17:23:34 2011
Subject: FW: Congressional Contact

Gents, I wanted to forward this on to you; I am not sure what the process is for this, but I did want you to know that one of our agents has been in contact with Members of Congress.

Scott

Scott Sweetow
Assistant Special Agent in Charge
Atlanta Field Division
(404) 417-(b) (7)(C) Direct
(b) (7)(C) Cell

From: Gant, Gregory K.
Sent: Friday, March 04, 2011 4:56 PM
To: Sweetow, Scott D.
Cc: (b) (7)(C)
Subject: Re: Congressional Contact

I think you should contact OPA and OLA to give them a heads up. Additionally, we should discuss this with (b) (7)(C) (b) (7)(C) for her input as well. Thanks

Gregory K Gant
Special Agent in Charge
Atlanta Field Division
Bureau of ATF
Office (404) 417-2600
Direct (404) 417-(b) (7)(C)

Cell (b) (7)(C)

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From: Sweetow, Scott D.
To: Gant, Gregory K.
Sent: Fri Mar 04 16:34:42 2011
Subject: FW: Congressional Contact
 Greg,

I received this last night from (b) (7)(C). In discussing this with him today, I am not sure what (b) (7)(C) is up to but I thought you should see it. I was thinking of reaching out to either (b) (7)(C) in OLA or (b) (7)(C) in Liaison to see if there is any procedure or requirement for notification on such things, so they are not blindsided; any objections if I do so?

Scott

Scott Sweetow
Assistant Special Agent in Charge
Atlanta Field Division
 (404) 417-(b) (7)(C) Direct
 (b) (7)(C) Cell

From: (b) (7)(C)
Sent: Wednesday, March 02, 2011 5:25 PM
To: (b) (7)(C)
Subject: RE: Congressional Contact

Ok...I think this goes without being said but if there is anything you think I can help you with, please let me know. (b) (5) so I want to make sure you are aware of the protections and limitations afforded to you under the Whistleblower Protection Enhancement Act of 2010. I imagine that you are familiar with this information, but if you have questions, let me know and I will find the answers.

Good Luck,

(b) (7)(C)
 ATF - Atlanta Field Division
 Group IV Supervisor (OCDETF Strike Force)
 Office - (404) 638-(b) (7)(C)
 Fax - (404) 638-7635

From: (b) (7)(C)
Sent: Wednesday, March 02, 2011 2:45 PM
To: (b) (7)(C)
Subject: Congressional Contact

(b) (7)(C)

There seems to have been a lot of congressional interest about ATF lately and likely to be more. In that vein, I wanted to let you know that I have been in contact with congressional offices regarding various issues at ATF.

Thx,

(b) (7)(C)

From: (b) (7)(C)
Sent: Friday, February 25, 2011 3:52 PM
To: Schmalzer, Tracy (SMO)
CC: Sweeney, Laura (SMO); (b) (7)(C)
Subject: RE: Gunrunner statement

10-4 thanks.....i think we will see something with the Calderon visit and or the AG testimony and want to be ready

(b) (7)(C)

Chief
ATF Public Affairs Division
Washington, DC
Desk 202-648 (b) (7)(C)
Cell (b) (7)(C)

From: Schmalzer, Tracy (SMO) [mailto:(b) (7)(C)]
Sent: Friday, February 25, 2011 3:50 PM
To: (b) (7)(C); Sweeney, Laura (SMO)
Cc: (b) (7)(C)
Subject: RE: Gunrunner statement

thanks (b) (7)(C) hold off on anything for now -- we're finalizing the grassley letter and we'll want to make sure they comport. if you get any inquiries let us know -- i haven't had a one, which was a bit surprising.

From: (b) (7)(C) (ATF)
Sent: Friday, February 25, 2011 3:45 PM
To: Sweeney, Laura (SMO); Schmalzer, Tracy (SMO)
Cc: (b) (7)(C) ATF
Subject: Gunrunner statement

Ladies,

Here is the statement we would like to keep in our back pocket in case we need to respond to additional media queries associated with the Phoenix case that was recently highlighted in the media on CBS.

It would be issued as a statement from either the director, deputy director or myself.

I am forwarding to you all for concurrence.

Let me know

(b) (7)(C)

(b) (7)(C)

Chief
ATF Public Affairs Division

Washington, DC

Desk 202-648-**(b) (7)(C)**

Cell **(b) (7)(C)**

Subject: **Employee 5** Updated: Call in re Gunrunner Talkers/One Pager for Hill use/distribution.....

Location: Call in information is attached below.

Start: 4/5/2011 2:30 PM

End: 4/5/2011 3:00 PM

Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

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

(b) (7)(C) Potter, Mark W.; (b) (7)(C)

(b) (7)(C) Jill C (SMO)

<<Gunrunner Talkers 06FEB11.docx>>

To access this conference via telephone, please call the following number: 1-800-366-9503, (if you are calling from Washington DC, area code 202, you must dial ONLY 777-7778). If you are calling from the local Metro Washington DC area including Virginia and Maryland, please dial 202-777-7778, when prompted for your conference code, please enter (b) (7)(E) followed by the # on your telephone keypad

From:

To: Anderson, (Andy) Glenn N.; Barrera, Hugo J.; Brandon, Thomas E.; Browning, Robert J.; Champion, Robert R.; Crenshaw, Kelvin N.; Durham, Phillip M.; Gant, Gregory K.; Gleysteen, Mike P.; Graham, Zebedee T.; Herkins, Stephen C.; Horace, Matthew W.; Newell, William D.; O'Brien, Virginia T.; Potter, Mark W.; Richardson, Marvin G.; Stoop, Theresa R.; Thomas, Guy N.; Torres, John A.; Traver, Andrew L.; Turk, Ronald B.; Vido, Paul J.; Webb, J. Dewey; Zapor, Bernard J.

CC: (b) (3) (P.L. 111-117) McDermond, James E.; Chait, Mark R.; McMahon, William G.

Subject: Add to TP

Ladies and gentlemen,

Below are a couple of talking points that we wanted to add.

Operation Fast and Furious neither involved a "sting" in Mexico nor any "controlled deliveries" of weapons into Mexico.

At no time did ATF agents observe weapons from Operation Fast and Furious cross into Mexico. There were no undercover law enforcement officers involved in Operation Fast and Furious and ATF did not provide weapons to suspects in that investigation.

Additionally we wanted to point out that while we recognize that the Laredo Field office still belongs to the Houston Field Division not the Dallas Field Division, the investigation was referred to the Dallas Field Division from the Laredo Field office and worked by the Dallas Field Division.....our apologies for the confusion.

Thank you

(b) (7)(C)

(b) (7)(C)

Chief

ATF Public Affairs Division

Washington, DC

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

Cell (b) (7)(C)

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From: (b) (7)(C)
Sent: Friday, April 29, 2011 1:53 PM
To: (b) (7)(C)
CC: (b) (7)(C)
Subject: MEDIA CALL: Richard Diamond - Washington Times - (b) (6)

Importance: High

(b) (7)(C)

This reporter called looking to get a response from ATF regarding the Congressional Oversight Committee's review of ATF's Project Gunrunner. He taking the angle of whether or not ATF is going to provide a response to the committee? Have we already responded? What is going to be or has been our response to the committee? What steps are we taking to respond to them?

DEADLINE: Today – before 5 pm

(b) (7)(C)

Public Affairs Division
Office of Public Affairs
DOJ/ATF
Office: (202) 648-(b) (7)(C)
Internal (b) (7)(C)

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From: McDermond, James E.
Sent: Thursday, April 28, 2011 10:10 AM
To: Melson, Kenneth E.
CC: (b) (7)(C); Hoover, William J.; (b) (7)(C)
Subject: Fast/Furious Webcast Script
Attachments: fast and furious web cast PGA Edits.docx

Director,

Attached please find the draft version of the script that contains recommended changes as highlighted in yellow. Please let me know when you would like to deliver the message so that we can prepare.

Jim

James McDermond
Assistant Director
Bureau of Alcohol, Tobacco, Firearms and Explosives
Office of Strategic Intelligence and Information
202-648-(b) (7)(C) (office)
(b) (7)(C) (mobile)
202-648-9686 (fax)

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Good morning. It has been some time since I've spoken to you about events happening at ATF. I realize from attending several town halls that there is concern and confusion over what you have been reading in the papers and seeing on TV regarding the Fast and Furious case out of the Phoenix Division. We have wanted to communicate with you about that case, but because Fast and Furious involves ongoing litigation, we felt it is appropriate to be cautious about releasing facts concerning the case, even to our own people. First, if case information or evidence were released publicly it could compromise the litigation by giving the defendants a roadmap to the case. Second, it could compromise the safety of our witnesses. Already there have been security concerns about our agents and civilian witnesses. Third, we have an obligation to make sure that the people of Arizona have every confidence that the very best case will be presented to a jury for its consideration, and that there is no pretrial publicity that might taint the veracity of the prosecution. Finally, we have to focus on the case at hand because it is our duty to the defendants to make sure that the evidence presented at trial or in a proffer at a plea hearing is competent, probative and relevant to the issue of guilt or innocence. After all, our primary duty is to do justice.

The ATF investigation referred to as Operation Fast and Furious is a single, complex criminal investigation into persons responsible for supplying firearms to the Mexican Drug Trafficking Organizations. This investigation was initiated by the Phoenix Field Division and the United States Attorney's Office for the District of Arizona, and subsequently approved by the multi-agency Organized Crime and Drug Enforcement Task Force (OCDETF) Program.

The purpose of Operation Fast and Furious was to dismantle a transnational organization believed to be responsible for trafficking weapons by dismantling its leadership here and in Mexico. To date, this operation has resulted in an indictment charging 20 defendants with conspiracy to purchase hundreds of firearms and related offenses over a 15 month period from September 2009 to December 2010, and the case continues. Had it not been for the perseverance of this multi-agency task force, this sophisticated criminal network, or one that would inevitably have taken its place, would still be trafficking hundreds of weapons into Mexico now and in the future.

We will not let the negative media reports or external inquiries hamper the fair and just prosecution of those responsible for supplying firearms to cartel members. We stand behind the continued prosecution of those in the Fast and Furious investigation and will continue to work to stop the flow of money from Mexico used to purchase firearms and the flow of weapons back to Mexico to arm the Cartels.

The accusations and allegations that you are reading and hearing about have been a tremendous distraction to the investigative and trial teams. In an effort to address the needs both at Headquarters and in the field I have made several temporary changes in personnel. I have asked SAC Newell to come to Headquarters to help review and respond to the many inquiries

that we have regarding this case. SAC Tom Brandon from the Detroit Division has assumed the duties of SAC Phoenix.

In order to make sure that ATF can pay full time and attention to the responsibilities we have to the case, I have assigned ASAC Jim Needles to work exclusively with the US Attorney's Office in Phoenix to coordinate the preparation for trial, to oversee the assessment and investigation of remaining and new leads, and to make sure that the prosecutors have the information they need as the case moves forward. ASAC Tom Atteberry from the Kansas City Division has assumed the duties as Phoenix ASAC. ASAC Joe Anarumo has been detailed from the Miami Division to assume the duties as the second ASAC in Phoenix. Group Supervisor (b) (7)(C) has also been assigned to the US Attorney's Office to continue his supervision of the case preparation and (b) (7)(C) from the Miami Field Division has been detailed to oversee Group 7. I hope these arrangements will allow us to focus intensely on the case and at the same time to focus sharply on the other great cases being made in the Phoenix Field Division. **The highlighted changes (permanent or temporary), you need to state your intent.**

You may also know that the Attorney General rightfully asked the Acting Inspector General to review Fast and Furious. I welcome that review and have asked that as part of that review the OIG look at certain processes we have in place to make sure that we have the most effective and expedient means of investigating gun trafficking and that intelligence information is flowing unimpeded across all agencies of government. We are also reviewing our own internal information flow and sharing methodologies, our internal major case review procedures, and our policies regarding trafficking investigations. The "blue ribbon" panel I announced on --- --to review our investigative methods and techniques has been delayed until after the Inspector General's review has been conducted.

There is also an ongoing review of Fast and Furious and Project Gunrunner by the Senate Judiciary Committee and the House Oversight and Government Reform committee. They apparently are in the process of interviewing ATF employees and potential witnesses in the Fast and Furious case. A congressional subpoena has also been issued for records pertaining to Project Gunrunner and Fast and Furious. ATF and the Department of Justice have been responding to the extent we can to these inquiries and requests.

The Department, however, has a long standing policy against the disclosure of non-public information about ongoing criminal investigations, to Congress or anyone else. This policy is based, in part, on the strong interest in protecting the effectiveness of ongoing law enforcement efforts.

But, I assure you that if either the OIG or Congressional inquiry results in findings of professional negligence or misconduct, then those responsible will be held accountable.

Every problem has a solution, and a potential for everyone to become better informed and better at what they do. I am confident that in the end, ordinary Americans and Congress will realize and recognize the extraordinary work that each of you do every day. They will see the success of Project Gunrunner, the fact that -----guns have been removed from streets since its inception, that --- defendants have been referred for prosecution, and that as a result countless lives have been saved. They will understand the limitations and restrictions that we have in investigating and prosecuting gun trafficking cases and in ensuring compliance with regulatory laws. And they will understand that despite the size of our bureau and our budgetary restraints, the men and women of ATF are patriots of the highest order, putting their lives on the line every day, doing more with less, to make our communities and nation a safer place to raise our families. Thank you for your time and God bless you and this great country of ours.

From: (b) (7)(C)
Sent: Wednesday, April 27, 2011 5:34 PM
To: (b) (7)(C)
CC: McDermond, James E.
Subject: fast and furious web cast
Attachments: fast and furious web cast.docx

I need to add Whistleblower stuff.

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INSERT SOMETHING ALONG THESE LINES?[I assure you that if either the OIG or Congressional inquiry results in findings of professional negligence or misconduct, then those responsible will be held accountable.]

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I am confident in the end that the public we serve will recognize the extraordinary work that each of you does every day. They will see the success of Project Gunrunner; the fact that dangerous gun traffickers have been taken off the streets and that as a result - lives have been saved. They will come to understand the restrictions we experience investigating and prosecuting gun trafficking cases. They will understand that regardless of the restricted size of the Bureau and despite our budgetary restraints, the men and women of ATF are patriots of the highest order, putting their lives on the line every day, doing more with less, making our communities and nation a safer place to raise our families. By joining ATF you have answered what you can do for your country, and every single day of the year you fulfill your commitment to public service. We can all be proud of that.

Thank you for your time and God bless you and this great country of ours.

From: Melson, Kenneth E.

Sent: Wednesday, April 27, 2011 4:07 PM

To: Hoover, William J.; Chait, Mark R.; (b) (7)(C) [REDACTED] McDermond, James E.; (b) (7)(C) [REDACTED]

Subject: Revised draft web cast

Attachments: fast and furious web cast.docx

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Good morning. It has been some time since I've spoken to you about events happening at ATF. I realize from attending several town halls that there is concern and confusion over what you have been reading in the papers and seeing on TV regarding the Fast and Furious case out of the Phoenix Division. We have wanted to communicate with you about that case, but because Fast and Furious involves ongoing litigation, we felt it is appropriate to be cautious about releasing facts concerning the case, even to our own people. First, if case information or evidence were released publicly it could compromise the litigation by giving the defendants a roadmap to the case. Second, it could compromise the safety of our witnesses. Already there have been security concerns about our agents and civilian witnesses. Third, we have an obligation to make sure that the people of Arizona have every confidence that the very best case will be presented to a jury for its consideration, and that there is no pretrial publicity that might taint the veracity of the prosecution. Finally, we have to focus on the case at hand because it is our duty to the defendants to make sure that the evidence presented at trial or in a proffer at a plea hearing is competent, probative and relevant to the issue of guilt or innocence. After all, our primary duty is to do justice.

The ATF investigation referred to as Operation Fast and Furious is a single, complex criminal investigation into persons responsible for supplying firearms to the Mexican Drug Trafficking Organizations. This investigation was initiated by the Phoenix Field Division and the United States Attorney's Office for the District of Arizona, and subsequently approved by the multi-agency Organized Crime and Drug Enforcement Task Force (OCDETF) Program.

The purpose of Operation Fast and Furious was to dismantle a transnational organization believed to be responsible for trafficking weapons by dismantling its leadership here and in Mexico. To date, this operation has resulted in an indictment charging 20 defendants with conspiracy to purchase hundreds of firearms and related offenses over a 15 month period from September 2009 to December 2010, and the case continues. Had it not been for the perseverance of this multi-agency task force, this sophisticated criminal network, or one that would inevitably have taken its place, would still be trafficking hundreds of weapons into Mexico now and in the future.

We will not let the negative media reports or external inquiries hamper the fair and just prosecution of those responsible for supplying firearms to cartel members. We stand behind the continued prosecution of those in the Fast and Furious investigation and will continue to work to stop the flow of money from Mexico used to purchase firearms and the flow of weapons back to Mexico to arm the Cartels.

The accusations and allegations that you are reading and hearing about have been a tremendous distraction to the investigative and trial teams. In order to make sure that ATF can pay full time and attention to the responsibilities we have to the case, I have assigned ASAC Jim Needles to work exclusively with the US Attorney's Office in Phoenix to coordinate the preparation for trial, to oversee the assessment and investigation of remaining and new leads, and

to make sure that the prosecutors have the information they need as the case moves forward. ASCA Tom Atteberry from the Kansas City Division has assumed the duties as Phoenix ASAC. Group Supervisor (b) (7)(C) has also been assigned to the US Attorney's Office to continue his supervision of the case preparation. (b) (7)(C) from the Miami Field Division has been detailed to oversee of Group 7.

ASAC Joe Anarumo has been detailed from the Miami Division to assume the duties as the second ASAC in Phoenix. Finally, SAC Newell has come to Headquarters to help review and respond to the many inquiries that we have regarding this case. SAC Tom Brandon from the Detroit Division has assumed the duties of SAC Phoenix. I hope this arrangement will allow us to focus intensely on the case and at the same time to focus sharply on the other great cases being made in the Phoenix Field Division.

You may also know that the Attorney General rightfully asked the Acting Inspector General to review Fast and Furious. I welcome that review and have asked that as part of that review the OIG look at certain processes we have in place to make sure that we have the most effective and expedient means of investigating gun trafficking and that intelligence information is flowing unimpeded across all agencies of government. We are also reviewing our own internal information flow and sharing methodologies, our internal major case review procedures, and our policies regarding trafficking investigations. The "blue ribbon" panel I announced on --- --to review our investigative methods and techniques has been delayed until after the Inspector General's review has been conducted.

There is also an ongoing review of Fast and Furious and Project Gunrunner by the Senate Judiciary Committee and the House Oversight and Government Reform committee. They apparently are in the process of interviewing ATF employees and potential witnesses in the Fast and Furious case. A congressional subpoena has also been issued for records pertaining to Project Gunrunner and Fast and Furious. ATF and the Department of Justice have been responding to the extent we can to these inquiries and requests.

The Department, however, has a long standing policy against the disclosure of non-public information about ongoing criminal investigations, to Congress or anyone else. This policy is based, in part, on the strong interest in protecting the effectiveness of ongoing law enforcement efforts.

Every problem has a solution, and a potential for everyone to become better informed and better at what they do. I am confident that in the end, ordinary Americans and Congress will realize and recognize the extraordinary work that each of you do every day. They will see the success of Project Gunrunner, the fact that ----guns have been removed from streets since its inception, that --- defendants have been referred for prosecution, and that as a result countless lives have been saved. They will understand the limitations and restrictions that we have in investigating and prosecuting gun trafficking cases and in ensuring compliance with regulatory

laws. And they will understand that despite the size of our bureau and our budgetary restraints, the men and women of ATF are patriots of the highest order, putting their lives on the line every day, doing more with less, to make our communities and nation a safer place to raise our families. By joining ATF you have asked what you can do for your country, and every single day of the year you fulfill your commitment to public service. We can all be proud of that.

Thank you for your time and God bless you and this great country of ours.

From: (b) (7)(C)
Sent: Wednesday, April 27, 2011 2:19 PM
To: (b) (7)(C)
CC: (b) (7)(C)
Subject: RE: Request from Sen. Feinstein's office

We completed the stats and gave them to (b) (7)(C) but he asked for some updates. We are working on those updates now. Should have them back Tuesday. We'll send them to (b) (7)(C) as the POC for PGA as soon as they are ready.

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From: (b) (7)(C)
Sent: Wednesday, April 27, 2011 1:23 PM
To: (b) (7)(C)
Subject: FW: Request from Sen. Feinstein's office

(b) (7)(C)

What is the status for the latest statistics?

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From: (b) (7)(C)
Sent: Wednesday, April 27, 2011 1:14 PM
To: 'Eric_Jacobstein@feinstein.senate.gov'
Cc: 'Rene_Hanna@feinstein.senate.gov'; (b) (7)(C)

Subject: Re: Request from Sen. Feinstein's office

Will do. We should have some "news" for you this afternoon. I am including (b) (7)(C) who will be reaching out to you.

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From: Jacobstein, Eric (Feinstein)
To: (b) (7)(C)
Cc: Hanna, Rene (Feinstein)
Sent: Wed Apr 27 12:37:06 2011
Subject: Request from Sen. Feinstein's office

(b) (7)(C)

Hope all is well.

Can you please provide me with statistics from 2006-2010 of the total firearms recovered in Mexico, the total number traced, and the total number and percentage of those traced that originate in the United States?

The numbers I have seem to be outdated.

I would really like to get these numbers this week. Let me know.

Many thanks,

Eric

Eric Jacobstein
Staff Director
Senate Caucus on International Narcotics Control
Senator Dianne Feinstein, Chairman
202-228-3081

From: (b) (7)(C)
Sent: Wednesday, April 27, 2011 1:44 PM
To: (b) (7)(C)
Subject: FW: Request from Sen. Feinstein's office

(b) (7)(C)

Do understand correctly that you have the latest information?

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From: Jacobstein, Eric (Feinstein)
To: (b) (7)(C)
Cc: Hanna, Rene (Feinstein)
Sent: Wed Apr 27 12:37:06 2011
Subject: Request from Sen. Feinstein's office

(b) (7)(C)

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Many thanks,

Eric

Eric Jacobstein
Staff Director
Senate Caucus on International Narcotics Control
Senator Dianne Feinstein, Chairman
202-228-3081

From: (b) (7)(C)
Sent: Tuesday, April 26, 2011 3:54 PM
To: (b) (7)(C)
Subject: F&F Timeline (b) (7)(C) (b) (7)(C).xlsx
Attachments: F&F Timeline (b) (7)(C) (b) (7)(C).xlsx

(b) (7)(C)
Field Intelligence Support Team - Southwest Border
Bureau of Alcohol, Tobacco, Firearms and Explosives
Intelligence Operations Specialist
Office: 202-648 (b) (7)(C)
Cell: (b) (7)(C)
Fax: 202-648-9682
Email: (b) (7)(C)

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DATE OF EVENT	DESCRIPTION OF EVENT	REMARKS
11/10/2009	F&F case file opened under IN# 785115-10-0003-SI (b) (7)(C)	Case information transferred to 785115-10-0004 per AGO (b) (7)(C)
11/16/2009	F&F case file re-opened under IN# 785115-10-0004-MS (b) (7)(C)	Previous file 785115-10-0003 closed on 11/23/2009
11/20/2009	11/20/2009 Naco (Agua Prieta), Sonora (Mexico) seizure and arrest of transporter (b) (7)(C) Toscano (15) w/42 firearms, 43 mags, 3 bayonets and small amount of ammo.	(b) (3) (P.L. 111-117), (b) (7)(C)
11/25/2009	11/25/2009- Agua Prieta, Sonora seizure from SW at house containing Meth lab with arrest (b) (7)(C) narcotics: 26 firearms, 1 grenade launcher and 3,098 rnds of ammo-	SWB FIST determined that a firearm from seizure was purchased by a F&F target. Information provided to Phoenix FIG.
11/25/2009	AGS (b) (7)(C) contacted IRS (b) (7)(C) concerning 11/20/2009 Naco traces	(b) (7)(C)
12/2/2009	Interagency contact with DHS and (b) (7)(C)	Per (b) (7)(C) DHS agreed that they would not pursue any further leads without notifying her.
12/8/2009	SWB FIST briefing to Field Operations in reference to 11/20/2009 Naco, SO seizure (originally prepared to be briefed on 12-1-2009).	As a part of the briefing, the circumstances surrounding the seizure event as it pertained to the F&F case was briefed. Trace results up to that date and multiple sales information was provided. F&F clearly obtaining firearms to be transported to Mexico. SEE POWERPOINT
12/9/2009	SWB FIST briefing to Acting Director and senior management staff	Briefed on the 11/6/2008 Reynosa, Tamaulipas seizure of 424 firearms from the Gulf Cartel/Zetas and the F&F case supplying the Sinaloa cartel. These two case were used as examples to address the need to identify the cartel operatives in Mexico responsible for acquisition of firearms for the organization(s).
12/17/2009	Criminal Intelligence Division Chief briefing to DD Director and DOJ Attorneys	Division Chief provided the 12/9/2009 brief to this audience
12/15/2009	SWB FIST briefing to Field Operations in reference to 12/02/2009 Mexicali, Baja California seizure (48 firearms) and 12/09/2009 Douglas, Arizona seizure (8 firearms).	Briefed that a (b) (3) (P.L. 111-117), (b) (7)(C) coordinating the acquisition of firearms for this region. Briefed that about one firearm from the Douglas, AZ seizure to a target of F&F that purchased them on 12/08/2009 (1 day TTC) (b) (3) (P.L. 111-117) (b) (3) (P.L. 111-117) SEE POWERPOINT.
1/5/2010	SWB FIST briefing to Field Operations	As part of briefing, provided an update of what SWB FIST was able to determine (b) (3) (P.L. 111-117) Also briefed on the 2nd half of 2009 SWB states firearms tracing that depicted (b) (3) (P.L. 111-117) SEE POWERPOINT
1/12/2010	SWB FIST briefing to Field Operations	As part of briefing, provided an update of what SWB FIST was able to determine was purchased by F&F targets (233 firearms) SEE POWERPOINT
1/13/2010	El Paso seizure of 40 firearms recovered by El Paso Stash House Unit and 2 firearms recovered by CBP with an arrest at a border crossing.	Director Melsen's Office saw SAR and inquired if this was F&F guns as previously briefed, FIST SWB contacted ATF EPIC to obtain the firearms data of 40 firearms seizure to check against F&F suspect guns. All firearms purchased by F&F target. FIST SWB observed ICE tracing 2 firearms on same date (1/13/2010). A check of F&F suspect guns links CBP firearms seizure. CBP also seized 4000 rounds of 7.62 ammo and 81 high capacity magazines to include drum magazines. Stash house owner admits guns going to Sinaloa cartel in Juarez.
1/19/2010	SWB FIST briefing to Field Operations	SWB FIST provided an I2 link chart and briefed the F&F firearms seizures in Mexico and the US border seizures. The briefing depicted the targets and the amount of firearms recovered by targets. SEE POWERPOINT
1/26/2010	SWB FIST briefing to Field Operations	SWB FIST provided a full briefing on a cross-border trafficker arrested by CBP on 1/13/2010 with 2 firearms, 4000 rounds of 7.62 and 81 magazines (same cross border transporter as briefed on 1/19/2010).

2/21/2010 EPC tracing device and monitoring along with Phoenix surveillance leads to recovery of 40 firearms in the Tohono O'odham AZ reservation with arrest of transporters.

2/23/2010 SWB FIST briefing to Field Operations: **PART ONE**

2/23/2010 SWB FIST briefing to Field Operations: **PART TWO**

3/12/2010 SWB FIST (b) (7)(C) conducted a video conference, powerpoint brief to the ATF HQ, Senior management staff, the four border SACs and DOJ Assistant United States Attorney.

3/23/2010 (b) (7)(C) requesting clarification on seizure events and corresponding firearm tracing from Guerrero Seizure event.

3/23/2010 GS's briefing to Field Operations

3/24/2010 (b) (7)(C) requesting clarification on seizure event in Guasave, Sinaloa

3/24/2010 SWB FIST requested that the suspect gun purchasers information be entered into the Mexico seizure event files in Nforce.

3/24/2010 Completed the research and identification of the two major traffickers that were responsible for conveying the 40 firearms seized on 1/13/2010 at the stash house in El Paso (b) (7)(C)

3/26/2010 SWB FIST provided (b) (7)(C) resume depicting his email address that led to identifying his Myspace account. Provided photos from his Myspace depicting himself, (b) (7)(C) other unidentified individuals all armed with DRACOs

4/6/2010 SWB FIST briefing to Field Operations - Carried over & updated from 3/23/2010

4/14/2010 USBP traffick stop in Columbus, New Mexico with F&F firearms

4/7/2010 El Paso PD Narcotic Unit seizes 20 firearms, all of which were F&F firearms, in a stash house. ATF El Paso opened a case file.

4/20/2010 SWB FIST briefing to Field Operations

5/4/2010 (b) (7)(C) visit to Phoenix Group VII for information exchange 5/4-6/2010

5/13/2010 OSI personnel tdy to Phoenix for G&T.

Transporters admit to transporting to DTO in Mexico. ID'ed Stash house location on reservation linked to ATF case in Tucson FD.

Briefed the Tohono O'odham seizure and the links to three active ATF cases: Tucson 785085-06-0051 Operation Wife Receiver, Phoenix 785115-09-0001 STRIKEFORCE & Yuma- 785041-10-0011 (b) (7)(C) ALSO BRIEFED THE 11/14/2009 SEIZURE IN ALVAREZ, GUERRERO. 7 FIREARMS FROM F&F RECOVERED. ***ADDITIONAL FIREARMS LATER CAME BACK TO CASE.

Presented a link chart of the straw purchasing cell, maps of the Mexico and US seizures as of 3/5/2010, maps of Phoenix stash house locations and related ATF cases. One of the PP slides listed each straw purchaser and the amount of firearms they has purchased as of 2/27/2010, totaling 1026 firearms. As second slide listed the amount that each purchaser spent during the same time period, totaling \$659,749.32.

Provided GS an complete list of firearms trace data and analysis of questionable serial numbers.

Briefed that from 3/15/2010 to 3/23/2010 SWB FIST has identified 105 firearms to include 3 Barrett 50 caliber rifles were purchased by 4 F&F targets. POWERPOINT

Provided provided a complete list of firearms and analysis of event

(b) (7)(C) approved entering purchasers info from F&F into Nforce in the related Mexico seizures event files.

Identified the trafficker by providing name, personal data, photographs and social networking sites. Provided DEA & FBI case information linked to these traffickers and Mexican targets. All information provided to the El Paso FO (IR (b) (7)(C)

Compiled (b) (7)(C) request to email all photos to Ma (b) (7)(C) Myspace account. 03/28/2010 email from G (b) (7)(C) stating "home run on those photos from Myspace. We had no photos of (b) (7)(C) with guns, great find thanks."

Provided update by target of firearms purchased as of 4/4/2010, totaling 1,350. Briefed target's Myspace photos depicting top three targets all armed with DRACOs and an associate along with (b) (7)(C) armed with a DRACO. Information was obtained by exploiting the phone number from the (b) (7)(C). The photos and information was previously provided to case agent via the GS. POWERPOINT

USBP recorded the firearms data and released the possessors. Two of the firearms traced to a New Mexico target and 6 firearms were in F&F suspect gun files. ATF Las Cruces opened case 785120-10-0015.

SWB FIST assisted El Paso FO by linking the major trafficking targets identified in the 40 firearms seizure in the stash house on 1/13/2010 (Sandoval). The two traffickers were linked through social networking sites which displayed photographs of them along with individual arrested for possessing the firearms in this event.

UPDAT (b) (3) (P L 111-117), (b) (7)(C) Caliber)- updated briefing of the exploitation of one of the F&F targets Myspace. POWERPOINT

Met with GS and case agents. (b) (7)(C) provided a complete data dump of all SWB FIST F&F information and additional possible leads.

Returned July 3 2010

5/29/2010 6/8/2010	ICE Laredo seizure of 147 roman/Cugji weapons from Phoenix SWB FIST briefing to Field Operations	ICE took delivery of the firearms in Phoenix and turned over weapons to 2 individuals (Zeta transporters) from Mexico that were in turn arrested. One firearm was a suspect gun from F&F. Another 63 firearms were in suspect gun to another Group VII investigation 785071-10-0003 (GRIT). Presented the 5/29/2010 ICE Laredo seizure
6/17/2010	SWB FIST provided (b) (7)(C) with email address for the main target	SWB FIST conducted intelligence research and identified the email address of the straw purchasing cell leader (subject of case (b) (7)(E)). The email address was sent to (b) (7)(C). Upon request, he was provided a description of each step taken to identify the email address. Furthermore, he was provided information on the Yahoo's account log IP preservation and requirements to file a preservation request. <u>The target provided the same email address during a post-arrest interview.</u>
11/15/2010	Notification of 2 F&F firearms recovered from the high profile homicide scene were the body of the brother of the ex Attorney General of the State of Chihuahua	ATF EPIC facilitated SWB FIST's request to obtain the firearms data in this event. SWB FIST determined that 2 of the weapons were F&F firearms and notified Phoenix (b) (7)(C) via telephone. Followed up with news article summarizing the event and recovery. Notified ATF EPIC of the findings (b) (7)(C) WERE RESTRICTED FROM FILE.
11/17/2010	Reactivation of (b) (7)(C) mess to case file	11/17/2010 SA (b) (7)(C) sent email advising the (b) (7)(C) mess was reactivated.

From: (b) (7)(C)
Sent: Tuesday, April 26, 2011 2:02 PM
To: (b) (7)(C)
CC: (b) (7)(C) (b) (7)(C)
Subject: MEDIA CALL: Jill Greenwood, Pittsburgh Tribune Review, (b) (6)

(b) (7)(C)

NRA is holding its annual conference this week in Pittsburgh. The reporter just interviewed NRA exec Wayne LaPierre, who talked freely and on-the-record about Fast and Furious. She wants an ATF comment.

RECOMMENDED COMMENTS:

The investigation referred to as "Fast and Furious" is a single, complex criminal investigation into the firearms trafficking organizations that supply firearms to the Mexican Drug Trafficking Organizations (DTO's) that use these weapons to terrorize the good people on both sides of the U.S.-Mexican border in furtherance of their illicit, criminal activities. This investigation was initiated by the Phoenix Field Division and the United States Attorney's Office for the District of Arizona. The investigation was subsequently approved by the multi-agency Organized Crime and Drug Enforcement Task Force (OCDETF) Program. The purpose of this investigation is to dismantle a transnational organization believed to be responsible for trafficking weapons into Mexico by dismantling its leadership. To date, this investigation has resulted in an indictment charging 20 defendants with conspiracy to purchase hundreds of firearms from September 2009 to December 2010.

(b) (7)(C)

(b) (7)(C)

Deputy Chief
ATF - Public Affairs Division

(b) (7)(C)

Direct) 202-648-(b) (7)(C)
Mobile) (b) (7)(C)
Main) 202-648-8500

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From: McDermond, James E.
Sent: Monday, April 25, 2011 5:39 PM
To: (b) (7)(C)
Subject: Re: Mexico Stats

(b) (7)(C)

I spoke with (b) (7)(C) and he will contact (b) (7)(C) about this matter.

Jim
James McDermond, Assistant Director - ATF

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From: (b) (7)(C)
To: McDermond, James E.
Cc: (b) (7)(C)
Sent: Mon Apr 25 15:39:06 2011
Subject: Mexico Stats

Jim,

We are looking at trying to bring the reporters in on Friday April 29, 2011 and (b) (7)(C) needs two days to update the information from the time he receives the "Official" notice that we are going to post the information.

Since you were in the meeting when the decision was made can you please notify (b) (7)(C) either through yourself or (b) (7)(C) that we have the go ahead.he is reluctant to doing this without approval through his chain or a higher authority.

Thanks

(b) (7)(C)

Chief
ATF Public Affairs Division
Washington, DC
Desk 202-648-(b) (7)(C)
Cell (b) (7)(C)

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From: (b) (7)(C)
Sent: Monday, April 25, 2011 12:59 PM
To: (b) (7)(C)
CC: (b) (7)(C)
Subject: RE: Mexico Stats

Let me know when you're available to discuss.

(b) (7)(C)

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

(b) (7)(C)

(202) 648 (b) (7)(C) Office

(b) (7)(C) BlackBerry

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From: (b) (7)(C)
Sent: Monday, April 25, 2011 11:11 AM
To: (b) (7)(C)
Cc: (b) (7)(C)
Subject: Mexico Stats

(b) (7)(C)

Please come see me with your plan for rolling out the Mexico Stats to include dates, specifics on locations times, handouts speaker both on and off the record and recommendations on running new numbers and what they would look like. If I can get a brief on everything by COB tomorrow that would be great.

Please do not make contact with the reporters yet.

Thanks

(b) (7)(C)

(b) (7)(C)

Chief

ATF Public Affairs Division

Washington, DC

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

Cell (b) (7)(C)

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From: (b) (7)(C)
Sent: Monday, April 25, 2011 11:14 AM
To: (b) (7)(C)
CC: (b) (7)(C)
Subject: RE: Mexico Stats

Do you still have the media plan I provided?

(b) (7)(C)

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

(b) (7)(C)

(202) 648 (b) (7)(C) Office

(b) (7)(C) BlackBerry

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From: (b) (7)(C)
Sent: Monday, April 25, 2011 11:11 AM
To: (b) (7)(C)
Cc: (b) (7)(C)
Subject: Mexico Stats

(b) (7)(C)

Please come see me with your plan for rolling out the Mexico Stats to include dates, specifics on locations times, handouts speaker both on and off the record and recommendations on running new numbers and what they would look like. If I can get a brief on everything by COB tomorrow that would be great.

Please do not make contact with the reporters yet.

Thanks

(b) (7)(C)

(b) (7)(C)

Chief

ATF Public Affairs Division

Washington, DC

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

Cell (b) (7)(C)

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From: McDermond, James E.

Sent: Friday, April 22, 2011 3:35 PM

To: Melson, Kenneth E.

CC: Hoover, William J.; (b) (7)(C)

Subject: Draft documents

Attachments: Director 4-22-2011 Mexico Web cast msg110422 (3).docx; Director 4-22-2011 Mexico letter.docx; Thomasson1 MexicanQuestions(5).docx

Director,

Attached please find the following documents:

1. Draft webcast script;
2. Draft revision of your memorandum to the AG of Mexico;
3. Revision of PGA document in response to your questions concerning the Mexico Trace Statistics.

With respect to the draft webcast script, I recommend that you consider adding commentary to the script that will address the management changes made in the Phoenix Field Division. After your review please provide me with your comments. Additionally, I would ask that if the answers to your questions relative to the Mexican Trace statistics meet your satisfaction that you approve the posting of the statistics next week. As you know we have publicly stated that this data would be released in March of each year.

Regards,

Jim

James McDermond

Assistant Director

Bureau of Alcohol, Tobacco, Firearms and Explosives

Office of Strategic Intelligence and Information

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

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

202-648-9686 (fax)

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LAW ENFORCEMENT SENSITIVE**SCRIPT FOR DIRECTOR MELSON'S WEBCAST**

- Good Morning, in light of the many allegations about ATF's enforcement operations along the Southwest border, I want to assure you, ATF's dedicated employees, that we are addressing these allegations and stand by our decisions with regard to our enforcement actions.
- Operation Fast and Furious is an ongoing criminal investigation into an extensive gun-trafficking enterprise and a part of Project Gunrunner, ATF's broad initiative to deal with weapons trafficking along the Southwest Border.
- As many of you are aware, Project Gunrunner is a comprehensive strategy that focuses on the common threads of independent firearms trafficking investigations spread out among all of ATF's field divisions.
- The goal of Project Gunrunner is, and always has been, to reduce firearms-related violent crime associated with Mexican criminal organizations operating in the U.S. and Mexico, and to prevent these organizations from unlawfully acquiring and trafficking firearms.
- You should know that there are many separate and distinct firearms trafficking investigations into different criminal organizations being conducted by several field offices around the country.
- As of March 2010, Project Gunrunner led to the seizure of more than 6,688 firearms and the arrest of 1,397 defendants (more than 100 arrests a month) -- 850 of which have been convicted.
- The ATF investigation referred to as Operation Fast and Furious is a single, complex criminal investigation into persons responsible for supplying firearms to the Mexican Drug Trafficking Organizations (DTO's). These weapons are often used by DTOs and other criminal organizations to terrorize citizens on both sides of the U.S.-Mexican border in furtherance of their criminal activities.
- This investigation was initiated by the Phoenix Field Division and the United States Attorney's Office for the District of Arizona, and subsequently approved by the multi-agency Organized Crime and Drug Enforcement Task Force (OCDETF) Program.

LAW ENFORCEMENT SENSITIVE

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- The purpose of Operation Fast and Furious was to dismantle a transnational organization believed to be responsible for trafficking weapons into Mexico by dismantling its leadership. To date, this operation has resulted in an indictment charging 20 defendants with conspiracy to purchase hundreds of firearms over a 15 month period from September 2009 to December 2010.
- As many of you know there have been numerous allegations in the media and elsewhere that suggest Operation Fast and Furious was a failed effort. What you need to know is that in actuality, the investigation has dismantled a large, complex international firearms trafficking organization, and that the investigation is still ongoing.
- Had it not been for the perseverance of this multi-agency task force, this sophisticated criminal network would still be trafficking hundreds of weapons into Mexico.
- Some sources have even suggested that the purchase of multiple firearms at one time clearly indicates suspicious activity, and that ATF could criminally charge the purchaser on that knowledge alone. However, because of the historic significance of firearms ownership along the Southwest border, it is neither uncommon nor illegal for non-prohibited firearms purchasers to buy multiple firearms at a time in that part of the country. Therefore, what may be considered a suspicious purchase in other parts of the United States might be considered a rather common place activity along the Southwest border.
- Operation Fast and Furious neither involved a "sting" in Mexico nor any "controlled deliveries" of weapons into Mexico.
- At no time did ATF agents observe weapons from Operation Fast and Furious cross into Mexico. There were no undercover law enforcement officers involved in Operation Fast and Furious and ATF did not provide weapons to suspects in that investigation.
- The negative media reports will not hamper the prosecution of those responsible for supplying firearms to cartel members nor does it reflect on the hard work of the case agent or coworkers. We continue to stand behind the prosecution of those in the Fast and Furious investigation and will continue to work to stem the flow of firearms to Mexico.

LAW ENFORCEMENT SENSITIVE

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- The Department of Justice has a long standing policy against the disclosure of non-public information about ongoing criminal investigations. This policy is based, in part, on the strong interest in protecting the effectiveness of ongoing law enforcement efforts. The Fast and Furious investigation has not been adjudicated.
- It is important for you to know that the investigation is ongoing and the case remains open.

DRAFT

LAW ENFORCEMENT SENSITIVE



Q&A: Mexican Trace Data

(Continued)

(April 22, 2011)

Q. What is the percentage of domestic traces that identify a first purchaser?

A. Percentages of domestic traces that identify a first purchaser:

- 2010 – 63.1%
- 2009 – 61.0%
- 2008 – 62.0%
- 2007 – 61.4%

Q. Why are we in the U.S. more effective tracing firearms than Mexico?

A. Firearms tracing has been used by U.S. law enforcement for decades. U.S. law enforcement officers have gained significant knowledge and experience during these years, thus enabling them to increase the number of successful traces. One factor resulting in a successful firearms trace is being able to properly identify firearms information. Mexican officials do not have the experience or knowledge for identifying U.S. firearms. Recognizing this, ATF developed Spanish eTrace 4.0 (Spanish Language version) to assist Mexico in achieving more successful firearms traces. The most common reason a trace is unsuccessful is because the law enforcement agency gives an inaccurate description of the make and model of the firearm.

Q. What are the top reasons for an incomplete trace?

1. Inaccurate description of the make and model of the firearm being submitted for tracing.
2. Due to the age of the firearm, it may not have a serial number. Before the federal Gun Control Act of 1968, manufacturers were not required to give each gun an individual serial number.
3. Firearms submitted have incomplete descriptor data (missing make, serial number or model).

Q&A: Mexican Trace Data

Q. What has ATF done to help the Mexican government do a better job tracing firearms?

A. ATF has done numerous things over the years to improve successful traces submitted by Mexican law enforcement.

- ATF has provided firearms identification and recognition, firearms markings and tool mark examination and serial number restoration training both in Mexico and in the United States to Mexican law enforcement.
- ATF has provided eTrace 4.0 web-based, bi-lingual (English and Spanish) firearms tracing system to available accredited domestic and international law enforcement agencies to assist in the tracing of U.S.-sourced firearms.
- Through eTrace, law enforcement agencies can electronically submit firearms trace requests, monitor the progress of traces, retrieve completed trace results and query firearms trace-related data.
- The eTrace system currently has more than 17,000 individual law enforcement user accounts. International tracing supports joint law enforcement projects through programs such as the Southwest Border Initiative and the Caribbean Community Initiative.

ATF personnel assigned to the Mexico Country Office and at the various consulate offices throughout Mexico have submitted firearms traces for the Mexican law enforcement.

- ATF has continued to provide education and training to all levels of Mexican law enforcement in the importance of tracing firearms.
- eTrace 4.0 (Spanish Language version) was funded and designed by ATF for Mexican law enforcement to make tracing crime guns easier for non-English speaking countries.
- ATF personnel have responded with Mexican law enforcement officials to seizure locations in Mexico to trace firearms recovered.

Q. What is the percentage of purchaser identified traces from Mexico?

A. The percentage Mexican traces that identify a first purchaser are:

- | | |
|-----------------|-----------------|
| ➤ 2010 – 37.47% | ➤ 2008 – 25.17% |
| ➤ 2009 – 25.51% | ➤ 2007 – 25.72% |

From: Torres, John A.
Sent: Friday, April 22, 2011 3:22 PM
To: (b) (7)(C)
Subject: Re: Add to TP

Thanks.

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From: (b) (7)(C)
To: Anderson, (Andy) Glenn N.; Barrera, Hugo J.; Brandon, Thomas E.; Browning, Robert J.; Champion, Robert R.; Crenshaw, Kelvin N.; Durham, Phillip M.; Gant, Gregory K.; Gleysteen, Mike P.; Graham, Zebedee T.; Herkins, Stephen C.; Horace, Matthew W.; Newell, William D.; O'Brien, Virginia T.; Potter, Mark W.; Richardson, Marvin G.; Stoop, Theresa R.; Thomas, Guy N.; Torres, John A.; Traver, Andrew L.; Turk, Ronald B.; Vido, Paul J.; Webb, J. Dewey; Zapor, Bernard J.
Cc: (b) (7)(C) McDermond, James E.; Chait, Mark R.; McMahon, William G.; Ford, Larry W.
Sent: Fri Apr 22 15:10:14 2011
Subject: Add to TP

Ladies and gentlemen,

Below are a couple of talking points that we wanted to add.

Operation Fast and Furious neither involved a "sting" in Mexico nor any "controlled deliveries" of weapons into Mexico.

At no time did ATF agents observe weapons from Operation Fast and Furious cross into Mexico. There were no undercover law enforcement officers involved in Operation Fast and Furious and ATF did not provide weapons to suspects in that investigation.

Additionally we wanted to point out that while the we recognize that the Laredo Field office still belongs to the Houston Field Division not the Dallas Field Division, the investigation was referred to the Dallas Field Division from the Laredo Field office and worked by the Dallas Field Division.....our apologies for the confusion.

Thank you

(b) (7)(C)

(b) (7)(C)

Chief

ATF Public Affairs Division

Washington, DC

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

Cell (b) (7)(C)

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From: (b) (7)(C)
Sent: Friday, April 22, 2011 3:05 PM
To: (b) (7)(C)
Subject: RE:
Attachments: (b) (7)(C) MexicanQuestions(5).docx

(b) (7)(C) Here's the corrected document.

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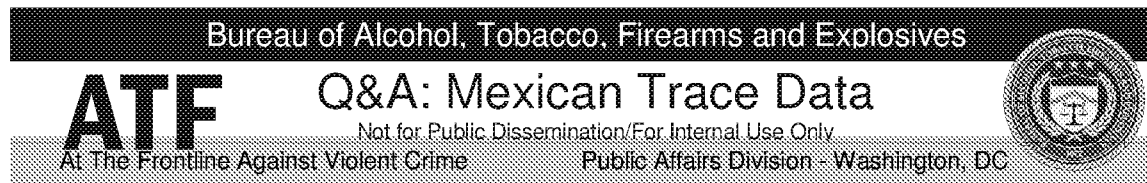
From: (b) (7)(C)
Sent: Friday, April 22, 2011 2:40 PM
To: Kemp, Janice L.
Subject:

(b) (7)(C)
Chief
ATF Public Affairs Division
Washington, DC
Desk 202-648-(b) (7)(C)
Cell (b) (7)(C)

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Q&A: Mexican Trace Data

(Continued)

(April 22, 2011)

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From: (b) (7)(C)
Sent: Friday, April 22, 2011 2:51 PM
To: (b) (7)(C)
Subject: Director 4-22-2011 Mexico Web cast msg110422 (3).docx
Attachments: Director 4-22-2011 Mexico Web cast msg110422 (3).docx

All changes made and header/footer added.

(b) (7)(C)
Public Affairs Specialist
ATF Headquarters
99 New York Ave, NE
Washington, DC 20226-0001
(T) 202.648 (b) (7)(C)
(C) (b) (7)(C)
(F) 202.648-9750

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LAW ENFORCEMENT SENSITIVE

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- The Department of Justice has a long standing policy against the disclosure of non-public information about ongoing criminal investigations. This policy is based, in part, on the strong interest in protecting the effectiveness of ongoing law enforcement efforts. The Fast and Furious investigation has not been adjudicated.
- It is important for you to know that the investigation is ongoing and the case remains open.

DRAFT

LAW ENFORCEMENT SENSITIVE

From: (b) (7)(C)
Sent: Friday, April 22, 2011 2:08 PM
To: (b) (7)(C)
CC: (b) (7)(C)
Subject: FW: Bureau (BC-LIVE-EVENT-04,0)

(b) (7)(C)

(T) 202.648-(b) (7)(C)
(C) (b) (7)(C)
(F) 202.648-9750

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From: AP Exchange notification [mailto:noreply.apexchange@notification.ap.org]
Sent: Friday, April 22, 2011 1:08 PM
To: (b) (7)(C)
Subject: Bureau (BC-LIVE-EVENT-04,0)

Date: 04/22/2011 01:06 PM

LIVE-EVENT-04/920
BC-LIVE-EVENT-04,0

BC-LIVE-EVENT-04

Interview with Representative Jason Chaffetz

xdfx LIVE-EVENT-04

<Show: LIVE EVENT>

<Date: April 22, 2011>

<Time: 10:30>

GREGG JARRETT, FOX NEWS ANCHOR: The murder of a Border Patrol agent

leading to threats of a subpoena for a key federal agency. Brian

Perry gunned down last year in Arizona. High powered automatic weapons found near his lifeless body now. Turns out they were registered to the Bureau of Alcohol, Tobacco and Firearms being sold to Mexican gangs as bait in an effort to track their operations. But now the ATF is refusing to cooperate with a congressional investigation.

Utah Republican Jason Chaffetz is a member of the House Oversight and Government Reform Committee, one of the lawmakers who wants some answers.

And thank you for being with us, Congressman. Are you prepared to bring contempt proceedings against the ATF and its director?

REP. JASON CHAFFETZ, R-UTAH, HOUSE OVERSIGHT AND GOVT. REFORM

COMMITTEE: Well, last month, Chairman Issa of the Oversight Committee issued a subpoena to the Department of Justice and ATF, demanding documents and so far they have not been willing to provide those documents.

The Congress has a constitutional duty role and responsibility to pursue this matter and to get into the depths of this, and thus far, they have not been willing to provide those documents, and so as Chairman Issa said, if we have to pursue contempt a course of action, we will, because we need to look at these documents.

JARRETT: Well, the ATF says through the Department of Justice, wait a minute, we've got a 53 count indictment and ongoing criminal investigation, and by releasing these documents, it may jeopardize that. What's your reaction?

CHAFFETZ: Well, we don't want to jeopardize any sort of investigation that they're doing, but let it be clear, and the chairman has said let it be clear, we're not trying to get involved in that investigation.

We're trying to do an investigation of the Department of Alcohol, Tobacco and Firearms and of the Justice Department, because it seems that they were very loose and irresponsible in pouring literally thousands of guns across the border knowingly and now these weapons have ended up not just with the death of Brian Perry that happened in December but ICE Officer Zapata, too.

And so they did not keep track of these weapons and we want to look into this, because it does not seem as if they were responsible in doing what they -- in their own words have said -- was going to be -- you know these guns were going to get into the hands of criminal element.

Now we've got two agents dead. So we demand some answers and need to look at those documents.

JARRETT: Ballistic tests, though, did show those that weapons registered to ATF did not kill Brian Terry, true?

CHAFFETZ: Well, they were in proximity to the crime scene, and so we have now at least 1500 guns that have gone across the border. We want to know how they're tracking them, where are they.

JARRETT: Right.

CHAFFETZ: Who made these decisions and why. Because we've got two agents that are dead.

JARRETT: I want to be fair here to the other side. The ranking Democrat on the committee, Elijah Cummings, has said this and we'll put it up on the scene.

"Despite my repeated requests Chairman Issa has refused to meet with the Department of Justice to ensure that his actions do not compromise ongoing investigations and prosecutions, including a trial of 20 individuals that is scheduled to begin in June

Making those documents public might jeopardize that criminal case but couldn't they make those privately available to you and your committee?

CHAFFETZ: Well, they should at least provide us a docket to -- to show us which documents they have, which ones they think would jeopardize the investigation and then show us the other documents. And clearly, we are co-equal here as a branch of government and we have a role and responsibility to hold the administration accountable. The Obama administration said they were going to be open and transparent but in this case we have to have some answers.

JARRETT: Well, let me come back then to my first question. Are you prepared now to move forward with criminal contempt proceedings against ATF and its acting director, Kenneth Nelson?

CHAFFETZ: Well, we hope it doesn't come to that but yes, we are prepared to go to that length. It's a very, very serious matter, one of the most serious matters I've been involved with thus far. There's a lot of -- there are a lot of questions and I think in the coming weeks and months you're going to see this play this out.

JARRETT: All right. Representative Jason Chaffetz, it's good to see you, sir, thank you very much.

CHAFFETZ: Thank you.

END

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From: (b) (7)(C)
Sent: Friday, April 22, 2011 12:47 PM
To: (b) (7)(C)
Subject: FW: Document Request from Senator Grassley's Office

How do you guys feel about a reminder e-mail to employees, or even a broadcast, about ATF policy regarding congressional inquiries? Although the official policy (below) references "written" correspondence, the policy also applies to verbal requests. It is especially important in this current climate that employees understand this fact.

We don't need to reference any specific inquiries or investigations, just a generic reminder of our policy. Although occurrences have been infrequent over the past few years, we consistently see personnel in the field respond to congressionals without involving LAD. Just a thought...

Joe

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.

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From: Gaston, Molly (SMO) [mailto:(b) (7)(C)]
Sent: Friday, April 22, 2011 11:08 AM
To: (b) (7)(C)
Cc: Wade, Jill C (SMO)(b) (7)(C); McDermond, James E.
Subject: RE: Document Request from Senator Grassley's Office

Thanks, (b) (7)(C)

From: (b) (7)(C) (ATF)

Sent: Friday, April 22, 2011 11:07 AM

To: Gaston, Molly (SMO)

Cc: Wade, Jill C (SMO); (b) (7)(C) [ATF]; McDermond, James E. (ATF)

Subject: Document Request from Senator Grassley's Office

Molly,

Tristan Leavitt, from Senator Grassley's office, left a message with one of our employees yesterday. In his voice mail, he explained that he wanted a copy of ATF Order 3310.4B. This document outlines ATF's Firearms Enforcement Program and is not a public document. Further, it contains sensitive information relative to investigative procedures and techniques.

I left a message for Tristan to call me. When he does, I will refer him to you. I will also remind him that you and (b) (7)(C) should be his primary contact on all future requests related to Project Gunrunner/Fast & Furious. If you have any questions, please call me. Thanks. - (b) (7)(C)

(b) (7)(C)

Deputy Chief

Legislative Affairs Division

Bureau of Alcohol, Tobacco, Firearms and Explosives

(202) 648-8510

From: (b) (7)(C)
Sent: Friday, April 22, 2011 11:32 AM
To: (b) (7)(C)
Subject: Draft 2 Mexico Web cast msg110422.docx
Attachments: Mexico Web cast msg110422.docx

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- Good Morning, in light of the many allegations about ATF's enforcement operations along the Southwest border, I want to assure you, ATF's dedicated employees, that we are addressing these allegations and stand by our decisions with regard to our enforcement actions.
- Operation Fast and Furious is an ongoing criminal investigation of an extensive gun-trafficking enterprise and a part of Project Gunrunner, ATF's broad initiative to deal with weapons trafficking along the Southwest Border.
- As many of you are aware, Project Gunrunner is an intelligence led, comprehensive strategy that focuses on the common threads in independent firearms trafficking investigations spread out among all of ATF's field divisions.
- The goal of Project Gunrunner is, and always has been, to reduce firearms-related violent crime associated with Mexican criminal organizations operating in the U.S. and Mexico and to prevent these organizations from unlawfully acquiring and trafficking firearms.
- You should know that there are many separate and distinct firearms trafficking investigations into different criminal organizations being conducted by several field offices around the country.
- As of March 2010, Project Gunrunner has led to the seizure of more than 6,688 firearms and the arrest of 1,397 defendants (more than 100 arrests a month) --850 of which have been convicted.
- The ATF investigation referred to as Operation Fast and Furious is a single, complex, criminal investigation into persons responsible for supplying firearms to the Mexican Drug Trafficking Organizations (DTO's). These weapons are often used by DTOs and other criminal organizations to terrorize citizens on both sides of the U.S.-Mexican border in furtherance of their illicit, criminal activities.
- This investigation was initiated by the Phoenix Field Division and the United States Attorney's Office for the District of Arizona, and subsequently approved by the multi-agency Organized Crime and Drug Enforcement Task Force (OCDETF) Program.

- The purpose of Operation Fast and Furious was to dismantle a transnational organization believed to be responsible for trafficking weapons into Mexico by dismantling its leadership. To date, this operation has resulted in an indictment charging 20 defendants with conspiracy to purchase hundreds of firearms over a 15 month period from September 2009 to December 2010.
- As many of you know there have been numerous allegations in the media and elsewhere that suggest Operation Fast and Furious was a failed effort. What you need to know is that in actuality, the investigation has dismantled a large, complex, international firearms trafficking organization, and that the investigation has not concluded.
- Had it not been for the perseverance of this multi-agency task force, this sophisticated criminal network would still be trafficking hundreds of weapons into Mexico.
- Some sources have even suggested that the purchase of multiple firearms at one time clearly indicates suspicious activity, and that ATF could criminally charge the purchaser on that knowledge alone. However, because of the historic significance of firearms ownership along the Southwest border, it is neither uncommon nor illegal for non-prohibited firearms purchasers to buy 10 or more firearms at a time in that part of the country. Therefore, what may be considered a suspicious purchase in other parts of the United States might be considered a rather common place activity along the Southwest border.
- Operation Fast and Furious neither involved a "sting" in Mexico nor any "controlled deliveries" of weapons into Mexico, by ATF.
- At no time did ATF agents observe weapons from Operation Fast and Furious cross into Mexico. There were no undercover law enforcement officers involved in Operation Fast and Furious and ATF did not provide weapons to suspects in that investigation.
- Obviously mistakes in judgment were made by the Phoenix Field Division management team in HOW they implemented their local enforcement strategy. As such I have decided to remove and replace the SAC and both ASACs in the Phoenix Field Division effective immediately. The SAC will assist with the OIG investigation and one of the ASACs will be assigned to

the United States Attorney's Office in Phoenix to assist with the prosecution of Fast and Furious defendants.

- These moves do not hamper the prosecution of those responsible for supplying firearms to cartel members nor does it reflect on the hard work of the case agent or her coworkers. We continue to stand behind the prosecution of those in the Fast and Furious investigation and will continue to work to stem the flow of firearms to Mexico.
- The Department of Justice has a long standing policy against the disclosure of non-public information about ongoing criminal investigations. This policy is based, in part, on the strong interest in protecting the effectiveness of ongoing law enforcement efforts. The Fast and Furious investigation has not been adjudicated.
- It is important for you to know that the investigation is ongoing and the case is still open.

From: (b) (7)(C)
Sent: Friday, April 22, 2011 11:24 AM
To: (b) (7)(C)
Subject: RE:
Attachments: (b) (7)(C)-4-2011 Mexico letter.docx; (b) (7)(C) MexicanQuestions(4).docx

(b) (7)(C) Here are my edits. The Qs&As may need some more work. I tried to quickly pull in more information. Let me know.

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From: (b) (7)(C)
Sent: Friday, April 22, 2011 9:57 AM
To: (b) (7)(C)
Subject:

(b) (7)(C) here they are thanks

(b) (7)(C)
Chief
ATF Public Affairs Division
Washington, DC
Desk 202-648-(b) (7)(C)
Cell (b) (7)(C)

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Bureau of Alcohol, Tobacco, Firearms and Explosives

ATF

At The Frontline Against Violent Crime

Q&A: Mexican Trace Data

Not for Public Dissemination/For Internal Use Only

Public Affairs Division - Washington, DC

**Mexican Trace Data**

(Continued)

(April 13, 2011)

Q. What is the percentage of domestic traces that identify a first purchaser?

A. Percentages of domestic traces that identify a first purchaser:

- 2010 – 63.1%
- 2009 – 61.0%
- 2008 – 62.0%
- 2007 – 61.4%

Q. Why are we in the U.S. more effective tracing firearms in the U.S. than in Mexico?

A. Firearms tracing has been implemented by U.S. law enforcement for decades. U.S. law enforcement officers have gained significant knowledge and experience over these decades enabling them to increase the number of successful traces. One factor resulting in a successful firearms trace is being able to properly identify firearms information. Mexican officials do have the length of experience in identifying U.S. firearms. Recognizing this, ATF developed Spanish eTrace 4.0 (Spanish Language version) to assist Mexico in achieving more successful firearms traces. The most common reason a trace is unsuccessful is because the law enforcement agency gives an inaccurate description of the make and model of the firearm.

does better tracing because than the Mexican because we see American law enforcement submit their firearms for tracing in a more timely fashion. In addition, most U.S. police departments have dedicated people assigned to handle traces who are savvy at performing traces and providing all necessary information for a complete trace.

Q. What are the top reasons for an incomplete trace?

A. 1. Inaccurate description of the make and model of the firearm. The lack of importer information being submitted for tracing. ~~customed for firearms not included for tracing.~~

.....2. Sometimes the gun is old and doesn't have a serial number. Before the federal Gun Control Act of 1968, manufacturers were not required to give each gun an individual serial number.

The age of firearm submitted for tracing are older.

Internal Use Only

2

3. Firearms submitted have incomplete descriptor data (missing make, serial number or model).

Q. What have we done to help the Mexicans do a better job tracing firearms?

A. ATF has done numerous things over the years to help Mexican law enforcement do a better job tracing firearms:

- ATF has provided training both in Mexico and in the United States to Mexican law enforcement.
- ATF has provided eTrace 4.0 web-based, bi-lingual (English and Spanish) firearms tracing system to available accredited domestic and international law enforcement agencies to assist in the tracing of U.S.-sourced firearms. has provided follow-up interaction with people traced.
- Through eTrace, law enforcement agencies can electronically submit firearms trace requests, monitor the progress of traces, retrieve completed trace results and query firearms trace-related data.
- The eTrace system currently has more than 17,000 individual law enforcement user accounts. International tracing supports joint law enforcement projects through programs such as the Southwest Border Initiative and the Caribbean Community Initiative.
- ATF employees assigned to the Mexico country office and at the various consulate offices have submitted firearms traces for the Mexicans.
- ATF has continued to provide education and training to all levels of Mexican law enforcement. In the past numerous meetings enforcement emphasizing the importance of tracing firearms. with all with all levels of Mexican law
- eTrace 4.0 (Spanish Language version) was funded and designed by ATF for Mexican law enforcement to make tracing crime guns easier for non-English speaking countries.
- ATF employees have responded to seizure locations in Mexico with Mexican law enforcement to trace firearms recovered.

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Q. What is the percentage of purchaser identified traces from Mexico?

A. The percentage Mexican traces that identify a first purchaser are:

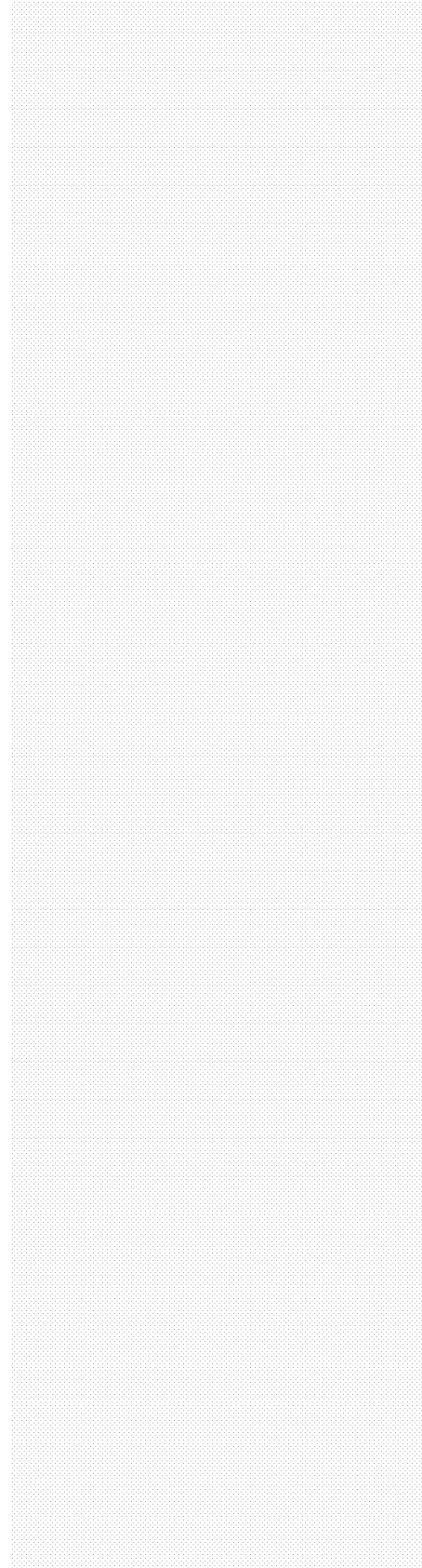
- 2010 – 37.47%
- 2009 – 25.51%

3

➤ 2008 – 25.17%

➤ 2007 – 25.72%

Internal Use Only



From: (b) (7)(C)
Sent: Friday, April 22, 2011 10:49 AM
To: (b) (7)(C)
Subject: Mexico Web cast msg110422.docx
Attachments: Mexico Web cast msg110422.docx

Here's the draft transcript for the Web cast to employees.

(b) (7)(C)
Public Affairs Specialist
ATF Headquarters
99 New York Ave, NE
Washington, DC 20226-0001
(T) 202.648.(b) (7)(C)
(C) (b) (7)(C)
(F) 202.648-9750

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- Operation Fast and Furious is an ongoing criminal investigation of an extensive gun-trafficking enterprise, and is a part of Project Gunrunner, ATF's broad initiative to deal with weapons trafficking along the Southwest Border.
- As many of you are aware, Project Gunrunner is an intelligence led, comprehensive strategy that focuses on the common threads in independent firearms trafficking investigations spread out among all 25 of ATF's field divisions.
- The goal of Project Gunrunner is and always had been to reduce firearms-related violent crime associated with Mexican criminal organizations operating in the U.S. and Mexico by preventing these organizations from unlawfully acquiring and trafficking firearms.
- You should know that there are many separate and distinct firearms trafficking investigations into different criminal organizations being conducted by several field offices.
- As of March 2010, Project Gunrunner has led to the seizure of more than 6,688 firearms and the arrest of 1,397 defendants (more than 100 arrests a month) --850 of which have been convicted.
- The ATF investigation referred to as Operation Fast and Furious is a single, complex criminal investigation into firearms trafficking organizations supplying firearms to the Mexican Drug Trafficking Organizations (DTO's) that use these weapons to terrorize the good people on both sides of the U.S.-Mexican border in furtherance of their illicit, criminal activities.
- The investigation was initiated by the Phoenix Field Division and the United States Attorney's Office for the District of Arizona, and subsequently approved by the multi-agency Organized Crime and Drug Enforcement Task Force (OCDETF) Program.

- The purpose of Operation Fast and Furious was to dismantle a transnational organization believed to be responsible for trafficking weapons into Mexico by dismantling its leadership. To date, this operation has resulted in an indictment charging 20 defendants with conspiracy to purchase hundreds of firearms over a 15 month period from September 2009 to December 2010.
- As many of you know there have been numerous allegations in the media and elsewhere that suggest Operation Fast and Furious was a failed effort. What you need to know is that in actuality, the investigation has dismantled a large, complex, international firearms trafficking organization, and the investigation has not concluded.
- Had it not been for the perseverance of this multi-agency task force, this sophisticated criminal network would still be trafficking hundreds of weapons into Mexico.
- Some sources have even suggested that the purchase of multiple firearms at one time clearly indicates suspicious activity, and that ATF could criminally charge on that knowledge alone. However, because of the historic significance of firearms ownership along the Southwest border, it is neither uncommon nor illegal for non-prohibited firearms purchasers to buy 10 or more firearms at a time in that part of the country. Therefore, what may be considered a suspicious purchase in other parts of the United States might be considered a rather common place activity along the Southwest border.
- Operation Fast and Furious neither involved a "sting" in Mexico nor any "controlled deliveries" of weapons into Mexico.
- At no time did ATF agents observe weapons from Operation Fast and Furious cross into Mexico. There were no undercover law enforcement officers involved in Operation Fast and Furious and ATF did not provide weapons to suspects in that investigation.
- The Department of Justice has a long standing policy against the disclosure of non-public information about ongoing criminal investigations. This policy is based, in part, on the strong interest in protecting the effectiveness of ongoing law enforcement efforts. The Fast and Furious investigation has not been adjudicated.
- It is important for you to know that the investigation is ongoing and the case is still open.

From: (b) (7)(C)

Sent: Friday, April 22, 2011 9:40 AM

To: McDermond, James E.; Chait, Mark R.; Herbert, Arthur W.; Ficaretta, Teresa; McCabe, Harry L.;

(b) (7)(C)

Subject: Fwd: Fwd: Frontline request...

While the below request is about the shotgun import proposal you can see from the start of the e-mail chain the discussion would lead to the AKs. This is your decision to make and a phone call is all I need in terms of direction.

I personally believe this is a no win as long as imported firearms can be reconfigured once in the U.S. and the pro-gun groups view any ban on reconfiguring as something that will lead to a sporting test for firearms produced in the U.S. In addition there is the definite link to Mexico as shown in the first e-mail. My initial reaction is stay away from meeting or discussing this matter.

From: Arkadi Gerney

Date: Apr 22, 2011 8:58:11 AM

Subject: Fwd: Frontline request...

To: (b) (7)(C)

Cc: Jancy Rountree <JRountree@cityhall.nyc.gov>

Jim,

FYI, a producer fir PBS frontline reached out to me re non-sporting purpose import ban. Based on his interests I though you might be good for him to talk to -- if you are interested. If you are, I think he be happy to talk on or off the record.

Let me know If you'd like me to connect him to you.

Hope you are well,
Arkadi

Begin forwarded message:

From: Seven S Dudley-InSight <sdudley@insightcrime.org>
Date: April 21, 2011 4:33:32 PM EDT
To: agerney@mac.com
Subject: Frontline request...

Hi Mr Gerney:

Thanks for speaking with me today.

In the broadest sense of the word, our project focus is similar to that of the mayors' coalition in that we are interested in tracking how guns move between legal and illegal worlds. In the most specific sense, we are curious as to how the US regulates and legislates gun imports. We ask this question because there appears to be a wide range of interpretation of the laws and little oversight of the gun importers. These imported weapons, in particular the WASR - 10 from Romania and the Norinco AK 47 variants, seem to be appearing at crime scenes in Mexico in massive numbers (ATF tells us they are the top two weapons found in Mexican crime scenes). Since they are the weapons of choice and since they are mostly moving through US gun shops, we wanted to figure out how and why.

We have already started this project with various partners: Frontline, Center for Public Integrity, the Investigative Reporters Workshop and InSight. You can consult the InSight version of the site [here](http://insightcrime.org) (Full disclosure: I am the co-director of InSight.). The others have their own versions on their sites.

I hope this satisfies Mr Zamillo, and he will speak with us. It would be extremely helpful.

I look foward to being in touch with you about other avenues of investigation.

Best,

Steven

--

Steven Dudley
Tel. (202) 657-6717
Cel. (510) 384-1185
sdudley@insightcrime.org
insightcrime.org

From: (b) (7)(C)
Sent: Thursday, April 21, 2011 6:25 PM
To: (b) (7)(C)
Subject: TPs (CLEAN)
Attachments: Fast-n-Furious is NOT 110421 dir FINAL.docx

Attached

(b) (7)(C)
Deputy Chief
ATF - Public Affairs Division
(b) (7)(C)
Direct) 202-648-(b) (7)(C)
Mobile) (b) (7)(C)
Main) 202-648-8500

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Bureau of Alcohol, Tobacco, Firearms and Explosives

ATF
At the Frontline Against Violent Crime

Key Messages/Talking Points

Not for Public Dissemination/For Internal Use Only

Public Affairs Division - Washington, DC



What Operation Fast and Furious Is NOT

(04/19/2011)

Background

The investigation referred to as “Fast and Furious” is a single, complex criminal investigation into the firearms trafficking organizations that supply firearms to the Mexican Drug Trafficking Organizations (DTO’s) that use these weapons to terrorize the good people on both sides of the U.S./Mexican border in furtherance of their illicit, criminal activities. This investigation was initiated by the Phoenix Field Division and the United States Attorney’s Office for the District of Arizona. The investigation was subsequently approved by the multi-agency Organized Crime and Drug Enforcement Task Force (OCDETF) Program. The purpose of this investigation is to dismantle a transnational organization believed to be responsible for trafficking weapons into Mexico by dismantling its leadership.

Talking Points

- The Fast and Furious investigation is NOT synonymous with Project Gunrunner. Project Gunrunner is a comprehensive strategy that is intelligence led and seeks to focus on common threads in various independent firearms trafficking investigations spread out among all 25 of ATF’s field divisions. Project Gunrunner is NOT a tactical plan. The goal of Project Gunrunner is to reduce firearms-related violent crime associated with Mexican criminal organizations operating in the U.S. and Mexico by preventing these organizations from unlawfully acquiring and trafficking firearms.
- The Fast and Furious investigation is NOT another name for the Project Gunrunner Cartel Focused Strategy. Deployed in September 2010, the Cartel Strategy reflects ATF’s increased national emphasis on firearms trafficking enforcement related to the Southwest Border and the importance of identifying and prioritizing trafficking investigations where a nexus to Mexican Drug Trafficking Organizations (DTOs) and cartels may be established.
- The Fast and Furious investigation has NOT been adjudicated. Although the defendants in this case have been indicted, the investigation is ongoing and the case is still open.
- The Fast and Furious investigation did NOT include surveilling guns crossing the U.S./Mexico border.
- The details attributed to the Fast and Furious investigation by the news media are NOT all associated with the actual Fast and Furious investigation.

For Internal Use Only

- There are many separate and distinct firearms trafficking investigations into different criminal organizations by several different field offices.
- The Fast and Furious investigation is NOT responsible for the deaths of CBP Agent Brian Terry and ICE Agent Jaime Zapata. Their murders are the direct and tragic result of violent criminal acts perpetrated by brazen criminals who have no respect for the rule of law or human life. Our hearts and prayers go out to the families of these brave agents. **The firearms recovered near the scene of Agent Terry's death were not forensically linked to his murder.**
- The Fast and Furious investigation is NOT related to a case that was initiated by the Laredo field office of the Dallas Field Division in November 2010. That case involved a firearm purchased by (b) (3) (P.L. 111-117) on or about October 10, 2010, which was one of the firearms that were used in the assault on ICE Special Agent Victor Avila and murder of Special Agent Jaime Zapata in Mexico. ATF did not know about the aforementioned purchase at the time.
- Due to the historic significance of firearms ownership along the Southwest border, it is not uncommon for firearms purchasers to buy 10 or more firearms at a time in that part of the country. Therefore, what may be considered a suspicious purchase in other parts of the country might be considered common place along the Southwest border.

###

From: (b) (7)(C)
 Sent: Thursday, April 21, 2011 6:24 PM
 To: (b) (7)(C)
 Subject: URGENT: Webcast Script and Townhall Meeting

(b) (7)(C)

The front office is ready to do a webcast to all employees on the "subject," and also a townhall meeting for all HQ employees. The narrative should serve as the script for the webcast. You have it, as does AD McDermond (at his request). You will need to finalize it tomorrow, so that the AD can send it to Director Melson by 12pm tomorrow. Looks like it will take place the early part of next week. (b) (7)(C) is spearheading the plan.

(b) (7)(C)

(b) (7)(C)

Deputy Chief
 ATF - Public Affairs Division

(b) (7)(C)

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

Mobile) (b) (7)(C)

Main) 202-648-8500

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From: (b) (7)(C)
Sent: Thursday, April 21, 2011 6:20 PM
To: McDermond, James E.
CC: (b) (7)(C)
Subject: TPs

AD McDermond:

Given the spate of FOIA requests on the subject, I think it would be prudent to hand deliver the talking points to Greg Serres in the morning, in lieu of emailing them tonight. Do you concur?

(b) (7)(C)

(b) (7)(C)

Deputy Chief
ATF - Public Affairs Division

(b) (7)(C)

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

Mobile: (b) (7)(C)

Main) 202-648-8500

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From: (b) (7)(C)
 Sent: Thursday, April 21, 2011 2:35 PM
 To: (b) (7)(C)
 CC: (b) (7)(C)
 Subject: HOT TOPICS for the weekend (Th 4/21/2011)

Importance: High

(b) (7)(C)

Here are the hot topics for the weekend. When in doubt, call me (b) (7)(C) or (b) (7)(C) cell
 (b) (7)(C) Check with (b) (7)(C) tomorrow (Friday) for updates or additions.

(b) (7)(C)

ATF RESPONSES

4/21/2011

Fast and Furious, Grassley, Issa, Project Gunrunner:

- ATF cannot comment on matters involving ongoing investigations.
- ATF is committed to working with its law enforcement partners in the U.S. and Mexico to stem the illegal flow of firearms to Mexico.

Justice Department spokeswoman Tracy Schmalzer said the department has “made clear to law enforcement agencies and prosecutors working along the [southwest] border that no one should allow guns to illegally cross.” She noted that Mr. Holder in recent congressional testimony said questions raised by ATF agents about the way operations had been conducted have been “taken seriously.”

“We continue to work with our law enforcement counterparts here and in Mexico to stem the flow of weapons, cash and drugs across our borders and interdict people whose only goal is to evade law enforcement,” Ms. Schmalzer said. “Fighting criminal activity along the southwest border — including the illegal trafficking of guns to Mexico — has been a priority of this administration and this Department of Justice.”

Report on the Importability of Certain Shotguns:

- The report provides clarity and predictability to the firearms industry, so importers know what shotguns may be imported to the United States.
- This report does not preclude the importation of true sporting shotguns.
- Under provisions of the Gun Control Act of 1968, ATF is responsible for determining whether firearms are “generally recognized as particularly suitable for or readily adaptable to sporting purposes.”
- The report makes no changes in the Federal laws and regulations governing the manufacture, sale, and distribution of domestically made shotguns.
- ATF is soliciting comments through May 1st on the report and will analyze the comments received [to-date, about 3,800 have been received].

Multiple Sales of Certain Rifles Proposal to OMB:

- ATF has reviewed the public comments and is ready to move forward with the proposal process.
- ATF expects OMB's approval to submit the proposal to the Federal Register any day now, which would allow the next 30-day phase in which the public comments go to OMB. Once that concludes and OMB has had time to review all comments, a final determination will be made.

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From: (b) (7)(C)
Sent: Friday, April 15, 2011 3:43 PM
To: (b) (7)(C)
Cc: (b) (7)(C)
Subject: HOT TOPICS for the weekend
Importance: High

(b) (7)(C)

Here are the hot topics for the weekend. Remember, when in doubt, feel free to contact (b) (7)(C)

(b) (7)(C) or me (b) (7)(C)
 (b) (7)(C)

Fast and Furious Investigation

* "ATF cannot comment on matters that are part of ongoing investigations."

Sen. Grassley's April 13th letter

* "The April 13 letter from the Senator is addressed to the Attorney General. ATF cannot comment on DOJ's

response.”

D.C Court of Appeals opinion regarding non-residents purchasing firearms in the United States

* “The matter is still before the federal court. ATF will not comment on pending litigation.”

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From: (b) (7)(C)
 Sent: Thursday, April 21, 2011 2:23 PM
 To: (b) (7)(C)
 CC: (b) (7)(C)
 Subject: REVISED: Narrative
 Attachments: Mexico letter WORKING DOCUMENT to djw 110421.docx

(b) (7)(C)

The attached version has been drafted by (b) (7)(C) and reviewed by me (with edits). I am fine with it.

(b) (7)(C)

(b) (7)(C)

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From: (b) (7)(C)
 Sent: Thursday, April 21, 2011 9:18 AM
 To: (b) (7)(C)
 Subject: Narrative

For your review.

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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.

This letter responds to your request for information concerning Operation Fast and Furious, an ongoing criminal investigation of an extensive gun-trafficking enterprise. Operation Fast and Furious is a part of Project Gunrunner, a broad ATF initiative to deal with weapons trafficking along the Southwest Border. Project Gunrunner is a comprehensive strategy that is intelligence led and seeks to focus on common threads in various independent firearms trafficking investigations spread out among all 25 of ATF's field divisions. The goal of Project Gunrunner is to reduce firearms-related violent crime associated with Mexican criminal organizations operating in the U.S. and Mexico by preventing these organizations from unlawfully acquiring and trafficking firearms. There are many separate and distinct firearms trafficking investigations into different criminal organizations being conducted by several field offices. As of March 2010, Project Gunrunner had led to the arrest of 1,397 defendants --850 of which had been convicted-- and the seizure of over 6,688 firearms.

The investigation referred to as "Fast and Furious" is a single, complex criminal investigation into the firearms trafficking organizations that supply firearms to the Mexican Drug Trafficking Organizations (DTO's) that use these weapons to terrorize the good people on both sides of the U.S.-Mexican border in furtherance of their illicit, criminal activities. This investigation was initiated by the Phoenix Field Division and the United States Attorney's Office for the District of Arizona. The investigation was subsequently approved by the multi-agency Organized Crime and Drug Enforcement Task Force (OCDETF) Program. The purpose of this investigation is to dismantle a transnational organization believed to be responsible for trafficking weapons into Mexico by dismantling its leadership. To date, this investigation has resulted in an indictment charging 20 defendants with conspiracy to purchase hundreds of firearms from September 2009 to December 2010.

Allegations in the media and elsewhere suggest that Operation Fast and Furious was a failed effort. To the contrary, the investigation has dismantled a large, complex, international firearms trafficking case, and the investigation has not concluded. Without the perseverance of this multi-agency task force, this sophisticated criminal network would still be trafficking hundreds of weapons into Mexico today and in the future.

Additionally, some sources suggest that the purchase of multiple firearms at one time clearly indicates suspicious activity and that ATF could criminally charge on that knowledge alone. However, because of the historic significance of firearms ownership along the Southwest border, it is not uncommon or illegal for non-prohibited firearms purchasers to buy 10 or more firearms at a time in that part of the country. Therefore, what may be considered a suspicious purchase in other parts of the United States might be considered a rather common place activity along the Southwest border.

Operation Fast and Furious neither involved a "sting" in Mexico nor any "controlled deliveries" of weapons into Mexico. At no time did ATF agents observe weapons from Operation Fast and

Furious cross into Mexico. There were no undercover law enforcement officers involved in Operation Fast and Furious and ATF did not provide weapons to suspects in that investigation.

The Department of Justice has a long standing policy against the disclosure of non-public information about ongoing criminal investigations. This policy is based, in part, on the strong interest in protecting the effectiveness of ongoing law enforcement efforts. The Fast and Furious investigation has not been adjudicated. Although the defendants in this case have been indicted, the investigation is ongoing and the case is still open. As with any open investigation, it is against DOJ policy to discuss the details of “Fast and Furious” until the case is fully adjudicated. Therefore, I am unable to share with you any particular details of Operation Fast and Furious.

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From: (b) (7)(C)
Sent: Thursday, April 21, 2011 11:23 AM
To: (b) (7)(C)
CC: (b) (7)(C)
Subject: ASSIGNMENT DUE by 3pm F 3/22/2011: Update USG comments binder

(b) (7)(C)

Please review the clips and other sources for recent (since last review) comments made by U.S. government officials on the Fast and Furious investigation and letters by Sen. Grassley, Rep. Issa and others.

Thanks,

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From: (b) (7)(C)
 Sent: Thursday, April 21, 2011 9:24 AM
 To: (b) (7)(C)
 Subject: FW: Story from the (DC) Daily Caller

For your information. (Due to the fact that PAD could not verify the veracity of this media outlet, the article below was kept out of the clips.) Similar article by mainstream media appear in the clips today.

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From: (b) (7)(C)
 Sent: Thursday, April 21, 2011 8:34 AM
 To: (b) (7)(C)
 Subject: Story from the (DC) Daily Caller

Obama snubs Issa on subpoena for ATF documents

The (Washington, DC) Daily Caller
 April 20, 2011

By Jonathan Strong - The Daily Caller | Published: 10:27 AM 04/20/2011 | Updated: 11:55 AM 04/20/2011

For the first time since Republicans took control of the House and gained the power of congressional subpoena, the Obama administration has declined to comply with a subpoena issued by top GOP oversight official Rep. Darrell Issa.

In the face of a subpoena by Issa, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) provided no

documents by the April 13 deadline, according to an April 20 letter from Issa to ATF's director, Kenneth Melson.

Issa is threatening contempt proceedings if ATF does not comply.

At issue are documents related to **Project Gunrunner and Operation Fast and Furious**, in which ATF allowed American guns to be smuggled into Mexico and sold to Mexican drug cartels. The goal of the program was to track the illegal weapons and drug markets after they were used in crimes and abandoned using ballistics information and serial numbers for the guns.

A spokesman for ATF declined to comment about the matter saying, "we can't respond to the media or anyone else until we respond to the chairman himself."

But in an April 13 letter to Issa, Assistant Attorney General Ronald Welch cited the Justice Department's policy not to disclose details about "ongoing criminal investigations" as a reason not to comply with the document demand.

Issa says the objection is spurious.

"We are not conducting a concurrent investigation with the Department of Justice, but rather an independent investigation of the Department of Justice," Issa says in his April 20 letter, citing three historical examples of congressional oversight of Justice Department investigations, including during the Teapot Dome scandal in 1922.

ATF did provide access to four documents for "in camera" review at Justice Department headquarters, Issa says, but the documents were "general" and did not "directly pertain" to Operation Fast and Furious, in which guns were permitted to be smuggled to Mexico.

In his letter threatening contempt proceedings, Issa provides as attachments several documents he has obtained independently from his official request to the agency.

One of the documents included is a "significant information report" showing that two AK-47 rifles allowed to be sold to Mexican drug cartels were recovered from the scene of border patrol agent Brian Terry's murder.

Issa says any decision to allow American guns to be sold to Mexican drug cartels was likely made by top-ranking Justice Department officials.

"It is nearly unfathomable that our government would allow straw purchasers to illegally acquire automatic weapons and transport them into Mexico, in furtherance of an ATF-led and inspired investigation. As I understand Department of Justice operations, such programs would require the approval of top officials," Issa says.

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MEMORANDUM FOR THE ATTORNEY GENERAL

THROUGH THE DEPUTY ATTORNEY GENERAL

FROM: Kenneth E. Melson
Acting Director, Bureau of Alcohol, Tobacco, Firearms
and Explosives

SUBJECT: Weekly Report for April 18-22, 2011

EXPECTED LEGISLATIVE OR POLICY DEVELOPMENTS:

- ***Bureau of Alcohol, Tobacco, Firearms and Explosives Meets with DOJ Officials to Discuss Regulatory Scope — Washington, DC:***

On April 12, 2011, representatives from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) met with officials from the Office of the Attorney General, Office of the Deputy Attorney General, Office of Legal Policy, Office of Legal Counsel, Office of Legislative Affairs, and the Executive Office for US Attorneys to discuss the way forward with respect to an informal opinion that has been issued by the Office of Legal Counsel on the scope of the Gun Control Act's prohibition on the possession of firearms by nonimmigrant aliens. A number of different approaches were discussed, and will be considered further by all parties.

- ***Bureau of Alcohol, Tobacco, Firearms and Explosives Provides Firearms Identification Briefings for Congressional Staff Members — Cheltenham, Maryland:***

On April 11, 2011, the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) Firearms Technology Branch provided firearms identification briefings, demonstrations, and hands-on instruction for five congressional staffer members of the House Appropriations Committee. FTB will replicate the firearms currently favored by the Mexican drug cartels, and include AK- and AR-type full and semiautomatic rifles and various pistols during the demonstrations.

- ***Bureau of Alcohol, Tobacco, Firearms and Explosives Meets With Congressional Staff To Discuss Firearms Trafficking:***

On April 15, 2011, officials from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will meet with staff members of Representative Mike Rogers (R-

MI) and Representative Emanuel Cleaver (D-MO) to discuss ATF's mission and firearms trafficking patterns in central Michigan and western Missouri.

- ***Bureau of Alcohol, Tobacco, Firearms and Explosives Meets With Congressional Staff To Discuss Firearms Crime:***

On April 18, 2011, officials from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will meet with staff members of Senator Ben Nelson (D-NE) to discuss firearms crime issues in Nebraska.

STEPS TO IMPROVE DEPARTMENT OPERATIONS AND TRANSPARENCY:

- ***Bureau of Alcohol, Tobacco, Firearms and Explosives Hosts Tour for the White House Office of National Drug Control Policy — Martinsburg, West Virginia:***

On April 8, 2011, the Bureau of Alcohol, Tobacco, Firearms and Explosives hosted a tour of the National Tracing Center (NTC) for personnel from the White House Office of National Drug Control Policy (ONDCP). The ONDCP guests received a tour of the NTC, as well as a demonstration of Spanish eTrace capabilities; they were also given a tour of the Firearms Technology Branch collocated in the same ATF Martinsburg facility.

- ***Bureau of Alcohol, Tobacco, Firearms and Explosives Provides “Tele-Instruction” for Brownells Gunsmith School — Martinsburg, West Virginia:***

On April 15, 2011, two firearms instructors with the Bureau of Alcohol, Tobacco, Firearms and Explosives' Firearms Technology Branch (FTB) participated in a training teleconference sponsored by Brownells, of Montezuma, Iowa, for over 150 gunsmiths located throughout the nation, sponsored by Brownells Gunsmith School, of Montezuma, Iowa. FTB's instructors provided instruction concerning the definition and status of gunsmithing under Federal firearms laws and regulations, and current Federal firearms-marking requirements. Brownells, in business for the past 70 years, is one of the world's largest suppliers of firearm accessories, gun parts and gunsmithing tools.

- ***Bureau of Alcohol, Tobacco, Firearms and Explosives to Meet With National Association of Sporting Goods Wholesalers — Pittsburgh, Pennsylvania:***

On April 28, 2011, officials with the Bureau of Alcohol, Tobacco, Firearms and Explosives will meet with representatives from the Board of Directors of the National Association of Sporting Goods Wholesalers (NASGW) to provide key information on the laws and regulations governing the sale and transfer of firearms in a large commercial environment. The NASGW member companies are Federal Firearms Licensees (FFL) that distribute firearms to retailers throughout the country.

SIGNIFICANT DEADLINES OR DEVELOPMENTS IN INTERAGENCY PROCESSES:

- Bureau of Alcohol, Tobacco, Firearms and Explosives Helps Develop Iraqi Airport Explosive Ordnance Disposal Team:***
 On April 10, 2011, personnel from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Iraq Office hosted a meeting with the Iraqi and U.S. State Department officials to develop an explosives ordnance disposal plan for the Baghdad Airport in order to meet international standards. Approximately 35 countries have commercial flights coming into Iraq. Airport security provided by U.S. forces currently meets international standards, but when U.S. forces leave Iraq, the standards will no longer be met and those international flights will be suspended unless Iraqi personnel can fill the security gap. The discussion focused on assisting the Government of Iraq in establishing an ordnance disposal team at the airport in order to help meet the required security standard.

PUBLIC EVENTS:

- Bureau of Alcohol, Tobacco, Firearms and Explosives Participates in Fireworks Safety Seminar – Columbia, South Carolina:***
 On April 2, 2011, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) reported that ATF industry operations investigators made a presentation on ATF regulations regarding licensing, storage, and the table of distances at a fireworks safety seminar held at the South Carolina Fire Academy in Columbia. The seminar was sponsored by Pyrotecnico, a professional pyrotechnics company, in coordination with the South Carolina State Fire Marshal's Office. Pyrotechnic technicians and State and local South Carolina fire marshals attended the seminar.

SIGNIFICANT ACCOMPLISHMENTS:

- Fire/Homicide at a Private Residence — Friday Harbor, Washington:***
 On April 2, 2011, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) reported that a victim was found deceased inside a residence after fire suppression activities had been completed in Friday Harbor. An autopsy revealed the woman had been beaten and stabbed to death prior to the fire. The San Juan County Sheriff's Department requested ATF assistance in processing the fire scene. ATF agents recovered significant evidence from the scene, including a partial confession written by the victim's 15-year-old son. The son confessed to his mother's murder after he was confronted with the evidence.
- Arrest After Controlled Delivery of Machine Guns — Orlando, Florida:***
 On April 6, 2011, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) reported that ATF agents arrested a suspect without incident following a controlled delivery of several machineguns in Orlando. ATF special agents and explosive enforcement officers then served a Federal search warrant at the suspect's residence and found evidence of the manufacturing and conversion of machineguns, large

quantities of ammunition, U.S. military "trip flares," and grenade components capable of converting an inert grenade to a live grenade. This suspect was previously investigated by ATF for attempting to illegally purchase explosives. ATF led this investigation with assistance from the Lake County Sheriff's Office. The investigation continues.

- ***Operation FN Traficadores Sentencing — Houston, Texas:***
On April 7, 2011, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) reported sentencing of firearms trafficking defendants to Federal prison terms ranging from 6 months to 40 years in Houston. During an ATF investigation into firearms trafficking, over 50 firearms were traced to Guatemala and Mexico, and 18 kilograms of heroin were seized at the U.S./Mexican border. ATF conducted the investigation in conjunction with Immigration and Customs Enforcement.
- ***Two Arrested for Trafficking Firearms to the Dominican Republic — West Palm Beach, Florida:***
On April 7, 2011, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) reported on the arrest of a straw purchaser at a gun show in Florida. The suspect was purchasing firearms destined for the Dominican Republic. ATF agents received information that another suspect, a citizen of the Dominican Republic, was also purchasing pistols and then secreting them for shipment to the Dominican Republic. Acting on a tip, ATF and Immigration and Customs Enforcement special agents searched a computer being shipped by the second suspect. Inside the computer they discovered three semi-automatic pistols. The computer parts and pistols were seized, and the second suspect was arrested at the airport as he attempted to depart for the Dominican Republic. The investigation continues.
- ***Federal Firearms License Revoked — Dallas, Texas:***
On March 21, 2011, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) reported that a Federal firearms license was revoked in Dallas. The licensee was cited for failing to record each receipt and disposition of individual firearms into the Acquisition and Disposition record in 4,099 instances, failing to retain records of the sale or other disposition of firearms, and for ten additional violations.
- ***Pipe Bomb Recovered — Marion, South Carolina:***
On April 7, 2011, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) reported that a small PVC pipe bomb was recovered when a suspect was stopped by Sheriff's deputies in Marion County. The Sheriff's Office then contacted ATF and the South Carolina State Law Enforcement Division for assistance. A second suspect was identified and interviewed, and he admitted to manufacturing the pipe bomb and transferring it to the first suspect. This suspect consented to a search of his residence, where another pipe bomb was recovered. During an interview, the second suspect claimed that he manufactured a total of three pipe bombs; one went to the first suspect, the second he detonated, and the third was found at his residence. He said he built the devices because he was curious about explosives and that he had no intention

of using the devices to harm anyone. Both suspects were taken into custody on State weapons charges.

- ***Fire at True Faith Baptist Church — Memphis, Tennessee:***
On April 7, 2011, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) reported on a fire at the True Faith Baptist Church in Memphis. No injuries were reported. Initial damage estimates are less than \$5,000. The investigation concluded that the fire was intentionally set. ATF, the Federal Bureau of Investigation, the Tennessee Bomb and Arson Section, and the Memphis Fire Department participated in the investigation, which continues.
- ***Suspects Arrested in Pawn Shop Murder, Robbery, and Fire — Cabot, Arkansas:***
On April 7, 2011, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) reported the arrest of two homicide suspects in Cabot. The two are suspected of the robbery and murder of the owner of KBC Pawn Shop, a Federal Firearms Licensee in South Cabot. Firefighters responding to a fire at the pawn shop discovered the owner's body in the building. He had been shot. Investigators determined that 35 firearms were stolen from the shop before it was set afire. Surveillance video was obtained from multiple businesses in the area. This video showed the suspect vehicle travelling down the street multiple times the day of the incident, and showed the vehicle traveling toward and away from the premises just minutes before and after the fire began. Investigators contacted the suspect and his wife, who drove to the Lonoke County Sheriff's Office to meet with ATF and local investigators. During a consent search of the vehicle one of the firearms stolen from the pawn shop was found. Investigators developed additional leads that indicated that, shortly after the theft, both suspects sold significant quantities of jewelry to area businesses. The male suspect confessed to all of the crimes that occurred at the pawn shop. Both suspects were arrested and are being held pending formal charges.
- ***Outlaws National President Sentenced to 20 Years — Richmond, Virginia:***
On April 7, 2011, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) reported that the national president of the Outlaws Motorcycle Club was sentenced to 23 years in prison after his December conviction on racketeering, conspiracy, and other charges in Richmond. Two of his associates received sentences of 3 and 24 years on similar charges.
- ***Projectile Damages Chabbad Synagogue—Santa Monica, California:***
On April 11, 2011, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) reported on the arrest of a person suspected of detonating a device that caused damage to the Chabbad Synagogue on April 7 in Santa Monica. Witnesses heard a loud noise, observed a dent in the side of the synagogue building, and found a large pipe, partially encased in concrete, on the roof of a residence across a narrow alley from the synagogue. ATF agents responded to the scene, along with FBI agents and members of the Joint Terrorism Task Force. When investigators found a burned, mangled black powder canister in a nearby garbage can, they concluded that the pipe was launched intentionally as a projectile and not as a result of a plumbing, natural

gas, or industrial incident. A receipt found in the garbage can led to the identity of a suspect. On April 11, the suspect was arrested in Cleveland Heights, Ohio. A concerned rabbi there contacted the Cleveland FBI office after a person who matched the suspect's description appeared at his synagogue looking for food and a place to rest. The Cleveland Heights Police Department responded to the synagogue and made a positive identification of the suspect. The suspect stated that he was homeless and travelling from Santa Monica en route to New York City. ATF and FBI agents are travelling to Ohio to interview the suspect. ATF has assumed the lead on laboratory examinations for this case, and associated evidence arrived at the ATF forensic science laboratory in San Francisco this week. The investigation continues.

- ***Guns Destined for Mexico Seized — Laredo, Texas:***
 On April 9, 2011, the Bureau of Alcohol, Tobacco and Firearms and Explosives (ATF) reported on the arrest of a person illegal firearms trafficking in Laredo. ATF agents were contacted by the Texas Department of Public Safety regarding a traffic stop they had conducted. The driver, a previously deported illegal alien, was found in possession of 37 assault type rifles and 74 magazines. The driver stated he was paid to transport the weapons from Pharr, Texas, to Laredo for trafficking into Mexico. The driver was arrested by ATF. The investigation continues.
- ***Defendant Receives Life Sentence — Charlotte, North Carolina:***
 On April 11, 2011, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) reported on the sentencing of an ATF defendant to life in prison plus 60 months in Charlotte. The defendant was part of violent armed narcotics trafficking organization in Charlotte responsible for at least three drug related murders. The sentencing Judge commented that the stiff sentence was in part due to the defendant's stated intention to shoot the arresting officers and to his long, violent criminal history. To date, eight members of this organization have been indicted, with a second trial set for June 2011. More indictments are anticipated. ATF conducted this investigation with the Charlotte Mecklenburg Police Department.
- ***Suspect in Three Homicides Arrested — Flint, Michigan:***
 On April 11, 2011, the Bureau of Alcohol, Tobacco, Firearms and Explosives reported on the arrest of a suspect in three homicides and an additional non-fatal shooting in Flint. All of the homicides occurred in the last 2 weeks. ATF agents worked with the Michigan State Police Fugitive Squad, the Flint Police Department, and the Genesee County Sheriff's Office to apprehend the suspect. He faces State and Federal charges.
- ***Federal Firearms License Revoked — Louisville, Kentucky:***
 On April 8, 2011, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) reported on the revocation of the Federal firearms license for Kentucky Outdoor World in Louisville. Citations were issued to the licensee in 2009 and 2010 for inventory and record discrepancies, not conducting NCIC checks, NICS information not being properly recorded, and incomplete information, among other issues. The

licensee received a Notice of Revocation of License in February 2011, and did not request a hearing.

- ***Guns Recovered Serving a Search Warrant — St. Croix, Wisconsin:***
 On April 12th, 2011, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) reported that ATF agents serving two search warrants related to a burglary investigation recovered over 20 firearms, hundreds of rounds of ammunition, several valuable coin collections, and an amount of liquid mercury from two suspects in St. Croix and Pierce Counties. The investigation stemmed from a burglary in Pope County, Minnesota, during which approximately 200 firearms, over 100,000 rounds of ammunition, grenades, fully automatic weapons, and other property valued at \$70,000 were stolen. The investigation continues.
- ***Home Invasion Suspects Arrested — Charlotte, North Carolina:***
 On April 11, 2011, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) reported the arrest of two individuals for their roles in a home invasion conspiracy. An ATF special response team, assisted by the Charlotte Mecklenburg Police Department SWAT team, arrested the suspects without incident. The two individuals are multi-convicted felons. ATF had already conducted two undercover purchases of firearms from one of the suspects. The other suspect has three prior felony convictions and a pending ATF case for a felon in possession of a firearm. Following their arrests, the two individuals confessed to their roles in the conspiracy. This investigation continues.
- ***Bureau of Alcohol, Tobacco, Firearms and Explosives Attends Workshop on Firearms Brokering and International Firearms Agreements— Entebbe, Uganda, and Nairobi, Kenya:***
 From April 11-20, 2011, an official from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will participate in a workshop on firearms brokering and international firearms agreements in Entebbe and Nairobi. The workshop is sponsored by the U.S. Department of State through the Regional Center on Small Arms, an institution formed to coordinate a joint effort by member States to prevent, combat, and eradicate stockpiling and illicit trafficking in small arms and light weapons.
- ***Bureau of Alcohol, Tobacco, Firearms and Explosives Assists Mexican Military With Large Firearms and Narcotics Seizure — Mexicali, Mexico:***
 On April 1, 2011, personnel from the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF's) Tijuana office received a request for assistance from the Mexican military in the identification and tracing of seized firearms. A Mexican military search of several residences in Mexicali resulted in the seizure of 39 firearms, 34 40mm grenades, seven hand fragmentation grenades, five grenade launchers, six 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, nine 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.”

- ***Bureau of Alcohol, Tobacco, Firearms and Explosives Serves Warrant at Federal Firearms Licensee — Parker City, Indiana:***
 On April 12, 2011, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) reported that Federal search warrants were served at the business premises the residence of the owner of LUDCO, Inc. a Federal firearms licensee in Parker City. As a result of these search warrants 4,266 firearms, 596,983 rounds of ammunition and \$159,308 in cash were seized. Compliance inspections of the licensee from August to November 2010 found that 1,000 guns were unaccounted for and were subsequently been reported to ATF as stolen or missing. It was also determined that the licensee was selling handguns to out-of-State residents.
- ***Forensic Auditors Participate in Search Warrants after Buy/Bust Operation:***
 On April 5, 2011, after a buy/bust operation related to untaxed tobacco products, search warrants were executed in multiple locations in Edmond and Oklahoma City, Oklahoma. ATF Forensic Auditors participated in the search warrants with ATF, ICE, HSI, FBI, IRS, Secret Service and local law enforcement. Forensic Auditors provided guidance at the search warrant locations regarding which records and property should be seized. The arrest and search warrants in Edmond and Oklahoma City concluded with the arrest of two individuals and the seizure of approximately \$230,000 in currency, \$375,000 (cashier’s check), tobacco products, jewelry, computers and financial documents.
- ***Two Convicted of Wire Fraud Conspiracy in Large Mortgage Fraud in Cleveland, Ohio:***
 On April 1, 2011, two individuals were found guilty of conspiracy (18 U.S.C 371) and wire fraud (18 U.S.C. 1343 and 2). Specifically, one individual was found guilty on 35 counts (two counts of conspiracy and 33 counts of wire fraud) and the second individual was convicted on 11 counts (two counts of conspiracy and nine counts of wire fraud). The jury was unable (hung) to reach a verdict on twenty-three additional wire fraud counts against the second individual. The two individuals were implicated as conspirators in what is considered one of the largest mortgage frauds in the United States (an estimated \$44 million fraud). Also at trial was a third individual who was the bookkeeper for the second individual’s limited liability corporation. The third individual was acquitted on all charges. The criminal investigation was conducted by a Cleveland I ATF Special Agent, a FBI Special Agent and an ATF Fisd District Manager. The Fisd District Manager served as the ATF trial representative and conducted the pre-trial interviews, proffers, exhibit preparation and trial presentation.

OTHER ITEMS OF IMPORTANCE/INTEREST TO DEPARTMENT LEADERSHIP:

- ***Bureau of Alcohol, Tobacco, Firearms and Explosives' Firearms and Explosives Services Divisions To Host "Bring Your Child to Work Day" — Martinsburg, West Virginia:***

On April 28, 2011, the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) Firearms and Explosives Services Division (FESD) will sponsor a "Bring Your Child to Work Day" program. In addition to observing parents in the workplace, the children will receive special briefings and demonstrations from the Firearms Technology Branch and the National Canine Operations and Training Center.

- ***Significant Traces of the Week:***

On April 6, 2011, ATF, Brownsville, Texas, requested four urgent traces involving a US citizen in custody of Colombian Police for illegal possession of firearms. The firearms were successfully traced to an individual purchaser. The investigation is ongoing.

On April 6, 2011, ATF, Brownsville, Texas, requested two urgent traces involving the potential homicide of an Immigration and Customs Enforcement (ICE) special agent. The firearms were successfully traced to an individual purchaser. The investigation is ongoing.

From: McDermond, James E.
Sent: Wednesday, April 20, 2011 5:31 PM
To: Hoover, William J.; Melson, Kenneth E.; (b) (7)(C)
CC: (b) (7)(C)
Subject: Issa 4/20/11 letter

All,

AAG Weich is on leave today however, I was advised by his office that the letter is probably in DOJ Exec. Sec. I will continue to attempt to locate.

Jim

James McDermond
Assistant Director
Bureau of Alcohol, Tobacco, Firearms and Explosives
Office of Strategic Intelligence and Information
202-648-(b) (7)(C) office)
(b) (7)(C) mobile)
202-648-9686 (fax)

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From: (b) (7)(C)
Sent: Wednesday, April 20, 2011 2:56:38 PM
To: (b) (7)(C) McDermond, James E.
Subject: Fw: No Lawyers - Only Guns and Money: Issa Threatens ATF Acting Director With Contempt Citation

229

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

From: (b) (7)(C)
To: Office of Legislative Affairs
Sent: Wed Apr 20 14:18:12 2011
Subject: No Lawyers - Only Guns and Money: Issa Threatens ATF Acting Director With Contempt Citation

<http://onlygunsandmoney.blogspot.com/2011/04/issa-threatens-atf-acting-director-with.html>

This just in.

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From: (b) (7)(C)
Sent: Wednesday, April 20, 2011 2:02 PM
To: (b) (7)(C)
Subject: Fast-n-Furious is NOT 110419 djwTC3 FINAL.docx
Attachments: Fast-n-Furious is NOT 110419 djwTC3 FINAL.docx

Most recent updates. As per counsel, the 9th circuit statement is false. (b) (7)(C)s double checking.

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Bureau of Alcohol, Tobacco, Firearms and Explosives

ATF
At the Frontline Against Violent Crime

Key Messages/Talking Points

Not for Public Dissemination/For Internal Use Only

Public Affairs Division - Washington, DC



What Operation Fast and Furious Is NOT

(04/19/2011)

Background

The investigation referred to as “Fast and Furious” is a single, complex criminal investigation into the firearms trafficking organizations that supply firearms to the Mexican Drug Trafficking Organizations (DTO’s) that use these weapons to terrorize the good people on both sides of the U.S./Mexican border in furtherance of their illicit, criminal activities. This investigation was initiated by the Phoenix Field Division and the United States Attorney’s Office for the District of Arizona. The investigation was subsequently approved by the multi-agency Organized Crime and Drug Enforcement Task Force (OCDETF) Program. The purpose of this investigation is to dismantle a transnational organization believed to be responsible for trafficking weapons into Mexico by dismantling its leadership.

Talking Points

- The Fast and Furious investigation is NOT synonymous with Project Gunrunner. Project Gunrunner is a comprehensive strategy that is intelligence lead and seeks to focus to common threads and is comprised of hundreds of independent firearms trafficking investigations spread out among all 25 of ATF’s field divisions. Project Gunrunner is NOT a tactical plan. The goal of Project Gunrunner is to reduce firearms-related violent crime associated with Mexican criminal organizations operating in the U.S. and Mexico by preventing these organizations from unlawfully acquiring and trafficking firearms.
- The Fast and Furious investigation is NOT another name for the Project Gunrunner Cartel Focused Strategy. Deployed in September 2010, the Cartel Strategy reflects ATF’s increased national emphasis on firearms trafficking enforcement related to the Southwest Border and the importance of identifying and prioritizing trafficking investigations where a nexus to Mexican Drug Trafficking Organizations (DTOs) and cartels may be established.
- The Fast and Furious investigation has NOT been adjudicated. Although the defendants in this case have been indicted, the investigation is ongoing and the case is still open.
- The Fast and Furious investigation is NOT a rogue operation conducted by either the Phoenix Field Division or any of its enforcement groups. The operation had been briefed to higher levels of ATF management prior to implementation and at various times during the investigation. There are many separate and distinct firearms trafficking investigations into different criminal organizations by several different field offices.

- The details attributed to the Fast and Furious investigation by the news media are NOT all associated with the actual Fast and Furious investigation.
- The Fast and Furious investigation is NOT responsible for the deaths of CBP Agent Brian Terry and ICE Agent Jaime Zapata. Their murders are the direct and tragic result of violent criminal acts perpetrated by brazen criminals who have no respect for the rule of law or human life. Our hearts and prayers go out to the families of these brave agents. **The firearms recovered near the scene of Agent Terry's death were not forensically linked to his murder.**
- The Fast and Furious investigation is NOT related to a case that was initiated by the Laredo field office of the Dallas Field Division in November 2010. That case involved a firearm purchased by (b) (7)(C) on or about October 10, 2010 which was one of the firearms that were used in the assault on ICE Special Agent Victor Avila and murder of Special Agent Jaime Zapata in Mexico. ATF did not know about the aforementioned purchase at the time.
- Due to the historic significance of firearms ownership along the Southwest border, it is not uncommon for firearms purchasers to buy 10 or more firearms at a time in that part of the country. Therefore, what may be considered a suspicious purchase in other parts of the country might be considered common place along the Southwest border.

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From: (b) (7)(C)
Sent: Wednesday, April 20, 2011 9:59 AM
To: (b) (7)(C)
Subject: Fast-n-Furious is NOT 110419 djwTC3 FINAL.docx
Attachments: Fast-n-Furious is NOT 110419 djwTC3 FINAL.docx

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Bureau of Alcohol, Tobacco, Firearms and Explosives

ATF

At the Frontline Against Violent Crime

Key Messages/Talking Points

Not for Public Dissemination/For Internal Use Only

Public Affairs Division - Washington, DC

**What Operation Fast and Furious Is NOT**

(04/19/2011)

Background

The investigation referred to as "Fast and Furious" is a single, complex criminal investigation into the firearms trafficking organizations that supply firearms to the Mexican Drug Trafficking Organizations (DTO's) that use these weapons to terrorize the good people on both sides of the U.S./Mexican border in furtherance of their illicit, criminal activities. This investigation was approved by the Phoenix Field Division and the United States Attorney's Office for the District of Arizona. The investigation was subsequently approved by the multi-agency Organized Crime and Drug Enforcement Task Force (OCDETF) Program. The purpose of this investigation is to dismantle a transnational organization believed to be responsible for trafficking weapons into Mexico by dismantling its leadership.

Talking Points

- The Fast and Furious investigation is NOT synonymous with Project Gunrunner. Project Gunrunner is a comprehensive strategy comprised of hundreds of independent firearms trafficking investigations spread out among all 25 of ATF's field divisions. The goal of Project Gunrunner is to reduce firearms-related violent crime associated with Mexican criminal organizations operating in the U.S. and Mexico by preventing these organizations from unlawfully acquiring and trafficking firearms.
- The Fast and Furious investigation is NOT another name for the Project Gunrunner Cartel Focused Strategy. Deployed in September 2010, the Cartel Strategy reflects ATF's increased national emphasis on firearms trafficking enforcement related to the Southwest Border and the importance of identifying and prioritizing trafficking investigations where a nexus to Mexican Drug Trafficking Organizations (DTOs) and cartels may be established.
- The Fast and Furious investigation has NOT been adjudicated. Although the defendants in this case have been indicted, the investigation is ongoing and the case is still open.
- The Fast and Furious investigation is NOT a rogue operation conducted by either the Phoenix Field Division or any of its enforcement groups. The operation had been briefed to higher levels of ATF management prior to implementation and at various times during the investigation.
- The details attributed to the Fast and Furious investigation by the news media are NOT all associated with the actual Fast and Furious investigation. At least two news

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organizations have reported on investigations in which they allege that ATF knowingly allowed firearms to be trafficked into Mexico from the United States. Fast and Furious is NOT the primary source of material for those allegations.

- The Fast and Furious investigation is NOT responsible for the deaths of CBP Agent Brian Terry and ICE Agent Jaime Zapata. Their murders are the direct and tragic result of violent criminal acts perpetrated by brazen criminals who have no respect for the rule of law or human life. **The firearms recovered near the scene of Agent Terry's death were not forensically linked to his murder.** Our hearts and prayers go out to the families of these brave agents.
- The Fast and Furious investigation is NOT part of, or associated with, other SWB firearms trafficking investigations. There are many separate and distinct firearms trafficking investigations into different criminal organizations by several different field offices.
- The Fast and Furious investigation is NOT the Laredo Zetas (b) (7)(C) case that was initiated by the Laredo field office of the Dallas Field Division in November 2010. A firearm purchased by (b) (7)(C) on or about October 10, 2010 was one of the firearms that were used in the assault on ICE Special Agent Victor Avila and murder of Special Agent Jaime Zapata in Mexico.
- The Fast and Furious investigation is NOT the Hobbs Firearm Traffickers case that targeted the (b) (7)(C) family. On March 25, 2010, the Las Cruces office of the Phoenix Field Division began this unrelated investigation into allegations of firearms trafficking by the (b) (7)(C) family.
- The 9th Circuit Court of Appeals ruled that firearms purchasers may actually lie on the ATF form 4473 as long as he/she is not aware that those firearms are for someone who could not buy them on their own.
- Due to the historic significance of firearms ownership along the Southwest border, it is not uncommon for firearms purchasers to buy 10 or more firearms at a time in that part of the country. Therefore, what may be considered a suspicious purchase in other parts of the country might be considered common place along the Southwest border.
- Just as each ATF field division emphasizes different strategies based on criminal trends and patterns and the types of crimes that plague each division's area of responsibility, each U.S. Attorney's Office has its own priorities and guidelines. In an area such as the Southwest Border where the purchase of large numbers of firearms is commonplace, the threshold for prosecution of federal firearms violations is much higher than in those areas where fewer people purchase multiple firearms.

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For Internal Use Only

From: McDermond, James E.
Sent: Wednesday, April 20, 2011 8:36 AM
To: (b) (7)(C)
Subject: Fw: Letter to Marisella
Attachments: Mexico letter.docx

(b) (7)(C)

I asked (b) (7)(C) to provide you my comment on the F and F talking points. Also, attached is from Billy relative to the narrative for the Mexican AG.

I will come and see you at the first break.

Jim
James McDermond, Assistant Director - ATF

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From: Hoover, William J.
To: McDermond, James E.
Sent: Wed Apr 20 07:21:02 2011
Subject: FW: Letter to Marisella

Jim,

Please see the attached from the Director re our conversation last night. This is his shot at the narrative.

Thank you,

Billy

William J. Hoover
Deputy Director
Bureau of Alcohol, Tobacco, Firearms & Explosives
O) 202-648-8710

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From: (b) (7)(C)
Sent: Tuesday, April 19, 2011 9:58 PM
To: Hoover, William J.
Cc: Melson, Kenneth E.
Subject: Letter to Marisella

this could be a start. All except a small part taken from DOJ responses to Congress. Ken.

From: Carroll, Timothy J.
Sent: Tuesday, April 19, 2011 4:51 PM
To: (b) (7)(C)
Subject: Fast-n-Furious is NOT 110419 djwTC2 FINAL.docx
Attachments: Fast-n-Furious is NOT 110419 djwTC2 FINAL.docx

The final version with all suggested corrections.

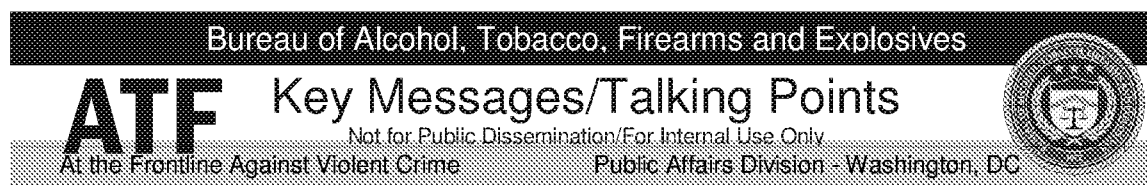
(b) (7)(C)

(b) (7)(C)

Special Agent/Program Manager
Public Affairs Division
ATF Headquarters
Washington D.C.

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What Operation Fast and Furious Is NOT (04/19/2011)

Background

The investigation referred to as “Fast and Furious” is a single, complex criminal investigation into the firearms trafficking organizations that supply firearms to the Mexican Drug Trafficking Organizations (DTO’s) that use these weapons to terrorize the good people on both sides of the U.S./Mexican border in furtherance of their illicit, criminal activities. This investigation was approved by the Phoenix Field Division and the United States Attorney’s Office for the District of Arizona. The investigation was subsequently approved by the multi-agency Organized Crime and Drug Enforcement Task Force (OCDETF) Program. The purpose of this investigation is to dismantle a transnational organization believed to be responsible for trafficking weapons into Mexico by dismantling its leadership.

Talking Points

- The Fast and Furious investigation is NOT synonymous with Project Gunrunner. Project Gunrunner is a comprehensive strategy comprised of hundreds of independent firearms trafficking investigations spread out among all 25 of ATF’s field divisions. The goal of Project Gunrunner is to reduce firearms-related violent crime associated with Mexican criminal organizations operating in the U.S. and Mexico by preventing these organizations from unlawfully acquiring and trafficking firearms.
- The Fast and Furious investigation is NOT another name for the Project Gunrunner Cartel Focused Strategy. Deployed in September 2010, the Cartel Strategy reflects ATF’s increased national emphasis on firearms trafficking enforcement related to the Southwest Border and the importance of identifying and prioritizing trafficking investigations where a nexus to Mexican Drug Trafficking Organizations (DTOs) and cartels may be established.
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- The Fast and Furious investigation is NOT a rogue operation conducted by either the Phoenix Field Division or any of its enforcement groups. The operation had been briefed to higher levels of ATF management prior to implementation and at various times during the investigation.

- The details attributed to the Fast and Furious investigation by the news media are NOT all associated with the actual Fast and Furious investigation. At least two news organizations have reported on investigations in which they allege that ATF knowingly allowed firearms to be trafficked into Mexico from the United States. Fast and Furious is NOT the primary source of material for those allegations.
- The Fast and Furious investigation is NOT responsible for the deaths of CBP Agent Brian Terry and ICE Agent Jaime Zapata. Their murders are the direct and tragic result of violent criminal acts perpetrated by brazen criminals who have no respect for the rule of law or human life. The firearms recovered near the scene of Agent Terry's death were not forensically linked to his murder. Our hearts and prayers go out to the families of these brave agents.
- The Fast and Furious investigation is NOT part of, or associated with, other SWB firearms trafficking investigations such as the Laredo Zetas (b) (7)(C) and the Hobbs Firearm Traffickers (b) (7)(C). They are separate and distinct investigations into different firearms trafficking organizations. The Fast and Furious case was investigated by agents from one group of the Phoenix Field Division.
- The Fast and Furious investigation is NOT the Laredo Zetas (b) (7)(C) case that was initiated by the Laredo field office of the Dallas Field Division in November 2010. A firearm purchased by (b) (7)(C) on or about October 10, 2010 was one of the firearms that were used in the assault on ICE Special Agent Victor Avila and murder of Special Agent Jaime Zapata in Mexico.
- The Fast and Furious investigation is NOT the Hobbs Firearm Traffickers case that targeted the (b) (7)(C) family. On March 25, 2010, the Las Cruces office of the Phoenix Field Division began this unrelated investigation into allegations of firearms trafficking by the (b) (7)(C) family.

###

Cleared by:

PGA/PAD: (b) (7)(C) 04/19/2011

PGA/PAD: (b) (7)(C) 4/19/2011

PGA/PAD: (b) (7)(C) 04/19/2011

From: (b) (7)(C)
Sent: Tuesday, April 19, 2011 4:23 PM
To: (b) (7)(C)
Subject: Fast-n-Furious is NOT 110419 djwTC FINAL.docx
Attachments: Fast-n-Furious is NOT 110419 djwTC FINAL.docx

As per your request.

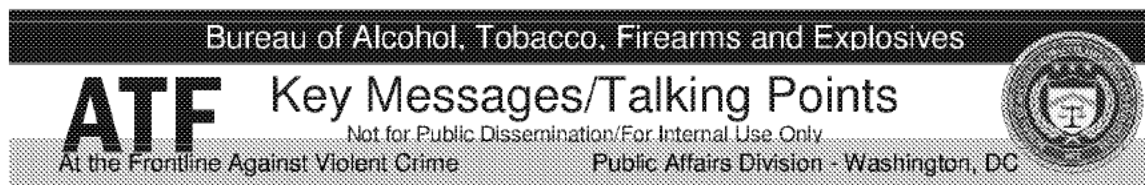
(b) (7)(C)

(b) (7)(C)

Special Agent/Program Manager
Public Affairs Division
ATF Headquarters
Washington D.C.

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(04/19/2011)

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- The Fast and Furious investigation is NOT the Hobbs Firearm Traffickers case that targeted the (b) (7)(C) family. On March 25, 2010, the Law Cruces office of the Phoenix Field Division began this unrelated investigation into allegations of firearms trafficking by the (b) (7)(C) family.

- The Fast and Furious investigation is NOT the Laredo Zetas (b) (7)(C) case that was initiated by the Laredo field office of the Dallas Field Division in November 2010. On October 10, 2010, a firearm purchased by (b) (7)(C) on or about October 10, 2010 was one of the firearms that were used in the assault on ICE Special Agent Victor Avila and murder of Special Agent Jaime Zapata in Mexico.
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- The Fast and Furious investigation has NOT been adjudicated. Although the defendants in this case have been indicted, the investigation is ongoing and the case is still open.
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###

Cleared by:

PGA/PAD: (b) (7)(C)
 PGA/PAD: (b) (7)(C) 04/19/2011
 PGA/PAD: (b) (7)(C) 04/19/2011

From: (b) (7)(C)
Sent: Tuesday, April 19, 2011 2:25 PM
To: (b) (7)(C)
CC: (b) (7)(C)
Subject: ASSIGNMENT DUE ASAP: Review and Edit Newest TPs on F-n-F
Attachments: Fast-n-Furious is NOT 110419 djw.docx

(b) (7)(C)

Attached are TPs about "what Fast and Furious is not." Please review, edit and add any points you think need to be addressed. I've already provided this DRAFT document to (b) (7)(C) because AD McDermond required is by COB today. However, please make the time this afternoon to add your input and/or concurrence.

Thanks,

(b) (7)(C)

(b) (7)(C)

Deputy Chief
ATE - Public Affairs Division

(b) (7)(C)

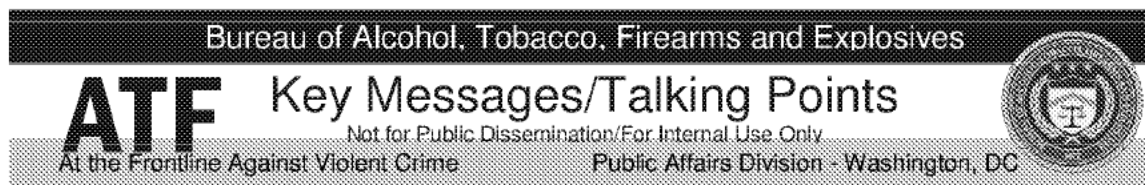
Direct) 202-648-(b) (7)(C)

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Operation Fast and Furious Is NOT

(04/19/2011)

DRAFT

Talking Points

- Fast and Furious is NOT synonymous with Project Gunrunner. Project Gunrunner is not a single all-encompassing investigation, but rather it is a comprehensive strategy comprised of hundreds of independent firearms trafficking investigations spread out among all 26 of ATF's field divisions. The goal of Project Gunrunner is to reduce firearms related violent crime associated with Mexican criminal organizations operating in the U.S. and Mexico by preventing these organizations from unlawfully acquiring and trafficking firearms.
- Fast and Furious is NOT part of or associated with other SWB firearms trafficking investigations, such as the Laredo Zetas (b) (7)(C) and the Hobbs Firearms Traffickers. They are separate and distinct investigations into different firearms trafficking organizations.
- Fast and Furious is NOT a comprehensive strategy that is comprised of hundreds of independent firearms trafficking investigations. The Fast and Furious case was investigated by agents from one group of the Phoenix Field Division.
- Fast and Furious is NOT the Hobbs Firearms Traffickers case was investigated by the Las Cruces field office of the Phoenix Field Division and targeted the (b) (7)(C) family. This investigation began on March 25, 2010
- Fast and Furious is NOT the Laredo Zetas case investigated by the Laredo field office of the Dallas Field Division. On October 10, 2010, (b) (7)(C) purchases one of the firearms that were subsequently used in the assault on ICE Special Agent Victor Avila and murder of Special Agent Jaime Zapata in Mexico; to wit, a Romarm-Cugir, model Draco, 7.62 caliber semi-automatic pistol.
- Fast and Furious is NOT the only investigation being reported on in the news media and being challenged by Sen. Grassley and other federal legislators. At least two news organizations have reported on investigations in which ATF allegedly knowingly allowed firearms to be trafficked to Mexico from the United States. Fast and Furious is NOT the primary source material for those stories or allegations.

- Fast and Furious is NOT an adjudicated investigation. Defendants in the case have been indicted, but the investigation is active and ongoing.
- Fast and Furious is NOT a rogue operation by a field office or division. The operation had been briefed to higher levels of ATF management.
- Fast and Furious is NOT another name for the Project Gunrunner Cartel Focused Strategy, deployed in September 2010, which reflects ATF's increased national emphasis on firearms trafficking enforcement related to the Southwest Border and the importance of identifying and prioritizing trafficking investigations in which a nexus to Mexican Drug Trafficking Organizations (DTOs) and cartels may be established.
- Fast and Furious is NOT the sole approach by ATF which places greater emphasis on investigations that target specific cartels and the persons responsible for organizing and directing firearms trafficking operations in the United States. This approach requires conducting our investigations in a more creative and comprehensive manner by fully incorporating our agency's unique regulatory, investigative, and analytical capabilities and resources.
- Fast and Furious is NOT responsible for the deaths of CBP Agent Brian Terry and ICE Agent Jaime Zapata. Their losses are the tragic consequence of brazen criminals who have no respect for the rule of law. Our hearts and prayers go out to the families of the agents.

###

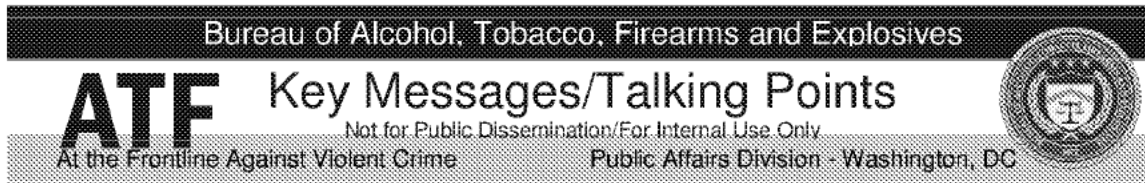
Cleared by:

PGA/PAD:

(b) (7)(C)

PGA/PAD:

(b) (7)(C)04/19/2011



Response to Senator Grassley's Letter Dated March 28, 2011

(04/01/11)

DRAFT

Statement

The goal of Project Gunrunner is to reduce firearms related violent crime associated with Mexican criminal organizations operating in the U.S. and Mexico by preventing these organizations from unlawfully acquiring and trafficking firearms. Project Gunrunner is not a single all-encompassing investigation, but rather it is a comprehensive strategy comprised of hundreds of independent firearms trafficking investigations spread out among all 26 of ATF's field divisions.

The investigations referred to as Fast and Furious, the Laredo Zetas (b) (7)(C) and the Hobbs Firearms Traffickers and three separate and distinct investigations into three different firearms trafficking organizations.

Talking Points

- Project Gunrunner is a comprehensive strategy that is comprised of hundreds of independent firearms trafficking investigations.
- The Fast and Furious case was investigated by agents from Phoenix group 7 of the Phoenix Field Division. This case is not connected to either Laredo Zetas or Hobbs Firearms Traffickers investigations.
- The Hobbs Firearms Traffickers case was investigated by the Las Cruces field office of the Phoenix Field Division and targeted the (b) (7)(C) family. This investigation began on March 25, 2010
- On August 7, 2010, a deputy with the Zavala County Sheriff's Office conducted a traffic stop on a white Saturn bearing paper tag (b) (7)(C) which had a BOLO issued by ATF. Subsequent to the stop, the Deputy developed probably case to arrest the seventeen year old Hispanic male driver for possessing 23 firearms that had the serial numbers obliterated.
- The juvenile, identified (b) (7)(C) as the individuals who paid him \$500 to transport the car to Mexico. Who were subsequently arrested and charged with federal firearms violations

- On or about September 9, 2010, the firearms recovered in the traffic stop were traced by ATF. On September 17, 2010, one of the firearms was traced back to (b) (3) (P.L. 111-117), (b) (7)(C) (b) (3) (P.L. 111-117), (b) (7)(C) The Las Cruces field office took no action against (b) (7)(C) or (b) (7)(C) nor did they forward information to the Dallas Field Division.
- The Laredo Zetas case was investigated by the Laredo field office of the Dallas Field Division. (b) (3) (P.L. 111-117), (b) (7)(C) purchases one of the firearms that were subsequently used in the assault on ICE Special Agent Victor Avila and murder of Special Agent Jaime Zapata in Mexico; to wit, a Romarm-Cugir, model Draco, 7.62 caliber semi-automatic pistol.
- On November 5, 2010, the Drug Enforcement Administration (DEA) contacts the Laredo field office of ATF, looking for investigative assistance. The ATF Dallas field division subsequently (b) (7)(D) Three subjects subsequently identified as (b) (7)(C) (b) (7)(C) provided (b) (7)(C), (b) (7)(D) with 37 firearms, 34 of which had the serial numbers obliterated. The firearms were recovered in a ruse traffic stop conducted in conjunction with local law enforcement.
- On January 23, 2011, after the serial numbers had been restored, ATF began tracing the firearms.
- On February 15, 2011, Special Agent Avila and Special Agent Zapata were attacked by members of Los Zetas in Mexico. Agent Avila was injured and Agent Zapata was killed during the attack.
- On February 23, 2011, Agents respond to the (b) (7)(C) residence and conduct consensual interviews of the (b) (7)(C) and obtain consent to search the residence.
- On February 27, 2011, ATF agents submit an affidavit for a search warrant for the (b) (7)(C) residence, which is subsequently signed by U.S Magistrate Judge Irma Ramirez.
- On March 3, 2011, ATF agents arrest (b) (7)(C) and (b) (7)(C) for possession of firearms that had the manufacturer's serial numbers obliterated.
- On March 23, 2011, (b) (7)(C) were indicted in the Northern Judicial District of Texas. The six-count indictment, returned today, charges each defendant with one count of conspiracy to acquire a firearm from a licensed dealer by false or fictitious statement and four substantive counts of that offense. It also charge (b) (7)(C) with one count of possessing a firearm with an obliterated serial number.
- Once the case was indicted, the case agent from the Las Cruces field office advised the case agents from the Laredo field office that the (b) (7)(C) (b) (7)(C) had firearms traced (b) (3) (P.L. 111-117)

From: (b) (7)(C)
 Sent: Monday, April 18, 2011 11:37 AM
 To: (b) (7)(C)
 Subject: Qs & As for Amy Isackson/NPR, San Diego

How many guns were found in Mexico in 2010, 2009, 2008, 2007, 2006, 2005, 2004? Information must be provided by GOM

How many guns were traced from Mexico back to the U.S. in 2010, 2009, 2008, 2007, 2006, 2005, 2004? To which US states (top 6) were the most guns traced? How many to California? Arizona? New Mexico? Texas? To how many gun shops and shows were these guns traced? What are the top five gun shops and shows? Most of this information will be posted at the ATF gov website when available.

What percent of guns found in Mexico are from the US? California? Arizona? Texas? New Mexico? Nevada? Utah? Washington? Most of this information will be posted at the ATF.gov website when available. (I am guessing if this information is provided it will only be the top source states.)

How many are guns found in Mexico are from abroad, imported to the U.S., and then taken to Mexico? From what countries? What kinds of arms? How many WASR-10s have been seized in Mexico, broken out by the last 6 years? Most of this information will be posted at the ATF gov website when it becomes available.

What percentage of the guns found in Mexico and traced back to the U.S. are guns that are sold legally in the U.S. but have been modified (either in the U.S. Or Mexico)? What percentage of the guns found in Mexico and traced to the U.S., that come from abroad but go through the U.S. to Mexico, have been modified? What kind of modifications? There is no definitive way of determining this information. (Perhaps we have anecdotal information from ATF cases?)

How many federally licesned guns shops are there in the four border states? Of those, how many have had guns found in Meixco traced back to them in 2010, 2009, 2008, 2007? What is the official answer to the first question? My information is "more than 6,000 FFLs" are considered on the SWB.

(b) (7)(C) suggested I run these by you. I did not go to (b) (7)(C) with these. Thanks, (b) (7)(C)

How many gun seizures have there been due to SIAVE borderwide and broken down by border crossing? To what states and stores have these guns been traced? (I googled SIAVE and it's the Government of Mexico's new Sistema de Aforo Vehicular inspection system (SIAVE.) The GOM would have to provide this.

How many arrests of drivers/gun smugglers has SIAVE yielded? Information must be provided by GOM

How many guns, from shops and shows, have gone missing in 2010, 2009, 2008, 2007, 2006, 2005? How many missing guns for those years in California and San Diego? What shops and shows had the most guns go missing in those years? How many guns? (Do you have stats on the first and second questions? I do not. Who are we using these days to get his information? VCAB?.)

How many agents are assigned to teams that focus on the border? What is the breakdown by state? (I

understand these numbers change.) What are the latest staffing numbers for Project Gunrunner? I am guessing (b) (7)(C) would have this info.)

How many agents are assigned to monitor internet gun and gun part sales? This is an interesting question that seems off topic. Answer. We do not regulate gun parts. (I would think this would be giving up investigative resources???)

(b) (7)(C)

ATF Public Affairs Division
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Washington, DC 20226
(202) 648-(b) (7)(C) Direct
(b) (7)(C) Cell

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From: (b) (7)(C)
Sent: Friday, April 15, 2011 7:30 PM
To: (b) (7)(C)
Subject: RE: update with DEA case

I can explain the beginning of 2nd paragraph if you want to call me... I'm at my desk...

(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: Friday, April 15, 2011 7:30 PM
To: (b) (7)(C)
Subject: Re: update with DEA case

Thank you!
(b) (7)(C)
Chief
ATF Public Affairs Division

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From: (b) (7)(C)
To: (b) (7)(C)
Sent: Fri Apr 15 18:33:37 2011
Subject: FW: update with DEA case

FYI – This is for information only. The details are being gathered by PFD. I discussed with SAC Newell that this might lead to some media inquiries and you should be aware.

(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: Newell, William D.
Sent: Friday, April 15, 2011 4:08 PM
To: (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. They conducted (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 SA (b) (7)(C) as in regards to 46 firearms and 4 empty gun boxes (FN 5.7mm). Of those 46 firearms (b) (3) (P.L. 111-117) (b) (3) (P.L. 111-117) (b) (3) (P.L. 111-117) One thing of possible note

(b) (3) (P.L. 111-117), (b) (7)(C)

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 SA (b) (7)(C) was not called on?) the DEA also recovered firearms from Fast and Furious:

(b) (3) (P.L. 111-117), (b) (7)(C)
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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: Friday, April 15, 2011 6:33 PM
To: (b) (7)(C)
Subject: FW: update with DEA case

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

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Thanks,

(b) (7)(C)

Group Supervisor

Phoenix Group VII

(b) (7)(C)

MEMORANDUM FOR THE ATTORNEY GENERAL

THROUGH THE DEPUTY ATTORNEY GENERAL

FROM: Kenneth E. Melson
Acting Director, Bureau of Alcohol, Tobacco, Firearms
and Explosives

SUBJECT: Weekly Report for April 18-22, 2011

EXPECTED LEGISLATIVE OR POLICY DEVELOPMENTS:

- ***Bureau of Alcohol, Tobacco, Firearms and Explosives Meets with DOJ Officials to Discuss Regulatory Scope — Washington, DC:***

On April 12, 2011, representatives from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) met with officials from the Office of the Attorney General, Office of the Deputy Attorney General, Office of Legal Policy, Office of Legal Counsel, Office of Legislative Affairs, and the Executive Office for US Attorneys to discuss the way forward with respect to an informal opinion that has been issued by the Office of Legal Counsel on the scope of the Gun Control Act's prohibition on the possession of firearms by nonimmigrant aliens. A number of different approaches were discussed, and will be considered further by all parties.

- ***Bureau of Alcohol, Tobacco, Firearms and Explosives Provides Firearms Identification Briefings for Congressional Staff Members — Cheltenham, Maryland:***

On April 11, 2011, the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) Firearms Technology Branch provided firearms identification briefings, demonstrations, and hands-on instruction for five congressional staffer members of the House Appropriations Committee. FTB will replicate the firearms currently favored by the Mexican drug cartels, and include AK- and AR-type full and semiautomatic rifles and various pistols during the demonstrations.

- ***Bureau of Alcohol, Tobacco, Firearms and Explosives Meets With Congressional Staff To Discuss Firearms Trafficking:***

On April 15, 2011, officials from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will meet with staff members of Representative Mike Rogers (R-

MI) and Representative Emanuel Cleaver (D-MO) to discuss ATF's mission and firearms trafficking patterns in central Michigan and western Missouri.

- ***Bureau of Alcohol, Tobacco, Firearms and Explosives Meets With Congressional Staff To Discuss Firearms Crime:***

On April 18, 2011, officials from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will meet with staff members of Senator Ben Nelson (D-NE) to discuss firearms crime issues in Nebraska.

STEPS TO IMPROVE DEPARTMENT OPERATIONS AND TRANSPARENCY:

- ***Bureau of Alcohol, Tobacco, Firearms and Explosives Hosts Tour for the White House Office of National Drug Control Policy — Martinsburg, West Virginia:***

On April 8, 2011, the Bureau of Alcohol, Tobacco, Firearms and Explosives hosted a tour of the National Tracing Center (NTC) for personnel from the White House Office of National Drug Control Policy (ONDCP). The ONDCP guests received a tour of the NTC, as well as a demonstration of Spanish eTrace capabilities; they were also given a tour of the Firearms Technology Branch collocated in the same ATF Martinsburg facility.

- ***Bureau of Alcohol, Tobacco, Firearms and Explosives Provides “Tele-Instruction” for Brownells’ Gunsmith School — Martinsburg, West Virginia:***

On April 15, 2011, two firearms instructors with the Bureau of Alcohol, Tobacco, Firearms and Explosives’ Firearms Technology Branch (FTB) participated in a training teleconference sponsored by Brownells, of Montezuma, Iowa, for over 150 gunsmiths located throughout the nation, sponsored by Brownells’ Gunsmith School, of Montezuma, Iowa. FTB’s instructors provided instruction concerning the definition and status of gunsmithing under Federal firearms laws and regulations, and current Federal firearms-marking requirements. Brownells, in business for the past 70 years, is one of the world’s largest suppliers of firearm accessories, gun parts and gunsmithing tools.

- ***Bureau of Alcohol, Tobacco, Firearms and Explosives to Meet With National Association of Sporting Goods Wholesalers — Pittsburgh, Pennsylvania:***

On April 28, 2011, officials with the Bureau of Alcohol, Tobacco, Firearms and Explosives will meet with representatives from the Board of Directors of the National Association of Sporting Goods Wholesalers (NASGW) to provide key information on the laws and regulations governing the sale and transfer of firearms in a large commercial environment. The NASGW member companies are Federal Firearms Licensees (FFLs) that distribute firearms to retailers throughout the country.

PUBLIC EVENTS:

- ***Bureau of Alcohol, Tobacco, Firearms and Explosives Participates in Fireworks Safety Seminar – Columbia, South Carolina:***

On April 2, 2011, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) reported that ATF industry operations investigators made a presentation on ATF regulations regarding licensing, storage, and the table of distances at a fireworks safety seminar held at the South Carolina Fire Academy in Columbia. The seminar was sponsored by Pyrotecnico, a professional pyrotechnics company, in coordination with the South Carolina State Fire Marshal's Office. In attendance were pyrotechnic technicians and State and local South Carolina fire marshals.

SIGNIFICANT ACCOMPLISHMENTS:

- ***Fire/Homicide at a Private Residence — Friday Harbor, Washington:***

On April 2, 2011, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) reported that a victim was found deceased inside a residence after fire suppression activities had been completed in Friday Harbor. An autopsy revealed the woman had been beaten and stabbed to death prior to the fire. The San Juan County Sheriff's Department requested ATF assistance in processing the fire scene. ATF agents recovered significant evidence from the scene, including a partial confession written by the victim's 15-year-old son. The son confessed to his mother's murder after he was confronted with the evidence.

- ***Arrest After Controlled Delivery of Machine Guns — Orlando, Florida:***

On April 6, 2011, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) reported that ATF agents arrested a suspect without incident following a controlled delivery of several machineguns in Orlando. ATF special agents and explosive enforcement officers then served a Federal search warrant at the suspect's residence and found evidence of the manufacturing and conversion of machineguns, large quantities of ammunition, U.S. military "trip flares," and grenade components capable of converting an inert grenade to a live grenade. This suspect was previously investigated by ATF for attempting to illegally purchase explosives. ATF led this investigation with assistance from the Lake County Sheriff's Office. The investigation continues.

- ***Operation FN Traficadores Sentencing — Houston, Texas:***

On April 7, 2011, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) reported sentencing of firearms trafficking defendants to Federal prison terms ranging from 6 months to 40 years in Houston. During an ATF investigation into firearms trafficking, over 50 firearms were traced to Guatemala and Mexico, and 18 kilograms of heroin were seized at the U.S./Mexican border. ATF conducted the investigation in conjunction with Immigration and Customs Enforcement.

- ***Two Arrested for Trafficking Firearms to the Dominican Republic — West Palm Beach, Florida:***
On April 7, 2011, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) reported on the arrest of a straw purchaser at a gun show in Florida. The suspect was purchasing firearms destined for the Dominican Republic. ATF agents received information that another suspect, a citizen of the Dominican Republic, was also purchasing pistols and then secreting them for shipment to the Dominican Republic. Acting on a tip, ATF and Immigration and Customs Enforcement special agents searched a computer being shipped by the second suspect. Inside the computer they discovered three semi-automatic pistols. The computer parts and pistols were seized, and the second suspect was arrested at the airport as he attempted to depart for the Dominican Republic. The investigation continues.
- ***Federal Firearms License Revoked — Dallas, Texas:***
On March 21, 2011, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) reported that a Federal Firearms license was revoked in Dallas. The licensee was cited for failing to record each receipt and disposition of individual firearms into the Acquisition and Disposition record in 4,099 instances, failing to retain records of the sale or other disposition of firearms, and for ten additional violations.
- ***Pipe Bomb Recovered — Marion, South Carolina:***
On April 7, 2011, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) reported that a small PVC pipe bomb was recovered when a suspect was stopped by Sheriff's deputies in Marion County. The Sheriff's Office then contacted ATF and the South Carolina State Law Enforcement Division for assistance. A second suspect was identified and interviewed, and he admitted to manufacturing the pipe bomb and transferring it to the first suspect. This suspect consented to a search of his residence, where another pipe bomb was recovered. During an interview, the second suspect claimed that he manufactured a total of three pipe bombs; one went to the first suspect, the second he detonated, and the third was found at his residence. He said he built the devices because he was curious about explosives and that he had no intention of using the devices to harm anyone. Both suspects were taken into custody on State weapons charges.
- ***Fire at True Faith Baptist Church — Memphis, Tennessee:***
On April 7, 2011, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) reported on a fire at the True Faith Baptist Church in Memphis. No injuries were reported. Initial damage estimates are less than \$5,000. The investigation concluded that the fire was intentionally set. ATF, the Federal Bureau of Investigation, the Tennessee Bomb and Arson Section, and the Memphis Fire Department participated in the investigation, which continues.
- ***Suspects Arrested in Pawn Shop Murder, Robbery, and Fire — Cabot, Arkansas:***
On April 7, 2011, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) reported the arrest of two homicide suspects in Cabot. The two are suspected of the robbery and murder of the owner of KBC Pawn Shop, a Federal Firearms Licensee in

South Cabot. Firefighters responding to a fire at the pawn shop discovered the owner's body in the building. He had been shot. Investigators determined that 35 firearms were stolen from the shop before it was set afire. After a news broadcast and reward announcement that evening, a couple who had patronized the business that afternoon came forward with information on a person they had observed inside the business, and provided a suspect and vehicle description. Surveillance video was obtained from multiple businesses in the area. This video showed the suspect vehicle travelling down the street multiple times the day of the incident, and showed the vehicle traveling toward and away from the premises just minutes before and after the fire began. Investigators contacted the suspect and his wife, who drove to the Lonoke County Sheriff's Office to meet with ATF and local investigators. During a consent search of the vehicle one of the firearms stolen from the pawn shop was found. Investigators developed additional leads that indicated that, shortly after the theft, both suspects sold significant quantities of jewelry to area businesses. The male suspect confessed to all of the crimes that occurred at the pawn shop. Both suspects were arrested and are being held pending formal charges.

- ***Outlaws National President Sentenced to 20 Years — Richmond, Virginia:***
On April 7, 2011, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) reported that the national president of the Outlaws Motorcycle Club was sentenced to 23 years in prison after his December conviction on racketeering, conspiracy, and other charges in Richmond. Two of his associates received sentences of 3 and 24 years on similar charges.
- ***Projectile Damages Chabbad Synagogue—Santa Monica, California:***
On April 11, 2011, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) reported on the arrest of a person suspected of detonating a device that caused damage to the Chabbad Synagogue on April 7 in Santa Monica. Witnesses heard a loud noise, observed a dent in the side of the synagogue building, and found a large pipe, partially encased in concrete, on the roof of a residence across a narrow alley from the synagogue. ATF agents responded to the scene, along with FBI agents and members of the Joint Terrorism Task Force. When investigators found a burned, mangled black powder canister in a nearby garbage can, they concluded that the pipe was launched intentionally as a projectile and not as a result of a plumbing, natural gas, or industrial incident. A receipt found in the garbage can led to the identity of a suspect. On April 11, the suspect was arrested in Cleveland Heights, Ohio. A concerned rabbi there contacted the Cleveland FBI office after a person who matched the suspect's description appeared at his synagogue looking for food and a place to rest. The Cleveland Heights Police Department responded to the synagogue and made a positive identification of the suspect. The suspect stated that he was homeless and travelling from Santa Monica en route to New York City. ATF and FBI agents are travelling to Ohio to interview the suspect. ATF has assumed the lead on laboratory examinations for this case, and associated evidence arrived at the ATF forensic science laboratory in San Francisco this week. The investigation continues.

- ***Guns Destined for Mexico Seized — Laredo, Texas:***
On April 9, 2011, the Bureau of Alcohol, Tobacco and Firearms and Explosives (ATF) reported on the arrest of a person illegal firearms trafficking in Laredo. ATF agents were contacted by the Texas Department of Public Safety regarding a traffic stop they had conducted. The driver, a previously deported illegal alien, was found in possession of 37 assault type rifles and 74 magazines. The driver stated he was paid to transport the weapons from Pharr, Texas to Laredo for trafficking into Mexico. The driver was arrested by ATF. The investigation continues.
- ***Defendant Receives Life Sentence — Charlotte, North Carolina:***
On April 11, 2011, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) reported on the sentencing of an ATF defendant to life in prison plus 60 months in Charlotte. The defendant was part of violent armed narcotics trafficking organization in Charlotte responsible for at least three drug related murders. The sentencing Judge commented that the stiff sentence was in part due to the defendant's stated intention to shoot the arresting officers and to his long, violent criminal history. To date, eight members of this organization have been indicted, with a second trial set for June 2011. More indictments are anticipated. ATF conducted this investigation with the Charlotte Mecklenburg Police Department.
- ***Suspect in Three Homicides Arrested — Flint, Michigan:***
On April 11, 2011, the Bureau of Alcohol, Tobacco, Firearms and Explosives reported on the arrest of a suspect in three homicides and an additional non-fatal shooting in Flint. ATF agents received information from a source on the whereabouts of the suspect, who was wanted by the Flint Police Department. All of the homicides occurred in the last 2 weeks. ATF agents worked with the Michigan State Police Fugitive Squad, the Flint Police Department, and the Genesee County Sheriff's Office to apprehend the suspect. He faces State and Federal charges.
- ***Federal Firearms License Revoked — Louisville, Kentucky:***
On April 8, 2011, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) reported on the revocation of the Federal Firearms license for Kentucky Outdoor World in Louisville. Citations were issued to the licensee in 2009 and 2010 for inventory and record discrepancies, not conducting NCIC checks, NICS information not being properly recorded, and incomplete information, among other issues. The licensee received a Notice of Revocation of License in February 2011, and did not request a hearing.
- ***Guns Recovered Serving a Search Warrant — St. Croix, Wisconsin:***
On April 12th, 2011, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) reported that ATF agents serving two search warrants related to a burglary investigation recovered over 20 firearms, hundreds of rounds of ammunition, several valuable coin collections, and an amount of liquid mercury from two suspects in St. Croix and Pierce Counties. The investigation stemmed from a burglary in Pope County, Minnesota during which approximately 200 firearms, over 100,000 rounds of

ammunition, grenades, fully automatic weapons, and other property valued at \$70,000 were stolen. The investigation continues.

- ***Home Invasion Suspects Arrested — Charlotte, North Carolina:***
On April 11, 2011, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) reported the arrest of two individuals for their roles in a home invasion conspiracy. An ATF special response team, assisted by the Charlotte Mecklenburg Police Department SWAT team, arrested the suspects without incident. The two individuals are multi-convicted felons. ATF had already conducted two undercover purchases of firearms from one of the suspects. The other suspect has three prior felony convictions and a pending ATF case for a felon in possession of a firearm. Following their arrests, the two individuals confessed to their roles in the conspiracy. This investigation continues.
- ***Bureau of Alcohol, Tobacco, Firearms and Explosives Attends Workshop on Firearms Brokering and International Firearms Agreements— Entebbe, Uganda, and Nairobi, Kenya:***
From April 11-20, 2011, an official from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will participate in a workshop on firearms brokering and international firearms agreements in Entebbe and Nairobi. The workshop is sponsored by the U.S. Department of State through the Regional Center on Small Arms, an institution formed to coordinate a joint effort by member States to prevent, combat, and eradicate stockpiling and illicit trafficking in small arms and light weapons.
- ***Bureau of Alcohol, Tobacco, Firearms and Explosives Helps Develop Iraqi Airport Explosive Ordnance Disposal Team:***
On April 10, 2011, personnel from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Iraq Office hosted a meeting with the Iraqi and U.S. State Department officials to develop an explosives ordnance disposal plan for the Baghdad Airport in order to meet international standards. Approximately 35 countries have commercial flights coming into Iraq. Airport security provided by U.S. forces currently meets international standards, but when U.S. forces leave Iraq, the standards will no longer be met and those international flights will be suspended unless Iraqi personnel can fill the security gap. The discussion focused on assisting the Government of Iraq in establishing an ordnance disposal team at the airport in order to help meet the required security standard.
- ***Bureau of Alcohol, Tobacco, Firearms and Explosives Assists Mexican Military With Large Firearms and Narcotics Seizure — Mexicali, Mexico:***
On April 1, 2011, personnel from the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF's) Tijuana office received a request for assistance from the Mexican military in the identification and tracing of seized firearms. A Mexican military search of several residences in Mexicali resulted in the seizure of 39 firearms, 34 40mm grenades, seven hand fragmentation grenades, five grenade launchers, six 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, nine 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."

- ***Bureau of Alcohol, Tobacco, Firearms and Explosives Seizes Firearms from Federal Firearms Licensee – Parker City, Indiana.***
On April 12, 2011, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) reported that Federal search warrants were served at the business premises the residence of the owner of LUDCO, Inc. a Federal firearms licensee in Parker City. As a result of these search warrants 4,266 firearms, 596,983 rounds of ammunition and \$159,308 in cash were seized. Compliance inspections of the licensee from August to November 2010 found that 1,000 guns were unaccounted for and were subsequently been reported to ATF as stolen or missing. It was also determined that the licensee was selling handguns to out-of-State residents. A criminal investigation conducted this year using confidential informants and undercover agents found multiple violations. An undercover agent, acting as a straw purchaser, was coached by the owner on how to conduct a straw purchase.
- ***Forensic Auditors Participate in Search Warrants after Buy/Bust Operation:***
On April 5, 2011, after a buy/bust operation related to untaxed tobacco products, search warrants were executed in multiple locations in Edmond and Oklahoma City, Oklahoma. ATF Forensic Auditors participated in the search warrants with ATF, ICE, HSI, FBI, IRS, Secret Service and local law enforcement. Forensic Auditors provided guidance at the search warrant locations regarding which records and property should be seized. The arrest and search warrants in Edmond and Oklahoma City concluded with the arrest of two individuals and the seizure of approximately \$230,000 in currency, \$375,000 (cashier's check), tobacco products, jewelry, computers and financial documents.
- ***Two Convicted of Wire Fraud Conspiracy in Large Mortgage Fraud in Cleveland, Ohio:***
On April 1, 2011, two individuals were found guilty of conspiracy (18 U.S.C 371) and wire fraud (18 U.S.C. 1343 and 2). Specifically, one individual was found guilty on 35 counts (two counts of conspiracy and 33 counts of wire fraud) and the second individual was convicted on 11 counts (two counts of conspiracy and nine counts of wire fraud). The jury was unable (hung) to reach a verdict on twenty-three additional wire fraud counts against the second individual. The two individuals were implicated as conspirators in what is considered one of the largest mortgage frauds in the United States (an estimated \$44 million fraud). Also at trial was a third individual who was the bookkeeper for the second individual's limited liability corporation. The third individual was acquitted on all charges. The criminal investigation was conducted by a Cleveland I ATF Special Agent, a FBI Special Agent and an ATF Fisd District Manager. The Fisd District Manager served as the ATF trial representative and conducted the pre-trial interviews, proffers, exhibit preparation and trial presentation.

OTHER ITEMS OF IMPORTANCE/INTEREST TO DEPARTMENT LEADERSHIP:

- ***Bureau of Alcohol, Tobacco, Firearms and Explosives' Firearms and Explosives Services Divisions To Host "Bring Your Child to Work Day" — Martinsburg, West Virginia:***

On April 28, 2011, the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) Firearms and Explosives Services Division (FESD) will sponsor a "Bring Your Child to Work Day" program. In addition to observing parents in the workplace, the children will receive special briefings and demonstrations from the Firearms Technology Branch and the National Canine Operations and Training Center.

- ***Significant Traces of the Week:***

On April 6, 2011, ATF, Brownsville, Texas, requested four urgent traces involving a US citizen in custody of Colombian Police for illegal possession of firearms. The firearms were successfully traced to an individual purchaser. The investigation is ongoing.

On April 6, 2011, ATF, Brownsville, Texas, requested two urgent traces involving the potential homicide of an Immigration and Customs Enforcement (ICE) special agent. The firearms were successfully traced to an individual purchaser. The investigation is ongoing.

From: ETorres, John A.
Sent: Friday, April 15, 2011 9:30:24 AM
To: (b) (7)(C)
Subject: Re: LA Times

269

We are looking forward to hearing it.

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

From: (b) (7)(C)
To: Torres, John A.
Sent: Fri Apr 15 08:35:56 2011
Subject: Re: LA Times

We do when we can but your question will be answered in greater detail next week at the SAC conference..

(b) (7)(C)

Chief
ATF Public Affairs Division

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

From: Torres, John A.
To: (b) (7)(C)
Sent: Fri Apr 15 08:19:19 2011
Subject: Re: LA Times

So why aren't we taking a proactive approach?

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

From: (b) (7)(C)
To: Torres, John A.
Cc: McDermond, James E.; McMahon, William G.; (b) (7)(C)
Sent: Fri Apr 15 08:08:51 2011
Subject: Re: LA Times

John,

I am well aware of the impact of these articles not only to your field division but to others and unfortunately there is little we can do about most of them at this time but I assure you we are working to address them when we can and when we are made aware of them prior to going to print.

E

You can expect, as we all can, more articles in various publications until the news cycle runs on this story and/or we are able to take a more proactive approach to addressing the media on this. 270

When we know of an article coming out in LA we will let you know ahead of time. But like this one today we didn't know about it because they never contacted us so we are as surprised as you are.

We can discuss next week at the SAC conference if you wish.

(b) (7)(C)

(b) (7)(C)

Chief
ATF Public Affairs Division

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

From: Torres, John A.
To: (b) (7)(C)
Cc: McDermond, James E.; McMahon, William G.
Sent: Fri Apr 15 00:14:12 2011
Subject: LA Times

(b) (7)(C) - Another front page article in the LA Times tonight on the web re Gunrunner. Will be front page first thing in the morning. These articles impact us more in terms of having to explain ourselves to our agency partners. Did we know about this one article? I have a bombing, two church fires and a major op in 13 days. These articles are killing me!
JT

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From: (b) (7)(C)
Sent: Friday, April 15, 2011 9:26 AM
To: (b) (7)(C)
CC: (b) (7)(C)
Subject: FW: New Search (Grassley criticizes ATF's conduct in gun probe)

FYI

(b) (7)(C)

(T) 202.648 (b) (7)(C)
(C) (b) (7)(C)
(F) 202.648-9750

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From: AP Exchange notification [mailto:noreply.apexchange@notification.ap.org]
Sent: Thursday, April 14, 2011 10:11 PM
To: (b) (7)(C)
Subject: New Search (Grassley criticizes ATF's conduct in gun probe)

Date: 04/14/2011 10:09 PM

US--Mexican Border-Guns/636
Eds: Updates with details from letter.
Grassley criticizes ATF's conduct in gun probe
JACQUES BILLEAUD
Associated Press

PHOENIX (AP) - A licensed gun dealer in Arizona who was cooperating with federal agents in a gun smuggling probe told investigators that he was worried that firearms sold by his store could end up in the wrong hands.

The dealer's concerns are contained in a letter that Republican Sen. Charles Grassley of Iowa wrote on Wednesday to U.S. Attorney General Eric Holder as part of Grassley's inquiry into efforts to combat gun smuggling into Mexico. The Associated Press obtained the letter on Thursday.

Grassley's letter says e-mails from the unnamed dealer to the federal Bureau of Alcohol, Tobacco, Firearms and Explosives demonstrate that some firearms agents instructed gun dealers to engage in suspicious sales despite the sellers' concerns.

The senator says the dealer sent an e-mail voicing that concern nearly six months before two rifles from the same ATF operation were found at the scene a Dec. 14 shootout near the Arizona-Mexico border that mortally wounded Border Patrol Agent Brian Terry.

"So, not only were the ATF agents who later blew the whistle predicting that this operation would end in tragedy, so were the gun dealers - even as ATF urged them to make the sales," Grassley wrote.

ATF and Justice Department officials in Washington had no immediate comment Thursday night on Grassley's letter. The U.S. Attorney's Office in Phoenix said in a written statement that it couldn't comment on the contents of Grassley's letter because it's in the process of prosecuting the gun smuggling case in question.

Firearms records show the two rifles found at the shootout were the same guns being monitored by ATF agents as part of a gun trafficking investigation and were sold by Lone Wolf Trading Company in Glendale. Lone Wolf owner Andre Howard said he didn't write the e-mails and declined to comment further.

The name of the dealer who wrote the e-mails was blackened out in e-mails attached to Grassley's letter.

The shooting that mortally wounded Terry broke out as Terry and three other agents tried to catch five suspected illegal immigrants north of the Arizona city of Nogales. The five illegal immigrants were believed to be bandits who would rob illegal immigrants as they cross into the United States. No one has been charged in Terry's shooting.

In an April 2010 email to the dealer cited by Grassley, ATF supervisor David Voth tried to ease the seller's concerns by saying the agency continually monitors those suspects. The dealer had asked for something in writing to alleviate his concerns about being blamed later on for selling those guns.

Voth agreed to line up a meeting with federal prosecutors for the seller, and Grassley said prosecutors refused to put anything in writing but assured the dealer that there were safeguards to prevent the distribution of guns sold at his business.

A month later, the dealer grew worried after viewing a news report about gun smuggling into Mexico. "As I said in our meeting, I want to help ATF with its investigation but not at the risk of (agents') safety because I have some very close friends that are US Border Patrol agents in southern AZ," the dealer wrote.

Grassley also said that the dealer's employees on one or two occasions witnessed an exchange of money between a straw gun buyer and someone else on the premise. ATF wanted them to go forward with the sale, but the employees refused, the senator said.

The Justice Department denied in a letter to the senator in February that ATF sanctioned or knowingly allowed the sale of assault rifles to straw buyers who sneaked them into Mexico.

Grassley asks in Wednesday's letter to the attorney general whether the Justice Department still stands by that claim.

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Summary

Date: 04/14/2011 10:09 PM
Slug: US--Mexican Border-Guns

Headline: Grassley criticizes ATF's conduct in gun probe
Byline: JACQUES BILLEAUD
Byline Title: Associated Press
Copyright Holder: AP
Priority: r (4)
With Photo:
Dateline: PHOENIX
Lead
Editors' Note: Eds: Updates with details from letter.
Word Count: 636
File Name (Transref):
Editorial Type: Lead
AP Category: a
Format:

BATF_support - 5bb93ef5a54f45af86416d8ae5895511

From: (b) (7)(C)
Sent: Thursday, April 14, 2011 7:51:18 PM
To: (b) (7)(C)
Subject: RE: Hey

274

My cell is (b) (7)(C)

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

From: (b) (7)(C)
Sent: Thursday, April 14, 2011 4:45 PM
To: (b) (7)(C)
Subject: Hey

(b) (7)(C)

I wanted to give you a quick call this afternoon if you have a minute or two. Let me know what a good number to call you on is. Your SAC and ASAC Needles are aware I am calling you.

Thanks

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

Chief
ATF Public Affairs Division

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From: Significant Activity Report
Sent: Thursday, April 14, 2011 6:37:33 PM
To: SAR/SIR Message Delivery
Subject: FW: SIR

From: (b) (7)(C)
Sent: Thursday, April 14, 2011 6:37:29 PM
To: (b) (7)(C)
(b) (7)(C) Significant Activity Report
Subject: SIR
Auto forwarded by a Rule

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DEPARTMENT OF JUSTICE - BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES
SIGNIFICANT INFORMATION REPORT

DATE: April 14, 2011
FROM: Houston Field Division
FIELD OFFICE: McAllen III Field Office

CASE INFORMATION

CASE NUMBER: 782115-11-0028
CASE TITLE: (b) (7)(C)
SPECIAL AGENT: (b) (7)(C)
TELEPHONE NUMBER: (956) 992-(b) (7)(C)

SYNOPSIS OF INCIDENT/ACTIVITY:

Arrest of International Firearms Trafficking suspect.

NARRATIVE OF INCIDENT/ACTIVITY:

On April 14, 2011, Special Agents with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Downers Grove Field Office, the ATF Rockford Satellite Office, ATF McAllen Group I, ATF McAllen Group III, Immigration & Customs Enforcement (ICE), Rio Grande Valley-Border Enforcement Security Taskforce (RGV BEST), and the Texas Department of Public Safety (DPS) executed one arrest warrant, four search warrants and four consent searches. These warrants are the result of a seven month long investigation into (b) (7)(C)

(b) (7)(C) and his associates for alleged violations of 18 USC 922(g) (5) (B), 22 USC 2778, 18 USC 554, 18 USC 1956, 18 USC 1341, and 18 USC 1343.

Pursuant to these warrants the following items were seized:

1. 2011 PORSCHE CAYANNE
2. 2010 MAZDA CX-7
3. 2008 Z-71 CHEVROLET SILVERADO
4. ISUZU BOX TRUCK
5. 1980 VOLVO
6. 2011 MERCEDES BENZ S500
7. 2011 TOYOTA FORKLIFT
8. Two pistols
9. Approximately 2000 rounds of ammunition
10. Numerous Financial documents
11. Numerous additional items appearing on the Arms Export Control Act's Munitions List
12. Numerous pieces of jewelry

Prior to this date, on October 5, 2010, (b) (7)(C) (b) (7)(C) to Fort Worth, TX, to purchase and transport firearms down to the Rio Grande Valley. Officers from the DeSoto, TX, Police Department conducted a traffic stop on the vehicle driven by (b) (7)(C) after the firearms transaction occurred. ATF and ICE Fort Worth agents debriefed (b) (7)(C) and (b) (7)(C) concerning the firearms. (b) (7)(C) that the weapons were purchased by (b) (7)(C), who is a legal permanent resident in the United States and can legally own the weapons. (b) (7)(C) abandoned the two (2) firearms to ATF and has since not attempted to obtain the firearms from ATF. (ATF Case number 781040-11-0004)

From October 2010, through January 2011, (b) (7)(C) has made numerous purchases of items appearing on the Arm Export Control Act's Munitions List and attempted to export those items to Mexico. These seizures included fifteen hundred (1500) AR-15 magazines, four thousand (4000) AK-47 magazines and over six hundred (600) sets of BDU Shirts, pants and combat boots at a value exceeding one hundred and fifty thousand dollars (\$150,000)

Since October 2010, (b) (7)(C) (b) (7)(C) and has frequently sought information and merchandise relating to M-249 Squad Automatic Weapons (SAW). (b) (7)(C) how to convert semi-automatic into full automatic firearms. (b) (7)(C) also commented that he has a six (\$6,000,000) to twelve (\$12,000,000) million dollar spending budget. (b) (7)(C) has purchased four (4) FNH M-249 SAW barrels and has recently placed a purchase request for two (2) FNH M-249 SAW lower receivers (fully automatic), including three hundred (300) front and rear AK-47 sights; fifty (50) stock and forearm grips for AR-15's and ten thousand (10,000) 7.62x54 ammunition belt links for a belt fed Kalashnikov PKM.

On April 11, 2011, (b) (7)(C) placed an order for one thousand eight hundred and forty (1,840) rounds of assorted ammunition from (b) (7)(C). On April 14, 2011 ATF McAllen Group III, ATF McAllen Group I, ATF Rockford Satellite Office and ICE RGV BEST conducted the controlled deliver, and arrested (b) (7)(C) once he took possession of the ammunition. Upon his arrest four simultaneous search warrants and four consent searches were initiated to recover evidence in the aforementioned criminal violations.

As a result of today's enforcement activity additional leads have been developed and more arrests/indictments and search warrants are anticipated. This investigation continues...

From: (b) (7)(C)
Sent: Thursday, April 14, 2011 12:29 PM
To: (b) (7)(C)
Subject: FW: VCAB #114670 - Mexico Trace Questions
Attachments: MM_07-10_nopurchaser.xlsx

FYI

(b) (7)(C)
Public Affairs Division
Bureau of Alcohol, Tobacco, Firearms and Explosives
99 New York Avenue NE
Washington, DC 20226

(b) (7)(C)
(202) 648-(b) (7)(C) Office
(b) (7)(C) BlackBerry

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From: (b) (7)(C)
Sent: Thursday, April 14, 2011 12:27 PM
To: (b) (7)(C)
Cc: Martin, Steve K. (b) (7)(C)
Subject: FW: VCAB #114670 - Mexico Trace Questions

Public Affairs Specialist (b) (7)(C)

Attached and below are the VCAB responses to your Mexico trace questions. The attached completion code statistics for firearms recovered and traced in Mexico (CY 2007 – CY 2010) are based on a query of the Firearms Tracing System (FTS) on March 1, 2011. The purchaser statistics included in the first question are based on a query of the FTS on April 13, 2011.

If you have any questions, please call me.

(b) (7)(C)

Chief, VCAB

(b) (7)(C)

What is the percentage of domestic traces that identify a first purchaser?

Percentage of purchasers identified for firearms recovered and traced in the U.S.
(FTS – April 13, 2011 – Duplicates, Gun Buybacks, Firearms Not Recovered and Firearms Turned In excluded)

CY 2010 – 63.3%

CY 2009 – 61.0%

CY 2008 – 62.0%

CY 2007 - 61.4%

Percentage of purchasers identified for firearms recovered and traced in Mexico.
(FTS – April 13, 2011 – Duplicates excluded)

CY 2010 – 36.9%

CY 2009 – 25.5%

CY 2008 – 25.2%

CY 2007 – 25.7%

Why are we more affective tracing firearms in the U.S. than in Mexico?

1. E-trace has made the submission of firearm trace requests much easier and more efficient for U.S. law enforcement agencies.
2. The significant increase in the number of U.S. law enforcement agencies using E-trace.
3. U.S. law enforcement agencies submit more complete, accurate and timely trace requests.
4. The increased emphasis U.S. law enforcement has placed on tracing crime guns.

What are the top five reasons for an incomplete trace from Mexico?

Please reference the attached chart.

1. Trace request did not include a firearm serial number.
2. Manufacturer's name for the firearm is incomplete, invalid, missing or a weapon type.
3. Firearm is too old to trace.
4. Trace request did not include the U.S. importer information.
5. Firearm serial number is invalid.

What can be done to help Mexicans do a better job of tracing so that more firearms are traced back to the first purchaser?

1. ATF must emphasize the need to include accurate and complete firearm information on trace requests,

including the recovery date and location,
possessor and associates.

2. A Mexico trace request review process for accuracy and completeness conducted by ATF personnel, prior to the trace request being processed by the NTC.
3. Timely submission of Mexico trace requests must be a priority.
4. Increased E-trace training in Mexico, which is presently being done.
5. ATF should narrow the types of Mexico firearms that are traced. Concentrate tracing on firearms known to be used by the drug cartels, which tend to be newer resulting in traces to a first purchaser.

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Completion Code	# of Traces	Top Five Completion Code Descriptions - CY 2007
(b)	(3)	(P.L. 111-117)

Completion Code	# of Traces	Top Five Completion Code Descriptions - CY 2008
(b)	(3)	(P.L. 111-117)

Excludes duplicate traces.
Data is based on a query of
the Firearms Tracing System
on March 1, 2011.

Completion Code	# of Traces	Top Five Completion Code Descriptions - CY 2009
(b)	(3)	(P.L. 111-117)

Completion Code	# of Traces	Top Five Completion Code Descriptions - CY 2010
(b)	(3)	(P.L. 111-117)

Excludes duplicate traces.
Data is based on a query of
the Firearms Tracing System
on March 1, 2011.

**Firearms Recovered and Traced in Mexico
Purchaser Not Identified**

Excludes duplicate traces.
Data is based on a query of
the Firearms Tracing System
on March 1, 2011.

From: Solomon, John (b) (7)(C)
Sent: Thursday, April 14, 2011 9:25 AM
To: (b) (7)(C)
Subject: Grassley letter
Attachments: GrassleyATF4-13-11.pdf

(b) (7)(C)

Per foner... We'll probably go live at 10a or so. Can always update if you have comment.

John

From: (b) (7)(C)
Sent: Thursday, April 14, 2011 9:10:22 AM
To: (b) (7)(C)
Subject: FW: Final signed response to Chairman Issa

Attachments: Issa Response 4 13 11.pdf

(b) (7)(C)

*DOJ- Bureau of Alcohol, Tobacco, Firearms & Explosives
Chief - Office of Legislative Affairs*

(b) (7)(C) (mobile1)
(b) (7)(C) (mobile2)
202.648.(b) (7)(C) (office)
202.648.9708 (fax)

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From: Axelrod, Matthew (ODAG) [mailto:(b) (7)(C)]
Sent: Wednesday, April 13, 2011 7:26 PM
To: (b) (7)(C); Melson, Kenneth E.; Hoover, William J.; (b) (7)(C)
Cunningham, Patrick (USAAZ); Burke, Dennis (USAAZ)
Subject: Final signed response to Chairman Issa



Issa
Response 4
13 11.pdf
(627 kB)

From: McDermond, James E.
Sent: Thursday, April 14, 2011 7:10 AM
To: (b) (7)(C)
Subject: Re: Mexico Trace Statistics

(b) (7)(C)

Did you receive a response from the Director?

Jim
James McDermond, Assistant Director - ATF

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From: (b) (7)(C)
To: Melson, Kenneth E.
Cc: McDermond, James E.; Hoover, William J.; (b) (7)(C)
Sent: Wed Apr 13 17:16:32 2011
Subject: Mexico Trace Statistics

Director,

We were able to speak with (b) (7)(C) and get a definitive answer to your questions from last week regarding the number of successful traces from Mexico to the first retail purchaser (b) (3)(PL 111-17) as compared to the total number of firearms recovered in Mexico and traced (b) (3)(PL 111-17) for calendar year 2010.

Attached is a more in-depth analysis of the question you asked and I have taken the liberty of putting some of that information in the body of this email to assist you looking at it.

Q. What is the percentage of purchaser identified traces from Mexico?

A. The percentage Mexican traces that identify a first purchaser are:

Ø 2010 – 37.47%

Ø 2009 – 25.51%

Ø 2008 – 25.17%

Ø 2007 – 25.72%

Q. What are the top three reasons for an incomplete trace?

- A.
1. The lack of importer information entered for firearms submitted for tracing.
 2. The age of firearms submitted for tracing are older.
 3. Firearms submitted have incomplete descriptor data (missing make, serial number or model)

Q. What is the percentage of domestic traces that identify a first purchaser?

A. Percentages of domestic traces that identify a first purchaser:

Ø 2010 – 63.1%

Ø 2009 – 61.0%

Ø 2008 – 62.0%

Ø 2007 – 61.4%

If you prefer I can arrange another meeting to discuss this or other questions you might have unless you are good with it in which case we can start to make arrangements to launch the information.

If we do launch the information we would utilize the same media strategy we had planned on which is to bring in two outlets, The center for public integrity and Hearst News papers and then have others relay on their reporting to explain the numbers.

Thank you

(b) (7)(C)

(b) (7)(C)

Chief

ATF Public Affairs Division

Washington, DC

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

Cell (b) (7)(C)

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From: (b) (7)(C)
Sent: Wednesday, April 13, 2011 9:10 PM
To: McDermond, James E.; (b) (7)(C)
Subject: Fw: Final signed response to Chairman Issa
Attachments: Issa Response 4 13 11.pdf

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From: Axelrod, Matthew (ODAG)
To: Pellettiere, Christopher A.; Melson, Kenneth E.; Hoover, William J.; (b) (7)(C) Cunningham, Patrick (USAAZ) ; Burke, Dennis (USAAZ)
Sent: Wed Apr 13 19:25:33 2011
Subject: Final signed response to Chairman Issa

<<Issa Response 4 13 11.pdf>>

From: (b) (7)(C)
Sent: Wednesday, April 13, 2011 4:54 PM
To: (b) (7)(C) Rubenstein, Steve R.; Stinnett, Melanie S.
Subject: RE: DRAFT RESPONSE TO CHAIRMAN ISSA'S 4/8/11 - PRESERVATION ORDER

LAW ENFORCEMENT SENSITIVE

concur

(b) (7)(C)

Acting Chief of Staff
Bureau of Alcohol, Tobacco, Firearms and Explosives

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From: (b) (7)(C)
Sent: Wednesday, April 13, 2011 4:24 PM
To: (b) (7)(C) Rubenstein, Steve R.; Stinnett, Melanie S.
Subject: RE: DRAFT RESPONSE TO CHAIRMAN ISSA'S 4/8/11 - PRESERVATION ORDER

Steve and I have reviewed this draft response and believe it should be much more concise and should not include copies of our preservation directives. Attached is the version with our suggested changes.
Thanks.

(b) (7)(C)

Acting Deputy Chief Counsel
Bureau of Alcohol, Tobacco, Firearms & Explosives
202-648-(b) (7)(C)

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From: (b) (7)(C)

Sent: Wednesday, April 13, 2011 1:44 PM

To: (b) (7)(C); Rubenstein, Steve R.; Stinnett, Melanie S.

Subject: DRAFT RESPONSE TO CHAIRMAN ISSA'S 4/8/11 - PRESERVATION ORDER

Attached is a proposed response to Chairman Issa related to his 4/8/11 letter requesting a preservation order. Please review and comment. The Department has requested a draft today. I'd appreciate your review before it goes to Director and Deputy.

(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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From: (b) (7)(C)
Sent: Wednesday, April 13, 2011 4:30 PM
To: (b) (7)(C)
Subject: Trace Questions
Attachments: MexicanQuestions(4).doc

(b) (7)(C)

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

(b) (7)(C)

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

(b) (7)(C) BlackBerry

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Mexican Trace Data

(Continued)

(April 13, 2011)

Q. What is the percentage of domestic traces that identify a first purchaser?

A. Percentages of domestic traces that identify a first purchaser:

- 2010 – 63.1%
- 2009 – 61.0%
- 2008 – 62.0%
- 2007 – 61.4%

Q. Why are we more affective tracing firearms in the U.S. than in Mexico?

A. U.S. law enforcement does better tracing firearms than the Mexicans because we are American law enforcement submit their firearms for tracing in a more timely fashion. In addition, most U.S. police departments have dedicated people assigned to handle traces who are savvier at performing traces and providing all necessary information for a complete trace.

Q. What are the top five reasons for an incomplete trace?

- A.
1. The lack of importer information entered for firearms submitted for tracing.
 2. The age of firearms submitted for tracing are older.
 3. Firearms submitted have incomplete descriptor data (missing make, serial number or model).

Q. What have we done to help the Mexicans do a better job tracing firearms?

A. ATF has done numerous things over the years to help Mexican law enforcement do a better job tracing firearms:

- ATF has provided training both in Mexico and in the U.S. to Mexican law enforcement.
- ATF has provided follow-up interaction with people trained.

Internal Use Only

- ATF employees at the Mexico country office and at the various consulate offices have submitted firearms traces for the Mexicans.
- ATF has had numerous meetings with all levels of Mexican law enforcement emphasizing the importance of tracing.
- eTrace 4.0 (Spanish Language version) was funded and designed by ATF for Mexican law enforcement to make tracing crime guns easier for non-English speaking countries.
- ATF employees have responded to seizure locations in Mexico with Mexican law enforcement to trace firearms recovered.

Q. What is the percentage of purchaser identified traces from Mexico?

A. The percentage Mexican traces that identify a first purchaser are:

- 2010 – 37.47%
- 2009 – 25.51%
- 2008 – 25.17%
- 2007 – 25.72%

Q. How many foreign sourced firearms have been submitted by Mexico each year for tracing?

A. Foreign sourced firearms submitted by Mexico for tracing:

	Foreign made (non-import)	Unknown Country	Non-U.S. Sourced Firearms
2010	1,017	3,287	4,304
2009	6,001	13,521	19,522
2008	1,065	337	1,402
2007	192	29	221

###

From: Serres, Greg
Sent: Wednesday, April 13, 2011 4:24 PM
To: (b) (7)(C); Rubenstein, Steve R.; Stinnett, Melanie S.
Subject: RE: DRAFT RESPONSE TO CHAIRMAN ISSA'S 4/8/11 - PRESERVATION ORDER
Attachments: ISSA DRAFT 1 RESPONSE TO ISSA 20110408.docx

(b) (7)(C) and I have reviewed this draft response and believe it should be much more concise and should not include copies of our preservation directives. Attached is the version with our suggested changes.
Thanks.

Greg Serres
Acting Deputy Chief Counsel
Bureau of Alcohol, Tobacco, Firearms & Explosives
202-648-(b) (7)(C)

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From: (b) (7)(C)
Sent: Wednesday, April 13, 2011 1:44 PM
To: (b) (7)(C); Serres, Greg; Rubenstein, Steve R.; Stinnett, Melanie S.
Subject: DRAFT RESPONSE TO CHAIRMAN ISSA'S 4/8/11 - PRESERVATION ORDER

Attached is a proposed response to Chairman Issa related to his 4/8/11 letter requesting a preservation order. Please review and comment. The Department has requested a draft today. I'd appreciate your review before it goes to Director and Deputy.

(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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From: (b) (7)(C)
Sent: Wednesday, April 13, 2011 4:07 PM
To: Stinnett, Melanie S.; (b) (7)(C) Serres, Greg;
Rubenstein, Steve R.
Subject: RE: DRAFT RESPONSE TO CHAIRMAN ISSA'S 4/8/11 - PRESERVATION ORDER

Thanks for that catch.

(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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From: Stinnett, Melanie S.
Sent: Wednesday, April 13, 2011 4:05 PM
To: (b) (7)(C) Serres, Greg;
Rubenstein, Steve R.
Subject: RE: DRAFT RESPONSE TO CHAIRMAN ISSA'S 4/8/11 - PRESERVATION ORDER

(b) (7)(C)

In the last paragraph on page 1 you state:

With regard to your request that a preservation order be issued this has been accomplished. In connection with the OIG review, and prior to your March 16, 2011 initial inquiry into this matter, ATF's Office of Professional Responsibility and Security Operations (OPRSO) issued, on February 28, 2011, a Preservation Directive for ATF Records Related to Operation Fast and Furious (Attachment 1).

The Preservation for Fast and Furious was not sent out till March 28, 2011.

Mel

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From: (b) (7)(C)
Sent: Wednesday, April 13, 2011 1:44 PM
To: (b) (7)(C); Serres, Greg; Rubenstein, Steve R.; Stinnett, Melanie S.
Subject: DRAFT RESPONSE TO CHAIRMAN ISSA'S 4/8/11 - PRESERVATION ORDER

Attached is a proposed response to Chairman Issa related to his 4/8/11 letter requesting a preservation order. Please review and comment. The Department has requested a draft today. I'd appreciate your review before it goes to Director and Deputy.

(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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From: Stinnett, Melanie S.

Sent: Wednesday, April 13, 2011 4:05 PM

To: (b) (7)(C) Serres, Greg;
Rubenstein, Steve R.

Subject: RE: DRAFT RESPONSE TO CHAIRMAN ISSA'S 4/8/11 - PRESERVATION ORDER

(b) (7)(C)

In the last paragraph on page 1 you state:

With regard to your request that a preservation order be issued this has been accomplished. In connection with the OIG review, and prior to your March 16, 2011 initial inquiry into this matter, ATF's Office of Professional Responsibility and Security Operations (OPRSO) issued, on February 28, 2011, a Preservation Directive for ATF Records Related to Operation Fast and Furious (Attachment 1).

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Mel

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From: (b) (7)(C)

Sent: Wednesday, April 13, 2011 1:44 PM

To: (b) (7)(C) Serres, Greg; Rubenstein, Steve R.; Stinnett, Melanie S.

Subject: DRAFT RESPONSE TO CHAIRMAN ISSA'S 4/8/11 - PRESERVATION ORDER

Attached is a proposed response to Chairman Issa related to his 4/8/11 letter requesting a preservation order. Please review and comment. The Department has requested a draft today. I'd appreciate your review before it goes to Director and Deputy.

(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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From: (b) (7)(C)
Sent: Wednesday, April 13, 2011 2:55 PM
To: (b) (7)(C) Serres, Greg; Rubenstein, Steve R.;
Stinnett, Melanie S.
CC: McDermond, James E.
Subject: RE: DRAFT RESPONSE TO CHAIRMAN ISSA'S 4/8/11 - PRESERVATION ORDER

I have no comments.

Jim?

(b) (7)(C)
DOJ- Bureau of Alcohol, Tobacco, Firearms & Explosives
Chief - Office of Legislative Affairs
(b) (7)(C) (mobile1)
(b) (7)(C) (mobile2)
202.648 (b) (7)(C) (office)
202.648.9708 (fax)

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From: (b) (7)(C)
Sent: Wednesday, April 13, 2011 1:44 PM
To: (b) (7)(C) Serres, Greg; Rubenstein, Steve R.; Stinnett,
Melanie S.
Subject: DRAFT RESPONSE TO CHAIRMAN ISSA'S 4/8/11 - PRESERVATION ORDER

Attached is a proposed response to Chairman Issa related to his 4/8/11 letter requesting a preservation order. Please review and comment. The Department has requested a draft today. I'd appreciate your review before it goes to Director and Deputy.

(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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Attachments: DRAFT 1 RESPONSE TO ISSA 20110408.docx; 2000-01-27 linder to HR.pdf; 2011-02-28 Preservation Directive FastandFurious.docx; 2011-04-05 ESI PRESERVATION DIRECTIVE FOR ATF OPERATION FAST AND FURIOUS.docx; 4-8-11 Issa letter - preservation.pdf

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From: (b) (7)(C)
Sent: Wednesday, April 13, 2011 10:50 AM
To: (b) (7)(C)
CC: (b) (7)(C)
Subject: Melson's Mexico Questions
Attachments: MelsonMexicanQuestions.doc

FYI,

(b) (7)(C) told me he had to have the "top five" reasons approved by DAD Martin before he can provide them to me. The three listed are those we talked about yesterday.

(b) (7)(C)

(b) (7)(C)

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

(b) (7)(C)

(202) 648-^{(b) (7)(C)} Office

(b) (7)(C) BlackBerry

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Mexican Trace Data

(Continued)

(April 13, 2011)

Q. What is the percentage of domestic traces that identify a first purchaser?

A. Percentages of domestic traces that identify a first purchaser:

- 2010 – 63.1%
- 2009 – 61.0%
- 2008 – 62.0%
- 2007 – 61.4%

Q. Why are we more affective tracing firearms in the U.S. than in Mexico?

A. U.S. law enforcement does better tracing firearms than the Mexicans because we are American law enforcement submit their firearms for tracing in a more timely fashion. In addition, most U.S. police departments have dedicated people assigned to handle traces who are savvier at performing traces and providing all necessary information for a complete trace.

Q. What are the top five reasons for an incomplete trace?

- A.
1. The lack of importer information entered for firearms submitted for tracing.
 2. The age of firearms submitted for tracing are older.
 3. Firearms submitted have incomplete descriptor data (missing make, serial number or model).

Q. What can be done to help Mexicans do a better job of tracing so that more firearms are traced back to the first purchaser?

A. To help Mexican law enforcement do a better job tracing firearms, when training, ATF personnel used firearms recovered by Mexican police to perform traces in late 2010. More training may be necessary help Mexican police see the usefulness of firearms tracing as an investigative tool. In addition, to improve the number of firearms traced back to the first purchaser Mexican police should run traces in a more timely fashion instead of holding onto firearms data and providing large quantities of recovered firearms to ATF all at once like the electronic files provided in 2009.

Q. What is the percentage of purchaser identified traces from Mexico?

A. The percentage Mexican traces that identify a first purchaser are:

- 2010 – 37.47%
- 2009 – 25.51%
- 2008 – 25.17%
- 2007 – 25.72%

Q. How many foreign sourced firearms have been submitted by Mexico each year for tracing?

A. Foreign sourced firearms submitted by Mexico for tracing:

	Foreign made	Unknown Country
2010	1,017	3,287
2009	6,001	13,521
2008	1,065	337
2007	192	29

From: (b) (7)(C)
Sent: Tuesday, April 12, 2011 3:09 PM
To: (b) (7)(C)
CC: (b) (7)(C); Rubenstein, Steve R.; Serres, Greg
Subject: FW: DRAFT RESPONSE TO SEN GRASSLEY - FOIA E-MAIL LETTER
Attachments: Grassley DRAFT 1 RESPONSE 20110408.docx

I agree with Greg with one comment attached

LAW ENFORCEMENT SENSITIVE

(b) (7)(C)

Acting Chief of Staff
Bureau of Alcohol, Tobacco, Firearms and Explosives

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LAW ENFORCEMENT SENSITIVE

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From: Serres, Greg
Sent: Tuesday, April 12, 2011 2:04 PM
To: (b) (7)(C); Rubenstein, Steve R.
Subject: RE: DRAFT RESPONSE TO SEN GRASSLEY - FOIA E-MAIL LETTER

Steve and I have reviewed this and attached is the version with our suggested changes.

Greg Serres
Acting Deputy Chief Counsel

Bureau of Alcohol, Tobacco, Firearms & Explosives
202-648-(b) (7)(C)

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From: (b) (7)(C)
Sent: Tuesday, April 12, 2011 9:12 AM
To: (b) (7)(C); Rubenstein, Steve R.; Serres, Greg
Subject: DRAFT RESPONSE TO SEN GRASSLEY - FOIA E-MAIL LETTER

All:

Here is a first draft of the proposed response to Senator Grassley with attachments. Please take a look and provide comments in track changes. I'd like to get this to Director and Deputy for review this afternoon.

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Acting Chief of Staff
Office of the Director
O: 202-648-(b) (7)(C)
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HQ Room 5 S 100

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The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Grassley:

This responds to your letter, dated April 8, 2011, in which you raise questions about guidance the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) may have distributed regarding Congressional communications, either in writing or otherwise, to ATF field offices.

(b) (5)

(b) (5)

Congress in several forms. Attached hereto is a copy of ATF Order 9000.1A Office of Public and Governmental Affairs which provides general guidance to all ATF employees regarding contacts with Congress (Attachment 1.) The order speaks principally to agency level contacts with Congress as well as disclosure of non-public information to the media and Congress. Nothing in this order restricts the right or ability of any employee to speak with Congress. The order does however outline restrictions on what may be disclosed to the general public, the media, and to Congress.

Among the items prohibited from disclosure are ATF official documents pertaining to open criminal investigations. All ATF Special Agents in particular receive additional guidance regarding release of official ATF documents related to criminal investigations. Attached hereto is a copy of ATF Order 3270.10c Law Enforcement Investigative Reports paragraph 22 (Attachment 2) which outlines categories of ATF official documents whose disclosure is restricted. The order further provides that documents pertaining to criminal cases where

prosecution is pending may not be released without the approval of the Assistant Director (Field Operations.)

ATF has a compelling interest in ensuring that its investigative files are protected from unauthorized disclosure. ATF's disclosure restrictions fully comport with the longstanding position of the Department of Justice as it pertains to the release of materials contained in open criminal case files as articulated in then Assistant Attorney General Robert Raben's January 27, 2000 letter to Chairman John Linder of the Subcommittee on Rules and Organization of the House. (Attachment 3) Thus while any employee, including special agents, may speak to Congress at anytime, and while there are no restrictions on the questions the Congress can ask, there are longstanding restrictions codified in law, regulation, Departmental, and ATF policy that address the disclosure of non-public information pertaining to open criminal investigations to the general public and to Congress. ATF fully intends that these disclosure restrictions are made known to and observed by all employees for the reasons more fully expounded upon in AAG Raben's letter.

Within the context of the aforementioned laws, regulations, and policies, on February 9, 2011, ATF's Assistant Director (Field Operations) issued the attached guidance regarding Rights and Duties under the Whistleblower Protection Act via e-mail to all Special Agents in Charge, for subsequent dissemination to all field supervisors (Attachment 4.) Nothing in that communication addresses contact with Congress. Additionally, ATF is currently finalizing the attached reminder of Employee Rights under the Whistleblower Protection Act for dissemination throughout ATF by electronic broadcast. (Attachment 5)

Finally, you have asked what steps ATF has taken to ensure that employees are aware of their right to communicate with Congress. In addition to the policy documents and recent reminder notices discussed above, ATF recognizes an ongoing requirement to emphasize the importance of protecting employees from retaliation relating to protected disclosures under the Whistleblower Protection Act and the reporting of waste, fraud, and abuse generally. To ensure that all personnel are aware of their rights and responsibilities under the Whistleblower Protection Act, ATF requires every employee to complete online Notification and Federal Employee Anti-discrimination and Retaliation Act of 2002 (No FEAR Act) training within 90 days of joining ATF and bi-annually thereafter. This commercially produced online training module is used by the Department and ATF to specifically address the provisions of the Whistleblower Protection Act. A copy of the training module is attached for your information (Attachment 6.) According to ATF's Learning Management System as of April 11, 2011, 99.3 percent of ATF's 5,124 employees are in compliance with the required No Fear Act training cycle.

I assure you that ATF has made no attempt to restrict communications between its employees and Congress, nor has it retaliated against any of its employees regarding this matter. Further, ATF has not attempted to learn the content of any communications between its employees and Congress. However, the possibility does exist that ATF officials may learn of such communications while compiling documentation and exercising due diligence in responding to ongoing inquiries from the Department of Justice Office of the Inspector General and a subpoena issued by the House Committee on Oversight and Government Reform. While it is possible that

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Comment [JPS1]: recommend not including unless final

ATF may encounter protected disclosures in these efforts, ATF does not intend that their response to the aforementioned document requests become an intrusion into your investigative process.

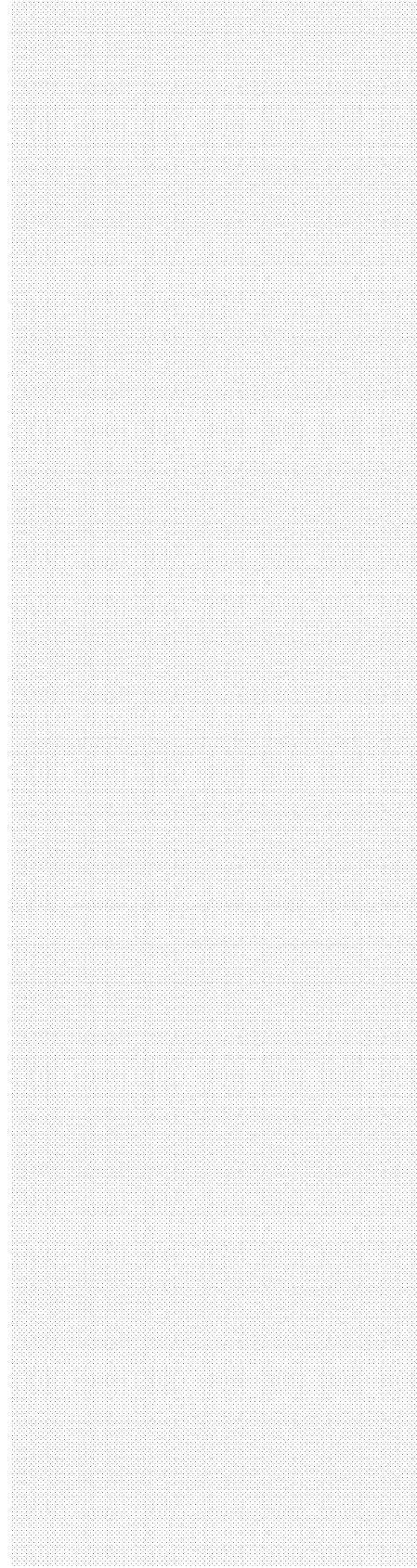
We hope that this information is helpful. Please do not hesitate to contact this office if we may be of assistance in this or any other matter.

Sincerely,

Ronald Weich
Assistant Attorney General

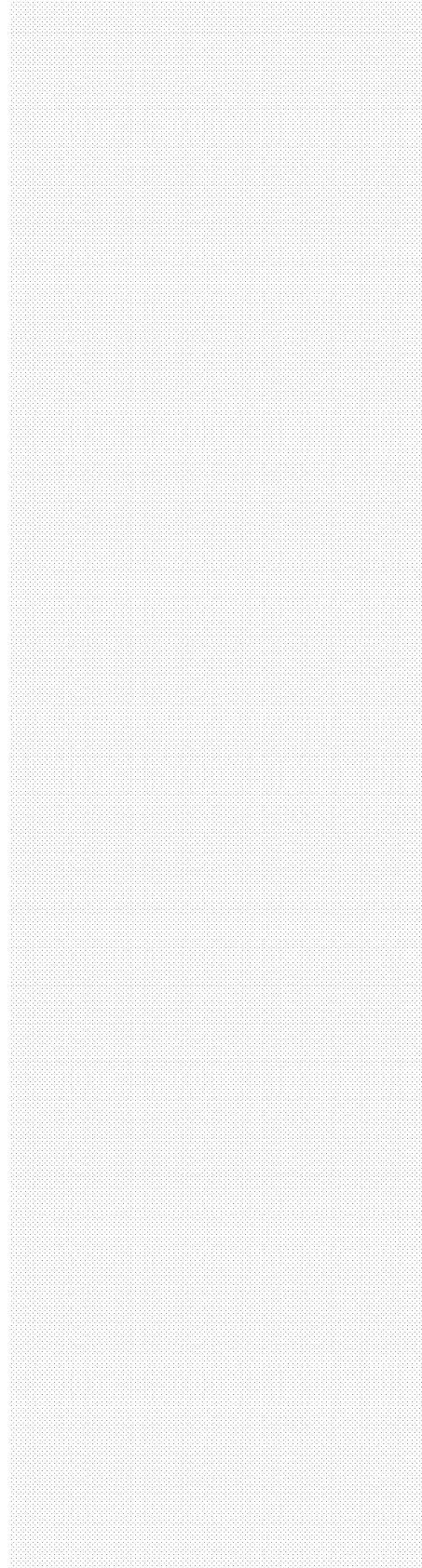
cc: The Honorable Patrick J. Leahy
Chairman

The Honorable Darrell Issa
Chairman, House Committee on Oversight and Government Reform



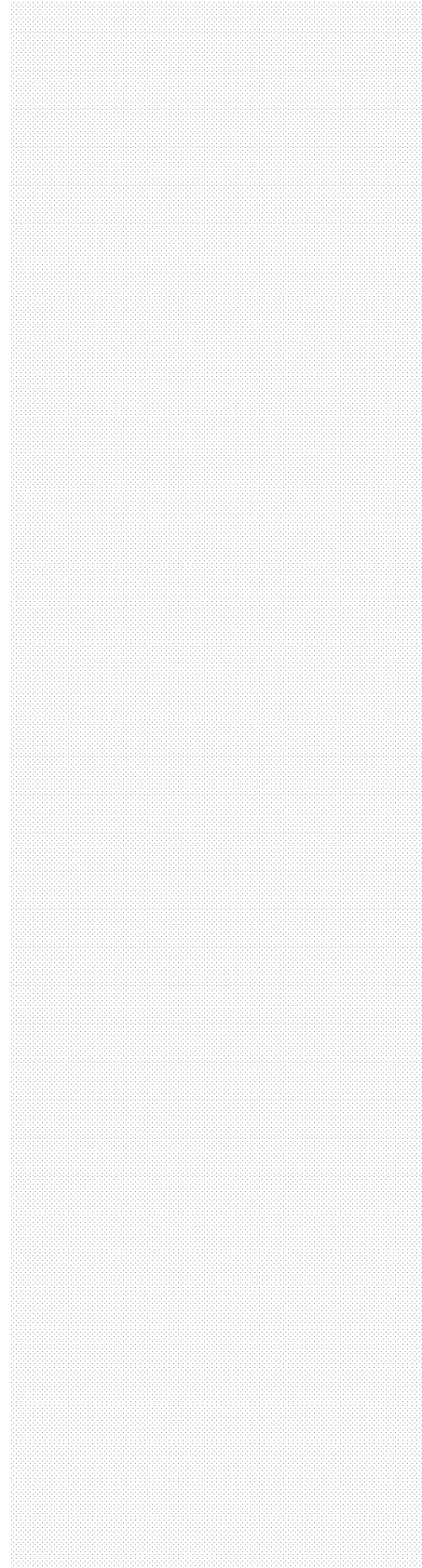
Attachment 1

ATF Order 9000.1A – Office of Public and Governmental Affairs



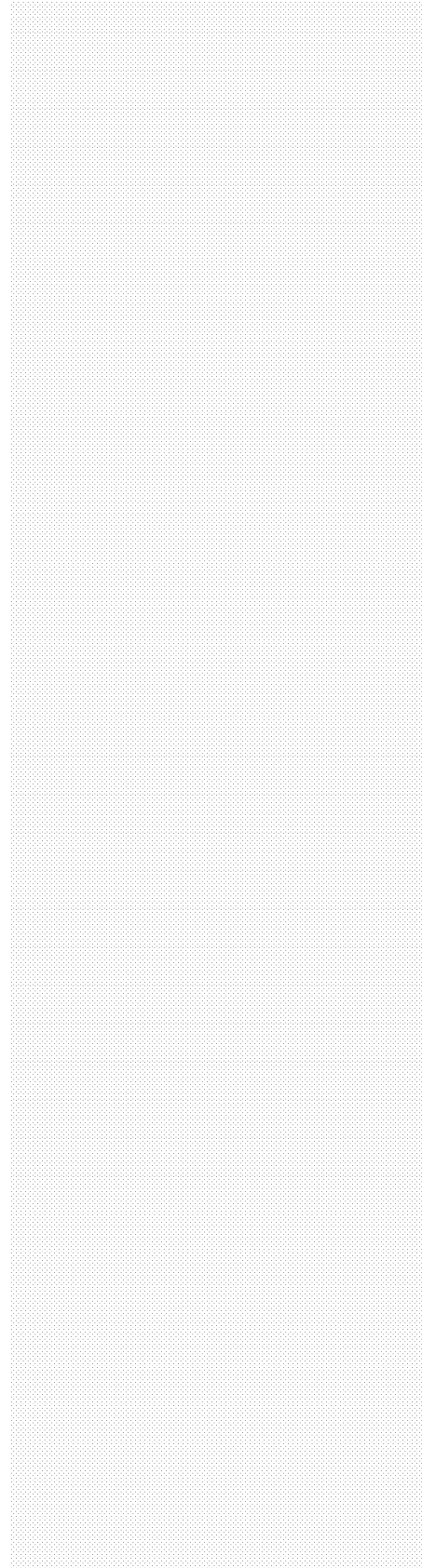
Attachment 2

ATF Order 3270.10c – Law Enforcement Investigative Reports



Attachment 3

Letter from Assistant Attorney General Robert Raben to Chairman John Linder of the Subcommittee on Rules and Organization of the House. January 27, 2000



Attachment 4

Text of the Assistant Director (Field Operations) February 9, 2011 E-Mail to All Special Agents in Charge – Reminder of Rights and Duties under the Whistleblower Protection Act

The Whistleblower Protection Act (WPA) protects most executive branch employees who disclose information that is reasonably believed to evidence a violation of any law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. 5 U.S.C. § 2302(b). A Federal agency is prohibited from retaliating against an employee for having made a protected disclosure. Id.

A disclosure that is “specifically prohibited by law” or “specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs” is not protected unless it is made “to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures.” Id. As applied to ATF, Inspector General here means the Inspector General of the Department of Justice.

Bureau employees who believe they have experienced retaliation at work for making a protected whistleblower disclosure may report the retaliation to:

- The ATF Internal Affairs Division (OPRSO);
- The Office of the Department of Justice Inspector General using the links at <http://www.justice.gov/oig/> for reporting waste, fraud, abuse, or misconduct; or
- The U.S. Office of Special Counsel, at 800-572-2249, or at www.OSC.gov.

Supervisors and managers are reminded that the WPA generally supersedes ATF rules and policies regarding the disclosure of information. ATF supervisors and managers shall not require or solicit employees to report having made a whistleblower disclosure. If an employee makes an unsolicited report of having made a whistleblower disclosure, or if a manager or supervisor otherwise becomes aware of an employee having made a disclosure that is, or may be, protected by the WPA, the manager or supervisor shall not require or solicit from the employee additional information about the disclosure, nor shall the manager or supervisor make any further inquiry into the matter.

If a manager or supervisor becomes aware of a disclosure and has questions about whether that disclosure is protected by the WPA, or concerns that a disclosure was made in violation of law, may jeopardize an ongoing law enforcement operation or prosecution, or may create threat to public safety, he or she should, through chain-of-command, alert the Deputy Assistant Director of the office in which the manager or supervisor is employed.

Attachment 5

ATF Employee Rights under the Whistleblower Protection Act

Under the Whistleblower Protection Act, an ATF employee may, without reprisal, disclose to a member of Congress (or a member's staff) *information that he or she reasonably believes evidences a violation of any law, rule, or regulation, or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.* Such a disclosure is a "*Protected Disclosure.*"

However, an ATF employee may *not* make such a disclosure to a member of Congress (or a member's staff) *if that disclosure is specifically prohibited by law or specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.* Such a disclosure by an ATF employee is *not* a Protected Disclosure unless it is made to the Special Counsel or to the Department of Justice Inspector General. Many types of information known by ATF employees on account of official duties are subject to laws specifically prohibiting disclosure e.g., Rule 6(e) of the Federal Rules of Criminal Procedure (grand jury matters); 26 U.S.C. § 6103 (tax return information).

An ATF employee is *not* required to respond to a member of Congress (or a member's staff) who solicits a Protected Disclosure, or any other disclosure, *unless* responding to such a request is part of that employee's official duties, or that employee is subject to a Congressional subpoena requiring his or her testimony.

Likewise, an ATF employee is *not* required to report to his or her supervisor that he or she made, or intends to make, a Protected Disclosure to a member of Congress (or a member's staff).

However, if an ATF employee has any question about the propriety of any potential disclosure, he or she may consult with the Disclosure Division and the Associate Chief Counsel (Field Operations and Information) or applicable field counsel. See ATF Order 9000.1A, Office of Public and Governmental Affairs, 4, General Guidelines for Releasing Information.

From: Serres, Greg

Sent: Tuesday, April 12, 2011 2:04 PM

To: (b) (7)(C) Rubenstein,
Steve R.

Subject: RE: DRAFT RESPONSE TO SEN GRASSLEY - FOIA E-MAIL LETTER

Attachments: Grassley DRAFT 1 RESPONSE 20110408.docx

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Greg Serres

Acting Deputy Chief Counsel

Bureau of Alcohol, Tobacco, Firearms & Explosives

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

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Acting Chief of Staff

Office of the Director

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HQ Room 5 S 100

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(b) (5)

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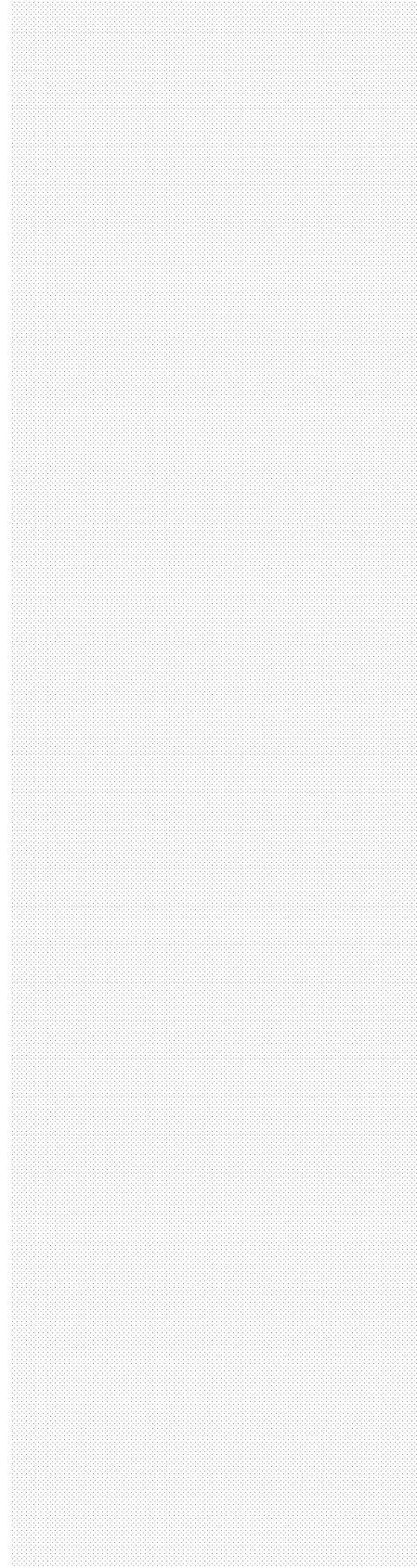
We hope that this information is helpful. Please do not hesitate to contact this office if we may be of assistance in this or any other matter.

Sincerely,

Ronald Weich
Assistant Attorney General

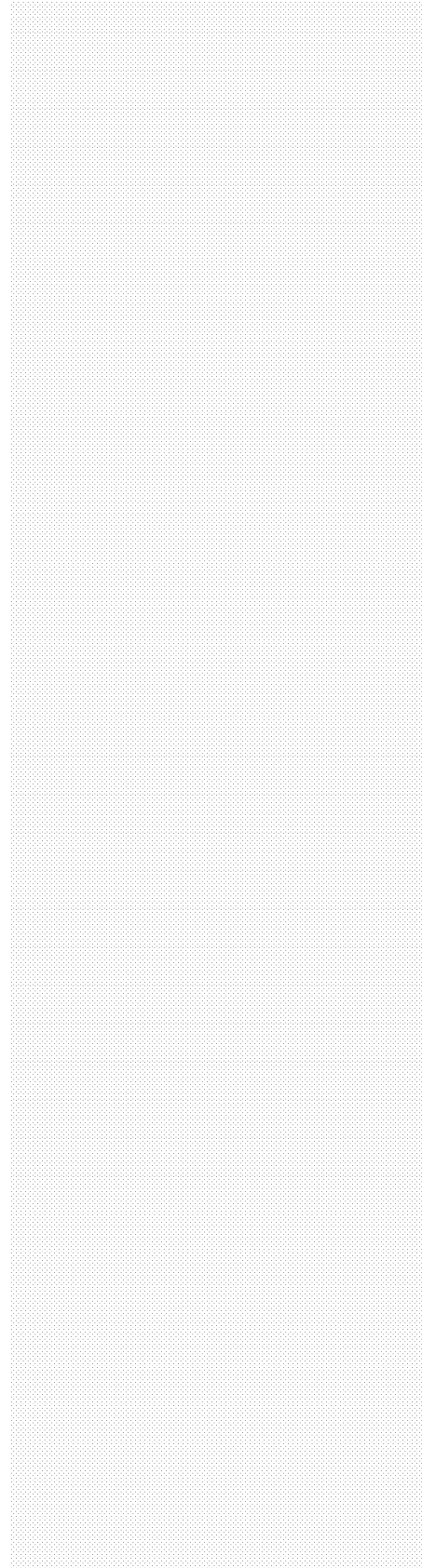
cc: The Honorable Patrick J. Leahy
Chairman

The Honorable Darrell Issa
Chairman, House Committee on Oversight and Government Reform



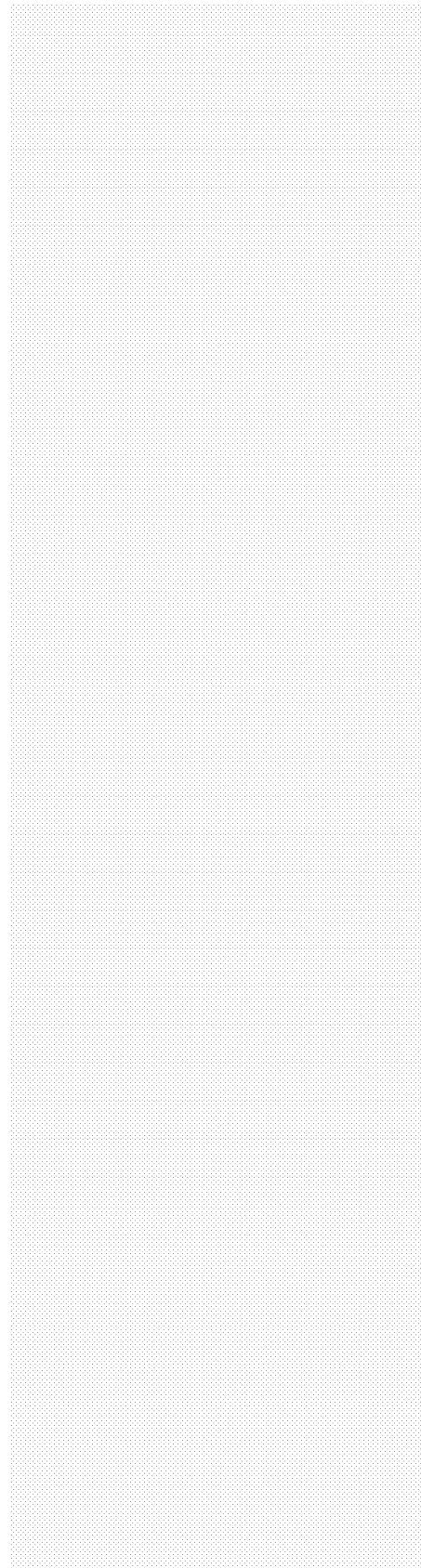
Attachment 1

ATF Order 9000.1A – Office of Public and Governmental Affairs



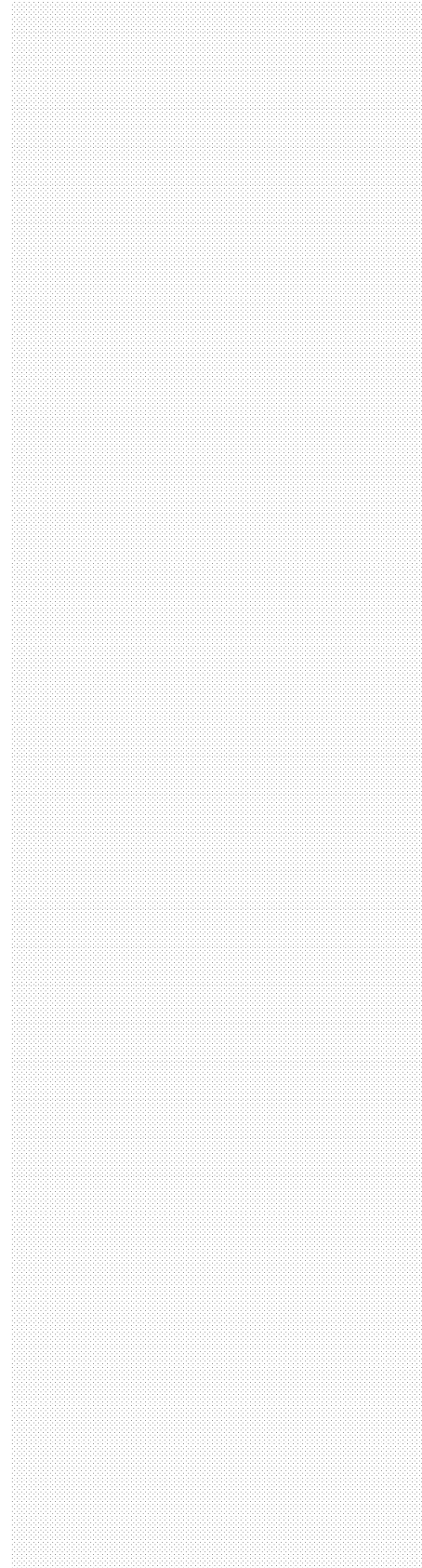
Attachment 2

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Bureau employees who believe they have experienced retaliation at work for making a protected whistleblower disclosure may report the retaliation to:

- The ATF Internal Affairs Division (OPRSO);
- The Office of the Department of Justice Inspector General using the links at <http://www.justice.gov/oig/> for reporting waste, fraud, abuse, or misconduct; or
- The U.S. Office of Special Counsel, at 800-572-2249, or at www.OSC.gov.

Supervisors and managers are reminded that the WPA generally supersedes ATF rules and policies regarding the disclosure of information. ATF supervisors and managers shall not require or solicit employees to report having made a whistleblower disclosure. If an employee makes an unsolicited report of having made a whistleblower disclosure, or if a manager or supervisor otherwise becomes aware of an employee having made a disclosure that is, or may be, protected by the WPA, the manager or supervisor shall not require or solicit from the employee additional information about the disclosure, nor shall the manager or supervisor make any further inquiry into the matter.

If a manager or supervisor becomes aware of a disclosure and has questions about whether that disclosure is protected by the WPA, or concerns that a disclosure was made in violation of law, may jeopardize an ongoing law enforcement operation or prosecution, or may create threat to public safety, he or she should, through chain-of-command, alert the Deputy Assistant Director of the office in which the manager or supervisor is employed.

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However, an ATF employee may *not* make such a disclosure to a member of Congress (or a member's staff) *if that disclosure is specifically prohibited by law or specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.* Such a disclosure by an ATF employee is *not* a Protected Disclosure unless it is made to the Special Counsel or to the Department of Justice Inspector General. Many types of information known by ATF employees on account of official duties are subject to laws specifically prohibiting disclosure e.g., Rule 6(e) of the Federal Rules of Criminal Procedure (grand jury matters); 26 U.S.C. § 6103 (tax return information).

An ATF employee is *not* required to respond to a member of Congress (or a member's staff) who solicits a Protected Disclosure, or any other disclosure, *unless* responding to such a request is part of that employee's official duties, or that employee is subject to a Congressional subpoena requiring his or her testimony.

Likewise, an ATF employee is *not* required to report to his or her supervisor that he or she made, or intends to make, a Protected Disclosure to a member of Congress (or a member's staff).

However, if an ATF employee has any question about the propriety of any potential disclosure, he or she may consult with the Disclosure Division and the Associate Chief Counsel (Field Operations and Information) or applicable field counsel. See ATF Order 9000.1A, Office of Public and Governmental Affairs, 4, General Guidelines for Releasing Information.

From: (b) (7)(C)
Sent: Tuesday, April 12, 2011 9:29 AM
To: (b) (7)(C)
Subject: RE: DRAFT RESPONSE TO SEN GRASSLEY - FOIA E-MAIL LETTER

Thanks

(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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From: (b) (7)(C)
Sent: Tuesday, April 12, 2011 9:28 AM
To: (b) (7)(C); Rubenstein, Steve R.; Serres, Greg
Subject: RE: DRAFT RESPONSE TO SEN GRASSLEY - FOIA E-MAIL LETTER

Looks good to me.

(b) (7)(C)

(b) (7)(C)
Chief
ATF Public Affairs Division
Washington, DC
Desk 202-648-(b) (7)(C)
Cell (b) (7)(C)

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From: (b) (7)(C)
Sent: Tuesday, April 12, 2011 9:12 AM
To: (b) (7)(C) Rubenstein, Steve R.; Serres, Greg
Subject: DRAFT RESPONSE TO SEN GRASSLEY - FOIA E-MAIL LETTER

All:

Here is a first draft of the proposed response to Senator Grassley with attachments. Please take a look and provide comments in track changes. I'd like to get this to Director and Deputy for review this afternoon.

(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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From: (b) (7)(C)

Sent: Tuesday, April 12, 2011 9:11 AM

To: (b) (7)(C) Rubenstein, Steve R.; Serres, Greg

Subject: DRAFT RESPONSE TO SEN GRASSLEY - FOIA E-MAIL LETTER

Attachments: ATF O 3270.10C, Law Enforcement Investigative Reports.pdf; ATF O 9000.1A, Office of Public and Governmental Affairs.pdf; linder.pdf; DRAFT 1 RESPONSE TO GRASSLEY 20110408.docx

All:

Here is a first draft of the proposed response to Senator Grassley with attachments. Please take a look and provide comments in track changes. I'd like to get this to Director and Deputy for review this afternoon.

(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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ATF O 3270.10C

3/15/2004

Includes Change 1

dated 11/16/2006

**LAW ENFORCEMENT INVESTIGATIVE REPORTS
(OFFICE OF FIELD OPERATIONS)**

CHANGE 1 - APPROVED BY THE ASSISTANT DIRECTOR (FIELD OPERATIONS) ON 11/16/2006

TO: ALL OFFICE OF FIELD OPERATIONS SUPERVISORS AND SPECIAL AGENTS

1. PURPOSE. This change announces the inclusion in ATF O 3270.10C, Law Enforcement Investigative Reports (Field Operations), of Forfeiture Potential as a section in the Recommendation for Prosecution.
2. EXPLANATION OF CHANGE. Inclusion of Forfeiture Potential in the Recommendation for Prosecution is in response to the need for agents and prosecutors to better communicate the potential for seizing assets. The United States Attorney's offices are mandating that the Assistant United States Attorneys (AUSA's) look for forfeiture potential in each and every case. By stating on the cover of the case report whether the Asset Forfeiture and Seized Property Branch has initiated Administrative Proceedings, the AUSA will not need to expend energy duplicating their efforts. The change appears in subparagraph 42.c.(6).

3. FILING INSTRUCTIONS

<u>Remove Page</u>	<u>Dated</u>	<u>Insert Pages</u>	<u>Dated</u>
43	3/15/2004	43	11/16/2006
		43-1	11/16/2006
		44	3/15/2004
Exhibit 7A	3/15/2004	Exhibit 7A	11/16/2006

4. QUESTIONS. Questions regarding this change should be directed to (b) (7)(C) Chief, Policy Development and Evaluation Branch at 202-927-(b) (7)(C) or Special Agent (b) (7)(C) Program Manager, Asset Forfeiture and Seized Property Branch at 202-927-(b) (7)(C)

FOREWORD

To: All Office of Field Operations Supervisors and Special Agents

1. PURPOSE. This order contains policies and instructions relating to the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), law enforcement investigative reports.
2. CANCELLATION.
 - a. ATF O 3270.10B, Law Enforcement Investigative Reports, dated 3/2/1994.
 - b. "Conquering the Paper Sea – Utilization of Investigative Reports for Prosecution", dated 12/3/1996.
3. EXPLANATION OF CHANGES. This revised directive reflects major additions and deletions of material in most chapters. Please note the following changes:
 - a. Chapter E, Criminal Case Reports, has been modified extensively. The criminal case report format has changed to an incident-based reporting format. N-Force procedures have been incorporated into this order.
 - b. Field Divisions will not be required to maintain a duplicate investigative file.
 - c. N-Force will be the official investigative case file. Field offices will continue to maintain an investigative case file for all exhibits and reports not in N-Force.
 - d. Case activity must be recorded on the Case Management Log in N-Force.
 - e. General Criminal and Non-Criminal renamed to Intelligence Case (General). Non-Criminal title is eliminated.
 - f. The SAC may delegate approval of ATF F 3120.2, Report of Investigation (ROI's), and case reports to first line supervisors.
 - g. Removes the requirement to send copies of ROI's to Headquarters (Intel).
 - h. Removes the requirement to send copies of case reports to Counsel, and makes it optional for divisions.
 - i. Chapter F, Report of Petition Investigation, has been removed from this order. Seized Property will incorporate this information in their order.
 - j. Chapter G, ATF Operational Risk Assessment and Plan, has been removed from this order. (See ATF O 3210.1A, Operational Planning, dated 2/12/2001.)
4. REFERENCES.
 - a. ATF O 3270.10C, Investigative Priorities, Procedures and Techniques, dated 2/25/1999.
 - b. ATF O 6210.1, New Professional Training (NPT) Program, dated 5/7/1999.
 - c. ATF O 3310.4B, Firearms Enforcement Program, dated 2/8/1989.

ATF O 3270.10C

- d. ATF O 5800.1, Obtaining and Releasing Tax Information, dated 3/15/1996.
 - e. ATF O 5320.1, National firearms Act Branch, dated 6/3/1987.
 - f. ATF O 9000.1, Office of Liaison and Public Information, dated 4/23/2001.
 - g. ATF O 5000.10A, Administrative and Criminal Actions, dated 4/14/1988.
 - h. ATF B 5370.1, National Federal Firearms Licensee Adverse Action Policy, dated 5/8/2003.
 - i. ATF O 3520.1D, Law Enforcement Data Systems, dated 10/2/1985.
 - j. ATF O 1345.1, Records management Programs and Records Control Schedule, dated 10/29/1991.
 - k. ATF O 1720.1C, ATF Physical Security Program, dated 10/31/1994.
 - l. ATF O 3530.2, Electronic Surveillance, dated 7/17/1989.
 - m. ATF O 3700.2, Standard Operating Procedures and Policies for Criminal Law Enforcement Information, dated 12/11/1997.
 - n. ATF O 3320.1D, Explosives and Arson Enforcement Programs, dated 9/1/1992.
5. QUESTIONS. Questions or concerns regarding this order should be addressed to the Field Management Staff, Policy Development and Evaluation, at 202-927-8090.

Michael R. Bouchard
Assistant Director
(Field Operations)

TABLE OF CONTENTSPAGECHAPTER A. CONTEMPORANEOUS NOTES, FIELD DIVISION AND FIELD OFFICE INVESTIGATIVE FILES

1. Definitions	1
2. Contemporaneous Notes	1
3. Field Office Investigative Files	1
4. Field Division Investigative Case Review	3
5 – 10 Reserved	

CHAPTER B. ATF F 3120.2, REPORT OF INVESTIGATION

11. Use of ATF F 3120.2, Report of Investigation (ROI)	5
12. Case Management	6
13. Distribution	14
14. Memorandum	14
15 – 20 Reserved	

CHAPTER C. REPORT OF REFERRAL AND DISCLOSURE OF INFORMATION

21. Referrals of Information	17
22. Release of Official ATF Documents	18
23. Reporting Procedures for Referrals to Other Law Enforcement Agencies	20
24. Accounting for Referral Disclosures	20
25. Disclosures to Insurance Company Investigators	21
26. Reporting Referrals Within Law Enforcement	21
27. Reporting Referrals Between Law Enforcement and Industry Operations	21
28. Receipt of Information From Other Law Enforcement Agencies	23
29. Receipt of Information From Private Organizations	23
30 Reserved	

CHAPTER D. EXHIBITS TO INVESTIGATIVE REPORTS

31. Statements	25
Figure 1. Heading Style for Defendants' Statements	25
Figure 2. Defendant Identification in Statement Introduction	26
Figure 3. Statement of Rights in Defendant Statement	26
Figure 4. Ending Paragraph of Defendant Statement	26
Figure 5. Oath as Administered at Opening of Statement	26
Figure 6. Oath as Administered at Close of Statement	26
Figure 7. Jurat	27
Figure 8. Unsworn Declarations Under Penalty of Perjury (If executed outside the United States.)	27
Figure 9. Unsworn Declarations Under Penalty of Perjury (If executed within The United States, its Territories, Possessions or Commonwealths.)	27
Figure 10. Format for Witness Signature	27
32. Memorandum of Testimony	28
Figure 11. Heading Style for Memorandum of Testimony	28
33. Documentary Proof of Defendants Status	28

ATF O 3270.10C

34. Proof of Documentary Evidence	34
35. Unlicensed Operations	38
36 – 40 Reserved	

CHAPTER E. CRIMINAL CASE REPORTS

41. General Requirements	41
42. Recommendation for Prosecution	41
Figure 12. Example of Defendant and Arrest Status	43
43. Preparation, Review, Submission, and Distribution	44
44. Security of Reports	44
45. Closing of Field Office Investigative Files	45
46 – 50 Reserved	

Exhibits

1	Optional Form (OF) 23, Chargeout Record
2	ATF F 3120.2, Report of Investigation
3	Management Log
4	Elements of Information for Assessing Threat to Army Nuclear, Chemical, and Conventional Arms and Ammunition.
5	Memorandum of Understanding Between The Office of The Inspector General, Department of Defense And The Bureau of Alcohol, Tobacco And Firearms, Department of Treasury
6	ATF F 5000.21, Referral of Information
7	ATF F 3200.14, Recommendation for Prosecution (case report cover sheet)
7A	Format – Case Summation Letter

CHAPTER A. CONTEMPORANEOUS NOTES, FIELD DIVISION AND FIELD OFFICE INVESTIGATIVE FILES

1. DEFINITIONS.

- a. Records and notes, as referred to herein, include contemporaneous notes.
- b. GS/GM-1811 personnel means all organizational titles; e.g., special agent (S/A), resident agent in charge (RAC), group supervisor (GS), division operations officer (DOO), senior operations officer (SOO), director industry operations (DIO), assistant special agent in charge (ASAC), special agent in charge (SAC), and/or similar titles.

2. CONTEMPORANEOUS NOTES.

- a. Contemporaneous notes are subject to court presentation as original notes at the time of trial. Special agents must ensure the preservation of all notes, tapes, and transcripts of interviews with prospective Government witnesses in the event a court must rule whether or not the notes represent Jencks material. This action will prevent the possible exclusion of Government witnesses. (See U.S. v. Harris, 543 F. 2d 1247 (1976); U.S. v. Harrison, 524 F. 2d 421 (1975); and U.S. v. Vella, 562 F. 2d 275 (3rd. Cir, 1977).)
- b. All contemporaneous notes relating to an investigation assigned a case number will be filed in the field office investigative file.
- c. Each special agent shall specifically identify his/her notes by initialing and dating each page. Contemporaneous notes will remain a part of the field office investigative file.
- d. Contemporaneous notes or notebooks are subject to examination by the special agent's immediate supervisor or higher authority.
- e. Representatives of the Office of Inspection, in conducting their official duties, are authorized to inspect official contemporaneous notes or notebooks. Upon proper request, the employee will produce the records for review.

3. FIELD OFFICE INVESTIGATIVE FILES. A field office file will be established in order to assemble investigative notes, copies of approved reports generated in N-Force, outside agency reports, witness statements, and other memoranda relating to all investigations. The official investigative file however, will be in N-Force, which is a computer-based case management system. If possible, current photographs will be obtained of all subjects under investigation and kept in the field office investigative file. A file is required in all matters assigned a unique case number, as prescribed in chapter B. (Refer to ATF O 1345.1, Records Management Program and Records Control Schedule, regarding the disposition of field office investigative files.)

- a. Except in exigent circumstances, no search warrant shall be sought until a criminal case in N-Force has been opened and the factual basis for the issuance of the warrant is documented in the case.

ATF O 3270.10C

- b. The N-Force case will be kept in such a manner that another special agent could assume the investigation and be able to complete it without the necessity of conferring with the original assignee. All updates in the criminal case will be made within 5 days unless, the immediate supervisor grants an extension. The field office investigative paper file will be maintained to reflect approved N-Force reports, notes, photographs, and original exhibits, and other documents pertinent to the investigation.
 - (1) A future version of N-Force will allow supervisors to electronically approve reports within the N-Force application, thereby eliminating the need to print out reports for signature and placement in the office investigative file. Until then however, the only current method for approval is to print the report and submit it to the approving official for signature.
 - (2) The file shall be separated by subject matter either by multiple section folders (e.g., six-part pressboard) or by insertion of cardboard file backers manufactured with attached fasteners. The separation by subject matter shall sufficiently divide the file's contents for easy retrieval of information (e.g., all approved ATF F 3120.2s, Report of Investigation; investigative notes; Treasury Enforcement Communications System (TECS) printouts; property reports; and criminal case reports shall be filed separately within the file, as prescribed above).
- c. The files will be separated numerically by the case number, and will only be kept in an open or closed status. Before a file is placed in a closed status, all judicial and/or administrative action shall be completed. This would mean that outstanding fugitives, tax assessment actions, judicial forfeitures, and property awaiting disposition would cause a file to remain in an open status.
- d. Official files are Government property and are for official use only. Field office investigative files will be maintained at the field office under proper security, as prescribed by ATF O 1720.1C, ATF Physical Security Program.
- e. When an investigative file is removed from the field office, Optional Form (OF) 23, Chargeout Record, will be used to document custody of the file (see Exhibit 1).
- f. When an investigation is completed, material in the file will be processed as follows:
 - (1) After all action has been taken, including expiration of any appeal period, disposition of all property in custody, and the official closing of the case, the file will be examined. All duplicate material should be removed and destroyed (shredded).
 - (2) The case management log, TECS Printouts, and any remaining agents notes will be placed in the investigative file. The file will be marked closed and dated. The field office will maintain the file for 5 years, after which the division will request its forwarding for archive.

(If the file contains electronic surveillance, refer to ATF O 3530.2, Electronic Surveillance.)

- g. The file will be purged and/or destroyed in accordance with ATF O 1345.1, Records Management Program and Records Control Schedule.
4. FIELD DIVISION INVESTIGATIVE CASE REVIEW. A review of the investigation in N-Force, should enable field division officials to determine the status of an investigation without the necessity of contacting the RAC/GS or assigned special agent.
- a. If initially entered into TECS, a copy of the closing TECS entry must be maintained in the field office investigative file. The closing TECS printout will be maintained in the division office in a folder designated for that field office.
 - b. Annually, the Field Division Operations staff shall request that all field office investigative files closed for at least five years be forwarded to the Field Division for transfer to the National Records Center. If the file contains electronic surveillance, refer to ATF O 3530.2, Electronic Surveillance.
 - c. Investigative files will be transmitted to the Federal Records Center in accordance with instructions contained in ATF O 1345.1.

5 – 10 RESERVED

CHAPTER B. ATF F 3120.2, REPORT OF INVESTIGATION

11. USE OF ATF F 3120.2, REPORT OF INVESTIGATION (ROI). The special agent shall use the ROI:

- a. As the primary reporting vehicle for all investigative and reportable matters and all investigations assigned a case number. The special agent should report only pertinent facts and observations regarding investigative activity when preparing this report. The supervisor will ensure that general statements regarding opinions, management decisions, and policy are not included on the ATF F 3120.2.
- b. To report all activity of an investigation/incident/event within 5 working days (unless granted an extension by the immediate supervisor), after the initiation of the investigation by ATF. If the supervisor grants an extension, the case agent will note it in the Management Log.
- c. To report investigative events in a timely detailed investigative report (e.g., interviews, undercover (u/c) contacts, service of search or arrest warrants collection of evidence and records, processing of crime scene, etc.). Thus providing an accurate documentation of the investigation history, allowing for management review, and documentation of investigations which do not result in prosecution, but may be significant in future investigations or as intelligence to describe how property came into ATF custody.
- d. To report any investigation in which personal property becomes the responsibility of the Bureau as to security or disposition (e.g., abandoned, seized, or purchased property, inventory search, etc.) and as a transmittal for the property documents within 5 working days (unless granted an extension by the immediate supervisor), from the time the property was taken into ATF custody.
- e. To report any undercover contact, including the sale/trade of undercover merchandise.
- f. To report the result of petition and restoration of privileges investigations.
- g. To report on licensee investigations.
- h. To make referrals of intelligence information within the Office of Field Operations.
- i. To reply to collateral investigations within ATF. Negative collateral replies will be made by memorandum to the SAC (collateral requests will be forwarded via memorandum).
- j. Certified Fire Investigator (CFI) reports.

12. CASE MANAGEMENT. ATF F 3120.2, Report of Investigation, will be used to report all investigative and reportable matters on all investigations within 5 working days (unless granted an extension by the immediate supervisor), following any investigative activity/event. Generally speaking, each significant incident during an investigation will require a separate ATF F 3120.2, (see Exhibit 2). An ATF F 3120.2 will be prepared through N-Force, which is a computer based case management system that delivers information to the Bureau of Alcohol, Tobacco, Firearms and Explosives. Refer to the

ATF O 3270.10C

N-Force User's Manual or subsequent N-Force updates, for specific instructions for utilizing N-Force.

a. Types of Investigations Used in N-Force:

- (1) Criminal (Actual). A criminal (actual) case is one that has been assigned a unique case number. Special agents will be able to manage investigative information that has been entered into the system. The criminal case will contain all reports prepared by case participants. The information is then available to ATF to perform intelligence and statistical analysis. When an N-Force case is initially opened, it is important to enter all applicable case information, and uniquely title the investigation. The initial report will be numbered "01." Each subsequent ATF F 3120.2 pertaining to that investigation will follow in sequential order.
- (2) Intelligence (General). An intelligence (general) case is used to gather criminal intelligence information that may not constitute enough information to warrant a criminal investigation (criminal (actual case)). If the information contained therein were to subsequently warrant a criminal investigation, the intelligence case would be converted into a criminal case. An intelligence case number will be assigned until it is decided to convert the intelligence case to a criminal case. Each intelligence case opened in N-Force is tracked as a separate and distinct investigation regardless of the case number assigned. Maintenance of a paper or office file is not required for an intelligence case.

b. General Case. The general case is renamed to intelligence case. The general non-criminal intelligence case is eliminated. (This will be included in the new ATF O 3700.2A Standard Operating Procedures and Policies for Criminal Law Enforcement Information.)

(1) Intelligence (General) Case.

- (a) Special agents receive criminal intelligence information, which initially may not appear to justify the formal opening of a criminal case, but reasonably indicates past, current, or pending criminal violations of laws within ATF jurisdiction. (See ATF O 3700.2, chapter B, paragraph 19 regarding TECS requirements.) The system assigns a case number to include the office organization code, the current fiscal year, and 0001, such as, 785025-02-0001.
- (b) Special agents will report criminal intelligence information via N-Force. Maintenance of a paper file for criminal intelligence is not required. An agent may open an intelligence case at any time. A single intelligence case must not be used to document unrelated information; instead, separate criminal intelligence cases will be opened to document the unrelated information. There is no limit to the number of criminal intelligence cases that a special agent may open. Each intelligence case may be opened and closed independent of the others. **N-Force tracks each intelligence case independent of the others without regard to the case number.**

For Example: S/A Doe receives information on a Monday about a person associated with an Outlaw Motorcycle Organization. The S/A will document this information by opening a criminal intelligence case in N-Force and titling the case with a unique title, such as the name of the person. If later that same day S/A Doe receives unrelated information about a suspicious person purchasing components that could be used to assemble a destructive device, S/A Doe would document this information by opening another new criminal intelligence case in N-Force. S/A Doe would title this new case with a unique title such as the name of the business, name of reporting party, or explosive activity and the date, etc. If on Tuesday S/A Doe receives additional information related to either of these criminal intelligence cases, S/A Doe would access the appropriate intelligence case in N-Force and update the case by adding the new information.

- (c) The intelligence case should be developed and maintained in the same fashion as a criminal case and may be converted from an intelligence to a criminal case at any time, and **must** be converted to a criminal case when any of the following occurs;
- 1 The S/A requests use of agent cashier funds.
 - 2 The S/A requests authority for electronic surveillance monitoring.
 - 3 The S/A takes property into Bureau custody or intends to take property into custody by use of a search warrant.
 - 4 A suspect is recommended for prosecution by the submission of a case report.
 - 5 A person is identified as a suspect with the intention of formal prosecution.
 - 6 Enforcement action such as, arrest, search, undercover, SRT/NRT activation, etc.
- (d) Criminal intelligence cases shall not be titled, "intelligence case", or "general intelligence case", etc. The title must be specific to the intelligence information received.
- (e) Since criminal intelligence information often comes in bits and pieces outside the scope of a criminal investigation, it is incumbent (as required for Federally funded intelligence operating system by 28 CFR part 23) upon the special agent to document the level of reliability of the information and its source. The reliability of the information and source will be reported using the following three classifications:
- 1 Information should be considered extremely reliable; e.g., previously proven reliable informant with corroboration; information obtained

ATF O 3270.10C

- through surveillance; and information from official records, such as telephone tolls, motor vehicle records, etc.
- 2 Information should be considered reliable; e.g., information provided by an upstanding citizen who has no personal agenda for providing the information or a previously proven reliable informant who has no history of deception who reportedly saw or heard the reported event.
 - 3 Reliability of information is unknown; e.g., information provided by an unproven informant or an anonymous hot line tip.
- (f) The national criminal intelligence priority (and/or field division priority) subject area and classification of reliability will be identified in the description of activity as follows:
- 1 Description of activity should always read "criminal intelligence information", followed by the priority subject title and classifications of reliability. For example:
 - a Criminal Intelligence Information - Motorcycle Gang Criminal Activity - Reliable.
 - b Criminal Intelligence Information - Violent Anti-Government Criminal Activity - Extremely Reliable.
 - 2 Synopsis should be the who, what, when, and where of the information in one or two sentences.
 - 3 Narrative will document all of the relevant criminal intelligence information.
- (2) (General) Non-Criminal Intelligence Case. This order eliminates the (General) Non-Criminal Intelligence Case category within N-Force. Events that are not either criminal or intelligence information are administrative in nature and will not be reported in N-Force. Administrative matters are to be reported via memorandum.
- (3) General Case Information. After creating a new case, the General Case Information folder captures high-level case information that tracks the progression of an investigation, the various investigative techniques and services utilized, defendant and case profile information, performance measure information, and the various program areas involved. It is important to enter all applicable general case information when an investigation is opened and whenever its status changes. Special agents must select as many flags as possible that apply to the investigation. The General Case Information window in N-Force is where the agent describes the type of case under investigation. **For Example:** Options listed include: High Intensity Drug Trafficking Area (HIDTA), Youth Crime Gun Interdiction Initiative (YCGII), Gang Related, Drug Related, National Instant Criminal Background Check System (NICS), Organized Crime Drug Enforcement Task Force (OCDETF), International Traffic in Arms (ITAR), Money Laundering, etc. This is the primary and only official case management system for statistical reporting. If these profiles are

not flagged in the system, ATF cannot accurately report Bureau investigative activities. As the investigation progresses these profiles must be updated and additional profiles flagged where appropriate. The case agent is responsible for updating the general case information sections as appropriate during all phases of the investigation/case. The first line supervisor is responsible for reviewing the N-Force case and ensuring all appropriate information is entered (e.g., opening, referred for prosecution, judicial action, etc.).

- (a) Participants Folder. Special agents, police officers and other law enforcement personnel should not be listed under persons or suspects/defendants folder unless they are a victim, witness, suspect, etc. These persons should be listed under investigative participant.
- (b) Location Folder. All businesses, residences, or entities with an address will be listed in the location folder. For example, XYZ Pawn Shop will only be listed under the "locations" folder. Any person related to this location should be entered in the "persons" or "suspect/defendant" folders. This includes victims, witnesses, suspects, business owner, etc.
- (c) Persons and Suspects/Defendants Folders. The "persons" and "suspects/defendants" folders are for entering people only. The information must contain all known information about the person, suspect or defendant. If the special agent determines that a person identified in the investigation becomes a suspect, that person shall be moved in N-Force from the person's folder to the suspect/defendant folder along with the completion of all appropriate information (e.g., affiliation, defendant's background, and arrest information fields, under the charges tab). When a criminal case report has been submitted and approved by a supervisor, and/or a suspect has been arrested by ATF, the agent shall enter the criminal charges for the suspect under the charges tab, which then reflects the status change from suspect to defendant. All other appropriate information in the case shall be updated.
- (d) Management Log. The case management log is primarily used, by the case agent to track administrative actions during a case; e.g., discussions during meetings about the investigation or a minor update showing the progress of the case through the prosecution process. Lack of investigative activity in 30 days, or judicial activity in 90 days, will cause a review of the investigation by the case agent and/or first-line supervisor. The results of this review will be noted by the case agent and/or supervisor on the electronic Management Log (see Exhibit 3), for that investigation in N-Force. The fact that a case review was conducted in the electronic case management system, will initiate a new reporting period. ASACs will insure that timely case reviews are conducted.
- (e) Events. When selecting the appropriate event, it is important to be familiar with the event browser and all events and subgroups listed. These events are linked to databases that are used for important statistical reports and resource management.

ATF O 3270.10C

- (f) Detailed Narrative. After creating a new event that involves ATF F 3120.2, a template for the narrative is displayed on the screen as explained below. The initial opening report should summarize the nature of the information, and synopsis of alleged violations.
- (4) Description of Activity. The first line of the report will be a sentence under this caption. This sentence serves as the report title. The "Description of Activity" should be concise (2-20 words, if possible). Though concise, the title should be specific enough to distinguish it from other Reports of Investigation (ROI), listed in the ATF F 3200.14, Recommendation for Prosecution. This report title serves to reference the report in the final submission to the Assistant United States Attorney (AUSA). ROI's, which support the specific criminal charges, will be referenced in the ATF F 3200.14 under the heading "Documents Submitted In Support of Prosecution."

For Example:

- (a) Allegation of firearms possession by John Wayne Doe.
 - (b) Interview of John Wayne Doe.
 - (c) Execution of search warrant at John Wayne Doe Residence.
 - (d) Arrest of Jane Gail Doe.
 - (e) Arrest and interview of John Wayne Doe.
 - (f) Undercover purchase of (firearms, explosives, or destructive devices) by Special Agent or Confidential Informant.
 - (g) Surveillance report of
 - (h) (Abandonment, seizure, and retention) of property taken into Bureau custody; i.e., Seizure unregistered firearms from John Wayne Doe.
 - (i) Other significant investigative activity.
 - (j) Interstate Nexus.
 - (k) Seizure of unregistered firearms from John Adams.
- (5) Synopsis. A concise summary of major events/incidents documented in the specific ROI. It is the second section of the report that should answer the questions who, what, where, and when. The synopsis is generally one complete sentence reporting on the investigative event.

Examples: On June 13, 2000, during an interview conducted by Special Agents Mary Smith and James Jones in ATF's Savannah Field Office, John Wayne Doe confessed to the purchase of three firearms; or, On June 13, 2000, a search warrant was executed at 123 Jones Street, Brunswick, Georgia, where seventeen firearms and various documents were found during the search.

- (a) Special agents should limit reports to one significant event (arrest, search warrant, undercover purchase, etc.) to facilitate discovery concerns and a logical presentation for prosecution. However, more than one event may be reported on the same ROI if the events are of minor significance.
- Example:** "On June 13, 2000, at 9:45 a.m., information was received by the Chicago Police Department (CPD) alleging that John Wayne Doe was a member of the XYZ organization. At 1 p.m. this same date, Special Agent Ralph Jones made inquiries with confidential informant 12345, who corroborated this information."
- (b) A series of related enforcement events that culminate in a significant activity may be reported in the same ROI. This is particularly applicable for the opening report.
- (6) Narrative. The portion of the report that contains the details of the investigation.
- (a) The narrative must be written in the third person; e.g., (Special Agent John Smith, not "I"). While the undersigned or the reporting agent is technically third person, this is NOT an acceptable method for writing the narrative.
- (b) The narrative serves to document investigative events/incidents/activities.
- 1 The goal of the narrative is to establish whether a prosecutable offense has been committed.
 - 2 The first paragraph of the narrative serves to introduce any persons or locations that need identification.
 - 3 Defendants or suspects are to be initially identified by capitalizing the defendant's or suspect's name, followed by identifiers (e.g., SAMUEL PAUL JONES, W/M, DOB: 10/17/52, residing at 123 First Street, Brunswick, Georgia, 31410, home telephone number (912) 657-4231. He is employed as an auto mechanic at Smith Motors, 456 Tukeol Avenue, Brunswick, Georgia, 31410, business telephone number (912) 656-7865.
 - 4 The remainder of the narrative generally contains the following information:
 - a Facts, which can be used to prove the elements of the alleged offense.
 - b Information about which the writer can testify.
 - c Information about which a witness can testify.
 - d The last paragraph, when appropriate, will detail any property custody information; e.g., "the seized firearms were taken into custody by S/A Jones for processing; e.g., "all drug evidence turned over to Drug Enforcement Agency (DEA) Agent Smith."

ATF O 3270.10C

- (7) Forms/Reports. When you create case records, you are also creating the content for forms/reports in N-Force. When a form/report is generated, N-Force extracts the appropriate data previously entered into N-Force. In accordance with ATF business rules, N-Force will not generate a form/report until all essential data required for that form/report has been entered into the system and all other form/report prerequisites have been met. Any updates will be made in N-Force and not to printed reports.
- (8) Additional Details.
- (a) Special agents should ensure that they take appropriate contemporaneous notes relating to an investigation, regardless of whether an ROI is prepared by him/her or the case agent (if participating agent only). Refer to chapter A, subparagraphs 2.a.–e. for guidelines on contemporaneous notes. Do not use abbreviations except when using an acronym. When using an acronym for the Bureau of Alcohol, Tobacco, Firearms and Explosives use the acronym ATF, not BATF.
 - (b) If an acronym is going to be used repeatedly in a report, spell it out the first time the reference is used, followed by the acronym in parentheses; e.g., Kansas City, Missouri, Police Department (KCMOPD). Use only the acronym thereafter. Do not use slang terms unless directly attributing the term to a defendant or witness statement. In either case the slang term must be defined.
 - (c) Appropriately identify each person, such as Detective Mary Smith of the Santa Ana Police Department, and list his/her role in the investigation (e.g., "Detective Smith arrested someone", not "the Santa Ana Police arrested someone.").
 - (d) Keep in mind the potential for future motions for discovery. However, give complete description of details. Stick to the facts: what was seen, heard, smelled, tasted, and touched. That of which you have first-hand knowledge should be included.
 - (e) Proofread reports thoroughly. Use correct verb tense; e.g., "Jane Doe reported that she had seen the defendant 2 days ago." Avoid the passive voice; e.g., use "Special Agent Jones seized three firearms", instead of "three firearms were seized by Special Agent Jones". Use the third person.
 - (f) Do not include future plans in your narrative. These should be discussed with the immediate supervisor, and discretion should be used to determine whether they should go in the Management Log.
 - (g) The narrative should tell a factual story or sequence of events. Be specific about the activity; otherwise, the assistant U.S. attorney may not readily understand the case.
 - (h) If the event/incident could be testified to, put it in the report. If not, then do not put it in the report.

- (i) Attachments to ATF F 3120.2 will consist only of evidentiary documents that support the investigative event documented in the ATF F 3120.2, which will be testified to if necessary (e.g., ATF F 3400.16, Property Inventory/Forfeited Property Appraisal Report, inventory of evidence acquired during a search, undercover buy, etc.). ATF F 3200.4, Waiver of Right to Remain Silent and of Right to Advice of Counsel, can also be considered evidentiary documentation. Do not put the word "attachment(s)" on the ATF F 3120.2, unless there are in fact attachment(s) included.
 - (j) A special agent who participates in several separate significant activities, (e.g., surveillance, undercover buy, and interview) related to the same investigation may incorporate their information into one ATF F 3120.2 as long as the information is clear. In complex cases or multiple locations, venues, defendants, etc., a separate ATF F 3120.2 for each event or individual, may provide better organization and easier submission into an eventual case report.
 - (k) Interstate Nexus Experts prepared report serves as his/her Nexus statement on the ATF F 3120.2.
 - (l) It is incumbent upon all participating agents to obtain access to the appropriate N-Force case and prepare their own ROIs in the case agents criminal case. The case agent is responsible for granting access to appropriate participants, and ensuring that those investigative reports are included in the criminal case. The case agent will not prepare a report for another participating agent.
 - (m) Certified Fire Investigator (CFI) reports are to be submitted via ATF F 3120.2 as outlined in the reference guide. The Statement of ATF CFI's, must be used as the fire cause supporting document in the criminal case report, and when releasing all written opinions regarding fire cause and origin to any requesting governmental agency, department, firm, or business.
- (9) Submitted By: (Name, Title, Office, Date). These blocks will reflect the name, signature, title and office of the special agent who prepares the report, as well as the date submitted.
- (10) Reviewed By: (Name, Title, Office, Date). These blocks will be completed, signed, and dated by the person who reviews the report (usually, the first-line supervisor). Assistant Special Agents in Charge (ASACs) generally review reports submitted by any Resident Agent in Charge (RAC)/Group Supervisor (GS), division operations officer, organized crime coordinator, and Organized Crime Drug Enforcement Task Force (OCDETF) coordinator, as delegated by the SAC.
- (11) Approval By: (Name, Title, Office, and Date). These blocks will reflect the name, signature, title, and office of the approving official, as well as the date approved. SACs are authorized to delegate the approval of ATF F 3120.2s to a RAC/GS within their field division. This authority should not be

ATF O 3270.10C

delegated to an Acting RAC/GS, or a RAC/GS during his/her supervisory probation period. Once a RAC/GS has completed his/her probationary period, the SAC will assess the supervisor's ability to assume this responsibility before delegating approval authority. Any exception to these restrictions must be specifically documented in a memorandum to the respective DAD for approval. The SAC shall generate an appropriate memorandum to each RAC/GS who has been designated by the SAC, as having approval authority. Copies of these memoranda shall be kept at each affected field office and field division. The ATF F 3120.2 will continue to bear the typed name and title of the SAC. The RAC/GS will affix his/her signature at the signature line, prefaced by the word "for". The delegation of authority will not decrease or eliminate division management's oversight, accountability and responsibility for investigative activity in N-Force. Division management is expected to conduct database queries currently available from the N-FOCIS Program Branch, as well as perform investigative/case analysis, productivity, and data accuracy reviews.

Division management will ensure regular communication with first line supervisors regarding ongoing investigations. Particular attention should be focused on those investigations considered sensitive or complex. The division will document these regular reviews in the case management log.

13. DISTRIBUTION. All approved ATF Fs 3120.2, including those within the same field division, shall be distributed in the following manner:
 - a. Field Office (original to be maintained in the field office investigative file).
 - b. For restoration of privileges investigations, ROI's with ONE copy of all attachments will be submitted directly to the Firearms Enforcement Branch; another copy will be maintained in the field division file.

14. MEMORANDUM. An ROI is the primary reporting vehicle for all investigative and reportable matters and all investigations assigned a case number. In limiting the purpose of the report to law enforcement incident based reporting, the majority of requests for authorization or approval will be prepared in memorandum form. Reporting upon the results of those approvals, which are based upon investigative activity, would be reported on an ATF F 3120.2. The following reports and requests must be prepared in memorandum form and can be listed as an event in a criminal case:
 - a. Collateral requests.
 - b. Request use of props.
 - c. Report referrals to other law enforcement agencies (letter form is acceptable).
 - d. Request to conduct a Federal Firearms Licensee (FFL) investigation.
 - e. Request to participate in a storefront operation.
 - f. Request to acquire undercover identification.
 - g. Request for/use of major case funding.
 - h. Request for approval to conduct foreign travel/obtain official passport.

- i. Request to release official ATF documents/reports.
- j. Letters of request to outside agencies (e.g., court records, fingerprint cards).
- k. NICs contact letters.
- l. Warning notice of unlicensed firearms dealing.

15 – 20 RESERVED

CHAPTER C. REPORT OF REFERRAL AND DISCLOSURE OF INFORMATION

21. REFERRALS OF INFORMATION.

- a. Special agents frequently receive information of value from other law enforcement agencies or discover violations of laws other than those the Bureau enforces. The special agent should report information or violations directly to the authorities concerned, if appropriate. Special agents will not conduct investigations outside the jurisdiction of the Bureau without strictly adhering to procedures as stated in ATF O 3210.7C, Investigative Priorities, Procedures, and Techniques.
- b. Referrals may include, but are not limited to, criminal cases recommended for State prosecution; the results of ATF laboratory examinations; ATF recovery of stolen firearms and/or explosives, criminal investigative intelligence, etc. Referrals to outside agencies will be accounted for as prescribed in paragraph 23.
- c. A referral may be made by letter or memorandum on Bureau letterhead. Accounting for referrals should include to whom the referral was made, a summary of the information, any known results, and any other pertinent details. Full compliance with the Bureau's referral system is essential, because an annual consolidation of referrals is presented to congressional committees and other official bodies as an index of the Bureau's contribution to the law enforcement community.
- d. If information is discovered involving espionage, sabotage, or threats to the lives and property of foreign officials and/or foreign guests, it must be reported immediately and directly to the nearest field office of the Federal Bureau of Investigation (FBI).
- e. If the information involves a potential diversion of nuclear material, that information must be referred immediately to both the FBI and the office of the Inspector General, Department of Energy (202-586-4393). The SAC will notify the Assistant Director (Field Operations) (ADFO) as soon as practicable.
- f. When information involves a threat to the security of nuclear, chemical, and/or conventional military arms and ammunition, it must also be reported to the U.S. Army. (See Exhibit 4 (Elements of Information for Assessing Threat to Army Nuclear, Chemical, and Conventional Arms and Ammunition) for specific referral elements requested by the Army.)
 - (1) The SAC will notify the ADFO of the referral as soon as practicable.
 - (2) The ADFO shall inform the Headquarters Department of the Army (HQDA), Assistant Chief of Staff for Intelligence (ACSI), ATTN: Directorate of Counterintelligence (DAMI-DIC), Washington, DC. (703) 545-6700, or CID at (703) 806-0413 or (703) 806-0294. After hours contact CID or HQDA, ACSI Watch Team (24 hours).
- g. The Intelligence Division is required to notify the Department of Defense (DOD) of the recovery of military ordnance or information that might serve to prevent future losses, as defined by the Memorandum of Understanding (MOU) between the Office of the Inspector General, DoD and ATF, dated September 21, 1990 (see Exhibit 5). (Also refer to ATF O 3210.7C, Investigative Priorities, Procedures, and Techniques.)

ATF O 3270.10C

- h. The MOU also addresses procedures that DOD must follow to report the loss or theft of specified munitions, including ammunition, destructive devices, and explosives to ATF (see exhibit 5). (Also refer to ATF O 3210.7C.)
 - i. Special agents will be alert for income tax violations.
 - (1) In each case in which it appears that a suspect has realized substantial profits from illicit operations or possesses excessive net worth, the special agent will refer this information to the Internal Revenue Service (IRS).
 - (2) Whenever large sums of money are discovered during an investigation, which are not subject to seizure, the special agent will immediately notify his/her supervisor, who will contact the nearest office of the IRS Criminal Investigation Division (CID) to advise them of the facts and circumstances. If this is not possible and the RAC/GS has determined that there is probable cause to believe the money was derived from an illicit operation, he/she will contact the appropriate assistant U.S. attorney and advise him/her of the facts or circumstances before retaining the money as evidence.
 - j. Emergency information, especially in reference to Presidential protection (threats against the President, Vice President, etc.), will be reported immediately to the nearest U.S. Secret Service field office. Information concerning violations of counterfeiting, forgery, or the Gold Reserve Act should be reported to the nearest U.S. Secret Service field office.
 - k. Whenever a written referral is made to any outside agency, it will be made by the SAC or higher official, on Bureau letterhead stationery
22. RELEASE OF OFFICIAL ATF DOCUMENTS. (Also see ATF O 6210.1, New Professional Training Program.)
- a. The release of ATF official documents is regulated and governed by 26 U.S.C., section 5848, which describes restriction on National Firearms Act (NFA) information; 26 U.S.C., sections 6103 and 7213, both of which deal with confidentiality and disclosure of tax information; 18 U.S.C., section 1905, which covers the disclosure of confidential information generally; and 27 CFR part 71, which addresses requests or demands for disclosure of ATF records or information in testimony and in related matters. The following is a list of other laws and regulations that restrict the disclosure of certain information that may be contained in ATF records.
 - (1) The Federal Rules of Criminal Procedure, Rule 6(e) - restricts disclosure of grand jury materials.
 - (2) The Electronic Communications Privacy Act, 18 U.S.C., section 2510 - restricts disclosure of electronic surveillance materials.
 - (3) Right to Financial Privacy Act, 21 U.S.C., section 3401 - restricts disclosure of records obtained from financial institutions.
 - (4) Under 27 CFR 71.27(f), the SAC may disclose official ATF documents in liquor, firearms, tobacco, and explosives matters, other than tax returns or tax return information, to State agencies. In accordance with ATF O 3310.4B, Firearms

Enforcement Program, the SAC has the authority to disclose NFA information to other Federal agencies.

- b. Title 26 U.S.C., section 6103 prohibits the disclosure of any tax "return" or "return information" except as authorized by 26 U.S.C. (See ATF O 5800.1, Obtaining and Releasing Tax Information.)
 - (1) The term "return" is defined in section 6103(b) as any tax or information return and includes such forms as ATF F 4 (5320.4), Application for Tax Paid Transfer and Registration of a Firearm, and ATF F 5630.5, Special Tax Registration and Return (Alcohol and Tobacco). The term "return information" is defined to include, among other things, a taxpayer's identity, the amount of his/her income or tax payments, or any other data with respect to a return or the determination of the existence, or possible existence, of liability under Title 26. This term does not include data in a form, which cannot be associated with or otherwise identify, directly or indirectly, a particular taxpayer.
 - (2) The term "return information" is not limited to information furnished to ATF by or on behalf of the taxpayer to whom it relates. Rather, the prohibition against disclosing "return information" applies to all such information, whether or not the taxpayer furnished it.
- c. When a special agent receives a request from another agency for a copy or copies of official ATF documents, reports of investigation, etc., he/she will submit a written request to the SAC by memorandum, providing the following information regarding the request.
 - (1) Whether an ongoing investigation might result in criminal prosecution.
 - (2) Whether a criminal case is pending.
 - (3) Whether the document(s) requested contains the name of a confidential informant.
 - (4) Whether the documents requested contain a disclosure covered by 26 U.S.C., section 5848; 26 U.S.C., section 6103; 26 U.S.C., section 7213; or 18 U.S.C., section 1905. (See paragraph 22.a. for information on these code sections.)
 - (5) Whether any known reasons exist that would make it inappropriate to release information. In the event a criminal prosecution is pending; the appropriate U.S. attorney or State attorney's office will be made aware of the request. The attorney's recommendation will be solicited and included in the request, or transmittal, as to whether the release will jeopardize prosecution.
 - (6) Whether the document(s) contains grand jury material or information.
- d. In determining whether to authorize disclosure of information under 27 CFR 71.27(f), the SAC has the discretion to delete portions of investigative reports when the disclosure of such information jeopardizes current investigations or prosecutions or the identity of informant(s).
- e. Matters within the purview of 26 U.S.C., sections 5848, 6103, and 7312, or 18 U.S.C. section 1905, as well as matters pertaining to applications for relief from disabilities

ATF O 3270.10C

- under the Gun Control Act of 1968, shall be referred to Bureau Headquarters for authorization by the ADFO. However, the authority to disclose NFA information to other Federal agencies has been delegated to the SACs by ATF O 3310.4B, Firearms Enforcement Program.
- f. All requests for reports where criminal prosecution is pending must be referred to Bureau Headquarters for ADFO authorization. (See ATF O 3310.4B and ATF O 5320.1, National Firearms Act Branch.)
23. REPORTING PROCEDURES FOR REFERRALS TO OTHER LAW ENFORCEMENT AGENCIES. (Also see ATF O 3210.7C.)
- a. A special agent referring a significant item of information will prepare a memorandum and will forward the report to the SAC. Special agents will prepare a memorandum to the SAC when results are received from other law enforcement agencies relating to referrals of information.
- (1) The memorandum will contain a short synopsis of the original information referred.
 - (2) The synopsis will be followed by a narrative of the results obtained by the recipient of the referral.
 - (3) The special agent will submit the completed report to the SAC.
- b. For accounting and retrieval purposes, all reports that are written to report referral information will be filed in the appropriate general investigative case file or in the administrative files under subject classification code 3200.
24. ACCOUNTING FOR REFERRAL DISCLOSURES.
- a. The Privacy Act of 1974 requires an accurate accounting of disclosures of information pertaining to an individual from a record retrievable by use of an individual's name or other identifier. This accounting shall be retained for 5 years or for the life of the record disclosed, whichever period is longer. Accounting will be in accordance with provisions in ATF O 9000.1, Office of Liaison and Public Information.
- b. An accounting is necessary when the disclosure (referral) meets ALL of the following criteria:
- (1) The information referral (disclosure) is about an individual. "Individual" is defined as a citizen of the United States or an alien admitted for permanent residency (other aliens are not covered by the definition).
 - (2) It must be from a tangible document (record), including fingerprints, voiceprints, or photographs that exist at the time the information is released.
 - (3) The document (record) must be retrievable by an individual identifier (e.g., investigation number) or is an integral part of a package of documents, like a case report, that is retrievable because it includes an individual identifier.
 - (4) The document (record) must be under the control of the Bureau; this includes all ATF-originated reports, documents, and records. The reports of all other

agencies that come into Bureau custody for information or action are also included in this definition.

- c. All disclosures (referrals) that meet the criteria of paragraph 24.b. must be accounted for, unless the disclosure is made to another employee of the Department of Justice, who has a legitimate need to know the information, or unless it is required under the Freedom of Information Act (FOIA).
 - d. Records required to be kept by a firearms or explosives licensee are not records maintained by ATF as long as the licensee is in business, but are, in fact, records belonging to the licensee. Accordingly, information obtained from the records of an active licensee may be (except where specifically prohibited by statute; e.g., 26 U.S.C. section 5848) referred to another agency. Such action would constitute a referral to be accounted for as specified in paragraph 21.b. If, on the other hand, the information came from a licensee's records surrendered to ATF upon going out of business, this would be a referral from a Bureau record and the disclosure accountable in accordance with ATF O 9000.1.
 - e. Based upon Office of Management and Budget (OMB) Privacy Guidelines, 40 Fed. Reg. 28951 (July 9, 1975), the Bureau takes the position that the disclosure of information (TECS information excluded) on individuals during a joint investigation between ATF special agents and State, local, or other Federal law enforcement officers would not give rise to the Privacy Act accounting requirement as long as:
 - (1) The SAC has determined that a joint investigation is either a formal task force (e.g., OCDEF or arson task force) or a "temporary task force" with a common defined purpose. Documentation of this determination by the SAC will be by memorandum, submitted by the case agent. The documentation will include the purpose and location of the investigation, the identity of the temporary task force members, and the names of their agencies. This information will be stored in the "miscellaneous notes" section of the case file.
 - (2) The information disclosed between task force members will be directly related, and will be limited solely to the task force purpose as stated above. In such cases, all State, local, or other Federal officers assigned to this temporary task force will be deemed employees of the "lead agency," ATF, for purposes of receipt of ATF information. Since such disclosures will thus occur within a "single agency," under the OMB guidelines, there will be no disclosures and therefore no accounting will be required.
 - f. Membership on a task force does not exempt the special agent from the disclosure prohibitions prescribed by law; e.g., the registration of NFA firearms.
25. DISCLOSURES TO INSURANCE COMPANY INVESTIGATORS. The procedures for making disclosures to an insurance company are contained in ATF O 3320.1D, Explosives and Arson Enforcement Programs.
26. REPORTING REFERRALS WITHIN LAW ENFORCEMENT. Special agents who receive information on ATF violations in another field office will refer such information by telephone, or by written memorandum.
27. REPORTING REFERRALS BETWEEN LAW ENFORCEMENT AND INDUSTRY OPERATIONS.

ATF O 3270.10C

- a. Referrals between law enforcement and Industry Operations offices will be made on ATF F 5000.21, Referral of Information (see Exhibit 6). In the case of a referral by an inspector, the area supervisor will be the approving official. In the case of a referral by a special agent, the RAC/GS will be the approving official. Attach any pertinent information to the referral form. Grand jury information may not be referred to Industry Operations for use in civil or administrative proceedings without an appropriate court order.
- b. The field division receiving a referral will acknowledge it within 10 days of receipt. Generally, the division intelligence office will be the initial receiving division office and will respond to the referring office. The intelligence office will review the referral and attach any additional information before forwarding the referral to the appropriate field office supervisor. (NOTE: In the case of an FFL investigation, ATF F 5000.21 will be prepared for the signature of the SAC. When the SAC grants authority, he/she will forward the original to the division's Director of Industry Operations (DIO) and provide the field office with a copy.) ATF F 5000.21 will be prepared and distributed in the following manner:
 - (1) When law enforcement is the originator of a referral, the special agent will prepare a ATF F 5000.21, completing Part 1, making an original and two copies. The RAC/GS will forward the original to the intended recipient, a copy will be retained at the field office, and a copy will be forwarded to the SAC.
 - (2) When law enforcement is the recipient of a referral, the receiving field division will prepare ATF F 9310.7, Assignment Control, before forwarding the referral to the appropriate field office for action. If a referral is received directly by a field office from the originator, the field office will notify the field division, which will initiate the control form. ATF F 9310.7 will be used by the field division to ensure that referrals are acknowledged within 10 days and that follow-up reports, if appropriate, are timely made.
 - (3) The acknowledgement of a received referral will be made on Part II of the ATF F 5000.21. The acknowledgement will state what, if any, action has been taken, or will be taken relative to the referral. Any subsequent reports will make appropriate reference to the referral. All reports that are generated, as the result of a referral from Industry Operations will be filed in the appropriate general investigation case file or in the administrative files under subject classification code 3200.
 - (4) Written referrals from outside of ATF will be processed in the same manner as internal referrals. The investigating special agent will acknowledge the receipt of the referral by preparing a letter for the SACs signature and forwarding it to the field division within the 10-day response period. The response will reference the referral and will state what investigative action has been, or will be taken. If the SAC determines that follow-up reports are necessary, he/she will ensure that they are timely made.
 - (5) Information obtained by Industry Operations will be referred to the appropriate law enforcement field division whenever there is reason to believe that the subject matter falls within the purview of law enforcement. The following are additional instances, that shall be referred by Industry Operations to law enforcement:

- (a) Willful omissions or falsifying any material information on applications.
 - (b) Any employment-related threat or act of violence toward an employee.
 - (c) Willful operations without a license or permit.
 - (d) Access to licensed premises denied to appropriate ATF personnel while on official business.
 - (e) Information concerning the theft/loss of explosives or explosive storage violations, which pose an immediate threat to public safety.
- (6) When investigations of Federal firearms or explosives licensees are initiated, special agents will notify the appropriate regulatory personnel so that the appropriate licensee file may be properly documented. The following information will be provided:
- (a) Names and identifying data concerning the subject of the investigation.
 - (b) Request for copies of all reports relating to the licensee.
 - (c) Request for notification from the licensing supervisor of any official contact with or from the licensee.
- c. When investigations of Federal firearms or explosives licensees are completed, the investigating agent will notify the appropriate regulatory personnel of the results of the investigation. When no criminal prosecution is recommended in these investigations, administrative action may be considered. (Refer to ATF O 5000.10A, Administrative and Criminal Actions and ATF B 5370.1, National Firearms Licensee Adverse Action Policy.)
- d. For referrals regarding firearm licensees, see ATF O 3310.4B.
28. RECEIPT OF INFORMATION FROM OTHER LAW ENFORCEMENT AGENCIES. Where State, local, or other Federal officers have made the principal raids, arrests, and seizures before referring a case to the Bureau, special agents must ensure that the case meets Federal and ATF standards before it is considered for Federal prosecution or forfeiture action.
29. RECEIPT OF INFORMATION FROM PRIVATE ORGANIZATIONS.
- a. Information provided by non-governmental (private) organizations, associations, societies, leagues, unions, or other combinations (hereinafter referred to as "groups") should be evaluated carefully and, where warranted, be thoroughly investigated. As with paragraph 27 above, any information received from any group shall be coordinated with the division intelligence office.
 - b. Such groups, or their individual members, shall not be permitted to furnish funds for the financing of any official enforcement operations. If any organization, acting entirely upon its own responsibility, purchases information, such financing should not be considered as a bar to its use as a basis for further investigation or as evidentiary items for inclusion in ATF case reports. Special agents shall be particularly careful to

ATF O 3270.10C

avoid entering into any agreement with groups concerning the acquisition of information or evidence, which might be considered by the courts as collusion to avoid the laws pertaining to search and seizure.

30 RESERVED

CHAPTER D. EXHIBITS TO INVESTIGATIVE REPORTS

31. STATEMENTS.

a. Purpose.

- (1) Statements are used to inform the prosecutor or other officials of the facts to which the witnesses can be expected to testify.
- (2) The statements should contain all relevant information, recorded as nearly as possible in the exact word of the witness. It is the duty of the special agent to bring all relevant and material facts concerning the matter under investigation to the attention of the prosecutor or other officials.
- (3) Special agents will submit an ATF F 3120.2, Report Of Investigation (ROI), as a system of incident-based law enforcement reporting.

b. Defendant Statements.

- (1) Each defendant or third-party witness who is in custody must be advised of his/her rights. The signed ATF F 3200.4, Waiver of Right to Remain Silent and of Right to Advice of Counsel, will become a sub-attachment to the special agent's ROI. If the witness does not sign the ATF F 3200.4, the ROI will report the fact that the witness would not sign, along with the information obtained from the interview/interrogation.
- (2) The heading style in figure 1 will be used for defendant's statements, whether narrative or question and answer.
- (3) When taking statements from defendants, witnesses, and confidential informants who may not be trusted to later testify truthfully and accurately, special agents may use an ATF F 5000.1, Affidavit, for preparing the statement. The form is optional; it is useful and it saves time in the preparation of the statement.

Figure 1. Heading Style for Defendants' Statements

Statement of

John S. Laidlaw, 816 Park Avenue, Oshkosh, Wisconsin, made to Special Agent John Doe, Bureau of Alcohol, Tobacco and Firearms, on March 17, 2000, in Room 208, Post Office Building, Miami, Florida, in the presence of Special Agent Mary Smith.

- (4) Such preliminary introductory statements as "I, James Atwood, being first sworn according to law, say...." may be used whenever a defendant is actually sworn before any part of the statement is written. In practice, the special agent may not know whether the defendant will swear to the statement or sign it. The swearing and jurat are as legally effective without the preliminary statement, but some defendants may be more careful with the truth when first sworn, while others may be frightened to silence by the formality.
- (5) For a defendant, the identification in the introduction will include recent history, as in figure 2.

ATF O 3270.10C

Figure 2. Defendant Identification in Statement Introduction

"My name is Frank Boyle. I am 34 years of age, married, and reside at 2943 Parker Avenue, San Francisco. For the last 3 years, I have been employed as a salesman for the Beet and Kane Sugar Company, 6187 Produce Row, San Francisco, California."

- (6) The fact that the prospective defendant, who is the subject of a custodial interrogation, has been admonished clearly and unequivocally of his/her constitutional right to refrain from making self-incriminating statements, will be reflected after the identification in the introduction, if the ATF F 3200.4 has not been utilized.

Figure 3. Statement of Rights in Defendant Statement

"Before I made this statement, I was advised by Special Agent John Doe of my right to remain silent; that anything I say can be used against me in court or other proceedings; that I may consult with an attorney before making any statement or answering any questions and have him/her present with me during questioning; and that I can have an attorney assigned by the U.S. Magistrate or the court to represent me if I cannot afford or otherwise obtain one. I understand that I have the right to remain silent and that I may invoke this right, or the right to consult a lawyer, at anytime, and I hereby waive the right to remain silent and freely and voluntarily make this statement without consulting an attorney or having one present during the making of this statement."

- (7) When all relevant material has been recorded, the special agent will ask the defendant to read the statement carefully and to make any needed corrections. After such inspection, the special agent will then add a paragraph as in figure 4.

Figure 4. Ending Paragraph of Defendant Statement

"I related to Special Agent Smith the facts in the foregoing statement consisting of _____ pages which I have initialed or signed. I have been given an opportunity to make corrections, and I have initialed each correction made. This statement is true and correct."

- (8) Oaths can be administered at either the opening or closing of a statement. (See ATF O 3210.7C; paragraph 77(a) for oath restrictions-Title 26 only.)

Figure 5. Oath as Administered at Opening of Statement

"Do you solemnly swear (or affirm) that the testimony that you will give in regard to _____ will be the truth, the whole truth, and nothing but the truth, so help you God?"

Figure 6. Oath as Administered at Close of Statement

"Do you solemnly swear (or affirm) that the testimony that you will give in regard to _____ as it has been reduced to writing is the truth, the whole truth, and nothing but the truth, so help you God?"

- (9) The special agent must wait for assent before proceeding. The special agent will then request the witness to initial each page of the statement, to initial any changes or corrections in the body of the statement, and to sign the document. Below the signature of the witness, the special agent will place the jurat, as in figure 7.

Figure 7. Jurat

"Subscribed and sworn to before me this 17th day of March, 2000."

/s/ John Doe
John Doe
Special Agent

- (10) Any matter required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit in writing by a witness (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), may be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement in writing by the witness (subscribed by him/her as true under penalty of perjury, and dated).

Figure 8. Unsworn Declarations Under Penalty of Perjury (If executed outside the United States.)

"I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct." Executed on (date).

(Signature)

Figure 9. Unsworn Declarations Under Penalty of Perjury (If executed within the United States, its Territories, Possessions, or Commonwealths.)

"I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct." Executed on (date).

(Signature)

- (11) Any other participant in the interview will sign as an attesting witness.

Figure 10. Format for Witness Signature

Witness: /s/ John Doe

John Doe
Special Agent
March 7, 2002

- (12) In the event that the witness refuses to sign the statement, the special agent will note the fact at the bottom of the statement and sign this notation. Other participants will sign as witnesses as above.

ATF O 3270.10C

c. Third-Party Statements.

- (1) In general, third-party statements may be prepared following the general guidelines set forth in paragraph 31.b.(2), except that the witness need not be advised of his/her right to remain silent. ATF F 5000.1 may be used in this instance.
- (2) The first paragraph will then qualify the witness. Where the third-party witness has been convicted of a felony, his/her conviction record should be added to the first or qualifying paragraph. If the felony record is long, a statement as, "I have been convicted several times for various felonies," will be sufficient.
- (3) Each event should be introduced by showing the date it occurred. The other narrations should follow in whatever order the event can best be related. So far as possible, the statement should clarify when, who did what, where, how, and why.
- (4) The special agent may opt to omit the final paragraph referring to the fact that the witness has read and approved the statement. He/she may also omit the jurat from third party statements and sign as a witness only if he/she deems it appropriate.

32. MEMORANDUM OF TESTIMONY. An ATF F 3120.2 (ROI) and a memorandum of testimony is used to report the expected testimony of a witness who was not interviewed; e.g., an officer of a business. The heading in figure 11 will be used.

Figure 11. Heading Style for Memorandum of Testimony

"Synopsis:

On September 25, 2002, Jane Smith, Executive Assistant to John Doe, was interviewed at Dokes, Inc., Friendship, Maryland, and said John Dokes, President, Dokes, Inc., can produce records and testify as follows:".

33. DOCUMENTARY PROOF OF DEFENDANT STATUS. (See ATF O 3210.7C.)

- a. General. Documentary proof may be required in firearms or explosives violations to establish that a prospective defendant:
 - (1) Is under indictment for a crime punishable by imprisonment for a term exceeding 1 year.
 - (2) Has been convicted of a crime punishable by imprisonment for a term exceeding 1 year.
 - (3) Is a fugitive from justice.
 - (4) Has been adjudicated a mental defective.
 - (5) Has been discharged from the armed forces under dishonorable conditions when such status of the defendant is an essential element in a case.
 - (6) Is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child.

- (7) Has been convicted of a misdemeanor crime of domestic violence.
- b. Under Indictment.
- (1) The term indictment as used on the Federal firearms and explosives laws includes criminal information as well as indictment issued by a grand jury.
 - (2) To prove that a person is under indictment for a felony, a certified copy of the indictment or criminal information will be obtained as an essential element in a criminal case.
 - (3) The special agent will also have to prove that a defendant knows that they have been, or currently are under indictment. This may be proven by obtaining certified docket entries provided by the courts.
- c. Restraining Order. A court order that restrains such persons from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that:
- (1) Was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate.
 - (2) Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.
- d. Convictions.
- (1) Court Convictions.
 - (a) A conviction for a crime punishable by imprisonment for a term exceeding 1 year can have taken place in any Federal, State, or foreign court or by a court-martial. It is not necessary that such a person be actually imprisoned to come within the prohibition if the maximum sentence he/she could have received falls within the statutory requirements.
 - (b) For purposes of 18 U.S.C., chapters 40 and 44, a conviction for a crime punishable by imprisonment for a term exceeding 1 year does not include antitrust, trade practice, and similar offenses and certain State misdemeanors punishable by imprisonment for 2 years or less (see 18 U.S.C., sections 841[1] and 921[a][20]). Nor does the term include, for purposes of 18 U.S.C., chapter 44, any conviction which has been expunged or set aside or for which a person has been pardoned or has had civil rights restored, unless the person is prohibited by the law of the jurisdiction in which the proceedings were held from receiving or possessing any firearms. Therefore, to determine whether a conviction is still viable for purposes of a firearms prosecution, the special agent must ascertain whether the convicted person was the beneficiary of any such pardon, expunction, set aside, or restoration of rights. Assistant chief

ATF O 3270.10C

counsels can assist in making this determination. Special agents should also check the court records to determine if an appellate court has reversed the conviction. A reversal would remove the disabilities of the conviction.

- (c) To prove a conviction of such a crime, the special agent should obtain a certified or an exemplified copy of the judgment entry of the conviction involved. The certification may be made by either:
 - 1 A judge of a court of record of the district or political subdivision in which the record is kept. The seal of that court also should authenticate this certification.
 - 2 A public officer (e.g., the clerk of the court of record, having a seal and having official duties in the district or political subdivision in which the record is kept). The seal of the office of the certifying official should also authenticate this certification.
- (d) The special agent must be prepared to establish that the person named in the judgment entry of conviction is the same person being tried in the case. Such proof may be established by comparison of fingerprints by a qualified expert, or by any other means of positive identification. The special agent must remember that an identical or similar name is not sufficient proof in itself to establish that the defendant and the person in the judgment entry are the same person. The testimony of some person who was present in court when the defendant was convicted and can identify him/her, as the same person is an alternate way to establish that the present defendant is the one named in the judgment entry conviction.
- (e) The special agent may have to request certified records from the Identification Division of the FBI. Most court authorities will take judicial notice of the FBI identification record and accept it as the valid arrest record of an individual as maintained by the FBI, without requiring that the copy of the record be certified. Since certified copies of identification records are normally used only for judicial purpose, the FBI Identification Division will not honor any future requests for such copies, unless the request contains full justification of the need for the certification. When necessary, a letter will be prepared for the signature of the SAC, which contains adequate justification for this request.
- (f) The special agent may be requested to establish that the person named in the judgment of conviction, if at the time of that conviction, was represented by counsel. Appearance slips or waiver of right to counsel are a part of the court record. While lack of counsel with respect to a prior conviction is not a defense to a firearm prosecution, it may have a bearing on whether a particular case will be prosecuted. Lack of counsel, as well as any other constitutional infirmity with respect to a conviction, will preclude use of the conviction for purposes of sentence enhancement under the Armed Career Criminal Act, 18 U.S.C., section 924(e).
- (g) For the purpose of 18 U.S.C., chapter 44, section 922(g)(9), this subsection shall not apply with respect to the sale or disposition of a

firearm or ammunition to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector who pursuant to subsection (b) of section 925 is not precluded from dealing in firearms or ammunition, or to a person who has been granted relief from disabilities pursuant to subsection (c) of section 925.

(2) Court-Martial Convictions and Dishonorable Discharges.

- (a) The term "court-martial" is held to mean a general court-martial.
- (b) Discharge from the armed forces under dishonorable conditions is held to mean a dishonorable discharge.
- (c) The same documentation as required for a court conviction is required when evidence of a court-martial conviction or a dishonorable discharge is an essential element in a criminal case.
- (d) A request for military authorization to furnish evidence that a former member of the U.S. Armed Forces has been discharged under dishonorable conditions, or has been convicted, through court-martial, of a crime punishable by imprisonment for a term exceeding 1 year, will be initiated by the special agent assigned the investigation.
- (e) A request for evidence of such discharge or conviction should set forth all available information regarding the subject under investigation; i.e., the full name, date and place of birth, dates of service, branch of service, serial number, and social security number of the former U.S. Armed Forces member.
- (f) The request will be submitted to the immediate supervisor for approval before forwarding it to the SAC. The SAC will issue the formal request.
- (g) Requests will be made by letter. The locations of the files of the U.S. Armed Forces are as follows:

1 Army.

- a Files on all personnel separated on or after January 1, 1960; all retired personnel (except general officers); and all reserve members (including retired reservists) are available at U.S. Army Reserve Components Personnel and Administration Center, 9700 Page Boulevard, St. Louis, Missouri 63132. (See subparagraph 6 below.)
- b Files on all officers on active duty (including retired general officers) are located in the U.S. Army Military Personnel Center, Alexandria, Virginia 22332.
- c Files on all enlisted personnel on active duty are at the U.S. Army Enlisted Records Center, Fort Benjamin Harrison, Indianapolis, Indiana 46249.
- d All other files are located at the U.S. Army Reserve Components

ATF O 3270.10C

Personnel and Administration Center, 9700 Page Boulevard,
St. Louis, Missouri 63132. (See subparagraph 6 below.)

2 Navy.

- a Because of an interpretation of the Privacy Act of 1974, the Navy has restricted the release of documents relating to court-martials, dishonorable discharges, and other related records.
- b Records for all active duty naval personnel including reservists and those separated for 1 to 2 years, are located at the Bureau of Naval Personnel. Those files are available by writing to the Bureau of Naval Personnel, ATTN: PERS 313D, Washington, DC 20370-5000, at telephone number (703) 614-1315.
- c All other naval personnel records are at the National Personnel Records Center (Military Personnel Records), 9700 Page Boulevard, St. Louis, Missouri 63132. (See subparagraph 6 below.)

3 Marine Corps.

- a Files on all active personnel can be obtained by contacting the Commandant of the Marine Corps, Code MMRB, U.S. Marine Corps, Quantico, Virginia 22314.
- b All other files are located at the National Personnel Records Center (Military Personnel Records), 9700 Page Boulevard, St. Louis, Missouri 63132. (See subparagraph 6 below.)

4 Air Force.

- a Files on all reserve members not on extended active duty and all retired reservists in a non-pay status are located at the Air Reserve Personnel Center, 3800 York Street, Denver, Colorado 80205.
- b All other files on active duty personnel are at the U.S. Air Force, Military Personnel Center, Military Personnel Records Division, Randolph Air Force Base, Texas 78150.
- c All other Air Force military personnel records are at the National Personnel Records Center (Military Personnel Records), 9700 Page Boulevard, St. Louis, Missouri 63132. (See subparagraph 6 below.)

5 Coast Guard.

- a Files on enlisted personnel and officer personnel active and separated less than 6 months can be obtained from U.S. Coast Guard Commandant-G-PIM-2, 2100 Second Street SW., Washington, DC 20593. Information on all active reservists and those separated less than 6 months can be obtained through U.S. Coast Guard Commandant-G-RSM-3 at the same address.

ATF O 3270.10C

34. PROOF OF DOCUMENTARY EVIDENCE. (See ATF O 3210.7C.)

- a. Official Records. While conducting investigations, the special agent will produce such proof of official records relating to the case being investigated as may be necessary to establish the truth.
- (1) Rule 27, Proof of Official Record, Federal Rules of Criminal Procedure, 18 U.S.C., provides: "An official record or an entry therein or the lack of such a record or entry may be proved in the same manner as in civil actions." This incorporates many other legal provisions as cited in the U.S. Code, including Rule 44, Federal Rules of Civil Procedure, 28 U.S.C., which is of primary importance to the special agent. The rule does not supersede statutes regulating modes of proof with respect to specific official records. In such cases, the parties have the option of following the general rule or the pertinent statute.
 - (2) Rule 44, Proof of Official Record, Federal Rules of Civil Procedure, states as follows:
 - (a) Authentication of Copy - Domestic Records. An official record kept within the United States, or any State, district, or commonwealth, within a territory subject to the administrative or judicial jurisdiction of the United States, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by the officer's deputy, and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of the officer's office.
 - (b) Authentication of Copy - Foreign Records. A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position (i) of the attesting person, or (ii) of any foreign official whose certificate of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of embassy or legation, consul general, vice consul, or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the court shall, for good cause shown, (i) admit an attested copy without final certification or (ii) permit the foreign official record to be evidenced by an attested summary with or without a final certification. The final certification is unnecessary if the record and the attestation are certified as provided in a treaty or convention to which the United States and the foreign country in which the official record is located are parties.

- (c) Proof of Lack of Record. A written statement, that after diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in the case of a domestic record, or complying with the requirements in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.
 - (d) Other Proof. This rule does not prevent the proof of official records or of entry or lack of entry therein by any method authorized by law.
- (3) Since official records substitute for the appearance of the public official, certified, certified exemplified, or certified-authenticated records will stand on their own as exhibits in ATF case reports.
- (4) Title 28 U.S.C., Section 1733, Government Records and Papers; Copies, provides for the following (the exception is stated in subparagraph (c)):
 - (a) Books or records of account or minutes of proceedings of any department or agency of the United States shall be admissible to prove the act, transaction, or occurrences as a memorandum of which the same were made or kept.
 - (b) Properly authenticated copies or transcripts of any books, records, papers, or documents of any department or agency of the United States shall be admitted in evidence equally with the originals thereof.
 - (c) This section does not apply to cases, actions, and proceedings to which the Federal Rules of Evidence apply.
- (5) Rule 1005, Federal Rules of Evidence, provides as follows: "Public Records - The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, if otherwise admissible, including data compilations in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with Rule 902 or testified to be correct by a witness who has compared it with the original. If a copy, which complies with the foregoing, cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given."
- (6) Rule 902, Federal Rules of Evidence, entitled "Self-Authentication," provides as follows: "Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:
 - (a) Domestic public documents under seal. A document bearing a seal purporting to be that of the United States, or of any State, district, Commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.
 - (b) Domestic public documents not under seal. A document purporting to bear the signature in the official capacity of an officer or employee of any entity included in subparagraph (1) hereof, having no seal, if a public officer having a seal and having official duties in the district or political

ATF O 3270.10C

subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

- (7) Certified copies of public records. A copy of an official record or report or entry therein or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (1), (2), or (3) of this rule or complying with any act of Congress or rule prescribed by the Supreme Court pursuant to statutory authority.
- b. Regular Course of Business Records.
- (1) When entries in records kept in the regular course of business (see paragraph 34.a.(3)) are relevant and material to a contested case in a Federal court, the record may be used in evidence. It is necessary for a witness, or witnesses, to authenticate the record sought to be introduced as having been made in the regular course of business. For example, testimony that exhibits came from chronological files designed to preserve record of all outgoing correspondence from defendant's office and that his/her secretary regularly maintained such files was sufficient foundation to permit admission in evidence.
 - (2) It is not necessary to authenticate the records by testimony of the maker.
 - (3) "The Best Evidence Rule," which provides generally that original documentary evidence must be produced, unless it is no longer available or comes under a statutory exception, is applicable to regular course of business records. Usually a copy, which can be identified and proved correct, is admissible as secondary evidence when the original is no longer available. Proving copies of private records by witnesses who must appear in court should not be confused with certified copies of official records, which may be proved by certificate without any witness actually appearing in court. However, if official records are also regular course of business records, as most of them are, they may be proved by the keeper of official records appearing in court with the originals and without certifying the copies. (It is illegal to remove some official records from the place of custody, and impractical to remove others, but the explanation made here is necessary for full understanding.)
 - (4) Rule 803, Federal Rules of Evidence, entitled "Hearsay Exceptions," provides in pertinent part: The following are not excluded by the hearsay rule, even though the declarant is available as a witness.
 - (a) Records of regularly conducted activity. A memorandum report, record, or data compilation, in any form, or acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances or preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution,

association, profession, occupation and calling of every kind, whether or not conducted for profit.

- (b) Absence of entry in records kept in accordance with the provisions of Rule 803, subparagraph (6). Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of Rule 803, subparagraph (6), to prove the nonoccurrence or non-existence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.
- (5) Title 28 U.S.C., section 1732, Record Made in Regular Course of Business; Photographic Copies, provides: "If any business, institution, member of a profession or calling, or any department or agency of Government, in the regular course of business or activity has kept or recorded any memorandum, writing, entry, print, representation or combination thereof, of any act, transaction, occurrence, or event, and in the regular course of business has caused any or all of the same to be recorded, copied, or reproduced by any photographic, photostatic, microfilm, microcard miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original, the original may be destroyed in the regular course of business unless its preservation is required by law. Such reproduction, when satisfactorily identified, is admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not and an enlargement or facsimile of such reproduction is likewise admissible in evidence if the original reproduction is in existence and available for inspection under the direction of the court. The introduction of a reproduced record, enlargement or facsimile does not preclude admission of the original. This subsection shall not be construed to exclude from evidence any document or copy thereof which is otherwise admissible under the rules of evidence."

c. Miscellaneous Memoranda.

- (1) Customarily, people write notes to aid themselves in their business or personal activities, even though their course of business does not include the making of such memoranda. Therefore, the notes do not qualify for admission in evidence as provided in 28 U.S.C., section 1732 (quoted previously). Contingent upon circumstances favorable to their use, miscellaneous memoranda are often of great value, not only while conducting the investigation, but also at trials.
- (2) When a memorandum indicating conspiratorial activities or accountings, transactions, or list of customers relevant to any crime is found in the possession of an involved person, it should be retained as evidence, which may incriminate the possessor, the author, or those mentioned therein.
- (3) If memoranda relating to competent facts have been made by a witness when the facts were clear in his/her memory (not necessarily made contemporaneously with discovery), he/she may use them before or while testifying as "present memory refreshed" or while testifying as "past memory recorded."

ATF O 3270.10C

- (a) Where practical, the special agent (or other witness) should refresh his/her memory by studying his/her notes before taking the witness stand.
 - (b) When notes are used by a witness to refresh present memory while testifying, the adverse party will have a right to examine them for cross-examination.
 - (c) When the witness cannot refresh his/her memory of the facts by examining the memorandum, he/she may still be able to state that, because of the memorandum, he/she knows that the facts recorded therein are true. By laying this foundation, the witness has no independent recollection of the facts after seeing it, reading directly from the writing. Both the memorandum and the testimony of the witness are admissible.
 - (d) It is not essential that the memorandum used be an original writing, provided the witness can testify that the original was correct and that the copy is a correct copy of the original.
- (4) On occasion, valuable evidence has been lost because available relevant notes were not properly preserved, or because they were returned along with money and other valuables to the defendant upon his/her release from arrest. If the arrest is legal, retention of relevant memoranda (and other evidence) found on the person of the arrestee is also legal.
35. UNLICENSED OPERATIONS. Following are considerations involved in proving unlicensed operations:
- a. In those cases alleging carrying on the business of being a manufacturer, dealer, or importer in firearms or explosives, it is necessary to introduce proof that the defendant did engage in such a business and was not properly licensed.
 - b. Engaged in the business generally denotes repetitive sales with the principal objective of profit (see 18 U.S.C., section 921(a)(21) for the statutory definition of "engaged in the business" for purposes of 18 U.S.C., chapter 44). In determining whether a person is engaged in a firearms or explosives business, it is necessary to examine the circumstances of each case. Relevant factors include profit motive, the acquisition of firearms or explosives for resale, repetitive sales, readiness to procure firearms or explosives for sale, and the quantities of firearms or explosives involved.
 - c. The official source of license records of licensees under the provisions of 18 U.S.C., chapter 44, is the Chief, National Licensing Center, Atlanta, Georgia. Evidence that the defendant did not possess a license can be obtained either by certification from the licensing center or by live testimony from a custodian of the records. Requests for such evidence should be made via memorandum through RAC or G/S to Chief, National Licensing Center.

- d. To prove lack of record, a written statement signed by an officer having custody of an official record or by his/her deputy that, after diligent search, no record or entry of a specified tenor is found to exist in the records of the office, accompanied by a certificate as above provided, is admissible as evidence that the records of his/her office contain no such record or entry.

36 – 40 RESERVED

CHAPTER E. CRIMINAL CASE REPORTS

41. GENERAL REQUIREMENTS.

- a. Due to the implementation of the dismissal sanction of the Speedy Trial Act, the prompt submission of a criminal case report is vital. The act provides that a defendant must be indicted within 30 days of arrest and be brought to trial within 70 days from the date of indictment. To be in compliance with the act, CASE REPORTS MUST BE SUBMITTED WITHIN THE TIME FRAMES AND UNDER THE CIRCUMSTANCES NOTED IN THIS CHAPTER.
- b. Criminal case reports are designed to convey to prosecutors and supervisory officials the results of investigations in support of such further action as may be appropriate. THE REPORT MUST BE SUFFICIENTLY FLEXIBLE TO PERMIT THE REPORTING OF A WIDE VARIATION OF FACTS AND CIRCUMSTANCES.
- c. The case report is designed with certain captions, which are briefly descriptive of elements, generally required by prosecutors, which, however, may be modified to meet local attorney requirements.
- d. The case report depicts primarily "WHAT THE DEFENDANTS DID," rather than actions by the special agents.
- e. All case reports and copies thereof are the property of the Government. Federal law prohibits release of information contained therein to unauthorized persons. Requests for copies of criminal case reports by outside agencies will be handled in accordance with procedures in chapter C.
- f. When criminal cases are referred to the U.S. attorney for prosecution, a formal case report, which is based upon ATF Forms 3120.2, is provided. The presence of additional ATF F 3120.2s **must** be brought to the attention of the trial attorney subsequent to the submission of the formal case report in accordance with local discovery rules, but prior to trial. The trial attorney needs to be informed of the existence of these reports and to be familiar with their contents before trial in order to comply with the Jencks Act and the Brady rule at the appropriate time.

42. RECOMMENDATION FOR PROSECUTION. ATF F 3200.14, Recommendation for Prosecution (case report cover sheet), will be used on criminal case reports forwarded to the U.S. attorney, State prosecutor, or the Department of Justice. The name and work telephone number of the case agent will be typed on the cover. The signature of the SAC, (or delegate), on ATF F 3200.14 will indicate approval of the case report. The format of the uniform cover sheet is illustrated in Exhibit 7 (ATF F 3200.14). SACs are authorized to delegate the approval of case reports to a RAC/GS within their field division. This authority should not be delegated to an Acting RAC/GS, or a RAC/GS during his/her supervisory probation period. Once a RAC/GS has completed his/her probationary period, the SAC will assess the supervisor's ability to assume this responsibility before delegating approval authority. Any exception to these restrictions must be specifically documented in a memorandum to the respective DAD for approval. The SAC shall generate an appropriate memorandum to each RAC/GS who has been designated by the SAC, as having approval

ATF O 3270.10C

authority. Copies of these memoranda shall be kept at each affected field office and field division. The ATF F 3200.14 will continue to bear the typed name and title of the SAC. The RAC/GS will affix his/her signature at the signature line, prefaced by the word "for". (See also paragraph 12.(b)(11).)

- a. Conclusion and Comments. When necessary, conclusion and comments should be communicated to the prosecutor independent of the case report, either in conference or by cover memorandum. Certain matters cannot be related to the prosecutor in the case report. These include but are not limited to:
 - (1) Assistance to Government by a defendant.
 - (2) Evaluation of witnesses.
 - (3) Conflicts in testimony.
 - (4) Probable defenses.
 - (5) Documentation of previous or current criminal activity.
 - (6) Why certain coconspirators or codefendants are not recommended for prosecution.
- b. Cover Letter. The cover letter is optional. If used, this letter will be addressed to the appropriate Federal, State, or local prosecutor, and signed by the SAC. The letter will provide the prosecutor with a brief overview of the case and the statutes violated. The letter may also be used to transmit information described in paragraph 42.a. or for any other reason deemed appropriate by the SAC. Such information may relate to venue, statute of limitation, possible defenses, or criminal history of the defendant.
- c. Case Summation Letter.
 - (1) Heading.
 - (a) The case summation letter should follow the format as shown in exhibit 7A. Use official letterhead for original report.
 - (b) The SAC or authorized delegates signature on the case report cover (ATF F 3200.14) will indicate approval of the case report.
 - (2) Synopsis. This paragraph will indicate:
 - (a) Who the defendant is.
 - (b) What the defendant did as to type and manner of violation.
 - (c) When the violation occurred, extent of violation, and duration.
 - (d) Where, or the location (city, county, and judicial district) of the violation.
 - (3) Defendants and Arrest Status. The full names of persons recommended for prosecution or administrative action will be listed alphabetically by last name as

shown in figure 12; last name (capitalized) followed by first name, then middle name.

Figure 12. Example of Defendant and Arrest Status

BEVILS, David John - Not Arrested, to be indicted
MILES, Keith Byron - Arrested July 7, 1993

- (4) Conspirators. The caption, "Conspirators" will be used to list the names and addresses of persons in the report who were involved in the violation but who are not recommended for prosecution or administrative action.
- (5) Statutes Violated.
 - a. Statutes violated will be listed in numerical order by section with the title number following (see exhibit 7A). Citation should be in abbreviated form rather than a complete citation; e.g., "Felon in Possession of a Firearm."
 - b. If all defendants did not violate all of the sections listed, the charges should be separated as to each defendant to clearly indicate which defendant or defendants violated each section listed.
- * (6) Forfeiture Potential. The United States Attorney's offices are mandating that the Assistant United States Attorneys (AUSA's) look for forfeiture potential in each and every case. This enhanced use of asset forfeiture as a law enforcement tool necessitates the formal communication of asset forfeiture potential to the prosecutors. There are scores of forfeiture authorities in the Federal statutes. ATF special agents have the authority to seize a myriad of assets that are proceeds of or are facilitating property of crimes that are outside of ATF jurisdiction. Although ATF can seize these assets, ATF lacks the ability to administratively forfeit the assets. In these cases, ATF must ask the AUSA's to include these assets in the criminal indictment. Inclusion of forfeiture potential on the case report allows the AUSA's to have this information early and will prevent forfeitable assets from remaining in the hands of the offender.
 - (a) Description of Property Seized. This will include a brief description of the property and the item numbers. It then will reference the reader to the "Property Summary Report" from N-Force for additional details.
 - (b) Statutory Forfeiture Authority. This will list the forfeiture authority for the property listed.
 - (c) Pending Administrative Forfeiture Actions. This section will list the property items that ATF is pursuing for administrative forfeiture action.
 - (d) Criminal Forfeiture. This section will list the property items over which ATF does not have Administrative Forfeiture Authority and will request that the AUSA pursue forfeiture as part of a criminal prosecution by including such forfeiture allegations in the indictment pursuant to Title 28 U.S.C. Section 2461(c). *

ATF O 3270.10C

(7) Documents Submitted in Support of Prosecution.

- (a) The "Documents Submitted in Support of Prosecution," provides the prosecutor with an inventory of reports that provide a clear, concise, word-picture of the crime, giving the facts to prove the charges, arranged in chronological order.
- (b) Under this heading, the special agent will include copies of all necessary ROIs and exhibits submitted in support of the criminal prosecution.
- (c) Official documents: e.g., police reports, notarized copies of court records, certified penitentiary packages, lab reports, NFA determinations, and others of this type should be listed as a separate exhibit and not as an attachment to an ROI. Exhibits will be numbered and tabbed for easy reference if included in "Documents Submitted in Support of Prosecution." Exhibits will be identified in a brief manner descriptive enough for reviewers and AUSA's to understand the nature of the document: e.g., "Fingerprint Examiners Report as to identity of Richard Rowe," or, "Certified copy of Conviction of Richard Rowe."
- (d) Attachments to Reports of Investigation which serve as evidence, describe evidence, or otherwise support the prosecution, will be presented and listed following the report to which it is attached. For example, an ROI describing the search of a residence might have as an attachment the property forms listing the property taken into ATF custody. An ROI detailing the post-Miranda statement of a defendant might have as an attachment the signed waiver of rights. As is presently the practice, copies should be presented and original documents should be kept in the case file until needed for trial.

43. PREPARATION, REVIEW, SUBMISSION, AND DISTRIBUTION.

- a. Field Office Review. The "Recommendation for Prosecution (ATF F 3200.14)" will be prepared by the case agent for the approval of the SAC (or designee). The Recommendation for Prosecution cover sheet, along with the formal case report, which contains 3210.2's and all relevant documents, will be reviewed by the case agent's supervisor for approval. If delegation authority has not been granted to the RAC/GS, then the case report will be forwarded to the SAC.
- b. Submission Guidelines.
 - (1) A criminal case report will be forwarded for approval within 10 workdays after an arrest (prior to indictment or information) of a defendant. Under extenuating circumstances, the SAC (or designee) may extend the 10-day requirement and/or the requirement for submission prior to indictment/information. The content of the report must contain the probable cause for the arrest, and the preponderance of the evidence used to sustain any related seizure and should contain sufficient information to allow the U.S attorney (or local prosecutor), or assistant chief counsel, to prepare formal indictments and/or institute formal forfeiture proceeding. SACs may delegate case report approval authority to 1811 supervisory personnel (RAC/GS).
 - (2) When an arrest warrant or summons is issued as the result of a grand jury indictment or information, the guidelines contained in this paragraph are equally applicable.
 - (3) If approved at the division level, the field division will return the case report package to the appropriate supervisor to distribute to the AUSA.
 - (4) The field division may maintain a copy of the criminal case report, but it is discouraged since the field office will maintain a copy.
 - (5) The case review and/or reporting time line are 90 days after submitting the criminal case report to the prosecuting attorney. All updates will be entered into the appropriate case management log within N-Force.
- c. Distribution. The criminal case report, including supplemental reports, will be distributed as follows:
 - (1) Federal and State cases – original and one copy, IN STATE CASES, AN ADDITIONAL COPY IS PREPARED IF THE U.S. ATTORNEY DESIRES A COPY. Every effort should be made to submit such reports to the State prosecutor before trial action is taken into State court.
 - (2) The original report should be mailed or delivered to the prosecutor of the judicial jurisdiction in which action is recommended (via ATF F 3200.14) in accordance with instructions contained in this paragraph. If the report contains information obtained as a result of grand jury subpoena and/or testimony, ATF F 3200.14 will contain the following caveat (warning):

"CAUTION – THIS REPORT CONTAINS GRAND JURY MATERIAL AND MAY

ATF O 3270.10C

BE SUBJECT TO PROVISIONS OF RULE 6(e), RULES OF CRIMINAL PROCEDURE.” All reviewing officials will sign under the caveat to document Rule 6(e) disclosures.

- (3) One copy will be placed in the official office investigative file.
 - (4) If requested, the SAC may retain a copy of the case report, and exhibits. The SAC may prescribe additional copies of case reports for specific purposes within the field division.
 - (5) If the U.S. attorney or assistant chief counsel request administrative forfeiture and tax assessment case reports, they will be prepared and distributed in the same manner as copies of the criminal case reports. The appropriate caption will be used; e.g., Statutes Violated, Chronology of Events.
 - (6) If case report approval is not delegated, the SAC may assign the report to a staff person for additional review.
 - (a) If such review uncovers minor errors or omissions, field division personnel may correct the report and the RAC/GS notified by whatever means appropriate.
 - (b) If major corrections are required, the report will be returned to the RAC/GS with appropriate documentation for corrective action.
 - (c) A TECS query and/or input shall be made to ensure that the data in TECS is complete and accurate. TECS personal history instructions are contained in ATF O 3520.1D, Law Enforcement Data Systems.
 - (7) The SAC is responsible for recommending or not recommending prosecution, and the SAC may delegate approval authority to GS-1811 supervisory personnel. After the criminal case report has been approved for prosecution, the special agent shall not attempt to have the case dismissed unless authorized to do so by the SAC or higher authority.
44. SECURITY OF REPORTS. Case reports involving sensitive matters or situations will be mailed as prescribed in reporting sensitive situations. (See ATF O 3210.7C.)
45. CLOSING OF FIELD OFFICE INVESTIGATIVE FILES.
- a. Judicial Progress of Defendant.
 - (1) When closing a case/investigation, the special agent shall make the following entry on the case Management Log, “No Judicial Action Pending, No Property in ATF Custody, Case/Investigation Closed”.
 - (2) The first line supervisor is responsible for officially placing a case in “closed” status in N-Force. This will be done only after reviewing the final case Management Log submission from the special agent and reviewing the defendant and general information sections in N-Force to ensure all appropriate information has been entered.

ATF O 3270.10C

- (3) Upon receipt of the TECS printout reporting final judicial action, the RAC/GS will determine that the appropriate modification has been made for each defendant and that no property is in Bureau custody. The TECS printout, Management Log, notes and original exhibits and any other closing documents will be placed into the office investigative file (see ATF O 3520.1D). A copy of the final TECS printout will be forwarded to the division. (See Chapter A for requirements related to the maintenance of closed files.)
 - (4) If tax assessment potential is indicated, the special agent will prepare ATF F 5000.21, Referral of Information, to refer the information to the appropriate assistant chief counsel.
- b. FBI form R-84, Final Disposition Report. Upon the final adjudication of a defendant, Form R-84 will be prepared for each defendant, whose fingerprint card was submitted. The Final Disposition Report will be forwarded to the FBI, ATTN: Identification Division.

46 – 50 RESERVED

ATF O 3270.10C
3/15/2004
Exhibit 1

OUT

IDENTIFICATION OF RECORD (NUMBER, TITLE AND/OR SUBJECT, DATE OF FILE OR DOCUMENT)	CHARGED TO (PERSON & OFFICE)	DATE CHARGED OUT
13760-93-2750-M	Jim Roberts	9/30/93
OPTIONAL FORM 23 FEB 1942 GSA Circular No. 239	CHARGEOUT RECORD 5023-101	
DATE CHARGED OUT	CHARGED TO (PERSON & OFFICE)	IDENTIFICATION OF RECORD (NUMBER, TITLE AND/OR SUBJECT, DATE OF FILE OR DOCUMENT)

OUT

ATF O 3270.10C

3/15/2004

Exhibit 2

DEPARTMENT OF THE TREASURY BUREAU OF ALCOHOL, TOBACCO AND FIREARMS REPORT OF INVESTIGATION		PAGE 1 OF _____
1. ADDRESSED TO:		2. MONITORED INVESTIGATION INFORMATION:
3. TITLE OF INVESTIGATION:		
4. CASE NUMBER:		5. REPORT NUMBER:
6. TYPE OF REPORT (Check applicable boxes)		
<input type="checkbox"/> REPORT OF INVESTIGATION		<input type="checkbox"/> COLLATERAL REPLY
<input type="checkbox"/> REPORT OF INTELLIGENCE		<input type="checkbox"/> TITLE I <input type="checkbox"/> TITLE II
7a. SUBMITTED BY (Name)	7b. SUBMITTED BY (Title and Office)	7c. SUBMITTED BY (Date)
8a. REVIEWED BY (Name)	8b. REVIEWED BY (Title and Office)	8c. REVIEWED BY (Date)
9a. APPROVED BY (Name)	9b. APPROVED BY (Title and Office)	9c. APPROVED BY (Date)

ATF O 3270.10C

3/15/2004

Exhibit No. 4

**ELEMENTS OF INFORMATION FOR ASSESSING THREAT TO ARMY
NUCLEAR, CHEMICAL, AND CONVENTIONAL ARMS AND AMMUNITION**

1. Threats by groups, organizations or individuals to steal nuclear arms/ammunition, lethal chemical agents and/or munitions, or conventional arms and ammunition.
2. Identification of groups, organizations, and individuals having both the knowledge/experience to attempt such a theft (e.g., former Armed Services or Department of Defense personnel, persons with chemistry education or chemical industry experience, etc.) and the inclination (criminal background and/or affiliation with terrorist, extremist or hostile causes).
3. Information pertaining to paragraphs 1 and 2, above, should include number of personnel involved, possible armament, location of base of operations, and whether terrorist or criminally oriented.
4. Reference to nuclear, chemical or conventional arms and ammunition made during interviews or interrogations. Attempts should be made to determine motive for obtaining these items (criminal, terrorist or hostile intelligence), extent of planning involved, modus operandi to be employed, location of target government facility, identification of inside accomplices, and any prior affiliation of conspirators/perpetrators with a government lethal chemical facility.
5. Any other information obtained indicating a potential threat to these items.

ATF O 3270.10C
3/15/2004

Exhibit No. 5

**MEMORANDUM OF UNDERSTANDING BETWEEN THE
OFFICE OF THE INSPECTOR GENERAL, DEPARTMENT OF DEFENSE
AND THE
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
DEPARTMENT OF TREASURY**

I. PURPOSE

The purpose of this Memorandum of Understanding is to implement Section 2722, Title 10 U.S.C., by establishing reporting procedures regarding the theft or other loss of Department of Defense (DoD) firearms, ammunition, destructive devices, and/or explosive materials (hereafter referred to as "munitions").

II. PROCEDURES

A. The DoD criminal investigative organizations (Defense Criminal Investigative Service, United States Army Criminal Investigation Command, Naval Investigative Service Command and the Air Force Office of Special Investigations) shall report the theft or other loss of munitions specified in the enclosure to the Bureau of Alcohol, Tobacco and Firearms (ATF) within 72 hours after the discovery or notification of such theft or other loss. Thefts or other losses occurring within the United States shall be reported to the appropriate ATF district law enforcement office. Those occurring outside of the United States shall be reported to the Intelligence Branch, Special Operations Division, ATF, Department of the Treasury, Washington, DC 20226. Except as otherwise specified herein, reports of theft or other loss of munitions will be governed by those definitions that appear in Title 18, U.S.C., Sections 921 (firearm, destructive device, and ammunition) and 841 (explosive materials).

B. The Secretaries of the Military Departments shall ensure that copies of significant/serious incident reports detailing the theft or other loss of munitions specified in the enclosure are provided for information to the Intelligence Branch, Special Operations Division, ATF, Department of the Treasury, Washington, DC 20226.

ATF O 3270.10C

3/15/2004

Exhibit 5

-2-

C. The ATF will provide, when requested and as appropriate, a "watch list" to the Office of the Assistant Inspector General for Criminal Investigations Policy and Oversight, Office of Inspector General, DoD, 400 Army Navy Drive, Suite 1037, Arlington, VA 22202, detailing DoD munitions recovered during criminal investigations. The watch list should also include information regarding any trends relating to the theft or other loss of munitions that may require corrective or other appropriate action by the DoD to prevent further thefts or losses.

D. This agreement shall become effective immediately following the signature of both parties listed below.

11 September 1990
Date

Susan J. Crawford
Inspector General
Department of Defense

September 21, 1990
Date

Stephen E. Higgins
Director, Bureau of
Alcohol, Tobacco, and
Firearms

Enclosure

MUNITION LOSSES

As appropriate, the ATF district law enforcement office and/or headquarters Intelligence Branch, Special Operations Division, shall be provided information by telephone (followed up in writing) from the DoD Components concerned, of all significant/serious incidents of theft, loss, or unaccounted for Arms, Ammunition and Explosive Materials (AA&EM) as soon as possible but no later than 72 hours after occurrence or discovery. Generally, loss or theft of the following AA&EM shall be considered significant/serious:

- a. One or more missile or rocket rounds.
- b. One or more machine guns.
- c. One or more automatic fire weapons.
- d. Twenty-five or more manually operated weapons.
- e. Ammunition. (Reportable incidents do not include losses of the following types of ammunition known to have been expended during training.)
 - (1) .50 caliber and smaller--5,000 rounds or more, except in the case of .38 caliber ammunition, then 20,000 rounds or more.
 - (2) Larger than .50 caliber--five rounds or more of nonautomatic weapon ammunition.
 - (3) Larger than .50 caliber--1,000 rounds or more of ammunition for automatic weapons.
 - (4) Any fragmentation, concussion, or explosive grenade, to include artillery or ground burst simulators, or any other type of simulator or device containing explosive materials.
- f. One or more mines (antipersonnel and antitank).
- g. Demolition explosives including detonation cord, blocks of explosives (C-4) and other types of explosive materials.
- h. Also reportable are:
 - (1) Armed robberies or attempted armed robberies involving the above items.

ATF O 3270.10C

3/15/2004

Exhibit 5

(2) Forced entries or attempted forced entries in which there is physical evidence of the attempt wherein the above items are stored.

(3) Any evidence of trafficking in the above items or using same to barter for narcotics or any other thing of value to include the taking of AA&EM across international borders unlawfully, regardless of the quantity of AA&EM involved.

ATF O 3270.10C

3/15/2004

Exhibit 6

DEPARTMENT OF JUSTICE- BUREAU OF ALCOHOL , TOBACCO, FIREARMS AND EXPLOSIVES REFERRAL OF INFORMATION		REFERRAL NO. (Optional)
PART I - REFERRAL		
1. TO: (Title, agency and address)		2a. DATE
		2b. UI
<p>The following information and attachment (Check applicable box) <input type="checkbox"/> are sent to you as requested, <input type="checkbox"/> are referred to you for consideration as potential criminal or civil violations coming under your jurisdiction.</p> <p>COMPLETE FOR REFERRALS OR REQUESTS OUTSIDE ATF - This Referral (Check applicable box) <input type="checkbox"/> DOES <input type="checkbox"/> DOES NOT contain confidential returns or return information under 26 U.S.C. 6103.</p> <p>COMPLETE IF APPLICABLE: This is a confirmation of a referral made (Check applicable box) <input type="checkbox"/> by telephone <input type="checkbox"/> in person on</p>		
3. NAME(S) OF PRINCIPALS INVOLVED IN POSSIBLE VIOLATION		
4. STATUTE(S) POSSIBLY VIOLATED		
5. FEDERAL LICENSES AND/OR PERMITS HELD (Type and number)		
6. ATF OFFICER UNCOVERING POTENTIAL VIOLATION		7. POST OF DUTY
8. SUMMARY OF SIGNIFICANT FACTS AND/OR EXPLANATION OR DESCRIPTION OF ATTACHMENT (Continue on a separate sheet, if necessary.)		
9. ATF OFFICIAL APPROVING REFERRAL (Signature)		
10. TITLE AND ADDRESS		11. TELEPHONE NO.

ATF 0 3270.10C
3/15/2004

Exhibit 6

PART II - RESPONSE (See Instruction 4.)

1. THE REFERRAL ABOVE IS <input type="checkbox"/> ACCEPTED <input type="checkbox"/> REJECTED (Explain below) <input type="checkbox"/> OTHER (Explain below)	2. DATE
3. ACTION PLANNED OR TAKEN AND COMMENTS (Continue on a separate sheet, if necessary.)	

4. SIGNATURE	5. TITLE OF OFFICIAL
6. ADDRESS	7. TELEPHONE NO.

COMPLETE FOR REFERRALS WITHIN ATF: THIS RESPONSE IS INTERIM FINAL

ATF O 3270.10C
3/15/2004
Exhibit 7



**DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS**

OFFICE OF CRIMINAL ENFORCEMENT

**Recommendation
for Prosecution**

Case Number: 79122-00-0022

Judicial District: Honorable Alan Bersin
United States Attorney
Southern Judicial District of California
940 Front Street
San Diego, California

Case Agent: Special Agent Jim Davis

(619) 557-6046
Telephone

Approved by: _____ 3/30/
Signature Date

I. Jones
Type Name

Special Agent in Charge
Title

FOR OFFICIAL USE ONLY

FORMAT – CASE SUMMATION LETTER

Case Number: 79122-01-0022

This Recommendation for Prosecution relates to alleged violations of the Federal firearms laws and other statutes by Martin Walters and John Williams, previously convicted felons, who on February 12, 2001 unlawfully possessed a firearm; and on March 4, 2001 unlawfully possessed a firearm in the furtherance of a drug trafficking offense all in the City of San Diego, Southern Judicial District of California. In addition, this recommendation for prosecution relates to the possible forfeiture of property seized from the above named individuals for alleged violations of Federal firearms laws and Federal drug statutes.

DEFENDANTS AND ARREST STATUS

WALTERS, Martin – Not arrested to be indicted
WILLIAMS, John – Not arrested to be indicted

STATUTES VIOLATED

Title 18, U.S.C. Section 924(c) – Using, Carrying or possessing a Firearm in Furtherance of a Drug Trafficking Offense.

Title 18, U.S.C. Section 924(o) – Conspiracy to Commit an Armed Drug Trafficking Offense

Title 18, U.S.C. Section 922(g) – Possession of a Firearm by a felon

Title 21, U.S.C., Section 841(a) (1) – Possession with Intent to Distribute a Controlled Substance

Title 21, U.S.C., Section 846 – Conspiracy to Commit a Drug Trafficking Offense

FORFEITURE POTENTIAL

Description of Property Seized

- 1) Genuine United States Currency (\$5,491.00) described more fully as Item 0004 on the attached Report of Investigation and Property Detail Report.
- 2) One 2000 Ford Expedition, Vehicle Identification Number 1FAB27X44123 described more fully as Item 0003 on the attached Report of Investigation and Property Detail Report.
- 3) Assorted firearms and ammunition, described as Item 0001, 0002, and 0005 on the attached ATF Reports of Investigation and Property Detail Report.

ATF O 3270.10C
11/16/2006
Exhibit 7A
Change 1

Statutory Forfeiture Authority

Title 18 U.S.C. Section 924(d)(1) – any firearm or ammunition involved in a knowing violation of the Gun Control Act, Title 18 U.S.C. Chapter 44.

Title 21 U.S.C. Section 853(a) (6) – all proceeds of facilitating property traceable to a drug trafficking offense.

Pending Administrative Forfeiture Actions

ATF has initiated administrative forfeiture under Title 18 U.S.C., Section 924d on the firearms and ammunition listed as items number 0001, 0002, and 0005.

Criminal Forfeiture – ATF does not have Administrative Forfeiture for Drug Proceeds or Property Facilitating a Drug Offense. ATF requests that the United States Currency described as items 0003, and the vehicle described as item number 0004 be pursued as part of the criminal prosecution by including such forfeiture allegations in the indictment pursuant to Title 28 U.S.C. Section 2461 (c).

DOCUMENTS SUBMITTED IN SUPPORT OF PROSECUTION

- 1) ATF Report of Investigation (ROI) dated 1/11/2001: Allegation of Illegal Firearms Trafficking by Martin Walters.
- 2) ATF ROI dated 2/13/01: Undercover purchase of a firearm and drugs from Walters and John Williams.
Attachment: N-Force Property Summary Report(s)
- 3) ATF ROI dated 3/6/2001: Execution of search warrant, arrest and post-Miranda statement of Martin Walters.
Attachment: N-Force Property Summary Report(s)
Waiver of Right to Remain Silent (ATF F 3200.4)
Signed Statement
- 4) ATF ROI dated 3/6/2001: Arrest and post-Miranda Statement of John Williams.
Attachment: Waiver of Right to Remain Silent (ATF F 320.4)
Signed Statement
- 5) ATF ROI dated 1/16/2004: Statement of SA David Johnson, Interstate Nexus Examiner regarding firearms not manufactured in California.
- 6) California State Bureau of Investigation Lab report regarding the drugs seized from Walters.
- 7) Certified Abstract of Felony Judgment and Conviction of Martin Walters by San Diego Superior Court, dated 12/19/1998.
- 8) Certified Abstract of Felony Judgment and Conviction of John Williams by San Diego Superior Court, dated 6/2119/2000.
- 9) ATF Fingerprint Examiners Report as to identity of Marvin Walters and John Williams.

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Grassley:

(b) (5)

(b) (5)

(b) (5)

(b) (5)

(b) (5)
(b) (5)

(b) (5)

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,

Ronald Weich
Assistant Attorney General

cc: The Honorable Patrick J. Leahy
Chairman

The Honorable Darrell Issa
Chairman, House Committee on Oversight and Government Reform

Attachment 1

ATF Order 9000.1A – Office of Public and Governmental Affairs

Attachment 2

ATF Order 3270.10c – Law Enforcement Investigative Reports

Attachment 3

Letter from Assistant Attorney General Robert Raben to Chairman John Linder of the Subcommittee on Rules and Organization of the House. January 27, 2000

Attachment 4

Text of the Assistant Director (Field Operations) February 9, 2011 E-Mail to All Special Agents in Charge – Reminder of Rights and Duties under the Whistleblower Protection Act

The Whistleblower Protection Act (WPA) protects most executive branch employees who disclose information that is reasonably believed to evidence a violation of any law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. 5 U.S.C. § 2302(b). A Federal agency is prohibited from retaliating against an employee for having made a protected disclosure. Id.

A disclosure that is “specifically prohibited by law” or “specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs” is not protected unless it is made “to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures.” Id. As applied to ATF, Inspector General here means the Inspector General of the Department of Justice.

Bureau employees who believe they have experienced retaliation at work for making a protected whistleblower disclosure may report the retaliation to:

- The ATF Internal Affairs Division (OPRSO);
- The Office of the Department of Justice Inspector General using the links at <http://www.justice.gov/oig/> for reporting waste, fraud, abuse, or misconduct; or
- The U.S. Office of Special Counsel, at 800-572-2249, or at www.OSC.gov.

Supervisors and managers are reminded that the WPA generally supersedes ATF rules and policies regarding the disclosure of information. ATF supervisors and managers shall not require or solicit employees to report having made a whistleblower disclosure. If an employee makes an unsolicited report of having made a whistleblower disclosure, or if a manager or supervisor otherwise becomes aware of an employee having made a disclosure that is, or may be, protected by the WPA, the manager or supervisor shall not require or solicit from the employee additional information about the disclosure, nor shall the manager or supervisor make any further inquiry into the matter.

If a manager or supervisor becomes aware of a disclosure and has questions about whether that disclosure is protected by the WPA, or concerns that a disclosure was made in violation of law, may jeopardize an ongoing law enforcement operation or prosecution, or may create threat to public safety, he or she should, through chain-of-command, alert the Deputy Assistant Director of the office in which the manager or supervisor is employed.

Attachment 5

ATF Employee Rights under the Whistleblower Protection Act

Under the Whistleblower Protection Act, an ATF employee may, without reprisal, disclose to a member of Congress (or a member's staff) *information that he or she reasonably believes evidences a violation of any law, rule, or regulation, or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.* Such a disclosure is a "*Protected Disclosure.*"

However, an ATF employee may *not* make such a disclosure to a member of Congress (or a member's staff) *if that disclosure is specifically prohibited by law or specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.* Such a disclosure by an ATF employee is *not* a Protected Disclosure unless it is made to the Special Counsel or to the Department of Justice Inspector General. Many types of information known by ATF employees on account of official duties are subject to laws specifically prohibiting disclosure e.g., Rule 6(e) of the Federal Rules of Criminal Procedure (grand jury matters); 26 U.S.C. § 6103 (tax return information).

An ATF employee is *not* required to respond to a member of Congress (or a member's staff) who solicits a Protected Disclosure, or any other disclosure, *unless* responding to such a request is part of that employee's official duties, or that employee is subject to a Congressional subpoena requiring his or her testimony.

Likewise, an ATF employee is *not* required to report to his or her supervisor that he or she made, or intends to make, a Protected Disclosure to a member of Congress (or a member's staff).

However, if an ATF employee has any question about the propriety of any potential disclosure, he or she may consult with the Disclosure Division and the Associate Chief Counsel (Field Operations and Information) or applicable field counsel. See ATF Order 9000.1A, Office of Public and Governmental Affairs, 4, General Guidelines for Releasing Information.

From: (b) (7)(C)
Sent: Tuesday, April 12, 2011 8:34 AM
To: (b) (7)(C)
CC: (b) (7)(C)
Subject: RE: Mexican Trace stats

(b) (7)(C)

Please get the raw numbers on the number of foreign-sourced firearms submitted by Mexico for tracing by calendar year. It's not info we need in the slides, but info we should have available.

(b) (7)(C)

(b) (7)(C)

Deputy Chief
ATF - Public Affairs Division
Direct) 202-648-(b) (7)(C)
Main) 202-648-8500

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From: (b) (7)(C)
Sent: Monday, April 11, 2011 4:26 PM
To: (b) (7)(C)
Cc: (b) (7)(C)
Subject: Mexican Trace stats

Gentlemen:

Are these are the questions we need answered? Anything I'm missing?

1. What is the percentage of domestic traces that identify a first purchaser?
2. Why are we more affective tracing firearms in the U.S. than in Mexico?
3. What are the top five reasons for an incomplete trace?

4. What can be done to help Mexicans do a better job of tracing so that more firearms are traced back to the first purchaser?

Percentage of purchaser identified traces from Mexico:

2010 – 37.47%
2009 – 25.51%
2008 – 25.17%
2007 – 25.72%

(b) (7)(C)

Public Affairs Division
Bureau of Alcohol, Tobacco, Firearms and Explosives
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Washington, DC 20226

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(202) 648-^{(b) (7)(C)}Office

(b) (7)(C)

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From: (b) (7)(C)
Sent: Monday, April 11, 2011 8:57 PM
To: (b) (7)(C)
CC: (b) (7)(C)
Subject: Fw: Response to Chairman Issa's letter to ATF Director Melson, dated 3/16/11, per our conversation
Attachments: Response to Chairman Issa - 4 8 11.pdf

That should be our talkers. See attached.

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From: (b) (7)(C)
To: (b) (7)(C)
Cc: McDermond, James E.
Sent: Mon Apr 11 20:56:14 2011
Subject: Fw: Response to Chairman Issa's letter to ATF Director Melson, dated 3/16/11, per our conversation

You saw this?

From: Gaston, Molly (SMO)
To: (b) (7)(C)
Sent: Mon Apr 11 20:12:10 2011
Subject: Fw: Response to Chairman Issa's letter to ATF Director Melson, dated 3/16/11, per our conversation

From: Burton, Faith (SMO)
Sent: Friday, April 08, 2011 05:21 PM
To: 'ashok.pinto@mail.house.gov' <ashok.pinto@mail.house.gov>; 'dave.rapallo@mail.house.gov' <dave.rapallo@mail.house.gov>; 'susanne.grooms@mail.house.gov' <susanne.grooms@mail.house.gov>; 'stephen.castor@mail.house.gov' <stephen.castor@mail.house.gov>
Cc: Gaston, Molly (SMO); Weich, Ron (SMO)
Subject: Response to Chairman Issa's letter to ATF Director Melson, dated 3/16/11, per our conversation

<<Response to Chairman Issa - 4 8 11.pdf>>

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Sent: Monday, April 11, 2011 4:26 PM
To: (b) (7)(C)
CC: (b) (7)(C)
Subject: Mexican Trace stats

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(b) (7)(C)

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BlackBerry

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without express authorization is strictly prohibited.

Employee 5
From: Significant Activity Report
Sent: Monday, April 11, 2011 11:15:52 AM
To: SAR/SIR Message Delivery
Subject: FW: SIR

541

From: (b) (7)(C)
Sent: Monday, April 11, 2011 11:14:47 AM
To: (b) (7)(C)
(b) (7)(C) Significant Activity Report
Subject: SIR
Auto forwarded by a Rule

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DEPARTMENT OF JUSTICE - BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES
SIGNIFICANT INFORMATION REPORT

DATE: April 11, 2011
FROM: Houston Field Division
FIELD OFFICE: Laredo Field Office

CASE INFORMATION

CASE NUMBER: 782080-11-0034
CASE TITLE: (b) (7)(C)
SPECIAL AGENT: (b) (7)(C)
TELEPHONE NUMBER: (b) (7)(C)

SYNOPSIS OF INCIDENT/ACTIVITY:

Seizure of large amount of firearms headed to Mexico

NARRATIVE OF INCIDENT/ACTIVITY:

On April 09, 2011, Agents with ATF were contacted by the Texas Department of Public Safety reference a traffic stop they had conducted on a 2002 blue in color, Chevrolet Trailblazer traveling on Hwy 83 coming into Laredo, Texas. The driver, identified as (b) (7)(C) (b) (7)(C) 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 he was paid to transport the weapons from Pharr, Texas to Laredo.

(b) (7)(C) was traveling with (b) (7)(C) (b) (7)(C) was arrested by ATF via criminal complaint for 18 USC 922(g) (5) (alien in possession of a firearm.

The following investigation will continue. The weapons were identified as follows:

Fifteen(15) AR-15 type rifles with obliterated serial numbers
Twenty-one (21) AK-47 type rifles with obliterated serial numbers
One (1) AK-47 type rifle with serial number
Seventy-four (74) various magazines

From: (b) (7)(C)
Sent: Wednesday, April 27, 2011 6:04 PM
To: McDermond, James E.; (b) (7)(C)
Subject: Edits
Attachments: fast and furious web cast PGA Edits.docx

Jim,

Here are the Edits you requested. Changes are highlighted in yellow, I left the first paragraph in but agree that it reads better if we remove it completely.

See you tomorrow

(b) (7)(C)

(b) (7)(C)

Chief
ATF Public Affairs Division
Washington, DC
Desk 202-648-(b) (7)(C)
Cell (b) (7)(C)

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Good morning. It has been some time since I've spoken to you about events happening at ATF. I realize from attending several town halls that there is concern and confusion over what you have been reading in the papers and seeing on TV regarding the Fast and Furious case out of the Phoenix Division. We have wanted to communicate with you about that case, but because Fast and Furious involves ongoing litigation, we felt it is appropriate to be cautious about releasing facts concerning the case, even to our own people. First, if case information or evidence were released publicly it could compromise the litigation by giving the defendants a roadmap to the case. Second, it could compromise the safety of our witnesses. Already there have been security concerns about our agents and civilian witnesses. Third, we have an obligation to make sure that the people of Arizona have every confidence that the very best case will be presented to a jury for its consideration, and that there is no pretrial publicity that might taint the veracity of the prosecution. Finally, we have to focus on the case at hand because it is our duty to the defendants to make sure that the evidence presented at trial or in a proffer at a plea hearing is competent, probative and relevant to the issue of guilt or innocence. After all, our primary duty is to do justice.

The ATF investigation referred to as Operation Fast and Furious is a single, complex criminal investigation into persons responsible for supplying firearms to the Mexican Drug Trafficking Organizations. This investigation was initiated by the Phoenix Field Division and the United States Attorney's Office for the District of Arizona, and subsequently approved by the multi-agency Organized Crime and Drug Enforcement Task Force (OCDETF) Program.

The purpose of Operation Fast and Furious was to dismantle a transnational organization believed to be responsible for trafficking weapons by dismantling its leadership here and in Mexico. To date, this operation has resulted in an indictment charging 20 defendants with conspiracy to purchase hundreds of firearms and related offenses over a 15 month period from September 2009 to December 2010, and the case continues. Had it not been for the perseverance of this multi-agency task force, this sophisticated criminal network, or one that would inevitably have taken its place, would still be trafficking hundreds of weapons into Mexico now and in the future.

We will not let the negative media reports or external inquiries hamper the fair and just prosecution of those responsible for supplying firearms to cartel members. We stand behind the continued prosecution of those in the Fast and Furious investigation and will continue to work to stop the flow of money from Mexico used to purchase firearms and the flow of weapons back to Mexico to arm the Cartels.

The accusations and allegations that you are reading and hearing about have been a tremendous distraction to the investigative and trial teams. In an effort to address the needs both at Headquarters and in the field I have made several temporary changes in personnel. I have asked SAC Newell to come to Headquarters to help review and respond to the many inquiries

that we have regarding this case. SAC Tom Brandon from the Detroit Division has assumed the duties of SAC Phoenix.

In order to make sure that ATF can pay full time and attention to the responsibilities we have to the case, I have assigned ASAC Jim Needles to work exclusively with the US Attorney's Office in Phoenix to coordinate the preparation for trial, to oversee the assessment and investigation of remaining and new leads, and to make sure that the prosecutors have the information they need as the case moves forward. ASAC Tom Atteberry from the Kansas City Division has assumed the duties as Phoenix ASAC. ASAC Joe Anarumo has been detailed from the Miami Division to assume the duties as the second ASAC in Phoenix. Group Supervisor (b) (7)(C) has also been assigned to the US Attorney's Office to continue his supervision of the case preparation and (b) (7)(C) from the Miami Field Division has been detailed to oversee Group 7. I hope these arrangements will allow us to focus intensely on the case and at the same time to focus sharply on the other great cases being made in the Phoenix Field Division.

Are these Temporary or permanent changes

You may also know that the Attorney General rightfully asked the Acting Inspector General to review Fast and Furious. I welcome that review and have asked that as part of that review the OIG look at certain processes we have in place to make sure that we have the most effective and expedient means of investigating gun trafficking and that intelligence information is flowing unimpeded across all agencies of government. We are also reviewing our own internal information flow and sharing methodologies, our internal major case review procedures, and our policies regarding trafficking investigations. The "blue ribbon" panel I announced on --- --to review our investigative methods and techniques has been delayed until after the Inspector General's review has been conducted.

There is also an ongoing review of Fast and Furious and Project Gunrunner by the Senate Judiciary Committee and the House Oversight and Government Reform committee. They apparently are in the process of interviewing ATF employees and potential witnesses in the Fast and Furious case. A congressional subpoena has also been issued for records pertaining to Project Gunrunner and Fast and Furious. ATF and the Department of Justice have been responding to the extent we can to these inquiries and requests.

The Department, however, has a long standing policy against the disclosure of non-public information about ongoing criminal investigations, to Congress or anyone else. This policy is based, in part, on the strong interest in protecting the effectiveness of ongoing law enforcement efforts.

But, I assure you that if either the OIG or Congressional inquiry results in findings of professional negligence or misconduct, then those responsible will be held accountable.

Every problem has a solution, and a potential for everyone to become better informed and better at what they do. I am confident that in the end, ordinary Americans and Congress will realize and recognize the extraordinary work that each of you do every day. They will see the success of Project Gunrunner, the fact that -----guns have been removed from streets since its inception, that --- defendants have been referred for prosecution, and that as a result countless lives have been saved. They will understand the limitations and restrictions that we have in investigating and prosecuting gun trafficking cases and in ensuring compliance with regulatory laws. And they will understand that despite the size of our bureau and our budgetary restraints, the men and women of ATF are patriots of the highest order, putting their lives on the line every day, doing more with less, to make our communities and nation a safer place to raise our families. Thank you for your time and God bless you and this great country of ours.

From: (b) (7)(C)
Sent: Wednesday, April 27, 2011 5:10 PM
To: (b) (7)(C)
Subject: FW: Revised draft web cast
Attachments: fast and furious web cast.docx

(b) (7)(C)
Chief
ATF Public Affairs Division
Washington, DC
Desk 202-648 (b) (7)(C)
Cell (b) (7)(C)

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From: Melson, Kenneth E.
Sent: Wednesday, April 27, 2011 4:08 PM
To: Hoover, William J.; Chait, Mark R. (b) (7)(C) McDermond, James E.;
(b) (7)(C)
Subject: Revised draft web cast

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Thank you for your time and God bless you and this great country of ours.

From: (b) (7)(C)
Sent: Wednesday, April 27, 2011 4:33 PM
To: (b) (7)(C)
Subject: FW: Revised draft web cast
Attachments: fast and furious web cast.docx

(b) (7)(C)
Chief
ATF Public Affairs Division
Washington, DC
Desk 202-648 (b) (7)(C)
Cell (b) (7)(C)

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There is also an ongoing review of Fast and Furious and Project Gunrunner by the Senate Judiciary Committee and the House Oversight and Government Reform committee. They apparently are in the process of interviewing ATF employees and potential witnesses in the Fast and Furious case. A congressional subpoena has also been issued for records pertaining to Project Gunrunner and Fast and Furious. ATF and the Department of Justice have been responding to the extent we can to these inquiries and requests.

The Department, however, has a long standing policy against the disclosure of non-public information about ongoing criminal investigations, to Congress or anyone else. This policy is based, in part, on the strong interest in protecting the effectiveness of ongoing law enforcement efforts.

Every problem has a solution, and a potential for everyone to become better informed and better at what they do. I am confident that in the end, ordinary Americans and Congress will realize and recognize the extraordinary work that each of you do every day. They will see the success of Project Gunrunner, the fact that ----guns have been removed from streets since its inception, that --- defendants have been referred for prosecution, and that as a result countless lives have been saved. They will understand the limitations and restrictions that we have in investigating and prosecuting gun trafficking cases and in ensuring compliance with regulatory

laws. And they will understand that despite the size of our bureau and our budgetary restraints, the men and women of ATF are patriots of the highest order, putting their lives on the line every day, doing more with less, to make our communities and nation a safer place to raise our families. By joining ATF you have asked what you can do for your country, and every single day of the year you fulfill your commitment to public service. We can all be proud of that.

Thank you for your time and God bless you and this great country of ours.

From: (b) (7)(C)
Sent: Tuesday, April 26, 2011 4:49 PM
To: (b) (7)(C)
Subject: Fw: F&F Timeline (b) (7)(C) v1) (b) (7)(C) v1).xlsx
Attachments: F&F Timeline (b) (7)(C) v1) (b) (7)(C) v1).xlsx

Let's hold this close

(b) (7)(C)
Chief
ATF Public Affairs Division

From: (b) (7)(C)
To: (b) (7)(C)
Sent: Tue Apr 26 15:54:26 2011
Subject: F&F Timeline (b) (7)(C) v1) (b) (7)(C) v1).xlsx

(b) (7)(C)
Field Intelligence Support Team - Southwest Border
Bureau of Alcohol, Tobacco, Firearms and Explosives
Intelligence Operations Specialist
Office: 202-648-^{(b) (7)(C)}
Cell: (b) (7)(C)
Fax: 202-648-9682
Email: (b) (7)(C)

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DATE OF EVENT	DESCRIPTION OF EVENT	REMARKS
11/10/2009	F&F case file opened under IN# 785115-10-0003-S (b) (7)(C)	Case information transferred to 785115-10-0004 per AG (b) (7)(C)
11/16/2009	F&F case file re-opened under IN# 785115-10-0004-AGS (b) (7)(C)	Previous file 785115-10-0003 closed on 11/23/2009
11/20/2009	11/20/2009 Naco (Agua Prieta), Sonora (Mexico seizure and arrest of transporters) (b) (7)(C) Toscano (15) w/42 firearms, 43 mags, 3 bayonets and small amount of ammo.	(b) (3) (P.L. 111-117), (b) (7)(C)
11/25/2009	11/25/2009- Agua Prieta, Sonora seizure from SW at house containing Meth lab with arrest (b) (7)(C) addition to narcotics: 26 firearms, 1 grenade launcher and 3,098 rnds of ammo-	SWB FIST determined that a firearm from seizure was purchased by a F&F target. Information provided to Phoenix FIG.
11/25/2009	AGS (b) (7)(C) contacted IRS (b) (7)(C) concerning 11/20/2009 Naco traces	(b) (7)(C)
12/1/2009	Interagency contact with DHS and (b) (7)(C)	Re (b) (7)(C) DHS agreed that they would not pursue any further leads without notifying her.
12/8/2009	SWB FIST briefing to Field Operations in reference to 11/20/2009 Naco, SO seizure (originally prepared to be briefed on 12-1-2009).	As a part of the briefing, the circumstances surrounding the seizure event as it pertained to the F&F case was briefed. Trace results up to that date and multiple sales information was provided. F&F clearly obtaining firearms to be transported to Mexico. SEE POWERPOINT
12/9/2009	SWB FIST briefing to Acting Director and senior management staff	Briefed on the 11/6/2008 Reynosa, Tamaulipas seizure of 424 firearms from the Gulf Cartel/Zetas and the F&F case supplying the Sinaloa cartel. These two case were used as examples to address the need to identify the cartel operatives in Mexico responsible for acquisition of firearms for the organization(s).
12/17/2009	Criminal Intelligence Division Chief briefing to DD Director and DOJ Attorneys	Division Chief provided the 12/9/2009 brief to this audience
12/15/2009	SWB FIST briefing to Field Operations in reference to 12/02/2009 Mexicali, Baja California seizure (48 firearms) and 12/09/2009 Douglas, Arizona seizure (8 firearms).	Briefed that a (b) (3) (P.L. 111-117), (b) (7)(C) coordinating the acquisition of firearms for this region. Briefed that all but one firearm from the Douglas, AZ traced to a target of F&F that purchased them on 12/08/2009 (1 day TTC) (b) (3) (P.L. 111-117) (b) (3) (P.L. 111-117) SEE POWERPOINT.
1/5/2010	SWB FIST briefing to Field Operations	As part of briefing, provided an update of what SWB FIST was able to determine (b) (3) (P.L. 111-117) Also briefed on the 2nd half of 2009 SWB states firearms tracing that depicted several F&F targets and cooperating PFLs. SEE POWERPOINT
1/12/2010	SWB FIST briefing to Field Operations	As part of briefing, provided an update of what SWB FIST was able to determine (b) (3) (P.L. 111-117) SEE POWERPOINT
1/13/2010	El Paso seizure of 40 firearms recovered by El Paso Stash House Unit and 2 firearms recovered by CBP with an arrest at a border crossing.	Director Melsen's Office saw SAR and inquired if this was F&F guns as previously briefed, FIST SWB contacted ATF EPIC to obtain the firearms data of 40 firearms seizure to check against F&F suspect guns. All firearms purchased by F&F target. FIST SWB observed ICE tracing 2 firearms on same date (1/13/2010). A check of F&F suspect guns links CBP firearms seizure. CBP also seized 4000 rounds of 7.62 ammo and 81 high capacity magazines to include drum magazines. Stash house owner admits guns going to Sinaloa cartel in Juarez.
1/19/2010	SWB FIST briefing to Field Operations	SWB FIST provided an I2 link chart and briefed the F&F firearms seizures in Mexico and the US border seizures. The briefing depicted the targets and the amount of firearms recovered by targets. SEE POWERPOINT
1/26/2010	SWB FIST briefing to Field Operations	SWB FIST provided a full briefing on a cross-border trafficker arrested by CBP on 1/13/2010 with 2 firearms, 4000 rounds of 7.62 and 81 magazines (same cross border transporter as briefed on 1/19/2010).

2/21/2010 EPC tracing device and monitoring along with Phoenix surveillance leads to recovery of 40 firearms in the Tohono O'odham AZ reservation with arrest of transporters. Transporters admit to transporting to DTO in Mexico. ID'ed Stash house location on reservation linked to ATF case in Tucson FD.

2/23/2010 SWB FIST briefing to Field Operations: **PART ONE**

2/23/2010 SWB FIST briefing to Field Operations: **PART TWO**

3/12/2010 SWB FIST & (b) (7)(C) conducted a video conference, powerpoint brief to the ATF HQ, Senior management staff, the four border SACs and DOJ Assistant United States Attorney.

3/23/2010 (b) (7)(C) requesting clarification on seizure events and corresponding firearm tracing from Guerrero Seizure event.

3/23/2010 GS's briefing to Field Operations

3/24/2010 (b) (7)(C) requesting clarification on seizure event in Guasave, Sinaloa

3/24/2010 SWB FIST requested that the suspect gun purchasers information be entered into the Mexico seizure event files in Nforce.

3/24/2010 Completed the research and identification of the two major traffickers that were responsible for conveying the 40 firearms seized on 1/13/2010 at the stash house in El Paso (b) (7)(C)

3/26/2010 SWB FIST provided GS (b) (7)(C) name depicting his email address that led to identifying his Myspace account. Provided photos from his Myspace depicting himself (b) (7)(C) other unidentified individuals all armed with DRACOs

4/6/2010 SWB FIST briefing to Field Operations - Carried over & updated from 3/23/2010

4/14/2010 USBP traffick stop in Columbus, New Mexico with F&F firearms

4/7/2010 El Paso PD Narcotic Unit seizes 20 firearms, all of which were F&F firearms, in a stash house. ATF El Paso opened a case file.

4/20/2010 SWB FIST briefing to Field Operations

5/4/2010 (b) (7)(C) sit to Phoenix Group VII for information exchange 5/4-6/2010

5/13/2010 OSI personnel tdy to Phoenix for G&T.

Briefed the Tohono O'odham seizure and the links to three active ATF cases: Tucson 785085-06-0051 Operation Wide Receiver, Phoenix 785115-09-0069 TRIKEFORCE & Yuma- 785041-10-00 (b) (7)(C) ALSO BRIEFED THE 11/14/2009 SEIZURE IN ALVAREZ, GUERRERO. 7 FIREARMS FROM F&F RECOVERED. ***ADDITIONAL FIREARMS LATER CAME BACK TO CASE.

Presented a link chart of the straw purchasing cell, maps of the Mexico and US seizures as of 3/5/2010, maps of Phoenix stash house locations and related ATF cases. One of the PP slides listed each straw purchaser and the amount of firearms they has purchased as of 2/27/2010, totaling 1026 firearms. As second slide listed the amount that each purchaser spent during the same time period, totaling \$659,749.32.

Provided GS an complete list of firearms trace data and analysis of questionable serial numbers.

Briefed that from 3/15/2010 to 3/23/2010 SWB FIST has identified 105 firearms to include 3 Barrett 50 caliber rifles were purchased by 4 F&F targets. POWERPOINT

Provided provided a complete list of firearms and analysis of event

(b) (7)(C) approved entering purchasers info from F&F into Nforce in the related Mexico seizures event files.

Identified the trafficker by providing name, personal data, photographs and social networking sites. Provided DEA & FBI case information linked to these traffickers and Mexican targets. All information provided to the El Paso FO (b) (7)(C)

Compiled & (b) (7)(C) quest to email all photos to (b) (7)(C) Myspace account. 03/28/2010 email from (b) (7)(C) using "home run on those photos from Myspace. We had no photos of (b) (7)(C) with guns, great find thanks.

Provided update by target of firearms purchased as of 4/4/2010, totaling 1,350. Briefed target's Myspace photos depicting top three targets all armed with DRACOs and an associate name with (b) (7)(C) armed with a DRACO. Information was obtained by exploiting the phone number from the (b) (7)(C) the photos and information was previously provided to case agent via the GS. POWERPOINT

USBP recorded the firearms data and released the possessors. Two of the firearms traced to a New Mexico target and 6 firearms were in F&F suspect gun files. ATF Las Cruces opened case 785120-10-0015.

SWB FIST assisted El Paso FO by linking the major trafficking targets identified in the 40 firearms seizure in the stash house on 1/13/2010 (b) (7)(C) The two traffickers were linked through social networking sites which displayed photographs of them along with individual arrested for possessing the firearms in this event.

UPDATE (b) (3) (P.L. 111-117), (b) (7)(C)

Caliber)- updated briefing of the prosecution of one of the F&F targets Myspace. POWERPOINT

Met with GS and case agents. (b) (7)(C) provided a complete data dump of all SWB FIST F&F information and additional possible leads.

Returned July 3 2010

5/29/2010 6/8/2010	ICE Laredo seizure of 147 roman/Cugiri weapons from Phoenix SWB FIST briefing to Field Operations	ICE took delivery of the firearms in Phoenix and turned over weapons to 2 individuals (Zeta transporters) from Mexico that were in turn arrested. One firearm was a suspect gun from F&F. Another 63 firearms were in suspect gun to another Group VII investigation 785071-10-0003 (GRIT). Presented the 5/29/2010 ICE Laredo seizure
6/17/2010	SWB FIST provide (b) (7)(C) with email address for the main target	SWB FIST conducted intelligence research and identified the email address of the straw purchasing cell leader (subject of case (b) (7)(E)). The email address was sent to (b) (7)(C). Upon request, he was provided a description of each step taken to identify the email address. Furthermore, he was provided information on the Yahoo's account log IP preservation and requirements to file a preservation request. <u>The target provided the same email address during a post arrest interview.</u>
11/15/2010	Notification of 2 F&F firearms recovered from the high profile homicide scene were the body of the brother of the ex Attorney General of the State of Chihuahua	ATF EPIC facilitated SWB FIST's request to obtain the firearms data in this event. SWB FIST determined that 2 of the weapons were F&F firearms and notified Phoenix (b) (7)(C) via telephone. Followed up with news article summarizing the event and recovery. Notified ATF EPIC of the findings (b) (7)(C) HERE RESTRICTED FROM FILE
11/17/2010	Reactivation of (b) (7)(C) access to case file	11/17/2010 SWB FIST sent email advising that (b) (7)(C) access was reactivated.

From: (b) (7)(C)
Sent: Monday, April 25, 2011 5:03 PM
To: (b) (7)(C)
Subject: FW: Add to TP

(b) (7)(C)
Chief
ATF Public Affairs Division
Washington, DC
Desk 202-648 (b) (7)(C)
Cell (b) (7)(C)

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From: (b) (7)(C)
Sent: Friday, April 22, 2011 3:10 PM
To: Anderson, (Andy) Glenn N.; Barrera, Hugo J.; Brandon, Thomas E.; Browning, Robert J.; Champion, Robert R.; Crenshaw, Kelvin N.; Durham, Phillip M.; Gant, Gregory K.; Gleysteen, Mike P.; Graham, Zebedee T.; Herkins, Stephen C.; Horace, Matthew W.; Newell, William D.; O'Brien, Virginia T.; Potter, Mark W.; Richardson, Marvin G.; Stoop, Theresa R.; Thomas, Guy N.; Torres, John A.; Traver, Andrew L.; Turk, Ronald B.; Vido, Paul J.; Webb, J. Dewey; Zapor, Bernard J.
Cc: (b) (7)(C) McDermond, James E.; Chait, Mark R.; McMahon, William G.; Ford, Larry W.
Subject: Add to TP

Ladies and gentlemen,

Below are a couple of talking points that we wanted to add.

Operation Fast and Furious neither involved a "sting" in Mexico nor any "controlled deliveries" of weapons into Mexico.

At no time did ATF agents observe weapons from Operation Fast and Furious cross into Mexico. There were no undercover law enforcement officers involved in Operation Fast and Furious and ATF did not provide weapons to suspects in that investigation.

Additionally we wanted to point out that while we recognize that the Laredo Field office still belongs to the Houston Field Division not the Dallas Field Division, the investigation was

referred to the Dallas Field Division from the Laredo Field office and worked by the Dallas Field Division.....our apologies for the confusion.

Thank you

(b) (7)(C)

(b) (7)(C)

Chief

ATF Public Affairs Division

Washington, DC

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

Cell (b) (7)(C)

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From: (b) (7)(C)
Sent: Monday, April 25, 2011 11:21 AM
To: (b) (7)(C)
CC: (b) (7)(C)
Subject: RE: Mexico Stats
Attachments: (b) (7)(C) MexicanQuestions(5).docx

Nope don't have it BUT here are the Q&A that we reworked on Friday regarding the Director's questions on some of the Mexican trace numbers.

(b) (7)(C)

Chief
ATF Public Affairs Division
Washington, DC
Desk 202-648-(b) (7)(C)
Cell (b) (7)(C)

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From: (b) (7)(C)
Sent: Monday, April 25, 2011 11:14 AM
To: (b) (7)(C)
Cc: (b) (7)(C)
Subject: RE: Mexico Stats

Do you still have the media plan I provided?

(b) (7)(C)
Public Affairs Division
Bureau of Alcohol, Tobacco, Firearms and Explosives
99 New York Avenue NE
Washington, DC 20226
(b) (7)(C)
(202) 648-(b) (7)(C) Office
(b) (7)(C) BlackBerry

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From: (b) (7)(C)
Sent: Monday, April 25, 2011 11:11 AM
To: (b) (7)(C)
Cc: (b) (7)(C)
Subject: Mexico Stats

(b) (7)(C)

Please come see me with your plan for rolling out the Mexico Stats to include dates, specifics on locations times, handouts speaker both on and off the record and recommendations on running new numbers and what they would look like. If I can get a brief on everything by COB tomorrow that would be great.

Please do not make contact with the reporters yet.

Thanks

(b) (7)(C)

(b) (7)(C)
Chief
ATF Public Affairs Division
Washington, DC
Desk 202-648-(b) (7)(C)
Cell (b) (7)(C)

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Q&A: Mexican Trace Data

(Continued)

(April 22, 2011)

Q. What is the percentage of domestic traces that identify a first purchaser?

A. Percentages of domestic traces that identify a first purchaser:

- 2010 – 63.1%
- 2009 – 61.0%
- 2008 – 62.0%
- 2007 – 61.4%

Q. Why are we in the U.S. more effective tracing firearms than Mexico?

A. Firearms tracing has been used by U.S. law enforcement for decades. U.S. law enforcement officers have gained significant knowledge and experience during these years, thus enabling them to increase the number of successful traces. One factor resulting in a successful firearms trace is being able to properly identify firearms information. Mexican officials do not have the experience or knowledge for identifying U.S. firearms. Recognizing this, ATF developed Spanish eTrace 4.0 (Spanish Language version) to assist Mexico in achieving more successful firearms traces. The most common reason a trace is unsuccessful is because the law enforcement agency gives an inaccurate description of the make and model of the firearm.

Q. What are the top reasons for an incomplete trace?

1. Inaccurate description of the make and model of the firearm being submitted for tracing.
2. Due to the age of the firearm, it may not have a serial number. Before the federal Gun Control Act of 1968, manufacturers were not required to give each gun an individual serial number.
3. Firearms submitted have incomplete descriptor data (missing make, serial number or model).

Q&A: Mexican Trace Data

Q. What has ATF done to help the Mexican government do a better job tracing firearms?

A. ATF has done numerous things over the years to improve successful traces submitted by Mexican law enforcement.

- ATF has provided firearms identification and recognition, firearms markings and tool mark examination and serial number restoration training both in Mexico and in the United States to Mexican law enforcement.
- ATF has provided eTrace 4.0 web-based, bi-lingual (English and Spanish) firearms tracing system to available accredited domestic and international law enforcement agencies to assist in the tracing of U.S.-sourced firearms.
- Through eTrace, law enforcement agencies can electronically submit firearms trace requests, monitor the progress of traces, retrieve completed trace results and query firearms trace-related data.
- The eTrace system currently has more than 17,000 individual law enforcement user accounts. International tracing supports joint law enforcement projects through programs such as the Southwest Border Initiative and the Caribbean Community Initiative.

ATF personnel assigned to the Mexico Country Office and at the various consulate offices throughout Mexico have submitted firearms traces for the Mexican law enforcement.

- ATF has continued to provide education and training to all levels of Mexican law enforcement in the importance of tracing firearms.
- eTrace 4.0 (Spanish Language version) was funded and designed by ATF for Mexican law enforcement to make tracing crime guns easier for non-English speaking countries.
- ATF personnel have responded with Mexican law enforcement officials to seizure locations in Mexico to trace firearms recovered.

Q. What is the percentage of purchaser identified traces from Mexico?

A. The percentage Mexican traces that identify a first purchaser are:

- | | |
|-----------------|-----------------|
| ➤ 2010 – 37.47% | ➤ 2008 – 25.17% |
| ➤ 2009 – 25.51% | ➤ 2007 – 25.72% |

From: (b) (7)(C)
Sent: Monday, April 25, 2011 11:10 AM
To: (b) (7)(C)
CC: (b) (7)(C)
Subject: Mexico Stats

(b) (7)(C)

Please come see me with your plan for rolling out the Mexico Stats to include dates, specifics on locations times, handouts speaker both on and off the record and recommendations on running new numbers and what they would look like. If I can get a brief on everything by COB tomorrow that would be great.

Please do not make contact with the reporters yet.

Thanks

(b) (7)(C)

(b) (7)(C)

Chief

ATF Public Affairs Division

Washington, DC

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

Cell (b) (7)(C)

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From: (b) (7)(C)

Sent: Friday, April 22, 2011 3:21 PM

To: McDermond, James E.

Subject: Director's Messages

Attachments: Director 4-22-2011 Mexico Web cast msg110422 (3).docx; Director 4-22-2011 Mexico letter.docx; (b) (7)(C)MexicanQuestions(5).docx

(b) (7)(C)

Chief

ATF Public Affairs Division

Washington, DC

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

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LAW ENFORCEMENT SENSITIVE**SCRIPT FOR DIRECTOR MELSON'S WEBCAST**

- Good Morning, in light of the many allegations about ATF's enforcement operations along the Southwest border, I want to assure you, ATF's dedicated employees, that we are addressing these allegations and stand by our decisions with regard to our enforcement actions.
- Operation Fast and Furious is an ongoing criminal investigation into an extensive gun-trafficking enterprise and a part of Project Gunrunner, ATF's broad initiative to deal with weapons trafficking along the Southwest Border.
- As many of you are aware, Project Gunrunner is a comprehensive strategy that focuses on the common threads of independent firearms trafficking investigations spread out among all of ATF's field divisions.
- The goal of Project Gunrunner is, and always has been, to reduce firearms-related violent crime associated with Mexican criminal organizations operating in the U.S. and Mexico, and to prevent these organizations from unlawfully acquiring and trafficking firearms.
- You should know that there are many separate and distinct firearms trafficking investigations into different criminal organizations being conducted by several field offices around the country.
- As of March 2010, Project Gunrunner led to the seizure of more than 6,688 firearms and the arrest of 1,397 defendants (more than 100 arrests a month) -- 850 of which have been convicted.
- The ATF investigation referred to as Operation Fast and Furious is a single, complex criminal investigation into persons responsible for supplying firearms to the Mexican Drug Trafficking Organizations (DTO's). These weapons are often used by DTOs and other criminal organizations to terrorize citizens on both sides of the U.S.-Mexican border in furtherance of their criminal activities.
- This investigation was initiated by the Phoenix Field Division and the United States Attorney's Office for the District of Arizona, and subsequently approved by the multi-agency Organized Crime and Drug Enforcement Task Force (OCDETF) Program.

LAW ENFORCEMENT SENSITIVE

LAW ENFORCEMENT SENSITIVE**SCRIPT FOR DIRECTOR MELSON'S WEBCAST**

- The purpose of Operation Fast and Furious was to dismantle a transnational organization believed to be responsible for trafficking weapons into Mexico by dismantling its leadership. To date, this operation has resulted in an indictment charging 20 defendants with conspiracy to purchase hundreds of firearms over a 15 month period from September 2009 to December 2010.
- As many of you know there have been numerous allegations in the media and elsewhere that suggest Operation Fast and Furious was a failed effort. What you need to know is that in actuality, the investigation has dismantled a large, complex international firearms trafficking organization, and that the investigation is still ongoing.
- Had it not been for the perseverance of this multi-agency task force, this sophisticated criminal network would still be trafficking hundreds of weapons into Mexico.
- Some sources have even suggested that the purchase of multiple firearms at one time clearly indicates suspicious activity, and that ATF could criminally charge the purchaser on that knowledge alone. However, because of the historic significance of firearms ownership along the Southwest border, it is neither uncommon nor illegal for non-prohibited firearms purchasers to buy multiple firearms at a time in that part of the country. Therefore, what may be considered a suspicious purchase in other parts of the United States might be considered a rather common place activity along the Southwest border.
- Operation Fast and Furious neither involved a "sting" in Mexico nor any "controlled deliveries" of weapons into Mexico.
- At no time did ATF agents observe weapons from Operation Fast and Furious cross into Mexico. There were no undercover law enforcement officers involved in Operation Fast and Furious and ATF did not provide weapons to suspects in that investigation.
- The negative media reports will not hamper the prosecution of those responsible for supplying firearms to cartel members nor does it reflect on the hard work of the case agent or coworkers. We continue to stand behind the prosecution of those in the Fast and Furious investigation and will continue to work to stem the flow of firearms to Mexico.

LAW ENFORCEMENT SENSITIVE

LAW ENFORCEMENT SENSITIVE**SCRIPT FOR DIRECTOR MELSON'S WEBCAST**

- The Department of Justice has a long standing policy against the disclosure of non-public information about ongoing criminal investigations. This policy is based, in part, on the strong interest in protecting the effectiveness of ongoing law enforcement efforts. The Fast and Furious investigation has not been adjudicated.
- It is important for you to know that the investigation is ongoing and the case remains open.

DRAFT

LAW ENFORCEMENT SENSITIVE



Q&A: Mexican Trace Data

(Continued)

(April 22, 2011)

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A. Percentages of domestic traces that identify a first purchaser:

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- 2009 – 61.0%
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- 2007 – 61.4%

Q. Why are we in the U.S. more effective tracing firearms than Mexico?

A. Firearms tracing has been used by U.S. law enforcement for decades. U.S. law enforcement officers have gained significant knowledge and experience during these years, thus enabling them to increase the number of successful traces. One factor resulting in a successful firearms trace is being able to properly identify firearms information. Mexican officials do not have the experience or knowledge for identifying U.S. firearms. Recognizing this, ATF developed Spanish eTrace 4.0 (Spanish Language version) to assist Mexico in achieving more successful firearms traces. The most common reason a trace is unsuccessful is because the law enforcement agency gives an inaccurate description of the make and model of the firearm.

Q. What are the top reasons for an incomplete trace?

1. Inaccurate description of the make and model of the firearm being submitted for tracing.
2. Due to the age of the firearm, it may not have a serial number. Before the federal Gun Control Act of 1968, manufacturers were not required to give each gun an individual serial number.
3. Firearms submitted have incomplete descriptor data (missing make, serial number or model).

Q&A: Mexican Trace Data

Q. What has ATF done to help the Mexican government do a better job tracing firearms?

A. ATF has done numerous things over the years to improve successful traces submitted by Mexican law enforcement.

- ATF has provided firearms identification and recognition, firearms markings and tool mark examination and serial number restoration training both in Mexico and in the United States to Mexican law enforcement.
- ATF has provided eTrace 4.0 web-based, bi-lingual (English and Spanish) firearms tracing system to available accredited domestic and international law enforcement agencies to assist in the tracing of U.S.-sourced firearms.
- Through eTrace, law enforcement agencies can electronically submit firearms trace requests, monitor the progress of traces, retrieve completed trace results and query firearms trace-related data.
- The eTrace system currently has more than 17,000 individual law enforcement user accounts. International tracing supports joint law enforcement projects through programs such as the Southwest Border Initiative and the Caribbean Community Initiative.

ATF personnel assigned to the Mexico Country Office and at the various consulate offices throughout Mexico have submitted firearms traces for the Mexican law enforcement.

- ATF has continued to provide education and training to all levels of Mexican law enforcement in the importance of tracing firearms.
- eTrace 4.0 (Spanish Language version) was funded and designed by ATF for Mexican law enforcement to make tracing crime guns easier for non-English speaking countries.
- ATF personnel have responded with Mexican law enforcement officials to seizure locations in Mexico to trace firearms recovered.

Q. What is the percentage of purchaser identified traces from Mexico?

A. The percentage Mexican traces that identify a first purchaser are:

- 2010 – 37.47%
- 2008 – 25.17%
- 2009 – 25.51%
- 2007 – 25.72%

From: (b) (7)(C)

Sent: Friday, April 22, 2011 3:10 PM

To: Anderson, (Andy) Glenn N.; Barrera, Hugo J.; Brandon, Thomas E.; Browning, Robert J.; Champion, Robert R.; Crenshaw, Kelvin N.; Durham, Phillip M.; Gant, Gregory K.; Gleysteen, Mike P.; Graham, Zebedee T.; Herkins, Stephen C.; Horace, Matthew W.; Newell, William D.; O'Brien, Virginia T.; Potter, Mark W.; Richardson, Marvin G.; Stoop, Theresa R.; Thomas, Guy N.; Torres, John A.; Traver, Andrew L.; Turk, Ronald B.; Vido, Paul J.; Webb, J. Dewey; Zapor, Bernard J.

CC: (b) (7)(C) McDermond, James E.; Chait, Mark R.; McMahon, William G.; Ford, Larry W.

Subject: Add to TP

Ladies and gentlemen,

Below are a couple of talking points that we wanted to add.

Operation Fast and Furious neither involved a "sting" in Mexico nor any "controlled deliveries" of weapons into Mexico.

At no time did ATF agents observe weapons from Operation Fast and Furious cross into Mexico. There were no undercover law enforcement officers involved in Operation Fast and Furious and ATF did not provide weapons to suspects in that investigation.

Additionally we wanted to point out that while we recognize that the Laredo Field office still belongs to the Houston Field Division not the Dallas Field Division, the investigation was referred to the Dallas Field Division from the Laredo Field office and worked by the Dallas Field Division.....our apologies for the confusion.

Thank you

(b) (7)(C)

(b) (7)(C)

Chief

ATF Public Affairs Division

Washington, DC

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

Cell (b) (7)(C)

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From: (b) (7)(C)

Sent: Friday, April 22, 2011 2:39 PM

To: (b) (7)(C)

Subject:

Attachments: Director 4-22-2011 Mexico Web cast msg110422 (2).docx

(b) (7)(C)

Chief

ATF Public Affairs Division

Washington, DC

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

Cell (b) (7)(C)

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- Good Morning, in light of the many allegations about ATF's enforcement operations along the Southwest border, I want to assure you, ATF's dedicated employees, that we are addressing these allegations and stand by our decisions with regard to our enforcement actions.
- Operation Fast and Furious is an ongoing criminal investigation into an extensive gun-trafficking enterprise and a part of Project Gunrunner, ATF's broad initiative to deal with weapons trafficking along the Southwest Border.
- As many of you are aware, Project Gunrunner is an intelligence-led, comprehensive strategy that focuses on the common threads of independent firearms trafficking investigations spread out among all of ATF's field divisions.
- The goal of Project Gunrunner is, and always has been, to reduce firearms-related violent crime associated with Mexican criminal organizations operating in the U.S. and Mexico, and to prevent these organizations from unlawfully acquiring and trafficking firearms.
- You should know that there are many separate and distinct firearms trafficking investigations into different criminal organizations being conducted by several field offices around the country.
- As of March 2010, Project Gunrunner led to the seizure of more than 6,688 firearms and the arrest of 1,397 defendants (more than 100 arrests a month) -- 850 of which have been convicted.
- The ATF investigation referred to as Operation Fast and Furious is a single, complex criminal investigation into persons responsible for supplying firearms to the Mexican Drug Trafficking Organizations (DTO's). These weapons are often used by DTOs and other criminal organizations to terrorize citizens on both sides of the U.S.-Mexican border in furtherance of their criminal activities.
- This investigation was initiated by the Phoenix Field Division and the United States Attorney's Office for the District of Arizona, and subsequently approved by the multi-agency Organized Crime and Drug Enforcement Task Force (OCDETF) Program.

- The purpose of Operation Fast and Furious was to dismantle a transnational organization believed to be responsible for trafficking weapons into Mexico by dismantling its leadership. To date, this operation has resulted in an indictment charging 20 defendants with conspiracy to purchase hundreds of firearms over a 15 month period from September 2009 to December 2010.
- As many of you know there have been numerous allegations in the media and elsewhere that suggest Operation Fast and Furious was a failed effort. What you need to know is that in actuality, the investigation has dismantled a large, complex international firearms trafficking organization, and that the investigation is still ongoing.
- Had it not been for the perseverance of this multi-agency task force, this sophisticated criminal network would still be trafficking hundreds of weapons into Mexico.
- Some sources have even suggested that the purchase of multiple firearms at one time clearly indicates suspicious activity, and that ATF could criminally charge the purchaser on that knowledge alone. However, because of the historic significance of firearms ownership along the Southwest border, it is neither uncommon nor illegal for non-prohibited firearms purchasers to buy 10 or more firearms at a time in that part of the country. Therefore, what may be considered a suspicious purchase in other parts of the United States might be considered a rather common place activity along the Southwest border.
- Operation Fast and Furious neither involved a "sting" in Mexico nor any "controlled deliveries" of weapons into Mexico.
- At no time did ATF agents observe weapons from Operation Fast and Furious cross into Mexico. There were no undercover law enforcement officers involved in Operation Fast and Furious and ATF did not provide weapons to suspects in that investigation.
- Obviously mistakes in judgment were made by the Phoenix Field Division management team in HOW they implemented their local enforcement strategy. As such, I have decided to remove and replace the SAC and both ASACs in the Phoenix Field Division effective immediately. The SAC will assist with the OIG investigation and one of the ASACs will be assigned to

the United States Attorney's Office in Phoenix to assist with the prosecution of Fast and Furious defendants.

- These moves do not hamper the prosecution of those responsible for supplying firearms to cartel members nor does it reflect on the hard work of the case agent or coworkers. We continue to stand behind the prosecution of those in the Fast and Furious investigation and will continue to work to stem the flow of firearms to Mexico.
- The Department of Justice has a long standing policy against the disclosure of non-public information about ongoing criminal investigations. This policy is based, in part, on the strong interest in protecting the effectiveness of ongoing law enforcement efforts. The Fast and Furious investigation has not been adjudicated.
- It is important for you to know that the investigation is ongoing and the case is still open.

From: (b) (7)(C)
Sent: Friday, April 22, 2011 2:39 PM
To: (b) (7)(C)
Subject:
Attachments: (b) (7)(C) MexicanQuestions(4).docx

(b) (7)(C)

Chief

ATF Public Affairs Division

Washington, DC

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

Cell (b) (7)(C)

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Mexican Trace Data

(Continued)

(April 22, 2011)

Q. What is the percentage of domestic traces that identify a first purchaser?

A. Percentages of domestic traces that identify a first purchaser:

- 2010 – 63.1%
- 2009 – 61.0%
- 2008 – 62.0%
- 2007 – 61.4%

Q. Why are we in the U.S. more effective tracing firearms than Mexico?

A. Firearms tracing has been used by U.S. law enforcement for decades. U.S. law enforcement officers have gained significant knowledge and experience during these years, thus enabling them to increase the number of successful traces. One factor resulting in a successful firearms trace is being able to properly identify firearms information. Mexican officials do not have the experience or knowledge for identifying U.S. firearms. Recognizing this, ATF developed Spanish eTrace 4.0 (Spanish Language version) to assist Mexico in achieving more successful firearms traces. The most common reason a trace is unsuccessful is because the law enforcement agency gives an inaccurate description of the make and model of the firearm.

Q. What are the top reasons for an incomplete trace?

1. Inaccurate description of the make and model of the firearm being submitted for tracing.
2. Due to the age of the firearm, it may not have a serial number. Before the federal Gun Control Act of 1968, manufacturers were not required to give each gun an individual serial number.
3. Firearms submitted have incomplete descriptor data (missing make, serial number or model).

Q. What has ATF done to help the Mexican government do a better job tracing firearms?

A. ATF has done numerous things over the years to improve successful traces submitted by Mexican law enforcement.

- ATF has provided firearms identification and recognition, firearms markings and tool mark examination and serial number restoration training both in Mexico and in the United States to Mexican law enforcement.
- ATF has provided eTrace 4.0 web-based, bi-lingual (English and Spanish) firearms tracing system to available accredited domestic and international law enforcement agencies to assist in the tracing of U.S.-sourced firearms.
- Through eTrace, law enforcement agencies can electronically submit firearms trace requests, monitor the progress of traces, retrieve completed trace results and query firearms trace-related data.
- The eTrace system currently has more than 17,000 individual law enforcement user accounts. International tracing supports joint law enforcement projects through programs such as the Southwest Border Initiative and the Caribbean Community Initiative.

ATF personnel assigned to the Mexico Country Office and at the various consulate offices throughout Mexico have submitted firearms traces for the Mexican law enforcement.

- ATF has continued to provide education and training to all levels of Mexican law enforcement in the importance of tracing firearms.
- eTrace 4.0 (Spanish Language version) was funded and designed by ATF for Mexican law enforcement to make tracing crime guns easier for non-English speaking countries.
- ATF personnel have responded with Mexican law enforcement officials to seizure locations in Mexico to trace firearms recovered.

Q. What is the percentage of purchaser identified traces from Mexico?

A. The percentage Mexican traces that identify a first purchaser are:

- 2010 – 37.47%
- 2009 – 25.51%
- 2008 – 25.17%
- 2007 – 25.72%

From: (b) (7)(C)

Sent: Friday, April 22, 2011 12:20 PM

To: McDermond, James E.

CC: (b) (7)(C)

Subject: Webcast

Attachments: Director 4-22-2011 Mexico Web cast msg110422 (2).docx; Director 4-22-2011 Mexico letter.docx; (b) (7)(C) MexicanQuestions(4).docx

Jim,

Here are the three documents re worked. I am headed to my meeting.

(b) (7)(C)

(b) (7)(C)

Chief

ATF Public Affairs Division

Washington, DC

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

Cell (b) (7)(C)

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- Good Morning, in light of the many allegations about ATF's enforcement operations along the Southwest border, I want to assure you, ATF's dedicated employees, that we are addressing these allegations and stand by our decisions with regard to our enforcement actions.
- Operation Fast and Furious is an ongoing criminal investigation into an extensive gun-trafficking enterprise and a part of Project Gunrunner, ATF's broad initiative to deal with weapons trafficking along the Southwest Border.
- As many of you are aware, Project Gunrunner is an intelligence-led, comprehensive strategy that focuses on the common threads of independent firearms trafficking investigations spread out among all of ATF's field divisions.
- The goal of Project Gunrunner is, and always has been, to reduce firearms-related violent crime associated with Mexican criminal organizations operating in the U.S. and Mexico, and to prevent these organizations from unlawfully acquiring and trafficking firearms.
- You should know that there are many separate and distinct firearms trafficking investigations into different criminal organizations being conducted by several field offices around the country.
- As of March 2010, Project Gunrunner led to the seizure of more than 6,688 firearms and the arrest of 1,397 defendants (more than 100 arrests a month) -- 850 of which have been convicted.
- The ATF investigation referred to as Operation Fast and Furious is a single, complex criminal investigation into persons responsible for supplying firearms to the Mexican Drug Trafficking Organizations (DTO's). These weapons are often used by DTOs and other criminal organizations to terrorize citizens on both sides of the U.S.-Mexican border in furtherance of their criminal activities.
- This investigation was initiated by the Phoenix Field Division and the United States Attorney's Office for the District of Arizona, and subsequently approved by the multi-agency Organized Crime and Drug Enforcement Task Force (OCDETF) Program.

- The purpose of Operation Fast and Furious was to dismantle a transnational organization believed to be responsible for trafficking weapons into Mexico by dismantling its leadership. To date, this operation has resulted in an indictment charging 20 defendants with conspiracy to purchase hundreds of firearms over a 15 month period from September 2009 to December 2010.
- As many of you know there have been numerous allegations in the media and elsewhere that suggest Operation Fast and Furious was a failed effort. What you need to know is that in actuality, the investigation has dismantled a large, complex international firearms trafficking organization, and that the investigation is still ongoing.
- Had it not been for the perseverance of this multi-agency task force, this sophisticated criminal network would still be trafficking hundreds of weapons into Mexico.
- Some sources have even suggested that the purchase of multiple firearms at one time clearly indicates suspicious activity, and that ATF could criminally charge the purchaser on that knowledge alone. However, because of the historic significance of firearms ownership along the Southwest border, it is neither uncommon nor illegal for non-prohibited firearms purchasers to buy 10 or more firearms at a time in that part of the country. Therefore, what may be considered a suspicious purchase in other parts of the United States might be considered a rather common place activity along the Southwest border.
- Operation Fast and Furious neither involved a "sting" in Mexico nor any "controlled deliveries" of weapons into Mexico.
- At no time did ATF agents observe weapons from Operation Fast and Furious cross into Mexico. There were no undercover law enforcement officers involved in Operation Fast and Furious and ATF did not provide weapons to suspects in that investigation.
- Obviously mistakes in judgment were made by the Phoenix Field Division management team in HOW they implemented their local enforcement strategy. As such, I have decided to remove and replace the SAC and both ASACs in the Phoenix Field Division effective immediately. The SAC will assist with the OIG investigation and one of the ASACs will be assigned to

the United States Attorney's Office in Phoenix to assist with the prosecution of Fast and Furious defendants.

- These moves do not hamper the prosecution of those responsible for supplying firearms to cartel members nor does it reflect on the hard work of the case agent or coworkers. We continue to stand behind the prosecution of those in the Fast and Furious investigation and will continue to work to stem the flow of firearms to Mexico.
- The Department of Justice has a long standing policy against the disclosure of non-public information about ongoing criminal investigations. This policy is based, in part, on the strong interest in protecting the effectiveness of ongoing law enforcement efforts. The Fast and Furious investigation has not been adjudicated.
- It is important for you to know that the investigation is ongoing and the case is still open.



Mexican Trace Data

(Continued)

(April 22, 2011)

Q. What is the percentage of domestic traces that identify a first purchaser?

A. Percentages of domestic traces that identify a first purchaser:

- 2010 – 63.1%
- 2009 – 61.0%
- 2008 – 62.0%
- 2007 – 61.4%

Q. Why are we in the U.S. more effective tracing firearms than Mexico?

A. Firearms tracing has been used by U.S. law enforcement for decades. U.S. law enforcement officers have gained significant knowledge and experience during these years, thus enabling them to increase the number of successful traces. One factor resulting in a successful firearms trace is being able to properly identify firearms information. Mexican officials do not have the experience or knowledge for identifying U.S. firearms. Recognizing this, ATF developed Spanish eTrace 4.0 (Spanish Language version) to assist Mexico in achieving more successful firearms traces. The most common reason a trace is unsuccessful is because the law enforcement agency gives an inaccurate description of the make and model of the firearm.

Q. What are the top reasons for an incomplete trace?

1. Inaccurate description of the make and model of the firearm being submitted for tracing.
2. Due to the age of the firearm, it may not have a serial number. Before the federal Gun Control Act of 1968, manufacturers were not required to give each gun an individual serial number.
3. Firearms submitted have incomplete descriptor data (missing make, serial number or model).

Q. What has ATF done to help the Mexican government do a better job tracing firearms?

A. ATF has done numerous things over the years to improve successful traces submitted by Mexican law enforcement.

- ATF has provided firearms identification and recognition, firearms markings and tool mark examination and serial number restoration training both in Mexico and in the United States to Mexican law enforcement.
- ATF has provided eTrace 4.0 web-based, bi-lingual (English and Spanish) firearms tracing system to available accredited domestic and international law enforcement agencies to assist in the tracing of U.S.-sourced firearms.
- Through eTrace, law enforcement agencies can electronically submit firearms trace requests, monitor the progress of traces, retrieve completed trace results and query firearms trace-related data.
- The eTrace system currently has more than 17,000 individual law enforcement user accounts. International tracing supports joint law enforcement projects through programs such as the Southwest Border Initiative and the Caribbean Community Initiative.

ATF personnel assigned to the Mexico Country Office and at the various consulate offices throughout Mexico have submitted firearms traces for the Mexican law enforcement.

- ATF has continued to provide education and training to all levels of Mexican law enforcement in the importance of tracing firearms.
- eTrace 4.0 (Spanish Language version) was funded and designed by ATF for Mexican law enforcement to make tracing crime guns easier for non-English speaking countries.
- ATF personnel have responded with Mexican law enforcement officials to seizure locations in Mexico to trace firearms recovered.

Q. What is the percentage of purchaser identified traces from Mexico?

A. The percentage Mexican traces that identify a first purchaser are:

- 2010 – 37.47%
- 2009 – 25.51%
- 2008 – 25.17%
- 2007 – 25.72%

From: (b) (7)(C)
Sent: Friday, April 22, 2011 11:18 AM
To: (b) (7)(C)
Subject: RE: Mexico Web cast msg110422.docx

Obviously mistakes in judgment were made by the Phoenix Field Division management team in HOW they implemented their local enforcement strategy. As such I have decided to remove and replace the SAC and both ASACs in the Phoenix Field Division effective immediately. The SAC will assist with the OIG investigation and one of the ASACs will be assigned to the United States Attorney's Office in Phoenix to assist with the prosecution of Fast and Furious defendants. These moves do not hamper the prosecution of those responsible for supplying firearms to cartel members nor does it reflect on the hard work of the case agent or her coworkers. We continue to stand behind the prosecution of those in the Fast and Furious investigation and will continue to work to stem the flow of firearms to Mexico.

(b) (7)(C)

Chief
ATF Public Affairs Division
Washington, DC
Desk 202-648-(b) (7)(C)
Cell (b) (7)(C)

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From: (b) (7)(C)
Sent: Friday, April 22, 2011 10:49 AM
To: (b) (7)(C)
Subject: Mexico Web cast msg110422.docx

Here's the draft transcript for the Web cast to employees.

(b) (7)(C)

Public Affairs Specialist
ATF Headquarters
99 New York Ave, NE
Washington, DC 20226-0001
(T) 202.648-(b) (7)(C)
(C) (b) (7)(C)
(F) 202.648-9750

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From: (b) (7)(C)

Sent: Friday, April 22, 2011 9:56 AM

To: (b) (7)(C)

Subject:

Attachments: 1 MexicanQuestions(4).docx; 4-2011 Mexico letter.docx

(b) (7)(C) here they are thanks

(b) (7)(C)

Chief

ATF Public Affairs Division

Washington, DC

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

Cell (b) (7)(C)

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Mexican Trace Data

(Continued)

(April 13, 2011)

Q. What is the percentage of domestic traces that identify a first purchaser?

A. Percentages of domestic traces that identify a first purchaser:

- 2010 – 63.1%
- 2009 – 61.0%
- 2008 – 62.0%
- 2007 – 61.4%

Q. Why are we more affective tracing firearms in the U.S. than in Mexico?

A. U.S. law enforcement does better tracing firearms than the Mexicans because we are American law enforcement submit their firearms for tracing in a more timely fashion. In addition, most U.S. police departments have dedicated people assigned to handle traces who are savvier at performing traces and providing all necessary information for a complete trace.

Q. What are the top reasons for an incomplete trace?

- A.
1. The lack of importer information entered for firearms submitted for tracing.
 2. The age of firearms submitted for tracing are older.
 3. Firearms submitted have incomplete descriptor data (missing make, serial number or model).

Q. What have we done to help the Mexicans do a better job tracing firearms?

A. ATF has done numerous things over the years to help Mexican law enforcement do a better job tracing firearms:

- ATF has provided training both in Mexico and in the U.S. to Mexican law enforcement.
- ATF has provided follow-up interaction with people trained.

Internal Use Only

2

- ATF employees at the Mexico country office and at the various consulate offices have submitted firearms traces for the Mexicans.
- ATF has had numerous meetings with all levels of Mexican law enforcement emphasizing the importance of tracing.
- eTrace 4.0 (Spanish Language version) was funded and designed by ATF for Mexican law enforcement to make tracing crime guns easier for non-English speaking countries.
- ATF employees have responded to seizure locations in Mexico with Mexican law enforcement to trace firearms recovered.

Q. What is the percentage of purchaser identified traces from Mexico?

A. The percentage Mexican traces that identify a first purchaser are:

- 2010 – 37.47%
- 2009 – 25.51%
- 2008 – 25.17%
- 2007 – 25.72%

From: (b) (7)(C)
Sent: Friday, April 22, 2011 8:42 AM
To: (b) (7)(C)
CC: (b) (7)(C)
Subject: FW: REVISED: Narrative
Attachments: Mexico letter WORKING DOCUMENT to djw 110421.docx

(b) (7)(C)

Please adjust this to be used by the director as a script. I need it no later than 11:30 this morning.

Thank you

(b) (7)(C)

Chief
ATF Public Affairs Division
Washington, DC
Desk 202-648-(b) (7)(C)
Cell (b) (7)(C)

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From: (b) (7)(C)
Sent: Thursday, April 21, 2011 2:24 PM
To: (b) (7)(C)
Cc: (b) (7)(C)
Subject: REVISED: Narrative

(b) (7)(C)

The attached version has been drafted by (b) (7)(C) and reviewed by me (with edits). I am fine with it.

(b) (7)(C)

(b) (7)(C)

Deputy Chief
ATF - Public Affairs Division
Direct) 202-648-(b) (7)(C)
Main) 202-648-8500

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From: (b) (7)(C)
Sent: Thursday, April 21, 2011 9:18 AM
To: (b) (7)(C)
Subject: Narrative

For your review.

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This letter responds to your request for information concerning Operation Fast and Furious, an ongoing criminal investigation of an extensive gun-trafficking enterprise. Operation Fast and Furious is a part of Project Gunrunner, a broad ATF initiative to deal with weapons trafficking along the Southwest Border. Project Gunrunner is a comprehensive strategy that is intelligence led and seeks to focus on common threads in various independent firearms trafficking investigations spread out among all 25 of ATF's field divisions. The goal of Project Gunrunner is to reduce firearms-related violent crime associated with Mexican criminal organizations operating in the U.S. and Mexico by preventing these organizations from unlawfully acquiring and trafficking firearms. There are many separate and distinct firearms trafficking investigations into different criminal organizations being conducted by several field offices. As of March 2010, Project Gunrunner had led to the arrest of 1,397 defendants --850 of which had been convicted-- and the seizure of over 6,688 firearms.

The investigation referred to as "Fast and Furious" is a single, complex criminal investigation into the firearms trafficking organizations that supply firearms to the Mexican Drug Trafficking Organizations (DTO's) that use these weapons to terrorize the good people on both sides of the U.S.-Mexican border in furtherance of their illicit, criminal activities. This investigation was initiated by the Phoenix Field Division and the United States Attorney's Office for the District of Arizona. The investigation was subsequently approved by the multi-agency Organized Crime and Drug Enforcement Task Force (OCDETF) Program. The purpose of this investigation is to dismantle a transnational organization believed to be responsible for trafficking weapons into Mexico by dismantling its leadership. To date, this investigation has resulted in an indictment charging 20 defendants with conspiracy to purchase hundreds of firearms from September 2009 to December 2010.

Allegations in the media and elsewhere suggest that Operation Fast and Furious was a failed effort. To the contrary, the investigation has dismantled a large, complex, international firearms trafficking case, and the investigation has not concluded. Without the perseverance of this multi-agency task force, this sophisticated criminal network would still be trafficking hundreds of weapons into Mexico today and in the future.

Additionally, some sources suggest that the purchase of multiple firearms at one time clearly indicates suspicious activity and that ATF could criminally charge on that knowledge alone. However, because of the historic significance of firearms ownership along the Southwest border, it is not uncommon or illegal for non-prohibited firearms purchasers to buy 10 or more firearms at a time in that part of the country. Therefore, what may be considered a suspicious purchase in other parts of the United States might be considered a rather common place activity along the Southwest border.

Operation Fast and Furious neither involved a "sting" in Mexico nor any "controlled deliveries" of weapons into Mexico. At no time did ATF agents observe weapons from Operation Fast and

Furious cross into Mexico. There were no undercover law enforcement officers involved in Operation Fast and Furious and ATF did not provide weapons to suspects in that investigation.

The Department of Justice has a long standing policy against the disclosure of non-public information about ongoing criminal investigations. This policy is based, in part, on the strong interest in protecting the effectiveness of ongoing law enforcement efforts. The Fast and Furious investigation has not been adjudicated. Although the defendants in this case have been indicted, the investigation is ongoing and the case is still open. As with any open investigation, it is against DOJ policy to discuss the details of “Fast and Furious” until the case is fully adjudicated. Therefore, I am unable to share with you any particular details of Operation Fast and Furious.

###



From: (b) (7)(C)
Sent: Thursday, April 21, 2011 12:19 PM
To: (b) (7)(C)
Subject: Re:

Ok...
(b) (7)(C)
Chief
ATF Public Affairs Division

From: (b) (7)(C)
To: (b) (7)(C)
Sent: Thu Apr 21 10:47:17 2011
Subject: RE:

(b) (7)(C)

Per AD McDermond, I am providing three copies of this TPs document to (b) (7)(C) for he, the Director and Deputy Director) WITHOUT the (b) (7)(E)

(b) (7)(C)

(b) (7)(C)

Deputy Chief
ATF - Public Affairs Division
Direct) 202-648-(b) (7)(C)
Main) 202-648-8500

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From: (b) (7)(C)
Sent: Wednesday, April 20, 2011 5:53 PM
To: (b) (7)(C)
Subject:

(b) (7)(C)

Please have Tim put this into narrative form by COB tomorrow.....also the "list" is your overhead with the almonds and you can use the attachment for that....the SOD and DAD Central are on my computers if you want to hand out.

Thanks

(b) (7)(C)

Chief

ATF Public Affairs Division

Washington, DC

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

Cell (b) (7)(C)

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From: (b) (7)(C)

Sent: Wednesday, April 20, 2011 5:53 PM

To: (b) (7)(C)

Subject:

Attachments: Fast-n-Furious is NOT 110419 djwTC3 FINAL1.docx

(b) (7)(C)

Please have (b) (7)(C) put this into narrative form by COB tomorrow.....also the "list" is your overhead with the almonds and you can use the attachment for that....the SOD and DAD Central are on my computers if you want to hand out.

Thanks

(b) (7)(C)

Chief

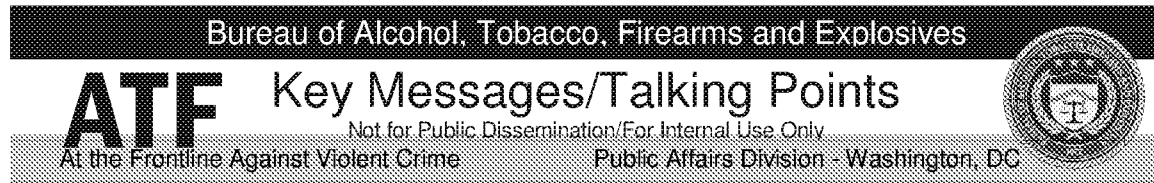
ATF Public Affairs Division

Washington, DC

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

Cell (b) (7)(C)

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What Operation Fast and Furious Is NOT (04/19/2011)

Background

The investigation referred to as “Fast and Furious” is a single, complex criminal investigation into the firearms trafficking organizations that supply firearms to the Mexican Drug Trafficking Organizations (DTO’s) that use these weapons to terrorize the good people on both sides of the U.S./Mexican border in furtherance of their illicit, criminal activities. This investigation was initiated by the Phoenix Field Division and the United States Attorney’s Office for the District of Arizona. The investigation was subsequently approved by the multi-agency Organized Crime and Drug Enforcement Task Force (OCDETF) Program. The purpose of this investigation is to dismantle a transnational organization believed to be responsible for trafficking weapons into Mexico by dismantling its leadership.

Talking Points

- The Fast and Furious investigation is NOT synonymous with Project Gunrunner. Project Gunrunner is a comprehensive strategy that is intelligence led and seeks to focus on common threads in various independent firearms trafficking investigations spread out among all 25 of ATF’s field divisions. Project Gunrunner is NOT a tactical plan. The goal of Project Gunrunner is to reduce firearms-related violent crime associated with Mexican criminal organizations operating in the U.S. and Mexico by preventing these organizations from unlawfully acquiring and trafficking firearms.
- The Fast and Furious investigation is NOT another name for the Project Gunrunner Cartel Focused Strategy. Deployed in September 2010, the Cartel Strategy reflects ATF’s increased national emphasis on firearms trafficking enforcement related to the Southwest Border and the importance of identifying and prioritizing trafficking investigations where a nexus to Mexican Drug Trafficking Organizations (DTOs) and cartels may be established. On at least 28 occasions during the last 8 weeks the media has misrepresented this fact in large part due to bloggers erroneous postings.
- The Fast and Furious investigation has NOT been adjudicated. Although the defendants in this case have been indicted, the investigation is ongoing and the case is still open.
- The Fast and Furious investigation did NOT include surveilling guns crossing the U.S./Mexico border.
- The details attributed to the Fast and Furious investigation by the news media are NOT all associated with the actual Fast and Furious investigation.

- There are many separate and distinct firearms trafficking investigations into different criminal organizations by several different field offices.
- The Fast and Furious investigation is NOT responsible for the deaths of CBP Agent Brian Terry and ICE Agent Jaime Zapata. Their murders are the direct and tragic result of violent criminal acts perpetrated by brazen criminals who have no respect for the rule of law or human life. Our hearts and prayers go out to the families of these brave agents. **The firearms recovered near the scene of Agent Terry's death were not forensically linked to his murder.**
- The Fast and Furious investigation is NOT related to a case that was initiated by the Laredo field office of the Dallas Field Division in November 2010. That case involved a firearm purchased by (b) (7)(C) in or about October 10, 2010, which was one of the firearms that were used in the assault on ICE Special Agent Victor Avila and murder of Special Agent Jaime Zapata in Mexico. ATF did not know about the aforementioned purchase at the time.
- Due to the historic significance of firearms ownership along the Southwest border, it is not uncommon for firearms purchasers to buy 10 or more firearms at a time in that part of the country. Therefore, what may be considered a suspicious purchase in other parts of the country might be considered common place along the Southwest border.

###

From: (b) (7)(C)
Sent: Wednesday, April 20, 2011 5:17 PM
To: (b) (7)(C)
Subject: FW: New Issa letter
Attachments: 53439146-4-20-11-Melson-Follow-Up-Letter[1].pdf

(b) (7)(C)

Chief
ATF Public Affairs Division
Washington, DC
Desk 202-648 (b) (7)(C)
Cell (b) (7)(C)

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From: (b) (7)(C)
Sent: Wednesday, April 20, 2011 5:17 PM
To: McDermond, James E.; Hoover, William J.; Melson, Kenneth E.
Cc: (b) (7)(C)
Subject: New Issa letter

Gentlemen,

I just pulled this off the blog and it is up on "tickle the wire". We have been looking for the letter and I don't think it has come to us through official channels unless you all got it sometime today.

Jim is checking with the department to see if they have it.

(b) (7)(C)

(b) (7)(C)

Chief
ATF Public Affairs Division
Washington, DC
Desk 202-648 (b) (7)(C)
Cell (b) (7)(C)

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From: (b) (7)(C)
Sent: Wednesday, April 20, 2011 5:16 PM
To: McDermond, James E.; Hoover, William J.; Melson, Kenneth E.
CC: (b) (7)(C)
Subject: New Issa letter
Attachments: 53439146-4-20-11-Melson-Follow-Up-Letter[1].pdf

Gentlemen,

I just pulled this off the blog and it is up on "tickle the wire". We have been looking for the letter and I don't think it has come to us through official channels unless you all got it sometime today.

Jim is checking with the department to see if they have it.

(b) (7)(C)

(b) (7)(C)

Chief

ATF Public Affairs Division

Washington, DC

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

Cell (b) (7)(C)

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From: (b) (7)(C)

Sent: Wednesday, April 20, 2011 1:46 PM

To: (b) (7)(C)

Subject:

Attachments: Fast-n-Furious is NOT 110419 djwTC3 FINAL.docx

(b) (7)(C)

Chief

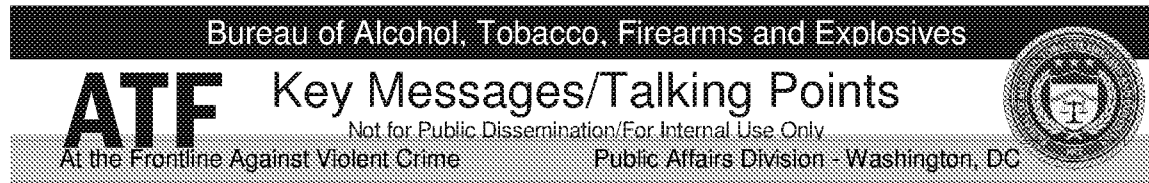
ATF Public Affairs Division

Washington, DC

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

Cell (b) (7)(C)

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What Operation Fast and Furious Is NOT (04/19/2011)

Background

The investigation referred to as “Fast and Furious” is a single, complex criminal investigation into the firearms trafficking organizations that supply firearms to the Mexican Drug Trafficking Organizations (DTO’s) that use these weapons to terrorize the good people on both sides of the U.S./Mexican border in furtherance of their illicit, criminal activities. This investigation was approved by the Phoenix Field Division and the United States Attorney’s Office for the District of Arizona. The investigation was subsequently approved by the multi-agency Organized Crime and Drug Enforcement Task Force (OCDETF) Program. The purpose of this investigation is to dismantle a transnational organization believed to be responsible for trafficking weapons into Mexico by dismantling its leadership.

Talking Points

- The Fast and Furious investigation is NOT synonymous with Project Gunrunner. Project Gunrunner is a comprehensive strategy comprised of hundreds of independent firearms trafficking investigations spread out among all 25 of ATF’s field divisions. The goal of Project Gunrunner is to reduce firearms-related violent crime associated with Mexican criminal organizations operating in the U.S. and Mexico by preventing these organizations from unlawfully acquiring and trafficking firearms.
- The Fast and Furious investigation is NOT another name for the Project Gunrunner Cartel Focused Strategy. Deployed in September 2010, the Cartel Strategy reflects ATF’s increased national emphasis on firearms trafficking enforcement related to the Southwest Border and the importance of identifying and prioritizing trafficking investigations where a nexus to Mexican Drug Trafficking Organizations (DTOs) and cartels may be established. On at least 27 occasions during the last 8 weeks the media has misrepresented this fact in large part due to bloggers erroneous postings.
- The Fast and Furious investigation has NOT been adjudicated. Although the defendants in this case have been indicted, the investigation is ongoing and the case is still open.
- The Fast and Furious investigation is NOT a rogue operation conducted by either the Phoenix Field Division or any of its enforcement groups. The operation had been briefed to higher levels of ATF management prior to implementation and at various times during the investigation.

- The details attributed to the Fast and Furious investigation by the news media are NOT all associated with the actual Fast and Furious investigation. At least two news organizations have reported on investigations in which they allege that ATF knowingly allowed firearms to be trafficked into Mexico from the United States. Fast and Furious is NOT the primary source of material for those allegations.
- The Fast and Furious investigation is NOT responsible for the deaths of CBP Agent Brian Terry and ICE Agent Jaime Zapata. Their murders are the direct and tragic result of violent criminal acts perpetrated by brazen criminals who have no respect for the rule of law or human life. **The firearms recovered near the scene of Agent Terry's death were not forensically linked to his murder.** Our hearts and prayers go out to the families of these brave agents.
- The Fast and Furious investigation is NOT part of, or associated with, other SWB firearms trafficking investigations. There are many separate and distinct firearms trafficking investigations into different criminal organizations by several different field offices.
- The Fast and Furious investigation is NOT the Laredo Zetas (b) (7)(C) case that was initiated by the Laredo field office of the Dallas Field Division in November 2010. A firearm purchased by (b) (7)(C) on or about October 10, 2010 was one of the firearms that were used in the assault on ICE Special Agent Victor Avila and murder of Special Agent Jaime Zapata in Mexico.
- The Fast and Furious investigation is NOT the Hobbs Firearm Traffickers case that targeted the (b) (7)(C) family. On March 25, 2010, the Las Cruces office of the Phoenix Field Division began this unrelated investigation into allegations of firearms trafficking by the (b) (7)(C) family.
- The 9th Circuit Court of Appeals ruled that firearms purchasers may actually lie on the ATF form 4473 as long as he/she is not aware that those firearms are for someone who could not buy them on their own.
- Due to the historic significance of firearms ownership along the Southwest border, it is not uncommon for firearms purchasers to buy 10 or more firearms at a time in that part of the country. Therefore, what may be considered a suspicious purchase in other parts of the country might be considered common place along the Southwest border.
- Just as each ATF field division emphasizes different strategies based on criminal trends and patterns and the types of crimes that plague each division's area of responsibility, each U.S. Attorney's Office has its own priorities and guidelines. In an area such as the Southwest Border where the purchase of large numbers of firearms is commonplace, the threshold for prosecution of federal firearms violations is much higher than in those areas where fewer people purchase multiple firearms.

3 | P a g e

TPs- What Fast and Furious is NOT
(4/19/2011)

For Internal Use Only

###

For Internal Use Only

From: (b) (7)(C)
Sent: Wednesday, April 20, 2011 8:49 AM
To: McDermond, James E.
Subject: RE: Letter to Marseille

10-4 working on the bullets

(b) (7)(C)
Chief
ATF Public Affairs Division
Washington, DC
Desk 202-648 (b) (7)(C)
Cell (b) (7)(C)

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From: McDermond, James E.
Sent: Wednesday, April 20, 2011 8:37 AM
To: (b) (7)(C)
Subject: Fw: Letter to Marisella

(b) (7)(C)

I asked (b) (7)(C) to provide you my comment on the F and F talking points. Also, attached is from Billy relative to the narrative for the Mexican AG.

I will come and see you at the first break.

Jim
James McDermond, Assistant Director - ATF

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From: Hoover, William J.
To: McDermond, James E.
Sent: Wed Apr 20 07:21:02 2011
Subject: FW: Letter to Marisella

Jim,

Please see the attached from the Director re our conversation last night. This is his shot at the narrative.

Thank you,

Billy

William J. Hoover
Deputy Director
Bureau of Alcohol, Tobacco, Firearms & Explosives
O) 202-648-8710

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From: (b) (7)(C) mailto:(b) (7)(C)
Sent: Tuesday, April 19, 2011 9:58 PM
To: Hoover, William J.
Cc: Melson, Kenneth E.
Subject: Letter to Marisella

this could be a start. All except a small part taken from DOJ responses to Congress. Ken.

From: (b) (7)(C)
Sent: Thursday, April 14, 2011 7:11 AM
To: McDermond, James E.
Subject: Re: Mexico Trace Statistics

No sir
(b) (7)(C)
Chief
ATF Public Affairs Division

From: McDermond, James E.
To: (b) (7)(C)
Sent: Thu Apr 14 07:10:57 2011
Subject: Re: Mexico Trace Statistics

(b) (7)(C)

Did you receive a response from the Director?

Jim
James McDermond, Assistant Director - ATF

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From: (b) (7)(C)
To: Melson, Kenneth E.
Cc: McDermond, James E.; Hoover, William J.; (b) (7)(C)
Sent: Wed Apr 13 17:16:32 2011
Subject: Mexico Trace Statistics

Director,

We were able to speak with (b) (7)(C) and get a definitive answer to your questions from last week regarding the number of successful traces from Mexico to the first retail purchaser (b) (3) (PL 111-11) as compared to the total number of firearms recovered in Mexico and traced (b) (3) (PL 111-11) for calendar year 2010.

Attached is a more in-depth analysis of the question you asked and I have taken the liberty of putting some of that information in the body of this email to assist you looking at it.

Q. What is the percentage of purchaser identified traces from Mexico?

A. The percentage Mexican traces that identify a first purchaser are:

Ø 2010 – 37.47%

Ø 2009 – 25.51%

Ø 2008 – 25.17%

Ø 2007 – 25.72%

Q. What are the top three reasons for an incomplete trace?

- A.
1. The lack of importer information entered for firearms submitted for tracing.
 2. The age of firearms submitted for tracing are older.
 3. Firearms submitted have incomplete descriptor data (missing make, serial number or model)

Q. What is the percentage of domestic traces that identify a first purchaser?

A. Percentages of domestic traces that identify a first purchaser:

Ø 2010 – 63.1%

Ø 2009 – 61.0%

Ø 2008 – 62.0%

Ø 2007 – 61.4%

If you prefer I can arrange another meeting to discuss this or other questions you might have unless you are good with it in which case we can start to make arrangements to launch the information.

If we do launch the information we would utilize the same media strategy we had planned on which is to bring in two outlets, The center for public integrity and Hearst News papers and then have others relay on their reporting to explain the numbers.

Thank you

(b) (7)(C)

(b) (7)(C)

Chief

ATF Public Affairs Division

Washington, DC

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

Cell (b) (7)(C)

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From: (b) (7)(C)

Sent: Wednesday, April 13, 2011 5:16 PM

To: Melson, Kenneth E.

CC: McDermond, James E.; Hoover, William J.; (b) (7)(C)

Subject: Mexico Trace Statistics

Attachments: 1 MexicanQuestions(4).docx

Director,

We were able to speak with (b) (7)(C) and get a definitive answer to your questions from last week regarding the number of successful traces from Mexico to the first retail purchaser (b) (3)(PL 111-1) compared to the total number of firearms recovered in Mexico and traced (b) (3)(PL 111-1) for calendar year 2010.

Attached is a more in-depth analysis of the question you asked and I have taken the liberty of putting some of that information in the body of this email to assist you looking at it.

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Ø 2008 – 25.17%

Ø 2007 – 25.72%

Q. What are the top three reasons for an incomplete trace?

- A.
1. The lack of importer information entered for firearms submitted for tracing.
 2. The age of firearms submitted for tracing are older.
 3. Firearms submitted have incomplete descriptor data (missing make, serial number or model)

Q. What is the percentage of domestic traces that identify a first purchaser?

A. Percentages of domestic traces that identify a first purchaser:

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Ø 2009 – 61.0%

Ø 2008 – 62.0%

Ø 2007 – 61.4%

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If we do launch the information we would utilize the same media strategy we had planned on which is to bring in two outlets, The center for public integrity and Hearst News papers and then have others relay on their reporting to explain the numbers.

Thank you

(b) (7)(C)

(b) (7)(C)

Chief

ATF Public Affairs Division

Washington, DC

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

Cell (b) (7)(C)

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Mexican Trace Data

(Continued)

(April 13, 2011)

Q. What is the percentage of domestic traces that identify a first purchaser?

A. Percentages of domestic traces that identify a first purchaser:

- 2010 – 63.1%
- 2009 – 61.0%
- 2008 – 62.0%
- 2007 – 61.4%

Q. Why are we more affective tracing firearms in the U.S. than in Mexico?

A. U.S. law enforcement does better tracing firearms than the Mexicans because we are American law enforcement submit their firearms for tracing in a more timely fashion. In addition, most U.S. police departments have dedicated people assigned to handle traces who are savvier at performing traces and providing all necessary information for a complete trace.

Q. What are the top reasons for an incomplete trace?

- A.
1. The lack of importer information entered for firearms submitted for tracing.
 2. The age of firearms submitted for tracing are older.
 3. Firearms submitted have incomplete descriptor data (missing make, serial number or model).

Q. What have we done to help the Mexicans do a better job tracing firearms?

A. ATF has done numerous things over the years to help Mexican law enforcement do a better job tracing firearms:

- ATF has provided training both in Mexico and in the U.S. to Mexican law enforcement.
- ATF has provided follow-up interaction with people trained.

2

- ATF employees at the Mexico country office and at the various consulate offices have submitted firearms traces for the Mexicans.
- ATF has had numerous meetings with all levels of Mexican law enforcement emphasizing the importance of tracing.
- eTrace 4.0 (Spanish Language version) was funded and designed by ATF for Mexican law enforcement to make tracing crime guns easier for non-English speaking countries.
- ATF employees have responded to seizure locations in Mexico with Mexican law enforcement to trace firearms recovered.

Q. What is the percentage of purchaser identified traces from Mexico?

A. The percentage Mexican traces that identify a first purchaser are:

- 2010 – 37.47%
- 2009 – 25.51%
- 2008 – 25.17%
- 2007 – 25.72%

From: (b) (7)(C)
Sent: Wednesday, April 13, 2011 2:21 PM
To: (b) (7)(C); Serres, Greg; Rubenstein, Steve R.; Stinnett, Melanie S.
Subject: RE: DRAFT RESPONSE TO CHAIRMAN ISSA'S 4/8/11 - PRESERVATION ORDER

Looks good to me

(b) (7)(C)
 Chief
 ATF Public Affairs Division
 Washington, DC
 Desk 202-648 (b) (7)(C)
 Cell (b) (7)(C)

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From: (b) (7)(C)
Sent: Wednesday, April 13, 2011 1:44 PM
To: (b) (7)(C); Serres, Greg; Rubenstein, Steve R.; Stinnett, Melanie S.
Subject: DRAFT RESPONSE TO CHAIRMAN ISSA'S 4/8/11 - PRESERVATION ORDER

Attached is a proposed response to Chairman Issa related to his 4/8/11 letter requesting a preservation order. Please review and comment. The Department has requested a draft today. I'd appreciate your review before it goes to Director and Deputy.

(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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without express authorization is strictly prohibited.

From: (b) (7)(C)
Sent: Tuesday, April 12, 2011 9:28 AM
To: (b) (7)(C) Rubenstein, Steve R.; Serres, Greg
Subject: RE: DRAFT RESPONSE TO SEN GRASSLEY - FOIA E-MAIL LETTER

Looks good to me.

(b) (7)(C)

(b) (7)(C)

Chief
ATF Public Affairs Division
Washington, DC
Desk 202-648-(b) (7)(C)
Cell (b) (7)(C)

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From: (b) (7)(C)
Sent: Tuesday, April 12, 2011 9:12 AM
To: (b) (7)(C) Rubenstein, Steve R.; Serres, Greg
Subject: DRAFT RESPONSE TO SEN GRASSLEY - FOIA E-MAIL LETTER

All:

Here is a first draft of the proposed response to Senator Grassley with attachments. Please take a look and provide comments in track changes. I'd like to get this to Director and Deputy for review this afternoon.

(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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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, April 22, 2011 11:24 AM
To: (b) (7)(C)
Subject: RE:
Attachments: (b) (7)(C) Mexico letter.docx; (b) (7)(C) MexicanQuestions(4).docx

(b) (7)(C) Here are my edits. The Qs&As may need some more work. I tried to quickly pull in more information. Let me know.

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From: (b) (7)(C)
Sent: Friday, April 22, 2011 9:57 AM
To: (b) (7)(C)
Subject:

(b) (7)(C) here they are thanks

(b) (7)(C)
Chief
ATF Public Affairs Division
Washington, DC
Desk 202-648-(b) (7)(C)
Cell (b) (7)(C)

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Mexican Trace Data

(Continued)

(April 13, 2011)

Q. What is the percentage of domestic traces that identify a first purchaser?

A. Percentages of domestic traces that identify a first purchaser:

- 2010 – 63.1%
- 2009 – 61.0%
- 2008 – 62.0%
- 2007 – 61.4%

Q. Why are we in the U.S. more effective tracing firearms than Mexico?

A. Firearms tracing has been used by U.S. law enforcement for decades. U.S. law enforcement officers have gained significant knowledge and experience during these years, thus enabling them to increase the number of successful traces. One factor resulting in a successful firearms trace is being able to properly identify firearms information. Mexican officials do not have the experience or knowledge for identifying U.S. firearms. Recognizing this, ATF developed Spanish eTrace 4.0 (Spanish Language version) to assist Mexico in achieving more successful firearms traces. The most common reason a trace is unsuccessful is because the law enforcement agency gives an inaccurate description of the make and model of the firearm.

Q. What are the top reasons for an incomplete trace?

1. Inaccurate description of the make and model of the firearm being submitted for tracing.
2. Due to the age of the firearm, it may not have a serial number. Before the federal Gun Control Act of 1968, manufacturers were not required to give each gun an individual serial number.
3. Firearms submitted have incomplete descriptor data (missing make, serial number or model).

Q. What has ATF done to help the Mexican government do a better job tracing firearms?

A. ATF has done numerous things over the years to improve successful traces submitted by Mexican law enforcement.

- ATF has provided firearms identification and recognition, firearms markings and toolmark examination and serial number restoration training both in Mexico and in the United States to Mexican law enforcement.
- ATF has provided eTrace 4.0 web-based, bi-lingual (English and Spanish) firearms tracing system to available accredited domestic and international law enforcement agencies to assist in the tracing of U.S.-sourced firearms.
- Through eTrace, law enforcement agencies can electronically submit firearms trace requests, monitor the progress of traces, retrieve completed trace results and query firearms trace-related data.
- The eTrace system currently has more than 17,000 individual law enforcement user accounts. International tracing supports joint law enforcement projects through programs such as the Southwest Border Initiative and the Caribbean Community Initiative.

ATF personnel assigned to the Mexico Country Office and at the various consulate offices throughout Mexico have submitted firearms traces for the Mexican law enforcement.

- ATF has continued to provide education and training to all levels of Mexican law enforcement in the importance of tracing firearms.
- eTrace 4.0 (Spanish Language version) was funded and designed by ATF for Mexican law enforcement to make tracing crime guns easier for non-English speaking countries.
- ATF personnel have responded with Mexican law enforcement officials to seizure locations in Mexico to trace firearms recovered.

Q. What is the percentage of purchaser identified traces from Mexico?

A. The percentage Mexican traces that identify a first purchaser are:

- 2010 – 37.47%
- 2009 – 25.51%
- 2008 – 25.17%
- 2007 – 25.72%

From: Burton, Faith (SMO)(b) (6)
Sent: Wednesday, February 23, 2011 6:16:18 PM
To: Burke, Dennis (USAAZ); Weinstein, Jason (CRM); [REDACTED];
McDermond, James E.; [REDACTED] Sweeney, Laura (SMO);
[REDACTED] Schmalzer, Tracy (SMO)
CC: Gaston, Molly (SMO); Weich, Ron (SMO)
Subject: Draft Response to the CBS story on ATF - for use if asked -

I've talked with Laura Sweeney, who's crashing on the ICE shooting arrest and Tracy is traveling with the AG. If ATF is asked about the CBS story that will run tonight, what about saying:



DP

Please comment. Anything more we should add?

From: [REDACTED]
Sent: Tuesday, March 22, 2011 12:26 PM
To: Chait, Mark R.; McMahon, William G.; [REDACTED]
Subject: Fw: Draft response to HJC Chairman Smith's letter of 3/9/11 re Gunrunner/ Fast & Furious allegations - for comment asap. Thanks. FB
Attachments: smith gunrunner clean.docx

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From: Burton, Faith (SMO)
To: [REDACTED]; McDermond, James E.; [REDACTED]; Hoover, William J.; Melson, Kenneth E.
Cc: Gaston, Molly (SMO); Burke, Dennis (USAAZ) ; Weinstein, Jason (CRM) ; Cunningham, Patrick (USAAZ)
Sent: Tue Mar 22 11:57:09 2011
Subject: Draft response to HJC Chairman Smith's letter of 3/9/11 re Gunrunner/ Fast & Furious allegations - for comment asap. Thanks. FB

<<smith gunrunner clean.docx>>

From: [REDACTED]
Sent: Thursday, March 17, 2011 4:32 PM
To: Melson, Kenneth E.; Hoover, William J.; McDermond, James E.; [REDACTED]
Subject: FW: Issa

fyi

From: [REDACTED]
Sent: Thursday, March 17, 2011 4:32 PM
To: 'Weich, Ron (SMO)'; Burton, Faith (SMO)
Cc: Weinstein, Jason (CRM)
Subject: Issa

Fyi. Let's hope staff is successful in walking him back. But this sounds like a guy moving towards a Hearing.

http://www.youtube.com/watch?v=GrBbt6yxvFE&feature=player_embedded

[REDACTED]
*DOJ- Bureau of Alcohol, Tobacco, Firearms & Explosives
Chief - Office of Legislative Affairs*

[REDACTED]
202 [REDACTED]
202.648.9708 (fax)

From: [REDACTED]
Sent: Wednesday, March 16, 2011 5:25 PM
To: Hoover, William J.; [REDACTED]
Subject: Re: 3/9 letter from HJC Republicans re: Gunrunner -- Have you all seen this?

They asked for feedback on Q5, but that is all.

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From: Hoover, William J.
To: [REDACTED]
Sent: Wed Mar 16 17:21:12 2011
Subject: Fw: 3/9 letter from HJC Republicans re: Gunrunner -- Have you all seen this?

Have you guys been working with OLA on this?

Billy

William J. Hoover
Deputy Director
Bureau of Alcohol, Tobacco, Firearms & Explosives
O) 202-648-8710

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From: Weinstein, Jason
To: Hoover, William J.
Sent: Wed Mar 16 16:20:09 2011
Subject: Fw: 3/9 letter from HJC Republicans re: Gunrunner -- Have you all seen this?

Jason M. Weinstein
Deputy Assistant Attorney General
Criminal Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Office: (202) 305-9827
Cell: (b) (6)

From: Weinstein, Jason
To: Burton, Faith (SMO); Burke, Dennis (USAAZ) <DBurke1@usa.doj.gov>

Employee 5

11

Cc: Gaston, Molly (SMO) (b) (6); 'Axelrod, Matthew'; 'Weich, Ron'
<Ron.Weich@SMOJMD.USDOJ.gov>
Sent: Wed Mar 16 15:43:39 2011
Subject: RE: 3/9 letter from HJC Republicans re: Gunrunner -- Have you all seen this?

Here's a first cut at a response to HJC. DP

DP

From: Burton, Faith (SMO) (b) (6)
Sent: Tuesday, March 15, 2011 3:19 PM
To: Weinstein, Jason; Burke, Dennis (USAAZ)
Cc: Gaston, Molly (SMO)
Subject: FW: 3/9 letter from HJC Republicans re: Gunrunner -- Have you all seen this?

From: Hoover, William J.
Sent: Wednesday, March 16, 2011 5:21 PM
To: [REDACTED]
Subject: Fw: 3/9 letter from HJC Republicans re: Gunrunner -- Have you all seen this?
Attachments: smith.HJC response.3-15-11.docx

Importance: High

Have you guys been working with OLA on this?

Billy

William J. Hoover
Deputy Director
Bureau of Alcohol, Tobacco, Firearms & Explosives
O) 202-648-8710

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From: Weinstein, Jason
To: Hoover, William J.
Sent: Wed Mar 16 16:20:09 2011
Subject: Fw: 3/9 letter from HJC Republicans re: Gunrunner -- Have you all seen this?

Jason M. Weinstein
Deputy Assistant Attorney General
Criminal Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Office: (202) 305-9827
Cell: (b) (6)

From: Weinstein, Jason
To: Burton, Faith (SMO); Burke, Dennis (USAAZ) (b) (6)
Cc: Gaston, Molly (SMO) (b) (6); 'Axelrod, Matthew'; 'Weich, Ron'
(b) (6)
Sent: Wed Mar 16 15:43:39 2011
Subject: RE: 3/9 letter from HJC Republicans re: Gunrunner -- Have you all seen this?

Here's a first cut at a response to HJC.

DP

DP

From: Burton, Faith (SMO) [mailto:(b) (6)]
Sent: Tuesday, March 15, 2011 3:19 PM
To: Weinstein, Jason; Burke, Dennis (USAAZ)
Cc: Gaston, Molly (SMO)
Subject: FW: 3/9 letter from HJC Republicans re: Gunrunner -- Have you all seen this?

From: [REDACTED]
Sent: Wednesday, March 16, 2011 10:43 AM
To: 'Weich, Ron (SMO)'; Weinstein, Jason (CRM)
CC: Hoover, William J.; Gaston, Molly (SMO); Burton, Faith (SMO); Wade, Jill C (SMO); 'Agrast, Mark D. (SMO)'; McDermond, James E.; (b) (7)(C); [REDACTED]
Subject: RE: Letter from Chairman Issa

Whoops. Sorry Jason. Looping you in.

[REDACTED]
*DOJ- Bureau of Alcohol, Tobacco, Firearms & Explosives
Chief - Office of Legislative Affairs*

[REDACTED]
202.648.7453 (office)
202.648.9708 (fax)

From: [REDACTED]
Sent: Wednesday, March 16, 2011 10:34 AM
To: Weich, Ron (SMO)
Cc: Hoover, William J.; Gaston, Molly (SMO); Burton, Faith (SMO); 'Wade, Jill C'; 'Agrast, Mark D. (SMO)'; McDermond, James E.; [REDACTED]; [REDACTED]
Subject: FW: Letter from Chairman Issa

Ron,

See the attached letter from Chairman Issa. I assume that DOJ/OLA will take the lead on answering this. Let me know if otherwise. Thank you.

[REDACTED]
*DOJ- Bureau of Alcohol, Tobacco, Firearms & Explosives
Chief - Office of Legislative Affairs*

[REDACTED]
202.648.7453 (office)
202.648.9708 (fax)

From: Pinto, Ashok [mailto:Ashok.Pinto@mail.house.gov]
Sent: Wednesday, March 16, 2011 10:26 AM
To: Melson, Kenneth E.
Cc: [REDACTED]
Subject: Letter from Chairman Issa

Dear Acting Director Melson:

Attached is a letter from Chairman Issa. Please acknowledge receipt of this message.

Sincerely,

Ashok Pinto

Ashok M. Pinto
U.S. House of Representatives
Committee on Oversight and Government Reform

Employee 5
Darrell Issa, Chairman
(202) 225-5074

From: [REDACTED]
Sent: Wednesday, March 16, 2011 10:34 AM
To: Weich, Ron (SMO)
CC: Hoover, William J.; Gaston, Molly (SMO); Burton, Faith (SMO); Wade, Jill C (SMO); 'Agrast, Mark D. (SMO)'; McDermond, James E.; [REDACTED]
Subject: FW: Letter from Chairman Issa
Attachments: 3-16-2011 Letter.pdf

Ron,

See the attached letter from Chairman Issa. I assume that DOJ/OLA will take the lead on answering this. Let me know if otherwise. Thank you.

[REDACTED]
*DOJ- Bureau of Alcohol, Tobacco, Firearms & Explosives
Chief - Office of Legislative Affairs*

[REDACTED]
202.648.9708 (fax)

From: Pinto, Ashok [mailto:Ashok.Pinto@mail.house.gov]
Sent: Wednesday, March 16, 2011 10:26 AM
To: Melson, Kenneth E.
Cc: [REDACTED]
Subject: Letter from Chairman Issa

Dear Acting Director Melson:

Attached is a letter from Chairman Issa. Please acknowledge receipt of this message.

Sincerely,

Ashok Pinto

Ashok M. Pinto
U.S. House of Representatives
Committee on Oversight and Government Reform
Darrell Issa, Chairman
(202) 225-5074

From: [REDACTED]
Sent: Tuesday, March 15, 2011 9:42 PM
To: Hoover, William J.; [REDACTED]
Subject: Re: Letter from the Hon. Lamar Smith - Re - ATF Operation Gunrunner

Yep. That's the e-trace stuff they're looking for (my earlier email). We're on it. DP
DP [REDACTED] Reyes briefing went great. Director did a bang-up job. I heard the active listening session was "interesting." Have a nice evening.

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From: Hoover, William J.
To: [REDACTED]
Sent: Tue Mar 15 21:04:45 2011
Subject: Fw: Letter from the Hon. Lamar Smith - Re - ATF Operation Gunrunner

Have you guys seen this? Are we coordinating with OLA?

Billy

William J. Hoover
Deputy Director
Bureau of Alcohol, Tobacco, Firearms & Explosives
O) 202-648-8710

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From: Axelrod, Matthew (ODAG)
To: Hoover, William J.
Sent: Tue Mar 15 17:26:25 2011
Subject: FW: Letter from the Hon. Lamar Smith - Re - ATF Operation Gunrunner

Billy, you guys have seen this, right? DP

DP [REDACTED]

From: Burrows, Charlotte (SMO)
Sent: Tuesday, March 15, 2011 4:15 PM
To: Axelrod, Matthew (ODAG)
Cc: Monaco, Lisa (ODAG); Goldberg, Stuart (ODAG); Columbus, Eric (ODAG)
Subject: FW: Letter from the Hon. Lamar Smith - Re - ATF Operation Gunrunner

You've likely already seen this latest letter from Chairman Smith re: Operation Gunrunner, but am

Employee 5
forwarding just in case. C

28

From: Cole, Karen (ODAG)
Sent: Tuesday, March 15, 2011 4:13 PM
To: Burrows, Charlotte (SMO)
Subject: Letter from the Hon. Lamar Smith - Re - ATF Operation Gunrunner

<<Untitled.PDF - Adobe Acrobat Pro.pdf>>

From: Hoover, William J.
Sent: Tuesday, March 15, 2011 9:04 PM
To: [REDACTED]
Subject: Fw: Letter from the Hon. Lamar Smith - Re - ATF Operation Gunrunner
Attachments: Untitled.PDF - Adobe Acrobat Pro.pdf

Have you guys seen this? Are we coordinating with OLA?

Billy

William J. Hoover
Deputy Director
Bureau of Alcohol, Tobacco, Firearms & Explosives
O) 202-648-8710

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From: Axelrod, Matthew (ODAG)
To: Hoover, William J.
Sent: Tue Mar 15 17:26:25 2011
Subject: FW: Letter from the Hon. Lamar Smith - Re - ATF Operation Gunrunner

Billy, you guys have seen this, right? DP [REDACTED]

DP [REDACTED]

From: Burrows, Charlotte (SMO)
Sent: Tuesday, March 15, 2011 4:15 PM
To: Axelrod, Matthew (ODAG)
Cc: Monaco, Lisa (ODAG); Goldberg, Stuart (ODAG); Columbus, Eric (ODAG)
Subject: FW: Letter from the Hon. Lamar Smith - Re - ATF Operation Gunrunner

You've likely already seen this latest letter from Chairman Smith re: Operation Gunrunner, but am forwarding just in case. C

From: Cole, Karen (ODAG)
Sent: Tuesday, March 15, 2011 4:13 PM
To: Burrows, Charlotte (SMO)
Subject: Letter from the Hon. Lamar Smith - Re - ATF Operation Gunrunner

<<Untitled.PDF - Adobe Acrobat Pro.pdf>>

LAMAR S. SMITH, Texas
CHAIRMAN

Employee 5
F. JAMES SENSENBRENNER, Jr., Wisconsin
HOWARD COBLE, North Carolina
ELTON GALLEGLY, California
BOB GUDDALATTE, Virginia
DANIEL E. LUNGREN, California
STEVE CHABOT, Ohio
GARHILL E. ISSA, California
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J. RANDY FORBES, Virginia
STEVE KING, Iowa
TRENT FRANKS, Arizona
LOUIE GOHmert, Texas
JIM JORDAN, Ohio
TED POE, Texas
JASON CHAFFETZ, Utah
TOM REESE, New York
TIM GRIFFIN, Arkansas
TOM MARINO, Pennsylvania
TROY GOWDY, South Carolina
DENNIS ROSS, Florida
SANDY ADAMS, Florida
IEN CLAYTON, Arizona

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

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31
JOHN CONYERS, JR., Michigan
RANKING MEMBER

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MELVIN L. WATT, North Carolina
ZOE LOPGREN, California
SHELLA JACKSON LEE, Texas
MAXINE WATERS, California
STEVE COHEN, Tennessee
HENRY C. "HANK" JOHNSON, JR., Georgia
PEDRO R. PIERLUISI, Puerto Rico
MIKE QUIGLEY, Illinois
JUDY CHU, California
TED DEUTCH, Florida
LINDA T. SANCHEZ, California
DEBBIE WASSERMAN SCHULTZ, Florida

March 9, 2011

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

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

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/>.

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>.

James Smith

Lehman

Tom Marino

Frey Gordy

Judy Forbes

Elton Gallegly

~~ATM~~

Jim Lamm

Quil E. Jones

Tommy H. Smith

Kent Starks

Bob Goodlatte

Howard Coble

Steve King

Myles, Tonia (JMD)

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

Importance: High

Pis log the attached ltr. Thanks.

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

[REDACTED]

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: [REDACTED]
Sent: Tuesday, March 15, 2011 6:02 PM
To: [REDACTED]
Subject: Fw: 2011-03-15 CEG to DEA
Attachments: 2011-03-15 CEG to DEA (Briefing and Documents).pdf

Importance: High

Hmmmmmm.

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From: Burton, Faith (SMO)
To: Weich, Ron (SMO) ; Weinstein, Jason (CRM) ; Burke, Dennis (USAAZ) ; McDermond, James E.; [REDACTED]
[REDACTED] Raman, Mythili (CRM)
Cc: Gaston, Molly (SMO) ; Agrast, Mark D. (SMO)
Sent: Tue Mar 15 17:43:32 2011
Subject: FW: 2011-03-15 CEG to DEA

FYI. We'll coordinate with DEA on this.

From: Downey, Brian (Judiciary-Rep) [mailto:Brian_Downey@judiciary-rep.senate.gov]
Sent: Tuesday, March 15, 2011 4:51 PM
To: Leonhart, Michele M. (DEA-US); Masumoto, Scott S. (DEA-US); 'gary.tuggle@usdoj.gov'; Cooper, Mary Irene (DEA-US); Shoemaker, Sheldon R. (DEA-US); Burton, Faith (SMO); Gaston, Molly (SMO)
Cc: CEG (Judiciary-Rep); Foster, Jason (Judiciary-Rep)
Subject: 2011-03-15 CEG to DEA
Importance: High

Hello,

Please find attached a letter from Senator Grassley. Please confirm receipt and ensure that all formal correspondence on this matter is sent electronically in PDF format to ceg@judiciary-rep.senate.gov (cc'd above). If you have any questions about this matter, please contact me directly. Thank you.

Sincerely,

Brian M. Downey
Investigator
Ranking Member Charles E. Grassley
U.S. Senate Committee on the Judiciary
Washington, DC
(P) 202-224-5225
(F) 202-224-3799

From: [REDACTED]
Sent: Monday, March 14, 2011 10:37 AM
To: Sullivan, Bill (JMD)
CC: Gaston, Molly (SMO); Burton, Faith (SMO); Weich, Ron (SMO); Wade, Jill C (SMO); Chait, Mark R.; McDermond, James E.; [REDACTED]; [REDACTED]
Subject: RE: Gunrunner

Bill,

I am checking. But know that this is a very sensitive subject. I would suggest that you reach out to Faith Burton for guidance. DP

DP

[REDACTED]
 DOJ- Bureau of Alcohol, Tobacco, Firearms & Explosives
 Chief - Office of Legislative Affairs

202 [REDACTED]
 202.648.9708 (fax)

From: Sullivan, Bill (JMD) [mailto:Bill.Sullivan@usdoj.gov]
Sent: Monday, March 14, 2011 10:33 AM
To: [REDACTED]
Cc: Gaston, Molly (SMO); Burton, Faith (SMO); Weich, Ron (SMO); Wade, Jill C (SMO)
Subject: RE: Gunrunner

Is it accurate to have concluded that, from the article, 602 guns have been recovered in the US after crimes?

From: [REDACTED] (ATF)
Sent: Friday, March 11, 2011 11:25 AM
To: Sullivan, Bill (JMD)
Cc: Gaston, Molly (SMO); Burton, Faith (SMO); Weich, Ron (SMO); Wade, Jill C (SMO)
Subject: RE: Gunrunner

DP

Looping in OLA.

[REDACTED]
 DOJ- Bureau of Alcohol, Tobacco, Firearms & Explosives
 Chief - Office of Legislative Affairs

202 [REDACTED]
 202.648.9708 (fax)

From: Sullivan, Bill (JMD) [mailto:Bill.Sullivan@usdoj.gov]
Sent: Friday, March 11, 2011 11:20 AM
To: [REDACTED]; Jordan, Wyevetra G (JMD); Lucas, Daniel (JMD)
Subject: Fw: Gunrunner

Greg - can you all help me with this request? I hope all is well.

From: Myers, Stephanie [mailto:Stephanie.Myers@mail.house.gov]
Sent: Friday, March 11, 2011 09:37 AM
To: Sullivan, Bill (JMD)

Subject: Gunrunner

Hey Bill,

So I was just re-reading a story on Gunrunner from Main Justice this morning. It says 797 Fast & Furious guns “were recovered in Mexico and the U.S. after they were used in crimes. Of those crime guns, 195 were recovered in Mexico.” That means 602 were recovered in the U.S. after crimes.

Can you get me some info on what kinds of crimes those guns were involved in? Especially the serious ones, and whether the possessor was prohibited from having it (i.e. the person obtained it through a straw purchase). I realize it may take some time.

Stephanie Myers
House Committee on Appropriations
Subcommittee on Commerce, Justice, Science, and Related Agencies
202-225-0717

From: [REDACTED]
Sent: Monday, March 14, 2011 10:35 AM
To: Chait, Mark R.; [REDACTED]; McDermond, James E.
CC: [REDACTED]; McMahon, William G.
Subject: FW: Gunrunner

See chain below. Not sure what has been "released" either in the press or through the indictment. Can we say anything. Thx.

[REDACTED]
DOJ- Bureau of Alcohol, Tobacco, Firearms & Explosives
Chief - Office of Legislative Affairs

[REDACTED]
202 [REDACTED]
202.648.9708 (fax)

From: Sullivan, Bill (JMD) [mailto:(b) (6)]
Sent: Monday, March 14, 2011 10:33 AM
To: [REDACTED]
Cc: Gaston, Molly (SMO); Burton, Faith (SMO); Weich, Ron (SMO); Wade, Jill C (SMO)
Subject: RE: Gunrunner

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Sent: Friday, March 11, 2011 11:25 AM
To: Sullivan, Bill (JMD)
Cc: Gaston, Molly (SMO); Burton, Faith (SMO); Weich, Ron (SMO); Wade, Jill C (SMO)
Subject: RE: Gunrunner

DP

Looping in OLA.

[REDACTED]
DOJ- Bureau of Alcohol, Tobacco, Firearms & Explosives
Chief - Office of Legislative Affairs

[REDACTED]
202 [REDACTED]
202.648.9708 (fax)

From: Sullivan, Bill (JMD) [mailto:(b) (6)]
Sent: Friday, March 11, 2011 11:20 AM
To: [REDACTED]; Jordan, Wyevetra G (JMD); Lucas, Daniel (JMD)
Subject: Fw: Gunrunner

Greg - can you all help me with this request? I hope all is well.

From: Myers, Stephanie [mailto:Stephanie.Myers@mail.house.gov]
Sent: Friday, March 11, 2011 09:37 AM
To: Sullivan, Bill (JMD)
Subject: Gunrunner

Hey Bill,

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Stephanie Myers
House Committee on Appropriations
Subcommittee on Commerce, Justice, Science, and Related Agencies
202-225-0717

From: Hoover, William J.
Sent: Wednesday, March 09, 2011 5:11:57 PM
To: Melson, Kenneth E.
CC: McDermond, James E.; Chait, Mark R.; [REDACTED]; [REDACTED]
Subject: FW: development re Gunrunner oversight (incoming Leahy letter) --
Attachments: 3-9-11 PJJ to Holder Re - NRA letter on Project Gunrunner.pdf

As info.

Billy

William J. Hoover
Deputy Director
Bureau of Alcohol, Tobacco, Firearms & Explosives
O) 202-648-8710

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From: Smith, Brad (ODAG) [mailto:(b) (6)]
Sent: Wednesday, March 09, 2011 5:10 PM
To: Hoover, William J.
Subject: FW: development re Gunrunner oversight (incoming Leahy letter) --

FYI

From: Weich, Ron (SMO)
Sent: Wednesday, March 09, 2011 5:07 PM
To: Wilkinson, Monty (OAG); Richardson, Margaret (SMO); Monaco, Lisa (ODAG); Smith, Brad (ODAG); Miller, Matthew A (SMO); Schmalzer, Tracy (SMO); Burton, Faith (SMO); Gaston, Molly (SMO); [REDACTED] (ATF); Agrast, Mark D. (SMO)
Subject: RE: development re Gunrunner oversight (incoming Leahy letter) --

And here is the Leahy letter. We will try to reply quickly.



3-9-11 PJJ to
Holder Re -
NRA letter on
Project
Gunrunner.pdf
(42 kB)

From: Weich, Ron (SMO)
Sent: Wednesday, March 09, 2011 3:36 PM
To: Wilkinson, Monty (OAG); Richardson, Margaret (SMO); Monaco, Lisa (ODAG); Smith, Brad (ODAG); Miller, Matthew A (SMO); Schmalzer, Tracy (SMO); Burton, Faith (SMO); Gaston, Molly (SMO); [REDACTED] (ATF); Agrast, Mark D. (SMO)
Subject: RE: development re Gunrunner oversight (incoming Leahy letter) --

[REDACTED] informs me that the NRA has written to the House Judiciary Committee as well. Safe to assume that Chairman Smith will approach this differently than Chairman Leahy. Here is the text of that letter:

March 9, 2011

Dear Chairman Smith and Ranking Member Conyers:

I am writing to ask you to conduct expedited hearings on firearms trafficking enforcement tactics used by the Bureau of Alcohol, Tobacco, Firearms and Explosives.

As the nation's oldest and largest group dedicated to the civil rights of firearms owners, we have felt firsthand the effects of recent violence along the Mexican border. Among the victims of the bloodshed was NRA Life member Robert Krentz, murdered on his Arizona ranch by border-crossing criminals. We've also seen the violence exploited as an excuse for promoting many gun control proposals, most of which had been suggested earlier as "solutions" to other problems.

Law enforcement agencies have sufficient laws at their disposal to address this crisis. Among the relevant laws are those outlawing transfers to prohibited persons such as illegal aliens and nonimmigrant aliens, transfers for use in violent and drug trafficking crimes, and illegal exportation of firearms and ammunition. Current and proposed laws that simply affect honest Americans shouldn't be any part of that plan.

To be clear, the National Rifle Association strongly supports the efforts of federal, state and local law enforcement officials to disrupt criminal enterprises, and thousands of our members proudly serve in those agencies. However, the Department of Justice's Inspector General has criticized the BATFE for focusing on investigations of straw purchasers "rather than on higher-level traffickers, smugglers, and the ultimate recipients of the trafficked guns." And more recent national media reports have raised very serious allegations that even while the Inspector General's review was going on, BATFE leaders were undertaking a new approach to the issue—an approach that can only be called wrongheaded, foolish and reportedly deadly.

Their project—known as "Fast and Furious" and apparently conducted over the strong objections of rank and file agents—reportedly allowed over 2,000 firearms to be sold to individuals already linked to Mexican drug cartels. Many of those transactions were reported as suspicious by the licensed firearms

dealers themselves, but BATFE reportedly encouraged them to proceed with these sales, which the dealers would otherwise have turned down. Hundreds of those guns have reportedly been traced to criminal activity so far, including two that were discovered at the scene of a shootout that claimed the life of a U.S. Border Patrol agent.

It's tragically ironic that while this plan was apparently unraveling, the BATFE was also seeking White House approval to demand reporting of certain multiple rifle sales. That reporting requirement would flood the agency with even more reports of legal transactions, while likely driving criminal traffickers further underground.

We are clearly at a critical point on this issue. Without aggressive enforcement of existing laws, the situation on the border will continue to deteriorate, claiming the lives of innocent citizens and law enforcement personnel alike. Yet reckless enforcement tactics may already have cost lives, while ineffective regulatory requirements would waste scarce resources and undermine Americans' Second Amendment rights.

Oversight of these serious problems should not be conducted by the very agencies that reportedly created them. Therefore, we respectfully urge you to use every power at your disposal to review the BATFE's investigative tactics and regulatory proposals with respect to southwest border issues.

The investigation should consider the effectiveness of past BATFE enforcement tactics, as well as the conduct of the "Fast and Furious" operation and the bureau's response to internal criticism of that initiative. Any investigation should also examine the responses by the BATFE and the Department of Justice to earlier congressional inquiries about the "Fast and Furious" program. (In particular, there seems to be good reason to question the Justice Department's statement on February 4 that the BATFE never sanctioned the sale of guns "to a straw purchaser who then transported them into Mexico.")

We greatly appreciate your attention to this issue. If you have any questions, please don't hesitate to contact me personally.

Sincerely,

Chris W. Cox

Executive Director

NRA Institute for Legislative Action

From: Weich, Ron (SMO)

Sent: Wednesday, March 09, 2011 3:24 PM

To: Wilkinson, Monty (OAG); Richardson, Margaret (SMO); Monaco, Lisa (ODAG); Smith, Brad (ODAG); Miller, Matthew A (SMO); Schmalzer, Tracy (SMO); Burton, Faith (SMO); Gaston, Molly (SMO); [REDACTED] (ATF); Agrast, Mark D. (SMO)

Subject: development re Gunrunner oversight (incoming Leahy letter) --

In separate letters, Sen. Grassley and the NRA have written to Sen. Leahy demanding SJC hearings on the Gunrunner allegations. I am told that Sen. Leahy will reject the request in light of the OIG review, but at the same time he will write to the AG seeking the status of that review and asking whether Gunrunner is an ongoing law enforcement operation. Leahy intends this to be a friendly letter, but some may read it as Leahy "joining" the oversight activity.

From: [REDACTED]
Sent: Wednesday, March 09, 2011 3:25:52 PM
To: Melson, Kenneth E.; Hoover, William J.; McDermond, James E.
CC: [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]
Subject: FW: development re Gunrunner oversight (incoming Leahy letter) --

Fyi.

[REDACTED]
*DOJ- Bureau of Alcohol, Tobacco, Firearms & Explosives
Chief - Office of Legislative Affairs*

[REDACTED]
202 [REDACTED]
202.648.9708 (fax)

From: Weich, Ron (SMO) [mailto:(b) (6)]
Sent: Wednesday, March 09, 2011 3:24 PM
To: Wilkinson, Monty (OAG); Richardson, Margaret (SMO); Monaco, Lisa (ODAG); Smith, Brad (ODAG); Miller, Matthew A (SMO); Schmalzer, Tracy (SMO); Burton, Faith (SMO); Gaston, Molly (SMO); [REDACTED] Agrast, Mark D. (SMO)
Subject: development re Gunrunner oversight (incoming Leahy letter) --

In separate letters, Sen. Grassley and the NRA have written to Sen. Leahy demanding SJC hearings on the Gunrunner allegations. I am told that Sen. Leahy will reject the request in light of the OIG review, but at the same time he will write to the AG seeking the status of that review and asking whether Gunrunner is an ongoing law enforcement operation. Leahy intends this to be a friendly letter, but some may read it as Leahy "joining" the oversight activity.

From: McDermond, James E.
Sent: Saturday, March 05, 2011 7:53 AM
To: [REDACTED]
Subject: Fw: 2011-03-04 CEG to ATF
Attachments: 2011-03-04 CEG to ATF.pdf

Importance: High

[REDACTED]
Round 4. See below.

Jim
James McDermond, Assistant Director - ATF

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From: Melson, Kenneth E.
To: Chait, Mark R.; Hoover, William J.; McDermond, James E.; [REDACTED]; [REDACTED]
Sent: Fri Mar 04 19:46:38 2011
Subject: Fw: 2011-03-04 CEG to ATF

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From: Downey, Brian (Judiciary-Rep)
To: [REDACTED]; Melson, Kenneth E.; Hoover, William J.
Cc: CEG (Judiciary-Rep) ; Foster, Jason (Judiciary-Rep) ; Leavitt, Tristan (Judiciary-Rep) ; 'Faith.Burton@usdoj.gov' (Faith.Burton@usdoj.gov) ; Gaston, Molly (SMO) (Molly.Gaston@usdoj.gov) ; 'Edgar.Chen@usdoj.gov' (Edgar.Chen@usdoj.gov)
Sent: Fri Mar 04 19:36:01 2011
Subject: 2011-03-04 CEG to ATF

Please find attached a letter from Senator Grassley. Please ensure that all formal correspondence on this matter is sent electronically in PDF format to ceg@judiciary-rep.senate.gov (cc'd above). Please confirm receipt. Thanks.

Brian M. Downey

Employee 5

64

Investigator

Ranking Member Charles E. Grassley

U.S. Senate Committee on the Judiciary

Washington, DC

(P) 202-224-5225

(F) 202-224-3799

From: [REDACTED]
Sent: Saturday, March 05, 2011 3:56 AM
To: [REDACTED]
Subject: Re: 2011-03-04 CEG to ATF

Great fun!

[REDACTED]
Deputy Chief
ATF - Public Affairs
(202) [REDACTED]

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From: [REDACTED]
To: [REDACTED]
Sent: Fri Mar 04 20:39:08 2011
Subject: Re: 2011-03-04 CEG to ATF

Saddle up boys!!
[REDACTED]
Chief
ATF Public Affairs Division

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From: [REDACTED]
To: [REDACTED]; [REDACTED]
Sent: Fri Mar 04 20:29:19 2011
Subject: Re: 2011-03-04 CEG to ATF

We are getting Director up to speed. Chait and company have full details due to him by 1900 Sunday. He will be briefing the DAG Monday. We are on this.
[REDACTED]
Acting Chief of Staff
ATF Office of the Director
O: 202-[REDACTED]
C: [REDACTED]

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From: [REDACTED]
To: [REDACTED]; [REDACTED]; [REDACTED]
Sent: Fri Mar 04 20:26:15 2011
Subject: Fw: 2011-03-04 CEG to ATF

Once more into the breach gentlemen.....

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From: Downey, Brian (Judiciary-Rep)
To: [REDACTED]; Melson, Kenneth E.; Hoover, William J.
Cc: CEG (Judiciary-Rep) ; Foster, Jason (Judiciary-Rep) ; Leavitt, Tristan (Judiciary-Rep) ; 'Faith.Burton@usdoj.gov' (Faith.Burton@usdoj.gov) ; Gaston, Molly (SMO) (Molly.Gaston@usdoj.gov) ; 'Edgar.Chen@usdoj.gov' (Edgar.Chen@usdoj.gov)
Sent: Fri Mar 04 19:36:01 2011
Subject: 2011-03-04 CEG to ATF

Please find attached a letter from Senator Grassley. Please ensure that all formal correspondence on this matter is sent electronically in PDF format to ceg@judiciary-rep.senate.gov (cc'd above). Please confirm receipt. Thanks.

Brian M. Downey
Investigator
Ranking Member Charles E. Grassley
U.S. Senate Committee on the Judiciary
Washington, DC
(P) 202-224-5225
(F) 202-224-3799

From: [REDACTED]
Sent: Friday, March 04, 2011 10:06 PM
To: [REDACTED]
Subject: Re: 2011-03-04 CEG to ATF

Mo?

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Chief
ATF Public Affairs Division

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From: [REDACTED]
To: [REDACTED]; [REDACTED]
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We are getting Director up to speed. Chait and company have full details due to him by 1900 Sunday. He will be briefing the DAG Monday. We are on this.

[REDACTED]
Acting Chief of Staff
ATF Office of the Director
O: 202-[REDACTED]
C: [REDACTED]

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From: [REDACTED]