



Office of the Inspector General
United States Department of Justice

Statement of Michael E. Horowitz
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before the

House Committee on Oversight and Government Reform

concerning

Report by the Office of the Inspector General
on the Review of ATF's Operation Fast and Furious
and Related Matters

September 20, 2012

Good morning Mr. Chairman, Ranking Member Cummings, and Members of the Committee,

I appreciate having the opportunity to appear before you today to testify about the findings of my Office's report into ATF's Operation Fast and Furious and related matters, a report that details a pattern of serious failures in both ATF's and the U.S. Attorney's Office's handling of the investigations and the Department of Justice's response to Congressional inquiries about those flawed operations. This is my first opportunity to testify before the Congress since I was sworn in as the Department of Justice's Inspector General just five months ago.

During the confirmation process, I made a commitment to the Congress and the American people that I would continue the strong tradition of the Office of the Inspector General for independence, nonpartisanship, impartiality, and fairness. Those are the standards that I and the Office of the Inspector General applied in conducting the review of Operation Fast and Furious and related matters, and in preparing this report. As in all our work, we abided by one bedrock principle – to follow the facts and the evidence wherever they lead.

Methodology

As the report indicates, we reviewed over 100,000 documents and interviewed over 130 witnesses, many on multiple occasions. We decided what documents to request, and what interviews to conduct. The witnesses we interviewed served at all levels of the Department, ranging from the current and former Attorneys General, to the line agents serving in the field offices in Phoenix and Tucson, Arizona. Very few witnesses refused our request to be interviewed, and we have noted those instances in our report. The Justice Department provided us with access to the documents we requested, including post-February 4 material concerning the Department's representations to Congress.

We operated with complete and total independence in our search for the truth, and the decision about what to cover in this report and the conclusions that we reached were made by me and my Office, and by no one else.

I am pleased that we have been able to put forward to the Congress and the American people a full and complete recitation of the facts that we found, and the conclusions that we reached, with minimal redactions by the

Department to our report. The Administration made no redactions for Executive Privilege, even though our report evaluates in detail and reaches conclusions about the Department's post-February 4 actions in responding to Congress. Additionally, at our request, the Department has agreed to seek court authorization to unredact as much of the wiretap information as possible (consistent with privacy and ongoing law enforcement interests). If the court agrees to the Department's request, we will shortly issue a revised version of the report with this material unredacted.

Let me now turn to the substantive findings in our report.

Background

On October 31, 2009, special agents working in the Phoenix office of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) received information from a local gun store about the recent purchases of multiple AK-47 style rifles by four individuals. Agents began investigating the purchases and soon came to believe that the individuals were so-called "straw purchasers" involved in a large-scale gun trafficking organization responsible for buying guns for transport to violent Mexican drug trafficking organizations. This investigation was later named "Operation Fast and Furious."

By the time ATF and the U.S. Attorney's Office for the District of Arizona (U.S. Attorney's Office) publicly announced the indictment in the case on January 25, 2011, ATF agents had identified more than 40 subjects believed to be connected to a trafficking conspiracy responsible for purchasing over 2,000 firearms for approximately \$1.5 million in cash. The vast majority of the firearms purchased by Operation Fast and Furious subjects were AK-47 style rifles and FN Herstal 5.7 caliber pistols. During the course of the investigation, ATF agents seized only about 100 of the firearms purchased, the result of a strategy jointly pursued by ATF and the U.S. Attorney's Office that deferred taking overt enforcement action against the individual straw purchasers while seeking to build a case against the leaders of the organization.

Numerous firearms bought by straw purchasers were later recovered by law enforcement officials at crime scenes in Mexico and the United States. One such recovery occurred in connection with the tragic shooting death of a federal law enforcement agent, U.S. Customs and Border Protection Agent Brian Terry. On January 16, 2010, one of the straw purchasers, Jaime Avila, purchased three AK-47 style rifles from a Phoenix-area gun store. ATF agents

learned about that purchase 3 days later and, consistent with the investigative strategy in the case, made no effort to locate Avila or seize the rifles even though ATF had identified Avila as a suspect in November 2009. Two of the three rifles purchased by Avila on January 16 were recovered 11 months later at the scene of the murder of Agent Terry, who was shot and killed on December 14, 2010, as he tried to arrest persons believed to be illegally entering the United States.

The next day, and in response to Agent Terry's murder, ATF agents arrested Avila. Several weeks later, on January 19, 2011, the U.S. Attorney's Office indicted 20 Operation Fast and Furious straw purchasers and gun traffickers. As of September 1, 2012, 14 defendants, including Avila, have entered guilty pleas to one or more counts of the indictment.

The flaws in Operation Fast and Furious became widely publicized as a result of the willingness of a few ATF agents to publicly report what they knew about it, and the conduct of the investigation became the subject of a Congressional inquiry. On January 27, 2011, Senator Charles E. Grassley wrote to ATF Acting Director Kenneth Melson that the Senate Judiciary Committee had received allegations that ATF had "sanctioned the sale of hundreds of assault weapons to suspected straw purchasers," who then transported the firearms throughout the southwest border area and into Mexico. On February 4, 2011, the Department of Justice (Department) responded in writing by denying the allegations and asserting that "ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico." However, after examining how Operation Fast and Furious and other ATF firearms trafficking investigations were conducted, the Department withdrew the February 4 letter on December 2, 2011, because it contained "inaccuracies."

Also on January 27, 2011, Senator Grassley's staff brought the allegations of one ATF agent to the attention of the Office of the Inspector General (OIG). We interviewed the agent and began a preliminary inquiry into the matter. On February 28, 2011, Attorney General Eric Holder requested the OIG to conduct a review of Operation Fast and Furious, and we agreed to conduct the review.

During the course of our review we received information about other ATF firearms trafficking investigations that raised questions about how those investigations were conducted. Our investigation included a review of one of

them, Operation Wide Receiver, which was conducted by the Tucson office of ATF's Phoenix Field Division with the assistance of the U.S. Attorney's Office in 2006 and 2007, but which was later prosecuted by the Department's Criminal Division.

Findings

- **ATF and the U.S. Attorney's Office Share Equal Responsibility for the Strategic and Operational Failures in Operations Wide Receiver and Fast and Furious**
 - **The Failure to Adequately Consider Public Safety and the Lack of Sufficient Controls**

We concluded that both Operation Wide Receiver and Operation Fast and Furious were seriously flawed and supervised irresponsibly by ATF's Phoenix Field Division and the U.S. Attorney's Office, most significantly in their failure to adequately consider the risk to the public safety in the United States and Mexico. Both investigations sought to identify the higher reaches of firearms trafficking networks by deferring any overt law enforcement action against the individual straw purchasers – such as making arrests or seizing firearms – even when there was sufficient evidence to do so. The risk to public safety was immediately evident in both investigations. Almost from the outset of each case, ATF agents learned that the purchases were financed by violent Mexican drug trafficking organizations and that the firearms were destined for Mexico.

Yet, in Operation Fast and Furious, we found that no one responsible for the case at either the ATF Phoenix Field Division or the U.S. Attorney's Office raised a serious question or concern about the government not taking earlier measures to disrupt a trafficking operation that continued to purchase firearms with impunity for many months. We also did not find persuasive evidence that any supervisor in Phoenix, at either the U.S. Attorney's Office or ATF, raised serious questions or concerns about the risk to public safety posed by the continuing firearms purchases or by the delay in arresting individuals who were engaging in the trafficking. This failure reflected a significant lack of oversight and urgency by both ATF and the U.S. Attorney's Office, and a disregard by both for the safety of individuals in the United States and Mexico.

In addition to the sheer volume of firearms purchasing activity in both investigations, the challenges agents faced in conducting surveillance should

have called into question the wisdom of a longer-term approach whose success was dependent on being able to observe how the firearms were crossing into Mexico and to know what happened to them once they got there. We believe the limitations and the ineffectiveness of the surveillance should have prompted ATF and U.S. Attorney's Office personnel responsible for conducting and supervising the case to assess whether they could responsibly conduct investigations as large and ambitious as Operations Wide Receiver and Fast and Furious.

- **The Inappropriate Use of Cooperating Federal Firearms Licensees to Advance the Investigations**

Agents in Operation Wide Receiver and Operation Fast and Furious used the substantial cooperation of Federal Firearms Licensees (FFL) to advance the investigations. The relationships with the FFLs in these two investigations created at least the appearance that ATF agents approved or encouraged sales of firearms that they knew were unlawful and that they did not intend to seize. In Operation Wide Receiver, agents clearly sanctioned the unlawful sale of firearms because the FFL was a paid ATF informant; in Operation Fast and Furious, we found that agents emphasized to the cooperating FFLs the value of their cooperation and sought additional cooperation that could be satisfied only by completing sales, at least giving the impression to these FFLs that ATF wanted the sales to continue. We also believe that, while there may be circumstances where the government can appropriately seek the cooperation of an FFL, there is a potential conflict between the ATF's regulatory and criminal law enforcement functions with respect to FFLs when the ATF seeks their ongoing and extensive assistance in an investigation.

- **Issues Regarding Coordination with Other Law Enforcement Agencies in Operation Fast and Furious**

In Operation Fast and Furious, ATF missed an early opportunity to advance the investigation when it failed to exploit information provided by the DEA in December 2009 that may have led to the identification of a significant individual connected to its investigation. Among other things, ATF failed to conduct a potentially important surveillance because it did not have enough agents available to staff a surveillance operation due to the approaching holidays. ATF would later learn that this individual was a subject of an unrelated joint FBI-DEA investigation. We also found instances where ATF

resisted efforts by ICE to conduct independent or coordinated investigations even though ATF had insufficient resources to handle such a large case and ICE has primary jurisdiction over export violations involving munitions and firearms.

- **Former Attorney General Mukasey Was Not Made Aware That ATF Had Allowed Guns to “Walk” in Operation Wide Receiver or Any Other Investigation**

Former Attorney General Mukasey became Attorney General after investigative activity in Operation Wide Receiver was concluded. We found no evidence that he was informed that ATF, in connection with Operation Wide Receiver, was allowing or had allowed firearms to “walk.” We found that Mukasey was briefed on ATF’s attempts to use controlled deliveries – a law enforcement technique that witnesses told us differs significantly from “walking” in that it involves the delivery of contraband under surveillance or other control by law enforcement agents, with arrests and interdictions at the point of transfer – in a different ATF firearms trafficking investigation involving a lead subject named Fidel Hernandez. While the briefing paper mentioned that ATF’s attempts to conduct controlled deliveries had been unsuccessful, we found no basis to conclude that this briefing put Mukasey on notice of Operation Wide Receiver or of “walking” as a tactic employed in ATF investigations.

- **The Wiretap Applications Submitted to the Department’s Criminal Division in Operation Wide Receiver and Operation Fast and Furious Contained “Red Flags” Regarding the Conduct of the Investigations**

We reviewed all 14 wiretap affidavits in both Operation Wide Receiver and Operation Fast and Furious and concluded that the affidavits in both cases included information that would have caused a prosecutor who was focused on the question of investigative tactics, particularly one who was already sensitive to the issue of gun walking, to have questions about ATF’s conduct of the investigations. However, during our review we found no evidence that any of the 5 Deputy Assistant Attorneys General (DAAG) who reviewed the 14 wiretap applications in connection with Operations Wide Receiver and Fast and Furious identified any issues or raised any concerns about the information contained in the applications. In light of the explicit statutory assignment of responsibility for authorizing wiretap applications, we were concerned by the statements of the three DAAGs we interviewed that they did not regularly

review wiretap applications, instead relying on summary memoranda they received. Our report recommends that DAAGs should be required to conduct a review of wiretap applications and affidavits that is sufficient to enable them to form a personal judgment that the application meets the statutory criteria.

We further found that given DAAG Weinstein's discovery in March and April 2010 of "gun walking" issues in Operation Wide Receiver, coupled with the information he learned about Operation Fast and Furious in April and May 2010, his review of the first cover memorandum to the wiretap application and affidavit that he received in Operation Fast and Furious in May 2010 should have caused him to read the affidavit and ask questions about the operational details of Operation Fast and Furious.

- **ATF Headquarters' Failure to Provide Meaningful Oversight in Operation Fast and Furious**

We found that Operation Fast and Furious received little or no supervision by ATF Headquarters, despite its connection to a dangerous narcotics cartel in Mexico, the serious risk it created to public safety in the United States and Mexico, and its potential impact on the country's relationship with Mexico. Sufficient information was available to ATF's senior leadership, up to and including Acting Director Melson, about the investigative tactics used and the corresponding risk to public safety, yet ATF leadership repeatedly failed to act in a timely fashion on this information. Further, ATF senior officials ignored warnings about gun walking from their own employees. We determined that, by the first months of 2010, ATF Headquarters' deference to the Phoenix Field Division imperiled the agency's obligation to protect the public. We concluded that ATF's senior leadership should have recognized that its agents were failing to take adequate enforcement action as straw purchasing activity continued at an alarming pace, and should have instituted measures to promptly conclude the case, even if over the objections of its Phoenix Field Division or the U.S. Attorney's Office. We also determined that ATF's senior leadership failed to seek timely closure of the investigation, even after its Deputy Director recognized the need to conclude the investigative phase and asked for an "exit strategy." We found that Deputy Director Hoover and Acting Director Melson did not review the exit strategy until 2011, after the Fast and Furious investigation was publicly announced on January 25, 2011. We concluded that the "exit strategy" that Deputy Director Hoover asked for was never implemented and that the first arrest did not occur until December, immediately after Agent Terry's murder.

- **The Failure by the Department's and ATF's Senior Leadership to Sufficiently Inquire About Operation Fast and Furious After Agent Terry's Shooting**

Senior leadership at both the Department and ATF did little in the immediate aftermath of Agent Terry's shooting to try to learn how two weapons that had been purchased 11 months earlier by a previously-identified subject of Operation Fast and Furious ended up at the murder scene. While ATF Acting Director Melson and ATF Acting Deputy Director Hoover promptly requested information after learning of the connection, and promptly notified the Office of the Deputy Attorney General about the information, they failed to initiate a review of the matter. Similarly, when stories appeared on the Internet alleging that ATF had allowed firearms to "walk" to Mexico and that one of the firearms may have been linked to the death of a federal law enforcement officer, Acting Director Melson expressed concern about ATF employees leaking information and forwarded the matter to ATF Internal Affairs for investigation after being assured by four or five supervisors that the allegation on the Internet was false.

We further concluded that although Attorney General Holder was notified immediately of Agent Terry's shooting and death, he was not told about the connection between the firearms found at the scene of the shooting and Operation Fast and Furious. We determined that Attorney General Holder did not learn of that fact until sometime in 2011, after he received Sen. Grassley's January 27 letter. Senior Department officials were aware of this significant and troubling information by December 17, 2010, but did not believe the information was sufficiently important to alert the Attorney General about it or to make any further inquiry regarding this development. We concluded that an aggressive response to the information was required, including prompt notification of the Attorney General and appropriate inquiry of ATF and the U.S. Attorney's Office. However, we found that senior Department officials who were aware of the information took no action whatsoever.

Had the Department's senior leadership taken immediate action after learning that weapons found at the scene of a federal law enforcement agent's murder were linked to a straw purchaser in an ATF firearms trafficking investigation, the Department likely would have gathered information about Operation Fast and Furious well before it received the inquiry from Sen.

Grassley about the very same issue in late January 2011. The Department, however, did not do so.

- **Attorney General Holder Was Not Made Aware of the Potential Flaws in Operation Fast and Furious Until February 2011**

We found no evidence that Attorney General Holder was informed about Operation Fast and Furious, or learned about the tactics employed by ATF in the investigation, prior to January 31, 2011. We found it troubling that a case of this magnitude, and one that affected Mexico so significantly was not directly briefed to the Attorney General. We would expect such information to come to the Attorney General through the Office of the Deputy Attorney General. However, we found that neither ATF nor the U.S. Attorney's Office sufficiently advised the Office of the Deputy Attorney General about the investigation itself or of any operational concerns regarding the investigation.

- **The Failures in the Department's Responses to Congressional Inquiries**

We concluded, as did the Department, that its February 4, 2011, response letter to Senator Grassley contained inaccuracies, particularly its assertion that ATF "makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico." However, we also found that, by March or April 2011, senior Department officials knew or should have known that ATF had not made "every effort to interdict weapons that [had] been purchased illegally and prevent their transportation to Mexico," either in Operation Fast and Furious or other firearms trafficking investigations and therefore the February 4 letter contained inaccuracies.

- **The Department's February 4 Letter Contained Inaccuracies Due to a Significantly Flawed Drafting Process**

We found that a poorly executed information gathering and drafting process, as well as questionable judgments by Department officials, contributed to the Department's inclusion of inaccurate information in its February 4 response letter to Senator Grassley. In preparing this letter, Department officials relied on information provided by senior component officials that was not accurate, primarily from U.S. Attorney Burke, ATF Acting Director Melson, and ATF Deputy Director Hoover. These officials failed to exercise appropriate oversight of the investigation, and to some extent were

themselves receiving incorrect or incomplete information from their subordinates about it. These deficiencies contributed substantially to the provision of inaccurate information to Department officials who were responsible for responding to Congressional inquiries.

We further concluded that the Department officials who had a role in drafting the February 4 letter should have done more to inform themselves about the allegations in Sen. Grassley's letter and should not have relied solely on the assurances of senior officials at ATF and the U.S. Attorney's Office that the allegations were false. While the Department should be able to rely on the representations of its senior component officials in responding to Congressional inquiries, we do not believe that the gravity of the allegation in this instance was met with an equally serious effort by the Department to determine whether ATF and the U.S. Attorney's Office had allowed the sale of hundreds of weapons to straw purchasers. This was particularly the case here because the Department knew that hundreds of assault weapons had indeed been sold to straw purchasers during Operation Fast and Furious and that two of those firearms had in fact been found at the scene of Agent Terry's murder. Under these circumstances, we believe that the Department should have independently assessed the facts surrounding the related allegations by Sen. Grassley in late January 2011, rather than relying on ATF's and the U.S. Attorney's Office's assurances that they were baseless.

- **The Failure by AAG Breuer and DAAG Weinstein to Draw a Connection Between the Allegations in Senator Grassley's Letters and Their Knowledge of Operation Wide Receiver**

We also found that a critical deficiency in the Department's knowledge of relevant information resulted from the failure by AAG Breuer and DAAG Weinstein to draw a connection between the allegations in Sen. Grassley's letters and their knowledge of Operation Wide Receiver, an investigation in which ATF employed similarly flawed tactics. At the Department, Breuer, Weinstein, and a few other Criminal Division attorneys knew about Operation Wide Receiver. Additionally, Weinstein knew about Operation Fast and Furious from his discussions with a senior ATF official in April and May 2010 and his review and authorization of three wiretap applications in May and June 2010. Weinstein also was directly and substantially involved in drafting the Department's February 4 response letter to Sen. Grassley.

Breuer testified before Congress on November 1, 2011, that he made mistakes by not telling senior Department leadership about the problems with Operation Wide Receiver when he learned of them in April 2010, and by failing to draw a connection between those problems and the allegations concerning the conduct of Operation Fast and Furious in January and February 2011. We agree with this assessment. Weinstein, by contrast, told the OIG that Operation Wide Receiver “had not come to mind as being possibly relevant to this response” because he believed Sen. Grassley’s allegations were limited to Operation Fast and Furious.

- **The Department Knew or Should Have Known by the Date of its May 2 Letter That it Could Not Reaffirm the Accuracy of the Entire February 4 Letter.**

We found that the Department’s statement – “It remains our understanding that ATF’s Operation Fast and Furious did not knowingly permit straw buyers to take guns into Mexico” – in its May 2 letter responding to another inquiry from Sen. Grassley reasonably could have been understood by Congress and the public as at least a partial reaffirmation of the Department’s February 4 letter. However, we determined that senior Department officials knew or should have known by that date that, while ATF may not have allowed straw purchasers to buy firearms so that they themselves could take the guns to Mexico, ATF had in many instances allowed straw purchasers to buy firearms knowing that a third party would be transporting them to Mexico. Thus, we concluded that the May 2 letter was true only in the most literal sense.

We further concluded that, by the date of its May 2 response letter, senior Department officials responsible for drafting the letter also knew or should have known that ATF had not made “every effort to interdict weapons purchased illegally and prevent their transportation to Mexico,” either in Operation Fast and Furious or other firearms trafficking investigations, and that the Department’s February 4 letter contained inaccuracies and could no longer be defended in its entirety.

Indeed, we noted that the Department, in its first four responses to Congressional questions following its February 4 letter, appropriately made no substantive comments about the investigation in light of the additional information it had learned and its referral of the matter to the OIG in February. Given that senior Department officials’ confidence in the accuracy of the February 4 letter was decreasing rather than increasing as their internal review progressed, we found it troubling that the Department’s subsequent May 2

letter to Sen. Grassley included a substantive statement – albeit a qualified one – regarding the Fast and Furious investigation that could have been read to reaffirm the prior questioned letter. We believe that the Department should have continued to refrain from making substantive statements about both the February 4 letter and the Fast and Furious investigation, as it did in its four prior letters to Congress, or state that there were significant concerns about the accuracy of the February 4 letter and that Department officials would not respond to further inquiries until they determined the actual facts.

Similarly, we found that the Department should not have provided testimony on June 15 before the House Committee on Oversight and Governmental Reform in a manner that created ambiguity and uncertainty regarding whether the Department was still defending its February 4 and May 2 letters.

Conclusion

Our review of Operation Fast and Furious and related matters revealed a series of misguided strategies, tactics, errors in judgment, and management failures that permeated ATF Headquarters and the Phoenix Field Division, as well as the U.S. Attorney's Office for the District of Arizona and at the Headquarters of the Department of Justice. In this report, we described deficiencies in two operations conducted in ATF's Phoenix Field Division between 2006 and 2010 – Operation Wide Receiver and Operation Fast and Furious. In the course of our review we identified individuals ranging from line agents and prosecutors in Phoenix and Tucson to senior ATF officials in Washington, D.C., who bore a share of responsibility for ATF's knowing failure in both these operations to interdict firearms illegally destined for Mexico, and for pursuing this risky strategy without adequately taking into account the significant danger to public safety that it created. We also found failures by Department officials related to these matters, including failing to respond accurately to a Congressional inquiry about them.

Based on our findings, we made six recommendations designed to increase the Department's involvement in and oversight of ATF operations, improve coordination among the Department's law enforcement components, and enhance the Department's wiretap application review and authorization process. The OIG intends to closely monitor the Department's progress in implementing these recommendations.

Finally, we recommend that the Department review the conduct and performance of the Department personnel as described in this report and determine whether discipline or other administrative action with regard to each of them is appropriate.