



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

October 31, 2011

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

Dear Mr. Chairman:

This responds to your subpoena dated October 11, 2011, which requested documents regarding the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) investigation known as Operation Fast and Furious and related matters. It also responds to both your letter dated July 11, 2011, requesting communications of twelve named Department employees, and your letter dated September 1, 2011, requesting documents and communications of six current or former employees in the United States Attorney's Office for the District of Arizona.

We are delivering today to your office 652 pages of material responsive to your subpoena and letters. These documents bear limited redactions to protect specific details about pending investigations, including text that would identify targets and sensitive techniques or disclose prosecutorial deliberations, plus limited information relating to line employees, such as their cellular phone numbers. We also have withheld text that implicates individual privacy interests, including information about individuals who have been investigated but not prosecuted. In addition, we have redacted text from multi-subject documents that is not responsive to your requests. In some substantial multi-subject documents, such as weekly reports, we have not included pages that contained text that was either not responsive or contained details of particular investigations other than Fast and Furious. The nature of specific redactions is indicated by a redaction code ("RC") set forth in the enclosed list. In some instances, we have included text that is not responsive to your subpoena or letters because it provides context that may be helpful to your understanding of the enclosed documents. In response to requests from Chairman Smith and Chairman Leahy, we will deliver to the House and Senate Committees on the Judiciary the same documents that we deliver to you.

Further, we have identified an additional 47 pages of law-enforcement sensitive material that we are prepared to make available at the Department for review by staff of your Committee, as well as staff of the Senate and House Committees on the Judiciary. There are limited redactions of text that would identify law-enforcement sensitive details and techniques as well as information implicating individual privacy interests.

These records are responsive to items 1, 4, 5, 10, 14, and 21 of the Schedule attached to the Committee's subpoena. Our search for records responsive to the subpoena and your letters is continuing, and we will supplement this response when we have processed additional responsive records. In addition, and consistent with established third-agency practice, we are consulting with the Departments of Homeland Security and State regarding documents that implicate their equities. We will advise you when we have completed those consultations. We appreciate the opportunity to confer with Committee staff to obtain additional guidance about your particular priorities and other interests in connection with the subpoena.

To assist the Committee in its oversight duties, we also appreciate the opportunity to provide you with relevant and necessary context for several of the documents in today's production.

Documents from the U.S. Attorney's Office for the District of Arizona

The documents stamped HOGH USAO 002960-61 reflect communications in January 2010 among then U.S. Attorney Dennis Burke and his staff regarding the Fast and Furious investigation. The communications to Mr. Burke recount a division between ATF's Phoenix Field Division and ATF Headquarters over how to proceed in the investigation. They also demonstrate that the U.S. Attorney's Office's view at that time was that there was insufficient evidence to charge any of the suspects, and thus the office adopted the approach preferred by ATF's Phoenix Field Division to pursue a longer-term investigation.

In assessing the January exchange, you may wish to refer to HOGH USAO 003026-27 and 003046-47. These are memoranda regarding the Fast and Furious matter that were prepared by the U.S. Attorney's Office in August 2010, which state that "[t]hus far the investigation has interdicted approximately 200 firearms, including two .50 caliber rifles. Investigating agents have pursued interdiction of the firearms transferred to the conspirators where possible. Agents have not purposely let guns 'walk.' Interdiction in some cases has been hampered by counter-surveillance used by the targets." An OCDETF-related memorandum written in October 2010 used the same language and added that "ATF has undertaken a very aggressive approach to seizing firearms tied to this conspiracy whenever a legal theory for seizure can be developed."

We are also producing documents relating to a March 2010 visit by the Attorney General to Arizona. The Attorney General's schedule during the brief trip was extremely busy. Among other meetings and events there, he attended a conference of U.S. Attorneys, a session with tribal leaders, and a mortgage fraud press conference. He also met with the Mexican Attorney General and visited the U.S. Attorney's Office for the District of Arizona and with a broad range of U.S. law enforcement personnel. In addition, he was scheduled for a ten-minute meeting with then U.S. Attorney Burke. In anticipation of that visit, officials in the Arizona U.S. Attorney's Office solicited and collected "[s]ignificant case summaries" regarding matters being handled in the office. One of the initial summaries prepared by the office in anticipation of the Attorney General's visit related to Operation Fast and Furious. However, a review of the Attorney General's briefing materials for that trip (HOGH HRNDZ 003245-48) demonstrates that the

“significant case list” actually transmitted by prosecutors in Arizona to the Attorney General’s Office did not include any reference to Fast and Furious. Indeed, the criminal cases that were listed had already been formally charged by the office. The Fast and Furious investigation had not yet resulted in charges.

Nor have we located any evidence suggesting that then U.S. Attorney Burke briefed the Attorney General on Fast and Furious either during their ten-minute meeting or at another time during the visit. According to Mr. Burke’s private counsel, with whom we have conferred, Mr. Burke does not recall having briefed the Attorney General about Fast and Furious at any time. The Attorney General similarly has no recollection of having been briefed on the investigation. His staff member’s notes from other meetings during the trip reflect general discussions about challenges on the Southwest border and the demand for firearms in Mexico but no mention of Fast and Furious, much less of any of the inappropriate operational tactics employed in that investigation.

Today’s production also contains e-mail communications (HOCR USAO 003070, 3073-74, 3085-86, 3087) reflecting an interest on the part of the Arizona U.S. Attorney’s Office in late December 2010 and early January 2011 in having first the Attorney General and then the Deputy Attorney General participate in the late-January press conference announcing the Fast and Furious indictments. As you know, neither the Attorney General nor the Deputy Attorney General attended that press conference. The staff member in the Attorney General’s office with whom Mr. Burke raised the possibility has no recollection of speaking to the Attorney General about it, and we note that Mr. Burke’s email to the staff member does not refer to Fast and Furious by name, let alone discuss any operational tactics. Moreover, according to Mr. Burke’s counsel, Mr. Burke does not recall ever having discussed this matter with either the Attorney General or Deputy Attorney General.

Documents from Main Justice

With this letter, we are also producing additional weekly reports to the Office of the Attorney General that either relate to gun trafficking issues generally, or to Fast and Furious in language already included in reports made available to you in a prior production, or relate generally to developments in a separate investigation, Operation Wide Receiver. Many of those entries do not refer specifically to Fast and Furious by name and none of them contain references to any inappropriate investigative tactics. The Attorney General provided important context for weekly reports like those produced today in his October 7, 2011 letter to you and other members of Congress.

Documents from ATF

We are producing as well a January 2011 e-mail (HOCR ATF 003600-03) showing that, in response to an Office of the Attorney General request on January 7, 2011 for anticipated policy announcements and initiatives from each Department component, ATF submitted information about three items, including a short summary of the expected Fast and Furious indictments and press event to occur less than two weeks later. The information was requested

so that the Office of the Attorney General could decide what items to include in a periodic report to the White House's Office of Cabinet Affairs. Although ATF submitted information about Fast and Furious, that information was not provided to the Office of Cabinet Affairs as part of the Department's policy update, because the information provided by ATF related to a specific case and not a policy initiative, as requested.

Documents Related to the Wide Receiver Matter

In addition, we are producing documents that reflect the involvement of the Gang Unit of the Justice Department's Criminal Division in a pair of gun trafficking cases referred to separately as "Wide Receiver 1" and "Wide Receiver 2." These cases originated in the Arizona U.S. Attorney's Office and were investigated by ATF in 2006 and 2007, prior to Operation Fast and Furious. These documents also reflect the Gang Unit's involvement in a third gun trafficking case that also originated out of the Arizona U.S. Attorney's Office, *United States v. Raul Flores Lopez, et al. ("Flores")*. The documents further reflect a Gang Unit prosecutor's attempts to become involved in several additional gun trafficking cases in Arizona, including the Fast and Furious case.

According to these documents, in the summer of 2009 the Gang Unit offered to assist several U.S. Attorneys' Offices along the Southwest Border in their efforts to combat gun trafficking to Mexico. Shortly thereafter, in response to the Gang Unit's offer, the Arizona U.S. Attorney's Office sought assistance on the Wide Receiver cases, which had been languishing in that Office's Tucson branch at least since ATF had completed its investigation and presented the case for prosecution close to two years earlier. The Arizona U.S. Attorney's Office had been involved in the underlying ATF investigation.

As of the fall of 2009, when the Gang Unit was asked to prosecute the Wide Receiver cases (HOCR WR 003371), none of the Wide Receiver defendants had been indicted notwithstanding that the case had long since been presented for prosecution. A prosecutor in the Gang Unit began to analyze the results of ATF's completed investigation and reached the conclusion that the Wide Receiver cases would likely need to involve two indictments against multiple defendants. In an early review of the case, the prosecutor wrote that "it appears that the biggest problem with the case is its [sic] old [and] should have been taken down last year AND a lot of guns seem to have gone to Mexico." HOCR WR 003383. Despite this, the prosecutor recommended to her supervisors that "we get our feet wet and take the case." *Id.* In the fall of 2009, she wrote a draft memorandum setting forth her preliminary analysis. HOCR WR 003391-93. She addressed this memorandum to Deputy Assistant Attorney General ("DAAG") Jason Weinstein but emailed it only to her immediate supervisors (HOCR WR 003390); we have found no indication that the draft memorandum was subsequently finalized or that it was sent to DAAG Weinstein. At the same time that the prosecutor assigned to the Wide Receiver cases was analyzing the completed Wide Receiver investigation, she was also preparing to try a death penalty case in Maryland against a member of the MS-13 gang who had ordered the murder of a juvenile. That trial began in January 2010 and concluded in March 2010.

While she was trying the MS-13 case, ATF headquarters asked the Gang Unit to assist with the Fast and Furious matter. In response to that request, on March 5, 2010, a different Gang Unit prosecutor attended a briefing on the case. Within two weeks, however, the Gang Unit prosecutor learned that the U.S. Attorney's Office in Arizona would be handling Fast and Furious by itself, and, consequently, he had no substantive involvement with the matter.

Following the conclusion of the MS-13 trial in Maryland, the Gang Unit prosecutor handling the Wide Receiver cases completed a prosecution memorandum for Wide Receiver 1. Upon reading that memorandum in April 2010, DAAG Weinstein became aware that in 2006 and 2007, as part of the Wide Receiver investigation, ATF had failed to interdict guns despite having the ability and legal authority to do so and that, as a result, guns had crossed the border into Mexico. HOCR WR 003442. According to an e-mail he sent in April 2010, DAAG Weinstein was "stunned" to learn these facts. Mr. Weinstein and others in the Gang Unit quickly alerted Assistant Attorney General Lanny Breuer, who directed Weinstein to meet with ATF senior leadership. HOCR WR 003442, 003451. On April 28, 2010, DAAG Weinstein met with two senior ATF officials to alert them that the Criminal Division was planning soon to indict the Wide Receiver cases, but that ATF's 2006 and 2007 investigation had been problematic, both because ATF had failed to interdict a significant number of guns despite having the ability and legal authority to do so and some of those guns had crossed the border into Mexico, and because of certain allegations involving the ATF agent who had conducted the investigation. HOCR WR 003442, 003485. According to contemporaneous notes taken by a participant in the meeting, the fact that guns had "walk[ed]" in Wide Receiver was explicitly discussed with the ATF officials. HOCRWR 003478a.

The documents produced today reflect that the Gang Unit prosecutor was ready to indict the Wide Receiver cases and unseal them beginning in the spring of 2010, but that the Assistant U.S. Attorney in the U.S. Attorney's Office in Arizona handling Fast and Furious believed that if the Wide Receiver indictments became public at that time they would negatively impact his case. The Assistant U.S. Attorney therefore requested that the indictments and/or the unsealing of the indictments in Wide Receiver be delayed. HOCR WR 003480, 003489. As a result of that request, Wide Receiver 1 was indicted under seal in May 2010, Wide Receiver 2 was indicted under seal in October 2010, and both cases were unsealed in November 2010. HOCR DOJ 003260, 63.

Over the course of the next several months, the Gang Unit prosecutor handling the Wide Receiver cases sought to become involved in other gun trafficking cases in Arizona. Thus, in approximately July 2010, she was asked to assist with several additional cases, including Fast and Furious. She was informed at that time, however, that the Assistant U.S. Attorney handling Fast and Furious was unlikely to need much help on the case until it was indicted; and, ultimately, she did not become closely involved with any of the cases that she had been asked to help on that summer. HOCR WR 003517, 003518, 003534. In September 2010, she expressed to her immediate supervisors her increasing "frustrat[ion]" with her lack of involvement on Arizona gun trafficking cases, noting that despite having been "ostensibly assigned" to Fast and Furious she had had "little to no involvement" with the case, and did not think there would be enough work for her in Arizona to keep her busy. HOCR WR 003517-19.

In October 2010, however, the Gang Unit prosecutor handling the Wide Receiver cases was asked to handle a separate straw purchaser case involving the seizure of 49 guns. That case, referred to as *Flores*, appeared to be tangentially related to Fast and Furious insofar as several of the suspects in *Flores* appeared to have purchased guns for suspects in Fast and Furious. HOCR WR 003521. The Gang Unit prosecutor agreed to handle the case, and, in January 2011, the *Flores* indictment was announced together with the Fast and Furious indictment.

Today, the Gang Unit (now part of the Criminal Division's Organized Crime and Gang Section) continues to prosecute Wide Receiver 2 and *Flores*. To date, in both Wide Receiver cases, six defendants have pleaded guilty, and two remain fugitives. In *Flores*, seven defendants have pleaded guilty, and one is scheduled to go on trial next month.

We hope this information is helpful. Please do not hesitate to contact us 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 written over the typed name.

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Elijah Cummings
Ranking Member

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- RC-6: Redaction of text that discloses prosecutorial or internal executive branch deliberative information.**
- RC-7: Redaction of text that implicates equities of another agency. Pursuant to established third agency practice, DOJ will consult the affected agency and respond further to the Committee.**