

# REVIEWING ATF'S FAILURES IN THE DEATH OF ICE AGENT JAIME ZAPATA

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## HEARING

BEFORE THE

### COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTEENTH CONGRESS

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## REVIEWING ATF'S FAILURES IN THE DEATH OF ICE AGENT JAIME ZAPATA

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Thursday, March 9, 2017

HOUSE OF REPRESENTATIVES  
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM  
*Washington, D.C.*

The committee met, pursuant to call, at 10:03 a.m., in Room 2154, Rayburn Office Building, Hon. Jason Chaffetz [chairman of the committee] presiding.

Present: Representatives Chaffetz, Duncan, Jordan, Gosar, Farenthold, Walker, Blum, Hice, Russell, Grothman, Hurd, Palmer, Mitchell, Cummings, Maloney, Norton, Lynch, Connolly, Kelly, Watson Coleman, Plaskett, Krishnamoorthi, and DeSaulnier.

Chairman CHAFFETZ. The Committee on Oversight and Government Reform will come to order, and without objection the chair is authorized to declare a recess at any time.

We are here today to talk about ATF's failures in the death of an ICE agent, Jaime Zapata. Well, there is nothing more difficult than dealing with a person who puts their life on the line for the United States of America and they get killed doing it. They lose their life. The Zapata family deserves some answers, a wonderful family.

Jaime was one of, I think, 5 children, 5 kids. All those brothers serve in law enforcement in various capacities, and I do not know that the Zapata family is here. I hope they are able to watch on television. I think that they are. But it breaks your heart when you have somebody that young who is serving their Nation and their life is taken. And it was violent, and it was, many people believe, preventable.

But it is also the responsibility, I believe, of the United States and the Congress to understand what happened so that we can try to help prevent it and make sure it never happens again. It is also, I think, imperative, it certainly is in my heart, to give answers to the family so they can understand what happened, and what went well and what did not go well.

And as you will hear me say time and time again in this committee, we are different in the United States. We are self-critical. We do take a good, hard look at ourselves and ask difficult questions. And it is one of the things that differentiates the United States of America from just about every other country on the planet, that you can speak truth to power. You can bring people in. You can grill them and talk to them, and ask hard questions, and get those answers, and we are self-critical. It is not just here to protect the politically elite or the higher ups in government.

So, what happened on February 15th of 2011, more than 6 years ago now, cartel members in Mexico murdered an Immigration and Customs Enforcement agent, Jaime Zapata, when he was driving there on ICE business. One of the firearms recovered from the attack was traced back to an October 2010 purchase by Otilio Osorio at a Dallas/Fort Worth gun show. The evidence uncovered by the Department of Justice inspector general shows that the Bureau of Alcohol, Tobacco, and Firearms, the ATF, failed to investigate Osorio, his brother, Ranferi Osorio, and their associates who were all part of a straw purchasing ring.

Straw purchasing. It is illegal in the United States of America to buy a gun for someone else, and you certainly cannot do that for others en masse. It is against the law. Evidently, the ATF potentially missed chances to prevent the firearms in question from trafficking to Mexico.

The ATF knew in June of 2010 that the Osorios were associated with an organization that was likely trafficking firearms to Mexico. In fact, the inspector general found that by late September 2010, the ATF should have been investigating the Osorio brothers and their associates. As the IG summarized, and I quote, "These were dangerous individuals involved in serious and significant ongoing criminal activities that represented a substantial risk to public safety in the United States and Mexico."

The inspector general also found a scenario where ATF had both a legal authority and the opportunity to take firearms in the Osorios' possession, but failed to seize them. Those firearms were also later found at a crime scene.

Unlike the Fast and Furious case, which this committee has been vigorously pursuing, where refraining from contacting straw purchases was part of the flawed strategy, the inspector general found the Dallas Field Division simply failed to do its job. We will never know whether Agent Zapata would still be alive if the ATF had done its job properly, and we rely heavily on the inspector general and their expertise in looking at this.

And, again, our hearts, and minds, and prayers go to the Zapata family.

In September of 2012, nearly 5 years ago, the committee and Senator Chuck Grassley requested an investigation of ATF's actions relating to Agent Zapata's death. We presented evidence to the IG obtained from confidential sources as well as whistleblowers. We told the inspector general that ATF may have had probable cause to arrest the Osorio brothers in November of 2010 when ATF witnessed them providing 40 weapons with obliterated serial numbers to an undercover ATF informant at a Walmart parking lot for the purpose of trafficking those weapons to Mexico. The Department of Justice inspector general report confirms these facts.

ATF's first contact with the Osorios and Morrison, however, did not occur until 3 months after Agent Zapata's murder. So, again, information was there, but it was 3 months after Agent Zapata was murdered that the ATF first made contact.

It has been more than 6 years since Agent Zapata was murdered in the ambush attack involving U.S. purchased and subsequently

trafficked firearms. It has been nearly 5 years since the probe was requested.

Today we want to examine ATF's past practices with respect to investigating straw purchases and firearms trafficking cases. We have had the ATF here on a couple different occasions dealing with these issues, and yet we are concerned that these problems are still happening.

ATF must enforce the existing laws and aggressively stop illegally purchased and possessed firearms. Repeated excuses that the U.S. Attorney's Office will not prosecute or that heightened probable cause is necessary I think should be rejected, you know. I think we do have a further problem with prosecutors prosecuting gun crimes. In fact, this committee is anticipating having hearings on that very subject.

It is frustrating not only at the ATF level, but it is frustrating with the TSA. I mean, every day we are taking guns off airplanes, and yet go try to find a case that is prosecuted. It is rare to none. There seems to be virtually no consequence. And today we aim to bring renewed focus on the incident for not only the Zapata family, but also those other families who serve in our Nation and the overall general well-being of the United States of America.

We invited ATF Deputy Director Ronald Turk and Special Agent in Charge William Temple to testify today because they could provide some of the answers the Zapata family and the public deserve. The Justice Department does not think we need to hear from them.

You will notice that there are five seats there, but only two have bothered to show up. You know, when Congress, certainly an oversight committee, invites you to testify, it is not optional. It is not an exercise of whether or not it is convenient. They will show up, and we will get to that in a moment.

Mr. Temple is the head of the Dallas Field Office, the special agent in charge, and he can provide a unique perspective in the field, one of the most challenging environments for fighting firearms trafficking. And in light of the serious problems that we covered in this IG report, we have to hear from the ATF officials outside of Washington. I am tired of hearing from just management. I want to hear from the people that actually are on the frontlines doing this. As you noticed, Mr. Temple is not here either. The Department of Justice continues to insist we should not talk to Mr. Turk or Mr. Temple, and I am going to get back to that later as we go through the questioning.

We want to encourage ATF and other law enforcement agencies to place more emphasis on taking down criminals and their tools before they work their will. No law passed by Congress can require Federal law enforcement officers to simply do their job. It is tough. It is difficult. I have been on a lot of ride-alongs. I blow in and out in a few hours, and they do they do this day in and day out.

They need to know that we got their back, we got their support, we love them, we care for them. And if there are problems and challenges that are happening at the front line, we need to know it. We cannot get that perspective if when we ask them to be here, some management person says, no, they really do not need to be here, I speak for the Agency, I speak for the mass. That is not the

way this is going to work. It is certainly not going to work in this Congress. It does not work for me.

So, I thank the two that are here, but, Mr. Brandon, you got some questions to answer about why people that work for you are not here. And we will get to that in the questioning.

And as for Mr. Craft, you know, when you work as an AUSA, an assistant U.S. attorney, again, we are going to have to have some hard discussions with the Department of Justice because they are not above oversight either, and they will be here in the future as well.

I have gone well past my time. Let me now recognize Ms. Maloney of New York for her opening statement.

Ms. MALONEY. I want to thank the chairman for holding this hearing, and thank him for his sensitivity for the sacrifice of law enforcement and the pain of families. This is an important hearing.

When Special Agent Jaime Zapata was shot and killed in Mexico in February of 2011, he was only 32 years old. He was as enthusiastic and hardworking as any law enforcement agent can be. 6 years ago, this remarkable young man was murdered in an ambush while working in service of his Nation. His partner, Special Agent Victor Avila, was gravely injured alongside him. Examining the circumstances of Agent Zapata's death and the shooting of Agent Avila required a thorough and diligent investigation by the Office of Inspector General.

I thank Mr. Horowitz and his staff for the report we are discussing today. This report identifies a number of serious problems in the way that ATF, the Drug Enforcement Administration, and the U.S. Attorney's Office investigated the trafficking of weapons to Mexico in 2010 and 2011.

Many of these issues are not new to us on this committee. We have investigated them over and over again for several years, and we have worked to ensure that these agencies make serious and lasting improvements.

The IG's report highlights some very important new facts. For example, it describes how a Federal prosecutor in Texas made a very serious mistake in agreeing to release a man by the name of Manuel Barba from Federal custody in July of 2010. According to the IG, that prosecutor had DEA reports with Mr. Barba claiming that he was heavily involved in drug trafficking.

The IG found that this decision had terrible consequences, and I quote: "Based on the information reasonably knowable to the agents and the prosecutors, it is clear that they should not have agreed to Barba's release from Federal custody and left at liberty to direct the straw purchase of one of the assault weapons and its trafficking to Mexico where it was used in the Zapata/Avila shooting."

This prosecutor's supervisor, the U.S. attorney for the Eastern District of Texas, admitted later, and I quote: "We dropped the ball." Well, I have got to say that this Congress has dropped the ball in its support of law enforcement. We had testimony before this committee on Fast and Furious where the agent said give us a tough anti-drug trafficking law. And this committee, I authored along with Chairman Cummings a bill that just did that, made it



a felony. They said we do not even bother to prosecute it because it is just a slap on the wrist, and give us the tools.

I will say I am proud that it is the one bill addressing gun safety that has bipartisan support. I am reintroducing it again today with Republican support. It is the only gun safety bill that the NRA has not come out against because it makes so much sense, and practically every law enforcement agency in the country has endorsed this bill.

And I would venture to say we have hearings about it, but it involves illegal trafficking of guns, and I hope that some members of this committee will join me and the chairman in having a hearing on the bill and actually doing something to keep these guns out of criminals' hands.

Now, the IG's report also disproved an unfounded assertion made by Republicans on this committee at the time. They claimed that Agent Zapata and Avila may have been shot with the guns that were so-called walked as part of Operation Fast and Furious. These claims have turned out to be wrong. Let me be clear. This new information in no way diminishes our committee's obligation to ask tough questions and demand answers, but it does caution against members rushing to judgment without all the facts.

With that in mind, today we will also discuss a recent New York Times article alleging that ATF failed to properly oversee so-called, and I quote, "churning accounts" between 2011 and 2013 while investigating cigarette smuggling. In 2003, the Justice Department under Attorney General John Ashcroft argued in favor of allowing ATF to use churning accounts, asserting that Congress should give ATF authority to use money generated during undercover sting operations to offset their investigating expenses. In response, Congress granted this authority in 2004, and President Bush signed it into law.

In 2013, the IG issued a report highlighting numerous accountability problems with these churning accounts between 2006 and 2011. In response, ATF says that it stopped using these accounts. The New York Times article alleges that this latest operation was, and I quote, "not authorized under Justice Department rules and went beyond what was identified in that audit released in 2013."

We do not have the full story yet. The chairman asked ATF to submit documents, but the due date is not until tomorrow. In addition, litigation referenced in the press report is under seal. Documents on the public docket are heavily redacted, and it is unclear whether ATF has submitted documents in that case.

Nevertheless, if the allegations in this press report are true, they raise serious, serious questions. Who authorized this program? How was the money used? Did this activity violate Department guidelines? Has there been an audit of these accounts to determine whether funds were used improperly? Has anyone been disciplined? And how were the activities described in this report any different than straight out tobacco smuggling?

We will not rush to judgment, but we will seek answers. We will review the documents. We will monitor the litigation to determine whether the case is unsealed, and we will question today's witnesses.

Also, Congress has a role. More than 5 years ago, several ATF whistleblowers testified at that very witness table about abuses that they saw firsthand. They called for legislation to make gun trafficking a serious Federal crime. They explained that the current penalties for gun trafficking are not more than paperwork violations, and they called them, and I quote, "toothless."

In response, I authored legislation in the past 2 Congresses. Our legislation was bipartisan. It had more than 100 co-sponsors from both political parties. It targeted criminals and, most importantly, helped law enforcement do their job. They asked for this. They endorsed it. It was endorsed by local, Federal, State police groups as well as prosecutor organizations with members across this country. Yet our bill received absolutely no action in this House.

I will reintroduce it today, and I hope the chairman will grant the request of the ranking member for a hearing so that we can look at solving the problem of gun trafficking that is often with drug cartels, and gangs, and criminals. And I think it is a very important piece of legislation. It can save lives and prevent guns from getting into the hands of criminals that kill good agents, such as Jaime Zapata.

My time has expired. I thank the chairman for calling this important hearing, and I hope you will grant our request for a hearing on the bill.

Chairman CHAFFETZ. The gentlewoman yields back. I thank the gentlewoman.

We will hold the record open for 5 legislative days for any members who would like to submit a written statement.

Chairman CHAFFETZ. We will now recognize our panel of witnesses.

We are pleased to welcome the Honorable Michael Horowitz, inspector general of the United States Department of Justice. We thank you and all the people that work with you for your service. One of the things we would like you to address, though, is why in the world it took so long to get to this point. It seems excessively long, but, again, you have a very storied and rich career in serving our country, and we thank you for that.

Mr. Thomas Brandon is the acting director of the Bureau of Alcohol, Tobacco, and Firearms, and Explosives. Again, we thank you for your service both in the military, the United States Marines, but also at ATF and working on behalf of the United States of America. And a very difficult, but very important job, and we thank you again for your service and for your being here today.

As you know, pursuant to committee rules, all witnesses are to be sworn before they testify. So, if you will please rise and raise your right hand.

Do you solemnly swear or affirm that the testimony you will give will be the truth, the whole truth, and nothing but the truth, so help you God?

[Chorus of ayes.]

Chairman CHAFFETZ. Thank you. Let the record reflect that both witnesses answered in the affirmative.

We will give you some latitude, but we would appreciate it if you would limit your oral testimony to roughly 5 minutes. Again, we

will give you great latitude here, but your entire written statement and any supporting documents will be made part of the record.

Mr. Horowitz, you are now recognized for 5 minutes.

## **WITNESS STATEMENTS**

### **STATEMENT OF HONORABLE MICHAEL E. HOROWITZ**

Mr. HOROWITZ. Thank you, Mr. Chairman. Mr. Chairman, Ranking Member Cummings, members of the committee, thank you for inviting me to testify today at this important hearing.

On February 15th, 2011, ICE Special Agents Victor Avila and Jaime Zapata were attacked by members of a drug cartel while working in Mexico. Tragically, Agent Zapata did not survive the attack, while Agent Avila was seriously injured.

Two firearms used in that attack were traced to purchases in Texas made by Otilio Osorio and Robert Riendfliesh, both of whom were connected to then ongoing DOJ criminal investigations. Our review examined the information that the ATF, DEA, FBI, and the Department of Justice obtained about the illegal narcotics and gun trafficking activities of Osorio, Riendfliesh, and their associates prior to the attack on Agents Zapata and Avila.

Our review of ATF's investigation of Osorio, his brother, Ranferi Osorio, and neighbor, Kelvin Morrison, found numerous problems with the timeliness of ATF's response to mounting evidence that the individuals were committing firearms trafficking offenses.

We found that ATF had collected sufficient information prior to Osorio's purchase on October 10, 2010 of the firearm that was later used in the attack on Agents Zapata and Avila to justify questioning his brother and Morrison, or taking other investigative steps regarding their firearms purchases. Our review also found that approximately 1 month after Osorio's firearm purchase, the Osorio brothers were recorded transferring 40 firearms, 37 with obliterated serial numbers. Despite this information, ATF's first contact with the Osorios and Morrison did not occur until late February 2011 following the attack on the agents.

In addition, our review identified one instance, which occurred after the attacks on Agents Avila and Zapata, where we believe ATF had both the legal authority and opportunity to seize firearms in the Osorios' possession, but did not. Two of the firearms that could have been seized were later recovered at a crime scene in Mexico.

We concluded that the ATF supervisor in the Dallas Field Division was not sufficiently proactive and failed to ensure that all of ATF's leads were investigated. The consultations with prosecutors were started, and that there was adequate coordination within ATF and with the DEA. We further determined that ATF delayed its investigation and arrests of the Osorios and Morrison for reasons that lacked sufficient justification.

We also identified serious deficiencies with DEA's handling of its narcotics investigation of Manuel Barba, the person who trafficked the firearm purchased by Riendfliesh. The DEA uncovered information about Barba's potential gun trafficking in May 2010, yet never shared it with ATF. As a result, ATF only learned of Barba's gun

trafficking as a result of its own investigation in August 2010, after the sale of the Riendfliesh firearm.

We further determined that the AUSA handling the DEA narcotics prosecution of Barba should not have agreed to Barba's release from jail in July 2010 following his arrest. That decision left Barba at liberty to lead a group of firearms traffickers and direct the straw purchase and trafficking of the Riendfliesh firearm to Mexico.

We were not persuaded by DEA's explanations for not passing on evidence of Barba's firearms trafficking activities to ATF, and we determined that there is room for improvement in DEA's policy to clearly require such communication in appropriate circumstances. As part of our oversight work concerning ATF's Operation Fast and Furious, we previously encouraged DEA to develop policies that provide clear guidance to its agents about when to contact ATF, but to date, DEA has not implemented that recommendation.

With respect to ATF's own investigation of Barba and Riendfliesh, we found that ATF agents in that investigation diligently pursued leads, took effective investigative steps, and appropriately consulted and coordinated their activities with prosecutors. We did not identify any failure to take action by the ATF agents that might reasonably have prevented the trafficking of the Riendfliesh firearm.

We did not make formal recommendations in this report because we believe our recommendations in the Operation Fast and Furious review that we did and in our recent follow-up review on the Operation Fast and Furious recommendations were sufficient to address the deficiencies we found in this review.

We look forward to working with this committee and the Department to address the concerns identified in all of our reviews with regard to gun trafficking. And I'd be pleased to answer any questions the committee may have.

Thank you.

[Prepared statement of Mr. Horowitz follows:]



Office of the Inspector General  
United States Department of Justice

Statement of Michael E. Horowitz  
Inspector General, U.S. Department of Justice

*before the*

U.S. House of Representatives  
Committee on Oversight and Government Reform

*concerning*

A Review of Investigations of the Osorio and Barba Firearms Trafficking Rings

March 9, 2017

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

Thank you for inviting me to testify about the Department of Justice (Department) Office of the Inspector General's (OIG) review of investigations of the Osorio and Barba firearms trafficking rings and the OIG's earlier work on the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) use of income-generating, undercover operations. We appreciate the Committee's sincere interest in these important issues and look forward to continuing our oversight of the ATF.

#### **ATF's Investigation of the Osorio Firearms Trafficking Organization**

On February 15, 2011, Immigration and Customs Enforcement (ICE) Special Agents Victor Avila and Jaime Zapata were attacked by members of the Los Zetas drug cartel while travelling in Mexico. Agent Zapata did not survive the attack and Agent Avila was seriously injured. Two firearms used in the attack were traced to purchases in Texas made by Otilio Osorio (the Osorio firearm) and Robert Riendfliesh (the Riendfliesh firearm). Our review examined the information that the ATF, Drug Enforcement Administration (DEA), Federal Bureau of Investigation (FBI), and Department of Justice obtained about the illegal narcotics and gun trafficking activities of Osorio, Riendfliesh, and their associates prior to the attack on the ICE agents, and whether agents failed to seize firearms destined for Mexico. We also examined the circumstances surrounding the release of Manuel Barba from federal custody in Beaumont, Texas in July 2010 following his arrest for narcotics offenses. After his release, Barba trafficked the firearm purchased by Riendfliesh, which was recovered from members of the Los Zetas cartel following the attack on the ICE agents.

Our review found numerous problems with how ATF assimilated information concerning Osorio, his brother Ranferi Osorio, and neighbor Kelvin Morrison, and with the timeliness of ATF's response to mounting evidence that these individuals were committing firearms offenses. We further had serious concerns with how DEA handled its Barba narcotics investigation, which also uncovered information about Barba's substantial gun trafficking. DEA never shared that information with ATF, and ATF only subsequently learned of Barba's firearms activities through its own separate investigation.

#### **Review of Information Prior to and Following the Purchase of the Osorio Firearm**

Our review found that ATF's Dallas Field Division had collected sufficient facts prior to Otilio Osorio's purchase of the Osorio firearm on October 10, 2010, to justify questioning Ranferi Osorio and Morrison or taking other investigative steps within a reasonable amount of time about their firearms purchases. While no single ATF staff member was aware of all of the collected facts, overall the information available to ATF prior to October 10 included the following key facts:

- (1) In June 2010, ATF agents seized a duffel bag containing firearms with obliterated serial numbers and Ranferi Osorio's luggage tags near the border

with Mexico. These firearms had what is known as short "times to crime," which refers to the time that passes between the purchase of a gun and its recovery in connection with a crime. Obliterated serial numbers and short "times to crime" are indicators of straw purchasing and firearms trafficking;

(2) In June 2010, ATF agents also obtained information showing that one of the purchasers of the seized firearms described above listed the Osorio residence as her address and that a second purchaser resided less than 1 mile from the Osorio home;

(3) On August 7, 2010, law enforcement seized another shipment of firearms with obliterated serial numbers and short "times to crime" near the border with Mexico. Two of these firearms traced back to Ranferi Osorio and one traced back to Morrison;

(4) Between August and September 2010, ATF collected information from sales reports and an intelligence analyst concerning multiple sales of handguns to the Osorio brothers and Morrison; and

(5) On October 7, 2010, ATF received a tip from a concerned firearms vendor in the Dallas area about firearms purchases by the Osorio brothers, Morrison, and five others.

Despite this information, ATF's first contact with the Osorios and Morrison did not occur until late February 2011, following the attack on agents Zapata and Avila.

We determined that by early October 2010, before Osorio's purchase of a firearm that was ultimately used in the attack on Agents Avila and Zapata, the ATF had sufficient facts to justify questioning Ranferi Osorio and Morrison or taking other investigative steps about their firearms purchases. Our review also found that approximately one month after Osorio's firearm purchase, the Osorio brothers were recorded transferring 40 firearms, 37 of which had obliterated serial numbers. As we explain in the report, however, we do not believe that it is possible to identify what investigative steps should have been taken at the time, or precisely when arrests should have occurred, and that to attempt to do so now would be mere speculation. We did conclude that the supervisor of ATF's firearms group in Dallas was not sufficiently proactive and failed to ensure that the leads that ATF had received about Ranferi Osorio and Morrison were investigated, that consultations with prosecutors had started, and that there was adequate coordination within ATF and with DEA. We further determined that ATF delayed its investigations and arrests of the Osorios and Morrison for reasons that lacked sufficient justification.

In addition, our review identified one instance where we believe ATF had both the legal authority and opportunity to take firearms in the Osorios' possession but failed to seize them. This occurred after the attack on agents Avila and Zapata. In response to the attack, agents searched the Osorio residence on February 24, 2011, and found ten firearms. The ATF agents participating in the search did not seize the firearms because they did not believe that they had a legal basis to take

them. We found that the agents reached their legal conclusion regarding probable cause and the likely views of the U.S. Attorney's Office without consulting any prosecutors in that office. When agents returned to the Osorio residence 4 days later to arrest the Osorios, five of the firearms were missing, and two of those were later recovered at a crime scene in Mexico. We believe that one of the lessons for ATF in this matter is the importance of coordination with the U.S. Attorney's Office.

*Barba's Release from Federal Custody and Subsequent Trafficking of the Riendfliesh Firearm*

Our review also examined two investigations that were focused on Manuel Barba: a DEA narcotics investigation and an ATF firearms investigation. Our review found serious deficiencies with the DEA's and an Assistant U.S. Attorney's (AUSA) handling of the Barba case. DEA first learned in April 2010 of Barba's drug dealing and in May 2010 of his potential firearms trafficking to Mexico. However, DEA never shared the information about Barba's possible gun trafficking with ATF so that ATF could determine whether an investigation might be appropriate. ATF only learned of Barba's gun trafficking as a result of its own investigation of Barba in August 2010, after the sale of the Riendfliesh firearm. We were not persuaded by DEA's explanations for not passing on evidence of Barba's involvement with firearms trafficking to ATF, and we determined that there is room for improvement in DEA's policy to clearly require such communication in appropriate circumstances. As part of oversight work concerning ATF's Operation Fast and Furious, we previously encouraged DEA to develop policies that provide clear guidance to its agents about when to contact ATF, but to date DEA has not implemented our suggestions.

We further determined that the AUSA handling the Barba drug prosecution should not have agreed to Barba's release from federal custody in July 2010 following his indictment and ultimate plea in the Eastern District of Texas, leaving Barba at liberty to lead a group of firearms traffickers and ultimately to direct the straw purchase and the trafficking of the Riendfliesh firearm to Mexico. We found that, prior to his release, the DEA failed to highlight for the AUSA statements Barba had made about trafficking AK-47s. We also found no evidence that the AUSA read the DEA report that included these statements or took them into account in agreeing to Barba's release.

With respect to the conduct of the firearms trafficking investigations that led to ATF's identification and arrests of Barba and Riendfliesh, we did not identify any failure to take action on the part of the investigating agents that might reasonably have prevented the trafficking of the Riendfliesh firearm. We found that ATF agents diligently pursued leads, took effective investigative steps, and appropriately consulted and coordinated their activities with the U.S. Attorney's Office for the Southern District of Texas. Our investigation did not identify circumstances where agents witnessed the unlawful transfer of firearms and failed to seize them.

Further, our review did not find evidence that the FBI, ATF Headquarters, or DOJ were alerted to or aware of the criminal activities of the Osorios, Morrison,



Riendfliesh, or Barba before the shooting of agents Avila and Zapata, or that there were deficiencies regarding the notification process in that regard.

We did not make formal recommendations for improvement in this report because we believe the recommendations we made in our Operation Fast and Furious review, and in our recent follow up report, also address the deficiencies we identified in this review. As these reports demonstrate, the high risks associated with these matters and the possibility of tragic consequences for failure to respond to them appropriately is all too real.

Our report can be found on the OIG's website at the following link:  
<https://oig.justice.gov/reports/2017/o1701.pdf>.

We look forward to working with this Committee and the Department to address the concerns identified in our reviews. This concludes my prepared statement, and I would be pleased to answer any questions that you may have.

Chairman CHAFFETZ. Thank you. Mr. Brandon, you are now recognized for 5 minutes.

**STATEMENT OF THOMAS E. BRANDON**

Mr. BRANDON. Chairman Chaffetz, Ranking Member Cummings, and members of the committee, thank you for the opportunity to appear before you today. I welcome the opportunity to discuss the Department of Justice Office of Inspector General reports titled, "Review of Investigations of the Osorio and Barba Firearms Trafficking Rings," and "ATF's Use of Income-Generating Undercover Operations."

I appreciate the work of the OIG in these matters. We agree with all of the findings in both reports, and ATF has implemented all of the recommendations from the 2013 report. I will continue to work closely with inspector general to further improve ATF.

Before addressing those matters, however, I want to express the deepfelt condolences of all the men and women of ATF, to the family, friends, and colleagues of Special Agents Jaime Zapata and Victor Avila for the loss and suffering they have endured. Any time a law enforcement officer is lost in the line of duty, it is a tragedy that affects everyone. And over my career, I have had friends and colleagues killed in the line of duty, and every morning I contemplate the sacrifice that law enforcement officers have made on my behalf and on behalf of all Americans. I make my decisions as ATF's acting director with this in mind.

Mr. Chairman, you know that I am a career special agent. I am not a political appointee. I have worked the streets in Detroit, L.A., and Phoenix. I understand the impact a law enforcement career has on a family. So, when I say that every day ATF special agents, investigators, and professional staff work tirelessly to remove the most violent offenders from the streets to make our communities safer, I speak from the heart and the very essence of my being. I've been there myself. It's not a talking point for me. It has been my life, and I'm honored and proud to lead the men and women of ATF.

Leadership requires from time to time that we turn inward and examine ourselves. The DOJ OIG has helped us do that. I have closely read the OIG report on the Osorio and Barba gun trafficking rings, and I thank the inspector general for the thorough assessments of the events involved in those investigations.

In particular, the OIG pointed out where ATF could make improvements to communications and information dissemination. ATF could and should have done better. We make no excuses, and I accept full responsibility for the lapses in 2010 and 2011. These events occurred more than 7 years ago before substantial leadership changes were implemented at ATF. The ATF of 2017 is not the ATF of 2010.

Let me tell you how ATF has changed since that time. Since my arrival as the ATF deputy director in the fall of 2011, I've brought a laser focus to enhancing communication, operational oversight, and accountability to ensure that our investigations are effective, focused, and efficiently executed. In particular, hard lessons have taught us that the level of complexity involved in firearms trafficking investigations demand constant organizational vigilance,

management oversight, and that effective communication is essential to success in these high stakes cases.

To meet these demands, ATF has implemented a broad range of organizational improvements during my tenure. These improvements include implementation of Frontline as ATF's intelligence-led risk-based business model; establishment of crime gun intelligence centers in every ATF field division; focused hiring of intelligence research specialists with an emphasis on those with military experience; establishment of a formal ATF internal communications plan; enhancement of ATF's Monitored Case Program; enhancement of mandatory leadership command and control training for first-line supervisors and management; and mandatory training for all agents on firearms trafficking techniques. I want to assure the committee for that as long as I'm privileged to lead ATF, we will continue to identify areas where we can further strengthen our operational effectiveness.

I also understand the committee's interest in recent media reports regarding ATF tobacco investigation. That investigation is the subject of an ongoing Federal civil lawsuit, and the Court has sealed the case pending trial. The United States is a party to that litigation, and, therefore, the Court's order is binding on ATF and me. Consequently, my ability to respond to questions specific to that investigation is extremely limited at this time.

What I can advise the committee is that the OIG conducted a full program audit of ATF's income-generating undercover activities beginning in 2011, and issued a comprehensive report in September 2013. That report, which evaluated the period of 2006 to 2011, identified serious deficiencies in ATF's policies and controls over those investigations.

Before the OIG issued the report, ATF had internally recognized the need for more robust policies, procedures, and oversight on income-generating undercover activity investigations, and had begun implementing enhancements in 2011. In April 2013, ATF issued a comprehensive order governing tobacco investigations, including strict rules on the use of income-generating undercover activities.

ATF is not currently using this technique, and has not done so since 2013, and will not do so in the future unless very specific and limited parameters are met. ATF has closed all of these bank accounts and deposited all remaining funds from those accounts in the U.S. Treasury General Fund. Beyond implementation and strict enforcement of the April 2013 order, as noted, ATF has implemented all of the OIG's 2013 recommendations, and, as a result, by October 2015, the OIG has closed all of its recommendations.

Mr. Chairman and members of the committee, I am proud to be here today representing the men and women of the ATF. They work diligently every day to keep our communities safer. Thank you for this opportunity, and I am pleased to take your questions.

[Prepared statement of Mr. Brandon follows:]



## **Department of Justice**

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STATEMENT OF

THOMAS E. BRANDON  
ACTING DIRECTOR  
BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES  
U.S. DEPARTMENT OF JUSTICE

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM  
U.S. HOUSE OF REPRESENTATIVES

FOR A HEARING CONCERNING

REVIEWING ATF'S FAILURES  
IN THE DEATH OF ICE AGENT JAIME ZAPATA

PRESENTED

MARCH 9, 2017

Chairman Chaffetz, Ranking Member Cummings, and Members of the Committee, thank you for the opportunity to appear before the Committee today. I welcome the opportunity to discuss the Department of Justice (DOJ) Office of Inspector General's (OIG) reports "Review of Investigations of the Osorio and Barba Firearms Trafficking Rings" and "ATF's Use of Income-Generating, Undercover Operations."

Before addressing those matters, however, I want to express again the deeply felt condolences of all the men and women of ATF to the families, friends and colleagues of Special Agents Jaime Zapata and Victor Avila for the loss and suffering they have endured. As a career special agent, I understand all too well the devastating impact of having a colleague killed or seriously injured in the line of duty. The entire law enforcement community is a family that depends on each other, and whatever missteps we have made as an agency, ATF's commitment to supporting our law enforcement partners is -- and always has been -- deep and unwavering.

Mr. Chairman and Members of the Committee, every day, ATF Special Agents, Investigators, and professional staff work tirelessly to remove the most violent offenders from the streets and make our communities safer. I am honored and proud to lead the men and women of ATF. We take our motto, "Protecting the Public; Serving our Nation" to heart.

Review of Investigations of the Osorio and Barba Firearms Trafficking Rings

I have closely reviewed the OIG report on the Osorio and Barba gun trafficking rings, and I thank the Inspector General for the thorough assessment of the events involved in those investigations. The primary findings of the OIG report with respect to ATF relate to the Osorio investigation, so I will focus my remarks on that part of the report. Overall, ATF agrees with the OIG's assessment that we did not effectively evaluate and internally disseminate information developed during the summer of 2010 indicating the existence of the Osorio trafficking ring; that we did not effectively communicate with the U.S. Attorney about charging options that information may have supported; and that we did not effectively communicate with our partner agency and prosecutors following the November 2010 seizure of the firearms the Osorio brothers delivered in the undercover operation.

ATF could -- and should -- have done better. ATF makes no excuses, and I accept full responsibility for those lapses in 2010 and 2011.

Since my arrival as ATF Deputy Director in the fall of 2011, the ATF Executive staff has been laser-focused on enhancing communication, operational oversight, and accountability to ensure that our investigations are effective, focused and efficiently executed. In particular, we know from hard-learned lessons that the level of complexity involved in firearms trafficking investigations demands constant

organizational vigilance, and that effective communication is essential to success in these high-stakes cases.

To meet these demands, ATF has implemented a broad-range of organizational improvements over the last six years. These improvements include implementation of Frontline, ATF's intelligence-led, risk-based business model; establishment of Crime Gun Intelligence Centers in every ATF field division; focused hiring of intelligence research specialists with an emphasis on those with military experience; establishment of a formal ATF internal communications plan; enhancement of ATF's Monitored Case Program; enhancement of mandatory leadership command and control training for first line supervisors and managers; and mandatory training for all agents on firearms trafficking techniques.

The Inspector General is aware of these changes, and we hope the absence of new recommendations in this report indicates that these changes have effectively addressed recommendations in prior reports. I assure the Members of the Committee that ATF will continue to identify areas where we can further strengthen our operational effectiveness.

ATF's Use of Income-Generating, Undercover Operations

I also understand the Committee's interest in recent media reports regarding an ATF tobacco investigation. That investigation is the subject of an ongoing federal civil lawsuit, and the Court has ordered the sealing of the case pending trial. The United States is a party to that litigation, and ATF is bound by the Court's order. Consequently, my ability to respond to questions specific to that investigation is extremely limited, but I look forward to addressing the Committee's concerns in the future.

What I can advise the Committee is that the OIG conducted a full program audit of ATF's "income generating undercover activities" beginning in 2011, and issued a comprehensive report in September 2013. That report, which evaluated the period 2009 to 2011, identified serious deficiencies in ATF's policies and controls over those investigations, commonly referred to as "churning" cases. Well prior to the issuance of that report, ATF had internally recognized the need for more robust policies, procedures and oversight on churning investigations, and had begun implementing enhancements in 2011. In April 2013, ATF issued a comprehensive Order governing use of the churning technique and tobacco investigations. Beyond implementation and strict enforcement of the April 2013 Order, ATF also complied with all of the subsequent recommendations made by



the OIG in the September 2013 report. As a result, by October 2015, OIG had closed all of its recommendations.

I can also advise the Committee that ATF is not currently utilizing the churning technique in any tobacco investigation, and has not done so since 2013. All churning bank accounts have been closed, and all remaining funds in those accounts, have been deposited into the U.S. Treasury general fund.

Mr. Chairman and Members of the Committee, I am proud to be here today representing the men and women of ATF; they work diligently every day to make our communities safer. Thank you for this opportunity.

Chairman CHAFFETZ. Thank you, and I will recognize myself for 5 minutes.

Mr. Brandon, you have been the acting director a year and 11 months now, correct?

Mr. BRANDON. Yes, sir.

Chairman CHAFFETZ. Mr. Turk and Mr. Temple work for you?

Mr. BRANDON. They do.

Chairman CHAFFETZ. Why are they not here?

Mr. BRANDON. When we received the request, the invitation to testify, Mr. Chairman, I met with my team, consulted with DOJ, and wanted to quickly respond by having someone here from ATF, and that person would be me.

Chairman CHAFFETZ. But the invitation was to yourself, Mr. Turk, and Mr. Temple, and you unilaterally decided that Mr. Turk and Mr. Temple would not be here?

Mr. BRANDON. No, I did not.

Chairman CHAFFETZ. Who decided that Mr. Turk and Mr. Temple were not going to be here?

Mr. BRANDON. Well, the decision is theirs voluntarily. To let you know, Mr. Chairman, I did not order them not to be here, and no one that I know of from the Department ordered them not to be here.

Chairman CHAFFETZ. So, they personally chose not to be here.

Mr. BRANDON. That is their free decision, but also I agreed with it. I am not going to duck anything here.

Chairman CHAFFETZ. So, they just decided that coming before Congress was an optional activity and that they were not going to do it. I think I understand. Do you know what a subpoena is, Mr. Brandon?

Mr. BRANDON. Yes, I do.

Chairman CHAFFETZ. What does a subpoena require you to do?

Mr. BRANDON. To appear before the Court or the legislative body in this case.

Chairman CHAFFETZ. See this subpoena right here? I do not have to ask a judge. I do not get a vote here. We are now hereby subpoenaing, here is one for Mr. Turk. He is to testify before this committee in a deposition on March 21st. Is there any reason he cannot attend at that time?

Mr. BRANDON. I do not believe so.

Chairman CHAFFETZ. He will be served this subpoena. Mr. Temple, he is going to present himself for a deposition, which is a much more difficult thing than appearing before Congress. These things go on for hours under oath. Any reason he cannot be here on March 22nd at 10:00 a.m.?

Mr. BRANDON. Not that I am aware of.

Chairman CHAFFETZ. Okay. And you are the director, or you are the acting director, so you can help make sure that his schedule is free to be here at that time?

Mr. BRANDON. I will make sure of that.

Chairman CHAFFETZ. I just issued a subpoena for Mr. Temple as well. He will present himself before this committee. These are not optional exercises.

Now, Mr. Craft was given a little bit shorter notice. We are going to have to have that discussion with the Department of Justice. He was the minority witness that was requested by Mr. Cummings to

be here. His non-presence is also totally and wholly unacceptable, and we will figure out how to best move forward on him.

These are not optional exercises. You are wasting this committee's time by allowing Mr. Turk and Mr. Temple to think anything other than. When they are invited to come to Congress, they will come to Congress. And when I sent you a notice on Thursday of last week, for you to contact your Department, your Agency, your people, for them to contact our office last night in the 5:00 hour is totally and wholly unacceptable. There is no excuse for that, and we will not tolerate that.

And if I need to issue a subpoena at the get-go, you tell me. We will do that every time because they should have been here today. And if you had given us the proper notice as was laid out in the letter, which says that you will contact the committee by March 6th, which you did not, then we would have issued a subpoena, and they would be here today, and we would have a more full and complete hearing. And everybody in this audience, and especially the Zapata family, could hear from these people.

Do we understand each other?

Mr. BRANDON. Yes, Mr. Chairman, we do. And I apologize if there was a communication as late as yesterday. I was under the understanding that there was communication, and if there was a subpoena, obviously they would be here. But I hear you loud and clear.

Mr. CUMMINGS. Mr. Chairman, would you yield for a second?

Chairman CHAFFETZ. Yes, I will yield.

Mr. CUMMINGS. Mr. Brandon, I think the thing that concerned me more is when you said you agreed with the decision of them not to come. You understand the significance of a subpoena, do you not, and a request that your agents be here. But you just sat there and said you agreed with their decision, so apparently there was some back and forth. And you being their boss, I am just trying to figure out, you know, what part you played in all of that because that bothers me.

It also bothers me that, you know, the late getting back to us. I mean, I think we try to accommodate, but when we get something, a response the evening before, that is kind of rough. But tell me what part you played.

Chairman CHAFFETZ. No, go ahead.

Mr. CUMMINGS. I just want to be clear on this.

Mr. BRANDON. Thank you, sir.

Mr. CUMMINGS. You are their boss now, right?

Mr. BRANDON. Yes, I am.

Mr. CUMMINGS. Okay.

Mr. BRANDON. We got the invitations, not subpoenas, and I was told that normally we would get more time to respond within the 14-day rule. We wanted to absolutely appear here and be prepared, and that in talking to the Department, which had a lot of things going on with hearings, that this was the proper way to handle

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Mr. CUMMINGS. But you said you agreed. You said you agreed with the decision for them not to be here. See, that puts in a kind of awkward position. We got the boss who says, okay, guys, you do

not have to show up, and that sends a hell of a message. That is a problem.

Mr. BRANDON. It was not meant to be anything disrespectful to this committee in trying to say, okay, who was going to representing the Agency.

Mr. CUMMINGS. Thank you, Mr. Chairman.

Chairman CHAFFETZ. Jaime Zapata was killed about 6 years ago. This has been under investigation nearly 5 years. When did you get the report from the Department of Justice, the inspector general? How long ago did you get the initial draft of the report?

Mr. BRANDON. The members of my team received the report, and it was the back and forth with edits. And I received it, I believe, approximately a month ago to read it.

Chairman CHAFFETZ. Mr. Horowitz, do you have a more specific time?

Mr. HOROWITZ. I can get you a more specific time, but it would probably be about a month to 6 weeks ago. If I can check and just get a more refined —

Chairman CHAFFETZ. So, your excuse that you needed more time, that just is not flying, okay? You had to know that we were deeply interested in this. And if you get the report 4 to 6 weeks ago, you are going back and forth with edits, my understanding is that members of the ATF actually got a draft in December. Mr. Horowitz?

Mr. HOROWITZ. That is correct, Mr. Chairman. It was December.

Chairman CHAFFETZ. So, you get it in December, and now your complaint is you did not have enough time to prepare for this hearing. And that is why in part we invited Mr. Temple here because my concern is 6 years after we had an American killed, an agent killed, that you all have not got the lesson. So, do not tell me that you need more time because if you cannot communicate to Congress that you get it and that you are implementing the changes, my guess is all those men and women, the thousands of people out in the field, they have not gotten the message either.

And that is the concern. That is the concern. You all try to dress it up so that you come to Congress and put on the best-looking picture you can. We want the raw truth of what has happened and what those men and women are having to deal with on the front lines. So, the idea that you needed more time, we did not get the customary 2 weeks, is a load of crap, and you know it because you have had this since December, and that is my frustration. I could go on, but my time has expired.

I will now recognize Ms. Maloney of New York for 5 minutes.

Ms. MALONEY. Thank you. I would like to ask Mr. Brandon to respond to my comments concerning really Congress not giving you the tools that you need to get the job done.

When Congress first began working on this and we were looking into the shooting death of Agent Zapata in 2012, we were already—2011, I believe it was—we were already in the midst of an investigation of the so-called Operation Fast and Furious. And that was the botched attempt to target gun traffickers connected to Mexican drug cartels.

And we had whistleblowers testify sitting right where you are right now, Mr. Brandon, and they asked us to give them the tools

to get the job done. I can remember it like yesterday. He said we do not even bother to go after serious gun traffickers because there is no enforcement, and even if you caught them, you cannot do anything to them. It is just a paper violation. "A paper violation." Give us the tools. Make it a felony, make it a crime, and crack down on these straw purchasers who buy guns for criminals and then use them to kill our agents.

Well, we did, Mr. Cummings and I along with members of the Republican Party, and actually Senator Duckworth. She was then a member of this committee. We drafted a bill that cracked down, and it has been universally endorsed by law enforcement across the country. Now, that was 5 years ago.

So, I would like to ask Mr. Brandon, is it true that today there is no such dedicated statute targeting gun trafficking? Is gun trafficking still just a paper violation as your agent testified before us 5 years ago?

Mr. BRANDON. Yes, ma'am, nothing has changed.

Ms. MALONEY. And how big a problem is it? That makes guns flow easily, not only through Mexico, but probably throughout the world. I was talking to a representative from the Caribbean. They say guns flow all over the Caribbean from the U.S., but there is no law against it. Is that correct?

Mr. BRANDON. That is true, ma'am, and there is no doubt that a firearms trafficking statute would help deal with the gun violence in America.

Ms. MALONEY. Then I really want to ask my colleagues on the other side of the aisle to join Ranking Member Cummings and other members of this committee. Ms. Kelly was very active in it as there was a lot of violence in the district that she represents. And I for one thought after we had Newtown when the 23 young children were killed, that we would act on gun violence.

But the one bill that has bipartisan support and the one bill that law enforcement has come out almost universally in support of is give us the tools to do the job. So, my question is, if we did make that a Federal felony, if we did crack down on straw purchasers, would that help you? Would that help our law enforcement, not just ATF, but all law enforcement do their job in a better way to protect people?

Mr. BRANDON. Yes, ma'am, it would, in my opinion. Absolutely.

Ms. MALONEY. Now, the bill was supported by the American Bar Association, the Association of Prosecuting Attorneys, the Federal Law Enforcement Officers Association, Major Cities Chiefs Association, but, most importantly in my mind, the police and fire that are on the front line in the district that I represent across this country.

So, let me ask you, Mr. Brandon, how serious is the problem of gun trafficking along the southwest border today? Has the concern in any way gone away?

Mr. BRANDON. The concern has not. We at ATF, without having that statute and with the laws that we enforce, have given credit for agents to have interdiction and deterrence of firearms rather than waiting for building a criminal case and where guns can get to the criminal element and be misused to shoot and hurt people.

We are doing the best with what we have. And so, with interdiction deterrence—we refer to it as being on the left side of boom—

and that is one of the strategies we have taken. But firearms trafficking along the southwest border and across the United States still is a problem.

Ms. MALONEY. Well, it is one that we can address. And for all of the talk of building a wall that may cost tens of billions of dollars along the southwest border, there is remarkably little talk about passing this law which costs nothing. This would cost nothing to the taxpayer to enact this law, which then would give our law enforcement the ability to better protect the American people, and it seems to me that it is just common sense. And our chairman is a commonsense guy, so I hope he will join the ranking member and myself, and I would say many members on this side of the aisle, and on the Republican side of the aisle.

It is interesting. All of the Republican prosecutors, they know the problem, so they are co-sponsors of this. And we go a big step forward in combatting violent crime on the border in Mexico, and really the exporting of guns, and really the use of guns by criminals. Even if you sell one to a drug cartel, a criminal, a murderer, or whatever, there is no penalty for it.

And I got to think that if we made it a penalty, and our bill has a 20-year visit to jail if you do so knowingly, then we could cut down on this violence. How many agents have to be killed by illegal guns that are sold to bad people because there is no enforcement against gun trafficking? It is a simple thing to do. We could pass it.

Again, I join the ranking member in really pleading for a hearing on this bill that we have had in for 2 different Congresses now for 4 years, and we are reintroducing it today. I think it could help us solve the problem and give law enforcement stronger tools to crack down on the bad guys, on the bad guys that are buying these illegal guns and using them in terrible ways to kill people, including our own agents.

My time has expired.

Chairman CHAFFETZ. I thank the gentlewoman.

Ms. MALONEY. But I feel very strongly about this, and I am very frustrated because I would like to see some action. I would like to see this bill passed.

Chairman CHAFFETZ. I thank the gentlewoman. We will now recognize the gentleman from Tennessee, Mr. Duncan, for 5 minutes.

Mr. DUNCAN. Thank you, Mr. Chairman. Mr. Horowitz, this committee depends in a significant way on work by inspectors general, and you have done very good work for this committee in the past. But I noticed that on March 8th, 2011, the Department of Justice referred questions about the firearms recovered at the scene of Mr. Zapata's death on March 8th, 2011. And then, on September 19th, 2012, Senator Grassley wrote a letter to it asking these same questions, yet your report did not come out until March 1st, 2017.

I think several of us are concerned about that length of that time, that delay.

Mr. HOROWITZ. Yes. We got the request and the referral from this committee and Chairman Grassley in September 2012, and the bottom line is there is no excuse. We should have gotten it done more promptly. I could tell you about some of the staffing issues we had and challenges we had on the Barba piece of the report. We

learned some new information later on in the investigation that I think is important to the story here.

But the bottom line is I agree with you, Congressman. And we have talked internally and are taking steps to make sure we can get these out more timely.

Mr. DUNCAN. All right. Well, good. Do you believe there was probable cause to arrest both of the Osorio brothers and their neighbor, Kelvin Morrison, after the ATF witnessed completion of a transfer of 40 firearms on November 9th, 2010?

Mr. HOROWITZ. That is what we found in our report, and I agree with you, Congressman.

Mr. DUNCAN. Mr. Brandon, you said a few minutes ago that you were told this was, I think the words you used, that this was a proper way to handle this in telling Mr. Turk and Mr. Temple that this was up to them or something. Who told you this was the proper way to handle this?

Mr. BRANDON. I was speaking with attorneys within ATF and also with members from the Legislative Affairs at DOJ.

Mr. DUNCAN. Can you tell us specifically the people that told you that this was the proper way to handle this?

Mr. BRANDON. I had my chief of staff, Joe Allen, communicating with the Department, and like I said, that with everything going on, communication was not the best. I will say to you, in respect to you and Mr. Chaffetz, as far as referring to it as crap, had I known this was the feeling coming down, and also to you, Mr. Cummings, you know, that this was your feelings, you know, that would be a different thing. I would say, well, hey, an invitation is really subpoena. There is no option here.

And so, I just want to clarify that to you, that it was no disrespect from me as a leader and trying to shove it to the committee. That is absolutely not the truth. We have been trying to run to the truth. And so, I just want to make that clear of the intent, and to look you right in the eyes, Mr. Chairman, because I can see you glaring at me, that that is absolutely not how it went down.

And an invitation, I am taking this and a clear interpretation from you is an invitation is really a subpoena. It is not an option. I get it, and they would be sitting here. And so, I just wanted to say I apologize for not having that political understanding of this.

And also, saying I was trying to hide behind something for 2 weeks. I am not a hiding type guy. And so, basically it was not B.S., and I just wanted to share that with all of you.

Mr. DUNCAN. All right. Well, let me get to one other thing before my time runs out. The inspector general found that the Dallas Field Division simply failed to do its job. The report says the supervisor of ATF's Dallas Firearms Group was not sufficiently proactive, and failed to ensure that the leads the ATF had received about Osorio and Morrison were investigated, and that consultations with prosecutors had started. What do you say about that?

Mr. BRANDON. Sir, I agree with the OIG, Mr. Horowitz, and his team. We had a supervisor that has retired that was over our firearms trafficking that was asleep at the switch, and I totally agree with it, the findings of the OIG.

Mr. DUNCAN. And have you taken steps to see that something like this does not happen again in the future?

Mr. BRANDON. Yes, sir. I mean, as I mentioned in my opening statement, we developed a Frontline intelligence-led, risk-based way of doing business. One of the key components of that is each division, we have 25 of them around the country, has to do a domain assessment and have to share that domain assessment with the U.S. attorney. And that is an important part because of the communication that was lacking.

And if we are out of step with the U.S. Attorney's Office, if we are not in step, we are out of step, and we do not want to waste our limited investigative time, our resources and time if they are not going to be prosecuted. So, to share that with you, sir, that is how we have tightened it up, and that was implemented in the beginning of 2012, and I will leave it at that.

Mr. DUNCAN. All right. Thank you very much.

Chairman CHAFFETZ. I thank the gentleman. We will now go to the gentleman from Virginia, Mr. Connolly, for 5 minutes.

Mr. CONNOLLY. I thank the chair, and I welcome the panel.

I would just say to you, Mr. Brandon, on a bipartisan basis, I mean, when executive branch officials are invited to testify before Congress, it is an invitation, but it is also an obligation. And I appreciate what you have said, but I do not think it ought to require a subpoena to get the executive branch to be accountable to the legislative branch. That is our constitutional system, and we do not want to go down that road. I do not think we want to set the precedent that the only way we can compel your testimony is by subpoena. I am sure you would agree.

Mr. BRANDON. Sir, yes, I totally agree, and had I understood this storm coming down on me right now, they would be sitting here.

Mr. CONNOLLY. Okay. You are the acting director of the ATF. In the last 10 years, how many confirmed directors have there been at the ATF?

Mr. BRANDON. I am sorry, sir, in how many years?

Mr. CONNOLLY. In the last decade.

Mr. BRANDON. There has only been one. It was —

Mr. CONNOLLY. One. And how recently was that?

Mr. BRANDON. I believe it was July 31st, 2013. It was B. Todd Jones, my former boss.

Mr. CONNOLLY. So, for most of the decade, we have had acting directors. Is that correct?

Mr. BRANDON. That is correct, sir.

Mr. CONNOLLY. And the reason for that is what?

Mr. BRANDON. Well, it is presidentially nominated, Senate confirmed.

Mr. CONNOLLY. And the Senate gave it the slows.

Mr. BRANDON. Well, I would say that the process is slow.

Mr. CONNOLLY. What has happened to your budget?

Mr. BRANDON. Well, like many in the Federal government, you know, you could do more with more, and the budget with ATF is tight. And in candor, sir, with what I refer to here being up in D.C. as decimal dust to the Federal budget of \$50 million to \$100 million extra ATF, we could make a significant input with technology to help our State and local—



Mr. CONNOLLY. But, I mean, in the last 6, 7 years. I mean, we are so concerned about things like Fast and Furious and the tragic death of Mr. Zapata. We have certainly beefed up your budget with additional resources, have we not?

Mr. BRANDON. No, sir. No. Our budget has been eroding.

Mr. CONNOLLY. Really, eroding. So, we do not want to confirm a director, at least not very often. We have deliberately left the organization, with no disrespect to you or your predecessors who were in an acting capacity, but the proper form is to have a confirmed director of the Agency. We have actually reduced the resources available to you.

And, as Ms. Maloney just pointed out, despite testimony, and your testimony is consistent with other agents who have sat here. I remember one hearing where I believe it was the agent from Phoenix who said, yeah, that would be a tool we want. And I remember the then chairman, not this chairman, actually interfering with the testimony because he did not like the answer, and actually started to direct the answer.

It seems to me that we cannot have it both ways in Congress. If we want you to do your job and do it well, and we want to achieve the goals the Agency has and has set for especially the southern part of our border, it seems to me we have to do our jobs. And I am not sure we have consistently done that. You can comment or not, Mr. Brandon.

Mr. BRANDON. No, sir. Look, I have a lot of friends, Democrats and Republicans, and I will say raise your hand if you are in favor of gun violence, and I have never seen a hand go up. This is an American issue. It is not a "D" or an "R" issue.

Mr. CONNOLLY. Yeah, but it is quite another matter if we are unwilling to do something about it.

Mr. BRANDON. Oh, I agree. That is what you guys are here for.

Mr. CONNOLLY. Mr. Horowitz. Your office issued recommendations from the Operation Fast and Furious review in 2012. Is that correct?

Mr. HOROWITZ. That is correct.

Mr. CONNOLLY. And did ATF make major improvements pursuant to those recommendations?

Mr. HOROWITZ. The ATF, as we noted in last year's follow-up review, made significant changes to their policies and practices.

Mr. CONNOLLY. Anything glaring that still needs to be resolved?

Mr. HOROWITZ. Not from ATF.

Mr. CONNOLLY. Not from ATF. Okay. Your office also issued a report reviewing, well, you reviewed the implementation and it was a favorable report.

Mr. HOROWITZ. As to ATF.

Mr. CONNOLLY. As to ATF. Who is not favorable?

Mr. HOROWITZ. There were two outstanding recommendations, one with regard to the FBI, which had not put in place a policy regarding when guns should or should not be seized, and DEA regarding, among other things, regarding notifications to ATF, which played itself out in this case that we are here today to talk about.

Mr. CONNOLLY. Thank you. Mr. Brandon, final point. I have got 10 seconds. Thank you for your service. Thank you to the men and women of the Agency. I just hope Congress will back you up.

I yield back.

Mr. BRANDON. Thank you, sir.

Chairman CHAFFETZ. And right on time. I am highly impressed.

Mr. CONNOLLY. [Off audio.]

Chairman CHAFFETZ. See, you got constituents in the crowd. I would just further note to tell you how on time that Mr. Connolly is, at least today. So, this is good.

Mr. CONNOLLY. I thank the chair for his praise.

[Laughter.]

Chairman CHAFFETZ. Thank you. I will now recognize Mr. Farenthold of Texas. And I think, as he will tell you, Mr. Zapata was a constituent of Blake Farenthold's, so.

Mr. FARENTHOLD. Thank you, Mr. Chairman. When I was first elected in 2010, I had the privilege of representing the Rio Grande Valley in Brownsville, and Agent Zapata and his family grew up in Brownsville. So, this is a very important issue to me.

Before I get started, though, I do want to address one or two things Mr. Connolly had said, the first of which is I think the Senate does need to be much more speedy in their confirmation process, and would urge Mr. Connolly to speak to some members of his Party over there about that as we are in the middle of quite a few confirmations now.

Mr. Brandon, you also testified that you could do more with more resources. And I think everybody that I regularly associate with in Congress wants to give our law enforcement agencies, be it yours or the others, the tools necessary to do what they need to do. But I would imagine you would not want to see your taxes go up significantly to fund that either.

Mr. BRANDON. No, sir. I am fiscally conservative.

Mr. FARENTHOLD. So, as much as we would like to, there are a lot of things we have got to do in this government, and that is why we are asking you and the fine men and women who work for you, you know, to do more with less, just like we are asking the vast majority of the government to do the same.

But let me get along to my lines of questioning. And I do not want to pound on about the fact that the other folks are not here, but I want to explain the frustration that this committee faces. We faced 6 years of stonewalling, a lot of which has to do with Fast and Furious, to the point that we held the former Attorney General in contempt of Congress and pursued litigation against him and to obtain documents from the Department of Justice.

So, there is a frustration here that we would hope would start to evaporate with new leadership in the executive branch. Obviously, we are early on in there, and we do not have folks confirmed. But this stonewalling does nothing but cost the taxpayers dollars and deny the American people the opportunity to have good oversight of their government. So, you know, I am not pounding on it. I just wanted to explain that frustration to you and where we are coming from.

But let us talk a little bit about what is going on now and the report. So, let me start with Mr. Horowitz. Let us talk a little bit about Fast and Furious and the gun running operation. Can you in roughly a minute tell me what we have learned and what still

needs to be done as a result of your investigation into this? Just bullet points.

Mr. HOROWITZ. Yeah. So, with regard to Fast and Furious, our follow-up review, and now this review, the couple of open recommendations that still are out there involve, in particular on this matter, on the Mr. Barba side of the case we found once again that one Federal law enforcement agency, in this case DEA, failed to tell another law enforcement agency, in this case ATF, about gun trafficking activity that it knew about.

That failure was, in our view, significant and important, and should not have occurred. And DEA needs to have a policy in place that ensures that its agents develop that —

Mr. FARENTHOLD. All right. We have fusion centers everywhere. What are we not doing? I mean, I have been to multiple fusion centers where you guys are supposed to be talking to each other.

Mr. HOROWITZ. Yeah. Look, I think that is a concern. We saw that, as you will recall, in Fast and Furious between ICE and ATF, the lack of sharing of information. It is an issue that continues to arise, and as these centers exist it needs to be addressed and overcome. There is no excuse for it.

Mr. FARENTHOLD. I am sorry. I have a lot of questions and not a lot of time. Mr. Brandon, I want to ask you to reassure me that we do not have any programs like Fast and Furious going on now where we are letting weapons move across borders in an attempt to get the bigger guy. Have we learned that lesson?

Mr. BRANDON. Yes, sir, and one of our things for responding to that was the Monitored Case Program that I have every month in these cases, which anything dealing with international trafficking are briefed up to me. One of the things we put in there is progress, plans, and problems. And if a problem is identified of communication, it is to communicate, collaborate, and de-conflict, and from the briefings to me, and which I am very actively involved because I was a street agent in the field. Got shot at and all the other stuff, so I am not a suit in D.C.

Mr. FARENTHOLD. And let us talk about getting shot at, too. What programs have we, if any, Mr. Horowitz, have we implemented with respect to our various law enforcement agents detailed to countries with high drug violence, like Mexico, to ensure that they are safe? At the time of the Zapata shooting, they were unarmed due to our policies in dealing with Mexico. Has anything changed where our agents are able to carry weapons or they are escorted by Mexican agents who are armed?

Mr. HOROWITZ. I know there remain issues with regard to that, Congressman. If I could get back to you on that and follow up, I would appreciate it.

Mr. FARENTHOLD. Thank you very much. I see my time has expired.

Chairman CHAFFETZ. I thank the gentleman. I now recognize the ranking member, Mr. Cummings, of Maryland.

Mr. CUMMINGS. Thank you very much, Mr. Chairman. Mr. Horowitz, your report identified serious deficiencies in the actions of the U.S. Attorney's Office for the Eastern District of Texas against the drugs and firearms trafficker named Manuel Barba. Specifically, according to your report, and I quote, "The assistant U.S. attorney

handling the Barba drug prosecution should not have agreed to Barba's release from Federal custody in July 2010 following his indictment and ultimate plea in the Eastern District of Texas, leaving him at liberty to leave the Bates Allen Crew, and ultimately direct the straw purchase and trafficking of the firearm to Mexico."

Apparently, the DEA had recorded statements of Mr. Barba saying that he planned to traffic 20 AKA-47s, and those statements were included in the DEA report. But your report found "no evidence" that the prosecutor "read the DEA report that recited Barba's statements." Mr. Horowitz, that sounds like a serious mistake that had significant repercussions. Would you agree?

Mr. HOROWITZ. Yes.

Mr. CUMMINGS. I think they tell children, they measure children's progress in the first grade, and one of the things they measure is follow directions. It seems like you would read a document. Would you agree?

Mr. HOROWITZ. Yes.

Mr. CUMMINGS. So, Mr. Barba was released following the prosecutor's motion in July 2010. About 1 month later, Mr. Barba's trafficking ring purchased the firearm that was later used in the Zapata shooting. Is that correct?

Mr. HOROWITZ. That is correct.

Mr. CUMMINGS. So, Mr. Barba was not re-arrested until February of 2011. That is 7 months that he was free to operate his gun trafficking ring, 7 long months. So, Mr. Horowitz, do you know how many firearms were trafficked by Mr. Barba's ring during that 7-month period?

Mr. HOROWITZ. The information that we have currently, but would require further investigation, determined is at least 10 firearms were purchased by Riendfliesh on August 20th. We cannot rule out that there were not others, but there are at least 10 post to the July release.

Mr. CUMMINGS. So, these were very serious findings, and I do commend your office for uncovering them. But I understand the U.S. attorney acknowledged that his office dropped the ball and made some changes to their policy around the release of defendants before securing their cooperation.

Now, Mr. Horowitz, do you know whether the prosecutor who made this significant error was ever disciplined in any way for mishandling the Mr. Barba case? And you would agree that it was a mishandling, would you not?

Mr. HOROWITZ. I agree, and I do not know the answer as I sit here, but certainly we can follow up and get back on it.

Mr. CUMMINGS. How soon can you get back to me on that, today? That should be easy.

Mr. HOROWITZ. Well, it depends on the Department providing me the information. I do not have the information in my files, so we need to go to the Justice Department to get that and alert them to your request.

Mr. CUMMINGS. All right. Mr. Horowitz, I do not know if you are aware of this, but my staff did a little research on that prosecutor. And in 2013, the New York Post posted that same prosecutor who mishandled the Barba case, and he criticized Trayvon Martin on social media, called President Obama the, and I quote, "Dalibama,"

and said that, I quote, "Obama: Why Stupid People Shouldn't Vote." That was the same prosecutor.

Do you know whether the prosecutor was disciplined in that instance, or were you aware of any of that?

Mr. HOROWITZ. I was aware of it, and I am limited in what I can say with regard to any personnel action in a public setting. So, we would have to have further discussions with you about that.

Mr. CUMMINGS. But it appears that the prosecutor still works in the office. We invited him to appear here today to provide him with an opportunity to respond to your findings and address what I think are very serious questions about his judgment. He declined. And, you know, when we are paying people to do the work of the Federal government and they have those kinds of attitudes, there is no place for that. There is just no place for it, and it concerns me greatly.

And, you know, I do not mind saying it. I think President Obama is one of the most brilliant persons I have ever met and very principled, and these kind of comments simply have no place in our society.

So, I will yield back on that.

Chairman CHAFFETZ. The gentleman yields back. I will now recognize the gentleman from North Carolina, Mr. Walker, for 5 minutes.

Mr. WALKER. Thank you, Mr. Chairman. Mr. Brandon, how are you holding up? Doing okay?

Mr. BRANDON. I have had better days.

Mr. WALKER. Okay. All right. I do not want your probably, even though I am not familiar with it, your distinguished career to be defined in a few minutes here today. So, I want to make sure that we are kind of starting over and getting some information here.

You mentioned that you talked with your attorneys and chief of staff about the best decision, whether or not to bring or advise Mr. Turk and Mr. Temple. Early on you were pretty defiant as far as saying you are agreeing with these decisions. Did you not get good counsel from attorneys or your chief of staff of talking about the importance of coming to testify before Congress?

Mr. BRANDON. From my opinion, sir, I believe that there was a misunderstanding of what an invitation is to come before you. Now I know, so I would weigh in differently, you know, during that. But also, we are a component within DOJ, so we have to coordinate through the Department of Justice.

And I want to be fair to them, these people who are dealing with the DAG hearing and everything else, and so, I take responsibility. I am not going to duck it as far as I thought it was the best thing to do. And you can see, I am plain spoken. I am not a polished headquarters type person. And to answer your question, knowing what I know now, like I previously said, and to be respectful to this committee, I would have a different view of things weighing in.

Mr. WALKER. You have made a couple of comments about that. You are not a suit in D.C. You are more of a non-polished guy. You have kind of like a just do the job type personality. How long have you been the acting director there, Mr. Brandon?

Mr. BRANDON. Well, if I may say so, to answer your question, since April 1st. I say that, that that does not measure someone's

intelligence, or drive, or commitment to do that job. I just say it is my style and who I am, and I try to be who I am. But since April 1st of 2015 I have been acting director.

Mr. WALKER. Sure, okay. So, coming up on 2 years. You know, you understand the responsibility. I mean, even though you may not be on the street and you are wearing a suit and tie, you understand the responsibility of being the director, right, the acting director?

Mr. BRANDON. I have been living and breathing it 7 days a week.

Mr. WALKER. All right. So, with that comes with the responsibility of fulfilling the requests or the obligation that comes with the position. My specific question today that I want to get into, 2 weeks ago the committee requested documents on a North Carolina churning investigation reported on in the New York Times. Tomorrow is the deadline for that request. Can you tell me what steps have been taken to collect, identify, and produce those documents responsive to the committee's February 22nd letter?

Mr. BRANDON. Yes, sir. I have a team inside headquarters, and I actually pulled people off the street that have knowledge of these types of investigations, and working through the weekend and everything to meet the document production that we are allowed to do.

Mr. WALKER. I believe the New York Times also talked about, maybe even have written you guys about the informants receiving more than \$1 million. Precisely how much did each informant receive?

Mr. BRANDON. You know, sir, and this is what I mentioned in my opening statement, and this is advice I have gotten through the attorneys as the U.S. government is named in that lawsuit. And the judge has it under seal, and I cannot comment before the committee.

Mr. WALKER. Like you cannot comment on the amounts?

Mr. BRANDON. I have been told not to comment on anything regarding the litigation that the United States government is a party to.

Mr. WALKER. So, you cannot say what the purpose of these payments were, were they profit or expenses paid on behalf of the government, whether all the money and the property was accounted for, or were any of these payments in cash. So, any of those questions you are telling me that you cannot address at all.

Mr. BRANDON. Yes, sir, that is what I am saying.

Mr. WALKER. Okay. Well, then let me switch to, I know you said earlier you cannot go back to 2010. Let me talk about 2015 and 2016. Can you tell me how many straw purchases or firearm trafficking cases did the ATF refer for prosecution in 2015 and 2016, respectively?

Mr. BRANDON. I do not have those numbers in front of me, but I will take them back and report back to the committee, sir.

Mr. WALKER. So, if you do not have those numbers, you would not have any numbers as far as how many of those cases were ultimately prosecuted either. Is that correct?

Mr. BRANDON. With our system, I would be able to get that information, too, as far as recommended for prosecution, and we track the ones that get prosecuted and convicted.

Mr. WALKER. I have a few more questions, but I am just going to wrap it up this one because my time is quickly expiring. What is ATF doing to ensure agents coordinate with the prosecutor in U.S. attorneys' office as early as possible in their investigations?

Mr. BRANDON. Thank you for the question. Part of what I mentioned about Frontline with our domain assessments, even for our strategic plan for the year, they have to coordinate. And an ATF agent cannot open an investigation anymore, and this came after Fast and Furious. They have to coordinate with their supervisor, and then they have to note that they have consulted with an AUSA.

Mr. WALKER. Thank you, Mr. Chairman.

Chairman CHAFFETZ. I thank the gentleman. I will now recognize the gentlewoman from New Jersey, Ms. Watson Coleman.

Ms. WATSON COLEMAN. Thank you very much. First of all, to the Zapata family, please accept my condolences even at this late date. And I know it is even difficult to have to be revisiting this so many years later.

Mr. Horowitz, this is basically for you. In light of the recent reporting of the ATF tobacco diversion case, I would like to ask about the status of the recommendations in the IG's audit of ATF churning operations. The order was released in 2013?

Mr. HOROWITZ. That is correct.

Ms. WATSON COLEMAN. How many of these recommendations are now closed out?

Mr. HOROWITZ. We made 17 recommendations, and all 17 are now closed out.

Ms. WATSON COLEMAN. Good to hear. So, and there is no need for a follow-up then.

Mr. HOROWITZ. Well, there might have been, but we are informed, as the acting director said in his testimony, that the ATF has shut down their operations. So, at this point there would be nothing for us to —

Ms. WATSON COLEMAN. I want to tell you that we appreciate the work that you do and how important your function is. And having said that, I would like to kind of bring us up to date on some questions that I have.

It seems like every day there is a new revelation about the contacts between this President's campaign, and actually his Administration, and his associates, and even his family, and Russian officials. First, there were reports that former policy advisor, Carter Page, traveled to Moscow. It was denied, then it was admitted. But we have got indications that there have been interactions with Page, and Roger Stone, and Rick Gates, and Paul Manafort, and Michael Flynn, now the Attorney General, the son-in-law, Jared Kushner, even reports of Donald, Jr. and J.D. Gordon.

In light of this, I would like to ask you, do you realize why Congress would be so very, very concerned about these things, and these revelations that are coming to bear?

Mr. HOROWITZ. Well, just broadly speaking, I certainly understand why folks would have questions about various issues.

Ms. WATSON COLEMAN. Thank you. Mr. Horowitz, Senator Schumer recently sent his letter asking you to open an investigation into whether there has been any political interference with any on-

going DOJ investigation that is related to President Trump's campaign, transition, and Administration's contact with Russia, as well as attempts by Russia to interfere with our election. And I would like to add my strong support to Senator Schumer's request for an investigation of these matters.

Can you tell me whether you will be investigating whether there was any political interference with any potential DOJ or FBI investigations on this matter?

Mr. HOROWITZ. Congresswoman, we have Senator Schumer's letter, a letter from other senators. We have the chairman's letter on a matter related to it. And we are reviewing that and deciding and considering what, if anything, we should be doing with regard to that matter.

Ms. WATSON COLEMAN. Could you pledge to us that any investigation, if undertaken, will be fact based and thorough, and that the American people will be informed to the extent that it is significant and possible, and not a threat to our security at home?

Mr. HOROWITZ. Absolutely, Congresswoman. Every piece of work we do, we do with the two principles that every IG office operates under, which is independence and transparency. And if and when we do any work in that area, we would do the same thing that you have seen from us in the matters that we are here to testify about today.

Ms. WATSON COLEMAN. Thank you, Mr. Horowitz. We are definitely thirsty and hungry for the truth in these matters.

Mr. Brandon, let me just echo some of the concerns that we were raised by my chairman and my ranking member as it relates to the absence of the 2 individuals that have been expected to be a part of this today. I think that is very unfortunate. I thank you acknowledging the fact that perhaps this was a wrong call on your part, and I certainly hope that we have better cooperation in the near future.

Mr. Chairman, I yield back. Thank you.

Chairman CHAFFETZ. I thank the gentlewoman. I will now recognize the gentleman from Georgia, Mr. Hice, for 5 minutes.

Mr. HICE. Thank you, Mr. Chairman. Just following up because I think it is pretty unavoidable connecting some dots here, Fast and Furious and all of this. Of course, the program lasted from 2009 to 2011, allowing weapons from the U.S. pass to suspected gun smugglers. We ended up losing some 1,400 firearms during that, many of which ended up being used in crimes, including the death of Border Patrol Agent Brian Terry in December of 2010.

All right. Shortly after that Fast and Furious ends, and then investigations begin both with this committee and the House Judiciary Committee, and that is a fascinating process to me. Let me just highlight some of the issues that take place.

In October 2011, documents are obtained after Eric Holder was subpoenaed, documents. It is found that his testimony was inconsistent. He said he knew of Fast and Furious for only a few weeks. The documents revealed he knew over a year. February 2012, Holder tells this committee that firings and charges against DOJ officials who oversaw Fast and Furious are likely to come within 6 months, and he denies any cover up involvement.



June of that year, this committee recommends Holder to be held in contempt of Congress for failing to turn over documents that have been sought by the committee. On that same day, President Obama asserts executive privilege over the documents that are sought by this committee. Then 8 days later, the House here votes to hold Eric Holder in criminal contempt.

The next month, a congressional report is released placing blame on Acting ATF Director Nelson, and Deputy Director Hoover. Hoover resigns that day. Then you, Mr. Horowitz, release a report a few months later that says, in essence, that there were 14 ATF individuals and DOJ employees who were responsible for management failures. I think that was a very polite way of putting it. And then, it takes 2 years before finally DOJ turns over the 65,000 pages that had been sought.

Why did it take so long to get those 65,000 pages?

Mr. HOROWITZ. I would not know the answer on that, Congressman. We were not involved in the litigation or any of that —

Mr. HICE. You were not involved in that. Do you know if any action was ever taken against those who were involved in the Fast and Furious scandal?

Mr. HOROWITZ. The acting director.

Mr. HICE. Okay.

Mr. BRANDON. Yes, Congressman. That would be me as the deciding official on Fast and Furious. Many of the people retired, but I know that, I believe it was July of last year, a document was provided to this committee regarding each person listed and their status, and any discipline they received. And to respect the privacy laws, that is how it was delivered, and it is DOJ policy that I not speak publicly on those —

Mr. HICE. So, there was some action taken against some. Is that

Mr. BRANDON. There was action, and things were resolved.

Mr. HICE. Okay. Could you provide this committee with what action was taken, because it appears as though there was some criminal activity involved.

Mr. HICE. Let me ask you, Mr. Horowitz. Would you agree with that? I mean, in your findings, you used the phrase “management failures,” but I think Congress is holding Eric Holder in criminal contempt. I mean, is there criminal activity involved in this whole Fast and Furious?

Mr. HOROWITZ. We did not see criminal activity by the agents or the prosecutors involved in the case. We did find, as you noted, very serious failures in what occurred and how they handled themselves and their responsibilities.

Mr. HICE. Okay. With Eric Holder?

Mr. HOROWITZ. Again, Congressman, on the documents back and forth, given our independence as an independent entity within the Department, we were not in the middle of any of the back and forth. And so, I only know what I have read in the newspaper about that.

Mr. HICE. Okay. Do you have any idea of how much of the 65,000 pages they finally turned over were redacted percentage wise?

Mr. BRANDON. Sir, I do not.

Mr. HICE. Okay. Mr. Brandon, I mean, as a result of Fast and Furious, you have testified that there are lessons learned. Things have changed. Now, does ATF, do you believe, have a responsibility to disrupt potential straw purchasing, even if they are unable to obtain a prosecution?

Mr. BRANDON. Yes, sir. As I commented, that was one of the things when I came up here saying that agents do not get credit for interdiction and deterrence, and I will give you an example. My life was impacted. I was in Detroit. I got sent to Phoenix over Fast and Furious. And when I was sitting down with people looking at information coming in on multiple sales, it would be, hey, we do not have the time to build a criminal case. And I said, hey, you can knock on the door and do an old shoe leather, and that was the interdiction or deterrence and emphasizing that.

So, to answer your question, we now give credit for ATF agents who do exactly that investigative work where previously they did not get credit in all the spirit of public safety to prevent guns, like I mentioned, to be on the left side of boom, to prevent it from happening.

Mr. HICE. Okay. Thank you, sir. I yield back.

Chairman CHAFFETZ. Thank you. I now recognize the gentleman from the Virgin Islands, Ms. Plaskett, for 5 minutes.

Ms. PLASKETT. Thank you, Mr. Chairman and Ranking Member. We were talking just now about Fast and Furious, and several members on this committee are, of course, very familiar with the ATF problems in previous years through the investigation that occurred on this committee.

Mr. Horowitz, your office issued recommendations from Fast and Furious review in 2012. That is correct, right?

Mr. HOROWITZ. That is correct.

Ms. PLASKETT. And, Mr. Brandon, you say that there are key lessons that ATF has learned from in the aftermath of Fast and Furious and how the Agency has changed, correct?

Mr. BRANDON. Yes, ma'am.

Ms. PLASKETT. Would you say those are substantial?

Mr. BRANDON. Yes, and cultural within the organization.

Ms. PLASKETT. Now, was that based on just the IG's report or this committee as well?

Mr. BRANDON. Well, I think a combination of both to answer your question, ma'am.

Ms. PLASKETT. Thank you. And, you know, this committee, of course, relies on you, Mr. Horowitz, tremendously. I think maybe you should have a seat up here as well. You come and testify in front of us so often. Well, maybe not up here, but, you know, you can have a staff seat because we rely on you so tremendously for the work that you do that then leads to other investigations, leads to hearings that we have, as in Fast and Furious.

Last week, Mr. Horowitz, a number of Senate Judiciary members wrote to your office requesting an investigation of Attorney General Jeff Sessions and his recusal decision, his contacts with Russian officials, and his testimony to the Senate about those contacts. Did you receive that letter from those senators?

Mr. HOROWITZ. We did.

Ms. PLASKETT. Okay. And can you tell us whether you plan on conducting that investigation?

Mr. HOROWITZ. One of the things we do when we get requests like that, and we have gotten a request from Senator Schumer as well, the chair of this committee, chair of House of Judiciary related to certain issues there, is we take them under advisement, carefully assess what the ask is, and then make a determination.

So, at this point I do not have an answer for you on what, if anything, we might do in response. But we obviously take requests like that seriously and we will look at it.

Ms. PLASKETT. So, you are looking at it.

Mr. HOROWITZ. Right.

Ms. PLASKETT. You are taking it under advisement.

Mr. HOROWITZ. Correct.

Ms. PLASKETT. And at some point, would you let us know if you are going to make an investigation, or do you just conduct the investigation without our —

Mr. HOROWITZ. We always respond to the member to let them know what we are intending to do.

Ms. PLASKETT. Thank you. And we really appreciate that because it is the independence and the transparency of the IG's office that makes your work so important to us. And it is important that we believe that everyone understands the Department of Justice's own rules and regulations on recusals.

The Code of Federal Regulations state, and I am quoting here, "No employee shall participate in a criminal investigation or prosecution if he has a personal or political relationship with any person or organization which he knows has a specific and substantial interest that would be directly affected by the outcome of the investigation or prosecution."

The regulations go on to state, "A 'political relationship' means a close identification with an elected official or candidate arising from service as a principal advisor thereto or principal official thereof." We all know that Attorney General Sessions was the first senator to endorse Donald Trump in his presidential bid. He served as a key surrogate throughout the campaign, including since March of 2016, in his official role as chairman of President Trump's National Security Advisory Committee.

Mr. Horowitz, would you agree that Attorney General Sessions' role on the campaign meets the regulations criteria for recusal?

Mr. HOROWITZ. I am going to defer on that, Congresswoman, if I could because that is obviously something we would be thinking about in connection with the claims, allegations made in the letter.

Ms. PLASKETT. And would you say that as well to my question of whether you agree or not that the Attorney General has a political relationship with President Trump and his campaign for President?

Mr. HOROWITZ. Again, I would defer on that for now, Congresswoman.

Ms. PLASKETT. And do you agree or would you defer to answer that President Trump has a specific or substantial interest that would be directly affected by the outcome of any investigation into Russian interference in the 2016 election?

Mr. HOROWITZ. I would defer as well, Congresswoman.

Ms. PLASKETT. Okay. Thank you. Mr. Horowitz, from our reading, his final announcement, the Attorney General's announcement that he would recuse himself would then have us conclude that he is recusing himself because of his role in the Trump campaign. Would you agree or not agree with that?

Mr. HOROWITZ. Again, I would defer given our review of the allegation that we have been getting.

Ms. PLASKETT. And then, okay. So, but, I mean, just following the logical conclusion of that, should not other officials working at the Justice Department who worked for the Trump campaign also recuse themselves from investigations related to the Trump campaign and to Russian interference?

Mr. HOROWITZ. I would want to know if there are such officials in the Justice Department and whether they have recused or not before answering —

Ms. PLASKETT. Would your investigation as presented by the senators requesting that you investigate this, would it also entail you looking to see if there were officials, or would it merely be within the scope of Attorney General Sessions?

Mr. HOROWITZ. I think it is fair to say that with any reviews we do, once we undertake a review, if we found other issues to look at that were closely related, we would pick up those issues as well.

Ms. PLASKETT. Okay. Thank you so much for responding to my questions, and I thank you for your indulgence, Mr. Chairman.

Chairman CHAFFETZ. The gentlewoman yields back. I will now recognize the gentleman from Oklahoma, Mr. Russell, for 5 minutes.

Mr. RUSSELL. Thank you, Mr. Chairman, and thank both of you for being here, and Mr. Horowitz, your continued dedication, and thank you, Mr. Brandon, for your service. I have a lot of respect for the field agents. However, there are some troubling questions that really have not been answered.

June, August 2010, we had the Eagle Pass and La Pryor seizures. We know that these firearms are being trafficked. We have obliterated serial numbers. And notwithstanding what we heard in testimony here today from you, Mr. Brandon, about the uncertainty of how whether or not something could be seized or we need more laws, it is pretty clear, as you should know, that serial numbers obliterated constitute a real problem. And we can go into what those codes are.

With regard to 2010, an ATF agent is tipped off by an FFL, often demonized. FFL is often demonized as the problem for making straw purchases when the reality is they are the ones linking some of this because of their alertness. And then a decision is made at that point to allow the straw purchase to try to continue when we have already had the Osorios linked and tied with the La Pryor and the Eagle Pass seizures. But yet, we are going to continue on with that.

So, my question to you, Mr. Horowitz, in your investigation, what value could you determine that these agents or others would find by allowing dozens of illegally purchased firearms to continue to walk?

Mr. HOROWITZ. In this review, like in Fast and Furious, I think that is one of the significant concerns we have. This was a different

scenario than Fast and Furious, as we outlined, but when you see firearm violations and you have the opportunity to make arrests or take other investigative activity given the risks associated with them, it is important to do that. The firearms you mentioned at those two seizures had 2 days to 2 weeks of time to crime stat, so.

Mr. RUSSELL. Which is a real problem. And so, okay, you can kind of look at, well, within the next month they did make a purchase with an agent. But now we have 40 more firearms with obliterated serial numbers. Mr. Brandon, why did that not result in an instant arrest? We are talking literally scores of firearms now illegally trafficked. ATF is fully aware of it, and yet nothing happens in November 2010. Why was that?

Mr. BRANDON. The explanation from the Dallas Field Division, which Bill Temple was not in charge —

Mr. RUSSELL. Yeah, we would like to have heard from him.

Mr. BRANDON. So, he used to work for me in Detroit, and he just got to Dallas, I believe, less than a year ago. But I am not here to defend that other than there was —

Mr. RUSSELL. Why was no arrest made? I mean, we are talking scores of firearms. We know they are going south. Why was no arrest made in November 2010?

Mr. BRANDON. There was a sensitive DEA investigation going on.

Mr. RUSSELL. Okay. Well then, let us move on from that because here is another problem that we have. We have the Osorios tied to this, and yet there is some uncertainty on the part of the ATF agents when by the time they get to February of 2011, they are not sure if they go and find in Osorio's bedrooms these firearms, whether or not they are allowed to seize them.

Well, my goodness, as the only firearms manufacturer in Congress, gee, even I know that if you have got illegal firearms in somebody's bedroom, and you had a good warrant to go in and check it out, and you have got obliterated serial numbers, you are in deep kimchi. So, what happened?

Mr. BRANDON. Well, sir, I agree with the OIG. The group supervisor for the Firearms Trafficking Group, he failed to communicate that to the agents who were there. Again, I am not defending it, and how we have —

Mr. RUSSELL. And this is the frustration that we have, Mr. Brandon, because what has happened is, you know, we had dedicated agents, like yourselves, who lost their lives because people were not doing their job. And worse, we had a desire on the part, which we have been trying to get to the bottom of, of people who allowed these firearms to walk south for reasons yet to be determined. And yet, everyone wants to sweep that under the rug.

And with regard to my colleagues that have stated about the law and the need for more laws, I would remind everyone, the 1968 Gun Control Act requires serial numbers. 18 U.S. Code Section 1922(k), 26 U.S. Code 5861, Paragraph (g) lays out requirements for what constitutes legal firearms. And it is illegal to possess firearms and have serial numbers removed, obliterated, or altered.

Mr. Brandon, are you familiar with the Don't Lie For the Other Guy Program?

Mr. BRANDON. Yes, with the National Shooting Sports Foundation.

Mr. RUSSELL. Sure, and not only them, but, my goodness, what, for 17 years now, we have had that program. Is it or is it not a felony to make a straw purchase? And here we are talking about the need from your own mouth in acknowledgement to some of my colleagues' queries that we need to have a law to prevent this type of trafficking or straw purchases. Are you not aware of the Don't Lie For the Other Guy Program?

Mr. BRANDON. I am aware of it.

Mr. RUSSELL. Do you know what the penalties are for that?

Mr. BRANDON. Yeah, there is a 5-year felony, a 10-year felony.

Mr. RUSSELL. No, it is 10 years, sir. A 10-year felony for a Federal crime, and up to \$250,000 fine. You can find that in U.S. Code 18 Section 924(c) and (e). I would be happy to show it to you.

Here is the problem. We are talking around this issue. I have every belief that you are dedicated to your job, but right now we have three empty chairs, and we have you that does not even seem to know what the U.S. Code is.

Mr. BRANDON. Can I —

Mr. RUSSELL. Now, I would like to believe that you do know those, but, Mr. Chairman, I would suggest that we have a regroup. The ranking member has not been allowed to have his witness here today. We have not even gotten to the tobacco issues. We need to have some follow on here. And, Mr. Horowitz, I am very grateful for the things that you have dug up. You have exposed some things. We are grateful for that. Mr. Brandon, I do believe you are dedicated, but I will tell you what, it is not looking too pretty here today.

I yield back my time. Thank you, Mr. Chairman.

Mr. BRANDON. Could I get a minute?

Chairman CHAFFETZ. Mr. Brandon, you are recognized, sir.

Mr. BRANDON. Mr. Russell —

Mr. RUSSELL. I am out of time. That is why.

Mr. BRANDON. I am aware there are two statutes. One is a 5-year and one is 10-year, so I did not want you to come away with that. But I would also like to comment on what you said about Federal firearms licensees.

We have built, and that is one of the things under my charge, a better relationship and communication with the Federal firearms licensees because they are the front line of defense in receiving that information. And if you even go onto ATF's website, yesterday Twitter, one of the things under my leadership was the number of FFL burglaries that have been happening across the country, FFL robberies, things that were not tracked until 5 years ago.

So, I just wanted to share that I have a passion for recognizing we regulate an industry, and good, honest, hardworking men and women dealing in a lawful commodity, and that are absolutely vital to our intelligence-led, risk-based way of doing business.

And they should have followed up. When FFL called and gave those names, that should have been, you know, an alarm going off. So, thank you for letting me make that comment.

Chairman CHAFFETZ. Thank you, of course. I will recognize the gentleman from Massachusetts, Mr. Lynch, for 5 minutes.

Mr. LYNCH. Thank you, Mr. Chairman. And I want to echo the gentleman from Oklahoma's request for follow-up on this because I think we really need to drill down on this.

Mr. Brandon, last month the New York Times wrote a story raising some troubling questions about ATF's use of confidential informants in a tobacco operation that I guess was under way from 2011 to 2013.

Mr. Chairman, I ask unanimous consent to enter this story by Matt Apuzzo, the New York Times, February 22nd. The title is "ATF Fills Secret Bank Account with Millions from Shadowy Cigarette Sales."

Chairman CHAFFETZ. Without objection, so ordered.

Mr. LYNCH. So, the article reported that the ATF officials directed confidential informants to engage in sham transactions with a collective of tobacco farmers, and then used the off-the-books proceeds in an undercover ATF investigation. This is churning. You are familiar with that, right?

Mr. BRANDON. Yes, sir.

Mr. LYNCH. Okay. And the way it works is you use those illicit funds to fund your own operation. Is that right?

Mr. BRANDON. Yeah, for continuing the operations.

Mr. LYNCH. Okay. While ATF did in this case possess special authority granted to it under the Bush Administration that allows the use of black market cash and proceeds in undercover operations called churning, the news report further alleged that this operation exceeded that authority. Do you believe that they exceeded the authority in this case?

Mr. BRANDON. Congressman, like I testified previously and included in my opening statement, that the U.S. government is a party to civil litigation, and I cannot comment on that. And also, the judge has it under seal.

Mr. LYNCH. Okay. How long is that seal going to be in place. Do you have any idea?

Mr. BRANDON. I believe it's until the 24th of this month.

Mr. LYNCH. Good. Good. We can have it back. Does the gentleman wish me to yield?

Chairman CHAFFETZ. If you will yield, and we will give you plenty of extra time to make up for this. You commented "that we are allowed to do" as it relates to that. What have you done to address the Court and ask permission to comply with a congressional request for that material? Have you called the judge? Have you petitioned the Court?

We go through this regularly. We are guided by the Constitution. We do not have these prohibitions. That information should be given to us, but we need you to approach the Court and tell them the dilemma that you are in in order to release that information.

Mr. BRANDON. Mr. Chairman, we have had conversations with DOJ, the U.S. attorneys who are over the civil litigation, and I am punting to them for that answer.

Chairman CHAFFETZ. And we are snapping the ball to you saying the ball is in your hands and saying you need to approach the Court and make the request to give them permission to comply with a congressional directive.

Mr. BRANDON. Okay. I will take that back.

Chairman CHAFFETZ. I will go back to Mr. —

Mr. LYNCH. Thank you, reclaiming my time. Mr. Horowitz, are you familiar with this particular use of confidential informants for this cigarette scam which apparently generated millions of dollars and were put in these accounts?

Mr. HOROWITZ. I am certainly familiar with these churning accounts from our 2012 audit, and the work we did there, and the substantial problems we found through that audit.

Mr. LYNCH. Okay. How did we vet these particular informants? I mean, under the Reno guidelines, there is certain conduct that would disqualify someone from being a confidential informant on behalf of the ATF. Were these folks vetted or were they in compliance with the Reno standards?

Mr. HOROWITZ. I am not sure I know as I sit here today the specific individuals in the case under seal. But I will say more broadly we found in our audit that in 33 of the 35 instances that we looked at back in 2013, that the critical information required the ATF policy to start the operation was not present. And we found a major churning investigation that had not ever been approved, and that the committee that was supposed to meet to review it never met.

And we are close to issuing a report on ATF's handling of its confidential informants more broadly beyond this matter, and can certainly discuss with you when we get that report out in the next hopefully month or so those issues further.

Mr. LYNCH. Mr. Brandon, I know your previous answer was limited because of the seal. Is there anything you wish to dispute that has been put out here in terms of, the allegations are very, very serious.

Mr. BRANDON. Yes, sir, they are. The one thing I would like to assert is what the OIG, their thorough investigation of our churning cases, as you said, where we recognized there was a problem 7 years ago. In candor to you and the committee, the policy was lacking. The oversight was lacking. The leadership was poor. And we shut those down. There has not been a churning case since 2013.

But I compliment the OIG and his team because they did an excellent report. We cooperated fully, and there are no longer any outstanding recommendations regarding churning from the OIG with ATF.

Mr. LYNCH. Okay. Is that authorization still out there, though? I know it came from the Bush Administration. Has anybody pulled that back, or is it just your own decision not to operate that way?

Mr. BRANDON. We put in tight policy. To answer your question, it is still out there. However, there have been no requests for churning investigations because it is a very tight policy and standard to open a churning investigation, and we have not done so since —

Mr. LYNCH. Okay. Mr. Horowitz, from the accounting in terms of these accounts with the cash coming in and then going back out, it is sort of self-contained. And, you know, there is the opportunity for abuse, let us put it that way. Any recommendations that you have with regard to the way this is handled?

Mr. HOROWITZ. Well, we certainly made several in connection with that review. And it is a report that we made sure the Depart-



ment saw and made recommendations to the deputy AG's office because of the broader concern of whether any other Federal law enforcement agencies might have churning accounts and how they are doing things. But clearly, there needs to be far stricter controls than were in place back then. ATF has made changes in response, and that is what led us to close the recommendations as to ATF.

Mr. LYNCH. That is good news, but was anybody disciplined for what they described going on here in the New York Times article?

Mr. HOROWITZ. I am limited in what I can say other than, as we indicated in the audit, our auditors referred matters for further investigation to our agents. And I need to leave it at that.

Mr. LYNCH. Okay. I know the chairman has a document request, and I believe it is due tomorrow. Mr. Brandon, are we prepared, are you prepared, to deliver those documents?

Mr. BRANDON. Like I have testified, Congressman, I have pulled people from the field. They have been working through the weekend, and we are diligently working to comply with the request.

Mr. LYNCH. Okay. I think I have exhausted my time. I yield back.

Chairman CHAFFETZ. Will the gentleman yield?

Mr. LYNCH. Sure, I would. Sure.

Chairman CHAFFETZ. I believe there is a great big asterisk, though, to the end of that sentence, right? You are not going to provide us the things that you believe are under seal by the Court, correct?

Mr. BRANDON. Mr. Chairman, I am going to have to comply with the U.S. Attorney's Office and DOJ dealing with those legal matters.

Chairman CHAFFETZ. Okay.

Mr. LYNCH. Just sort of as a follow-up, Mr. Chairman.

Chairman CHAFFETZ. Yeah.

Mr. LYNCH. I think if we get to the 24th and that seal goes away or there is greater cooperation on the part of the Court, maybe we reconvene this hearing with all the folks that are missing and go at this again.

Chairman CHAFFETZ. Oh, we will no doubt have people back. But it has been the long-term practice prior to me that civil litigation is not a prohibition on Congress being able to do its job, get its documents that it receives.

Mr. LYNCH. I agree. I agree.

Chairman CHAFFETZ. And so, yeah, we plan to issue a subpoena. The moment you provide that document production and it is shy of what we asked for, we will send you a subpoena. And so, we are planning on sending that to you on the 13th. I would rather not. I would rather have you give us all the documents we request, but we do not recognize that civil litigation given our constitutional duties. Anyway —

Mr. CUMMINGS. Just one question.

Chairman CHAFFETZ. Mm-hmm.

Mr. CUMMINGS. I just want to go back for a moment, and, Mr. Horowitz, maybe you can answer this. This seal was a Court seal, right? Who is sealing it? I assume it is the Court.

Mr. HOROWITZ. As I sit here, that is my understanding, but I have not been involved in the litigation.

Mr. CUMMINGS. And if the Court seals it, then the Court has to unseal it, right?

Mr. HOROWITZ. Correct.

Mr. CUMMINGS. I mean, civil or criminal. It does not matter.

Mr. HOROWITZ. Right.

Mr. CUMMINGS. Okay.

Mr. HOROWITZ. In fact, as the committee knows, we are dealing with that on the report that we issued on the Osorio/Barba matter, which is certain matters were under seal, and we are asking the Department to go back to the Court and get it unsealed so we can redact it.

Mr. CUMMINGS. I got you. All right. Okay.

Chairman CHAFFETZ. It is our belief that a congressional seal bars them from making it public, but to provide it to the United States Congress is not one of those prohibitions of a seal. A court seal, I should say. Not a congressional seal, but a court seal prohibits somebody from making it public. Providing the information we have requested to the United States Congress is not making it public. Therefore, we do not recognize that seal as something that prohibits Congress from doing its job. That is our position.

And, Mr. Brandon, I know that puts you in a tough spot, but carry that message back if you will.

Mr. BRANDON. Yes, sir.

Chairman CHAFFETZ. Thank you. Mr. Grothman from the State of Wisconsin is now recognized for 5 minutes.

Mr. GROTHMAN. Okay. Mr. Horowitz, thanks for being here. There are a lot of interesting things that you brought forth today. Can you give me other examples, or are you aware of any other examples in the last 5 years in which ATF by not communicating with DOA has led to, you would say, errors in investigations?

Mr. HOROWITZ. As I sit here, I cannot think of anything off the top of my head. I do think we found in the storefronts report that we did, and I have to just go back and refresh myself, concerns about its coordination in some of those storefronts that were several years with State and Federal prosecutors, and the coordination between them on who would take which cases and whether they would, in fact, take cases.

Mr. GROTHMAN. Okay. We will flip to Mr. Brandon. What are you doing to make sure that your agents coordinate with U.S. attorneys as quickly as possible compared to the past?

Mr. BRANDON. Congressman, as I testified, we established what we call Frontline, an intelligence-led, risk-based business model in beginning of 2012. And in that, every special agent in charge of a division has to do an annual domain assessment. And that came from me that they had to share that with the U.S. attorney and his first assistant, the criminal chief, to make sure that ATF is in step with the U.S. attorney. And it also makes us more efficient and effective on our resources to make sure that what we are investigating are the most violent people, and that there will be a prosecution from it.

Mr. GROTHMAN. Do you feel the U.S. attorneys' willingness to prosecute a straw purchasing case is influenced by how you investigate a case?

Mr. BRANDON. Sure. You know, I mean, prosecutors want good cases. I do not blame them, and that is our job to deliver them. But I also know that across the country, U.S. attorneys have different challenges on what they are wanting to investigate with their resources. So, it is not the same all across the board.

Mr. GROTHMAN. Do you ever change your investigative methods because you think the case is unlikely to lead to prosecution?

Mr. BRANDON. To be candid, there have been some divisions where if it did not look the U.S. attorney would take it, that we would go to the State attorney general's office for prosecution.

Mr. GROTHMAN. And do you feel you have the responsibility to disrupt straw purchasing or firearms trafficking, even if you think you are unable to obtain a prosecution or conviction?

Mr. BRANDON. Yes, sir. And as I testified, I really believe the interdiction and deterrence credit that we give agents for their production has helped knock down the number of, say, straw purchases where they get scared off, and let them know that they have come under ATF attention.

So, I keep using the expression, but be on the left side of boom. That was not in the culture. It was, why waste our time on this if we are not going to get a prosecution. And we put an emphasis on public safety with interdiction and deterrence from firearms getting in the wrong hands.

Mr. GROTHMAN. Okay, thank you.

Chairman CHAFFETZ. Sorry.

Mr. CUMMINGS. Would the gentleman yield? Thank you. I want to go back to something that Mr. Lynch was talking about, Mr. Horowitz. To get to a churning situation, I guess that really calls for some folks to be cooperating, right? I mean, in other words, you got to have several people working together for that to happen, right?

Mr. HOROWITZ. That is my understanding from what we have seen.

Mr. CUMMINGS. And so, you know, when I read the story, and I know we cannot get into that too much here, I was kind of surprised to even see that, particularly after all the Fast and Furious stuff that we have been through. It just seemed to be a bit much. I was shocked, to be frank with you. Were you?

Mr. HOROWITZ. I have to say I was not primarily because —

Mr. CUMMINGS. Because you had more information.

Mr. HOROWITZ. Because our 2013 audit —

Mr. CUMMINGS. Yeah.

Mr. HOROWITZ.—identified many similar situations, frankly, of a lack of controls. In that circumstance, we not only found a problem with the controls over the bank accounts and the controls over the CIs, the informants, but the controls over the cigarettes themselves. ATF could not reconcile all the cigarettes with a substantial value to them.

So, in that report we saw a series of failures, so, frankly, I was not particularly surprised.

Mr. CUMMINGS. So, you think this is just people in the Agency that just say, you know, we will use any method necessary to get the job done, or are they people that just say we do not care about, you know, how this is going to appear? In other words, I am con-

cerned that, you know, you can let any agency or any organization get lulled into a culture of I do it the way I want to do it, and that is why I was asking you about does it take several people. How do we even get there?

Mr. HOROWITZ. This was —

Mr. CUMMINGS. Because I do not want to see it happening again. We should not be opening up the New York Times reading about this kind of stuff. Go ahead.

Mr. HOROWITZ. I was just going to say, the churning issues that we identified, the issues in Fast and Furious we identified, the ATF storefronts report, some of the things we have been before the committee and talked about on the DEA side, those were not, generally speaking, as you just indicated, Congressman, one person running amuck. They were multiple people without adequate controls, leadership, and oversight being able to do what they thought, in most of those instances, not all, were advancing law enforcement interests when, in fact, they were not.

Mr. CUMMINGS. Thank you, Mr. Chairman.

Chairman CHAFFETZ. Thank you. We will now recognize Mr. DeSaulnier of California.

Mr. DESAULNIER. Thank you, Mr. Chairman. And along the lines of what the ranking member just mentioned, we have heard in this committee when you have come and testified before, Mr. Horowitz, just on lessons learned and doing reasoned nonpartisan interventions. So, to Mr. Brandon, does ATF maintain a database of Federal law enforcement weapons that have been lost or stolen?

Mr. BRANDON. No, we do not.

Mr. DESAULNIER. Right. So, in the San Francisco Bay area where I am from, there has been a lot of media attention, and the San Jose Mercury News has done an extensive series of stories—you may have read it—about lost and stolen weapons by both State, local, and Federal officers.

Two people have lost their lives that I am aware of because of lost and stolen Federal weapons, one by an agent from the Bureau of Land Management that led to the tragic death of Kate Steinle, a former constituent of mine, that has led to the larger discussion both by the President and members of Congress about immigration status. But the fact remains that that gun that was used in that murder and in another murder in Oakland were Federal law enforcement officers who had weapons stolen.

So, I have a bill, and to my friend from Oklahoma, I do not need to have a bill passed. I have also asked the Administration, the previous Administration, could you at least, led by ATF, create a policy that was germane to all Federal law enforcement both on proper storage of weapons so we would not have the situation that happened in San Francisco that happens a lot in San Francisco unfortunately where if there is anything in the car, thieves will break a window and grab and snatch, snatch and grab anything in there that led to these two deaths.

So, it just seems to me common sense that you would lead an effort to make sure that there was the best policy possible, whether it requires a statute or not, to make sure that we have learned the lesson in this instance and others just in terms of an inventory control and accountability issue, that you would make sure that these

kind of things were at least minimized. And the fact that you do not even create a database to follow these things for Federal law enforcement seems to me to be negligence in the extreme, and personally, having seen people, constituents, people suffer the consequences.

So, my question is, the State of California responded to this by passing a statute that required Federal and State agencies, because they have been guilty of the same thing, and sometimes quite tragically, I will add, to law enforcement officers. I have another constituent who is a police chief, and his weapons were stolen out of his car in a driveway in a very affluent community and used to commit a crime, and he was horrified and quite guilty about it.

So, I have heard sort of the culture question by the ranking member, friends of mine in law enforcement saying you should not be imposing these, we care about public safety, let us take care of it, but that is not enough. I really think that it is incumbent on you, and the IG has pointed this out, to develop better inventory control, and better accountability, and better consequences for Federal law enforcement officers, and better preventative practices.

So, my question is, as I understand the law in California, Federal agents will have to comply with that. And if you are aware of how you are helping to comply with that effort, and why we do not do it on a national level, and I do not think it needs statute. I think you could do it administratively, and it would help a great deal. So, could you respond to those observations?

Mr. BRANDON. Yes, Congressman. You described tragedies, you know, and I remember reading about it in the paper.

As far as ATF and I know the other agencies as well, we account for our firearms inventory, and that is an annual thing as far as having to account for every firearm. I will share my sensitivity to what you are saying is that when I was in the deputy director position, I increased the penalty if an agent had a firearm stolen out of their care a mandatory 5 days off without compensation, and it could not be reduced. And I was sending a message culturally because of the sensitivity, which has become prominent amongst people stealing guns out of cars.

I have gone to St. Petersburg. The chief had billboards up about please lock your car up, secure your firearm. I was in Memphis. The chief was saying the same thing. So, I support that.

Whether or not ATF would be the custodian of everybody's firearms, I believe that it is being done at each law enforcement bureau component, and that we do an annual inventory, and that any firearm that is stolen with ATF, that it is investigated by our Internal Affairs. The OIG always has a chance of reviewing the files, and then it will go through our process for discipline.

Mr. DESAULNIER. Mr. Brandon, I hope that all of those changes actually result in a positive thing that we both want, but it is not working so far. We just had another incident with an FBI agent out of the Concord, California Bureau office, which is in my hometown, where multiple weapons were taken. So, it is not working.

So, my question is, why given that law enforcement has said over and over again we care about these things, we are doing things, as you had pointed out to, but it is not working. So, understood that

there is going to be some margin of error and there are going to be instances, but we are not doing enough.

So, my admonition and request for you and of the committee is we need to do things and do it across the board to all Federal agencies as the State of California is doing for State and local officers, and make sure, particularly on the front on storage of the weapons, and when they are not in use. If they are not on your person, the new law says they have got to be locked in your trunk and have a gun lock on them, which seems to me to be the right thing to do.

So, I would just ask you and the committee that we continue to pursue this in the prevention area in this larger thing so we do not have these tragic situations, knowing that they may happen on occasion, but they are happening far too often as it is right now.

Mr. BRANDON. No. Thank you, Congressman, and ATF's policy is, what you said, is about the secure storage of firearms in a vehicle. It has to be not just in a trunk, but within a container that is within that trunk that is designed for firearms storage.

Mr. DESAULNIER. So, my only observation is that is great, but it is not working across all Federal agencies. And to the degree that you have the ability to enforce that and bring up the best standards, I think we should be pursuing that. Thank you.

Mr. BRANDON. I am sorry —

Chairman CHAFFETZ. No, go ahead.

Mr. BRANDON. Congressman, we have a quarterly meeting at DOJ with FBI, DEA, the Marshals, and the FBI, the four components. I will bring it up at the meeting as a topic of firearms storage.

Mr. DESAULNIER. I would appreciate that.

Mr. BRANDON. Thank you.

Chairman CHAFFETZ. Thank you, and that is a good point. The committee is happy to follow up, and perhaps we could get an inventory or some sort of indication as to what they are doing or not doing in that. So, let us work with you on that as well. That is a good point.

I will now recognize myself. Mr. Horowitz, you said earlier that your office found no criminal conduct from anyone involved in Fast and Furious. I want to ask about former ATF Phoenix Field Division Assistant Special Agent-in-Charge George Gillett, who was heavily involved in running Fast and Furious. He had personally purchased a firearm. What happened, do you recall, to that firearm?

Mr. HOROWITZ. I do, and it was transferred by him to a non-U.S. national.

Chairman CHAFFETZ. And so, he sold it to a non-U.S. national, and what happened with that gun? Where did they find it?

Mr. HOROWITZ. If I recall correctly, it was a scene of a crime, but I would have to go back and just make sure I remember.

Chairman CHAFFETZ. Yeah, that is the way we recall it as well. Mr. Brandon, when you fill out Form 4473, are you allowed to use your work address or are you supposed to use your home address?

Mr. BRANDON. You are supposed to use the residence you live at.

Chairman CHAFFETZ. If you put something other than your home address, can you prosecute those crimes? Is that a crime?

Mr. BRANDON. If you intentionally and knowingly put something down false on a form, yes, it is.

Chairman CHAFFETZ. So, the form says you are supposed to put your home address, correct?

Mr. BRANDON. I believe so. As I recall, yes.

Chairman CHAFFETZ. Yeah. So, something other than your home address would be inaccurate, correct?

Mr. BRANDON. Correct. I mean, I bought a gun last summer. I put down my apartment.

Chairman CHAFFETZ. So, did the Inspector General's Office make any recommendation to the Department of Justice to consider prosecuting him for—this is Mr. Gillett—for lying about his address on Form 4473? Mr. Horowitz?

Mr. HOROWITZ. I do not believe we did.

Chairman CHAFFETZ. And why not?

Mr. HOROWITZ. Because what we have been told or were told is that for law enforcement agents at the Department, many of them do not use their home address for security purposes, but instead use a P.O. Box, or UPS Box, or some other location, and that that was not sufficient evidence of intent to warrant a criminal prosecution.

Chairman CHAFFETZ. Even though he sold it to a non-U.S. national and it ended up at a crime, and he used an address that is different on the form. You just decided that, nah, we will not prosecute that. What is hard for the American people to understand is why that waiver? Are these forms publicly available? I mean, can you just go look this up?

Mr. HOROWITZ. I believe you can. I think if you go on the internet and look, it is on ATF's website.

Chairman CHAFFETZ. But, I mean, can you look up, oh, let us go find and ATF agent, and then we look at his form and see if he purchased anything, and, oh, there is his address? I mean, what are we trying to protect him from?

Mr. HOROWITZ. I would defer to —

Chairman CHAFFETZ. Mr. Brandon, is that common practice? Is that what ATF agents are doing in putting a work address on there?

Mr. BRANDON. Not to my knowledge. I was surprised at George Gillett's response. In candor to you, Mr. Chairman, I am glad he is off ATF. He was not one of our best. And people that were doing undercover work, ATF would provide undercover identification, and that would be the permissible type.

Chairman CHAFFETZ. Right.

Mr. BRANDON. But I think, if I remember correctly, he was using a drop box at a mail place, a P.O. Box, and I was surprised. And it is not common that I know of to ATF.

Chairman CHAFFETZ. Let me switch gears. Mr. Brandon, you said that there was a person, the group supervisor who was supposed to have some responsibility here—we are going back to the Zapata case—I think the phrase you used “asleep at the switch.” How long did it take for you to all figure out—and I am not talking about you personally, but the organization—how long did it take ATF to figure out that there was somebody asleep at the switch?

And the second part of that is, what happened to him? Was he fired? Was he disciplined? Did you give him bonuses? What happened to this person?

Mr. BRANDON. The person retired from ATF.

Chairman CHAFFETZ. As a result of this? Right after it? I mean, help me with the timespan. 6 years have passed, so help me with the timespan.

Mr. BRANDON. Well, I know the employee, from reading the report, that the OIG interviewed him. He retired before the report came out, and his reputation was not that of a dynamic leader that was engaged.

Chairman CHAFFETZ. Mr. Horowitz, can you weigh in on this?

Mr. HOROWITZ. My understanding is he retired in June of 2012, so even before we got the referral in September 2012.

Chairman CHAFFETZ. Okay.

Mr. HOROWITZ. And before we began our review.

Chairman CHAFFETZ. Mr. Horowitz, we have talked in general about access issues to a whole host of things. Are you having access issues at the ATF?

Mr. HOROWITZ. We are not, and I want to be clear also. The delay had nothing to do with any access issues with ATF. We got what we needed. That was not an issue.

Chairman CHAFFETZ. And outside the Zapata case, on a broader sense, are there access issues that you care to highlight here at this hearing?

Mr. HOROWITZ. Currently we do not. ATF has been very good in the last several years about getting us, even as we were having fights with DEA and FBI. Our access issues with ATF were actually in connection with the Fast and Furious matter.

Chairman CHAFFETZ. Well, let us note that 2011, we got some good news, so congratulations, Mr. Brandon. We thank you for that.

Mr. BRANDON. Well, thank you.

Chairman CHAFFETZ. My time has expired.

Mr. BRANDON. Mr. Chairman, can I —

Chairman CHAFFETZ. Yes.

Mr. BRANDON.—because I did want anybody to think I was lying. I confused it. There was another employee that retired at the end of 2016 that the OIG was critical of in documenting his surveillance and interview of an FFL. So, that is what I was referring to my head just for the clarification. I did not want to be inconsistent.

Chairman CHAFFETZ. Okay. No, I appreciate it. No, thank you. Let us go back to Mr. Lynch of Massachusetts for 5 minutes.

Mr. LYNCH. Thank you, Mr. Chairman. Mr. Horowitz, I want to go back to the cigarette smuggling case. Mr. Brandon, you had ATF agents working with at least a couple of informants in that case. And it says here in the New York Times article that they were funneling tens of millions of dollars, and then apparently they are using the black market cash to pay the informants. Is that a usual practice?

Mr. BRANDON. Again, sir, if I can comment not particularly to this investigation. It is under seal.

Mr. LYNCH. Okay.



Mr. BRANDON. But in churning in general and how the OIG's report was spot on, and that oversight was deficient, policy was deficient, it was a hot mess. And that is why we shut it down, all of them, in 2013. There has not been another one. And I actually, you know, welcome when everything that can come out on this case that the government is a party of.

Mr. LYNCH. All right. Let me thank you for that. Mr. Horowitz, so I am trying to follow your investigation. You did a very good report. I think it was a 2013 report. You went back from, I think, February of 2006 —

Mr. HOROWITZ. Right.

Mr. LYNCH.—to about June of 2011, right?

Mr. HOROWITZ. Yes.

Mr. LYNCH. So, we got that block of time.

Mr. HOROWITZ. Right.

Mr. LYNCH. You had some reports there where informants were being paid, some of them a million dollars, a million dollars a year. To pay an informant, who I think at that point was working with the DEA, if I am not mistaken.

Okay. So, now we have another report from the New York Times that goes to January and February of 2011, so it is within the scope of your study, Mr. Horowitz, your report. So, there is some overlap here that this churning is going on.

So, is your investigation, did you cover this? Did you cover the accounts? I am trying to figure out is the money being reported properly? Who did it go to? How much money were these folks getting?

Mr. HOROWITZ. Again, I do not know all the specifics of the matter and what is under seal.

Mr. LYNCH. But did you investigate that, though?

Mr. HOROWITZ. But I will say that given what my auditors looked at and the accounts they looked at —

Mr. LYNCH. Okay.

Mr. HOROWITZ.—I believe we looked at the breadth of the undercover churning accounts that ATF was using, and that our audit report covered those accounts in full, and that the problems we identified covered that.

Now, when we finished in June 2011 in our field work, one of the reasons it took some time to issue the report was, frankly, because as we were doing our audit work beginning in 2011, ATF was making many of the changes that Acting Director Brandon outlined. And so, what we ended up doing was continually updating our audit report, which caused us to want to make sure we were picking up some of the changes they made. And they asked us actually to look at some of the changes they made.

Mr. LYNCH. Okay.

Mr. HOROWITZ. So, I think —

Mr. LYNCH. I was just trying to get the timeline down to make sure that you were looking at this case, and it appears that you did. Part of your investigation at least captured this before the practices ended.

Mr. HOROWITZ. I will say this. I do not, again, know all the specifics of what is under seal, but if it fell into a period through June 2011, I think it is safe to say that our auditors looked at the scope

of their churning accounts through June 2011. And my guess is the acting director, given our back and forth —

Mr. LYNCH. Okay.

Mr. HOROWITZ.—could probably speak to that as well as to whether we looked at all of their accounts.

Mr. LYNCH. All right. Well, you know what we will do is we will wait until the 24th and have another bite at that just to make sure we are right. All right.

I yield back, Mr. Chairman. Thank you.

Chairman CHAFFETZ. Thank you. I will now recognize the ranking member, Mr. Cummings, for 5 minutes.

Mr. CUMMINGS. It would be legislative malpractice, Mr. Brandon, if I did not ask you these questions.

In my district, in the inner city of Baltimore, you have situations where young men can get a gun just as fast as they can get a cigarette, and it is interesting that there has been a proliferation of sales of guns. And I am just wondering, how does that make your job harder, and how do you all deal with that? And you do not have to sugar coat it with me. I believe that the ATF has been treated like a stepchild, and I think there are some that, if they had their way, would get rid of you guys immediately.

One of the reasons why Mr. Lynch's questions are so significant, and one of the reasons why Fast and Furious was significant, is because it then gives people who do not like you and your organization justification to treat your organization the way it is treated. And anybody who knows anything about the ATF can sit here and be dishonest, but I believe that with all my heart because I attend the funerals of young, particularly, black men who die tragic deaths, and even my own nephew, brains blown away on a wall being robbed. That was in Norfolk 5 years ago. They still have not found the person who did it, but I know the ATF got involved.

But this is my question. Yesterday I had a meeting with President Trump, you know, and I told him, I said, Mr. President, do me a favor. When you talk about the black community, do not just talk about, make it sound as if we are all in some bunker somewhere suffering. Do not judge us by a weakest link.

But he keeps saying that I am trying to figure out. He keeps saying that he is going to send in the feds—I do not who he is talking about, I guess troops, probably ATF—to help with places Baltimore, and he loves to talk about Baltimore. He loves to talk about Chicago. And we know we have limited resources. One of our members told you a little bit earlier that you just got to do more with less pretty much.

So, if the President came to you and said, Brandon, you know, how can we use our resources best to help places like Baltimore and Chicago, what would you say, because I am just wondering how he would do that. I know about the task force, you know, because we have got that in Baltimore. That to me is important. But do you, I mean, just send people in and say ATF, you know, look at this situation, do whatever you want?

I mean, what would your recommendation be, because he is probably going to come to you if he has not already, or somebody is going to come to you.

Mr. BRANDON. Congressman, I appreciate the question.

Mr. CUMMINGS. And I am not trying to put you on the spot. I am really curious because I want us to be effective and efficient in whatever we do, and I know you do, too.

Mr. BRANDON. I would love the opportunity. Like I said, I think everybody wants to be tight with the taxpayers' money, and I am one of those persons. But one of the things from the major cities chiefs that they all said is we what we would do is go in with enhanced enforcement initiatives for 90, 120 days, and you are not selling sustainability.

There is a program called the National Integrated Ballistics Information Network, NIBIN. It has been a game changer, and it is where the casings at shootings, and perhaps, I do not know if this was done with your nephew in Norfolk. But that is entered into what they call, it is a fancy microscope that puts a digital signature on the casing, much like a fingerprint.

And when you have a comprehensive collection plan with the PDs and it goes through NIBIN, it will link up shootings in different States and to go after people, and I will give you an example if I had the chance to talk to President Trump. We have done more with less, but this is good for the American public. It is decimal dust. \$50 million to \$100 million for this technology, not for another ATF employee.

The example was when I was at San Diego, the International Association of Chiefs of Police, the deputy chief made a point, and I was speaking before the Police Executive Research Forum. He said, our PD got shot at. Within 12 hours, we collected that, had that scanned in, and it went down to our National NIBIN Correlation and Training Center where we as ATF said how can we serve the States and locals better.

Within 12 hours, we sent the response back saying that shooting at that PD is matched up with 3 other shootings. It went to our Crime Gun Intelligence Center. The misery of Fast and Furious, and I do not defend it, was us establishing the Crime Gun Intelligence Center where you collect, analyze, and synthesize, and disseminate information rapidly with our law enforcement partners. They had 3 or 4 guys locked up within 24 hours.

So, if I had the President's ear, that is what I would say. NIBIN, it is a game changer for investigative leads, what I refer to as trigger pullers, and then to go after the traffickers that are supplying them with firearms. And I think it is something everybody can wrap their arms around because, as you well know, sir, and I spent a lot of my career in Detroit and the victims, it is painful to watch people being shot, and the misery it does on the families. And then there are shootings even at funerals, as you know.

Mr. CUMMINGS. Yes, oh, I do.

Mr. BRANDON. Which I have done surveillances on those and so forth. So, to answer your question, I believe even if I was a taxpayer outside of ATF, this is something worthy of attention to address the gun violence across America. And also to reiterate the point, I think we have made a lot of progress in working with our local PDs on federal firearms licensee burglaries.

Last year, there were over 7,500 guns stolen during FFL burglaries. And so, we are trying to say, hey, prevent that. Working with the National Shooting Sports Foundation and others, and the

SHOT Show, and so forth, to educate them for security. And, again, it is different than an armed robbery where we could hit them federally with 924(c), you know, or the Hobbs Act and so forth like that. An FFL burglary is a different animal.

But that is what I would say, and it is just the right thing.

Mr. CUMMINGS. Thank you very much.

Chairman CHAFFETZ. These machines, they cost how much?

Mr. BRANDON. Mr. Chairman, I have to go back, but I think it maybe \$129,000. And if I may comment where, again, to your point of the cost of this, which is just like fire departments have done across the country and tactical teams during regionalization, that not every PD needs a machine, you know. You can have where they have memorandums of agreement, and that I know of other PDs that say, hey, come down on Tuesdays, enter all your casings. So, it is an expensive item, but it saves lives.

Chairman CHAFFETZ. We just want to work with you. I would love to learn more about it, and if you could just educate us on that. I would love to help you get more of them.

Mr. BRANDON. Mr. Chairman, I really appreciate it. I would love to.

Chairman CHAFFETZ. Yeah. No, that would be great. You said something that really caught my ear, and it is something the committee has been looking at it, and we would really appreciate your help. I was encouraged when you said that the statistics that you have at your disposal, you said "We do not want to waste our time on cases that will not be prosecuted."

That is true with every law enforcement agency I have ever encountered, right? There is nothing more frustrating than the men and women who go out there, do the hard work, they put a case together, and then a prosecutor says, eh, it is not as sexy, it is not as jury friendly as we hoped it would be, and so, hey, you know, we are not going to do anything here.

In order for us to get our arms wrapped around that, you are as swift as you can providing us sort of, and I think a 3-year window, unless somebody else wants to weigh in here. I do not want to go back 15 years. But if you can look back over the past 3 years and give us some statistics here is how many straw purchasing cases we had.

I have got push the Department of Justice to find out what they are actually prosecuting, but my guess is most every one of your agents already knows, if I give them this paperwork, they are not going to prosecute it, so why bother, right?

So, I want to know what those cases are, but as importantly, I want to know what you have given them. And the example and the parallel that I am giving is the TSA. TSA, I cannot say enough about their Instagram account. You want to go see an amazing Instagram account, go to the TSA one.

Every day they are putting up pictures of guns and other types of weapons, and knives, and things that people are trying to bring on airplanes. And then when you go work with the local law enforcement, when you work with the prosecutors, it is crickets. They almost never prosecute anybody. And my guess is we are having the exact phenomenon throughout the country with these gun violations.

I need exposure to that, and that is where your help in providing us the statistics, sooner rather than later. I do not know what timeframe to put on that, but you did say that they were fairly easy to put together. Can you get back to us as to when is a reasonable time and to provide us those statistics?

Mr. BRANDON. Mr. Chairman, I would be happy to.

Chairman CHAFFETZ. That would be really helpful.

Chairman CHAFFETZ. Please do familiarize yourself with that churning case as highlighted in the New York Times. We will be having a hearing about this. I need to know that you are personally involved and engaged on this, and that you are willing to cooperate with us on this investigation. Do I have your cooperation on that?

Mr. BRANDON. Mr. Chairman, you absolutely do. And whatever I am legally allowed to do without getting in a jam with a Federal judge, I am all yours —

Chairman CHAFFETZ. Again, our —

Mr. BRANDON.—to testify.

Chairman CHAFFETZ. I know I have said it a couple of times, but your providing Congress the information requested is not making that information public. And not only do we not recognize the seal, so to speak, but we do not believe it binds you, but I know there are lots of attorneys that are going to give you a lot of advice.

But we do need that information, and, at the very least, we also need you to try to pursue that in the Court if you think you have to. Again, we do not think you have to, but if you think you have to, I want to make sure you are at least asking them.

Mr. CUMMINGS. Mr. Chairman?

Chairman CHAFFETZ. Yes?

Mr. CUMMINGS. Let me say this to you, Mr. Brandon. You know, so often we have these hearings, and things do not get tied up properly, and I am going to tell you what I told the chairman a few minutes ago about you. I said I believe this guy is a good guy, and that he may not have fully understood the invitation because I do feel your sincerity, I really do. I have interviewed a lot of witnesses in my career as a lawyer.

And I just want to thank you for, you know, your candor, I mean. But I got to tell you something about this guy. He can be kind of nice, but once he thinks you understand him, you think you saw some fury today? It gets worse.

[Laughter.]

Mr. CUMMINGS. So, all I am saying is that you are now on notice that an invitation, we expect you to make sure that folk get here as best you can, okay? You got me?

Mr. BRANDON. Mr. Chairman, my former boss said the education of Tom Brandon continues.

[Laughter.]

Mr. BRANDON. And this was an education today. Again, I meant no disrespect. I was trying to do the right thing, but, hey, obviously it did not go that well. But I appreciate your comments about me being candid and open, and that is my MO.

Mr. CUMMINGS. And we also thank you for your service because

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Mr. BRANDON. I appreciate that.

Mr. CUMMINGS.—obviously you have been through a lot. You have seen a lot.

Mr. BRANDON. Fast and Furious changed my life.

Mr. CUMMINGS. Yeah.

Mr. BRANDON. And I stayed in the game. I stayed in the fight because I love the men and women of ATF. They do a vital, important mission of protecting the public and serving our Nation. And, you know, the ATF of 2017 is not the ATF of 2010 when much of this stuff happened, and I just wanted to thank you for allowing me to say that.

Mr. CUMMINGS. Thank you very much.

Chairman CHAFFETZ. And I want to thank you for your service and your candor. You are earning our respect, and the proof will be in the pudding as we move forward. But I do believe you, too, and I think we better understand each other, and hopefully DOJ understands us as well. But I think we made the message clear, and I appreciate your working with us.

And, again, back to your service in the U.S. Marines and moving forward, you have done a lot for this Nation and put your life on the line on a regular basis, which is more than, you know, most people do. And we admire, and I cannot say enough about the men and women who also serve with you in doing that because, you know, we are up here wearing ties and real clerical. And yet you see the 16-hour days these people put in with their lives on their line dealing with the worst scum you can possibly imagine.

And I want you to know we all recognize that, and grateful that people will step up and do that, not only at ATF, but other departments and agencies as well, everybody from Border Patrol to working in the prisons. I mean, it is tough. It is tough, and we do not praise people enough for the good work and the sacrifices they make and their families make, their spouses, their kids, their friends, their family, their parents. It is tough, and they do amazing work, and we never compensate them enough. But I do hope from time to time, we stop, and pause, and recognize them.

So, again, I think it is one of the beauties of this Nation is that we have these kind of really candid discussions, but we have also got a duty to do on both sides of these tables here. And so, we appreciate your working with us and helping us to ultimately get to the truth and make things better.

And so, to Mr. Horowitz, again, the number of people that work with you at the IG's office, know how much we appreciate them.

I thank all the members here today. It is an important topic and something we will continue to follow up on.

The committee stands adjourned.

[Whereupon, at 12:32 p.m., the committee was adjourned.]

## **APPENDIX**

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MATERIAL SUBMITTED FOR THE HEARING RECORD

**The New York Times** | <https://nyti.ms/2lu9Ev1>

U.S.

## A.T.F. Filled Secret Bank Account With Millions From Shadowy Cigarette Sales

By MATT APUZZO FEB. 22, 2017

WASHINGTON — Working from an office suite behind a Burger King in southern Virginia, operatives used a web of shadowy cigarette sales to funnel tens of millions of dollars into a secret bank account. They weren't known smugglers, but rather agents from the Bureau of Alcohol, Tobacco, Firearms and Explosives.

The operation, not authorized under Justice Department rules, gave agents an off-the-books way to finance undercover investigations and pay informants without the usual cumbersome paperwork and close oversight, according to court records and people close to the operation.

The secret account is at the heart of a federal racketeering lawsuit brought by a collective of tobacco farmers who say they were swindled out of \$24 million. A pair of A.T.F. informants received at least \$1 million each from that sum, records show.

The scheme relied on phony shipments of snack food disguised as tobacco. The agents were experts: Their job was to catch cigarette smugglers, so they knew exactly how it was done.



Government records and interviews with people involved reveal an operation that existed on a murky frontier — between investigating smuggling and being complicit in it. After The New York Times began asking about the operation last summer, the Justice Department disclosed it to the department's inspector general's office, which is investigating. The inspector general "expressed serious concerns," court records show.

It is unclear how broadly the A.T.F. adopted this practice, at what level it was approved, and whether it continues. Nearly all references to the A.T.F. have been blacked out of public court records, and most documents are entirely sealed.

The investigation and the looming racketeering trial will bring renewed scrutiny to the A.T.F., which has been buffeted in recent years by the botched gun-tracking operation known as Fast and Furious and its mismanagement of undercover investigations. Representative Jason Chaffetz, whose House oversight committee investigated Fast and Furious, asked the A.T.F. on Wednesday for reams of documents related to the secret tobacco account.

Members of Congress, particularly Republicans, have heaped criticism on the agency for decades, and the National Rifle Association has lobbied to limit the agency's authority and funding.

While government auditors have previously cited problems with A.T.F.'s tobacco investigations, this operation went beyond what was identified in that audit, released in 2013. The A.T.F. and the Justice Department declined to comment.

Documents in the racketeering lawsuit outline the A.T.F. operation. The tobacco cooperative is suing a former employee and a consultant who, according to court documents, both worked as A.T.F. informants. The informants have denied all wrongdoing.

Part of their defense, records show, is that they acted on behalf of the government. In response, a judge recently added the United States government as a defendant.

Since last summer, The Times has fought to make all the documents public, but the Justice Department has argued successfully in court to keep them secret. Crucial details, however, have been revealed through poor redaction, documents that were filed publicly by mistake and the sheer difficulty of keeping so much a secret for so long.

### Buying Into an Operation

In spring 2011, U.S. Tobacco Cooperative was looking to expand its distribution network. The co-op is made up of about 700 tobacco farmers — from Virginia to Florida — who pool their crops and share the profits. Based in Raleigh, N.C., the company is a major exporter to China and produces discount-brand cigarettes including Wildhorse, Traffic and 1839.

“These are really, really good people,” said Stuart D. Thompson, the cooperative’s chief executive. “Every year, they take all their chips. They put them on the table, and they hope they get them all back.”

The company began negotiating to buy a tobacco distributor in Bristol, Va., Big South Wholesale. Big South’s owners, Jason Carpenter and Christopher Small, had a network of customers and owned a warehouse.

They also had an existing secret relationship with the A.T.F., records show.

The two men have filed court documents acknowledging “participation in undercover law enforcement activities.” And a judge’s sealed order, which is publicly available online, revealed that the two men worked “on behalf of various government agencies, primarily the Bureau of Alcohol, Tobacco, Firearms and Explosives.”

The basics of cigarette smuggling are simple. Each state sets its tobacco taxes. Buying cigarettes in low-tax states, like Virginia, and secretly selling them in higher-tax states, like New York, generates large profits. More complicated schemes have shipped cigarettes to Indian reservations, where they are not taxed, then rerouted them for sale on the black market.

A.T.F. agents try to disrupt these networks. Often that means working with informants to buy and sell tobacco on the black market, much the way agents pose as drug dealers to investigate cartels.

Because so much of the case remains sealed, Mr. Carpenter and Mr. Small are prohibited from answering questions about nearly every aspect of the case. “Everything we did that is being attacked now in litigation, we did in good faith,” they said in a statement.

Exactly who at U.S. Tobacco knew about their A.T.F. ties and what they knew are a matter of dispute. But there were signs that Big South was not a simple tobacco distributor. Its assets included more than two dozen vehicles, including expensive S.U.V.s and a fleet of Mercedes, BMW, Audi, Lexus and Jaguar sports cars.

Early 2011 was a time of intense pressure inside the A.T.F. The agency was under fire from Congress over the Fast and Furious operation, in which agents allowed gun traffickers to buy weapons and ship them to Mexico, hoping the shipments could lead them to major weapons dealers. Justice Department auditors began scrutinizing how A.T.F. agents managed their tobacco smuggling investigations.

With that audit continuing, the A.T.F. issued new rules to tightly monitor undercover investigations. Soon after those rules went into effect, U.S. Tobacco completed its purchase of Big South for \$5.5 million, a deal that gave Big South the authority to buy and sell cigarettes on behalf of the cooperative. Almost immediately, the farmers say, Mr. Carpenter and Mr. Small began defrauding them.

It worked like this: An export company working with the A.T.F. placed an order for cigarettes to be shipped internationally — thus not subject to American taxes. Big South would instead ship bottled water and potato chips, making it look as if cigarettes had been exported. Mr. Carpenter and Mr. Small would then buy the tobacco at a slight markup through a private bank account. Lastly, they would sell the tobacco to Big South, again at a markup.

Because they had the authority to buy on behalf of the tobacco cooperative, “Carpenter and Small simply sold products to themselves,” the farmers wrote in court documents. All of these transactions occurred on paper. The cigarettes never left the Virginia warehouse.

“It’s what I saw with my own eyes,” said Brandon Moore, the warehouse manager and one of the people who discussed the transactions in the case. Their accounts fit with descriptions in court records.

Mr. Moore said he was aware of the A.T.F. operation but became troubled by it as he learned more. “It shouldn’t be going on, even if it is the A.T.F.,” he said.

In one deal described in the lawsuit, the informants bought tobacco at \$15 a carton and sold it to U.S. Tobacco at \$17.50. The profit, about \$519,000, went into what was known as a “management account.” That account, while controlled by Mr. Carpenter and Mr. Small, helped pay for A.T.F. investigations.

Mr. Moore, the warehouse manager, said agents often told him what to buy on the company’s credit card. For instance, he recalled spending tens of thousands of dollars at Best Buy on iPads, televisions and other gifts to curry favor with potential criminal targets.

Mr. Carpenter and Mr. Small have also acknowledged in court documents receiving more than \$1 million each, though it is not clear from public documents whether that was profit or reimbursement for expenses paid on behalf of the government.

How that arrangement began is unclear. Ryan Kaye, an A.T.F. supervisor, testified that the management account was created “as a result of verbal directives from the A.T.F. program office and other headquarters officials.” Mr. Kaye’s full statement is sealed, but excerpts are cited in one publicly available document.

The defendants in the lawsuit contend that U.S. Tobacco got a good deal on the cigarettes, even at the prices they paid. The farmers tell a different story, saying they never would have purchased Big South if they understood that Mr.

Carpenter and Mr. Small had a side arrangement that involved selling them tobacco at inflated values.

Thomas Lesnak, a retired A.T.F. agent who was involved in the operation, dismissed suggestions that anything was done improperly. He said he could not discuss Big South because the Justice Department was still conducting investigations based on information developed during operations based at the warehouse.

The arrangement began to break down in late 2012, when Mr. Thompson joined U.S. Tobacco as the chief financial officer. He was curious why his warehouse was placing so many orders for a brand of cigarette that competes against U.S. Tobacco. He could not get a straight answer, the company said in court documents.

In March 2013, Mr. Moore picked up the phone, called Mr. Thompson and explained what was happening. "I did what I did because of the ethics of it," Mr. Moore said recently. "What was happening there was wrong."

Once U.S. Tobacco discovered the bookkeeping irregularities, it reported them to the Justice Department, which investigates white-collar crime and government misconduct. Records show that the Justice Department, which includes the A.T.F., investigated some aspects of the case but no charges were filed.

"We voted unanimously to give everything we had to the government," said Charlie Batten, a U.S. Tobacco board member whose family has worked the same North Carolina soil for generations. "We thought they would take it and run with it. What happened was, they've fought us tooth and nail."

Because of the sealing order, Mr. Thompson, Mr. Batten and others are prohibited from discussing what happened to the money — even with their own farmers.

Three years into its lawsuit, U.S. Tobacco still cannot disentangle itself from the government. The cooperative recently told a judge that it was under

investigation by the Treasury Department.

All those secret tobacco sales, it turns out, should have been taxed. And the government wants its money.

Kitty Bennett contributed research.

*Get politics and Washington news updates via Facebook, Twitter and in the Morning Briefing newsletter.*

A version of this article appears in print on February 23, 2017, on Page A1 of the New York edition with the headline: Shadowy Cigarette Sales Filled Secret Bank Account for A.T.F.

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**U.S. Department of Justice**Bureau of Alcohol, Tobacco,  
Firearms and Explosives*Office of the Director*

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MAR 15 2017 Washington, DC 20226

The Honorable Jason Chaffetz  
Chairman  
House Oversight and Government Reform Committee  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Chaffetz:

During my testimony before the Committee on March 9, 2017, you observed that you've often heard law enforcement say that "we don't want to waste our time on cases that won't be prosecuted." You asked me to provide the Committee the number of straw purchase cases ATF recommended for prosecution over the past three years, and how many of them were accepted.

In the attached document, you will see that over the past three years, ATF referred 636 defendants with knowingly making any false or fictitious oral or written statement with respect to any fact material to the lawfulness of the sale of a firearm (Title 18 U.S.C. 922(a)(6)). Of these, 334 were accepted for prosecution. It is worth noting that the increase of recommendations in FY 2016 compared to FY 2015 follows several years in which ATF worked with the Department of Justice, the Office of the Inspector General, and Congress to conduct a rigorous review of policies and procedures related to firearms trafficking and straw purchase investigations and prosecutions.

We hope you find this information helpful. Please let us know if you or your staff would like a detailed briefing of this material.

Sincerely yours,

Thomas E. Brandon  
Acting Director

Bureau of Alcohol, Tobacco, Firearms and Explosives

Attachment

cc: Ranking Member Elijah Cummings

U.S. Department of Justice  
Bureau of Alcohol, Tobacco, Firearms and Explosives  
Office of Public and Governmental Affairs  
Legislative Affairs Division



March 15, 2017

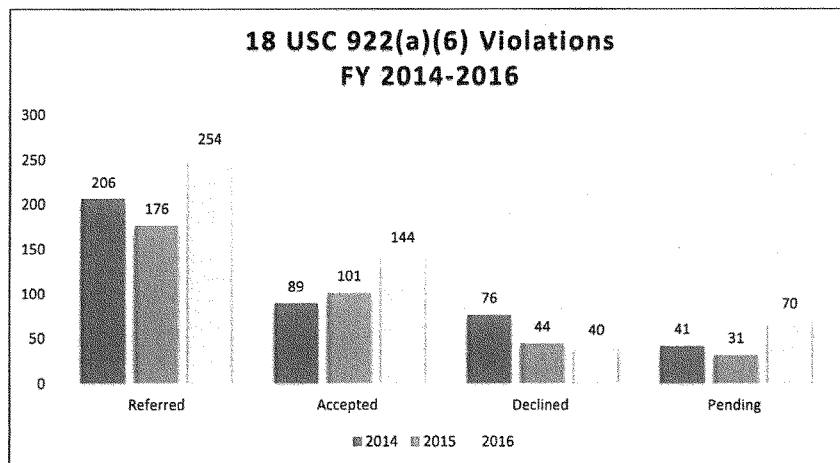
### **Firearms Trafficking**

There is no specific Federal statute for firearms trafficking. Most firearms trafficking cases rely on proving that “straw purchasers” falsified firearms transaction records to acquire firearms for someone else. The falsification of the Federal form – “Lying and Buying” – is a criminal act.

There are seven principal false statement violations charged in “Lying and Buying” cases. The decision on what to charge depends on facts, strength of evidence, and court precedent. However, 18 USC 922(a)(6) is the violation most frequently used to prosecute straw-purchasing. Below, as requested, are the number of such cases over the past three years, as well as the number of those accepted, declined, and pending.

#### **FY 2014-2016, Nationwide (Percentages Rounded)**

#	Code: 18 USC 922(a)(6)	2014	2015	2016
1	Violations Referred	206	176	254
2	Cases Accepted	89 (43%)	101 (57%)	144 (57%)
3	Cases Declined	76 (37%)	44 (25%)	40 (16%)
4	Cases Pending	41 (20%)	31 (18%)	70 (28%)





3/13/2017

## Prosecution of False Statements Made When Buying Firearms



BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES



### **Illegal Firearms Trafficking**

There is no specific Federal charge for illegal “firearms trafficking.” Most illegal firearms trafficking cases rely on proving that “straw purchasers” falsified firearms transaction records to acquire firearms for someone else. The falsification of the Federal form – lying and buying – is the criminal act.

### **“Straw Purchasing”— False Statement Violations**

There are seven principal false statement violations charged in Lying and Buying Cases (hereafter “false statement(s)”). The decision on what to charge depends on facts, strength of evidence, and court precedent.

#	Code	Description	Sentencing
1	18 USC 2	Aiding and Abetting	Dependent on underlying offense
2	18 USC 922(a)(6)	Non-FFL Providing False or Fictitious Information to Buy Firearms From an FFL	Up to 10 years
3	18 USC 922(m)	FFL Omitting Information From or Falsifying Records – Penalty up to one year imprisonment	Up to 1 year
4	18 USC 924(a)(1)(A)	False statements in required records or in applying for a license	Up to 5 years
5	18 USC 1001	False statements – Penalty up to five years imprisonment	Up to 5 years
6	26 USC 5861(l)	Make/cause false entry on any NFA application or record	Up to 10 years
7	26 USC 7206	Fraud and false statements	Up to 3 years

### **Prosecution of False Statement Violations**

Chairman Chaffetz specifically asked about prosecutions under 18 USC 922(a)(6). This violation is most frequently used to prosecute straw-purchasing.

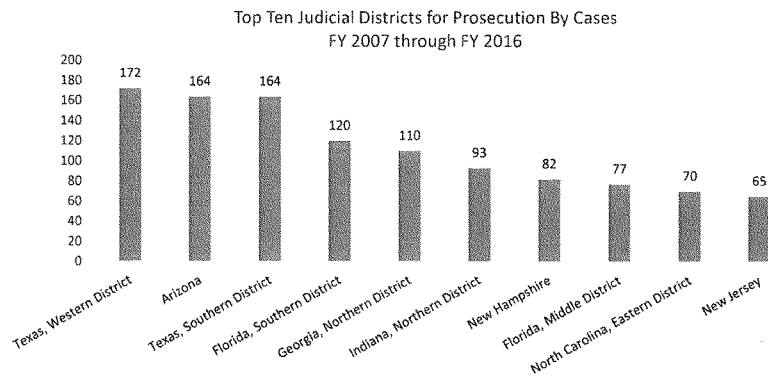
#### **FY 2007-2016, Nationwide**

#	Code	% of All False Statement Charges Referred	Acceptance Rate	Declination Rate	Pending Rate
1	18 USC 2	27% (2,446)	65% (1,601)	30% (744)	4% (101)
2	18 USC 922(a)(6)	36% (3,259)	56% (1,839)	38% (1,232)	6% (188)
3	18 USC 922(m)	1% (104)	49% (51)	39% (41)	12% (12)
4	18 USC 924(a)(1)(A)	33% (2,985)	67% (1,991)	28% (833)	5% (161)
5	18 USC 1001	4% (375)	44% (164)	49% (185)	7% (26)
6	26 USC 5861(l)	0% (3)	0% (0)	100% (3)	0% (0)
7	26 USC 7206	0% (6)	83% (5)	17% (1)	0% (0)



### FY 2007-2016, Top Ten Judicial Districts

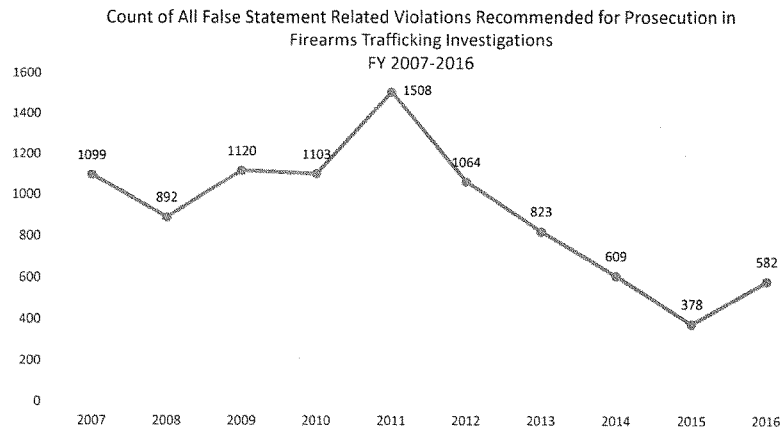
The prosecution of false statement violations is regionalized and aligns with known firearms trafficking corridors. The top ten judicial districts account for 5,081 (55%) of the 9,178 false statement violations recommended for prosecution.



### Sentencing

- Of the 9,178 violations, 1,167 have thus far resulted in a sentence to prison for an average period of 67 months
- An additional 598 have resulted in a sentence to probation for an average of 50 months

### ATF Recommendation of False Statement Violations for Prosecution





- *Reduction in number of charges recommended for prosecution (2011-2015), post Fast and Furious*

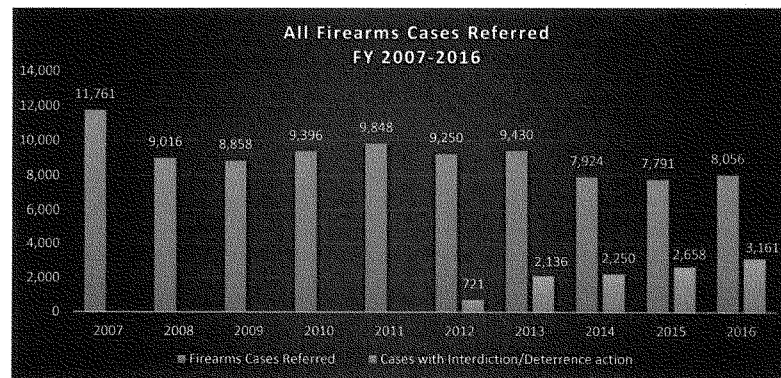
The number of charges recommended for prosecution for false statement violations has declined steadily since Fiscal Year 2011. Between 2011 and 2015, ATF, working in conjunction with the Department of Justice, the Office of the Inspector General, and Congress conducted a rigorous review of ATF policies and procedures related to firearms trafficking and straw purchase investigations. During this review, investigative activity in these areas dropped significantly while policy revisions were developed and implemented. Concurrently, ATF began to pursue and track firearms interdiction (see Firearms Interdiction Section).

- *Increase in number of charges recommended for prosecution (2016- )*

In 2016, there was a 54% increase in recommendations for prosecution of false statement violations compared to FY 2015. This increase comes around the time that OIG reported ATF's progress in closing all of their recommendations from the Fast and Furious review.

A review of our new strategic plan and its supporting vision, mission, and value statements clearly sets forth our goals to put public safety first and documents a continued focus on illegal firearms trafficking and violent gun crime as our top priority.

#### ATF Firearms Interdiction



One of the most substantive changes to ATF policy and practice was placing firearms interdiction/deterrence as a top priority. The revised weapons transfer policy was issued in November 2011:



“When an agent has a legal basis to make an arrest or seize the firearm, the agent, considering primarily public and officer safety, must take all reasonable steps to prevent the firearm’s criminal misuse by: (1) intervening to stop the transfer (if the transfer has not yet occurred); (2) arresting the suspect; (3) taking the firearm into law enforcement custody; and/or (4) conducting continuous on-site physical surveillance to identify additional suspects or locations before taking enforcement action. If continuous on-site physical surveillance is used, such surveillance may not cease until enforcement action is taken.”

As part of this effort, ATF began tracking interdiction and deterrence actions in mid-2012 (instances where ATF disrupted or stopped the transfer of firearms to protect public safety, even if it meant foregoing a viable criminal prosecution). Since then:

- ~220 firearms trafficking cases/year have been terminated with an interdiction or deterrence action in order to protect public safety by actively preventing firearms from moving into the illegal market place.
- In FY 2016, interdiction and deterrence actions were taken in 3,161 firearms-related cases.

#### **False Statement Violations with Other Violations**

##### **FY 2007-2016**

False statement offenses frequently involve other criminal conduct. Over the past 10 years, 2,810 cases with a total of 10,574 involved defendants recommended for prosecution contained an allegation of a false statement(s) having been made by one or more of the defendants. Of the 10,574 defendants, 6,181 defendants were charged with 8,460 false statement violations. Of the 6,181 defendants charged with false statements, 3,914 were accepted for prosecution on a false statements charge.

<b>Defendants in Cases Alleging False Statement Violations</b>							
Total Defendants	Defendants Charged With False Statements	Defendants Accepted for False Statements	Defendants Charged with Other Than False Statements	Defendants Accepted for Other Violations	Defendants Charged with Both	Defendants Accepted for Both	Defendants Accepted for Other in Lieu of False Statements
10,574	6,181	3,914	8,725	6,224	6,865	4,474	294

The scope of the criminality associated with false statement violations is illustrated by the following list of the top 20 violations charged in the 2,810 cases that alleged a false statement violation.



Top 20 Violations Charged in Cases Alleging a False Statements Violation		
Statute	Charge Description	Total
18 USC 371	Conspiracy to commit offense against U.S.	3,554
18 USC 922(a)(6)	Falsified information when buying firearms	2,935
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18 USC 924(o)	Conspire to Commit an offense under 924(c)	259

The overwhelming majority of the criminal activity involving false statements recommended for prosecution involves individual actors attempting to or acquiring firearms. There are only 104 instances over the past 10 years where ATF has recommended that an FFL be prosecuted for falsifying or omitting required information from their records. Not surprisingly, given the extensive vetting process associated with the registration and transfer of NFA weapons, there are only nine instances in the past 10 years where false statements have been alleged in connection with NFA weapons.

3/13/2017

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BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES



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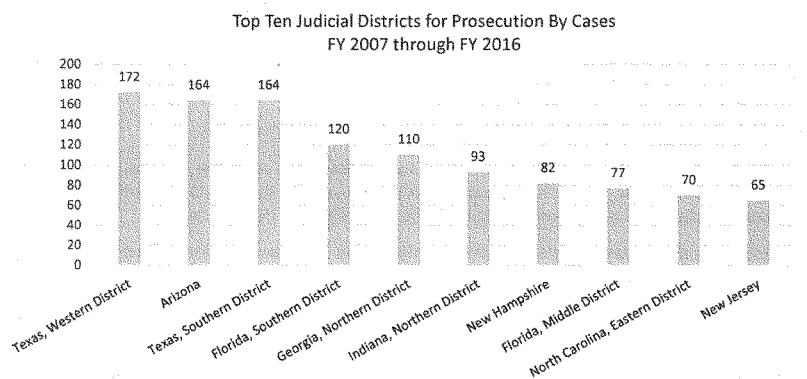
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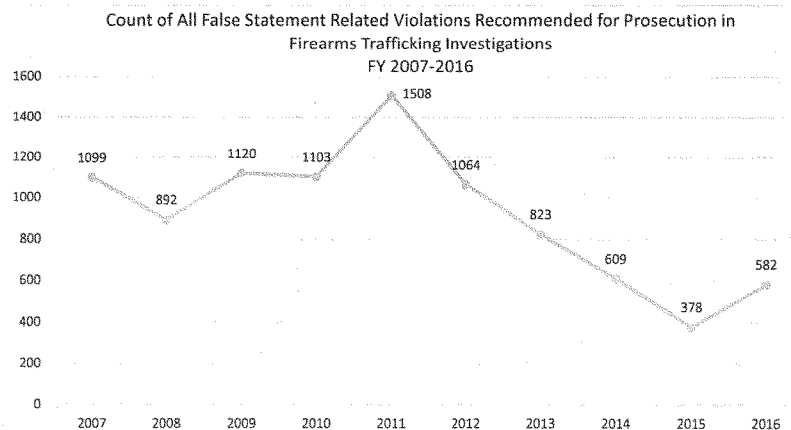
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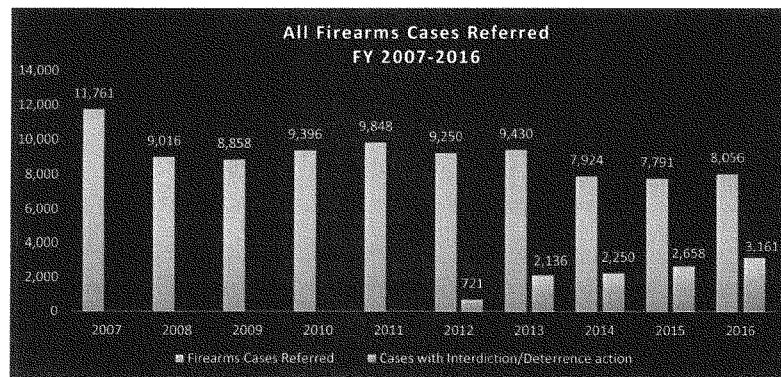
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