

While the Department of Justice can and should continue its investigation, those activities should not curtail the ability of Congress to fulfill its oversight duty. We urge you to instruct the Department of Justice to promptly provide complete answers to all congressional inquiries.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. ISSA. I yield the gentleman an additional 15 seconds.

Mr. CHAFFETZ. Nothing's changed in over a year. But I will tell you this: Brian Terry doesn't have answers. You don't have answers. I don't have answers. I want all the facts. That's what we're asking for today, the facts, all of them.

Mr. CUMMINGS. I will remind the gentleman that all of this started under President Bush.

I reserve the balance of my time.

Mr. ISSA. I would recognize myself for 10 seconds.

The distinguished gentleman from Maryland can have an opinion, but he can't have his facts.

Fast and Furious was an OCDETF operation that began under President Obama and Attorney General Holder. No ifs, no ands, no buts. And I would trust that the gentleman would no longer make statements that would be less than truthful.

And I reserve the balance of my time.

Mr. CUMMINGS. I yield myself 15 seconds.

Again, the gentleman puts out statements in search of facts.

I reserve the balance of my time.

Mr. ISSA. With that, I yield 1 minute to the distinguished gentleman from Indiana (Mr. BURTON), the former chairman of the Oversight Committee.

Mr. BURTON of Indiana. I thank the gentleman for yielding.

There has been a lot of hyperbole and a lot of repetition, but a lot of the things that have been said haven't really been factual. So let's look at the facts:

Brian Terry was murdered. Hundreds of people have been murdered in Mexico with guns that went across the border. The Justice Department said in February of 2011 that they had no knowledge about this, and then 10 months later, they admitted they lied. Now they said they didn't know, and then they said they did. I don't know what you call that, but to me, it's a lie.

Then Chairman ISSA tried again and again to get information so we could get to the bottom of this, like the 32 Democrats wanted, and they refused. He sent subpoenas; they refused. They hid behind this being an ongoing investigation and they couldn't give those documents. We got a fraction of the documents that should have been given to us, but they wouldn't do that.

ISSA met with the Attorney General's people to try to come to some conclusion, some kind of a resolution of this so we wouldn't have to move the contempt citation; nothing, absolutely nothing.

And then finally, at the 11th hour, when we knew that we were going to

have to move with the contempt citation, the President of the United States issues an executive order claiming executive privilege. Something is funny.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. ISSA. I yield the gentleman an additional 30 seconds.

Mr. BURTON of Indiana. Something is wrong. There's just no question. Something is being hidden from the Congress and the American people. And no matter how much is being said here tonight, the fact of the matter is we aren't getting the information.

A Border Patrol agent has been killed, maybe two. Hundreds of people have been killed in Mexico with American guns that our government knew were going across that border. The Attorney General has not been giving us the information. The Justice Department has been hiding it from the Congress and the American people, and the President has claimed executive privilege. If that doesn't tell you something, nothing will.

Mr. CUMMINGS. I reserve the balance of my time.

Mr. ISSA. Mr. Speaker, I would inquire of how much time is remaining.

The SPEAKER pro tempore. The gentleman from California has 6½ minutes remaining. The gentleman from Maryland has 1¼ minutes remaining.

Mr. ISSA. I thank the Speaker.

I submit the following:

#### HOUSE OF REPRESENTATIVES,

#### COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,

Washington, DC, May 24, 2012.

Hon. ELIJAH E. CUMMINGS,

Ranking Member, Committee on Oversight and Government Reform, House of Representatives, Washington, DC.

DEAR RANKING MEMBER CUMMINGS: Last February, I joined Senator Grassley in investigating Operation Fast and Furious, the reckless and fundamentally flawed program conducted by the Phoenix Field Division of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). As you know, during Fast and Furious, ATF agents let straw purchasers illegally acquire hundreds of firearms and walk away from Phoenix gun stores. The misguided goal of this operation was to allow the U.S.-based associates of a Mexican drug cartel to acquire firearms so they could be traced back to the associates once the firearms were recovered at crime scenes. On December 15, 2010, two guns from the Fast and Furious operation were the only ones found at the scene of U.S. Border Patrol Agent Brian Terry's murder.

#### AN ORGANIZED CRIME DRUG ENFORCEMENT TASK FORCE (OCDETF) WIRETAP CASE

Operation Fast and Furious got its name when it became an official Department of Justice Organized Crime Drug Enforcement Task Force (OCDETF) Strike Force case. The OCDETF designation resulted in funding for Fast and Furious from the Justice Department's headquarters in Washington, D.C. The Strike Force designation meant that it would not be run by ATF, but would instead create a multi-agency task force led by the U.S. Attorney's Office. The designation also meant that sophisticated law enforcement techniques such as the use of federal wire intercepts, or wiretaps, would be employed. Federal wiretaps are governed by Title III of

the Omnibus Crime Control and Safe Streets Act, and are sometimes referred to as "T-III's."

The use of federal wire intercepts requires a significant amount of case-related information to be sent to senior Department officials for review and approval. All applications for federal wiretaps are authorized under the authority of the Assistant Attorney General for the Criminal Division. In practice, a top deputy for the Assistant Attorney General has final sign-off authority before the application is submitted to a federal judge for approval. This deputy must ensure that the wiretap application meets statutory requirements and Justice Department policy. The approval process includes a certification that the wiretap is necessary because other investigative techniques have been insufficient. Therefore, making such a judgment requires a review of operational tactics. Since gunwalking was an investigative technique utilized in Fast and Furious, then either top deputies in the Criminal Division knew about the tactics employed as part of their effort to establish legal sufficiency for the application, or they approved the wiretap applications in a manner inconsistent with Department policies.

From the beginning, ATF was transparent about its strategy. An internal ATF briefing paper used in preparation for the OCDETF application process explained as much:

Currently our strategy is to allow the transfer of firearms to continue to take place, albeit at a much slower pace, in order to further the investigation and allow for the identification of co-conspirators who would continue to operate and illegally traffic firearms to Mexican DTOs which are perpetrating armed violence along the Southwest Border.

\* \* \* \* \*

The ultimate goal is to secure a Federal T-III audio intercept to identify and prosecute all co-conspirators of the DTO. . . .

Tracking the illegally-purchased guns after they left the premises of Federal Firearms Licensees (FFLs) would allow ATF and federal prosecutors to build a bigger case, one aimed at dismantling what was believed to be a complex firearms trafficking network. The task force failed, however, to track the firearms. Instead, according to the testimony of ATF agents, their supervisors ordered them to break off surveillance shortly after the guns left the gun stores or were transferred to unknown third parties. Many of the firearms purchased were next seen at crime scenes on both sides of the border.

#### THE FAST AND FURIOUS GUN TRAFFICKING NETWORK WAS NOT COMPLEX

We now know the gun trafficking ring that Fast and Furious was designed to target was relatively straightforward. It involved approximately 40 straw purchasers; a moneyman, Manuel Celis-Acosta (Acosta), and; two figures tied to Mexican cartels. Acosta and the cartel figures were the top criminals targeted by ATF and the U.S. Attorney's Office.

On January 19, 2011, 20 suspects were indicted, including Acosta and 19 of his straw buyers. In all, it is believed that the Fast and Furious network purchased approximately 2,000 firearms. An internal ATF document dated March 29, 2011, shows that of the indicted defendants, only a select few purchased the majority of the firearms, and nearly all of the purchases occurred after ATF knew that these defendants were straw purchasers working with Acosta. These four indicted defendants alone illegally purchased nearly 1,300 firearms: Uriel Patina (720), Sean Steward (290), Josh Moore (141), and Alfredo Celis (134).

#### THE GOALS OF OUR INVESTIGATION

A central aim of our investigation has been to find out why and how such a dangerous

plan could have been conceived, approved, and implemented. Who in ATF and the Justice Department knew about the volume of guns being purchased? Who approved of the case at various stages as it unfolded? Under whose authority did this occur? Who could have—and should have—stopped it? By closely examining this disastrous program, our Committee hopes to prevent similar reckless operations from using dangerous tactics like gunwalking ever again. Our investigation also aims to determine what legislative actions might be necessary to ensure that such a program will not happen again.

THE DEPARTMENT'S FAILURE TO COMPLY WITH THE COMMITTEE'S SUBPOENAS

Our Committee is still entitled to thousands of documents responsive to our subpoenas. These documents will undoubtedly shed more light on the misguided tactics used in Operation Fast and Furious. If the Justice Department changes course and complies with the Committee's subpoenas, some of these documents will cover the targets of an FBI investigation of the individuals who were the link between the drug cartels and the Fast and Furious firearms trafficking ring. Other documents will chronicle the Department's response to allegations of whistleblowers following Agent Terry's death and how it shifted its position from the outright denial that there was any misconduct to the Department's formal withdrawal of its false statement in December 2011.

Most importantly, as you are well aware, we are still waiting for documents relating to the individuals who approved the tactics employed in Fast and Furious. In his recent letter to me, Deputy Attorney General James Cole asserted that such documents "will not answer the question" of what senior officials were in fact notified of the unacceptable tactics used in Fast and Furious. This statement is deeply misleading. We are aware of specific documents that lay bare the fact that senior officials in the Department's Criminal Division who were responsible for approving the applications in support of the Fast and Furious wiretap authorization requests were indeed made aware of these questionable tactics. Cole's letter goes on to state that "Department leadership was unaware of the inappropriate tactics used in Fast and Furious until allegations about those tactics were made public in early 2011." That statement is even more misleading and utterly false. The information provided to senior officials in the affidavits accompanying the wiretaps includes copious details of the reckless investigative techniques involved. Senior department leaders were not only aware of these tactics. They approved them.

WIRETAP APPLICATION OBTAINED BY THE COMMITTEE

The Committee has obtained a copy of a Fast and Furious wiretap application, dated March 15, 2010. The application includes a memorandum dated March 10, 2010, from Assistant Attorney General of the Criminal Division Lanny A. Breuer to Paul M. O'Brien, Director, Office of Enforcement Operations, authorizing the wiretap application on behalf of the Attorney General. The memorandum from Breuer was marked specifically for the attention of Emory Hurley, the lead federal prosecutor for Operation Fast and Furious.

In response to your personal request, I am enclosing a copy of the wiretap application. Please take every precaution to treat it carefully and responsibly. I am hopeful that it will assist you in understanding the information brought to the attention of senior officials in the Criminal Division charged with reviewing the contents of the applications to determine if they were legally sufficient and

conformed to Justice Department policy. The information is as vast as it is specific. This wiretap application, signed by Deputy Assistant Attorney General Kenneth Blanco under the authority of his supervisor, Assistant Attorney General Breuer, provides new insight into who knew—or should have known—what and when in Operation Fast and Furious.

To assist you in better understanding the facts, I appreciate the opportunity to provide relevant and necessary context for some of the information in this wiretap application. Due to the sensitivity of the document, individual targets and suspects will be referred to with anonymous designations. You will notice, however, that the individuals referred to in the wiretap application are well-known to our investigation. Although senior Department officials authorized this application on March 15, 2010, a mere four months after the investigation began, it contains a breathtaking amount of detail.

The detailed information about the operational tactics contained in the applications raises new questions about statements of senior Justice Department officials, including the Attorney General himself. Before the Senate Judiciary Committee on November 8, 2011, the Attorney General testified:

I don't think the wiretap applications—I've not seen—I've not seen them. But I don't know—I don't have any information that indicates that those wiretap applications had anything in them that talked about the tactics that have made this such a bone of contention and have legitimately raised the concern of members of Congress, as well as those of us in the Justice Department. I—I'd be surprised if the tactics themselves about gun walking were actually contained in those—in those applications. I have not seen them, but I would be surprise[d] [if that] were the case.

At a hearing before our Committee on February 2, 2012, the Attorney General also denied that any information relating to tactics appeared in the wiretap affidavits. He testified:

I think, first off, there is no indication that Mr. Breuer or my former deputy were aware of the tactics that were employed in this matter until everybody I think became aware of them, which is like January February of last year. The information—I am not at this point aware that any of those tactics were contained in any of the wiretap applications.

Contrary to the Attorney General's statements, the enclosed wiretap affidavit contains clear information that agents were willfully allowing known straw buyers to acquire firearms for drug cartels and failing to interdict them—in some cases even allowing them to walk to Mexico. In particular, the affidavit explicitly describes the most controversial tactic of all: abandoning surveillance of known straw purchasers, resulting in the failure to interdict firearms.

The Justice Department's Office of Enforcement Operations reviews the wiretap applications to ensure that they are both legally sufficient and conform to Justice Department policy. Deputy Attorney General James M. Cole has verified this understanding. In a letter he sent to Congress on January 27, 2012, he stated that the Department's "lawyers help AUSAs and trial attorneys ensure that their wiretap packages meet statutory requirements and DOJ policies. When Assistant Attorney General Breuer testified last November about the wiretap approval process, however, he stated:

[The role of the reviewers and the role of the deputy in reviewing Title Three applications is only one. It is to insure that there is legal sufficiency to make an application to go up on a wire, and legal sufficiency to peti-

tion a federal judge somewhere in the United States that we believe it is a credible request. But we cannot—those now 22 lawyers that I have who review this in Washington—and it used to only be seven—can not and should not replace their judgment, nor can they, with the thousands of prosecutors and agents all over the country. There is a legal analysis; is there a sufficient basis to make this request.

Assistant Attorney General Breuer failed to acknowledge that before a wiretap application can be authorized, it must adhere to Justice Department policy. Yet, the operational tactics included in the enclosed wiretap application—including abandoning surveillance and not interdicting firearms—violate Department policy. According to Deputy Attorney General Cole, operations allowing guns to cross the border do indeed violate Department policy. In an e-mail he sent to southwest border U.S. Attorneys on March 9, 2011, Deputy Attorney General Cole stated, "I want to reiterate the Department's policy: We should not design or conduct undercover operations which include guns crossing the border."

The Committee understands the limitations of the Office of Enforcement Operations function. Nevertheless, when presented with alarming details such as those contained in this application, a sensible lawyer—vested with the important responsibility of recommending to the Assistant Attorney General whether a wiretap should be authorized—must raise the alarm. Senior officials reviewing the application for legal sufficiency and/or whether Justice Department policy was followed, however, failed to identify major problems that these manifold facts suggested.

MARCH 2010 WIRETAP APPLICATION STATES THE MAIN SUSPECT HAD INTENT TO ACQUIRE FIREARMS FOR THE PURPOSE OF TRANSPORTING THEM TO MEXICO

According to the wiretap application obtained by the Committee, as early as December 2009, the task force had identified the main suspect in Fast and Furious (Target 1), a figure well-known to our investigation. The affidavit provides transcripts of entire conversations obtained through a prior DEA wire intercept. These conversations demonstrate that key suspects in Operation Fast and Furious were running a firearms trafficking ring. In one conversation that took place on December 11, 2009, Unknown Person 1 asks, "Can you hold them [firearms] for me there for a little while there?" Target 1 responds, "Well it's that I do not want to have them at home, dude, because there is a lot of . . . uh, it's too much heat at my house." Unknown Person 1 then asked where he could store the firearms and Target 1 responds, "[m]ake arrangements with that guy [Straw Purchaser X], call him back and make arrangements with him." The affidavit acknowledges that while monitoring the DEA target telephone numbers, law enforcement officers intercepted calls that demonstrated that Target 1 was conspiring to purchase and transport firearms for the purpose of trafficking the firearms from the United States to Mexico.

MARCH 2010 WIRETAP APPLICATION STATES THAT NEARLY 1,000 FIREARMS HAD ALREADY BEEN PURCHASED, AND THAT MANY WERE RECOVERED IN MEXICO

The Probable Cause section of the affidavit shows that ATF was aware that from September 2009 to March 15, 2010, Target 1 acquired at least 852 firearms valued at approximately \$500,000 through straw purchasers. As of March 15, 2010, twenty-one straw purchasers had been identified. Between September 23, 2009, and January 27, 2010, 139 firearms purchased by these straw

purchasers were recovered—81 of which were in Mexico. These recoveries occurred one to 49 days after their purchase in Arizona.

**MARCH 2010 WIRETAP APPLICATION DESCRIBES HOW SMUGGLERS WERE BRINGING FIREARMS INTO MEXICO**

The wiretap affidavit details that agents were well aware that large sums of money were being used to purchase a large number of firearms, many of which were flowing across the border. For example, in the span of one month, Straw Purchaser Z bought 241 firearms from just three cooperating FFLs. Of those, at least 57 guns were recovered shortly thereafter either in the possession of others or at crime scenes on both sides of the border. The wiretap affidavit even shows that ATF agents knew the tactics the smugglers were using to bring the guns into Mexico.

According to the affidavit: The potential interceptees conspire with each other and others known to illegally traffic firearms to Mexico. The potential interceptees purchase firearms in Arizona and transport them to Mexico or a location in close proximity of the United States/Mexico border. The potential interceptees deliver the firearms to individual(s) both known and unknown who then transport them into Mexico and/or the potential interceptees transport the firearms across the border and deliver them to customers both known and unknown.

The fact that ATF knew that Target 1 had acquired 852 firearms and had the present intent to move them to Mexico should have prompted Department officials to act. Department officials should have ensured that the firearms were interdicted immediately and that law enforcement took steps to disrupt any further straw purchasing and trafficking activities by Target 1. Similarly, by way of example, if Criminal Division attorneys were reviewing a wiretap affidavit that showed that human trafficking was taking place for the purpose of forcing humans into slavery, the attorneys should act to make sure such a practice would not continue. Accordingly, Target 1's activities should have provoked an immediate response by the Criminal Division to shut him and his network down.

**MARCH 2010 WIRETAP APPLICATION CONTAINS DETAILS OF DROPPED SURVEILLANCE**

The wiretap affidavit also describes firearms purchases by individual straw purchasers. For example, Straw Purchaser Y purchased five AK-47 type firearms on December 10, 2009, and surveillance units observed Straw Purchaser Y travel from the FFL where he made the purchase to Target 1's residence. The next day, surveillance units observed Straw Purchaser Y purchase an additional 21 AK-47 type firearms, and within an hour, arrive at Target 1's home.

On December 8, 2009, agents observed Straw Purchaser Z purchase 20 AK-47 type firearms. While Straw Purchaser Z was making this purchase, Z saw a commercial delivery truck arrive at the gun store with a shipment of an additional 20 AK-47 type firearms. Straw Purchaser Z then told FFL employees that he wanted to purchase those additional firearms. Later that same day, Straw Purchaser Z returned to the FFL to buy them. After Straw Purchaser Z left the FFL with the firearms, Phoenix police officers conducted a vehicle stop on Straw Purchaser Z's vehicle and identified two of the passengers as Straw Purchaser Z and Target 1. The officers observed the firearms in the bed of the truck and asked the subjects about the firearms. Straw Purchaser Z told them he had purchased the firearms and they belonged to him. ATF agents continued surveillance until the vehicle arrived at Target 1's residence.

The very next day, nine of these firearms were recovered during a police stop of a third person in Douglas, Arizona, on the U.S.-Mexico border. Five days later, Straw Purchaser Z bought another 43 firearms from an FFL. On December 24, 2009, Straw Purchaser Z bought even more firearms, purchasing 40 AK-47 type rifles from an FFL. All of these rifles were recovered on January 13, 2010, in El Paso, Texas, near the U.S./Mexico border. Although the individual found in possession of all these guns provided the first name of the purchaser, agents did not arrest the individual or the purchaser.

Though the wiretap application states that agents were conducting surveillance of known straw purchasers, none of these weapons were interdicted. No arrests were made. **MARCH 2010 WIRETAP DETAILS HOW FAST AND FURIOUS FIREARMS HAD BEEN FOUND AT CRIME SCENES IN MEXICO**

The wiretap affidavit also details the very sort "time-to-crime" for many of the firearms purchased during Fast nd Furious. For example, on November 6, 2009, November 12, 2009, and November 14, 2009, Straw Purchaser Y purchased a total of 25 AK-47 type firearms from an FFL in Arizona. On November 20, 2009—just eight days later—Mexican officials recovered 17 of these firearms in Naco, Sonora, Mexico. Another straw purchaser, Straw Purchaser Q, purchased a total of 17 AK-47 type firearms from an FFL on November 3, 2009, November 10, 2009, and November 12, 2009. Then, on December 9, 2009, Mexican officials recovered 11 of these firearms in Mexicali, Baja California, Mexico, along with approximately 421 kilograms of cocaine, 60 kilograms of methamphetamine, 48 additional firearms, 392 ammunition cartridges, \$2 million in U.S. currency, and \$800,000 in Mexican currency.

Once again, although ATF was aware of these facts, no one was arrested, and ATF failed to even approach the straw purchasers. Upon learning these details through its review of this wiretap affidavit, senior Justice Department officials had a duty to stop this operation. Further, failure to do so was a violation of Justice Department policy.

**STRAW PURCHASERS HAD MEAGER FINANCIAL MEANS**

The affidavit provides details of the straw purchasers' financial records. As of March 15, 2010, just four straw purchasers had spent \$373,206 in cash on firearms. Yet, these same straw purchasers had only minimal earnings in Fiscal Year (FY) 2009. Straw Purchaser Q earned \$214 per week, while Straw Purchaser Y earned only \$188 per week. Straw Purchaser Z earned \$9,456.92 during FY 2009, and Straw Purchaser X did not report any income whatsoever.

Name	Money spent on firearms by 3/15/10	FY 2009 income*
Straw Purchaser Y	\$128,580	\$9,776
Straw Purchaser Q	64,929	11,128
Straw Purchaser X	39,663	None reported
Straw Purchaser Z	140,034	9,456
<b>Total</b>	<b>\$373,206</b>	

\*Incomes based on weekly incomes detailed in wiretap application

These straw purchasers did not have the financial means to spend tens of thousands of dollars each on guns. Yet, ATF allowed them to continue acquiring firearms without approaching them to inquire how they were able to obtain the funds to do so. ATF also failed to alert the FFLs with this information so that they could make more fully informed decisions as to whether to continue selling to these straw purchasers.

**CONCLUSION**

The wiretap affidavit reveals a remarkable amount of specific information about Oper-

ation Fast and Furious. The affidavit reveals that the Justice Department has been misrepresenting important facts to Congress and withholding critical details about Fast and Furious from the Committee for months on end. As the primary investigative arm of Congress, our Committee has a responsibility to demand answers from the Department and continue the investigation until we get all the facts.

Sincerely,

**DARRELL ISSA,**  
Chairman.

Mr. ISSA. I now yield 1 minute to the gentleman from Oklahoma (Mr. LANKFORD).

Mr. LANKFORD. Mr. Speaker, this is a truly sad day. This is not stunning, as I have heard. This is a deliberative process that we've tried to work through.

We have a border agent that's been killed. We have hundreds of Mexicans that have been killed. And the fingerprints on all of that go straight back to an operation that was done by the Federal Government. This is a moment to get all of the facts, to get it on the table, find out what happened, and to get it done.

Now, we started with a subpoena process, over 22 different categories. We narrowed that down to one. How do we get the documents from the time of February 4 of last year, when the Department of Justice told us one thing, and December, when they said, Oops, and changed their story? We found out that they had not told us the truth. And in that time period when they stalled, stalled, stalled, stalled, we just want the information on that. How did this occur?

This is essential because Phoenix ATF had a plan, Fast and Furious. It was then approved by the U.S. attorney in that area, and then went up the food chain to the Department of Justice, where it was signed off. This is not irrelevant. It is essential that we know the process of how this was done. If we're going to fix this problem, we've got to know the facts. Instead, they're being withheld.

Mr. CUMMINGS. I will continue to reserve the balance of my time.

Mr. ISSA. Mr. Speaker, as a point of inquiry, do I have the right to close?

The SPEAKER pro tempore. The gentleman from California has the right to close.

Mr. ISSA. Then I will reserve my right to close.

Mr. CUMMINGS. Does the gentleman have any further requests for time?

Mr. ISSA. No, I do not.

Mr. CUMMINGS. Mr. Speaker, as the Democratic leader said, there is no doubt that the Constitution gives Congress the right and responsibility to investigate. But the Constitution also requires something else. It requires Congress and the executive branch to avoid unnecessary conflict and deceit, accommodations that serve both of their interests.

In this case, the Attorney General has testified nine times. He has provided thousands of pages of documents. He has provided 13 pages of deliberative