# Congress of the United States
Washington, DC 20515

October 25, 2011

**Via Electronic Transmission**

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General Holder:

On October 11, your Department (DOJ) sent Senator Grassley a letter regarding murdered Immigration and Customs Enforcement (ICE) Agent Jaime Zapata. Not only was the response more than *six months* late, it completely failed to answer the key questions.[1]

In a March 1, 2011, press release, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) stated it was unaware of Otilio Osorio's purchase on October 10, 2010, of the weapon used to murder Agent Zapata.[2] According to ATF documents, however, the agency had reason to believe as early as September 17, 2010, that Otilio's brother and co-habitant Ranferi Osorio and their next-door neighbor Kelvin Morrison were straw purchasers.[3] Yet the ATF apparently made no effort to contact Ranferi Osorio or Kelvin Morrison and inquire about how their weapons came to be trafficked to Mexico within 2 weeks of their purchase.

Moreover, it appears that the ATF had an opportunity to arrest the Osorio brothers and Kelvin Morrison during a staged operation on November 9, 2010. According to a DOJ press release, "a Dallas ATF confidential informant (CI) arranged a meeting" at which the Osorio brothers, arriving at the meeting with Morrison as a passenger in their vehicle, "unloaded several large bags containing firearms into the CI's vehicle, which was kept under surveillance..."[4] The DOJ press release says all 40 firearms had obliterated serial numbers, which made simple possession of them a prosecutable offense.[5] Local law enforcement officials stopped the vehicle later in the day—presumably in concert with ATF and for the purpose of identifying the vehicle's inhabitants.[6] Inexplicably, none of the suspects were arrested.

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[1] Letter from Senator Charles Grassley to Acting Director Kenneth Melson (Mar. 4, 2011) (Attachment 1); Letter from Senator Charles Grassley to Acting Director Kenneth Melson (Mar. 28, 2011) (Attachment 2).

[2] Department of Justice Press Release (Mar. 1, 2011), available at http://www.fbi.gov/dallas/press-releases/2011/dl030111.htm.

[3] Attachments 2.2 and 2.3, attached to Letter from Senator Charles Grassley to Acting Director Kenneth Melson (Mar. 28, 2011).

[4] Department of Justice Press Release (Mar. 1, 2011).

[5] *Id.*

[6] *Id.*

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Finally, documents in our possession indicate that the ATF did not create a Report of Investigation (ROI) on the November 9 transfer of firearms until over *three months* later, on February 25, 2011—the same day ATF received the report tracing the Zapata murder weapon back to the purchase by Otilio Osorio.[7] Documenting investigative steps three months after the fact and only after a trace returned to the murder of a federal agent raises red flags about the nature of ATF's investigation.

Yesterday, another member of the Senate Judiciary Committee, Senator John Cornyn, also raised questions about issues surrounding the Osorio brothers and Morrison and urged us to look into the matter.[8] Accordingly, please provide detailed responses to the following questions:

(1) Did ATF make any effort to question Ranferi Osorio or Kelvin Morrison after trafficked firearms were traced back to them on September 17? If not, why not?

(2) Why weren't any of these individuals arrested in November in connection with the undercover drop-off of weapons on November 9?

(3) Was any surveillance maintained on the Osorio brothers or Morrison by any DOJ component, including ATF and DEA, after the November 9 operation?

(4) If not, did personnel from any DOJ component raise concerns about the wisdom of allowing individuals like the Osorio brothers or Morrison to continue their activities after the November weapons transfer? If so, how were those concerns addressed?

(5) Given that the likely recipients of any trafficked guns were so close to the border, did personnel from any DOJ component raise concerns about the possibility of those guns being used against U.S. border agents? If so, how were those concerns addressed?

(6) Does any component of DOJ know when or how the firearm used in the deadly assault on Agent Zapata was trafficked to Mexico?

(7) Does the ATF have policies about creating ROIs at the time that events take place?

(8) Why was the ROI regarding events in November 2010 not created until immediately after the ATF received the trace results on the Zapata murder weapon?

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[7] Delivery of Firearms to ATF Confidential informant (created Feb. 25, 2011, 14:53).
[8] Letter from Senator John Cornyn to Senator Charles Grassley and Chairman Darryl Issa (Oct. 24, 2011).

In addition to answering those questions, please provide all records relating to the following:

(9) When any component of the DOJ first became aware of the trafficking activities of Otilio and Ranferi Osorio and Kelvin Morrison;

(10) Surveillance that may have been conducted on the Osorio brothers or Morrison prior to the November 9 transfer of weapons;

(11) The November 9 transfer; and

(12) Any surveillance that any component of the DOJ continued to conduct on the Osorio brothers or Morrison between the November 9, 2010, transfer and their arrest on February 28, 2011.

We look forward to receiving your response as soon as possible, but by no later than noon on November 8, 2011. Should you have any questions regarding any of these letters, please contact [redacted] Ranking Member Grassley's office at (202) 224-5225 or [redacted] Chairman Issa's Committee staff at (202) 225-5074.

Sincerely,

Darrell Issa, Chairman
Committee on Oversight and
Government Reform
U.S. House of Representatives

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

cc: Mr. B. Todd Jones, Acting Director
U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives

The Honorable Michele M. Leonhart, Administrator
U.S. Drug Enforcement Administration

The Honorable Elijah E. Cummings, Ranking Member
U.S. House of Representatives, Committee on Oversight and Government Reform

The Honorable Patrick Leahy, Chairman
U.S. Senate, Committee on the Judiciary

# Attachment 1

United States Senate
WASHINGTON, DC 20510

March 4, 2011

**Via Electronic Transmission**

Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, NE
Washington, DC 20226

Dear Acting Director Melson:

Due to my inquiry into the ATF's Operation Fast and Furious, I am concerned that the ATF may have employed the same risky strategy of encouraging weapons trafficking that was employed elsewhere by the ATF, beyond the Phoenix Field Office and its Operation "Fast and Furious."

As you know, U.S. Immigration and Customs Enforcement (ICE) Agent Jaime Zapata was murdered in Mexico on February 15. According to a press report based on an unnamed source, the weapon used to kill Zapata "was shipped through Laredo with the possible knowledge of the ATF," and "the feds were already investigating the suspects when the gun was sent to Mexico."[1] According to another report in the Dallas Morning News:

> In North Texas . . . ATF agents were conducting another Project Gunrunner surveillance operation involving brothers Otilio and Ranferi Osorio. ATF and Drug Enforcement Administration officials organized the November undercover transfer of about 40 weapons believed to be destined for a Mexican drug cartel. When Immigration and Customs Enforcement Agent Jaime Zapata was gunned down Feb. 15 in Mexico, ballistics tests and a partial serial number linked one weapon used in the shooting to Otilio Osorio.[2]

In its March 1 press release announcing the arrest of the Osorio brothers as well as their next-door neighbor Kelvin Morrison, the Department of Justice (DOJ) confirmed that all three men were being investigated by the ATF as early as last November. Prior to the 40 weapons referenced above being confiscated in Laredo, the Osorio brothers and Morisson provided the guns to an ATF confidential informant in Dallas in a meeting set up by the ATF. After the delivery of the illegal weapons, the three men were stopped by local police. Why were these traffickers not thereafter arrested in November?

[1] Terry Wallace, "ATF: Gun in US agent's death traced to Texas man," *Associated Press*, February 28, 2011.
[2] "Federal gun-smuggling surveillance program backfires," *Dallas Morning News*, March 3, 2011.

Naturally, this raises questions about whether the ATF strategy of allowing straw purchasers to continue to operate in hopes of making bigger cases may have contributed to the shooting of ICE Agent Jaime Zapata. Please provide written answers to the following questions:

(1) Although the gun used in the assault on Agent Zapata that has been traced back to the U.S. was purchased on October 10, 2010, how can we know that it did not make its way down to Mexico after the November investigation, when the arrest of these three criminals might have prevented the gun from being trafficked and later used to murder Agent Zapata?

(2) When did law enforcement first become aware that Morrison purchased the gun?

(3) Given that the likely recipients of any trafficked guns were so close to the border, did any ATF personnel raise concerns about the possibility of those guns being used against U.S. law enforcement? If so, how did the ATF address those concerns?

(4) Did any ATF personnel raise concerns about the wisdom of allowing individuals like the Osorio brothers or Morrison to continue their activities after the November weapons transfer? If so, how did the ATF address those concerns?

In addition to answering those questions, please provide all records relating to:

(5) When law enforcement officials first became aware of the trafficking activities of Otilio and Ranferi Osorio and Kelvin Morrison;

(6) Surveillance that may have been conducted on the Osorio brothers or Morrison prior to the November transfer of weapons between the ATF's confidential informant and the Osorio brothers and Morrison;

(7) The November transfer; and

(8) Any surveillance that law enforcement continued to conduct on the Osorio brothers or Morrison after the November transfer.

Please contact my staff no later than March 7, 2011 to schedule a briefing on this matter. Should you have any questions regarding this letter, please contact Tristan Leavitt at (202) 224-5225.

Sincerely,

Charles E. Grassley
Ranking Member

cc: The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

# Attachment 2

PATRICK J. LEAHY, VERMONT, CHAIRMAN

HERB KOHL, WISCONSIN
DIANNE FEINSTEIN, CALIFORNIA
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TOM COBURN, OKLAHOMA

BRUCE A. COHEN, *Chief Counsel and Staff Director*
KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510–6275

March 28, 2011

**Via Electronic Transmission**

Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, NE
Washington, DC 20226

Dear Acting Director Melson:

On March 4, 2011, I wrote you regarding questions surrounding the February 15 murder of U.S. Immigration and Customs Enforcement (ICE) Agent Jaime Zapata in Mexico. I have yet to receive a reply.

In my last letter, I referenced the March 1 DOJ press release regarding the Osorio brothers and their next-door neighbor Kelvin Morrison. They were arrested on charges related to trafficking firearms to a Mexican drug cartel and indicted on March 23. According to the release, all three defendants had been suspects in an ATF undercover operation in early November 2010. In that operation, the Osorio brothers and Morrison provided 40 firearms to an ATF informant. The press release indicates, "The meeting [between the informant and the suspected traffickers] was arranged related to an investigation of Los Zetas," a Mexican drug trafficking cartel.[1]

The DOJ's press release appears to be the first public acknowledgement that one of the firearms used in the murder of Agent Zapata had been traced back to Otilio Osorio. Specifically, the press release stated:

> [A]ccording to one affidavit filed in the case, one of the three firearms used in the Feb. 15, 2011, deadly assault of ICE Special Agent Jaime Zapata that was seized by Mexican officials has been traced by ATF to Otilio Osorio. Otilio Osorio allegedly purchased that firearm on Oct. 10, 2010, in the Dallas/Fort Worth metroplex, prior to law enforcement's awareness of the purchase. Ballistic testing

[1] Press Release, Department of Justice, March 1, 2011, available at http://dallas.fbi.gov/dojpressrel/pressrel11/dl030111.htm.

> conducted by Mexican authorities on this firearm indicated it was one of the three firearms used during the deadly assault on Special Agent Zapata's vehicle.[2]

The DOJ's press release gives the impression that law enforcement officials were unaware of Osorio's activities in October 2010 when he allegedly purchased the weapon that was later used to kill Agent Zapata.

The press release leads the reader to believe that law enforcement had no reason to suspect Osorio was a straw purchaser until sometime between October 10 and early November, when he was the subject of the undercover operation. According to the release:

> The investigation *now has also revealed* that on Aug. 7, 2010, a Romarm, model WASR, 7.62 caliber rifle was discovered by law enforcement officers in LaPryor, Texas, near the U.S./Mexico border. Trace results indicated that Morrison purchased this firearm on July 30, 2010, from a FFL [federal firearms licensee]. According to the affidavit, between July 10, 2010, and Nov. 4, 2010, Morrison purchased 24 firearms from FFLs.[3]

This portion of the DOJ's press release appears designed to give the impression that the August 7 discovery by unspecified "law enforcement officers" and subsequent trace results linking the weapon to Morrison became known only after the October 10 purchase of the murder weapon.

However, I have learned that ATF agents actually observed a cache of weapons being loaded into a suspect vehicle on July 29, 2010, but did not maintain surveillance on that vehicle.[4] The very next day, Morrison purchased the firearm that was later "discovered," in August.[5] In fact, it was actually seized along with 22 other AK-style firearms in the very suspect vehicle that ATF agents had witnessed being loaded with weapons on July 29.[6] When the vehicle was stopped en route to Eagle Pass, Texas on August 7, the weapon purchased by Morrison on July 30 was recovered, *along with two weapons purchased by Ranferi Osorio*.[7] All of these facts were apparently known to federal authorities contemporaneously, and yet none of them are included in the Justice Department's craftily-worded press release.

The March 8 letter I received from Department of Justice (DOJ) Assistant Attorney General Ronald Weich is not an adequate response to my March 4 letter, which was addressed specifically to you. Therefore, please provide your direct response to the questions in my letter, along with the documents previously requested. In particular, please prioritize any documents responsive to paragraph (5), which called for all records relating to when law enforcement first became aware of the trafficking activities of Otilio and Ranferi Osorio and Kelvin Morrison.

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[2] *Id.*
[3] *Id.* (Emphasis added.)
[4] ATF Management Log, Case 785096-10-[redacted], Case Title "[redacted] Firearm Traffickers (SWB Gunrunner)." (Attachment 1)
[5] ATF Firearms Trace Summary, Sep. 17, 2010. (Attachment 2)
[6] *Supra* note 4.
[7] ATF Firearms Trace Summary, Sep. 15, 2010; ATF Firearms Trace Summary, Sep. 17, 2010. (Attachment 3)

Should you have any questions regarding this letter, please contact Tristan Leavitt at (202) 224-5225.

Sincerely,

Charles E. Grassley
Ranking Member

Attachment

# Attachment 2.1

**Management Log for Case:** 785096-10-[redacted]

**Case Title:** [redacted] Firearm Traffickers (SWB GUNRUNNER)

**Date:** [redacted]

**User:** [redacted]

| Log Date | Log Type | Mgmt Log Text |
|---|---|---|
| 07/28/2010 | CASE OPENED | Investigation opened on [redacted] for alleged firearms trafficking. |
| 07/28/2010 | [redacted] AUTHORIZED | [redacted] |
| 07/28/2010 | INVESTIGATIVE ACTIVIT | [redacted] receives four AK-47 surv. on subject |
| 07/28/2010 | INVESTIGATIVE ACTIVIT | [redacted] |
| 07/29/2010 | INVESTIGATIVE ACTIVIT | [redacted] receives four AK-47's surv. on subject. |
| 07/29/2010 | INVESTIGATIVE ACTIVIT | [redacted] attempts to purchase 2 handguns and is denied. |
| 07/29/2010 | INVESTIGATIVE ACTIVIT | [redacted] load guns in white Saturn and drive off. [redacted] is driving vehicle. |
| 07/29/2010 | INVESTIGATIVE ACTIVIT | BOLO placed in white Saturn with US CBP Eagle pass, Texas for illegal exportaion of firearms |
| 07/30/2010 | INVESTIGATIVE ACTIVIT | [redacted] attempts to purchase SKS rifle and is delayed. Does not receive firearm. |
| 08/07/2010 | INVESTIGATIVE ACTIVIT | White Saturn is apprehended in La Pryor, Texas with 23 AK-47's with serial numbers ground off. Vehicle was enroute to POE at Eagle Pass, Texas |
| 11/09/2010 | INVESTIGATIVE ACTIVIT | Attempted to introduce an undercover [redacted] [redacted] insisted on changing the meeting location and the deal was canceled. |
| 01/14/2011 | INVESTIGATIVE ACTIVIT | Spoke to FFL today and learned that [redacted] attempted to purchase a .45 caliber pistol on 01/13/2011 and was denied. The FFL stated that [redacted] said that he was interested in making a large purchase of AK-47 rifles later this month. |
| 03/01/2011 | DIVISION REVIEW | SAC Newell file review. |

# Attachment 2.2

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

**Phone:(800)** [redacted] **Fax:(800)** [redacted]

**Print Date:** [redacted]

## FIREARMS TRACE SUMMARY

**Trace Number: T20100213104** **Request Date: September 09, 2010** **Completion Date: September 17, 2010**

[redacted]
**LAS CRUCES SATELLITE OFFICE**
[redacted]
**LAS CRUCES, NM 88011**
**PHONE: (505)** [redacted] **Ext:**
**FAX (575)** [redacted]

**Badge No:** [redacted]
**Investigation No: 785096-10-**[redacted]

### FIREARM INFORMATION

**Manufacturer:** ROMARM/CUGIR
**Model:** GP WASR 10/63
**Caliber:** 762
**Serial Number:** **1973FA1408**
**Type:** RIFLE
**Country:** ROMANIA
**Importer:** CENTURY ARMS INC (CAI), ST....
**Obliterated:** Y
**Identifying Marks:**
**NIBIN:**
**Gang Name:**

### RECOVERY INFORMATION

**Recovery Date:** 08/07/2010
**Time to Crime:** 8 days

LA PRYOR, TX 78872
**Possessor:** [redacted]
**DOB:** [redacted]
**POB:** TX UNITED STATES

### PURCHASER INFORMATION

**Purchase Date:** 07/30/2010

KELVIN LEON MORRISON JR
[redacted]
FERRIS, TX 75125
**DOB:** [redacted]
**POB:** PALESTINE, TX UNITED STATES
**Race:** BLACK **Height:** 5 ft 4 in
**Sex:** Male **Weight:** 200 lbs
**ID 1:** TX DRIVER'S LICENSE: [redacted]
**ID 2:** SOCIAL SECURITY: [redacted]
Contact the local ATF office for additional information.

### DEALER INFORMATION

**FFL:** [redacted]

[redacted]
[redacted]
MESQUITE, TX [redacted]
**Phone:** (214) [redacted] **Ship-To-Date:** 07/13/2010
Ext:

### ADMINISTRATIVE INFORMATION

## SUMMARY OF RESULTS

THIS FIREARM WAS TRACED TO AN INDIVIDUAL PURCHASER.
**Additional Remarks:**

Unclassified Controlled Information

**The information in this report must be validated prior to use in any criminal proceedings.**

# Attachment 2.3

# DEPARTMENT OF JUSTICE

## BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES

## NATIONAL TRACING CENTER

**Phone:(800)** [redacted] **Fax:(800)** [redacted]

**Print Date:** [redacted]

## FIREARMS TRACE SUMMARY

**Trace Number: T20100213089** **Request Date: September 09, 2010** **Completion Date: September 17, 2010**

[redacted]

**LAS CRUCES SATELLITE OFFICE**

[redacted]

**LAS CRUCES, NM 88011**

**PHONE: (505)** [redacted] **Ext:**

**FAX (575)** [redacted]

**Badge No:** [redacted]

**Investigation No: 785096-10-**[redacted]

### FIREARM INFORMATION

**Manufacturer:** ROMARM/CUGIR
**Model:** GP WASR 10/63
**Caliber:** 762
**Serial Number:** **1963BC0163**
**Type:** RIFLE
**Country:** ROMANIA
**Importer:** CENTURY ARMS INC (CAI), ST....
**Obliterated:** Y
**Identifying Marks:**
**NIBIN:**
**Gang Name:**

### RECOVERY INFORMATION

**Recovery Date:** 08/07/2010
**Time to Crime:** 14 days

LA PRYOR, TX 78872
**Possessor:** [redacted]
**DOB:** [redacted]
**POB:** TX UNITED STATES

### PURCHASER INFORMATION

**Purchase Date:** 07/24/2010

RANFERI OSORIO

[redacted]

LANCASTER, TX 75134
**DOB:** [redacted]
**POB:** MEXICO
**Race:** HISPANIC
**Sex:** Male
**Height:** 5 ft 9 in
**Weight:** 180 lbs
**ID 1:** TX STATE CARD ID: [redacted]
**ID 2:** SOCIAL SECURITY: [redacted]

Contact the local ATF office for additional information.

### DEALER INFORMATION

**FFL:** [redacted]

[redacted]

[redacted]

MESQUITE, TX [redacted]
**Phone:** (214) [redacted] Ext:
**Ship-To-Date:** 07/20/2010

### ADMINISTRATIVE INFORMATION

## SUMMARY OF RESULTS

THIS FIREARM WAS TRACED TO AN INDIVIDUAL PURCHASER.

**Additional Remarks:**

Uncontrolled Unclassified Information

**The information in this report must be validated prior to use in any criminal proceedings.**



**FOR OFFICIAL USE ONLY**

# DEPARTMENT OF JUSTICE

## BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES

## NATIONAL TRACING CENTER

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

Print Date: [redacted]

## FIREARMS TRACE SUMMARY

**Trace Number: T20100213071** **Request Date: September 09, 2010** **Completion Date: September 15, 2010**

[redacted]
**LAS CRUCES SATELLITE OFFICE**
[redacted]
**LAS CRUCES, NM 88011**
**PHONE: (505)** [redacted] **Ext:**
**FAX (575)** [redacted]

**Badge No:** [redacted]
**Investigation No:** 785096-10-[redacted]

### FIREARM INFORMATION

**Manufacturer:** ROMARM/CUGIR
**Model:** DRACO
**Caliber:** 762
**Serial Number:** DC-2784-10
**Type:** PISTOL
**Country:** ROMANIA
**Importer:** CENTURY ARMS INC (CAI), ST....
**Obliterated:** Y
**Identifying Marks:**
**NIBIN:**
**Gang Name:**

### RECOVERY INFORMATION

**Recovery Date:** 08/07/2010
**Time to Crime:** 8 days

LA PRYOR, TX 78872
**Possessor:** [redacted]
**DOB:** [redacted]
**POB:** TX UNITED STATES

### PURCHASER INFORMATION

**Purchase Date:** 07/30/2010

RANFERI NMN OSORIO
[redacted]
LANCASTER, TX 75134
**DOB:** [redacted]
**POB:** MEXICO
**Race:** HISPANIC
**Sex:** Male
**ID 1:** TX DRIVER'S LICENSE: [redacted]
**ID 2:** :

**Height:** ft in
**Weight:** lbs

### DEALER INFORMATION

**FFL:** [redacted]

[redacted]
[redacted]
MESQUITE, TX [redacted]
**Phone:** (214) [redacted] Ext:

**Ship-To-Date:**

Contact the local ATF office for additional information.

### ADMINISTRATIVE INFORMATION

## SUMMARY OF RESULTS

THE DESCRIBED FIREARM WAS DETERMINED TO HAVE BEEN SOLD AS PART OF A MULTIPLE HANDGUN SALE AND REPORTED TO ATF BY A FEDERAL FIREARMS LICENSEE (FFL). THE TRANSACTION DATE NOTED IN THIS TRACE SUMMARY IS THE DATE THE MULTIPLE SALE WAS GENERATED BY THE FFL AND MAY NOT REPRESENT THE ACTUAL TRANSACTION DATE OF THE TRACED FIREARM. TO VERIFY THE ACTUAL TRANSACTION DATE OF THE TRACED FIREARM, PLEASE CONTACT THE FFL.

**Additional Remarks:**

ACCORDING TO [redacted] THE FIREAM TYPE CHANGED FROM RIFLE TO PISTOL AND MODEL FROM WASR TO DRACO.

**The information in this report must be validated prior to use in any criminal proceedings.**

Unclassified Controlled Information



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