

Congress of the United States
Washington, DC 20510

February 27, 2012

VIA ELECTRONIC TRANSMISSION

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

Dear Attorney General Holder:

For almost an entire year, we have been requesting that the Department provide information about the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF's) knowledge regarding Otilio Osorio's straw purchasing activities. We are interested in him because he was the straw purchaser of the weapon used in the murder of Immigration and Customs Enforcement (ICE) Agent Jaime Zapata on February 15, 2011.

Letters from Senator Grassley on March 4, 2011, and March 28, 2011 provided documentation that, on September 17, 2010, ATF traced trafficked weapons to Otilio's brother and co-habitant, Ranferi Osorio, as well as the Osorio brothers' next-door neighbor, Kelvin Morrison. Senator Grassley further inquired why these facts did not prompt ATF to conduct a "knock and talk" with these individuals or begin conducting surveillance on them.

On November 9, 2010, as part of a Drug Enforcement Administration (DEA) investigation, ATF witnessed Otilio and Ranferi Osorio providing 40 weapons with obliterated serial numbers to an undercover ATF informant for the purpose of trafficking the weapons to Mexico. Surprisingly, they were not arrested for another three and a half months. Senator Grassley further inquired why they were not arrested at the time they were observed to be in possession of weapons with obliterated serial numbers, which is a crime. He asked whether ATF or DEA continued to surveil the Osorio brothers between early November and their arrest, following the discovery that Otilio Osorio's weapon was used in the murder of Agent Zapata. Inexplicably, the Department has failed to provide substantive responses to any of these letters, including a subsequent follow-up letter on this matter, sent jointly on October 25, 2011.

ATF has tried to distinguish this case from Operation Fast and Furious and to justify its failure to intervene. In one news article on the Osorio brothers, ATF North Texas spokesperson Tom Crowley is quoted as saying: "[T]aking them down and arresting them at that time would have possibly jeopardized that investigation. . . . None of the tactics used in this investigation were anything similar to what was used in

Arizona's Fast and Furious, including intentionally walking firearms across the border."¹ Yet failure to conduct surveillance of individuals known to be trafficking weapons to Mexico was a core problem with the tactics used in Fast and Furious. Lack of surveillance is what allowed such firearms to reach the border. The same irresponsible tactic appears to have been used in this matter.

Now, news reports indicate that this may have been an issue with a purchaser of another one of the weapons found at Agent Zapata's murder scene.² Records indicate that ATF opened a case against Manuel Barba in June 2010,³ approximately two months before he took possession on August 20, 2010, of the rifle which was later trafficked to Mexico and also used in the murder of Agent Zapata.⁴ Additionally, the documents show that ATF had indications in October 2010 that Barba was obliterating serial numbers on weapons, the possession of which would have been a prosecutable offense.⁵ At least as of December 13, 2010, ATF also was aware that Barba was still under indictment for a 2006 state case, and thus had been unlawfully receiving firearms while under indictment.⁶ However, a warrant was not issued for Barba's arrest in this case until February 14, 2011.⁷

To assist us in better understanding of the circumstances leading up to the murder of Agent Zapata, please answer the following questions:

1. Did ATF have any contact with Barba, such as a "knock and talk," between June 7, 2010, when Barba's case was opened, and August 20, 2010, when he received the weapon that would later be used in the murder of Agent Zapata?
2. When did ATF agents first contact Barba in connection with this case?
3. Records indicate Federal Firearms Licensee (FFL) interviews were conducted in this case by early October 2010. When were FFLs first contacted by ATF in this case?
4. What information about Barba or the individuals known to be working with him as straw purchasers was communicated to the FFLs?
5. What cooperation did any FFLs agree to provide ATF in this investigation?

¹ Jack Douglas Jr., "Fort Worth Gun Falls Into Wrong Hands, Kills U.S. Agent," CBS 11 News (Feb. 15, 2011), available at <http://dfw.cbslocal.com/2012/02/15/fort-worth-gun-falls-into-wrong-hands-kills-u-s-agent>.

² Sharyl Attkisson, "Second gun used in ICE agent murder linked to ATF undercover operation," CBS News (Feb. 22, 2012), available at http://www.cbsnews.com/8301-31727_162-57383089-10391695/second-gun-used-in-ice-agent-murder-linked-to-atf-undercover-operation.

³ ATF Management Log for Case 782045-10-[redacted], Baytown Crew, available at <http://www.cbsnews.com/htdocs/pdf/baytown.pdf> (accessed Feb. 23, 2012).

⁴ Plea Agreement, *United States v. Barba*, Case 4:11-cr-00087, U.S. District Court for the Southern District of Texas (filed Oct. 31, 2011), at 9.

⁵ ATF Management Log for Case 782045-10-[redacted], Baytown Crew.

⁶ *Id.*

⁷ *Id.*

6. Did any FFLs ever provide ATF with advance or contemporaneous (within three days) notice of purchases by the individuals suspected to be working with Barba as straw purchasers?
7. Why was Barba not arrested in October 2010 when ATF obtained audio evidence that Barba was obliterating serial numbers before trafficking weapons to Mexico?
8. Why was Barba not arrested in December 2010 when ATF knew he had been unlawfully receiving firearms from straw purchasers while under indictment?
9. How many weapons were purchased between June 7, 2010, and February 14, 2011, by the straw purchasing ring associated with Barba?
10. How many weapons purchased between June 7, 2010, and February 14, 2011, by the straw purchasing ring associated with Barba were interdicted?

Thank you in advance for ensuring your response arrives no later than March 9, 2012. Should you have any questions regarding this letter, please contact Tristan Leavitt of Ranking Member Grassley's staff at (202) 224-5225 or Henry Kerner of Chairman Issa's 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: The Hon. B. Todd Jones, Acting Director
Bureau of Alcohol, Tobacco, Firearms and Explosives

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

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

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