

Congress of the United States
Washington, DC 20515

October 10, 2013

The Honorable B. Todd Jones
Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, NW
Washington, D.C. 20226

Dear Mr. Jones:

It has come to our attention that the Bureau of Alcohol, Tobacco, Firearms and Explosives recently denied Special Agent John Dodson's request to publish a book about Operation Fast and Furious. Because we strongly support the efforts of whistleblowers to expose waste, fraud, mismanagement, and abuse within the federal government, we find it disconcerting that ATF denied Special Agent Dodson's request merely because the content of his book might be uncomfortable and embarrassing to some within your organization. This position does not reflect the commitment you made in your confirmation hearing to be supportive of whistleblowers in your role as Director of the ATF.

In order to publish the manuscript, ATF required Special Agent Dodson to submit ATF E-Form 2131.1, entitled "Request to Engage in Outside Employment." In response, he received a letter from ATF Deputy Counsel Greg Serres, informing him that the letter served as a formal determination on his request and that the request had been denied.¹ Mr. Serres' letter does not provide any indication that the denial is subject to appeal or any limitation on the agency's discretion whatsoever. Instead, Mr. Serres' letter quoted from ATF Order 3210.2, Employee Ethics and Responsibilities, Paragraph 34, titled "Outside Employment and Other Outside Activities." Yet, Mr. Serres failed to note that that same section excludes the writing of a book from the definition of outside employment.² The paragraph that applies to such activities, "Engagements to Teach, Speak, or Write," states: "Employees *may* teach, lecture, or write for compensation provided such action is not prohibited by law, regulation, or this order."³

Attached to Mr. Serres' letter was the underlying ATF form Special Agent Dodson submitted to request to engage in outside employment. The form states, "If Disapproved, Explain in Remarks on Reverse." However, the relevant remarks section simply reads:

This would have a negative impact on the morale in the Phoenix F[ield] D[ivision] and would have a detrimental [sic] effect on our relationships with DEA and FBI.⁴

¹ Letter from Greg Serres, Deputy Chief Counsel, Bureau of Alcohol, Tobacco, Firearms and Explosives, to John Dodson, Special Agent, Bureau of Alcohol, Tobacco, Firearms and Explosives (Aug. 29, 2013).

² ATF Order 2130.2, Employee Ethics and Responsibilities, October 18, 2011, Paragraph 34(b)(1).

³ ATF Order 2130.2, Employee Ethics and Responsibilities, October 18, 2011, Paragraph 35 (emphasis added).

⁴ Attachment to letter from Greg Serres, Deputy Chief Counsel, Bureau of Alcohol, Tobacco, Firearms and Explosives, to John Dodson, Special Agent, Bureau of Alcohol, Tobacco, Firearms and Explosives (Aug. 29, 2013).

Such a rationale is not a sufficient reason to prevent government employees from legitimately exercising their First Amendment right to free speech. After this decision began to receive public scrutiny, we understand ATF issued the following statement yesterday:

ATF has not denied the publishing of a manuscript or an individual's 1st Amendment rights. . . . While his supervisor stated morale and interagency issues for the denial, the fact remains no agent may profit financially from information gained through his federal employment while still an employee. . . . It is improper to approve ATF individuals involved in any investigation to profit financially from their experience while employed. According to the Office of Government Ethics and under the Code of Federal Regulations, Title 5 subsection 2635.807(a): in part states "An employee, including a special Government employee, shall not receive compensation from any source other than the Government for teaching, speaking or writing that relates to the employee's official duties."⁵

ATF management did not cite that regulation in the initial denial of Special Agent Dodson's request. More importantly, ATF's public statement ignores the rest of this regulation, which limits the scope of the prohibition. According to 5 C.F.R. § 2635.807(a)(2)(i), there are criteria for *which* teaching, speaking or writing relate to an employee's official duties.⁶ The guidance on the Office of Government Ethics (OGE) website succinctly describes the three conditions in the regulation, one of which must be met for writing to relate to an employee's official duties:

- The subject of the activity deals in significant part with any matter to which the employee *presently is assigned* or to which the employee had been assigned *during the previous one-year period*;
- The invitation . . . was extended to the employee *primarily* because of his official position, rather than his or her expertise in the subject; or
- The invitation or the offer of compensation was extended by a person or entity substantially affected by the performance of the employee's duties; or the activity is based substantially on nonpublic information.⁷

Special Agent Dodson's request does not relate to his current official duties. Special Agent Dodson has not been involved with Operation Fast and Furious in over a year, nor are his current assignments related to any of the investigations described in the book. Moreover, Special

⁵ "ATF releases statement on Fast and Furious whistleblower's book," Gretawire (Oct. 8, 2013), <http://gretawire.foxnewsinsider.com/2013/10/08/atf-releases-statement-on-fast-and-furious-whistleblowers-book>.

⁶ Standards of Ethical Conduct for Employees of the Executive Branch: Teaching, Speaking, Writing, 5 C.F.R. § 2635.807.

⁷ U.S. Office of Government Ethics, "Teaching, Speaking, & Writing," *available at* <http://www.oge.gov/Topics/Outside-Employment-and-Activities/Teaching,-Speaking,---Writing/> (last accessed Oct. 9, 2013).

Agent Dodson's position as the liaison to Border Patrol in Tucson, Arizona does not appear to be the primary reason Dodson was offered the opportunity to write the book. The publisher of the proposed manuscript does not appear to be substantially affected by the performance of Special Agent Dodson's official duties at ATF. Finally, Special Agent Dodson's manuscript is based substantially on information that has been discussed publicly at length in congressional hearings, congressional staff reports, and a report released publically by the Department of Justice's Office of Inspector General. In short, there appears to be no basis for denying Special Agent Dodson's request under the OGE regulation. The sole motivation appears to be that certain officials still believe that information about Operation Fast and Furious is embarrassing to ATF.

Further, ATF's decision to deny Special Agent Dodson's request for outside employment stands in stark contrast with its decision regarding the request for outside employment of former Deputy Assistant Director for Field Operations Bill McMahon. McMahon was among the leadership officials at ATF which the Inspector General faulted for his management of Operation Fast and Furious. Yet, when he submitted a request in the summer of 2012 to begin an outside security job at J.P. Morgan, ATF leadership quickly approved it. Once ATF granted McMahon's approval, he moved to his job in the Philippines and never again showed up for work at ATF. During this time period, he remained on ATF's payroll for several more months, effectively collecting a substantial six-figure salary from both the taxpayers and J.P. Morgan simultaneously. Although he was eventually terminated, it was not until after we brought the situation to ATF's attention, and you testified in your confirmation proceedings that his termination was unrelated to Operation Fast and Furious.

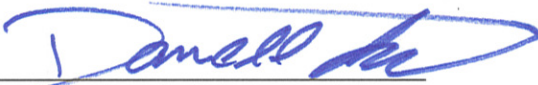
Therefore, please provide the following documents and information as soon as possible, but by no later than 5:00 p.m. on October 22, 2013:

- 1) All cases since January 1 2009, in which the ATF required a Request to Engage in Outside Employment for an employee seeking to publish a manuscript. Please describe the disposition of each request in detail, including the rank and title of the requestor, the disposition of the request, and the reasoning for the decision.
- 2) All documents, including e-mails, relating to ATF's decision to deny Special Agent Dodson's Request to Engage in Outside Employment.
- 3) Complete copies of all Request to Engage in Outside Employment forms submitted by ATF employees between January 1, 2012, and the present.
- 4) The number of ATF employees currently engaged in approved outside employment. Please provide a summary of those approved outside employment arrangements to include the types of outside employment approved and the numbers of employees approved for each type of employment, subdivided by rank and title.

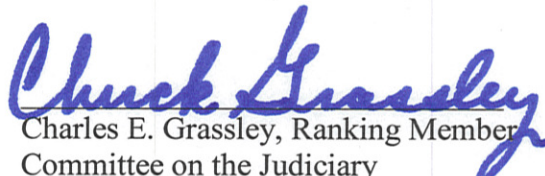
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Should you have any questions regarding this request, please contact Tristan Leavitt of the Senate Judiciary Committee staff at (202) 224-5225 or Carlton Davis of the Oversight and Government Reform Committee staff at (202) 225-5074. Thank you for your prompt attention to this matter.

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

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