

V. RECOMMENDATIONS

As its title indicates, the Committee on Oversight and Government Reform has two primary missions. Not only is it charged with conducting oversight of programs to root out waste, fraud, and abuse, but it is also responsible for reforming these programs to ensure that government works more effectively and efficiently for the American people. For these reasons, set forth below are ten constructive recommendations intended to address operational problems identified during the course of this investigation.

These recommendations for both Executive and Congressional action are not intended to be comprehensive or exhaustive, and some already may be under consideration or in various stages of implementation at the Department of Justice and ATF.

Strictly Enforce the Prohibition on Gunwalking Across Law Enforcement Agencies. Documents obtained by the Committee indicate that ATF lacked sufficient clarity regarding its operational policies and training for firearms trafficking cases. Following the public controversy over Fast and Furious, Acting ATF Director B. Todd Jones issued a memo strongly stating the Department’s policy against gunwalking, and the Attorney General has used his position to publicly reiterate this prohibition. These measures should be complemented by efforts within each Federal law enforcement agency to establish clear operational policies with respect to suspect firearms transfers and provide appropriate training for field agents and supervisors.

Improve Management and Oversight of ATF Trafficking Investigations. Documents obtained by the Committee reveal a lack of adequate communication between ATF field offices and headquarters about significant trafficking investigations. In several cases, deficient communication was magnified by disagreements between the field and headquarters about tactics and strategy. ATF should improve its management of investigations by requiring operational approval of all significant gun trafficking investigations by senior ATF officials in order to ensure consistent application of ATF policies and procedures.

Require “Operational Safety Strategy” in Trafficking Investigations. As part of its broader effort to improve management and oversight of significant trafficking investigations, ATF should require that each Operational Plan developed in the field include an Operational Safety Strategy that analyzes the risks to agents and the public of firearms potentially being released into

the community and sets forth appropriate operational safeguards. Senior ATF officials should approve these plans in order to ensure that each specific operation has sufficient resources to implement the safeguards intended to protect agent and public safety.

Enhance the Accessibility and Responsiveness of the ATF Ombudsman.

Documents obtained by the Committee indicate that Operation Fast and Furious was one of several deeply flawed operations run by ATF's Phoenix Field Division since 2006. Line agents reported to the Committee that they made their concerns about these controversial tactics public only after raising them first with their supervisors, but they stated that their concerns were not heeded. To ensure agents' concerns are communicated to ATF leadership, ATF should consider ways to improve its Office of the Ombudsman to make it more accessible and responsive to ATF line agents.

Conduct a Review of the U.S. Attorney's Office in Arizona. Documents and testimony received by the Committee indicate that the legal interpretations and prosecutorial decisions regarding firearms cases made by officials in the U.S. Attorney's Office in Arizona may differ substantially from those of other U.S. Attorneys' offices. Because it remains unclear to what extent these differences are the result of judicial, prosecutorial, or individual decisions, the Department of Justice should direct the Executive Office for United States Attorneys to conduct a thorough review of the Arizona U.S. Attorney's Office to ensure that it is doing everything it can to keep illegal guns off the streets and out of the hands of criminals.

Expand the Multiple Long Gun Sales Reporting Requirement. Numerous law enforcement agents testified before the Committee that obtaining reports on multiple purchases of long guns, including AK-47 variant assault weapons and .50 caliber semi-automatic sniper rifles that are now the "weapons of choice" for international drug cartels, would provide them with timely and actionable intelligence to help combat firearms trafficking rings. In July 2011, the Department of Justice issued a rule requiring such reports for weapon sales in certain states. Earlier this month, a Federal District Court upheld the rule, finding that "ATF acted rationally."²⁷⁵ ATF should now expand the reporting requirement to apply to other states in which firearms trafficking networks are particularly active.

Confirm or Appoint a Permanent ATF Director. Consistent and strong leadership is vital to strengthening ATF and ensuring that policies and procedures are applied consistently. For six years, however, ATF has been forced to contend with temporary leadership because individual senators have blocked the confirmation of a permanent director. The Senate should

confirm a permanent director for ATF as soon as possible, and the President should consider a recess appointment if the Senate fails to do so.

Enact a Dedicated Firearms Trafficking Statute. During the Committee's investigation, multiple law enforcement agents warned that there is currently no Federal statute that specifically prohibits firearms trafficking and, as a result, prosecutors often charge traffickers with "paperwork violations" such as dealing in firearms without a license. The agents testified that these cases are difficult to prove and that U.S. Attorneys' offices frequently decline to prosecute. They stated that a Federal statute specifically dedicated to prohibiting firearms trafficking would help them disrupt, defeat, and dismantle firearms trafficking organizations. In July 2011, Ranking Member Elijah Cummings and Representative Carolyn Maloney introduced legislation in the House to establish such a firearms trafficking statute. Senator Kirsten Gillibrand has introduced a similar bill in the Senate. Congress should consider and pass this legislation without delay.

Provide ATF with Adequate Resources to Combat Illegal Gun Trafficking. Documents and testimony obtained by the Committee revealed that ATF line agents were drastically under-resourced, resulting in deficient surveillance of suspected straw purchasers and firearms traffickers. Over the past decade, ATF's budget has not kept pace with its law enforcement responsibilities, particularly in light of the exponential growth in illegal firearms trafficking to Mexico. Congress should appropriate the additional resources ATF needs to perform its mission and combat gun trafficking along the Southwest Border.

Repeal the Prohibition Against Reporting Crime Gun Trace Data. To increase transparency by ATF and oversight by Congress, Congress should repeal the prohibition against reporting crime gun trace data and require ATF to provide yearly reports to Congress that include aggregate statistics about crime gun trace data categorized by State and Federal Firearms Licensee, as well as aggregate gun trace data for guns that are recovered in Mexico, categorized by State and Federal Firearms Licensee. This information will assist Congress in understanding the problem of gun trafficking along the Southwest Border and assessing ATF's progress in fighting it.