

Portraits in Oversight:

Congress Investigates Gun Trafficking Operation Fast and Furious



Operation Fast and Furious was a failed law enforcement strategy employed by the U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) in 2009, to track guns bought in Arizona and trafficked into Mexico without seizing the illegally purchased guns. It was exposed after a U.S. border patrol agent was killed with guns involved in the operation. Both the House and Senate launched investigations, raising law enforcement, whistleblower, and obstruction of Congress concerns; sparking a years-long court battle over congressional access to executive branch documents; and initiating the first House vote to hold a sitting Cabinet member in contempt of Congress.



Weapons seized in the Fast and Furious investigation (Source: Department of Justice)

Operation Fast and Furious arose out of a series of ATF efforts to combat gun trafficking. In 2005, ATF launched Project Gunrunner to enhance the tracking of U.S. guns transported to Mexico and improve law enforcement coordination and intelligence activities.¹ In March 2006, an ATF office in Tucson, Arizona, initiated Operation Wide Receiver in which ATF agents allowed a confidential informant to sell hundreds of firearms to “straw purchasers,” people who legally buy weapons

and transfer them to others who cannot legally possess them. Although ATF agents knew more than 400 firearms were purchased during Operation Wide Receiver, they made no arrests and retrieved fewer than 100 of the guns. The operation ended in December 2007.²

Nearly two years later in October 2009, ATF agents learned of a large trafficking ring in the Phoenix area that had already purchased more than 600 guns. ATF and the local U.S. Attorney’s Office “deferred taking action against the subjects who had been identified in order to pursue a larger case ... that sought to dismantle the entire trafficking group and identify how the firearms were being paid for and transported to Mexico.”³ The strategy, called Operation Fast and Furious, used wiretaps and other investigative techniques to identify straw purchasers

¹ U.S. Department of Justice, Office of the Inspector General. (2010, November). *Review of the ATF’s Operation Project Gunrunner*. <https://oig.justice.gov/reports/ATF/e1101.pdf>, p. i.

² U.S. Department of Justice, Office of the Inspector General. (2012, November). *A review of the ATF’s Operation Fast and Furious and related matters*. <https://oig.justice.gov/reports/2012/s1209.pdf>, p. 28.

³ U.S. Department of Justice, Office of the Inspector General. (2012, November). p. 103.

and their co-conspirators involved in purchasing, over time, a total of about 2,000 firearms for \$1.5 million. Many of the firearms were transported to Mexico by the suspects for use by Mexican drug cartels. But before any arrests were made, Customs and Border Protection Agent Brian Terry was killed on December 14, 2010, and two guns found on the scene were identified as having been purchased by an Operation Fast and Furious suspect.⁴

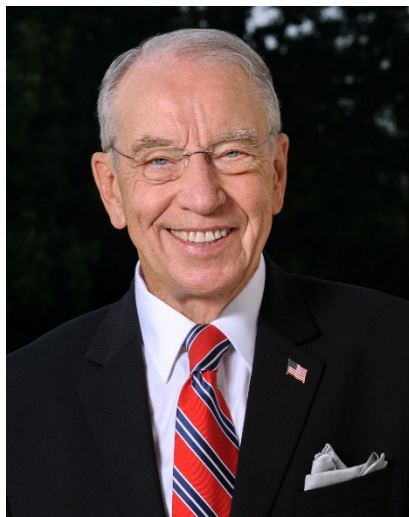
One month later, on January 25, 2011, the U.S. Attorney in Arizona, working with ATF and other law enforcement agencies, indicted 34 individuals in five cases for illegally transporting U.S. firearms to Mexico.⁵

Both the Senate and House launched inquiries into the death of Agent Terry and the ATF's gun trafficking investigations. On January 27, 2011, Republican Sen. [Chuck Grassley](#) of Iowa, who was then serving as the ranking minority member of the Senate Judiciary Committee, sent a letter to Acting ATF Director Kenneth Melson asking about the ATF operations and the guns used in the murder of Agent Terry.⁶

On January 31, 2011, Sen. Grassley sent a second letter to ATF after learning that a senior ATF official in the Phoenix office had retaliated against the ATF whistleblowers who brought information to the Judiciary



Border Patrol Agent Brian Terry (Source: U.S. Customs and Border Patrol)



Sen. Chuck Grassley of Iowa

Committee. He stated that, "Whistleblowers are some of the most patriotic people I know – men and women who labor, often anonymously, to let Congress and the American people know when the Government isn't working so we can fix it." He reminded Mr. Melson that obstructing Congress and retaliating against whistleblowers were crimes and urged him to relay that to ATF management.

On February 4, 2011, Assistant Attorney General Ronald Weich responded to Sen. Grassley's letters. Relying on information from the U.S. Attorney's Office and the ATF office in Arizona, the letter denied that ATF had allowed U.S. guns to be trafficked into Mexico or had engaged in whistleblower retaliation. The letter denied, in particular, that ATF had allowed guns to be transported into Mexico without

⁴ U.S. Department of Justice, Office of the Inspector General. (2012, November). p. 103.

⁵ U.S. Drug Enforcement Administration. (2011, January 25). "34 Suspects Indicted in Drug and Firearms Trafficking Organization," <https://www.dea.gov/press-releases/2011/01/25/34-suspects-indicted-drug-and-firearms-trafficking-organization>.

⁶ U.S. Department of Justice, Office of the Inspector General. (2012, November). p. B-1 – B-2.

interdiction as part of a strategy to build a case against higher-level members of a criminal network. The letter offered to brief the Judiciary Committee about the ATF operations but not to disclose information about pending criminal investigations.⁷ Later that month, on February 28, 2011, Attorney General [Eric Holder](#) asked DOJ's acting inspector general to launch an investigation into Operation Fast and Furious.⁸

On May 2, 2011, Assistant Attorney General Weich wrote to Sen. Grassley a second time in response to an April 13 letter requesting documents related to Operation Fast and Furious. The letter declined to produce the requested documents, noting that the request had been made by the Judiciary Committee minority, and "the Executive Branch over many Administrations has taken the position that only a chairman can speak for a committee in conducting oversight."⁹

By then, the House Committee on Oversight and Government Reform had also launched an investigation into Operation Fast and Furious led by Committee Chair [Darrell Issa](#) (R-CA). On March 16, 2011, the committee asked DOJ to produce within two weeks documents related to Project Gunrunner and Operation Fast and Furious. Even though this letter was signed by a committee chair rather than a ranking minority member, DOJ did not produce any documents by the March 30 due date. In response, the committee issued a subpoena for the same information on March 31.



Rep. Darrell Issa of California

On April 19, 2011, Assistant Attorney General Weich wrote to the House Oversight Committee asking that it not contact or subpoena any witnesses in the Fast and Furious matter, because it might hamper DOJ's ability to prosecute suspects or reveal their identities.¹⁰ On May 2, 2011, DOJ sent 92 pages of documents to the committee and invited the committee to view at DOJ an additional 466 pages with "limited redactions."¹¹ The next day, May 3, committee members and staff went to DOJ to review the additional documents. Committee Chair Issa later reported that many of the documents were partially or completely redacted and of little use. The committee subsequently wrote to Attorney General Holder that the requested documents were "not permitted to have any redactions" and asked for them to be produced immediately.¹²

⁷ U.S. Department of Justice, Office of the Inspector General. (2012, November). p. C-1 – D2.

⁸ U.S. Department of Justice, Office of the Inspector General. (2012, November). p. 369.

⁹ U.S. Department of Justice, Office of the Inspector General. (2012, November). p. E-1.

¹⁰ Fisher, L. (2013, March). The law: Obama's executive privilege and Holder's contempt: "Operation Fast and Furious." *Presidential Studies Quarterly*, 43(1), p. 175. <https://www.jstor.org/stable/43286702>

¹¹ Weich, R. (2011, May 2). [Letter from Ronald Weich to Rep. Darrell Issa, May 2, 2011]. Retrieved from https://www.justice.gov/sites/default/files/oip/pages/attachments/2015/03/06/documents_released_in_response_to_a_foia_request_for_records_pertaining_to_atf_operation_fast_and_furious.pdf, p. 1.

¹² Fisher, L. (2013, March). p. 176.

In addition to demanding documents, the House Oversight Committee initiated a series of six hearings related to Operation Fast and Furious. The hearings took place over a span of six years, with the bulk in 2011 and 2012. The hearings were initially led by Committee Chair Issa and Democratic Ranking Member [Elijah Cummings](#) of Maryland. Chair Issa began every hearing with the same statement:

The Oversight Committee mission statement is: We exist to secure two fundamental principles. First, Americans have a right to know that the money Washington takes from them is well spent. And, second, Americans deserve an efficient, effective government that works for them. Our duty on the Oversight and Government Reform Committee is to protect these rights. Our solemn responsibility is to hold government accountable to taxpayers, because taxpayers have the right to know what they get from their government. We will work tirelessly, in partnership with citizen watchdogs, to deliver the facts to the American people and bring genuine reform to the bureaucracy.¹³

Ranking Member Cummings, who initially supported the inquiry, noted in his opening statement, “The Department’s interest in prosecuting these crimes and the committee’s



*Rep. Elijah Cummings of
Maryland*

interest in investigating the management of ATF programs are not – and I repeat, are not – mutually exclusive.”¹⁴ He also released a minority staff report focused on the need for stronger gun control laws to stop trafficking, “Outgunned: Law Enforcement Agents Warn Congress they Lack Adequate Tools to Counter Illegal Firearms Trafficking.”¹⁵

A second hearing was held on [June 15, 2011](#). At that hearing, committee leaders expressed their intent to conduct a fact-based, bipartisan inquiry. In his opening statement, House Oversight Committee Chair Issa noted that, “more than 30 Democratic House Members have joined Senator Grassley and myself in calls for the truth. I hope this will continue to be a bipartisan effort.”¹⁶ Senate

¹³ Obstruction of justice: Does the Justice Department have to respond to a lawfully issued and valid congressional subpoena?: Hearing before the U.S. House Committee on Oversight and Government Reform, 112th Cong. (2011). <https://www.govinfo.gov/content/pkg/CHRG-112hhrg70820/pdf/CHRG-112hhrg70820.pdf>, p. 1 – 2.

¹⁴ Obstruction of justice: Does the Justice Department have to respond to a lawfully issued and valid congressional subpoena? (2011). p. 3.

¹⁵ Outgunned: Law enforcement agents warn Congress they lack adequate tools to counter illegal firearms trafficking. House Committee on Oversight and Government Reform, Minority Staff Report (2011, June). https://oversightdemocrats.house.gov/sites/democrats.oversight.house.gov/files/documents/OUTGUNNED%20Firearms%20Trafficking%20Report%20-%20Final_1.pdf

¹⁶ Operation Fast and Furious: Reckless decisions, tragic outcomes: Hearing before the U.S. House Committee on Oversight and Government Reform, 112th Cong. (2011). <https://www.govinfo.gov/content/pkg/CHRG-112hhrg71077/pdf/CHRG-112hhrg71077.pdf>, p. 1

Judiciary Ranking Member Grassley, serving as the first witness, concluded his remarks by stating:

Finally, I want to say something about the politics of gun control. This investigation is not about politics. It is about getting the facts. That is what constitutional responsibility of oversight is all about. That is our checks and balances of government. No matter what side of that issue you are on, the facts here should be disturbing. There will be plenty of time for both sides to argue about policy implications of all this at some point, but I hope that we can do that at another day.¹⁷

Also testifying at the second hearing were members of Agent Terry's family and three ATF whistleblowers who'd alerted Congress to the gun trafficking problems. ATF Phoenix Field Division Special Agents Olindo "Lee" Casa, John Dodson, and Peter Forcelli testified that they had become alarmed when they were told to surveil suspected straw purchasers of guns but not to intervene in the transactions. According to the whistleblowers, when they and other agents voiced concerns about not seizing illegally purchased guns, the group supervisor at the time threatened retaliation in an email if they did not "blindly toe the company line."¹⁸ They stated that the Arizona U.S. Attorney's Office also declined to prosecute the straw-purchasing cases.



Agent Terry's family and ATF whistleblowers testify before the House Oversight Committee (Source: House Oversight and Government Reform Committee)

In an exchange with House committee member Rep. [Blake Farenthold](#) (R-TX), Mr. Forcelli summed up the ATF agents' concerns about the differences between Operation Fast and Furious and typical ATF operations:

MR. FORCELLI: “. . . For years, when I first got to Phoenix, I was supervising firearms-trafficking investigations, and we utilized trackers We would make a car stop at the hand-to-hand exchange, or we would seize the weapon if it got to a reasonable point where we thought it might go to Mexico. To answer your question, I have sat down many times to try to figure out what the logic would

¹⁷ Operation Fast and Furious: Reckless decisions, tragic outcomes, 2011, p. 13.

¹⁸ Operation Fast and Furious: Reckless decisions, tragic outcomes, 2011, p. 100 – 101.

be to let these firearms go to Mexico, and I can't think of a single logical reason why this strategy would work."

REP. FARENTHOLD: "And you are not aware of any cooperation with the Mexican authorities or any of our intelligence agencies that might be tracking these beyond Mexico or anything?"

MR. FORCELLI: "I think if we were tracking them, we wouldn't see the tragic results we see when these guns get traced back from murder scenes."¹⁹

The final witness was Assistant Attorney General Weich who was subjected to vigorous questioning by committee Republicans, including regarding ongoing problems with document production. He testified that DOJ would work with the House committee to produce the information needed for the oversight investigation. Committee Chair Issa and Ranking Member Cummings confirmed that any document production would be available to both sides simultaneously.²⁰



Assistant Attorney General Ronald Weich testifies before House Oversight Committee on June 15, 2011 (Source: House Oversight and Government Reform Committee)

On July 4, 2011, the House Oversight Committee conducted a non-public interview of ATF Acting Director Melson focused on ongoing document disputes. He told the committee that he and his colleagues thought that "there could have been accommodations made between the Hill and ATF and DOJ as to how information was shared."²¹ Over the next two weeks, from July 5 to 21, 2011, DOJ turned over more than 1,300 pages of additional documents. In addition, over time, the committee obtained significant information and documentation from other sources including from whistleblowers and federal employees interviewed by the committee.

The House oversight committee held its third Fast and Furious hearing on [July 26, 2011](#). It featured six ATF officials: Darren Gil, former Attaché to Mexico; Carlos Canino, Acting Attaché in Mexico; Jose Wall, Senior Special Agent in Tijuana, Mexico; Lorren Leadmon, Intelligence Operations Specialist; William Newell, former Special Agent in Charge of the Phoenix Field Division; and William McMahon, Deputy Assistant Director for Field Operations West. Prior to the hearing, DOJ sent a letter to the subpoenaed witnesses instructing them to restrict their testimony before the committee. At the hearing, Committee Chair Issa took note of the DOJ letter while

¹⁹ Operation Fast and Furious: Reckless decisions, tragic outcomes, 2011, p. 139.

²⁰ Operation Fast and Furious: Reckless decisions, tragic outcomes, 2011, p. 187 – 188.

²¹ U.S. Congress. (2017, June 7). *Fast and Furious: Obstruction of Congress by the Department of Justice*. House Committee on Oversight and Government Reform and Senate Committee on the Judiciary. p. 195.

reminding the witnesses that “every question we ask, you are compelled to answer, unless you assert your Fifth Amendment rights.”²²

Mr. Gil, Mr. Wall, and Mr. Canino testified that they were never informed of Operation Fast and Furious while serving in Mexico and that the relationship between ATF in Mexico and the Mexican authorities had been damaged as a result.²³ Mr. Newell, who was in charge of



Agents and ATF officials testify before House Oversight Committee (Source: House Oversight and Government Reform Committee)

Operation Fast and Furious at ATF, told the committee that, in retrospect, “I recognize that in this case and future large-scale investigations, it is imperative that there exists an effective flow of information between the field and headquarters,” that risk assessments should be performed more often, and that “it is incumbent upon me to communicate a greater sense of urgency to my staff and the U.S. Attorney’s Office as to the need for the return of expeditious charges.”²⁴

Mr. Newell and Mr. McMahon were grilled by the committee, particularly about 2009 and 2010 emails indicating that they knew guns were being trafficked across the border.²⁵ Mr. Newell nevertheless maintained that ATF did not intentionally allow guns to cross the border and said that ATF “made reasonable efforts” to coordinate with Mexican law enforcement when appropriate.²⁶ In contrast, one of their colleagues in Mexico, Mr. Canino, expressed to Republican Rep. [Paul Gosar](#) from Arizona his frustration with how many guns were transported across the border without interdiction and never tracked or retrieved:

Everybody is saying, oh, this case was so big, it was so complicated. Firearms-trafficking cases are not complicated, sir, okay? They are not complicated. The reason this case was so big is because we didn’t do anything. ... [W]e have the

²² Operation Fast and Furious: The other side of the border: Hearing before the U.S. House Committee on Oversight and Government Reform, 112th Cong. (2011). <https://www.govinfo.gov/content/pkg/CHRG-112hhrg72802/pdf/CHRG-112hhrg72802.pdf>, p. 48.

²³ Operation Fast and Furious: The other side of the border, 2011, p. 11 – 12.

²⁴ Operation Fast and Furious: The other side of the border, 2011, p. 37.

²⁵ Operation Fast and Furious: The other side of the border, 2011, p. 61.

²⁶ Operation Fast and Furious: The other side of the border, 2011, p. 43.

ATF trafficking guidelines and best practices, and we just threw it out the window.²⁷

Meanwhile, the struggle over access to DOJ documents continued. According to the House committee, DOJ failed to turn over any new documents for months, finally producing 346 pages between September 1 and October 11, 2011, after which DOJ informed the committee it had completed document production in response to the March 31 subpoena. That same day, October 11, 2011, the committee issued a new subpoena to Attorney General Holder, requesting additional documents, including internal agency communications addressing how DOJ planned to deal with inquiries from Congress and the media.²⁸ The new subpoena was opposed by committee Democrats, the first public indication that the inquiry was losing or had lost its bipartisan support.

On December 2, 2011, DOJ created a new controversy when it informed the House committee that it was withdrawing the February 4 letter sent to Sen. Grassley denying that the ATF had used gun trafficking as a law enforcement tactic and failed to retrieve illegally purchased guns, admitting the letter was “inaccurate,” and stating the letter had largely relied on incorrect information from Phoenix ATF officials and the Arizona U.S. Attorney’s Office. DOJ also produced to the committee 1,400 pages of internal DOJ communications related to the drafting of the February 4 letter, including an email from DOJ’s criminal division chief Lanny Breuer.²⁹



Attorney General Eric Holder shows document to Assistant Attorney General Weich at hearing on February 2, 2012 (Source: House Oversight and Government Reform Committee)

Two months later, on February 2, 2012, Attorney General Holder appeared before the committee at its [fourth Fast and Furious hearing](#). The contentious hearing focused on when he became aware of the operation, why the DOJ waited ten months to withdraw the inaccurate letter to Sen. Grassley, why the committee could not have all the requested documents, and why no disciplinary action had been taken against any DOJ or ATF official. Attorney General Holder testified that he had been informed of Agent Terry’s murder within 24 hours but was not told that it was tied to a

²⁷ Operation Fast and Furious: The other side of the border, 2011, p. 77.

²⁸ H.R. Report No. 112-546. p. 4.

²⁹ Johnson, C. (2011, December 2). *Justice withdraws inaccurate ‘Fast and Furious’ letter it sent to Congress*. NPR. <https://www.npr.org/sections/thetwo-way/2011/12/02/143067851/justice-withdraws-inaccurate-fast-and-furious-letter-it-sent-to-congress>

specific ATF operation. He did not recall exactly when he first heard about Operation Fast and Furious, but believed it was in January or February 2011.³⁰ He told Rep. [Scott DesJarlais](#) (R-TN) that, although the letter was not formally withdrawn until December 2, it was not an attempt to deceive Congress.³¹

Committee Chair Issa pressed Attorney General Holder about the lack of cooperation with committee information requests. He noted that the committee had been told they could not be provided requested documents, because “they are difficult and time-consuming to give us, and yet 10 times as many documents were provided to the [DOJ] Inspector General.” In addition, he observed that more than three times as many people were interviewed by the DOJ Inspector General compared to the House.³² Committee member Todd Platts (R-PA) explained:

The frustration is that, apparently, the Inspector General has thousands of pages of documents that this committee, in trying to do legitimate oversight, has not been privy to; and the sooner this committee on both sides of the aisle have access to the same information, the sooner the efforts of this committee can be achieved in a nonpartisan, just good government fashion.³³

The withdrawal of the February 4 letter and DOJ’s admission it was inaccurate elicited strong responses from some committee members at the Fast and Furious hearing. Some Republican committee members called for Attorney General Holder’s resignation.³⁴ In contrast, Ranking Member Cummings said in his opening statement that although Committee Chair Issa “deserve[d] credit for exposing these operations over the last 5 years ... [y]ou now appear intent on escalating controversy and promoting unsubstantiated allegations in a campaign that looks more like an election year witch hunt than even-handed investigation.”³⁵ His statement was further evidence of a loss of bipartisan support for the investigation.

Additional evidence of diminished bipartisanship was the release of separate Republican and Democratic reports at the hearing, even though both reports recited similar facts and levied similar criticisms of Operation Fast and Furious.

The Republican members of the House oversight committee and Republican members of the Senate Judiciary Committee released a 22-page joint memorandum summarizing the facts uncovered to date.³⁶ The product of an unusual bicameral investigative effort, the memorandum found that Operation Fast and Furious had failed to dismantle the gun trafficking

³⁰ Operation Fast and Furious: Management failures at the Department of Justice: Hearing before the U.S. House Committee on Oversight and Government Reform, 112th Cong. (2012).

<https://www.govinfo.gov/content/pkg/CHRG-112hhrg72915/pdf/CHRG-112hhrg72915.pdf>. p. 132.

³¹ Operation Fast and Furious: Management failures at the Department of Justice, 2012, p. 170.

³² Operation Fast and Furious: Management failures at the Department of Justice, 2012, p. 2.

³³ Operation Fast and Furious: Management failures at the Department of Justice, 2012, p. 206.

³⁴ Operation Fast and Furious: Management failures at the Department of Justice, 2012, p. 157, 193, & 203.

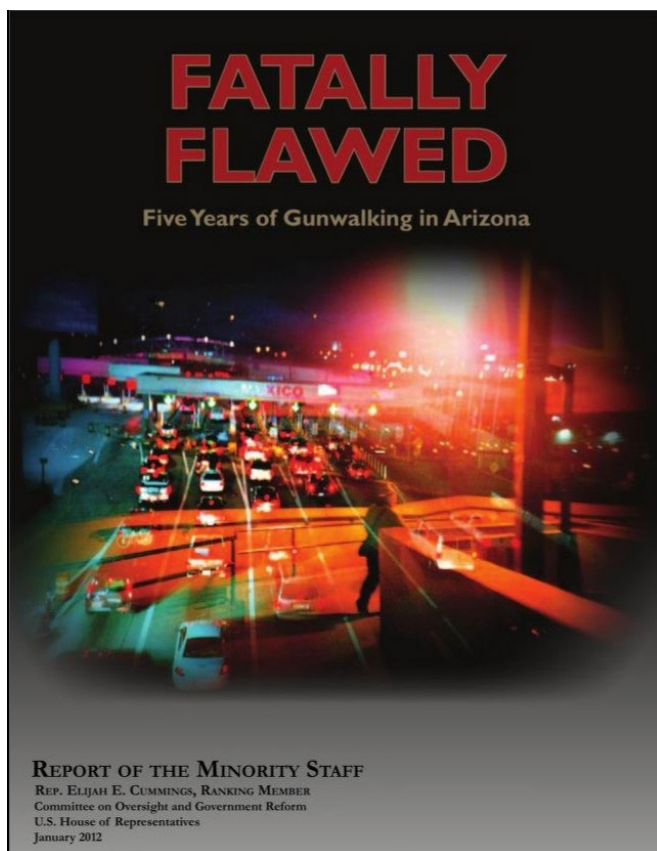
³⁵ Operation Fast and Furious: Management failures at the Department of Justice, 2012, p. 100.

³⁶ Operation Fast and Furious: Management failures at the Department of Justice, 2012, p. 102.

network it had targeted despite identifying the ringleader, five key participants who purchased 70% of the guns, and two key drug cartel associates. It also found that DOJ had failed to stop ATF's improper tactic of allowing guns to be trafficked into Mexico without interdiction. The memorandum described the ensuing blame game and failure to cooperate as follows:

ATF blames Main Justice for encouraging Fast and Furious. The Justice Department blames ATF and the Arizona U.S. Attorney's Office for the use of misguided tactics. Those who were in a position at Main Justice to stop the program blame their staffs for not bringing issues regarding Fast and Furious to their attention. U.S. Attorney's Office personnel have either taken the Fifth Amendment and refused to discuss the issue with Congress, or have been estopped by the Justice Department from talking to Congress altogether. ... The family of Brian Terry, the families of countless citizens in Mexico slain by

weapons purchased through Fast and Furious, and the American people deserve to know the truth. The Justice Department's failure to be forthcoming and cooperate with the Committee's investigation is unacceptable.³⁷



Minority report on gunwalking (Source: House Oversight and Government Reform Committee)

Committee Ranking Member Cummings released a separate 92-page minority report.³⁸ Like the Republican report, the minority report condemned Project Gunrunner, Operation Wide Receiver, and Operation Fast and Furious for "reckless" tactics. The minority report stated that the "strategy failed to include sufficient operational controls to stop these dangerous weapons from getting into the hands of violent criminals, creating a danger to public safety on both sides of the border."³⁹ The report stated explicitly that the ATF Phoenix office had observed guns cross the border "without interdiction."⁴⁰ It also found no evidence that Attorney General Holder had authorized the ATF's gunwalking tactics.⁴¹

³⁷ Operation Fast and Furious: Management failures at the Department of Justice, 2012, p. 123.

³⁸ Operation Fast and Furious: Management failures at the Department of Justice, 2012, pp. 5-97.

³⁹ Operation Fast and Furious: Management failures at the Department of Justice, 2012, p. 5.

⁴⁰ Operation Fast and Furious: Management failures at the Department of Justice, 2012, p. 32.

⁴¹ Operation Fast and Furious: Management failures at the Department of Justice, 2012, p. 100.

The minority report offered ten recommendations to reform ATF practices, including recommendations to:

- Strictly enforce a new prohibition on gun trafficking in agency operations;
- Improve management and oversight of ATF trafficking investigations;
- Include an Operational Safety Strategy in every operational plan to assess the potential risk of firearms entering the community and provide operational safeguards;
- Confirm a permanent ATF director, which had not happened in six years;
- Increase resources for ATF to combat gun trafficking; and
- Enact legislation limiting gun trafficking.⁴²

After the hearing, the House Oversight Committee majority continued the effort to obtain additional documents from DOJ. On June 13, 2012, the Oversight Committee wrote to DOJ narrowing the materials requested by the outstanding subpoena to Attorney General Holder, but he continued to decline to produce any documents generated after February 4, 2011, the date on which DOJ had submitted the inaccurate letter to the committee. DOJ claimed that the subsequent documents would disclose privileged internal executive branch deliberations on how to respond to Congress and the media.

On June 15, 2012, the committee sent a letter warning the Attorney General that, unless the requested documents were produced, the committee would consider holding him in contempt on June 20, 2012. On June 19, Attorney General Holder met with House Committee Chair Issa and Ranking Member Cummings as well as Senate Judiciary Committee Chair [Patrick Leahy](#) (D-VT) and Ranking Member Grassley, to try to resolve the dispute.

The effort was unsuccessful. As he wrote in a subsequent letter to President Obama, Committee Chair Issa declined to accept DOJ's offer to provide a compilation of documents if the House Oversight Committee would – as Mr. Issa put it – accept them “sight unseen,” cancel the contempt vote, and deem the DOJ in full compliance with the subpoena.⁴³

On June 20, 2012, the House Oversight Committee convened and, on a 23-17 party-line vote, found the Attorney General in contempt of Congress.⁴⁴ Eight days later, on June 28, the matter was placed before the full House.⁴⁵ Ranking Committee Minority Member Cummings opposed the contempt resolution, describing it as “highly politicized and reckless.”⁴⁶ Respected congressional investigator [Rep. John Dingell](#) (D-MI) moved to refer the matter back to the

⁴² Operation Fast and Furious: Management failures at the Department of Justice, 2012, p. 80 – 81.

⁴³ Issa, D. (2012, June 25). *Letter to President Barack Obama*. <https://oversight.house.gov/wp-content/uploads/2012/08/June-25-2012-Issa-to-Obama.pdf>

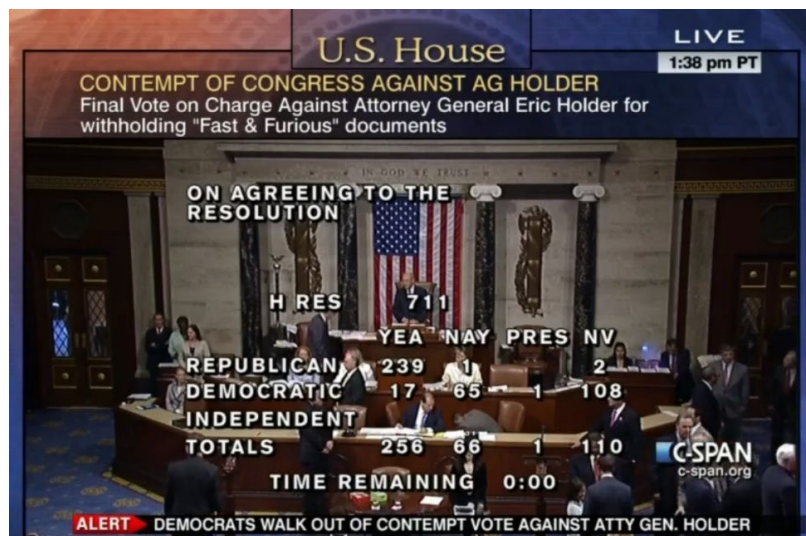
⁴⁴ D.C. District Court Memorandum Opinion (9-30-2013), https://levin-center.org/wp-content/uploads/2020/01/2013-9-30-Fast_Furious-District-court-opinion-finding-jurisdiction.pdf

⁴⁵ H. Res. 711 (112th Congr.), <https://rules.house.gov/bill/112/h-res-711>

⁴⁶ 158 Cong. Rec. H4402 (daily ed. June 28, 2012), <https://www.govinfo.gov/content/pkg/CREC-2012-06-28/pdf/CREC-2012-06-28.pdf>

committee to secure key facts about the ATF's "serious misbehavior and utter incompetence" by calling additional hearing witnesses,⁴⁷ but his motion was defeated. A total of 255 members, including 17 Democrats, voted to hold the Attorney General in contempt.⁴⁸ It was the first time in the country's history that the House voted to hold a sitting Cabinet member in contempt of Congress.⁴⁹

On July 31, 2012, the Republicans on the House Oversight Committee and on the Senate Judiciary Committee released the first of a three-part bicameral report on the Fast and Furious investigation. This part was 211 pages long and detailed the status of the inquiry to date, doing so without input from committee Democrats.⁵⁰ The ATF deputy director, William Hoover, resigned a few days later.



House votes on contempt of Congress motion against AG Holder on June 28, 2012 (Source: C-SPAN)

On August 13, 2012, escalating the document dispute to a new level, the House Oversight Committee filed a civil lawsuit against Attorney General Holder, asking the D.C. federal district court to order DOJ to produce the subpoenaed documents. Committee Democrats opposed the lawsuit. DOJ responded that the court lacked jurisdiction to resolve a political dispute between the executive and legislative branches, and that even if it had jurisdiction, President Obama had properly asserted executive privilege over all documents dated after February 4, 2011. The resulting court battle continued for the next

⁴⁷ 158 Cong. Rec. H4412-4413 (daily ed. June 28, 2012), <https://www.govinfo.gov/content/pkg/CREC-2012-06-28/pdf/CREC-2012-06-28.pdf>

⁴⁸ 158 Cong. Rec. H4417 (daily ed. June 28, 2012) (vote on H. Res. 711 showed 255 voted in favor; 67 voted against, 1 voted present, and 109 did not vote) <https://www.govinfo.gov/content/pkg/CREC-2012-06-28/pdf/CREC-2012-06-28-pt1-PgH4177-2.pdf>

⁴⁹ Strong, J. (2012, June 28). *In historic vote, Attorney General Eric Holder held in contempt*. Roll Call. <https://rollcall.com/2012/06/28/in-historic-vote-attorney-general-eric-holder-held-in-contempt/> DOJ later declined to prosecute the Attorney General. D.C. District Court Memorandum Opinion (9-30-2013), <https://levin-center.org/wp-content/uploads/2020/01/2013-9-30-Fast-Furious-District-court-opinion-finding-jurisdiction.pdf> Thirty years earlier, in 1982, Congress voted to hold Anne Gorsuch, then head of the Environmental Protection Agency (EPA), in contempt of Congress for refusing to provide certain documents related to the Superfund program. While the EPA Director now holds cabinet rank, she did not do so at the time, and EPA remains an agency, not a cabinet department.

⁵⁰ U.S. Congress. (2012, July 31). *Fast and Furious: The anatomy of a failed operation (Part I of III)*. House Committee on Oversight and Government Reform and Senate Committee on the Judiciary. https://drive.google.com/file/d/1bv0e2rD2EEvd9qOvZMFyHYA_vxtq0aOM/view?usp=sharing

seven years, producing landmark legal precedents on civil enforcement of congressional subpoenas and the assertion of executive privilege.

In the meantime, on September 20, 2012, the House oversight committee held its [fifth Fast and Furious hearing](#), the last during the 112th Congress. The hearing featured Department of Justice Inspector General Michael Horowitz who discussed his office's year-long Fast and Furious investigation and its 471-page report released the previous day.⁵¹ He testified that the report found "a pattern of serious failures in both ATF's and the U.S. Attorney's Office's handling of the investigations in Fast and Furious and Wide Receiver, and the Justice Department's response to congressional inquiries about those flawed operations."⁵² The report stated that its conclusions were based on an examination of over 100,000 pages of documents and interviews of over 130 witnesses.



Department of Justice Inspector General Michael Horowitz testifies before the House Oversight Committee on September 20, 2012 (Source: C-SPAN)

House Committee Chair Issa asked Inspector General Horowitz if he believed the 100,000 pages should have been shared with the committee which had received a total of just 8,000 pages from DOJ. IG Horowitz responded that every document his office received had been "relevant and important" to the investigation.⁵³

IG Horowitz also disclosed troubling facts about the ATF gun trafficking operations:

- The deputy assistant attorneys general in DOJ's criminal division responsible for approving the relevant wiretap applications admitted that they had not read the related applications or affidavits and instead relied on summary memos.
- "There were a series of failures in the controls. ... [T]here has to be a serious review in vetting of operations like this."⁵⁴
- From the beginning of the operation, an effort was made to keep Immigration and Customs Enforcement agents from investigating gun trafficking at the border.⁵⁵
- The flow of information was "poor" or "inaccurate" at many points in the case.⁵⁶

⁵¹ IG report – the DOJ's Office of the IG examines the failures of Operation Fast and Furious: Hearing before the U.S. House Committee on Oversight and Government Reform, 112th Cong. (2012).

<https://www.govinfo.gov/content/pkg/CHRG-112hrg76369/pdf/CHRG-112hrg76369.pdf>.

⁵² IG report – the DOJ's Office of the IG examines the failures of Operation Fast and Furious, 2011, p. 6.

⁵³ IG report – the DOJ's Office of the IG examines the failures of Operation Fast and Furious, 2011, p. 22.

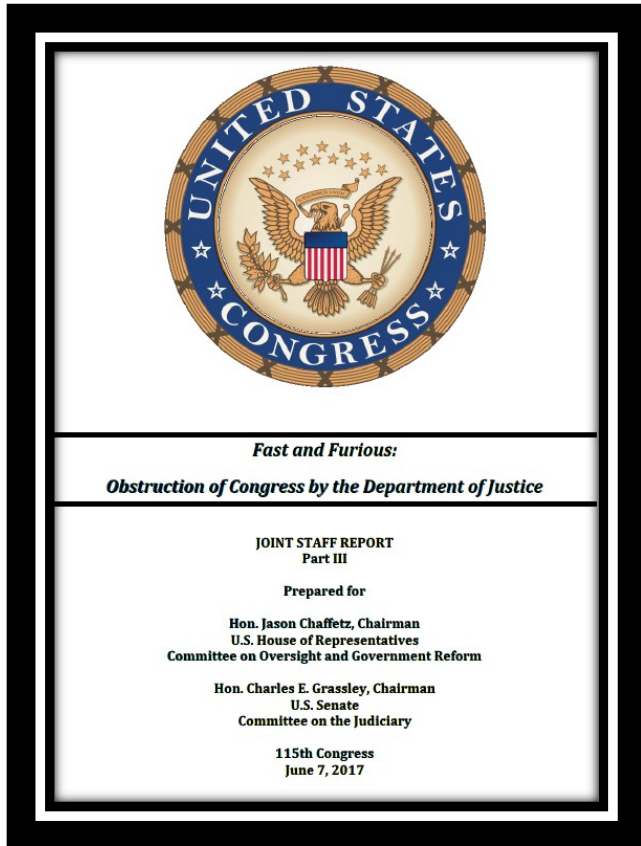
⁵⁴ IG report – the DOJ's Office of the IG examines the failures of Operation Fast and Furious, 2011, p. 25.

⁵⁵ IG report – the DOJ's Office of the IG examines the failures of Operation Fast and Furious, 2011, p. 49.

⁵⁶ IG report – the DOJ's Office of the IG examines the failures of Operation Fast and Furious, 2011, p. 56.

- No action was taken to stop Operation Wide Receiver even though many agents understood the problems, and they continued to do nothing during Fast and Furious.⁵⁷

IG Horowitz found no evidence that Attorney General Holder knew about Operation Fast and Furious before 2011, but recommended disciplinary action against 14 DOJ officials involved in the operation. Acting ATF Director Melson and Deputy Assistant Attorney General Jason Weinstein resigned following the release of the IG report.⁵⁸



In October 2012, Republican members released the second part of their Fast and Furious bicameral report,⁵⁹ but the investigation itself came to a stand-still awaiting resolution of the House lawsuit to enforce its subpoena. The congressional investigation remained in limbo for years.

The federal judge assigned to the civil lawsuit, D.C. District Court Judge Amy Berman Jackson, began to wade through the many issues raised by the case. In September 2013, in a lengthy opinion addressing the contentious issue of jurisdiction, the court determined that it had both the authority and responsibility to resolve the subpoena dispute and denied a DOJ motion to dismiss the case.⁶⁰ The court wrote: “[E]ndorsing the proposition that the executive may assert an

unreviewable right to withhold materials from the legislature would offend the Constitution more than undertaking to resolve the specific dispute that has been presented here. After all, the Constitution contemplates not only a separation, but a balance, of powers.”⁶¹

The court issued its ruling despite an unusual amicus brief filed by five leading House Democrats who urged dismissal of the lawsuit, because the House Oversight Committee had “defaulted on its constitutional obligation” to pursue “accommodation and compromise” with

⁵⁷ IG report – the DOJ’s Office of the IG examines the failures of Operation Fast and Furious, 2011, p. 65.

⁵⁸ *Operation Fast and Furious fast facts*. (2022, September 2022). CNN. Retrieved November 3, 2023, from <https://www.cnn.com/2013/08/27/world/americas/operation-fast-and-furious-fast-facts/index.html>

⁵⁹ U.S. Congress. (2012, October 29). *Fast and Furious: The anatomy of a failed operation (Part II of III)*. House Committee on Oversight and Government Reform and Senate Committee on the Judiciary. https://drive.google.com/file/d/1UJzYOL_1zJCg2fJZY-CgFVMZyFsCT15/view

⁶⁰ D.C. District Court Memorandum Opinion (9-30-2013), https://levin-center.org/wp-content/uploads/2020/01/2013-9-30-Fast_Furious-District-court-opinion-finding-jurisdiction.pdf

⁶¹ *Id.* at 2.

the executive branch, engaged in “unnecessary conflict” with the executive branch, and “rush[ed]” to court despite significant document production by DOJ.⁶²

In August 2014, the court ruled on multiple executive privilege issues.⁶³

First, it ruled that, to protect executive branch decisionmaking, the president may assert executive privilege to prevent production to Congress of not only presidential communications, but also internal DOJ documents never sent to the president. The court also determined that an assertion of executive privilege was not absolute but could be overcome by a sufficient showing by Congress of a need for the material. In addition, the court held that the Attorney General could not issue a blanket assertion of executive privilege over a collection of records, but had to make a document-by-document



D.C. District Court.

showing that the privilege applied. The court required DOJ to produce a detailed listing of the withheld documents to aid in determining whether privilege applied to specific records. Those rulings were among the first by a federal court to address the application of executive privilege to agency documents disclosing internal deliberations by agency personnel.

In November 2014, having completed the document-by-document review mandated by the court, DOJ decided to produce over 64,000 pages to the House committee. DOJ also gave the committee a detailed list of the records still being withheld which, after several revisions, specified a total of 10,446 documents.⁶⁴ In response, the House committee asked the court to order DOJ to turn over the withheld documents as well. The court directed the parties to work with a magistrate to try to resolve the dispute, but the mediation failed.

In January 2016, the district court ruled on several additional document issues.⁶⁵ It found that documents revealing DOJ’s internal deliberations about how to respond to

⁶² Memorandum Amici Curiae of Representatives Elijah E. Cummings, John Conyers, Jr., Henry A. Waxman, Edolphus Towns, & Louise M. Slaughter in Support of Dismissal (Dec. 20, 2012), at 1-2, 8; <https://levin-center.org/wp-content/uploads/2023/12/2012-12-20-Amicus-Brief-by-House-Democrats-in-Fast-and-Furious-case.pdf>

⁶³ D.C. District Court Order (8-20-2014), https://levin-center.org/wp-content/uploads/2020/01/2014-8-20-Fast_Furious-District-court-order-on-deliberative-process-privilege.pdf

⁶⁴ D.C. District Court Memorandum Opinion and Order (1-19-2016), pp. 6-7, https://levin-center.org/wp-content/uploads/2020/01/2016-Fast_Furious-District-court-opinion-on-deliberative-process-privilege-2.pdf

⁶⁵ D.C. District Court Memorandum Opinion and Order (1-19-2016), https://levin-center.org/wp-content/uploads/2020/01/2016-Fast_Furious-District-court-opinion-on-deliberative-process-privilege-2.pdf

congressional and media inquiries were protected from disclosure by the deliberative process privilege. But the court also found that DOJ had essentially waived its privilege by disclosing the disputed documents to the DOJ Inspector General and then agreeing that the IG could make the substance of those documents public in the 2012 IG report. As a result, the court ordered DOJ to produce the privileged documents to the committee. The court also directed the parties to attempt to reach an accommodation over several other, smaller categories of materials still in dispute. DOJ produced the documents ordered by the court, but negotiations to reach an accommodation over the remaining documents concluded without success.

Later in 2016, both the House and DOJ filed appeals with the D.C. Circuit Court, challenging the district court's rulings on a variety of grounds. In January 2017, however, after the election of President Donald Trump and installation of new Justice Department leadership, DOJ and the House entered into a new round of negotiations to resolve the court case.

By this point in time, much of the misconduct condemned by the Operation Fast and Furious investigation had been addressed. ATF now prohibited its agents from allowing gun trafficking without seizing illegally purchased guns. ATF leaders who'd been in charge during the Fast and Furious operations had resigned and been replaced.



Rep. Jason Chaffetz of Utah

Nevertheless, the House Oversight Committee continued reviewing the documents produced by DOJ in response to the district court's rulings. On June 7, 2017, the Republicans on the House Oversight Committee and on the Senate Judiciary Committee released the third and final part of their bicameral report describing what had been learned.⁶⁶

In addition, that same day, the House Oversight Committee held its [sixth and final hearing](#) entitled, "Fast and Furious, Six Years Later," this time under Committee Chair [Jason Chaffetz](#) (R-UT). In his opening statement, Chair Chaffetz stated:

We are here to check in on one of the longest-running congressional oversight and investigative matters of our time ... [I]t should not take years and endless, expensive litigation for the executive branch to cooperate with proper congressional oversight. We still require additional documents, and litigation is

⁶⁶ U.S. Congress. (2017, June 7). *Fast and Furious: Obstruction of Congress by the Department of Justice (Part III of III)*. House Committee on Oversight and Government Reform and Senate Committee on the Judiciary. https://drive.google.com/file/d/1wkC5avCyW_ePu4k7WoHtQTpJer_B4JK9/view

ongoing as the Department of Justice continues its unprecedented stonewalling of Congress and the Terry family. And I am sorry to report, under the Trump administration, this has not changed.⁶⁷

The hearing reviewed the status of the committee's inquiry, taking testimony from Sen. Grassley, Agent Terry's family members, and ATF Special Agent John Dodson.

In March 2018, the House and DOJ informed the D.C. Circuit Court of Appeals that they had finally reached a settlement of their document dispute, conditioned on the district court's vacating its earlier rulings and dismissing the case with prejudice. The parties jointly moved for the district court to take those actions. In response, District Court Judge Jackson denied the motion to vacate the earlier rulings.⁶⁸ Noting that the Supreme Court had held that judicial opinions were "presumptively correct and valuable to the legal community as a whole," the court found that the rulings addressed complex constitutional issues, and those issues "could very well arise again." The court ruled that "the public interest would not be served by vacatur." The district court left its precedents in place.⁶⁹

In May 2019, despite having lost the motion to vacate the lower court rulings, the House and DOJ filed a joint pleading with the D.C. Circuit voluntarily dismissing the case with prejudice and providing an exhibit containing their settlement agreement.⁷⁰ The settlement agreement included this statement:

The Parties agree that because subsequent developments have obviated the need to resolve those issues in an appeal in this case, the District Court's holdings should not in any way control the resolution of the same or similar issues should they arise in other litigation between the Committee and the Executive Branch, and hereby waive any right to argue that the judgment of the District Court or any of the District Court's orders or opinions in this case have any preclusive effect in any other litigation.

The extent to which a future Congress or Attorney General might view themselves as bound by the agreement to ignore all Fast and Furious precedents is, however, unclear.

⁶⁷ Fast and Furious, Six Years Later. Hearing before the U.S. House Committee on Oversight and Government Reform, 115th Cong. (2017). <https://www.govinfo.gov/content/pkg/CHRG-115hhrg28505/pdf/CHRG-115hhrg28505.pdf>, p. 1 – 2.

⁶⁸ D.C. District Court Memorandum Opinion and Order (10-22-2018), https://levin-center.org/wp-content/uploads/2020/01/2018-10-22-Fast_Furious-District-court-opinion-refusing-to-vacate-earlier-rulings.pdf.

⁶⁹ Some legal scholars have since condemned the court's decisions for misinterpreting prior case law and improperly limiting congressional authority to obtain executive branch documents. See, e.g., David Rapallo, House Rules: Congress and the Attorney-Client Privilege, *Washington University Law Review*, Vol. 100, pp. 455-515, 2022, at 504, footnotes 309-311, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4254169.

⁷⁰ Joint Motion for Voluntary Dismissal with Prejudice (5-8-2019), https://levin-center.org/wp-content/uploads/2020/01/2019-5-8-Fast_Furious-joint-motion-for-voluntary-dismissal-of-appeal.pdf.

The death of Agent Terry sparked an important congressional investigation into irresponsible law enforcement conduct that allowed U.S. guns to be trafficked into Mexico and then tried to conceal those actions. The resulting Fast and Furious investigation, led by House and Senate Republicans, sustained a seven-year effort to uncover the facts and win judicial enforcement of a congressional subpoena demanding documents from the executive branch. The inquiry accomplished its main objectives, but at the same time, was marred by failures in all three branches of government. The Obama Administration had to retract a misleading letter sent to Congress and was sanctioned for refusing to provide Congress with documents already supplied to its own Inspector General; the House committee failed to sustain bipartisan support for its efforts and ended up repudiating a judicial ruling that favored Congress' right to executive branch information; and the judiciary took years to address key legal issues, finally resolving them after the administration at fault had already left office.

In the end, however, for all its flaws, the Fast and Furious inquiry serves as an important congressional investigation marked by persistent fact-finding, judicial validation of Congress' right to compel executive branch information, and the realization of Congress' constitutional duty to act as an effective check on executive branch misconduct.

For more information:

- [The Center for Public Integrity: Fast and Furious](#)
- [Office of the Inspector General: A Review of the ATF's Operation Fast and Furious and related matters](#)
- [Fast and Furious: A comprehensive collection of U.S. government documents to 2017](#)



