



Written by [Jack Kenny](#) on August 21, 2014

## Judge Orders DOJ to Provide “Fast and Furious” Log

Yesterday, a federal judge ordered the U.S. Justice Department to provide Congress with a list of documents related to the 2006-2011 “gun-walking” operation, dubbed “Fast and Furious,” that resulted in the loss of some 2,000 U.S. rifles. Two of the weapons were found at the scene of the shooting death of Border Patrol Agent Brian Terry in December near the border city of Nogales, Arizona.



Though described as a sting operation aimed at following the trail of illegally purchased guns to high-level arms traffickers and drug dealers in Mexico, e-mails circulated within the department’s Bureau of Alcohol, Tobacco, Firearms and Explosives, made clear the intent to use the purchases to press for controversial legislation to require federal registration of multiple “long gun” sales to U.S. citizens.

Judge Amy Berman Jackson in the U.S. District Court for the District of Columbia Wednesday gave the Justice Department until October 1 to produce the list of documents long sought by the House Committee on Oversight and Government Reform, chaired by California Republican Daniel Issa. U.S. Attorney General Eric Holder’s refusal to comply with a subpoena from the committee for material related to the operation led to his June 2012 citation for contempt of Congress by the full House in a 255-67 vote. It was the first time in U.S. history that a member of the president’s Cabinet was charged with contempt of Congress. More than 100 Republican members called for Holder’s resignation over the “Fast and Furious” scandal.

The Justice Department argued in court papers that the documents listed in the “privilege log” should remain confidential, and President Obama has invoked the claim of executive privilege to prevent their disclosure. Though the judge’s order requires turning over only a list of the documents and not the documents themselves, it seems certain that the House panel will then subpoena specific documents by title, leading perhaps to more confrontation with Holder and the White House and another court case.

“This administration has been so intent on hiding the contents of these documents that it allowed Attorney General Holder to be held in contempt instead of just turning them over to Congress,” Issa said. “The privilege log will bring us closer to finding out why the Justice Department hid behind false denials in the wake of reckless conduct that contributed to the violent deaths of Border Patrol Agent Brian Terry and countless Mexican citizens.”

The judge ruled, however, that documents relating to how the Justice Department responded to congressional inquiries were still privileged and exempt from disclosure.

“We are pleased the judge recognized that executive privilege includes a deliberative process beyond presidential communications,” said Emily Pierce, a spokeswoman for Justice Department.

Internal ATF communications showed that agents planned to use evidence of the multiple gun sales in Fast and Furious to press for a new regulation regarding rifle sales in the United States, CBS News disclosed in a December 7, 2011 [report](#). The sought-after regulation would require some U.S. gun shops to report the sale of multiple rifles or “long guns.” It was referred to in ATF communications as



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“Demand Letter 3,” since it was the bureau’s third program demanding gun dealer reports.

After receiving an update on Fast and Furious at ATF headquarters in Washington, Field Ops Assistant Director Mark Chait wrote in a July 14, 2010 e-mail to Bill Newell, ATF’s Phoenix Special Agent in Charge of Fast and Furious: “Bill — can you see if these guns were all purchased from the same (licensed gun dealer) and at one time. We are looking at anecdotal cases to support a demand letter on long gun multiple sales. Thanks.”

As ATF was preparing for a January 4, 2011 press conference to announce arrests in the Fast and Furious operation, Newell suggested it would be “another time to address Multiple Sale on Long Guns issue.” A day after the press conference, Chait e-mailed Newell: “Bill — well done yesterday.... In light of our request for Demand letter 3, this case could be a strong supporting factor if we can determine how many multiple sales of long guns occurred during the course of this case.”

CBS News also cited anxiety on the part of the gun dealers who cooperated with ATF in Fast and Furious. “We just want to make sure we are cooperating with ATF and that we are not viewed as selling to the bad guys,” one licensed gun dealer wrote to ATF officials in Phoenix in December 2010. “We were hoping to put together something like a letter of understanding to alleviate concerns of some type of recourse against us down the road for selling these items.” Two months later the same dealer wrote:

I wanted to make sure that none of the firearms that were sold per our conversation with you and various ATF agents could or would ever end up south of the border or in the hands of the bad guys.... I want to help ATF with its investigation but not at the risk of agents [sic] safety because I have some very close friends that are US Border Patrol agents in southern AZ as well as my concern for all the agents [sic] safety that protect our country.

“It’s like ATF created or added to the problem so they could be the solution to it and pat themselves on the back,” one law-enforcement source told CBS News. “It’s a circular way of thinking.”

Revelations of ATF’s plan to use Fast and Furious sales to press for more gun regulation led to swift responses at the time from gun rights advocates both within and outside Congress. Larry Keane, a spokesman for National Shooting Sports Foundation, called it “deeply troubling” if sales made by gun dealers “voluntarily cooperating with ATF’s flawed ‘Operation Fast & Furious’ were going to be used by some individuals within ATF to justify imposing a multiple sales reporting requirement for rifles.”

“There’s plenty of evidence showing that this administration planned to use the tragedies of Fast and Furious as rationale to further their goals of a long gun reporting requirement,” said Sen. Charles Grassley (R-Iowa). “But, we’ve learned from our investigation that reporting multiple long gun sales would do nothing to stop the flow of firearms to known straw purchasers because many Federal Firearms Dealers are already voluntarily reporting suspicious transactions. It’s pretty clear that the problem isn’t lack of burdensome reporting requirements.”



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