



Office of the Inspector General
United States Department of Justice

Statement of Michael E. Horowitz
Inspector General, U.S. Department of Justice

before the

U.S. House of Representatives
Committee on Oversight and Government Reform

concerning

A Review of Investigations of the Osorio and Barba Firearms Trafficking Rings

March 9, 2017

Mr. Chairman, Ranking Member Cummings, and Members of the Committee:

Thank you for inviting me to testify about the Department of Justice (Department) Office of the Inspector General's (OIG) review of investigations of the Osorio and Barba firearms trafficking rings and the OIG's earlier work on the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) use of income-generating, undercover operations. We appreciate the Committee's sincere interest in these important issues and look forward to continuing our oversight of the ATF.

ATF's Investigation of the Osorio Firearms Trafficking Organization

On February 15, 2011, Immigration and Customs Enforcement (ICE) Special Agents Victor Avila and Jaime Zapata were attacked by members of the Los Zetas drug cartel while travelling in Mexico. Agent Zapata did not survive the attack and Agent Avila was seriously injured. Two firearms used in the attack were traced to purchases in Texas made by Otilio Osorio (the Osorio firearm) and Robert Riendfliesh (the Riendfliesh firearm). Our review examined the information that the ATF, Drug Enforcement Administration (DEA), Federal Bureau of Investigation (FBI), and Department of Justice obtained about the illegal narcotics and gun trafficking activities of Osorio, Riendfliesh, and their associates prior to the attack on the ICE agents, and whether agents failed to seize firearms destined for Mexico. We also examined the circumstances surrounding the release of Manuel Barba from federal custody in Beaumont, Texas in July 2010 following his arrest for narcotics offenses. After his release, Barba trafficked the firearm purchased by Riendfliesh, which was recovered from members of the Los Zetas cartel following the attack on the ICE agents.

Our review found numerous problems with how ATF assimilated information concerning Osorio, his brother Ranferi Osorio, and neighbor Kelvin Morrison, and with the timeliness of ATF's response to mounting evidence that these individuals were committing firearms offenses. We further had serious concerns with how DEA handled its Barba narcotics investigation, which also uncovered information about Barba's substantial gun trafficking. DEA never shared that information with ATF, and ATF only subsequently learned of Barba's firearms activities through its own separate investigation.

Review of Information Prior to and Following the Purchase of the Osorio Firearm

Our review found that ATF's Dallas Field Division had collected sufficient facts prior to Otilio Osorio's purchase of the Osorio firearm on October 10, 2010, to justify questioning Ranferi Osorio and Morrison or taking other investigative steps within a reasonable amount of time about their firearms purchases. While no single ATF staff member was aware of all of the collected facts, overall the information available to ATF prior to October 10 included the following key facts:

- (1) In June 2010, ATF agents seized a duffel bag containing firearms with obliterated serial numbers and Ranferi Osorio's luggage tags near the border

with Mexico. These firearms had what is known as short "times to crime," which refers to the time that passes between the purchase of a gun and its recovery in connection with a crime. Obliterated serial numbers and short "times to crime" are indicators of straw purchasing and firearms trafficking;

(2) In June 2010, ATF agents also obtained information showing that one of the purchasers of the seized firearms described above listed the Osorio residence as her address and that a second purchaser resided less than 1 mile from the Osorio home;

(3) On August 7, 2010, law enforcement seized another shipment of firearms with obliterated serial numbers and short "times to crime" near the border with Mexico. Two of these firearms traced back to Ranferi Osorio and one traced back to Morrison;

(4) Between August and September 2010, ATF collected information from sales reports and an intelligence analyst concerning multiple sales of handguns to the Osorio brothers and Morrison; and

(5) On October 7, 2010, ATF received a tip from a concerned firearms vendor in the Dallas area about firearms purchases by the Osorio brothers, Morrison, and five others.

Despite this information, ATF's first contact with the Osorios and Morrison did not occur until late February 2011, following the attack on agents Zapata and Avila.

We determined that by early October 2010, before Osorio's purchase of a firearm that was ultimately used in the attack on Agents Avila and Zapata, the ATF had sufficient facts to justify questioning Ranferi Osorio and Morrison or taking other investigative steps about their firearms purchases. Our review also found that approximately one month after Osorio's firearm purchase, the Osorio brothers were recorded transferring 40 firearms, 37 of which had obliterated serial numbers. As we explain in the report, however, we do not believe that it is possible to identify what investigative steps should have been taken at the time, or precisely when arrests should have occurred, and that to attempt to do so now would be mere speculation. We did conclude that the supervisor of ATF's firearms group in Dallas was not sufficiently proactive and failed to ensure that the leads that ATF had received about Ranferi Osorio and Morrison were investigated, that consultations with prosecutors had started, and that there was adequate coordination within ATF and with DEA. We further determined that ATF delayed its investigations and arrests of the Osorios and Morrison for reasons that lacked sufficient justification.

In addition, our review identified one instance where we believe ATF had both the legal authority and opportunity to take firearms in the Osorios' possession but failed to seize them. This occurred after the attack on agents Avila and Zapata. In response to the attack, agents searched the Osorio residence on February 24, 2011, and found ten firearms. The ATF agents participating in the search did not seize the firearms because they did not believe that they had a legal basis to take

them. We found that the agents reached their legal conclusion regarding probable cause and the likely views of the U.S. Attorney's Office without consulting any prosecutors in that office. When agents returned to the Osorio residence 4 days later to arrest the Osorios, five of the firearms were missing, and two of those were later recovered at a crime scene in Mexico. We believe that one of the lessons for ATF in this matter is the importance of coordination with the U.S. Attorney's Office.

Barba's Release from Federal Custody and Subsequent Trafficking of the Riendfliesh Firearm

Our review also examined two investigations that were focused on Manuel Barba: a DEA narcotics investigation and an ATF firearms investigation. Our review found serious deficiencies with the DEA's and an Assistant U.S. Attorney's (AUSA) handling of the Barba case. DEA first learned in April 2010 of Barba's drug dealing and in May 2010 of his potential firearms trafficking to Mexico. However, DEA never shared the information about Barba's possible gun trafficking with ATF so that ATF could determine whether an investigation might be appropriate. ATF only learned of Barba's gun trafficking as a result of its own investigation of Barba in August 2010, after the sale of the Riendfliesh firearm. We were not persuaded by DEA's explanations for not passing on evidence of Barba's involvement with firearms trafficking to ATF, and we determined that there is room for improvement in DEA's policy to clearly require such communication in appropriate circumstances. As part of oversight work concerning ATF's Operation Fast and Furious, we previously encouraged DEA to develop policies that provide clear guidance to its agents about when to contact ATF, but to date DEA has not implemented our suggestions.

We further determined that the AUSA handling the Barba drug prosecution should not have agreed to Barba's release from federal custody in July 2010 following his indictment and ultimate plea in the Eastern District of Texas, leaving Barba at liberty to lead a group of firearms traffickers and ultimately to direct the straw purchase and the trafficking of the Riendfliesh firearm to Mexico. We found that, prior to his release, the DEA failed to highlight for the AUSA statements Barba had made about trafficking AK-47s. We also found no evidence that the AUSA read the DEA report that included these statements or took them into account in agreeing to Barba's release.

With respect to the conduct of the firearms trafficking investigations that led to ATF's identification and arrests of Barba and Riendfliesh, we did not identify any failure to take action on the part of the investigating agents that might reasonably have prevented the trafficking of the Riendfliesh firearm. We found that ATF agents diligently pursued leads, took effective investigative steps, and appropriately consulted and coordinated their activities with the U.S. Attorney's Office for the Southern District of Texas. Our investigation did not identify circumstances where agents witnessed the unlawful transfer of firearms and failed to seize them.

Further, our review did not find evidence that the FBI, ATF Headquarters, or DOJ were alerted to or aware of the criminal activities of the Osorios, Morrison,

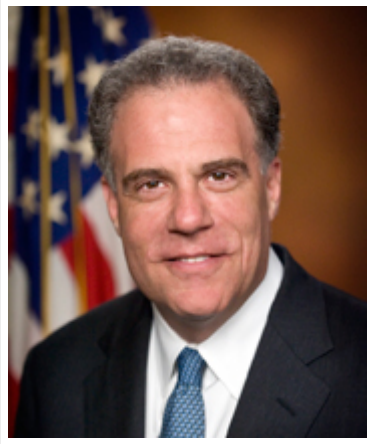
Riendfliesh, or Barba before the shooting of agents Avila and Zapata, or that there were deficiencies regarding the notification process in that regard.

We did not make formal recommendations for improvement in this report because we believe the recommendations we made in our Operation Fast and Furious review, and in our recent follow up report, also address the deficiencies we identified in this review. As these reports demonstrate, the high risks associated with these matters and the possibility of tragic consequences for failure to respond to them appropriately is all too real.

Our report can be found on the OIG's website at the following link:
<https://oig.justice.gov/reports/2017/o1701.pdf>.

We look forward to working with this Committee and the Department to address the concerns identified in our reviews. This concludes my prepared statement, and I would be pleased to answer any questions that you may have.

Meet the Inspector General



Michael E. Horowitz was confirmed as Inspector General for the Department of Justice (DOJ) by the U.S. Senate on March 29, 2012. He was sworn in as the fourth confirmed Inspector General on April 16, 2012.

As Inspector General, Mr. Horowitz oversees a nationwide workforce of more than 400 special agents, auditors, inspectors, attorneys, and support staff whose mission is to detect and deter waste, fraud, abuse, and misconduct in DOJ programs and personnel, and to promote economy and efficiency in Department operations.

Mr. Horowitz most recently worked as a partner at Cadwalader, Wickersham, & Taft LLP, where he focused his practice on white collar defense, internal investigations, and regulatory compliance. He also was a board member of the Ethics Resource Center and the Society for Corporate Compliance and Ethics. From 2003 to 2009, Mr. Horowitz served as a Presidentially appointed and Senate confirmed Commissioner on the U.S. Sentencing Commission. As

Commissioner, he was instrumental in rewriting the guidelines for corporate compliance programs, and for fraud, antitrust, intellectual property, and money laundering offenses.

Mr. Horowitz previously worked for DOJ in the Criminal Division at Main Justice from 1999 to 2002, first as Deputy Assistant Attorney General and then as Chief of Staff. Prior to joining the Criminal Division, he was an Assistant U.S. Attorney for the Southern District of New York from 1991 to 1999. From 1997 to 1999, Mr. Horowitz was the Chief of the Public Corruption Unit, and from 1995 to 1997, he was a Deputy Chief of the Criminal Division. In 1995, he was awarded the Attorney General's Award for Distinguished Service for his work on a complex police corruption investigation.

Before joining the DOJ, Mr. Horowitz was an associate at Debevoise & Plimpton and clerked for Judge John G. Davies of the U.S. District Court for the Central District of California.

Mr. Horowitz earned his Juris Doctor, *magna cum laude*, from Harvard Law School and his Bachelor of Arts, *summa cum laude*, from Brandeis University.

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