

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
MINORITY (202) 225-5051

<http://oversight.house.gov>

Opening Statement

Rep. Carolyn Maloney

Hearing on "Reviewing ATF's Failures in the Death of ICE Agent Jaime Zapata"

March 9, 2017

When Special Agent Jaime Zapata was shot and killed in Mexico in 2011, he was only 32 years old. He was as enthusiastic and hard-working as law enforcement agents come. Six years ago, this remarkable man was murdered in an ambush while working in service of his nation. His partner, Special Agent Victor Avila, was gravely injured alongside him.

Examining the circumstances of Agent Zapata's death and the shooting of Agent Avila required a thorough and diligent investigation by the Office of the Inspector General. I thank Mr. Horowitz and his staff for the report we are discussing here today.

This report identifies a number of serious problems in the way that ATF, the Drug Enforcement Administration (DEA), and the U.S. Attorney's Office investigated the trafficking of weapons to Mexico in 2010 and 2011. Many of these issues are not new to us on this Committee. We have investigated them over several years, and we have worked to ensure that these agencies make serious, lasting improvements.

The Inspector General's report highlights some important new facts. For example, it describes how a federal prosecutor in Texas made a serious mistake in agreeing to release a man by the name of Manuel Barba from federal custody in July 2010. According to the Inspector General, that prosecutor had DEA reports with Mr. Barba claiming that he was heavily involved in gun trafficking. The Inspector General found that this decision had terrible consequences:

Based on the information reasonably knowable to the agents and the prosecutors, it is clear that they should not have agreed to Barba's release from federal custody and left at liberty to direct the straw purchase of [one of the assault rifles] and its trafficking to Mexico, where it was used in the Zapata/Avila shooting.

This prosecutor's supervisor, the U.S. Attorney for the Eastern District of Texas, admitted later: "We did drop the ball."

The Inspector General's report also disproved an unfounded assertion made by Republicans on this Committee at the time. They claimed that Agents Zapata and Avila may have been shot with guns that were walked as part of Operation Fast and Furious. Those claims turned out to be wrong.

Let me be clear: this new information in no way diminishes our Committee's obligation to ask tough questions and demand answers, but it does caution against Members rushing to judgment without all the facts.

With that in mind, today we will also discuss a recent *New York Times* article alleging that ATF failed to properly oversee so-called "churning accounts" between 2011 and 2013 while investigating cigarette smuggling.

In 2003, the Justice Department under Attorney General John Ashcroft argued in favor of allowing ATF to use churning accounts, asserting that Congress should give ATF authority to use money generated during undercover sting operations to offset investigative expenses. In response, Congress granted this authority in 2004, and President Bush signed it into law.

In 2013, the Inspector General issued a report highlighting numerous accountability problems with these churning accounts between 2006 and 2011. In response, ATF says that it stopped using these accounts.

The *New York Times* article alleges that this latest operation was "not authorized under Justice Department rules" and "went beyond what was identified in that audit, released in 2013."

We do not have the full story yet. The Chairman asked ATF to submit documents, but the due date is not until tomorrow. In addition, litigation referenced in the press report is under seal, documents on the public docket are heavily redacted, and it is unclear whether ATF has submitted documents in that case.

Nevertheless, if the allegations in this press report are true, they raise obvious questions. Who authorized this program? How was the money used? Did this activity violate Department guidelines? Has there been an audit of these accounts to determine whether funds were used improperly? Has anyone been disciplined? And how were the activities described in this report any different than straight out tobacco smuggling?

We will not rush to judgment, but we will seek answers. We will review the documents, we will monitor the litigation to determine when the case is unsealed, and we will question today's witnesses.

Finally, Congress also has a role. More than five years ago, several ATF whistleblowers testified at that very witness table about abuses they saw first-hand. They called for legislation to make gun trafficking a federal crime. They explained that the current penalties for gun trafficking are no more than paperwork violations, and they called them "toothless."

In response, we introduced legislation in the past two congresses. Our legislation was bipartisan. It had more than 100 co-sponsors from both political parties. It targeted criminals and helped law enforcement. It was endorsed by local and federal police groups, as well as prosecutor organizations with members across the country. Yet, our bill received no action in the House. We plan to reintroduce our legislation again this year, and I hope we will finally be able to move it with the support of even more Members of this Committee.
