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September 21, 2011

Committee on Oversight and Government Reform  
2157 Rayburn House Office Building  
Washington, D.C. 20515-614

Dear Sir/Madam:

Enclosed please find the Supplemental Statement of Special Agent William Newell, supplementing and clarifying his testimony before the Committee on July 26, 2011. Please feel free to contact me if you have any questions.

Very truly yours,



Paul E. Pelletier

cc: Steve Castor (w/enclosures)  
Chief Counsel, Investigations  
Committee on Oversight and Government Reform

Susanne Sachsman Grooms (w/enclosures)  
Chief Counsel, Democratic Staff  
Committee on Oversight and Government Reform

cc: Bill Newell (w/enclosures)

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**Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.**

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**Supplemental Statement of William D. Newell,  
Former Special Agent in Charge of the Phoenix Field Division  
Bureau of Alcohol, Tobacco, Firearms and Explosives, To Testimony  
Given Before the United States House of Representatives  
Committee on Oversight and Government Reform  
On July 26, 2011**

I am William D. Newell of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). I testified before the Committee on Oversight and Government Reform on July 26, 2011. After taking time to reflect and review my testimony from the hearing on July 26, 2011, I realize I could have given clearer, more complete and more direct responses to some questions. It was not my intention to give answers that lacked the clarity everyone on the panel deserved from a federal law enforcement agent in my position. It is not an excuse but a reality that the pressure I have been under over the last several months has been nothing like I have ever experienced; this inquiry and the way it has been handled has taken a physical toll on my family, me and the dedicated men and women who continue to pursue the goals of this investigation. The format of the hearing also was not conducive to providing answers which include the depth and breadth necessary for a full understanding of the underlying facts. As a consequence and in retrospect, some of my answers could have been more detailed and clearer. I would therefore like to take this opportunity to expound upon and clarify some of these answers through this supplemental statement in hopes that you will be better able to evaluate the principal goals underlying the Fast and Furious investigation for the purpose of assisting the inquiry.

Ranking Member Cummings asked whether the errors in Fast and Furious relating to ATF's inability to seize guns during the investigation were errors of omission or errors

of commission. To be clear, any errors were unintentional errors of omission and are rooted in the laws we have at our disposal in attempting to address this type of illegal activity, the inherent risks posed by the nature of these investigations and the rapid progression of this investigation, which I will attempt to summarize below.

As I stated in my opening statement at the hearing, throughout the course of this investigation we attempted to be innovative in tracking and seizing firearms purchased by the suspected “straw” buyers while simultaneously being engaged in a strategic effort to identify the decision makers, the financiers and an ever expanding network of “straw” purchasers of the firearms in order to ultimately disrupt the entire criminal organization. Ensuring the safety of the citizens of the United States and, concomitantly the citizens of Mexico, underlied the fabric of all of our law enforcement decisions in this investigation. To be clear, the main objective of the Fast and Furious investigation was to find a way to *eliminate* the flow of firearms to Mexico by this criminal organization. As such, those searching for the secret or hidden “high level” authorization to “permit guns to flow south,” an objective antithetical to our OCDETF investigation, ultimately will remain unsatisfied. Upon reflection and review, my efforts in the hearing to expound upon the bases and practical application of the law enforcement goals lacked a completeness which was difficult for me to effectuate in that forum.

### ***The Inception of the Investigation***

The operational phase of this ATF investigation was formally initiated by the case agents on November 16, 2009 under the title “Jacob Chambers, et al.” At that time, approximately seven (7) suspects had been identified as possibly being engaged in concerted firearms trafficking. During the next seven weeks, diligent ATF field agents

aggressively investigated these individuals, leading to the identification of other suspected “straw” purchasers and numerous firearms purchases that occurred both before and after the ATF investigation opened. The agents also conducted numerous queries of law enforcement databases which identified a potential link between these suspected firearms traffickers and a Phoenix area drug trafficking ring with ties to a Mexican drug trafficking organization. During this time there was active coordination, discussion, and assessment of the investigative information, strategy, and progress with the U.S. Attorney’s Office (USAO). Based on the limited information and evidence up to this point in the investigation regarding the suspected illegal trafficking activity, the organization, its members, and the methods, routes and suspects by which firearms had been diverted from lawful commerce, including some recovered in the U.S. and Mexico, additional investigation was required. The investigation, which initially focused on a few suspected “straw” purchasers, quickly ballooned to an expansive and expanding firearms trafficking network. It was believed that it was important to adopt an investigative plan to terminate this organization’s ability to traffic in firearms.

It is well established that many firearms trafficking organizations operating in the Southwest Border states are sophisticated transnational criminal enterprises involving multiple layers of criminal operators, including fungible “straw” purchasers. These purchasers have no prohibitive criminal history, and if arrested, generally refuse to cooperate and, indeed, have little ability to assist law enforcement in furthering the investigation through cooperation due to the insular design of the organization. They also have little incentive to cooperate based on the obvious prosecutive challenges and the nominal sentencing guidelines associated with the falsification of information required on

federal firearms transaction forms. Another disincentive for cooperation is the significant and well-founded fear of violent physical retaliation by the Mexican drug cartels. Thus, the premature arrest of “straw” purchasers prior to the identification and arrest of the organizers and financiers of the enterprise would have permitted the unabated trafficking of guns, as, in addition to potentially fatally exposing the investigation, the arrested “straw” purchasers would have been quickly replaced by new purchasers, unknown to law enforcement. Moreover, even if the USAO would have authorized the piecemeal arrest and prosecution of individual suspected “straw” purchasers, I am certain such arrests would literally have empowered the organization to continue to operate and illegally traffic firearms in virtual anonymity, undetectable to law enforcement and frustrating ATF’s ability to staunch the flow of guns by charging all of the organization’s members.<sup>1/</sup>

As I stated at the hearing, with 20/20 hindsight I now see that I should have conducted more frequent assessments during the course of the investigation in order to determine whether our surveillance and seizure efforts were effective in those instances where we had advance knowledge of an attempt by a suspected member of the firearms trafficking organization to purchase weapons. This was not an intentional omission of either myself or the agents who were doing their level best under trying and difficult circumstances while seeking to effectuate these, and other, legitimate law enforcement objectives: (1) the desire to establish to the satisfaction of the USAO that the suspects were indeed unlawful “straw” purchasers<sup>2/</sup> and members of the criminal enterprise; (2) to

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<sup>1/</sup> Experience dictates that decisions about arrest and seizure are best made by agents on the scene in accordance with the law and in consultation with their supervisors and federal prosecutors.

<sup>2/</sup> It is my understanding that to lodge criminal charges against “straw” purchasers in the District of Arizona we must be able to produce for federal prosecutors sufficient evidence to establish beyond a

identify the breadth, scope and methodologies of the criminal enterprise; and (3) to seize firearms and arrest the criminally culpable members of the organization when lawfully permitted to do so.

Although we suspected that this organization was in the business of purchasing firearms for a Phoenix area drug trafficking ring with ties to a Mexican drug trafficking organization, we did not stand idly by and watch more than 2000 guns be transported to Mexico. When ATF had advance notice that a suspected “straw” purchaser would be purchasing guns,<sup>3/</sup> the agents used available resources to track, surveil and seize the guns as permitted under existing laws and policies of ATF and the USAO.<sup>4/</sup> ATF also, contrary to insinuations at the hearing, used a wide variety of well-established law enforcement investigative techniques during the investigation in an effort to identify the participants, locations, vehicles, financing and operating methods, to interdict and seize firearms, and to gather the evidence necessary to support a successful federal prosecution in the District of Arizona. In fact, new and innovative techniques were used during the course of this investigation in an effort to track the movement of firearms as well as seize them lawfully, including the use of Federal civil forfeiture warrants for firearms. ATF

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reasonable doubt that the person suspected of “straw” purchasing a firearm intended to falsify the ATF F 4473 Firearms Transaction Record. A confession absent supporting evidence that the “straw” purchaser was buying guns for another does not rise to the level of proof beyond a reasonable doubt in this District. Furthermore, each substantive “straw” purchase violation must be proved with independent evidence related solely to that transaction; evidence of similar past behavior, to my understanding, will not be sufficient to support a prosecution in this District.

<sup>3/</sup> For example, we did not receive notification that an FFL had sold 3 firearms to Jaime Avila on January 16, 2010 until three days later - - January 19, 2010. As such, ATF agents could not have surveilled the purchase, storage and/or transportation of those firearms. Two (2) of those firearms were later found on the scene of Agent Terry’s murder.

<sup>4/</sup> It is frequently the practice in these types of trafficking rings for the weapons to change hands several times before ultimate transfer across the border, with guns occasionally being stored at stash houses, sometimes for weeks and months at a time, and comingled with guns acquired from other purchasers. Recoveries related to this case in the U.S. and Mexico indicate that this was indeed the practice of this organization.

also, contrary to other insinuations at the hearing, conducted numerous interviews with suspected “straw” purchasers throughout the course of the investigation, but gained minimal information and cooperation during these interviews as to their culpability and the structure of the criminal organization. Furthermore, during the investigation ATF also attempted to insert an experienced undercover agent into the organization in a proactive attempt to gain valuable insight and evidence as to the inner workings, means and methods of this criminal enterprise. This undercover attempt, which was well-planned by dedicated and experienced agents, ultimately was not successful. As such, Fast and Furious was not an ATF undercover operation but a proactive investigation using the previously noted law enforcement techniques. I want to further reiterate, in most instances we did not have advance notice of the firearms purchases by suspected members of the organization.

We also routinely shared information regarding this investigation with the ATF Country Office in Mexico, other ATF field divisions along the Southwest Border, ATF HQ, and our Mexican counterparts including the PGR Representative stationed in the ATF Phoenix Field division office.<sup>51</sup>

At the time ATF Phoenix Field Division opened this investigation in November of 2009, Phoenix ATF agents believed that suspects in this criminal enterprise had acquired more than 300 firearms. Though we did not know its scope or all of the players in the

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<sup>51</sup> As part of “Project Gunrunner” ATF instituted a bi-weekly Southwest Border Briefing Paper which provides a wide ATF audience with information of active investigations, training efforts, and other Gunrunner related matters. Beginning in early December, 2009, when this investigation was then titled “Jacob Chambers, et al”, this report began providing bi-weekly updates on the investigation, including, *inter alia*, the number of guns purchased by the organization, investigative techniques being used, coordination with other law enforcement agencies, and the recovery of firearms in the U.S. and Mexico, to Darren Gil, the ATF Mexico Attaché, and to Carlos Canino, the Deputy Attaché. Mr. Gil would have continued to receive these bi-weekly Briefing Papers until his removal from that post in the Fall of 2010. Accordingly, I cannot reconcile Mr. Gil’s statement to the Committee that Operation Fast and Furious “was kept secret from [him] and his colleagues.”

enterprise, on November 20, 2009,<sup>6/</sup> we learned that there had been a seizure in Naco, Sonora, Mexico of 42 firearms, of which 37 ultimately<sup>7/</sup> were traced to the criminal enterprise we were investigating. At that time, Group VII of the ATF Phoenix Field Division had only three (3) agents, yet they continued to build an investigation into this previously unknown yet burgeoning firearms trafficking criminal enterprise. On December 8, 2009, ATF agents learned that one of the suspected “straw” purchasers, Sean Steward, had sought to purchase 20 AK-47 type rifles at a Federal Firearms Licensee (FFL) in the Phoenix area. ATF agents surveilled Steward’s eventual purchase of the 20 firearms at approximately 9:00 pm that evening. An ensuing traffic stop was conducted and Steward maintained to the law enforcement officers at the scene that he had purchased the guns and that they indeed belonged to him. Because Steward was not prohibited by law from purchasing or possessing the firearms, our agents on scene believed there did not exist lawful authority to seize the weapons despite their strong suspicions.<sup>8/</sup> On December 21, 2009, a Phoenix Police Department Gun Squad officer made contact with suspect Jose Polanco who had purchased 3 pistols on November 17, 2009. In answer to questions regarding one of the pistols which had been seized from a convicted felon in Phoenix on November 19, 2009, Polanco specifically denied having

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<sup>6/</sup> As stated previously, “straw” purchasers are fungible; therefore, many of the “straw” purchasers we had identified as members of the organization at the inception of the investigation were no longer being used by the organization when the investigation received OCDETF approval.

<sup>7/</sup> At the time of the seizure agents did not know that all 37 guns were linked to the organization they were investigating. Over the next several months, as ATF Phoenix continued to develop intelligence and work leads in the case, the case agents were able to connect those guns to several different suspected “straw” purchasers they believed were linked to the organization.

<sup>8/</sup> Despite the clarity of 20/20 hindsight so fervently expressed by several Committee members and ATF witnesses at the July 26, 2011 hearing, the determination on the ground at that time was not unwarranted.



purchased the weapon for another individual and claimed he purchased it for himself but then decided to sell it.<sup>9/</sup>

In a January 5, 2010, meeting at the United States Attorney's Office, it is my understanding that a determination was made that the legally sufficient evidence required to make arrests, seize firearms, and successfully prosecute the suspected violations had not yet been obtained. Over the next several weeks ATF continued to collect evidence to support an OCDETF<sup>10/</sup> investigation into this enterprise that we now believed was organized, prolific and supplying firearms to a Phoenix area drug trafficking ring with ties to a Mexican drug trafficking organization.<sup>11/</sup> By the time the United States Attorney's Office and the ATF Phoenix Field Division submitted the OCDETF paperwork to the OCDETF Regional Program Office in Houston, Texas in mid-January, the agents believed they had linked approximately 950 previously purchased guns to the Fast and Furious criminal enterprise.<sup>12/</sup> On February 5, 2010 we were notified by the Houston Regional OCDETF Office that the Fast and Furious investigation had received OCDETF approval.

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<sup>9/</sup> In my experience, "straw" purchasers routinely deny the facts necessary to establish that they are indeed "straw" purchasers necessitating the collection of admissible evidence satisfactory to the USAO before charges can be filed. In this regard, Mr. Gil's testimony at the July 26, 2011 hearing that confessions are obtained "99.9%" of the time does not square with my experience or with the events in this case.

<sup>10/</sup> At this time we had hoped that an OCDETF approved operation would provide funding that would allow for additional agents to be detailed to the group to assist in conducting surveillance and enhance other investigative techniques necessary to achieve the objectives of the investigation.

<sup>11/</sup> To illustrate the herculean efforts of the 3 agents assigned to Group VII, during the first 6 weeks of their investigation the agents prepared and submitted more than 55 reports of investigation which recorded their early efforts to determine the scope of the criminal enterprise. This volume of investigative effort was unprecedented in my experience.

<sup>12/</sup> Because there is no central registry of all firearms purchases, there is no way for ATF to immediately identify where, when and how many firearms purchases have been made by a person of interest, not even for those purchases made at federally licensed firearms dealers (FFLs). Therefore "linking" previously purchased firearms to suspects in a firearms trafficking organization involves, but is not limited to, agents reviewing and analyzing information of "after the fact" sales including: reported multiple sales forms, reviewing firearms transaction records at FFLs, information from cooperating individuals, surveillances, lawful interdictions and/or firearms traces by ATF and other law enforcement agencies. It should be noted that evidence of previously purchased firearms by suspects in this investigation is still being uncovered.

### *The Post-OCDETF Phase*

Throughout the OCDETF phase of the investigation we continued to utilize the previously mentioned and well-established law enforcement investigative techniques to assist the agents in determining the size, scope and methods of the criminal enterprise as well as to obtain sufficient evidence to arrest and prosecute the culpable individuals and seize the firearms when we believed we lawfully could do so.<sup>13/</sup> From the time of the inception of the Fast and Furious OCDETF phase of the investigation until the conclusion of the operational phase of the investigation at the end of July, 2010, ATF was able to surveil the purchase of approximately 300 firearms by people suspected of acting as “straw” purchasers for the criminal organization. ATF was able to proactively and lawfully seize approximately 60 of those firearms. For example, on February 13, 2010, ATF agents, because they had advance notice of a pending gun purchase from an FFL, obtained a court order to place a tracking device in the stock of one of the firearms that Uriel Patino purchased later that day. On February 20, 2010, ATF agents were able to track the firearms to the Tohono O’Odham Indian Nation in Arizona heading presumably toward Mexico. Upon coordination with the United States Border Patrol, a vehicle believed to be carrying the firearms was spotted near the border with Mexico. The vehicle was found to be loaded with forty-one (41) AK-47 type firearms wrapped in plastic. Thirty-seven of these firearms were subsequently determined to have been purchased by Uriel Patino between January 15, 2010 and February 13, 2010.<sup>14/</sup> The

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<sup>13/</sup> To be clear, and contrary to statements made at the hearing, I am aware of only one instance in this investigation where ATF agents were prevented from confronting a suspect. In that instance, on April 27, 2010, it is my understanding that, due largely to considerations of agent safety, agents were prevented from stopping a vehicle to confront a suspect.

<sup>14/</sup> Patino purchased the 37 firearms in the following manner: 10 firearms purchased on January 15, 2010; 10 firearms purchased on February 8, 2010; 5 firearms purchased on February 11, 2010; 2 firearms purchased on February 12, 2010; and 10 firearms purchased on February 13, 2010.

driver of the vehicle, unknown to ATF at that time, was placed under arrest and the firearms seized. Over the next several months agents were able to surveil Patino's purchase of approximately 200 firearms of which they were able to proactively and lawfully seize only 21.<sup>15/</sup> It should be noted that, to date, ATF has seized a total of 231 firearms in this investigation.<sup>16/</sup>

Using ATF and OCDETF resources we detailed several out-of-town agents to assist with surveillance during the period of March 14 to May 3, 2010. These agents often worked seven days a week and logged more than 4,000 hours of surveillance. From early May to mid-August the Phoenix Field Division was tasked with deploying the second Gunrunner Impact Team (GRIT) initiative which involved detailing approximately 85 ATF personnel of different job series from across the country to assist with the numerous firearms trafficking investigations being conducted by the Phoenix Field Division at that time. This included detailing 10 agents to Group VII to assist with firearms trafficking investigations including Fast and Furious. During this time period Phoenix Group VII personnel also continued to conduct numerous surveillances in support of this investigation.<sup>17/</sup> During this period, to my knowledge not a single agent

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<sup>15</sup> At the time, the policy of the United States Attorney's Office for the District of Arizona as understood by me was that ATF did not have lawful authority to seize firearms being transferred between two non-prohibited persons absent articulable and specific proof that the transfer in question was in and of itself unlawful.

<sup>16/</sup> As articulated earlier, in consultation with the United States Attorney's Office for the District of Arizona, ATF made every effort during this investigation to lawfully interdict and seize firearms. In that vein we used many law enforcement tools including trackers, visual surveillances, interviews, search warrants and electronic intercepts.

<sup>17</sup> It should be emphasized, that even with the detailees and the additional manpower available during the GRIT operation, the field agents could not maintain surveillance on every "suspected" resident, suspected "straw" purchaser or dealer premises of interest on an uninterrupted, 24/7 basis. We utilized our human resources, other assets and tools as effectively and efficiently as possible. The agents in the field must be permitted to make judgments as to how to best proceed, particularly when they were dealing with approximately 50 suspected "straw" purchasers and other suspects.

was instructed to decline to make a seizure or interdict firearms when he or she could do so lawfully and safely.

As I stated at the hearing and previously in this supplemental statement I realize that with more regular assessments I could have articulated to my staff the need to be proactive in ascertaining the quantity of guns being purchased that we were not able to intercept and more urgently articulating to the USAO the need to address in some way these now clear facts. These are the unintentional *omissions* for which I am, in retrospect, responsible as the then SAC of ATF in Phoenix.

Also, Ranking Member Cumming's statement that Director Melson was not aware of the "so called 'gun walking' [allegations] until they were reported publically" and that "they stayed in-house down there" assumes that allegations of "gun walking" were *actually* raised in Phoenix by the whistleblowers during the operational phase of the investigation. As I stated in my interview with Committee staff and also at the hearing on July 26, 2011, I am unaware of any concerns of alleged "gun walking" raised by the whistleblowers during the operational phase of the investigation until they were being reported publically in or about February 2011.<sup>18</sup> To me, the stark absence of contemporaneous documents voicing concerns to supervisors over "guns walking," establishes quite convincingly that concerns over alleged "gun walking" were not raised with the appropriate supervisors in the Phoenix Field Division during the operational phase of this investigation. Finally, there exists a well-established process within ATF in which employees can contact the Internal Affairs Division or Office of the Ombudsman

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<sup>18/</sup> I have reviewed the statements made by the whistleblowers to this Committee and it is my belief that many of the assertions in these statements are untrue. Certainly the immediate supervisor at the time as well as the lead case agent of the Fast and Furious investigation would have personal knowledge as to the veracity of most of those assertions.

to report activity they believe needs to be addressed immediately or when they believe their concerns are not being addressed in the field by the appropriate supervisors. To the best of my knowledge, at no time during the operational phase of the Fast and Furious investigation did any of the whistleblowers contact the Internal Affairs Division or Office of the Ombudsman with concerns regarding the investigation.

Pursuant to Title 28 United States Code, Section 1746, I declare under the penalty of perjury that the forgoing is true and correct.

  
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William D. Newell

Executed this 20th of September, 2011.