

Jim: Welcome to the latest podcast from the Department of Justice Office of the Inspector General. My name is Jim Mitzelfeld, and I am a senior counsel in our office.

I'm here today with DOJ Inspector General Michael Horowitz, and Sean O'Neill, Deputy Assistant Inspector General of our Oversight and Review Division.

We're here to discuss our new follow-up report to our 2012 review of Operations Fast and Furious and Wide Receiver.

Inspector General Horowitz, to get us started, can you give us a little background about what this report covers?

Michael: Sure, Jim. As you mentioned, today's report is a follow-up to our 2012 review of Operations Fast and Furious and Wide Receiver. These were two investigations conducted by the Bureau of Alcohol, Tobacco, Firearms and Explosives, or ATF. Both were aimed at investigating the trafficking of firearms across our southwest border with Mexico.

In 2012, we found that serious failures by ATF and the U.S. Attorney's Office for the District of Arizona, led to the risky strategy of not arresting individuals or seizing firearms destined for Mexico when they could, a tactic that raised significant public safety and foreign policy concerns. Today's report checks in on how the Department has responded to the six recommendations we made in that 2012 report.

Jim: Can you tell us what we found with respect to how the Department responded to those recommendations?

Michael: Sure. We found that the Department has carried out four of our six recommendations, and has made progress resolving the remaining two. For example, DOJ completed reviews of ATF's policies to make sure that they comply with DOJ guidelines. And ATF developed guidance on how to investigate certain gun trafficking cases and made changes to improve its oversight of sensitive investigations.

However, we also found that the Department and ATF should take additional steps to fully address two of the recommendations. One was for the Department to review the policies and procedures of the FBI, the DEA, and the U.S. Marshals Service so that those components avoid making the same mistakes that were made in Fast and Furious. The other was that ATF should revise its program for monitoring sensitive cases and improve its internal inspection procedures.

Jim: Sean, as Deputy Assistant Inspector General for Oversight and Review, you were on the team responsible for today's report. Can you give us an example of a recommendation on which the Department and ATF made progress?

Sean: Back in 2012, we recommended ATF develop guidance on how to investigate gun trafficking organizations. Both Fast and Furious and Wide Receiver were so-called "enterprise investigations" of this kind. Among other things, we recommended that ATF agents better understand how to build this type of case, in light of both the lessons of Fast and Furious and a new ATF policy on firearms transfers that took effect in 2011.

Jim: Can you describe ATF's policy on firearms transfers?

Sean: The policy, in part, lays out specific options for what an ATF agent can do if an agent learns of a firearms transfer and has a legal basis to make an arrest or seize the firearm. The policy emphasizes that the agent must take all reasonable steps to prevent the illegal use of the firearm – either by arresting the individual or seizing the weapon.

We also reviewed the new policy and ATF's training materials. These include instructions for agents to coordinate with prosecutors when building gun trafficking cases. We concluded that these steps were adequate to close this recommendation.

Jim: Two of the OIG's recommendations that the Department and ATF made progress on, dealt with evaluating whether ATF's policies complied with Department policy and guidance. What did you find in those areas?

Sean: We had recommended that the Department look at ATF's policies on both:

- law enforcement operations, and
- procedures for sensitive investigations.

After the OIG's first report was issued in 2012, the Department led a working group, at the Deputy Attorney General-level, to review these policies and make sure that they were in compliance and adequately protected public safety.

The Deputy Attorney General's working group produced two memos that provided guidance to the Department's law enforcement components and U.S. Attorneys on how to evaluate and manage risk in sensitive investigations. These were both issues we identified in our 2012 Fast and Furious review.

So with respect to the law enforcement operations policy, we are satisfied that the Department has conducted the review we requested. And that ATF's policies comply with Department guidance.

Jim: You mentioned that we also recommended the Department review ATF's procedures for its oversight of sensitive investigations. Has the Department carried out this recommendation?

Sean: Yes, Jim, both the Department and ATF have made significant progress to address this recommendation. For example,

- first, the Department's working group has reviewed these policies;

- second, ATF has revised its policies concerning confidential informants and undercover operations to improve ATF's oversight, including with its home invasion undercover operations; and
- third, ATF has established what it calls its "Monitored Case Program" to better evaluate sensitive cases.

However, we also found some areas of concern that warranted ATF's attention before we could close this recommendation.

Jim: Before I ask you about those areas of concern, you mentioned the term "home invasion undercover operations" – can you explain what that is?

Sean: I can, Jim. In a "home invasion" undercover operation, ATF agents provide an opportunity for suspects to commit an armed robbery of a "stash house" operated by drug dealers. As you might imagine, there is a significant risk of violence when this kind of undercover strategy is used. However, ATF's policies did not provide for sufficiently rigorous oversight of these operations. ATF has changed that.

The areas that we needed ATF to resolve before we could close the final recommendation involved ATF's criteria for evaluating risk. For example, we determined that ATF's procedures for its Monitored Case Program and its Inspection Division were not sufficiently evaluating certain high-risk activities. For example, the Inspection Division was not monitoring its undercover operations.

We also raised concerns about ATF's procedures for

- One, authorizing confidential informants to conduct activities that would otherwise be illegal if the person was not an informant, and
- Two, ATF's lack of guidance on using polygraphs to oversee confidential informants.

Since that time, ATF has taken steps that address these specific concerns and has committed to making additional improvements in the way that it evaluates and monitors risk in sensitive investigations. We will continue to assess ATF's progress in this area.

Jim: As we've discussed, today's report notes areas where the Department has made progress on four recommendations. However, it also finds that the Department has not fully addressed two of our recommendations from 2012. Can you help our listeners understand this better?

Sean: That's right, Jim. First, we recommended the Department review the policies and procedures of its law enforcement components other than ATF. The goal was to make sure that the FBI, DEA and U.S. Marshals Service did not make the same mistakes that were made in Fast and Furious. We found the Department made significant strides in developing an approach to risk management in law enforcement operations. But we also found some problems with the Department's efforts to fully address this recommendation.

Jim: Can you give us an example of a problem you found?

Sean: Sure. We found that the DEA, FBI, and the U.S. Marshals Service had not changed their policies to expressly address how to handle certain types of firearms transfers that can occur during investigations. As we discussed earlier, ATF has developed new policies on firearms transfers. The other agencies initially did not take this step. One reason was that the Department's own policies do not require the components to develop policies that expressly address certain types of firearms transfers. In addition, during our interviews, staff from DEA, FBI, and the U.S. Marshals Service said in part that because their agents do not engage in the troubling practices described in our Fast and Furious report, they didn't think it was necessary to modify their policies.

We found these arguments unpersuasive. Because agents from all three components routinely deal with violent criminals with access to trafficked firearms, we believe it is critical that these agents are prepared to respond appropriately when they learn of firearms transfers.

Jim: Have these components made any changes in response to our concerns?

Sean: They have, Jim. During the course of our review, the DEA issued a risk mitigation and assessment policy that addresses firearms transfers, and the FBI and U.S. Marshals Service have committed to revising their policies to address this activity. We will continue to monitor their progress in this area.

Jim: And what is the second recommendation that the Department has not fully addressed.

Sean: The second area where we felt the Department needs to make additional improvements concerns revisions to ATF's program for monitoring sensitive cases and enhancing ATF's internal inspection procedures. ATF has committed to make changes in both of these areas.

Jim: Thank you, Sean. Inspector General Horowitz, today's report includes one new recommendation. Can you tell us about that?

Michael: That's right, Jim. We recommended that the Department evaluate how to better use findings from OIG reports to improve the operations of all Department components, not just the specific component under review.

So for example, although our 2012 Fast and Furious report focused on the ATF, some of the issues were also relevant to the FBI, the DEA, and the U.S. Marshals Service, and we think our report could be useful to those organizations.

Transcript: "Podcast: A Follow-up of the OIG's Report on Operations Fast and Furious and Wide Receiver"

Our new recommendation aims to help the Department develop new procedures to evaluate and carry out OIG recommendations across all relevant Department components -- not only for recommendations related to Fast and Furious, but for all future OIG recommendations. And the good news is that the Department has developed a process to carry out this recommendation.

Jim: That wraps up things for today. For listeners who'd like more detail, today's full report is now available on our website, at oig.justice.gov. Michael and Sean, thanks for helping us understand this report.

Michael: Thank you, Jim, and thanks as well to our listeners for joining us today.