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COMBATING INTERNATIONAL ORGANIZED CRIME: EVALUATING CURRENT AUTHORITIES, TOOLS, AND RESOURCES

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME AND TERRORISM

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

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COMBATING INTERNATIONAL ORGANIZED CRIME: EVALUATING CURRENT AUTHORITIES, TOOLS, AND RESOURCES

TUESDAY, NOVEMBER 1, 2011

U.S. SENATE,
SUBCOMMITTEE ON CRIME AND TERRORISM,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 9:31 a.m., in room SD–226, Dirksen Senate Office Building, Hon. Sheldon Whitehouse, Chairman of the Subcommittee, presiding.

Present: Senators Whitehouse, Feinstein, Klobuchar, Coons, and Grassley.

OPENING STATEMENT OF HON. SHELDON WHITEHOUSE, A U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Chairman WHITEHOUSE. Good morning. The hearing will come to order. I appreciate the witnesses' having taken the time to join us. I am not sure if any of our Republican members will be joining us, but I have been given the nod by the minority staff to go ahead and proceed, so I will begin with my opening statement. If anybody else does arrive, we can proceed to their opening statements if they care to make one.

Every day, as we know, overseas criminal networks target Americans, weakening our economic prosperity and compromising our safety. Today's hearing provides us an opportunity to evaluate our current statutory authorities, law enforcement tools, and resources for protecting the American people from the serious and ever growing threat of international organized crime.

The international organized crime networks we confront today are significantly different from La Cosa Nostra and other criminal networks we confronted in the past. Criminal groups increasingly operate internationally, taking advantage of globalization, of the Internet, and of new technologies to engage in sophisticated and expansive crimes targeted at victims an ocean away.

Overseas networks of cyber criminals have hacked into the computer networks of innovative American businesses, stealing their valuable intellectual property in order to produce cheap competitors or counterfeits. Large-scale criminal enterprises are openly engaged in the online sale of massive amounts of stolen American movies, music, and software. And an entire criminal industry has grown up around stealing and selling credit card numbers, bank

account passwords, and personal identification information of American consumers.

Criminal groups involved in human trafficking or smuggling narcotics and weapons are dangers to our communities, often engaged in kidnapping, extortion, and related acts of violence along the way. Some overseas crime networks are linked to terrorist organizations.

These foreign criminals' overseas base of operations, flexible network structures, and use of the Internet and other modern tools creates significant challenges for U.S. law enforcement. Investigators tracking an international crime group must regularly work in and with several different countries to build a single case. The laws and practical circumstances in each country pose obstacles to uncovering evidence, to interviewing witnesses, to locating criminal suspects. And the high-tech tools used by foreign criminals require our law enforcement experts to use complex and often costly forensics to identify those responsible for a crime.

Even once investigators have pieced together a case against a dangerous group and found their suspects, additional hurdles may stand in the way of bringing foreign criminals to justice. Criminal statutes, for example, may not apply to criminal groups based overseas. And some of our most powerful criminal laws for prosecuting organized crime may not capture the types of fraud and theft that international criminals engage in today. Our RICO statute, for instance, does not apply to computer crimes and, thus, does not help combat overseas hacking rings.

Overseas criminal groups demand heightened attention and resources from many elements of our Government. Investigative and law enforcement agencies must work together to detect and disrupt overseas criminal plots. They must also collaborate with our economic, diplomatic, and intelligence communities to share threat information, cut off criminal networks' access to funds, and supplement criminal prosecutions with other approaches to keeping the American people safe.

It is good that the administration has announced an aggressive strategy to combat international organized crime and prepared specific legislative recommendations on which Congress can act. Today we are joined by representatives from the Department of Justice, the Treasury Department, and ICE who are well positioned to discuss the threats we face in foreign criminals. I also look forward to hearing more from them about what actions the administration has taken and what we in Congress can do to provide law enforcement with the tools it needs to confront this challenge.

Protecting American citizens and business from foreign criminals is no partisan issue. Members of Congress in both parties agree that we must strengthen our ability as a Nation to take down these overseas criminals.

Our Ranking Member, Senator Kyl, is unfortunately not able to join us today because of his important commitments on the Debt Committee, but I have greatly enjoyed collaborating with him this year on legislation concerning cybersecurity and on other hearings, and I look forward to working with him and other members of the Committee on this important issue.

Since there is no one immediately present to make further opening statements, we can get right to the meat of the hearing, which is always a good thing. I would just go right across the panel here, beginning with Lanny Breuer, who is the Assistant Attorney General for the Criminal Division at the Department of Justice. Before joining the Justice Department, he was a partner at Covington & Burling, LLP, here in Washington, where he served as co-chair of the white-collar defense and investigations practice group. Previously in his career, he served as an assistant district attorney in Manhattan and as Special Counsel to President Clinton. He received his B.A. from Columbia College and his J.D. from Columbia Law School, and we are pleased to have him here today.

Mr. Breuer, please proceed with your testimony.

STATEMENT OF HON. LANNY A. BREUER, ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC

Mr. BREUER. Good morning, Mr. Chairman. It is a real pleasure to be here. Thank you for the opportunity to appear before you today along with my partners from the Departments of Treasury and Homeland Security to discuss the Justice Department's efforts to address the threat posed by transnational organized crime.

Transnational organized crime poses a grave and growing threat to our economic and national security and the safety of our citizens. These groups commit a staggering array of crimes, all the way from credit card fraud and cyber crime to violent crime and drug trafficking. They penetrate and undermine Government institutions, they threaten the world financial system, and they subvert legitimate markets. For these reasons, the task of combating transnational organized crime has never been more urgent.

The fight against transnational organized crime is among the highest priorities of this Administration, and the Justice Department is proud to play a leading role in that effort. The Department has made great strides in attacking transnational organized crime groups. As the cases highlighted in my written testimony illustrate, our work often depends upon our close relationships with foreign law enforcement. It is often impossible to identify, arrest, and prosecute offenders or obtain critical evidence without the assistance of our allies.

To give just one example, our prosecutors and agents work with Romanian law enforcement to target organized criminal groups operating in that country that threaten American citizens and institutions. Just last month, I traveled to Romania and saw firsthand how closely our two nations are working together, and that work is paying off. For instance, early this year joint investigations resulted in the arrest of over 100 organized cyber criminals in our two countries. But the challenges to pursuing these groups remain significant.

For example, law enforcement in some countries is unable or unwilling to cooperate with our investigative efforts. In addition, finding the assets of sophisticated criminal organizations often involves unraveling a web, a sophisticated web of shell corporations used to disguise and launder profits. And even if we are able to build a

case, securing extradition of the defendants often poses a significant obstacle.

Attorney General Holder and I have taken important steps to better position the Justice Department to confront 21st century organized crime. In 2009, the Attorney General announced the creation of the International Organized Crime Intelligence and Operations Center, or IOC–2, which coordinates the efforts of nine Federal law enforcement agencies against transnational organized crime networks. And late last year, the Attorney General accepted my recommendation to merge the Organized Crime and Gang Sections within the Criminal Division to make more efficient and effective use of our resources to go after organized crime groups both here and abroad. With the support of Congress, that merger took effect earlier this year.

But combating the threats posed by transnational organized crime requires more than effective law enforcement. To that end, in July the Administration announced a cutting-edge strategy that for the first time brings all of the resources and tools of the Federal Government to bear in a coordinated way against transnational criminal groups.

One of the centerpieces of our new strategy is a package of essential legislative updates designed to ensure that we have the tools we need to confront these evolving threats. This package includes changes to our money laundering and forfeiture laws to improve our ability to break the financial backbone of criminal organizations. We also seek to modernize our racketeering laws. And we propose other amendments aimed at addressing the increasing global reach of these organizations. We believe that these legislative proposals will enhance our ability to attack transnational criminal groups wherever they are and protect the American people from this global threat.

Thank you for the opportunity to discuss this important issue with you, and I am, of course, pleased to answer your questions.

[The prepared statement of Mr. Breuer appears as a submission for the record.]

Chairman WHITEHOUSE. Thank you, Mr. Breuer.

Our next witness is Daniel Glaser, the Assistant Secretary for Terrorist Financing at the Department of Treasury's Office of Terrorism and Financial Intelligence. He has also served as Treasury's Deputy Assistant Secretary for Terrorist Financing and Financial Crimes. In addition to his prior roles at the Treasury Department, he has served as an attorney for the United States Secret Service and as the head of the U.S. delegation to the Financial Action Task Force, an intergovernmental agency charged with formulating policies to combat international money laundering and terrorism financing. He is a graduate of the University of Michigan and the Columbia University School of Law, and we welcome him here.

Mr. Glaser.

STATEMENT OF HON. DANIEL L. GLASER, ASSISTANT SECRETARY FOR TERRORIST FINANCING, U.S. DEPARTMENT OF THE TREASURY, WASHINGTON, DC

Mr. GLASER. Chairman Whitehouse, distinguished members of the Committee, thank you for the opportunity to appear before you

today to discuss the Treasury Department's contribution to the Obama administration's strategy to transnational organized crime.

In my testimony today, I will focus on the Treasury Department's efforts to implement this strategy with the use of our unique authorities, including Executive Order 13581, as well as our ongoing work to promote financial transparency both domestically and abroad.

In early 2010, the United States completed a comprehensive assessment of transnational organized crime which concluded that these networks have expanded in scope and sophistication, engage in a range of illicit activities, and are exploiting the international financial system. To combat this growing threat to U.S. interests, the Obama administration announced the national strategy to combat transnational organized crime that utilizes new and innovative capabilities and tools to combat this threat. The most significant new tool is Executive Order 13581, designed to specifically block the property of major transnational criminal organizations. In the Executive order, the President identifies and imposes sanctions on four significant criminal organizations: the Brothers' Circle in Russia, the Camorra in Italy, the Yakuza in Japan, and Los Zetas in Mexico. These groups' growing infiltration of legitimate commerce and economic activity threatens U.S. economic interests at home and abroad through subversion, exploitation, and distortion of legitimate markets and economic activity. The result is a convergence of complex, volatile, and destabilizing threats to U.S. national security.

The Treasury Department is now implementing a strategy to effectively implement Executive Order 13581. First, we are attempting to map the financial networks of these organizations so we can target them with derivative designations, thereby undermining their ability to operate effectively within the international financial system. Our efforts will complement U.S. law enforcement authorities in the fight against the criminal organizations, building on our already close cooperation with the U.S. Department of Justice.

We will also work with like-minded foreign partners and the international financial community to build an international coalition to combat transnational organized crime more broadly. In fact, I will travel to Moscow next week to discuss this very issue and build on our ongoing cooperation with our Russian counterparts.

Of course, the Treasury Department will not limit our efforts to these four groups or solely to this Executive order. We will also seek out new organizations to target, and we will employ our full arsenal of tools, including Section 311 of the USA PATRIOT Act.

The success of our efforts to combat organized crime through targeted action also relies on our ongoing work to promote a transparent global financial system. Transnational criminals seek to exploit the complexity and opacity of the international financial system. We, therefore, must enhance financial transparency and diminish their ability to commit and profit from crime. In order to improve this transparency, the Treasury Department has worked internationally to create a global anti-money laundering and counterterrorism financing framework as a foundation for taking action against criminal groups. This work has been advanced

through such organizations as the Financial Action Task Force, the IMF, the World Bank, and the G–20.

These efforts, however, are undermined by the ability of criminal organizations to launder illicit proceeds through the abuse of legal entities. Accordingly, Treasury has developed a strategy to address this vulnerability in the U.S. and international financial systems.

First, we are working with our interagency partners and with Congress, including in particular Senator Levin, to develop new legislation that will enhance the ability of beneficial ownership information to law enforcement about legal entities created in the U.S.

Second, we plan to clarify and strengthen customer due diligence requirements for financial institutions with respect to the beneficial ownership of legal entities.

Finally, we are working with our international partners in the FATF to clarify and facilitate the global implementation of international standards regarding beneficial ownership. Without widespread global implementation, illicit actors could evade strengthened U.S. requirements and access the U.S. financial system through other means.

Transnational organized crime presents a persistent and unique security threat to our financial system. Our efforts to combat this threat will persist, and we will continue to find innovative ways to disrupt and dismantle illicit financial networks, and to ensure that the international financial community builds strong systems to counter penetration by organized crime groups.

Thank you for the opportunity to testify today, and I look forward to answering any questions.

[The prepared statement of Mr. Glaser appears as a submission for the record.]

Chairman WHITEHOUSE. Thank you, Mr. Glaser.

Our final witness is Kumar Kibble, who is the Deputy Director for U.S. Immigration and Customs Enforcement at the Department of Homeland Security. He has served in leadership roles at ICE headquarters, including as the Deputy Assistant Director for the National Security Investigations Division and as Deputy Director and Acting Director of Investigations. Mr. Kibble began his Government career in 1990 as an infantry officer in the U.S. Army's 82nd Airborne Division. He is a graduate of the U.S. Military Academy at West Point. We are pleased he is here.

Mr. Kibble.

STATEMENT OF KUMAR C. KIBBLE, DEPUTY DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY, WASHINGTON, DC

Mr. KIBBLE. Chairman Whitehouse and distinguished members of the Subcommittee, on behalf of Secretary Napolitano and Director Morton, thank you for the opportunity to discuss ICE's role in combating transnational organized crime.

Our roughly 20,000 employees include 7,000 homeland security investigations—or HSI—special agents assigned to more than 200 cities throughout the United States and 70 foreign offices around the world. This global team focuses exclusively on investigating transnational threats. HSI investigators are uniquely equipped

with cross-border authorities, expertise, and information enabling them to disrupt and dismantle transnational criminal networks operating along the entire illicit travel and trade pathways in destination, transit, and source countries.

Just yesterday, we announced the results of Operation Pipeline Express, a 17-month multi-agency investigation responsible for dismantling a massive narcotics-trafficking organization affiliated with the Sinaloa Cartel. Conservative estimates indicate that during a 5-year period this organization smuggled more than 3.3 million pounds of marijuana, 20,000 pounds of cocaine, and 10,000 pounds of heroin into the United States, generating almost $2 billion in illicit proceeds. HSI agents, working with the Pinal County sheriff's office, the Arizona Attorney General's office, and more than 20 Federal, State, and local partners, arrested 76 subjects and seized more than 60,000 pounds of narcotics and more than 100 weapons. The organization's smuggling methods included use of backpackers, vehicles, and sophisticated countersurveillance operations. This case demonstrates how HSI targets transnational criminal organizations along the entire continuum of transnational crime beyond our borders in coordination with foreign partners, at our borders in coordination with Customs and Border Protection, and within our borders in cities throughout the United States in partnership with Federal, State, local, and tribal agencies.

Over the last two decades, transnational organized crime has expanded dramatically in size, scope, and impact. In response, earlier this year the administration launched its new strategy to combat transnational organized crime, or the TOC Strategy. To support the administration's strategy within ICE, we have developed the Illicit Pathways Attack Strategy, or IPAS. Using a risk-based approach, IPAS prioritizes our efforts to attack convergence points and vulnerabilities in the networks, routes, and infrastructure used by high-risk transnational criminal networks.

Our first IPAS plan facilitates engagement with host country partners to increase joint human smuggling investigations, enhance exchange of information, build capacity, and support foreign and domestic prosecutions. A coordinated strategy of attacking human smuggling networks along the entire illicit travel continuum reduces pressure on our borders and assists partner nations in disrupting organized alien smuggling within their own territories.

In addition to human smuggling, HSI works with our interagency and international partners to disrupt and dismantle criminal networks engaged in schemes that include intellectual property theft, arms and technology proliferation, bulk cash smuggling, child exploitation, human trafficking, drug smuggling, and transnational gang activity.

But to truly dismantle these schemes, partnerships and information sharing with domestic and, more importantly, foreign counterparts are absolutely essential, and we lead several interagency centers to coordinate a comprehensive response to these threats. The National IPR Center brings together 19 Federal and international partners to address intellectual property theft. Through the center we are leading an effort to educate the public and audiences about IP theft and its connection with international organized crime.

Working with our Cyber Crime Center, or C3, the IPR Center has led innovative cyber operations resulting in the seizure of 200 domain names used to facilitate counterfeiting and copyright infringement.

The Export Enforcement Coordination Center, created by Executive order last year and led by HSI, will coordinate counterproliferation investigations and industry outreach among CBP, the Departments of Homeland Security, State, Commerce, Treasury, Defense, Justice, Energy, and the Office of the Director of National Intelligence. And our Human Smuggling and Trafficking Center is an interagency fusion center and information clearinghouse to help coordinate interagency efforts involving human smuggling and trafficking. And, sadly, a significant number of these victims are children, and we take these cases very seriously.

Bulk cash smuggling investigations are also coordinated through our Bulk Cash Smuggling Center through which we provide real-time operational and tactical support to Federal, State, and local officers involved in bulk cash smuggling seizures 24 hours a day, 7 days a week. And we coordinate closely with the El Paso Intelligence Center to respond to these bulk cash smuggling inquiries from State and local agencies.

Thank you again for the opportunity to appear before you today and for your continued support of ICE and its law enforcement mission. I would be pleased to answer any questions you may have.

[The prepared statement of Mr. Kibble appears as a submission for the record.]

Chairman WHITEHOUSE. Let me thank the witnesses for being here and for their work. I do not need to tell you, as people who are on the front lines of this battle, that we have never been more vulnerable to international organized crime, and I certainly do not need to lecture you about the urgency of our response. You are living it. But I think you can tell us what tools we can provide you to make your job easier and more effective in dealing with this large, growing, and increasingly pernicious threat.

Let me first ask a question about the scale of the enterprises that you are facing and compare for me the revenues, for instance, that you believe some of the largest criminal cartels and organizations have access to with the revenues of, let us say, small sovereign countries, just to give us a sense of the scale for starters. Mr. Breuer?

Mr. BREUER. Thank you, Mr. Chairman.

Mr. Chairman, you are absolutely right. The challenge that we face internationally and nationally in combating international organized crime is extraordinary, and some of these groups, of course, have sway that crosses borders easily and have become almost institutions, almost extraterritorial, if you will, states in and of themselves. If you talk about some of the groups in the former Soviet Union, if you talk about groups in Latin American cartels, they have amassed enormous resources, they are extraordinarily diversified, and they have, of course——

Chairman WHITEHOUSE. When you say enormous resources, compare it to—are they resources larger than the revenues of countries that we recognize——

Mr. BREUER. Certainly, certain countries, yes, Senator, they are, and compared to some countries they absolutely are at least equivalent, or so we believe. And they are, of course, massively diversified, so it poses an enormous threat and underscores your point that to combat this, not only do we need to have enhanced tools, but we need to have our international partners join us in this very important preeminent battle.

Chairman WHITEHOUSE. Mr. Glaser, anything to add on that?

Mr. GLASER. Just to give you some numbers, Mr. Senator, the narcotics industry in the United States is reported to generate between $19 and $39 billion in profit per year. The Camorra, which is one of the groups you have targeted with our new Executive order, their annual budget has been estimated at up to $25 billion. The World Bank has estimated that there is $1 trillion per year that is spent in bribery around the world. So Lanny is absolutely right. We are talking about big numbers, and numbers that have the ability to skew the ability of governments around the world to really combat it.

Chairman WHITEHOUSE. Do you agree, Mr. Kibble?

Mr. KIBBLE. Yes, sir. I can even think of specific cases. The investigation we took down or announced yesterday, that group over a 5-year period generated $2 billion in revenue. I can think of a bulk cash smuggling investigation that resulted in the dismantling of a Colombian super cartel. That generated in excess of $5 billion. So we are talking about amounts that range into the billions.

Chairman WHITEHOUSE. So the other question is, when I think back to my U.S. Attorney tenure and I consider the cases that we did that were the most intensive on the office, one was a public corruption case. It involved a lot of DOJ oversight because DOJ does a lot of oversight on public corruption cases, as you know, Mr. Breuer. It involved the RICO Act, racketeering prosecution, which has a number of complexities and also some oversight issues with DOJ. It involved undercover investigators who had to be backstopped and put in position. It involved working with confidential informants, which is always complex. And you put the whole thing together, and it was very time intensive and management intensive. It took a lot of work.

We had an environmental case with a lot of forensic work that had to be done to rebuild what had happened to a burned tug and barge array in order to show the culpability of the company. And a wonderful FBI agent spent an enormous amount of time effectively virtually rebuilding, I guess you would say, that tug from its records so that we could show the necessary criminal standard had been met.

You look at cases that are as intensive as that, and then you add to it the foreign element, and I am going to be out of time, so I will come back around to this some more in a second round. But just quickly scale for me in terms of gathering evidence, you can tail a suspect very readily in the United States if you are an FBI agent; you can get subpoenas; you can go out and interview witnesses. That is the very simplest part of a simple investigation. You move that to a foreign country, and all of that becomes suddenly complex. Could you comment on that?

Mr. BREUER. Of course, Mr. Chairman, you are exactly right. I am exceedingly proud of what we are doing, but the complexity is vast. When you have these transnational organized crime groups, we have to collect data internationally. We do that through law enforcement-to-law enforcement partnerships, all of which take a long time, because we have to build those relationships. If we are going to bring admissible evidence into court, we have to do that through mutual legal assistance treaties. Some countries are more progressive and quicker about those than others.

We have to deal with byzantine financial records all over the world in different institutions that sometimes are more helpful or not helpful. And we have to do that with our resources.

So these are very difficult. With some countries we have better relations; with others we have less. Some countries are more sophisticated, others are less. And with transnational organized crimes being so powerful, so wealthy, and so entrenched, identifying, exploiting our knowledge, and prosecuting is an overwhelming responsibility of ours. I think it is one we are doing well, but clearly it is a challenge that becomes harder each day.

Chairman WHITEHOUSE. My time has expired. But before I turn to Senator Grassley, let me ask you for a one-word answer. Given the power and the wealth and the reach of these organizations, is it always clear in dealing with a foreign country that the foreign country is not on their side?

Mr. BREUER. No.

Chairman WHITEHOUSE. Thank you.

Senator Grassley, and then on our side, in order of arrival, is Senator Feinstein, Senator Coons, and Senator Klobuchar.

Senator Grassley.

Senator GRASSLEY. Thank you, Mr. Chairman.

Mr. Breuer, yesterday you made a public statement saying that ATF and U.S. Attorney's Office officials "repeatedly assured officials in the Criminal Division and the leadership of the Department of Justice the allegations about walking guns in Fast and Furious were not true." Please be more specific. Who exactly at ATF said that the gun-walking allegations were untrue? And who exactly at the U.S. Attorney's Office said the allegations were untrue?

Mr. BREUER. Senator Grassley, as I said yesterday, of course, it was my office that ultimately prosecuted the Wide Receiver case. I want to be very clear to you, Senator, that when I learned of this in April of 2010 and I learned about it and we decided to prosecute this case from 2006 and 2007, I regret that at that point, knowing then—knowing now, I wish that at that time that I had said clearly to the Deputy Attorney General and the Attorney General that, in this case, Wide Receiver, we had determined that in 2006 and 2007 guns had walked. I did not do that, and I regret not doing that. But——

Senator GRASSLEY. Thank you for that statement. Now, who told you at ATF and the Attorney General's office that these allegations were untrue?

Mr. BREUER. Well, Senator, at the time, as I recall, we first spoke to the ATF back in April of 2010, my front office did. And based on what I understood, we had an understanding from the

ATF that this practice of 2006 and 2007, that the ATF understood the seriousness of that, and——

Senator GRASSLEY. What is that individual's name?

Mr. BREUER. Well, this clearly, as far as I know, Senator Grassley, at the time Mr. Hoover, who is the Deputy, was one of the people who would have been involved in that discussion. Of course, I was not there for it, so I can only tell you my understanding. And then, of course——

Senator GRASSLEY. That is all I want is your understanding of it.

Mr. BREUER. That is my understanding, Senator. Then, of course, Senator, in early this year when this matter came to life, and the ATF agents made the claims that they did, I recall that both the leadership of ATF and the leadership of the United States Attorneys Offices in Arizona, those, of course, who were closest and were handling the matter, were adamant about the fact that this was not, in fact, a condoned practice. I am sure you recall that as well.

Senator GRASSLEY. The word "leadership" applies then to the people that were head of the U.S. Attorney's Office and the head of ATF. Even though you did not give me their names, that is who you are talking about, right?

Mr. BREUER. That is exactly right, as I recall.

Senator GRASSLEY. Let me go on then.

Mr. BREUER. Yes, Senator.

Senator GRASSLEY. On February 4, 2011, the Department sent me a letter also assuring me that allegations of gun walking were untrue. It reads, "ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico." That statement is absolutely false, and you admitted as much last night, that you knew by April 2010 that ATF walked guns in Operation Wide Receiver. That is correct, yes?

Mr. BREUER. Yes, Senator. What I——

Senator GRASSLEY. That is all I need to know, if that is correct. Did you review that letter before it was sent to me?

Mr. BREUER. Senator, again, I just want to be clear that, as I told you a moment ago, I regret that in April of 2010 that I did not draw the connection between Wide Receiver and Fast and Furious. And, moreover, I regret that even earlier this year I did not draw that connection.

In direct answer to your question, Senator, I cannot say for sure whether I saw a draft of the letter that was sent to you. What I can tell you, Senator, is at that time, I was in Mexico dealing with the very real issues that we are also committed to. But I also regret, as I have said, that I did not draw that connection earlier.

Senator GRASSLEY. After learning of gun walking in Wide Receiver, did you ever information Attorney General Holder or Deputy Attorney General about it? And if so, when? And if not, why not?

Mr. BREUER. Senator, I cannot be more clear. I have said to you, and I will continue to, I regret the fact that in April of 2010 I did not. At the time I thought that dealing with the leadership of ATF was sufficient and reasonable, and, frankly, given the amount of work I was doing at the time, I thought that that was the appropriate way of dealing with it. But I cannot be more clear that

knowing now—if I had known then what I know now, I, of course, would have told the Deputy and the Attorney General.

Senator GRASSLEY. Did you ever tell anybody else in the Justice Department leadership the same thing? And if so, who and when?

Mr. BREUER. Senator, I thought we had dealt with it by talking to the ATF leadership.

Senator GRASSLEY. OK. How many guns were walked in Wide Receiver?

Mr. BREUER. Well, Senator, I can probably try to look at that. Of course, that was in 2006 and 2007. And just to be clear, if I may, Senator, that was a case that had been abandoned and had languished. It was my Division that decided to take the case where guns had been permitted to go to Mexico years earlier and at least make sure that the criminals who were responsible for purchasing those guns were held to account. As a result of that, Senator, we prosecuted 11 different people. I think, to answer your question, in total, if my math is good, probably about 350 or so. But, Senator, I will have to double-check that number.

Senator GRASSLEY. OK. I think you are very close, so you do not have to check that number. According to my information, just five straw buyers—and I will refer to the chart here, and then I will quit and let you go on to another member, and I will do some more in a second round. According to my information, just five of the straw buyers in Fast and Furious were allowed to buy nearly 1,000 weapons. When did you first know that guns were walked in Fast and Furious?

Mr. BREUER. Senator, I found out first from the public disclosures made by the ATF agents early this year. When they started making those public statements, of course, at that point, as you know, both the leadership of ATF and the leadership of the U.S. Attorneys Offices adamantly said that those allegations were wrong. But as those allegations became clearer, that is when I first learned that guns that could—that ATF had both the ability to interdict and the legal authority to interdict, that they failed to do so. And that is when I first learned that, Senator.

Senator GRASSLEY. Thank you, Mr. Breuer.

Mr. BREUER. Thank you, sir.

Senator GRASSLEY. Thank you, Mr. Chairman.

Chairman WHITEHOUSE. I will next call on Senator Feinstein, who not only brings to this concern her distinguished service of this Committee, but her service as Chair of the Senate Intelligence Committee. Senator Feinstein?

Senator FEINSTEIN. Thank you very much, Mr. Chairman. I appreciate that.

Mr. Breuer, in June of this year, I received a letter from BATF—this was in response to a letter I had asked them—from Acting Director Melson stating that 29,284 firearms recovered in Mexico in 2009 and 2010 and submitted to the ATF Tracing Center, with those weapons 20,504, or 70 percent, were United States sourced. The country of origin for the remaining firearms apparently could not be determined by ATF, meaning that the number could be much higher.

What actually is the number? Now, this was back in June. Is that the most current number? Is it fair to assume that 70 percent of the firearms showing up in Mexico are from the United States?

Mr. BREUER. Thank you, Senator, for the question and for your leadership on this issue. You have, of course, identified the paramount issue that we have to face as we deal with transnational organized crime from the Mexican cartels. From my understanding, 94,000 weapons have been recovered in the last 5 years in Mexico. Those are just the ones recovered, Senator, not the ones that are in Mexico. And of the 94,000 weapons that have been recovered in Mexico, 64,000 of those are traced to the United States. We have to do something to prevent criminals from getting those guns, Senator, and that is my understanding of the most accurate numbers.

Senator FEINSTEIN. Well, you see, this is a deep concern for me, and I know others disagree, but we have very lax laws when it comes to guns. And I think this to some extent influences BATF in how they approach the problem as to whether they have political support or not. But I think these numbers are shocking, and I think when you know the number of deaths these guns have caused, used by cartels against victims, it is literally up in the tens of thousands. So the question comes: What can we do? And I would really rather concentrate on the constructive rather than other things, and so the question comes: Do you believe that if there were some form of registration when you purchase these firearms, that would make a difference?

Mr. BREUER. I do, Senator. Senator, we are talking today about transnational organized crime, and your leadership and the Chairman's and other Senators' shows that information is the tool we need to challenge and defeat organized crime. Today, Senator, we are not even permitted to have ATF require reports about multiple sales of long guns, of any kind of semi-automatic weapon or the like. So the ATF is unable to get that in all States. Very few hunters in the United States, or sports people, law-abiding people, really need to have semi-automatic weapons or long guns. So today if I go into a dealership and I want to buy 50 or 60 semi-automatic weapons, there is nothing that requires that to be in any way notified to ATF. Without that kind of notification, we lose track and can lose track of these kinds of potent weapons, and that is just one example of the kind of tool that I think would empower ATF and law enforcement to help fight this scourge.

Senator FEINSTEIN. My concern, Mr. Chairman, is there has been a lot said about Fast and Furious, and perhaps mistakes were made. But I think this hunt for blame does not really speak about the problem, and the problem is anybody can walk in and buy anything, .50-caliber weapons, sniper weapons, buy them in large amounts, and send them down to Mexico. So the question really comes: What do we do about this? I have been here 18 years. I have watched the BATF get beaten up at every turn in the road. And, candidly, it is just not right.

We have more guns in this country than we have people, and somebody has got to come to the realization that when these guns go to the wrong places, scores of deaths result, and that is exactly the case with the cartels.

So you are saying today that, if I understand this, over 5 years in recovered weapons there were 94,000; 64,000 of those came from the United States. So, clearly, over two-thirds of the weapons used in Mexico by cartels are coming from the United States.

Mr. BREUER. That is correct, Senator. And just to make a point of that, in Wide Receiver, which was a matter where the guns were permitted to go to Mexico during the prior Administration, in the years 2006 and 2007, when my team discovered that, we decided we had to prosecute that case, because even though years and years earlier the guns had gone to Mexico, we had to hold the people who bought those guns responsible. And so we prosecuted those people, as Senator Grassley pointed out.

But it is clear that we need more tools to get those people who are buying the guns and illegally transporting them to Mexico. We cannot permit the guns to go knowingly, and we cannot permit the guns to go unknowingly. We need to stop the flow.

Senator FEINSTEIN. A last question. What would be the No. 1 tool that would be of help to you?

Mr. BREUER. Well, I think that the No. 1 tool would be if ATF were given the ability to know when guns are purchased. Frankly, I do not know if it is the No. 1 tool, but one of the issues we are asking for in connection with the legislation we are talking about today, is the ability to forfeit the weapons and the inventories of gun dealers who knowingly sell their guns to criminals, if we could forfeit the guns of the dealers who we can prove knowingly are selling to criminals. We do not want to do anything to people who are selling to law-abiding citizens. But we have to stop these dealers from selling to criminals.

Senator FEINSTEIN. Thank you very much.

Thank you, Mr. Chairman.

Chairman WHITEHOUSE. Senator Coons.

Senator COONS. Thank you, Chairman Whitehouse, and thank you for convening this important hearing.

Let me start, if I could, Mr. Kibble, with some of the things you mentioned in your testimony, and the whole panel did, that transnational organized crime has broadened from its traditional areas of narcotrafficking, gun running, bribery extortion, into perhaps less obvious or less well expected areas—identity theft, cyber crime, intellectual property crimes, and counterfeiting. A whole series of recent articles have documented how in Mexico nine out of ten DVDs are pirated, and so blatantly so that most of them are stamped with the insignia of La Famiglia or Los Zetas, who are two of the notorious drug cartels. And according to a 2009 RAND report, gangs in Mexico are turning to DVD piracy because it provides a huge profit margin, very low risk compared to other criminal enterprises.

What can we do that we are not already doing? What additional resources might we be able to offer, legal or otherwise, to strengthen our enforcement activities and to get our allies and partners around the world to join us in combating pirated DVDs or counterfeiting in pharmaceuticals or other areas that have a high profit margin but currently very low risk?

Mr. KIBBLE. Senator, the trend that you correctly describe, we see this—whereas before we had transnational criminal networks

that maybe focused on one specific commodity, we see this diversification, and we have seen that with the Mexican cartels as well. Intellectual property theft is very attractive, as you noted, because the sentencing exposure is fairly low given the profit potential that can be gained by moving these counterfeit commodities.

So what we are doing is we are trying to partner internationally with our partners in Mexico to share information to aid in the interdiction of copyrighted material or infringed material. What would be helpful is, because a lot of the ways we build these cases to get cooperating defendants, so the extent that we can have more significant penalties that help to encourage cooperation, that helps us to work up to the higher echelons of organizations that are engaged in counterfeiting.

Senator COONS. I noted that was one of the principal recommendations and something I look forward to working with the Chairman on.

Mr. Glaser, in your testimony—I want to start by commending your work in combating the financing of transnational crime and terrorism in particular. You mentioned the Financial Action Task Force is planning on releasing new international standards regarding beneficial ownership, I think early next year. And during the comment period, many of the stakeholders, the American Bar Association, European Bar Association, British Bar Council, National Association of Secretaries of State, shared a concern they were not being meaningfully consulted, and that concerns me because if you are not actively consulting the Secretaries of State and the folks mostly in the bar who will be required to partner to administer and comply with the new beneficial ownership standard, I think we run the risk of creating a standard that works great on paper but bogs down in the real world and might potentially put needless regulatory burdens on small business that do not achieve your real goals.

Do you agree that the FATF should work closely with those who would be responsible for implementing its new guidance? And what is Treasury doing to improve that collaboration and consultation in advance of a new rule?

Mr. GLASER. Thank you, Senator. I certainly agree that it is extremely important that the FATF consult with the private sector and take very seriously the views articulated by the private sector. As you point out, after all, the private sector really serves as a reality check for the types of things that are going to work and that are not going to work, what is going to be unduly burdensome, and they also have just some good ideas about how to make things go forward.

I do think the FATF consults—and I know that the standards that you are referring to and that I referred to in my testimony are scheduled to be released I believe in February of 2012, February of next year, and in advance of that there is formal private sector consultations that the FATF does.

What I think is even more important for the U.S. private sector is the consultations that they do directly with us, with the U.S. Government, because at the end of the day the international the District are implemented through governments. So what is going to apply to them is going to be the regulations and the laws and the

policies that we adopt in the United States. That is why, you know, in working—you mentioned beneficial ownership in particular. We have been working very closely with Congress, with Senator Levin in particular, and I know Senator Grassley has also cosponsored the beneficial ownership legislation. This has been a multi-year process where we have been working very closely with the Secretaries of State of the States and with the private sector to try to understand how this company or corporation process works and how we can make it work as a practical matter. So I do think all of that is important, and that is what we are working very hard to do.

Senator COONS. Thank you. Given the short period until those rules come out, I would just urge some renewed consultation with those who do this professionally or as they are elected.

Madam Chair, if I might, one last question?

Senator FEINSTEIN. [presiding.] Please go ahead.

Senator COONS. If I might, Mr. Breuer, the broader context we are talking about here was how bribery and narcotrafficking, IP counterfeiting, identity theft, and so forth are—the expanded the reach of transnational organized crime has, as your early comments suggested, expanded its previous scope to the point where even some nation states are thoroughly compromised. Later today I will be chairing a hearing on China in Africa and how the economic and political situation on the continent of Africa, mostly Sub-Saharan Africa, has changed fundamentally. There are real challenges with counterfeit products, with transparency, with the trafficking of drugs and human trafficking throughout Africa. Any comment for me in that context about how we see transnational organized crime beginning to affect the stability of partner allied states on the continent of Africa?

Mr. BREUER. Absolutely, Senator, and thank you for what you are doing in this area. We have to be very nimble and understand that those countries that are under economic duress or those countries that have less stable governments or newer governments are going to be less able to resist the ever strengthening role of organized crime. Earlier this year, along with an Assistant Secretary of State, I was honored to lead a delegation. We went to Liberia and to Ghana, and we spoke to leaders in both of those countries about this very issue.

We have to be careful that Western Africa and other regions do not become beachheads for the cartels. They take their drugs and their other products and try to use different places around the world for staging areas. We have to be partners with them. In Liberia I was fortunate enough to see the beginning of a coast guard that we are helping to build there. Well, that is essential, because i they themselves can begin in a meaningful way to police themselves, they can do a better job of fighting organized crime. And so I think we have to be nimble and we have to continue to develop partnerships throughout.

Senator COONS. Thank you.

Senator FEINSTEIN. Thank you very much.

Senator Klobuchar.

Senator KLOBUCHAR. Thank you. Thank you very much, all of you, for being here for this important topic. I know that Senator

Coons raised the issue of intellectual property theft. It is an issue which I have been very focused on, and not just with the DVDs that Senator Coons mentioned but also with theft over the Internet. And I think people do not often realize the relationship between these kinds of thefts and organized crime. So I wondered, Mr. Breuer, if you could talk about what types of intellectual property have been targeted by organized crime groups and what we can do to better prevent such crimes.

Mr. BREUER. Well, Senator, we very much think that transnational organized crime today, as you have identified, is absolutely challenging intellectual property and is using computers and is expanding around the world.

What we have to do is we have to have more tools. We have to empower us, as we have asked to be able to bring racketeering cases, RICO cases against organizations, and to have more of an international reach in doing that, because these are sophisticated organizations.

I was just in Romania last week, as I mentioned, and the very issue you are identifying is one that we talked a lot about, because, of course, groups in those kinds of countries through computers and others are stealing the intellectual property of the United States.

But we are bringing many, many cases in that area, and we are going to continue to do it. But using the racketeering powers that we have asked for, money laundering and forfeiture powers, and enabling us to continue to have countries around the world join international conventions, is the way for us to work hard in this area.

Senator KLOBUCHAR. I have always believed that our laws and our prosecutors have to be as sophisticated as the crooks that are breaking them, and this is a whole new area, obviously, with the Internet and trying to make sure we maintain people's freedom and their ability to put things up there, but at the same time are able to draw the line when actually it is for organized crime for commercial use for making money off it.

In your written testimony, you propose strengthening criminal penalties for violation of IP law and focus on those that involve the conscious or reckless risk of death or bodily injury. Can you give us an example of what the Department of Justice has dealt with with such a scenario as that?

Mr. BREUER. Absolutely, Senator. Time and again, even in the last couple of years, we have been bringing cases where individuals have taken counterfeit products and have tried to sell them to our military—that is one of the large categories—have tried to deal with the infrastructure of our United States—that is another major category—or have dealt with pharmaceuticals or products that we ingest. Those cases, just in the last year, I think, are at an all-time high, and if I were to generalize, they are exactly that: whether they are trying to counterfeit Cisco products and have them sold for our military air force or our computers, whether people are taking products that go to our computer systems more generally, we have tried as hard as we can to prosecute those crimes. But we think we need enhanced tools, and we are hopeful we can get them.

Senator KLOBUCHAR. Very good. And you are aware of the two bills that we have been focusing on in the Judiciary Committee which is, first of all, the rogue website bill, which allows the Justice Department to take down websites that meet very high criteria—the criteria is that it is being used to steal things, basically—and also to make the felony penalties the same as people selling DVDs on the corner, which Senator Coons had brought up. Correct?

Mr. BREUER. Yes, Senator, I am, and we are very supportive of exactly those kinds of provisions and trying to have as comprehensive an approach as we can have.

Senator KLOBUCHAR. Thank you very much.

Did you want to add something, Mr. Kibble?

Mr. KIBBLE. Senator, I just wanted to say those tools are going to be very important for stepping up our fight on online IP theft. But I would say there are some interesting things that we are doing already in terms of we are up to now about 200 domain names that have been seized using existing authorities, and what we are doing with that is we are posting seizure notices. And what we have found is, in partnering with industry, that they have told us that a number of folks that are operating illicit websites that are used to distribute counterfeit merchandise, 80 of them have unilaterally taken down websites. We also have forfeited about 86 of those 200, and we use that to route people who go to those sites to a public service announcement that talks about how it impacts the American economy in terms of participating in intellectual property theft.

But these tools that have been proposed in the legislative package are going to be important for staying up as the bad guys adapt.

Senator KLOBUCHAR. Thank you very much. I appreciate it.

Senator FEINSTEIN. The vote has begun. Senator Whitehouse has gone to vote, says he will be right back, and so he wants to continue this, so I will continue on.

Last month, I authored with Senator Grassley the Targeting Transnational Drug Trafficking Act. This essentially strives to strengthen extraterritorial law. Among its provisions, the bill creates penalties for extraterritorial drug-trafficking activity when individuals have reasonable cause to believe that illegal drugs will be trafficking into the United States. Now, current law says that drug traffickers must know that illegal drugs will be trafficked to the United States. So what we have done is essentially lower the knowledge threshold to reasonable cause to believe.

I would like to get each one of your views on that.

Mr. BREUER. Senator, your legislation, your proposed legislation here, and Senator Grassley's, is essential. Right now, as we have talked about, these transnational organized crime groups are very sophisticated and can be very segmented. So you can have an outfit in South America, in Colombia, you can have a separate outfit that is simply responsible for the transmission of the drugs in a certain area or for a certain ingredient. And right now, you are absolutely right, to prosecute you we have to prove that you knew that the drugs were going to the United States.

What we want to do is exactly what you say, and it will be an enormous tool. If you had reasonable cause to believe that the

products were going to the United States—and we do not have to prove that you individually knew it—that will be an enormous tool in us prosecuting the cartels. And more to the point, if you are part of a conspiracy and we can prove that one member of the conspiracy had reasonable cause to believe the product was going to the United States, that will be a tool that will enable us to go after all the conspirators, and it is essential in our fight against organized crime and against these cartels. So we could not be more supportive, Senator.

Senator FEINSTEIN. Thank you very much.

Do you differ from that, Mr. Glaser or Mr. Kibble?

Mr. GLASER. No, Senator.

Mr. KIBBLE. No, Senator.

Senator FEINSTEIN. Thank you. I better go vote, Senator.

Chairman WHITEHOUSE. Yes. First of all, Senator Feinstein, thank you very much for stepping in as Chair for me. As I think the witnesses are aware, we are now in a voting sequence in the Senate, and so Senator Grassley and I have made the mad dash back and forth to vote in order to be here for a second round. I have to say, he was quite something to keep up with.

Senator Grassley.

Senator GRASSLEY. Thank you.

Mr. Breuer, I think this will be my last round of questioning. Were you aware at the time that Deputy Attorney General Gary Grindler was briefed on Operation Fast and Furious in March of 2010?

Mr. BREUER. Senator, I do not believe that I was briefed on Operation Fast and Furious, and, Senator, I do not believe that I was aware of that briefing.

Senator GRASSLEY. OK. In December 2009, Director Melson asked you to assign a prosecutor to the case from headquarters, and in March 2010, a prosecutor from the gang unit was assigned to Fast and Furious. Why did the No. 2 official in the Justice Department get a briefing around the same time headquarters assigned a prosecutor to Fast and Furious?

Mr. BREUER. Senator, I cannot answer that. What I can say to you is, from the very beginning of my tenure as the Assistant Attorney General, I have been very committed to doing everything we could to fighting the drug cartels and to doing what we can to stop what they are doing. It was in that vein that I offered the southwest borders whatever help we in the Criminal Division could bring, and that is how the very issues you are raising came about. But I cannot tell you anything about the briefing because I simply did not participate in it.

Senator GRASSLEY. OK. You said that when you first learned about gun walking in Wide Receiver, you instructed one of your deputies to schedule a meeting with the ATF Acting Director to "bring these issues to their attention." When you first learned about gun walking in Fast and Furious, did you do the same thing? And if not, why not?

Mr. BREUER. I did not, Senator, and that is what I regret.

Senator GRASSLEY. OK. Was the deputy who you assigned to meet with ATF, Jason Weinstein, also responsible for authorizing

any of the applications to the court for wiretaps in Fast and Furious?

Mr. BREUER. Senator, the answer is, he and other deputies in my office, including the longest-serving deputy in the United States' history, who has served for almost 60 years, did. If I may, Senator, for a moment, I would like to explain what that role is, if you would permit me.

The Congress made clear in law that wiretaps on telephones are an extraordinarily intrusive technique. They are a technique that I support fully and that I think are essential in fighting organized crime and transnational organized crime. And they are why, Senator, in my 2½ years I have over tripled the number of reviewers who do it. But as Congress made clear, the role of the reviewers and the role of the deputy in reviewing Title III applications is only one. It is to ensure that there is legal sufficiency to make an application to go up on a wire and legal sufficiency to petition a Federal judge somewhere in the United States that we believe it is a credible request. But we cannot—those now 22 lawyers that I have who review this in Washington, and it used to only be 7 cannot and should not replace their judgment, nor can they, with the thousands of prosecutors and agents all over the country. Theirs is a legal analysis: Is there a sufficient basis to make this request? We must and have to rely on the prosecutors and their supervisors and the agents and their supervisors all over the country to determine that the tactics that are used are appropriate.

Senator GRASSLEY. Thank you for that explanation.

You said in your statement last night that you "did not draw a connection" between gun walking in Wide Receiver and gun walking in Fast and Furious. You also said that you regret your failure to "alert others within the Department leadership" of similarities.

What finally made the light bulb go on for you that the two cases had similar problems?

Mr. BREUER. Senator, thank you for that question. I hope you know, Senator, that I have tried and my Division has tried as comprehensively as we can to deal with the plight of Mexico. I am proud to say, Senator, that it is my Division that is prosecuting the thugs and criminals who killed the three U.S. consulate officials in Juarez. It is my Division that is responsible for the investigation right now of the murderers of ICE Agent Zapata and the shooting of Avila. And it is my Division, working with law enforcement, that has brought 104 Mexican criminals, cartel leaders and the like, including Benjamin Arellano Felix, to justice this year in the United States.

So every day, whether it is an organized crime or white-collar crime or cyber crime case we are working, there is absolutely no question, Senator, that as I was involved in this exercise and as all of this has come to light, that I, in thinking about it, realized that I should have back in April of 2010 drawn that connection. I have expressed that regret personally to the Attorney General of the United States, and then I determined that I should do it publicly as well.

Senator GRASSLEY. I have just three short questions, Mr. Chairman. When did you finally alert others within the Department

leadership about the similarities that I just described? And who did you alert?

Mr. BREUER. Senator, I cannot anymore recall because, of course, by the time that the connection is drawn with me——

Senator GRASSLEY. That is OK. How did you first hear about Fast and Furious?

Mr. BREUER. Well, I first heard about the tactics about guns being permitted to go to Mexico when ATF had both the legal authority to interdict them and the ability to interdict them, I first heard of those allegations when the ATF agents went public.

Senator GRASSLEY. OK. And then when and how did you first learn about the connection between Fast and Furious and U.S. Border Patrol Agent Brian Terry's murder?

Mr. BREUER. Senator, Border Patrol Agent Brian Terry's murder is an absolute horrible tragedy, as are the tragedies of the other people, law enforcement and others, who have been killed. The only way I learned about any connection there was when it became public. But, of course, as you know, Senator, with respect to many of these tragedies, my Division has done everything we can to hold the people liable. When CBP Agent Rosas was killed, I worked personally, tirelessly, to bring his murderer to the United States. I attended the funeral. I spent time with his family. And that is why we are working tirelessly to hold the murderers of Agent Zapata accountable and the murderers of the consulate officials accountable.

Senator GRASSLEY. Mr. Chairman, I have a request of you. I released a report that I would like to ask be made a part of the record. It refutes the numbers referenced earlier that 70 percent of the guns in Mexico came from the U.S. The answer is not to clamp down on law-abiding citizens or gun dealers. Would you include that in the record?

Chairman WHITEHOUSE. Without objection, the report will be included in the record.

[The report appears as a submission for the record.]

Senator GRASSLEY. Thank you, Mr. Chairman, and thank you, Mr. Breuer, for your comments.

Mr. BREUER. Thank you, Senator.

Chairman WHITEHOUSE. Thank you, Senator Grassley.

We will wind up the hearing now because the votes are underway and we have, I think, six remaining, so I do not think I can manage to continue, plus we are now through a second round. But I did want to go back to the point that I raised initially and ask each of you, obviously briefly, you are all law enforcement professionals—for you this is a practical problem—evaluate for us and for those who will be listening to this record how and how much a case is complicated by having an international component. There is the initial investigative piece of tailing suspects and getting subpoenas for evidence and doing witness interviews, and that is a kind of traditional investigative piece. There is the electronic piece of trap-and-trace, pen register, wiretap authority. There is often a third scientific piece of putting together forensic evidence, whether electronically or, you know, rebuilding a crime scene or reconstructing a fire or something like that. Then there is the question of getting access to the criminals themselves, the arrest and seizure of the in-

dividual. And, finally, there are the asset protection and ultimately forfeiture and seizure parts of trying to make sure that the proceeds and instruments of the crime are claimed and seized by our Government.

If you could kind of walk us through a hypothetical case and in those five areas, if there are a couple where you have a particular specialty and you want to pass off others so we are not repeating ourselves too much, I will leave that to you to sort out. But I would like to kind of leave this hearing with a flavor for exactly how what could already be a very complicated case in the United States under U.S. law with our existing procedures and protocols becomes exacerbated as a challenge when it has an overseas component. Mr. Breuer, I will let you go first.

Mr. BREUER. Senator, I will take a try at that. In a typical case we may receive some sort of complaint from some sort of an entity. Maybe it is identity fraud, maybe it is online fraud, it could be really anything. So the first thing we have to do is try to investigate that allegation. Perhaps we will try to trace whatever information we can. Maybe we will try to find whether an online vendor or a money transmitter or someone has been involved.

It may turn out that we will try to run the names through something that this Administration started, which is called IOC–2. It is a data base where we now try to get from all of law enforcement, whether from Treasury, from ICE, from wherever we can, information to see if we can find other touches throughout.

But then we may need to get foreign evidence. Our foreign partners vary. Some, like Romania, where I was last week, are very, very strong, and they are happy to exchange information, and they work well with us. But, frankly, others will not share information. If we need it in court, we have to go through the court system and do what is called a mutual legal assistance treaty, and we have to get it that way. That can take months and months, if not years. We can sometimes follow very byzantine kinds of procedures that we have to do.

Chairman WHITEHOUSE. Something as simple as having an agent tail somebody is——

Mr. BREUER. Right, I have to get——

Chairman WHITEHOUSE. At the agent level here, an agent and a supervisor will decide to do it based on a case. That is something you and the Department of Justice will never see. The U.S. Attorney might not even see it themselves in the local office. That would be really where-the-rubber-meets-the-road investigative determination, and there would be virtually no administrative burden or complexity to getting clearance to accomplish that task. You want to tail the same person, and you used the example of Romania, what is——

Mr. BREUER. We have to get the Romanian authorities to agree to do that. We have to work with them, and they have to be willing to do it, and it is enormously difficult. Not only is that difficult——

Chairman WHITEHOUSE. Trap-and-trace.

Mr. BREUER. Right. I mean, we——

Chairman WHITEHOUSE. I mean, compare trap-and-trace.

Mr. BREUER. Well, I mean, in the United States we are able to do that with some efficiency. In countries around the world, there

is the entire gamut of what we are allowed to do with respect to telephonic and other kinds of information. Some countries will do it somewhat easily. Other countries will almost never do it. Some countries, for instance, if we identify the criminals, will never extradite their nationals. So with impunity, unless that country is willing to prosecute the person, we cannot do it.

These are very huge problems, and that is why——

Chairman WHITEHOUSE. Unless you can lure them overseas.

Mr. BREUER. Unless we can lure them overseas. That is exactly right. And that is a very difficult issue. We do it, as you know, but that can also have international ramifications. And so it is something we do only after much consideration.

Chairman WHITEHOUSE. From a Treasury point of view, Mr. Glaser, in terms of asset forfeiture and seizure of goods, again, a couple of practical comparisons, if you could, on how the international element of one of these investigations adds to the burden and challenge that you have to face compared to a pure domestic case.

Mr. GLASER. As has been alluded to a number of times, the international financial system is seamless, it is borderless, it is instantaneous. And people who are operating within the international financial system do so in that environment. So the challenge that we have is that, unfortunately, governments are not borderless, governments are not instantaneous, governments are not seamless. We have to operate through treaties; we have to operate through mutual legal assistance agreements, through information sharing and other types of information-sharing agreements.

What our challenge is, at the Treasury Department what we try to do with respect to the international financial system is make it as transparent as possible so that the investigators and the prosecutors that Lanny works with on a daily basis have the opportunity to trace through the international financial system where the information is, and really even more fundamentally to make sure that the information is there in the first place, to make sure that financial institutions are asking the right questions and keeping the right records so that when there is a mutual legal assistance request that can be made, that the information is there in the first place.

I think the biggest challenge we have now, as I said in both my written and oral testimony, is with respect to corporate vehicles, with respect to companies, both domestically and internationally, and the use of companies to disguise the true parties to transactions.

Chairman WHITEHOUSE. What we would call shell or phony corporations?

Mr. GLASER. Front companies, shell companies, there are all different sorts. And it is not just necessarily companies. It could be trusts. But there are all sorts of non-transparent corporate vehicles that exist for perfectly legitimate reasons, and in no way certainly from the Treasury Department perspective do we want to interfere with how these corporate vehicles are used in legitimate commerce. But the fact is that they are also very useful to criminals, and I think there are some very common-sense things that we could do, again, both domestically and globally to ensure that when law en-

forcement investigators and prosecutors need to know who is behind these transactions, that information is available to them.

Chairman WHITEHOUSE. Thank you.

Mr. Kibble.

Mr. KIBBLE. I would just pick up on some of the same themes, Chairman. The nature of the transnational criminal threat has migrated to a very cellular structure so that frequently in our investigations, whether they are counterfeit pharmaceuticals or counterproliferation investigations, they involve multiple countries and multiple continents. And when you are trying to reduce that illicit flow across our borders, which is the perspective which ICE comes at it from, it is coordinating that effort in multiple countries. And getting back to the point that Mr. Glaser said, the agile nature of our adversary that does not respect our borders, it is fashioning structures and partnerships and information exchange frameworks that allow us to move every bit as nimbly.

A good example in Mexico, during the course of our investigations along the southwest border, we will develop information that identifies sicarios, cartel hit men that are in houses across the border, and during the course of our investigations, we have been able to share that with partners in Mexico that we have cultivated that have arrested those assassins, that have seized grenades, that have seized weapons, and we need to build that across the entire illicit pathway, and that can be challenging, depending on the framework and the governance of the particular countries we are dealing with.

So it is just trying to build the structure that allows us to act every bit as nimbly as the transnational criminal threat we face.

Chairman WHITEHOUSE. Let me ask a final question, but I will make it a question for the record and you can get back to me. But, again, trying to be as practical about this as possible, as a U.S. Attorney, even if you have a relatively complicated case, the universe of folks that is involved in that case is your chain of command to the prosecutor who has been assigned it. It is the investigating agency, or in some cases agencies, but usually only two or three, and usually all, you know, ATF working with the FBI on a case, for instance, side by side, and so that is simple and within the district. You have the deconfliction to make sure that you are not doing something that somebody else is already into. And you have your relationship with the Department of Justice if it is a case in which the Department of Justice needs to sign off at various stages. That is kind of your universe for doing even a very complicated case.

I would like to ask if you could pull together an example of an international case, maybe one that has been taken down, or maybe just pull the other hypothetical one, and lay out what the prosecutor in charge of that case is looking at in terms of not only their own chain of command to the prosecutor, not only the American domestic law enforcement investigative agency or agencies, but then the MLAT network, if it is not FBI, you have got to get the legats involved through the FBI. You have got an intelligence component to it often. You have to have a liaison with the local embassy. There is probably a Treasury component.

I would like to kind of be able to almost construct kind of a diagram of what it takes to put all these agencies in the field to

mount a really effective international investigation and how much bigger an administrative group and reach that is than just plain for the same crime if it were entirely domestic. So if I could ask you to do that, is that all right?

Mr. BREUER. Of course, Senator.

Chairman WHITEHOUSE. Good.

[The information referred to appears as a submission for the record.]

Chairman WHITEHOUSE. Thank you very much.

I will put the Attorney General's letter to Chairman Issa and Chairman Leahy, which I do not think I have a date on, but it is the one that refers to Operation Fast and Furious—oh, there it is—the October 7, 2011, letter from Attorney General Holder to Chairman Issa, Chairman Leahy, and others, and without objection, that will be added to the record of these proceedings.

[The letter appears as a submission for the record.]

Chairman WHITEHOUSE. The hearing record will remain open for another week if anybody wants to add anything further.

I will close by again thanking the witnesses for their dedication to keeping our country safe and to protecting us from the criminal threat that we have always faced, but the international criminal threat that we face now in, I think, unprecedented intensity and in unprecedented means. And your service to your country is much appreciated, and the hearing is adjourned.

[Whereupon, at 10:51 a.m., the Subcommittee was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

Questions for the Records for
Lanny A. Breuer
Assistant Attorney General
Criminal Division
U.S. Department of Justice

Subcommittee on Crime and Terrorism
Committee on the Judiciary
United States Senate

"Combating International Organized Crime: Evaluating Current Authorities, Tools and Resources"
November 1, 2011

Questions from Senator Patrick Leahy

Question 1:

During the hearing, you were interrupted as you attempted to answer a question from Senator Grassley. Would you like to complete your answer? The question is below:

> **Senator Grassley. On February 4, 2011, the Department sent me a letter also assuring me that allegations of gun walking were untrue. It reads, "ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico." That statement is absolutely false, and you admitted as much last night, that you knew by April 2010 that ATF walked guns in Operation Wide Receiver. That is correct, yes?**
>
> **Mr. Breuer. Yes, Senator. What I—**
>
> **Senator Grassley. That is all I need to know, if that is correct.**

Response:

Thank you for the opportunity to complete my response.

In April 2010, one of my Deputy Assistant Attorneys General (DAAG), Jason Weinstein, informed me about certain misguided tactics that had been used in Operation Wide Receiver in 2006 and 2007, which had resulted in the ATF losing control of guns that then crossed the border into Mexico. DAAG Weinstein became aware of these misguided tactics in the course of his supervision of the Criminal Division's Gang Unit, which had agreed, in September 2009, to assume responsibility from the United States Attorney's Office in Arizona for prosecuting Operation Wide Receiver.

When I learned of these misguided tactics in April 2010, the operative phase of the Wide Receiver investigation was approximately four years old and had been complete for well over two years; the Acting Directors of the ATF in 2006 and 2007 – when Operation Wide Receiver was investigated – were no longer leading the ATF; and the U.S. Attorneys in Arizona in 2006 and 2007 – whose Office handled Operation Wide Receiver until the Gang Unit became involved in 2009 – were no longer leading the U.S. Attorney's Office. Once I became aware of the inappropriate tactics that had resulted in the ATF losing control of guns that then crossed the border into Mexico, I directed DAAG Weinstein to meet with the leadership of the ATF to convey my concerns about the investigation. Based on the meeting DAAG Weinstein subsequently had with the ATF's Deputy Director, I had no reason to believe that the new leadership of the ATF approved of, or that it would ever continue to endorse, the tactics that had been used years earlier in Operation Wide Receiver. In addition, after the allegations regarding Operation Fast and Furious became public, the leadership of both the ATF and the U.S. Attorney's Office in Arizona – who held supervisory responsibility for the investigation – repeatedly and vigorously assured individuals throughout the Justice Department that those allegations were false.

Based on the information I had at the time the Department sent its February 4, 2011 letter, I had no reason to believe that the leadership of the ATF approved of, or that it would ever continue to endorse, the misguided tactics that had been used years earlier in Operation Wide Receiver, which had resulted in the ATF losing control of guns that then crossed the border into Mexico. In recent weeks, I have seen reports suggesting that, during my November 1, 2011 testimony, I acknowledged knowing that the February 4 letter was inaccurate at the time it was submitted. I want to make clear that such an interpretation of my testimony is absolutely incorrect. I testified that, at the time the Department sent its February 4 letter, I did not make a connection between Operation Wide Receiver and the allegations being made about Operation Fast and Furious. But, as I have stated, knowing what I now know was a pattern of unacceptable and misguided tactics used by the ATF, I regret not having drawn a connection between the allegations relating to Operation Fast and Furious and the inappropriate tactics used years earlier in Operation Wide Receiver.

Question 2:

You testified that you regretted not alerting others in the Justice Department after you became aware, in April of 2010, of investigative tactics that were used in a previous ATF investigation entitled Operation Wide Receiver, which occurred in 2006 and 2007. That testimony has been misconstrued by some as if about Operation Fast and Furious. When did you become aware of the unacceptable tactics being used in Operation Fast and Furious?

Response:

I first became aware of allegations regarding the use of unacceptable tactics in Operation Fast and Furious when those allegations became public earlier this year. Before that time, I was unaware of any such tactics in connection with Operation Fast and Furious.

Questions from Senator Charles Grassley

Department Letter of February 4, 201[1]

Last week when asked whether you saw a draft of the February 4 letter sent to me that contained the false statement, "ATF makes every effort to interdict weapons that have been purchased illegally, and prevent their transportation to Mexico," you responded: "I cannot say for sure whether I saw a draft of the letter that was sent to you. What I can tell you, senator, is at that time, I was in Mexico dealing with the very real issues that we are all so committed to."

Question 3(a):

Did your Deputy Assistant Attorney General (DAAG) Jason Weinstein review the Department's February 4, 201[1] letter to me?

Response:

Yes, DAAG Weinstein reviewed the letter; he also participated in its drafting.

I understand from documents being produced by the Justice Department, and from conversations I have had with DAAG Weinstein, that he offered to assist in drafting the February 4 letter because, having been unable to go on his planned trip to Mexico with me and other Department officials, he had the time to do so. I further understand that during the drafting process, he relied on the unequivocal assertions of the leadership of the ATF and the Arizona U.S. Attorney's Office – officials who held supervisory responsibility for Operation Fast and Furious and who were therefore in the best position to know the actual facts concerning the operation.

DAAG Weinstein has expressed to me that, in hindsight, he wishes he had not relied on those assertions and that, because he did rely so heavily on them, he viewed, incorrectly, the misguided tactics used in Operation Wide Receiver – which resulted in the ATF losing control of guns that then crossed the border into Mexico – as having no relation to the allegations that were being made about Operation Fast and Furious.

Before joining the Criminal Division in 2009, DAAG Weinstein had been an Assistant United States Attorney (AUSA) for ten years, prosecuting violent and other criminals in Manhattan and Baltimore. He rose to become Assistant Criminal Chief and Violent Crime Chief in the Baltimore U.S. Attorney's Office, where he prosecuted some of Baltimore's most violent offenders and created the Maryland Exile program, which contributed to a significant reduction in murders and shootings in the Baltimore area. In 2007, he and others received an award from the Justice Department for having built the nation's best violent crime task force. In 2009, I selected Mr. Weinstein for his position as Deputy Assistant Attorney General overseeing the Gang Unit and other Criminal Division sections because of his years of experience in fighting violent crime and because

of his stellar reputation in the law enforcement community. He has made enormous contributions to the Division and to the Department over the past two-and-a-half years and during his long career with the Department. I consider him to be an extremely talented, ethical, and devoted prosecutor.

Question 3(b):

Who else in the Criminal Division reviewed the letter?

Response:

Based on the documents being produced by the Justice Department, it is my understanding that several individuals within the Criminal Division received drafts of the February 4 letter. However, I am not aware of anyone in the Division apart from DAAG Weinstein who participated in any meaningful way in drafting or reviewing it.

Question 3(c):

What were the dates you were in Mexico in late January and early February 20[1]?

Response:

I was in Mexico on an official visit from February 1-3, 2011.

Question 3(d):

When did you first become aware that the Department denied in its February 4 letter allegations that guns had been walked?

Response:

Like many others in the Department, I was aware, at the time, that the Department was drafting a response to your January 2011 letters and that officials at the ATF and the U.S. Attorney's Office in Arizona felt strongly that the allegations being made were untrue. I was also aware, like many others in the Department, that based on the unequivocal statements of the ATF and the Arizona U.S. Attorney's Office, the Department intended to deny the allegations. I did not, however, participate in drafting or editing the Department's February 4, 2011 letter.

Based on the documents being produced by the Justice Department, I understand that two emails attaching drafts of the letter were sent to me by DAAG Weinstein on February 2, while I was in Mexico, and that I forwarded one of those emails to my personal email account on that day; I also understand that on February 4, after I had returned from Mexico, I received two emails attaching signed versions of the letter, including the final version, and that on February 5, I forwarded both emails to my personal email account. However, as I testified, I cannot say for sure whether I saw a draft of the letter before it

was sent to you. I have no recollection of having done so and, given that I was on official travel that week and given the scope of my duties as Assistant Attorney General, I think it is exceedingly unlikely that I did so.

In recent weeks, I have seen erroneous reports suggesting that, during my November 1, 2011 testimony, I acknowledged knowing that the February 4 letter was inaccurate at the time it was submitted. I want to make clear that such an interpretation of my testimony is absolutely incorrect. I testified that, at the time the Department sent its February 4 letter, I did not make a connection between Operation Wide Receiver and the allegations being made about Operation Fast and Furious. As I explain more fully in response to Senator Leahy's Questions for the Record, based on the information I had at the time the Department sent its February 4, 2011 letter, I had no reason to believe that the leadership of the ATF approved of, or that it would ever continue to endorse, the misguided tactics that had been used years earlier in Operation Wide Receiver, which resulted in the ATF losing control of guns that then crossed the border into Mexico. But, as I have also stated, knowing what I now know was a pattern of unacceptable and misguided tactics used by the ATF, I regret not having drawn a connection between the allegations relating to Operation Fast and Furious and the inappropriate tactics used years earlier in Operation Wide Receiver.

Connection Between Operation Wide Receiver and Operation Fast and Furious

In your testimony of November 1, you stated: "I regret that in April of 2010 that I did not draw the connection between Wide Receiver and Fast and Furious." However, it is clear that at that time, your own staff considered them related components of the same case.

On February 22, 2010, Gang Unit prosecutors Laura Gwinn and Joe Cooley, assigned respectively to Wide Receiver and Fast and Furious, emailed back and forth with each other about the connection between the two cases when some of the guns being trafficked in Fast and Furious were tracked to a stash house of one of the targets in Wide Receiver. HOGR WR 003422.

Because of those overlapping targets, Wide Receiver and Fast and Furious were considered associated cases. When the ATF Phoenix Field Division assembled a PowerPoint presentation on Fast and Furious in March 2010, one of the slides listing "Associated Cases" with Fast and Furious listed Operation Wide Receiver. This same PowerPoint was presented at ATF headquarters on March 5, 2010. HOGR ATF 002091. According to a March 11, 2010, memo from Gang Unit Chief Kevin Carwile, Gang Unit member Joe Cooley attended that briefing. HOGR DOJ 003311.

Concerns about those overlapping targets also led to delay in unsealing the ndictments in Wide Receiver, as the U.S. Attorney's Office in Arizona had concerns that when the Wide Receiver indictments were unsealed it would tip off targets in

Fast and Furious. As the Department wrote in its October 31, 2011, letter to Senator Leahy: "The documents produced today reflect that the Gang Unit prosecutor was ready to indict the Wide Receiver cases and unseal them beginning in the spring of 2010, but that the Assistant U.S. Attorney in the U.S. Attorney's Office in Arizona handling Fast and Furious believed that if the Wide Receiver indictments became public at that time they would negatively impact his case. The Assistant U.S. Attorney therefore requested that the indictments and/or the unsealing of the indictments in Wide Receiver be delayed. HOGR WR 003480, 003489. As a result of that request, Wide Receiver 1 was indicted under seal in May 2010, Wide Receiver 2 was indicted under seal in October 2010, and both cases were unsealed in November 2010. HOGR DOJ 003260, 63."

In a July 1, 2010, memo to DAAG Weinstein, Principal DAAG and Criminal Division Chief of Staff Mythili Raman, and Criminal Division Deputy Chief of Staff Steven Fagell, the connection between Fast and Furious and Wide Receiver was referenced when Gang Unit Chief Kevin Carwile described "a gun trafficking case with apparent ties to the Tucson case already indicted by [the Gang Unit]." HOGR DOJ 003327.

Finally, an October 18, 2010, memo under your name that is addressed to the Attorney General and Acting Deputy Attorney General reads: "On October 27, the Organized Crime and Gang Section (OCGS) plans to indict eight individuals under seal relating to the trafficking of hundreds of firearms into Mexico. The sealing will likely last until another investigation, Phoenix-based Operation Fast and Furious, "is ready for takedown." HOGR DOJ 003263.

Question 4(a):

In light of all of these connections, how is it credible for you to claim that you "did not draw the connection between Wide Receiver and Fast and Furious"?

Response:

None of the documents cited in your question indicates a connection between the misguided tactics used by the ATF in 2006 and 2007 in Operation Wide Receiver – which resulted in the ATF losing control of guns that then crossed the border into Mexico – and any inappropriate investigative tactics being used in Operation Fast and Furious, and I was not aware of any such connection.

Indeed, the fact that I did not connect what I knew about Operation Wide Receiver with the allegations relating to Operation Fast and Furious is perhaps best reflected in the reaction I had when I learned, in April 2010, of the unacceptable tactics used years earlier in Operation Wide Receiver that had resulted in the ATF losing control of guns that then crossed the border into Mexico – namely, to ensure that the leadership of the ATF was promptly apprised of the misguided tactics used in the investigation, which had been conducted long before I became Assistant Attorney General and long before the Criminal

Division assumed responsibility for prosecuting the Wide Receiver defendants. I am confident that had I drawn a connection between what I knew about Operation Wide Receiver and the allegations relating to Operation Fast and Furious, I would have taken action.

As I testified, knowing what I now know was a pattern of unacceptable and misguided tactics used by the ATF, I regret not having drawn a connection between the allegations relating to Operation Fast and Furious and the inappropriate tactics used years earlier in Operation Wide Receiver.

Additionally, as I have explained more fully in response to Senator Leahy's Questions for the Record, based on the information I had at the time the Department sent its February 4, 2011 letter – including the information that senior officials at the ATF and the U.S. Attorney's Office in Arizona, who held supervisory responsibility for Operation Fast and Furious, provided to the Department at the time – I had no reason to believe that the leadership of the ATF approved of, or that it would ever continue to endorse, the misguided tactics that had been used years earlier in Operation Wide Receiver, which had resulted in the ATF losing control of guns that then crossed the border into Mexico.

Question 4(b):

Since the Criminal Division believed in the spring of 2010 that both Wide Receiver and Fast and Furious involved overlapping targets, when you learned in April 2010 that guns were walked in Wide Receiver, did you ask whether they were also walked in Fast and Furious? If not, why not?

Response:

Please see response to Question 4(a) above.

Question from Senator Amy Klobuchar

Question 5:

In connection with this hearing, the witnesses submitted written testimony which asserted a significant link between terrorism financing and transnational organized crime. A White House Fact Sheet from July 25, 2011 also asserted such a link, citing Department of Justice data on the matter. However, not all statements from Administration officials have indicated there is a significant link. Please briefly clarify what you see as the level of coordination between terrorist financing and transnational organized crime.

Response:

The Department of Justice believes that a link exists between terrorist financing and transnational organized crime, and in particular between terrorist financing and international narcotics traffickers. Further, the potential for continued and increased overlap between these crimes and the entities that engage in them is substantial. Indeed, only days ago, on November 15, 2011, a defendant, Oumar Issa, a citizen of Mali, pleaded guilty in federal court in Manhattan to his role in transporting cocaine through West and North Africa with the intent to support the drug trafficking activities of al-Qa'ida, al-Qa'ida in the Islamic Maghreb, and the Revolutionary Armed Forces of Colombia (FARC). Each of these organizations has been designated by the U.S. Department of State as a Foreign Terrorist Organization.

Transnational organized crime groups can, and do, offer illicit goods and services vital to terrorist operations –including false identifications and travel documents and weapons. These groups are also available to smuggle aliens and launder funds for terrorists. Among other means, international narcotic trafficking groups have transferred funds to terrorist organizations through international banking channels. In February 2011, the DEA and the Department of the Treasury obtained evidence that The Lebanese Canadian Bank SAL and its subsidiaries (LCB) facilitated the money laundering activities of an international narcotics trafficking and money laundering network and, as a result, identified LCB as a financial institution of primary money laundering concern under Section 311 of the USA PATRIOT Act. The investigation revealed that the network in question moved illegal drugs from South America to Europe and the Middle East via West Africa and that it laundered hundreds of millions of dollars monthly through accounts held at LCB. The network also laundered funds through trade-based operations involving consumer goods throughout the world, including used car dealerships in the United States. The Treasury Department's finding concluded that it had reason to believe that Hizballah derived financial support from the criminal activities of the network and that LCB managers were complicit in the network's money laundering activities.

The links between transnational organized crime and terrorist financing are not new. From approximately 1990 through January 2005, Mohammad Essa was a member of an international heroin trafficking organization that was responsible for manufacturing and transporting hundreds of kilograms of heroin in Afghanistan and Pakistan. The organization was closely aligned with the Taliban in Afghanistan, and provided financial support to the Taliban and related Islamic-

extremist organizations there. In return, the Taliban provided the organization with protection for its opium crops, heroin laboratories and drug-transportation routes. Essa managed the organization's heroin distribution operation in the United States, the proceeds of which directly supported the insurgency in Afghanistan and a "jihad" against the United States. Essa was charged in May 2007 principally for conspiring to import into the United States $25 million worth of heroin from Afghanistan and Pakistan. In May 2009, a federal judge in the Southern District of New York sentenced Essa to 103 months incarceration.

In another example, Dawood Ibrahim has reigned as one of the pre-eminent criminals in the Indian underworld for most of the past two decades. Ibrahim's syndicate is involved in large-scale shipments of narcotics in the United Kingdom and Western Europe. His criminal enterprise engages in a wide range of criminal activities, sharing his smuggling routes from South Asia, the Middle East and Asia with al-Qa'ida and funding attacks by Islamic extremists aimed at destabilizing the Indian government. He is currently wanted by India for the 1993 Bombay Exchange bombings, which killed hundreds of Indians and injured over a thousand more. Further, he is known to have financed the activities of Lashkar-e-Tayyiba (Army of the Righteous), a group designated by the Department of State as a Foreign Terrorist Organization and as a Specially Designated Global Terrorist entity in 2001. In October 2003, the Treasury Department designated Ibrahim as a Specially Designated Global Terrorist pursuant to Executive Order 13,224 — effectively forbidding United States financial entities from working with him and blocking any assets he may have under U.S. jurisdiction. He is also listed under U.N. sanctions requiring all U.N. member states to take similar actions.

Others involved in international organized crime have also been arrested for supporting terrorist activities: Monzer Mohammad Al Kassar, a notorious narcotics and arms trafficker, was arrested in Spain at the request of the United States for conspiring to sell millions of dollars worth of weapons to the FARC that were to be used to kill Americans in Colombia. In February 2009, after his extradition to the United States, Kassar was sentenced to 30 years incarceration. In August 2009, international arms trafficker Jamal Yousef was charged with selling military-grade weapons, also to the FARC, in exchange for nearly one metric ton of cocaine. He was arraigned in New York in August 2009.

Terrorist organizations depend on money to recruit, plan, and carry out terrorist attacks and to avoid detection and capture. Like transnational criminal organizations, and sometimes through these organizations, they generate much of this funding from criminal activity. Our anti-money laundering and forfeiture laws are among the most significant tools that the Department has to combat these organizations where they are most vulnerable and to choke off the flow of money to terrorism and transnational criminal activity. The Department has proposed enhancements to our existing statutory authority to further our efforts in this fight.

Question from Senator Richard J. Durbin

Question 6:

I have long been concerned about organized retail crime ("ORC"), a serious problem that has links to international organized crime. ORC involves the coordinated theft of large amounts of items from retail stores by professional shoplifters called "boosters." Boosters then deliver the items to "fences," or middlemen who deliver the goods to warehouses operated by organized retail crime rings. At these warehouse locations, teams of workers re-label, re-package, or modify items, often storing them in substandard conditions. Organized retail crime rings then resell their stolen merchandise at flea markets, swap-meets, and Internet marketplace sites. As ICE has previously indicated, "ORC rings are very sophisticated, compartmentalized and operate similar to criminal organizations involved in drug trafficking or human smuggling. Furthermore, transnational criminal syndicates such as Eastern European street gangs and organized crime elements have become increasingly involved, and utilize traditional money laundering techniques to conceal their profits."

Retailers and the FBI estimate that organized retail crime costs retailers tens of billions of dollars per year and deprives states of hundreds of millions of dollars in lost sales tax revenues. The proceeds of organized retail crime can be used to finance other forms of crime, including gang activity, drug trafficking and terrorism.

Please discuss the steps the Justice Department is taking to combat organized retail crime.

Response:

The Department currently plays a central role in coordinating information-sharing and cooperation with the private sector on organized retail theft. The FBI, through its Organized Retail Theft program, specifically focuses on the most significant retail theft cases involving the interstate transportation of stolen property, and work closely with major retailers across the country to promote the sharing of intelligence.

The Department of Justice, through the United States Attorney's Offices, vigorously pursues appropriate cases of organized retail theft. For example, in October 2010, the United States Attorney's Office for the Northern District of California announced the guilty pleas of 15 defendants in two criminal organizations for their roles in a large-scale fencing operation to buy and sell over-the-counter health and beauty products and to launder the proceeds through complex financial transactions. One of those defendants ultimately agreed to the entry of a money judgment in the amount of more than $14 million (which represents the gross proceeds the organization received from distributors who purchased stolen property during the period covered by the indictment). He also agreed to forfeit the following: real property; five vehicles; approximately $165,000 in cash; nine diamonds, twelve gold bars and other assorted watches and jewelry seized on the day the defendants were arrested; and the funds in ten bank accounts, totaling $81,502.93. Other defendants in the second case agreed to forfeit a money judgment of

more than $5 million; two pieces of real property; one vehicle; approximately $24,000 in cash; and the funds in five bank accounts, totaling $84,077.81.

More recently, as of January 2011, five individuals are being prosecuted by the United States Attorney's Office in the Middle District of North Carolina for their alleged roles in a conspiracy to steal baby formula from retail stores in several southern states, including North Carolina, South Carolina, Kentucky, Georgia and Virginia. The stolen products were collected in rented storage units in the High Point/Thomasville, North Carolina area and then transported in bulk to a grocery store in Union City, New Jersey. All defendants have pleaded guilty and four of the five have been sentenced to terms of imprisonment ranging from 15 months to 31 months.

Overall, from 2007 to the present, at least 84 defendants engaged in organized retail theft have been charged by 15 U.S. Attorney's Offices in 20 indictments with a variety of charges ranging from interstate transportation of stolen property to wire and mail fraud and money laundering, as well as conspiracies to commit these crimes.

Subcommittee on Crime and Terrorism
Hearing on "Combating International Organized Crime: Evaluating Current Authorities, Tools, and Resources"
Questions of Senator Richard J. Durbin

Question for Assistant Secretary for Terrorist Financing Daniel Glaser

1. I have long been concerned about organized retail crime ("ORC"), a serious problem that has links to international organized crime. ORC involves the coordinated theft of large amounts of items from retail stores by professional shoplifters called "boosters." Boosters then deliver the items to "fences", or middlemen who deliver the goods to warehouses operated by organized retail theft rings. At these warehouse locations, teams of workers re-label, re-package, or modify items, often storing them in substandard conditions. Organized retail theft rings then resell their stolen merchandise at flea markets, swap-meets, and Internet marketplace sites. As ICE has previously indicated, "ORC rings are very sophisticated, compartmentalized and operate similar to criminal organizations involved in drug trafficking or human smuggling. Furthermore, transnational criminal syndicates such as Eastern European street gangs and organized crime elements have become increasingly involved, and utilize traditional money laundering techniques to conceal their profits."

   Retailers and the FBI estimate that organized retail crime costs retailers tens of billions of dollars per year and deprives states of hundreds of millions of dollars in lost sales tax revenues. The proceeds of organized retail theft can be used to finance other forms of crime, including gang activity, drug trafficking and terrorism.

   Please discuss the steps the Treasury Department is taking to combat organized retail crime.

The Treasury Department is committed to deterring and detecting all forms of financial crimes, including organized retail crimes (ORC). The Bank Secrecy Act (BSA) and implementing regulations cast a wide net in this regard and impose information collection and reporting requirements on financial and non-financial institutions and on individuals, generating information useful to law enforcement, such as U.S. Immigration and Customs Enforcement, Homeland Security Investigations Special Agents, investigating ORC and other criminal activity. The BSA database currently holds approximately 180 million records of financial transactions and other reports. Criminals encounter the information collection and reporting requirements of the BSA when they attempt to spend, deposit, invest, or move illicit proceeds:

- *The BSA requires anyone engaged in a trade or business who accepts cash in an amount over $10,000 in one transaction or a series of related transactions to file with the Internal Revenue Service a Report of Cash Payments Over $10,000 Received in a Trade or Business. The report requires a description of the transaction, full identifying information of the parties involved, and whether the merchant believes the transaction to be suspicious.*
- *Depository institutions, securities broker-dealers, mutual funds, and futures commission merchants and introducing brokers have a similar filing obligation related to cash transactions, including cash deposits and withdrawals over $10,000. These financial*

institutions also are required to verify customer identification when they open an account, maintain transaction records, and report suspicious activity, as appropriate, to the Financial Crimes Enforcement Network (FinCEN). To the extent that the business practices of customers might lead a financial institution to suspect participation in illicit activity, such as participation in retail theft networks, law enforcement would have access to Suspicious Activity Reports filed with FinCEN.

- *Money services businesses (MSBs) are required to verify customer identification, maintain transaction records, and, file suspicious activity reports when they sell to one customer more than $3,000 in travelers checks or money orders, or initiate a wire transfer, above $3,000. MSBs responsible for prepaid access programs have the same obligations depending on certain criteria. Providers of open loop prepaid access, for example, that allow customers to move more than $1,000 a day, access funds internationally, reload at a non-depository source, or transfer value among the users, have full customer identification, recordkeeping, and reporting obligations.*
- *Individuals entering or leaving the United States with more than $10,000 in currency or monetary instruments, or who send the money through the mail, are required to file a Report of International Transportation of Currency or Monetary Instruments with the Bureau of Customs and Border Protection.*

Question#:	1
Topic:	SEARCH
Hearing:	Combating International Organized Crime: Evaluating Current Authorities, Tools, and Resources
Primary:	The Honorable Richard J. Durbin
Committee:	JUDICIARY (SENATE)

Question: ICE recently launched the SEARCH (Seizing Earnings and Assets from Retail Crime Heists) Initiative to address the threat of transnational crime being committed by organized retail crime rings. Please discuss the actions that the SEARCH Initiative has undertaken and the results it has thus far achieved.

Please discuss any other steps that ICE is taking to combat organized retail crime.

Response: Homeland Security Investigations (HSI) is aware of the importance of the Seizing Earnings and Assets from Retail Crime Heists (SEARCH) Initiative and the impact organized retail crime has on more than just our retail industry and retail economy. HSI investigations have demonstrated that profits generated from organized retail crime represent a clear threat to the U.S. financial sector because profits may be laundered through U.S. and international financial systems. Similar to other criminal organizations, organized retail crime rings look for and exploit the vulnerabilities within these financial infrastructures to move and store their illicit proceeds.

HSI launched the SEARCH Initiative on February 8, 2011, due to the success of the Organized Retail Crime (ORC) Pilot program. This is an ongoing, national initiative that links federal, state, and local law enforcement, prosecutors, and the financial and retail community to provide a multi-faceted approach to prosecuting and deterring individuals and/or organizations involved in ORC. The retail industry has been pushing to make this a national initiative because this type of organized criminal activity is considered to be a local problem. Lack of visibility outside a jurisdiction can contribute to the appearance that it is a local problem. Federal investigations conducted by HSI, however, have proven that the level and sophistication of criminal enterprises involved in ORC are often much greater. HSI SEARCH cases have led to the seizure of over $8.2 million in cash, property, and monetary instruments.

Statistics—February 8, 2011 (Inception) through November 9, 2011:
Cases Initiated—129
Criminal Arrests—84
Indictments—56
Convictions—23
Seizures—351
Search Warrants—4
Administrative Arrests—15

Question#:	1
Topic:	SEARCH
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Investigative Hours—78,983

Note that several of the above investigations are ongoing and further indictments and convictions can be expected.

A recent example of an HSI-led ORC case involved a vast network of undocumented Honduran and El Salvadoran nationals involved in the "boosting" or theft of over-the-counter merchandise from pharmacies throughout the United States. Employees of the organization would clean and repackage the stolen products and then sell the merchandise to wholesale distributors. This investigation resulted in a 29-count federal indictment, charging seven defendants with conspiracy to transport stolen merchandise in interstate commerce, structuring monetary transactions, and money laundering. Three search warrants and eight arrest warrants were executed with 20 criminal/civil seizure warrants on bank accounts in the Houston, Texas, area. An analysis of financial transactions revealed the primary suspect generated, in a 1-year period, more than $5 million from selling the stolen merchandise.

SUBMISSIONS FOR THE RECORD

Department of Justice

STATEMENT

OF

LANNY A. BREUER
ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

BEFORE THE

SUBCOMMITTEE ON CRIME AND TERRORISM
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

AT A HEARING ENTITLED

"COMBATING INTERNATIONAL ORGANIZED CRIME: EVALUATING CURRENT AUTHORITIES, TOOLS, AND RESOURCES"

PRESENTED

NOVEMBER 1, 2011

Statement of Lanny A. Breuer
Assistant Attorney General
Criminal Division
U.S. Department of Justice

Subcommittee on Crime and Terrorism
Committee on the Judiciary
United States Senate

"Combating International Organized Crime: Evaluating Current Authorities, Tools, and Resources"
November 1, 2011

I. INTRODUCTION

Mr. Chairman, Senator Kyl, and distinguished Members of the Committee: Thank you for inviting me to speak with you this morning about the threat posed by transnational organized crime, the efforts of the Department of Justice to address the threat, and steps Congress can take that will assist in these efforts. I am honored to appear before you on behalf of the Department of Justice, along with my colleagues from the Departments of Treasury and Homeland Security.

The fight against transnational organized crime is one of the highest enforcement priorities of the Department of Justice and the Administration. Together with the United States Attorneys' Offices and our many law enforcement partners, the Criminal Division, whose fine lawyers and staff I am privileged to lead, investigates and prosecutes cases involving transnational organized crime all over the country, indeed, all over the world.

Transnational organized crime refers to self-perpetuating associations of individuals who operate transnationally for the purpose of obtaining power, influence, or commercial gains, wholly or in part by illegal means. These organizations promote and protect their activities through a pattern of violence and corruption, including by insinuating themselves into the political process and becoming alternate providers of governance, security, and livelihoods to win popular support. In the process, transnational organized criminals are often assisted by willing facilitators, including lawyers, bankers, and business owners, who exploit their professional legitimacy to perpetuate and disguise illegal activity and profits.

The convergence of threats posed by these groups is significant and growing. Last year, the National Intelligence Council issued an unclassified report identifying five key threats that transnational organized crime poses to United States national security:

1. Penetration of State Institutions. Transnational organized crime's penetration of governments is subverting the rule of law, democratic institutions, and transparent business practices. The growing reach of transnational organized criminal networks is

pushing them to seek strategic alliances with state leaders and foreign intelligence services, threatening stability and undermining free markets.

2. Threat to the U.S. and World Economy. Transnational organized crime is increasing its subversion of legitimate financial and commercial markets, threatening U.S. economic interests and raising the risk of significant damage to the world financial system.

3. Growing Cybercrime Threat. Transnational organized criminal networks are becoming increasingly involved in cybercrime, which costs consumers billions of dollars annually, creates risks to sensitive corporate and government computer networks, and undermines worldwide confidence in the international financial system.

4. Threatening Crime-Terror Nexus. Terrorists and insurgents are increasingly turning to crime to generate funding and acquire logistical support.

5. Expansion of Drug Trafficking. Despite demonstrable counterdrug successes in recent years, illicit drugs remain a serious threat to the health, safety, security, and financial well-being of U.S. citizens.

Responding to this assessment, in July the Administration released its Strategy to Combat Transnational Organized Crime ("TOC Strategy"), which set forth a whole-of-government response to the enumerated threats. At the announcement of the TOC Strategy, Attorney General Eric Holder noted:

> Today's criminal organizations are increasingly sophisticated. They know no borders. They threaten the stability of our financial system and the promise of a competitive marketplace. And their operations are putting far too many American businesses, government institutions, consumers, and citizens at risk.

The TOC Strategy outlines several strategic objectives at the heart of the Department's efforts to address this threat:

- the protection of Americans from the harm, violence, and exploitation of transnational criminal networks;

- breaking the economic power of transnational criminal networks and protecting strategic markets and the U.S. financial system from penetration and abuse by transnational criminal organizations; and

- defeating transnational criminal networks that pose the greatest threat to national security by targeting their infrastructures, depriving them of their enabling means, and preventing the criminal facilitation of terrorist activities.

The strategy also recognizes that some intellectual property rights (IPR) and cyber crimes merit particular attention, as well as the need to strengthen and safeguard our financial system:

> [S]ome TOC activity is inherently harder to detect and deter. The United States will place special emphasis on IPR violations and cybercrimes due to their particular impact on the economy and consumer health and safety. The United States remains intent on improving the transparency of the international financial system, including an effort to expose vulnerabilities that could be exploited by terrorist and other illicit financial networks. At the same time, the United States will enhance and apply our financial tools and sanctions more effectively to close those vulnerabilities, [and] disrupt and dismantle illicit financial networks.

The Department of Justice is committed to the fight against transnational organized crime and we have enjoyed certain successes to date. However, serious challenges remain, and additional tools are needed. As part of the TOC Strategy, the Administration has proposed a number of important legislative improvements, which the Department believes could assist us and our law enforcement partners in meeting these challenges and addressing the identified threats.

II. CURRENT SUCCESSES IN COMBATING TRANSNATIONAL ORGANIZED CRIME

The Department has made great strides in attacking transnational organized crime groups, particularly those with some physical presence or foothold in the United States. We have prosecuted groups involved in narcotics and narco-terrorism, kidnapping and extortion, and health care and other identify fraud crimes alike. Below are several key examples:

- Joint Colombian-United States Drug Trafficking Investigation: On September 2, 2011, the U.S. Attorney's Office for the Southern District of Florida announced that 34 individuals were charged in five separate indictments in an operation that targeted a Drug Trafficking Organization (DTO) based in Bogota, Colombia that utilized U.S. registered aircraft to transport thousands of kilograms of cocaine from South America, to clandestine airstrips in Central America and the Caribbean region. The drug trafficking organization is alleged to have purchased U.S. registered aircraft using nominees, who in turn submitted false documentation to the Federal Aviation Administration (FAA) to hide the identities of the South American drug traffickers who were purchasing the planes. The Colombian-based DTO, which arranged for the aircraft to depart from South America, allegedly had ties to drug trafficking organizations in Mexico. During the course of the investigation, law enforcement seized 1300 kilograms of cocaine, $1.6 million in U.S. currency, and eight U.S. registered aircraft. The case is being prosecuted by a special unit within the Southern District of Florida that was established in February 2011, to prosecute the violent Bandas Criminales (BACRIM) drug trafficking groups in Colombia.

- Armenian Health Care Fraud: In October 2010, the Department announced charges against 73 members and associates of an Armenian-American organized crime group, with ties abroad, in five states (California, Georgia, New Mexico, New York and Ohio) for various health care fraud-related crimes involving more than $163 million in fraudulent billing. The defendants were charged with engaging in numerous frauds,

including sophisticated schemes to defraud Medicare and insurance companies by submitting fraudulent bills for medically unnecessary treatments or treatments that were never performed. As part of this prosecution, the defendant Armen Kazarian became the first "Vor" or "Thief-in-Law," convicted of racketeering in the United States.[1]

- International Computer Hacking: In November 2009, charges were filed based on a successful FBI investigation into a sophisticated international computer hacking ring involving defendants from Estonia, Russia, and Moldova. Various defendants were charged in the Northern District of Georgia with hacking into a computer network operated by a credit card processing company and using sophisticated techniques to compromise the data encryption used to protect customer data on payroll debit cards. Ultimately, counterfeit devices were employed to withdraw over $9 million from more than 2,100 ATMs in at least 280 cities worldwide, including cities in the United States, Russia, Ukraine, Estonia, Italy, Hong Kong, Japan, and Canada. Remarkably, this loss occurred within a span of less than 12 hours. Through this investigation, the FBI uncovered a previously undetected hacking technique that compromised the bank's encryption system. This information was disseminated throughout the banking sector to prevent further losses. Five Estonian defendants have been arrested and charged in Estonia. One of those defendants was extradited to the United States. Additionally, one defendant in the United States and two defendants residing in Hong Kong were arrested for their involvement in this criminal enterprise.

- Armenian Power Takedown: In February 2011, federal prosecutors from the United States Attorney's Office for the Central District of California, the Southern District of Florida and the Criminal Division announced charges against more than 100 members and associates of Eurasian organized crime groups, in six indictments, in four cities. The arrests included more than 80 defendants from the Armenian Power group, who were charged with a wide variety of violent and fraud-related crimes. The alleged crimes included kidnapping, extortion, assault, witness intimidation, bank fraud, credit card fraud and drug distribution. AP's membership consists primarily of individuals whose heritage goes back to Armenia and other Eastern Bloc countries. AP is an international organized crime group that started as a street gang in East Hollywood, California in the 1980s.

- Operation Whirling Dervish: In July 2011, the Department announced charges resulting from a DEA narco-terrorism undercover operation, charging three defendants with conspiring to provide various forms of support to Hizballah, the PKK, and Pejak. Two defendants were arrested in Bucharest, Romania, where they were detained pending extradition to the United States; the third was arrested in the Republic of the Maldives. This investigation was supported by Romanian authorities who identified Kurdish PKK members that were selling heroin to support their terrorist organization. It also identified

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[1] A "vor" (translated as "Thief-in-Law" refers to a member of a select group of high-level criminals from Russia and counties that had been part of the former Soviet Union, including Armenia. "Vors" offer prestige and protection to criminal organizations in return for a share of the criminal earnings, and use their position of authority to resolve disputes among criminals.

Iranian Pejak elements that were utilizing the drug trade to finance operations and Hizballah elements that were attempting to purchase military-grade weaponry. This investigation is continuing.

- Eastern European Money Laundering: In June 2011, a joint prosecution between the Division's Computer Crime and Intellectual Property Section of the Criminal Division and the U.S. Attorney's Offices in Chicago and Washington, D.C., resulted in a Romanian man being sentenced to 48 months imprisonment in the United States for his role in an international money-laundering scheme involving the creation of fraudulent online auctions. In a similar case handled by the Criminal Division's Organized Crime and Gang Section, a Bulgarian man was sentenced this September to 64 months imprisonment for his role in an auction scheme, which appears to have been orchestrated by a transnational criminal group based in Eastern Europe. Another individual, a Romanian citizen, was sentenced to 24 months imprisonment for his role in the same conspiracy, also in September 2011. According to court documents, in less than one year, the scheme netted more than $1.4 million from U.S. victims.

As is clear from the examples cited above, a key component of our transnational organized crime strategy has been forging successful and strategic partnerships with foreign law enforcement authorities. The example of Romania is instructive. It is estimated that approximately one-third of so-called "phishing" attacks targeting United States citizens originate in Romania, and we have worked closely with authorities there to identify and prosecute those involved.[2] As an important first step, several law enforcement agencies, including the Federal Bureau of Investigation, the United States Secret Service and the Drug Enforcement Administration, have employees stationed in Romania, who work side by side with Romanian law enforcement in an effort to target cyber-criminals and other organized crime. The results have been significant. Earlier this year, joint United States-Romanian investigations resulted in the arrest of over 100 organized crime related cyber-criminals in our two countries. Those arrests involved various schemes involving the fake sales of merchandise, including cars and boats, over the Internet to thousands of victims in the United States and elsewhere.

Just last month, I traveled to Romania and, in meeting with United States and Romanian law enforcement, I observed first-hand how closely our two nations are collaborating. Through joint cooperation efforts with our foreign counterparts and by deploying our resources in innovative ways, we have succeeded in disrupting and dismantling various criminal syndicates attacking United States citizens and property.

Another important innovation critical to our efforts has been the development of the International Organized Crime Intelligence and Operations Center, or IOC-2, here in the Department of Justice. Building on our successful counter-narcotics work, IOC-2 brings together nine federal law enforcement agencies in a powerful center to share data and intelligence, both domestically and internationally, on organized crime investigations. IOC-2 greatly expands our abilities to spot patterns and coordinate investigations against transnational

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[2] "Phishing" refers to an email fraud method in which the perpetrator sends out legitimate-looking email in an attempt to gather personal and financial information from recipients.

organized crime networks. IOC-2 also aids our attempts to identify forfeitable assets associated with international criminal activities and promote seizure and forfeiture judgments.

III. CHALLENGES TO GREATER SUCCESS

Our work on transnational organized crime enforcement is far from over. While the threat is clear, the obstacles to successfully investigating, prosecuting and dismantling these networks are numerous. Transnational organized crime groups and the offenses they commit present significant challenges. As a point of comparison, it has been well documented that domestic organized crime syndicates employ tactics that create many roadblocks for law enforcement: layers of secrecy, corruption of officials, and fear and intimidation that silence witnesses. Despite these challenges, over the years, Congress and the Department of Justice have developed methods of attacking domestic organized crime to the point where our record of achievements is one of the federal government's great success stories. Transnational organized crime poses an additional dimension of challenges: while the effects are felt here in the United States, the perpetrators, witnesses and evidence reside abroad, often in jurisdictions unable or unwilling to cooperate with our investigative efforts.

Take a few simple examples. Organized cyber criminals direct cyber attacks from abroad that target United States citizens and steal their identities for the purpose of raiding bank accounts or placing fraudulent credit card purchases. Other organized criminals commit crimes abroad and launder and maintain funds in the United States, without ever traveling to our shores, and sometimes through the use of U.S. shell corporations.

In each instance, the investigation and prosecutions of these organizations and crimes pose significant challenges. At a minimum, pursuing an investigation abroad is often time consuming and delays can be significant and undermine an investigation. Tracking down criminals abroad often requires the cooperation of foreign law enforcement agencies and even if we locate our targets, many of the investigative tools for gathering evidence are not available to us in an international context. In some countries, we cannot employ Title III wiretaps against the perpetrators, nor can we, in many cases, send an undercover agent to gather incriminating statements. The country's law enforcement agencies may not have the level of training or the necessary technology to implement the investigative steps, even if they are authorized.

Arresting lower level members of the organization and persuading them to cooperate against higher level bosses is also extremely difficult and may require the approval and cooperation of foreign authorities, as well as navigating various domestic immigration and other laws. Other countries have domestic laws which ban the extradition of their own citizens to foreign countries for prosecution. In such instances, the only option may be for the foreign government to prosecute the target under their domestic laws, and often the associated penalties are little more than a "slap on the wrist," particularly in cybercrime cases. Still other targeted organized crime groups may have so penetrated the country's law enforcement entities or political leadership that the country will refuse to answer our request for assistance.

These concerns are not hypothetical. The prosecution, or the attempted prosecution, of Semion Mogilevich makes this clear. Mogilevich is a powerful Russian organized crime figure

and the head of an international criminal enterprise engaged in activities designed to penetrate and corrupt strategic sectors world-wide. He and his co-conspirators were indicted by the U.S. Attorney's Office for the Eastern District of Pennsylvania in 2003 on racketeering, securities fraud and money laundering charges, yet remain at liberty. At the heart of the charged crimes was a sophisticated multi-million dollar scheme responsible for defrauding thousands of investors in the United States, Canada and abroad in the stock of a public company that was headquartered in the United States. The indictment alleges that, while residing in Eastern Europe, Mogilevich funded and controlled a criminal enterprise, comprised of individuals and companies in over twenty countries throughout the world, including corrupt accountants and auditors, and numerous United States shell companies which were used to conceal their involvement and to launder proceeds from the scheme. Despite committing crimes here, Mogilevich remains outside our reach and is believed to currently be residing in Moscow, Russia. He is currently on the *FBI's Ten Most Wanted Fugitives List*.

Those transnational criminal networks involved in cyber crimes pose even further barriers to prosecution. The technology revolution has facilitated cyber crime, enabling those involved to access and exploit the personal information of others. Today's criminals can remotely access the computer systems of government agencies, universities, merchants, financial institutions, credit card companies, and data processors from thousands of miles and many international borders away to steal large volumes of personal information – including personal financial information.

Finally, the ability of transnational criminal organizations to generate vast sums of money is both their strength and their weakness. Criminal organizations are businesses, and like any business profit is their primary motivation. The wealth generated by today's drug cartels and other international criminal networks enables some of the worst criminal elements to operate with impunity while wreaking havoc on individuals and institutions around the world. Generating proceeds often is only the first step –criminals then launder their proceeds, often using our financial system to move or hide their assets and often with the help of third parties located in the United States. Indeed, international criminal organizations increasingly rely on these third parties and on the use of domestic shell corporations to mask crimes and launder proceeds under the guise of a seemingly legitimate corporate structure. We can use our asset forfeiture laws to take the assets away from the criminal organizations and dismantle their financial infrastructures but, as discussed below, the existing law needs to be modernized.

IV. LEGISLATION

There are important steps we can take to better address extraterritorial threats and the increasingly global reach of transnational criminal organizations. The Department of Justice together with our partners have developed a package of legislative proposals to ensure that federal law keeps up with the rapid evolution of organized criminal activity. We need changes to our existing money laundering, asset forfeiture, narcotics and racketeering laws. Additional proposals recognize that in an increasingly global law enforcement environment, witness security and protection for foreign witnesses must also be available. And finally, stiffer penalties for certain crimes, such as intellectual property offenses, which are increasingly the focus of transnational organized crime, are also necessary. These proposals are outlined below.

A. Anti-Money Laundering and Forfeiture Laws

The TOC Strategy recognizes that criminals who commit their crimes overseas often launder and maintain their assets in the United States. Accordingly, a focal point of the Strategy is the Proceeds of Crime Act (POCA) a comprehensive money laundering and forfeiture proposal designed to address gaps in our current legal authority. Money laundering and forfeiture laws strike at the very core of transnational criminal organizations by preventing them from using our financial system to move and hide their money, and by depriving them of the profit and capital needed to operate their enterprises.

POCA would update and clarify the current list of specified unlawful activities that are predicates for money laundering to include all domestic felonies except those specifically exempted, state felonies and federal misdemeanors that are included in the existing racketeering predicates, and any foreign crimes that would be felonies in the United States. The changes sought would also increase the scope and effect of anti-money laundering provisions in laws concerning promotional money laundering, bulk cash smuggling, tax evasion, and money laundering through informal value transfer systems, and would clarify the application of the law to commingled funds and aggregated transactions. Finally, the proposal also extends wiretap authority for money laundering offenses, and it extends the extraterritorial provision for money laundering to non-United States citizens where their extraterritorial acts in violation of 18 U.S.C. § 1956 cause an effect in the United States. These changes would fill in numerous gaps and omissions in our decades-old anti-money laundering laws and improve the ability to prosecute money launderers and to forfeit criminal proceeds and facilitating property.

POCA also seeks to update our civil forfeiture capabilities. Civil forfeiture is a particularly effective tool in this regard, as it enables prosecutors to forfeit the proceeds of crime even when criminal prosecutions of those involved are not possible. Thus fugitives, drug kingpins, and corrupt foreign officials not present in the United States cannot elude the reach of our enforcement entirely.

POCA would enhance the government's civil forfeiture authority in a number of important ways. It seeks to expand the scope of civil forfeiture authority to include "facilitating property," or property that enables crime to occur, for all money laundering predicates and broadens the categories of facilitating property that can be civilly forfeited in connection to drug offenses and alien smuggling and harboring. To better attack the financial infrastructures of these organizations through more effective financial investigations, the proposal provides increased civil forfeiture, administrative, and foreign bank record subpoena authority. It also would enable the use of classified information in civil forfeiture cases, which is critical in going after transnational criminal organizations that threaten our national security.

Taken together, the changes will make our investigations and prosecutions against the financial operations of transnational organized crime groups much more effective. By taking their money, we take away these groups' reason to exist and ability to operate. We are committed to working with Congress to combat the use of shell companies to generate and move illicit

money by requiring that those who form entities in the United States disclose beneficial owner information.

B. Racketeering Provisions

Second, the Administration proposes to modernize our most powerful anti-organized crime statutes: the Racketeer Influenced and Corrupt Organizations Act, or RICO, and the Violent Crimes in Aid of Racketeering statute, or VICAR. The proposed amendments to the RICO statute, 18 U.S.C. § 1961, *et seq.*, would clarify that RICO has extraterritorial application in cases where criminal enterprises operate at least in part in the United States, or where they commit any predicate acts in the United States, or where the charged pattern includes offenses that apply extraterritorially. Criminal organizations have expanded their activities to increase their power, influence, and wealth, availing themselves of new opportunities. The proposed legislation, therefore, expands the list of racketeering predicate crimes to include offenses that are prevalent in an increasingly interconnected world and engaged in by transnational organized crime groups, including economic espionage, computer fraud, aggravated identity theft, violations of the Foreign Corrupt Practices Act, health care fraud, illegal firearms trafficking, as well as a limited number of violations of foreign law.

These proposed changes are important to address a number of recurring issues in organized crime prosecutions. In a number of instances, the government has been unable to charge the members or associates of a criminal enterprise with RICO because the underlying criminal activities were not listed as predicates. The new predicates are intended to fill these gaps.

Amendments to the Violent Crimes in Aid of Racketeering (VICAR) statute, 18 U.S.C. § 1959, are also recommended, including a provision which would provide for extraterritorial application in certain situations such as when the underlying statute criminalizing the violent act in question applies extraterritorially or when any part of the violation occurs within the jurisdiction of the United States.

C. Witness Protection

The Administration is also proposing legislation that fosters international cooperation regarding the relocation of witnesses giving testimony in criminal cases, and relatives and other persons close to them. Relocation is sometimes the only way to protect the security of such persons, and enhancing our ability to cooperate with foreign governments in these situations will greatly improve our ability to mount multinational operations against high-priority transnational organized crime targets.

D. Extraterritorial Jurisdiction

The Administration proposes criminalizing conduct occurring on vessels or aircraft owned by the United States or a United States citizen, vessels registered under U.S. or state law, and aircraft registered under United States law if such vessels or aircraft are outside the jurisdiction of any particular state. In the absence of such expanded jurisdiction, the United

States would, for example, lack federal jurisdiction over a sex-trafficking offense committed on board a United States-registered vessel or aircraft located between two foreign countries. Our proposal would address an existing reservation on jurisdiction by the United States to the 2000 UN Transnational Organized Crime Convention, and in particular the supplementing Trafficking in Persons Protocol.

E. Intellectual Property Crimes

Intellectual property crime is a strong lure to transnational organized criminal enterprises, which have increasingly turned to counterfeiting and piracy as a relatively low risk high reward means to fund their other unlawful activities. The Administration is seeking to strengthen penalties involving particularly egregious intellectual property offenses. Specifically, as first recommended in the Administration's White Paper on Intellectual Property Enforcement Legislative Recommendations transmitted to Congress by the Intellectual Property Enforcement Coordinator, the Administration has proposed that Congress issue direct the United States Sentencing Commission to consider several sentencing enhancements for offenses committed in connection a variety of aggravated conduct, including when the IP crime is committed in furtherance of criminal activities of local, national, or international criminal enterprises or when it involves the conscious or reckless risk of death or serious bodily injury. Furthermore, it is imperative that defendants whose sale of infringing products for use in critical infrastructure, national defense, security, and law enforcement face significant criminal penalties, and the Administration is recommending that Congress direct the Sentencing Commission to consider an enhancement in this circumstance.

F. Narcotics

The Administration proposes to expand conspiracy liability when controlled substances are destined to the United States from a foreign country. Under our proposal, members of any conspiracy to distribute controlled substances will be subject to United States jurisdiction when at least one member of the conspiracy intends or knows that the drugs will be unlawfully imported into the United States. We are also recommending changes to sentencing policy for violations of the Narcotics Kingpin Designation Act. Such violations currently carry statutory penalties of up to 30 years' imprisonment and/or fines up to $5,000,000. Sentencing guidelines for these violations, however, do not yet exist. The Administration is recommending a congressional directive to the United States Sentencing Commission, proposed statutory language, and a proposed sentencing guideline to yield a sentencing range of 37 - 46 months for a first offender, absent adjustments or departures.

V. CONCLUSION

Transnational organized crime presents many new challenges for United States law enforcement. The investigations and prosecutions of transnational organized criminals groups are among the most difficult and complex cases in the Department. Even as we develop our cases and push the envelope of what our agents and prosecutors have tried in the past, the criminals continue to evolve rapidly, deploying new techniques and strategies to evade our nets and continue their illegal activities. It is important to ensure that federal agents and prosecutors are fully armed with the most comprehensive and up to date legislative and investigative tools to carry this fight across the globe and attack the criminals where they live. Only in this way can we protect our citizens, corporations, and property from those who would take them from us.

Written Testimony of the U.S. Department of the Treasury's Assistant Secretary for Terrorist Financing Daniel L. Glaser before the Senate Committee on the Judiciary, Subcommittee on Crime and Terrorism
Combating International Organized Crime: Evaluating Current Authorities, Tools, and Resources
November 1, 2011, Time 10:00 am; Dirksen Senate Office Building Room 226

Introduction

Chairman Whitehouse, Ranking Member Kyl, and distinguished members of this Committee, thank you for the opportunity to appear before you today to discuss the Treasury Department's contribution to the Obama Administration's July 2011 integrated strategy to address the threat posed by transnational organized crime (TOC).

In early 2010, the United States completed a comprehensive assessment of transnational organized crime – the first since 1995 – which concluded that TOC networks have expanded in scope and sophistication, engage in a range of illicit activities, and are taking advantage of the increasingly integrated international financial system. Among the most startling conclusions of that assessment is that these groups' growing infiltration of legitimate commerce and economic activity fundamentally threatens U.S. economic interests at home and abroad and could cause significant damage to the world financial system through subversion, exploitation, and distortion of legitimate markets and economic activity. Terrorists and insurgents increasingly are turning to crime and criminal networks for funding and logistics. Criminal networks are increasingly exploiting vulnerabilities in information technology and are involved in cyber crime. The result is a convergence of complex, volatile, and destabilizing threats to U.S. national security.

To combat this growing threat to U.S. and international security, the Obama Administration announced this past July a national Strategy to Combat Transnational Organized Crime (the "Strategy"). The Strategy lays out five strategic objectives, 56 priority actions, and new and innovative capabilities and tools to mitigate the threat.

President Obama's opening message to the Strategy makes clear that despite a long and successful history of dismantling criminal organizations, not all of our capabilities have kept pace with the expansion of 21st century transnational criminal threats. Shortly before the White House announced the Strategy, President Obama signed Executive Order (E.O.) 13581, thereby providing the Treasury Department a new tool and authority to target the financial underpinnings of the world's most powerful transnational criminal organizations.

This Executive Order supplements an array of the Treasury Department's tools and capabilities that can be used to target TCOs and safeguard our financial system from abuse. Our targeting capabilities include financial sanctions, the imposition of special regulatory measures and requirements, and engagement with at-risk financial institutions and jurisdictions.

In my testimony, I will focus on the Treasury Department's efforts to implement E.O. 13581, as well as the other authorities we have available to use in implementing the Strategy, such as Section 311 of the USA PATRIOT Act. I will also discuss our ongoing work to promote

financial transparency domestically and abroad, and the importance of transparency in mitigating the threats posed by TOC and other forms of illicit finance. In particular, I will address the abuse of legal entities as a systemic vulnerability to TOC networks and a chronic challenge to achieving financial transparency. Addressing this vulnerability requires a broad approach, including the adoption of legislation to facilitate the availability of meaningful beneficial ownership information for companies created within the United States.

Targeted Financial Measures

Historically, economic sanctions have been the Treasury Department's primary tool to target the financial networks of illicit actors, including drug trafficking organizations. As these organizations generate hundreds of millions of dollars per year that are often placed in or moved through the international financial system, we have used targeted financial measures to restrict their access to the U.S. financial system. One such authority specifically designed to target drug trafficking organizations is the Foreign Narcotics Kingpin Designation Act (the "Kingpin Act"). Since June 2000, over 1000 individuals and entities have been designated under the Kingpin Act, resulting in the blocking of millions of dollars in financial assets in the United States. The Kingpin Act provided the flexibility necessary to continue targeting Latin American drug cartels over an extended period of time as the drug trade under the control of Colombian cartels gave way to a more segmented market progressively dominated by Mexican TCOs and shifted geographically from Colombia to Mexico. Recognizing the success of measures such as the Kingpin Act, the Strategy proposes that a similar method, with the flexibility to adapt to varying situations, be used to target TOC.

Executive Order 13581

While the Strategy draws from a broad range of tools and authorities to combat the threat posed by TCOs both domestically and abroad, targeted financial sanctions will be employed to help protect the U.S. financial system from these groups. On July 24, 2011, President Obama signed E.O. 13581, "Blocking Property of Transnational Criminal Organizations," imposing sanctions against significant TCOs that threaten the U.S. national security, foreign policy, or economy and granting the Treasury Department the authority to address TCOs under the International Emergency Economic Powers Act. For the first time, the President recognizes that TOC warrants the declaration of a national emergency and the imposition of economic sanctions.

In the annex of E.O. 13581, the President identified and imposed sanctions on four significant TCOs: the Brothers' Circle (a.k.a. Moscow Center), the Camorra, the Yakuza, and Los Zetas.

The four groups in the annex were chosen because they are large, sophisticated, multi-national organizations engaged in a wide variety of dangerous criminal enterprises ranging from narcotics trafficking, human trafficking, weapons trafficking, murder, complex financial fraud, and intellectual property theft that threaten the U.S. national security, foreign policy, and economy. Let me provide you additional background on these four organizations.

- First, the Brothers' Circle is a multi-ethnic criminal group composed of leaders and senior members of several Eurasian criminal groups largely based in countries of the

former Soviet Union, but extending to the Middle East, Africa, and Latin America. The Brothers' Circle serves as a coordinating body for these criminal networks, including mediating disputes between the individual criminal networks and directing global criminal activity.

- The Camorra, Italy's largest organized crime group, is a loose collection of allied and competing local clans in the province of Naples and the Campania region of Italy. The Camorra operates internationally and is involved in serious criminal activity such as counterfeiting and narcotics trafficking. The Camorra may earn more than 10 percent of its roughly $25 billion annual profit through the sale of counterfeit and pirated goods – such as luxury clothing, power tools, CDs, DVDs, and software..

- The third group, the Yakuza, comprises the major Japanese organized crime syndicates, and had more than an estimated 80,000 members in 2008. The Yakuza derives a majority of its profits from the drug trade, but is also involved in weapons trafficking, and nearly all aspects of human trafficking and sexual exploitation. The Yakuza is also heavily involved in white-collar crime, often using front companies to hide illicit proceeds within legitimate industries, including construction, real estate, and finance.

- Lastly, Los Zetas, formerly the armed wing of the Gulf Cartel, is an extremely violent transnational group based primarily in Mexico. According to press reporting, the organization is estimated to have thousands of members collectively in Mexico, Central America, and the United States and is specifically responsible for the safe passage of large quantities of illegal narcotics, including cocaine, methamphetamine, heroin, and marijuana from or through Mexico and eventually into the United States. In addition to drug trafficking, Los Zetas is involved in extortion, money laundering, intellectual property theft, and human smuggling. President Obama previously identified Los Zetas as a significant foreign narcotics trafficker under the Kingpin Act in 2009 (its former parent organization, the Gulf Cartel, was similarly identified in 2007). Since that time, 58 individuals and entities have been designated as associates of the two groups. Its listing under E.O. 13581 demonstrates that Los Zetas has expanded its illicit activities beyond drug trafficking.

The President's strategy draws from a broad range of tools and authorities to attack the threat posed by these organizations. As part of this broad strategy, sanctions will complement U.S. law enforcement authorities in the fight against transnational criminal organizations, as they have the in the case of Kingpin Act designations. The Treasury Department intends to build on our close cooperation with the U.S. Department of Justice and other United States Government agencies to identify key nodes of operation for coordinated action in disrupting TOC networks.

In order to implement E.O. 13581 effectively, the Treasury Department has scoped out a series of actions that Treasury will undertake simultaneously in furtherance of the President's Strategy. These actions include: pursuing derivative designations of the four groups, identifying additional transnational criminal organizations, liaising with key foreign partners, and conducting outreach to the private sector.

The Treasury Department, in partnership with law enforcement and Intelligence Community counterparts, will attempt to map out the criminal networks of these groups in order to pursue derivative designations aggressively. As affiliates of the groups do not make transactions under the group name, it is essential to designate the groups' leadership, operatives, associated companies and businesses, and financial facilitators. Designating such individuals and entities owned or controlled by, or providing material support to, these organizations will increase the financial pressure on their networks and affect their ability to conduct financial transactions.

In addition to pursuing derivative designations of groups currently listed in the annex of the E.O., the Treasury Department will work with our interagency partners to identify additional TCOs that pose a threat to the national security, foreign policy, and economy of the U.S. for potential designation.

We will work with like-minded foreign partners to build an international coalition to combat TOC more broadly. Many countries in Europe and Asia have recognized the TCO threat long ago and have taken domestic steps to mitigate the threat. We believe they are natural partners in this initiative. We have already begun outreach to strategic allies to raise awareness of our authorities, to discuss potential information sharing opportunities, and build support for an international effort against TOC. Under Secretary David Cohen was in Europe last week, where he raised TOC as a priority issue with his counterparts there. I will travel to Moscow next week, where I will also raise this as an area where we hope to expand our cooperation with our Russian counterparts.

We will make outreach to the U.S. and international financial community an essential component of our efforts. Our goal will be to ensure that banks understand the risks of doing business with TCOs and are taking appropriate due diligence measures. Our partnership with the private sector on other sanctions programs has amplified the effects of our actions. Our aim, therefore, is to replicate the success of that partnership in order to make it more difficult for these illicit groups to abuse the U.S. and international financial system.

While enacting targeted financial measures against these four groups is our first priority, the Treasury Department is also investigating whether it would be appropriate to use other restrictive measures against TOC.

Section 311 of the USA PATRIOT Act

The Administration's Strategy calls for use of Section 311 of the USA PATRIOT Act, in addition to the new Executive Order, to combat TOC. This powerful tool allows the Treasury Department to take action to protect the U.S. financial system from specific threats. It authorizes the Treasury Department to identify a foreign jurisdiction, foreign financial institution, type of account or class of transactions as a primary money laundering concern, and impose any one or combination of a range of special measures that U.S. financial institutions must take to protect against illicit financing risks associated with the subject of the action. In practical terms, Section 311, where appropriate, enables the Treasury Department to cut off foreign financial institutions from the U.S. financial system on the grounds that they facilitate transnational organized crime or other illicit activity.

For example, in February 2011, the Treasury Department identified the Beirut-based Lebanese Canadian Bank (LCB) as a financial institution of primary money laundering concern for its role in facilitating the activities of an international narcotics trafficking and money laundering network operating across five continents. The LCB action was the product of close coordination and cooperation with the Drug Enforcement Administration. Similarly, in 2005, the Treasury Department identified two Latvian banks (VEF Bank and Multibanka) under Section 311 because they were being used to facilitate or promote money laundering and other financial crimes.

Several of our Section 311 actions against foreign banks have highlighted the role of shell companies in illicit activity. The Multibanka and VEF actions I mention above noted that the banks were involved in transferring funds involving illicit activity by multiple shell companies with no legitimate business purposes. Further, the Section 311 findings against Macau's Banco Delta Asia (BDA) and Infobank in Belarus alerted financial institutions around the world to the role that front companies play in furtherance of a wide array of illicit conduct. In these actions, the Treasury Department exposed the fact that BDA was providing services to North Korean front companies, and Infobank was involved in laundering improper fees derived from the United Nations' Oil for Food Program via shell companies. These findings illustrate the need for enhanced financial transparency, which is also a component of the President's Strategy.

Financial Transparency

The success of our efforts to combat TOC networks through targeted action, including through the application of E.O. 13581, relies on our ongoing work to promote a transparent global financial system. The President's Strategy notes that such transparency is critical to law enforcement's efforts to combat TOC. Enhanced transparency also enables financial institutions, law enforcement and other relevant authorities to implement and enforce the targeted measures described above. More broadly, financial transparency is the cornerstone of our efforts to protect the financial system from abuse. It is the foundation of virtually all of our efforts and successes to date in countering illicit finance, from an increasing reliance on targeted financial measures in addressing global security threats to supporting international efforts to strengthen global anti-money laundering/combatting the financing of terrorism (AML/CFT) standards.

The growth and increasing sophistication of the international financial system in recent years has enabled TCOs and other illicit actors to move money, hide assets, and conduct transactions anywhere in the world, exposing financial centers to exploitation and abuse in an unprecedented way. Our success in combating these illicit actors going forward will depend critically on our continued efforts to increase transparency across the international financial system. By requiring the collection of key information regarding the nature of transactions and the relevant transacting parties and beneficial owners, a transparent financial system will compel some criminals to avoid transactions altogether and pose significant obstacles for others who nevertheless seek to move funds in support of their illicit activities. And if, despite our best efforts, these individuals and entities still manage to access the financial system, the information collected by financial institutions enables law enforcement to trace the money and track down criminals and other bad actors.

The stakes are high. Just as financial transparency has helped us combat WMD proliferators, corrupt kleptocrats, and terrorist financiers, it also serves as a powerful weapon against transnational organized criminal networks. Where transnational criminals seek to exploit complexity and opacity, we must seek to untangle and bring clarity. As we enhance financial transparency, we diminish their ability to commit crime.

How we achieve financial transparency

In the broadest sense, our efforts to promote a transparent financial system encompass ongoing work to strengthen financial transparency across the formal financial sector and expand such transparency to the informal sectors, such as hawala and other informal remittance systems. This has not been limited to the U.S. financial system, but has included efforts to strengthen global standards and facilitate implementation of effective AML/CFT regimes in countries around the world. Working through various multilateral bodies, we have promoted transparency throughout the international financial system and have integrated robust systemic AML/CFT safeguards into the international financial architecture. This global AML/CFT architecture has enabled us to systematically identify and address illicit financing vulnerabilities in the international financial system on an ongoing basis. I would like to take a moment to discuss some of these successes in more detail.

Developing a Global AML/CFT Framework

The global threat of transnational criminal organizations and the increasing interdependence of the international financial system require a global approach to combating transnational organized crime. The Treasury Department's Office of Terrorism and Financial Intelligence (TFI) has worked with its interagency and international partners to help create a global AML/CFT framework as a foundation for taking action against criminal networks and for closing down vulnerabilities that they exploit. This framework consists of several intergovernmental organizations that collectively develop, assess and facilitate jurisdictional implementation of measures that are essential to combating various forms of illicit finance, including transnational organized crime. Such organizations include:

- ***Financial Action Task Force (FATF)*** – The FATF is the premier international policy-making and standard-setting body in the international effort against terrorist financing, money laundering, and other illicit finance. Established by the G-7 Economic Summit in 1989, the FATF is an intergovernmental body that has grown to include 36 members, representing most major financial centers in all parts of the globe. The FATF sets global AML/CFT standards, promotes and assesses compliance with those standards, and, when necessary, promotes compliance through diplomatic pressure and coordination of economic countermeasures through its member governments. Through a combination of technical expertise and political and economic strength, the FATF has been unique among international bodies in its ability to take strong, effective multilateral action to prompt positive change in strengthening jurisdictional AML/CFT regimes worldwide. My office, Terrorist Financing and Financial Crimes (TFFC), manages the FATF program for the U.S. government and heads the interagency U.S. delegation to the FATF. The U.S. delegation to the FATF includes the Departments of State, Justice, and Homeland Security; the Board of

Governors of the Federal Reserve System; the Securities and Exchange Commission; other federal financial regulatory agencies; and federal law enforcement agencies.

- ***FATF-Style Regional Bodies (FSRBs)*** – Through the FATF, TFI and its interagency and international partners have also supported the creation and development of eight independent FSRBs that serve as leaders in their respective regions for advancing AML/CFT policy, including by conducting periodic compliance assessments of member jurisdictions against the FATF's AML/CFT standards. In conjunction with the FATF, these bodies are intended to establish a global framework for ensuring the adoption and implementation of the FATF standards.

- ***IMF / World Bank*** – The World Bank and International Monetary Fund (IMF) have become strong partners of the FATF and the Treasury Department in assessing global compliance with international AML/CFT standards, and providing high-quality technical assistance. In 2003, the World Bank and IMF officially recognized the FATF Recommendations as one of the 12 Key International Standards and Codes. Since then, the FATF, the World Bank and IMF worked together to develop a joint standardized methodology for assessing countries against the FATF Recommendations. Today, all formal World Bank and IMF Financial Sector Assessment Programs (FSAPs) must contain a full AML/CFT component, and the World Bank, IMF, and the FATF are coordinating to ensure that virtually every country in the world is subject to an AML/CFT assessment using the joint methodology.

- ***Group of 20*** – The Group of 20 Ministers have endorsed the important work of the FATF in combating money laundering and terrorist financing, including by calling for the FATF to enhance the transparency of the international financial system and to publicly identify countries of concern for money laundering and terrorist financing. TFI works with AML/CFT experts in the G-20 countries to adequately respond to the G-20 calls and facilitate multilateral action in protecting the international financial system from abuse by illicit actors.

To facilitate compliance with global AML/CFT standards, the G-20 has called upon the FATF to continue to publicly identify jurisdictions that fail to meet the international standards and may pose a risk to the international financial system. I have had the privilege of serving as co-chair of the working group within the FATF that oversees this process. Jurisdictions that have been identified by this process must commit to an Action Plan of ambitious reforms. If the reform timelines specified in the Action Plans are not met, the FATF will issue increasingly strong public warnings, potentially culminating in a specific call for regulatory countermeasures from member countries. In response to this process, numerous jurisdictions have passed important AML/CFT legislation, which likely would not have happened so quickly without the encouragement from this FATF process.

Abuse of legal entities as a fundamental challenge to financial transparency

Despite our ongoing efforts and longstanding commitment to promote a transparent global financial system and to combat money laundering and illicit finance, federal law enforcement

agencies and other information sources indicate that hundreds of billions of dollars of illicit proceeds are generated each year in the United States from criminal offenses stemming from illicit drug sales, various forms of financial fraud and tax evasion. The challenges in identifying and recovering proceeds of crime laundered through the U.S. and global financial system may be attributed in large part to ongoing and substantial criminal abuse of legal entities and a lack of insight into the beneficial ownership of those legal entities. These challenges, which are applicable to all manner of financial crime perpetrated by TOC networks, have been exhaustively described in various testimonies and publications. The following provide some examples:

- In 2007, the Departments of Justice, Homeland Security and the Treasury jointly issued the National Money Laundering Strategy (2007 Strategy), which in part, identifies current and emerging trends in money laundering, as well as specific vulnerabilities. The 2007 Strategy specifically emphasizes the risks associated with shell companies and trusts, noting that the use of these entities for illicit purposes has become increasingly popular with criminal actors because of the "ability to hide ownership and mask financial details." The 2007 Strategy reiterates the long-standing concern regarding shell entities by the international community, citing a 1998 statement by the United Nations: "...the principal forms of abuse of secrecy have shifted from individual bank accounts to corporate bank accounts and then to trust and other corporate forms that can be purchased readily without even the modest initial and ongoing due diligence that is exercised in the banking sector." As asserted by a representative of the Asset Forfeiture and Money Laundering Section of the United States Department of Justice (AFMLS), law enforcement faces "considerable difficulties when investigating U.S. shell corporations due to the lack of beneficial ownership information available in the United States."

- Further, in 2006, Congress directed the Government Accountability Office (GAO) to examine vulnerabilities associated with company formation in the United States. The report cites examples of abuse of the financial system by illicit shell company activities and reports that federal law enforcement officials are "concerned that criminals are increasingly using U.S. shell companies to conceal their identity and illicit activities," and that shell companies are also a way of providing access to the U.S. financial system to offshore illicit actors via correspondent account relationships at U.S. banks.

The abuse of legal entities is an international problem; both foreign and domestic legal entities can be used for illicit purposes. Viktor Bout, an international arms merchant who was designated by the Treasury Department's Office of Foreign Asset Control (OFAC), used U.S. shell companies to mask his ownership and facilitate his illegal arms trafficking activities. Law enforcement believes that the Sinaloa Cartel, one of the major Mexican drug trafficking organizations, uses both U.S. and Colombian shell companies to launder drug proceeds. Additionally, illicit actors use foreign shell companies to mask the involvement of designated persons and circumvent U.S. sanctions programs relating to Iran and North Korea.

Treasury's 3-pronged approach

Addressing the ongoing abuse of legal entities to perpetrate all manner of financial crime requires a broad approach. Accordingly, the Treasury Department has developed a strategy on beneficial ownership that has three independent, but interrelated, objectives.

First, we are working to enhance the availability of beneficial ownership information to law enforcement regarding legal entities created in the United States. Together with our interagency partners and with Congress – including, in particular, Senator Levin, who has been a leader in this area – we are working to address this issue through legislation. These efforts, guided by the President's Strategy, also aim to ensure that legal entities can produce a clear statement of their beneficial ownership to any financial institution that is seeking such information as an element of their customer due diligence. Increased transparency in company formation in the U.S. will also improve law enforcement's ability to respond to Mutual Legal Assistance Treaty (MLAT) requests from foreign partners.

Second, we plan to clarify and strengthen customer due diligence (CDD) requirements for financial institutions with respect to the beneficial ownership of legal entity account holders. In March 2010, the Treasury Department, together with the functional financial regulators, issued Guidance to clarify existing regulatory expectations for obtaining beneficial ownership information for certain accounts and customer relationships. We are also working with the regulatory and law enforcement communities, and consulting with the private sector, to determine how such due diligence requirements can be further clarified and strengthened as necessary through rulemaking or otherwise.

Third, we are working with our international partners in the FATF to clarify and facilitate the global implementation of international standards regarding beneficial ownership. As with our domestic efforts, our beneficial ownership work in the FATF focuses on both issues of legal entity formation within jurisdictions, as well as customer due diligence by financial institutions. We continue to work closely within the FATF and support the current ongoing revision to the FATF recommendations in this regard. The FATF hopes to have a new international standard adopted by February 2012. It is particularly important that we do not neglect this international effort as we move forward in addressing the issue of beneficial ownership in the United States. A unilateral solution is an incomplete and ineffective solution. Without widespread global implementation, even if CDD practices at our domestic institutions forbid dealing directly with a particular customer due to beneficial ownership risk, this same customer may nevertheless seek to access the financial system through foreign correspondent channels.

Conclusion

The President's Strategy calls upon the Treasury Department to deploy our targeted tools and to enhance financial transparency in order to close vulnerabilities, disrupt and dismantle illicit financial networks, and apply pressure on transnational criminal organizations. We are committed to disrupting TOC infiltration of the global economy to better protect the financial system, including by freezing the assets of criminal networks under our new sanctions authorities. At the same time, the United States remains intent on improving the transparency of the international financial system, which will benefit our efforts to combat all manner of illicit finance, including transnational organized crime.

U.S. Senator Chuck Grassley • Iowa

Ranking Member • Senate Judiciary Committee

http://grassley.senate.gov

Prepared Statement of Ranking Member Chuck Grassley
Senate Committee on the Judiciary
Subcommittee on Crime and Terrorism
"Combating International Organized Crime: Evaluating Current Authorities, Tools and Resources"
Tuesday, November 1, 2011

Yesterday Assistant Attorney General Breuer made a public statement regarding an ATF case known as Operation Wide Receiver. In the statement, he said:

> "When the allegations related to Operation Fast and Furious became public earlier this year, the leadership of ATF and the U.S. Attorney's Office in Arizona repeatedly assured individuals in the Criminal Division and the leadership of the Department of Justice that those allegations were not true."

The Justice Department officially assured me that the allegations were not true. On February 4, 2011, the Department sent me a letter that read: "ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico." However, as Mr. Breuer's admissions in yesterday's statement made clear, the Department's claim was not true.

According to documents received last night, Mr. Breuer's deputy asked the most basic question of Wide Receiver that anyone should have known to ask of Fast and Furious upon becoming aware of the number of guns involved: "[D]id ATF allow the guns to walk, or did ATF learn about the volume of guns after the FFL began cooperating?" In Operation Wide Receiver, around 300 guns were walked by ATF. In Fast and Furious, just 5 of the straw buyers were allowed to purchase nearly 1000 guns while an FFL was cooperating, while being watched by ATF, while their phone calls were being monitored by a wiretap approved by Justice Department headquarters, and while a prosecutor from headquarters was assigned to the case.

The headquarters prosecutor was assigned to Fast and Furious because of an email that ATF Director Ken Melson sent Mr. Breuer in December 2009. Director Melson requested an attorney to work with ATF Phoenix Field Office on a case. Mr. Breuer said it was a "terrific idea" and assigned someone from the Gang Unit by March 2010.

That same month, Deputy Attorney General Gary Grindler—now the Attorney General's Chief of Staff—was being briefed in person on investigative details of Fast and Furious. The briefing included a very detailed PowerPoint presentation from ATF, and Mr. Grindler made a number of hand-written notes on a print-out of the PowerPoint. The PowerPoint included such details as the fact that by March 12, one straw buyer had already bought as many guns as were ever walked in Wide Receiver. The PowerPoint also included a map of where in Mexico guns were being recovered and the amount of money each straw buyer had spent on the gun purchases, most in the tens of thousands of dollars, along with a note from Mr. Grindler saying "all cash."

The American people—and especially the family of murdered Border Patrol Agent Brian Terry—deserve answers from the Justice Department about why they claim they didn't know gunwalking was occurring in Operation Fast and Furious when the department's fingerprints are all over it.

Attached Documents

1) Justice Department's Feb. 4, 2011 letter to Senator Grassley: "ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico."

2) Dec. 3-4, 2009: Assistant Attorney General Lanny Breuer approves a Gang Unit prosecutor being assigned to ATF gun trafficking cases at the request of ATF Acting Director Kenneth Melson. (HOGR ATF 2730)

3) Mar. 1, 2010: That Gang Unit prosecutor, Joe Cooley, reports to ATF and begins on Operation Fast and Furious around the time his fellow Gang Unit prosecutor Laura Gwinn is reporting up the chain that guns were walked in Operation Wide Receiver. (HOGR ATF 2155-2156)

4) Mar. 5, 2010: Joe Cooley's handwritten notes. Cooley is briefed on Operation Fast and Furious as well as Operation Wide Receiver. (HOGR DOJ 2807-2809)

5) Mar. 12, 2010: Deputy Attorney General Gary Grindler's notes from briefing on Operation Fast and Furious. Grindler's notes include such details as the fact that by March 12, one straw buyer had bought 313 guns and another had bought 231; the amount of money each straw buyer had spent on gun purchases, most in the tens of thousands of dollars, along with a note from Grindler saying "all cash"; and a map of where in Mexico guns were being recovered. (HOGR DOJ 2817-2823)

6) Mar. 16, 2010: Deputy Assistant Attorney General Jason Weinstein asks the chief of the Gang Unit Kevin Carwile, to whom both Cooley and Gwinn report: "[D]id ATF allow the guns to walk, or did ATF learn about the volume of guns after the FFL began cooperating?" As Justice Department officials acknowledged yesterday in a widely-attended briefing with Congressional staff, Carwile's recollection that "they learned afterward" would prove to be false. (HOGR WR 3439)

7) Apr. 30, 2010: Weinstein tells Breuer "ATF let a bunch of guns walk in effort to get upstream conspirators but only got straws, and didn't recover many guns. Some were recovered in MX after being used in crimes." (HOGR WR 3485)

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D. C. 20530

February 4, 2011

The Honorable Charles E. Grassley
Ranking Minority Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Grassley:

This responds to your letters, dated January 27, 2011 and January 31, 2011, to Acting Director Kenneth Melson of the Department's Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), regarding Project Gunrunner. We appreciate your strong support for the Department's law enforcement mission.

At the outset, the allegation described in your January 27 letter—that ATF "sanctioned" or otherwise knowingly allowed the sale of assault weapons to a straw purchaser who then transported them into Mexico—is false. ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico. Indeed, an important goal of Project Gunrunner is to stop the flow of weapons from the United States to drug cartels in Mexico. Since its inception in 2006, Project Gunrunner investigations have seized in excess of 10,000 firearms and 1.1 million rounds of ammunition destined for Mexico. Hundreds of individuals have been convicted of criminal offenses arising from these investigations and many others are on-going. ATF remains committed to investigating and dismantling firearms trafficking organizations, and will continue to pursue those cases vigorously with all available investigative resources.

In this vein, the suggestion that Project Gunrunner focuses simply on straw purchasers is incorrect. The defendants named in the indictments referenced in your January 27 letter include leaders of a sophisticated gun trafficking organization. One of the goals of the investigation that led to those indictments is to dismantle the entire trafficking organization, not merely to arrest straw purchasers.

I also want to assure you that ATF has made no attempt to retaliate against any of its agents regarding this matter. We recognize the importance of protecting employees from retaliation relating to their disclosures of waste, fraud, and abuse. ATF employees receive annual training on their rights under the Whistleblower Protection Act, and those with knowledge of waste, fraud, or abuse are encouraged to communicate directly with the

Department's Office of Inspector General. These protections do not negate the Department's legitimate interest in protecting confidential information about pending criminal investigations.

We also want to protect investigations and the law enforcement personnel who directly conduct them from inappropriate political influence. For this reason, we respectfully request that Committee staff not contact law enforcement personnel seeking information about pending criminal investigations, including the investigation into the death of Customs and Border Patrol Agent Brian Terry. Like you, we are deeply concerned by his murder, and we are actively investigating the matter. Please direct any inquiry into his killing to this office.

The Department would be pleased to provide a briefing to Committee staff about Project Gunrunner and ATF's efforts to work with its law enforcement partners to build cases that will disrupt and dismantle criminal organizations. That briefing would not address the on-going criminal investigation referenced in your letter. As you know, the Department has a long-standing policy against the disclosure of non-public information about pending criminal investigations, which protects the independence and effectiveness of our law enforcement efforts as well as the privacy and due process interests of individuals who may or may not ever be charged with criminal offenses.

We hope that this information is helpful and look forward to briefing Committee staff about Project Gunrunner. Please do not hesitate to contact this office if we may provide additional assistance about this or any other matter.

Sincerely,

Ronald Weich
Assistant Attorney General

cc: The Honorable Patrick J. Leahy
Chairman

From: Melson, Kenneth E.
Sent: Friday, December 04, 2009 12:26 PM
To: Back, Michelle A.
Subject: FW: Weapons seizures in Mexico

Would you set up a meeting with Mr. Breuer. Billy, Mark, and Sam should go too. Thanks.

From: Breuer, Lanny A. RC-1 [redacted]
Sent: Friday, December 04, 2009 10:18 AM
To: Melson, Kenneth E.
Cc: Siskel, Edward N. (ODAG) (SMO); Hoover, William J.; Weinstein, Jason; Rosen, Paul; Raman, Mythili; Fagell, Steven
Subject: RE: Weapons seizures in Mexico

Ken,

We think this is a terrific idea and a great way to approach the investigations of these seizures. Our Gang Unit will be assigning an attorney to help you coordinate this effort. Please let us know who will be the POC at ATF on this, and we'll have the Gang Unit folks reach out to that person. I would love to see you to discuss this further and other issues of common interest. I hope you are well.

Best,

Lanny

From: Melson, Kenneth E. RC-1 [redacted]
Sent: Thursday, December 03, 2009 5:46 PM
To: Breuer, Lanny A.
Cc: Siskel, Edward N. (ODAG) (SMO); Hoover, William J.
Subject: Weapons seizures in Mexico

Lanny: We have decided to take a little different approach with regard to seizures of multiple weapons in Mexico. Assuming the guns are traced, instead of working each trace almost independently of the other traces from the seizure, I want to coordinate and monitor the work on all of them collectively as if the seizure was one case. Using the traces as intelligence, and compiling the information from each trace investigation, we can connect the purchases, identify the traffickers and use more serious charges against them. The intelligence analysis and linking of trace data and investigation results will be done at HQ out of our intelligence directorate. I would like to see if you have any interest in assigning a criminal division attorney to work with that group to develop multi-division/district cases and perhaps go to the district with the best venue to indict the case. The level of activity will depend on the number of Mexican seizures, and whether they will trace the guns, or allow us to do it. We do seem to be making progress with our Mexican partners. We are currently working on a case with SSP which might lead us to the first joint arrest in Mexico of a person connect to US arms trafficking. We should meet again just to catch up on where we are in our gun trafficking issues and we could talk about the above idea as well. Let me know what you think. Thanks. Ken.

From: Cooley, Joseph [redacted]
Sent: Monday, March 01, 2010 1:07 PM
To: Gillett, George T. Jr.; Voth, David J.
CC: O'Keefe, Kevin C.; MacAllister, Hope A.; Hurley, Emory (USAAZ)
Subject: RE: Firearms Investigation

Yes, that was operation name that Kevin mentioned to me. I will be available for the Friday meeting at ATF HQ.

Joseph A. Cooley
Trial Attorney
Gang Unit
Deptartment of Justice
950 Pennsylvania Ave. N.W., [redacted]
Washington, DC 20530
[redacted]

From: Gillett, George T. Jr. [redacted]
Sent: Monday, March 01, 2010 12:59 PM
To: Cooley, Joseph; Voth, David J.
Cc: O'Keefe, Kevin C.; MacAllister, Hope A.; Hurley, Emory (USAAZ)
Subject: RE: Firearms Investigation

Mr. Cooley –

The investigation you are referring to has been dubbed, "The Fast and Furious." This is an approved OCDETF investigation. I will have group supervisor David Voth coordinate with you to meet on this investigation. There is a briefing scheduled at 1:00 PM on Friday, May 5, at ATF Headquarters on this and other active, southwest border investigations. It may be most effective (if your schedule permits) to attend this briefing. However, I will have Mr. Voth contact you on your cell phone to coordinate a meeting with you before the briefing so you can be completely up to speed.

Please don't hesitate to contact me if you have further questions/concerns.

George T. Gillett
Assistant Special Agent in Charge
ATF - Phoenix Field Division
[redacted]

From: Cooley, Joseph [redacted]
Sent: Monday, March 01, 2010 10:43 AM
To: Gillett, George T. Jr.; Voth, David J.
Cc: O'Keefe, Kevin C.
Subject: Firearms Investigation

Gentlemen,

At the request of ATF Headquarters, Gang Unit has agreed to assist in the Firearms trafficking into Mexico investigations. Earlier this year, I was assigned to this task. I just finished up a trial last week and I am now available to provide any assistance needed. I understand that the case agent working out the Phoenix Office is Hope McAllister. I could not find her in the email directory. Please have her contact me at her earliest convenience.

JAC

Joseph A. Cooley
Trial Attorney

Gang Unit
Deptartment of Justice
950 Pennsylvania Ave. N.W., [redacted]
Washington, DC 20530
[redacted]

Notes taken by DOJ HQ Gang Unit prosecutor Joe Cooley on March 5, 2010

3/5/10

Briefing @ ATF

Tucson AZ

→ 1046

1000 guns since 9/09

Shawn Stewart

#1 purchaser had El Paso

Durgan → 55 more guns since

→ 241

$649,—

11/20/09 Women in MX

4 firearms seized

12/03/09 Nogales, AZ

4 firearms & ammo

12/09/09 Douglas, AZ – 7 Stewart purchase

Notes taken by DOJ HQ Gang Unit prosecutor Joe Cooley on March 5, 2010

12/9/09
Mexicali, Baja, Cal
12 tons (pair)
(warehouse)

41 guns seized

12/18/09
Ensenada, Baja

12/21/09 Phoenix, AZ

1/8/10

1/13/10 El Paso
again
person in stash house connected
w/ kidnapping crew

Behind the arrests & Stewart hop to El Paso

2/21/10 Dallas, AZ

Notes taken by DOJ HQ Gang Unit prosecutor Joe Cooley on March 5, 2010

Op Wide Receiver → Lamar Brown
→ stole house
two firearms
(Epic provided GPS)

2/25/10 Tignone Bags
→ all AKs converted to
full auto

Notes taken by Acting Deputy Attorney General Gary Grindler on March 12, 2010

ATF Monthly Meeting
with the Acting Deputy Attorney General
Friday, March 12, 2010

AGENDA

1. RC-2 [redacted]
2.
3.
4. Phoenix Case - Update on a significant firearms trafficking case
5. RC-2 [redacted]
6.
7.

Notes taken by Acting Deputy Attorney General Gary Grindler on March 12, 2010

ATF Monthly Mtg 3/12/10

RC-2

[redacted]

RC-2

3. Operation The Fast
& Furious
Drafts
Long VHA - multiple
indictments

RC-2

[redacted]

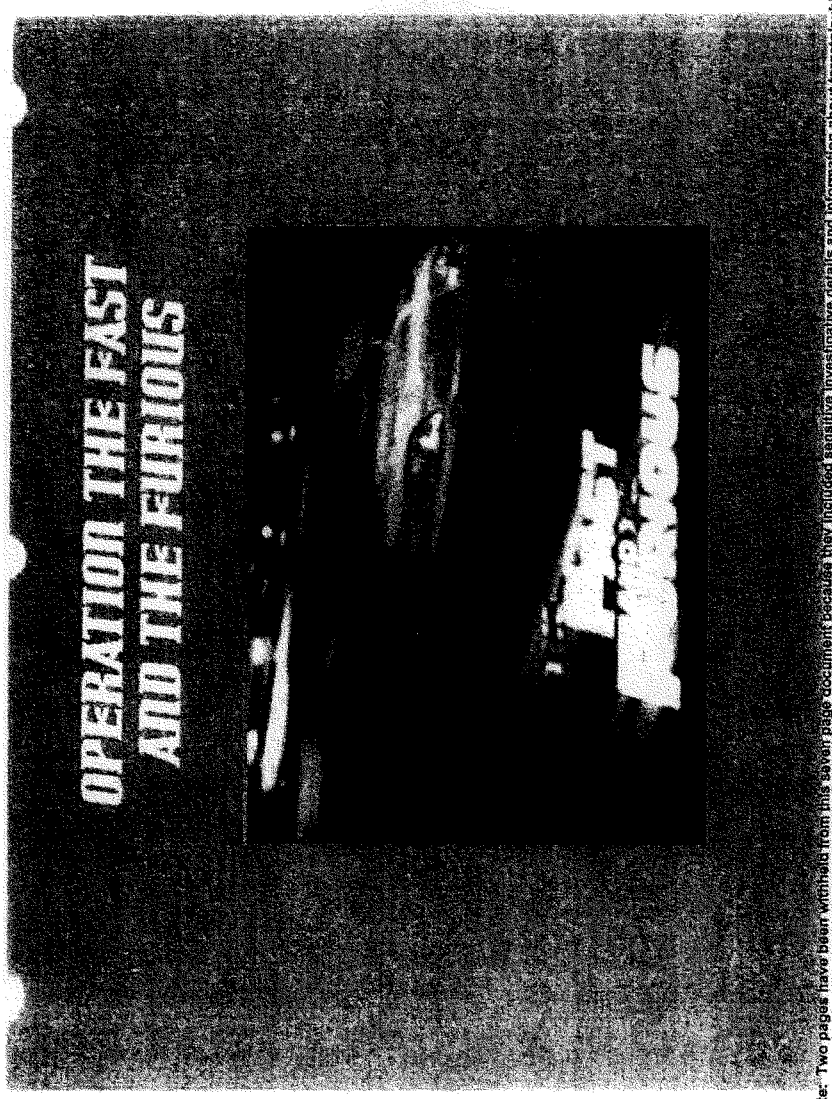
Seizure in Mexico
take ↑ to prosecute
to sep. in US
letter by Cartel

OCDETF STRIKE FORCE
Primary - Phoenix USAO

(F)

HOGR DOJ 002818

Notes taken by Acting Deputy Attorney General Gary Grindler on March 12, 2010



Note: Two pages have been withheld from this seven page document because they included sensitive investigative details and information about targets/subjects.

Notes taken by Acting Deputy Attorney General Gary Grindler on March 12, 2010

Total Firearms Purchased as of Feb 27, 2010
785115-10-0004

Patino	Uriel	313
Steward	Sean	241
Moore	Joshua	116
Chambers	Jacob	68
Celis	Alfredo	55
Herregovac	Delan	30
RC-4 [redacted]		
Montelongo	Jacob	18
Avila Jr	Jamie	17
RC-4 [redacted]		
Polanco	Jose	3
RC-4 [redacted]		
Celis-Acosta	Manuel	1
RC-4 [redacted]		
	TOTAL	1026

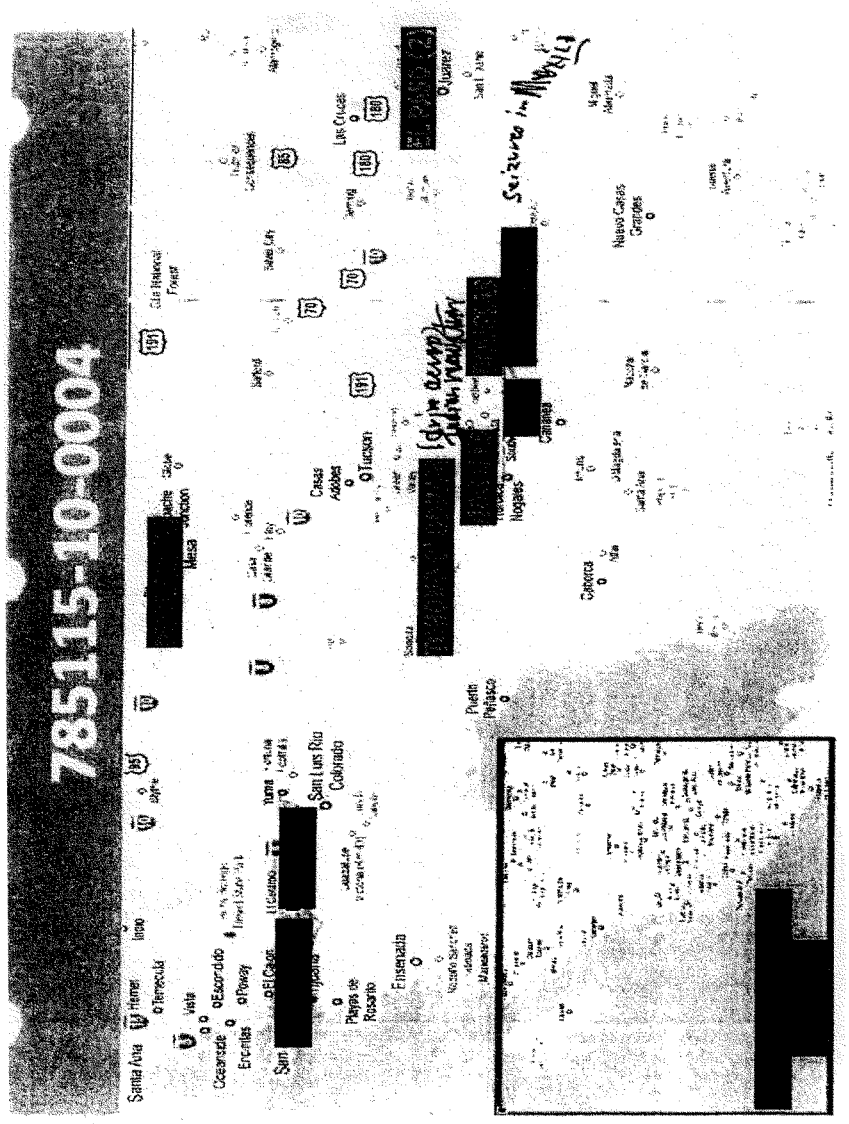
Notes taken by Acting Deputy Attorney General Gary Grindler on March 12, 2010

Total Cost of Firearms Purchased as of Feb 27, 2010
785115-10-0004

PURCHASE SUMMARY

NAME	GUN PURCHASE	INVOICE TOTAL	NOTES
RC-4			
Jaime Avilar	11,364.00	13,002.64	
RC-4			
Alfredo Cano	36,959.75	38,823.33	
Jacob Chambers	35,541.75	38,863.98	
RC-4			
Dylan Hercegovak	22,715.80	23,781.91	
RC-4			
Jacob Montelongo	7,446.97	7,731.27	
Joaquin Segura	59,653.40	64,929.95	
RC-4			
Uriel Patino	204,112.98	213,756.87	
RC-4			
Jose Polanco	1,769.00	1,851.52	
Sean Stewart	134,939.94	140,534.36	
RC-4			
TOTAL PURCHASES	$ 616,394.09	$ 648,745.32	

Notes taken by Acting Deputy Attorney General Gary Grindler on March 12, 2010



Notes taken by Acting Deputy Attorney General Gary Grindler on March 12, 2010

HOGR-DOJ-002823

RC-1 [redacted]

From: Carwile, Kevin
Sent: Tuesday, March 16, 2010 11:09 AM
To: Weinstein, Jason
Subject: RE: talking points

My recollection is they learned afterward. The pros memo will be ready soon. Any thoughts/progress on the [redacted] matter?

P. Kevin Carwile
Chief, Gang Unit
Criminal Division
U.S. Department of Justice

From: Weinstein, Jason
Sent: Tuesday, March 16, 2010 11:04 AM
To: Carwile, Kevin
Subject: RE: talking points

I'm looking forward to reading the pros memo on Wide Receiver but am curious – did ATF allow the guns to walk, or did ATF learn about the volume of guns after the FFL began cooperating?

From: Carwile, Kevin
Sent: Tuesday, March 16, 2010 10:47 AM
To: Weinstein, Jason
Subject: talking points

Here is a quick page of talking points. You did not describe the intended audience. The two operations are pre-indictment so the info on these matters would need to be kept internal. See attached.

P. Kevin Carwile
Chief, Gang Unit
Criminal Division
U.S. Department of Justice

RC-1 [redacted]

From: Weinstein, Jason
Sent: Friday, April 30, 2010 7:03 PM
To: Breuer, Lanny A.
Subject: Re: Operation Wide Receiver

As you'll recall from Jim's briefing, ATF let a bunch of guns walk in effort to get upstream conspirators but only got straws, and didn't recover many guns. Some were recovered in MX after being used in crimes. Billy, Jim, Laura, Alisa and I all think the best way to announce the case without highlighting the negative part of the story and risking embarrassing ATF is as part of Deliverance.

Jason M. Weinstein
Deputy Assistant Attorney General
Criminal Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
Office: RC-1 [redacted]
Cell: RC-1 [redacted]

----- Original Message -----
From: Breuer, Lanny A.
To: Weinstein, Jason
Sent: Fri Apr 30 18:39:45 2010
Subject: Re: Operation Wide Receiver

Anything I should know about thos?

----- Original Message -----
From: Weinstein, Jason
To: Breuer, Lanny A.; Raman, Mythili; Fagell, Steven
Sent: Wed Apr 28 18:59:27 2010
Subject: Operation Wide Receiver

Jim T and I met with Billy Hoover and with Laura and Alisa to talk about this gun trafficking case with the issues about the guns being allowed to walk for investigative purposes. Can fill you in tomorrow in more detail but we all think the best move is to indict both Wide Receiver I and Wide Receiver II under seal and then unseal as part of Project Deliverance, where focus will be on aggregate seizures and not on particulars of any one indictment.

Jason M. Weinstein
Deputy Assistant Attorney General
Criminal Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW

DIANNE FEINSTEIN, CALIFORNIA, CHAIRMAN
CHARLES E. GRASSLEY, IOWA, CO-CHAIRMAN
CHARLES SCHUMER, NEW YORK
SHELDON WHITEHOUSE, RHODE ISLAND
TOM UDALL, NEW MEXICO
JEFF SESSIONS, ALABAMA
JAMES E. RISCH, IDAHO

TELEPHONE: 202.228.3083
FACSIMILE: 202.228.3084

United States Senate

SENATE CAUCUS ON
INTERNATIONAL NARCOTICS CONTROL
HART SENATE OFFICE BUILDING, ROOM 818-C
WASHINGTON, DC 20510

November 15, 2011

Via Electronic Transmission

The Honorable Hillary R. Clinton
Secretary of State
U.S. Department of State
2201 C Street NW
Washington, DC 20520

Dear Secretary Clinton:

I write today to request copies of diplomatic cables to and from the Department of State and U.S. embassies in Mexico and nations in Central America and South America that discuss instances of, and the overall extent of, trafficking in weapons from, to, and within those regions. I am aware from news reports of the existence of such cables. I believe that the information contained in them is crucial to Congress's understanding of the threat posed by transnational drug trafficking organizations (DTOs) and other organized criminal groups, such as Mara Salvatrucha (MS-13).

As the Senate Caucus on International Narcotics Control detailed in a report we issued in September of this year, DTOs and other criminal groups in Mexico and Central America pose a national security threat both to the people of the United States and to the people of the countries where they operate.[1] As our report stated, "Violence in Central America…has grown out of control."[2] Murder rates in the Central American countries are so high that "Central America has become one of the most violent areas of the world."[3] The Administration has recognized this threat in its *National Drug Control Strategy* and its *Strategy to Combat Transnational Crime*, as well as in its support to regional governments through, among other activities, the Merida Initiative and the Central American Security Strategy.

As you know, among the grave concerns regarding the threat posed by these criminals is that they are increasingly armed with sophisticated weapons. According to a press report, DTOs are "obtaining rockets and other heavy armament that make them more than a match for Central

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[1] United States Senate Caucus on International Narcotics Control, "Responding to Violence in Central America," 112th Congress, First Session (September 2011), *available at*: http://www.feinstein.senate.gov/public/index.cfm/files/serve?File_id=a67575d5-66dd-4e36-a4ae-6a4f70de500a&SK=689B2D014C1464F4CFD6561AA5FEDC4F (visited Nov. 9, 2011).
[2] *Id.* at p.3
[3] *Id.* at p. 13.

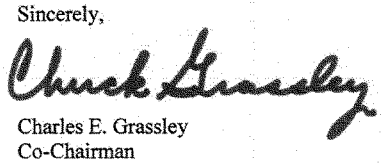
America's weak militaries."[4] For example, according to another press report, a raid on a drug trafficking organization's warehouse in Guatemala City recovered 11 machine guns, a light antitank weapon, 563 rocket-propelled grenades, 32 hand grenades, 8 landmines, and a large amount of ammunition.[5]

According to these media reports, diplomatic cables from U.S. Embassies in Central America and Mexico provide significant information about these matters, including U.S. government assessments of the role of regional militaries in the proliferation of weapons to DTOs. I believe it is crucial that Congress review those cables and avail itself of the information contained therein as part of its duty to examine the threat to the United States posed by DTOs and other criminals. Furthermore, I believe that it is likely that there is relevant information on these matters in cables that has not been released or otherwise publicly referenced.

Accordingly, as Co-Chairman of the Senate Caucus on International Narcotics Control, I request that you provide (1) the four cables specifically referenced in the reports by Tim Johnson of McClatchy Newspapers, entitled, "Drug gangs move into new territory: Central America," (April 21, 2011) and "Drug Gangs Help Themselves to Central American Military Arsenals," (April 21, 2011); (2) all classified and unclassified cables from U.S. Embassies in Central America, South America, and Mexico that address weapons trafficking—including, but not limited to, trafficking of military weapons in host countries, security of military weapons stockpiles, and U.S. assistance to host countries in preventing illicit transfer of firearms from military bases; and (3) all classified and unclassified cables discussing the July 2, 2010 cable from the U.S. Embassy in Mexico entitled, "Mexico Weapons Trafficking – The Blame Game."

I appreciate your prompt assistance in responding to this request. Given the serious nature of the subject matter and the urgent need for these documents, I expect your response to my request no later than November 30, 2011. If any of these documents are classified, please transmit them to the Office of Senate Security, located at the Senate Visitors' Center, Room 217, and mark the documents "to the attention of Senator Grassley Co-Chairman, Senate Caucus on International Narcotics Control."

Sincerely,



Charles E. Grassley
Co-Chairman

Cc: The Honorable Diane Feinstein
Chairman, Senate Caucus on
International Narcotics Control

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[4] Johnson, Tim, "Drug gangs move into new territory: Central America," (April 21, 2011) *available at*: http://www.mcclatchydc.com/2011/04/21/112617/drug-gangs-muscle-into-new-territory.html (visited Nov. 9, 2011)
[5] *Id.*

The Attorney General

Washington, D.C.

October 7, 2011

The Honorable Darrell E. Issa
Chairman
Committee on Oversight
and Government Reform
U.S. House of Representatives
Washington, DC 20515

The Honorable Elijah Cummings
Ranking Minority Member
Committee on Oversight
and Government Reform
U.S. House of Representatives
Washington, DC 20515

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Minority Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Lamar S. Smith
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable John Conyers, Jr.
Ranking Minority Member
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Messrs. Chairmen and Senator Grassley, Congressman Conyers, and Congressman Cummings:

I have watched for some months now as the facts surrounding Operation Fast and Furious have been developed on the public record. I have not spoken at length on this subject out of deference to the review being conducted, at my request, by our Department's Inspector General. However, in the past few days, the public discourse concerning these issues has become so base and so harmful to interests that I hope we all share that I must now address these issues notwithstanding the Inspector General's ongoing review.

For example, I simply cannot sit idly by as a Majority Member of the House Committee on Oversight and Government Reform suggests, as happened this week, that law enforcement and government employees who devote their lives to protecting our citizens be considered "accessories to murder." Such irresponsible and inflammatory rhetoric must be repudiated in the strongest possible terms. Those who serve in the ranks of law enforcement are our Nation's heroes and deserve our Nation's thanks, not the disrespect that is being heaped on them by those who seek political advantage. I trust you feel similarly and I call on you to denounce these statements.

I also want to be very clear that protecting American citizens from the devastating effects of gun violence is among the most important responsibilities of the Department of Justice. Likewise, ensuring that weapons sold here do not flow south to Mexico is of paramount importance. We are committed to disrupting and dismantling the organizations that traffic weapons across our borders and I am proud to

stand with our brave law enforcement officers who fight every day to protect our citizens and those of Mexico from the effects of gun violence and illegal gun trafficking.

A. Fast and Furious was a Flawed Response to a Serious Problem on the Southwest Border

According to ATF, it took into evidence nationwide approximately 35,000 firearms in FY 2011. In FY 2010, the number was approximately 37,500. During that same period, ATF reports that it took into evidence nationwide over 5 million rounds of ammunition. Still, the Southwest Border remains the front line in the battle against illegal gun trafficking. ATF and our prosecutors struggle mightily to make cases against gun smugglers and do outstanding work on a daily basis in an effort to stop the flow of guns across our borders.

Notwithstanding the seriousness of the problem faced on the Southwest Border, there is no doubt that Operation Fast and Furious was fundamentally flawed. Regrettably, its effects will be felt for years to come as weapons that should have been interdicted but were not continue to show up at crime scenes in this country and in Mexico. This is both tragic and completely unacceptable. I want to be very clear that we must aim to disrupt and dismantle the dangerous cartels that operate south of our border. That said, in our pursuit of that goal we must take all steps possible to prevent guns from crossing our border and the desire to bring cartel leaders to justice does not and cannot justify losing track of dangerous weapons.

For that very reason, in 2011, after the controversy about this matter arose, I took decisive action to ensure that such operations are never again undertaken. First, I referred the matter to the Department's Inspector General for review so the facts underlying it could come out. Second, I instructed the Deputy Attorney General to reiterate to our prosecutors and law enforcement components that Department policy prohibits the design or conduct of undercover operations which include the uncontrolled crossing of guns across the border. In addition, new leadership is now in place both at ATF and in the United States Attorney's Office in Arizona. It has become clear that the flawed tactics employed in Fast and Furious were not limited to that operation and were actually employed in an investigation conducted during the prior Administration. Regardless, those tactics should never again be adopted in any investigation.

B. No Knowledge of Fast and Furious' Misguided Tactics

Much has been made in the past few days about my congressional testimony earlier this year regarding Fast and Furious. My testimony was truthful and accurate and I have been consistent on this point throughout. I have no recollection of knowing about Fast and Furious or of hearing its name prior to the public controversy about it. Prior to early 2011, I certainly never knew about the tactics employed in the operation and it is my understanding that the former United States Attorney for the District of Arizona and the former Acting Director and Deputy Director of ATF have told Congress that they, themselves, were unaware of the tactics employed. I understand that they have also told Congress that they never briefed me or other Department leadership on the misguided tactics that were used in Fast and Furious. Of course, that is not surprising for, as Chairman Issa made clear in an interview on CNN just this week, even the former Acting Director of ATF "has said he didn't know about" the tactics being used in the field by his agency.

In the past few days, some have pointed to documents that we provided to Congress as evidence that I was familiar with Fast and Furious earlier than I have testified. That simply is not the case and those suggestions mischaracterize the process by which I receive information concerning the activities of the Department's many components. On a weekly basis, my office typically receives over a hundred pages of so-called "weekly reports" that, while addressed to me, actually are provided to and reviewed by members of my staff and the staff of the Office of the Deputy Attorney General. The weekly reports contain short summaries of matters that the agencies deem of interest that week. Sometimes, the summaries are simply a sentence-long and other times they consist of a paragraph. In some cases, the summaries are of policy-related issues or upcoming events. In other cases, the summaries are brief, high-level reviews of pending matters or investigations. It is important to look at the documents supposedly at issue here and, for that reason, I have attached them to this letter and am making them public in the form they previously were provided by us to Congress. Please note that none of these summaries say anything about the unacceptable tactics employed by ATF.

Attorneys in my office and in the Office of the Deputy Attorney General review these weekly reports and bring to my attention only those matters deemed to require my consideration or action; given the volume of material to which I must devote my attention, I do not and cannot read them cover-to-cover. Here, no issues concerning Fast and Furious were brought to my attention because the information presented in the reports did not suggest a problem. Rather, the entries suggest active law enforcement action being taken to combat a firearms-trafficking organization that was moving weapons to Mexico. For example, the ATF weekly report for July 19-23, 2010 briefly described the seizure in Phoenix of 73 firearms and 250 AK-47 drum magazines from a local business as part of Operation Fast and Furious, again with no mention of any unacceptable tactics.

If a component of the Department has concerns about a particular matter, there are established avenues for raising them with my office or that of the Deputy Attorney General and a weekly report is not one of them. As Attorney General, I am not and cannot be familiar with the operational details of any particular investigation being conducted in an ATF field office unless those details are brought to my attention. That did not happen with Fast and Furious until the public controversy arose in 2011.

Senator Grassley has suggested that I was aware of Operation Fast and Furious from letters he provided to me on or about January 31, 2011 that were addressed to the former Acting Director of ATF. However, those letters referred only to an ATF umbrella initiative on the Southwest Border that started under the prior Administration -- Project Gunrunner -- and not to Operation Fast and Furious.

To be sure, during 2010 I knew generally that ATF was conducting gun trafficking operations along the Southwest Border and elsewhere in the country since that is a core part of its mission given the large number of firearms flowing to Mexico each year from the United States. I also was aware of the existence of Project Gunrunner. More specifically, however, I now understand some senior officials within the Department were aware at the time that there was an operation called Fast and Furious although they were not advised of the unacceptable operational tactics being used in it. For example, I understand that we have provided to Congress materials from a March 2010 monthly meeting between the then-Acting Deputy Attorney General and senior ATF officials that included discussion of Fast and

Furious. That meeting, of course, occurred shortly before Chairman Issa received his own briefing regarding Fast and Furious from some of the same ATF officials. I am aware that Chairman Issa has said that he was not briefed on the unacceptable details of Fast and Furious. Like Chairman Issa, the then-Acting Deputy Attorney General was not told of the unacceptable tactics employed in the operation in his regular monthly meetings with ATF to discuss its activities throughout the United States and abroad.

C. Congress Has Failed to Consider Whether Additional Tools Are Needed to Stem the Flow of Guns into Mexico

ATF witnesses testified before the House Committee on Oversight and Government Reform that the agency's ability to stem the flow of guns from the United States into Mexico is severely impaired by a lack of effective law enforcement tools. For example, a number of witnesses indicated that current penalties for illegal straw purchases are inadequate to deter such activity or to induce cooperation with law enforcement authorities after a violation is detected. Likewise, the lack of reporting requirements for multiple long gun purchases in a short period of time hindered law enforcement efforts to combat gun trafficking. Yet, the House of Representatives has voted to block a rule that requires such reporting on the Southwest Border.

As I have said, the fact that even a single gun was not interdicted in this operation and found its way to Mexico is unacceptable. Equally unacceptable, however, is the fact that too many in Congress are opposed to any discussion of fixing loopholes in our laws that facilitate the staggering flow of guns each year across our border to the south. I cannot help but note that at the same time that some members of Congress understandably criticize the Fast and Furious operation, they vehemently refuse to consider whether ATF has the resources and legal tools it needs to do its job -- tools that would be entirely consistent with the constitutional rights of law-abiding citizens.

A telling moment in this regard came during one of the Fast and Furious hearings held by the House Committee on Oversight and Government Reform when Representative Maloney sought to question an ATF witness about potential reforms to our laws that would help stem the flow of illegal weapons. Representative Maloney was cut-off in mid-sentence by Chairman Issa, who then "cautioned" the witness that it would not be "valid testimony" to respond to such questions because the Committee was not interested in "proposed legislation and the like[.]" While failing to interdict weapons is an unacceptable tactic to stop the flow of illegal weapons, it seems clear that some in Congress are more interested in using this regrettable incident to score political points than in addressing the underlying problem. Even in the face of an unprecedented flow of guns across the border, too many in Congress still oppose every effort to reform our gun laws in ways that would make the United States and our Mexican neighbors safer.

Until we move beyond the current political climate -- where real solutions take a back seat to both political posturing and making headlines on cable news programs, and is deemed more important than actually solving our country's difficult challenges -- nothing is going to change. I hope we can engage in a more responsible dialogue on this subject in the future. There is much we all need to do together to stop gun violence on both sides of the border and make our Nation safer.

Sincerely,

Eric H. Holder, Jr.

Enclosures

U.S. Immigration and Customs Enforcement

STATEMENT

OF

KUMAR C. KIBBLE

DEPUTY DIRECTOR

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
DEPARTMENT OF HOMELAND SECURITY

REGARDING A HEARING ON

"COMBATING ORGANIZED CRIME: EVALUATING CURRENT AUTHORITIES, TOOLS, AND RESOURCES"

BEFORE THE

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CRIME AND TERRORISM

Tuesday, November 1, 2011
10:00AM

226 Dirksen Senate Office Building
Washington, DC 20510

INTRODUCTION

Chairman Whitehouse, Ranking Member Kyl, and distinguished Members of the Subcommittee:

On behalf of Secretary Napolitano and Director Morton, I would like to thank you for the opportunity to discuss the role of U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) in combating transnational organized crime. ICE has the most expansive investigative authority and largest team of investigators in the Department of Homeland Security (DHS). With more than 20,000 employees and a budget of $5.7 billion, ICE has nearly 7,000 HSI special agents assigned to more than 200 cities throughout the United States and 70 offices in 47 countries worldwide. ICE is uniquely positioned and exclusively devoted to disrupting and dismantling transnational criminal networks by targeting the illicit pathways and organizations that engage in human smuggling and produce, transport, and distribute illicit contraband.

ICE targets transnational criminal organizations at every critical phase in the cycle: internationally in cooperation with foreign counterparts, where transnational criminal and terrorist organizations operate; at our nation's physical border and ports of entry (POEs) in coordination with U.S. Customs and Border Protection (CBP), where the transportation cells attempt to exploit America's legitimate trade, travel, and transportation systems; and in cities throughout the United States, where criminal organizations earn substantial profits off the smuggling of aliens and illicit goods.

Over the last two decades, transnational organized crime has expanded dramatically in size, scope and impact—posing a significant threat to national and international security. In response, earlier this year, the Administration launched its new Strategy to Combat Transnational

Organized Crime (TOC Strategy). In his written message to the Strategy, President Obama states that the Strategy is organized around a single, unifying principle: to build, balance, and integrate the tools of American power to combat transnational organized crime—and urge our partners to do this. DHS and ICE fully support this principle to bring together best practices from international, federal, local, state and tribal law enforcement in order to combat transnational organized crime and related threats to our national security. The Strategy sets out six priority actions. The first starts at home by taking shared responsibility and swift action within our own borders to combat TOC domestically and to lessen its impact on our international partners; enhance intelligence and information sharing; protect the financial system and strategic markets against transnational organized crime; strengthen interdiction, investigations, and prosecutions; disrupt drug smuggling and human trafficking and its facilitation of other transnational threats; and build international capacity, cooperation, and partnerships.

ICE Response to the Strategy to Combat Transnational Organized Crime

ICE takes very seriously the threat to national security that transnational organized crime represents. ICE developed a robust implementation plan called the Illicit Pathways Attack Strategy (IPAS). ICE designed the IPAS to focus its resources in a manner that best targets, disrupts, and dismantles transnational organized crime while maximizing efficiency. The IPAS provides a methodology and mechanism for ICE to prioritize threats and vulnerabilities within its mission and to coordinate its own efforts internally and among our Federal partners. Ultimately, the IPAS will enhance ICE's and host country partners' abilities to investigate and prosecute individuals involved in transnational criminal organizations that threaten the stability and national security of the host countries and pose continuing threats to the homeland security of the United States.

Prioritization allows ICE to strategically focus enforcement and capacity building efforts along the continuum of crime within and beyond our borders. IPAS provides a structure for engagement with host country partners to increase joint investigations, enhance exchange of information, and support foreign and domestic prosecutions. The IPAS is built upon principles of:

- Attacking criminal networks within and beyond our borders;
- Prioritizing networks and pathways that pose the greatest threats;
- Participating and facilitating robust interagency engagement; and
- Pursuing a coordinated regional approach that leverages foreign partners.

ICE uses a risk-factor based methodology to identify converging networks, routes and infrastructure used by multiple criminal organizations. In particular, ICE prioritizes its efforts on attacking convergence points and vulnerabilities along the illicit travel and transport continuum. ICE uses traditional law enforcement techniques as well as high tech analytical tools like biometric data collection.

At ICE, we work hard to collaborate with federal, state, local and tribal partners at every opportunity. A coordinated strategy of attacking criminal networks at multiple locations along the illicit travel continuum will reduce pressure on law enforcement resources and assist partner nations in preventing or disrupting organized alien smuggling within their own territories. The ICE led National Intellectual Property Rights Coordination Center (IPR Center), ICE's Bulk Cash Smuggling Center, the Drug Enforcement Administration (DEA) Special Operations Division, Department of Defense Combatant Commands, DEA's El Paso Intelligence Center (EPIC), the Organized Crime Drug Enforcement (OCDETF) Fusion Center, the Organized

Crime Intelligence and Operations Center (IOC-2), and the National Counterterrorism Center are all examples of this coordinated, collaborative effort.

The Administration's Strategy makes clear that due to U.S. and international pressure, terrorists increasingly are turning to crime and criminal networks to fund and facilitate their illicit activities. A threat of particular concern is the convergence of terrorist travel and human trafficking. One recent case exemplifies this trend that we will continue to address through the IPAS. An HSI Attaché Quito terrorist mobility investigation was conducted jointly with HSI Atlanta, the Department of Justice, and the FBI, as well as Ecuadorian authorities through the HSI Quito Transnational Criminal Investigative Unit (TCIU). The investigation focused on a criminal travel network engaged in facilitating the illicit transnational movement of suspected members of terrorist organizations like Al Qaeda, Tehrik-i-Taliban Pakistan (TTP), and Jaish-e-Mohammed.

In September 2011, three Pakistani citizens pleaded guilty in the District of Columbia to one count each of conspiracy to provide material support to the Tehrik-I-Taliban (TTP), often referred to as the Pakistani Taliban, a designated foreign terrorist organization. Sentencing is scheduled for December 9, 2011; each defendant faces a maximum sentence of 15 years in prison and a fine of up to $250,000. As part of their plea agreements, the defendants have agreed to a stipulated order of removal to Pakistan upon the completion of their criminal sentences.

Between January 3, 2011, and March 10, 2011, the three conspired to provide material support to the TTP in the form of false documentation and identification, knowing that the TTP engages in terrorist activity and terrorism. According to court documents, they conducted a human smuggling operation in Quito, Ecuador, during which they attempted to smuggle an individual they believed to be a member of the TTP from Pakistan into the United States. Court

documents indicate that law enforcement agents directed confidential sources to ask the defendants, who were residing in Ecuador at the time, for their assistance in smuggling a fictitious person from Pakistan to the United States. Over the course of the ensuing negotiations, the defendants were made aware that the person to be smuggled was a member of the TTP who was blacklisted in Pakistan. The defendants agreed to move this person from Pakistan into the United States, despite his purported affiliation with the TTP, and accepted payment from the confidential sources for the smuggling operation and procured a false Pakistani passport for the purported TTP member. The three individuals were arrested in Miami on March 13, 2011, on conspiracy to commit alien smuggling and then pleaded guilty to terrorism conspiracy charges.

The investigation, carried out in conjunction with the Government of Ecuador, was conducted under the Extraterritorial Criminal Travel Strike Force (ECT) program, a joint partnership between the Justice Department's Criminal Division and HSI with invaluable support from the Criminal Division's Office of International Affairs, the U.S. National Central Bureau of INTERPOL, CBP and the US Embassy in Quito. The ECT program focuses on human smuggling networks that present national security or public safety risks or present grave humanitarian concerns.

Securing and Managing our Borders Against Illicit Trade, Travel, and Finance

The Southwest Border Initiative

In March 2009, the Administration launched the Southwest Border Initiative to bring unprecedented focus and intensity to Southwest Border security. In support of this initiative, ICE targeted considerable resources at the Southwest Border to address the activities associated with transnational criminal organizations, including the interdiction of contraband such as

firearms, ammunition, bulk cash currency, and stolen vehicles; human smuggling; human trafficking; and the detection of tunnels and other border crime at and between ports of entry along the Southwest Border. Under this initiative, ICE has: doubled the personnel assigned to the Border Enforcement Security Task Forces (BESTs); increased the number of intelligence analysts along the Southwest Border focused on cartel violence; and tripled deployments of Border Liaison Officers to work with their Mexican counterparts. Indeed, ICE now has one quarter of its personnel assigned to the Southwest Border—more agents and officers along the border than ever before.

As part of this Initiative, ICE has collaborated with the Department of Health and Human Services (HHS) on prevention and treatment approaches that specifically target drugs being smuggled across the southern border and the populations abusing these drugs. Reducing the local demand for illicit drugs through prevention and treatment will in turn reduce the quantity of drugs smuggled across the border.

Border Enforcement Security Task Forces (BESTs)

ICE continues to expand the BEST program, which currently operates in 22 locations throughout the United States and Mexico. BEST leverages over 650 federal, state, local, and foreign law enforcement agents and officers representing over 85 law enforcement agencies and provides a co-located platform to conduct intelligence-driven investigations to identify, disrupt and dismantle criminal organizations posing significant threats to border security. In fiscal year (FY) 2011, ICE-led BESTs made 2,119 criminal arrests, 1,121 administrative arrests, and federal and state prosecutors obtained 1,079 indictments and 998 convictions in BEST-investigated cases.

In 2009, Secretary Napolitano announced the formation of the first-ever Mexico-based BEST to facilitate the exchange of law enforcement information and to support the joint investigation of criminal activity that falls within ICE's purview. These crimes include weapons and munitions smuggling, money laundering, human smuggling, human trafficking, customs fraud, and cybercrime violations. The Mexico City BEST includes both Mexican law enforcement officers and prosecutors working collaboratively with ICE and other United States government staff to share information and expertise in cooperative investigations.

International Partners and Cooperation

With 70 offices worldwide, ICE works closely with our federal agency and international partners to disrupt and dismantle transnational criminal organizations. As part of these efforts, ICE currently maintains nine Transnational Criminal Investigative Units (TCIUs) worldwide. These units are composed of highly trained host country counterparts who have the authority to investigate and enforce violations of law in their respective countries. Because ICE officials working overseas do not possess law enforcement or investigative authority in host countries, the use of these TCIUs enables ICE to disrupt, dismantle, and prosecute transnational criminal organizations while respecting the sovereignty of the host country.

In FY 2010, ICE's international partners played a central role in Operation Pacific Rim. Working closely with the Colombian National Police, Mexican authorities, and our partners in Ecuador and Argentina, as well as the FBI and DEA, ICE led an investigation that spanned the globe and effectively disrupted one of the most powerful and sophisticated bulk cash and drug smuggling organizations in the world. The case began when HSI and Colombian police intercepted a suspicious shipment of what was supposed to be fertilizer, but was instead bundles

of shrink-wrapped cash. HSI's El Dorado Task Force coordinated the investigation; the task force targets financial crime at all levels and consists of 260 members of local, state, and federal law enforcement, intelligence analysts, and federal prosecutors. As a result of law enforcement cooperation, both domestic and international, this operation resulted in 10 convictions, 21 indictments and seizures totaling more than $174 million in cash, 3.8 tons of cocaine and $179 million in property.

During 2011, two more TCIUs became operational and ICE plans to expand additional TCIUs in FY 2012.

In 2009, ICE partnered with the Department of State Bureau of International Narcotics and Law Enforcement Affairs (INL) to organize the Trans-Pacific Symposium on Dismantling Transnational Illicit Networks. This meeting brought together 25 countries and jurisdictions from across the Pacific to explore common approaches and strengthen cooperation against transnational criminal networks that span East Asia, the Pacific and Latin America. The Symposium acted as a platform to launch a number of joint INL/ICE international projects. By building cooperative platforms and networks, the U.S. will generate greater collective action, joint cases, and common strategic approaches with our international partners to combat converging transnational criminal threats.

ICE Enforcement Efforts

Counter-proliferation Investigations

ICE is charged to prevent foreign adversaries from illegally obtaining U.S. military products and sensitive technology, including weapons of mass destruction and their components. ICE is a leading law enforcement agency responsible for investigating U.S. export control law

violations, including all U.S. export laws related to military items, controlled "dual-use" commodities and sanctioned or embargoed countries. In FY 2011, ICE initiated 1,780 new investigations into illicit procurement activities, made 583 criminal arrests, and made 2,332 seizures valued at $18.9 million.

In 2010, ICE, in coordination with the World Customs Organization (WCO), launched "Project Global Shield," an unprecedented multilateral law enforcement effort aimed at combating the illicit cross-border diversion and trafficking of precursor chemicals used by terrorist and other criminal organizations to manufacture improvised explosive devices by monitoring their cross-border movements. On June 23, 2011, Global Shield was endorsed by the WCO Council and expanded from a pilot project to a long-term program. It currently has 83 participating countries and has led to 19 arrests, 24 seizures, and chemical seizures totaling over 33 metric tons.

In November 2010, President Obama issued an Executive Order directing the Secretary of Homeland Security to establish the interagency Export Enforcement Coordination Center (EECC) to be led by ICE. The EECC will streamline matters relating to export enforcement by coordinating among CBP, the Departments of Homeland Security, State, Commerce, Treasury, Defense, Justice, Energy, the Office of the Director of National Intelligence, and other executive branch departments, agencies, or offices as the President may designate. Once fully operational, the center, which will be managed and operated by ICE, will enhance the United States' ability to combat illicit proliferation and serve as a hub for exchanging information and intelligence related to export enforcement.

An example of a successful international case involves the illegal transshipment of dual-use technology to Iran. ICE's counter-proliferation efforts uncovered a scheme by a proliferator in Canada to obtain and export materials to Iran for use in the production of nuclear materials. On July

29, 2010, Mahmoud Yadegari was sentenced in a Canadian court to four years and three months' incarceration for attempting to export pressure transducers (which have applications in the production of enriched uranium, a critical step in creating nuclear energy and weapons) to Iran. He purchased the pressure transducers from a U.S. company. He then had them exported to Canada where he attempted to forward them to Iran through the United Arab Emirates. Company officials in Massachusetts alerted ICE to the purchases, and ICE, in turn, coordinated its investigation with Canadian authorities.

Human Trafficking and Smuggling Investigations

ICE works with our interagency and international partners to improve transnational law enforcement cooperation and disrupt and dismantle international human smuggling and trafficking networks and organizations along their entire routes. ICE holds the directorship of the Human Smuggling and Trafficking Center (HSTC), an interagency information and intelligence fusion center and clearinghouse. The HSTC was established to facilitate the broad dissemination of anti-smuggling and trafficking information and help coordinate the U.S. Government's efforts against human smuggling, human trafficking and criminal facilitation of terrorist mobility.

Recently, ICE's Office of Intelligence established a Human Trafficking Unit to develop intelligence and identify potential human trafficking investigative targets. In the coming fiscal year, ICE plans to expand coordination with the Departments of Justice and Labor to initiate additional investigations of human trafficking violations. In addition, in July 2010, the DHS launched the Blue Campaign to coordinate and enhance the Department's efforts to combat human trafficking. The Campaign harnesses and leverages the varied authorities and resources

of DHS to deter human trafficking by increasing awareness, protecting victims, and contributing to a robust criminal justice response. ICE is an active participant in this campaign.

Sadly, a significant number of human trafficking victims are children. ICE takes these cases very seriously. ICE's "Operation Predator" targets and investigates human smugglers and traffickers of minors, as well as child pornographers, child sex tourists and facilitators, criminal aliens convicted of offenses against minors, and those deported for child exploitation offenses who have returned illegally. Since its launch in 2003, Operation Predator has resulted in the arrest of over 13,594 sexual predators, of which 10,975 were non-U.S. citizens.

Our efforts to dismantle transnational criminal organizations are producing tremendous results. One example is "Operation In Plain Sight," a targeted investigation focused on dismantling a human smuggling network that used transportation companies, referred to as "shuttle companies," to facilitate the smuggling and transportation of aliens away from our borders to the interior of the United States. The bi-national investigation, which included unprecedented cooperation with Mexico's Secretaria Seguridad Publica and marked the most comprehensive human smuggling investigation in ICE history, ultimately implicated high level members of human smuggling organizations in Phoenix, Tucson, and Nogales, Arizona, and in northern Mexico. Specifically, Operation In Plain Sight resulted in: nearly 50 criminal arrests and more than 40 administrative arrests; seizures of illicit weapons, cash, and vehicles; and the initiation of other promising investigations of criminal organizations in Mexico – effectively dismantling an entire criminal enterprise engaged in smuggling through Arizona.

Combating Intellectual Property (IP) Theft

ICE is a leading agency in the investigation of criminal intellectual property violations involving the illegal production, smuggling, and distribution of counterfeit and pirated products, as well as associated money laundering violations. Led by ICE, the IPR Center, located in Arlington, Virginia, brings together 19 relevant federal and international partners to efficiently and effectively leverage resources, skills and authorities to provide a comprehensive response to IP theft. The mission of the IPR Center is to address the theft of innovation that threatens U.S. economic stability and national security, undermines the competitiveness of U.S. industry in world markets, and places the public's health and safety at risk.

The IPR Center is leading an effort to educate the public and other audiences about IP theft and its connection with transnational organized crime. In June 2010, the IPR Center hosted a symposium titled "IP Theft and International Organized Crime and Terrorism: The Emerging Threat." Panels of academics, industry leaders and domestic and international government officials discussed links between transnational organized crime, terrorism and IP theft.

ICE's IP theft enforcement efforts have continued to increase under this Administration. In FY 2010, ICE initiated 1,033 intellectual property infringement cases—a 42 percent increase over FY 2009—and achieved 365 arrests. In that same year, criminal charges were brought against 216 defendants, and 170 defendants were convicted in connection with ICE-investigated cases. In FY 2010, indictments returned in connection with ICE-initiated intellectual property investigations increased by 86 percent over the previous year. These figures include both federal and state prosecutions.

Transnational Gangs

Transnational gangs often conspire with other dangerous criminal organizations, which allow them to mature from small autonomous criminal groups into larger, international criminal enterprises engaged in human smuggling and trafficking, narcotics smuggling and distribution, money laundering, weapons smuggling and arms trafficking, kidnapping, extortion, and export violations.

Operation Community Shield, an ICE-led anti-gang program, combines ICE's statutory and administrative enforcement authorities with our law enforcement partnerships. Community Shield increases public safety by combating the growth and proliferation of transnational gangs in communities throughout the United States, and ICE conducts targeted enforcement operations using criminal arrest and administrative removal authorities against gang members, thereby disrupting the ability of gangs to operate. In addition, these targeted enforcement operations lead to the development of information critical to the successful prosecution of transnational gang members for conspiracy and racketeering related violations. Since its inception in 2005, Operation Community Shield has led to the arrests of more than 23,090 gang members and associates, 8,735 of whom had prior violent criminal histories. In addition, 266 gang leaders have been arrested and 2,140 weapons have been seized.

In February 2011, ICE completed "Project Southern Tempest," the largest ever Homeland Security Investigations-led national initiative targeting gangs with ties to Mexican drug trafficking organizations. The ICE National Gang Unit initiated Project Southern Tempest under the auspices of Operation Community Shield to combat the national security and public safety threats posed by transnational street gangs conducting business on behalf of Mexican drug trafficking organizations in the United States. Southern Tempest was executed in 168 U.S. cities

side by side with 173 of our federal, state, and local law enforcement partners, and led to the arrest of 678 gang members and associates. More than 46 percent of those arrested during this operation were members or associates of gangs with ties to Mexican trafficking organizations. Of those arrested, 447 were charged with criminal offenses and 322 had violent criminal histories. Southern Tempest also led to several significant seizures from gang members and associates, including 86 firearms.

Foreign Corruption Investigations

Large-scale corruption on the part of public officials in other nations, particularly developing nations, poses a significant threat to public trust and government infrastructure. In many cases, public corruption exists in unstable environments in which criminal and terrorist organizations flourish. In response, ICE created the Foreign Corruption Investigations Group, which pursues corrupt foreign officials who plunder state coffers for personal gain and then attempt to place those funds in the U.S. financial system.

ICE participates in the overall U.S. government response to the issue of large-scale foreign public corruption as a member of an ad hoc anti-kleptocracy working group. ICE plays an integral role in developing the government-wide anti-kleptocracy strategy due to the agency's expertise in investigating international money laundering and enforcing customs and immigration law. Since the inception of the Foreign Corruption Investigations Group, ICE has initiated more than 182 investigations, made 80 criminal arrests, and seized more than $131 million associated with foreign corruption.

Money Laundering and Bulk Cash Smuggling Investigations

One of the most effective methods for dismantling transnational criminal organizations is to attack the criminal proceeds that fund their operations. ICE investigations utilize a "supply chain attack" strategy designed to trigger cascading failures within a criminal organization by simultaneously targeting multiple components within the organization.

The combination of successful financial investigations, reporting requirements under the Bank Secrecy Act, and anti-money laundering compliance efforts by financial institutions has strengthened formal financial systems and forced criminal organizations to seek other means to diversify the movement of illicit funds. ICE—as the investigative agency with jurisdiction over all crimes with a clear and direct nexus to U.S. borders—investigates money laundering and bulk cash smuggling violations. From FY 2010 to date, ICE has made 345 arrests for bulk cash smuggling under 31 U.S.C. § 5332. In that same time period, 261 defendants were convicted in federal court for this same offense.

Operation Firewall

ICE's Operation Firewall disrupts the movement and smuggling of bulk cash en route to the border, at the border, and internationally via commercial and private passenger vehicles, commercial airline shipments, airline passengers and pedestrians. Since 2005, we have enhanced Operation Firewall efforts to include surge operations targeting the movement of bulk cash destined for the Southwest Border to be smuggled into Mexico. Since its inception in 2005, Operation Firewall has resulted in more than 5,833 seizures totaling more than $567.2 million, and the arrests of 1,223 individuals. These efforts include 386 international seizures totaling more than $258.4 million and 258 international arrests.

ICE's National Bulk Cash Smuggling Center

ICE's bulk cash smuggling investigations are coordinated through the ICE-led Bulk Cash Smuggling Center, through which we provide real-time operational support to federal, state, and local officers involved in bulk cash smuggling seizures 24 hours a day, 7 days a week. Since its inception in August 2009, the BCSC has initiated 446 investigations, which have resulted in more than 183 criminal arrests, 57 indictments, and 39 convictions.

CONCLUSION

Thank you again for the opportunity to appear before you today and for your continued support of ICE and its law enforcement mission. ICE is committed to enhancing public safety and dismantling transnational criminal organizations through efforts such as those I have discussed here today. We look forward to continuing our good work, refining our existing programs and partnerships and collaborating with our federal, state, local and tribal partners to ensure the safety and security of all Americans.

I would be pleased to answer any questions you may have.

SUBCOMMITTEE ON CRIME AND TERRORISM
SENATE JUDICIARY COMMITTEE

Opening Statement of Senator Jon Kyl

"Combating International Organized Crime:
Evaluating Current Authorities, Tools, and Resources"

1 November 2011

Introduction

Chairman Whitehouse, thank you for holding this hearing.

As the world becomes more globalized, we know that organized crime no longer poses a strictly local or regional threat to the societies in which it is found. Increasingly, it is a global problem and, as such, the United States must increase its vigilance and step up efforts to combat transnational organized crime and the associated — and growing — threats it poses to our national security. Specifically, I would like to focus my remarks on the need to strengthen efforts to interdict, investigate, and prosecute transnational organized crime and its perpetrators, as well as the need to disrupt transnational drug trafficking.

Strengthening Interdiction, Investigations, and Prosecutions

As a senator from Arizona, I intimately understand the problems associated with cross-border crime along the border with Mexico. We must continue to pursue vigorous interdiction efforts to ensure that our borders are secured and the public is not threatened. I have been a supporter of innovative border enforcement efforts in the past (such as BEST, the Border Enforcement Security Task Force),

and I urge President Obama to make organized crime on our southern border a top priority.

Recently, this subcommittee heard testimony about the threat posed to our nation by terrorist financing activities. Just as terrorist-affiliated organizations continuously evolve to evade domestic and international law enforcement efforts, so too do transnational organized criminal groups. It is of utmost importance that our investigative and prosecutorial tools reflect the criminal threats we face. I have long worked hard to ensure our law enforcement agencies have the statutory framework and legal tools necessary to fight transnational criminal activity. I stand ready to continue that work today.

Disrupting Drug Trafficking

The sale and use of illegal narcotics continue to threaten the health and security of every American. We must diminish these threats by maximizing the use of current legislation (such as the Foreign Narcotics Kingpin Designation Act) by blocking all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers. This act, and others similar to it, will also aid in the prosecution of persons involved in illegal activities linked to drug trafficking.

The fight against drug trafficking is also a fight against terrorism. Many drug trafficking organizations are not pushing drugs just for financial ends, but look to use that money as a means to further their terrorist aims. That is why we must utilize our intelligence agencies more effectively to combat trafficking outfits in Mexico, South America, Europe, Asia, and — in particular — the Middle East and Africa. Disrupting the funding for this crime-terror relationship will serve a

dual purpose in decreasing the amount of drugs that come into our country while also undercutting the ability of terrorist groups to be successful.

I also remain deeply concerned about the intersection of transnational organized crime and WMD proliferators. We know that those who peddle narcotics, counterfeit cigarettes, or nuclear weapons-related materials and equipment rely on many of the same facilitators, bankers, smugglers, front companies, and transportation networks to conduct illicit activities. The U.S. government knows all too well that states such as North Korea earn desperately needed hard currency from a combination of criminal activities and illicit proliferation. I look forward to hearing from the witnesses today on the administration's efforts to disrupt the dangerous nexus between transnational organized crime and WMD proliferators.

Conclusion

The fight against transnational organized crime is an important one. Today's hearing will consider the administration's efforts to disrupt and deter this pernicious activity. I look forward to learning more about the administration's strategy to combat transnational organized crime in all of its forms, and I look forward to hearing from the witnesses that are to testify before the Subcommittee today.

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NEWS FROM U.S. SENATOR SHELDON WHITEHOUSE

FOR IMMEDIATE RELEASE
November 1, 2011

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Opening Statement of Senator Sheldon Whitehouse Crime and Terrorism Judiciary Subcommittee Hearing "Combating International Organized Crime: Evaluating Current Authorities, Tools, and Resources"

As Prepared for Delivery

Washington, D.C. – Every day, overseas criminal networks target Americans, weakening our economic prosperity and our safety. Today's hearing provides us an opportunity to evaluate our current statutory authorities, law enforcement tools, and resources for protecting the American people from the serious and ever-growing threat of international organized crime.

The organized crime networks we confront today have changed significantly from La Cosa Nostra and other criminal networks we confronted in the past. Criminal groups increasingly operate internationally, taking advantage of globalization, the internet, and new technologies to engage in sophisticated and expansive crimes targeted at victims an ocean away.

Overseas networks of cybercriminals have hacked into the computer networks of innovative American businesses, stealing valuable intellectual property in order to produce cheap competitors or counterfeits. Large-scale criminal enterprises are openly engaged in the online sale of massive amounts of stolen American movies, music, and software. And an entire criminal industry has grown up around stealing and selling credit card numbers, bank account passwords, and personal identification information of American consumers.

Criminal groups involved in human trafficking or smuggling narcotics and weapons are dangers to our communities – often engaging in kidnapping, extortion, and related acts of violence along the way. Some overseas crime networks are linked to terrorist organizations.

These foreign criminals' overseas base of operations, flexible network structures, and use of the internet and other modern tools create significant challenges for U.S. law enforcement. Investigators tracking an international crime group must regularly work in – and with – several different countries to build a single case. The laws and practical circumstances in each country pose obstacles to uncovering evidence, interviewing witnesses, and locating criminal suspects. And the hi-tech tools used by foreign criminals require our law enforcement experts to use complex and often costly forensics to identify those responsible for a crime.

Even once investigators have pieced together a case against a dangerous group and found their suspects, additional hurdles may stand in the way of bringing foreign criminals to justice. Criminal statutes, for example, may not apply to criminal groups based overseas. And some of

our most powerful criminal laws for prosecuting organized crime may not capture the types of fraud and theft that international criminals engage in today. The RICO statute, just to name one example, does not apply to computer crimes and thus does not help combat overseas hacking rings.

Overseas criminal groups demand heightened attention and resources from many elements of our government. Investigative and law enforcement agencies must work together to detect and disrupt overseas criminal plots. They must also collaborate with our economic, diplomatic, and intelligence communities to share threat information, cut off criminal networks' access to funds, and supplement criminal prosecutions with other approaches to keep the American people safe.

It is good that the Administration has announced an aggressive strategy to combat international organized crime and prepared specific legislative recommendations on which Congress can act. Today, we are joined by representatives from the Department of Justice, the Treasury Department, and ICE, who are well positioned to discuss the threats we face from foreign criminals. I also look forward to hearing more from them about what actions the Administration has taken, and what we in Congress can do to provide law enforcement with the tools it needs to confront this challenge.

Protecting American citizens and business from foreign criminals is not a partisan issue. Members of Congress in both parties agree that we must strengthen our ability to take down these overseas criminals. Our ranking member, Senator Kyl, is unfortunately not able to join us today because of his commitments on the debt committee. But I have greatly enjoyed collaborating with him this year on legislation concerning cybersecurity and on other hearings, and I look forward to working with him, and other members of the committee, on this important issue.

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Statement of the

National Retail Federation

Submitted to the

United States Senate Committee on Judiciary
Subcommittee on Crime and Terrorism

For its hearing on

Combating International Organized Crime:
Evaluating Current Authorities, Tools, and Resources

Held on

November 1, 2011

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The National Retail Federation (NRF) respectfully submits this statement for the record for the November 1, 2011 hearing entitled "*Combating International Organized Crime: Evaluating Current Authorities, Tools, and Resources*". NRF would like to thank Chairman Whitehouse, Ranking Member Kyl and the members of the Subcommittee for holding this important hearing. The issue of organized crime, both international and domestic, is a critical issue that has a significant impact on the retail industry and US consumers. We fully support efforts by Congress to identify requisite authorities, tools and resources that will help key federal law enforcement agencies, along with their partners in state and local law enforcement, address these important issues.

As the world's largest retail trade association and the voice of retail worldwide, NRF represents retailers of all types and sizes, including chain restaurants and industry partners, from the United States and more than 45 countries abroad. Retailers operate more than 3.6 million U.S. establishments that support one in four U.S. jobs – 42 million working Americans. Contributing $2.5 trillion to annual GDP, retail is a daily barometer for the nation's economy. NRF's Retail Means Jobs campaign emphasizes the economic importance of retail and encourages policymakers to support a Jobs, Innovation and Consumer Value Agenda aimed at boosting economic growth and job creation.

Organized Retail Crime

Specifically for the retail industry, when it comes to organized crime, the major issue we face is organized retail crime (ORC). According to the FBI and retail loss prevention experts, the retail industry loses between $15 and $30 billion in ORC-related activities each year. In addition, 94 percent of retailers reported that they were victims of ORC in the past year, according to the 2011 NRF Organized Retail Crime[1] survey released earlier this year. This was a 5.5% increase over last year and the largest percentage in the survey's history.

In addition to the increase in the number of retailers who have been victimized, the level of organized retail crime activity has continued to increase. According to the survey, 84.8% of retailers believe organized retail crime activity has increased within the last three years. Furthermore, an increasing number of retailers said boosters are becoming more brazen and that, on average, more than one in ten organized retail crime apprehensions (13%) lead to some level of violence, such as physical assault and/or battery.

ORC, as defined by industry experts is the "Theft/Fraud" activity conducted with the intent to convert illegally obtained merchandise, cargo, cash, or cash equivalent into financial gain (no personal use), where/when the following elements are present:

- Theft/Fraud is multiples of items; and
- Theft/Fraud is conducted:
    - over multiple occurrences;
    - and/or in multiple stores;
    - and/or in multiple jurisdictions;
    - and/or by two or more persons, or an individual acting in dual roles ("booster" and "fence operators", as discussed below).

[1] A copy of the 2011 NRF Organized Retail Crime Survey is attached.

Groups, gangs and sometimes individuals are engaged in illegally obtaining retail merchandise through both theft and fraud in substantial quantities as part of a criminal enterprise. These crime rings generally consist of "boosters" – individuals who methodically steal merchandise from retail stores – and "fence operators" who convert the product to cash or drugs as part of the criminal enterprise. Sophisticated criminals have even found ways to switch UPC bar codes on merchandise so they ring up differently at checkout, commonly called "ticket switching." Others use stolen or cloned credit cards to obtain merchandise or produce fictitious receipts to return products back to retail stores for store credit, which may be given in the form of gift cards that can then be sold online at a discount from the total value of the card (i.e., netting the criminal pure profit for what looks like a good deal to the unsuspecting consumer).

As an example, in February of this year, more than 30 individuals were arrested and indicted in the Phoenix area, for their alleged involvement in identity theft and ORC, consisting of theft, fraudulent returns to stores and selling fraudulently obtained gift cards through a popular online marketplace. The main suspect, also accused of stealing from a local charity, had a network of associates that would recruit people to shoplift items from retail stores and then return the items for store credit cards.

In many instances, organized retail crime groups target several retail stores in one day, moving from state to state, across jurisdictional lines, stealing and reselling merchandise. These groups often steal thousands of dollars worth of merchandise at a time with the intent to resell it for profit, buy drugs or fund terrorist/illicit activities. This past May, law enforcement officials in the Seattle area dismantled a sophisticated ORC ring stealing razor blades, detergent, toiletries and food items worth an estimated $6.1 million dollars. The ring leaders would pay drug addicts to steal merchandise from large retail chains, which would later be sold to smaller stores.

ORC rings typically target everyday consumer products that are in high demand and easy to steal, such as infant formula, razor blades, batteries, analgesics, cosmetics and gift cards. More expensive products such as DVDs, CDs, video games, designer clothing and electronics are also highly prized. Once stolen, the goods are resold at pawn shops, flea markets, swap meets and, increasingly through Internet websites – both their own and popular online marketplaces and auction sites.

Most concerting to consumers is that this type of criminal activity can put consumers' health and safety at risk. For example, consumers are potentially at risk when ORC rings steal consumable products, such as over-the-counter medications and infant formula. Pilfered products may not be kept under ideal or required storage conditions which can threaten the product's integrity. And often times these organized thieves will repackage and re-label stolen products to falsely extend the product's expiration date or to disguise the fact that the merchandise has been stolen. There have been numerous cases involving the theft of infant formula which was found to not be properly stored.

Federal and State Action Against ORC

One of the biggest obstacles in investigating and apprehending the criminals who steal and resell retail products through online marketplaces is the lack of resources available to local, state, and federal law enforcement to investigate these crimes. Over the past several years, there have been many attempts by Congress to pass legislation aimed at addressing the issue of ORC. Legislation has focused on properly defining ORC, creating enhanced penalties for ORC

criminals, creating a multi-agency federal unit to help state and local law enforcement and creating incentives for online marketplaces to ensure they are not knowingly allowing the sale of stolen property on their sites. While legislation has yet to pass Congress, we renew our call for Congress to pass legislation as soon as possible to help law enforcement fight ORC.

In the absence of legislation, key federal agencies have identified ORC as an important issue and have focused more of their attention and directed additional resources to addressing it. In addition, several states have passed their own ORC legislation aimed to address the issue.

The Homeland Security Investigations (HSI) Division of Immigration and Customs Enforcement (ICE) has established the Seizing Earnings and Assets from Retail Crime Heists Initiative (SEARCH Initiative) which actively looks for and investigates leads related to ORC rings that have an international scope. SEARCH Initiative investigations often target the way ORC rings earn, move and store funds. The SEARCH Initiative was started as a pilot program in 2009 and became an official program in October 2010.

Since its inception the SEARCH Initiative has resulted in the following statistics:

HSI Cases Initiated – 124
Criminal Arrests – 71
Criminal Indictments – 56
Convictions – 21
Seizures – 351
Value of Property Seized - Over $8.2 Million

These are overwhelming numbers in the short amount of time in which the SEARCH Initiative has been in operation. As ORC continues to be a major issue impacting the U.S. economy, the agencies need additional tools and resources to battle the problem. On their own, many local law enforcement entities have created ORC partnerships with industry and federal agencies to combat the growing problem. However, ORC is not limited to a state or local issue. ORC by nature is interstate, and from what we have witnessed, can also have an international nexus as well.

The Federal Bureau of Investigation currently runs an Organized Retail Theft program which specifically focuses on the most significant retail theft cases involving the interstate transportation of stolen property. Under this program, the FBI partners with law enforcement at the federal, state, and local levels, sharing intelligence and working together operationally on seven major theft task forces located in five cities around the country—Miami, El Paso, Memphis, New York, and Chicago.

While NRF supports these important initiatives, it further demonstrates the need for greater law enforcement resources and coordination at all levels of government to address the growing problem of ORC and its impact on the retail industry and the U.S. economy.

Conclusion

While retailers will continue to invest billions of dollars in trying to prevent organized retail crime and apprehend and prosecute the perpetrators, it is clear to law enforcement and the retail industry that the problem cannot be solved by fighting these cases one-by-one and only in the

shopping aisles. Without new Federal laws in place, these crimes may continue to be miscategorized and treated as petty theft or a misdemeanor. Today, ORC cases are rarely appropriately prosecuted, and when they are, individuals who are convicted usually see limited jail time or are placed on probation if they have no prior arrests. We need to change this equation and Congress can help law enforcement do so by passing federal ORC legislation.

As demonstrated by the facts above, ORC is a serious crime and a top priority for large and small retailers nationwide. Expenditures against retail theft have become part of construction budgets, merchandising budgets and information technology and staffing budgets. This is an enormously important and expensive effort for the retail industry. The continuing growth of organized retail crime and the damage it causes to communities dictates that something needs to be done to control the theft and resale market for stolen goods. With the constantly and rapidly escalating scale at which any criminal is now able to operate, it is clear that there is an immediate need to update Federal law to cover these 21st century organized criminal operations.

We thank you for your attention to this matter. We stand ready to work with the members of this Subcommittee, the Judiciary Committees of the Senate and House, and Congress to address the growing ORC problem. If you have any questions or need additional information, please contact Jonathan Gold (goldj@nrf.com), Vice President Supply Chain and Customs Policy for NRF.

National Retail Federation®
The Voice of Retail Worldwide

2011

Organized Retail Crime Survey

www.nrf.com/organizedretailcrime

About the Survey

NRF's Organized Retail Crime survey is distributed each spring to senior loss prevention executives nationwide. This year's survey features responses from 129 executives representing department/large box stores, discount, drug, grocery, restaurant and specialty retailers. The 2011 Organized Retail Crime Survey is NRF's seventh annual survey and was conducted from April 19 – May 10, 2011.

About the National Retail Federation

As the world's largest retail trade association and the voice of retail worldwide, the National Retail Federation's global membership includes retailers of all sizes, formats and channels of distribution as well as chain restaurants and industry partners from the U.S. and more than 45 countries abroad. In the U.S., NRF represents the breadth and diversity of an industry with more than 1.6 million American companies that employ nearly 25 million workers and generated 2010 sales of $2.4 trillion. www.nrf.com

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EXECUTIVE SUMMARY

The National Retail Federation's Organized Retail Crime survey, now in its seventh year, is conducted every spring to gauge the impact and severity of organized retail crime. This year's survey collects information from a variety of retailers, ranging from restaurants to department stores to specialty retailers and grocery stores. Insights of senior retail loss prevention executives from 129 retail companies are included in this report.

Organized Retail Crime Grows, Criminals Becoming More Violent

This year's survey found that organized retail crime affects almost every single retailer, with 95 percent reporting they have been a victim of organized retail crime in the past 12 months, up six percent from last year. Although retailers continue to build their defenses against this growing problem, criminals are finding myriad ways to work around the system. Retailers are also reporting that the criminals they apprehend are increasingly resorting to violence, putting the safety of both associates *and* customers at risk.

Cargo Theft Poses Major Problem for Retailers

The scope of most criminal enterprises extends far beyond store limits. For the first time in the survey's history, NRF polled retailers about this threat and found that nearly half of all respondents said they have been a victim of cargo theft within the past year. The survey found most cargo theft occurs en route from the distribution center to the store, but other points within the supply chain are just as vulnerable. This not only affects a retailer's bottom line, it also affects what consumers end up seeing on the shelves at the store and the amount of inventory available.

Top Cities Impacted by Organized Retail Crime

Crime rings throughout the country often take advantage of big cities and large highways to move their stolen merchandise and hit multiple targets. When asked where in the United States retailers have the most problems with criminal gangs and organized retail crime, cities including Los Angeles, Miami, New York and Dallas were listed. Making the list for the first time, Las Vegas and Phoenix are now among the top 10 metropolitan areas retailers say are affected, indicating criminal enterprises continue to travel the country. Many times, retailers and law enforcement officials find it difficult to track these crime gangs because they cross state lines in a matter of hours. New technologies, however, are beginning to play a vital role in tracking thefts and criminal behavior even through various states and at different retail companies.

Awareness and Allocation of Resources

As the economy forces retail executives to pay close attention to every line item in their budgets, loss prevention executives say senior leadership is more likely to understand how organized retail crime impacts the company's bottom line. This year's survey found nearly six in 10 senior loss prevention executives say their senior

management understands the severity of the problem, a big step up from the 39 percent reported in 2005. As a result, many companies are allocating additional resources – including more personnel and greater investment in technology – to combat the problem.

Retailers Identifying More Fence Locations

Organized crime gangs who steal consumer and other valuable goods such as over-the-counter medicines, baby formula, diabetic testing strips and designer jeans, often use the façade of a local pawn shop, flea market or warehouse to hide their stolen merchandise. These criminals also pose as legitimate sellers on online auction sites, selling their stolen goods to innocent and unknowing consumers. The report found more than seven in 10 retailers identified or recovered this stolen merchandise from both physical and online fence locations. Industry partnerships with law enforcement and increased resources in personnel may have contributed to the increase in identifying these stolen goods. The increase in the number of retailers who have been victimized may have played a role as well.

Legislative Efforts

Retailers have spent years lobbying Congress about the need for specific organized retail crime legislation. Specific lobbying interests include stiffer penalties for criminals involved with organized retail crimes, expanding law enforcement's ability to charge and prosecute offenders and decreasing the felony dollar amount threshold at which criminals are charged. Though retailers recently celebrated the passing of H.R. 5932, the Organized Retail Theft Investigation and Prosecution Act of 2010 in the House of Representatives, which aims to establish the Organized Retail Theft Investigation and Prosecution Unit with the Department of Justice, budget crises and several other pressing issues prevented this bill from being presented to the Senate. Several states have engaged the issue through state legislation and many have already seen success. The report outlines which states have already passed bills and those that are currently working on bills.

Conclusion

Through various platforms, retailers are able to communicate and network with industry peers about the challenges organized retail crime presents for their business and how to combat the multi-billion dollar problem. These platforms include national committees, local intelligence sharing groups, partnerships with local, state, and federal law enforcement, and relationships with lawmakers. Together, retailers and law enforcement officials are making great strides in uncovering the criminal enterprises that exist throughout the country. These collaborations have resulted in many successful federal indictments and the breakup of large crime rings, which operated for years behind physical and online fence operations.

From government affairs and strategic partnerships to grassroots initiatives, retailers have been very resourceful in finding ways to confront the issue. Efforts to pass federal legislation persist and work continues behind the scenes as executives from different companies come together to shed light on this growing problem.

2011 Organized Retail Crime Survey

Purpose

The purpose of the National Retail Federation's annual organized retail crime survey is to understand the impact of organized retail crime on retailers across the country. By measuring trends and operational methods of criminal enterprises making tens of billions of dollars in illegal profits every year, retailers, law enforcement and legislators will be in a better position to respond to this industry-wide issue which has significant repercussions on consumers, brands and local economies.

Introduction: Organized Retail Crime

Organized retail crime is defined as the theft/fraud activity conducted with the intent to convert illegally obtained merchandise, cargo, cash, or cash equivalent into financial gain (no personal use), where/when the following elements are present:

- Theft/Fraud is multiples of items
- Theft/Fraud is conducted:
  - over multiple occurrences
  - and/or in multiple stores
  - and/or in multiple jurisdictions
  - by two or more persons, or an individual acting in dual roles (booster & fence)

Groups, gangs and sometimes individuals are engaged in illegally obtaining retail merchandise through both theft and fraud in substantial quantities as part of a criminal enterprise. These crime rings generally consist of "boosters" – who methodically steal merchandise from retail stores or trailers (cargo theft) – and fence operators who convert the product to cash or drugs as part of the criminal enterprise. Sophisticated criminals have even found ways to switch UPC bar codes on merchandise so they ring up differently at checkout, commonly called "ticket switching." Others use stolen or cloned credit cards to obtain merchandise, tamper with retail equipment such as pin-pads or produce fictitious receipts to return products back to retail stores.

Organized retail crime ring members will have designated roles, such as driver, lookout, picker, packer and supervisor. They use hand signals, cell phones, GPS devices and comprehensive shopping lists. Tools of the trade include foil-lined shopping bags, purses, boxes and signal jammers to defeat inventory control tags. Some will use computers to replicate fake receipts for the purpose of making cash returns, while others will use fake credit cards or checks to purchase gift cards and other expensive goods. In some cases, employees are recruited to look the other way or provide details about camera or security systems.

Precise measurements of the true scope of this problem are difficult to determine given the inherently secretive nature of these criminal operators. However, according to Congressional testimony and industry experts, organized retail crime losses total an estimated $15-30 billion annually.

In many instances, organized retail crime groups target several retailers in one day moving from state to state stealing and reselling merchandise. These groups often steal thousands of dollars worth of merchandise at a time with the intent to resell it for profit. Many times, unsuspecting consumers purchase these items from pawn shops, swap meets, flea markets and street vendors. In recent years, crime rings have also swarmed the internet with intentions to unload their stolen goods through online marketplaces, classified ads or through their own websites. This practice is referred to as e-Fencing.

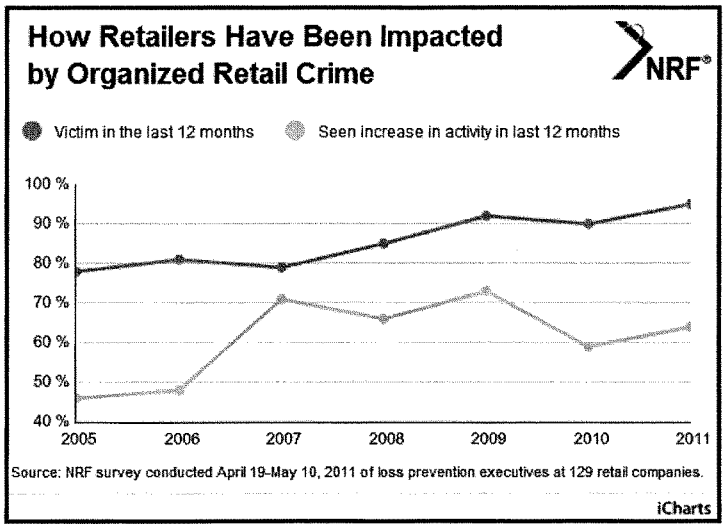
The most popular items targeted by these groups are goods in high demand commanding up to a near-retail resale price. In general, department and specialty stores groups target items such as designer clothing, handbags, lingerie and accessories. Grocery and drug stores are targeted for infant formula, over-the-counter drugs, razor blades and high-end health and beauty aids. At electronics and general merchandise locations, items range from batteries to the latest "i" devices. Stores are targeted for gift cards using fraudulent tender or return.

Increasing partnerships between retailers and law enforcement agencies demonstrate the severity of the issue for retailers of all sizes and formats. Organized retail crime gangs can wreak havoc on a company's entire operating system as well as potentially causing serious harm to store employees and shoppers should a thief get violent.

Organized Retail Crime is Increasing

According to NRF's seventh annual Organized Retail Crime survey, 94.5 percent of retailers have been a victim of organized retail crime in the past 12 months, a six percent increase from last year (89.5%). Additionally, 6 out of 10 retailers (64.1%) report they've seen an increase in organized retail crime over the same time frame, up slightly from last year (58.9%).

Organized retail crime losses are attributed to several factors including lower staffing levels at stores; the ease of selling stolen merchandise online, in pawn shops/flea markets and other fencing operations; and the current economic environment, which is ripe with consumers looking for low prices.



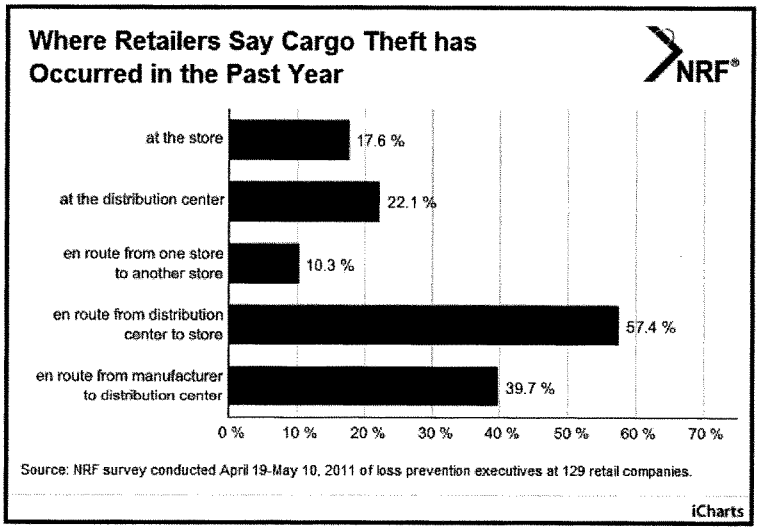
Gateway Crimes

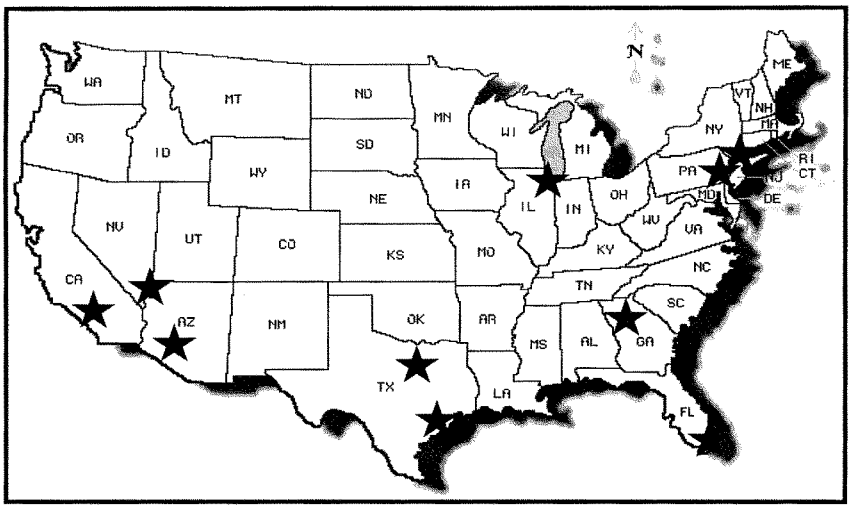
Law enforcement and industry experts believe members of organized retail crime groups are engaged in "gateway" crimes, with connections to street gangs, drugs, weapons, immigration issues and even terrorist financing. On average, retailers believe that 41 percent of organized retail criminals are involved in gateway crimes, including drugs, weapons or gangs.

As an example, it is not uncommon to see low-level drug users stealing specific merchandise at the direction of a group leader. The new merchandise they steal or fraudulently obtain is then traded for cash to buy drugs or exchanged for drugs. In some cases the proceeds of this black market activity are used to further a larger criminal enterprise engaged in stolen automobiles, money laundering, or immigration violations.

Survey Evaluates Impact of Cargo Theft for First Time

For the first time in this year's survey, the impact of cargo theft was evaluated. According to the survey, almost half (49.6%) of retailers were victims of cargo theft within the past year. Most of these thefts occurred en route from the distribution center to the store (57.4%), though retailers often experienced cargo theft from the manufacturer to the distribution center (39.7%), from one store to another (10.3%), at the distribution center (22.1%) and when the items arrived at a store (17.6%). Figure 2 shows the various location points where cargo theft is a problem for retailers.





Top 10 Cities for Organized Retail Crime

Last year survey respondents reported the top cities organized retail crime gangs targeted. This year, survey responses were very similar. The top cities in alphabetical order include:

- Atlanta, GA
- Chicago, IL
- Dallas, TX
- Houston, TX
- Las Vegas, NV
- Los Angeles, CA
- Miami/Ft. Lauderdale, FL
- New York, NY/Northern NJ
- Philadelphia, PA
- Phoenix, AZ

Las Vegas and Phoenix are two new additions to the list, replacing San Francisco and the Baltimore-DC-Northern Virginia corridor, which both continue to be areas with high organized retail crime activity.

Legislative Initiatives to Counter Organized Retail Crime

Throughout the country, retailers are working on several fronts to tackle the giant problem of organized retail crime. From government affairs and strategic partnerships to grassroots initiatives, retailers have been very resourceful in finding ways to confront the issue.

NRF has been educating state retail associations on organized retail crime since Spring 2005. Utilizing a model legislation package NRF published in 2006, several states have engaged the issue through state legislation.

Organized retail crime legislation in some states has been successful while other legislation is facing hurdles. For example, though Los Angeles and the Bay Area in Northern California are consistently rated as one of the top organized retail crime activity areas in the country, there have been setbacks on the progress of legislation due to the state's fiscal crisis with the felony threshold rising from $400 to $950 earlier this year. This year Texas and Illinois were both successful in passing legislation, while New York, New Jersey and Massachusetts are all working on bills.

> *"We must force ourselves to look beyond the surface of shoplifting and see organized retail crime for what it really is – a large, low risk, high profit criminal operation frequently run by very astute criminals who are taking advantage of our leniency, complacency, and lack of cooperative effort."*
>
> – *Sheriff Grady Judd, Polk County, Florida during Congressional testimony, September 22, 2008*

In Texas, the state legislature recently passed House Bill 2482, which removes the minimum threshold value for a charge of organized retail theft of $1,500. Punishment would be increased to the next higher category of offense for persons that organize, supervise, finance, or manage one or more other persons engaged in the activity; or if it is shown at trial the defendant caused a fire exit alarm to sound or become activated, deactivated or prevented a fire exit alarm from sounding; or used a shielding or deactivation instrument to prevent or attempt to prevent detection by a retail theft detector. The bill is headed to the Governor's desk for signature and will take effect in early fall, which is when offenses will be categorized as such.

Illinois House Bill 6460, passed in February, expands law enforcement's ability to charge and prosecute offenders of organized retail crime. Under the new law, prosecutors are able to seek forfeiture of assets of those convicted of organized retail crime. The forfeiture of assets represents a major legislative step forward in providing financial disincentive to organizers and participants of organized retail crime.

Efforts to pass federal legislation persist. In November 2010, H.R. 5932, the Organized Retail Theft Investigation and Prosecution (ORTIP) Act of 2010, passed in the House of Representatives. However, due to the budget crisis and several other pressing issues, H.R. 5932 was not presented to the Senate. This bill would have protected both retailers and consumers against the massive economic costs and very real public health and safety risks posed by

organized retail crime. Establishing a team of law enforcement professionals dedicated to fighting these crimes and working in close consultation with retailers shows the importance of this issue to industry, consumers and law enforcement, and serves as an important deterrent to perpetrators. The new Congressional session started in January 2011 and NRF is working with members of Congress to explore similar legislation this year.

Recent Organized Retail Crime Cases

Retailers and law enforcement partner together investigating many organized retail crime cases each year. The methods of operation, retail store locations and products change, but the crime is the same – stealing from retailers and depriving honest customers of the goods they seek.

> *"The weak economy has pushed consumers to look for better prices. Organized retail crime groups capitalized on that desperation competing with legitimate, taxpaying retail companies. Catching these bad actors has become a game of cat and mouse for investigators."*
>
> – *Joe LaRocca, Senior Advisor, Asset Protection, National Retail Federation*

Criminals are keen on obtaining the hottest-selling merchandise as it is highly resalable. Consumable products such as over-the-counter medications, infant formula, high-end technology devices and designer denim are some of the top targeted items to be fenced. Trends retailers have identified in top fenced merchandise include the desire for all branded merchandise, particularly exclusive licensed goods. The list of frequently targeted items is located in Addendum A.

While a significant number of organized retail crime investigations are opened and closed each year, two notable incidents have occurred in the past twelve months. See Addendum B for a larger list of organized retail crime busts.

In the last three years, very large multi-million dollar organized retail crime rings have been broken apart. Last spring, one of the largest rings operating out of the Mid-Atlantic with connections throughout the East Coast was brought down. Dubbed "Operation Pharmgate" for the preponderance of over-the-counter medications involved in the case, the investigation uncovered two warehouses, several boosters and local pawnshops all involved in the illicit activity. It's this type of activity that has retailers, lawmakers and consumers concerned. Consumers are potentially at risk when professional shoplifting rings steal consumable products, such as over-the-counter medications and infant formula. Pilfered products may not be kept under ideal or required storage conditions, which can threaten the product's integrity. And oftentimes these organized criminals will repackage and re-label stolen products to falsely extend the product's expiration date or to disguise the fact that the merchandise has been stolen. In September 2010, Albuquerque's "most prolific burglar" received a 20-year prison sentence for burglarizing nearly 50 businesses. The suspect, who was part of the "Vatos Locos" group, would smash into local businesses and steal

expensive merchandise such as iPods, sunglasses and cell phones. In addition to the merchandise losses and potential safety issues for customers and store employees, some cases involve costly repairs and an unsightly storefront to local businesses.

Incidents Involving Aggressive Thieves/Violence

Retail criminals know that if they are apprehended they face arrest, prosecution, bail and even jail. Oftentimes, they will stop at nothing to steal merchandise and keep from getting caught. Unfortunately, some of these crimes are committed through acts of violence and can endanger the lives of others. According to the survey, retailers say that 13 percent of organized retail crime apprehensions result in violence including physical assault or battery.

Many retailers report an increase in violent behavior among criminals, which puts both employees and shoppers at risk. When asked, "Within the past year, what trends in organized retail crime have you noticed," answers included:

- less fear of getting caught
- smash and grab activity significantly increased
- criminals are getting more violent, more bold
- steady increase in activity

Last holiday season, two separate incidents highlighted the extent of violence and aggression criminals are willing to exert to avoid apprehension.

In November 2010, a loss prevention associate working for Weis Markets in East Lampeter, Pa., was shot in the parking lot while attempting to apprehend two retail theft suspects. One of the suspects was taken into custody and the other was recently arrested in New York using a stolen credit card. The loss prevention associate was working a shift Sunday afternoon when he spotted two apparent shoplifters and followed them to the parking lot. One of the suspects pulled a handgun, pistol-whipped him on the head several times and then shot him.

On the same November weekend, during a police investigation into three men suspected of organized retail crime in Orlando, a suspect used a stolen van to ram an unmarked police car in the parking lot of a Target store. With dozens of shoppers in the area and few options, two officers were forced to open fire, critically injuring one suspect. The two other suspects were booked into Orange County jail on charges including grand theft and fraudulent use of personal identification information. While violent incidents do not occur during all investigations, the propensity to violence is increasing and is something retailers are monitoring.

Strategic Partnerships to Tackle Organized Retail Crime

There are several partnerships retailers have established to tackle organized retail crime in various methods including:

- national committees
- local intelligence sharing groups
- partnerships with local, state, and federal law enforcement
- relationships with lawmakers
- public media platforms

"The use of the task force approach to combating crime, coupled with successful partnerships within industry, is seen by the FBI as one of the most effective and efficient tools by which to identify, disrupt and dismantle any criminal enterprise. That strategy is working."

– *Dave Johnson, Section Chief, Criminal Investigation Division, FBI*

Committee Involvement

NRF's Joint Organized Retail Crime Task Force (JORCTF) and Investigator's Network are two committees dedicated to educating, training and working on organized retail crime. Comprised of the nation's top organized retail crime investigators, the JORCTF educates the industry and law enforcement on patterns and trends. The Investigator's Network is a committee of over 1600 retail investigators. Meetings held throughout the country in various regions and allow loss prevention and law enforcement personnel to meet regionally, track local offenders and work collaboratively on major organized retail crime issues.

Local Law Enforcement Relationships

As organized retail crime has received significant media attention over the past few years, several jurisdictions throughout the country have put in place plans to address the issue. The City of Albuquerque laid out a community strategic plan in 2008 to get the entire community engaged and involved to make their city a safer place. In 2009, the Los Angeles Area Organized Retail Crime Association (LAAORCA) recently conducted their annual training seminar with over 800 attendees from retail, law enforcement and financial institutions. Results in both communities have been astounding as criminals have begun looking for other locales in which to conduct their illicit business. Several communities throughout the country were quick to pick up the format and replicate the regional law enforcement-retail community plan in their area. Local organized retail crime associations have been created and rolled out in metropolitan areas like San Diego, Chicago and Montgomery County (MD).

Federal Law Enforcement Partnerships

Higher volume dollar loss cases, with cross-state border activity or having an international nexus are investigated alongside federal law enforcement partners at the U.S. Immigration and Customs Enforcement-Homeland Security Investigations (ICE-HSI), United States Postal Inspection Service (USPIS), United States Secret Service (USSS) and Federal Bureau of Investigation (FBI).

In July 2009, ICE-HSI launched a Pilot program in Houston, Los Angeles, Miami and New York focused on building partnerships with the retail industry and developing a series of tools to assist law enforcement in threat assessments, case tracking and most significantly, an in-depth analysis of how organized crime rings are exploiting systemic vulnerabilities in the banking system to launder their profits.

Due to the success of the Pilot, in February the program was expanded into a national initiative, which will be known as the SEARCH initiative (Seizing Earnings and Assets from Retail Crime Heists). As a result of this partnership, ICE-HSI reported that as of May 2011, more than 93 criminal HSI cases have been initiated. These cases have resulted in 41 criminal arrests, 29 indictments, 15 convictions, 251 seizures, the execution of 22 search warrants, and 15 administrative arrests. These cases have also led to the seizure of nearly $4.9 million in cash, property, and monetary instruments.

According to ICE-HSI officials, the challenge of combating these networks is best addressed through federal anti-money laundering statutes that can carry severe penalties and through partnerships between the retail industry and law enforcement at all levels. By linking these types of crimes together, federal investigations have proven the level and sophistication of criminal enterprises often involved in organized retail crime activity.

> ***"This type of organized, criminal activity is commonly looked at as a local problem, but I can assure you that is not always the case."***
>
> — *James Dinkins, Executive Associate Director, ICE-HSI*

NRF has maintained a long-standing partnership with the Federal Bureau of Investigation (FBI). Since 2005, NRF and the FBI have worked together on many fronts, from legislative and networking to training and data share initiatives. The partnership has provided education for thousands of retailers and law enforcement, and helped pave the path with a unique partnership that was established in spring 2009.

The Federal Bureau of Investigation has stated organized retail crime groups can best be dismantled through a coordinated and cooperative effort between law enforcement and the retail industry. In December 2003 the FBI established an organized retail theft initiative to identify and disrupt multijurisdictional groups using federal statutes such as conspiracy, interstate transportation of stolen property, and money laundering.

Additionally, Congress passed legislation signed by the President in January of 2006 that required the attorney general and the FBI, in consultation with the retail community, to build a system for information sharing, to include intelligence as well as lessons learned and best practices regarding organized retail theft.

Industry Partnerships

In early 2009, NRF announced a partnership with the world's largest online marketplace, eBay, to tackle organized retail crime. With support from the FBI and retailers from around the country, the Partnering with Retailers Offensively Against Crime and Theft (PROACT) program was launched. The program is aimed at identifying and stopping criminals who resell stolen goods online, and results have been encouraging.

Another important component of the partnership includes working together on legislation to enhance federal law enforcement resources to combat organized retail crime and punish major offenders through enhanced criminal penalties. The working group will also identify ways to leverage new technology, including data sharing initiatives, which offensively partners with retailers against crime and theft.

Due to the landlord-tenant relationship, retailers are working closely with mall property owners. In 2007 the NRF in partnership with the International Council of Shopping Centers (ICSC) launched a organized retail crime training video for mall security officers. By working together, criminal groups may be spotted in parking lots or mall entrances before they even enter the store and steal a single piece of merchandise. Through this collaboration, mall blitz operations have uncovered dozens of retail crime cases over the past year. This year the relationship is expanded to include joint training sessions during the NRF's Loss Prevention Conference in June 2011.

Additional Organized Retail Crime Survey Findings

Overall Organized Retail Crime Levels in the U.S.

NRF asked retailers what they thought about the pattern of criminal activity in general over the last three years. Eight out of ten retailers (84.8%) believe organized retail crime activity has increased in the last three years.

Allocation of Resources

While the economy is beginning to recover, retailers are still operating on lean budgets and cautiously adding back staff and more resources to tackle the problem. Nearly half of retailers (46.5%) polled report they are allocating additional resources toward fighting organized retail crime, a modest decrease from last year (48.4%). Some retailers surveyed spend upwards of $1 million on personnel every year to address the issue, while others are choosing to invest in technologies that have helped curb the problem.

Organized Retail Crime Threat Level

When asked how organized retail crime ranks as a threat to their company, over one-quarter (26.7%) rated the problem as a "severe" or "significant" threat to their company. On average, retailers rated organized retail crime as 2.87, which is slightly up from last year's 2.67 rating.

Physical and e-Fencing Activity

Retailers continue to report recoveries of stolen merchandise from physical and e-Fencing locations, and have experienced a significant increase in the past twelve months. According to the survey, over three quarters (75.2%) of retailers say they have identified stolen merchandise or gift cards at physical fence locations and 70.4 percent through e-Fencing activities. This is up from last year, when 62.5 percent of respondents reported recovering merchandise from physical locations and 66.1 percent from e-Fencing locations. The increases in both categories may correlate with retailers' continued awareness and efforts in working with law enforcement agencies to thwart the efforts of professional crime rings.

Top Management and Law Enforcement Understanding of Organized Retail Crime

Retailers continue to be vigilant and tuned in to the potential threat organized retail crime poses on their business. A record 58.3 percent of retailers believe that top management in their company understands the complexity and severity of organized retail crime, a sixteen percent increase over last year. Retailers have made a lot of headway with top management through education and awareness in the media, but the significant amount of traction organized retail crime has received in passing bills at the state level and supporting a bill at the federal level has raised the profile of this issue as well.

Retailers were polled on law enforcement's understanding of the severity of organized retail crime. Respondents believe 32.3 percent of law enforcement officers understand the severity of organized retail crime, down from last year's 39.5 percent. This survey point illustrates opportunities for education and training between retailers and law enforcement.

Conclusion

Retailers' level of awareness regarding the problems that organized retail crime creates for their business has never been higher. With reports of violent, brazen and aggressive criminal behavior increasing each year, retailers are on full alert these days.

Although it is encouraging that the awareness of organized retail crime is rising among senior retail executives and legislators, retailers nationwide continue to suffer billions of dollars of losses each year due to this problem. From loss of sales, consistently out-of-stock merchandise to aggressive offenders, organized retail crime gangs wreak havoc on retailers – whether it's diluting the brand or to the sheer magnitude of the dollar loss.

Organized retail crime is a serious issue for large and small retailers nationwide. Locking everything behind glass may reduce sales, dramatically impacting the revenue for businesses and tax revenues for states. Expenditures against retail theft have become part of construction budgets, merchandising budgets and information technology and staffing budgets. This is an enormously important and expensive effort for the retail industry.

The monetary losses retailers suffer each year to organized retail crime could easily go to new inventory, more employees, remodeled store fronts, sales and promotions for their shoppers, new store locations and most importantly, lower prices for consumers. Instead, some retailers are forced to resort to increasing prices on their merchandise to make up for what they lose to thoughtless, selfish and unethical criminals.

Since 2005, NRF and its various committees have been on the forefront of educating retailers, law enforcement, legislators, the business community and consumers on the vast impact of organized retail crime. As evidenced by the top 10 metropolitan areas most affected, there is still work to be done. Only four of the top 10 metropolitan areas are located in states with active organized retail crime related legislation. While state legislators nationwide are working to close this gap, this remains a challenge for retailers and law enforcement professionals.

As businesses across the country continue to grapple with a slowly recovering economy and law enforcement resources are challenged by economic cutbacks, retailers are working harder to combat the growing problem of organized retail crime. The good news is that efforts to increase the industry's awareness, law enforcement involvement and strategic partnerships have made a positive difference on the level of activity that retailers are experiencing.

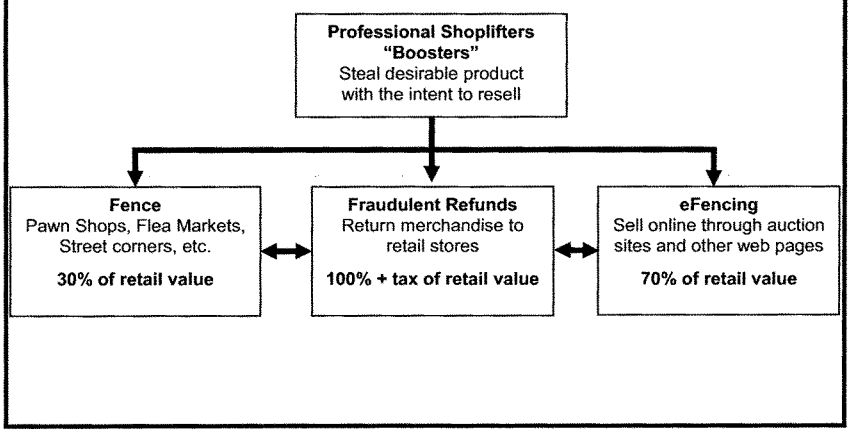
Moving forward, a continued emphasis on training and awareness programs will help retail employees identify and understand the economic effect of organized retail crime to their company, which may assist with the slightly declining trend. Additionally, by actively participating in public-private sector partnerships, retailers will help facilitate information sharing with law enforcement on large, multi-jurisdictional crimes plaguing the industry.

Addendum A—Highly Targeted Items	
Abreva	Golf Balls
Advil	Handbags
Aleve	High-end clocks
Alli weight loss pills	High-end liquor
Art Supplies	HP Ink Jet Cartridges
Aveeno Lotion	Husqvarna Chainsaws
Benadryl	Immodium Products
Blu-ray movies and player	Kitchen Aid Mixers
Braun electric razors	Laptops
Braun Toothbrushes	LCD Monitors & Televisions
Braun Replacement Heads	Levis
Bumble and Bumble Hair Products	Lincoln Pro-Mig 175 Electric Welder
Candles	Lotrimin
Cell Phones	MAC Products (notebooks, iPads, iPods)
Chewing Gum & Mints – Regular or Sugar Free	Matrix
Cigarettes	Nicorette
Claritin	NorthFace jackets
Computer Accessories	Oil of Olay
Cover Girl Cosmetics	Oral B Replacement Heads
Crest Whitestrips	Pepcid AC
Denim Jeans	Play Station 3 Consoles
Deodorant	Prilosec
DeWalt 18v Batteries	Primatene
DeWalt 18v 6-tool Combo Kit	Pureology
Diabetic testing strips	Red Bull energy drinks
Dietary Weight Gain Products (muscle building)	RoC
Dietary Weight Loss Products	Rogaine
Digital Cameras	Similac
Digital Recorders	Schick Quattro
Duracell AA & AAA batteries	Schick refill cartridges (all)
DYSON Vacuums	Sonicare replacement heads
E.P.T. Pregnancy Tests	Sudafed
Energy Drinks	Tylenol Extra Strength
Enfamil	Victoria Secret "Pink" Lingerie
Gillette MACH3 Power Refill Razor Cartridges	Visine
Gillette MACH3 Razors	X-box 360 Console
Gillette Sensor Refill Cartridges	X-box 360 Games (New Titles)
Gillette Venus Razors	Zantac

Addendum B—Recent Organized Retail Crime Cases	
Los Angeles Police Department-FBI Interstate Theft Taskforce (ITTF) **Dates of Case:** May 2009- May 2010 **Total $ Amt of Case:** $30 million total **$ Amt Seized at Time of Arrest:** $2.5 Million Seized	Large scale-fencing location operating in the Los Angeles area. National department store chain partnered with law enforcement on a case of vast quantity of Levis jeans being stolen. A separate case being run by the chain's Midwest team identified a booster crew shipping stolen merchandise to Los Angeles via a major nationwide trucking company. Several thousand pounds of Levis had been shipped West and the warehouse containing all the jeans had merchandise valued over $30 million worth of Levi's. At the end of the investigation $2.5 million worth of Levi's were seized from this operation. This case speaks to the importance of Retail and Law Enforcement partnerships. The ITTF has played a major role in the success of numerous investigations and continue to provide retailers and the community an invaluable service.
Baltimore County (MD) Police Department and United States Postal Inspector **Dates of Case:** June 2009 – March 2010 **$ Total $ Amt of Case:** $30-45 million total **$ Amt Seized at Time of Arrest:** $3-5 million seized	Dubbed "Operation Pharmgate" because the preponderance of the stolen over-the-counter medications and beauty care merchandise. Boosters were stealing health and beauty care merchandise from retailers throughout the entire mid-Atlantic region. Boosters would sell to pawn shops at 20 – 25% of its retail value and pawn shops would turn around and sell it only for at prices that were 30 – 40% LESS than the retail value. Two warehousing operations were uncovered as merchandise was being transported throughout the mid-Atlantic/East Coast. Based on transaction history and evidence, investigation was valued at $30-45 million. Law enforcement seized $3-5 million in product, with a majority needing to be destroyed as it was ingestible product (e.g. analgesics, etc)

Addendum B—Recent Organized Retail Crime Cases (cont'd)	
Appleton Police Department (WI) **Champaign Police Department (IN)** **Franklin County Sheriffs' Department (OH)** **Internal Revenue Service** **United States Postal Inspection Service** **Dates of Case:** February 2007 – March 2011 **$ Amt of Case:** $6.0 million	Starting in 2007, one serious offender began systematically stealing scrapbooking merchandise from a national chain craft store then reselling it on eBay at heavily reduced prices, sometimes 85% below retail value. The investigation revealed that merchandise had been stolen from at least 26 stores in 7 states and the operation had grown from one booster to several. Multiple undercover purchases uncovered the main offender and confidential informants tipped off investigators. The fence operation was moving away from selling on eBay (a visible source for doing business) to a more private manner of operating by solely reaching out to customers through direct marketing. The second main offender turned on the first and the case was brought to conclusion. Several agencies became involved including United States Postal Inspection Service, Internal Revenue Service and many local law enforcement agencies.
Polk County Sheriff's Office **and Florida Department of Law Enforcement** **Dates of Case:** 2003 – 2008 **$ Amt of Case:** $60-100 million	Polk County Sheriff's Office brought down a massive organized retail crime ring, which included a warehouse filled with stolen merchandise, booster crews that worked throughout the state of Florida and had stolen an estimated $60-100 million from retailers over a five-year period. The stolen merchandise was sold online on eBay and other online marketplaces.

Addendum C—How Organized Retail Crime Works



National
Retail Federation®
325 7th Street, NW
Suite 1100
Washington, DC 20004
www.nrf.com

[redacted]

From: Newell, William D.
Sent: Wednesday, July 07, 2010 8:46 PM
To: [redacted]
Subject: Re: Mexico Weapons Trafficking - The Blame Game

"ends" up... Typing and eating dinner, shame on me.
Bill Newell
Special Agent in Charge
ATF Phoenix Field Division (AZ and NM)
Cell: 602[redacted]

***

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From: Newell, William D.
To: [redacted]
Sent: Wed Jul 07 23:44:18 2010
Subject: Re: Mexico Weapons Trafficking - The Blame Game

As for "large seizures" and "DTO related" what about the recent 147 guns in Laredo specifically intended for the Zetas? I could go on and on but once our "Fast and Furious" case breaks it will change this. [redacted] and crew know better and we (ATF) needs to be careful about feeding Dept of State with opinion instead of fact. It appears to me that this cable, "authored" by the Ambassador, was based largely on opinion and not fact. It may be the easy road but unfortunately always up being a dead end.
Bill Newell
Special Agent in Charge
ATF Phoenix Field Division (AZ and NM)
Cell: 602-[redacted]

***

NOTICE: This electronic transmission is confidential and intended only for the person(s) to whom it is addressed. If you have received this transmission in error, please notify the sender by return e-mail and destroy this message in its entirety (including all attachments).

From: [redacted]
To: Newell, William D.
Sent: Wed Jul 07 20:21:43 2010
Subject: Fw: Mexico Weapons Trafficking - The Blame Game

***

NOTICE: This electronic transmission is confidential and intended only for the person(s) to whom it is addressed. If you have received this transmission in error, please notify the sender by return e-mail and destroy this message in its entirety (including all attachments).

From: [redacted]
To: [redacted]
Sent: Wed Jul 07 20:19:05 2010
Subject: FW: Mexico Weapons Trafficking - The Blame Game

From: Gil, Darren D.
Sent: Tuesday, July 06, 2010 10:56 AM
To: [redacted]
Cc: [redacted]
Subject: FW: Mexico Weapons Trafficking - The Blame Game
Importance: High

All,

This is the cable that went to Main State. Quite extraordinary in its honest language of the situation here in Mexico.

Although not classified, this cable is sensitive and should not be distributed outside of our offices here in Mexico.

[redacted] Leadership should be advised, as I sent an earlier version up already.

Please note the Ambassador's comments which refer to your hard work and commitment here in Mexico, you all are to be commended.

d.

Darren D. Gil
ATF Attache-Mexico

(011) 52 [redacted]
(011) 52 [redacted]
[redacted]

From: Gil, Darren D (Mexico City) [redacted]
Sent: Tuesday, July 06, 2010 9:51 AM
To: Gil, Darren D.
Subject: FW: Mexico Weapons Trafficking - The Blame Game

SBU
This email is UNCLASSIFIED.

From: [redacted]
Sent: Friday, July 02, 2010 10:32:43
To: [redacted]

Cc: [redacted]

Subject: Mexico Weapons Trafficking - The Blame Game

UNCLASSIFIED

Action Office:	LEGAT, POL, ORA
Info Office:	RSO, DAO, ATF, DOJ, USSS, ODC

MRN:	10 MEXICO 365
Date/DTG:	Jul 02, 2010 / 021531Z JUL 10
From:	AMEMBASSY MEXICO
Action:	WASHDC, SECSTATE *ROUTINE*
E.O.:	[redacted]
TAGS:	PGOV, PINR, MX, PREL
Captions:	SENSITIVE, SIPDIS
Reference:	[redacted]
Pass Line:	WHA
Subject:	Mexico Weapons Trafficking - The Blame Game

1. (SBU) Summary. The Mexican Government (GOM) has consistently focused the blame for weapons trafficking into Mexico squarely on the United States. Recent articles in Mexico City daily, El Universal, however, have called into question whether all the responsibility rests with the United States, or whether there is also more Mexico can do to combat this problem. It appears that Mexico may be just starting to realize that the answer to the arms trafficking problem requires confronting the challenge on both sides of the border. Nevertheless, the GOM still has substantial work to do and institutional barriers to overcome in order to effectively play its role in stopping the violence associated with the illicit weapons trade. End Summary.

Myth: An Iron Highway of Weapons Flows from the U.S.

2. (SBU) The Mexican Attorney General's office (PGR) is quick to report that since the start of the Calderon administration in December 2006, Mexico security forces have seized 83,566 weapons. The sheer magnitude of weapons, as well as the general acceptance that most come from U.S sources,

suggests that there is an "Iron Highway" of weapons streaming across the border in identifiable patterns that make interdiction easy. Rather, it appears there maybe thousands of small streams. To date, despite U.S. Customs and Border Protection's (CBP) use of the latest detection equipment and agents trained in a wide range of interdiction techniques, our best efforts have not produced massive seizures of weapons on the U.S. side of the border, although some important seizures have been effected and are being investigated. Most illicit weapons confiscated in Mexico are from various crime scenes, checkpoints, or DTO camps inside of Mexico - not at the border. CBP reports that since 2009, it and Mexican Customs has conducted coordinated operations at border crossings. Mexican Customs, however, is in the nascent stages of transitioning from a tariff collection entity to a law enforcement agency and lacks full statutory authority to perform at an equivalent level to its CBP counterparts. At present, Mexican Customs relies on other Mexican law enforcement agencies (SSP, PGR or SEDENA) to effect detentions and arrests of smugglers. Additionally, the scarcity of interdiction technology at many of the Mexican ports of entry result in significant inconsistencies along the border. This, as well as the dispersed and small nature of the seizures, suggest that interdiction is not as simple as plugging the suspected holes on the U.S. side of the border. But perhaps the biggest gap is a strong disincentive. In the United States the average sentence for arms trafficking is only 12 to 30 months for straight weapons trafficking crimes. For U.S. prosecutors, there is a bigger pay off from focusing on other crimes. For traffickers and straw purchasers, the combination of cost and risk still is not too high to bear.

3. (SBU) In order to address this issue, the GOM has worked through the Merida Initiative to identify the need for significant investment in non-intrusive inspection equipment at the border. NAS and CBP are working with their Mexican partners and identifying exchanges and training opportunities under the 21st century border pillar in order to strengthen interdiction coordination.

Myth: The DTOs Are Mostly Responsible

4. (SBU) While DTOs are the largest consumer of illegal fire arms in Mexico, they are not the primary trafficking agents of weapons going south from the United States. ATF officials assess that, instead, straw purchasers buy small quantities of weapons at pawn shops, gun shows, and fully licensed firearm dealers (FFL) in the United States, illegally transport one to five weapons across the border, and sell them independently to the DTOs. They do not work directly for the organized criminal groups. For example, ATF officers cite as an emblematic case the 54 firearms recovered at a Mexican Customs check point on March 22, 2009. Using e-Trace, ATF traced all firearms recovered to a licensed dealer in St. Madera, CA. Further investigation by ATF agents identified twelve Mexican citizens, legally residing in the United States, who trafficked these weapons and as many as 442 additional firearms to Mexico between 2005 and 2009. Separate individuals with links to organized crime in Oaxaca State had requested the weapons. The case demonstrates general trends in arms trafficking, including: 1) the lack of a single large seizure, but rather multiple small shipments over a long period of time; 2) weapons were bought legally in the United States; 3) the purchasers were Mexicans living legally in the United States; and 4) the individuals who made the purchases were not directly linked to the organized criminal group requesting the transfers.

5. (SBU) The Mexican Attorney General's Office (PGR) agrees that individuals or small groups, not the DTOs, are primarily responsible for most trafficking. This represents a shift from its earlier position. In April 2008, PGR officially stated in their Monthly Arms Trafficking Report that the DTOs had specific members in their organization dedicated to procuring and transporting weapons into Mexico. In the same report for April 2009, PGR assessed that DTOs did not control the arms trafficking networks, but relied on semi-autonomous individuals or small, independent organizations to buy weapons and sell them to the cartels. This allowed the DTOs a more flexible distribution network where they were not directly involved in the transactions.

Myth: Mexico Aggressively Investigating Weapons Confiscated

6. (SBU) According to PGR records, ten of the 15 commercial brands of weapons regularly confiscated in Mexico are manufactured and sold by U.S. companies. To date, however, the GOM has done little to investigate the origin of these weapons. As a result, the United States has largely been unable to open investigations domestically on unreputable dealers or smuggling organizations on the U.S. side of the border. To assist in these efforts, ATF has made several attempts to implement e-Trace weapons trafficking software in Mexico. In September 2009, PGR's Center for Information, Analysis, and Planning to Fight Crime (CENAPI) requested ten accounts and ten computers to access to e-Trace. The request followed a presentation at the Bilateral Weapons Trafficking Conference in Phoenix, AZ by ATF (Reftel) that discussed the benefits of e-Trace as a tool in developing investigations for weapons smuggling. In October 2009, ATF provided CENAPI with ten computers and five accounts, corresponding to the number of specific individuals identified as E-trace users.

7. (SBU) To date, PGR has restricted the rollout of additional accounts to other agencies in the GOM reducing its effectiveness as an investigative tool. The Mexican Attorney General told the Ambassador in a March 2010 meeting that he wants all Mexican federal and state law enforcement agencies to have e-Trace access, but the process nevertheless has been mired in an administrative tug-of-war for control and access to the tool. The Mexican Federal Police (SSP) has requested 70 accounts, and three state governments have requested a total of 300 accounts, but PGR has only given ATF permission to train - not provide - other institutions on e-Trace. PGR/CENAPI insists that it must maintain control of the tool and that they are capable of tracing all weapons confiscated in Mexico without distributing it more broadly.

8. (SBU) ATF, meanwhile, assesses that CENAPI does not have the personnel, nor the infrastructure to accommodate the volume of traces of confiscated weapons in Mexico. The Secretariat of National Defense (SEDENA) claims to have seized over 5,000 firearms since January 1, 2010. As of April 23, 2010, CENAPI has traced 513 firearms – only 10%. U.S. law enforcement officials state that in order for e-Trace to be effective, weapons data seized at crime scenes must be immediately entered into e-Trace so that the U.S. sellers are investigated and held accountable. ATF touts the May 2010 seizure of a weapons cache from a Zeta training camp as an example of how the system can be used successfully. As ATF was granted immediate access to the firearms, it was able to quickly trace the semi-automatic weapons to a purchase in Las Vegas only 39 days prior to being confiscated in Mexico. ATF opened an investigation and is tracking down the smugglers based on the information received from the FFL. ATF's ability to quickly perform the traces, rather than having to wait to go through CENAPI, contributed to its launching an immediate investigation in the case. The same can be said for granting vetted state and deployed local forces e-Trace access, which would allow for the kind of swift turnaround on traces that would be virtually impossible through a centralized CENAPI system. Recent negotiations for a memorandum of understanding between PGR and ATF on e-Trace usage may open the door, but ATF remains skeptical that PGR will allow universal access. [Note: PGR and SRE finally completed their review of the MOU on 25 June and we expect for it to be signed shortly. End Note]

Myth: Mexico Methodically Registers and Tracks Weapons

9. (SBU) While Mexico has a system in place for registering and tracking firearms, no central database exists and the GOM lacks an automated ability to track ownership. SEDENA is solely responsible for the import and distribution of legal firearms in Mexico. Moreover, U.S. law enforcement officers say that an individual can register a legal weapon with SEDENA without having to submit to a background investigation or having to provide information on how it was purchased. To remedy this, the GOM plans to eventually register all weapons in Mexico in Plataforma Mexico, SSP's comprehensive crime database, accessible to vetted federal and state law enforcement officers. Plataforma Mexico has yet to receive data from e-Trace due to institutional rivalries (the Federal Police controls Plataforma Mexico but does not have e-Trace access)

Myth: The GOM Justice System is Tough on Violators of Gun Laws.

10. (SBU) Mexican gun ownership laws as written are quite strict compared to U.S. laws. They prohibit personal ownership of rifles or shot guns greater than .22 caliber and pistols greater than .38 caliber. Additional restrictions apply to automatic weapons, various classes of revolvers, and semi-automatic pistols. Furthermore, owning more than two hand-guns and ten long guns is prohibited. U.S. law enforcement experts indicate that the stricter gun control laws should allow for more prosecutions and stiffer penalties for criminals involved in weapons trafficking. Little data is available, however, on the prosecution and sentencing of individuals involved with illegally possessing or trafficking a firearm. The case of Gregorio Salgado Lopez is a key example of how the Mexican justice system struggles to detain and prosecute egregious cases of firearms possession or trafficking. In March 2009 Salgado was arrested at a checkpoint in San Emerterio for possessing 55 disassembled firearms. ATF discovered the case through local press. Through its own investigation, ATF determined that Salgado was part of larger ring of smugglers. Although the magnitude of weapons alone should have been enough to bring him to trial and obtain a conviction, by the time ATF presented the additional information to the PGR, Salgado had already been released without a trial.

11. (SBU) Comment: Mexico understands that stopping the flow of illegal weapons into the country is paramount to achieving long-term success in the counternarcotics fight. Calderon made this a central theme of his address to the U.S. Congress. The responsibility does not lie solely on the northern side of the border. Just as demand fuels the flow of drugs north, it also drives the flow weapons south. With a combined operational effort, shared information, sustained investigations, and more prosecutions with serious sentences in the U.S. our relationship will be strengthened as we work together to cease the flow of weapons south. The first step will be to implement e-Trace across the board in Mexico and to train operators in its use as an investigative tool. This common platform will provide the springboard from which further investigative and judicial collaboration can occur. But if we cannot prosecute straw purchasers and traffickers in the United States, and put them in jail with serious sentences, then the trafficking will continue. There is too much money to be made, and it will not stop until there is a tough price to be paid in U.S. jails. End comment.

Signature:	[redacted]
Drafted By:	MEXICO[redacted]
Cleared By:	EXEC[redacted] POL[redacted] ATF:Gil, Darren CBP[redacted] ICE[redacted]
Approved By:	[redacted]
Released By:	MEXICO[redacted]
Info:	MEXICO, AMEMBASSY *ROUTINE*; NATIONAL SECURITY COUNCIL WASHINGTON DC *ROUTINE*; DEPT OF HOMELAND SECURITY WASHINGTON DC *ROUTINE*; DEPT OF JUSTICE WASHINGTON DC *ROUTINE*; CDR USNORTHCOM PETERSON AFB CO *ROUTINE*; CDR USSOUTHCOM MIAMI FL *ROUTINE*; ALL US CONSULATES IN MEXICO COLLECTIVE *ROUTINE*
Action Post:	
Dissemination Rule:	LEGAT_Action, RSO_Info, POL_Action, DAO_INFO, ATF_Info, DOJ_Info, ORA_Info, USSS_Info, ODC_Info