

**ATF Director Confirmation Hearing
Questions for the Record
for
Senator Durbin**

The following are submitted as responses to questions for the record from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Director Confirmation Hearing:

1. Mr. Jones, crime gun tracing is one of the most important tools that law enforcement can use to help solve crimes. I have urged every law enforcement agency in Illinois to report the guns they recover in crimes to ATF for tracing to determine where that gun was first sold at retail and to generate leads for criminal investigations. As more crime gun tracing takes place, law enforcement can also get a better understanding of trends and patterns in criminal gun trafficking.

While thousands of law enforcement agencies regularly report their crime guns to ATF for tracing, there are many agencies that do not do so - even though ATF's eTrace system is free and easy for law enforcement agencies to use. I plan to introduce legislation to incentivize all law enforcement agencies to trace 100 percent of their recovered crime guns. **Will you work with me to promote this goal of 100 percent crime gun tracing among state and local law enforcement agencies?**

RESPONSE: Yes. Crime gun tracing is a cornerstone of ATF's strategic plan. ATF is committed to assisting all law enforcement agencies in tracing 100 percent of their recovered firearms. As of June 19, 2013, there are 4,722 law enforcement agencies throughout the United States that have direct access to ATF's eTrace application. According to the Department of Justice Bureau of Justice Statistics there are a total of 17,985 recognized law enforcement agencies in the United States. Firearms tracing significantly assists law enforcement in solving violent crimes and generating thousands of leads that may otherwise be available. By tracing firearms recovered by law enforcement authorities, ATF is able to discern patterns of names, locations, and weapon types. This information provides invaluable leads that aid in identifying persons engaged in the diversion of firearms into illegal commerce, linking suspects to firearms in criminal investigations, identifying potential traffickers, and detecting intrastate, interstate, and international patterns in sources.

2. **Mr. Jones, just so it is clear to anyone unfamiliar with crime gun tracing, can you explain how ATF's crime gun tracing system is not a national registry of lawfully-owned firearms?**

RESPONSE: ATF does not maintain any type of national firearms registry and is prohibited by statute from doing so. ATF only traces firearms for law enforcement agencies where the firearm is involved or suspected to have been involved in a crime. During data entry into the Firearms Tracing System (FTS), the law enforcement officer must enter a "crime code" or the system will not permit the trace to

proceed. These limitations on data input ensure that only firearms associated with a bona fide investigation are traced. The data in the FTS is not part of a national firearms registry, and is limited to information necessary for tracing crime guns as authorized under the Gun Control Act (GCA). The Government Accountability Office (GAO) has addressed this very issue in a comprehensive report and concluded that the FTS was not a violation of either the GCA or ATF's appropriation restriction. See GAO Report "Federal Firearms Licensee Data: ATF's Compliance with Statutory Restrictions" (GAO/GGD 96-174), dated September 11, 1996.

3. Mr. Jones, the gun lobby and its allies in Congress often criticize ATF for not doing enough to enforce the gun laws on the books. However, when it comes to straw purchasing – which is one of the main ways that criminals get guns – the laws on the books are terribly weak. Under current federal law straw purchases can only be prosecuted as paperwork offenses, and it is difficult to get a conviction and rare to see a significant sentence imposed. **Would it help crack down on gun crime if Congress created a tough federal straw purchasing statute instead of the current paperwork offense?**

RESPONSE: Yes. The trafficking of firearms to violent criminals, gangs, and drug trafficking organizations, whether into our cities or across the Southwest border, presents a grave threat to public safety. Straw purchasers, individuals without a criminal record who purchase firearms for drug dealers, violent criminals, firearms traffickers, and prohibited persons are the linchpin of most firearms trafficking operations. Straw purchasers, often acquiring a relatively small number of firearms in each transaction, make it possible for firearms traffickers to effectively circumvent the background check and recordkeeping requirements of Federal law, ultimately putting guns into the hands of criminals. Under current law, there is no statute specifically directed at straw purchasing. Instead, prosecutors rely primarily on 18 U.S.C. § 922(a)(6), which prohibits making a material false statement, typically on a Firearms Transaction Record, ATF Form 4473, in connection with the purchase of a firearm from a Federal Firearms Licensee (FFL), and 18 U.S.C. § 924(a)(1)(A), which prohibits making a false statement with regard to any information that FFLs are required by law to keep on file. These violations are often perceived as technical "paperwork" violations, which result in penalties that are too low to serve as a meaningful deterrent, provide for consistent and proportionate sentences, or genuinely account for the violence associated with gun trafficking. Due in large part to the low penalties they face, defendants arrested for straw purchasing or related conduct have little or no incentive to cooperate with law enforcement. This lack of cooperation frustrates efforts to identify other members and leaders of trafficking schemes, and build cases against those individuals and their organizations. A tough federal straw purchasing statute with meaningful penalties and a broad forfeiture provision would encourage straw purchasers to cooperate with law enforcement, deter future straw purchasers, and deprive drug trafficking and violent criminal organizations of the proceeds they use to acquire additional weapons or otherwise support their illicit activities.

4. Mr. Jones, it has come to light that guns can be manufactured almost entirely out of plastic using 3-D printer technology. While these guns typically can only be fired once or a few times before breaking, they pose serious security concerns because they can pass unnoticed through metal detectors.

The Undetectable Firearms Act of 1988 requires that guns contain a certain amount of metal in them so that they can be noticed by metal detectors. However, this law expires at the end of 2013. **What would be the risk of harm if this law is not re-authorized? How would airports, courthouses, schools, and government buildings be vulnerable to undetectable weapons?**

RESPONSE: ATF has been working closely with the FBI, U.S. Secret Service and TSA on 3-D printing of plastic firearms and the risks to public safety posed by these undetectable firearms. Since these firearms cannot be detected by metal detectors, they increase the risk that would-be assassins, terrorists and murderers would be able to bring these firearms through security at our nation's airports, courthouses, schools and legislative bodies in order to commit acts of violence. When Congress passed the original Undetectable Firearms Act of 1988, technologies such as 3-D printing did not exist, and self-manufactured plastic firearms were only a theoretical risk. Today that risk is real. These firearms can be made by individuals using existing technology that can be purchased or leased. We believe it is likely this technology will improve as time advances allowing individuals to make more sophisticated undetectable firearms.

5. Mr. Jones, when we last met in my office we discussed the work that ATF is doing on the ground fighting crime in neighborhoods in Chicago, East St. Louis, Rockford and elsewhere in Illinois. We discussed how ATF has long been used as a punching bag by the gun lobby and its allies in Washington, but whenever you talk to state and local law enforcement agencies who are facing armed criminals on the streets, they are glad to have ATF there by their side. **I want to thank you and the brave men and women of the Chicago ATF Field Division for the work they are doing in Illinois to fight violent crime, and ask if there are additional steps Congress can take to assist in the fight against violent gun crime in Illinois.**

RESPONSE: As I referenced in my testimony at the confirmation hearing, ATF is facing an unprecedented attrition rate in its Special Agent population. By 2017, approximately 40 percent of ATF's Special Agent population will be retirement eligible. The President's FY 2014 budget proposal contains essential additional resources for ATF Special Agent hiring. These resources would allow ATF to begin hiring new Special Agents next year, and allow us to use our existing highly-experienced Senior Agent cadre to help train and mentor those new agents, before we lose to retirement those Senior Agents and their wealth of knowledge. ATF Special Agents are the core of our criminal investigative processes. ATF Special Agents work side by side with State and local law enforcement, such as the Chicago Police Department and the Illinois State Police, and

the local US Attorneys' Offices, to combat violent crime and enhance public safety. Absent budget support to address Special Agent attrition, the resulting decrease in our Special Agent population would lessen our ability to deploy agents to the field to work closely with our state and local law enforcement partners. Experience has shown that these partnerships are among the most effective means of curbing violent crime. Hence, the need for Congressional support for additional hiring resources for ATF in FY 2014 and ensuing years is essential to assisting the fight against violent firearm crime in cities like Chicago and throughout the nation.

6. Mr. Jones, like all federal law enforcement agencies ATF has been impacted by the budget sequester.

a. **Is the sequester impacting ATF's ability to help combat gun crime in Illinois?**

RESPONSE: Yes. ATF's FY 2013 budget was reduced by \$58 million due to sequestration, and contributed to an overall decrease of \$82 million in resources this year. As a result, ATF has been unable to hire Special Agents as vigorously as needed and has deferred the hiring of hundreds of critical non-agent personnel. We have also been forced to cut back services provided through contractual support, and have reduced travel and professional development training. All resources provided to ATF are used to execute our primary mission of fighting violent crime. Therefore, sequestration, and any other resource reductions, will have a direct impact on ATF's ability to execute this mission. The priority of ATF is to work with state and local law enforcement for the positive advancement of public safety and violent crime reduction in our nation's communities. Dedication of ATF's resources is prioritized to enable the agency to best fight violent crime while other agency responsibilities may be disadvantaged. Furthermore, as mentioned in the response to Question 5 above, ATF is facing an unprecedented attrition rate in its Special Agent population. ATF Special Agents are the core of our criminal investigative processes. Sequestration has made Special Agent hiring very challenging. Therefore, additional hiring resources, such as those included in the President's FY 2014 budget proposal, are essential to assisting the fight against violent firearm crime in cities like Chicago and throughout the nation.

b. **Does ATF have the manpower it needs in Illinois and elsewhere to effectively investigate and fight gun crime?**

RESPONSE: I am mindful of the austere fiscal challenges facing the Department of Justice, and ATF continues to identify and adjust existing resources to maintain the absolutely essential law enforcement programs and services that we are charged with providing to the American people in the fight against violent crime. However, ATF's funding over the last decade has struggled to keep pace with the growing threats of violent gun crime, violent gangs, and illegal firearms trafficking. This has affected ATF's capacity to properly replace essential law enforcement equipment for Special Agents and surveillance technology, and to plan for the attrition of an increasingly aging Special Agent population. With respect to manpower, by 2017, approximately 40 percent of ATF's Special Agent population will be retirement eligible. The President's FY 2014 budget proposal contains essential additional resources for Special Agent hiring that

would allow for ATF to begin addressing essential attrition replacement hiring. These resources would allow ATF to begin hiring new Special Agents next year, and allow us to use our existing highly-experienced Senior Agent cadre to help train and mentor those new agents, before we lose to retirement those Senior Agents and their wealth of knowledge.

**Senator Chuck Grassley
Questions for the Record**

**Byron Todd Jones
Nominee - Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives**

1. In your hearing, you told me that you were aware that the Office of Special Counsel has an open complaint against you, but that you did not know the substance of the complaint.

a. At the time of the hearing, you had not seen the complaint. Have you seen it now?

RESPONSE: No, I have not seen the complaint.

b. Are you aware that the process is currently in a mediation phase?

RESPONSE: Yes, I have been advised of that.

c. Did you personally agree to mediation?

RESPONSE: No, but I did consult with my United States Attorney's Office (USAO) staff about mediation.

i. If no, who did on your behalf?

RESPONSE: The First Assistant U.S. Attorney for the District of Minnesota.

ii. If yes, why did you agree to this without knowing the substance of the complaint?

RESPONSE: Based on publicly available information, I am aware of the general nature of the allegations. I believe that it is best to make every effort to resolve personnel matters informally if possible. Doing so serves the best interests of the Office and the employee.

2. In your hearing, I asked you about a letter signed by "Employees of the United States Attorney's Office for the District of Minnesota". You said that you had seen a copy of the letter.

a. Did you at any time learn who these individuals were? If so, explain the details of how you learned this information.

RESPONSE: No.

- b. I asked you if you had taken any adverse action against them and you said that you had not. I then said I was including “unwanted, retaliatory transfer as an adverse action” and asked if that changed your answer. I did not get a clear answer from you. Please answer this question.**

RESPONSE: I am unaware of the identity of the author or authors of that letter, or if any authors are actually employees of the USAO. Regardless, I do not believe that I have ever engaged in a prohibited personnel practice.

- c. Are there any other individuals in your office who believe you have retaliated against them for complaining about your management of the U.S Attorney’s Office for the District of Minnesota?**

RESPONSE: I am not aware of any at this time.

- 3. In your hearing, I asked you about when you first took over the U.S. Attorney’s Office in Minnesota in 2009. I asked three times if you removed the chief of the Narcotics and Violent Crime section at that time. You said that you made some reassignments and management changes.**

- a. Did Thomas Hollenhorst resign, as you implied in the hearing, or was he demoted?**

RESPONSE: All Assistant United States Attorney (AUSA) management positions within a USAO are temporary appointments and it is the prerogative of all United States Attorneys to select their management teams. Upon becoming United States Attorney in August 2009, I met with all AUSAs individually and, after these meetings, I decided to reassign the AUSA who had been serving as chief of the Narcotics and Violent Crime Section to the OCDETF/Violent Crime Section at the same pay.

- b. If he resigned, was this resignation of his own volition or was it after you had had a conversation with him? Did you ever suggest that he resign or he would be removed?**

RESPONSE: Please see the response to Question 3a. Consistent with the Privacy Act, it would not be appropriate to disclose the contents of my conversation with him.

- c. Please identify by name and title the several individuals you received resignations from in 2009 who had been serving in supervisory roles. Recall that 5 U.S.C. § 522(b)(9) of the Privacy Act permits disclosure of otherwise-protected information if the disclosure is made “to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof.”**

RESPONSE: Consistent with the Privacy Act, I am able to provide the following information: AUSAs who were serving as the First Assistant United States Attorney, two Senior Litigation Counsels, and the Criminal Chief resigned those positions and were reassigned as line AUSAs at the same pay. The Civil Chief and two Deputy Criminal Chiefs remained in the positions that they occupied prior to my arrival. Over the past four years, I have made further changes in my management team.

- d. You appointed a new Chief of this section in 2009. I asked you how you knew her and you said that you had known many of your new employees for over 20 years. How, specifically, did you know your new Narcotics and Violent Crime Section Chief?**

RESPONSE: I primarily knew her through the outstanding professional reputation she enjoyed within the office before I returned as U.S. Attorney. She joined the United States Attorney's Office for the District of Minnesota after working as a career prosecutor (an AUSA in the Northern District of Georgia) and as a county prosecutor in Georgia. She was not a personal friend; I had only briefly met her in a social setting on one or two occasions while I was in private practice several years before I returned to the U.S. Attorney's Office.

- e. Is it true that her father was a former partner of yours?**

RESPONSE: Yes.

- f. You said that she had "some" previous management experience. Please describe in detail her management experience.**

RESPONSE: When I promoted her to OCDETF/Violent Crime Section Chief, she brought with her 20 years of experience as a lawyer, 13 of them as a state or federal prosecutor who had done extensive work in the area of guns, drugs, and violent crime. As a state and federal prosecutor, the Section Chief routinely managed investigative task forces and prosecution teams consisting of agents from multiple agencies targeting large, multi-state, drug trafficking organizations. She also had served periodically as an acting Section Chief for the asset forfeiture, gun, and narcotics sections in the Northern District of Georgia during absences of the assigned Chief.

- 4. According to the complaint filed with the Special Counsel, prosecutions in the unit are down significantly since you took over as U.S. Attorney. Why are the prosecutions down?**

RESPONSE: When I returned to the Office in 2009, I immediately prompted a review of all criminal cases to better understand the caseload of the office. During the review, I learned that the USAO was expending significant resources prosecuting street level drug dealers that I believed were more appropriately prosecuted by state and local law enforcement.

Although these small drug prosecutions provided a rise in the office's statistics, they did not substantially improve public safety, and they diverted federal resources from the prosecution of

other important federal law enforcement priorities, including complex frauds, national security matters, Indian country cases, and child exploitation cases. After the review, I redirected prosecution resources to address these more significant federal interest cases that could not be addressed by state and local law enforcement. Prosecuting cases in these priority areas requires a substantial commitment of prosecutorial resources, but often results in a smaller total number of defendants. For instance, the average criminal defendant prosecuted in 2007 required about 150 hours of AUSA time.¹ In 2012, the average criminal defendant required about 300 hours. This doubling of prosecutorial time reflects the redirection of prosecutorial resources to larger, more complex federal cases that may involve fewer individual defendants.

For example, we needed to dedicate prosecution resources to address several of the largest, most complex cases brought in the history of the District of Minnesota, including: U.S. v. Thomas Petters (\$3.5 billion dollar Ponzi scheme with 13 convicted defendants to date); U.S. v. Trevor Cook (\$190 million dollar fraud with 6 convicted defendants); U.S. v. Wakinyon McArthur (Native Mob organized crime case with over 25 convicted defendants); and the Operation Rhino Somali terrorism case (9 defendants convicted to date). Many of these complex cases resulted in lengthy trials requiring enormous commitments of time by AUSAs and staff.

- 5. Mr. Oswald wrote that he is “one of the few voices able to publicly express our complete discontent with Mr. Jones’ ineffective leadership and poor service provided to the federal law enforcement community without fear of retaliation or retribution from him”.**
- a. Have you heard of complaints about you or the U.S. Attorney’s Office for the District of Minnesota by federal or state law enforcement in Minnesota? If yes, please detail these complaints, as well as when and how they were brought to your attention and what you did to address them.**

RESPONSE: In any working relationship, it is not uncommon for disagreements to arise as to agency priorities and missions. These disagreements are usually resolved through communication and coordination between line staff and supervisors. When that is ineffective, it is my practice to meet with the appropriate agency head. By doing this, I have been able to resolve specific issues, although that does not mean others agree with the decisions or policy adjustments I have implemented as U.S. Attorney. As several of the letters submitted to the Committee in support of my nomination make clear, I have always valued collaboration and communication with law enforcement and prosecution partners. My goal has always been to represent the interests of the United States and to protect its citizens in a collaborative manner.

- b. The complaint filed with the Special Counsel alleges, “at least two federal judges reportedly have tried to talk to Mr. Jones about the situation only to be rebuffed.” Have any federal judges spoken to you about the way**

¹ For guilty pleas, the time needed to prosecute case would be less, for trials, the time would be substantially more. These statistics reflect an average across all cases.

the office was being managed? If so, please describe those contacts in detail.

RESPONSE: I have not seen the complaint and, hence, do not know what you mean by “the situation.” I have had periodic discussions with the Chief federal judge and other federal judges about various matters during my tenure, but I do not recall that any of these conversations has included complaints about the USAO. I have not “rebuffed” any inquiry from a federal judge.

6. Were complaints about the Narcotics Chief ever brought to your attention by anyone in the U.S. Attorney’s office? If so, by whom?

RESPONSE: Consistent with the Privacy Act, I am not in a position to answer this question.

7. The complaint filed with the Special Counsel alleges, “at least two federal judges reportedly have tried to talk to Mr. Jones about the situation only to be rebuffed.” Do you recall federal judges reaching out to you? If so, please describe those contacts in detail.

RESPONSE: Please see the response to Question 5b.

8. The complaint alleges, that in October 2012 the Assistant U.S. Attorney wrote you a memo dated September 4, 2012 titled “Office Situation.” Did you receive and review such a memorandum? Please explain fully.

RESPONSE: Yes, I received, via email, a memorandum entitled “Office Situation” on about that date.

9. Did you investigate these allegations to determine if they were in fact true? If so, please describe all your investigative efforts.

RESPONSE: I did not conduct any independent investigation of allegations in the AUSA’s memorandum as I was recused from the decision making process related to disciplinary matters with the AUSA.

10. The memorandum describes a conversation between you and an Assistant U.S. Attorney about four incidents of unwarranted discipline against him. Do you recall a conversation about these actions?

RESPONSE: Without more information as to the circumstances of the conversation, I am unable to answer this question. Further, consistent with the Privacy Act, it would not be appropriate to

disclose the contents of a conversation with this AUSA concerning discipline imposed against him.

11. The memorandum discusses concerns about the Narcotics Chief. Please describe any efforts you took to review these allegations?

RESPONSE: Please see the response to Question 9.

12. What did you do to document any investigative efforts?

RESPONSE: Please see the response to Question 9.

13. Please identify with whom you discussed this memorandum at the U.S. Attorney's Office.

RESPONSE: I shared this memorandum with the First Assistant U.S. Attorney (FAUSA).

14. Did you talk to anyone at the Department of Justice in Washington D.C.? If so, whom?

RESPONSE: No. I believe that the FAUSA emailed a copy of the AUSA's September 4, 2012, memorandum to EOUSA's Office of General Counsel, on about September 10, 2012.

15. Did you speak with the Narcotics Chief about this memorandum?

- a. **If so, please describe the nature of your conversations and your interactions with her.**
- b. **Please provide all written communications with the Narcotics Chief regarding the memorandum.**

RESPONSE: No.

16. The memorandum also states that the Assistant U.S. Attorney would like to report to a new supervisor, but not transfer sections. Why didn't you grant this request?

RESPONSE: Please see the response to Question 17.

17. Ultimately, the complaint alleges that you transferred the Assistant U.S. Attorney to the Appellate Section, against his wishes. Why did you make this transfer?

RESPONSE: I made the transfer in part because the Appellate Section was understaffed. Consistent with the Privacy Act, I am not in a position to discuss internal conversations with the AUSA about this matter.

18. Please provide to the Committee any memoranda, email, notes or documents related your decision to make this transfer. If no documents exist, please explain why you did not document this action.

RESPONSE: I believe I have explained my decision and the reason for it above. Additionally, I am not in a position to disclose internal documentation regarding this matter, consistent with the Privacy Act.

19. The complaint also alleges that in addition to the transfer, that you suspended the Assistant U.S. Attorney for five days without pay. Please provide to the Committee any memoranda, email, notes or documents related to this decision. If no documents exist, please explain why you did not document this action.

RESPONSE: Consistent with the Privacy Act, I am not in a position to disclose the requested documents.

20. Both the Special Agent in Charge of the FBI and an AUSA in your office have informed me that the Narcotics Chief is responsible for the disenfranchisement and destruction of relationships between the USAO and the federal agencies involved with guns and drugs. Will you describe the professional relationship that the Narcotics Chief has with these federal agencies?

RESPONSE: I believe that the OCDETF/Violent Crimes Section Chief, acting consistent with my instruction, has focused on transitioning the Office's prosecutions from street level narcotics investigations to targeting sophisticated criminal organizations. She and other members of my management team are dedicated to improving the quality of narcotics investigations in the District. Please see also the response to Question 24a.

21. Sometime in either 2011 or 2012, your office was presented with a case that involved the seizure of 16.1 pounds of methamphetamine, two hand guns and half a million dollars in cash. According to reports, your office did not take this case because it was "undersold" to the Narcotics Chief.

- a. Did you ever discuss the handling of this case with her, either before or after her decision not to prosecute?
- b. If no, why not?
- c. If yes, what was the explanation for declination?

RESPONSE: The USAO had formally opened the matter and assigned prosecutors to work with agents on it. The decision to ultimately remove the case from the U.S. Attorney's Office and present the case to the County Attorney was that of the federal agents. The USAO concurred in the decision at the request of the agents. Fortunately, in the District of Minnesota, we have very strong prosecution partners at the state and local level. These local prosecutors effectively handle narcotics cases day in and day out. By way of example, the case in question resulted in a 30 year sentence for the lead defendant when prosecuted by the Hennepin County Attorney's Office.

22. The number of drug cases your office has charged in FY 2012 dropped 42 percent. What is the reason for this?

RESPONSE: Please refer to the response to Question 4. After arriving at the United States Attorney's Office, I conducted a total review of prosecutorial policies and determined that the USAO had to more closely scrutinize the drug cases being referred to us since many of them, particularly those that focused on local drug trafficking, could—and should—be prosecuted by the County Attorney's Office. I also determined that while it was incumbent upon us to vigorously litigate large-scale drug trafficking cases, the USAO had to ensure that those referrals demonstrated an actual or potential link to regional, national, or international drug trafficking or money laundering organizations, as mandated for OCDETF designation and the investigative funding that includes overtime dollars. To that end, training was provided to case agents that focused on, among other things, the financial investigation component necessary in OCDETF cases. This strategic pivot was necessary to ensure the appropriate use of limited federal investigative resources in a manner that complemented existing state law enforcement efforts. The Special Agent in Charge of the Chicago Division of DEA, which includes the District of Minnesota, has concurred with this more focused approach to drug prosecutions and has worked proactively with me to address deficiencies in previous investigations.

23. A common complaint I've heard within ATF is that U.S. Attorney's Offices are unwilling to pursue straw purchasing charges. Yet according to one account, you reportedly said of gun and drug cases, "We could do that all day, but we've chosen not to because that's not the best use of our resources."

a. If this statement is accurate, why did you not see gun cases as a good use of your resources?

RESPONSE: As noted above, serious gun and drug cases are an appropriate priority for federal prosecution, and have been aggressively prosecuted. However, given the limited resources available, we must choose wisely and prioritize cases.

b. How do you expect to be able to encourage agents in ATF to pursue gun crime when you wouldn't even prosecute it yourself as a U.S. Attorney?

RESPONSE: The District of Minnesota has focused on prosecuting those offenders who pose the greatest threat to public safety, such as felons with significant criminal histories who possess and use firearms. The State of Minnesota has robust laws to address gun crimes. In making a decision to bring a prosecution, my staff closely examines the merits of handling a case at the federal level or deferring to state prosecution. Through this process, and the wise allocation of limited resources, the gun prosecution program has substantially advanced public safety in Minnesota. In fact, this past year saw a 21.4% increase in the number of defendants found guilty of firearms offenses, and a 55.3% increase in the number of defendants receiving sentences in excess of 61 months. These statistics reflect my focus on targeting the most serious threats – the most effective approach to improving public safety. Please see also the response to Question 27b.

- c. You indicated in the hearing that the drop in prosecutions of gun and drug cases involved both resources and “collaboration with state and locals.” Please identify the annual staffing levels of the Narcotics and Violent Crime Section from 2008 to 2013.**

RESPONSE: Staffing in the Narcotics and Violent Crime Section has remained roughly stable over the past five years: between 8-10 total AUSAs are assigned to cover the entire District of Minnesota. I am not aware of a drop in the prosecution of gun cases. The drop in the prosecution of narcotics cases has been addressed in previous responses.

- d. If the staffing levels remain relatively constant between 2008 and 2013, what does your reallocation of resources away from guns and drugs consist of? If you have not shifted more Assistant U.S. Attorneys over to the White Collar Section or other sections of the Criminal Division, what exactly are roughly the same number of Assistant U.S. Attorneys doing in the Narcotics and Violent Crime Section if they are not prosecuting gun and drug cases?**

RESPONSE: Please see the response to Question 4.

24. Your opening statement indicated your desire to strengthen ATF on its mission of working with partners to combat violent crime. Yet according to multiples sources of information in Minnesota, including the former FBI Special Agent in Charge in Minnesota, your office has failed to provide law enforcement with support on violent crime, as well as gang and drug matters. Reportedly, the situation has deteriorated to the point that federal agencies have opted to bring their cases to Dakota, Hennepin, and Ramsey counties for prosecution in state court.

- a. When did you first become aware of this deterioration in relations with law enforcement agencies in Minnesota?**

RESPONSE: I do not believe any such deterioration occurred. As evidenced by the numerous letters the Committee received in support of my nomination, I believe my relationship with the

Minnesota law enforcement community—federal, state and local—is outstanding. Upon assuming responsibility as the Chief Law Enforcement Officer of the District of Minnesota, I implemented significant changes to improve the quality of federal criminal investigations with an emphasis on more robust risk management. The changes that we have implemented are intended to serve the public interest with integrity and efficiency.

b. When you first learned of this, what actions did you take to investigate it?

RESPONSE: Please see the response to Question 24a.

c. What did you do to try to remedy relations with law enforcement agencies?

RESPONSE: Please see the response to Question 24a.

d. Did you personally meet with any specific state or federal law enforcement agencies to discuss their concerns regarding the office? If so, please describe the circumstances of the meeting.

RESPONSE: As U.S. Attorney, I meet regularly with the leadership of all federal law enforcement agencies in the District of Minnesota. I also periodically meet with the leadership of state law enforcement agencies and county prosecutors. These meetings provide an open forum where any concerns of law enforcement can be heard and addressed. These meetings have included productive and open discussions of prosecution priorities, ensuring appropriate venues for certain prosecutions and resource allocation. They also have fostered, not hindered, the outstanding relationships that exist among law enforcement in the District of Minnesota.

25. You have attributed the diminishing prosecutions to a shift in priorities, stating at different times that you have refocused resources on white-collar cases and on terrorism cases. Yet the numbers show white-collar defendant charges dropped from 125 in Fiscal Year 2011 to 86 in Fiscal Year 2012. How do you account for this decrease, and how does it square with your public statements about shifting priorities to this area?

RESPONSE: After assuming responsibility as the United States Attorney, and as noted above, I directed that prosecutors focus on cases of substantial federal interest not capable of being handled by our state and local partners. As a result, the USAO has successfully prosecuted a series of the largest, most complex white collar cases in the State's and Nation's history. Our focus on these extremely large, complex cases, many of which proceeded to trial, has limited the resources of our fraud prosecutors in charging and investigating new matters. However, we have developed fraud working groups with the metropolitan area County Attorneys to triage the prosecution of fraud cases to ensure that fraud cases are efficiently handled. Our state prosecutor partners have stepped up to the challenge, handling fraud cases. With the severe reduction in available resources as a result of sequestration, partnership building with state and local law enforcement is now paramount. The number of cases prosecuted does not necessarily reflect the

enormous importance of prosecuting more complex and significant cases or our diligence in this effort.

26. Numbers I have seen show 15 counter-terrorism cases in Fiscal Year 2009 and 13 in 2010. The numbers then drop to 2 in 2011 and 2 in 2012. How do you account for this decrease, and how does it square with your public statements about shifting priorities to this area?

RESPONSE: In collaboration with the Minneapolis Division of the FBI, and its Joint Terrorism Task Force (JTTF), we have investigated, charged, and obtained convictions in one of the broadest anti-terrorism cases in the history of this country. This investigation and many other terrorism investigations are ongoing. I have assigned two AUSAs to work full time on terrorism matters, and have trained other AUSAs to step in to assist in terrorism matters if necessary. Deterring, investigating, and prosecuting terrorism is our lead priority. The numeric reduction of terrorism cases is not indicative of a shifted priority, but rather reflects the serious and dedicated work of the JTTF and the USAO to combat terrorism in the District.

27. You were chair of the Attorney General's Advisory Committee from 2009 to 2011. In that capacity, you were a member of the Southwest Border Strategy Group. In October 2009 that group decided to distribute a draft strategy for combating the Mexican cartels. The draft stated: "Merely seizing firearms through interdiction will not stop firearms trafficking to Mexico." The draft strategy goes on to emphasize identifying the members of arms trafficking networks. The implication is clear. The strategy placed a higher value on gathering intelligence about trafficking networks than on arresting straw purchasers.

a. You said that you did not attend the October 26, 2009 meeting of the Southwest Border Strategy Group. Did you approve of any strategy to de-emphasize straw purchasing cases?

RESPONSE: As I have said before, I was not involved in formulating the Department's Cartel Strategy. I would note the Department's Office of Inspector General concluded that it was "not reasonable" to interpret the border strategy memoranda "as supportive of a strategy that deferred overt action against subjects as they continued to traffic hundreds of weapons with impunity." See Report at 436. I agree with this conclusion, and under my leadership, the U.S. Attorney's office and ATF have pursued, and will continue to pursue, straw-purchasing investigations and prosecutions. That said, however, I must note that the prosecution of straw purchasers poses significant challenges.

b. Do you think it is an appropriate strategy to go for big cases instead of putting a stop to straw purchasers whenever you can?

RESPONSE: Public safety is the number one priority in all criminal investigations. Developing evidence to prosecute larger firearm trafficking organizations and drug cartels instead of

individual offenders is a valuable law enforcement approach that is essential to dismantling these trafficking networks. Development of such cases, however, should never compromise public safety. As Acting Director of ATF, I have strongly reinforced that public safety outweighs collection of evidence for prosecution of cases. On November 3, 2011, I issued a memorandum clarifying ATF policy regarding firearms transfers. This policy was formalized on March 19, 2013, in an ATF Order and was broadcast to all ATF employees on March 26, 2013. The policy states that interdiction or other forms of early intervention may be necessary to prevent the criminal acquisition, trafficking, or misuse of firearms, and that, during the course of an investigation, protecting the public and officer safety should be the primary considerations.

Under the policy, an agent must take all reasonable steps to prevent a firearm's criminal misuse. In this regard, the policy expressly prohibits a firearm involved in a government-controlled transfer from leaving ATF's control. A government-controlled firearm transfer (also known as a controlled delivery) occurs when the Government actively participates in the transfer of a firearm to any person, whether associated with a drug cartel or otherwise, believed to be unlawfully acquiring or possessing the firearm. The firearm(s) involved in the controlled delivery may or may not be owned by the Government. Continuous physical (onsite) surveillance by ATF is required for a firearm to be considered within ATF's control. Any exception to this policy must be approved in writing in advance of the operation by the Director. This policy was instituted to ensure that ATF is effectively pursuing those individuals involved in firearms trafficking schemes while protecting the public.

28. 5 U.S.C. § 522(b)(9) of the Privacy Act permits disclosure of otherwise-protected information if the disclosure is made “to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof . . .” ATF oversight is clearly within the provenance of this Committee. Therefore, the Privacy Act does not apply to questions from this Committee regarding discipline proposed for ATF employees.

- a. **I understand that in October 2012, ATF's Internal Affairs Division issued a report regarding the fire at Special Agent Jay Dobyns' home.**
- b. **What were this report's findings regarding George Gillett?**
- c. **Did the report substantiate any of Special Agent Dobyns' allegations against Mr. Gillett?**
- d. **What were this report's findings regarding William Newell?**
- e. **Did the report substantiate any of Special Agent Dobyns' allegations against Mr. Newell?**
- f. **Separate from discipline that may have been contemplated against Mr. Gillett for other reasons, what disciplinary measures for Mr. Gillett did ATF's Professional Review Board propose to ATF's Deciding Official as a result of the Internal Affairs Division report? What date did the Professional Review Board make its proposal?**
- g. **What disciplinary measures did ATF's Deciding Official determine were appropriate? If the Deciding Official decided not to impose the disciplinary measures proposed by the**

- h. What date was Mr. Gillett notified of the discipline ATF's Deciding Official had determined was appropriate? Please provide a copy of the disciplinary proposal provided to Mr. Gillett.**
- i. Separate from discipline that may have been contemplated against Mr. Newell for other reasons, what disciplinary measures for Mr. Newell did ATF's Professional Review Board propose to ATF's Deciding Official as a result of the Internal Affairs Division report? What date did the Professional Review Board make its proposal?**
- j. What disciplinary measures did ATF's Deciding Official determine were appropriate? If the Deciding Official decided not to impose the disciplinary measures proposed by the Professional Review Board, please explain why.**
- k. What date was Mr. Newell notified of the discipline ATF's Deciding Official had determined was appropriate? Please provide a copy of the disciplinary proposal provided to Mr. Newell.**

RESPONSE: I understand that Special Agent Dobyms is currently in litigation with the Department over issues relating to this fire. Accordingly, and consistent with the Privacy Act, I am not in a position to answer these questions.

29. Why didn't you impose any discipline for Operation Fast and Furious when you became the Acting Director of ATF?

RESPONSE: Discipline is not ordinarily proposed at the Director's level, but rather by a lower level supervisor of the employee to be disciplined, or by the ATF Professional Review Board. Consistent with standard practice, I did not personally propose or impose disciplinary action in connection with the deficiencies identified in the Office of Inspector General's Report on Operation Fast and Furious and related matters; however, other ATF officials did propose or impose disciplinary action.

Moreover, as you are aware, at the time I became the Acting Director of ATF, Operation Fast and Furious was the subject of an ongoing investigation by the Department of Justice Office of Inspector General. During the pendency of that investigation, and prior to the release of the Inspector General's findings, it would have been premature and inappropriate for me or anyone else at ATF to take disciplinary action against ATF employees. Taking action prior to the issuance of the OIG findings and the review of those findings through the established ATF disciplinary process would have been inconsistent with federal employment law principles and standards of due process.

30. Have any ATF employees been terminated based solely on their involvement in Operation Fast and Furious? If so, who, and on what date?

RESPONSE: Consistent with the Privacy Act, I am able to provide the following information: of the Senior Executive Service (SES) employees involved in Fast and Furious, one voluntarily

separated from Federal service before the disciplinary process was complete; a second was removed from Federal service for misconduct unrelated to Operation Fast and Furious; a third was disciplined, but not removed from service; and, a fourth voluntarily separated from Federal service before the Office of the Inspector General issued its report in the matter.

31. 5 U.S.C. § 522(b)(9) of the Privacy Act permits disclosure of otherwise-protected information if the disclosure is made “to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof . . .” ATF oversight is clearly within the jurisdiction of this Committee. Therefore, the Privacy Act does not apply to questions from this Committee regarding discipline proposed for ATF employees.

I have heard that Fast and Furious Case Agent Hope MacAllister grieved her discipline for Fast and Furious to the Merit Systems Protection Board, and won.

a. Is this true?

RESPONSE: Please see response to Question 31b.

b. What disciplinary measures did ATF propose for Ms. MacAllister as a result of her role in Operation Fast and Furious? Please provide a copy of the disciplinary proposal.

RESPONSE: I have not been involved in a disciplinary process regarding Special Agent MacAllister and, consistent with the Privacy Act, I am not in a position to answer this question.

c. Where is Ms. MacAllister now, and what is her current GS-level?

RESPONSE: Special Agent MacAllister is a GS-13 serving in the field. ATF is not prepared to disclose her location for security reasons.

32. 5 U.S.C. § 522(b)(9) of the Privacy Act permits disclosure of otherwise-protected information if the disclosure is made “to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof . . .” ATF oversight is clearly within the provenance of this Committee. Therefore, the Privacy Act does not apply to questions from this Committee regarding discipline proposed for ATF employees.

I asked you in the hearing about David Voth, the Group Supervisor who oversaw Operation Fast and Furious. You responded: “Special Agent Voth was subject to the internal disciplinary process and there were repercussions.”

- a. **What disciplinary measures did ATF propose for Mr. Voth as a result of his role in Operation Fast and Furious? Please provide a copy of the disciplinary proposal.**

RESPONSE: I was not involved in a disciplinary process regarding Special Agent Voth and, consistent with the Privacy Act, I am not in a position to answer this question.

- b. **Where is he now, and what is his current GS-level?**

RESPONSE: Special Agent Voth is a GS-13 who will be reporting for duty in the field in July. ATF is not prepared to disclose his location for security reasons.

33. 5 U.S.C. § 522(b)(9) of the Privacy Act permits disclosure of otherwise-protected information if the disclosure is made “to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof . . .” ATF oversight is clearly within the provenance of this Committee. Therefore, the Privacy Act does not apply to questions from this Committee regarding discipline proposed for ATF employees.

You stated at the hearing that James Needles currently serves in another capacity within ATF.

- a. **What is that other capacity, and where is Mr. Needles assigned?**

RESPONSE: Special Agent Needles currently serves as Deputy Division Chief in the Firearms Operations Division.

- b. **Were any disciplinary measures proposed for Mr. Needles by ATF as a result of his role in Operation Fast and Furious? If so, please provide a copy of the disciplinary proposal.**

RESPONSE: I have not been involved in a disciplinary process regarding Special Agent Needles and, consistent with the Privacy Act, I am not in a position to answer this question.

34. 5 U.S.C. § 522(b)(9) of the Privacy Act permits disclosure of otherwise-protected information if the disclosure is made “to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof . . .” ATF oversight is clearly within the provenance of this Committee. Therefore, the Privacy Act does not apply to questions from this Committee regarding discipline proposed for ATF employees.

You stated at the hearing that George Gillett had retired from ATF.

- a. **Separate from discipline that may have been contemplated against George Gillett for other reasons, what disciplinary measures for Mr. Gillett did ATF's Professional Review Board propose to ATF's Deciding Official as a result of the Inspector General report on Operation Fast and Furious and related matters? What date did the Professional Review Board make its proposal?**

RESPONSE: I did not participate in a disciplinary process regarding Special Agent Gillett and, consistent with the Privacy Act, I am not in a position to answer this question.

- b. **What disciplinary measures did ATF's Deciding Official determine were appropriate? If the Deciding Official decided not to impose the disciplinary measures proposed by the Professional Review Board, please explain why.**

RESPONSE: Special Agent Gillett voluntarily separated from service on December 29, 2012.

- c. **What date was Mr. Gillett notified of the discipline ATF's Deciding Official had determined was appropriate? Please provide a copy of the disciplinary proposal provided to Mr. Gillett.**

RESPONSE: Please see the response to Question 34a.

- d. **On what date did Mr. Gillett retire?**

RESPONSE: December 29, 2012.

- e. **Did Mr. Gillett retire with any ATF benefits? If so, what do Mr. Gillett's retirement benefits consist of?**

RESPONSE: Special Agent Gillett retired with the benefits to which he was entitled under applicable federal law.

- f. **Why was Mr. Gillett allowed to retire with his benefits, given his role both in Operation Fast and Furious and in the investigation into the fire at Special Agent Dobyns' home?**

RESPONSE: Please see the response to Question 34e.

35. 5 U.S.C. § 522(b)(9) of the Privacy Act permits disclosure of otherwise-protected information if the disclosure is made "to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof . . ." ATF oversight is clearly within the provenance of this Committee. Therefore, the Privacy Act does not apply to questions from this Committee regarding discipline proposed for ATF employees.

You stated that the discipline proposed against former Special Agent in Charge William Newell “is a matter that has come quickly into resolution” and that “[t]here is still a resolution pending that should be forthcoming.”

- a. Separate from discipline that may have been contemplated against Mr. Newell for other reasons, what disciplinary measures for Mr. Newell did ATF’s Professional Review Board propose to ATF’s Deciding Official as a result of the Inspector General report on Operation Fast and Furious and related matters? What date did the Professional Review Board make its proposal?**

RESPONSE: Please see the response to Question 35b.

- b. What disciplinary measures did ATF’s Deciding Official determine were appropriate? If the Deciding Official decided not to impose the disciplinary measures proposed by the Professional Review Board, please explain why.**

RESPONSE: I was not involved in a disciplinary process regarding Special Agent Newell and, consistent with the Privacy Act, I am not in a position to answer this question.

- c. What date was Mr. Newell notified of the discipline ATF’s Deciding Official had determined was appropriate? Please provide a copy of the disciplinary proposal provided to Mr. Newell.**

RESPONSE: Please see the response to Question 35b.

- d. Has Mr. Newell had any formal complaints pending against ATF in the past two years? If so, how were those resolved?**

RESPONSE: Consistent with the Privacy Act, I am not in a position to answer this question.

- e. Did Mr. Newell conduct any type of settlement agreement with ATF in connection with proposed discipline? If so, what date was the settlement agreement concluded, and what did it consist of? Please provide a copy of any such settlement agreement.**

RESPONSE: Please see the response to Question 35b.

- f. What aspect of Mr. Newell’s proposed discipline is still currently pending, as you stated in the hearing?**

RESPONSE: Please see the response to Question 35b.

- g. Where is Mr. Newell now, and what is his current GS-level?**

RESPONSE: Special Agent Newell is currently assigned to the Tactical Operations Branch, and is a GS-13.

- h. On what date will Mr. Newell be eligible to retire with his full ATF benefits?**

RESPONSE: June 19, 2013.

- i. What will Mr. Newell's retirement benefits consist of?**

RESPONSE: Special Agent Newell will retire with the benefits to which he is entitled under applicable federal law at the time of his retirement.

36. 5 U.S.C. § 522(b)(9) of the Privacy Act permits disclosure of otherwise-protected information if the disclosure is made "to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof . . ." ATF oversight is clearly within the provenance of this Committee. Therefore, the Privacy Act does not apply to questions from this Committee regarding discipline proposed for ATF employees.

In response to questions regarding former Deputy Assistant Field Director for Field Operations William McMahan, you first stated in the hearing, "Bill McMahan has retired from ATF." You then later said, "Mr. McMahan was one of the individuals terminated. He was not allowed to retire. He was terminated."

- a. Did Mr. McMahan retire from ATF, or was he terminated?**

RESPONSE: I removed Special Agent McMahan from federal service, effective on November 27, 2012, for conduct unrelated to Operation Fast and Furious.

- b. Either way, what date did Mr. McMahan leave ATF?**

RESPONSE: Please see the response to Question 36a.

- c. Separate from discipline that may have been contemplated against Mr. McMahan for other reasons, what disciplinary measures for Mr. McMahan did ATF's Professional Review Board propose to ATF's Deciding Official as a result of the Inspector General report on Operation Fast and Furious and related matters? What date did the Professional Review Board make its proposal?**

RESPONSE: Consistent with the Privacy Act, I am unable to provide information in response to this question other than to note that Special Agent McMahan was removed from federal service

before the Professional Review Board made any disciplinary proposal regarding his involvement in Operation Fast and Furious.

37. In the hearing, I asked you three questions, and you only answered one. I asked: “How was McMahon’s status resolved? How is it possible that one of your senior leaders in headquarters could be overseas for months while drawing a federal paycheck without ATF knowing it and working for a private company, and what does that say about how you’re running the agency?” You failed to answer the latter two questions, so I will ask them again.

a. How is it possible that one of your senior leaders in headquarters could be overseas for months while drawing a federal paycheck without ATF knowing it and working for a private company?

RESPONSE: We provided Special Agent McMahon with a fair, thorough, and even-handed disciplinary process, and when that process was complete, I concluded that it was appropriate to remove him from the ATF.

b. What does that say about how you’re running the agency?

RESPONSE: I believe that it demonstrates that I am committed to leading an agency that conducts the disciplinary process and addresses performance issues in a deliberate, fair, and even-handed way.

38. When I asked whether Mr. McMahon was only terminated after I brought his employment status to your attention, you answered: “The issue that you raised about his leave status and his prior employment status were all subject to a process. We very much appreciate the information enhancing our level of knowledge about things that were already in play internally.”

a. What was already in play internally with respect to Mr. McMahon in August 2012, when I brought his double-dipping to your attention?

RESPONSE: I am not in a position to provide additional information about this matter, consistent with the Privacy Act.

b. Please provide copies of the personnel proposals prior to August 21, 2012 that you were referring to regarding Mr. McMahon.

RESPONSE: Please see the response to Question 38a.

39. 5 U.S.C. § 522(b)(9) of the Privacy Act permits disclosure of otherwise-protected information if the disclosure is made “to either House of Congress, or, to the extent of

matter within its jurisdiction, any committee or subcommittee thereof . . .” ATF oversight is clearly within the provenance of this Committee. Therefore, the Privacy Act does not apply to questions from this Committee regarding discipline proposed for ATF employees.

During your tenure as Acting Director, ATF engaged in a disastrous undercover storefront operation in Milwaukee, Wisconsin called Operation Fearless. The Office of Professional Responsibility and Security Operations (OPRSO) internal review of Operation Fearless recently found at least 11 problem areas, including poor planning in designing the case and insufficient management during the case. Operation Fearless included many of the same flaws as Operation Fast and Furious, suggesting that ATF’s new leadership had learned nothing from that debacle.

- a. Operation Fearless was part of a Monitored Case Program that was designed to give greater headquarters oversight to sensitive cases. Why did that oversight fail in this case?**

RESPONSE: The Monitored Case Program (MCP or Program) was established to provide enhanced, headquarters-level oversight of sensitive and high-risk investigations. Since its inception, the MCP has been continually refined and improved as we have learned from experience. On learning of the troubling allegations of problems in Operation Fearless, I directed OPRSO to conduct a thorough review of the investigation to identify deficiencies and recommend measures ATF could take to better protect the public. One of the identified deficiencies was that the MCP missed indicators that the investigation was in several respects poorly planned and executed. Consequently, the problems with the investigation were not briefed to appropriate headquarters personnel. As a result of OPRSO’s findings about deficiencies in the MCP’s performance, we have taken several steps to further refine and improve the Program. These steps include changes in permanent staffing, issuance of an updated Program directive, enhanced training for MCP personnel, and a requirement that field supervisors and case agents participate directly in select monitored case briefings to ATF headquarters.

- b. Please provide a copy of the OPRSO report on Operation Fearless, as Chairman Issa, Chairman Goodlatte, Chairman Sensenbrenner and I requested on May 10, 2013.**

RESPONSE: As the Department advised you in its letter of May 31, 2013, ATF is not in a position to release the OPRSO report, as it contains substantial sensitive law enforcement information, details regarding open criminal matters, and information relating to ongoing personnel matters.

- 40. According to the Justice Department, you were provided with Internal Affairs Division summaries regarding the theft of three ATF-issued firearms from a government vehicle and the burglary of the Operation Fearless storefront. However, the Department said**

you do not recall reading either of those summaries. Do you normally read summaries that are provided to you by the Internal Affairs Division? If not, why not?

RESPONSE: I often review the summaries. I also rely on my staff to bring information in the summaries to my attention when they believe it appropriate.

41. I understand that the Special Agent in Charge of Milwaukee during Operation Fearless, Bernard Zapor, was promoted last fall to Deputy Assistant Director for Field Operations (Central). In a briefing providing to Committee staff on April 15, 2013, ATF indicated that disciplinary action was underway against Mr. Zapor. However, I have now heard that as a result of his failed management of Operation Fearless, Mr. Zapor was made the new Special Agent in Charge of the Phoenix Field Division, where his family was residing and he owns a home.

- a. Is this true? If so, why would you put him in charge of an office that so clearly needs good leadership?
- b. What disciplinary measures for Mr. Zapor did ATF's Professional Review Board propose to ATF's Deciding Official as a result of the OPRSO report on Operation Fearless? What date did the Professional Review Board make its proposal?
- c. What disciplinary measures did ATF's Deciding Official determine were appropriate? If the Deciding Official decided not to impose the disciplinary measures proposed by the Professional Review Board, please explain why.
- d. What date was Mr. Zapor notified of the discipline ATF's Deciding Official had determined was appropriate? Please provide a copy of the disciplinary proposal provided to Mr. Zapor.
- e. What disciplinary measures for the Milwaukee Field Division counsel named in the OPRSO report did ATF's Professional Review Board propose to ATF's Deciding Official? What date did the Professional Review Board make its proposal?
- f. What disciplinary measures did ATF's Deciding Official determine were appropriate? If the Deciding Official decided not to impose the disciplinary measures proposed by the Professional Review Board, please explain why.
- g. What date was the field division counsel notified of the discipline ATF's Deciding Official had determined was appropriate? Please provide a copy of the disciplinary proposal provided to the field division counsel.
- h. What disciplinary measures for the Resident Agent in Charge named in the OPRSO report did ATF's Professional Review Board propose to ATF's Deciding Official? What date did the Professional Review Board make its proposal?
- i. What disciplinary measures did ATF's Deciding Official determine were appropriate? If the Deciding Official decided not to impose the

disciplinary measures proposed by the Professional Review Board, please explain why.

- j. What date was the Resident Agent in Charge notified of the discipline ATF's Deciding Official had determined was appropriate? Please provide a copy of the disciplinary proposal provided to the Resident Agent in Charge.**
- k. What disciplinary measures for the Operation Fearless case agent did ATF's Professional Review Board propose to ATF's Deciding Official? What date did the Professional Review Board make its proposal?**
- l. What disciplinary measures did ATF's Deciding Official determine were appropriate? If the Deciding Official decided not to impose the disciplinary measures proposed by the Professional Review Board, please explain why.**
- m. What date was the Operation Fearless case agent notified of the discipline ATF's Deciding Official had determined was appropriate? Please provide a copy of the disciplinary proposal provided to the case agent.**
- n. What disciplinary measures for any other employee has ATF's Professional Review Board (PRB) proposed to ATF's Deciding Official as a result of the OPRSO report? Please name each employee for whom discipline was proposed, the date the Professional Review Board made its proposals, the discipline proposed by PRB, the decision made by ATF's Deciding Official, and the date the employee was notified of the proposed discipline. Please also provide a copy of the disciplinary proposal provided to each employee.**

RESPONSE: Consistent with the Privacy Act, I am not in a position to disclose some of the information requested by this question. I can state that I am confident that Mr. Zapor is well qualified to provide strong and effective leadership in Phoenix.

The OPRSO review of Operation Fearless led to the referral of several matters to IAD. For consistency, IAD will refer all these matters to the PRB at the same time. Several investigations are still ongoing and should they indicate that an employee engaged in misconduct, the matter will be referred to the PRB upon the completion of all related IAD investigations.

42. In Reno, Nevada, relations between ATF and the U.S. Attorney's Office completely fell apart in the fall of 2011. Things got so bad that that U.S. Attorney's Office refused to take cases from ATF. Whistleblowers within ATF say that when these problems in Reno were brought to your attention, you stated that you had bigger things to worry about. Ignoring the underlying issues, you simply moved most of ATF's agents out of Reno.

- a. You stated in the hearing: "I was very dismayed when I first heard of a disconnect between the federal prosecution office and Reno. . . . [W]e currently have two full-time and soon to be three agents in Reno. We're**

on a good path in Reno to fix whatever concerns historically existed there.”

- b. What was the cause of the disconnect between the U.S. Attorney’s Office and the Reno ATF office?**

RESPONSE: Through a collaborative effort of ATF and the Nevada United States Attorney’s office, difficulties in the working relationship between the offices in Reno have been identified and addressed.

- c. In a letter of April 23, 2013, ATF stated that the San Francisco Field Division learned of this situation in August 2011 and engaged with the U.S. Attorney’s Office and the Reno ATF office in an effort to resolve it. Why was the San Francisco Field Division unsuccessful?**

RESPONSE: Upon learning of the situation between the Reno field office and the U.S. Attorney’s office, the leadership of the ATF San Francisco Field Division actively engaged the U.S. Attorney’s Office to address the issues. The new ATF San Francisco Special Agent in Charge and the U.S. Attorney have met several times and have re-established an effective working relationship.

- d. ATF indicated in its April 23, 2013 letter that ATF headquarters became aware of these issues in November 2011. When and how did you first personally become aware of these issues?**

RESPONSE: I first became personally aware of the issues in Reno in early March 2012, when the Assistant Director of Field Operations provided me a summary of the situation.

- e. What did you do to address these issues when you first became aware of them?**

RESPONSE: On becoming aware of the issues, I directed the Office of Field Operations to undertake additional fact-finding and sent a senior headquarters manager to Nevada to address the situation with the U.S. Attorney directly.

- f. ATF indicated in its April 23, 2013 letter that you had discussions in March 2012 with the U.S. Attorney for the District of Nevada. What was discussed, and why couldn’t the matter be readily resolved at that time?**

RESPONSE: My discussion with the Nevada U.S. Attorney focused on taking all steps necessary to resolve the situation as soon as possible. I advised the U.S. Attorney that I had directed the new Assistant Director of Field Operations to review the situation and then travel to Nevada to meet directly with him to address and resolve the areas of concern.

- g. Why were agents moved out of Reno? Wouldn't it have been more cost-effective to address the issues in Reno rather than simply transferring four agents out of the office?**

RESPONSE: ATF Headquarters became aware of the issues in Reno in November 2011 and after separate discussions in March 2012 involving the U.S. Attorney for the District of Nevada, myself, and the Assistant Director for Field Operations, it became apparent that the issues could not be readily resolved at that time in a manner that would allow ATF to best utilize its limited agent resources. ATF subsequently decided to reassign four special agents from ATF Reno to duty posts with pressing needs for additional agents. These moves were made with minimal permanent change of station (PCS) costs.

- h. If there are soon to be three full-time agents in Reno, as you said, why was the Reno office ever stripped down to two full-time agents to begin with?**

RESPONSE: Although only two special agents continued to be permanently assigned to ATF Reno, it remains a satellite of ATF's Las Vegas field office, under the San Francisco Field Division. Accordingly, the Las Vegas Resident Agent in Charge provides leadership, oversight, support and other resources, to include nine Las Vegas-based Special Agents, to the ATF Reno office when required. The Special Agents who transferred out of Reno all requested reassignments for various reasons and were placed in understaffed or priority locations at minimal PCS costs.

- i. Now I understand ATF detailed a third agent back to Reno in February 2013 in order to work as a Violent Crime Coordinator with the Northern Nevada Project Safe Neighborhoods (PSN) Task Force. How many PSN cases have been prosecuted by the third agent in his capacity as the Violent Crime Coordinator?**

RESPONSE: The third agent, who is currently detailed to ATF Reno, has been assigned to the United States Attorney's Office's PSN Task Force. He has worked on ATF firearms investigations and prosecutions, as well as multiple pending explosives investigations.

- j. What is the current cost of detailing the third agent to Reno?**

RESPONSE: The total cost to date of detailing a third agent to the Reno satellite office has been approximately \$13,803. The projected cost for the remainder of the assignment, scheduled to end the first week of August 2013, is \$11,158. Therefore, the total estimated cost for the detail will be approximately \$24,962.

- k. What further relocation costs will be incurred by making the detail a permanent assignment?**

RESPONSE: The expense could approach \$163,000 to permanently relocate an agent to the Reno satellite office. Many costs related to a PCS come in significantly under that amount contingent upon multiple factors, such as family size, home ownership status and other factors.

- l. ATF indicated in its April 23, 2013 letter that the cost of relocating the four agents from Reno was approximately \$152,000. Does that figure include the lump sum payment for house hunting trips or the closing costs paid to the two agents who purchased homes during the move?**

RESPONSE: Yes.

- m. ATF indicated in its April 23, 2013 letter that a new Special Agent in Charge (SAC) of the San Francisco Field Division began in August 2012, and that “within weeks of his arrival the SAC met with [the U.S. Attorney for the District of Nevada] in Las Vegas to discuss a mutually agreeable resolution of the outstanding issues between the two offices.” What date did this meeting take place? Was it scheduled before or after my letter to you of September 17, 2012 raising this matter?**

RESPONSE: On August 16, 2012, the newly appointed SAC of the San Francisco Field Division met with the District of Nevada U.S. Attorney to address the issues with the ATF Reno Office. These events occurred prior to ATF’s receipt of Senator Grassley’s letter on September 17, 2012.

- n. ATF indicated in its April 23, 2013 letter that agents in Reno have opened 26 cases in 2013. How many of those were actual criminal cases, and how many were NICS retrievals that have no potential of being submitted for prosecution?**

RESPONSE: By the end of April 2013, the ATF Reno Office had opened 30 criminal investigations, 22 of which were NICS delayed denial cases.

- 43. On October 12, 2012, the House Committee on Oversight and Government Reform subpoenaed “[a]ll agendas, meeting notes, meeting minutes, and follow-up reports for the Attorney General’s Advisory Committee of U.S. Attorneys between March 1, 2009 and July 31, 2011, referring or relating to Operation Fast and Furious.” That period specific is the time you were Chair. The Justice Department has never produced any such documents or certified that none exist. When I asked you about this at the hearing, you stated that you didn’t “have any knowledge beyond the fact that relevant documents have been collected internally at the Department” I asked you if you would respond to the question in writing.**

RESPONSE: The Department provided a written response to you on this issue prior to my confirmation hearing. In a letter dated June 5, 2013, the Department explained that, in response to the House Committee on Oversight and Government Reform’s subpoena of October 11, 2011,

the Department had already searched for these materials. It is my understanding that the Department produced on October 31, 2011, the single responsive document located in that search.

- 44. I also asked you about any personal notes from the Advisory Committee that you might have taken regarding Fast and Furious. On April 10, 2013, I sent you personally a letter asking that you meet with my staff for an interview. The letter stated: “In addition, by April 17, 2013, please provide my staff with any personal notes from the Attorney General’s Advisory Committee that you may have taken regarding Operation Fast and Furious.” You indicated to me in the hearing that you didn’t have any recollection of a letter that had this request.**
- a. Do any such agendas, meeting notes, meeting minutes, and follow-up reports for the Attorney General’s Advisory Committee exist that refer or relate to Operation Fast and Furious? If so, why haven’t they been turned over pursuant to the subpoena?**
 - b. Did you receive my April 10, 2013 letter? If so, why do you not have a recollection of my request?**
 - c. Do you have any personal notes from the Attorney General’s Advisory Committee in your possession that reference or relate to Operation Fast and Furious? If so, please produce a copy of them to the Committee**

RESPONSE: The single responsive document that the Department located in its search for these materials indicates that I did not attend an AGAC meeting in which Operation Fast and Furious was mentioned. I am not aware of any additional responsive materials.

- 45. Both my staff and the staff of the House Oversight and Government Reform Committee requested a staff interview with you multiple times during our investigation of Operation Fast and Furious. However, you never permitted yourself to be interviewed. You recently agreed to an interview regarding the St. Paul quid pro quo, but refused to answer questions about Fast and Furious or any other topic.**
- a. Your predecessor, Kenneth Melson, participated in a voluntary staff interview. Why couldn’t you?**
 - b. Did anyone at the Justice Department instruct you not to participate in a staff interview? If so, who? Please describe the circumstances.**
 - c. Were you otherwise willing to participate in a staff interview?**

RESPONSE: I welcomed the opportunity during my hearing, and now, in these responses, to answer Committee Members’ questions, including any you may have had about Fast and Furious or any other topic. I am advised that it is unprecedented for a nominee to be asked to participate in a Senate staff interview—which is not a matter of public record—prior to his or her nomination hearing. I believed it would be appropriate to answer the Committee’s questions publicly and under oath, in accordance with the established practice of the confirmation process.

46. On July 9, 2012, you issued a video message in which you told ATF employees: “[I]f you don’t respect the chain of command, if you don’t find the appropriate ways to raise your concerns to your leadership, there will be consequences” I know you have since issued a clarification to ATF employees at the request of myself and Chairman Darrell Issa.

- a. Other than to keep whistleblowers from going outside their chain of command, what message were you intending to communicate to ATF employees in your original video?**

RESPONSE: Beginning in March 2012, I released a series of videotaped internal messages to ATF employees known as “Change Casts” in an effort to strengthen and improve ATF. The video message quoted above was an excerpt from one of these Change Casts. This excerpt was provided to the media by an unknown source. One of the main employee concerns expressed to me since my appointment has been the lack of accountability for those who do not abide by agency rules. The Change Cast at issue focused on the need for accountability at all levels of ATF, from senior management to the most junior employees, and was not intended to discourage protected disclosures nor to suggest that any prohibited personnel practices would result from protected disclosures. Since my appointment, I have expanded opportunities for ATF employees to raise work-related concerns and stressed the need for attention to those concerns by supervisory ATF officials.

- b. Did you make the clarification the same way you made the initial comment: in a video message to all ATF employees?**

RESPONSE: This message was written, not a video. The message was posted on ATF’s intranet, as were the Change Casts, and was also sent to all employees via email.

- c. Please provide a copy of the clarification you provided to all ATF employees.**

RESPONSE: See attachment.

47. You have stated that on November 3, 2011, you issued a memorandum saying that ATF must take all reasonable steps to prevent the criminal misuse of a firearm. You also agreed in the hearing to provide a copy of that order. Please provide a copy of the order.

RESPONSE: I did commit in the hearing to providing a copy of that Order, and I will honor that commitment. However, because it is a law-enforcement sensitive document, its public disclosure could compromise investigations and officer safety. I respectfully request the opportunity to work with your staff to provide the Order in an appropriate manner separate from these responses.

48. I also asked you about any guidance issued regarding cooperating federal firearms licensees (FFL) and the role they should play in investigations. You indicated that you have updated the confidential informant order. However, one of the issues in the Operation Fast and Furious surrounded the fact that none of the FFLs involved were signed up as confidential informants, including the primary FFL. Nevertheless, ATF agents encouraged the FFLs to continue selling to suspected straw purchasers.

a. Please provide a copy of the revised confidential informant order.

RESPONSE: Enclosed please find a redacted copy of the Order that is appropriate for public release.

b. What have you done to shore up policies dealing with FFLs who are not confidential informants, especially to address encouraging them to go forward with sales that they would not otherwise go forward with?

RESPONSE: On November 3, 2011, I issued a memorandum clarifying ATF policy regarding firearms transfers. The memorandum specifically addressed the issue of FFL inquiries about proceeding with suspect sales by directing ATF Special Agents that they should advise FFLs that FFLs are under no obligation to sell firearms under circumstances that the licensee feels are suspicious, and that FFLs should always use their best judgment in determining whether or not to sell or transfer a firearm; a very narrow and specific exception to this policy exists for authorized controlled deliveries. The policies outlined in the November 3, 2011, memorandum were formalized on March 19, 2013, in an ATF Order, and the Order was broadcast to all ATF employees on March 26, 2013.

49. I asked you in the hearing about ATF keeping a Suspect Gun Database despite the congressional prohibition against keeping a national gun registry. However, you seemed completely unfamiliar with the issue.

a. Had you ever heard of the Suspect Gun Database before this hearing? If not, why not?

RESPONSE: Yes, I was aware of the Suspect Gun Program prior to the hearing.

b. When did ATF first begin using the Suspect Gun Database?

RESPONSE: The Suspect Gun Program is a feature in ATF's Firearms Tracing System (FTS), which enables ATF Special Agents to flag firearms that they suspect to be illegally trafficked or otherwise connected with potential illegal activity that ATF is investigating. If the firearm is subsequently recovered by a law enforcement agency and traced, the Special Agent who flagged the suspect firearm would be notified. A suspect firearm may only be submitted in association with a criminal investigation by ATF. The Suspect Gun Program has been utilized since 1992.

c. Is there any legal standard that ATF agents are required to meet before adding information on a purchaser to the Suspect Gun Database?

RESPONSE: Under Federal law, 18 USC 923(g)(7), firearms can only be traced pursuant to a bona-fide criminal investigation. When suspect gun data is entered into FTS, such data must be connected to a criminal investigation.

d. Is there any criteria for removing information on a purchaser from the Suspect Gun Database, or does information remain on the database indefinitely?

RESPONSE: A firearm flagged in the Suspect Gun Program may be deactivated and the Special Agent would no longer be notified if that firearm was subsequently recovered and traced. The data, however, remains in FTS so that when future recoveries of those firearms are traced, the investigative lead is preserved.

e. How does ATF headquarters conduct oversight on the usage of the Suspect Gun Database?

RESPONSE: Only firearms involved in an open ATF criminal investigation can be flagged in FTS under the Suspect Gun Program. Periodic reviews are conducted to determine if investigations of firearms submitted under the Suspect Gun Program are still active. If the case is no longer active, appropriate administrative steps are taken to remove the notification settings on the flagged firearms.

f. How many suspect gun purchases are currently recorded in the Suspect Gun Database?

RESPONSE: There are 173,784 firearms currently listed as suspect firearms in the FTS. Firearms information is not removed from FTS. All firearms were associated with ATF criminal investigations.

g. How many different purchasers are currently on record in the Suspect Gun Database?

RESPONSE: There are currently 7,329 individuals who may be purchasers and/or suspects that are associated with a suspect firearm in the FTS. All of the individuals identified were associated with ATF criminal investigations.

h. How does the usage of the Suspect Gun Database square with the Firearm Owners Protection Act of 1986, which you referenced in the hearing and which makes a national gun registry illegal?

RESPONSE: ATF does not maintain any type of national firearms registry and is prohibited by statute from doing so. Information under the Suspect Gun Program relates to firearms suspected to be illegally trafficked or otherwise having a connection with potential illegal activity that ATF

is investigating. If the firearm is subsequently recovered by a law enforcement agency and traced, the Special Agent who flagged the suspect firearm will be notified. A suspect firearm may only be submitted in association with a criminal investigation. The information is not used for any other purpose. The GAO has addressed this very issue in a comprehensive report and concluded that the FTS was not a violation of either the Gun Control Act or ATF's appropriations restriction. *See* U.S. Government Accounting Office Report, "ATF's Compliance with Firearms Licensee Data Restrictions," September 11, 1996 (GAO/GGD 96-174). *See also* J&G Sales v. Truscott, 473 F.3d 1043 (9th Cir. 2007) and Blaustein & Reich, Inc. v. Buckles, 365 F.3d 281 (4th Cir. 2004).

**SPECIAL MESSAGE FROM THE ACTING DIRECTOR
SUPPLEMENT TO CHANGE CAST #8**

July 25, 2012

As you may be aware, some employees have raised questions about my recent ChangeCast #8, "Choices and Consequences." The goal of the ChangeCast program is to strengthen and improve ATF. ChangeCast #8 focused on the need for accountability at all levels of ATF – from senior management to the most junior employees. One of the main employee concerns expressed to me since my appointment has been the lack of accountability for those who do not abide by the rules. ChangeCast #8 specifically addressed employee concerns about accountability.

Let me reiterate, however, that ATF orders requiring all employees to report through the chain of command as to daily duties and responsibilities do not override the Whistleblower Protection Act, 5 U.S.C, 2302(b)(8), which prohibits personnel actions taken because of protected disclosures. "Protected disclosures" include disclosures of information by an employee or applicant which the employee or applicant reasonably believes evidence a violation of any law, rule, or regulation, or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. ChangeCast #8 was not intended in any way to discourage disclosures covered by the Whistleblower Protection Act or imply that employees would be disciplined for making such protected disclosures.

A previous message addressing these protections was posted on the ATF Web Portal on May 2, 2012, and may be found at this link: [Supplemental Message to All Employees on Disclosure Policy](#).

U.S. Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives

DATE: 11/8/2011
Includes Change 1 - Date: 7/2/2012

OPI: 701200

OPI RECERTIFICATION DATE: 11/8/2016

CONFIDENTIAL INFORMANT USAGE



FOREWORD

TO: All Field Operations Personnel

1. PURPOSE. This order contains policy and instructions relating to confidential informant (CI) usage within the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).
2. CANCELLATIONS. This order cancels:
 - a. Chapters A and D of ATF O 3250.1A, Informant Use and Undercover Operations, dated 10/26/2001; and
 - b. Memorandum from the Assistant Director (Field Operations), SUBJECT: Use of and Reporting on Illegal Aliens as Informants/Witnesses, dated 6/23/2010.
3. DISCUSSION. This order incorporates the Attorney General's Guidelines Regarding the Use of Confidential Informants (hereinafter referred to as the Department of Justice (DOJ) Guidelines), dated May 30, 2002, into the ATF directives system. As a result of the issuance of the DOJ Guidelines, ATF has been required to establish a CI Review Committee, which must evaluate the use of long-term CIs, high-level CIs, and persons under the obligation of a legal privilege of confidentiality or affiliated with the media. In addition, this order incorporates updated policy regarding sponsoring illegal aliens or foreign nationals as CIs or witnesses. Finally, the requirement for a CI semiannual review remains in effect.
4. REFERENCES.
 - a. Department of Justice Guidelines Regarding the Use of Confidential Informants, dated May 30, 2002.
 - b. ATF O 1720.1D, Physical Security Program, dated 8/15/2008.
 - c. ATF O 3210.7C, Investigative Priorities, Procedures, and Techniques, dated 2/25/1999.
 - d. ATF O 3254.1A, Victim and Witness Assistance Program, dated 11/17/2010.
 - e. ATF O 3251.1, Expenditure of Funds for Investigative Purposes, dated 2/20/1997.
 - f. ATF O 3040.1A, Operations Security Program, dated 2/15/2011.
 - g. ATF O 3040.2A, Operations Security - Threat Policy, dated 11/17/2008.

- h. U.S. Sentencing Guidelines Manual, located at:
http://www.ussc.gov/Guidelines/2010_guidelines/index.cfm
 - i. U.S. Attorneys' Manual § 9-21.050.
 - j. Title 26 U.S.C. S 7623.
 - k. Title 27 CFR § 70.41.
 - l. Title 19 U.S.C. § 1619.
 - m. Title 22 U.S.C. § 401(b).
 - n. Title 19 U.S.C. § 1619.
 - o. Title 28 U.S.C. § 524.
 - p. Title 28 U.S.C. § 530A.
 - q. Title 28 CFR part 16.
 - r. Title18 U.S.C. § 1905.
5. FORMS AVAILABILITY. All ATF forms outlined in this order are available on the ATF Web Portal > Knowledge Center > Forms Web site. Directions on how to obtain other agencies' forms discussed in this order have also been included in the body of the order.
6. CI REFERENCE DOCUMENTS. Please see the Enforcement Support Branch's ATF Web Portal page for sample memorandums and other related reference documents that are discussed in this order.
7. RECORDS RETENTION REQUIREMENTS. Documents outlined in this order must be retained in accordance with ATF's records management program.
8. QUESTIONS. Any questions regarding the provisions of this order may be directed to the Chief, Special Operations Division (SOD), on 202-648-8620.

Ronald B. Turk
Assistant Director
(Field Operations)

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CHAPTER A. GENERAL PROVISIONS1. PURPOSE, SCOPE, AND AUTHORITY.

- a. This order sets ATF policy consistent with the DOJ Guidelines.
- b. This order applies to the use of all CIs under ATF's direction. It does not limit ATF's ability to impose additional restrictions on CI use.
- c. This order does not create any enforceable legal right or private right of action by a CI or other person, is to be used solely as internal ATF policy, and is to be considered as law enforcement sensitive.
- d. The order is only to be applied to CIs as defined in subparagraph 3a.
- e. All previous ATF policies regarding CIs are hereby superseded. The DOJ Guidelines are mandatory and must be followed absent an express exemption there from. The DOJ Guidelines do not supersede ATF and DOJ attorneys' otherwise applicable ethical obligations, which can, in certain circumstances (e.g., with respect to contacts with represented persons), have an impact on special agents' conduct.

2. POLICY ON THE USE OF CIs. ATF's policy is to use CIs to assist in investigating criminal activity, developing them to the point where they will regularly contribute information. Since using CIs is a sensitive matter and requires the association of special agents with persons whose motivations may be suspect or ultimately challenged by courts, this investigative technique shall be carefully controlled and closely monitored. Proper use of CIs requires that individual rights not be infringed upon and that special agents conduct themselves within the parameters of ethical and legal law enforcement behavior.3. DEFINITIONS.a. CI Defined.

- (1) CIs are defined as persons who assist enforcement efforts, providing information and/or lawful services related to criminal or other unlawful activity to ATF that otherwise might not be available—in return for money or some other specific consideration. CIs shall work under ATF special agents' direction and control. Information or services provided must have specific investigative or general intelligence value in enforcing laws and regulations within ATF's responsibility.

- (2) In addition to providing information, CIs may be expected to participate in investigations or testify in open court, if required. They may also expect that their identities will not be disclosed, except with their approval or within the exceptions set forth in this order. The United States will strive to protect CIs' identities but cannot guarantee that they will not be divulged.
 - (3) Special agents in charge (SACs) shall approve all CIs before ATF uses them; however, this does not preclude a special agent from receiving information from a person on a one-time-only basis. Persons providing information on a one-time-only basis need not be documented; however, as always, special agents should verify the information and attempt to identify the persons providing it.
- b. Federal Inmate. This is any person in Federal custody—under either the Bureau of Prisons' (BOP) or U.S. Marshals Service's (USMS) control.
- c. Fugitive. This is a person who meets the following conditions:
- (1) For whom a Federal, State, or local law enforcement agency has placed a wanted record in the National Crime Information Center (NCIC) database;
 - (2) Who is located either within the United States or in a country with which the United States has an extradition treaty; and
 - (3) Whom the law enforcement agency that has placed the wanted record in NCIC is willing to take into custody upon his or her arrest and, if necessary, seek his or her extradition to its jurisdiction.
- d. Tier 1 Otherwise Illegal Activity. This is any activity that:
- (1) Would constitute a misdemeanor or felony under Federal, State, or local law if engaged in by a person acting without authorization; and
 - (2) Involves the following:
 - (a) The commission, or the significant risk of the commission, of any act of violence by a person or persons other than the CI;
 - (b) Corrupt conduct, or the significant risk of corrupt conduct, by senior Federal, State, or local public officials;
 - (c) The manufacturing, importing, exporting, possession, or trafficking of controlled substances in a quantity equal to or exceeding those quantities specified in the U.S. Sentencing Guidelines (USSG) § 2D1.1(c)(1);

NOTE: This citation is for the 2010 edition of the USSG Manual (http://www.ussc.gov/Guidelines/2010_guidelines/index.cfm), and it is intended that this subparagraph will remain applicable to the highest offense level in the Drug Quantity Table in future USSG Manual editions.

- (d) Financial loss, or the significant risk of financial loss, in an amount equal to or exceeding those amounts specified in the USSG § 2B1.1(b)(1)(I);

NOTE: It is intended that this will remain applicable to dollar amounts that in future editions of the USSG Manual trigger sentencing enhancements similar to those set forth in § 2B1.1(b)(1)(I) of the 2010 edition.

- (e) A CI providing to any person (other than a special agent) any item, service, or expertise that is necessary for the commission of a Federal, State, or local offense that the person otherwise would have difficulty obtaining; or

- (f) A CI providing to any person (other than a special agent) any quantity of a controlled substance with little or no expectation of its recovery by a law enforcement agency.

- e. Tier 2 Otherwise Illegal Activity. This is any other activity that would constitute a misdemeanor or felony under Federal, State, or local law if engaged in by a person acting without authorization. (NOTE: This is any illegal activity that does not fall under the definition of Tier 1 and would qualify as a misdemeanor or felony. Many activities could fall under this category, including (but not limited to) burglary, street racing, bribery, etc.)
- f. Control Agent. This is the ATF special agent responsible for ensuring that a CI adheres to this order's policies and guidelines and that all of this order's requirements regarding a CI are followed.
- g. CI Review Committee (CIRC). This is a committee created by ATF to review certain decisions relating to registering and using CIs. The committee chair is the appropriate deputy assistant director (DAD) (Field Operations) (FO), and membership includes the following two representatives designated by the Assistant Attorney General (AAG) for DOJ's Criminal Division: (1) a Deputy AAG for the Criminal Division and (2) an assistant U.S. attorney (AUSA). In addition, the Chief, SOD, and the Associate Chief Counsel (Field Operations and Information) are CIRC members. The DAD(FO) may add personnel as necessary. All CIRC decisions are final unless a request for exception or dispute resolution is submitted as described in paragraph 8.

- h. High-Level CI. This is a CI who is part of the senior leadership of a criminal enterprise that does the following:
- (1) Has (a) a national or international sphere of activities or (b) high significance to ATF's mission, even if the enterprise's sphere of activities is local or regional; and
 - (2) Engages in, or uses others to commit, any of the conduct described in subparagraph 3d(2)(a) through (d).
- i. Federal Prosecuting Office (FPO). This is any of the following:
- (1) U.S. attorneys' offices (USAOs);
 - (2) The DOJ Criminal Division, Tax Division, Civil Rights Division, Antitrust Division, and Environmental and Natural Resources Division; and
 - (3) Any other DOJ litigating component with authority to prosecute Federal criminal offenses.

NOTE: For the purposes of this order, the term "USAO" will be used to reflect the term "FPO."

4. PROHIBITION ON COMMITMENTS OF IMMUNITY BY FEDERAL LAW ENFORCEMENT OFFICERS. ATF special agents do not have authority to make any promise or commitment that would prevent the Government from prosecuting a person for criminal activity that is not authorized pursuant to chapter D or that would limit the use of any evidence by the Government—without the prior written approval of the Federal or State prosecutor who has primary jurisdiction to prosecute the CI for such criminal activity. ATF special agents must take the utmost care to avoid giving any person the erroneous impression that they have any such authority.
5. DUTY OF CANDOR. ATF employees have a duty of candor in discharging their responsibilities and must so perform to comply with the requirements and terms of ATF orders and policies.
6. CI DISCLOSURE ISSUES.
- a. CIs' identities and CI identification and control files are not normally subject to disclosure. However, personal information CIs furnish about another, which becomes a part of an ATF records system, could become subject to disclosure under the Privacy Act. Disclosure of personal information to CIs about a third party under investigation during the course of any information exchange is a Privacy Act disclosure. Disclosing special agents must account for the disclosure by notating it in the CI file as prescribed in

subparagraph 7c. CIs' true names need not be a part of the accounting; aliases or assigned confidential identity codes may be substituted.

- b. Except in the case of approvals and reviews described in paragraph 19 (Review of Long-Term CIs), subparagraph 81i (coordination concerning payments to CIs), paragraph 94 (notification that a CI has obtained privileged information), and paragraph 18 (coordination concerning deactivation of a CI, but only with respect to a CI whose identity was not previously disclosed), whenever ATF is required to make contact of any kind with a USAO pursuant to this order regarding a CI, ATF should not withhold the true identity of the CI from the USAO without the express approval of the appropriate SAC.
- c. Demands to identify CIs before any legal proceedings should be handled in the same manner as requests for information that are subject to the provisions of 28 CFR Part 16 and 18 U.S.C. § 1905. The response to any subpoena, court order, or any other request seeking a CI's identification or production of any CI's control file, documents, or data or other disclosure that could reveal the CI's identity must have the SAC's prior approval. Division counsel should immediately be notified upon receipt of such a demand.
- d. Where prosecution is contemplated in matters in which information has been received from a CI who requested anonymity and the USAO can give no assurance of its ability to protect the CI's identity, ATF shall take no further action until the appropriate DAD(FO) can be advised and decide whether to engage DOJ's Criminal Division.
- e. CIs have a duty and obligation to safeguard confidentiality agreements with ATF. If CIs break the agreements by disclosing their working relationship to anyone other than a law enforcement officer or during courtroom testimony, they will be immediately removed for cause. (See paragraph 16.) If information comes to ATF's attention that a DEACTIVATED CI disclosed the relationship with ATF, such information will be documented in a memorandum and placed in the deactivated CI's file.

7. MAINTAINING CONFIDENTIALITY.

- a. ATF special agents must take the utmost care to avoid conveying any confidential investigative information to a CI (e.g., information relating to electronic surveillance, search warrants, the identity of other actual or potential CIs, etc.) other than what is necessary and appropriate for operational reasons.
- b. Pursuant to the DOJ Guidelines, AUSAs are required to maintain as confidential CIs' identities and the information they provide unless obligated to disclose it by law or court order. If ATF provides U.S. attorneys (USAs)

or their designees with written material containing such information, the handling of the information must be in accordance with the DOJ Guidelines. At the end of the investigation, all written material concerning the information that has not been disclosed is to be returned to ATF. Special agents shall notate the return of undisclosed documents in N-Force.

- c. Any disclosure of information in the CI file outside of ATF must be documented in the CI's control file in a memorandum. This should include the name of the person to whom the CI's identity was disclosed, the specific nature of the information disclosed, and the reason for the disclosure. Before any information is disseminated, a review by the SAC is required and should be noted on the memorandum.
- d. ATF employees have a continuing obligation after leaving DOJ employment to maintain as confidential CIs' identities and information they provided, unless the employees are obligated to disclose it by law or court order.

8. EXCEPTIONS AND DISPUTE RESOLUTION.

- a. Whenever any exception to any provision of this order is justified or whenever there is a dispute between ATF and any other DOJ agency (except the Criminal Division) regarding this order, dispute resolution requests for exceptions must be sought in writing through the appropriate SAC to the Assistant Director (AD) (FO), who will forward it to the AAG for the Criminal Division or the AAG's designee for resolution. The Deputy Attorney General or his or her designee shall hear appeals, if any, from the AAG.
- b. Whenever there is a dispute between the Criminal Division and ATF, it shall be resolved by the Deputy Attorney General or his or her designee.
- c. Any exception granted or dispute addressed and resolved shall be documented in ATF files maintained by the AD(FO) or designee.

9. COMPLIANCE.

- a. SACs shall ensure that all of their assigned special agents receive sufficient training, including in-service training, in the use of CIs consistent with this order, to include registering, reviewing, and terminating CIs and notifying outside entities. Training shall be repeated as warranted.
- b. The AD(FO) or designee will maintain at all times an active roster of all ATF CIRC members for the purpose of conducting CIRC reviews.

10 RESERVED

CHAPTER B. CI SUITABILITY DETERMINATION AND SPECIAL APPROVAL REQUIREMENTS

11. CI SUITABILITY DETERMINATION (INITIAL).

- a. Before committing substantial resources or taking significant enforcement action based upon information provided by a CI of unknown reliability, special agents shall make all reasonable efforts to ensure that information provided by a CI is reliable and that the CI will not jeopardize an enforcement mission. Additionally, before using any CI, the SAC or ASAC shall make a suitability determination. Thereafter, the SAC or ASAC shall document in the field division's CI control files that the suitability determination has been made. Information to be obtained and assessed must include the following:
- (1) The CI's true name and all known aliases.
 - (2) Residence/business addresses and telephone numbers.
 - (3) Personal description, including date and place of birth.
 - (4) Employment history. If unemployed, current source of income.
 - (5) Social Security number.
 - (6) Past activities (criminal or criminally associated).
 - (7) Whether the CI is a substance abuser or has a history of substance abuse.
 - (8) Whether the CI is related to an employee of any law enforcement agency.
 - (9) Federal Bureau of Investigation (FBI) number and State and local criminal identification numbers.
 - (10) Criminal reputation and known associates.
 - (11) Whether the CI is in the military or is a public official, law enforcement officer, representative of the news media, union official, employee of a financial institution or school, or a party to privileged communications (e.g., a member of the clergy, a physician, a lawyer, etc.).

- (12) The extent to which the person would make use of his or her affiliations with legitimate organizations in order to provide information or assistance to ATF, and if so, how ATF will ensure that the information or assistance is limited to criminal matters.
- (13) Citizenship/alien status. (See paragraph 23.)
- (14) Parole/probation status. (See paragraph 27.)
- (15) The extent to which the person's information or assistance can be corroborated.
- (16) Brief synopsis of information furnished in the past, including:
 - (a) The name, title, and agency of the law enforcement official contacted regarding the CI's reliability.
 - (b) The reliability and truthfulness of the information provided.
 - (c) The date and value of the information furnished.
 - (d) Whether the CI will testify in open court.
 - (e) Identity of other agencies to which the CI is currently supplying information.
 - (f) If the CI has served in that capacity for another law enforcement agency, whether the agency terminated that relationship for cause and why.
- (17) Person's prior known record as a witness in any proceeding.
- (18) Motivation in providing information or assistance, including any consideration sought from the Government for assistance.
- (19) Whether the CI has shown any indication of emotional instability or unreliability or of furnishing false information.
- (20) The nature of the information or service to be supplied and the nature and importance of the information to a present or potential investigation, including whether the information can be corroborated.
- (21) The nature of any relationship between the potential CI and the subject or target of an existing or potential investigation or prosecution, including but not limited to a current or former spousal relationship or other family tie and any current or former employment or financial relationship.

- (22) The risk that the CI may adversely affect an investigation or potential prosecution.
 - (23) The risk of physical harm that may occur to the CI, his or her immediate family, or his or her close associates as a result of assisting ATF.
 - (24) Financial or other arrangements—including promises or other benefits given a CI by ATF, any other law enforcement office (if available and known to ATF), a Federal prosecuting office, and any other State or local prosecuting office (if available to ATF)—in return for providing information or services to any Federal, State, or local agency.
 - (25) Whether the CI is reasonably believed to be a subject or target of a pending investigation, is under arrest, or has been charged in a pending prosecution.
 - (26) Whether the CI poses a criminal threat or danger to the public.
 - (27) Whether the CI poses a risk for flight.
 - (28) Whether the CI is a relocated witness (WITNESS SECURITY (WITSEC) PROGRAM ONLY).
 - (29) Whether CI relocation or application to the WITSEC Program is anticipated.
- b. In addition to the above information, the following items shall be attached to the memorandum:
- (1) Completed ATF F 3252.2, Informant Agreement (English Version), or ATF F 3252.3, Informant Agreement (Spanish Version).
 - (2) Current CI color photograph and fingerprints (FBI Form FD-249, Arrest and Fingerprint Card, or appropriate copy of fingerprints from the Joint Automated Booking System).
- NOTE: FBI Form FD-249 may be ordered through the following link:
http://www.fbi.gov/about-us/cjis/fingerprints_biometrics/ordering-fingerprint-cards.
- (3) State and Federal (NCIC) criminal history documents.
 - (4) State and Federal (NCIC) warrant check documenting that the CI does not have any pending arrest warrants.

- (5) Treasury Enforcement Communications System (TECS) query.
- c. Unless extraordinary circumstances exist and are substantiated, the SAC or ASAC shall not approve the following persons as ATF CIs:
- (1) Persons convicted of perjury.
 - (2) Persons under 18 years of age (juveniles). If a juvenile is approved for use, written consent must be obtained from a parent or guardian.
 - (3) News media representatives. (See paragraph 21.)
 - (4) Persons who have been adjudicated mentally incompetent, have a history of mental illness, or appear to be mentally or emotionally disturbed.
 - (5) Persons who are known or are believed to have given false information to law enforcement authorities in the past.
 - (6) Persons who have set preconditions for remuneration or other considerations that are unrealistic.
 - (7) Persons who have odious criminal records or reputations or who have personal character traits that would make them undesirable as CIs.
 - (8) Persons who have been arrested for or convicted of sex crimes involving minors.
 - (9) Persons who are current or former participants in the WITSEC Program. (See paragraph 22.)
 - (10) Persons who are foreign nationals/illegal aliens. (See paragraph 23.)
 - (11) Persons who are on active military duty. (See paragraph 24.)
 - (12) Person who are fugitives. (See paragraph 25.)
 - (13) Persons in Federal custody, on parole, on supervised release, or on probation or who are detainees, unless prior approval through the appropriate official has been obtained. (See paragraph 26.)
 - (14) Persons in State or local custody, on parole, on supervised release, or on probation or who are detainees, unless prior approval through the appropriate official has been obtained. (See paragraph 27.)

- (15) BOP personnel. (See paragraph 29.)
 - (16) Persons previously documented as ATF CIs and who were removed for cause.
 - (17) Persons who are licensees in an industry in which ATF has jurisdiction (including Federal firearms and explosives licensees). (See paragraph 31.)
12. EMERGENCY CI APPROVAL. In emergency situations where a CI's immediate use is necessary or desired due to valid and necessary investigative needs, the requesting special agent may obtain verbal approval for the CI's use pending official field division or CIRC review and approval. The SAC or ASAC shall approve all verbal requests. Once the emergency situation has subsided, the special agent shall document in N-Force the time and date that the SAC or ASAC provided verbal approval and initiate the CI's registration in accordance with this order.
13. REGISTRATION.
- a. In registering a CI, the control agent, along with one additional special agent or other law enforcement official present as a witness, shall review written instructions that include the below information, which should then be reflected and retained in the CI file. (See ATF F 3252.2 or ATF F 3252.3.)
 - (1) The CI must provide truthful information to ATF at all times;
 - (2) The CI's assistance and the statements made to ATF are entirely voluntary;
 - (3) The U.S. Government will strive to protect the CI's identity but cannot guarantee that it will not be divulged;
 - (4) ATF on its own cannot promise or agree to any immunity from prosecution or other consideration by a Federal prosecutor's office or a court in exchange for cooperation, since the decision to confer any such benefit lies outside of ATF's discretion;
 - (5) The CI will have no immunity or protection from investigation, arrest, or prosecution for anything the CI says or does, and ATF cannot promise or agree to such immunity or protection, unless and until specifically granted such immunity or protection in writing by a USA or his or her designee (i.e., the AUSA). ATF will advise any prosecuting office(s) of the nature and extent of the CI's cooperation;

- (6) Without explicit authorization and written pre-approval, the CI has not been authorized to engage in criminal activity (Tier 1 or Tier 2 Otherwise Illegal Activity (subparagraphs 3d and e)) and could be prosecuted for any unauthorized criminal activity in which the CI has engaged or will engage in the future;
 - (7) The CI must abide by the control agent's instructions and must not take or seek to take any independent action on the U.S. Government's behalf;
 - (8) The CI is not an employee of the U.S. Government and may not represent himself or herself as such;
 - (9) The CI may not enter into any contract or incur any obligation on the U.S. Government's behalf, except as specifically instructed and approved by ATF;
 - (10) ATF cannot guarantee any rewards, payments, or other compensation to the CI;
 - (11) If the CI receives any rewards, payments, or other compensation from ATF, the CI is liable for any taxes that may be owed;
 - (12) No promises or commitments can be made, except by the U.S. Citizenship and Immigration Services, regarding the alien status of any person or the right of any person to enter or remain in the United States;
 - (13) The CI shall be advised that he or she is not to attempt to be present during conversations between persons under criminal indictment and their attorneys. If the CI is inadvertently present and learns of defense plans or strategy, the CI shall be informed that he or she is not permitted to report such conversations without the USA's prior approval.
 - (14) The CI will not disclose the nature of his or her relationship with ATF to anyone other than a law enforcement officer or during courtroom testimony—and only with the control agent's approval before any such disclosure.
- b. Immediately after these instructions have been given, the special agent shall ensure that the CI acknowledges his or her receipt and understanding of the instructions in writing, and, along with the other law enforcement official, document his or her review of the instructions with the CI and his or her understanding of them. As soon as practicable thereafter, the SAC or ASAC shall review and, if warranted, approve the documentation.

The instruction and documentation procedures shall be repeated whenever it appears necessary or prudent to do so and, in any event, at least every 12 months.

- c. If the CI is approved, an entry shall be made on ATF F 3252.1, Informant Control Log, reflecting the name of the CI, the confidential identity code assigned to the approved CI (e.g., 784000-002), the name of the special agent requesting use of the CI, the date of approval, verification date, and the date of removal (to be completed when appropriate).
- d. The SAC or ASAC shall notify the requesting special agent of approval to use the CI, through his or her resident agent in charge (RAC)/group supervisor (GS), by signing and returning a copy of the requesting memorandum (paragraph 11), which the RAC/GS shall retain as notification of approval. These documents shall be maintained in accordance with the security provisions outlined in ATF O 1720.1D, Physical Security Program; operations security principles; and subparagraph 41b.
- e. After registration of the CI and documentation of instructions have occurred, one special agent and at least one other law enforcement officer shall fully debrief the CI to reconfirm his or her knowledge of criminal or other unlawful activities. When the CI is likely to provide information that is subject to legal claim or privilege (e.g., privileged conversation between client/attorney), ATF will ensure prior coordination with an appropriate prosecuting attorney.

14. CONTINUING SUITABILITY REVIEW.

- a. Beginning the first week of January and July of each year, the field division shall review each CI's file to determine if the CI should: (1) remain active, (2) be deactivated (paragraph 15), or (3) be removed for cause (paragraph 16). If the CI is to remain active, the control agent shall complete and sign a continued suitability review memorandum directed to the SAC for his or her written approval. In completing the memorandum, the control agent must address the factors set forth in subparagraphs 11a(1) through (29), and the memorandum must state any changes that have occurred since either the initial CI suitability memorandum or the most recent CI continuing suitability review memorandum was executed.
 - (1) General Background Information. If there have been no changes to the CI's general background information, the memorandum shall state that there have been no changes regarding information contained in the initial or most recent CI suitability review memorandum; subparagraphs 11a(1) through (29) will not need to be specifically addressed.
 - (2) Criminal History. If there have been no changes to the CI's criminal history, the memorandum shall state that there are no changes

regarding the CI's criminal history contained in the initial or most recent CI suitability review memorandum. If there are changes, these changes to the CI's criminal history or TECS record may be paraphrased within the continuing suitability review memorandum in lieu of submitting the actual criminal history printout.

- (3) ATF F 3252.2 or ATF F 3252.3. A newly executed CI Agreement (ATF F 3252.2/ATF F 3252.3) will only accompany the semiannual continuing suitability review memorandum in preparation for the January review period, thus making the submission of a new CI Agreement (ATF F 3252.2/ATF F 3252.3) an annual requirement.
 - (4) Other. The continued suitability review memorandum shall contain the following:
 - (a) Length of time that the person has been registered as a CI;
 - (b) Length of time that the CI has been handled by the same control agent;
 - (3) Cumulative amount of money paid to the CI during the previous 6-month period;
 - (4) Case numbers in which the CI participated.
- b. Each CI must be documented on a separate memorandum. Each special agent shall submit this semiannual review, through his or her RAC/GS, to the SAC by memorandum. This semiannual review requirement is the minimum review amount. Additional reviews may be conducted if deemed necessary by the control agent, SAC, or other appropriate management official.
- c. Semiannual reviews shall be conducted in the following manner:
- (1) The RAC/GS shall advise the control agent and appropriate ASAC that it is time for the review. The RAC/GS is responsible for maintaining the field office's CI identification and control files. (See subparagraph 41b.)
 - (2) The control agent shall obtain the CI's file and any related information from the RAC/GS and ensure that all contracts, payments, and related items are current and complete. The control agent shall then conduct records and criminal history checks and reflect any changes or note that there are no changes in the continuing suitability review memorandum as stated in subparagraphs 14a(1) and (2). Once complete, the CI continuing suitability review memorandum shall be forwarded to the SAC, along with all pertinent documentation for

review together with recommendations. The CI continuing suitability review memorandum must contain an appropriate explanation regarding any CIs who are to be retained or removed from active status.

- (3) An approved CI shall not be recommended for removal as long as any investigation that he or she has contributed to is still pending final disposition unless the assigned prosecutor and ATF supervisor jointly concur that such a removal will not impede the prosecution. The only other exception to this is that a CI may be removed for cause at any time.
 - (4) The SAC will indicate his or her determination by signing the CI continuing suitability review memorandum. All files shall be securely returned to the RAC/GS.
- d. Special agents must notify the RAC/GS when an active CI is arrested or believed to have engaged in unauthorized and/or unlawful conduct, except for a minor traffic infraction. Any unauthorized and/or unlawful conduct must be recorded and maintained in the CI's file. Upon receipt of any such information, the SAC shall ensure that a new continuing suitability review memorandum is promptly prepared and submitted, and the SAC must approve the CI's continued use.
- (1) If ATF is involved in an investigation with more than one Federal law enforcement agency using the CI, coordination among all of the relevant agencies' SACs or designated representative should occur.
 - (2) In situations where a prosecutor is either (1) participating in the conduct of the underlying investigation using the CI or (2) working with the CI in connection with a prosecution, ATF must immediately inform the prosecutor of the arrest or the nature and extent of the alleged unauthorized, unlawful conduct.
- e. Unless extraordinary circumstances exist that would convince the SAC that the approval should continue, a previously approved CI shall be removed from the files when either of the following circumstances occur:
- (1) It is determined that the CI falls within one of the categories listed in subparagraph 11c. In such instances, the responsible special agent shall document the facts in a memorandum and forward it to the SAC, through his or her RAC/GS.
 - (2) During the semiannual verification or prior thereto, the responsible special agent determines that a CI should be removed and so notifies the SAC by memorandum, through his or her RAC/GS.

15. DEACTIVATION OF APPROVED CIs.

- a. When it has been determined that a CI is to be deactivated, special agents shall take the following steps and document them via memorandum through channels to the SAC:
- (1) Document the reasons for deactivating the CI in the CI's files;
 - (2) If the CI can be located, notify the CI that he or she has been deactivated as a CI and provide documentation that such notification was provided;
 - (3) If the CI was authorized to engage in Tier 1 or Tier 2 Otherwise Illegal Activity pursuant to paragraph 62, revoke the authorization under the provisions of paragraph 67.
 - (4) Document the length of time that the CI was registered as a CI;
 - (5) Document the cumulative amount of money paid to the CI during the previous 6-month period; and
 - (6) Document the cumulative amount of money paid to the CI by ATF.
- b. The SAC shall notify the requesting special agent, through his or her RAC/GS, of the removal by returning a signed copy of the above request memorandum conspicuously marked "Informant Removed." When a CI has been removed, an entry shall be made on ATF F 3252.1 reflecting the date removed. The SAC shall have that CI's identification file placed in the field division inactive file by numerical sequence, where it shall be retained according to ATF's records management program. CI files maintained by the field office shall also be retained in compliance with ATF's records management program. At the end of the prescribed retention period, files shall be shredded.
- c. Emergency removal may take place by telephone, followed as soon as possible by submission of a memorandum.

16. REMOVAL FOR CAUSE (UNDESIRABLE/UNRELIABLE) OF APPROVED CIs.

When it appears that a CI shows indications of emotional instability or unreliability or has willfully furnished false, materially substantive information, the SAC shall be advised immediately as outlined below. Depending upon the significance of the materiality and the impact on the problem, the SAC shall notify the appropriate DAD(FO).

- a. When any CIs are suspected or known to be undesirable or unreliable, their services shall be discontinued immediately. Special agents making the

determination shall immediately notify their SAC, through channels, by memorandum. The memorandum shall address the following items:

- (1) Document the reasons for deactivating the CI in the CI's files;
- (2) If the CI can be located, notify the CI that he or she has been deactivated as a CI and provide documentation that the CI has been notified. (If possible, obtain a signed statement from the former CI acknowledging that he or she is no longer an ATF CI.);
- (3) If the CI was authorized to engage in Tier 1 or Tier 2 Otherwise Illegal Activity pursuant to paragraph 62, revoke the authorization under the provisions of paragraph 67.
- (4) Document the length of time that the person has been registered as a CI;
- (5) Document the cumulative amount of money paid to the CI during the previous 6-month period; and
- (6) Document the cumulative amount of money paid to the CI by ATF.

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The memorandum, along with the CI's file, shall be forwarded to the Chief, SOD, where it will be stored. The CI's file shall be stamped "Informant Removed for Cause."

17. CONTACTS WITH FORMER CIs DEACTIVATED FOR CAUSE. Absent exceptional circumstances that are approved by a RAC/GS and in advance whenever possible, special agents shall not initiate contacts with, or respond to contacts from, former CIs who have been deactivated for cause. When granted approval, such approval shall be documented in the CIs' files.

18. COORDINATION WITH PROSECUTORS ON CI DEACTIVATION/REMOVAL FOR CAUSE. In situations where the USAO is either participating in the conduct of an ATF investigation utilizing a CI, or working with a CI in connection with a prosecution, the special agent shall coordinate with the attorney assigned to the matter, in advance whenever possible, regarding any of the decisions described in paragraphs 15 and 16.
19. REVIEW OF LONG-TERM CIs. The review process for long-term CIs will begin at the 6-year point with a review by the CIRC and every successive 6-year interval (12 years, 18 years, etc.) thereafter. These reviews also require 3-year DAD(FO) reviews beginning at the 9-year mark and continuing every 3 years thereafter following a CIRC review (15 years, 18 years, etc.). If a CI meets a 6- or 3-year review interval during the year, the CI's review packet will be forwarded to the appropriate DAD(FO) at the next semiannual review interval.
- a. Six-year CI Reviews.
- (1) When a CI has been registered for more than 6 consecutive years, and to the extent such a CI remains open every 6 years thereafter, the CIRC shall review the CI's completed initial and continuing suitability review memorandum packages and decide whether, and under what conditions, the person should continue to be utilized as a CI. A DOJ Criminal Division representative on the CIRC who disagrees with the decision to approve the continued use of such a CI may seek review of that decision pursuant to paragraph 8.
 - (2) The field division procedure for submitting CIs for the 6-year review to the CIRC is as follows:
 - (a) The field division SAC or his or her designee shall review all active CIs to determine which, if any, CIs have been active for 6 years (or subsequent 6-year intervals) and must be submitted for CIRC review. This review shall occur after all field division continuing suitability review memorandums have been received but no later than February 1 and August 1.
 - (b) No later than February 15 and August 15, all field divisions shall submit by memorandum to the Chief, SOD, a listing by assigned confidential identity code any CIs who must be reviewed by the CIRC. (If no CIs within a field division require submission to the CIRC, the memorandum shall state as such.)
 - (c) A separate CIRC review packet shall be submitted for each CI requiring review. Each packet shall include a copy of the CI's initial suitability review memorandum, a copy of the new semiannual continuing suitability review memorandum, and a

copy of the new semiannual CI agreement (ATF F 3252.2 or ATF F 3252.3). A cover memorandum from the SAC to the Chief, SOD, will accompany the packet addressing the following areas in order to assist the CIRC in making a decision for the CI's continued use:

- 1 A synopsis of accomplishments.
- 2 A justification for continued use.
- 3 Any judicial consideration(s) given to the CI for his or her cooperation.
- 4 A summary of the CI's criminal history or the actual printout.
- 5 The control agent's contact information.
- 6 A certification from the SAC stating that he or she has reviewed the above and it meets the requirements of paragraphs (II)(A)(3)(a) and (b) of the DOJ Guidelines.

b. Subsequent Three-year CI Reviews.

- (1) All CIs who meet the 9-year mark after the 6-year CIRC review will require an internal review by the appropriate DAD(FO). The procedure for submitting CIs to the appropriate DAD(FO) for review is as follows:
 - (a) The field division SAC or his or her designee shall review all active CIs to determine which, if any, CIs have been active for 9 years (or subsequent 3-year intervals not coinciding with a 6-year CIRC review) and must be submitted to the appropriate DAD(FO) for review. This review shall occur after all field division continuing suitability review memorandums have been received but no later than February 1 and August 1.
 - (b) No later than February 15 and August 15, all field divisions shall submit by memorandum a listing by assigned confidential identity code any CIs that the appropriate DAD(FO) must review. (If no CIs require submission to the DAD(FO), the memorandum shall state as such.) A separate DAD(FO) review packet shall be submitted for each CI requiring review. Each packet shall include a copy of the initial suitability review memorandum, a copy of the most recent semiannual continuing suitability review memorandum with any additional documentation, and a copy of the most

recent annual CI agreement (ATF F 3252.2 or ATF F 3252.3). A cover memorandum from the SAC to the Chief, SOD, will accompany the packet addressing the following areas to assist the DAD(FO) in making a decision for the continued use of the CI:

- 1 A synopsis of accomplishments.
- 2 A justification for continued use.
- 3 Any judicial consideration(s) given to the CI for his or her cooperation.
- 4 A summary of the CI's criminal history or the actual printout.
- 5 The control agent's contact information.
- 6 A certification from the SAC stating that he or she has reviewed the above and it meets the requirements of paragraphs (II)(A)(3)(a) and (b) of the DOJ Guidelines.

- (2) If the appropriate DAD(FO) decides that there are any apparent or potential problems that may warrant any change in the use of the CI, he or she shall consult the appropriate SAC and provide the CI's initial and continuing suitability review memorandum packages to the CIRC for review in accordance with subparagraph 19a.

20. USE OF HIGH-LEVEL CIs (HLCIs).

- a. Before using a person as an HL CI, the control agent shall first obtain CIRC written approval. A Criminal Division CIRC representative who disagrees with a decision to approve an HL CI may seek review of that decision pursuant to paragraph 8.
- b. To submit an HL CI for review/approval, the field division SAC or his or her designee shall first review all CI initial and continuing suitability review memorandums to determine if a CI meets the HL CI definition (subparagraph 3h). If the determination is made that a potential CI meets the HL CI definition or that an existing CI's status within an organization has changed so that the CI now meets the HL CI definition, then a memorandum requesting CIRC review shall be submitted immediately to the Chief, SOD, along with copies of any available initial and continuing suitability review memorandums.
- c. After a final CIRC decision to approve or disapprove an HL CI has been made, the Chief, SOD, shall notify the field division SAC via memorandum.

- d. In addition, after a final decision has been made to approve an HLCI, the CIRC shall consider whether to notify the USA who is participating in the conduct of an investigation that is, or would be, utilizing the HLCI, or any USAO that has been, or would be, working with the HLCI in connection with a prosecution, of the decision to approve the HLCI. If the CIRC determines that no such notification shall be made, the reason(s) for the determination shall be provided to the Criminal Division.
- e. None of the sections of this paragraph shall prevent a field division from using a CI who has been granted emergency approval by the SAC, but CIRC review and approval must be immediately subsequently obtained.

21. PERSONS UNDER THE OBLIGATION OF A LEGAL PRIVILEGE OF CONFIDENTIALITY OR AFFILIATED WITH THE MEDIA (LPCM).

NOTE: Before using a person as a CI who is under the obligation of an LPCM, the requesting special agent shall first obtain written CIRC approval, through channels. A DOJ Criminal Division representative on the CIRC who disagrees with a decision to approve the use of such a person as a CI may seek review of that decision pursuant to paragraph 8.

- a. The field division SAC or his or her designee shall review all CI initial and continuing suitability review memorandums to determine if a CI is under the obligation of an LPCM. If the field division determines that a potential CI is under the obligation of an LPCM or that an existing CI's status within an organization has changed so that the CI now is under the obligation of an LPCM, a memorandum requesting CIRC review shall be submitted immediately to the Chief, SOD, along with copies of any available CI initial and continuing suitability review memorandums.
- b. After a final CIRC decision to approve or disapprove a CI who is under the obligation of an LPCM has been made, the Chief, SOD, shall notify the field division SAC via memorandum.
- c. In addition, after a final decision has been made to approve a CI who is under the obligation of a LPCM, the CIRC shall consider whether to notify the USAO that is participating in the conduct of an investigation that is, or would be, utilizing the person—or any USAO that has been, or would be working with that person in connection with a prosecution—of the decision to approve that person in connection with a prosecution, of the decision to approve that person as a CI. If the CIRC determines that no notification shall be made, the reason(s) for the determination shall be provided to the CIRC Criminal Division representative. A CIRC Criminal Division representative who disagrees with a decision not to provide such notification may seek review of that decision pursuant to paragraph 8.

- d. None of the sections of this paragraph shall prevent a field division from utilizing a CI who has been granted emergency SAC approval, but CIRC review and approval must be immediately subsequently obtained.

22. USE OF CURRENT OR FORMER PARTICIPANTS IN THE FEDERAL WITNESS SECURITY (WITSEC) PROGRAM AS CIs.

- a. If ATF or any other agency has placed a person in the WITSEC Program, further use of that person in a new investigation shall be governed by the guidelines of this chapter and consistent with DOJ requirements. These guidelines apply even if all subsistence and support to the person have been terminated and the witness has been voluntarily or involuntarily separated from the program.
- b. The Chief, SOD's concurrence must be obtained before any WITSEC participant may be used as a CI or for any other assignment. Failure to obtain approval could endanger the WITSEC participant, obligate ATF to major expenditures, or provoke a civil action against ATF. For the purpose of this order, a "WITSEC participant" is a person who has been officially relocated by DOJ.
- c. When it is suspected that a prospective or approved CI is a WITSEC participant, the SAC shall immediately notify the Chief, SOD, who shall contact DOJ's Office of Enforcement Operations (OEO), and the appropriate AUSA must be notified. The AAG who authorized the witness protection will make approval for the WITSEC participant's usage. Without such express approval, the WITSEC participant shall not be used or contacted further.
- d. OEO will consider requests to use a WITSEC participant as a CI on a case-by-case basis. When requesting the use of a WITSEC participant as a CI, the SAC must include the following information in the request to the Chief, SOD, so that OEO may make an informed judgment:
 - (1) The name of the CI or person relocated.
 - (2) Alias(es) used by the CI.
 - (3) Approval of the appropriate headquarters official of the concerned agency.
 - (4) If the CI is not a witness, the relationship of the CI to the witness and the name(s) of the witness(es).
 - (5) Identifying data on the CI (e.g., date of birth (DOB), place of birth, Social Security number, FBI number, BOP register number, sex).

- (6) Whether the CI left voluntarily or was removed from the WITSEC Program.
- (7) The CI's employment. If unemployed, include how the CI is subsisting and the extent to which this activity jeopardizes the CI's livelihood.
- (8) The name(s) of the target(s) of the investigation, including his or her role in the crime, or the organization under investigation.
- (9) The significance and/or scope of the criminal activity and the target(s).
- (10) The CI's relationship or association with the target(s) under investigation.
- (11) Whether the CI is able to report substantial information concerning significant criminal activity.
- (12) The necessity of using the CI in the investigation, including details about the nature of the use being requested.
- (13) Whether information or assistance that the CI may be able to contribute may prevent the death of another person.
- (14) The consideration of alternatives to the CI's use and an indication of why they will not work.
- (15) A detailed account of the CI's involvement in criminal activity after being approved for the WITSEC Program.
- (16) An appraisal of whether the request centers on the CI's new criminal involvement and how the CI is aware of the new criminal activity.
- (17) Whether the CI will become involved in criminal activity by acting as a CI.
- (18) Whether the CI wants to furnish information/assistance to the Government because of the belief that he or she may be apprehended for participating in a crime.
- (19) The benefit that the CI expects in return for his or her cooperation.
- (20) A statement as to whether the CI's activity requires him or her to testify.

- (21) An indication as to whether the CI completed the testimony for which he or she was placed in the WITSEC Program.
 - (22) Details about other agencies' use of the CI since his or her relocation.
 - (23) The CI's probation or parole status, including whether the U.S. Probation Office and the U.S. Parole Commission should be notified.
 - (24) The security measures to be taken to ensure the CI's safety and to minimize the risk to the public.
 - (25) Use of electronic devices, bodywires, video, etc.
 - (26) The number of law enforcement agents assigned to the security detail.
 - (27) The length of time that the CI will be needed.
 - (28) Whether the CI is incarcerated. If so, whether the prosecutor and/or judge should be advised.
 - (29) If the CI is an inmate, the location of his or her incarceration.
 - (30) If the CI is an inmate, whether he or she will remain in the custody of the investigative agency, be housed in jails or similar facilities at certain times, or be unguarded (except for his or her protection).
 - (31) If the CI is an inmate, whether a prison redesignation will be necessary upon completing the activity.
 - (32) If the CI is represented by counsel, whether counsel concurs with the activity.
 - (33) If applicable, whether the activity has been endorsed by the appropriate Federal/State prosecutor. If so, provide the prosecutor's name, telephone number, and location.
 - (34) Whether the CI's activities will require submission of a new WITSEC Program application and a subsequent relocation.
 - (35) Whether the CI will be charged/indicted in this investigation.
- e. Once the Chief, SOD, concurs with the request, he or she shall forward it to OEO for DOJ approval before the person may be used as a CI.

- f. SOD, Enforcement Support Branch (ESB), shall maintain a centralized alphabetical file of all ATF witnesses/CIs who have been submitted for acceptance into the WITSEC Program.

23. USE AND REPORTING OF FOREIGN NATIONALS/ILLEGAL ALIENS AS CIs OR WITNESSES.

- a. Five programs exist to request use of illegal aliens as ATF CIs or to maintain their presence in the United States as witnesses. All of these programs are administered through the Department of Homeland Security, Immigration and Customs Enforcement (ICE). All questions related to the use of illegal aliens as CIs/witnesses shall be directed to SOD, ESB.
- (1) Significant Public Benefit Parole (SPBP), which grants aliens temporary non-immigrant status in the United States for a 1-year period or less. SPBP is available for aliens who are needed as CIs for investigative efforts or as witnesses in proceedings that are being, or will be, conducted by judicial, administrative, or legislative bodies in the United States. SPBPs are authorized only on a case-by-case basis for “urgent humanitarian reasons” or “significant public benefit,” provided that the aliens present neither a security risk nor a risk of absconding. To initiate a request for this program, a special agent should contact ESB, which will advise the special agent of current ICE procedures and provide sample documents and assistance throughout the process. The subsequent official request is made via memorandum from the respective SAC to the Chief, SOD. This memorandum, commonly called a “risk and threat assessment memorandum,” includes the alien’s background, an explanation of the alien’s potential benefit to a specific investigation, a risk and threat assessment, the expected duration of the need and use of the alien, and finally, designation of two special agents with responsibility for the alien. The application packet shall be forwarded through SOD to the AD(FO) or his or her delegate for final approval. This memorandum accompanies the ICE SPBP template and a cover letter to ICE from the AD(FO).
- (2) Deferred Action, which stays the deportation proceedings of an illegal alien who is in ICE custody or an illegal alien who has an extensive criminal history that would prohibit obtaining an SPBP. There is no statutory basis for the deferred action program, and therefore, these requests are granted for 1 year or less, on a case-by-case basis, at ICE’s discretion. This program is available to delay deportation for law enforcement reasons or pending an alien’s application for other types of temporary status, as described in this order. To initiate a request for this program, a special agent should contact ESB, which will advise of current ICE procedures and provide sample documents and assistance throughout the process.

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The subsequent official request is made as stated in subparagraph (1), above (i.e., a risk and threat assessment memorandum from the SAC to the Chief, SOD). The application packet shall be forwarded through SOD to the AD(FO) or his or her delegate for final approval. The memorandum accompanies a cover letter to ICE from the AD(FO), as well as other forms.

- (3) U-Visa Program, which is granted to witness or victim immigrants who have incurred substantial suffering as a result of physical or mental abuse related to a specified criminal activity, who possess information about this crime, and who have been helpful, are being helpful, or will be helpful to Federal, State, or local authorities, including police or prosecutors. The temporary status granted to the immigrant is for 3 years, may be extended by law enforcement, and is eligible to be converted to permanent status. The status is available for those who assisted in an investigation or prosecution. ATF can submit law enforcement agency (LEA) certifications on behalf of victim/witness immigrants for crimes related to its primary jurisdiction. If a special agent is contemplating submitting this type of certification on behalf of such an immigrant, he or she should contact ESB, which will advise of current procedures and provide sample documents and assistance throughout the process. The subsequent official request is made as outlined in subparagraph 23a(1) (i.e., a risk and threat assessment memorandum from the SAC to the Chief, SOD), with the addition of Form I-918, Petition for U Nonimmigrant Status, and I-918 Supplement B, U Nonimmigrant Status Certification, both of which will detail the immigrant's helpfulness and victim status. Division counsel will assist the SAC in drafting a memorandum addressing the legal qualifications of the immigrant, which will be sent to ESB for processing. The Chief, SOD, will evaluate the application packet for endorsement, forwarding it to the AD(FO) for final approval. If the AD(FO) approves the application, the memorandum accompanies a cover letter to the U.S. Citizenship and Immigration Services (USCIS) from the AD(FO), as well as other forms. It should be noted that an alien does not have to be currently sponsored by ATF via another program (e.g., SPBP or deferred action) to apply for a U-Visa. The U-Visa certification does not constitute a final determination of status, but it should be filled out in full to demonstrate that ATF believes that the applicant qualifies for the status. Additionally, unlike the S-Visa described below, ATF bears no responsibility for continued observation of or contact with these applicants, and it is the aliens' responsibility to maintain their status and seek any adjustments to legal permanent resident (LPR) status. (b) (5)

- (4) S-Visa Program, which has a considerably more complicated application process and should be sponsored by ATF only in the most compelling circumstances. ATF assumes responsibility for these applicants, if they are granted the status, for the duration of the 3-year status, which means that ATF Headquarters must send reports to the Attorney General quarterly and immediately report any criminal activity or lapse in contact. At the discretion of the Attorney General, the Department of Homeland Security, and the State Department, an S-Visa is available to a limited number of aliens who supply critical, reliable information necessary to successfully investigate and/or prosecute a criminal organization or who supply critical, reliable information concerning a terrorist organization—if the alien is eligible to receive a State Department reward under the Rewards for Justice Program. The S-Visa Program can also be used as a path to U.S. citizenship. To initiate a request for this program, a special agent should contact ESB, which will advise of current ICE procedures and provide sample documents and assistance throughout the process. The subsequent official request is made as stated in subparagraph 23a(1) (i.e., a risk and threat assessment memorandum from the SAC to the Chief, SOD). The assessment memorandum and required attachments shall be forwarded to ESB for processing and will be evaluated for endorsement by the Chief, SOD. The application packet will be forwarded to the AD(FO) for final approval. If the AD(FO) approves the application, the memorandum accompanies a cover letter to OEO from the AD(FO) as well as other forms. Additionally, this program requires ATF to submit the request packet to DOJ's OEO for approval of the AAG, Criminal Division, before USCIS processing. If a sponsored alien is granted an S-Visa, ATF maintains responsibility for supervising and monitoring the alien for the entire 3-year term, which includes completing 30-day status memorandums as described in subparagraph 23b(4). In addition, ATF Headquarters must send quarterly reports to OEO and immediately report any criminal activity or lapse in contact. Once approved, the alien may apply for an adjustment to LPR status. This adjustment in LPR status is not automatic and must be initiated within the approved 3-year S-Visa term. The sponsoring special agent must contact ESB for guidance during this process, which involves submitting Form I-854, Inter-Agency Alien Witness and Informant Record, for Headquarters approval and subsequent submission of Form I-485, Application to Register Permanent Residence or Adjust Status.
- (5) T-Visa Status, which is available to victims of human trafficking and is similar to U-Visas in process and length of status. Unlike the S-Visas and U-Visas, the T-Visa does not REQUIRE an LEA certification to support an application, but a certification is used as evidence to support the application. ATF has no potential primary

jurisdiction over human-trafficking crimes. Therefore, if ATF is asked to support an application for T-Visa non-immigrant status, referral should be made to an LEA with jurisdiction over human-trafficking crimes or to the USAO with jurisdiction over the case for certification. In the unlikely event that there is no other avenue available to the victim (because prosecution or referral was denied) and ATF has primary responsibility for investigating the crime that was related to the trafficking, then a certification should be handled in the same manner as a U-Visa application. The T-Visa LEA certification form is Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons.

NOTE: All of the above programs require requests from the field through ESB/SOD to the AD(FO). SOD will only endorse applications supported by a field division SAC, and a SAC may deny any request received from his or her field division without forwarding it to Headquarters. (b) (5)

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(b) (5)

- b. In addition to any requirements stated in subparagraph 23a, all requests to sponsor illegal aliens or foreign nationals who are brought into the United States to perform investigative activity or attend trial shall adhere to the following requirements:
- (1) All requests to use or sponsor an illegal alien or foreign national as a CI or witness shall be directed to ESB, SOD.
 - (2) There are various circumstances in which a sponsored illegal alien is not an active, registered CI. These include witnesses, family members of alien CIs, and former alien CIs who are in the process of obtaining an ATF-sponsored S-Visa or adjustment to LPR. Because these types of aliens are not serving as actual CIs, they are not to be registered and reflected in the ATF CI files; however, all records associated with the sponsorship must be maintained at the field office and field division levels by creating and maintaining a folder for each alien for the duration of the sponsorship. The alien's folder will be used to maintain all documents relating to the application and approval of the temporary legal status from ICE as well as the monthly supervision memorandums from the sponsoring control agent. Any information regarding requests to adjust status or related

to any of the programs outlined in this order must be well documented in the alien's folder.

- (3) If initially, or at any point in the sponsorship period, there is a need for an alien to be used as an active, registered CI in an investigation, special agents must coordinate with ESB and follow the procedures in the programs described in subparagraph 23a. Once ICE approves the temporary legal status, the alien must then be registered as a CI and a CI file will be created and maintained by both the field office and field division as required by this order. A copy of all of the information in the alien's folder will be included in the new CI file. Once the alien CI is deactivated or removed for cause, the alien's ongoing sponsorship records will still be maintained in the field office and field division alien folder.
- (4) All requests to sponsor illegal aliens or foreign nationals shall include the designation of two special agents who will be responsible for supervising and tracking during the sponsorship period. Their names must be submitted with the original request to SOD. If one of the special agent's transfers, retires, or is promoted, another special agent shall immediately be designated as a replacement. Any changes in the control agents shall be documented in a memorandum from the SAC to the Chief, SOD—a copy of which will be maintained in the field office and field division alien folders and related CI file, if applicable.
- (5) Special agents receiving authorization to sponsor illegal aliens or foreign nationals under the programs of subparagraph 23a must submit status memorandums every 30 days to their SACs (with a copy to ESB) informing of the assistance, location, change in criminal history, and expected duration of use. For assistance in preparing this memorandum, special agents should contact ESB. If the sponsored alien is serving as an actual CI, the additional semiannual CI reporting requirements of this order must be followed as well.
- (6) If a special agent learns of any illegal activity or has any other reason to discontinue the use or sponsorship of the illegal alien or foreign national, he or she shall report the discontinuance to the immediate supervisor as well as compose a memorandum through his or her SAC to the Chief, SOD, notifying of the change. Additionally, ESB should be immediately notified when a special agent is unable to locate an illegal alien or foreign national sponsored by ATF. This notification will be followed by a memorandum from the SAC to the Chief, SOD, outlining the circumstances of the missing alien. The memorandum should include the illegal alien's/foreign national's name, identifiers, last known address and/or work address, and last

contact. ESB will then notify ICE and any other agencies involved with the sponsorship that the alien is unaccounted for.

- (7) As the illegal alien's or foreign national's approved period of temporary legal status nears its end, ESB shall advise affected special agents of their options to extend or terminate the sponsorship within 3 months before the expiration date. The ESB coordination with special agents will be in conjunction with, but not limited to, the 30-day reporting requirements of subparagraph 23b(5).
 - (8) At the end of the sponsored alien's service to ATF, the special agents supervising the illegal alien or foreign national will coordinate with ESB to turn the alien over to the nearest ICE office. This is mandatory for all sponsorships under the deferred action, SPBP, and S-Visa programs and may apply to other programs at ICE's discretion.
- c. Foreign nationals legally in the United States by way of a valid visa, asylum, or other similar program or an alien currently sponsored by another law enforcement agency and in temporary legal status may be used as CIs or witnesses. Questions concerning this type of CI should be directed to ESB. Special agents may use such foreign nationals as CIs without ATF Headquarters' approval described in the previously mentioned sponsorship programs (subparagraph 23a) and without the associated monitoring and reporting; however, the below procedures must be followed:
- (1) The special agent must obtain from the foreign national or alien sponsored by another law enforcement agency a copy of his or her entry or status document(s) (e.g., green card, asylum document, visa, mandatory tracking requirements, deferred action approval letter, etc.). The special agent must also verify the validity of the document(s) with the local ICE office or the other law enforcement agency holding sponsorship. This will ensure the authenticity of the alien's status and show any restrictions or expirations associated with it. After the temporary legal status or sponsorship has been verified, a copy of this document(s) will be placed in the field office and field division CI files. Special agents using a legal foreign national under this exception must monitor the alien's legal status to ensure the alien's visa or temporary legal status does not expire during his or her service with ATF.
 - (2) During the CI approval process, the SAC should use caution when assessing the risk associated with using legally present foreign nationals as CIs to minimize the potential liability and problems of an international nature.

- d. If a foreign national is a senior ranking member of a foreign government, requests for approval must contain the information required in subparagraphs 11a(1) through (29).

24. USE OF MILITARY PERSONNEL AS CIs.

- a. The Posse Comitatus Act (18 U.S.C. § 1385) and the Defense Drug Interdiction Assistance Act (18 U.S.C. §§ 371-78) establish prohibitions against the use of the military to enforce civilian laws.
- b. These acts do not apply to the Coast Guard, since it is under the Department of Homeland Security during peacetime and is considered a civilian organization. Unless imperative, active duty members of the Coast Guard should not be recruited or used as CIs.
- c. Generally, members of the National Guard and the reserve components of the U.S. military fall under the definition of military personnel and should not be used as CIs, but a determination must be made as to whether the personnel are on active duty.
- d. In view of the prohibitions imposed, special agents shall not use active duty military personnel in ongoing criminal investigations arising under laws administered by ATF without prior approval from the SAC, concurrence of the USA, and if appropriate, coordination with the Department of Defense. This does not preclude military personnel from providing technical assistance, such as providing render safe assistance, or from furnishing information concerning a criminal violation, and it does not prohibit ATF from using military storage facilities to store firearms or explosive materials.

25. FUGITIVES.

- a. Except as provided below, a special agent shall have no communication with a current or former CI who is a fugitive.
- b. A special agent is permitted to have communication with a current or former CI who is a fugitive in the following circumstances:
 - (1) If the communication is part of a legitimate effort by that special agent to arrest the fugitive; or
 - (2) If the communication is approved, in advance whenever possible, by the ASAC; the designated representative of any Federal, State, or local law enforcement agency that has a wanted record for the person in NCIC; and in the case of a Federal warrant, by the USAO for the issuing district.

- c. A special agent who has communication with a fugitive must promptly report the communication to all Federal, State, and local law enforcement agencies and other law enforcement agencies having a wanted record for the person in NCIC. Those communications must be documented in the fugitive CI's files.
26. FEDERAL INMATES, PROBATIONERS, PAROLEES, DETAINEES, AND SUPERVISED RELEASEES.
- a. Before using a Federal probationer, parolee, or supervised releasee as a CI, the RAC/GS shall determine if the use of that person in such a capacity would violate the terms and conditions of the person's probation, parole, or supervised release. If the RAC/GS has reason to believe that it would violate such terms and conditions, before using the person as a CI, the RAC/GS or his or her designee must obtain the permission of a Federal probation, parole, or supervised release official with authority to grant such permission, and the permission must be documented in the CI's files. If such permission is denied or it is inappropriate for operational reasons to contact the appropriate Federal official, the special agent may seek to obtain authorization for use of such a person as a CI from the court then responsible for the person's probation, parole, or supervised release, provided that the special agent first consults with the USAO for that district.
- b. In situations where a USAO is either participating in the conduct of an investigation by ATF in which a Federal probationer, parolee, or supervised releasee would be used as a CI, or where a USAO would be working with a Federal probationer, parolee, or supervised releasee in connection with a prosecution, the special agent shall notify the attorney assigned to the matter before using the person as a CI.
- c. Consistent with DOJ requirements, use of a CI who is in the custody of the USMS or BOP—or who is under BOP supervision—must have prior approval from the Criminal Division, OEO. (See U.S. Attorneys' Manual § 9-21.050.)
- d. In causing a Federal inmate to be remanded into ATF custody, ATF assumes a great responsibility. If the inmate or the general public experience personal injury and/or death while the inmate is ATF's responsibility, liability may arise under the Federal Employees' Compensation Act or the Federal Tort Claims Act. There is also a potential for adverse publicity. Therefore, prudent decisions must be made when considering such requests.

- e. The Chief, SOD's concurrence shall be obtained before any Federal inmate, probationer, parolee, detainee, or supervised releasee may be used as a CI or for any other assignment on ATF's behalf. When making such requests, the SAC shall submit a memorandum to the Chief, SOD, who shall make a recommendation to OEO. Approval for use will be made by the AAG, in conjunction with the Director of the BOP, USMS, or other appropriate investigative agency.
- f. All requests for using a Federal inmate, probationer, parolee, detainee, or supervised releasee in investigations must be coordinated with ESB/SOD. When a special agent determines the need to use a Federal inmate, probationer, parolee, detainee, or supervised releasee in an investigation, he or she shall prepare a memorandum to the SAC addressing the following:
- (1) The current location of the inmate, probationer, parolee, detainee, or supervised releasee. (In the case of an inmate, include the name of the correctional facility, city, and State.);
 - (2) Identifying data on the inmate, probationer, parolee, detainee, or supervised releasee (e.g., DOB, BOP number, FBI number, Social Security number, sex, etc.);
 - (3) The charges, including specific statutes for which the inmate is being detained; whether sentenced or unsentenced; and sentencing details, including date. (In the case of a probationer, parolee, detainee, or supervised releasee, provide information relative to the statutes for which the potential CI is being supervised);
 - (4) A copy of the inmate's arrest record or summary of the arrest record must be attached (NCIC);
 - (5) An explanation of the necessity of using the inmate, probationer, parolee, detainee, or supervised releasee in the investigation, including other techniques that have been tried or considered and the reasons why these techniques have not worked or been tried;
 - (6) The name(s) and DOB(s) of the target(s) of the investigation, role in the crime or organization under investigation, citation to principal criminal statutes involving the target(s), identifying data on the target(s), and summary of criminal history;
 - (7) The inmate's, probationer's, parolee's, detainee's, or supervised releasee's relationship or association with the target(s) under investigation;

- (8) Whether the target(s) is aware of the cooperator's arrest or incarceration. Include the inmate's, probationer's, parolee's, detainee's, or supervised releasee's cover story to safeguard the security of the cooperator and the investigation;
- (9) An indepth explanation of the nature of the activity being requested, including the type of electronic surveillance equipment that will be used and how it will be used (if applicable);
- (10) Whether the person must be released from the custody of the USMS or BOP and if so, into whose custody;
- (11) In the case of a Federal inmate, security measures to be taken to ensure the inmate's safety, alleviate the risk to the public, and prevent the inmate's escape;
- (12) The length of time the inmate, probationer, parolee, detainee, or supervised releasee will be needed in the activity;
- (13) Whether the inmate, probationer, parolee, detainee, or supervised releasee will be needed as a witness, including whether he or she will be considered for the WITSEC Program;
- (14) In the case of a Federal inmate, whether a redesignation in custodial location will be necessary during or upon completing the investigative activity;
- (15) In the case of a Federal inmate, the number of special agents and other law enforcement agency personnel assigned to the security detail and which law enforcement agencies they represent;
- (16) Whether the appropriate Federal prosecutor has endorsed the request. If not, explain why. If so, provide the name, phone number, and location of the prosecutor who is endorsing the request;
- (17) Whether the potential CI is represented by counsel; if so, an acknowledgement by ATF that the counsel concurs with his or her client's participation in this activity; and whether the potential CI is facing pending criminal charges. If the potential CI is facing pending criminal charges but is not represented by counsel, the memorandum must indicate that the potential CI is participating in the activity voluntarily and does not wish to consult with an attorney;
- (18) Whether the inmate will engage in warrantless interception of certain categories of verbal communications as specified by the Attorney General;

- (19) Whether entrapment and McDade issues have been discussed with the AUSA. If there are no issues, give a brief statement to this effect.

NOTE: In 1989, then-Attorney General Richard Thornburgh issued a memorandum that purported to unilaterally exempt DOJ lawyers from certain State rules of ethics governing all other lawyers. The McDade-Murtha Law, codified at 28 U.S.C. § 530A, was enacted in 1998 to reaffirm the traditional role of the States in this area, clarifying that Federal prosecutors, like all other lawyers, are subject to State ethical rules governing attorney conduct.

- (20) Acknowledgement by ATF that the Federal prosecutor has determined that the planned operation is not violative of the Attorney General's "Contact with Represented Persons" guidelines with regard to either the cooperating individual or any target(s) or other persons to be contacted during this operation.
- g. If the SAC concurs, the memorandum will be forwarded to the Chief, SOD, for endorsement.
- h. If the Chief, SOD, endorses the request, it will be forwarded to OEO. In accordance with DOJ procedures, requests must be submitted to OEO in writing to the Chief, Special Operations Unit, OEO, Criminal Division. In exigent circumstances requiring an immediate response from OEO, oral requests for approval will be accepted from the Chief, SOD. However, confirmation of the request and appropriate supporting information must be submitted to OEO in writing as soon as possible after approval.
- i. As part of the review process, OEO coordinates with headquarters personnel of all appropriate agencies (e.g., BOP, USMS). Upon approval or denial of the request, OEO will advise the Chief, SOD, of the decision.
- j. In the case of a Federal inmate, the warden of the facility in which the inmate is held will, if the request is approved, contact the identified control agent and coordinate the activity. Any exceptional security problems that prohibit notifying the warden of the inmate 's assistance to ATF must be explained in the original request.
- k. In those situations in which OEO has approved the request but the person whose release is being sought for investigative purposes is being held in USMS or BOP custody BY ORDER OF A COURT, the AUSA must obtain a court order authorizing the release from custody by the USMS or BOP to the approved investigative agency. Such an order should be sealed by the court for the security of both the inmate and the investigation. NO court order shall be obtained transferring the custody of a person from the USMS or BOP to an investigative agency without OEO's prior approval.

- l. Progress reports shall be submitted to the Chief, SOD, if requested.
 - m. ESB shall maintain a centralized alphabetical file of Federal inmates, probationers, parolees, detainees, and supervised releasees assisting ATF.
 - n. In the case of the use of a Federal inmate only, the special agent shall prepare a report detailing the results of the inmate's activity and submit it through channels to the Chief, SOD, within 14 days of concluding the inmate's cooperation. This report will be forwarded to OEO.
27. USE OF STATE OR LOCAL PRISONERS, PROBATIONERS, PAROLEES, DETAINEES, AND SUPERVISED RELEASEES.
- a. In general, the same factors outlined in paragraph 26 with respect to using Federal inmates, probationers, parolees, detainees, and supervised releases as CIs shall also apply to using State or local prisoners, probationers, parolees, detainees, and supervised releases as CIs. Further, ATF shall comply with any applicable State or local laws, rules, and regulations pertaining to using State or local prisoners, probationers, parolees, detainees, and supervised releasees as CIs.
 - b. Special agents wishing to use State or local prisoners, probationers, parolees, detainees, and supervised releasees as CIs must obtain approval through the normal CI registration process. The memorandum must include the information referenced in subparagraph 27c.
 - c. Before using such a person as a CI, the RAC/GS or designee must obtain the permission of a State or local prison, probation office, parole office, applicable court with authority, or supervised release official with authority to grant such permission. This is to ensure the proper authorization has been obtained since the CI's use would violate the terms and conditions of his or her incarceration, probation (e.g., associating with the criminal element), parole, or supervised release. If it is a new CI request, the official's name and the date permission was granted shall be documented in the CI initial suitability review memorandum—specifically when addressing subparagraph 11a(14). In the case of an existing CI, the official's name and the date permission was granted shall be documented in a memorandum from the control agent to the RAC/GS and placed into the CI file. If such permission is denied or it is inappropriate for operational reasons to contact the appropriate State or local official, authorization may be sought from the State or local court responsible for the CI's incarceration, probation, parole, or supervised release.
 - d. In situations where the USAO is either participating in the conduct of an investigation in which a State or local prisoner, probationer, parolee, or supervised releasee would be used as a CI, or where the USAO would be working with a State or local prisoner, probationer, parolee, or supervised

releasee in connection with a prosecution, the appropriate special agent shall notify the assigned attorney before using the person as a CI.

28. USE OF LAW ENFORCEMENT OFFICERS AS CIs. While law enforcement officers (whether Federal, State, or local) may be used as sources of information, they should not be documented as CIs.
29. USE OF BUREAU OF PRISONS (BOP) PERSONNEL AS CIs. BOP has requirements for its personnel being involved in undercover operations that may include their use as CIs. A special agent seeking to use a BOP employee as a CI shall, through the chain of command, contact the Chief, SOD, who shall coordinate with BOP Headquarters for approval.
30. USE OF OTHER LAW ENFORCEMENT AGENCIES' CIs. In joint investigations where another agency is paying subsistence to a CI, ATF may provide funds to the CI to purchase evidence but is not required to document the person as an ATF CI.
31. USE OF FEDERAL FIREARMS LICENSEES OR OTHER LICENSEES AS CIs. Because of the licensing relationship with ATF, a licensee in an industry in which ATF has jurisdiction (i.e., firearms, explosives, alcohol, or tobacco) should not be documented as a CI. As an example, special agents should not document a Federal firearms licensee through the normal course of an ATF investigation, such as firearms trafficking, but should instead seek the licensee's cooperation to whatever level is necessary to successfully complete the investigation or to which the licensee is willing to cooperate outside the normal requirements and responsibilities of the license. There are two areas of exceptions involving the documentation of a licensee:
 - a. If such a licensee were arrested, charged, or facing charges—and the licensee agrees to cooperate as a CI in consideration for reduction of sentence or in lieu of prosecution—then documentation as a CI would be permitted. Prior approval and coordination must be obtained from the USAO and defense counsel involved in the investigation.
 - b. Employees of licensees who are not actual license holders or corporation officers listed under such an ATF license may be documented as CIs in investigative efforts against a licensee suspected of illegal activity.
32. LISTING A CI IN AN ELECTRONIC SURVEILLANCE APPLICATION.
 - a. A special agent shall not name a CI as a named interceptee or a violator in an affidavit in support of an application made pursuant to 18 U.S.C. § 2516 for an electronic surveillance order unless the special agent believes that (a) omitting the name of the CI from the affidavit would endanger that person's life or otherwise jeopardize an ongoing investigation; or (b) the CI is a bona fide subject of the investigation based on his or her suspected involvement in unauthorized criminal activity.

- b. If a CI is named in an electronic surveillance affidavit under subparagraph 32a, the special agent must inform the AUSA making the application and the court to which the application is made of the CI's actual status.

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CHAPTER C. GENERAL POLICY CONSIDERATIONS AND MANAGEMENT41. CI IDENTIFICATION AND CONTROL FILE.

- a. Special agents increase their personal hazard when working with CIs whose identities are known only to themselves. If special agents are injured, killed, held hostage, etc., while working in connection with a CI, ATF would find it extremely difficult to undertake an investigation if the CI's identity and background information were not available. To ensure that this does not occur, all CIs shall be identified and documented according to the provisions of this order. Only after identification, documentation, and approval by the SAC shall special agents use a CI. In addition, all special agents, before personally contacting a CI (or potential CI), shall inform at least one ATF special agent or the RAC/GS of the CI's identity, the location where the CI will be contacted, and the expected duration of the contact. For the initial contact, special agents shall only meet with a potential CI if accompanied by at least one other law enforcement officer.
- b. Each field division shall establish a CI identification file. Additionally, ATF F 3252.1 shall be maintained under the SAC's direction in accordance with the security provisions outlined in ATF O 1720.1D and operations security principles. Further, all correspondence reflecting CIs' actual names shall be transmitted in double-sealed envelopes, with the inner envelope marked "to be opened only by (appropriate addressee)." In addition to the SAC maintaining a CI identification file, each RAC/GS shall maintain a duplicate CI identification file. This file shall contain all correspondence on each CI and shall be maintained under the same security provisions previously outlined in this order.
- c. The CI identification file shall contain information on each approved CI, and ATF F 3252.1 will serve as a cross-reference index to the respective CI files.
- d. In addition to the initial and continuing suitability review memorandums, all required information from subparagraphs 11a and b, such as a current CI photograph and the FBI Form FD-249 (or Joint Automated Booking System/FBI-compliant printouts), MUST be maintained in the CI control file and in the duplicate CI control file maintained by the RAC/GS at the field office where the CI is registered.
- e. The information required under paragraphs 11 through 16 and any subsequent information that may be required would constitute a respective CI control file. As new or additional personal information is developed, it shall be included in that CI's file.

- f. The identification file for each approved CI shall be filed in the field division active file in numerical sequence of the assigned confidential identity codes used by that division. The first six digits shall be the appropriate field office organizational code. (For example, Los Angeles I Field Office has three approved CIs who have been assigned confidential identity codes "784000-002, 784000-006, and 784000-009." The three respective CI identification files would be noted "784000-002, 784000-006, and 784000-009" and would be filed in this same sequence.)
- g. The assigned confidential identity code of an approved CI shall be used in all subsequent instances where reference is made to the respective CI (e.g., case reports, agent cashier fund reports, referrals).
- h. Control and use of an approved CI may be transferred interdivision upon proper notification and approval of the SACs involved. However, transferring the respective CI identification file to the receiving field division is not necessary unless the CI is actually relocating to that division. The original confidential identity code assigned to the approved CI should be used when the CI is working temporarily in another field division. A new confidential identity code shall be assigned when a CI permanently relocates to a new field division (gaining field division). The new identity code shall be documented via memorandum and entered into the CI control file. The original confidential identification code (losing field division) shall be deactivated for the purposes of the field division and field office recordkeeping.

42. OPERATIONS SECURITY.

- a. To ensure maximum security in ATF offices, all CI communications, claims for reward, reports, memorandums, or documents identifying CIs shall be stored according to the security provisions outlined in ATF O 1720.1D as well as operations security principles. Access shall be limited to persons responsible for security of the aforementioned documents. Personnel to whom CIs' identities become known or who receive information that identifies CIs shall treat such information as highly confidential and shall exercise security precautions as required for those primarily responsible.
- b. To ensure operations security and to protect CIs' identities, CIs shall be escorted at all times while inside an ATF office, command post, offsite, or at any other location where they could gain unauthorized access or become privy to sensitive documents, the identities of other ATF CIs, or ATF information systems. Adherence to operations security guidelines and extreme care must be exercised in dealing with CIs to prevent them from having unauthorized access to official documents or otherwise becoming aware of and having the opportunity to obstruct ATF's function.

43. SENSITIVITY OF INFORMATION PERTAINING TO CIs. A CI's identity, information provided, assignments, and other pertinent matters are sensitive and shall be treated with the utmost security. (b) (7)(E)
(b) (7)(E)
(b) (7)(E) It cannot be overemphasized that the relationship with a CI requires the utmost discretion and demands from special agents the highest degree of honesty, integrity, and tact.
44. CONTACT WITH PROSECUTING OFFICES. No special agent shall contact the USAO or other prosecuting office requesting the reduction of bail for a person who is or will be providing information to ATF without receiving prior approval of the SAC or ASAC. Great care should be taken when seeking a reduction in bail, comparing the information that the person can provide against the charges that are pending (e.g., armed robbery, sex offense, etc.).
45. RELIABILITY OF INFORMATION PROVIDED BY CIs. Every investigative avenue available should be pursued to ensure that information provided by a CI is reliable. Special agents should be alert for dishonesty or false statements when a CI's testimony may be necessary for a successful prosecution. Juries tend to discredit the testimony of such persons and anyone associated with them. (NOTE: If any CI is determined to be unreliable, see paragraph 16.) Finally, special agents must ensure that it is they, not the CIs, who direct investigations.
46. MATTERS FALLING OUTSIDE OF ATF'S PRIMARY JURISDICTION. Special agents shall instruct CIs to confine themselves to matters within ATF's primary investigative jurisdiction, so far as possible. When CIs provide information on planned criminal activity not within ATF's enforcement responsibility, special agents shall, without compromising the CIs, expeditiously transmit that information to the appropriate law enforcement agency.
47. CIs' INVOLVEMENT IN ATF FUNCTIONS. CIs shall be advised that they are not ATF employees. (b) (7)(E)
(b) (7)(E)
(b) (7)(E)
48. MEETINGS WITH CIs OF THE OPPOSITE SEX. When possible, a minimum of one special agent and another law enforcement officer should be present whenever meeting with a CI of the opposite sex. If possible, at least one of the two law enforcement officers should be of the same sex as the CI.
49. PROHIBITED CI TRANSACTIONS AND RELATIONSHIPS.
- a. An ATF special agent shall not do the following:
- (1) Exchange gifts with a CI;

- (2) Provide the CI with anything more than nominal value;
 - (3) Receive anything of more than nominal value from a CI; or
 - (4) Engage in a business or financial transaction with a CI.
- b. Except as authorized pursuant to chapter E, any exception to the above provisions requires the RAC/GS' written approval, in advance whenever possible, based on a written finding by the RAC/GS that the event or transaction in question was necessary and appropriate for operational reasons. This written finding shall be maintained in the CI's files.
- c. Under no circumstances are special agents to become involved with CIs on a social or personal level. All contacts with CIs should be limited to official business only.
- d. In situations where a USAO is either participating in the conduct of an ATF investigation that is utilizing a CI, or working with a CI in connection with a prosecution, ATF shall notify the AUSA assigned if ATF approves an exception or if an ATF special agent socializes with a CI in a manner not permitted in this paragraph.

50. UNUSUAL AND/OR SIGNIFICANT MATTERS.

- a. All unusual and/or significant matters involving approved CIs must be reported immediately to the SAC, through the chain of command. The SAC will determine if the matter should be reported to the appropriate DAD(FO). Matters that must be reported immediately to the appropriate DAD(FO) include, but are not limited to, the following: murder, bodily injury, threats of bodily harm, or property damage to CIs or their families resulting from CI activities; CIs' involvement in any felonious criminal activity; or CIs' involvement in any sensitive matters as defined in ATF O 3210.7C, Investigative Priorities, Procedures, and Techniques.

- b. (b) (7)(E)
(b) (7)(E)

- (1) A signed statement should be obtained from CIs/witnesses for inclusion in the case report. In situations where it is believed that

(b) (7)(E)
(b) (7)(E)
(b) (7)(E)

(2) (b) (7)(E)
(b) (7)(E)

51. CI/WITNESS PROTECTION AND RELOCATION (ATF).

- a. Protection. Each special agent has a duty and an obligation to make every effort to protect CIs/witnesses, their dependents, and their property at all times, particularly when it becomes known or suspected that their identities are known by those against whom they may testify. Failing to take adequate safeguards may cause liability issues and great expense to ATF and could result in successful civil actions against the Bureau.
- b. Threat Assessment. Any CI/witness threat(s) shall be investigated by the ATF control agent and/or other field division special agents, and a threat assessment shall be completed. Please contact the field division's victim/witness coordinator or the Headquarters National Victim/Witness Coordinator for a current "threat assessment" form. (In addition, see ATF O 3254.1A, Victim and Witness Assistance Program.)
- c. Refusal of Protection. When CIs/witnesses refuse protection after a special agent advises that a clear and present danger to their safety exists, the USA should be advised immediately. The special agent should document the circumstances, noting the date and time that CIs/witnesses were advised of the danger and refused protection. When possible, CIs/witnesses should be asked to sign a statement indicating their refusal to accept protection.
- d. Expenses.
 - (1) Good judgment should be exercised to avoid suggestions to CIs/witnesses that might cause them to become unduly alarmed over their safety. However, when circumstances indicate that CIs/witnesses, their dependents, or their property is in danger, the special agent shall take whatever immediate action he or she deems necessary. If it is not possible to contact the SAC before taking protective action, then the SAC must be notified as soon as possible after the action has been taken, through the chain of command. ATF protection will continue until such time as the SAC determines that a valid threat no longer exists or CIs/witnesses are transferred to the USMS' custody upon authorization by the Attorney General.
 - (2) When CIs/witnesses are taken into protective custody or relevant expenditures are incurred, they shall be reported immediately to the SAC, through the chain of command. The SAC must approve all expenses incurred for witness/CI subsistence, travel, and relocation. Funds for these expenditures will be drawn from the ATF agent

cashiers fund. Requests for these funds must be made through the SAC using ATF F 3251.3, Request for Advance of Funds.

NOTE: CIs may additionally be eligible to receive Emergency Witness Assistance Program (EWAP) funds through the respective USAO. Special agents should contact their local USAO for further information regarding EWAP funds. If the CI receives EWAP funding or ATF funding directly related to the safety and security of the CI and/or the CI's family members, additional requirements related to ATF's Victim/Witness Assistance Program are required; the special agent will need to note funding use in the N-Force management log and notify the respective field division victim/witness coordinator. Please contact the field division victim/witness coordinator or the Headquarters National Victim/Witness Coordinator for further instructions and services.

52. WITSEC PROGRAM.

- a. Guidelines. The Witness Security Reform Act of 1984 continues the authority of the Attorney General to establish guidelines for use by USAs to provide protection and security by means of relocation for witnesses, their relatives, and associates. The responsibility for the security and maintenance of a protected witness and his or her dependents and associates rests with the USMS and DOJ's OEO. Requests for protection of a witness, etc., must be made through the USA. DOJ policy requires that protection of a witness and family members and associates in a local or State police matter be handled by those authorities. Exceptions to this policy will be allowed only upon the finding of the AAG of the concerned division that the proposed witness meets all of the following conditions:
- (1) The person is a qualifying witness in a specific case in process, or during or after a grand jury proceeding.
 - (2) Evidence in possession indicates that the life of the witness and/or that a member of the witness' family or household is in immediate jeopardy.
 - (3) Evidence in possession indicates that it would be in the Federal interest for DOJ to protect the witness and/or a family or household member.
- b. Procedures.
- (1) Requests to place a person and his or her family and associates in the WITSEC Program must be made to the USA. No ATF employee is authorized to make representations or promises, either expressed

or implied, to prospective witnesses regarding WITSEC Program services with the intent to elicit their cooperation as Government witnesses.

- (2) When it is known that the USA is recommending an ATF witness for the program, the case agent shall immediately prepare a threat assessment or threat/risk assessment memorandum and forward it to the SAC for review. The SAC shall forward the memorandum, along with his or her written recommendation, to the Chief, SOD.
- (3) If the prospective witness is a prisoner, a threat assessment must be completed. Once this prisoner is released from custody, and if it is determined that additional program services are necessary, then a risk assessment will be needed. If the witness is not a prisoner, then a threat/risk assessment must be completed. Separate threat/risk assessment memorandums are required for each family member or associate who will be entering the program with the witness/because of a witness' participation. A threat/risk assessment memorandum must contain the following information:

(a) Threat Assessment.

- 1 A statement that the appropriate USA has recommended the witness for participation in the program.
- 2 The facts of the specific case or cases in progress, including the role of the recommended witness; the record and reputation of the defendants, the criminal organization, and their illegal activities; and the involvement of any other agencies in the investigation.
- 3 Detailed information on the threat, whether direct or potential, to the witness and his or her family as a result of his or her cooperation with the Government.
- 4 Names and identifying data for all persons who may pose a danger to the witness. (See subparagraph 52b(10).)
- 5 The recommended witness' criminal record and reputation.
- 6 If the witness is a prisoner, a statement as to whether a change of identity is necessary or whether the Central Monitoring Program would satisfy safety concerns. This program ensures separation of the prisoner from

other prisoners or visitors who pose some level of risk to his or her personal safety.

- 7 The names of any relatives or members of the household of the principal witness, including their criminal backgrounds, and information documenting the threat against their safety.

(b) Risk Assessment.

- 1 Significance of the investigation or case in which the witness is cooperating.
 - 2 The relative importance of the witness' testimony.
 - 3 Whether the prosecutor can secure similar testimony from other sources.
 - 4 The alternatives to program use (such as a lump-sum relocation) that were considered and why they will not work. What capability does the person posing the threat have that a complete change of identity is required to ensure the witness' safety?
 - 5 The possible danger to other persons or property in the relocation area if the witness is placed in the program. Any prior criminal behavior must be addressed. (Applies to the witness and his or her family members.)
 - 6 Whether the need for the witness' testimony outweighs the risk of danger he or she may pose to the public. (Applies to the witness and his or her family members.)
 - 7 If minor children are involved, whether any child custody issues need to be addressed. (See subparagraph 52b(13).)
- (4) The Chief, SOD, will forward the threat/risk assessment, with his or her recommendation, to OEO.
 - (5) To expedite approval of requests to place persons in the program and to relieve ATF of the costly responsibility of protecting witnesses for lengthy periods of time, the SAC shall ensure that threat/risk assessments are submitted to the Chief, SOD, as soon as it becomes apparent that program services will be needed. Conditional approval may then be obtained, allowing witnesses to continue their undercover activities and yet permitting their entry on

an expedited basis when their cooperation becomes known or indictments are returned. The SAC will forward to the Chief, SOD, timely reports of significant occurrences (e.g., search warrants, arrests, indictments, convictions, etc.) involving any person recommended for the program.

- (6) No State or local witness will be admitted to the program unless the State or locality fully reimburses the USMS for the total cost of services rendered.
- (7) Upon request, the case agent shall produce the witness and adult family members (those being considered for relocation) for a preliminary interview at a site that the USMS selects. Also present will be the AUSA who is recommending the witness. The case agent, in close cooperation with the USA, shall thoroughly debrief each person recommended for the program. The debriefing should include all areas of knowledge that the witness may have concerning criminal activity. The special agent shall submit a written report of the debriefing, including to whom the information has been disseminated, to the SAC, who will forward it to the Chief, SOD, within 14 calendar days of submitting the threat/risk assessment.
- (8) The case agent will be required to produce the witness and adult family members/associates for psychological testing by a BOP psychologist. All appointments will be coordinated through the Chief, SOD. The psychologist will not know the witness' and family members' true names and, as a security requirement, will refer to them by an OEO-assigned code number. Copies of the psychological tests will be made available to the prosecutor for a determination as to any Brady problems.
- (9) A polygraph examination is required of all WITSEC Program candidates who are incarcerated or will be incarcerated in the near future. If this occurs, the case agent may be asked to arrange to have a polygraph examination administered. WITSEC Program authorization may be rescinded if the results of the examination reflect deception indicating that the candidate intends to harm or disclose other protected prisoner-witnesses or information obtained from such witnesses.
- (10) The case agent shall assist the sponsoring attorney in providing the following information to OEO on all persons who have been identified as posing a threat to the witness and who are in or are likely to come into Federal custody. This essential information will enable the BOP to determine the appropriate institution for safe housing of a prisoner-witness and to monitor the separation needs of protected prisoner-witnesses.

- (a) Name.
 - (b) Alias.
 - (c) Date of birth.
 - (d) FBI number.
 - (e) Race.
 - (f) Sex.
 - (g) Ethnic origin.
 - (h) Offense/charge.
 - (i) Current status (appeal, fugitive, un-incarcerated).
- (11) If the prospective WITSEC Program candidate is an illegal alien, the attorney or special agent seeking to sponsor the WITSEC Program candidate must contact ESB during the planning phase of the WITSEC Program application. ESB will provide guidance and the current procedures for obtaining temporary legal status for the alien and any family members from ICE. ESB will also supply the current ICE forms for the sponsorship program and assist the special agent through the process. Once temporary status for the alien(s) is obtained from ICE, the special agent will receive the ICE authorization documents allowing the WITSEC Program candidate and family members to remain in the United States while the WITSEC Program application is in process. WITSEC Program candidates who are illegal aliens cannot be accepted into the program or relocated by the USMS until all documents relating to the temporary legal status of the alien(s) have been provided to OEO or the USMS. In cases where the ICE procedures to obtain temporary legal status for an illegal alien candidate require a lengthy time period, the special agent should secure from ICE a letter of intent to change the witness' status as part of the requirements for relocation under the WITSEC Program. For more information concerning the sponsorship of illegal aliens as CIs or witnesses, special agents should review paragraph 23.
- (12) The Witness Security Reform Act of 1984 authorizes a Federal probation officer, upon the request of the Attorney General, to supervise any person provided protection under 18 U.S.C. chapter 224 section 3521 who is on probation or parole under State law if the State involved consents to such supervision. To have a State parolee or probationer supervised under Federal jurisdiction, the

State must provide written consent to such supervision. The case agent should assist in obtaining from the State specific documents needed for proper supervision of a State parolee or probationer.

- (a) Documents needed for State parolees include a presentence or background report detailing the circumstances of the instant offense and prior criminal conviction history, a sentence date record indicating the type and length of sentence imposed by the State court, a signed parole or release certificate, and all available institutional materials, such as progress reports and classification materials.
 - (b) Documents needed for State probationers include a presentence or background report detailing a description of the instant offense and prior criminal conviction history, the order of probation from the court indicating the sentence of probation imposed with signed conditions of release, and any other pertinent materials.
 - (c) A State parolee or probationer cannot be relocated out of the sentencing State without these documents and written consent from the supervising State releasing supervision to Federal authorities.
- (13) The Witness Security Reform Act of 1984 provides that a child may not be relocated unless the parent to be relocated (the "program parent") has legal custody. Court orders concerning custody and visitation must be obtained and reviewed before relocation of the child is allowed to ensure that compliance with the order is possible. If compliance is not possible, the program parent must initiate legal action to modify the order. The case agent must obtain from the program parent all legal custody documents that are required under the act. Where possible, these documents must be submitted to OEO with the WITSEC Program application. If the legal custodial parent's location is unknown, the case agent must make good faith efforts to locate the parent for the purpose of obtaining a legal custody change and/or written consent to the child's relocation by the USMS for security reasons.
- (14) Once a witness has entered the WITSEC Program and is under the supervision of the USMS, ATF is not to have any further contact with the witness.
- (a) The area of the witness' relocation should be known only to the USMS and must not be made known to the sponsoring AUSA, ATF case agent, or their staff members. All contact with the witness should be made through OEO or the USMS

Witness Security Inspector. The witness should be instructed to keep secret the area of his or her relocation and all associated matters.

- (b) If a WITSEC Program participant directly contacts an ATF special agent, the special agent should immediately inform the witness to keep his or her location and identity secret and inform the witness to coordinate any concerns through his or her appropriate USMS point of contact. The special agent should then immediately contact SOD, which will report the incident to OEO. Under no circumstances should an ATF agent solicit the witness' new location or new identity. If the witness' new location or identity becomes known to an ATF special agent, the special agent should contact SOD immediately to report the breach, identifying the witness only by his or her former name. Under no circumstances should an ATF special agent further disclose the new identity or location of a witness. It is made criminal in 18 USC section 3521(b)(3) to disclose information related to a witness' new identity or location.
 - (c) The Attorney General delegated the Director of OEO as the only official who is authorized to disclose the identity or location of a witness in the WITSEC Program. If for some reason it becomes necessary for an ATF special agent to contact a WITSEC Program witness, such contact should be coordinated through ESB, which will contact OEO and the USMS for guidance and approval to assist the requesting special agent. ESB shall notify the requesting special agent of the approval or declination. If approved, ESB shall coordinate the witness contact as directed by OEO or the USMS.
- (15) Normally, witnesses in the program will not be returned to a danger area for conferences or meetings. Special agents shall conduct interviews in neutral sites selected by the USMS. Exceptions to the use of a neutral site for interviews must be requested, in writing, by the Chief, SOD, to OEO. If approved by OEO, the requesting office may be required to provide the necessary security for the witness. Exception requests must be submitted at least 10 working days before the meeting and must include detailed explanations of why exceptions are necessary.
- (16) After the use of a relocated witness has concluded, the case agent shall forward to the SAC a summary of results obtained through the use of the witness. This report shall include actions taken by other agencies based on information referred to them by ATF. The SAC

shall forward this report to the Chief, SOD, after receipt. The following should be addressed:

- (a) Name of the witness.
- (b) Name of the case.
- (c) Jurisdiction.
- (d) Did the witness testify before grand jury? Trial? If the witness did not testify, why not?
- (e) Status of the witness in the case:
 - 1 Defendant.
 - 2 Unindicted coconspirator.
 - 3 Prisoner.
 - 4 Victim.
 - 5 Other.
- (f) Names of all defendants.
- (g) Statutory violations charged.
- (h) Date of indictment.
- (i) Date of conviction.
- (j) Disposition of the case as to each defendant.
- (k) If convicted, the details of the sentence imposed on each defendant, including fines levied, etc.
- (l) Any information as to significant forfeitures or seizures accomplished because of the assistance of the witness.
- (m) Any information as to contributions made by this witness to the law enforcement effort (Federal, State, and local) in your field division and elsewhere as a result of your request to place the witness in this program (e.g., furnishing probable cause for Title IIIs, search warrants, locations of fugitives).

- (17) If a former program participant is involved in criminal activity after relocation and is convicted of a State offense, he or she will not be accepted into Federal custody (via the WITSEC Program) unless the State authorities involved advise OEO that they cannot keep him or her safe either in their own facilities or through transfer to another State. OEO will arrange, through the sponsoring investigative agency, to have the State authorities provided with background information concerning the witness cooperation so that they may provide for his or her security needs.

- (18) ESB shall maintain a centralized alphabetical file of relocated witnesses.

53 – 60 RESERVED

CHAPTER D. AUTHORIZATION OF OTHERWISE ILLEGAL ACTIVITY61. GENERAL PROVISIONS.

- a. A CI shall not be authorized to engage in any activity that otherwise would constitute a misdemeanor or felony under Federal, State, or local law if engaged in by a person acting without authorization, except as provided in the authorization provisions in this chapter.
- b. ATF is never permitted to authorize a CI to do the following:
 - (1) Participate in an act of violence;
 - (2) Participate in an act that constitutes obstruction of justice (e.g., perjury, witness tampering, witness intimidation, entrapment, or fabrication, alteration, or destruction of evidence);
 - (3) Participate in an act designed to obtain information that would be unlawful if conducted by a law enforcement agent (e.g., breaking and entering, illegal wiretapping, illegal opening or tampering with the mail, or trespassing amounting to an illegal search); or
 - (4) Initiate or instigate a plan or strategy to commit a Federal, State, or local offense.

62. AUTHORIZATION.

- a. Tier 1 Otherwise Illegal Activity must be authorized in advance and in writing for a specified period, not to exceed 90 days, by the SAC and the USA of the appropriate USAO. For purposes of this subparagraph, the "appropriate USA" is the USA who:
 - (1) Is participating in the conduct of an investigation by ATF that is utilizing an active CI, or is working with an active CI in connection with a prosecution;
 - (2) With respect to Otherwise Illegal Activity that would constitute a violation of Federal law, would have primary jurisdiction to prosecute the Otherwise Illegal Activity; or
 - (3) With respect to Otherwise Illegal Activity that would constitute a violation only of State or local law, is located where the otherwise criminal activity is to occur.
- b. Tier 2 Otherwise Illegal Activity must be authorized in advance and in writing for a specified period, not to exceed 90 days, by the SAC.

63. FINDINGS.

- a. The SAC who authorizes Tier 1 or 2 Otherwise Illegal Activity must make a finding, which shall be documented in the CI's files, that authorization for the CI to engage in the Tier 1 or 2 Otherwise Illegal Activity meets both of the following criteria:
 - (1) That the activity is necessary either to:
 - (a) Obtain information or evidence essential for the success of an investigation that is not reasonably available without such authorization; or
 - (b) Prevent death, serious bodily injury, or significant damage to property.
 - (2) That in either of the above case, the benefits to be obtained from the CI's participation in the Tier 1 or 2 Otherwise Illegal Activity outweigh the risks.
- b. In making these findings, the SAC shall consider, among other factors, the following:
 - (1) The importance of the investigation;
 - (2) The likelihood that the information or evidence sought will be obtained;
 - (3) The risk that the CI might misunderstand or exceed the scope of his or her authorization;
 - (4) The extent of the CI's participation in the Otherwise Illegal Activity;
 - (5) The risk that ATF will not be able to supervise closely the CI's participation in the Otherwise Illegal Activity;
 - (6) The risk of violence, physical injury, property damage, and financial loss to the CI or others; and
 - (7) The risk that ATF will not be able to ensure that the CI does not profit from his or her participation in the authorized Otherwise Illegal Activity.

64. INSTRUCTIONS.

- a. After a CI is authorized to engage in Tier 1 or 2 Otherwise Illegal Activity, at least one special agent, along with one additional special agent or other law

enforcement official present as a witness, shall review with the CI written instructions that state, at a minimum, the following:

- (1) The CI is authorized only to engage in the specific conduct set forth in the written authorization described in paragraph 62 and not in any other illegal activity;
 - (2) The CI's authorization is limited to the time period specified in the written authorization;
 - (3) Under no circumstance may the CI do the following:
 - (a) Participate in an act of violence;
 - (b) Participate in an act that constitutes obstruction of justice (e.g., perjury, witness tampering, witness intimidation, entrapment, or fabrication, alteration, or destruction of evidence);
 - (c) Participate in an act designed to obtain information for ATF that would be unlawful if conducted by a law enforcement agent (e.g., breaking and entering, illegal wiretapping, illegal opening or tampering with the mail, or trespassing amounting to an illegal search); or
 - (d) Initiate or instigate a plan or strategy to commit a Federal, State, or local offense;
 - (4) If the CI is asked by any person to participate in any such prohibited conduct or if he or she learns of plans to engage in such conduct, he or she must immediately report the matter to the control agent; and
 - (5) Participation in any prohibited conduct could subject the CI to full criminal prosecution.
- b. Immediately after providing these instructions, the CI shall be required to sign or initial and date a written acknowledgment of the instructions, using ATF F 3252.2 or ATF F 3252.3 as appropriate. As soon as practicable thereafter, the SAC shall review and, if warranted, approve the written acknowledgment.
65. PRECAUTIONARY MEASURES. Whenever ATF has authorized a CI to engage in Tier 1 or 2 Otherwise Illegal Activity, it must take all reasonable steps to:
- a. Supervise closely the illegal activities of the CI;

- b. Minimize the adverse effect of the authorized Otherwise Illegal Activity on innocent individuals; and
- c. Ensure that the CI does not profit from his or her participation in the authorized Otherwise Illegal Activity.

66. SUSPENSION OF AUTHORIZATION.

- a. Whenever ATF cannot, for legitimate reasons unrelated to the CI's conduct (e.g., unavailability of the control agent), comply with the precautionary measures described in this chapter, it shall immediately:
 - (1) Suspend the CI's authorization to engage in Otherwise Illegal Activity until such time as the precautionary measures can be complied with;
 - (2) Inform the CI that his or her authorization to engage in any Otherwise Illegal Activity has been suspended until that time; and
 - (3) Document these actions in the CI's files.
- b. Immediately after the CI has been informed that he or she is no longer authorized to engage in any Otherwise Illegal Activity, the CI shall be required to sign or initial and date a written acknowledgment that he or she has been informed of this fact.
- c. As soon as practicable thereafter, the SAC shall review and, if warranted, approve the written acknowledgment.
- d. If the CI refuses to sign or initial the written acknowledgment, the special agent who informed the CI of the revocation of authorization shall document that the CI has orally acknowledged being so informed and the SAC shall, as soon as practicable thereafter, review and, if warranted, approve the written documentation.

67. REVOCATION OF AUTHORIZATION.

- a. If a special agent has reason to believe that a CI has failed to comply with the specific terms of the authorization of Tier 1 or 2 Otherwise Illegal Activity, he or she shall immediately:
 - (1) Revoke the CI's authorization to engage in Otherwise Illegal Activity;
 - (2) Inform the CI that he or she is no longer authorized to engage in any Otherwise Illegal Activity;
 - (3) Comply with the notification requirement of subparagraph 67b, below;

- (4) Make a determination whether the CI should be deactivated pursuant to paragraphs 15 and 16; and
 - (5) Document these actions in the CI's files.
- b. Immediately after the CI has been informed that he or she is no longer authorized to engage in any Otherwise Illegal Activity, the CI shall be required to sign or initial and date a written acknowledgment that he or she has been informed of this fact.
 - c. As soon as practicable thereafter, the SAC shall review and, if warranted, approve the written acknowledgment.
 - d. If the CI refuses to sign or initial the written acknowledgment, the special agent who informed the CI of the revocation of authorization shall document that the CI has orally acknowledged being so informed and the SAC shall, as soon as practicable thereafter, review and, if warranted, approve the written documentation.
68. RENEWAL AND EXPANSION OF AUTHORIZATION.
- a. Any special agent who seeks to reauthorize any CI to engage in Tier 1 or 2 Otherwise Illegal Activity after the expiration of the authorized time period, or after revocation of authorization, must first comply with paragraphs 62 through 65.
 - b. A special agent who seeks to expand in any material way a CI's authorization to engage in Tier 1 or 2 Otherwise Illegal Activity by ATF must first comply with paragraphs 62 through 65.
69. EMERGENCY AUTHORIZATION.
- a. In exceptional circumstances, the SAC and the appropriate USA may orally authorize a CI to engage in Tier 1 Otherwise Illegal Activity without complying with the documentation requirements in this chapter when they each determine that a highly significant and unanticipated investigative opportunity would be lost were the time taken to comply with these requirements. In such an event, the documentation requirements, as well as a written justification for the oral authorization, shall be completed within 48 hours of the oral approval and maintained in the CI's files.
 - b. In exceptional circumstances, a SAC may orally authorize a CI to engage in Tier 2 Otherwise Illegal Activity without complying with the documentation requirements in this chapter when he or she determines that a highly significant and unanticipated investigative opportunity would be lost were the time taken to comply with these requirements. In such an event, the documentation requirements, as well as a written justification for the oral

authorization, shall be completed within 48 hours of the oral approval and maintained in the CI's files.

70. DESIGNEES. The SAC and the appropriate USA may, with the concurrence of each other, agree to designate particular individuals in their respective offices to carry out the approval functions assigned to them above in paragraphs 62 through 69.

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CHAPTER E. MONETARY PAYMENTS81. CI REMUNERATION.

- a. General. Most CIs expect some form of remuneration in return for information provided. In many cases, the only consideration expected is money. Therefore, once the information, the time and effort expended by the CI, and/or the significance of any seizures and/or arrests have been evaluated, the procedures for payment provided in this chapter should be followed. Monies that a special agent pays to a CI in the form of fees and rewards shall be commensurate with the value, as determined by the special agent, of the information that the CI provided or the assistance he or she rendered to that special agent. A special agent's reimbursement of expenses incurred by a CI shall be based upon actual expenses incurred.
- b. Contingencies on Payments. Under no circumstances shall any payments to a CI be contingent upon the conviction or punishment of any person.
- c. Requests for Consideration of Leniency. ATF does not have authority to make any promise or commitment that would prevent the Government from prosecuting a person for criminal activity that is not authorized pursuant to this order. When a CI, who is also a defendant, requests some consideration of leniency in exchange for information, special agents are limited to advising the prosecutor and/or court in an appropriate manner, before trial, of what the defendant/CI has done to assist law enforcement.
- d. Paying CIs. All payments to CIs shall be witnessed by another special agent, sworn law enforcement officer, or State-certified fire investigator using ATF F 3251.1, Payment Receipt for Investigative Expenses and/or Information. (NOTE: Only under extenuating circumstances, with prior ASAC approval, may an unaccompanied special agent make a payment to a CI. The special agent shall denote the date and time approved in the witness section of ATF F 3251.1.) If obtaining a CI's true signature would jeopardize an investigation or the CI's safety, then the CI must sign the form with an assumed name or alias. However, this name/alias must be documented in the CI file to maintain the true identity of the recipient of funds. At the time of the payment, the special agent shall advise the CI that the monies may be taxable income that must be reported to appropriate tax authorities.
- e. Intermediaries. Special agents shall not approach, directly or indirectly, representatives of private industry and request assistance in providing money, gifts, or products of such companies to CIs. Additionally, special agents shall not act as intermediaries between other law enforcement agencies and CIs to deliver money furnished to the CI by other enforcement agencies. If other enforcement agencies desire to pay ATF CIs for

information or services rendered, special agents are not precluded from arranging necessary contacts between the CI and other enforcement agencies, but the actual exchange of monies shall be made directly between the CI and the respective enforcement agency—in accordance with the procedures established by those two parties. Likewise, ATF money shall be paid directly to a CI rather than through intermediaries.

- f. Single Payment Authorizations. A single payment of between \$2,500 and \$25,000 per case to a CI must be authorized, at a minimum, by the SAC. A single payment in excess of \$25,000 per case shall be made only with the authorization of the SAC and the express approval of the appropriate DAD(FO).
- g. Approval for Annual Payments. Consistent with subparagraph 81f, above, payments by a special agent to a CI that exceed an aggregate of \$100,000 within a 1-year period, as that period is defined by the special agent, shall be made only with the authorization of the SAC and the express approval of the appropriate DAD(FO). A DAD(FO) may authorize additional aggregate annual payments in increments of \$50,000 or less.
- h. Approval for Aggregate Payments. Consistent with subparagraphs 81f and g, above, and regardless of the timeframe, any payments by a special agent to a CI that exceed an aggregate of \$200,000 shall be made only with the authorization of the SAC and the express approval of the appropriate DAD(FO). After the DAD(FO) has approved payments to a CI that exceed an aggregate of \$200,000, he or she may authorize, subject to subparagraph g, above, additional aggregate payments in increments of \$100,000 or less.
- i. Coordination With Prosecution. In situations where a USAO is either participating in the conduct of an investigation by a special agent that is using a CI, or working with a CI in connection with a prosecution, the special agent shall coordinate with the attorney assigned to the matter, in advance whenever possible, the payment of monies to the CI pursuant to subparagraphs 81f through h, above.

82. REWARDS AND PURCHASE OF INFORMATION.

- a. Authorities.
 - (1) Title 26 U.S.C. § 7623.
 - (2) Title 27 CFR § 70.41.

- (3) Title 19 U.S.C. § 1619, called the Moiety Statute. (See regulations at 19 CFR §§ 161.11-161.15.) Title 22 U.S.C. § 401(b) provides that rewards for information concerning arms exports are payable pursuant to 19 U.S.C. § 1619.
- (4) Asset forfeiture funds may be used to pay awards for specific information or instances of assistance pursuant to 28 U.S.C. § 524.
- (5) The Annual DOJ Appropriations Bill.

b. Rewards - General Procedures.

- (1) A reward payment is made to a person who furnishes information contributing to the detection of persons who violate the provisions of statutes enforced by ATF. Except as provided in subparagraph 82b(2), below, reward payments shall not be contingent upon prosecution, conviction, or punishment of such persons or used to compensate CIs for their testimony in court or in administrative hearings. Rewards must be commensurate with the value of the information provided or assistance rendered.
- (2) Under 26 U.S.C. § 7623's authority, payment of sums may be made that are necessary for detecting and bringing to trial and punishment persons guilty of violating the Internal Revenue laws. Because payments under this statute are based upon punishment or the outcome of a proceeding, these payments to ATF CIs could give rise to claims of entrapment. To avoid entrapment issues, reward payments under 26 U.S.C. § 7623 shall be paid where information concerning violations of the Internal Revenue laws is furnished by (1) a person who was not working as a CI for ATF or another law enforcement agency at the time the information was furnished and was not involved in the violation, or (2) a person who was a CI for ATF or another law enforcement agency but was not involved in the violation. An example of an appropriate reward payment under 26 U.S.C. § 7623 is a payment to a person not working as a Government CI who furnishes information to ATF about another individual's outstanding tax liabilities. Payment of a reward to a Government CI involved in the violation should be made under subparagraph 82b(1), above.
- (3) The decision as to when to offer a reward payment must be carefully considered. During an ongoing investigation, special agents shall adhere to the following guidelines regarding the appropriate time to offer a reward for information:
 - (a) Offering a reward for information leading to apprehension and/or conviction of an ATF suspect should be treated as an

investigative tool. Although offering rewards has proven to be a successful method by which to obtain pertinent information, its use is not intended to circumvent the normal investigative process.

- (b) The primary objective for offering a reward is to encourage obtaining information that may not have otherwise been obtained were it not for the reward—not to offer payment for information that could very well be acquired through general investigative procedures and practices. To that end, typically rewards should be offered after reasonable investigative attempts have been exhausted and it becomes apparent that new information must be generated to successfully conclude the investigation.
 - (c) There are, however, exigent circumstances that may necessitate offering a reward earlier in the investigative process. For example, in cases where a serious threat to the general public exists from a serial arsonist or bomber, it may be beneficial to offer a reward before exhausting additional investigative techniques, thereby causing witnesses to come forward sooner and hence preserving public safety. These circumstances should be considered on a case-by-case basis and treated as exceptions to the rule.
 - (d) All payments must be made in a manner that avoids even the appearance of impropriety. Special agents should be aware that ATF does not pay for testimony, and our actions should never give rise to that impression. Therefore, special agents shall consult with their supervisors and the prosecuting attorney to ensure that paying any reward before trial is not misinterpreted.
- (4) Requests for payment of rewards or purchase of original information shall be made on ATF F 3200.13, Application and Public Voucher for Reward. Instructions for completing ATF F 3200.13 are outlined below and are on the form itself. The instructions shall be separated from the form before presenting it to the CI/claimant.
- (a) ATF F 3200.13 will be prepared reflecting the name of the vendor (CI/claimant) and justifying reward payment. Justification shall include, at a minimum, a narrative description of the violations, the magnitude of violations, the names and criminal records/reputations of the persons arrested, the seizure of any property, and other pertinent information that will substantiate and support the recommended reward.

- (b) The vendor must sign the ATF F 3200.13 in INK. The vendor's name will be typed below his or her signature and must be identical to the vendor's signature. (NOTE: If obtaining the vendor's true signature would jeopardize the investigation or the vendor's safety, then he or she may sign the form with an assumed name or alias. However, this name/alias must be documented in the CI file.) If the vendor signs with an "X," then the mark must be witnessed by two special agents, whose names must be legibly signed in INK on all copies of the ATF F 3200.13; the appropriate confidential identity code will be documented under the mark.
- (c) The special agent will not enter the amount recommended until after the vendor has signed the form, and no promises will be made concerning the amount of the reward.
- (5) The special agent shall submit the original and copies of ATF F 3200.13 to his or her RAC/GS for review. The RAC/GS shall review the ATF F 3200.13, make a recommendation of amount, sign the form, and forward it to the SAC.
- (6) The SAC may approve payment of rewards of \$25,000 or less but should have the funds available in his or her agent cashier account on the date of approval to cover the reward. The reward, if approved, shall be processed within 2 weeks of receipt by the SAC. Rewards in excess of \$25,000 must be approved by the appropriate DAD(FO). (See subparagraph 81f.) After approving the reward, the SAC shall process the payment using agent cashier funds. The agent cashier shall issue a check to the special agent for payment to the vendor or authorize the RAC/GS to provide the reward funds from his or her subcashier fund.
- (7) In situations where a prosecutor is either participating in the conduct of the underlying investigation utilizing a CI or working with a CI in connection with a prosecution, payments to the CI shall be coordinated with the prosecutor. Additionally, field divisions should consider disclosing to the prosecuting attorney rewards paid in any investigation when the case is forwarded for prosecution.
- (8) When a "general reward" is to be offered (e.g., press releases, posters, etc., announcing a \$25,000 reward for any information leading to the arrest and conviction of those responsible for a crime), the appropriate DAD(FO) must approve the request from the SAC in advance, and the SAC, Resource Management Section, should be notified.

c. Payment of Rewards From Agent Cashier Funds.

- (1) Upon SAC approval, the following procedures shall be observed:
 - (a) The SAC shall sign the ATF F 3200.13 and place the amount of the reward and the accounting classification in the appropriate boxes. The appropriate organizational codes will be used. [REDACTED]
 - (b) The SAC shall forward the original ATF F 3200.13 to the agent cashier. The check will be made payable to the special agent requesting the reward or the SAC may authorize the RAC/GS to provide the funds from his or her subcashier fund. (See subparagraph 82d.) The ATF F 3200.13 shall note the date the check was issued and the check number.
 - (c) The original ATF F 3200.13 shall be filed in the field division cashier file. The copy, with attached check, will be returned to the special agent, through his or her RAC/GS, or the approved copy will be forwarded to the RAC/GS authorizing use of the subcashier fund to provide the reward. The special agent will file the approved copy in the respective field office investigative file folder.
- (2) The agent cashier will replenish the investigative funds in the normal manner by including the expense on the field division's monthly OF 1129, Cashier Reimbursement Voucher and/or Accountability Report, which is submitted to the Financial Management Division. (See ATF O 3251.1, Expenditure of Funds for Investigative Purposes.) The OF 1129 will contain a statement in the accounting classification section as to the total amount expended for rewards, and the phrase "ORIGINAL INFORMATION ON FILE IN THE FIELD DIVISION OFFICE" will be typed in all caps. [REDACTED]

d. Transmittal of Reward Checks.

- (1) Agent cashier checks for rewards will be made payable to the special agent—who will cash the check and transfer the money to the vendor—or the funds may be obtained from the RAC/GS subcashier fund, transferred to the special agent, and then paid to the vendor.
- (2) The special agent shall have the vendor sign ATF F 3251.1 to verify the transfer of the money to the vendor. This receipt must

be witnessed by another law enforcement officer. (See subparagraph 81d.) The special agent will retain a copy of the receipt for his or her personal record, place a copy in the respective field office investigative file folder, and return the original to the SAC, through his or her RAC/GS. The SAC will file the original ATF F 3251.1 in the appropriate field division file.

- (3) If the funds for the reward are provided directly from the field division, then the field division must include the expenditure as an additional subvoucher item on the monthly OF 1129. (See subparagraph 82c(2).) If the funds are provided by the subcashier, then the expenditure is included on the subcashier's subvoucher log and monthly OF 1129.
 - (4) Reward payments must be calculated in the "Total Funds Expended in the Case to Date" section when completing an ATF F 3251.3 in the investigation for which the reward was paid.
- e. Requests for Rewards or Payment of Information Exceeding \$25,000. On requests of payment in excess of \$25,000, the SAC shall recommend approval by signing and dating both copies of the ATF F 3200.13. The SAC shall then forward the copies to the appropriate DAD(FO), who shall either approve or disapprove the request. The documents shall be transmitted in double-sealed envelopes. Upon approval, the DAD(FO) shall return the documents to the SAC. The SAC shall then pay the reward from the agent cashier fund.
- f. Purchase of Information Without Use of ATF F 3200.13. When a special agent finds it necessary to purchase specific information or when time and circumstances will not permit executing an ATF F 3200.13, he or she may negotiate an informal contract with the CI, the amount of which may not exceed \$200. This money is to be paid only after the information has been determined to be worthy of compensation.
- (1) All such negotiations in excess of \$200 per investigation shall be subject to the SAC's approval. The special agent shall receipt payment of cash to the CI by executing ATF F 3251.1 and ensure that the payment is witnessed as outlined in subparagraph 81d. The special agent shall retain one copy for his or her personal record, place one copy in the respective field office investigative file folder, and forward the original to the SAC, through his or her RAC/GS. The special agent shall claim the amount paid to the CI on SF 1164, Claim for Reimbursement, or through the agent cashier fund procedures and attach the ORIGINAL ATF F 3251.1 to substantiate his or her payment. The entry on SF 1164 shall state "Purchase of

Information" and shall include the case number, [REDACTED]
[REDACTED] The organizational
code must also be used.

(2)

(b) (7)(E)

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Finally, a CI paid a lump sum for information shall be informed that if he or she is required by law to file an income tax return, the money so paid must be included as other income.

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CHAPTER F. SPECIAL NOTIFICATION REQUIREMENTS91. NOTIFICATION OF INVESTIGATION OR PROSECUTION.

- a. A special agent must take the utmost care to avoid interfering with or impeding any criminal investigation or arrest of a CI by another law enforcement agency.
- b. When a special agent has reasonable grounds to believe that a current or former CI is being prosecuted, is the target of an investigation, or is expected to become a target of an investigation by a prosecutor for engaging in alleged felonious criminal activity, he or she must immediately notify, through channels, the SAC, who will immediately notify the USAO of that person's status as a current or former CI.
- c. Whenever such a notification is provided, the USA and SAC, with the concurrence of each other, shall notify any other Federal, State, or local prosecutors' offices or law enforcement agencies that are participating in the investigation or prosecution of the CI.

92. NOTIFICATION OF UNAUTHORIZED ILLEGAL ACTIVITY.

- a. When a special agent has reasonable grounds to believe that a CI, who is currently authorized to engage in specific Tier 1 or 2 Otherwise Illegal Activity, has engaged in unauthorized criminal activity or when a special agent knows that a CI who has no current authorization to engage in any Tier 1 or 2 Otherwise Illegal Activity has engaged in any criminal activity, he or she must immediately notify, through channels, the SAC, who shall immediately notify the following USAs of the CI's criminal activity and his or her status as a CI:
 - (1) The USA whose district is located where the criminal activity primarily occurred, unless a State or local prosecuting office in that district has filed charges against the CI for the criminal activity and there clearly is no basis for Federal prosecution in that district by the USA;
 - (2) The USA, if any, whose district is participating in the conduct of an investigation that is utilizing that active CI or is working with that active CI in connection with a prosecution; and
 - (3) The USA, if any, who authorized the CI to engage in Tier 1 Otherwise Illegal Activity pursuant to paragraph 62.

NOTE: Whenever such notifications to USAOs are provided, the special agent must also comply with the continuing suitability requirements described in paragraph 14.

- b. When such notifications are provided, the USA(s) and the SAC, with the concurrence of each other, shall notify any State or local prosecutor's office that has jurisdiction over the CI's criminal activity, and that has not already filed charges against the CI for the criminal activity, of the fact that the CI has engaged in such criminal activity. The USA(s) and the SAC are not required but may, with the concurrence of each other, also notify the State and local prosecutor's office of the person's status as a CI.
93. NOTIFICATION REGARDING CERTAIN FEDERAL JUDICIAL PROCEEDINGS. Whenever a special agent has reasonable grounds to believe that any of the below conditions apply, he or she shall, through channels, apprise the SAC, who shall immediately notify the USA for that proceeding of the person's status as a current or former CI:
- a. A current or former CI has been called to testify by the prosecution in any Federal grand jury or judicial proceeding;
- b. The statements of a current or former CI have been, or will be, utilized by the prosecution in any Federal judicial proceeding; or
- c. A Federal prosecutor intends to represent to a court or jury that a current or former CI is or was a coconspirator or other criminally culpable participant in any criminal activity.
94. PRIVILEGED OR EXCULPATORY INFORMATION.
- a. In situations where a USAO is either participating in the conduct of an investigation that is utilizing a CI or working with a CI in connection with a prosecution, a special agent shall notify the attorney assigned to the matter, in advance whenever possible, if he or she has reasonable grounds to believe that a CI will obtain or provide information that is subject to, or arguably subject to, a legal privilege of confidentiality belonging to someone other than the CI.
- b. If a special agent has reasonable grounds to believe that a current or former CI has information that is exculpatory as to a person who is expected to become a target of an investigation, or as to a target of an investigation, or as to a defendant (including a convicted defendant), the special agent shall notify the USA responsible for the investigation or prosecution of such exculpatory information.
95. RESPONDING TO REQUESTS FROM THE U.S. ATTORNEY (USA) REGARDING A CI. If a USA seeks information from a SAC as to whether a particular person is a current or former CI and states the specific basis for his or her request, the SAC shall promptly provide such information. If the SAC has an objection to providing such information based on specific circumstances of the case, he or she shall explain the objection to the USA, and any remaining

disagreement as to whether the information should be provided shall be resolved pursuant to paragraph 8.

96. FILE REVIEWS. When a special agent discloses any information about a CI to a Federal prosecuting office pursuant to paragraphs 91 through 95, the SAC and the USAO shall consult to facilitate any review and copying of the CI's files by the USAO or other USA that might be necessary to fulfill the disclosure obligations.
97. DESIGNEES. A SAC and an USA may, with the concurrence of each other, agree to designate particular persons in their respective offices to carry out the functions assigned to them in paragraphs 91 through 96.

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**EXPLANATION OF CHANGES TO
ATF O 3252.1**

**CHANGED 1, DATED 7/2/2012 AND SIGNED BY ASSISTANT DIRECTOR RONALD
B. TURK (FIELD OPERATIONS)**

TO: All Field Operations Personnel

1. **PURPOSE.** This change adds, clarifies, and corrects specific policies and procedures for using confidential informants (CIs) in Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) investigations.
2. **DISCUSSION/BACKGROUND FOR CHANGES.**
 - a. There are two changes in the FOREWORD. One clarifies the name of The Attorney General's Guidelines Regarding the Use of Confidential Informants (hereinafter referred to as the Department of Justice (DOJ) Guidelines), and the other explains that sample CI memorandums and other related reference documents have been placed on the Enforcement Support Branch's ATF Web Portal page.
 - b. Chapter A, General Provisions, incorporates a new definition, Federal Prosecuting Office.
 - c. In chapter B, CI Suitability Determination and Special Approval Requirements, for the various standard CI reporting memorandums, the reporting period for the amount of money paid to Cis has been corrected.
 - d. In chapter B, Paragraph 11, CI Suitability Determination (Initial), Paragraph 12, Emergency CI Approval and Paragraph 13, Registration, have been revised to allow for assistant special agents in charge to approve Cis.
 - e. Chapter B, Paragraph 14, Continuing Suitability Review, is revised as follows:
 - (1) To clarify the factors that must be addressed in the continued suitability review memorandums, the handling of criminal history information, and when to submit executed CI agreements (ATF F 3252.2/ATF F 3252.3).
 - (2) To incorporate an exception for removing Cis whose investigations are pending final disposition.
 - f. Chapter B, Paragraph 16, Removal for Cause (Undesirable/Unreliable) of Approved Cis, is revised to modify the Treasury Enforcement Communications System entry in these situations.

- g. Chapter B, Paragraph 19, Review of Long-term CIs, has been revised to read that the CI Review Committee will convene to make its review of a CI at the 6-year point and every successive 6-year interval (e.g., 12 years, 18 years, etc.) thereafter. These reviews also require a 3-year deputy assistant director (Field Operations) review beginning at the 9-year mark and continuing every 3 years after a CI Review Committee (e.g., 15 years, 18 years, etc.) convenes. In addition, the contents of the submitted CI packets has been clarified.
- h. Chapter B, Paragraph 23, Use and Reporting of Foreign Nationals/Illegal Aliens as CIs or Witnesses, modifies the requirement to document sponsored illegal aliens as CIs unless they are serving as actual CIs. This revision does not eliminate required 30-day status reporting or full compliance with the order's requirements governing illegal alien use.
- i. Chapter B, Paragraph 26, Federal Inmates, Probationers, Parolees, Detainees, and Supervised Releasees, has been revised to incorporate language from the DOJ Guidelines. Specifically, it clarifies that the resident agent in charge/group supervisor (RAC/GS) shall determine if the use of the person as a CI would violate the terms and conditions of the person's probation, parole, or supervised release. In addition, the paragraph is revised to note that the appropriate special agent shall notify the U.S. attorney's office prior to using the person as a CI.
- j. Chapter B, Paragraph 27, Use of State or Local Prisoners, Probationers, Parolees, Detainees, and Supervised Releasees, has been revised to reflect that the RAC/GS or designee must obtain the permission of a State or local prison, probation office, parole office, applicable court with authority, or supervised release official with authority to grant such permission before using such a person as a CI.
- k. In chapter B, a new paragraph has been added to the order to incorporate language from the DOJ Guidelines. Specifically, the new Paragraph 32, Listing a CI in an Electronic Surveillance Application, discusses when a CI would be named in an electronic surveillance affidavit.
- l. Chapter C, Paragraph 52, WITSEC Program, has been incorporated into the order. When the order was updated, this paragraph was inadvertently omitted from the new order.
- m. Chapter F, Paragraph 91, Notification of Investigation or Prosecution, incorporates language from the DOJ Guidelines explicitly stating that special agents will not interfere with or impede an investigation or arrest of a CI by another law enforcement agency.

3. SPECIFIC PAGE CHANGES AND UPDATES.

- a. FOREWORD: Paragraphs 3 and 6.
Pages 1 through 2.
- b. TABLE OF CONTENTS: Paragraph titles are added and page numbers are updated.
- c. Chapter A.: Paragraph 3.
Page A-4.
- d. Chapter B.: Paragraph 11.
Pages B-1 and B-4.
- e. Chapter B.: Paragraph 12.
Page B-5.
- f. Chapter B.: Paragraph 13.
Pages B-6 through B-7.
- g. Chapter B.: Paragraph 14.
Pages B-7 through B-9.
- h. Chapter B.: Paragraph 15.
Page B-10.
- i. Chapter B.: Paragraph 16.
Page B-11.
- j. Chapter B.: Paragraph 19.
Pages B-12 through B-14.
- k. Chapter B.: Paragraph 23.
Pages B-22 through B-24.
- l. Chapter B.: Paragraph 26.
Pages B-26 through B-27 and pages B-29 through B-30.
- m. Chapter B.: Paragraph 27.
Page B-30.

- n. Chapter B.: Paragraph 32.
Pages B-31 through B-32.
 - o. Chapter C.: Paragraph 52.
Pages C-6 through C-14.
 - p. Chapter F.: Paragraph 91.
Pages F-1.
4. QUESTIONS. Questions regarding these changes should be directed to the Chief, Special Operations Division, at 202-648-8620.