

United States Senate
WASHINGTON, DC 20510

November 21, 2023

VIA ELECTRONIC TRANSMISSION

The Honorable Merrick Garland
Attorney General
Department of Justice

The Honorable Steven Dettelbach
Director
Bureau of Alcohol, Tobacco, Firearms and Explosives

Dear Attorney General Garland and Director Dettelbach:

Legally protected whistleblower disclosures to my office indicate that in 2020 the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) received credible intelligence on the whereabouts of the ATF's most wanted fugitive, Erik Flores Elortegui (Flores), in Mexico, but the Department of Justice (DOJ) declined to seek a provisional arrest warrant to bring Flores to justice.¹ It is also alleged that U.S. officials failed to provide Mexican officials with information and evidence related to Flores's criminal activity for Mexican authorities to bring charges against him. Flores and his coconspirator were indicted in Oregon in 2015 on multiple counts related to trafficking firearms to Mexico.² Flores fled before his prosecution, and his coconspirator was subsequently found guilty.³ According to reports, Flores, a Mexican national who became a U.S. citizen in 2009, was linked to trafficking a high-caliber semi-automatic rifle used by the Cartel de Jalisco Nueva Generacion (CJNG) Cartel to shoot down a Mexican military helicopter in 2015.⁴

¹ Bureau of Alcohol, Tobacco, Firearms, and Explosives, *ATF Most Wanted List*, (Last visited Nov. 21, 2023) <https://www.atf.gov/most-wanted/list>; DOJ Office of International Affairs, *Our Mission and Our Work*, (last visited Nov. 21, 2023) <https://www.justice.gov/criminal/criminal-oia> ("OIA plays a central role in apprehending and returning fugitives to justice so that they may be held accountable for their crimes. OIA works with domestic and foreign partners to extradite or lawfully remove criminals sought for prosecution in the United States or abroad for a wide variety of offenses...").

² Indictment of Erik Flores and Robert Cummins (Sep. 16, 2015).

³ U.S. Attorney's Office, *District of Oregon, Eugene Man Sentenced to 40 Months in Prison for International Firearms Trafficking*, DOJ (Feb. 14, 2017) <https://www.justice.gov/usao-or/pr/eugene-man-sentenced-40-months-prison-international-firearms-trafficking>.

⁴ U.S. Attorney's Office, *District of Oregon, Two Oregon Men Indicted Federally for Firearms Trafficking to Mexico*, Department of Justice (Sep. 29, 2015) <https://www.justice.gov/usao-or/pr/two-oregon-men-indicted-federally-firearms-trafficking-mexico>; Beth Warren, *Mexico-US investigation links cartel downing of military helicopter to Oregon gun supplier*, Louisville Courier Journal (Oct. 27, 2022) <https://www.courier->

On September 16, 2015, Flores and his codefendant Robert Allen Cummins (Cummins) were indicted in Oregon on several counts related to firearms trafficking, making false statements in connection with the purchase of firearms, and unlawfully dealing in firearms.⁵ According to the indictment, Flores and Cummins illegally purchased thousands of dollars' worth of firearms to sell to criminal organizations in Mexico.⁶ The indictment provides that from December 2013 to May 2014, Flores was allegedly personally responsible for attempting to illegally traffic the following firearms into Mexico:

- Three Century Arms 7.62x39mm rifles
- Colt 1911 .38 Super caliber pistol
- Bushmaster .308 caliber rifle
- CMMG 7.62mm lower receiver
- Three Barrett Model 82A1 .50 caliber rifle
- Three Colt Aztec Gold .38 Super caliber pistol
- FN Model SCAR 17 5.7x28mm rifle
- Two FN, Model Five-Seven, 5.7x28mm pistols
- FN Model PS90 5.7x28mm rifle
- FN Model SCAR 17S 7.62mm rifle
- Six DPMS .308 caliber rifles⁷

The indictment provides that from 2013 to 2014, unnamed individuals from California deposited large amounts of cash into Flores's bank account.⁸ After each deposit, Flores then purchased large caches of firearms or directed Cummins to buy them on his behalf from sellers in Oregon.⁹ Reports describe Cummins as the "middleman" in Flores's trafficking scheme.¹⁰ Several of these firearms, including two Barrett .50 caliber rifles, were recovered in Sonora, Mexico.¹¹ Flores co-conspirator, Cummins, was found guilty and sentenced to 40 months in prison for his role in the firearms trafficking scheme.¹² Flores became a fugitive and is believed to have fled to Mexico to escape prosecution.¹³

Prior to the Flores indictment, on May 1, 2015, a Mexican military strike team engaged in an operation to target the compound of Nemesio Oseguera, a.k.a "El Mencho," of the CJNG

[journal.com/story/news/crime/2022/10/27/oregon-man-tied-helicopter-downing-by-el-menchos-cjng-cartel/69589556007/](https://www.oregonlive.com/story/news/crime/2022/10/27/oregon-man-tied-helicopter-downing-by-el-menchos-cjng-cartel/69589556007/); ATF Most Wanted *supra* note 1.

⁵ Two Oregon Men Indicted Federally for Firearms Trafficking to Mexico *supra* note 4.

⁶ Indictment of Erik Flores *supra* note 2.

⁷ *Id.* at 9.

⁸ *Id.* at 5-7.

⁹ *Id.* at 5-6.

¹⁰ Warren *supra* note 4.

¹¹ Indictment of Erik Flores *supra* note 2 at 6.

¹² Eugene Man Sentenced to 40 Months in Prison *supra* note 3.

¹³ Warren *supra* note 4.

cartel, one of the most sought-after drug kingpins in the world.¹⁴ According to an ATF briefing paper on the operation, as the Mexican military approached El Mencho's hideout via helicopters, CJNG cartel members opened fire.¹⁵ The report states that CJNG cartel members fired .50 caliber rifle rounds and disabled one of the military helicopters that was then blown-up by rocket-propelled grenades fired by CJNG members.¹⁶ The crash killed four members of the arrest team while other Mexican military strike team members moved in to rescue the survivors.¹⁷ Seven additional members of the strike team were killed during this rescue operation.¹⁸ According to the ATF report, a total of 11 strike force members died and 12 others were wounded.¹⁹ Following the Mexican government's operation to apprehend El Mencho, the CJNG engaged in vicious, retaliatory attacks on the cities of Guadalajara, Puerto Vallarta, and in three other neighboring states.²⁰ The CJNG hijacked and set fire to firetrucks and buses creating 39 different narco-blockades and set fire to several banks, gasoline stations, and private businesses.²¹ These violent actions lead to four major shootouts between CJNG cartel members and the Mexican government.²²

Reportedly, a subsequent investigation by the Mexican government into the attempt to apprehend El Mencho found that the CJNG cartel used a truck mounted M2HB .50 caliber semi-automatic rifle to shoot down the Mexican military helicopter.²³ Mexican authorities asked the ATF to trace the firearm, and the ATF discovered that the M2HB .50 caliber semi-automatic rifle was trafficked from the U.S. to Mexico by Erik Flores.²⁴ ATF email records provided to my office reveal that in March 2020 ATF believed Flores was hiding in Durango, Mexico.²⁵ The emails show a discussion between and among ATF personnel that instead of waiting for an extradition package from DOJ, ATF could present the Flores's case to the government of Mexico for prosecution as Flores is a dual U.S. and Mexico citizen.²⁶ However, it's alleged that the case wasn't presented to them for prosecution. Further, emails from August 2020 between and among ATF agents show that ATF received additional, credible intelligence on the location and address of Flores in Mexico and requested that DOJ obtain a provisional arrest warrant to extradite

¹⁴ ATF Briefing Paper, *Attempted Arrest of Cartel De Jalisco Nueva Generacion Leader and Downing of GOM Helicopter*, (Feb. 12, 2016) at 2; Karol Suarez & Beth Warren, *El Mencho's American Empire*, Courier Journal (Nov. 24, 2019) <https://www.courier-journal.com/in-depth/news/crime/2019/11/24/mexico-cartel-chopper-attack-survivor-hunt-el-mencho-not-hopeless/2560335001/>.

¹⁵ ATF Briefing Paper, *Downing of GOM Helicopter* *supra* note 14 at 2.

¹⁶ *Id.*

¹⁷ *Id.* at 3.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Warren *supra* note 4.

²⁴ *Id.*

²⁵ Email ATF and DOJ Flores/Cummins Indictment (Mar. 31, 2020).

²⁶ *Id.*

Flores from Mexico to the U.S. to stand trial.²⁷ According to the emails, ATF had been trying to get an arrest warrant for Flores from DOJ for over two years.²⁸

According to emails between DOJ and the ATF, the AUSA office from the District of Oregon and DOJ OIA were concerned that the case against Flores was not strong enough to seek a provisional arrest warrant.²⁹ Even though Flores was at the top of the ATF's most wanted list and linked to trafficking the M2HB .50 caliber rifle used by the CJNG to shoot down the Mexican military helicopter, ATF emails indicate that DOJ OIA was determined not to pursue a provisional arrest warrant to extradite Flores.³⁰ According to the ATF emails, the "AUSAs concern about the viability of the case was also a major concern for OIA" who decided to administratively close the case.³¹ This apparent new concern about the strength and viability of the Flores case is in stark contrast to AUSA Nathan Lichvarcik's description of Flores's indictment, in which he compares it to a case involving the Juarez Cartel running a drug and firearms trafficking network in a New Mexico border town.³²

My office has obtained email records that include AUSA Lichvarcik describing the Flores case as being "practically on the same scale as the Columbus case – just no corrupt U.S. officials involved."³³ This appears to reference a case AUSA Lichvarcik prosecuted out of Columbus, New Mexico where Mayor Eddie Espinoza, Police Chief Angelo Vega, Village Trustee Blas Gutierrez, and eight others were indicted for operating a firearms trafficking network to smuggle weapons from the U.S. to Mexico destined for criminal cartels.³⁴ Reports provide that the defendants in that case purchased approximately 200 weapons in a 14-month period, including firearms favored by the Mexican cartels.³⁵ According to the indictment, the defendants operated a full scale trafficking network where they "intentionally received, concealed, bought, sold, and facilitated the transportation, concealment, and sale of firearms" to be illegally trafficked from the U.S. to Mexico.³⁶ According to reports, the Juarez Cartel made payments to certain city officials in exchange for protection and help to smuggle drugs and

²⁷ Email ATF and DOJ re: Erik Flores (Aug. 3, 2020).

²⁸ *Id.*

²⁹ Email ATF and DOJ re: Erik Flores (Aug. 4, 2020).

³⁰ Email ATF and DOJ re: Erik Flores (Aug. 19, 2020).

³¹ *Id.*

³² Email ATF and DOJ Flores/Cummins Indictment (Sept. 18, 2015); Associated Press Reporter, *Former New Mexico police chief 'was on drug cartel's payroll and even let them use cop cars to carry out their business'*, Daily Mail (Sept. 26, 2013) <https://www.dailymail.co.uk/news/article-2433693/Former-New-Mexico-police-chief-drug-cartels-payroll-let-use-cop-cars-carry-business.html>.

³³ Email ATF and DOJ Flores/Cummins Indictment (Sept. 18, 2015).

³⁴ John Burnett, *Elected Officials' Arrests Shock Quiet Border Town*, NPR (Mar. 27, 2011) <https://www.npr.org/2011/03/27/134856836/elected-officials-arrests-stun-quiet-border-town>.

³⁵ Department of Justice, *Police Chief, Mayor And Village Trustee Of Columbus, New Mexico, Indicted In Federal Firearms Trafficking Case*, Press Release (Mar. 10, 2011) https://www.justice.gov/archive/usao/nm/press-releases/2011/2011-03-10_villalobos_pr.html.

³⁶ U.S. v. Ignacio Villalobos, et al. Indictment, (Mar. 8, 2011) https://www.justice.gov/archive/usao/nm/press-releases/2011/downloads/2011-03-10_villalobos_indictment.pdf.

firearms to Mexico.³⁷ Reportedly, twelve defendants were convicted for their involvement in the Columbus, NM firearms trafficking network.³⁸ If AUSA Lichvarcik believed that Flores's case was "practically on the same scale as the Columbus case," DOJ must explain why it determined not to extradite Flores to the U.S. and hold him accountable.³⁹

If these allegations are found to be true and accurate, they evidence a pattern by DOJ and ATF failing to use available resources and a whole of government approach to investigate, connect, and prosecute firearms trafficking networks in the U.S. with alleged connections to criminal cartels receiving weapons in Mexico. Rather than target law abiding citizens who exercise their Constitutional Second Amendment rights, the ATF and DOJ should target, investigate, and prosecute criminals smuggling firearms for the cartel into Mexico especially when the evidence is right in front of them.⁴⁰ So that Congress may conduct objective and independent oversight concerning DOJ and ATF's efforts to investigate and prosecute criminal cartel trafficking networks smuggling guns from the U.S. to Mexico, please provide answers to the following no later than December 5, 2023.

1. Why did DOJ decline to obtain a provisional arrest warrant or submit an extradition request for Flores? Is the arrest warrant for Flores still active? If so, why did DOJ OIA administratively close the case? Provide all records.⁴¹
2. Provide all records of the circumstances concerning Flores escape from the U.S. to Mexico.
3. Has DOJ provided information and evidence to the Mexican government related to Flores's alleged criminal activity? If not, why not?
4. Provide all email records between the ATF Mexico Country Office and the State Department between March 1, 2020 and October 31, 2020, related to providing the Mexican government with information related to Erik Flores.

³⁷ Associated Press Reporter *supra* note 32.

³⁸ Immigration and Customs Enforcement, 4 more sentenced in Columbus, NM, firearms trafficking case, Press Release (Oct. 10, 2012) <https://www.ice.gov/news/releases/4-more-sentenced-columbus-nm-firearms-trafficking-case>.

³⁹ Email ATF and DOJ Flores/Cummins Indictment (Sept. 18, 2015).

⁴⁰ Caleb Perhne, *ATF 'zero tolerance' policy impacts local gun stores*, News 5 WCYB, (Feb. 20, 2023) <https://wcyb.com/news/local/atf-zero-tolerance-policy-impacts-local-gun-stores>; Andrew Mark Miller, *Gun industry cries foul after hundreds of gun dealers lose licenses amid Biden administration crackdown*, Fox News (Aug. 18, 2023) <https://www.foxnews.com/politics/gun-industry-cries-foul-hundreds-gun-dealers-lose-licenses-biden-administration-crackdown>; Tom Lutey, *IRS, ATF search Great Falls gun store; Rosendale calls it harassment*, Billings Gazette (Jun 19, 2023) https://billingsgazette.com/news/state-regional/government-politics/irs-atf-search-great-falls-gun-store-rosendale-calls-it-harassment/article_22ced2c8-0bdc-11ee-9daf-07059b04cc18.html; E.D. Cauchi, *Mexican drug cartels pay Americans to smuggle weapons across the border, intelligence documents show*, CBS News (Sep. 18, 2023) <https://www.cbsnews.com/news/mexican-drug-cartels-american-weapons-smuggled-across-border/>.

⁴¹ "Records" include any written, recorded, or graphic material of any kind, including letters, memoranda, reports, notes, electronic data (e-mails, email attachments, and any other electronically-created or stored information), calendar entries, inter-office communications, meeting minutes, phone/voice mail or recordings/records of verbal communications, and drafts (whether or not they resulted in final documents).

5. Since failing to pursue the provisional arrest warrant in 2020, what actions have ATF or DOJ taken to bring Flores, ATF's most wanted fugitive, to justice? If nothing, why?
6. Other than the M2HB .50 caliber rifle and the weapons identified in the indictment, have other firearms recovered in Mexico been linked to Flores? Provide records of all firearms linked to Flores.
7. From 2012 to present, has Flores been linked to investigations involving the Drug Enforcement Administration, Homeland Security Investigation, Immigration and Customs Enforcement, or other U.S. law enforcement agencies? If so, provide records of the cases linked to Flores.
8. Provide all email records between and among DOJ OIA, the US Attorney's Office for the District of Oregon, and the ATF Mexico Country Office between March 1, 2020 and October 31, 2020, related to obtaining a provisional arrest warrant for Erik Flores.
9. Provide all email records between ATF Seattle Field Division and ATF Los Angeles Field Division between March 1, 2020 and October 31, 2020, related to obtaining a provisional arrest warrant for Erik Flores.
10. Since his 2015 indictment, has DOJ initiated an investigation into whether Flores had connections to Mexican cartels located in the U.S. or in Mexico? If not, why not?
11. From 2012 to present, has ATF shared information with other law enforcement agencies in Mexico or in the U.S. about Flores and his potential connection with the CJNG cartel? If not, why not?
12. From 2012 to present, have U.S. law enforcement agencies requested information from DOJ concerning Flores? If yes, which ones, what was it and was the information shared?
13. From 2012 to present, has the ATF shared intelligence on firearms linked to Flores with other U.S. law enforcement agencies? If not, why not?
14. From 2012 to present, what steps has the ATF or DOJ taken to investigate Flores's financial sources that supported his alleged firearms purchases, his connections to criminal cartels in Mexico, and his firearms trafficking network?

Thank you for your prompt review and responses. If you have any questions, please contact my Committee staff at (202) 224-0642.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Budget

Enclosures

U.S. Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives
Office of Strategic Intelligence and Information



(LES) Attempted Arrest of Cartel de Jalisco Nueva Generacion Leader and Downing of GOM Helicopter

ATF Briefing Paper



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**(LES) Attempted Arrest of Cartel de Jalisco Nueva Generacion Leader and
Downing of GOM Helicopter**

ATF Briefing Paper

Executive Summary

(LES) The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Office of Strategic Intelligence and Information (OSII), International Affairs Division (IAD), Mexico Country Office (MCO) received extremely sensitive information [REDACTED] regarding the attempted arrest of Nemesio OSEGUERA, a.k.a. "El Mencho", alleged leader of the Cartel de Jalisco Nueva Generacion (CJNG) and the subsequent downing of a Mexican Army [*Secretaria de la Defensa Nacional (SEDENA)*] helicopter. The operation set-off a wave of narco-terrorism in the cities of Guadalajara and Puerto Vallarta, Jalisco and other cities in neighboring states of Michoacan, Nayarit and Guanajuato.

Background

(LES) In [REDACTED] 2015, SEDENA intelligence discovered the possible location OSEGUERA in the area of Casimiro Castillo, Jalisco in the southern part of the state near the border with Colima.

(LES) In [REDACTED] 2015, SEDENA deployed an aerial arrest team for OSEGUERA consisting of [REDACTED]. The strike force consisted of four Helicopters.

- Helicopter number "1", an [REDACTED] Super Cougar, contained the arrest team consisting of SEDENA [REDACTED]
- Helicopter number "2", was to be used for transporting detainees.
- Helicopter number "3" and "4", were to provide aerial surveillance.

(LES) The operational plan was to have helicopter number "1" enter the perimeter and eliminate the threats, locate and arrest OSEGUERA.

(LES) Helicopter number "2" was to land, collect and transport any detainees to a secure briefing area. While helicopters "3" and "4" [REDACTED]

(LES) As helicopter number "1" entered the designated landing zone, CJNG members began firing .50 caliber rounds at the helicopter.

(LES) The helicopter sustained a direct hit to the rotor causing it to lose mobility. At that moment four rocket-propelled grenades (RPG) were fired at the helicopter; two striking the helicopter causing it to crash to the ground in flames.

LAW ENFORCEMENT SENSITIVE

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(LES) As a result of the impact and crash four SEDENA personnel were killed. The surviving members immediately engaged in a firefight with CJNG until SEDENA ground units arrive.

(LES) SEDENA ground units managed to rescue the survivors. This attack resulted in seven members of the arrest team dead and twelve wounded.

(LES) Due to being engaged in a firefight with the Federal arrest team, the CJNG ordered a retaliation on the cities of Guadalajara and Puerto Vallarta, Jalisco and other cities in the neighboring states of Michoacan, Nayarit and Guanajuato. This wave of violence resulted in four major shootouts causing the death of seven CJNG members and 19 arrested. CJNG hijacked and set on fire trucks and buses creating 39 different narco-blockades. The CJNG used this tactic as a method of distracting Federal, State and local authorities from pursuing OSEGUERA.

(LES) Several banks, gasoline stations, and private business were also set on fire.

PHOTOGRAPHS OF GUADALAJARA, JALISCO METRO AREA

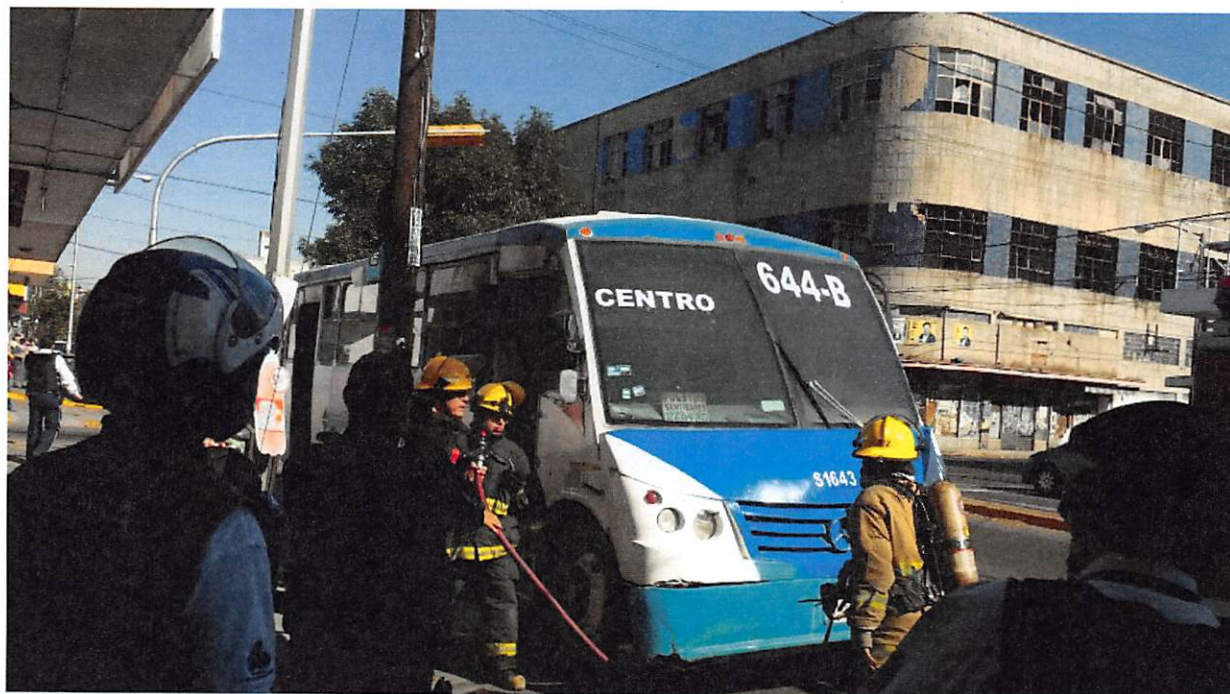


(LES) Narco-blockades in Guadalajara, Jalisco 05/01/2015.

LAW ENFORCEMENT SENSITIVE

**(LES) Attempted Arrest of Cartel de Jalisco Nueva Generacion Leader and
Downing of GOM Helicopter**

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(LES) On May 1, 2015, a total of 39 blockades in 25 municipalities covering four States were reported under the “Code Red”, the GOM’s initiation of their Federal emergency management system.

PHOTOGRAPHS OF PUERTO VALLARTA



LAW ENFORCEMENT SENSITIVE

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(LES) Molotov Cocktails and gasoline cans were used to initiate fires.
These events occurred in tourist areas.

LAW ENFORCEMENT SENSITIVE

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(LES) Puerto Vallarta on 05/02/2015.



(LES) Two vehicles and a private business were set on fire in Puerto Vallarta, Jalisco 05/02/2015.

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(LES) ATF MCO was notified by [REDACTED] and [REDACTED] of continuous CJNG threats against them and city infrastructures in Guadalajara and Puerto Vallarta, Jalisco.

CONCLUSION

(LES) The helicopter crash site and surrounding area continue to be searched by SEDENA. The initial report indicates that several CJNG vehicles, weapons and ammunitions were seized.

(LES) If requested, ATF MCO will work with the Federal authorities in order to trace any recovered weapons.

(LES) According to [REDACTED], every time Federal and or State authorities try to arrest CJNG leadership members and or other high ranking members of other drug trafficking organizations, retaliation from the targeted cartel is expected.

(LES) Tensions remain high in the State of Jalisco, Nayarit, Michoacán and Guanajuato.

Reference

(U) The point of contact for this Briefing Paper [REDACTED]
[REDACTED]

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

UNITED STATES OF AMERICA

6:15-CR- 341-AA

Plaintiff,

INDICTMENT

v.

Count 1: Conspiracy
18 U.S.C. § 371

**ERIK FLORES ELORTEGUI and
ROBERT ALLEN CUMMINS**

Defendants.

**Counts 2-13: False Statements in
Connection With the Acquisition of
Firearms**
18 U.S.C. § 924(a)(1)(A)

**Counts 14-25: Smuggling Goods from the
United States**
18 U.S.C. § 554

Count 26: Unlawful Dealing in Firearms
18 U.S.C. § 922(a)(1)(A)

Forfeiture
18 U.S.C. § 924(d)
18 U.S.C. § 981(a)(1)(C)
28 U.S.C. § 2461(c)

UNDER SEAL

THE GRAND JURY CHARGES:

Introduction

1. Transnational Criminal Organizations operating in Mexico rely upon the use of firearms to protect their supply of drugs, supply routes, profits, and distribution territory from both law enforcement agents and other criminal organizations.

2. These Criminal Organizations represent a ready and lucrative market for firearms and prefer certain makes, models, and calibers of firearms. These “weapons of choice” are generally semi-automatic versions of military type rifles and pistols, including .50 caliber rifles, 7.62mm rifles, .308 caliber rifles, 5.7x28mm firearms and .38 Super caliber handguns.

3. These firearms, and the ammunition they use, are not available in Mexico through regular commercial retail channels, but are available in the United States through licensed retail gun shops. Therefore, these Criminal Organizations rely on the commercial firearms market from the United States, among other places. Firearms traffickers commonly purchase the firearms they smuggle into Mexico from licensed retail gun shops in the United States. Because of their unavailability in Mexico, these firearms are worth significantly more in Mexico than in the United States, thereby furnishing a substantial profit motive for the firearms traffickers.

4. A Federal Firearms Licensee (“FFL”) is a business licensed under Chapter 44 of Title 18, United States Code, to engage in the business of dealing in firearms. When a purchaser buys a firearm from an FFL, that buyer must fill out a Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) Form 4473 (Firearms Transaction Record), which asks for and requires the buyer’s true name, current residential address, and other identifying information. The information on the ATF Form 4473 makes it possible to trace a firearm back to its retail purchaser. FFLs are required by Chapter 44 of Title 18, United States Code, to maintain these forms in their records.

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5. In addition, ATF Form 4473 asks the purchaser: "Are you the actual transferee/buyer of the firearm(s) listed on this form? Warning: You are not the actual buyer if you are acquiring the firearm(s) on behalf of another person. If you are not the actual buyer, the dealer cannot transfer the firearm(s) to you"

6. If an FFL or employee of an FFL knows that the individual filling out an ATF Form 4473 is not the actual purchaser of the firearm(s), but is instead purchasing the firearm(s) on behalf of another person, it is illegal for the FFL or an employee to sell the firearm(s) to that individual.

7. Firearms traffickers often employ "straw purchasers" to buy firearms from licensed gun dealers in the United States. These straw purchasers are commonly paid to falsely claim on the ATF Form 4473 that they are buying the firearm(s) for themselves, when in fact they are purchasing the firearm(s) on behalf of another.

8. Firearms traffickers commonly acquire firearms through straw purchasers to conceal the true purchaser. Firearms purchased in furtherance of a firearms trafficking conspiracy are usually purchased in cash to further conceal the true buyer and source of funds.

9. Firearms traffickers and straw purchasers commonly obliterate the serial numbers of firearms to make it more difficult for law enforcement to trace a recovered firearm and determine who first purchased it.

10. Only those individuals possessing an export license from the United States Department of State may legally export certain firearms and ammunition from the United States, including .50 caliber rifles, 7.62mm rifles, .308 caliber rifles, 5.7x28mm firearms and .38 Super handguns.

11. At all times relevant to this Indictment, defendants **ERIK FLORES ELORTEGUI** and **ROBERT ALLEN CUMMINS** did not have, and have never had, an export license from the United States Department of State.

COUNT 1
(Conspiracy)

From on or about November 2013 through on or about September 2014, in the District of Oregon and elsewhere, the defendants **ERIK FLORES ELORTEGUI** and **ROBERT ALLEN CUMMINS** did unlawfully and knowingly conspire, combine, confederate, and agree with each other and individuals unknown to the grand jury to commit the following offenses:

1. Knowingly making false statements in connection with the acquisition of firearms, in violation of 18 U.S.C. § 924(a)(1)(A); and
2. Smuggling Goods from the United States, in violation of 18 U.S.C. § 554.

Manner and Means of the Conspiracy

As part of the conspiracy:

1. Members of the conspiracy deposited thousands of dollars in cash at various locations in California, including some locations near the U.S./Mexico border, into bank accounts associated with **ERIK FLORES ELORTEGUI**.
2. The Defendants illegally purchased thousands of dollars' worth of firearms – the types of firearms for which there was a ready market among the Criminal Organizations in Mexico, such as .50 caliber rifles, AK-47 type rifles, 5.7x28mm firearms and .38 Super caliber handguns – from FFLs in Oregon.

3. During these firearms purchases, the Defendants knowingly made false statements and representations when they executed the ATF Forms 4473, stating the firearms were for themselves, when in fact they were being purchased on behalf of others.

4. The Defendants and others knowingly bought, sold, and facilitated the transportation of the firearms, which they knew were intended to be exported illegally to Mexico.

5. To avoid detection, members of the conspiracy obliterated the serial numbers of certain firearms and knowingly smuggled the firearms to Mexico.

Overt Acts

In furtherance of the conspiracy, and to accomplish the objectives thereof, the following overt acts, among others, were committed in the District of Oregon and elsewhere:

1. Between approximately November 1, 2013 and December 23, 2013, individual(s) in San Ysidro, California and Calexico, California made cash deposits into **ERIK FLORES ELORTEGUI**'s bank accounts totaling approximately \$52,000.
2. In December of 2013, **ERIK FLORES ELORTEGUI** purchased approximately \$14,000 worth of high-caliber firearms in Oregon, including one Barrett .50 caliber rifle for \$8,260, several AK-47 type rifles, and a Colt .38 Super pistol.
3. Between January of 2014 and April 27, 2014, individual(s) in California made cash deposits into **ERIK FLORES ELORTEGUI**'s bank accounts totaling approximately \$20,000.
4. Between approximately March 2, 2014 and May 7, 2014, **ERIK FLORES ELORTEGUI** purchased approximately \$19,000 worth of high-caliber firearms, including three Colt Aztec Gold pistols.
5. On or about May 3, 2014, **ERIK FLORES ELORTEGUI** sent a text message to **ROBERT ALLEN CUMMINS** inquiring whether **ROBERT ALLEN CUMMINS** had been in touch with FFL Adaptive Firing Solutions.
6. On or about May 5, 2014, **ERIK FLORES ELORTEGUI** sent a text message to **ROBERT ALLEN CUMMINS** with a link to a Barrett .50 caliber rifle being sold by FFL Adaptive Firing Solutions.

7. On or about May 5, 2014, **ROBERT ALLEN CUMMINS** responded in a text message and asked **ERIK FLORES ELORTEGUI** how many he wanted and stated that they should not text any more, and instead should talk on the phone or email.
8. On or about May 6, 2014, **ERIK FLORES ELORTEGUI** sent a text message to **ROBERT ALLEN CUMMINS** stating, "Let me know the subtotal and ata of the burritos."
9. On or about May 7, 2014, **ERIK FLORES ELORTEGUI** and **ROBERT ALLEN CUMMINS** met at a parking lot in Oregon.
10. Thereafter, on or about May 7, 2014, **ROBERT ALLEN CUMMINS** purchased a 7.62mm rifle from FFL Curt's Discount Guns on behalf of **ERIK FLORES ELORTEGUI**.
11. Thereafter, on or about May 7, 2014, **ROBERT ALLEN CUMMINS** gave an advance payment of \$38,100 in cash to FFL Adaptive Firing Solutions in Oregon City, Oregon for a large order of firearms to be picked up at a later date.
12. On or about May 15, 2014, **ERIK FLORES ELORTEGUI** purchased a Dremel grinding tool at the Home Depot in Hillsboro, Oregon.
13. On or about May 15, 2014, **ROBERT ALLEN CUMMINS** picked up the large purchase of firearms from FFL Adaptive Firing Solutions – for which he had previously paid \$38,100 in cash – which included three Barrett .50 caliber rifles, and multiple .308 caliber rifles and 5.7x28mm rifles.
14. Thereafter, on or about May 15, 2014, **ROBERT ALLEN CUMMINS** transferred to **ERIK FLORES ELORTEGUI** the majority of the firearms he had just picked up from FFL Adaptive Firing Solutions – including two Barrett .50 caliber rifles that were later found in Sonora, Mexico on July 8, 2014, along with other firearms with obliterated serial numbers.
15. On or about May 18, 2014, **ERIK FLORES ELORTEGUI** traveled from Oregon to the U.S./Mexico border and purchased a hotel room for one night at a Quality Inn in Calexico, California.
16. On or about May 19, 2014, **ERIK FLORES ELORTEGUI** purchased a Dremel cut off wheel and a triangle high speed cutter at the Home Depot in El Centro, California.
17. On or about May 19, 2014, **ERIK FLORES ELORTEGUI** traveled from the Calexico, California area across the border into Mexicali, Mexico.

18. On or about June 16, 2014, **ROBERT ALLEN CUMMINS** sent a text message to **ERIK FLORES ELORTEGUI** asking if he was “ready for any burritos yet please let me know thank you.”
19. Between approximately July 31, 2014 and August 28, 2014, individual(s) in California made cash deposits into **ERIK FLORES ELORTEGUI**’s bank accounts totaling approximately \$22,500.
20. On or about August 18, 2014, **ERIK FLORES ELORTEGUI** sent a text message to **ROBERT ALLEN CUMMINS** asking: “Did the tobacco people talk to you yet?”
21. In August of 2014, **ERIK FLORES ELORTEGUI** submitted numerous online inquiries about purchasing high-caliber rifles and handguns, including AK-47 type rifles.
22. On or about September 3, 2014, **ERIK FLORES ELORTEGUI** traveled from Oregon to the Calexico, California area.

In violation of Title 18, United States Code, Section 371.

COUNTS 2-13
(False Statements in Connection with the
Acquisition of Firearms – ATF Form 4473)

On or about the dates listed below, in the District of Oregon, each Defendant as set forth below, did knowingly make a false statement and representation with respect to information required by the provisions of Chapter 44 of Title 18, United States Code, to be kept in the records of the Federally Licensed Firearms Dealer listed below, licensed under the provisions of

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Chapter 44 of Title 18, United States Code, in that each Defendant listed below executed an ATF Form 4473, Firearms Transaction Record, stating that the Defendant was the actual purchaser of the firearm(s) listed below, when in fact the Defendant was purchasing the firearm(s) on behalf of another.

Count	Defendant	Date	Firearms Dealer	Firearm(s)
2	ERIK FLORES ELORTEGUI	12/2/2013	Northwest Armory	•Three Century Arms 7.62x39mm rifles •Colt 1911 .38 Super caliber pistol
3	ERIK FLORES ELORTEGUI	12/3/2013	Sportsman's Warehouse	•Bushmaster .308 caliber rifle
4	ERIK FLORES ELORTEGUI	12/20/2013	Tactical Ordnance	•CMMG 7.62mm lower receiver
5	ERIK FLORES ELORTEGUI	12/24/2013	Northwest Armory	•Barrett Model 82A .50 caliber rifle
6	ERIK FLORES ELORTEGUI	3/12/2014	Tigard Pawn	•Colt Aztec Gold .38 Super caliber pistol
7	ERIK FLORES ELORTEGUI	4/30/2014	Curt's Discount Guns	•FN Model PS90 5.7x28mm rifle
8	ROBERT ALLEN CUMMINS	4/30/2014	Curt's Discount Guns	•FN Model PS90 5.7x28mm rifle
9	ERIK FLORES ELORTEGUI	5/6/2014	Tigard Pawn	•Two Colt Aztec Gold .38 Super caliber pistols
10	ERIK FLORES ELORTEGUI	5/7/2014	Curt's Discount Guns	•FN Model SCAR 17S 7.62mm rifle
11	ROBERT ALLEN CUMMINS	5/7/2014	Curt's Discount Guns	•FN Model SCAR 17S 7.62mm rifle
12	ERIK FLORES ELORTEGUI	5/15/2014	Adaptive Firing Solutions	•Six DPMS .308 caliber rifles •Two Barrett Model 82A1 .50 caliber rifles
13	ROBERT ALLEN CUMMINS	5/15/2014	Adaptive Firing Solutions	•Six DPMS .308 caliber rifles •Two Barrett Model 82A1 .50 caliber rifles

In violation of Title 18, United States Code, Sections 2 and 924(a)(1)(A).

COUNTS 14-25
(Smuggling Goods from the United States)

On or about the dates listed below, in the District of Oregon, each Defendant as set forth below, did fraudulently and knowingly receive, conceal, buy, sell, and facilitate the transportation, concealment and sale of the firearms set forth below, prior to exportation, knowing the firearms to be intended for exportation from the United States contrary to any law or regulation of the United States, to wit: Title 22, United States Code, Sections 2778(b)(2) and (c);

Count	Defendant	Date	Firearm(s)
14	ERIK FLORES ELORTEGUI	12/2/2013	•Three Century Arms 7.62x39mm rifles •Colt 1911 .38 Super caliber pistol
15	ERIK FLORES ELORTEGUI	12/3/2013	•Bushmaster .308 caliber rifle
16	ERIK FLORES ELORTEGUI	12/20/2013	•CMMG 7.62mm lower receiver
17	ERIK FLORES ELORTEGUI	12/24/2013	•Barrett Model 82A1 .50 caliber rifle
18	ERIK FLORES ELORTEGUI	3/12/2014	•Colt Aztec Gold .38 Super caliber pistol
19	ERIK FLORES ELORTEGUI	3/29/2014	• FN Model SCAR 17 5.7x28mm rifle
20	ERIK FLORES ELORTEGUI	4/17/2014	•Two FN, Model Five-Seven, 5.7x28mm pistols
21	ERIK FLORES ELORTEGUI	4/30/2014	•FN Model PS90 5.7x28mm rifle
22	ERIK FLORES ELORTEGUI	5/6/2014	•Two Colt Aztec Gold .38 Super caliber pistols
23	ERIK FLORES ELORTEGUI	5/7/2014	•FN Model SCAR 17S 7.62mm rifle
24	ERIK FLORES ELORTEGUI	5/15/2014	•Six DPMS .308 caliber rifles •Two Barrett Model 82A1 .50 caliber rifles
25	ROBERT ALLEN CUMMINS	5/15/2014	•Six DPMS .308 caliber rifles •Two Barrett Model 82A1 .50 caliber rifles

In violation of Title 18, United States Code, Sections 2 and 554.

COUNT 26
(Engaging in Business Without a License-Firearms)

From on or about March 2014 through on or about March 9, 2015, in the District of Oregon, defendant **ROBERT ALLEN CUMMINS**, not being a licensed dealer of firearms

within the meaning of Chapter 44, Title 18, United States Code, did willfully engage in the business of dealing in firearms;

In violation of Title 18, United States Code, Section 922(a)(1)(A).

FIRST FORFEITURE ALLEGATION

Upon conviction of one or more of the offenses alleged in Counts 1 and 14 through 25 of this Indictment, defendants **ERIK FLORES ELORTEGUI** and **ROBERT ALLEN CUMMINS** shall forfeit to the United States pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c) any property constituting or derived from proceeds traceable to the violation.

SECOND FORFEITURE ALLEGATION

Upon conviction of any of the offenses alleged in Counts 1 through 13 and 26 of this Indictment, defendants **ERIK FLORES ELORTEGUI** and **ROBERT ALLEN CUMMINS** shall forfeit to the United States pursuant to 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c), all firearms involved in or used in the commission of the offense.

Dated this 16th day of September 2015.

A TRUE BILL. /


GRAND JURY FOREPERSON

Presented by:

BILLY J. WILLIAMS
Acting United States Attorney


NATHAN J. LICHVARCIK
Assistant United States Attorney

From: [REDACTED]
Sent: Tuesday, March 31, 2020 5:08 PM
To: [REDACTED]
Subject: FW: Flores/Cummins indictment
Attachments: 15-341indSEALED.PDF; Facts re Flores, Cummins.docx; Flores Timeline.pptx

One of the ATF fugitives in Mexico that we are waiting on a PAW for. This case was originally a referral from [REDACTED] in TJ.

[REDACTED]

From: [REDACTED] [REDACTED]@atf.gov>
Sent: Tuesday, March 31, 2020 12:24 PM
To: [REDACTED]@atf.gov>
Cc: [REDACTED]@atf.gov>; [REDACTED]@atf.gov>
Subject: FW: Flores/Cummins indictment

[REDACTED],
Erik Flores ELORTEGUI has already been charged by ATF with Federal Firearm violations and is a fugitive believed to be hiding out in Mexico (Durango). The .50 caliber rifle he smuggled is believed to be the same rifle that shot-down a GOM Police helicopter that killed nearly a dozen Mexican officers. Instead of waiting for an extradition package (I believe he is a dual national USC/Mexican) why not present this case for prosecution by GOM??
Let me know what you think.

[REDACTED]



From: [REDACTED]
Sent: Thursday, November 17, 2016 5:39 PM
To: [REDACTED]@atf.gov>
Subject: FW: Flores/Cummins indictment

[REDACTED],
See attached information provided by US Attorney. Check out the FLORES Timeline which provides a nice summary on the activities around the 26 gun seizure in San Luis Rio Colorado.

Thanks,

[REDACTED]

From: Lichvarcik, Nathan J. (USAOR) [REDACTED]@usdoj.gov]
Sent: Friday, September 18, 2015 1:12 PM

To: [REDACTED]@atf.gov>

Cc: [REDACTED]@atf.gov>; [REDACTED]@atf.gov>

Subject: Flores/Cummins indictment

[REDACTED] Here is the sealed indictment we got this week. Don't forward around yet.

[REDACTED] and [REDACTED]: I just included you to say hi, and let you know about this case out of Eugene which was kind of surprising, but practically on the same scale as the Columbus case – just no corrupt U.S. officials involved.

Nathan Lichvarcik

Assistant United States Attorney

District of Oregon

[REDACTED]
Eugene, Oregon 97401
[REDACTED]

[REDACTED]

From: [REDACTED]@atf.gov>

Sent: Thursday, August 20, 2020 6:15 PM

To: [REDACTED]@atf.gov>

Subject: FW: Erik Flores

FYI this is going nowhere.

[REDACTED]

From: [REDACTED] (CRM) [REDACTED]@CRM.USDOJ.GOV>

Sent: Wednesday, August 19, 2020 5:56 PM

To: [REDACTED]@atf.gov>

Cc: [REDACTED] (Mexico City) <[REDACTED]@state.gov>

Subject: RE: Erik Flores

[REDACTED] I wanted to give you a heads up that OIA has administratively closed this case after various consultations with the assigned AUSA. After consulting with the AUSA, OIA determined that the concerns the AUSA had about the strength of his case coupled with the very flimsy witness affidavit were too concerning to move forward on this extradition request. The AUSA cannot put important elements into the witness affidavit because the witness is apparently unable to recall key facts that could strengthen the case. The AUSAs concern about the viability of the case was also a major concern for OIA.

Let me know if you have any question I can try and answer.

From: [REDACTED] (CRM)

Sent: Tuesday, August 4, 2020 9:18 AM

To: [REDACTED]@atf.gov>

Cc: [REDACTED]@atf.gov>; [REDACTED]@atf.gov>;

[REDACTED]@atf.gov>; [REDACTED] (CRM)

[REDACTED]@CRM.USDOJ.GOV>

Subject: RE: Erik Flores

OK, if it is the Oregon case, then the issue is not the Statute of Limitations. My understanding is that the issue is the draft witness declaration. OIA is anxious to get this moved forward, but the affidavit is just too flimsy and lacks specificity. There seems to be some concern that the co-conspirator cannot recall some of the details that need to be included in the declaration that allows the declaration to connect the dots between the co-conspirator and the defendant. The strength of the case is a concern and there has been an inability to get the declarations where they need to be. The OIA Attorney had a call last month with the AUSA where they discussed this. Apparently, the AUSA is also concerned about the strength of the case.

A secondary concern regarding requesting a PAW is that the AUSA has been unable to articulate

location information to OIA. The information the AUSA has presented to OIA is that the Defendant may be back in the US. This is a secondary concern though, and not one that would prevent us from moving forward.

The SOL issue is a concern in that we have not been able to get a concrete answer from Mexico as to when the SOL runs, but that is not the main concern – we are fairly confident that there is a lengthy statute of limitations in this case.

The main concern is the inability to get the witness declaration to a state that will be acceptable by Mexico.

Hope this clears up any questions you all have,

■

From: ■
Sent: Monday, August 3, 2020 9:28 AM
To: ■ (CRM) <■@CRM.USDOJ.GOV>
Cc: ■ <■@atf.gov>; ■ <■@atf.gov>;
■ <■@atf.gov>
Subject: Re: Erik Flores

Yes, it's my understanding he's under indictment in district of Oregon

■
■
■

On Aug 3, 2020, at 12:25 PM, ■ (CRM) <■@crm.usdoj.gov>
wrote:

Is this Erik Flores Elortegui? Wanted in Oregon?

From: ■
Sent: Monday, August 3, 2020 8:18 AM
To: ■ <■@atf.gov>; ■ (CRM)
<■@CRM.USDOJ.GOV>
Cc: ■ <■@atf.gov>; ■
<■@atf.gov>
Subject: Re: Erik Flores

Thanks In including ■

■ this is the guy we were trying to get an arrest warrant for two years. His 50 caliber shot down a helicopter.

■
■
■

On Aug 3, 2020, at 10:15 AM, ■ <■@atf.gov>
wrote:

Hey guys,

We spoke about this guy recently. He's suspected to still be in Mexico and has warrant out of Oregon. Per case agent, DOJ will not pursue the Provisional Arrest Warrant due to statute of limitation issue relating to certain charges. Therefore, it doesn't particularly help U.S. case to locate him in Mexico. However, case agent said [REDACTED] have identified a possible new address/location for him in Mexico. When I get that info, I'll let you know.

Thanks,

[REDACTED]

Text messages re: gun order/cost

FROM	TO	DATE	CONTENT
Flores	Cummins	5/5/14	82a1-50brmg-semi-auto-29-rifle/ Barrett website
Cummins	Flores	5/5/14	Oh is this Eric if so do you know how many you want to order please call me no texting please thank you
Cummins	Flores	5/5/14	... you could email me what you are looking for so I can get my order placed right away thank you.
Flores	Cummins	5/5/14	Give me your email
Cummins	Flores	5/5/14	@comcast.net
Flores	Cummins	5/6/14	Let me know the subtotal and ata of the burritos.

FROM	TO	DATE	CONTENT
Flores	Cummins	5/7/14 @ 1:29:36	I am here now I will wait for you to call or text me I'm in the parking lot waiting

5/15/14
Hillsboro, OR



5/18/2014
Quality Inn
Calexico, CA

5/19/14
El Centro, CA

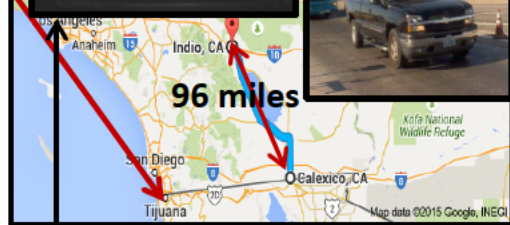
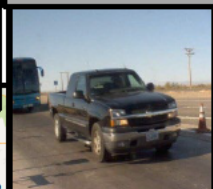
5/19/14
Mexicali, MX

5/20/14
Tijuana, MX

5/21/14 @ 6:46 am
Inbound from Mexico
at Port of Entry
Calexico, CA



5/21/14 @ 8:13 am
Hwy 86, Indio, CA



Dec 2, 2013 - Dec 24, 2013	Mar 12, 2014 - May 6, 2014	May 5, 2014 - May 6, 2014	May 7, 2014	May 15, 2014	May 18, 2014	May 19, 2014	May 20, 2014	May 21, 2014	June 14, 2014
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\$2,800

Advance payment for May 15 gun purchase



\$14,000.00

\$16,300.00

May 15, 2014
14 guns purchased by Cummins



\$38,100

June 14, 2014
Sonora, Mexico Seizure

