



# A BLUEPRINT FOR FEDERAL ACTION ON ILLEGAL GUNS

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REGULATION, ENFORCEMENT, AND  
BEST PRACTICES TO COMBAT  
ILLEGAL GUN TRAFFICKING

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Recommendations from Mayors Against Illegal Guns

August 2009



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## EXECUTIVE SUMMARY

**“We’ve got to enforce the gun laws that are on the books.”**

– Senator Barack Obama, July 12, 2007

**“NRA also supports enforcing the U.S. laws that are already on the books, to harshly punish anyone who engages in smuggling firearms.”**

– NRA Executive Director Chris W. Cox, March 12, 2009

**“In the end, the vast majority of Americans – including gun enthusiasts – want to see our laws enforced so that violent offenders are caught and punished.”**

–Senator Orrin Hatch, April 29, 2009

**“One good place to start would be to enforce the laws that are on the books right now.”**

– House Speaker Nancy Pelosi, February 26, 2009

**“We want to enforce the laws that we have on the books.”**

– Attorney General Eric Holder, Congressional testimony, May 14, 2009

For many years, leaders of the gun lobby have urged law enforcement professionals to “enforce the laws on the books.” Elected officials of all political stripes have joined that call. While the 450-plus members of Mayors Against Illegal Guns believe that Congress needs to close major gaps in federal laws,<sup>1</sup> we believe with equal strength that the executive branch needs to more effectively enforce existing gun laws. The coalition has identified 40 opportunities in six areas where the Administration could enhance enforcement of existing laws without Congressional action. These recommendations would dramatically improve law enforcement’s ability to keep guns out of the hands of criminals – and, in doing so, save innocent lives, including the lives of police officers.

The coalition recommends action involving seven federal agencies: Federal Bureau of Investigation (FBI), Bureau of Alcohol, Tobacco, Firearms & Explosives (ATF), Department of Justice (DOJ), Department of Homeland Security (DHS), the White House Office of Management and Budget (OMB), the Consumer Product Safety Commission (CPSC), and the State Department. Specifically, these agencies should implement 40 different recommendations in six areas:

### **I. IMPROVING GUN BACKGROUND CHECKS:**

1. Notify federal, state, and local law enforcement when someone fails a background check (FBI, ATF);
2. Prioritize rejected purchases for investigation and prosecution (DOJ, FBI, ATF);
3. Require secure identification for gun purchases (DHS, OMB);
4. Electronically verify state-issued identification (FBI);
5. Process background checks for employees of federally licensed dealers at the licensees’ request (ATF, FBI);

6. Perform background checks on employees of federally licensed dealers during audit inspections (ATF, FBI);
7. Notify dealers stripped of their licenses that they will continue to be “engaged in the business” if they dispose of inventory in significant quantities for profit (DOJ, ATF);
8. Enforce the requirement that dealers notify ATF whenever they transfer more than one handgun to their personal collections (ATF);
9. Maintain NICS records of default proceed sales to persons on the terrorist watch list for 20 years and all other records of default proceed sales for six months (ATF, FBI).

## **II. POLICING PROBLEMATIC GUN SHOWS:**

10. Identify which guns were sold at gun shows when tracing crime guns (ATF);
11. Conduct criminal enforcement operations at shows suspected to be major sources of illegally trafficked guns (ATF);
12. Increase enforcement activities to deter sales to prohibited purchasers by unlicensed sellers (ATF);
13. Investigate private sellers at gun shows who appear to be unlawfully engaged in the business (ATF);
14. Conduct comprehensive residency checks on buyers at gun shows known to be major sources of illegal guns (ATF).

## **III. SUPPLEMENTING ATF RESOURCES AND IMPROVING ITS STRUCTURE:**

15. Increase resources to deter cross-border trafficking to Mexico (DOJ, ATF, DHS, OMB, State Department, Congress);
16. Establish an Interstate Firearms Trafficking Unit run by a Deputy Chief for Interstate Firearms Trafficking (ATF, DOJ, OMB);
17. Increase the number of ATF Inspectors who audit federal firearms licensees (DOJ, ATF, OMB);
18. Enforce license revocations when dealers’ administrative appeals are exhausted (ATF);
19. Expand undercover investigations to assess dealer compliance with straw purchasing laws (ATF);
20. Mandate investigation of all incidents involving the theft of 5 or more handguns (ATF);
21. Require federal firearms licensees to report firearm thefts from common carriers and bonded warehouses (ATF);
22. Publish annual reports on lost and stolen guns (DOJ, ATF);
23. Support 250 additional state and local law enforcement officers to be assigned to ATF Task Forces (DOJ, ATF, OMB).

#### **IV. MORE EFFECTIVE CRIME GUN TRACING:**

24. Create a new Office of Tactical Trace Analysis at the National Tracing Center (ATF, DOJ, OMB);
25. Determine which dealers have a high number of traces compared to their sales volume (ATF);
26. Send a demand letter, conduct an inspection, or require a sworn statement when a federally licensed dealer fails to answer a trace request (ATF);
27. Require dealers to maintain copies of trace requests and their responses (ATF, OMB);
28. Require guns to have a second, hidden serial number (ATF, OMB);
29. Require guns to have tamper-resistant serial numbers (ATF, OMB);
30. Require guns to have standardized serial numbers (ATF, OMB).

#### **V. MORE EFFECTIVE PARTNERSHIPS AMONG GOVERNMENT, LAW ENFORCEMENT, COMMUNITY GROUPS, AND RESPONSIBLE GUN INDUSTRY REPRESENTATIVES:**

31. Allocate more Project Safe Neighborhood funds to reduce recidivism among gun offenders (DOJ, OMB);
32. Increase support for community programs that generate intelligence about firearms trafficking (DOJ, OMB);
33. Promote Wal-Mart's Responsible Firearms Retailers Partnership as a voluntary program for gun dealers (ATF);
34. Produce updated versions of reports on firearms trafficking (DOJ, ATF);
35. Expand the scope of ATF's trace reports (DOJ, ATF);
36. Fund external research of emerging problems in gun trafficking (DOJ, ATF);
37. Develop industry standards for gun safety locks (CPSC).

#### **VI. ENFORCEMENT OF EXISTING LAWS ON ESPECIALLY DANGEROUS FIREARMS:**

38. Resume enforcement of the ban on the importation of non-sporting purpose firearms (DHS, ATF, DOJ);
39. Require dealers to report multiple sales of long guns most commonly linked to crime (ATF);
40. Subject purchasers of Stinger Pen Guns to stricter background checks and registration requirements by reclassifying Stinger Pen Guns under the National Firearms Act (ATF).

More than any other federal agency or department, ATF is charged with enforcing federal gun laws. Not surprisingly, the bulk of the recommendations in this memorandum involve ATF. These recommendations should not be read as calling into doubt the dedicated work and sacrifices of ATF personnel across the country. But, in recent years especially, the hard work of ATF agents in the field has been undermined by congressional restrictions, inadequate resources, and a lack of leadership from federal officials in Washington. We believe that by following this blueprint for executive action, the federal government can dramatically improve efforts to cut down on gun trafficking and reduce associated crime and murder.

What follows is a detailed discussion of each recommendation for more effective enforcement of existing gun laws. Appendix A lists each recommendation with a brief description of how it could be implemented, Appendix B describes the coalition’s federal legislative agenda, and Appendix C is a sample background check form 4473.

## **A Note on Methodology**

Recommendations in this report are based upon discussions with elected officials, policy experts, and current and former federal, state, and local law enforcement officials, including ATF personnel. The recommendations were also guided by a review of reports, studies, court documents, and other material, including (1) hundreds of federal firearms prosecutions; (2) reports from government agencies, including ATF, FBI, and DOJ; (3) gun industry data on firearms production and sales; (4) studies by various experts and academics; and (5) media reports.

# I. IMPROVING GUN BACKGROUND CHECKS

In 1993, Congress passed the Brady Handgun Violence Protection Act, which requires federally licensed firearms dealers (FFLs) to conduct background checks on all prospective firearms purchasers. In the last decade, the National Instant Criminal Background Check System (NICS) has been used to process over 100 million background checks and has blocked more than 700,000 illegal sales.<sup>2</sup> While the NICS system is a major success story, gaps remain that allow criminals and other prohibited purchasers to circumvent the background check requirement.

## A. Reporting NICS Rejections to State and Local Law Enforcement Agencies

**Recommendation 1: The FBI should inform state and local law enforcement every time NICS reports that a prohibited person has attempted to purchase a firearm and, when appropriate, inform state mental health agencies when NICS rejects a buyer due to mental health.**

**Recommendation 2: The Justice Department should identify which NICS rejections should be investigated and prosecuted.**

Background: FBI and ATF do not have adequate guidelines about when and with whom to share information regarding NICS rejections. In 2007, there were 87,474 attempted purchases blocked by NICS, 60 percent of them by felons.<sup>3</sup> When persons who are legally prohibited from purchasing guns attempt to do so, federal law enforcement should communicate that red flag to the state and local authorities that may be best positioned to address the threat. For example, if a prospective purchaser with a domestic violence conviction is rejected in an attempt to buy a gun in Cincinnati, that information may not be of great interest to the Justice Department, FBI, or ATF, but it could be essential information for local police. Similarly, the FBI does not have guidelines for handling mental health file rejections. The events at Virginia Tech demonstrated the potential for catastrophe when mentally ill individuals gain access to guns.<sup>4</sup> Sharing data with state mental health agencies is critically important to public safety – including the safety of the individual with mental health problems seeking to acquire a firearm.

FBI should develop an email or other electronic alert system to report all NICS rejections to law enforcement in the jurisdictions covering both the dealer location and the address associated with a rejected buyer. In the case of rejections due to mental health, FBI should also share that information with state mental health agencies.

In addition, persons who try to buy guns but fail a NICS check almost certainly will have committed a federal felony by falsely certifying on background check Form 4473<sup>5</sup> that they were not a prohibited purchaser. Very few of these cases are pursued. In 2005, FBI referred 67,713 such cases to ATF, but U.S. Attorneys ultimately prosecuted

only 135 of them.<sup>6</sup> The Justice Department should develop a national risk assessment instrument based on a review of several thousand randomly selected persons rejected by NICS over a five-year period to identify factors most associated with risk of subsequent illegal activity. How many such persons later committed crimes? How many were involved in shootings? What characteristics are the strongest predictors of future crime? Answering these questions would help DOJ prioritize NICS rejections for investigation and prosecution.

## B. REAL ID and Gun Purchases

**Recommendation 3: The Department of Homeland Security (DHS) should require REAL ID-compliant identification for all gun purchases after December 1, 2014.**

Background: Bogus identification frustrates both NICS background checks and dealer recordkeeping requirements. In 2000 and 2001, the Government Accountability Office (GAO) attempted to use fake driver's licenses five times in different states to buy guns and succeeded in buying a gun from a licensed dealer in every case.<sup>7</sup> False identification is a particularly significant problem in southwest border states, where foreign nationals are illegally trafficking weapons and ammunition into Mexico. For example, in a recent criminal case, a Mexican citizen purchased firearms at least seven times from federally licensed dealers in Texas, each time falsely reporting that he was a Texas resident and presumably presenting false identification.<sup>8</sup>

One mechanism for verifying identification already exists. In 2005, Congress passed the REAL ID Act to ensure that more secure, tamper-resistant identification could be required for certain critical functions. Federal buildings and airports will start requiring REAL ID on December 1, 2014.<sup>9</sup> DHS should issue regulations clarifying that a NICS check in connection with a gun purchase is an "official purpose" for which the REAL ID Act requires specialized identification.

## C. Electronic Validation of Identification

**Recommendation 4: NICS should electronically verify the validity of and the name associated with any state-issued identification number provided on a background check Form 4473.**

Background: In addition to requiring tamper-resistant identification, the federal government should instantly and electronically verify a state-issued ID by checking motor vehicle records. The government has the capacity to do this by integrating

motor vehicle data into the NICS system. Currently, FBI only checks the name of the buyer on the Form 4473 against lists of prohibited persons. FBI does not access data maintained by state agencies to see whether the state driver's license identification number provided on the form 4473 has expired or been reported stolen or whether the name associated with the identification number matches the name provided by the buyer.<sup>10</sup> Where a state identification number is known to be invalid, FBI should deny the sale. In cases where the name associated with the identification number does not match the name provided by the buyer on the 4473, FBI should delay the sale and refer it for further investigation.

#### **D. Background Checks for Employees of Gun Dealers**

**Recommendation 5: ATF should perform background checks on employees of federal firearms licensees at the licensees' request.**

**Recommendation 6: ATF should perform background checks on gun dealer employees during audit inspections.**

Background: Under federal law, it is unlawful for a person prohibited from purchasing or possessing firearms to sell or handle firearms for an FFL. Unfortunately, there is no mechanism available for FFLs to voluntarily screen employees because FBI regulations prohibit FFLs from directly accessing NICS to conduct employee background checks.<sup>11</sup> Under current regulations, however, ATF could process employee checks on dealers' behalf under its authority to access NICS "in connection with a civil or criminal law enforcement activity relating to the Gun Control Act."<sup>12</sup> ATF should inform FFLs that voluntary checks are available and issue a new background check form modeled on Form 4473 to conduct such voluntary checks. In fact, Wal-Mart, the nation's largest gun seller, has already agreed to voluntarily check all employees and has asked ATF to conduct those checks in the NICS system.<sup>13</sup> As of the date of this memorandum, ATF is considering Wal-Mart's request.

In addition, when ATF reviews a dealer's files during an audit inspection, it should determine which employees are selling firearms and check each of those employees in NICS.<sup>14</sup> If ATF finds employees are prohibited purchasers, it should compel stores to dismiss, reassign or, if warranted, refer the employees for prosecution.

## E. Dealer Inventory Liquidations in the Wake of License Revocations

**Recommendation 7: The Justice Department should notify dealers stripped of their licenses that they will continue to be “engaged in the business” if they dispose of inventory in significant quantities for profit.**

Background: When ATF revokes a gun dealer’s license for violating federal firearms laws, it nonetheless has allowed dealers to transfer their firearms inventory into “personal collections” and liquidate them in unregulated “fire-sales” without background checks or full recordkeeping – despite a federal law prohibiting unlicensed individuals from engaging in the business of selling firearms. In 2006, after a Maryland gun dealer who had lost his license sued ATF, the Justice Department issued a new legal opinion stating that, “when a dealer loses his license he can dispose of his inventory by selling those firearms without being deemed to have engaged in the business in violation of 18 U.S.C. § 922(a)(1)(A). Plaintiff will only run afoul of Section 922(a)(1)(A) *if* he chooses to *purchase and resell* firearms.” The dealer was allowed to transfer more than 700 guns to his personal inventory and continue selling to the public without background checks.<sup>15</sup>

The position adopted by the Department in 2006 is not supported by a common sense reading of federal law. The test for whether a gun seller requires a license cannot simply be whether the seller currently *has* a license. Rather, the Justice Department should adopt a legal test based on whether an individual’s firearms sales, by virtue of volume and other indicia, constitute being “engaged in the business” – regardless of whether the seller *has* a federal license, *once had* one or *never had* one. In prosecutions of gun sellers charged with unlawfully selling without a license, the key indicia applied by federal courts to determine whether defendants are “engaged in the business” are sales of substantial numbers of guns<sup>16</sup> for profit.<sup>17</sup> Other indicia include repeated sales of guns with price tags,<sup>18</sup> of guns in their original packaging,<sup>19</sup> or through advertising or by using professional signs or premises.<sup>20</sup> DOJ should apply these same legal tests to dealers stripped of their licenses. Preventing continued gun sales to the public need not result in a financial loss to these dealers. ATF should notify the subject dealer by letter that while continued sales to the public may constitute illegally engaging in the business, selling to other licensed dealers is a “safe harbor” for disposing of inventory.

## F. Transfers From FFL Inventory to FFLs' Personal Collections

**Recommendation 8: ATF should fully enforce the requirement that dealers notify ATF within five business days whenever they transfer more than one handgun to an unlicensed person, including when dealers transfer more than one handgun to their own personal collections.**

Background: Even outside the context of license revocations, ATF does not sufficiently monitor transfers of guns from gun dealers' store inventory to their personal gun collections or the subsequent sale of those guns, increasing the risk that some dealers may evade background check and recordkeeping requirements by making off-the-books sales. Generally FFLs must notify ATF whenever they transfer more than one handgun to an unlicensed person within five business days,<sup>21</sup> but ATF has not enforced this requirement when FFLs transfer handguns from store inventory to their own personal collections. In addition, under federal law, a licensed dealer is required to conduct background checks and maintain records of guns sold from his personal collection if the guns are sold within one year of the dealer transferring the guns from his licensed inventory to his personal collection. This requirement is difficult to enforce because dealers are not required to inform ATF of the date when they transfer guns from their licensed inventory to their personal collections. This loophole is particularly problematic at gun shows because – as observed by former ATF agents and academic researchers – FFLs are more likely to sell simultaneously from licensed inventory and personal collections at gun shows and can easily sell guns “off-the books” without conducting background checks.<sup>22</sup>

ATF should vigorously enforce the multiple handgun reporting requirement and ensure that dealers notify ATF whenever they transfer multiple handguns within five business days to a personal collection. If enforced, these multiple sales reports would identify the make, model, and serial number of each transferred handgun, along with the date of the transfer. This record would alert ATF to suspicious transfers, help to enforce the one-year background check requirement on subsequent sales, and simplify tracing if these guns were recovered in crimes.

In addition, if ATF suspects a dealer, based on tracing and other intelligence, of selling guns from his personal inventory without a background check within one year of their transfer, it should send a new, “Type III” Demand Letter<sup>23</sup> requiring dealers to notify ATF of any transfer into personal inventory by letter, fax, or email within five business days. Such reports should identify the make, model, and serial number of each transferred firearm.

## G. Maintaining Data on Default Proceed Sales

**Recommendation 9: ATF should maintain NICS records of default proceed sales to persons on the terrorist watch list for 20 years and all other records of default proceed sales for six months.**

Background: Although the Tiahrt Amendment appropriations riders requires the destruction of NICS records of approved sales within 24 hours, the riders do not apply to records of denials or to default proceed sales, where the background check is incomplete after three days and the sale goes forward. While records of denials have been consistently maintained and preserved by ATF, records of default proceed sales are only kept for 90 days.<sup>24</sup> According to data provided by the FBI, default proceed sales are more than 8 times more likely to be associated with a prohibited purchaser than sales where the purchaser's background check is resolved within three days.<sup>25</sup> Moreover, the 90-day destruction deadline built into current regulations forces FBI to destroy critical information about terror suspects who purchased guns in the United States by default proceed. The Government Accountability Office recently reported that from 2004 to 2009 terror watch list suspects attempted to buy guns or explosives 963 times and were successful 90% of the time.<sup>26</sup> ATF should promulgate a regulation requiring maintenance of default proceed sales to persons on the terrorist watch list for 20 years and all other records of default sales for six months. Nothing in the appropriations riders would prohibit ATF from requiring maintenance of these records.

## II. POLICING PROBLEMATIC GUN SHOWS

The Justice Department has estimated that over 4,000 gun shows take place annually across America, each attracting an average of between 2,500 and 5,000 visitors.<sup>27</sup> While the vast majority of vendors and customers at gun shows are law-abiding citizens, enforcement gaps have allowed gun shows to be a major locus of supply for crime guns. According to a 2000 federal government study of federal firearms trafficking prosecutions, 30 percent of recovered guns were connected to gun shows.<sup>28</sup> More recently, ATF officials have described gun shows as a major source of firearms illegally trafficked by drug cartels into Mexico.<sup>29</sup>

Despite the scope of problematic practices at gun shows, a 2007 Justice Department's Office of the Inspector General report concluded "ATF does not have a formal gun show enforcement program."<sup>30</sup> In fact, despite the large number of crime guns connected to gun shows, only three percent of active ATF trafficking investigations occurred at gun shows between 2004 and 2006.<sup>31</sup> Yet those investigations yielded 121 arrests resulting in 83 convictions and 5,345 seizures of guns offered for sale or purchased illegally.<sup>32</sup> The Justice Department should adopt administrative and enforcement reforms to prevent gun shows from continuing to be a major source of illegal guns.

### A. Gun Tracing and Tracking Information on Gun Shows

**Recommendation 10: When tracing guns, ATF National Tracing Center (NTC) personnel should be trained to routinely ask the FFL who sold the gun whether the recovered gun was purchased at a gun show and the location of that gun show, and then use the data to identify problematic gun shows.**

Background: In discussions with former ATF agents and officials, it is apparent that ATF does not consistently identify whether traced guns were purchased at gun shows. If an individual buys a gun from an FFL at a gun show, the FFL is required to identify the name and location of that gun show in response to Question 19 on Form 4473. When NTC personnel trace a particular gun, however, they do not routinely ask the FFL in possession of the form whether the recovered gun was purchased at a gun show or the show's location. The failure to include this information in a trace report deprives ATF and local law enforcement of important clues about which gun shows are favorite targets of persons involved in the illegal diversion of firearms. It also does not assist ATF in determining whether – as research has suggested – certain FFLs are more likely to violate background check requirements and participate in straw sales at gun shows than in retail stores, in part because of the competition they face from private sellers.<sup>33</sup> Regional ATF offices should include this data in reports identifying problematic targets for investigation and enforcement.

## B. Criminal Enforcement Operations at Problematic Shows

**Recommendation 11: ATF field agents should have the discretion to conduct criminal enforcement operations at gun shows when trace data, prosecutions, and witness statements suggest a particular show is a source of crime guns.**

Under current practice guidelines, as described by former ATF agents and officials, ATF agents must have a specific person under suspicion to conduct a criminal investigation at a gun show. Because ATF's gun show enforcement activities are focused almost entirely on a few individuals suspected of engaging in illegal activity, criminal activity endemic to some gun shows goes unchecked.

ATF agents should have the discretion to employ criminal investigative techniques when intelligence suggests that a particular show is a site of problematic firearms transfers – even when intelligence does not identify a specific individual for investigation. Law enforcement may become aware from arrest debriefings, analyses of gun traces, and cooperating witnesses that a particular gun show is a hot-bed of illegal activity. In these cases, agents in local field offices should not be restricted from attempting to identify targets by operating undercover and using surveillance equipment at the show.

## C. Investigating Problematic Private Sellers

**Recommendation 12: ATF should increase enforcement activities to deter sales to prohibited purchasers by unlicensed gun sellers.**

**Recommendation 13: ATF should investigate private sellers at gun shows who appear to be engaged in the business without a license.**

Background: While the “gun show loophole”<sup>34</sup> leaves many sales among private parties unregulated, certain private sales are illegal and should be policed. For example, a person, regardless of whether an FFL or an unlicensed seller, may not transfer a handgun to a person she knows or has reason to believe is a federally prohibited purchaser or an out-of-state resident.<sup>35</sup> ATF should develop undercover integrity tests to identify private sellers who sell to prohibited buyers. In such integrity tests, the undercover buyer could indicate to the seller that he can't pass a background check, has a criminal history, or lives in another state.

ATF should also collect intelligence, using trace data, witness interviews, and undercover operations to identify sellers who appear to be “engaged in the business” of selling firearms but nonetheless do so at gun shows without a license. Investigations should

examine sales volume and profit as well as document whether problematic gun sellers appear at multiple shows.

#### **D. Residency Checks for Persons Purchasing Firearms at Gun Shows**

**Recommendation 14: At gun shows known for criminal activity, agents should have discretion to compare purchasers' addresses reported on Form 4473 to their state driving records.**

Background: In January 2006, ATF issued a memorandum to special agents in charge (SAIC) throughout the country in response to complaints about ATF's "aggressive and harassing" enforcement techniques at the Richmond International Raceway gun show in Virginia.<sup>36</sup> The revised guidance in part clarified sensible best practices for gun show operations, such as establishing a command center off site, but the memorandum also stifled a legitimate and effective technique employed at the Richmond show. Namely, agents in Richmond conducted residency checks by comparing buyers' residences as reported on Form 4473 to the residence listed in the buyer's driving records. If a buyer's driving records reflected an address other than the one provided on Form 4473, the agents initiated follow-up investigations to see if the sale was illegal. In Richmond, comprehensive residency checks resulted in 24 arrests and 23 convictions for firearms violations, mostly straw purchases.<sup>37</sup>

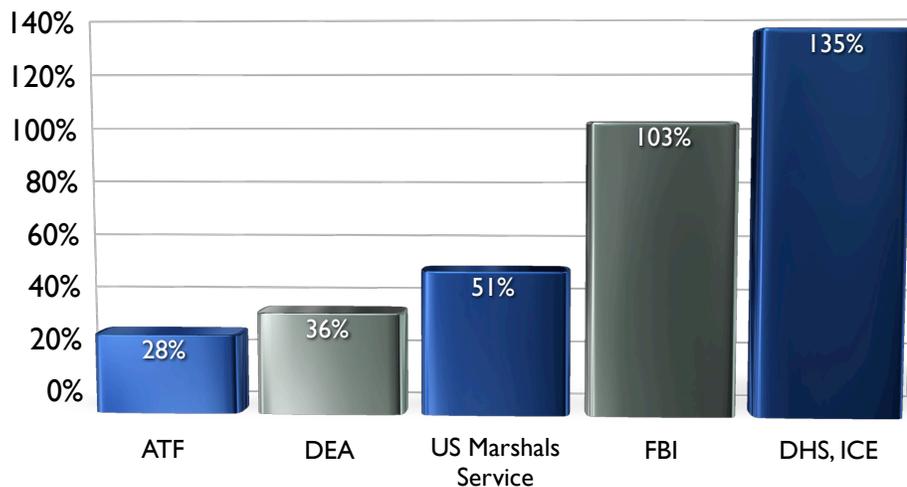
Under the guidelines issued by ATF after Richmond, an agent must have evidence that a buyer is committing a crime before checking the accuracy of the buyer's reported residence. ATF should issue new guidance to special agents and investigators that allows agents to conduct comprehensive residency checks at shows that are known to be major sources for illegally trafficked guns.<sup>38</sup>

### III. ATF RESOURCES AND STRUCTURE

Additional resources and structural reforms will help ATF achieve what ought to be its top priority – combating illegal gun trafficking.

ATF has 2,500 agents dispersed among 22 field divisions with a mandate to enforce federal laws regulating firearms, alcohol, tobacco, and explosives. Nevertheless, ATF does not have the resources or the organizational structure to succeed in its most critical mission: policing firearms trafficking across state lines and international borders. In recent years, former Acting Director Michael J. Sullivan and other ATF officials have been outspoken about the agency’s budget shortfalls, including a more than \$70 million budget gap in fiscal year 2007 and a \$37 million budget gap in fiscal year 2009.<sup>39</sup> While ATF received an additional \$10 million in the American Recovery and Reinvestment Act of 2009 to add resources at the Mexican border, these limited, temporary resources do not cure the systemic underfunding that has plagued ATF. Moreover, during the Bush Administration, ATF’s budget experienced far more limited growth than the budgets of other federal law enforcement agencies:

Percent Increase in Salaries and Expenses Appropriations FY2001-FY2008\*



\*DHS and ICE appropriations cover changes from FY2003-FY2008.

In addition to closing the shortfall in its budget request, ATF needs a ten percent increase in its annual budget – or approximately an additional \$103 million – to fund new enforcement efforts, including \$39.5 million for interdiction at the southwest border, \$53 million to hire personnel needed to meet its FFL inspection goals, \$7 million to fund a new Office of Tactical Trace Analysis (OTTA) (discussed in Recommendation 24), and \$3 million to fund an Interstate Firearms Trafficking Unit (IFTU).

In addition to increased funding, structural innovations could enhance ATF's ability to conduct comprehensive gun trafficking enforcement. Gun trafficking often involves movement of guns across state lines and international borders. Without a central coordinator, these investigations often fall prey to competition by regional field offices for jurisdiction. In addition, ATF can adopt practice reforms to hold accountable the small cohort of dealers that violate federal firearms laws.

## A. Mexican Trafficking and Border Resources

### **Recommendation 15: ATF should expand Project Gunrunner by increasing the ATF personnel assigned to interdict gun trafficking from the United States to Mexico.**

Background: In 2008, more than 6,200 deaths were attributed to the turf war between major Mexican drug cartels over key drug trafficking corridors into the United States.<sup>40</sup> The violence is fueled by a steady stream of high-powered firearms and ammunition trafficked to Mexico from U.S. gun dealers and the U.S. secondary market, including gun shows, flea markets and private sales.<sup>41</sup> ATF has reported that 90 percent of guns recovered and traced from Mexican crime scenes originated from U.S. gun dealers.<sup>42</sup> In 2008, 6,700 guns recovered in Mexico were traced to initial sales in the United States, more than the previous two years combined.<sup>43</sup> The three largest source states for guns recovered in Mexico are Texas (39 percent), California (20 percent), and Arizona (10 percent).<sup>44</sup>

Since February 2009, ATF has deployed 100 additional personnel from its offices around the country, including agents, inspectors, and analysts, to add to the baseline level of 148 ATF special agents along the southwest border.<sup>45</sup> In February, Congress approved an additional \$10 million in funding for "Project Gunrunner" in the American Recovery and Reinvestment Act of 2009. This funding will allow ATF to hire 37 permanent personnel to fill vacancies created by its Project Gunrunner redeployments, or to fill new positions in three new field offices and one new satellite office in the Southwest.<sup>46</sup>

The temporary surge in personnel must be sustained, and the small permanent additions made with Recovery Act funding must be expanded to address the persistent problem of southbound firearms trafficking.<sup>47</sup> In addition to the funds provided in the American Recovery and Reinvestment Act, \$39.5 million should be allocated annually to ATF to support Project Gunrunner. Specifically, \$9.5 million should be dedicated to DOJ, DHS, and State Department efforts to support gun tracing and enforcement operations on the Mexican side of the border; \$25 million should be allocated to hire 125 additional, permanent personnel in the Southwest border states and extend the surge deployment at

least through 2011;<sup>48</sup> and \$5 million should be allocated to allow more ATF personnel to work in joint task forces with U.S. state and local law enforcement agencies on trafficking investigations and expand ATF training and support operations within Mexico. This allocation of funds is largely consistent with legislation introduced by Representative Rodriguez (D-TX) but provides for \$10 million in additional funding for personnel.<sup>49</sup>

## **B. Deputy Chief for Interstate Firearms Trafficking**

### **Recommendation 16: ATF should establish an Interstate Firearms Trafficking Unit (IFTU) run by an ATF Deputy Chief to coordinate interstate investigations.**

Background: According to former ATF agents and officials, it is common for investigations targeting illegal firearms violations in source states – like straw purchases – to proceed with little interaction with ATF offices in states where guns related to the investigation are recovered. Likewise, investigations in recovery states – involving unlawful transfers to felons or other “end-user” trafficking cases – will often proceed with little effort to coordinate with ATF offices in source states. Thirty percent of firearms cross state lines before they are recovered in crimes.<sup>50</sup> Without coordination and oversight from law enforcement in both the source and recovery areas, ATF may fail to identify targets for investigation, or an investigation may be compromised by regional ATF offices and joint task forces working at cross-purposes.

The administration should provide an additional \$3 million annually to ATF to fund the IFTU and appoint a Deputy Chief of Interstate Firearms Trafficking. The Deputy Chief and the IFTU would identify and designate interstate firearms trafficking corridors and patterns; develop guidelines for initiating investigations; and develop and regulate a system to share intelligence with federal, state, and local law enforcement in the source and affected areas. Specifically, in collaboration with the new Office of Tactical Trace Analysis (discussed in Recommendation 24), the IFTU should issue a monthly report to all regional ATF offices and joint task forces highlighting targeting recommendations and collect from regional offices a monthly summary of trafficking investigations. IFTU should also mandate that Regional Agents in Charge (RAICs) analyze multiple sales reports on a daily basis, review the results of dealer audit inspections, and prioritize dealer audit inspections based on NICS data, trace data, and other intelligence.

## C. Administrative Enforcement and Dealer Inspections

**Recommendation 17: ATF should receive an additional \$53 million annually to hire more inspectors to meet its target of triennial dealer audits.**

**Recommendation 18: ATF should enforce a dealer's license revocation when the dealer's administrative appeals are exhausted.**

Background: In 2007, ATF inspected only 9.3 percent of FFLs – an average rate of one inspection every 11 years<sup>51</sup> – far from ATF's stated goal to inspect every gun dealer at least once every three years.<sup>52</sup> ATF officials estimate the agency needs \$53 million to hire 250 additional personnel to meet its inspections goal.

Even when ATF does inspect dealers and finds systemic negligence or malfeasance, it rarely exercises its administrative power to revoke the licenses of dealers that repeatedly violate the law. In 2007 it revoked only 100 licenses out of 109,000.<sup>53</sup> Furthermore, when ATF does revoke a dealer's license, it will often grant stays to allow the dealer to continue operating while appealing the agency's decision in a United States district court. For example, ATF allowed Jim's Guns and Whatever in Dayton, Ohio to operate for almost 19 months after ATF revoked its license.<sup>54</sup> Federal law allows ATF to put a license revocation into effect when a dealer's administrative appeal is rejected but before the dealer has exhausted his challenges in federal court. ATF should enforce revocations when a dealer's administrative appeal is rejected.

## D. Administrative Enforcement and Undercover Investigations

**Recommendation 19: ATF inspectors should conduct undercover investigations to assess gun dealer compliance with federal laws and regulations.**

Background: In addition to its criminal jurisdiction, ATF has administrative jurisdiction to inspect dealers and, when necessary and appropriate, initiate an action to revoke a dealer's license. According to former ATF agents, however, ATF's administrative efforts to monitor FFLs no longer include undercover integrity investigations. In conjunction with dealer education and oversight, undercover tests and enforcement action can dramatically improve dealers' compliance with law designed to deter straw purchases and other transfers to the illegal market.

After conducting similar integrity tests of dealers known to be top sources of crime guns trafficked to New York City, the City sued 27 federally licensed dealers in five states. The vast majority of those dealers are now under the oversight of a court-

appointed special master and have adopted additional safeguards or the best practices of the Responsible Firearms Retailer Partnership.<sup>55</sup> A study by John Hopkins University concluded that the portion of crime guns from these dealers recovered in New York City with time-to-crime of one year or less has dropped 75 percent since the investigations were announced.<sup>56</sup>

ATF should develop an undercover administrative enforcement program focusing on the handful of dealers that are problematic sources of crime guns. These undercover investigations should simulate straw purchases but could also involve other scenarios, such as customers seeking to make “off-the-books” purchases. Generally, ATF should subject dealers that fail one test to a three-year period of heightened oversight, including additional integrity tests and annual audit inspections. If a dealer fails a second test during the oversight period, ATF should reset the clock on oversight, take sworn statements of store personnel regarding sales of guns recovered in crime within two years of their sale, and issue a new, “Type IV” Demand Letter requiring the dealer to submit monthly reports on the quantity sold of the 10 models of guns most commonly associated with crime gun traces, the serial numbers of those guns, and the names of all employees who handle and sell guns. If a store fails a third integrity test during the oversight period, ATF should initiate a license revocation proceeding – or, where there is evidence of willful misconduct, a criminal investigation.

## E. Lost and Stolen Guns

**Recommendation 20: ATF should investigate all incidents involving thefts of five or more guns from dealers or individuals.**

**Recommendation 21: ATF should require FFLs to report to the National Crime Information Center (NCIC) thefts of firearms from common carriers and bonded warehouses.**

**Recommendation 22: The federal government should report annually on lost and stolen guns.**

**Background:** According to FBI data, 1.6 million firearms were stolen between 1998 and 2008.<sup>57</sup> Over 150,000 firearms were stolen in 2008 alone, 85 percent of which were never recovered.<sup>58</sup> This figure represents only a portion of firearm thefts because state and local law enforcement agencies are not required to report firearm thefts to the FBI.<sup>59</sup> Theft is one of the major sources of firearms diverted into the illegal market. ATF has reported that almost a fourth of its criminal trafficking investigations involved stolen guns.<sup>60</sup> Specifically, 14 percent involved trafficking in firearms stolen from FFLs, 10

percent involved trafficking in firearms stolen from homes, and 2 percent involved trafficking in firearms stolen from common carriers.<sup>61</sup>

ATF's guidelines only mandate investigation of incidents when they involve the theft of 10 or more handguns *and* either at least one of those guns is recovered in a crime within two years, or a suspect has been identified. As a result, a theft of multiple firearms could go uninvestigated by ATF for months or years until one of the guns is recovered in a crime or a suspect is identified. ATF should revise its guidelines to mandate investigation of all thefts involving five or more guns.

Gaps in reporting thefts also thwart ATF's investigation of lost and stolen guns. Although FFLs, including dealers, manufacturers, and importers, are required to report missing or stolen guns, common carriers and bonded warehouses hired by FFLs to ship and store firearms are not. ATF should reinterpret its regulations<sup>62</sup> to require all FFLs shipping or receiving firearms to report thefts of guns from common carriers as soon as those FFLs become aware of the missing guns. If a licensed dealer reports a theft from a common carrier, ATF should interview the wholesaler or other FFL that shipped the guns and catalogue the shipper's acquisition and disposition records. In addition, federally licensed manufacturers, dealers, and importers should be required, pursuant to revised regulations, to immediately report thefts from any bonded warehouse or other storage facility they have contracted with to store firearms.

ATF has made available only a small amount of outdated data on lost and stolen guns. To close this gap, the Justice Department should produce an annual report on lost and stolen guns, including the following analyses:

- State-by-state information about the number of dealers with missing guns discovered during audit inspections, the number of dealers inspected, the number and type of guns missing from each dealer, the number and type of guns identified in audit inspections that are later traced in crimes, and the number and type of guns identified as missing in audit inspections and later recovered by other means;
- State-by-state information about guns reported missing by FFLs other than in the course of inspections, including the number of FFLs reporting missing guns, the number of guns missing from each FFL, the number of guns reported missing that are later traced in crimes, and the number of guns identified as missing and later recovered by other means;
- State-by-state information about guns reported missing by individuals and common carriers, including the number of missing gun incidents, the number of missing guns reported for each incident, the number of guns reported missing that are later traced in crimes, and the number of guns identified as missing and later recovered by other means;

- Efforts by federal law enforcement to recover and prosecute gun thefts, in particular thefts involving five or more guns.

## F. Task Force Officers

**Recommendation 23: DOJ should support an additional 250 state and local law enforcement officers to be assigned to ATF Task Forces.**

Background: Across the country, ATF agents work hand in hand with state and local law enforcement in regional Task Forces to combat illegal trafficking. These Task Forces are supplemented by Task Forces Officers (TFOs) – personnel from local or state law enforcement agencies who are temporarily assigned to work with ATF on gun investigations. TFO salaries are typically paid by their home agency, and ATF pays for their overtime, vehicular, and other incidental expenses. TFOs play a key role in trafficking enforcement because they foster cohesive relationships between federal and local agencies, break down communication barriers, and help develop local law enforcement expertise in firearms investigations. ATF should hire an additional 250 TFOs to enhance investigative capacity, particularly relating to interstate and cross-border trafficking and lost and stolen guns.

## IV. MORE EFFECTIVE CRIME GUN TRACING

ATF relies on trace data in 60 percent of all gun trafficking investigations.<sup>63</sup> In 2008, working with state and local law enforcement, ATF traced nearly 250,000 guns recovered in U.S. crimes in an attempt to identify facts about the guns' first retail sale.<sup>64</sup> These traces can be critically important clues to solving gun crimes. And, trace data can identify trafficking patterns across a region and across the nation, helping law enforcement map where guns originate and how they are trafficked to the people who use them in crimes.

Despite the data's enormous potential, ATF does not have the organizational structure or resources to fully realize its power. ATF could more proactively aggregate and analyze trace data to provide targeting recommendations to regional offices. In addition, investigations are stalled at crucial moments because dealers frequently delay or fail to respond to trace requests or because a perpetrator obliterated the gun's unique serial number.

### A. Tactical Trace Analysis

**Recommendation 24: ATF should create an Office of Tactical Trace Analysis at the National Tracing Center to proactively analyze trace data and to identify gun traffickers and problematic dealers.**

**Recommendation 25: The Office of Tactical Trace Analysis should use a trace-to-NICS-check ratio to determine which dealers have a high volume of crime-gun traces compared to their approximate sales volume.**

Background: While ATF and its Crime Gun Analysis Branch have used trace data to pinpoint problematic dealers associated with recovered crime guns, to evaluate dealers' compliance with trace requests, and to assist in regional trafficking investigations – these activities are typically reactive in nature, inconsistent in scope, and not regularly shared with ATF field offices, task forces, and state and local law enforcement.

ATF should replace the Crime Gun Analysis Branch with a new Office of Tactical Trace Analysis (OTTA) and charge it with proactively developing investigative leads for regional field offices and task forces. In collaboration with the new Deputy Chief of Interstate Firearms Trafficking, OTTA should issue a monthly report to regional offices and task forces with recommendations on targets for further investigation.<sup>65</sup>

OTTA should also be a resource to state and local law enforcement by offering trainings in the e-Trace local input system and by providing customized analytical support to state and local law enforcement. Additionally, OTTA should produce regular reports that analyze aggregated trace data for policy makers and the public. As discussed in Recommendation 35, ATF released analyses of aggregated trace data in 2007 and

2008 as a result of changes made to FY 2008 Tiahrt language. OTTA should continue producing these reports and supplement them with reports on the interstate flow of crime guns, dealer response times to trace requests, and percentages of traced guns originating from the small cohort of dealers with high numbers of traces.

In addition, when analyzing trace data to identify problematic dealers,<sup>66</sup> OTTA should work with FBI to control for sales volume. In some cases, high numbers of traces may be a by-product of high sales by a dealer. OTTA could control for this phenomenon by calculating a trace-to-sales ratio.<sup>67</sup> When available, FBI should use sales volume data gathered during ATF dealer inspections. Otherwise FBI should use aggregate data on the number of NICS checks conducted by each dealer as a rough proxy for sales when calculating the ratio.<sup>68</sup>

An additional \$14 million should be allocated to ATF over two years to integrate the Crime Gun Analysis Branch staff into OTTA, hire additional staff, develop systems to share more data with state and local law enforcement, and undertake more comprehensive reporting and analysis.

## B. Dealer Response to Trace Requests

**Recommendation 26: When dealers fail to respond to trace requests, ATF should send demand letters, search FFLs' sales records, and/or require them to provide sworn statements describing when and to whom the gun was transferred.**

Background: Federal law requires FFLs to respond to trace requests “immediately . . . and in no event later than 24 hours,”<sup>69</sup> but trace requests routinely take far longer to complete. In fact, many traces are not completed at all: in at least 39 percent of trace attempts, ATF is unable to identify the source states or the source dealers.<sup>70</sup> Even when a dealer is identified, a third of the time a buyer is not.<sup>71</sup> ATF relies on accurate record-keeping by FFLs to successfully trace guns, and a FFL’s failure to keep complete records or comply with ATF requests can make those traces impossible.<sup>72</sup>

ATF can take several different steps when a dealer is unresponsive to trace requests. If a dealer ignores ATF’s requests for information about a gun’s sale or is unable to provide it, ATF can send “Demand Letter I,” which requires dealers to send ATF all firearms transactions records for the prior three years and to continue to submit these reports on a monthly basis until further notice. In recent years, however, ATF has rarely exercised its power to send demand letters. In fact, in 2004 ATF did not send a single dealer a Demand Letter I.<sup>73</sup> ATF can also search the FFL’s premises, take a statement from the FFL, or, if necessary, revoke the dealer’s license.

Any dealer that cannot respond to a trace of a gun less than five years old should receive a Demand Letter I. If a dealer is unresponsive to several trace requests of guns less than five years old, ATF should send an inspector to search the dealer's records to determine if there is more serious, systemic negligence or malfeasance by the FFL.<sup>74</sup> If a dealer fails to respond to a trace request for a gun used in a homicide, robbery, rape or other violent felony, an ATF agent should visit the dealer and take a sworn statement from the dealer describing his or her complete knowledge of the gun and its transfer. Often the process of reviewing and signing such a statement will jog the dealer's memory and, in some cases, may persuade a reluctant dealer to disclose pertinent information. Finally, chronic or willful failures to respond to such trace requests should provoke license revocations.

### C. Dealer Records of Gun Trace Requests

**Recommendation 27: The Justice Department should require FFLs to keep logs of gun trace requests.**

Background: A log of gun traces would help dealers prevent illegal sales by flagging which customers are subjects of repeated trace requests at that store, thereby alerting the seller to a potentially suspect purchaser. Presently, licensed dealers, manufacturers, and importers are not required to maintain such logs.

Pursuant to federal law, however, ATF could promulgate a new regulation requiring FFLs to keep a log of trace requests as record of the gun's "disposition."<sup>75</sup> Through its participation in the Responsible Firearms Retailer Partnership (RFRP), Wal-Mart will voluntarily maintain an electronic log of all the traces relating to its stores. If a customer who has a prior trace at that retailer attempts to purchase a firearm, the sale is electronically flagged. The retailer then has the discretion to proceed with the sale, request more information from the customer, or stop the sale.

### D. Obliteration of Gun Serial Numbers

**Recommendation 28: ATF should require a second, hidden serial number on every newly manufactured gun.**

**Recommendation 29: In the alternative, ATF should require that serial numbers be placed on steel and not soft metal, require stamped rather than etched marks on the gun surface, and require marks to be 0.0005 deep and 1/8 inch tall.**

Background: Regulations require gun manufacturers to include unique, identifying information – such as serial numbers – on every gun for the purpose of tracing recovered weapons. Violent criminals, including the perpetrator of the shootings at Virginia Tech, have attempted to obliterate those marks on thousands of guns recovered in crimes each year in an effort to thwart law enforcement.<sup>76</sup> In 2001, ATF estimated that between nine and 20 percent of recovered crime guns had their serial numbers removed.<sup>77</sup> Under current law, serial numbers must be engraved, cast, or stamped at least 0.003 inch deep, and the print of the serial number must be at least 1/16 inch tall.<sup>78</sup> Although current regulations state that none of the required information may be “susceptible of being readily obliterated, altered, or removed,” regulations do not prescribe stamping methods.<sup>79</sup> Information that is etched or engraved on softer metals or placed in a single location is especially vulnerable to tampering.

ATF should issue a regulation requiring guns to have additional, hidden sets of identifying information. For example, Massachusetts law requires gun manufacturers to install additional, tamper-resistant serial numbers either inside the gun barrel or visible only in infrared light.<sup>80</sup> The placement of these second numbers makes it extremely difficult to obliterate all identifying information. In the alternative, ATF should promulgate a regulation requiring larger or deeper serial numbers, serial numbers placed on steel and not soft metal, or numbers stamped rather than etched on a gun’s surface.

## E. Standardizing the Serial Number System

**Recommendation 30: ATF should require domestic manufacturers to use a standardized system for numbering firearms.**

Background: Youth Crime Interdiction Initiative’s National Crime Gun Trace Report (July 2002) indicated that mistyped or miscopied serial numbers prevented 11 percent of urban traces from being completed – making it the most frequent cause for a failed trace. Problems inputting, copying, and recognizing importer and manufacturer names undermined another nine percent of traces.<sup>81</sup> ATF regulations grant manufacturers and importers great discretion in choosing a serial-numbering system, as long as no two guns from the same manufacturer or importer have the same numbers. This variety contributes to inputting and copying errors by law enforcement and FFLs during the tracing process.

ATF should promulgate a regulation requiring a standard numbering system to reduce these errors. For example, every serial number could have a three-letter code for the manufacturer or importer and a unique ten-digit number. Under existing law, ATF has the authority to require a consistent numbering system, which would cut down on inputting and copying errors.<sup>82</sup>

## V. MORE EFFECTIVE PARTNERSHIPS AMONG GOVERNMENT, LAW ENFORCEMENT, COMMUNITY GROUPS, AND RESPONSIBLE GUN INDUSTRY REPRESENTATIVES

In order to combat violent crime, the Justice Department and its subdivisions have formed a variety of partnerships with dealers, the gun industry, academics, and community groups. For example, the federal government's Project Safe Neighborhood (PSN) has spent approximately \$2 billion since 2001 to support prosecutors, investigators, training programs, juvenile crime initiatives, gun lock safety kits, community outreach efforts and other gun and gang violence reduction strategies. The Justice Department has also partnered with the gun industry to increase public awareness of straw purchasing and the requirement that dealers offer locks for handguns.

These partnerships should reinforce proven strategies to deter gun crime. In particular, DOJ should invest in programs that effectively reduce recidivism among gun offenders and generate actionable intelligence on gun crimes, develop more rigorous partnerships with gun retailers, and develop industry standards for gun safety locks distributed through Project ChildSafe. Additionally, DOJ should reinvigorate federal studies and reengage outside researchers to better understand gun trafficking and to evaluate intervention strategies.

### A. Improving Project Safe Neighborhood and Other Community Engagement Initiatives Focused on Gun Violence

**Recommendation 31: The federal government should invest in local efforts to reduce recidivism among gun offenders.**

**Recommendation 32: The federal government should increase support for community programs that generate tips on illegal firearms trafficking.**

Background: Since 2001, PSN has been the Department of Justice's umbrella program to reduce gun and gang crime through partnerships among law enforcement and community groups. PSN is modeled in part on gun violence prevention initiatives that achieved promising results during the Clinton Administration.<sup>83</sup> However, effective PSN programs have not been brought to scale, and PSN funds should be used to support efforts to reduce recidivism among gun offenders and efforts to generate actionable intelligence on firearms trafficking.

Recidivism Among Gun Offenders: PSN programs have reduced recidivism among gun offenders through targeted deterrence. For example, Chicago's PSN program holds "Offender Notification Forums" to warn high-risk individuals about ongoing police enforcement efforts and potential penalties for gun crimes and to link them to social services and community support. Researchers found a 37 percent reduction in homicides.<sup>84</sup> Moreover, individuals who attended Offender Notification Forums were

almost 30 percent less likely to return to prison than similar individuals in the same neighborhood.<sup>85</sup> DOJ should bring PSN Offender Notification Forums to scale by funding and evaluating them in other cities.

In New York City, offenders convicted of felony gun possession in 2000 were four times more likely to be arrested for a later homicide than other felons. In response, New York City passed a Gun Offender Registration Act requiring gun felons to maintain contact with police for four years after their release from prison. Washington, D.C.; Baltimore, Maryland; and Utica, New York have all adopted gun offender registries, and other cities are actively considering them. DOJ should use PSN funds to support gun offender registries, which help local police track high-risk individuals and have the potential to deter recidivism among gun offenders.

Generating Tips on Illegal Trafficking: Over the past few years, law enforcement has confronted an alarming “stop snitching” campaign – a campaign popularized by t-shirts, hats, and high-profile endorsements by rap artists and sports stars.<sup>86</sup> PSN funds should be used to support local programs that generate intelligence by creating trusting relationships among law enforcement and community stakeholders. In cooperation with Boston Mayor Tom Menino and Cleveland Mayor Frank Jackson, Citizens for Safety has developed one successful model for such programs. Citizens for Safety hold workshops called “Traffick Jams,” which help police gather tactical intelligence by facilitating discussions among at-risk individuals, law enforcement, and community leaders. According to Citizens for Safety, 60 percent of workshop participants have stayed involved with the organization, and 90 percent have increased their awareness of gun trafficking.

DOJ should also allocate PSN funds to support community programs that generate tips on illegal gun trafficking by offering financial incentives. The gun bounty initiated by Mayor John Peyton of Jacksonville, Florida and Duval County Sheriff John Rutherford in partnership with the non-profit organization Crime Stoppers is one example of such a program. A \$1000 reward for anonymous tippers with information leading to the arrest of criminals using an illegal gun has led to 215 arrests.<sup>87</sup> A number of other cities, including New York, Salt Lake City, Newark and West Palm Beach, have similar firearms-focused cash-for-tips programs.<sup>88</sup>

## **B. Partnerships with Gun Dealers.**

**Recommendation 33: ATF should promote the Responsible Firearms Retailer Partnership (RFRP), pioneered by Wal-Mart, as a voluntary program for gun dealers to deter the movement of guns into the illegal market.**

**Background:** Since July 2000, ATF’s primary partnership with gun dealers has been a program called, “Don’t Lie for the Other Guy.” Developed in conjunction with the National Shooting Sports Foundation (NSSF), it combines in-store signage, voluntary training materials, and targeted public service announcements aimed at deterring straw purchases.<sup>89</sup> According to NSSF, since the program’s inception, 30,000 “Don’t Lie for the Other Guy,” signage kits have been distributed to gun dealers. While a positive step, ATF should pursue a more comprehensive voluntary gun dealer partnership program aimed at deterring the movement of guns into the illegal market.

One such example would be the Responsible Firearms Retailer Partnership (RFRP), created by Wal-Mart and Mayors Against Illegal Guns in April 2008. The RFRP 10-point voluntary code includes videotaping the point-of-sale, a “no green light, no sale” policy to eliminate default-proceed sales, employee background checks, and a computerized trace log and alert system.<sup>90</sup>

### **C. Research and Analysis on Gun Trafficking Methods and Patterns**

**Recommendation 34: DOJ and ATF should produce updated versions of groundbreaking reports on illegal firearms trafficking.**

**Recommendation 35: ATF should expand the scope of its trace reports.**

**Recommendation 36: DOJ should fund external research of emerging problems in illegal gun trafficking and the results of enforcement efforts.**

**Background:** From the early 1990s through 2002, the federal government mined data to produce an unprecedented view of gun trafficking patterns and illegal gun markets. These reports identified criminal networks, shaped policy, and enabled ATF and other law enforcement to narrowly focus enforcement resources. In recent years, however, the federal government has dramatically reduced its support for such analysis, spurring a growing gap in knowledge about firearms trafficking.

For example, during the Clinton Administration, the Justice Department, ATF, and the Treasury Department regularly released reports, such as *Following the Gun* (2000),<sup>91</sup> *Commerce in Firearms* (2000),<sup>92</sup> and *the Youth Crime Gun Interdiction Reports* (1997-2002).<sup>93</sup> These reports relied on aggregated trace data, surveys of thousands of federal prosecutions, and data from local law enforcement in more than 40 cities. Although they helped stakeholders understand the scope of illegal gun trafficking, these reports have not been updated in recent years. DOJ and ATF should produce new versions.

ATF should also publish more comprehensive trace data reports. The Tiahrt Amendment restrictions first enacted in 2004 created a substantial obstacle to using trace data for in-depth analysis. After Congress amended the Tiahrt trace language in 2007, ATF resumed releasing limited trace data analysis. However, ATF has the authority to produce far more detailed reports, and it should release the following data:

- “Time-to-crime data,” i.e. the interval between the sale of the gun and its recovery in crime, especially times to crime by state, for different types of firearms, different types of sales (e.g. multiple sales and single sales), and categories of dealers (e.g. high trace volume and lower trace volume);
- Information organized by source state on the number of guns recovered in other states and the average time-to-crime of guns recovered in other states;
- State-by-state percentages of traced guns originating from the top 1 percent of high-trace dealers;
- Annual state-by-state percentages of dealers not subject to a trace request;
- Percentage of traced guns with serial numbers obliterated;
- How quickly dealers, wholesalers, and manufacturers in different states respond to trace requests (e.g., average response time, percent of dealers that respond within 24 hours); and the percentage of traces for which dealers in different states cannot identify a sales record for a gun traced to a crime;
- Data specific to guns sold by FFLs at gun shows, including time-to-crime of traced guns sold at gun shows, percentage of crime guns sold at gun shows, and total traces for each gun show;
- Top-ten source dealers for traced guns in each state.

Finally, the National Institute of Justice (NIJ) and Bureau of Justice Statistics (BJS) at the Department of Justice should re-engage expert researchers and state and local agencies to evaluate strategies to combat illegal guns and reduce gun violence. Between 1995 and 2003, NIJ distributed \$4.7 million in firearms-related research grants.<sup>94</sup> NIJ and BJS also provided grants to research gun crimes and trafficking on a local and regional basis.<sup>95</sup> From 2004 through 2008, however, NIJ support for this research dropped dramatically to approximately \$560,000.<sup>96</sup>

The following are research areas ripe for investigation:

- Emerging problems related to illegal guns and local, state, and federal responses to these problem, including the use of toy and colored guns and trafficking along the southwest border;
- How gangs and other violent criminals obtain firearms and where they store them;
- Criminals’ acquisitions of firearms based on prisoner interviews (e.g., prices paid, how far did they go to get the gun, how they found supplier);

- Challenges to successful prosecution of gun traffickers and strategies for addressing those challenges;
- The impact of Violent Crime Impact Teams (VCIT) and partnerships among local, state and federal law enforcement agencies on gun violence;
- Which firearms, dealers, sales locations, timing of sales are at greatest risk of being connected to crime.

#### **D. Gun Safety Locks Requirement**

**Recommendation 37: Consumer Products Safety Commission (CPSC) should evaluate and develop industry standards for locks that meet legal requirements.**

Background: For the last decade, Project ChildSafe, a component of PSN, has distributed tens of millions of gun safety locks in partnership with the National Shooting Sports Foundation. More recently, in 2005, Congress passed the Protection of Lawful Commerce in Arms Act (PLCAA),<sup>97</sup> which requires gun dealers to offer every handgun buyer a trigger-lock or other safety locking device.<sup>98</sup> However, PLCAA does not specify standards for evaluating the effectiveness of particular locks. In fact, In 2001, the CPSC issued a recall of 400,000 trigger locks issued to dealers through the Project ChildSafe program.<sup>99</sup> Although CPSC does not have the authority to regulate firearms, it does have jurisdiction to regulate separate trigger-locking devices, and it should develop acceptable standards for these devices.<sup>100</sup>

## VI. ENFORCEMENT OF EXISTING LAWS ON ESPECIALLY DANGEROUS FIREARMS

Some of the longest-standing federal firearms laws regulate the purchase, possession, or import of machine guns and other unusually dangerous weapons. In recent years, however, the Justice Department has stopped enforcing some of these laws.

### A. Ban on the Importation of Non-Sporting Purpose Firearms

**Recommendation 38: The federal government should resume enforcement of federal law that bans importing “non-sporting purpose” firearms and ammunition.**

Background: A 2008 Associated Press story indicated that AK-variant military-style rifles traced in crimes within the United States increased from 1,140 in 1993 to 8,547 in 2007.<sup>101</sup> The majority of these weapons are manufactured outside the United States and are subject to the non-sporting purpose import ban pursuant to President George H.W. Bush’s 1989 executive order, which prevents the importation of foreign manufactured military-style firearms including AK-variant firearms. The executive order applies to fully manufactured firearms and the “frame, receiver, or barrel” of applicable firearms.<sup>102</sup> GAO has reported that 29 percent of the guns recovered in crimes in Mexico were imported into the United States – many in violation of the ban – and then sold by licensed dealers in the U.S.<sup>103</sup> The import ban was tightly enforced until 2001, but as 53 members of Congress wrote to the Attorney General in February 2009, ATF has not enforced this law in recent years.<sup>104</sup>

The federal government should resume enforcing this law.<sup>105</sup> DOJ and DHS should direct ATF and the Customs and Border Patrol to investigate importers marketing firearms as variants of military weapons that clearly violate the non-sporting purpose ban, including imported firearms marketed as variants of AK-47s. ATF should also evaluate whether any additional firearms, such as the FN 57, an imported handgun hailed for its capacity to puncture bullet-proof vests, ought to be added to the non-sporting purpose list.

### B. Multiple Purchases of Long Guns Commonly Used in Crimes

**Recommendation 39: ATF should identify the long guns most linked to crime and require dealers to report multiple sales of such guns.**

Background: ATF initiates 13 percent of its criminal trafficking investigations based on reviews of multiple handgun sale reports.<sup>106</sup> Under federal law, licensed dealers

are required to send these reports to ATF whenever the same person buys more than one handgun from that dealer within five business days.<sup>107</sup> If one of these guns is later recovered in a crime, these reports enable more efficient tracing. But the reporting requirement does not apply to long gun sales, even though some types of long guns are frequently used in crime. For example, ATF and DEA have found that the favorite weapons of Mexican drug cartels include high-quality .223, 7.62x39 mm, 5.7x28, and .50 caliber rifles.<sup>108</sup> At crime scenes in U.S. cities, 12-gauge shotguns are among the five most frequently recovered types of crime guns.<sup>109</sup>

ATF should use trace data and other intelligence to identify the rifles and shotguns most likely to be used in crime, including by the Mexican cartels. It should issue a new, “Type V” Demand Letter requiring dealers to report multiple sales of suspect long guns if in the prior year they had 15 or more traces<sup>110</sup> or three or more traces of suspect long guns. ATF should periodically review trace data so the list of suspect long guns continues to reflect those most likely to be linked to crime.

### C. Stinger Pen Guns

**Recommendation 40: ATF should reclassify the Stinger pen gun, as well as any other pen guns introduced since 2002, as “Any Other Weapons” under the National Firearms Act, thereby subjecting them to strict background check, licensing, and registration requirements.**

Background: In 2002, the Air Force Office of Special Operations at Andrews Air Force Base distributed a bulletin to domestic law enforcement agencies identifying the Stinger Manufacturer Corporation’s .22 caliber pen gun as a possible threat to the safety of the law enforcement officers.<sup>111</sup> Despite the danger of these easily-concealed guns, purchasers of the Stinger pen gun are subject only to a NICS check and not the more intense scrutiny faced by purchasers of other pen guns. Most pen guns are classified as Any Other Weapons (AOWs) by the National Firearms Act, which requires their purchasers to be fingerprinted, obtain prior approval from law enforcement to own the gun, submit a photo, and register with the National Firearms Registry. ATF classifies Stinger pen guns as handguns and not as AOWs because, unlike other pen guns, the Stinger must be cocked into the form of a handgun in order to be fired. The fact that the Stinger pen gun must be cocked, however, does not diminish a person’s ability to conceal the gun in its “pen” form. In fact, the Air Force Office of Special Operations refers to the Stinger as an “easily concealable firearm.” Consequently, ATF should reclassify the Stinger Pen Gun as an AOW to subject its purchasers to the same strict requirements as purchasers of other pen guns.

## ENDNOTES

<sup>1</sup> Mayors Against Illegal Guns endorses legislation that would: repeal the Tiahrt Amendments to give police information they need to enforce existing gun laws, close the gun show loophole to prevent criminals from easily purchasing weapons without a background check, close the terror gap by preventing known terrorists from purchasing firearms, close the gun dealer fire-sales loophole, and require employees of federal firearms licensees to undergo background checks. A description of the Coalition's Federal Legislative Agenda is annexed as Appendix B.

<sup>2</sup> Federal Bureau of Investigation, Website for the National Instant Criminal Background Check System, <http://www.fbi.gov/hq/cjisd/nics.htm> (last visited June 25, 2009). Not only can NICS handle a large number of transactions, background checks are being processed more efficiently and more quickly than in the past: in 2006, 92 percent of all NICS checks were resolved immediately. That figure was up from 72 percent between November 1998 and December 2001. See Letter from Thomas E. Bush, III, Assistant Director, CJIS Division, The Federal Bureau of Investigations, to The Honorable Michael R. Bloomberg, Mayor of New York City (October 21, 2008) (available at [http://www.mayorsagainstilllegalguns.org/downloads/pdf/FBI\\_NICS\\_Data\\_response.pdf](http://www.mayorsagainstilllegalguns.org/downloads/pdf/FBI_NICS_Data_response.pdf)).

<sup>3</sup> See Letter from Thomas E. Bush, III, supra note 2, at 19, 27.

<sup>4</sup> In the wake of the Virginia Tech massacre, Congress passed legislation to reform state practices and add hundreds of thousands of names that had been missing from the NICS mental health file. See NICS Improvement Amendments Act of 2007, Public Law No. 110-180. By August 2008, the number of names in the mental health file had grown to 585,000 persons from about half that amount at the start of 2007. See Letter from Thomas E. Bush, III, supra note 2, at 25. In just the first eight months of 2008, at least 549 gun sales were blocked because of the buyer's mental health record. Id. at 26.

<sup>5</sup> A sample Form 4473 is annexed as Appendix C. See 27 C.F.R. § 478.124.

<sup>6</sup> Michael Bowling, Ph.D., et al., Background Checks for Firearms Transfers, 2005, Bureau of Justice Statistics Bulletin, at 7-8, NCJ 214256 (Nov. 2006).

<sup>7</sup> U.S. Government Accountability Office, Firearms: Purchases From Federal Firearms Licensees Using Bogus Identification, GAO-01-427NI (March 19, 2001).

<sup>8</sup> United States v. Gandara, No. 08-cr-03355 (W.D. Tex. filed Nov. 6, 2008).

<sup>9</sup> See Public Law No. 109-113. Starting December 1, 2014 federal buildings and airports will require REAL ID from persons born after December 1, 1964. After December 1, 2017, REAL ID will be required regardless of the person's age. See 6 C.F.R. 37. Legislation just introduced in the Senate would extend these deadlines and remove DHS' discretion to add NICS checks as an "official purpose." While this legislation could reduce the costs of Real ID to states, DHS should work with Congress to amend the provisions that would otherwise allow DHS to require Real ID for gun purchases. See PASS ID Act, S.1261.

<sup>10</sup> Identification issued by local governments is sufficient to purchase firearms. FBI may not be able to ascertain the validity of these locally-issued IDs.

<sup>11</sup> Given the epidemic of cases involving guns missing from gun dealer inventories, the lack of background checks for gun store employees ought to be a major concern for federal law enforcement. In 2007, for example, ATF determined there were more than 30,000 guns missing from the inventories of just the 9.3 percent of the nation's gun dealers it inspected. See Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives, Fact Sheet: 2007 FFL Compliance Inspections, at 2 (2008); William J. Krouse, Congressional Research Service, The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF): Budget and Operations, at 7-8 (2008). Moreover, guns missing from stores have been involved in some of the nation's most notorious mass shootings. ATF found that Bulls-Eye Shooter Supply in Tacoma, Washington lost track of 238 guns over three years, and the two Washington, D.C.-area snipers used one of those guns to kill ten people in 2002. See Mike Carter, Steve Miletech, and Justin Mayo, Errant Gun Dealer, Wary Agents Paved Way for Beltway Sniper Tragedy, The Seattle Times, April 20, 2003; U.S. House of Representatives, Committee on the Judiciary Report to Accompany H.R. 5092, at 214 (2006).

<sup>12</sup> See 28 C.F.R. § 25.6.

<sup>13</sup> Conducting background checks on employees who handle firearms is part of the 10-point code of conduct developed by the Responsible Firearms Retailer Partnership (RFRP) that Wal-Mart created with Mayors Against

Illegal Guns. For more information about the RFRP, see <http://www.mayorsagainstillegalguns.org/html/partnership/partnership.shtml>.

<sup>14</sup> Signatures on the dealer's copies of completed Form 4473 will clearly indicate which employees are selling guns.

<sup>15</sup> Mem. in Support of Mot. Dismiss or in the Alt. to Transfer, *Abrams v. Truscott*, No. 06-cv-643 (CKK) (D.D.C. filed June 15, 2006). Similarly, in 2003, ATF revoked the license of Ugur "Mike" Yildiz after finding 500 violations of federal firearms laws in his Chicagoland Bells store. Yildiz was able to transfer the firearms in the store's inventory to his own name, and Canadian law enforcement later traced 25 weapons registered to Yildiz in connection with drug and violent crime investigations. He was subsequently charged with illegally transporting weapons internationally. Compl., at ¶ 7, *United States v. Yildiz*, No. 08-cr-480 (N.D. Ill. filed June 18, 2008).

<sup>16</sup> See *United States v. Tarr*, 589 F.2d 55, 59 (1st Cir. 1978) (establishing "regular course" requirement, which was later written into statute); *United States v. Fifty-Two Firearms*, 362 F. Supp. 2d 1308, 1315 (M.D. Fla. 2005); *Oddo v. Dep't of the Treasury*, ATF, 13 M.S.P.R 483, 485 (1982) (applying law prior to the passage of the Firearm Owners Protection Act (FOPA)); *United States v. White*, 175 Fed. Appx. 941, 942 (9th Cir. 2006) ("between twenty-three and twenty-five firearms"); *United States v. Hernandez*, 662 F.2d 289, 291 (5th Cir. Oct. 1981) (upholding conviction based on buying and reselling 30 guns over four months under pre-FOPA law); *United States v. Murphy*, 852 F.2d 1, 18-20 (1st Cir. 1988) (applying pre-FOPA law).

<sup>17</sup> See *White*, 175 Fed. Appx. at 942 (profit around \$50 per gun); *Murphy*, 852 F.2d at 18-20; *Hernandez*, 662 F.2d at 291; *United States v. Reminga*, 493 F. Supp. 1351, 1358 (W.D. Mich. 1980) (profit motive, which was required under pre-FOPA caselaw, was satisfied where defendant made money on some transactions, even though he did not make money on others and even though much of his gain resulted from inflation); *United States v. 57 Miscellaneous Firearms*, 422 F. Supp. 1066, 1070 (W.D. Mo. 1976) (finding profit motive before FOPA).

<sup>18</sup> See *57 Miscellaneous Firearms*, 422 F. Supp. 1066 at 1068.

<sup>19</sup> See *Oddo*, 13 M.S.P.R at 485.

<sup>20</sup> Cf. *Fifty-Two Firearms*, 362 F. Supp. 2d at 1315 (dealing at flea market over the course of about 14 months); *Reminga*, 493 F. Supp. at 1358 ("Time, attention, and labor" requirement, which applied under pre-FOPA caselaw, was satisfied where defendant, who had been formally unemployed for over two years, "spent a considerable amount of time at gun shows, gun stores, and other locations where sales of guns occur."); *Miscellaneous Firearms*, 422 F. Supp. at 1069-70 (six meetings with undercover officers, of which five led to sales, "show[] that defendant's gun selling activity was a business which occupied a substantial portion of his time, and of his labor" as required by pre-FOPA caselaw).

<sup>21</sup> See 18 U.S.C. § 923(g)(3)(A).

<sup>22</sup> See U.S. Department of Treasury, Bureau of Alcohol, Tobacco, Firearms, and Explosives, *Following the Gun: Enforcing Federal Law Against Firearms Traffickers*, at 39 (2000) (reporting that a licensed dealer trafficked illegal guns at a gun show by transferring the guns "off-the-book").

<sup>23</sup> ATF can require such reporting by sending "demand letters" to the subject FFLs pursuant to 18 U.S.C. § 923(g)(5)(A) and 27 C.F.R. § 478.126.

<sup>24</sup> See 28 C.F.R. 25.9(b)(1)(ii).

<sup>25</sup> See Letter from Thomas E. Bush, III, *supra* note 2, at 24.

<sup>26</sup> See U.S. Government Accountability Office, *Firearm and Explosives Background Checks Involving Terrorist Watch List Records*, GAO-09-125R, at 2, 14 (May 21, 2009) (available at: [http://www.gao.gov/docsearch/app\\_processform.php](http://www.gao.gov/docsearch/app_processform.php)).

<sup>27</sup> U.S. Department of Justice and Treasury, *Gun Shows: Brady Checks and Crime Gun Traces*, at 4 (January 1999).

<sup>28</sup> See *Following the Gun*, *supra* note 22, at 13 (gun shows were the source of 25,862 out of 84,128 total trafficked firearms connected to the prosecutions examined in the report).

<sup>29</sup> See, e.g., William Newell, Special Agent in Charge, Phoenix Field Division, ATF, *Testimony before the U.S. House of Representatives Committee on Appropriations Subcommittee on Commerce, Justice, Science and Related Agencies*, March 24, 2009 ("The rising incidences of trafficking U.S.-sourced firearms into Mexico is influenced by a number of factors, including increased demand for firearms by drug trafficking organizations, and the strictly regulated and generally prohibited possession and manufacturing of firearms in Mexico.

Drug traffickers are able to obtain firearms and ammunition more easily in the U.S., including sources in the secondary market such as gun shows and flea markets. Depending on State law, the private sale of firearms at those venues often does not require record keeping or background checks prior to the sale.”); U.S. Government Accountability Office, Firearms Trafficking: U.S. Efforts to Combat Arms Trafficking to Mexico Face Planning and Coordination Challenges, GAO-09-709 (June 18, 2009) (available at: <http://www.gao.gov/new.items/d09709.pdf>) (According to DOJ documents and ATF officials, firearms purchased on the secondary market at venues such as gun shows are “commonly trafficked to Mexico.”).

<sup>30</sup> U.S. Department of Justice Office of the Inspector General Evaluation and Inspections Division, The Bureau of Alcohol, Tobacco, Firearms and Explosives’ Investigative Operations at Gun Shows, at iii-iv (2007) (available at <http://www.usdoj.gov/oig/reports/ATF/e0707/final.pdf>).

<sup>31</sup> Id. at iv-v.

<sup>32</sup> Id. at 23.

<sup>33</sup> Garen Wintemute, Gun Shows Across a Multistate American Gun Market: Observational Evidence on the Effects of Regulatory Policies, *Injury Prevention*, 13: 150-156 (2007) (available at <http://www.ucdmc.ucdavis.edu/vprp/pdf/gunshowsIPman.pdf>) (noting that illegal straw purchases are more frequent in states that do not require background checks on all sales at gun shows).

<sup>34</sup> The so-called “gun show loophole” enables criminals to sidestep background checks if they buy from unlicensed sellers, who often operate at gun shows. Mayors Against Illegal Guns supports H.R. 2324 and S.843 (111th Congress), which would require buyers who purchase guns at gun shows to undergo criminal background checks.

<sup>35</sup> See 18 U.S.C. § 922(d), (a)(5), and (b)(3).

<sup>36</sup> See Investigative Operations at Gun Shows, *supra* note 30, at 1.

<sup>37</sup> Id. at 36.

<sup>38</sup> This recommendation to conduct residency checks is distinct from Recommendation 4. Recommendation 4 is designed to ascertain whether a buyer’s identification is valid. The purpose of this recommendation is to identify buyers who – regardless of the validity of the identification presented – make false statements on their Form 4473 by reporting an address other than where they currently live.

<sup>39</sup> See Budget Delays Force Hiring Freeze at Federal Crime Fighting Agencies, *USA Today*, Jan. 12, 2007 (available at [http://www.usatoday.com/news/washington/2007-01-12-crime-fighting\\_x.htm](http://www.usatoday.com/news/washington/2007-01-12-crime-fighting_x.htm)); Michael J. Sullivan, Testimony Before the House Committee on Appropriations, Subcommittee on Commerce, Justice, Science & Related Agencies, at 3-4, Apr. 8, 2008.

<sup>40</sup> See Newell Testimony, *supra* note 29.

<sup>41</sup> As William Hoover, ATF Assistant Director for Field Operations has acknowledged, the United States is a source for Mexican crime guns because it has “a readily accessible source of firearms and ammunition originating in mostly the secondary market.” William Hoover, Statement Before the United States House of Representatives Committee on Foreign Affairs Subcommittee on the Western Hemisphere, February 7, 2008 (available at <http://foreignaffairs.house.gov/110/hoo020708.htm>). The ATF also contends that Mexican drug cartels get two-thirds of their weapons through straw purchases or from unlicensed dealers who are not required to perform background checks or record sales. See Brady McCombs, U.S. Makes it Easier for Gun Traffickers, *Arizona Star*, June 28, 2009 (available at <http://www.azstarnet.com/sn/border/298845>).

<sup>42</sup> See Newell Testimony, *supra* note 29. Likewise, GAO reports that over the past five years, 87 percent of guns recovered in Mexico and successfully traced originated in the U.S., while over the past three years the figure is 90 percent. See U.S. Government Accountability Office, Firearms Trafficking: U.S. Efforts to Combat Arms Trafficking to Mexico Face Planning and Coordination Challenges, GAO-09-709 (June 18, 2009) (available at <http://www.gao.gov/new.items/d09709.pdf>).

<sup>43</sup> See GAO-09-709, *supra* note 42.

<sup>44</sup> Id.

<sup>45</sup> ATF Press Release, “ATF announces Gun Runner Impact Teams Rollout” (April 28, 2009) (available at [http://www.atf.gov/press/2009press/042809atf\\_announces-grits\\_rollout.htm](http://www.atf.gov/press/2009press/042809atf_announces-grits_rollout.htm)); see Newell Testimony, *supra* note 29, at 4.

<sup>46</sup> See U.S. Department of Justice, ATF Program-Specific Plan for Management of Recovery Act Funds (May 15, 2009) (available at: <http://www.usdoj.gov/recovery/pdfs/atf-plan.pdf>). Note that some of the funding will also be used to establish two offices at U.S. consulates in Mexico and to purchase armored vehicles.

<sup>47</sup> Surge assignments to the southwest border will expire 120 days from deployment. See “ATF announces Gun

Runner Impact Teams Rollout,” supra note 45.

<sup>48</sup> If, after 2011, the situation along the Southwest border has improved, ATF should consider redeploying some of these added personnel to other problematic trafficking corridors within the United States.

<sup>49</sup> See H.R. 495 (111th Congress).

<sup>50</sup> See Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives, ATF Firearms Trace Data 2007 (2008) (available at [http://www.atf.gov/firearms/trace\\_data/index2007.htm](http://www.atf.gov/firearms/trace_data/index2007.htm)).

<sup>51</sup> William J. Krouse, Congressional Research Service, The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF): Budget and Operations, at 8 (2008).

<sup>52</sup> Brian Bennett, Turning a Blind Eye to Gun Dealers, Time.com, May 8, 2007 (available at <http://www.time.com/time/nation/article/0,8599,1618392,00.html>) (reporting that ATF’s stated goal is to complete a routine inspection of dealers once every three years).

<sup>53</sup> See Fact Sheet: 2007 FFL Compliance Inspections, supra note 11, at 2.

<sup>54</sup> In a similar case, ATF identified 900 violations of federal law by a Maryland dealer that could not account for a quarter of its inventory. Nevertheless, after revoking the dealer’s license, ATF allowed it to operate for over 13 months while its case was pending in federal court. ATF further permitted Valley Gun to take 30 days after it lost in court to wind up its business by delivering any guns it had already agreed to sell. See Mem. in Support of Mot. Dismiss or in the Alt. to Transfer, Abrams v. Truscott, No. 06-cv-643 (CKK), at 3-4 (D.D.C. filed June 15, 2006).

<sup>55</sup> Upon receiving additional information in discovery, New York City voluntarily dismissed the cases against three of the 27 dealers sued.

<sup>56</sup> Daniel Webster Supp’l Expert Report, City of New York v. A-1 Jewelry & Pawn Inc, No. 06-cv-2233, at 1 (E.D.N.Y. filed May 15, 2006).

<sup>57</sup> See Letter from Jerome M. Pender, Acting Assistant Director, CJIS Division, FBI to the Honorable Michael R. Bloomberg, Mayor of New York City (May 27, 2009) (on file with Mayors Against Illegal Guns).

<sup>58</sup> Id.

<sup>59</sup> Id. at 1.

<sup>60</sup> See Following the Gun, supra note 22, at 25, tbl. 13; 41 (2000).

<sup>61</sup> See Id. at 13, tbl. 3.

<sup>62</sup> See 27 C.F.R. § 478.39.

<sup>63</sup> See Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Youth Crime Gun Interdiction Initiative Crime Gun Trace Reports: National Report, at 53 (2000).

<sup>64</sup> Letter from Kenneth E. Melson, Acting Director, Bureau of Alcohol, Tobacco, Firearms and Explosives to the Honorable John Peyton, Mayor of Jacksonville, at 3 (May 19, 2009) (on file with Mayors Against Illegal Guns).

<sup>65</sup> ATF and academic researchers have identified several key criteria that indicate problematic dealer practices: number of traces; number of traced guns with a short time span between sale and recovery in crime; number of traced guns with serial number obliterated; number of traces that were not fully completed; number or share of buyers who failed NICS checks; numbers of multiple handgun sales; traces of guns that had sat in the dealer’s inventory for over 2 years before their sale; numerous or frequent losses or thefts of guns from the dealer; pawnshops, which tend to have more traces than other dealers; numerous traces concentrated in a particular area of another state; types of guns sold; and location. See G. J. Wintemute, P.J. Cook & M. A. Wright, Risk Factors Among Handgun Retailers for Frequent and Disproportionate Sales of Guns Used in Violent and Firearm Related Crimes, *Injury Prevention*, 11: 357-363 (2005); Glenn L. Pierce, et al., Characteristics and Dynamics of Crime Gun Markets: Implications for Supply-Side Focused Enforcement Strategies, Final Report to the National Institute for Justice (Sept. 11, 2003); Department of the Treasury, Bureau of Alcohol, Tobacco, Firearms and Explosives, Commerce in Firearms in the United States, at 22 (2000). Numerous academics have concluded that ATF could mine its data more effectively.

<sup>66</sup> According to ATF data released in 2000, only 1 percent of gun dealers are the sources of 57 percent of guns recovered in crimes. See Department of Treasury, Bureau of Alcohol, Tobacco, Firearms, and Explosives, Commerce in Firearms in the United States, at 2 and 23 (2000). Meanwhile, 85 percent of gun dealers are not associated with a single trace annually. See Id.

<sup>67</sup> Some in the gun industry argue that trace data should not be used to identify problematic dealers because high numbers of traces may be attributable to high sales volume. Researchers have suggested a more mixed

picture: while in some cases a high trace volume merely indicates high sales volume, trace volume and sales volume in California (where dealers are required to report sales volume) are typically not closely correlated. See Garen J. Wintemute, “Relationship Between Illegal Use of Handguns and Handgun Sales Volume,” *Journal of the American Medical Assoc.*, vol. 284, at 566-7 (August 2, 2000) (available at <http://jama.ama-assn.org/cgi/content/full/284/5/566>).

<sup>68</sup> While a component of the Tiahrt Amendment appropriations rider prohibits the federal government from maintaining full NICS record data for more than 24 hours, FBI and ATF can maintain and analyze, aggregated NICS check data – including data that identifies the number of checks conducted by particular dealers – as long as the data does not identify the purchaser.

<sup>69</sup> 27 C.F.R. § 478.25(a).

<sup>70</sup> Mayors Against Illegal Guns, The Movement of Illegal Guns in America, at 28 (December 2008) (available at [http://www.mayorsagainstillegalguns.org/downloads/pdf/trace\\_report\\_final.pdf](http://www.mayorsagainstillegalguns.org/downloads/pdf/trace_report_final.pdf)).

<sup>71</sup> Department of Treasury, Bureau of Alcohol, Tobacco, Firearms, and Explosives, Commerce in Firearms in the United States, at 25 (2000).

<sup>72</sup> A dealer’s failure to provide trace information is a basis for revoking its license and is a federal felony if done willfully.

<sup>73</sup> The U.S. Department of Justice Office of Inspector General, Inspections by Firearms Dealers by the Bureau of Alcohol, Tobacco, Firearms, and Explosives, at 10 (2004).

<sup>74</sup> Searches in response to problems with a trace request will not count against the normal limit of one regulatory inspection per dealer per year. See 18 U.S.C. 923(g)(1)(B)(i), (ii)(II), (iii).

<sup>75</sup> The federal statute indicates that ATF can require dealers to keep records of “shipment, receipt, sale, or other disposition of firearms. . . .” 18 U.S.C. § 923(g)(1)(A). Under a common-sense interpretation of the statute, the processing of a trace request is a record of the gun’s “disposition.”

<sup>76</sup> 66 Fed. Reg. 40596, 40597 (August 3, 2001).

<sup>77</sup> 66 Fed Reg 40596, 40597 (August 3, 2001).

<sup>78</sup> 27 C.F.R. 478.92(a)(1)(i).

<sup>79</sup> See 27 C.F.R. 478.92(a)(1)(ii).

<sup>80</sup> See 940 Mass. Code Regs. 16.01, 16.03, 16.07(1) (2008).

<sup>81</sup> See Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Youth Crime Gun Interdiction Initiative Crime Gun Trace Reports: National Report, at 68 (2000) (available at <http://www.atf.gov/firearms/ycgii/2000/index.htm>).

<sup>82</sup> See 18 U.S.C. § 923(i).

<sup>83</sup> For example, the community engagement strategies pioneered by Boston’s Operation Ceasefire and refined in Chicago’s PSN Program have had a demonstrable effect on gun violence.

<sup>84</sup> Meares, Tracy, Andrew V. Papachristos and Jeffrey Fagan, Homicide and Gun Violence in Chicago: Evaluation and Summary of the Project Safe Neighborhoods Program, at 3-4 (January 2009) (available at [http://psnchicago.org/PDFs/2009-PSN-Research-Brief\\_v2.pdf](http://psnchicago.org/PDFs/2009-PSN-Research-Brief_v2.pdf)).

<sup>85</sup> Id.

<sup>86</sup> See, e.g., Jeremy Kahn, Story of a Snitch, *The Atlantic* (April 2007) (available at <http://www.theatlantic.com/doc/200704/stop-snitching>).

<sup>87</sup> Jacksonville Sheriff’s Office, Gun Bounty Program Results: October 6, 2006 to May 11, 2009 (2009).

<sup>88</sup> See, e.g., Salt Lake City Police Department Website, Tips for Cash, (available at <http://www.slcpd.com/getinvolved/tipsforcash.html>); \$500 Reward Offered In Gun Bounty Program, *MSNBC.com*, June 20, 2009 (available at <http://www.msnbc.msn.com/id/31449755/>).

<sup>89</sup> National Shooting Sports Foundation, Fact Sheet: Straw Purchase (2009) (available at [http://nssf.org/media/FactSheets/Straw\\_Purchase.cfm](http://nssf.org/media/FactSheets/Straw_Purchase.cfm)).

<sup>90</sup> The full 10-point code would establish these best practices for firearms retailers: 1) Videotaping the Point of Sale for All Firearms Transactions; 2) Implementing a Computerized Crime Gun Trace Log and Alert System; 3) Completing a Purchaser Declaration for Flagged Sales; 4) Deterring Fake IDs; 5) Maintaining Consistent Visible Signage to Alert Customers; 6) Conducting Employee Background Checks; 7) Conducting Employee Responsibility Training; 8) Conducting Inventory Checking; 9) Ensuring that No Sales are Made Without Background Check Results; and 10) Securing Firearms in Locked Cases. For more information, please see <http://www.mayorsagainstillegalguns.org/html/partnership/partnership.shtml>.

<sup>91</sup> U.S. Department of Treasury, Bureau of Alcohol, Tobacco, Firearms, and Explosives, Following the Gun: Enforcing Federal Law Against Firearms Traffickers (2000).

<sup>92</sup> Department of the Treasury, Bureau of Alcohol, Tobacco, Firearms and Explosives, Commerce in Firearms in the United States (2000).

<sup>93</sup> See, e.g., Department of the Treasury, Bureau of Alcohol, Tobacco, Firearms and Explosives, Youth Crime Gun Interdiction Initiative Reports (1997-2002).

<sup>94</sup> See U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, List of Awards, Fiscal Years 1995 – 2003 (available at <http://www.ojp.usdoj.gov/nij/awards/welcome.htm>). These federally funded reports provided law enforcement and policy-makers unprecedented analysis from the country's top academic experts. For example, in FY 1997, NIJ provided approximately \$500,000 to a group of academic experts to analyze the dynamics of illegal markets, crime gun trace data and its potential value in identifying violent offenders. See NIJ Awards in Fiscal Year 1997 (available at [http://www.ojp.usdoj.gov/nij/awards/1997.htm#firearms\\_research](http://www.ojp.usdoj.gov/nij/awards/1997.htm#firearms_research)). This report was published in 2004 and provided law enforcement with unprecedented information to target the diversion of firearms from the legal to the illegal markets. See Pierce, G., Braga, A., Koper, C., et al., The Characteristics and Dynamics of Crime Gun Markets: Implications for a Supply-Side Focused Enforcement Strategy, *Justice Quarterly*, 21:2, at 391-422 (2004).

<sup>95</sup> For example, in 1994, the New York State Division of Criminal Justice Services, Office of Justice Systems Analysis used federal grants to publish a report that analyzed the use of assault weapons specifically in New York City homicides (Office of Justice Systems Analysis, New York State Division of Criminal Justice Services, Assault Weapons and Homicides in New York City, May 1994). Also in 1994, the Virginia Department of Criminal Justice Services used federal grant money to publish a report on gun crimes, which provided Virginia policy-makers with new information to guide the development of effective policies to reduce gun violence in Virginia (Criminal Justice Research Center, Commonwealth of Virginia, Department of Criminal Justice Services, Guns and Violent Crime January 1994.).

<sup>96</sup> U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, List of Awards, Fiscal Years 2004 – 2008 (available at <http://www.ojp.usdoj.gov/nij/awards/welcome.htm>).

<sup>97</sup> Public Law No. 109-92. Passed and signed into law in 2005, Congress passed and the President signed into law the PLCAA grants broad immunity to gun manufacturers and gun dealers from civil liability but also requires dealers to offer a locking device with each handgun purchase.

<sup>98</sup> 18 U.S.C. § 922(z).

<sup>99</sup> Christy McKerney, *Defective Gunlock Triggers Recall in Broward, Miami-Dade*, *The South Florida Sun-Sentinel*, August 3, 2001.

<sup>100</sup> In July 2000, the Office of the General Counsel of the CPSC issued an advisory opinion concluding that it had jurisdiction over separate firearm trigger locks.

<sup>101</sup> Associated Press, AK-47-Type Guns Are Turning Up in U.S. More Often, *Fox News*, March 26, 2008, <http://www.foxnews.com/story/0,2933,341988,00.html>.

<sup>102</sup> See 18 U.S.C. § 925(d)(3). In 1989, President George H.W. Bush signed an executive order to prevent the importation of firearms and ammunition that are not “generally recognized as particularly suitable for or readily adaptable to sporting purposes” pursuant to the 1968 Gun Control Act. See Exec. Order No. 12,680.

<sup>103</sup> U.S. Government Accountability Office, Firearms Trafficking: U.S. Efforts to Combat Arms Trafficking to Mexico Face Planning and Coordination Challenges, GAO-09-709 (June 18, 2009) (available at: <http://www.gao.gov/new.items/d09709.pdf>). A review of 21 recent criminal cases involving gun trafficking to Mexico revealed that 90 percent of the firearms involved were military-style assault weapons, and “the bulk” were AK-variants or AR-variants. “Indicted: Types of Firearms and Methods of Gun Trafficking from the United States to Mexico as Revealed in U.S. Court Documents,” *Violence Policy Center*, April 2009, available at <http://www.vpc.org/studies/indicted.pdf>.

<sup>104</sup> Website for U.S. Representative Eliot L. Engle, Rep. Engel Urges President Obama to Enforce Bush 41/Clinton Restrictions on Imported Assault Weapons, <http://engel.house.gov/index.cfm?ContentID=1590&ParentID=7&SectionID=216&SectionTree=7,216&lnk=b&ItemID=1580> (last visited June 24, 2009).

<sup>105</sup> Mayors Against Illegal Guns does not have a position on the question of whether the domestic assault weapons ban, which expired in 2004, should be reinstated or whether new legislation regarding military-style semi-automatic rifles should be adopted. However, this coalition believes the federal government should

enforce existing laws on the import of foreign-manufactured military firearms and other especially dangerous firearms.

<sup>106</sup> See U.S. Department of Treasury, Bureau of Alcohol, Tobacco, Firearms, and Explosives, Following the Gun: Enforcing Federal Law Against Firearms Traffickers, at 9, tbl. 1 (2000) (reporting that a licensed dealer trafficked illegal guns at a gun show by transferring the guns “off-the-book”).

<sup>107</sup> See 18 U.S.C. § 923(g)(3)(A); 27 CFR 478.126a.

<sup>108</sup> William Hoover, Assistant Director for Field Operations, ATF, and Anthony P. Placido, Assistant Administrator for Intelligence Division, DEA, Statement before the Senate Committee on the Judiciary Subcommittee on Crime And Drugs Concerning “Law Enforcement Responses to Mexican Drug Cartels,” March 17, 2009. ATF has explained that .50 caliber rifles “are prized by the Mexican drug cartels due to their ability to penetrate engine blocks and armored glass.” See U.S. Department of Treasury, Bureau of Alcohol, Tobacco, Firearms, and Explosives, 2005 Annual Report, at 17 (2005) (available at [http://www.atf.gov/pub/gen\\_pub/2005annual\\_report.pdf](http://www.atf.gov/pub/gen_pub/2005annual_report.pdf)).

<sup>109</sup> ATF Youth Crime Gun Interdiction Initiative, Crime Gun Trace Reports (2000) - National Report, at 17 tbl. 5 (2002) (available at <http://www.atf.gov/firearms/ycgii/2000/cover.pdf>).

<sup>110</sup> ATF already utilizes a similar demand letter – “Demand Letter II” – which requires FFLs with 15 or more traces of guns within 3 years of initial purchase to submit information quarterly on previously owned firearms acquired from non-FFLs. In 2004 ATF sent Demand Letter II to 271 dealers. See U.S. Department of Justice Office of Inspector General, Inspections by Firearms Dealers by the Bureau of Alcohol, Tobacco, Firearms, and Explosives, at 10 (2004).

<sup>111</sup> Department of the Air Force, Air Force Office of Special Investigations, Criminal Information Report (CIR) 02-53: Officer Safety Bulletin – Stinger Pen Guns (2002).

# APPENDIX A

## Recommendations from Mayors Against Illegal Guns: A Blueprint for Implementation

| No. | Recommendation  | Responsible Agency   | Method of Implementation | Page |
|-----|---|--|--------------------------|------|
| 1   | The FBI should inform state and local law enforcement every time NICS reports that a prohibited person has attempted to purchase a firearm and, when appropriate, inform state mental health agencies when NICS rejects a buyer due to mental health. | The Federal Bureau of Investigations (FBI), Bureau of Alcohol, Tobacco & Firearms (ATF)      | Practice Reform          | 5    |
| 2   | The Justice Department should identify which NICS rejections should be investigated and prosecuted.   | DOJ, FBI, ATF  | Practice Reform          | 5    |
| 3   | The Department of Homeland Security (DHS) should require REAL ID-compliant identification for all gun purchases after December 1, 2014.   | The Department of Homeland Security (DHS), White House Office of Management and Budget (OMB) | Regulation               | 6    |
| 4   | NICS should electronically verify the validity of and the name associated with any state-issued identification number provided on a background check Form 4473.   | FBI  | Practice Reform          | 6    |
| 5   | ATF should perform background checks on employees of federal firearms licensees at the licensees' request.  | ATF, FBI   | Practice Reform          | 7    |
| 6   | ATF should perform background checks on gun dealer employees during audit inspections.  | ATF, FBI   | Practice Reform          | 7    |

| No. | Recommendation   | Responsible Agency | Method of Implementation | Page |
|-----|--|--------------------|--------------------------|------|
| 7   | The Justice Department should notify dealers stripped of their licenses that they will continue to be “engaged in the business” if they dispose of inventory in significant quantities for profit.   | DOJ, ATF           | Practice Reform          | 8    |
| 8   | ATF should fully enforce the requirement that dealers notify ATF within five business days whenever they transfer more than one handgun to an unlicensed person, including when dealers transfer more than one handgun to their own personal collections.                    | ATF                | Practice Reform          | 9    |
| 9   | ATF should maintain NICS records of default proceed sales to persons on the terrorist watch list for 20 years and all other records of default proceed sales for six months.   | ATF, FBI           | Practice Reform          | 10   |
| 10  | When tracing guns, ATF National Tracing Center (NTC) personnel should be trained to routinely ask the FFL who sold the gun whether the recovered gun was purchased at a gun show and the location of that gun show, and then use the data to identify problematic gun shows. | ATF                | Practice Reform          | 11   |
| 11  | ATF field agents should have the discretion to conduct criminal enforcement operations at gun shows when trace data, prosecutions, and witness statements suggest a particular show is a source of crime guns.   | ATF                | Practice Reform          | 12   |

| <b>No.</b> | <b>Recommendation</b>  | <b>Responsible Agency</b>                      | <b>Method of Implementation</b>    | <b>Page</b> |
|------------|--|--|------------------------------------|-------------|
| 12         | ATF should increase enforcement activities to deter sales to prohibited purchasers by unlicensed gun sellers.  | ATF  | Practice Reform                    | 12          |
| 13         | ATF should investigate private sellers at gun shows who appear to be engaged in the business without a license.  | ATF  | Practice Reform                    | 12          |
| 14         | At gun shows known for criminal activity, agents should have discretion to compare purchasers' addresses reported on Form 4473 to their state driving records. | ATF  | Practice Reform                    | 13          |
| 15         | ATF should expand Project Gunrunner by increasing the ATF personnel assigned to interdict gun trafficking from the United States to Mexico.                    | DOJ, ATF, DHS, OMB, State Department, Congress | Practice Reform, Increased Funding | 15          |
| 16         | ATF should establish an Interstate Firearms Trafficking Unit (IFTU) run by an ATF Deputy Chief to coordinate interstate investigations.                        | ATF, DOJ, OMB, Congress                        | Practice Reform, Increased Funding | 16          |
| 17         | ATF should receive an additional \$53 million annually to hire more inspectors to meet its target of triennial dealer audits.                                  | DOJ, ATF, OMB, Congress                        | Practice Reform, Increased Funding | 17          |
| 18         | ATF should enforce a dealer's license revocation when the dealer's administrative appeals are exhausted.   | ATF  | Practice Reform                    | 17          |
| 19         | ATF inspectors should conduct undercover investigations to assess gun dealer compliance with federal laws and regulations.                                     | ATF  | Practice Reform                    | 17          |

| No. | Recommendation   | Responsible Agency      | Method of Implementation           | Page |
|-----|--|-------------------------|------------------------------------|------|
| 20  | ATF should investigate all incidents involving thefts of five or more guns from dealers or individuals.  | ATF                     | Practice Reform                    | 18   |
| 21  | ATF should require FFLs to report to the National Crime Information Center (NCIC) thefts of firearms from common carriers and bonded warehouses.   | ATF                     | Practice Reform                    | 18   |
| 22  | The federal government should report annually on lost and stolen guns.   | DOJ, ATF                | Practice Reform                    | 18   |
| 23  | DOJ should support an additional 250 state and local law enforcement officers to be assigned to ATF Task Forces.   | DOJ, ATF, OMB, Congress | Practice Reform, Increased Funding | 20   |
| 24  | ATF should create an Office of Tactical Trace Analysis at the National Tracing Center to proactively analyze trace data and to identify gun traffickers and problematic dealers.                                 | ATF, DOJ, OMB, Congress | Practice Reform, Increased Funding | 21   |
| 25  | The Office of Tactical Trace Analysis should use a trace-to-NICS-check ratio to determine which dealers have a high volume of crime-gun traces compared to their approximate sales volume.                       | ATF                     | Practice Reform                    | 21   |
| 26  | When dealers fail to respond to trace requests, ATF should send demand letters, search FFLs' sales records, and/or require them to provide sworn statements describing when and to whom the gun was transferred. | ATF                     | Practice Reform                    | 22   |

| <b>No.</b> | <b>Recommendation</b>   | <b>Responsible Agency</b> | <b>Method of Implementation</b>    | <b>Page</b> |
|------------|---|---------------------------|------------------------------------|-------------|
| 27         | The Justice Department should require FFLs to keep logs of gun trace requests.  | ATF, OMB                  | Regulation                         | 23          |
| 28         | ATF should require a second, hidden serial number on every newly manufactured gun.  | ATF, OMB                  | Regulation                         | 23          |
| 29         | In the alternative, ATF should require that serial numbers be placed on steel and not soft metal, require stamped rather than etched marks on the gun surface, and require marks to be 0.0005 deep and 1/8 inch tall. | ATF, OMB                  | Regulation                         | 23          |
| 30         | ATF should require domestic manufacturers to use a standardized system for numbering firearms.  | ATF, OMB                  | Regulation                         | 24          |
| 31         | The federal government should invest in local efforts to reduce recidivism among gun offenders.   | DOJ, OMB, Congress        | Practice Reform, Increased Funding | 25          |
| 32         | The federal government should increase support for community programs that generate tips on illegal firearms trafficking.   | DOJ, OMB                  | Practice Reform                    | 25          |
| 33         | ATF should promote the Responsible Firearms Retailer Partnership (RFRP), pioneered by Wal-Mart, as a voluntary program for gun dealers to deter the movement of guns into the illegal market.                         | ATF                       | Practice Reform                    | 26          |
| 34         | DOJ and ATF should produce updated versions of groundbreaking reports on illegal firearms trafficking.  | DOJ, ATF                  | Practice Reform                    | 27          |

| <b>No.</b> | <b>Recommendation</b>   | <b>Responsible Agency</b> | <b>Method of Implementation</b> | <b>Page</b> |
|------------|---|---------------------------|---------------------------------|-------------|
| 35         | ATF should expand the scope of its trace reports.   | DOJ, ATF                  | Practice Reform                 | 27          |
| 36         | DOJ should fund external research of emerging problems in illegal gun trafficking and the results of enforcement efforts.   | DOJ, ATF                  | Practice Reform                 | 27          |
| 37         | Consumer Products Safety Commission (CPSC) should evaluate and develop industry standards for locks that meet legal requirements.   | CPSC                      | Regulation                      | 29          |
| 38         | The federal government should resume enforcement of federal law that bans importing “non-sporting purpose” firearms and ammunition.   | DHS, ATF, DOJ             | Practice Reform                 | 30          |
| 39         | ATF should identify the long guns most linked to crime and require dealers to report multiple sales of such guns.   | ATF                       | Practice Reform                 | 30          |
| 40         | ATF should reclassify the Stinger pen gun, as well as any other pen guns introduced since 2002, as “Any Other Weapons” under the National Firearms Act, thereby subjecting them to strict background check, licensing, and registration requirements. | ATF                       | Practice Reform                 | 31          |

## APPENDIX B

### The Coalition's Federal Legislative Agenda

Mayors Against Illegal Guns has endorsed six pieces of legislation – one relates to access to crime gun trace data and five relate to closing gaps in gun backgrounds checks:

- *Repealing the Tiahrt Amendments* – The Tiahrt Amendments restrict access to crime gun trace data, prevent ATF from requiring gun dealers to provide inventories, and require the destruction of most gun background check records within 24 hours.
- *Closing the Gun Show Loophole* – H.R.2324 and S.843 in the 111th Congress would require buyers who purchase guns at gun shows to undergo criminal background checks.
- *Closing the Terror Gap* – S.1317 and H.R.2159 in the 111th Congress would prevent individuals on the terrorist watch list from purchasing guns.
- *Closing the Gun Dealer Fire Sales Loophole* – H.R.6664 in the 110th Congress would have prevented gun dealers who have been shut down for illegal firearms sales from liquidating their inventories without conducting background checks.
- *Employee Background Checks* – H.R.6676 in the 110th Congress would have required gun dealers to conduct criminal background checks on their employees.
- *Closing Mental Health Gaps in Background Checks* – The NICS Improvement Amendments Act of 2007, which became law on January 8, 2008, authorizes funds to states to maintain and update criminal history and mental health records in NICS, making it harder for prohibited gun buyers to slip through the cracks of the background check system.

# APPENDIX C

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

OMB No. 1140-0020

## Firearms Transaction Record Part I - Over-the-Counter

**WARNING: You may not receive a firearm if prohibited by Federal or State law. The information you provide will be used to determine whether you are prohibited under law from receiving a firearm. Certain violations of the Gun Control Act, 18 U.S.C. §§ 921 et. seq., are punishable by up to 10 years imprisonment and/or up to a \$250,000 fine.**

Transferor's Transaction  
Serial Number (If any)

**Prepare in original only. All entries must be handwritten in ink. Read the Notices, Instructions, and Definitions on this form. "PLEASE PRINT."**

### Section A - Must Be Completed Personally By Transferee (Buyer)

|  |  |  |   |  |  |  |  |  |  |  |                  |          |                        |   |                               |  |                                 |     |       |     |      |
|--|--|--|---|--|--|--|--|--|--|--|------------------|----------|------------------------|---|-------------------------------|--|---------------------------------|-----|-------|-----|------|
| 1. Transferee's Full Name  |  |  | 2. Current Residence Address (U.S. Postal abbreviations are acceptable. Cannot be a post office box.) |  |  | 3. Place of Birth                            |  |  | 4. Height  |  | 5. Weight (Lbs.) |          | 6. Gender              |   | 7. Birth Date                 |  |                                 |     |       |     |      |
| Last Name  |  |  | First Name  |  |  | Middle Name (If no middle name, state "NMN") |  |  | U.S. City and State  |  | Foreign Country  |          | Ft. _____<br>In. _____ |   | Male <input type="checkbox"/> |  | Female <input type="checkbox"/> |     | Month | Day | Year |
| Number and Street Address  |  |  | City  |  |  | County                                       |  |  | State  |  |                  | ZIP Code |                        |   |                               |  |                                 |     |       |     |      |
| 8. Social Security Number (Optional, but will help prevent misidentification)  |  |  |   |  |  |  |  |  | 9. Unique Personal Identification Number (UPIN) if applicable (See Instructions for Question 9.) |  |                  |          |                        |   |                               |  |                                 |     |       |     |      |
| 10. Race (Ethnicity) (Check one or more boxes. See Instructions for Question 10.)  |  |  |   |  |  |  |  |  |  |  |                  |          |                        |   |                               |  |                                 |     |       |     |      |
| <input type="checkbox"/> American Indian or Alaska Native  |  |  |   |  |  |  | <input type="checkbox"/> Black or African American   |  |  |  |                  |          |                        | <input type="checkbox"/> Native Hawaiian or Other Pacific Islander  |                               |  |                                 |     |       |     |      |
| <input type="checkbox"/> Hispanic or Latino  |  |  |   |  |  |  | <input type="checkbox"/> Asian   |  |  |  |                  |          |                        | <input type="checkbox"/> White  |                               |  |                                 |     |       |     |      |
| 11. Answer questions 11.a. (see exceptions) through 11.l. and 12 (if applicable) by checking or marking "yes" or "no" in the boxes to the right of the questions.  |  |  |   |  |  |  |  |  |  |  |                  |          |                        |   |                               |  |                                 |     |       |     |      |
| a. Are you the actual transferee/buyer of the firearm(s) listed on this form? <b>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. (See Instructions for Question 11.a.) Exception: If you are picking up a repaired firearm(s) for another person, you are not required to answer 11.a. and may proceed to question 11.b.</b> |  |  |   |  |  |  |  |  |  |  |                  |          |                        |   |                               |  |                                 | Yes | No    |     |      |
| b. Are you under indictment or information in any court for a felony, or any other crime, for which the judge could imprison you for more than one year? (See Instructions for Question 11.b.)   |  |  |   |  |  |  |  |  |  |  |                  |          |                        |   |                               |  |                                 | Yes | No    |     |      |
| c. Have you ever been convicted in any court of a felony, or any other crime, for which the judge could have imprisoned you for more than one year, even if you received a shorter sentence including probation? (See Instructions for Question 11.c.)   |  |  |   |  |  |  |  |  |  |  |                  |          |                        |   |                               |  |                                 | Yes | No    |     |      |
| d. Are you a fugitive from justice?  |  |  |   |  |  |  |  |  |  |  |                  |          |                        |   |                               |  |                                 | Yes | No    |     |      |
| e. Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance?  |  |  |   |  |  |  |  |  |  |  |                  |          |                        |   |                               |  |                                 | Yes | No    |     |      |
| f. Have you ever been adjudicated mentally defective (which includes a determination by a court, board, commission, or other lawful authority that you are a danger to yourself or to others or are incompetent to manage your own affairs) OR have you ever been committed to a mental institution? (See Instructions for Question 11.f.)   |  |  |   |  |  |  |  |  |  |  |                  |          |                        |   |                               |  |                                 | Yes | No    |     |      |
| g. Have you been discharged from the Armed Forces under dishonorable conditions?   |  |  |   |  |  |  |  |  |  |  |                  |          |                        |   |                               |  |                                 | Yes | No    |     |      |
| h. Are you subject to a court order restraining you from harassing, stalking, or threatening your child or an intimate partner or child of such partner? (See Instructions for Question 11.h.)   |  |  |   |  |  |  |  |  |  |  |                  |          |                        |   |                               |  |                                 | Yes | No    |     |      |
| i. Have you ever been convicted in any court of a misdemeanor crime of domestic violence? (See Instructions for Question 11.i.)  |  |  |   |  |  |  |  |  |  |  |                  |          |                        |   |                               |  |                                 | Yes | No    |     |      |
| j. Have you ever renounced your United States citizenship?   |  |  |   |  |  |  |  |  |  |  |                  |          |                        |   |                               |  |                                 | Yes | No    |     |      |
| k. Are you an alien illegally in the United States?  |  |  |   |  |  |  |  |  |  |  |                  |          |                        |   |                               |  |                                 | Yes | No    |     |      |
| l. Are you a nonimmigrant alien? (See Instructions for Question 11.l.) If you answered "no" to this question, do NOT respond to question 12 and proceed to question 13.  |  |  |   |  |  |  |  |  |  |  |                  |          |                        |   |                               |  |                                 | Yes | No    |     |      |
| 12. If you are a nonimmigrant alien, do you fall within any of the exceptions set forth in the instructions? (If "yes," the licensee must complete question 20d.) (See Instructions for Question 12.) If question 11.l. is answered with a "no" response, then do NOT respond to question 12 and proceed to question 13.   |  |  |   |  |  |  |  |  |  |  |                  |          |                        |   |                               |  |                                 | Yes | No    |     |      |
| 13. What is your State of residence (if any)? (See Instructions for Question 13.)  |  |  |   |  |  |  | 14. What is your country of citizenship? (List/check more than one, if applicable. If you are a citizen of the United States, proceed to question 16.) |  |  |  |                  |          |                        | 15. If you are not a citizen of the United States, what is your U.S.-issued alien number or admission number? |                               |  |                                 |     |       |     |      |
|  |  |  |   |  |  |  | <input type="checkbox"/> United States of America  |  |  |  |                  |          |                        |   |                               |  |                                 |     |       |     |      |
|  |  |  |   |  |  |  | <input type="checkbox"/> Other (Specify)   |  |  |  |                  |          |                        |   |                               |  |                                 |     |       |     |      |

Note: Previous Editions Are Obsolete  
Page 1 of 6

**Transferee (Buyer) Continue to Next Page  
STAPLE IF PAGES BECOME SEPARATED**

ATF Form 4473 (5300-9) Part I  
Revised August 2008



**Section D - Must Be Completed By Transferor (Seller)**

|  |           |                   |  |                      |
|--|-----------|-------------------|--|----------------------|
| 26. Manufacturer and/or Importer <i>(If the manufacturer and importer are different, the FFL should include both.)</i> | 27. Model | 28. Serial Number | 29. Type <i>(pistol, revolver, rifle, shotgun, receiver, frame, etc.) (See instructions for question 29)</i> | 30. Caliber or Gauge |
|  |           |                   |  |                      |
|  |           |                   |  |                      |
|  |           |                   |  |                      |

30a. Total Number of Firearms *(Please handwritten by printing e.g., one, two, three, etc. Do not use numerals.)*

30b. Is any part of this transaction a Pawn Redemption?  Yes  No

30c. For Use by FFL *(See Instructions for Question 30c.)*

**Complete ATF Form 3310.4 For Multiple Purchases of Handguns Within 5 Consecutive Business Days**

31. Trade/corporate name and address of transferor *(seller) (Hand stamp may be used.)*

32. Federal Firearms License Number *(Must contain at least first three and last five digits of FFL Number X-XX-XXXXX.) (Hand stamp may be used.)*

**The Person Transferring The Firearm(s) Must Complete Questions 33-36. For Denied/Cancelled Transactions, The Person Who Completed Section B Must Complete Questions 33-35.**

**I certify that my answers in Sections B and D are true, correct, and complete. I have read and understand the Notices, Instructions, and Definitions on ATF Form 4473. On the basis of: (1) the statements in Section A (and Section C if the transfer does not occur on the day Section A was completed); (2) my verification of the identification noted in question 20a (and my reverification at the time of transfer if the transfer does not occur on the day Section A was completed); and (3) the information in the current State Laws and Published Ordinances, it is my belief that it is not unlawful for me to sell, deliver, transport, or otherwise dispose of the firearm(s) listed on this form to the person identified in Section A.**

33. Transferor's/Seller's Name *(Please print)*

34. Transferor's/Seller's Signature

35. Transferor's/Seller's Title

36. Date Transferred

**NOTICES, INSTRUCTIONS AND DEFINITIONS**

**Purpose of the Form:** The information and certification on this form are designed so that a person licensed under 18 U.S.C. § 923 may determine if he or she may lawfully sell or deliver a firearm to the person identified in Section A, and to alert the buyer of certain restrictions on the receipt and possession of firearms. This form should only be used for sales or transfers where the seller is licensed under 18 U.S.C. § 923. The seller of a firearm must determine the lawfulness of the transaction and maintain proper records of the transaction. Consequently, the seller must be familiar with the provisions of 18 U.S.C. §§ 921-931 and the regulations in 27 CFR Part 478. In determining the lawfulness of the sale or delivery of a long gun *(rifle or shotgun)* to a resident of another State, the seller is presumed to know the applicable State laws and published ordinances in both the seller's State and the buyer's State.

After the seller has completed the firearms transaction, he or she must make the completed, original ATF Form 4473 *(which includes the Notices, General Instructions, and Definitions)*, and any supporting documents, part of his or her permanent records. Such Forms 4473 must be retained for at least 20 years. Filing may be chronological *(by date)*, alphabetical *(by name)*, or numerical *(by transaction serial number)*, as long as all of the seller's completed Forms 4473 are filed in the same manner. **FORMS 4473 FOR DENIED/CANCELLED TRANSFERS MUST BE RETAINED:** If the transfer of a firearm is denied/cancelled by NICS, or if for any other reason the transfer is not complete after a NICS check is initiated, the licensee must retain the ATF Form 4473 in his or her records for at least 5 years. Forms 4473 with respect to which a sale, delivery, or transfer did not take place shall be separately retained in alphabetical *(by name)* or chronological *(by date of transferee's certification)* order.

If you or the buyer discover that an ATF Form 4473 is incomplete or improperly completed after the firearm has been transferred, and you or the

buyer wish to make a record of your discovery, then photocopy the inaccurate form and make any necessary additions or revisions to the photocopy. You only should make changes to Sections B and D. The buyer should only make changes to Sections A and C. Whoever made the changes should initial and date the changes. The corrected photocopy should be attached to the original Form 4473 and retained as part of your permanent records.

**Over-the-Counter Transaction:** The sale or other disposition of a firearm by a seller to a buyer, at the seller's licensed premises. This includes the sale or other disposition of a rifle or shotgun to a nonresident buyer on such premises.

**State Laws and Published Ordinances:** The publication (ATF P 5300.5) of State firearms laws and local ordinances ATF distributes to licensees.

**Exportation of Firearms:** The State or Commerce Departments may require you to obtain a license prior to export.

**Section A**

**Question 1. Transferee's Full Name:** The buyer must personally complete Section A of this form and certify *(sign)* that the answers are true, correct, and complete. However, if the buyer is unable to read and/or write, the answers *(other than the signature)* may be completed by another person, excluding the seller. Two persons *(other than the seller)* must then sign as witnesses to the buyer's answers and signature.

When the buyer of a firearm is a corporation, company, association, partnership, or other such business entity, an officer authorized to act on behalf of the business must complete Section A of the form with his or her personal information, sign Section A, and attach a written statement, executed under penalties of perjury, stating: (A) the firearm is being acquired for the use of and will be the property of that business entity and (B) the name and address of that business entity.

ATF Form 4473 (5300.9) Part 1  
Revised August 2008

If the buyer's name in question 1. is illegible, the seller must print the buyer's name above the name written by the buyer.

**Question 2. Current Residence Address:** U.S. Postal abbreviations are acceptable. (e.g., St., Rd., Dr., PA, NC, etc.). Address cannot be a post office box. County and Parish are one and the same.

If the buyer is a member of the Armed Forces on active duty acquiring a firearm in the State where his or her permanent duty station is located, but does not reside at his or her permanent duty station, the buyer must list both his or her permanent duty station address and his or her residence address in response to question 2. If you are a U.S. citizen with two States of residence, you should list your current residence address in response to question 2 (e.g., if you are buying a firearm while staying at your weekend home in State X, you should list your address in State X in response to question 2).

**Question 9. Unique Personal Identification Number (UPIN):** For purchasers approved to have information maintained about them in the FBI NICS Voluntary Appeal File, NICS will provide them with a Unique Personal Identification Number, which the buyer should record in question 9. The licensee may be asked to provide the UPIN to NICS or the State.

**Question 10. Race (Ethnicity):** Any other race or ethnicity that does not fall within those indicated, please select the closest representation.

**Question 11.a. Actual Transferee/Buyer:** For purposes of this form, you are the actual transferee/buyer if you are purchasing the firearm for yourself or otherwise acquiring the firearm for yourself (e.g., redeeming the firearm from pawn/retrieving it from consignment, firearm raffle winner). You are also the actual transferee/buyer if you are legitimately purchasing the firearm as a gift for a third party. **ACTUAL TRANSFEREE/BUYER EXAMPLES:** Mr. Smith asks Mr. Jones to purchase a firearm for Mr. Smith. Mr. Smith gives Mr. Jones the money for the firearm. Mr. Jones is **NOT THE ACTUAL TRANSFEREE/BUYER** of the firearm and must answer "NO" to question 11.a. The licensee may not transfer the firearm to Mr. Jones. However, if Mr. Brown goes to buy a firearm with his own money to give to Mr. Black as a present, Mr. Brown is the actual transferee/buyer of the firearm and should answer "YES" to question 11.a. However, you may not transfer a firearm to any person you know or have reasonable cause to believe is prohibited under 18 U.S.C. § 922(g), (n), or (x). **Please note: EXCEPTION:** If you are picking up a repaired firearm(s) for another person, you are not required to answer 11.a. and may proceed to question 11.b.

**Question 11.b. - 11.l. Definition of Prohibited Person:** Generally, 18 U.S.C. § 922 prohibits the shipment, transportation, receipt, or possession in or affecting interstate commerce of a firearm by one who: has been convicted of a misdemeanor crime of domestic violence; has been convicted of a felony, or any other crime, punishable by imprisonment for a term exceeding one year (*this does not include State misdemeanors punishable by imprisonment of two years or less*); is a fugitive from justice; is an unlawful user of, or addicted to, marijuana or any depressant, stimulant, or narcotic drug, or any other controlled substance; has been adjudicated mentally defective or has been committed to a mental institution; has been discharged from the Armed Forces under dishonorable conditions; has renounced his or her U.S. citizenship; is an alien illegally in the United States or a nonimmigrant alien; or is subject to certain restraining orders. Furthermore, section 922 prohibits the shipment, transportation, or receipt in or affecting interstate commerce of a firearm by one who is under indictment or information for a felony, or any other crime, punishable by imprisonment for a term exceeding one year.

**Question 11.b. Under Indictment or Information or Convicted in any Court:** An indictment, information, or conviction in any Federal, State, or local court. An information is a formal accusation of a crime verified by a prosecutor.

**EXCEPTION to 11.c. and 11.i.:** A person who has been convicted of a felony, or any other crime, for which the judge could have imprisoned the person for more than one year, or who has been convicted of a misdemeanor crime of domestic violence, is not prohibited from purchasing, receiving, or possessing a firearm if: (1) under the law of the jurisdiction where the conviction occurred, the person has been pardoned, the conviction has been expunged or set aside, or the person has had their civil rights (*the right to vote, sit on a jury, and hold public office*) taken away and later restored AND (2) the person is not prohibited by the law of the jurisdiction where the conviction occurred from receiving or possessing firearms. Persons subject to this exception should answer "no" to 11.c. or 11.i., as applicable.

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**Question 11.f. Adjudicated Mentally Defective:** A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease: (1) is a danger to himself or to others; or (2) lacks the mental capacity to contract or manage his own affairs. This term shall include: (1) a finding of insanity by a court in a criminal case; and (2) Those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility.

**Committed to a Mental Institution:** A formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily. The term includes commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution. Please also refer to Question 11.c. for the definition of a prohibited person.

**EXCEPTION to 11. f. NICS Improvement Amendments Act of 2007:** A person who has been adjudicated as a mental defective or committed to a mental institution is not prohibited if: (1) the person was adjudicated or committed by a department or agency of the Federal Government, such as the United States Department of Veteran's Affairs ("VA") (as opposed to a State court, State board, or other lawful State authority); and (2) either: (a) the person's adjudication or commitment for mental incompetency was set-aside or expunged by the adjudicating/committing agency; (b) the person has been fully released or discharged from all mandatory treatment, supervision, or monitoring by the agency; or (c) the person was found by the agency to no longer suffer from the mental health condition that served as the basis of the initial adjudication. **Persons who fit this exception should answer "no" to Item 11.f.** This exception does not apply to any person who was adjudicated to be not guilty by reason of insanity, or based on lack of mental responsibility, or found incompetent to stand trial, in any criminal case or under the Uniform Code of Military Justice.

**Question 11.h. Definition of Restraining Order:** Under 18 U.S.C. § 922, firearms may not be sold to or received by persons subject to a court order that: (A) was issued after a hearing which the person received actual notice of and had an opportunity to participate in; (B) restrains such person from harassing, stalking, or threatening an intimate partner or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and (C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury. An "intimate partner" of a person is: the spouse or former spouse of the person, the parent of a child of the person, or an individual who cohabitates or cohabitating with the person.

**Question 11.i. Definition of Misdemeanor Crime of Domestic Violence:** A Federal, State, local, or tribal offense that is a misdemeanor under Federal, State, or tribal law and has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with, or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim. The term includes all misdemeanors that have as an element the use or attempted use of physical force or the threatened use of a deadly weapon (e.g., assault and battery), if the offense is committed by one of the defined parties. (*See Exception to 11.c. and 11.i.*) A person who has been convicted of a misdemeanor crime of domestic violence also is not prohibited unless: (1) the person was represented by a lawyer or gave up the right to a lawyer; or (2) if the person was entitled to a jury, was tried by a jury, or gave up the right to a jury trial. Persons subject to this exception should answer "no" to 11.i.

**Question 11.l. "Nonimmigrant Alien":** An alien in the United States in a nonimmigrant classification. The definition includes, among others, persons traveling temporarily in the United States for business or pleasure, persons studying in the United States who maintain a residence abroad, and certain foreign workers. The definition does NOT include permanent resident aliens.

**Sale of Firearms to Legal Aliens:** Even if a nonimmigrant alien can establish that he or she has a U.S.-issued alien number or admission number and has resided in a State for at least 90 continuous days immediately prior to the date of

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sale, he or she is prohibited from receiving a firearm unless he or she falls within an exception to the nonimmigrant alien prohibition. (See Question 11.c. and Exception to 11.1.) If a nonimmigrant alien claims to fall within one of these exceptions by answering "yes" to question 12, he or she must provide the licensee with documentation of the exception (e.g., hunting license/permit; waiver). If the documentation is a hunting license/permit, the licensee must make sure it has not expired. An expired hunting license/permit does not qualify for the exception. A licensee **MUST** complete and may attach a copy of the documentation to ATF Form 4473.

**EXCEPTION TO 11.1:** A nonimmigrant alien is not prohibited from purchasing, receiving, or possessing a firearm if the alien: (1) is in possession of a hunting license or permit lawfully issued in the United States; or (2) has received a waiver from the prohibition from the Attorney General of the United States. (See 18 U.S.C. § 922(y)(2) for additional exceptions.) Persons subject to one of these exceptions should answer "yes" to questions 11.1. and 12 and provide a copy of the hunting license or letter granting the waiver, which must be recorded in 20.d. If the Transferee (Buyer) answered "yes" to this question, the licensee **MUST** complete 20.d.

**Question 12. Exceptions to Nonimmigrant Alien Response:** If question 11.1. is answered with a "no" response, then do **NOT** respond to question 12 and proceed to question 13. If response is "yes," then licensee must complete question 20.d., and may attach a copy.

**Question 13. State of Residence:** The State in which an individual resides. An individual resides in a State if he or she is present in a State with the intention of making a home in that State. If an individual is a member of the Armed Forces on active duty, his or her State of residence also is the State in which his or her permanent duty station is located. An alien who is legally in the United States is a resident of a State only if the alien is residing in the State and has resided in the State continuously for at least 90 days immediately prior to the date of sale or delivery of a firearm.

If you are a U.S. citizen with two States of residence, you should list your current residence address in response to question 2 (e.g., if you are buying a firearm while staying at your weekend home in State X, you should list your address in State X in response to question 2.) If you are not a citizen of the United States, you only have a State of residence if you have resided in a State for at least 90 continuous days immediately prior to the date of this sale.

**Question 16. Certification Definition of Engaged in the Business:** Under 18 U.S.C. § 922 (a)(1), it is unlawful for a person to engage in the business of dealing in firearms without a license. A person is engaged in the business of dealing in firearms if he or she devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms. A license is not required of a person who only makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his or her personal collection of firearms.

## Section B

**Question 18. Type of Firearm(s):** Check all boxes that apply. "Other" refers to frames, receivers and other firearms that are not either handguns or long guns (rifles or shotguns), such as firearms having a pistol grip that expel a shotgun shell, or National Firearms Act (NFA) firearms.

If a frame or receiver can only be made into a long gun (rifle or shotgun), it is still a frame or receiver not a handgun or long gun. However, they still are "firearms" by definition, and subject to the same GCA limitations as any other firearms. See Section 921(a)(3)(b). 18 U.S.C. Section 922(b)(1) makes it unlawful for a licensee to sell any firearm other than a shotgun or rifle to any person under the age of 21. Since a frame or receiver for a firearm, to include one that can only be made into a long gun, is a "firearm other than a shotgun or rifle," it cannot be transferred to anyone under the age of 21. Also, note that multiple sales forms are not required for frames or receivers of any firearms, or pistol grip firearms, since they are not "pistols or revolvers" under Section 923(g)(3)(a).

**Question 19. Gun Shows:** If sale at gun show or other qualifying event sponsored by any national, State, or local organization, as authorized by

27 CFR § 478.100, the seller must record the name of event and the location (city and State) of the sale in question 19.

**Question 20a. Identification:** List issuing authority (e.g., State, County or Municipality) and type of identification presented (e.g., Virginia driver's license (VA DL), or other valid government-issued identification).

**Know Your Customer:** Before a licensee may sell or deliver a firearm to a nonlicensee, the licensee must establish the identity, place of residence, and age of the buyer. The buyer **must** provide a valid government-issued photo identification to the seller that contains the buyer's name, residence address, and date of birth. The licensee must record the type, identification number, and expiration date (if any) of the identification in question 20.a. A driver's license or an identification card issued by a State in place of a license is acceptable. Social Security cards are not acceptable because no address, date of birth, or photograph is shown on the cards. A combination of government-issued documents may be provided. For example, if a U.S. citizen has two States of residence and is trying to buy a handgun in State X, he may provide a driver's license (showing his name, date of birth, and photograph) issued by State Y and another government-issued document (such as a tax document) from State X showing his residence address. If the buyer is a member of the Armed Forces on active duty acquiring a firearm in the State where his or her permanent duty station is located, but he or she has a driver's license from another State, you should list the buyer's military identification card and official orders showing where his or her permanent duty station is located in response to question 20.a.

**Question 20.b. Alternate Documentation:** Licensees may accept a combination of valid government-issued documents to satisfy the identification document requirements of the law. The required valid government-issued photo identification document bearing the name, photograph, and date of birth of transferee may be supplemented by another valid, government-issued document showing the transferee's residence address. This alternate documentation should be recorded in question 20.b., with issuing authority and type of identification presented. A combination of government-issued documents may be provided. For example, if a U.S. citizen has two States of residence and is trying to buy a handgun in State X, he may provide a driver's license (showing his name, date of birth, and photograph) issued by State Y and another government-issued document (such as a tax document) from State X showing his residence address.

**Question 20.c. Documentation for All Aliens:**

**Sale of Firearms to Legal Aliens:** A buyer who is not a citizen of the United States must provide additional documentation (beyond a valid government-issued photo identification that contains the buyer's name, residence address, and date of birth) to establish that he or she has resided in a State continuously for at least 90 days immediately prior to the date of the sale. (See Question 13.) Examples of appropriate documents to establish State residency are utility bills from each of the last 3 months immediately prior to the sale or a lease agreement that demonstrates 90 days of residency immediately prior to the sale. A licensee may attach a copy of the documentation to ATF Form 4473, rather than record the type of documentation in question 20.c. Acceptable documentation to prove 90-day continuous residency must be original documentation (e.g., utility bills, current bank statements, rent receipts, mortgage payments, lease agreements, personal property tax bills, documents issued by Federal, State, or local government agencies, first-class mail issued by government agency, insurance policies, or bill with current address or major credit card bill).

**Question 20.d. Documentation for Nonimmigrant Aliens:** See instructions for Question 11.1. Types of acceptable documents would include a valid State-issued hunting license or a letter from the U.S. Attorney General granting a waiver.

**Question(s) 21, 22, 23. NICS BACKGROUND CHECKS:** 18 U.S.C. § 922(t) requires that prior to transferring any firearm to an unlicensed person, a licensed importer, manufacturer, or dealer must first contact the National Instant Criminal Background Check System (NICS). NICS will advise the licensee whether the system finds any information that the purchaser is prohibited by law from possessing or receiving a firearm. For purposes of this form, contacts to NICS include contacts to State agencies designated to conduct NICS checks for the Federal Government. **WARNING:** Any seller who transfers a firearm to any person they know or have reasonable cause to believe is prohibited from receiving or possessing a firearm violates the law, even if the seller has complied with the background check requirements of the Brady law.

After the buyer has completed Section A of the form and the licensee has completed questions 18-20, and before transferring the firearm, the licensee must contact NICS (*read below for NICS check exceptions.*) However, the licensee should NOT contact NICS and should stop the transaction if: the buyer answers "no" to question 11.a.; the buyer answers "yes" to any question in 11.b.-11.l., unless the buyer only has answered "yes" to question 11.l. and also answers "yes" to question 12; or the buyer is unable to provide the documentation required by question 20.a, b, c, or d.

At the time that NICS is contacted, the licensee must record in question 21.a-c: the date of contact, the NICS (*or State*) transaction number, and the initial response provided by NICS or the State. The licensee may record the Missing Disposition Information (MDI) date in 21.c. that NICS provides for delayed transactions (*States do not provide this number*). If the licensee receives a "delayed" response, before transferring the firearm, the licensee must record in question 21.d. any response later provided by NICS or the State or that no resolution was provided within 3 business days. If the licensee receives a response from NICS or the State after the firearm has been transferred, he or she must record this information in question 21.e. **Note:** States acting as points of contact for NICS checks may use terms other than "proceed," "delayed," "cancelled," or "denied." In such cases, the licensee should check the box that corresponds to the State's response. Some States may not provide a transaction number for denials. However, if a firearm is transferred within the three business day period, a transaction number is required.

**NICS Responses:** If NICS provides a "proceed" response, the transaction may proceed. If NICS provides a "cancelled" response, the seller is prohibited from transferring the firearm to the buyer. If NICS provides a "denied" response, the seller is prohibited from transferring the firearm to the buyer. If NICS provides a "delayed" response, the seller is prohibited from transferring the firearm unless 3 business days have elapsed and, before the transfer, NICS or the State has not advised the seller that the buyer's receipt or possession of the firearm would be in violation of law. (See 27 CFR § 478.102(a) for an example of how to calculate 3 business days.) If NICS provides a "delayed" response, NICS also will provide a Missing Disposition Information (MDI) date that calculates the 3 business days and reflects when the firearm(s) can be transferred under Federal law. States may not provide an MDI date. *Please note State law may impose a waiting period on transferring firearms.*

**EXCEPTIONS TO NICS CHECK:** A NICS check is not required if the transfer qualifies for any of the exceptions in 27 CFR § 478.102(d). Generally these include: (a) transfers where the buyer has presented the licensee with a permit or license that allows the buyer to possess, acquire, or carry a firearm, and the permit has been recognized by ATF as a valid alternative to the NICS check requirement; (b) transfers of National Firearms Act weapons approved by ATF; or (c) transfers certified by ATF as exempt because compliance with the NICS check requirements is impracticable. See 27 CFR § 478.102(d) for a detailed explanation. If the transfer qualifies for one of these exceptions, the licensee must obtain the documentation required by 27 CFR § 478.131. A firearm must **not** be transferred to any buyer who fails to provide such documentation.

### Section C

**Question 24 and 25. Transfer on a Different Day and Recertification:** If the transfer takes place on a different day from the date that the buyer signed Section A, the licensee must again check the photo identification of the buyer at the time of transfer, and the buyer must complete the recertification in Section C at the time of transfer.

### Section D

Immediately prior to transferring the firearm, the seller must complete all of the questions in Section D. In addition to completing this form, the seller must report any multiple sale or other disposition of pistols or revolver on ATF Form 3310.4 (see 27 CFR § 478.126a).

**Question(s) 26, 27, 28, 29 and 30. Firearm(s) Description:** These blocks should be completed with the firearm(s) information. Firearms manufactured after 1968 should all be marked with a serial number. Should you acquire a firearm that is not marked with a serial number; you may answer question 28 with "NSN" (No Serial Number), "N/A" or "None."

If more than five firearms are involved in a transaction, the information required by Section D, questions 26-30, must be provided for the additional firearms on a separate sheet of paper, which must be attached to the ATF Form 4473 covering the transaction.

**Types of firearms include:** pistol, revolver, rifle, shotgun, receiver, frame and other firearms that are not either handguns or long guns (rifles or shotguns), such as firearms having a pistol grip that expel a shotgun shell or National Firearms Act (NFA) firearms.

Additional firearms purchases by the same buyer may not be added to the form after the seller has signed and dated it. A buyer who wishes to purchase additional firearms after the seller has signed and dated the form must complete a new ATF Form 4473. The seller must conduct a new NICS check.

**Question 30c.** This box is for the FFL's use in recording any information he or she finds necessary to conduct business.

**Question 32 Federal Firearms License Number:** Must contain at least the first three and last five digits of the FFL number, for instance X-XX-XXXXX.

**Question 33-35 Transferor/Sellers Information:** For "denied" and "cancelled" NICS transactions, the person who completed Section B must complete Section D, questions 33-35.

### Privacy Act Information

Solicitation of this information is authorized under 18 U.S.C. § 923(g). Disclosure of the individual's Social Security number is voluntary. The number may be used to verify the buyer's identity.

### Paperwork Reduction Act Notice

The information required on this form is in accordance with the Paperwork Reduction Act of 1995. The purpose of the information is to determine the eligibility of the transferee to receive firearms under Federal law. The information is subject to inspection by ATF officers and is required by 18 U.S.C. §§ 922 and 923.

The estimated average burden associated with this collection is 30 minutes per respondent or recordkeeper, depending on individual circumstances. Comments about the accuracy of this burden estimate and suggestions for reducing it should be directed to Reports Management Officer, Document Services Section, Bureau of Alcohol, Tobacco, Firearms and Explosives, Washington, DC 20226.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Confidentiality is not assured.

For More Information, Please Visit  
[www.MayorsAgainstIllegalGuns.org](http://www.MayorsAgainstIllegalGuns.org)