



# IN THE BUSINESS OUTSIDE THE LAW



HOW UNLICENSED SELLERS ARE FLOODING THE INTERNET WITH GUNS

MAYORS AGAINST  
ILLEGAL GUNS



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*A REPORT BY MAYORS AGAINST ILLEGAL GUNS*

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## EXECUTIVE SUMMARY

Nearly five decades ago, prompted by a series of high-profile political assassinations, the United States barred several narrow categories of particularly dangerous people from owning firearms. The National Instant Criminal Background Check System (NICS) was created in 1998 to enforce this law by requiring potential gun buyers to pass an instant screening at the point of purchase, ensuring that they are not felons, domestic abusers, seriously mentally ill or otherwise prohibited from owning guns.

The system has worked well and has unquestionably saved many lives. Since NICS became operational in 1998, it has blocked gun sales to more than two million prohibited people as they tried to acquire firearms.

But for all its successes, deadly weaknesses in the system continue to put guns in the hands of killers. The most serious is the so-called “private sale loophole,” which allows

anyone who is not a federally licensed dealer to sell firearms without conducting a background check. Criminals and other barred purchasers know this loophole well, and they exploit it every day, avoiding licensed dealers and seeking out unlicensed sellers instead. In an investigation released in September 2013, Mayors Against Illegal Guns showed that tens of thousands of criminals and other illegal buyers were obtaining firearms from private sellers on a single website — Armslist.com — every year.<sup>1</sup>

This new investigation examines a dark corner of this vast private marketplace: unlicensed “private sellers” who are offering guns for sale in such volume that they are effectively acting as dealers — but not conducting the background checks that federal law and public safety require.

Whereas licensed dealers “engaged in the business” of selling firearms must comply with straightforward rules that are vital to public safety — including conducting background checks on buyers, keeping paper records of sales and allowing periodic inspections by law enforcement officers — everyone else is treated differently. Private sellers — anyone who makes occasional gun sales or sells from their personal collection — are not required to have a license and need not conduct background checks or comply with the other regulations that dealers follow.

If these sales took place only occasionally, as the authors of our gun laws intended, this exemption would not seriously undermine public

safety. But today, an estimated 40 percent of gun transfers — 6.6 million transfers in 2012 — are conducted by private sellers with no background check.

The internet has magnified the problem. Websites like Armslist — which hosted 66,000 gun ads posted by private sellers on a recent day — offer unlicensed private sellers immediate access to a vast market of buyers. It has long been apparent that some share of these sellers are illegally “engaged in the business” of selling firearms without a federal license: selling guns at high volume to total strangers, just like dealers, but without following the rules that dealers must observe to ensure they are not selling to prohibited buyers.

This investigation of high-volume online sellers shows that hundreds of gun sellers are using the internet to transfer tens of thousands of firearms each year, blurring the line between private sellers and licensed dealers, undermining the background check system, and putting guns in the hands of killers.

**Nearly one in three gun ads on Armslist are posted by high-volume unlicensed sellers, many of whom are likely “engaged in the business” of selling firearms in violation of federal law.**

High-volume sellers posted twenty-nine percent of the gun ads listed by private sellers during the period of observation. At that rate, these sellers would transfer 243,800 guns each year.

**In follow-up conversations with a subsample of high-volume sellers, more than half gave additional indications that they were illegally “engaging in the business.”**

Beyond posting ads for multiple firearms, 58 percent of the high-volume sellers contacted by our investigators offered at least one additional indicator that they were engaging in the business, including selling guns new or in the original packaging, selling guns for profit and buying and reselling guns within a short period of time — all indicators that a seller is “engaging in the business” of selling guns.

**In the minority of states that go beyond federal law and require private sellers to conduct background checks, most sellers follow the law and gun sales are safer as a result.**

In states that require private sellers to conduct background checks for some or all gun sales, 73 percent of sellers told the would-be buyer they would need to comply with the state’s background check law.

## BACKGROUND

### HOW “ENGAGING IN THE BUSINESS” WITHOUT A LICENSE UNDERMINES THE BACKGROUND CHECK SYSTEM

Since 1968, federal law has prohibited particularly dangerous people — including felons, domestic abusers and the seriously mentally ill — from owning firearms. Gun sellers use the NICS system to conduct background checks on prospective buyers and ensure they are not barred. The process is simple, fast — a check generally takes less than two minutes, and over 90 percent of sales are approved immediately — and above all, effective: since 1998, NICS has blocked more than two million gun sales to prohibited purchasers.

But not all sales are subject to a background check. Federal law divides sellers into two groups: gun dealers “engaged in the business” of selling firearms, and private sellers who only make occasional sales.<sup>2</sup> Federal law<sup>3</sup> defines “engaging in the business” as “the repetitive purchase and resale of firearms [...] with the principal objective of livelihood and profit.”<sup>4</sup> By contrast, private sellers make “occasional sales” or sell from a “personal collection.”<sup>5</sup> The law’s authors presumed that many private sellers would not sell large volumes of guns, and appropriately exempted them from requirements to obtain licenses, run background checks and keep records of their sales.<sup>6</sup>

A system in which private sellers are effectively unregulated might satisfy public safety concerns if only a small number of guns were exchanged this way each year, generally among family members or friends. But private sellers account for an estimated 40 percent of the guns transferred in the U.S. In 2012, an estimated 6.6 million guns changed hands this way with no background check and no strings attached. That is more guns than there are seats in every major league sports stadium in the United States combined.

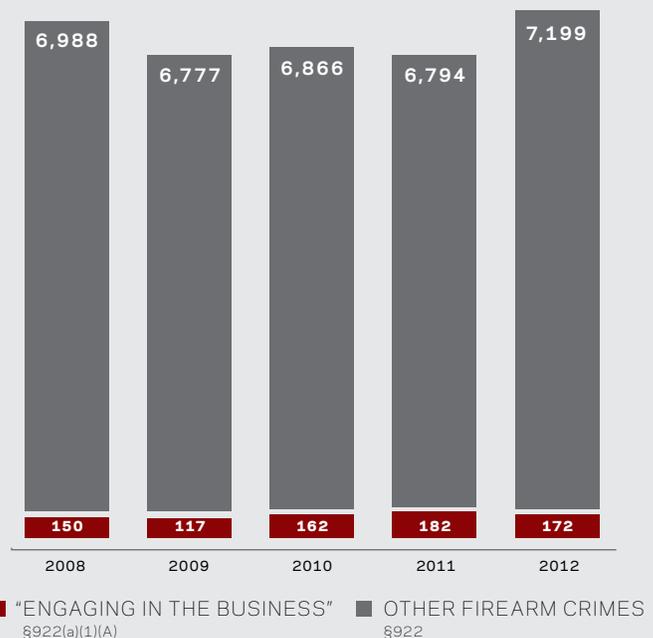
### WEAK ENFORCEMENT, DEADLY CONSEQUENCES

To be sure, nearly all of those who are engaged in the business of selling guns get licenses and conduct background checks: in 2013, there were 58,344 licensed gun dealers and pawnbrokers in the U.S. But some unknown number of Americans sell guns illegally, without a license but at a volume that should require them to obtain one and run background checks. Engaging in the business without a license is a federal offense punishable by up to five years in prison.<sup>7</sup>

However, federal law does not supply a clear definition of what it means to “engage in the business” of selling guns. The Bureau of Alcohol, Tobacco, Firearms & Explosives (ATF) has said that the lack of a standard “frustrates the prosecution of people who supply guns to felons and other prohibited persons” and makes it exceedingly difficult to build cases against violators.<sup>8</sup> Courts have also varied widely in their interpretation of the law. Some have readily found defendants to be engaged in the business: one influential court determined that a seller must have “the principal purpose...of livelihood and profit”<sup>9</sup> to be engaged in the business, whereas another court only requires that the defendant “ha[ve] guns on hand or is ready and able to procure them for the purpose of selling them from [time] to time.”<sup>10</sup> But these decisions are in the minority. In the absence of a clear standard, most courts have required prosecutors to produce a heavy weight of evidence, with the result that they rarely pursue cases of illegal firearms dealing.<sup>11</sup> New York City reviewed data on federal prosecutions of firearm sale and possession crimes nationwide and found that less than three percent of cases involved sellers who were dealing firearms without a license, fewer than 200 cases nationwide in any given year.<sup>12</sup>

The consequences of failing to enforce this requirement can be deadly. High-volume private sellers can funnel firearms into the black market with relative impunity until the weapons begin appearing at crime scenes, when law enforcement intervention is too late. The rare criminal cases brought against high-volume sellers illustrate how easily guns travel from these unregulated sales to convicted felons and other dangerous people.

### “ENGAGING IN THE BUSINESS” PROSECUTIONS AS A SHARE OF TOTAL FEDERAL PROSECUTIONS OF FIREARM SALE AND POSSESSION CRIMES



## DEADLY CONSEQUENCES

Kevin Dawson, 41, of Ooltewah, Tennessee traded and sold guns at gun shows and other venues without a license, even after ATF warned him that he needed to obtain one. In one transaction, he traded a firearm with Jesse Matthews, a convicted felon, who used it to kill Chattanooga Police Sgt. Tim Chapin in April 2011.<sup>13</sup> Only after an undercover ATF agent arranged to sell him a fully automatic Thompson submachine gun was Dawson finally charged with engaging in the business without a license. He was sentenced to two years and ten months in prison.<sup>14</sup>

David Devenny, 70, of Olympia, Washington profited from buying and reselling guns over an eight-year period without obtaining a license. He purchased at least 16 handguns in one five-month period in 2009 and resold them without background checks at nearby gun shows. A gun he sold to a man in Puyallup was used a week later to kill Seattle Police Officer Timothy Brenton. Devenny was eventually recorded selling three guns to confidential informants he knew had criminal records, and was indicted.<sup>15</sup> Agents seized 42 guns from Devenny, who pled guilty and was sentenced to 18 months in prison and three years of supervised release.<sup>16</sup>

Gerald Golke, 74, of Pewaukee, Wisconsin began buying firearms at gun shows and reselling them without a license as early as 2009. An informant tipped off police in June 2010, describing how Golke sold weapons to felons and gang members, including a convicted murderer. ATF agents recorded two sales Golke made to the informant, who was a felon, and subsequently raided Golke's home, where they seized 19 guns.<sup>17</sup> Golke pled guilty to knowingly selling a firearm to a felon and was sentenced to 30 days in prison and three years probation.<sup>18</sup>

Perry Bruce, 43, of Williamsport, Pennsylvania bought at least 30 guns from licensed dealers between 1995 and 1997, which he then resold to drug traffickers and felons. By 1999, 12 of the 30 guns had been recovered at crime scenes by Philadelphia police. A .44-caliber Rossi revolver Bruce had purchased in August 1997 and immediately resold found its way into the hands of a drug dealer in South Philadelphia who stored the weapon underneath a parked car. On April 19, 1999, a child playing in the street found the gun and accidentally shot and killed his friend, seven-year-old Nafis Jefferson. In 1998, Bruce pled guilty to selling guns without a license and illegal possession of a firearm by a drug user<sup>19</sup> and was sentenced to three years and 10 months in prison.<sup>20</sup>

Roy Alloway, 56, a former police officer in Bremerton, Washington bought and resold more than 700 firearms at gun shows without background checks, doing \$150,000 in business over a three-year period.<sup>21</sup> A .38 Smith & Wesson handgun Alloway bought in 2008 and later resold was recovered in 2010 from a man charged with aggravated assault in Chehalis. A Ruger pistol Alloway bought in 2005 and later resold was recovered by Seattle Police from a man who had used it in a holdup and carjacking.<sup>22</sup> In 2009, ATF launched an investigation of Alloway and in 2011 they raided his home, seizing 58 guns.<sup>23</sup> He pled guilty to dealing firearms without a license and to filing a false income tax return in February 2012, and was sentenced to two years in prison and three years of supervised release.<sup>24</sup>

Myron McPhate, 53, of Fort Worth, Texas bought and resold around 100 guns at gun shows and other locations in Grand Prairie without obtaining a license and without conducting background checks. During that time, he earned a reputation for selling to "almost anybody." ATF recovered 38 weapons at crime scenes that had passed through his hands, and others were recovered in Mexico, where assault weapons first sold in America play a central role in the country's rampant drug violence. McPhate pled guilty to dealing firearms without a license and was sentenced to 4 years and 3 months in prison.<sup>25</sup>

Raymond Anderson, 75, of Hartford, Wisconsin sold over 100 guns at gun shows without a license and without conducting background checks. Law enforcement first spoke with him in 2004 when a Taurus handgun recovered at a crime was traced back to him, but it wasn't until 2011, after they recorded him saying he had made \$3000 selling 10 guns at recent shows, that he was indicted for selling firearms without a license.<sup>26</sup> He was sentenced to three years probation, 120 days of house arrest, and 30 hours of community service.<sup>27</sup>

Michael Beas, 33, of Geer, South Carolina bought dozens of assault weapons and resold them for profit at gun shows in Georgia and the Carolinas without a license and without conducting background checks for the sales. Authorities were only alerted to the case when a Charlotte gun store flagged as unusual Beas's purchase of thirteen identical AK-47s. He pled guilty to a felony count of dealing firearms without a license.<sup>28</sup>

### **MAJOR MARKETS: THE INTERNET AND GUN SHOWS**

The online marketplace for guns has emerged relatively recently, and researchers and policymakers — hamstrung by congressional restrictions on gun research<sup>29</sup> — have devoted little attention to it. But gun shows — temporary exhibitions where firearms and accessories are bought and sold in person — are highly visible and well-studied, and researchers and law enforcement have observed a strong link between gun shows and the illegal firearms market. In a review of their gun trafficking investigations, ATF found that cases involving gun shows accounted for 26,000 illegally trafficked firearms over a two-year period.<sup>30</sup>

It is also well established that private sellers use gun shows to sell large numbers of guns without federal licenses. A 2007 study of 28 gun shows in California, Arizona, Nevada, Texas and Florida found that more than half of observed private sellers had at least 20 firearms for sale<sup>31</sup>— a volume that plainly exceeds the “occasional seller” standard. And a 2009 undercover investigation of seven gun shows conducted by the City of New York documented numerous private sellers engaged in the business of selling guns.<sup>32</sup> For example, investigators met a seller in Reno, Nevada displaying more than 100 guns for sale in twelve professionally designed cases. In Smyrna, Tennessee, a private seller reported doing “a pretty good business” in 9mm handguns; when it came to .45 caliber guns, he said he “sold as many as he [could] get.” And in Sharonville, Ohio, a private seller told an investigator he had sold more than 348 SKS assault rifles in “just under a year,” netting \$174,000 in revenue.

But for an unlicensed seller interested in reaching a vast market of buyers without getting a federal license, setting up a folding table at a gun show pales in comparison to the opportunities offered by the internet.

In January 2001, when the internet was still in its infancy, the Justice Department estimated that 80 firearm auction sites and around 4,000 other websites featured guns for sale.<sup>33</sup> In the dozen years since, the number of such sites has grown immeasurably.

A simple web search returns hundreds of online storefronts operated by licensed dealers, online brokers that mediate sales between buyers and sellers akin to eBay and classified ads aggregators where would-be buyers and sellers post ads — such as Armslist, the Craigslist of guns. There is no authoritative estimate of the total number of firearms sold online each year, but the number of gun ads listed by private sellers on Armslist has exploded by 500 percent in the last two years — from 12,000 in December 2011 to 66,000 active ads in December 2013.

At gun shows, sellers’ wares are laid out on tables for all to see, and high-volume sellers are relatively easy to identify. But online sellers can list guns on multiple websites and under multiple pseudonyms simultaneously, making it more difficult to identify individuals who are selling guns at a volume that would require them to obtain a federal firearm license and conduct background checks. And, as our investigators found, they are.

## THE INVESTIGATION

### THE DATA OUR INVESTIGATORS COLLECTED

While countless websites facilitate gun sales, this investigation focused on just one — Armslist — because it is large, primarily serves self-identified “private sellers” and hosts ads placed by buyers in all fifty states. The number of live ads on the website fluctuates over time as users post new ads and delete or update old ones, but the data collected by this investigation suggests the website may host more than 750,000 unique gun ads per year.

Unlike some sites, Armslist lets prospective buyers browse ads without identifying themselves, and lets them contact sellers via the website’s internal e-mail system without leaving any public record. The anonymity of this venue offers advantages to criminals seeking firearms from private sellers with no background check and no questions asked. Indeed, a Mayors Against Illegal Guns investigation released in September 2013 found that 1 in 30 Armslist

“Want-To-Buy” ads was posted by someone with a criminal record that bars them from owning a gun — more than four times the rate at which prohibited gun buyers try to buy guns at brick-and-mortar stores.<sup>34</sup>

The anonymity Armslist provides gun buyers is comparable to the anonymity it affords unlicensed gun sellers. No storefront or table loaded with merchandise reveals the number of guns a seller is advertising. And in any given ad listing, the seller need include no more information than the model of gun they are offering and the city or state where they are located. Prospective buyers can contact the seller directly using the website’s internal email system to arrange a sale.

But, as our investigators discovered, the web architecture of Armslist links all the gun listings posted by any specific user — presumably to allow buyers to review a seller’s whole inventory. By observing these networks of linked postings over time, our investigation painted a first-of-its-kind picture of the volume of private sales taking place on Armslist, and the “private sellers” conducting this illegal business without background checks.

### OUR INVESTIGATIVE METHODS

Our investigators retrieved all 125,263 unique firearm ads posted on Armslist by self-described private sellers during the eight-week period between August 17, 2013 and October 10, 2013. Each ad was assigned a seller identification number, and any ads posted by the same user were given a matching seller identification number, along with any ads linked to them. Over time, this data mapped out the contemporaneous gun ads listed by any given seller and the distribution of sales volume across the total population of sellers — from those who posted a single gun listing to those who posted tens or hundreds.

This technique still produces a conservative estimate of sellers’ total gun listings because it only links ads together that are online contemporaneously. If a seller removed all his ads, for example, the investigators would assign any new ad that seller posted to a new seller identification number, mistakenly attributing the new ad to a different seller and undercounting the seller’s true volume of sales.

Federal law provides no definitive legal standard for a “high volume” of private sales. But, for the purpose of this investigation, we focused on sellers who listed five or more guns during the period of observation. Sellers who posted ads at this rate over a year would list more than 34 guns annually.

### PHONE INTERVIEWS WITH HIGH-VOLUME SELLERS

A large volume of sales is a key indicator that a private seller is illegally engaging in the business of selling firearms without a license. But our investigators collected additional information from a subsample of sellers to confirm this categorization.

SHARE OF ONLINE  
GUN ADS POSTED  
BY HIGH-VOLUME  
SELLERS:

**29%**

71%



1-4 GUN ADS POSTED

29%



5+ GUN ADS POSTED

## HIGH-VOLUME SELLERS

POSTED 36,069 GUN ADS

TO ARMSLIST OVER EIGHT

WEEKS OF OBSERVATION,

**A RATE OF 243,800 PER YEAR**

ADS POSTED TO ARMSLIST FROM 8/17/13 TO 10/10/13

Of 4,218 high-volume sellers identified during the study, investigators contacted a random subsample of 400 sellers to confirm that they were not dealers who had misidentified themselves as private sellers, and to gather additional evidence that they were engaging in the business. Sellers were located in 38 states and had posted 6,300 unique ads during the eight-week investigative period. In most cases, investigators contacted sellers through Armslist and attempted to schedule phone calls. When a seller's ad provided a phone number, the investigator called them directly. In total, investigators completed 182 telephone conversations with subjects.

Within the subsample of gun sellers our investigators contacted, 9 of 182 (or five percent) reported having federal firearms licenses — six had mischaracterized themselves in their ad and three were selling from their personal collection, which is permitted under current federal law under certain circumstances. The 173 remaining gun sellers — 95 percent of the sample — confirmed they did not have federal firearms licenses and that they were posting numerous guns on the website.

### OUR FINDINGS

Twenty-nine percent of the ads private sellers listed during our investigation — nearly one in three — were posted by high-volume sellers who listed five or more ads during the period. If these sellers sustained this sales volume they would each advertise more than 34 firearms for sale annually. Together, they posted 36,069 guns during the period of observation, a rate of 243,800 per year.

Included in this group were private sellers like a man in Kirkland, Washington who posted 51 unique ads during the investigation. Another seller in Denver, Colorado posted 71 unique ads during the same period. And a private seller in Indianapolis created 127 unique postings; in conversation with an investigator, he acknowledged selling many guns through Armslist, "maybe one or two a week." At this sales volume, each of these sellers would conduct hundreds of firearms transactions every year — all without a license and without conducting a single federal background check.

Under federal law, a high volume of sales indicates that a private seller is illegally engaging in the business of selling firearms but is not sufficient evidence to prove a case. Successful prosecutions have also relied on several other key indicia, listed in the diagram below. Information about these indicia was collected in undercover conversations with sellers, many of whom offered details about their activities.

In conversation with our investigators, 101 of 173 contacted private sellers (58 percent) volunteered at least one additional indicator that they might be engaging in the business, whether selling guns in new or original packaging, selling guns for profit, or buying and reselling guns within a short period of time, amongst others.

Individual statements further illuminate these practices:

### SELLING GUNS NEW OR IN ORIGINAL PACKAGING <sup>35</sup>



Seller in Atlanta, Georgia, posted 11 gun ads during the period of observation: **"I do have a brand-new P938. [...] Unfired P938. [...] This particular one has the Blackwood grips on it. I also have a set of Hogue grips for it, got a Flush mag and an extended mag, never been fired, brand-new in the box."**



Seller in Huntsville, Alabama, posted 24 gun ads during the period of observation: **"I've got a couple of the Taurus Judges that are new in the box. I've got a stainless steel Circuit Judge. It's Rossi, it's not a pistol, you know, it's got that long revolver-looking handle, still in the box. I've got a couple of .22s, Smith & Wesson and Mossberg both. They are .22s. Anything I got is for sale."**

### SELLING GUNS REGULARLY <sup>37</sup>



Seller in Nashville, Tennessee, posted 16 gun ads during the period of observation: **"I'm in a real tight, tight, gun-trading bunch of people that we all got together. And basically whatever you want, I can get it."**



Seller in Denver, Colorado, posted 18 gun ads during the period of observation: **"I've been doing Armslist for probably three or four years now. And I've gotten probably I'd say a couple hundred guns through there just through trading previously."**



Seller in Springfield, Missouri; posted 12 gun ads during the period of observation: **"I've been selling and trading almost a year. And get through five or some guns a month. [...] I trade mostly, I'll buy and sell some — I do pretty good."**

### BUYING AND RESELLING GUNS WITHIN A SHORT PERIOD OF TIME <sup>36</sup>



Seller in Raleigh-Durham, North Carolina, posted 12 gun ads during the period of observation: **"I just got it last weekend and I really have to look into it but I can get back to you. Because I know, as of now, no more are coming in the country. And I know the C&P sold out in June, I believe it was. And all the ones in town, they either raised the prices on them extremely high or they got scooped up real quick as soon as that bill passed, I guess you'd call it."**

### SELLING GUNS FOR PROFIT <sup>38</sup>



Seller in Charleston, South Carolina, posted 24 gun ads during the period of observation: **"I probably make — I'll tell you the truth — I try to make \$100 to \$150 a gun. I got a good supplier."**



Seller in Atlanta, Georgia, posted 14 gun ads during the period of observation: **"I kind of fell into this. I was looking for — I'm always looking for guns but — I was looking for a little pistol for my girlfriend, and I'd buy her one, she didn't like it, and I'd sell it. Buy her another one, she didn't like that, sell that. And I said, 'Hey, I can make a little money from this!' And it grew from there."**

The conversations conducted by our undercover investigators illuminated other aspects of these illegal sales. Sellers sometimes tried to justify their unlicensed business practices by referring to the lack of a clear legal standard for engaging in the business. A seller in Portland, Oregon who posted at least 18 guns ads during the period of observation, argued that he wouldn't have to obtain a license even if he was selling at an extremely high volume. "You could have thousands of guns for sale [...] I could have 5,000 rifles in my house, there is no limit to how many guns you buy and sell as a private individual."

Another seller in Atlanta, Georgia who posted at least 14 guns described weighing the costs and benefits of getting a federal firearms license. He had decided that given the current law, it made more sense for him to sell without one. "I don't have an FFL, and [...] I was going back and forth about whether I should take that leap. But the way it stands now with the current laws, if I'm not a dealer I don't have to do background checks. If I did get my FFL, I'd be required to do background checks, but right now as long as Obama will let me sell face-to-face without doing that, then that's probably the way it's gonna stay for a while."

The internet has clearly played a unique role in encouraging this illegal conduct. A seller in Hopewell, Virginia who posted 26 guns during the period of observation explained that the internet allowed him to hide his sales volume. "You gotta watch. You can sell so many. If you sell too many, [...] somebody gonna come knock on your door. [...] That's the reason I don't list everything I got. When somebody calls me, then I talk to 'em." And a seller in Cincinnati, Ohio who posted 17 guns during the investigation explained how the internet had transformed his gun-selling practices: "[Selling guns] is a hobby... more like an obsession. It started like a hobby, and then places like Armslist made it so easy. So I get on Armslist like every day."

### **COMPLIANCE WITH STATE BACKGROUND CHECK LAWS**

Although federal law does not require background checks for private firearm transfers, 16 states and Washington, DC, have passed laws that require buyers to pass a background check before some or all private firearm purchases.<sup>39</sup> Investigators' conversations with online gun sellers yielded information on whether sellers are complying with these state laws.

In states that require background checks for private transfers, sellers were far more likely to require the buyer to undergo a background check than in states without these laws. This suggests that state background check laws have a strong and positive effect on seller behavior. Of 33 gun sellers in states that required them to conduct a background check before selling the gun they had listed, 24 (or 73 percent) told the buyer they would need to pass a check.<sup>40</sup>

## RECOMMENDATIONS

Law enforcement, legislators, and the websites that host gun ads have a responsibility to ensure that gun sales are conducted lawfully and safely.

### **Law enforcement**

- **ATF should promulgate a regulation to define "engaging in the business," and federal prosecutors should consistently and forcefully police the boundary between licensed dealers and private sellers.** The standard should include guidance on how to weigh indicators of engaging in the business, such as offering multiple guns of the same type for sale, reselling guns shortly after receiving them, offering to sell the majority of guns in one's possession, selling or offering for sale large quantities of guns, and selling guns frequently or with regularity.
- The online market presents unique opportunities for sellers to operate on a large scale and for purchasers to operate anonymously, and merits special attention from law enforcement. **ATF should create an internet unit to monitor online gun sales and crack down on high-volume, unlicensed sellers.**

## Congress

- In 2012, 6.6 million guns were transferred through private sales without background checks, and dangerous people exploit this loophole to evade background checks and get armed. **Congress should pass legislation requiring private sellers in commercial settings to conduct the same background checks as dealers.**

This would not burden private sellers or purchasers. Private parties would simply complete their sales at gun dealers. 98 percent of Americans live within 10 miles of an FFL,<sup>41</sup> and the “FFL Holder Network” organized by the website GunBroker.com demonstrates that 29% of gun dealers are already willing to assist private sellers with background checks.<sup>42</sup>

- **Congress should pass a federal gun trafficking statute so that private sellers who knowingly transfer a firearm to a prohibited person can be held fully accountable.** Law enforcement should have the tools they need to punish high-volume sellers who are trafficking guns to violent criminals and drug traffickers.

## Websites that host gun ads

- Armslist and other online gun marketplaces should take greater responsibility for the gun sales they facilitate. Some steps the sites might take include:
  - **Monitoring high-volume sellers.** Websites could issue direct warnings to sellers who appear to be engaging in the business of selling firearms without a license, and report repeat offenders to law enforcement. The website GunAuction.com already provides users a tool to report illegal activity and violations of the site rules.
  - **Requiring greater transparency from buyers and sellers.** Websites should require sellers to register with the website — including credit-card verified evidence of their identity — before they advertise guns, and should require buyers to do the same before they make purchase them. The websites ShootersXchange.com and GunRunnerAuctions.com have taken similar steps.
  - **Requiring background checks before all sales.** Armslist and other online gun marketplaces should recognize that they create opportunities for high-volume sellers to provide guns to anonymous buyers. To ensure they do not facilitate gun sales to criminals, these websites should add an item to their terms of use requiring users to conduct background checks on would-be gun buyers.

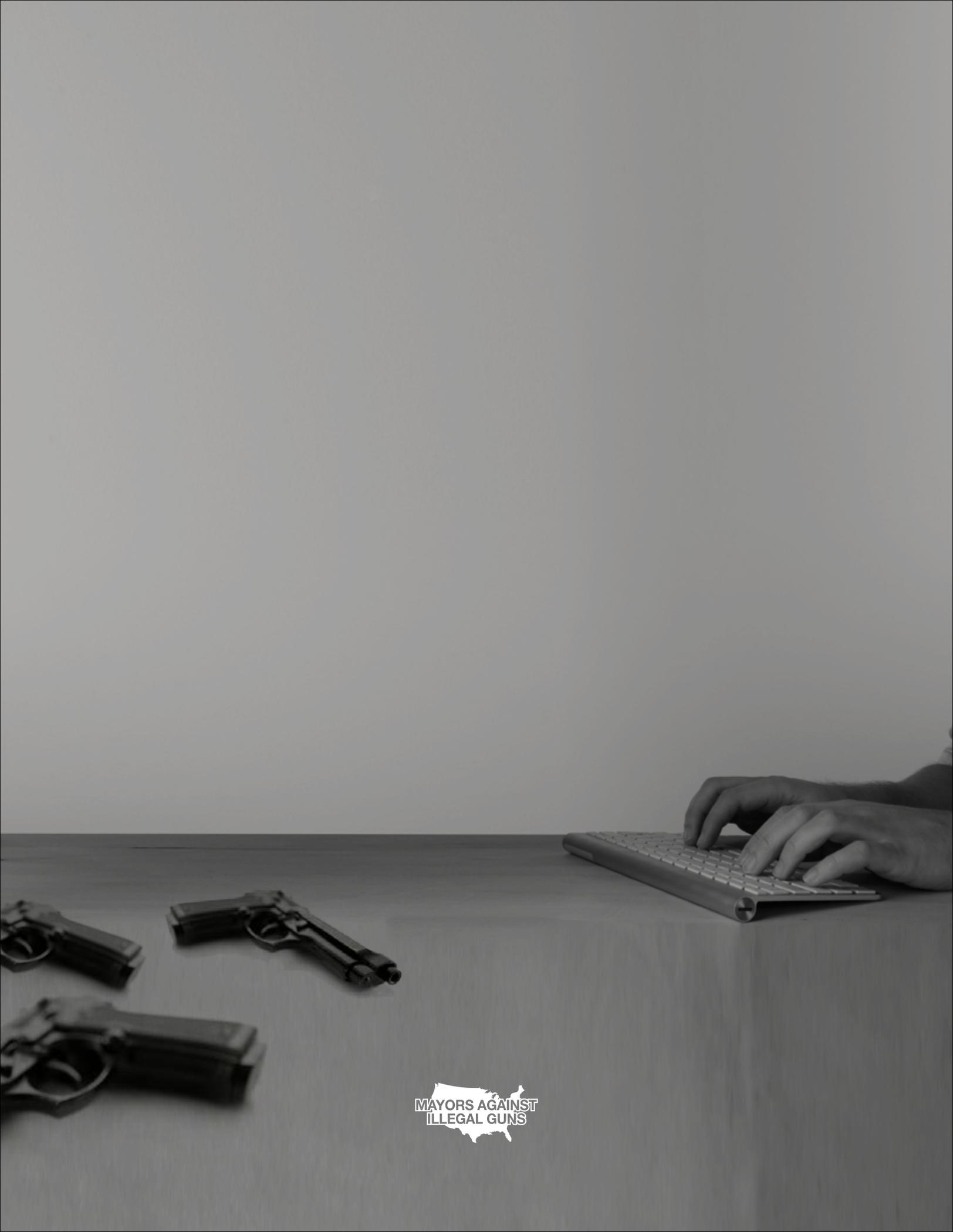
Barring this, websites can still recommend their users conduct background checks and provide tools to facilitate them. The website GunBroker.com organized an “FFL Holder Network” to conduct background checks for private sellers on the website, and 17,000 gun dealers have already joined voluntarily. This is not surprising because the majority of federally licensed gun dealers already support expanding background checks to all private transfers.<sup>43</sup> Other websites could adopt a similar model.



## ENDNOTES

- 1 Mayors Against Illegal Guns, "Felon Seeks Firearm, No Strings Attached," September, 2013, available at: <http://on.nyc.gov/1fheant>.
- 2 18 U.S.C. § 921(a)(21)(C). The term "dealer" "shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby."
- 3 Pub. L. No. 99-308, § 101(6), as amended by Pub. L. No. 99-360, § 1(b) and codified at 18 U.S.C. § 921(a)(21)-(22). Prior to 1986 when Congress passed the Firearms Owners Protection Act (FOPA), the legal standard for "engaged in the business" was not defined by federal statute and did not explicitly exclude collectors. Some courts applying the pre-1986 "engaged in the business" standard analyzed whether the defendant had a "profit motive" and whether he devoted "time, attention and labor" to selling firearms; others applied a less restrictive test that focused on the defendant's "readiness and willingness to procure weapons for sale" and whether the defendant held himself out as a dealer. See e.g., *United States v. Reminga*, 493 F. Supp. 1351, 1355 & 1358 (W.D. Mich. 1980). For both of these tests, claims of selling from a personal collection were not a defense, and the case focused on how many guns were sold, how much time was spent was selling them, and whether they were sold for profit. See *Id.* at 1358; *United States v. Tarr*, 589 F.2d 55, 59 (1st Cir. 1978) (establishing "regular course" requirement, which was later written into statute); *Oddo v. Dep't of the Treasury, ATF*, 13 M.S.P.R 483, 485 (1982); *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); *United States v. Murphy*, 852 F.2d 1, 18-20 (1st Cir. 1988).
- 4 See 18 U.S.C. § 922(a)(1)(A); 18 U.S.C. § 921(a)(21)(C).
- 5 *Id.*
- 6 At the time the private seller exception was created, its Congressional backers explained it had been written narrowly to exclude only "gun collectors and hobbyists," "sportsmen and sportswomen selling or trading [...] with their friends and hunting buddies," and collectors making exchanges "strictly for hobby purposes." 131 Cong Rec S 9101 (July 9, 1986) (statement of Sen Grassley); 132 Cong Rec H 1741 (April 10, 1986) (statement of Rep. Lightfoot); 132 Cong Rec H 1689 (April 9, 1986) (statement of Rep. Thomas).
- 7 18 USCS §§ 922(a)(1)(A), 924(a)(1).
- 8 U.S. Department of the Treasury and U.S. Department of Justice, "Gun Shows: Brady Checks and Crime Gun Traces," 1999, available at: <http://1.usa.gov/1bUu74b>.
- 9 *United States v. Hyde*, 1996 U.S. App. LEXIS 4679 (9th Cir. 1996)
- 10 *United States v. Nadirashvili*, 655 F.3d 114 (2d Cir. 2011). The same court found that the state had presented evidence of engaging in the business where a defendant sold two firearms in a month and held himself out as a "source of supply for other weapons." *United States v. Shan*, 361 Fed. Appx. 182 (2d Cir. 2010)
- 11 U.S. Department of Justice, "National Integrated Firearms Violence Reduction Strategy," 2001, available at: <http://1.usa.gov/JbLjpL>. See also: "Gun Shows: Brady Checks and Crime Gun Traces," page 24: "Although illegal activities by unlicensed traffickers often become evident to investigators quickly, months of undercover work and surveillance are frequently necessary to prove each of the elements in the current definition and to disprove the applicability of any of the several statutory exceptions."
- 12 Transactional Records Access Clearinghouse, Syracuse University, available at: <http://bit.ly/1e3QUfA>.

- 13 The Chattanooga, "Man Who Allegedly Sold Gun To Man Who Killed Sgt. Chapin To Forfeit 323 Weapons," December 17th, 2012, <http://bit.ly/1f4Sg5Z>.
- 14 WBIR, "3 Chattanooga men sentenced for illegal gun sales," May 10, 2013, available at: <http://on.wbir.com/1aSxSRu>.
- 15 Sara Jean Green, "Feds arrest gun dealer who allegedly sold rifle used in police officer's slaying," The Seattle Times, November 19th, 2010, available at <http://bit.ly/19fuDXY>.
- 16 U.S. Department of Justice, "Olympia Man Sentenced to Prison For Illegal Gun Sales," March 19, 2012, available at: <http://1.usa.gov/1czcKUY>.
- 17 John Diedrich, "Pewaukee man pleads guilty to selling weapons to a felon," Milwaukee-Wisconsin Journal Sentinel, January 3, 2011, available at: <http://bit.ly/17mATc9>.
- 18 Jim Stevens, "Pewaukee man sentenced for dealing guns," February 8, 2011, Living Lake Country, <http://bit.ly/1aVNY2p>
- 19 Nicole Welsensee, "Drug Dealer Linked To Gun Cops Search For Owner After Boy's Tragic Death," Philly.com, April 21, 1999, available at: <http://bit.ly/1d74eKY>.
- 20 L. Stuart Ditzen, "Suit in boy's death blames gun shop / The groundbreaking case says the weapon went from a legal sale to the black market," Philly.com 4/18/2004, available at: <http://bit.ly/19ijMlf>. ; see also <http://bit.ly/17neHia>.
- 21 Levi Pulkkinen, "Ex-cop who illegally dealt guns headed to prison," Seattle PI, February 23, 2013, available at: <http://bit.ly/1fA869j>
- 22 Rick Anderson, "Roy Alloway's 2,000-Gun Salute," Seattle Weekly, March 20, 2013, available at: <http://bit.ly/HLL9nS>.
- 23 John Farley, "Former Bremerton cop to be sentenced for firearms, tax evasion crimes," Kitsap Sun, February 22, 2012, available at: <http://bit.ly/17SB30k>.
- 24 U.S. Department of Justice, "Former Police Officer Sentenced to Prison for Illegal Gun Sales and Tax Crime," February, 23, 2013, available at: <http://1.usa.gov/1bu9eXe>
- 25 Darren Barbee, "After Fort Worth man illegally sold guns, some went to Mexico," July 1, 2011, Fort Worth Star-Telegram, available at: <http://bit.ly/1dn0ghJ>.
- 26 Bruce Vielmetti, "Two charged in illegal gun sales," Milwaukee Journal Sentinel, July 22, 2010 available at: <http://bit.ly/17sRMqX>.
- 27 John Diedrich, "Hartford man, 75, sentenced for illegal gun sales," Milwaukee Journal Sentinel, May 29, 2011, available at: <http://bit.ly/17PGETI>.
- 28 Greenville News, "Upstate man pleads guilty to trafficking Ak-47s," January 31, 2013, available at: <http://bit.ly/1e5S1rr>.
- 29 Mayors Against Illegal Guns, "Access Denied: How the Gun Lobby is Depriving Police, Policy Makers, and the Public of the Data We Need to Prevent Gun Violence," January 14, 2013, available at: <http://bit.ly/J2RFqS>.
- 30 U.S. Department of the Treasury and Bureau of Alcohol, Tobacco & Firearms, "Following the Gun: Enforcing Federal Laws Against Firearms Traffickers," June 2000, available at: <http://maig.us/1aSF0IG>.
- 31 Garen Wintemute, Gun Shows Across a Multistate American Gun Market: Observational Evidence on the Effects of Regulatory Policies, Injury Prevention, 13: 150-156, 2007.
- 32 The City of New York, "Gun Show Undercover: Report On Illegal Sales at Gun Shows," October, 2009, available at: <http://bit.ly/19fB51j>.
- 33 U.S. Department of Justice, "Gun Violence Reduction: National Integrated Firearms Violence Reduction Strategy," at 28, available at <http://1.usa.gov/JbLjpL>.
- 34 Mayors Against Illegal Guns, "Felon Seeks Firearm, No Strings Attached," September 10, 2013, available at: <http://bit.ly/1fhwKf9>.
- 35 See United States v. White, 175 Fed. Appx. 941 (9th Cir. 2006); United States v. Tyson, 653 F.3d 192 (3rd Cir. 2011); United States v. Brenner, 2012 U.S. App.LEXIS 8745 (5th Cir. 2012); United States v. Pegg, 2013 U.S.App.LEXIS 20939 (5th Cir. 2013).
- 36 Id.
- 37 Id.
- 38 Id.
- 39 Some states require people to obtain a state-issued permit before purchasing any gun, and passing a background check is part of the permit approval process.
- 40 The other 9 gun sellers (28 percent) appeared willing to violate the law. Two of them were from Colorado, which did not require background checks for private gun sales until July 2013 and where the constitutionality of that law is still being challenged.
- 41 Mayors Against Illegal Guns, "How Many Gun Dealers Are There In Your State?" available at <http://bit.ly/1d75Rs5>.
- 42 Gunbroker.com, "FFL Dealer Locator: Find FFL Dealers & Holders," available at <http://bit.ly/18SG7CR>.
- 43 Garen Wintemute, "Support for a Comprehensive Background Check Requirement and Expanded Denial Criteria for Firearm Transfers: Findings from the Firearms Licensee Survey," J Urban Health, November 8, 2013, available at: <http://1.usa.gov/1fhsuwe>.



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