

United States Senate
WASHINGTON, DC 20510

November 7, 2022

VIA ELECTRONIC TRANSMISSION:

Steven Dettelbach
Director
U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives
99 New York Avenue, NW
Washington, D.C. 20226

Subject: ATF FFL Revocation Concerns

Dear Director Dettelbach,

We have received reports of a growing amount of Federal Firearms License (FFL) revocations, all occurring at the direction of the Biden Administration. We are concerned the overzealous enforcement of minor paperwork errors is shuttering the doors of hardworking businesses and infringing on the Second Amendment in the process, including hardworking businesses across Iowa. Just recently, an Iowa FFL in the Des Moines area reported to us they had to give up their license due to clerical errors that were not willfully committed, and we are aware of another Iowa FFL who is currently working through the revocation process under similar circumstances. From our conversations with Iowa FFLs, only the largest businesses can afford the dedicated staff necessary to survive the Administration's crackdown on FFLs. While we understand and support regular compliance checks, revoking FFL licenses based on minor clerical errors appears to be focused on shutting down businesses rather than improving public safety. These types of revocations are distracting the ATF from the more necessary work of combating violent crime while the United States continues to suffer from an unprecedented surge in murders.

In June 2021, President Biden directed the Justice Department to adopt a zero-tolerance policy to revoke federal firearms licenses (FFLs) from those who committed "willful" violations of the law.¹ President Biden has made it a top priority to hold "rogue" firearms dealers accountable in order to combat gun trafficking.² While any business or person should be prosecuted for purposefully breaking the law, there is little evidentiary basis for the idea that FFLs are contributing substantially to illegal gun trafficking. A study by the DOJ found that few firearms used in crime are acquired from firearm dealers, about 7%, compared to 56% who stole a firearm

¹ Press Release, The White House, Biden-Harris Administration Announces Comprehensive Strategy to Prevent and Respond to Gun Crime and Ensure Public Safety (June 23, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/23/fact-sheet-biden-harris-administration-announces-comprehensive-strategy-to-prevent-and-respond-to-gun-crime-and-ensure-public-safety/>.

² *Id.*; see also Press Release, The White House, President Biden's Historic Actions to Make Our Communities Safer by Reducing Gun Crime (Mar. 1, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/23/fact-sheet-biden-harris-administration-announces-comprehensive-strategy-to-prevent-and-respond-to-gun-crime-and-ensure-public-safety/>.

or bought it on the black market.³ In those cases, FFLs may well have complied with all legal requirements and it is not clear what policing them more closely would accomplish. Despite the statistics, President Biden moved forward with the policy of targeting FFLs in June 2021. The ATF soon after updated its *Federal Firearms Licensee Quick Reference and Best Practices Guide*. The new guidance stated, “ATF will, absent extraordinary circumstances, initiate proceedings to revoke the license of any dealer that has committed a willful regulatory violation of the Gun Control Act (GCA) for specified violations.”⁴ These willful violations now include “falsifying records” and “failing to maintain records needed for successful firearms tracing.”⁵

Since its announcement, there have been concerns this policy may be capriciously enforced. It has been over a year since the policy went into effect, and it is evident the very real concerns felt upon the announcement appear to be proven true. We have received numerous reports that businesses have been shuttered over offenses that were previously allowed to be corrected on the spot. Many appear to be accidental, rather than “willful.” In fact, we have heard of the ATF reopening previously closed inspections, and then administering harsh punishment against those whose offenses were previously considered minor.

The Gun Control Act of 1968 authorizes the ATF to inspect FFLs to ensure they are compliant with the record keeping requirements and all other applicable laws and regulations.⁶ The violation can range from the issuance of warning letters and attending warning conferences to revoking FFL licenses and referring the case for criminal enforcement. The process was to question, warn, and then revoke. It seems under this zero-tolerance directive, the policy now seems to be revoke first and ask questions later. This year, the ATF revoked 92 licenses, more than in any year since 2006.⁷ The total more than triples the number of licenses revoked in 2021, when a similar number of dealers were inspected.⁸

The first goal of working with FFLs should be to help them to comply with the law and respect the vital role FFLs play in providing law abiding citizens with the means to defend themselves, not to eradicate small businesses for mere administrative errors. Thomas Brandon, former Acting Director of the ATF stated it best: the goal is not to penalize gun shops and federal firearms licensees but to gain their compliance,⁹ “The high majority of FFLs are good hardworking people running businesses, and they’re our front-line of defense for intelligence for diversion of firearms with straw purchases...”¹⁰ FFLs are a crucial partner in stopping dangerous criminals from accessing firearms, and they should be treated as such. As a regulatory agency, the ATF is entrusted with a special responsibility to fairly and consistently govern over the industry it regulates. These alleged actions by the ATF violate that trust and erode confidence within the regulator. While we have faith in the agents working to uphold the law, we are concerned the policies being executed from the top down

³ U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, SOURCE AND USE OF FIREARMS INVOLVED IN CRIMES: SURVEY OF PRISON INMATES, 2016 (2019).

⁴ BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES, PUB. 5300.15, FEDERAL FIREARMS LICENSEE QUICK REFERENCE AND BEST PRACTICES GUIDE (2021), <https://www.atf.gov/firearms/federal-firearms-licensee-quick-reference-and-best-practices-guide>.

⁵ *ATF Targeting FFLs for License Revocation*, NAT’L RIFLE ASS’N: INST. FOR LEGISLATIVE ACTION (Mar. 16, 2022), <https://www.atf.gov/firearms/federal-firearms-licensee-quick-reference-and-best-practices-guide>.

⁶ See Gun Control Act of 1968, Pub. L. No. 90-618, 82 Stat. 1213.

⁷ See Champe Barton, *New Data Shows ATF Gun Store Revocations at Highest Rate in 16 Years*, USA TODAY (Oct. 5, 2022), <https://www.usatoday.com/story/news/investigations/2022/10/05/atf-crackdown-gun-shops-new-data/8186091001/>.

⁸ *Id.* (referencing data compiled by the Bureau of Alcohol, Tobacco, Firearms and Explosives).

⁹ Brian Freskos et al., *After Repeated ATF Warnings, Gun Dealers Can Count on the Agency to Back Off; Sometimes Firearms Flow to Criminals*, USA TODAY (May 26, 2021), <https://www.usatoday.com/in-depth/news/investigations/2021/05/26/gun-dealers-let-off-hook-when-atf-inspections-find-violations/7210266002/>.

¹⁰ *Id.*

are disrupting the livelihoods of hardworking citizens. To facilitate a timely address of these concerns, please provide us with the following information by December 7, 2022:

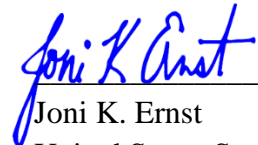
1. Please explain the process that must be followed when the ATF sends a revocation letter to an FFL. Has that process changed in the new Administration?
2. Please provide the statistics of FFLs that are closing/going out of business compared to new FFLs in business for FY2022.
3. Please describe what ATF considers a “willful violation” compared to a clerical mistake or error when inspecting an FFL. How does the ATF determine the difference in a violation?
4. You testified that “unintentional violations are much less serious than intentional violations” and that on that basis FFLs should not lose their license. How many of the revocations from October 2021 to August 2022 were due to “willful” violations?
5. How many FFLs received a “notice of revocation,” which happens after an inspection and prior to a revocation hearing?
6. How many FFLs, after receiving a notice of revocation, surrendered their license rather than requesting a hearing? How many times did the ATF conclude an inspection with a warning letter or warning conference only to later serve the FFL with a notice of revocation?

We appreciate your cooperation in this matter.

Sincerely,



Charles E. Grassley
Ranking Member
Senate Judiciary Committee



Joni K. Ernst
United States Senator