

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

MICHAEL CARGILL and
CTC HGC, LLC,
Plaintiffs,

V.

BUREAU OF ALCOHOL, TOBACCO,
FIREARMS AND EXPLOSIVES; ATF
DIRECTOR STEVEN DETTELBACH,
in his official capacity; ATTORNEY
GENERAL MERRICK GARLAND,
in his official capacity; UNITED STATES
DEPARTMENT OF JUSTICE; and
UNITED STATES OF AMERICA,
Defendants.

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Civil Action No. 1:22-cv-01063

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

In 1986, Congress amended the Gun Control Act (the “Act” or the “GCA”), adding a “willfulness” requirement to the statute to protect gun store owners from prosecution over common, honest errors—“men and women who bungled their paperwork.” Ex. 13: 131 CONG. REC. S23-03, 1 (1985); *see* 18 U.S.C. § 923(e). On orders from the President, Defendants now seek to illegally and unconstitutionally undo the protections that Congress expressly extended to Federal Firearms Licensees (“licensees” or “FFLs”). After decades of helping licensees comply with the requirements of the Gun Control Act (the “Act”), the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) has radically shifted its policy under the President’s “zero tolerance” edict for revoking licenses.

This new enforcement policy violates the Act by undoing what Congress sought to do in 1986 and effectively writing its crucial *mens rea* term—“willfully”—out of the statute. The new enforcement policy also violates the Constitution. It results in unlawful prosecution for inadvertent paperwork errors, and thus the loss of livelihoods, or worse, time in prison. Plaintiffs Michael Cargill and his gun store business, CTC HGC, LLC, (together hereinafter “Cargill”), move for summary judgment, pursuant to Fed. R. Civ. P. 56, and seek a declaration that the ATF’s new enforcement policy violates the Act and a permanent injunction preventing Defendants from enforcing their illegal and unconstitutional “zero tolerance” policy.

STATEMENT OF THE ISSUES

- 1) Whether ATF’s summary characterization of inadvertent mistakes as “willful” violates the Gun Control Act by eliminating the *mens rea* requirements of its crimes.
- 2) Whether ATF’s new “zero tolerance” enforcement policy violates the Second Amendment because it is not consistent with this Nation’s history and tradition of firearm regulation.
- 3) Whether equitable relief is appropriate to restrain ATF from acting unlawfully.

STATEMENT OF FACTS

I. ATF’s Decades-Long Revocation Policy Focused on Compliance and Education, Not Punishment.

For decades, ATF inspected licensees and enforced the Act with an eye towards “ensur[ing] compliance with the law and regulations and . . . educat[ing] licensees on the specific requirements of those laws and regulations.” Ex. 4: ATF, License Revocation Fact Sheet, at 1 (May 2014). ATF would only revoke licenses on “rare occasions” when it “encounter[ed] a licensee who . . . demonstrate[ed] a lack of commitment to improving his or her business practices.” *Id.*

This enforcement posture was reflected in ATF’s enforcement order. The 2019 version of the enforcement order, ATF O 5370.1D or “Order D,” explains: “It is necessary to establish willfulness” to revoke a license. Ex. 1: Order D at 6, ATF0504. This meant that ATF was required to “prove that the licensee knew its legal obligations under the Act and either purposefully disregarded or demonstrated a plain indifference or a reckless disregard to them.” *Id.* That version of the enforcement order communicated a reasonable standard for “willfulness.” It explained that “[n]ot every repeat violation is per se a willful violation,” and “[a] single, or even a few, inadvertent errors in failing to complete forms may not amount to ‘willful’ failures, even when the FFL knew of the legal requirement to complete the forms.” *Id.* Willfulness could be “infer[red] as a matter of law” only “after repeated warnings and explanations of the severity of the failures.” *Id.*

Order D also gave examples of the rare instances when revocation could be appropriate if there was not a history of prior violations. These included “an intentional straw sale,” “*knowingly* transferring to a prohibited person, refusing ATF right of entry and inspections during hours of operation at the licensed premises, discontinuing use of [the Act’s] required records, *knowingly* entering false information or *intentionally* making false statements involving required records under the [Act].” *Id.* (emphasis added). As exemplified by the italicized words, each of those

violations set a high bar for willfulness and indicate an affirmative choice by a licensee to disregard the Act's requirements.

Additionally, Order D gave three ways for ATF to “establish the knowledge element of willfulness”:

- (a) Establish the FFL has a history of similar, repeat violations, and the inspection report documents that an [officer] discussed them with the FFL. The FFL's compliance history can include other efforts by ATF (including qualification inspections) to inform the FFL about its legal responsibilities.
- (b) Use inspection reports to establish willfulness even if the inspection found no violations (i.e., acknowledgement of Federal firearms regulations).
- (c) Statements or admissions communicated by the FFL or its employee(s), as well as actions by the FFL or its employee(s) during an inspection that hindered or obstructed the inspection, or other evidence, can also establish willfulness.

Id. at 6-7, ATF0527-28.

As shown by the administrative record, this reasonable understanding of “willfulness” resulted in very rare revocations. In 2018, there were only 49 revocations and 34 surrenders of licenses in lieu of revocation out of 10,323 inspections, for a revocation rate of 0.8%. Ex. 5: ATF, 2018 Fact Sheet, at 2 (May 2019), ATF0454. Revocations were even scarcer in 2019, when only 43 out of 13,079 inspections resulted in revocation (0.33%). Ex. 6: ATF, 2019 Fact Sheet, at 2 (June 2020), ATF0457. In 2020, only 40 out of 5,827 (0.69%) inspections resulted in revocation. Ex. 7: ATF, 2020 Fact Sheet, at 3 (April 2021), ATF0462. Fiscal Year 2021 had only 27 revocations out of 6,639 (0.41%) inspections. Ex. 8: ATF, 2021 Fact Sheet, at 2 (August 2022), ATF0470. Unfortunately for law-abiding licensees, all this was about to change.

II. ATF Announces a “Zero Tolerance” Policy.

In June 2021, the Biden Administration announced that it would change ATF's enforcement policy for licensees. Ex. 10: WHITE HOUSE, REMARKS BY PRESIDENT BIDEN AND ATT'Y GEN.

GARLAND ON GUN CRIME PREVENTION STRATEGY 3 (June 23, 2021), ATF0021. Specifically, Attorney General Garland explained:

Absent extraordinary circumstances, ATF will initiate proceedings to revoke the licenses of dealers that willfully violate the law by failing to conduct required background checks, falsifying records, failing to respond to trace requests, refusing to permit ATF to conduct inspections, or transferring firearms to persons who are prohibited from owning them.

Id. Or, in President Biden’s words, “It’s zero tolerance for gun dealers who willfully violate key existing laws and regulations. Let me repeat: zero tolerance.” *Id.* at 6, ATF0024.

This announcement was followed by a memorandum in July 2021 from the Acting Assistant Director (Field Operations) to All Special Agents in Charge and All Directors of Industry Operations (“July 2021 Memo”). Ex. 11: July 2021 Memo, ATF0033. That memo announced that ATF will be issuing a new enforcement policy, a new version of Order D. *Id.* at 2, ATF0034. The new enforcement policy would result in an automatic revocation recommendation when a licensee willfully commits one of five specific violations: (1) transferring a firearm to a prohibited person; (2) failing to conduct a required background check; (3) falsifying records, such as a firearms transaction form; (4) failing to respond to a tracing request; and (5) refusing to permit ATF to conduct an inspection. *Id.* The new enforcement order would also set up new procedures for inspections that result in findings of those five listed violations. *Id.*

III. ATF Institutes New Enforcement Orders That Effectively Write Out the Willfulness Requirement.

ATF followed up on the July 2021 memorandum with new enforcement orders: ATF O 5370.1E (Jan. 28, 2022) (“Order E”), Ex. 2, ATF0510, and ATF O 5370.1F (Jan. 13, 2023) (“Order F” or “new enforcement policy”), Ex. 3, ATF0522. The new orders implement the promised changes, deleting the portion of Order D that said ATF “must prove that the licensee knew its legal obligations under the Act and either purposefully disregarded or demonstrated a plain indifference

or a reckless disregard to them.” *Compare* Ex. 1, at 6, ATF0504 *with* Ex. 3, at 6, ATF0527. They also list the five violations listed in the July 2021 memorandum as ones that “inherently demonstrate willfulness.” Ex. 3, at 6, ATF0527. Specifically, they list: “transferring a firearm to a prohibited person; failing to run a background check prior to transferring a firearm to a non-licensee; falsifying records, or making false statements; failing to respond to an ATF tracing request; refusing to permit ATF to conduct an inspections; or allowing a straw sale of a firearm to occur.” *Id.*

Orders E and F further undermine the willfulness requirement of the Act by creating situations where “revocation is the assumed action, unless extraordinary circumstances exist.” Ex. 2, at 3, ATF0512; Ex. 3, at 3, ATF0524. This section explicitly references the newly implemented “zero tolerance” policy. *Id.* Moreover, when one of the five relevant violations are cited, the inspection must be reviewed by the Deputy Assistant Director of Field Operations (Industry Operations)—known in the industry and in Order F as “DAD (IO).” Ex. 3, at 7, ATF0528. (“All inspections with instances of [the five relevant] violations . . . must come to the Deputy Assistant Director (DAD) (IO) for approval.”). Order F does not say that the violations need to be willful in order to be sent to the DAD (IO), where revocation is the assumed action.

The enforcement orders also expand how “ATF can establish the knowledge element of willfulness” from three ways to six. *Id.* at 6, ATF0527. The first three are essentially the same as appeared in Order D. (See ATF0504). They add three more; ATF can:

- (d) [Use p]ublications and information provided to the FFL which explain the FFL’s legal responsibilities.
- (e) Demonstrate that the FFL has complied with the specific regulations on other occasions.
- (f) Demonstrate that the FFL has substantial experience as an FFL.

Id. at 7, ATF0528.

The results have been predictable. Even with the lag in time for the new enforcement orders to result in revocations, the revocation rate jumped over 1% for the first time in recent history in 2022. Ex. 9: ATF, 2022 Fact Sheet, at 2 (ATF0476) (showing 90 out of 6,979 (1.29%) of inspections resulted in revocation. This is significant because the Gun Control Act carries criminal penalties. *See, e.g.*, 18 U.S.C. § 921(a)(1) (“whoever . . . knowingly makes any false statement or representation with respect to the information required by this chapter . . . to be kept in the records of a person licensed under this chapter . . . shall be fined under this title, imprisoned not more than five years, or both”). ATF’s finding that someone “willfully violated any provision of this chapter,” therefore, could easily result in even more serious consequences than license revocation. *Id.* at § 923(e).

IV. Cargill Owns and Operates a Gun Store That Offers Classes and Training to Texans.

Cargill is a licensee who operates a gun shop called Central Texas Gun Works in Austin, Texas. Compl., ECF No. 1, at ¶ 42. In addition to selling and transferring firearms, Cargill offers license to carry handguns classes, safety classes, and beginner firearm classes. *Id.*, at ¶ 43; Ex. 12: ATF, NARRATIVE OF REPORT OF INSPECTION 1 (July 21, 2023), ATF0535. Instruction includes classroom teaching and live firing at a gun range. Compl. at ¶ 44; Ex. 12, at 1, ATF0535.

Cargill was inspected in both 2018 and 2023. In light of these inspections and due to the new enforcement policy, Cargill had to implement more extensive safeguards and procedures for fear of accidentally running afoul of the ATF’s enforcement orders. Ex. 14 at ¶ 12; Ex. 15 at ¶¶ 4-8. These include purchasing four new computers, transferring all inventory into a new computer system, *id.* at ¶ 5, purchasing and subscribing to new software for background checks, *id.* at ¶ 7, and training employees with respect to the new computer and software systems, *id.* at ¶ 8. These procedures are burdensome and expensive.

STANDARD OF REVIEW

“Summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed ‘to secure the just, speedy and inexpensive determination of every action.’” *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986) (quoting Fed. R. Civ. P. 1). Summary judgment under Rule 56(c) is appropriate when there is no genuine issue as to any material fact in the case and the moving party is entitled to judgment as a matter of law. *Id.* at 322.

ARGUMENT

I. ATF’s New Enforcement Policy Violates the Gun Control Act.

ATF’s radical shift in enforcement policy violates the Gun Control Act by effectively writing the word “willfully” out of the statute. 18 U.S.C. § 923(e). Despite the fact that “[a]dministrative agencies are creatures of statute . . . [and] possess only the authority that Congress has provided,” *see Nat’l Fed’n of Indep. Bus. v. OSHA*, 142 S. Ct. 661, 665 (2022), ATF’s new enforcement policy defies its congressional mandate by allowing prosecution for honest mistakes and errors.

A. The New Enforcement Policy Runs Contrary to the Plain Intent of Congress, Relevant Fifth Circuit Precedent, and the Traditional Canons of Statutory Construction.

1. Congress amended the Act in 1986 to prevent exactly what Defendants are now doing.

ATF “must point to clear congressional authorization” giving it the power to issue its enforcement policy because the policy is novel, embodies a policy decision that infringes on individual liberties—both substantive and structural—fundamentally changes the statutory scheme, and intrudes on the states’ police power. *See West Virginia v. EPA*, 142 S. Ct. 2567, 2610, 2616 (2022). However, far from finding express congressional authorization for ATF’s new

enforcement policy, we find the opposite. When Congress amended the Act in 1986, it was not trying to give ATF more authority, but less. That is because ATF had been doing exactly what it now seeks to do, and Congress meant to stop it.

Congress could not have been clearer about its intentions when it added the term “willfully” to the Gun Control Act through the Firearm Owners’ Protection Act (“FOPA”) in 1986. It is worth quoting the sponsor of the amendment, Sen. James McClure, at length:

Extensive hearings and study of the actual enforcement of [the Act] clearly show that the ones who bear the brunt of this law are not necessarily the most dangerous criminals. *The ones who have been harassed by the enforcement of this act are often innocent men and women who have bungled their paperwork. . . .* While genuine criminals are all too often let free to roam the streets, these law-abiding gun owners and dealers have had their property unconstitutionally seized and held and their business and lives ruined. People who have done their best to comply with the law are forced to bear the sigma of Federal felons.”

Ex. 13: 131 CONG. REC. S23-03, at 1 (emphasis added). The amendment was “designed [in part] to . . . [m]andate an element of criminal intention for prosecution and conviction of Federal firearms law violations.” *Id.* The new enforcement policy stands in direct violation of Congressional intent, which is stark evidence of its illegality.

2. The Fifth Circuit has been exceedingly clear about how to interpret the willfulness requirement.

The Fifth Circuit has never found any lack of clarity or ambiguity in the meaning of “willfully.” Although the Act does not expressly define the word, that does not mean the term lacks a legal meaning. The Fifth Circuit has held that a licensee has acted “willfully” under the Gun Control Act when he “knew of his legal obligation and *purposefully* disregarded or was *plainly indifferent* to the record-keeping requirements.” *Fairmont Cash Mgmt., L.L.C. v. James*, 858 F.3d 356, 362 (5th Cir. 2017) (emphases added); *see also* Model Penal Code § 2.02(8) (“A requirement that an offense be committed willfully is satisfied if a person acts knowingly with respect to the material elements of the offense, unless a purpose to impose further requirements appears.”).

The willfulness requirement provides the crucial *mens rea* element that is necessary for any crime. *See Staples v. United States*, 511 U.S. 600, 605 (1994) (“we must construe the statute in light of the background rules of the common law, in which the requirement of some *mens rea* for a crime is firmly embedded”) (citation omitted); *id.* at 605-06 (“the common-law rule requiring *mens rea* has been followed in regard to statutory crimes even where the statutory definition did not in terms include it” and the Supreme Court has “suggested that some indication of congressional intent, express or implied, is required to dispense with *mens rea* as an element of a crime”) (citation omitted); *see also Morissette v. United States*, 342 U.S. 246, 250 (1952) (“The contention that an injury can amount to a crime only when inflicted by intention is no provincial or transient notion. It is as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil.”).

3. The textual meaning of “willful” is neither unclear nor ambiguous.

Even apart from relevant case law, basic principles of statutory interpretation demonstrate that “willfully” means an intent to commit an act, and not an inadvertent error. According to foundational maxims of interpretation, a provision’s “[w]ords are to be understood in their ordinary, everyday meanings,” Scalia & Garner, *READING LAW* § 6 (2012), and they “must be given the meaning they had when the text was adopted,” *id.* at § 7. At the time Congress amended the Act, “willful” meant—as it does today—“done with deliberate intention and not as an accident.” *OXFORD AMERICAN DICTIONARY* 796 (1980). *See also id.* at 344 (defining “intention” as “one’s purpose”). This basic and obvious definition weighs heavily in this case. After all, the “words for a governing text are of paramount concern, and what they convey, in their context, is what the text means.” Scalia & Garner at § 2. Such is the “best evidence” for Congress’s purpose in allowing

the Attorney General a basis to revoke licenses. *See W. Va. Univ. Hosps. v. Casey*, 499 U.S. 83, 98-100 (1991).

The traditional canons of statutory construction reinforce that “willful” requires a higher degree of intentionality than does ATF’s new enforcement policy. For example, the surplusage canon requires that “every word and every provision is to be given effect. . . . None should needlessly be given an interpretation that causes it . . . to have no consequence.” Scalia & Garner, at § 26. Here, “willfully” must not become inconsequential. *See infra*, Part II(B). Similarly, under the omitted-case canon, a matter “not covered is to be treated as not covered.” Scalia & Garner, at § 8.

Here, lesser states of culpability were omitted from the 1986 amendments; only “willfully” was included. As Judge Blackmun once noted, “if the Congress [had] intended to provide additional exceptions, it would have done so in clear language.” *Petteys v. Butler*, 367 F.2d 528, 538 (8th Cir. 1966) (Blackmun, J., dissenting). Relatedly, the negative-implication canon provides that “[t]he expression of one thing implies the exclusion of others.” Scalia & Garner, at § 10. Here, Congress only included “willfully,” not lesser states of culpability.

Furthermore, the doctrine of constitutional avoidance instructs courts to avoid reading statutory text in such a way that would produce a constitutional violation. *See United States v. Davis*, 139 S. Ct. 2319, 2333 (2019). The *mens rea* element is a necessary component of a crime, *Staples*, 511 U.S. at 605-06, and crimes are properly defined by the legislative and not executive branch of government, *Cargill v. Garland*, 57 F.4th 447, 451 (5th Cir. 2023). “[W]illfully,” therefore, should be read so as not to offend separation-of-powers principles by allowing an executive agency to exercise so much control over what constitutes criminal conduct. *See id.* at 470; *see also Collins v. Yellen*, 141 S. Ct. 1761, 1780 (2021) (finding a right “that belongs to

everyone in this country” to be regulated in accordance with “separation of powers,” which “is designed to preserve the liberty of all people”).

In this situation, particularly, where the statute at issue carries criminal penalties, allowing ATF to remove the threshold *mens rea* requirement would also run afoul of due-process principles, and should be avoided. *See Davis*, 139 S. Ct. at 2325, 2333 (arguing that the avoidance canon should be used not to offend “due process and separation-of-powers principles”); *see also Sessions v. Dimaya*, 584 U.S. 148, 175-77, 181 (2018) (Gorsuch, J., concurring in part) (explaining the relationship between due process and separation-of-powers principles).

Finally, assuming there is any ambiguity left in the statute after applying the canons of interpretation, the rule of lenity favors Cargill’s meaning. The rule of lenity “teach[es] that ambiguities about the breadth of a criminal statute should be resolved in the defendant’s favor.” *Davis*, 139 S. Ct. at 2333. Reading the law this way respects the due process rights of defendants, *id.*, and “preserves the separation of powers by maintaining the legislature as the creator of crimes.” *Cargill*, 57 F.4th at 470. It also disincentivizes “the possibility whereby Congress passes an ambiguous criminal statute, only to be interpreted later by a federal agency.” *Id.* Here, “willfully” is not ambiguous, but even assuming, *arguendo*, that it is, it should not be read to criminalize honest mistakes when another, more plausible meaning exists.

B. ATF’s New Enforcement Policy Will Result in Gun Shops Being Prosecuted for Inadvertent Mistakes.

Despite the numerous indicators the Act requires a genuine degree of *mens rea*, ATF’s new enforcement policy effectively write out that requirement, and direct ATF to revoke firearms licenses for single, common, inadvertent mistakes. The policy is currently spelled out in Order F, Ex. 3, ATF0522-34, which supersedes and replaces Order E, Ex. 2, ATF0510-21. It marks a radical divergence from the law’s text—under case law, according to the proper methods of statutory

construction, and even according to ATF's own prior definitions.¹ It does this in two ways: first, by imputing "knowledge" to virtually all licensees and, second, by establishing "zero tolerance" for common, inevitable violations of the Act.

1. The new enforcement policy renders the "knowledge" requirement meaningless.

Through its new enforcement policy, ATF has expanded the ways in which the "knowledge element" of willfulness can be "establish[ed]":

- (1) ATF can show "a history of similar, repeat violations[.]"
- (2) ATF can "[u]se inspection reports to establish willfulness even if the inspection found no violations (i.e., acknowledgment of Federal firearms regulations)."
- (3) ATF can use "[s]tatements or admissions communicated by the FFL or its employee(s), as well as actions by the FFL or its employee(s) during an inspection that demonstrate knowledge of regulations and concurrence with the IOI's findings."
- (4) ATF can use "[p]ublications and information provided to the FFL which explain the FFL's legal responsibilities."
- (5) ATF can "[d]emonstrate that the FFL has complied with the specific regulation on other occasions."

Or (6) ATF can "[d]emonstrate that the FFL has substantial experience as an FFL."

Ex. 3 at 6-7, ATF0527-28.

Thus, under Order F, experienced licensees automatically have imputed knowledge. So do licensees that have complied with the law. And all licensees that have been provided with certain ATF literature. And all licensees that have ever acknowledged their obligations previously. Really, any licensee except the most novice licensee is constructively determined to satisfy the "knowledge" requirement of willfulness—meaning almost all of them, and certainly one like

¹ Not only do Defendants recognize the proper meaning of "willful" in prior enforcement policies, but also in public statements. ATF's director, Defendant Dettelbach, during his confirmation hearing responded to a question about a hypothetical "willful violation" by explaining that "'willful' implies something more than an inadvertent error. . . . In general, in the law, the term 'willful' implies a high level of intent." *Nomination Hearing: Hearing Before the Committee on the Judiciary*, 117th Cong. (May 25, 2022) (statement of Hon. Steven Dettelbach) (available at 2:12:54-2:13:10: <https://www.judiciary.senate.gov/meetings/05/25/2022/nominations>).

Plaintiff Cargill, who has decades of experience in the firearms industry. As this shows, the new enforcement policy effectively writes the “knowledge” component out of the willfulness inquiry. With that done, all that is necessary to revoke a license is to establish a single violation of one of the five categories of violation mentioned in the order (“zero tolerance” and “on initial violations”).

2. The new enforcement policy expressly requires revocation for a single instance of common errors.

Where ATF once required that a licensee “knew its legal obligations under the [Act] and either *purposefully disregarded* or demonstrated a *plain indifference or a reckless disregard* to them,” Ex. 1, at 6, ATF0504 (emphasis added), it has now deleted that language from its enforcement policy. Ex. 3, at 6, ATF0527. Where once “even a few, inadvertent errors in failing to complete forms may not [have] amount[ed] to ‘willful’ failures, even when the licensee knew of [its] legal requirement,” and willfulness could be “infer[red] as a matter of law” only “after repeated warnings and explanations of the severity of the failures,” Ex. 1, at 6, ATF0504, there is now a list of actions that “inherently demonstrate willfulness.” Ex. 3, at 6, ATF0527.

In other words, Order D required ATF to show a licensee had some sort of active mental state of intentionally violating or recklessly disregarding its obligations under the Act. Under the new “zero tolerance” approach, ATF “does not [even] have to establish a history of prior violations to demonstrate willfulness.” *Id.* It is true that the new standard still includes the word “willful,” but a close reading of the new standard demonstrates that the inclusion of the statutory language is mere window dressing. In actuality, the new standard directly conflicts with the statute’s “willfulness” requirement and is thus illegal.

The zero-tolerance policy now applies to things like “falsification of records” (e.g. mistakes) on forms like Form 4473, with its 100 inputs, each of which is an opportunity for error. It also includes a single failure to contact NCIS when required to do so, even if the licensee sells

10,000 guns per year, as Plaintiff Cargill does. Due simply to human nature—and regardless of whether Plaintiff knows that 4473 forms are to be filled out correctly—the chance that one input in a million (100 inputs x 10,000 guns sold) will be erroneous is very high. Especially when inputting information on tablets or other devices, customers can inadvertently misspell something as simple as their own name or enter the wrong digit for a birthday or address.

Thus, actions now deemed to “inherently demonstrate willfulness” will now inevitably include good-faith mistakes. “ATF has zero tolerance for willful violations that can directly affect public safety and ATF’s ability to trace firearms recovered in violent crimes. Therefore, *revocation is the assumed action*, unless extraordinary circumstances exist, when [certain violations are found.]” Ex. 3, at 3, ATF0524 (emphasis added). For example, if a licensee does not receive a NICS background-check response within three days and so transfers a firearm to a customer—as it is expressly allowed to do, Ex. 3, at 8, ATF0529—but then receives a negative response thereafter, it will have inadvertently transferred that firearm to a person deemed prohibited after the allowed timeline. ATF will then consider this “willful,” and the business’s license will be subject to revocation, even though in this situation the licensee had no intention of breaching any of its legal obligations. Similarly, “[f]ail[ing] to respond to a firearm trace request within 24 hours,” *Id.*, can happen easily and with good faith—the requests often come by email, and a licensee might be closed for a day without cellular service and not see the email until back in the office. Yet, this, too would jeopardize a licensee’s entire business.

Any failure of a new, inexperienced employee to catch such an unintentional error, where he or she might review as many as 100 forms in a day (one per gun sold), will be imputed to the licensee—not as a basis for establishing negligence, but as a basis for establishing statutory willfulness. None of this, however, is evidence of the willfulness the Act requires. Indeed, the

addition of “willfulness” to the statute in 1986 was *expressly* done to prevent precisely this kind of zero-tolerance enforcement. Ex. 13: 131 CONG. REC. S23-03, at 1, 6. The approach that Defendants have adopted under Order F is illegal under the Act and should be permanently stayed or enjoined.

II. The New Enforcement Policy Violates the Second Amendment of the United States Constitution.

The new enforcement policy also violates the Second Amendment right to the means of effective self-defense, which requires justification by historical analogue. Because Defendants have restricted that right and provided no historical justification whatsoever, they have violated the Second Amendment. Furthermore, as a vendor, Cargill is “entitled to assert those concomitant rights of third parties that would be diluted or adversely affected” and are “uniformly permitted to resist efforts at restricting their operations by acting as advocates of the rights of third parties who seek access to their market or function.” *Craig v. Boren*, 429 U.S. 190, 195 (1976) (emphasis added) (citations omitted).

A. ATF’s New Enforcement Policy Implicates the Second Amendment of the United States Constitution.

Under the text-and-history test articulated in *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022), the first question is “whether the Second Amendment applies by its terms.” *United States v. Daniels*, 77 F.4th 337, 341 (5th Cir. 2023) (citing *Bruen*, 597 U.S. at 24). Accordingly, “when the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct.” *Id.* at 17.

“Constitutional rights [also] . . . implicitly protect those closely related acts necessary to their exercise.” *Luis v. United States*, 578 U.S. 5, 26-27 (2016) (Thomas, J., concurring). This means the Second Amendment protects the right to *effective* self-defense, as “the core right wouldn’t mean much without the training and practice that make it effective.” *Ezell v. City of*

Chicago, 651 F.3d 684, 704 (7th Cir. 2011). This includes not only access to training and practice, but also to items necessary for self-defense. *See, e.g., Jackson v. City & County of San Francisco*, 746 F.3d 953, 967-68 (9th Cir. 2014) (restrictions on hollow-point ammunition fall within the Second Amendment’s scope); *Barnett v. Raoul*, No. 3:23-cv-00209-SPM, 2023 U.S. Dist. LEXIS 74756, at *29-30 (S.D. Ill. Apr. 28, 2023) (“[B]ecause the ‘meaningful exercise’ of the right to armed self-defense is wholly dependent on the ability of citizens to utilize their arms and hit their intended target, items that aid in accuracy may be considered ‘arms’ and are presumptively protected by the Second Amendment.”), *vacated sub nom. Bevis v. City of Naperville*, 85 F.4th 1175 (7th Cir. 2023).

Here, Cargill uses his license to provide the training and practice that make armed self-defense in his community effective. Ex. 14: First Cargill Declaration. He also uses his license to sell the necessary instruments of self-defense. *Id.* The new enforcement policy threatens total closure to access to training and arms based on paperwork errors that are considered to “inherently demonstrate willfulness,” Ex. 3, at 6, ATF0527, and thereby chills this Second Amendment activity. The new enforcement policy therefore implicates the Second Amendment right to effective self-defense.

B. ATF’s New Enforcement Policy Is Not Consistent with the Nation’s Historical Tradition of Firearm Regulation.

If the conduct is presumptively protected under *Bruen*’s first prong, as it is here, then courts turn to the second prong, under which “the *Government* ‘must justify its regulation be demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.’” *United States v. Rahimi*, 61 F.4th 443, 453-54 (5th Cir. 2023) (emphasis added) (quoting *Bruen*, 597 U.S. at 24, and emphasizing that *Bruen*’s new test is distinct from “any means-end” analysis of the past), *cert. granted*; *see also Daniels*, 77 F.4th at 341 (same).

Bruen’s second prong places the burden of proof on the government to present historical analogues that hindered the right “to a comparable degree, with a comparable severity, and with a comparable blanket enforcement.” *Baird v. Bonta*, 81 F.4th 1036, 1047 (9th Cir. 2023); *see Bruen*, 597 U.S. at 28-29, 36-37, 57-58; *see also id.* at 58 & n.25 (noting burdens imposed by historical laws were dissimilar to the challenged law’s penalties, and “consider[ing] the barren record of enforcement” to be “one additional reason to discount their relevance”); *Dist. of Columbia v. Heller*, 554 U.S. 570, 633-34 (explaining fines or short stays in local jails “are akin to modern penalties for minor public-safety infractions like speeding or jaywalking” and are not like a law that “threatens citizens with a year in prison”). Additionally, the analogues presented must come from the appropriate time in history. *Bruen*, 597 U.S. at 34-38; *id.* at 37 (“we have generally assumed that the scope of the protection applicable to the Federal Government and States is pegged to the public understanding of the right when the Bill of Rights was adopted in 1791”). To meet its burden, not only would ATF need to produce historical licensing regimes for firearm dealers, it would also need to delve into the enforcement history of those regimes. *See Bruen*, 597 at 30, 57-58 & n.25; *Baird*, 81 F.4th at 1047. ATF has done neither. By restricting access under the new enforcement policy to firearms and training that make Americans’ right to self-defense effective, without providing any historical justification, ATF violates the Second Amendment.

III. This Court Should Provide Equitable Relief for Cargill.

A. This Court Has Authority to Provide Equitable Relief for Cargill.

Federal courts have the power to “enjoin federal officers from violating the Constitution.” *Texas v. Biden*, No. 2:21-cv-067-Z, 2021 U.S. Dist. LEXIS 195393, at *17 (N.D. Tex. July 19, 2021) (citing *Armstrong v. Exceptional Child Center, Inc.*, 575 U.S. 320, 327-28 (2015) and *Larson v. Domestic & Foreign Com. Co.*, 337 U.S. 682, 689-90 (1949)). Claims for this sort of injunctive

relief are known as *Larson* claims. *See Larson*, 337 U.S. at 689-90. They are the federal equivalent to claims raised under *Ex parte Young*, 209 U.S. 123 (1907).

The Court may hear these claims pursuant to its equitable powers. *Green Valley Special Util. Dist. v. City of Schertz*, 969 F.3d 460, 475 (5th Cir. 2020). “Through this line of cases, individuals have a ‘right to sue directly under the [C]onstitution to enjoin federal officers from violating their constitutional rights.’” *Anibowei v. Barr*, 2019 U.S. Dist. LEXIS 24105, at *10-11 (N.D. Tex. Feb. 14, 2019) (quoting *Porter v. Califano*, 592 F.2d 770, 781 (5th Cir. 1979)).

Accordingly, *Larson* claims “can be brought apart from the APA,” *Texas v. Biden*, 2021 U.S. Dist. LEXIS 19533, at *16, and they are not bound by APA rules. *Leal v. Azarii*, No. 2:20-cv-185-Z, 2020 U.S. Dist. LEXIS 241947, at *17-18 (N.D. Tex. Dec. 23, 2020), *vacated and remanded on other grounds in Leal v. Becerra*, No. 21-10302, 2022 U.S. App. LEXIS 20803 (5th Cir. July 27, 2022). All that is required for a *Larson* claim is to allege an ongoing violation of federal law. *Texas v. Biden*, 2021 U.S. LEXIS 195393, at *17-18; *Azarii*, 2020 U.S. Dist. LEXIS 241947, at *17-19. Moreover, these claims are appropriate not only where federal officials are violating the Constitution, but also where they are violating federal statutes. *See Anibowei*, 2019 U.S. Dist. LEXIS, at *10-11; *see also Green Valley*, 969 F.3d at 472.

B. Equitable Relief Is Appropriate in This Context.

Here, Defendant Dettelbach is the Director of ATF and is responsible for carrying out its policies. His conduct as sovereign in “revok[ing] any license” is limited by the bounds of the Gun Control Act to situations where the licensee “willfully violated any provisions of this chapter.” 18 U.S.C. § 923(e). Therefore, if he, with ATF under his direction, revokes any license where the licensee did not willfully violate a relevant provision of the Act, then “[h]is actions are *ultra vires* his authority and therefore may be the object of specific relief.” *Larson*, 337 U.S. at 689.

Defendant Dettelbach is also, of course, limited by the Second Amendment as articulated in *Bruen*, which places the burden on the government to show the challenged action is within the Nation’s history and tradition of firearm regulation. *Bruen*, 597 U.S. at 24. To the extent Defendant Dettelbach through the new enforcement policy directs ATF to act without providing historical justification—and Defendants have offered none whatsoever—his actions are unconstitutional and are subject to injunctive relief.

Defendant Dettelbach’s enforcement of the new policy is a real threat for Cargill and others similarly situated. Cargill has already been inspected and cited by ATF, both in August 2018, Ex. 14 at ¶¶ 7, 12, and even during this current litigation on June 26, 2023, ECF No. 27. Although ATF has not yet recommended revocation, it has both found Cargill to be in violation under the previous policy, Ex. 14 at ¶ 8, and applied the new enforcement policy against him, *see* ECF No. 27, at 1-2. Moreover, all four types of the violations listed in the August 2018 inspection report would fall under ATF’s new enforcement policy regarding falsification of records and would result in a revocation recommendation. Cargill is still technically subject to revocation on the basis of the 2018 report. Cargill is thus subject to the threat of *ultra vires* and unconstitutional action by Defendant Dettelbach. *See* Parts I-II.

Injunctive relief is therefore within this Court’s authority to provide, and appropriate in the circumstances given the threat of enforcement and the unlawfulness of the new enforcement policy.

CONCLUSION

For the foregoing reasons, the Court should, pursuant to 28 U.S.C. §§ 2201 and 2202; and Fed. R. Civ. P. 56, 57, and 65, grant the following relief to Plaintiffs:

- (1) Declare that Defendants’ new enforcement policy violates the Gun Control Act, the Administrative Procedures Act, and the U.S. Constitution;
- (2) Hold unlawful and set aside Defendants’ new enforcement policy;

- (3) Issue a permanent injunction against the Defendants, as well as all agents, administrators, employees, or other persons acting on behalf of the Defendants, from enforcing the new enforcement policy;
- (4) Award Plaintiffs their costs and expenses incurred in bringing this action, including, but not limited to, reasonable attorney fees pursuant to 28 U.S.C. § 2412; and
- (5) Grant such other and further relief as the Court deems equitable, just, and proper.

Dated: March 18, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 18, 2024, I electronically filed the foregoing document with the Clerk of the Court for the U.S. District Court for the Western District of Texas by using the CM/ECF system, which will serve a copy of same on all counsel of record.

Matthew Miller

Matthew Miller

Exhibit 1

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

Order

ATF O 5370.1D

SUBJECT: FEDERAL FIREARMS ADMINISTRATIVE
ACTION POLICY AND PROCEDURES

DATE: 10/02/2019
OPI RECERTIFICATION
DATE: 10/02/2024

OPI: 700000

TO: All ATF Industry Operations Offices

1. PURPOSE. This order provides fair and consistent guidelines for administrative remedies for violations disclosed relative to inspections of Federal firearm licensees (FFLs).
2. CANCELLATION. This order cancels ATF O 5370.1C, Federal Firearms Administrative Action Policy and Procedures, dated February 21, 2017.
3. AUTHORITIES.
 - a. Title 28 U.S.C. § 599A.
 - b. Title 28, CFR, Sections 0.130 and 0.131.
4. DISCUSSION. This order identifies the minimum guidelines for administrative action but does not address every potential scenario or violation. Each field division's Director, Industry Operations (DIO) should take the appropriate actions to ensure licensee compliance, protecting the public through proper application of this order. While it is desirable to have definitive guidelines in this area, every inspection is unique.
 - a. Administrative action is defined as a warning letter, warning conference, revocation, imposition of civil fine, and/or suspension of a Federal firearms license, including a recommendation of denial of an original or renewal application, and alternate action to revocation. The issuance of ATF F 5030.5, Report of Violations, is not an administrative action but rather a documentation of inspection findings.
 - b. This policy is for internal guidance only and is law enforcement sensitive. It is not intended—and should not be construed—to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States and its agencies, officers, or employees.
5. BACKGROUND. This order sets forth the general policy guidelines for administrative action recommendations for FFLs.
 - a. This is a national policy for determining administrative actions to promote consistent and equitable resolutions of violations of the Gun Control Act (GCA). The field should pursue all administrative actions in relation to the cited violations and their circumstances. The nature of the violations and their impact on public safety and the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) ability to reduce violent crime are significant considerations for the appropriate administrative action. ATF may also consider mitigating factors. This order will allow for the most efficient use of ATF resources while maintaining the goal of compliance throughout the industry.

- b. ATF inspects licensees to ensure compliance with Federal firearms laws by educating licensees on their responsibilities, verifying they are complying with the provisions of the GCA and its implementing regulations, and analyzing operations to detect possible diversion of firearms from legal commerce through regulatory inspections. Compliance with the GCA by the firearms industry is an essential part of addressing nationwide crime control and public safety efforts as outlined in ATF's Strategic Plan.
- c. Pursuant to 18 U.S.C. 923(e), ATF may only revoke a Federal firearms license for willful violations of the GCA and its implementing regulations. The term willfulness means a purposeful disregard of, a plain indifference to, or reckless disregard of a known legal obligation. ATF may also revoke or suspend a license, or impose a civil fine for certain violations of the Brady Handgun Violence Act and the Child Safety Lock Act of 2005. ATF may revoke for any willful violation of the GCA including all of the violations discussed in this order and any other violation of the GCA.

6. REFERENCES.

- a. ATF O 1100.168C, Delegation Order—Delegation of Authorities within the Bureau of Alcohol, Tobacco, Firearms and Explosives, dated 11/5/18.
- b. ATF O 3200.1A, Monitored Case Program, dated 3/19/15.
- c. ATF O 5000.19A, Industry Operations Manual, dated 4/4/18.
- d. Title 27 CFR Part 478.
- e. Title 18 U.S.C. 922.
- f. Title 18 U.S.C. 923.
- g. Title 18 U.S.C. 924.

7. POLICY.

- a. Unified Administrative Action Policy and Procedures.
 - (1) This order establishes a unified plan of action for resolution of violations through administrative action. The plan groups types of violations into categories for which specific administrative actions are recommended.
 - (2) This national policy will assist Special Agents in Charge (SACs), DIOs, field counsel, Area Supervisors (ASs), and Industry Operations Investigators (IOIs) in making appropriate recommendations.
 - (3) Each inspection has unique and sometimes complex circumstances. Therefore, even in cases where violations appear willful, the field should consider the following questions when recommending administrative action:
 - (a) Is the FFL willing/able to achieve and maintain voluntary compliance?
 - (b) Will the continued operation of the FFL pose a threat to public safety or contribute to violent crime and other criminal activities?
 - (c) Is the FFL taking responsibility for violations and willing to work with ATF to correct them?
 - (d) Is the FFL's failure to properly complete and maintain records directly impacting the traceability of firearms.

- (e) Do violations have a nexus to persons prohibited from possessing firearms?
- b. Report of Violations. The field will issue an ATF F 5030.5, Report of Violations, to the FFL for all violations identified during the inspection. This action does not require a determination of willfulness.
- c. Warning Letter. The field may issue a warning letter (WL) when violations of 27 CFR, Part 478; require a formal documented action on the part of ATF beyond the Report of Violations. The AS may decide that a WL is not necessary based on the nature and number of violations, improvement in business operations, record keeping, etc., since the previous inspection, FFL's compliance history, time elapsed since previous inspection and other relevant factors may be considered. Sending a WL to a FFL does not require a determination of willfulness. Violations that generally merit a WL as the minimum administrative action include—but are not limited to—the following:
 - (1) Failure to timely and/or correctly maintain records of receipt, manufacture, importation or other acquisition on 5 percent or more of the licensee's total acquisitions during the inspection period, with a minimum of 10 instances.
 - (2) Failure to timely and/or correctly maintain records of sales or other dispositions on 5 percent or more of the licensee's total dispositions during the inspection period, with a minimum of 10 instances.
 - (3) Failure by the licensee to obtain complete and accurate information for any item(s) on Forms 4473, questions 11 and 12, or failure to ensure the buyer signs and dates the Form 4473 (to include failing to have the buyer recertify their answers if the transfer takes place on a different date than the original signature) on 5 percent or more of the Forms 4473 examined except when any purchaser is prohibited - refer to subparagraph 7.e.(5)(a).
 - (4) Failure to record valid and complete transferee identification on 10 percent or more of the Forms 4473 examined.
 - (5) Failure to record any transferee identification on 10 percent or more of the Forms 4473 examined.
 - (6) Failure to file ATF F 3310.4, Report of Multiple Sale or Other Disposition of Pistols and Revolvers or ATF F 3310.12, Report of Multiple Sale or Other Disposition of Certain Rifles, (Southwest Border states only) when legally required and with a minimum of five instances.
 - (7) Missing firearms after inventory reconciliation (e.g., no records of disposition, required or otherwise).
 - (8) Failure to retain required GCA records for transferred firearms for period of time specified by regulation.
 - (9) Transfer of a rifle/shotgun to a resident of another State that violates State law.
 - (10) Failure to execute a Form 4473 for:
 - (a) The return of a firearm that was consigned to the licensee;
 - (b) The transfer of a firearm to a law enforcement officer for personal use; or
 - (c) The transfer of a firearm out of the business inventory to an FFL

responsible person (other than a sole-proprietor), if the transferee is not prohibited.

- (11) Failure to conduct a National Instant Criminal Background Check System (NICS) check or obtain alternative permit for:
 - (a) The return of a firearm that was consigned to the licensee;
 - (b) The transfer of a firearm to a law enforcement officer for personal use; or
 - (c) The transfer of a firearm out of business inventory to an FFL responsible person (other than a sole-proprietor), if the transferee is not prohibited.
 - (12) Failure to retrieve a NICS (or equivalent State background check system) e-check response prior to the transfer of a firearm, and the transferee is not prohibited.
 - (13) FFL transfers a firearm prior to receiving a final NICS response (or applicable State background check system) and 3 business days (or the state waiting period) have not elapsed, and the person is not prohibited.
 - (14) FFL fails to notify ATF about a change of control.
 - (15) FFL is engaged in an activity not authorized by the Federal firearms license (e.g., engaging in manufacturing firearms without a manufacturer's license).
 - (16) Failure to initiate a new NICS check when a transaction is not completed within the 30-day period from the date NICS was initially contacted provided that the person is not prohibited.
 - (17) Failure to timely report upon discovery of the theft or loss of a firearm to either ATF or local law enforcement.
 - (18) Failure to record NICS or Point of Contact background check information on 10 percent or more of Forms 4473 examined, with a minimum of 10 instances.
 - (19) ATF has previously cited the FFL in a Report of Violations within the previous 5 years and the current inspection reveals repeated similar violation(s) with no significant improvement.
- d. Warning Conference. A warning conference (WC) lets a DIO or AS assess the FFL's potential to achieve compliance and determine any potential risks to public safety and firearm traceability. It does not require a determination of willfulness.
- (1) It is generally appropriate when the FFL has previously been the subject of a WL or WC, and the current inspection indicates similar repeat violations, though it may be appropriate to hold a WC for an FFL without a history of previous violations or a WL in certain circumstances. The DIO may decide that a WL or no administrative action is appropriate based on the nature and number of violations, improvement with business operations since the previous inspection, compliance history, time elapsed since any previous administrative action, and other relevant factors.
 - (2) If the violations involve a corporation, ATF must invite a corporate responsible person to the WC. (Ensure a copy of the WC notification letter is sent to the FFL's corporate office.)

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- (3) During the WC, ATF should provide the FFL with specific instructions to achieve GCA compliance, and emphasize the mutual goal of ATF and the industry to safeguard the public.
- (4) Examples of violations that generally merit a WC as the minimum administrative action, include but are not limited to the following:
 - (a) Transfer of a firearm (including lower receiver) other than a rifle or shotgun to an out-of-state resident.
 - (b) Failure to mark imported or manufactured firearms appropriately.
 - (c) Failure to execute a Form 4473, exception use WL for:
 - (1) The return of a firearm that was consigned to the licensee;
 - (2) The transfer of a firearm to a law enforcement officer for personal use; or
 - (3) The transfer of a firearm out of business inventory to an FFL responsible person (other than a sole-proprietor), if the transferee is not prohibited. – see paragraph 7.c.(10).
 - (d) Failure to conduct a NICS check or obtain an alternate permit, exception use WL for:
 - (1) The return of a firearm that was consigned to the licensee;
 - (2) The transfer of a firearm to a law enforcement officer for personal use; or
 - (3) The transfer of a firearm out of business inventory to an FFL responsible person (other than a sole-proprietor), if the transferee is not prohibited. – see paragraph 7.c.(11).
 - (e) Failure to report theft or loss to both ATF and local law enforcement.
 - (f) Conducting business at locations not authorized as an extension of the licensed business premises.
 - (g) FFL has previously been the subject of a WL or WC within the previous 5 years and the current inspection reveals repeated similar violation(s) with no significant improvement.
- (5) If the FFL does not respond to the WC notification letter and there is evidence that the violations are willful, the DIO may revoke (or deny a renewal application for) the Federal firearms license.
- (6) Additionally, the DIO may decide after meeting with the FFL, or after offering opportunity for compliance, to proceed with revocation (renewals/denials) if the DIO believes the public interest is best served by revoking or denying renewal of the Federal firearms license, the DIO will proceed accordingly. In any situation in which the DIO seeks revocation or denial of renewal, notification of the proposed course of action must be made through Field Management Staff, Frontline Investigative Support Branch (FISB) (fmsisb@atf.gov).

- (7) In instances in which it is determined that the violations were not willful and/or the FFL is likely to come into compliance, the WC shall be the final administrative action.
- (8) The WC may include ATF Counsel and will discuss means to achieve compliance, the AS or DIO may request written proposals designed to achieve GCA compliance.

e. Revocation Under 18 U.S.C. 923(e).

- (1) It is necessary to establish willfulness—the field division must prove that the licensee knew its legal obligations under the GCA and either purposefully disregarded or demonstrated a plain indifference or a reckless disregard to them—to proceed with revocation under 18 U.S.C. 923(e). Not every repeat violation is per se a willful violation. A single, or even a few, inadvertent errors in failing to complete forms may not amount to “willful” failures, even when the FFL knew of the legal requirement to complete the forms. However, if such errors continue or even increase after repeated warnings and explanations of the severity of the failures, one may infer as a matter of law that the licensee simply does not care about the legal requirements. The failures then show the FFL’s plain indifference and therefore become willful.
- (2) ATF does not have to establish a history of prior violations to demonstrate willfulness. Accordingly, ATF may revoke a Federal firearms license under appropriate circumstances based on an initial set of violations, if it meets the elements of willfulness, such as an intentional straw sale or knowingly transferring to a prohibited person, refusing ATF right of entry and inspections during hours of operation at the licensed premises, discontinuing use of GCA required records, knowingly entering false information or intentionally making false statements involving required records under the GCA.
- (3) ATF can establish the knowledge element of willfulness in several ways:
 - (a) Establish the FFL has a history of similar, repeat violations, and the inspection report documents that an IOI discussed them with the FFL. The FFL’s compliance history can include other efforts by ATF (including qualification inspections) to inform the FFL about its legal responsibilities.
 - (b) Use inspection reports to establish willfulness even if the inspection found no violations (i.e., acknowledgment of Federal firearms regulations).
 - (c) Statements or admissions communicated by the FFL or its employee(s), as well as actions by the FFL or its employee(s) during an inspection that hindered or obstructed the inspection, or other evidence, can also establish willfulness.
- (4) ATF field counsel must evaluate the facts and circumstances surrounding an FFL’s alleged violation(s) to determine willfulness. Simultaneously, a copy of the Industry Operations Monitored Case Briefing Paper will be submitted to FISB. It can be later removed if the field division decides not to pursue Monitored Case Program (MCP) actions. (See 10.e.(3) for Regional Associate Chief Counsel (ACC) concurrence)
- (5) Revocation is an appropriate licensing action under section 923(e) and is strongly recommended in response to the discovery of the following willful violations which

directly impact the public:

- (a) Transfer of a firearm to a prohibited person while knowing or having reasonable cause to believe that the transferee is a prohibited person.
- (b) Allow an employee who is a prohibited person to have actual or constructive possession of a firearm while knowing or having reasonable cause to believe that the employee is a prohibited person.
- (c) Actively engage in a straw purchase transaction (i.e., the licensee knows or has reasonable cause to believe that the transferee of record is not the actual buyer.)
- (d) Falsify records required under the GCA or making a false or fictitious written statement in the FFL's required records or in applying for a firearms license.
- (e) Withhold or misrepresent material information in applying for a license after being provided education and opportunity to correct the misrepresented information.
- (f) Failure to conduct a NICS check or obtain alternative permit or fail to retrieve a NICS (or equivalent State Point of Contact background check system) response prior to the transfer of a firearm and the purchaser is prohibited.
- (g) Transfer of a firearm prior to receiving a final NICS response (or applicable State POC background check) and 3 days have not elapsed since the FFL contacted the system and the purchaser is prohibited.
- (h) Failure to create or discontinue use of required GCA records.
- (i) Failure to account for acquired firearms which records indicate were in inventory within the previous 5 years after reconciliation for which disposition could not be accounted for in required GCA records (e.g. acquisition and disposition record, Form 4473) and is a repeat violation of increased frequency.
- (j) Refused ATF right of entry and inspection during hours of operation at the licensed premise.
- (k) Failure to respond to a firearm trace request within 24 hours and is a repeat violation.
- (l) Discovery of a firearm with an obliterated serial number in FFL's inventory.
- (m) Transfer of a firearm to an underage person.
- (n) The FFL has been the subject of a WC in lieu of Revocation within the previous 5 years and the current inspection reveals repeated similar violations(s) with no significant improvement.
- (o) Any other GCA violation not specifically addressed in this order where revocation may be appropriate.

f. Fines/Suspensions/Revocation/ under 18 U.S.C. 922(t) or 922(z).

- (1) ATF may revoke, suspend, and/or impose a civil fine for violations of the Brady Handgun Violence Prevention Act and the Child Safety Lock Act of 2005. See 18 U.S.C. §§ 922(t), 922(z) and 924(p). In both situations, the proposed sanction (revocation, suspension, and/or fine) must be specifically spelled out in the Notice to Revoke or Suspend License and/or Impose a Civil Fine. The FFL has the same rights to appeal as in other GCA administrative hearings
- (2) ATF can revoke, suspend, and/or fine an FFL pursuant to 18 U.S.C. § 922(t)(5). This allows for revocation, suspension for not more than 6 months, and/or a civil fine for the transfer of a firearm and failure to conduct a NICS check required by 18 U.S.C. § 922(t)(1), where NICS was available and the person would have been denied had a NICS check been conducted. The transfer of the firearm and the failure to conduct the NICS check must be done knowingly.
- (3) ATF can revoke, suspend, and/or fine an FFL pursuant to 18 U.S.C. § 924(p) for failure to comply with 18 U.S.C. § 922(z)(1) and provide a secure gun storage or a safety device with each transfer of a handgun. With certain exceptions, this allows for the revocation, suspension for not more than 6 months, and/or a civil fine for the transfer of a handgun to a non-licensee unless the transferee is provided with a secure gun storage or safety device.
- (4) Notification of Civil Fine imposed must be made to Federal Firearms Licensing Center (FFLC) and Financial Management Division (FMD) via memo.
- (5) ATF field counsel must evaluate the facts and circumstances surrounding an FFL's alleged violation(s) to determine willfulness. Simultaneously, a copy of the Industry Operations Monitored Case Briefing Paper will be submitted to FISB. It can be later removed if the field division decides not to pursue revocation, civil fine, and/or suspension. (See 10.e.(3) for Regional ACC concurrence)

g. Denials.

- (1) An application for a Federal firearms license may only be denied if the applicant does not meet one or more of the licensing criteria set forth in 18 U.S.C. § 923(d). Generally, ATF will deny an application for renewal of a Federal firearms license based on willful violations of the GCA and the same criteria and procedures outlined for revocation under section 923(e) in section 6 above.
- (2) ATF will deny applications in which an applicant: failed to provide material information required on the application or the applicant is less than 21 years old, a prohibited person, made a material false statement on the application, or is a prior willful violator of the GCA. These situations may include "application denial," "hidden ownerships," or "straw applications," which usually involve situations where past willful violators or prohibited persons are responsible parties but are not listed on the application. ATF may also base a revocation on hidden ownership. In certain situations, a referral to ATF Criminal Enforcement may be appropriate.
- (3) ATF field counsel must evaluate the facts and circumstances surrounding an FFL's alleged violation(s) to determine willfulness. Simultaneously, a copy of the Industry Operations Monitored Case Briefing Paper will be submitted to FISB. It can be later removed if the field division decides not to pursue denial. (See 10.e.(3) for Regional ACC concurrence)

h. Alternate Actions.

- (1) For inspections that merit consideration of revocation in which the DIO proposes an alternate recommendation, the inspection is required to be submitted to the MCP for DAD (IO) review. (ATF O 3200.1A, Monitored Case Program)
- (2) ATF field counsel must evaluate the facts and circumstances surrounding an FFL's alleged violation(s) to determine willfulness. Simultaneously, a copy of the Industry Operations Monitored Case Briefing Paper will be submitted to FISB.

i. Other Administrative Resolutions.

- (1) Pursuant to 27 CFR 478.72-74, the DIO may afford the FFL/applicant the opportunity to submit facts and arguments for review, consideration and make offers of settlement before or after the issuance of a Notice of Revocation/Denial requiring DAD, Industry Operations (IO) approval. Examples include a request for a temporary closure period or a requested date of revocation after an agreed upon liquidation period. In appropriate situations, wherein the division believes the case may be resolved without conducting a hearing, the DIO may also offer the FFL an opportunity to meet with him/her to discuss potential resolutions of the matter after the issuance of a Notice of Revocation or Denial.
- (2) Following the issuance of the Notice to Revoke/Deny a DIO may consider alternatives to issuing a Final Notice of Denial of Application, Revocation, Suspension, and/or Fine of a Federal firearms license with the concurrence of the DAD (IO). The DIO should consult and work closely with field counsel on the negotiation of terms and conditions to which ATF may appropriately agree to settle or resolve.

8. GENERAL GUIDANCE. The division management team may consider the appropriate administrative actions. The DIO will seek advice of field counsel and the ACC (East/Central/West), when seeking Administrative Actions (Revocation/Denial/Suspension/Imposition of Civil Fine) for DAD (IO) approval and the AD, Field Operations (FO) when considering the appropriate administrative action.

- a. This order does not mandate doing any administrative action in a sequential or consecutive order. For example, a WC may be held or revocation sought after the first inspection if violations impact public safety or obstruct firearms traceability. Conversely, a WL may be issued even if the prior inspection resulted in a WC.
- b. The DIO or AS will conduct WCs.
- c. The DIO will ensure the timely initiation of administrative action occurs within 30 days of the IOI report submission date. They should finalize and issue the post-conference letter for cases requiring a WC, no later than 90 days after final DIO review unless there are mitigating circumstances. The AS should issue a WL within 15 days of his or her review.
- d. The area office should submit cases involving potential denials/revocations to the DIO within 30 days of the inspection submission date. The DIO has 120 days, inclusive of Counsel review, upon receipt of the inspection to issue the Notice. Field counsel will have a maximum of 60 days to review and prepare the Notice in final form for submission to the DIO for review and issuance. The DAD (IO) will be notified by the DIO via FISB if these periods are not met.
- e. Inspections may be suspended from MCP with DAD (IO) approval if the field division decides not to pursue administrative actions meeting the MCP criteria. Suspension

requests are submitted via Post Inspection Information.

- f. Criminal violations and violations that pose a danger to the public should be grounds for revocation, and the field must immediately notify ATF criminal enforcement. This may include situations where firearms are subject to seizure and forfeiture. This order does not prevent division management from pursuing simultaneous regulatory and criminal actions with the concurrence of the U.S. Attorney's Office. There may be instances where the Government resolves the case through a revocation and a criminal plea. If ATF pursues revocation, it will follow procedures, including those required by ATF O 3200.1A, Monitored Case Program.

9. HEADQUARTERS POLICY REVIEW AND ALTERNATE RECOMMENDATIONS.

- a. ATF must handle inspections and investigations with recommendations for administrative actions that meet the criteria of the MCP (e.g. revocations, denials, imposition of civil fine, suspension and/or alternate to revocation/denial etc.) per ATF O 3200.1A, Monitored Case Program.
- b. Alternate recommendations to revocation (see section 7.h) require concurrence of the DAD (IO) before proceeding. Refer to AS Manual for additional guidance.

10. FIELD RESPONSIBILITIES. Responsibilities for field personnel and management are as follows:

- a. Industry Operations Investigator. The IOI:
 - (1) Will conduct the inspection per established ATF guidelines, including use of the approved case management system. If they uncover violations, the IOI will obtain and preserve all available evidence and document the violations to show if the violations were willful, including copies of Forms 4473 and Acquisition and Disposition records since only documented violations will be cited in the Notice. The IOI will then make the appropriate recommendation based on the guidelines contained herein and forward the inspection to the AS.
 - (2) Must communicate with and notify the AS of violations, findings, and other circumstances impacting public safety upon discovery.
- b. Area Supervisor. The AS:
 - (1) Will review all firearms inspection reports and associated exhibits maintained within the approved case management system to ensure the IOI's recommendation meets established guidelines and evidentiary requirements, they adequately performed all relevant inspection work steps, and they correctly entered all necessary data.
 - (2) Must communicate with the DIO and notify them of violations, findings, and other circumstances impacting public safety upon discovery.
 - (3) Independently evaluate the IOIs recommendation and insert their recommendation in the approved case management system. If they disagree with the IOI recommendation, the AS will document the reason(s) within the recommendation section of the case management system. The AS must submit cases meriting WC, revocation, denial, fine, or suspension to the DIO within 30 days of the IOI submission date.
- c. Director of Industry Operations. The DIO shall:
 - (1) Review all inspections that recommend a WC and or alternate thereof. The DIO

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shall complete a recommendation in the approved case management system and return to the AS within 15 calendar days.

- (2) Review all inspections resulting in a recommendation of denial, revocation, suspension, fine, or alternate to revocation and complete a recommendation in the approved case management system. Additionally, the DIO must provide justification through the Industry Operations Monitored Case Briefing Paper and submit to FISB.
- (3) Request legal advice from field counsel in all potential alternate recommendations to revocation. Request field counsel and ACC legal advice for all denials, revocations, suspensions, and fines concerning willfulness determinations and litigation hazards.
- (4) Advise the SAC of any administrative actions that deal with potential revocation, denial, alternate to revocation, suspension, or fine recommendations, and other administrative resolutions.

d. Counsel.

- (1) At the request of the DIO, field counsel will review all inspection reports and exhibits in the approved case management system and provide legal advice on willfulness determinations and significant litigation hazards in all administrative actions. If counsel believes there is insufficient evidence to proceed with the proposed administrative action or believes there are substantial litigation hazards, they will provide written analysis.
- (2) The DIO and counsel should use discretion in determining which violations to allege and only allege willful violations in the Notice. In certain instances, it may not be in the interest of the Government to cite isolated violations wherein there are adequate willful violations to sustain a revocation.
- (3) The ACC for the applicable field division will review and approve all proposed Notices and administrative resolutions for legal soundness, and compliance with this policy prior to final submission to MCP and implementation of these actions.

e. Special Agent in Charge. The SAC has ultimate division responsibility to ensure that this national policy is properly enforced. To this end, they may establish additional controls in their division.

11. AVAILABILITY. The forms outlined in this order are available at ATFConnect>Documents/Content>Forms. The manual outlined in this order is available at ATFConnect>Organization>Field Operations>Industry Operations>IOI Manual.
12. RECORDS RETENTION REQUIREMENTS. Documents outlined in this order must be retained in accordance with AF O 1340.5A, Records Management Program and ATF O 1340.7A, ATF Records Control Schedule.
13. QUESTIONS. If you have any questions regarding this order, please contact Field Management Staff, 202-648-8400.



Assistant Director
(Office of Field Operations)

Exhibit 2

U.S. Department of Justice

Bureau of Alcohol, Tobacco, Firearms and Explosives

Order

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- b. ATF inspects FFLs to ensure compliance with Federal firearms laws, educate them on their responsibilities and verify they are complying with the provisions of the GCA and its implementing regulations. Compliance with the GCA by the firearms industry is an essential part of combatting crime gun violence and enhancing public safety as outlined in ATF's Strategic Plan.
- c. Pursuant to 18 U.S.C. § 923(e), ATF may revoke a federal firearms license for willful violations of the GCA and its implementing regulations, including all of the violations discussed in this order and any other violation of the GCA. The term willful means a purposeful disregard of, or a plain indifference to, or reckless disregard of a known legal obligation. ATF may also revoke or suspend a license or impose a civil fine for certain violations of the Brady Handgun Violence Prevention Act and the Child Safety Lock Act of 2005. See 18 U.S.C. §§ 922(t)(5) and 924(p).

6. REFERENCES.

- a. ATF O 1100.168C, Delegation Order—Delegation of Authorities within the Bureau of Alcohol, Tobacco, Firearms and Explosives, dated 11/5/18.
- b. ATF O 3200.1B, Monitored Case Program, dated 10/20/21.
- c. ATF O 5000.19A, Industry Operations Manual, dated 4/4/18.
- d. Title 27 CFR Part 478.
- e. Title 18 U.S.C. § 922.
- f. Title 18 U.S.C. § 923.
- g. Title 18 U.S.C. § 924.

7. POLICY.

- a. Unified Administrative Action Policy and Procedures.
 - (1) This order establishes a unified plan of action for resolution of violations through administrative action. The plan groups types of violations into categories for which specific administrative actions are recommended.
 - (2) This national policy will assist Special Agents in Charge (SACs), DIOs, Area Supervisors (AS), and Industry Operations Investigators (IOIs) in making appropriate recommendations.
 - (3) Each inspection has unique and sometimes complex circumstances. Therefore, even in cases where violations appear willful, the field should consider the following questions when recommending administrative action:
 - (a) [REDACTED]
 - (b) [REDACTED]
 - (c) [REDACTED]
 - (d) [REDACTED]

(e)



- (4) ATF has zero tolerance for willful violations that greatly affect public safety and ATF's ability to trace firearms recovered in violent crimes. Therefore, revocation is the assumed action, unless extraordinary circumstances exist, when violations are cited that include:

- (a) Transfer of a firearm to a prohibited person knowing or having reasonable cause to believe that the transferee is a prohibited person.
- (b) Failure to: 1) contact the National Instant Criminal Background Check System (NICS) (or equivalent State Point of Contact (POC)) for a background check prior to transfer of a firearm; 2) obtain a qualifying alternative permit in lieu of a background check; or 3) wait 3 business days after contacting NICS or the appropriate POC where the system has not notified the FFL that the transfer may proceed. This includes:
 - (1) Return of consignment firearms,
 - (2) Pawn redemption of firearms,
 - (3) Acceptance of an invalid alternate permit or nonqualifying alternative permit in lieu of NICS,
 - (4) Transfer of a firearm more than 30 days after an initial NICS check without conducting a new NICS check,
 - (5) Transfer of a firearm prior to receiving a final NICS or applicable State POC response where three days have not elapsed since the FFL contacted the system,
- (c) Failure to respond to a firearm trace request within 24 hours after receipt of request.
- (d) Falsification of records required under the GCA or making a false or fictitious written statement in the FFL's required records or in applying for a firearms license. Withholding or misrepresenting material information in applying for a license.
- (e) Refusing ATF right of entry and inspection during hours of operation at the licensed premises.

- b. Report of Violations. The field will issue a Report of Violations to the FFL for all violations identified during the inspection. This action does not require a determination of willfulness.
- c. Warning Letter. The field may issue a warning letter (WL) when violations of 27 CFR Part 478 merit a formal documented action on the part of ATF beyond the Report of Violations. The AS may decide that a WL is not necessary based on the nature and number of violations, improvement in compliance with firearms laws and regulations, FFL's compliance history, time elapsed since previous inspection and other relevant factors. Sending a WL to an FFL does not require a determination of willfulness. Violations that generally merit a WL as the minimum administrative action include, but are not limited to, the following:

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- (5) Notification of Civil Fine imposed must be made to Federal Firearms Licensing Center and Financial Management Division via memo.
- (6) ATF Field Counsel must evaluate the facts and circumstances surrounding an FFL's alleged violation(s). During Counsel's review, a copy of the Industry Operations Monitored Case Risk Assessment Briefing Paper will be submitted to FISB. It can be later removed from the MCP if the Field Division decides not to pursue revocation, denial, suspension, and/or fine, or if Counsel determines the case does not satisfy the elements of the violations. (See paragraph 10.d.(3) for ACC concurrence.)

g. Denials under 18 U.S.C. § 923(d).

- (1) An application for a Federal firearms license may only be denied if the applicant does not meet one or more of the licensing criteria set forth in 18 U.S.C. § 923(d). Generally, ATF will deny an application for renewal of a Federal firearms license based on willful violations of the GCA and the same criteria and procedures outlined for revocation under section 923(e) in section 7 above.
- (2) ATF will deny applications in which an applicant: failed to provide material information required on the application or the applicant is less than 21 years old, a prohibited person, made a material false statement on the application, or is a prior willful violator of the GCA. [REDACTED]
- (3) ATF Field Counsel must evaluate the facts and circumstances surrounding an applicant's alleged violation(s). During Counsel's review, a copy of the Industry Operations Monitored Case Risk Assessment Briefing Paper will be submitted to FISB. It can be later removed from the MCP if the Field Division decides not to pursue denial. (See 10.d.(3) for Regional ACC concurrence.)

h. Alternate Actions.

- (1) For inspections that merit consideration of revocation for violations outlined in paragraph 7.e.(6)(a)-(e), extraordinary circumstances must exist before the DIO proposes an alternate recommendation, and those extraordinary circumstances must be thoroughly explained in the DIO's recommendation. NOTE: One instance of a violation outlined in paragraph 7.e.(6)(a)-(e) above does not constitute extraordinary circumstances and will not be an acceptable reason for an alternate recommendation.
- (2) Appropriate alternate recommendations to revocation include an AS led Warning Conference or a DIO led Warning Conference. Who conducts the warning conference will depend on the totality of the circumstances surrounding the inspection results. A warning letter is rarely an acceptable alternate recommendation to revocation.
- (3) For inspections that merit consideration of revocation in which the DIO proposes an alternate recommendation, the inspection is required to be submitted to the MCP for DAD (IO) approval. (ATF O 3200.1B, Monitored Case Program.)

i. Other Administrative Resolutions.

- (1) Pursuant to 27 CFR 478.72-74, the DIO may afford the FFL/applicant the opportunity to submit facts and arguments for review and consideration and

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the approved case management system. Additionally, the DIO must provide justification through the Industry Operations Monitored Case Risk Assessment Briefing Paper and submit to FISB.

- (3) Request legal advice from Field Counsel in all potential alternate recommendations to revocation. Request Field Counsel and ACC legal advice for all denials, revocations, suspensions, and fines.
- (4) Advise the SAC of any administrative actions that deal with potential denials, revocations, suspensions, fines, alternates to revocations, and other administrative resolutions.
- (5) Following a hearing requested pursuant to either 27 C.F.R. §§ 478.72 or 478.74, the DIO must conclude whether the Government has met its burden of proof by a preponderance of the evidence that the elements required to issue a Final Notice of Denial of Application, Revocation, Suspension and/or Fine of Firearms License, ATF Form 5300.13. If the DIO believes such elements have not been proven, including the willfulness required to sustain a denial under 18 U.S.C. § 923(d)(1)(C) or revocation under 18 U.S.C. § 923(e), the DIO must fully brief the DAD (IO) as to the basis for this determination.

d. Counsel.

- (1) At the request of the DIO, Field Counsel will review all inspection reports and exhibits in the approved case management system and provide legal advice in all administrative actions.
- (2) [REDACTED]
[REDACTED] As noted above, ATF may also revoke or suspend a license or impose a civil fine for certain violations of 18 U.S.C. §§ 922(t)(5) and 924(p). [REDACTED]
[REDACTED]
- (3) The ACC for the applicable Field Division will review and approve all proposed Notices and administrative resolutions for legal soundness, and compliance with this policy prior to final submission to MCP and implementation of these actions.

e. Special Agent in Charge. The SAC has ultimate division responsibility to ensure that this national policy is properly enforced. To this end, they may establish additional controls in their division.

11. AVAILABILITY. The forms outlined in this order are available at ATFConnect>Forms and Policy>Forms. The manual outlined in this order is available at ATFConnect>Directorates>Field Operations>Industry Operations>IOI Manual.
12. RECORDS RETENTION REQUIREMENTS. Documents outlined in this order must be retained in accordance with ATF O 1340.5A, Records Management Program and ATF O 1340.7A, ATF Records Control Schedule.
13. QUESTIONS. If you have any questions regarding this order, please contact Field Management Staff, [REDACTED].

GEORGE LAUDER
Digitally signed by GEORGE LAUDER
Date: 2022.01.28 17:22:07 -05'00'
Assistant Director
(Office of Field Operations)

Exhibit 3

U.S. Department of Justice

Bureau of Alcohol, Tobacco, Firearms and Explosives

Order

ATF O 5370.1F

SUBJECT: FEDERAL FIREARMS ADMINISTRATIVE
ACTION POLICY AND PROCEDURESDATE: 01/13/2023
RECERTIFICATION
DATE: 01/13/2028

OPI: 700000

- TO: All Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Industry Operations Offices
1. PURPOSE. This order provides fair and consistent guidelines for administrative remedies for violations disclosed relative to inspections of Federal firearm licensees (FFLs).
 2. CANCELLATION. This order cancels ATF O 5370.1E, Federal Firearms Administrative Action Policy and Procedures, dated 1/28/2022.
 3. AUTHORITIES.
 - a. Title 28 U.S.C. § 599A.
 - b. Title 28, CFR, Sections 0.130 and 0.131.
 4. DISCUSSION. This order identifies the minimum guidelines for administrative action but does not address every potential scenario or violation. Each Field Division's Director of Industry Operations (DIO) should take the appropriate actions to ensure FFL compliance and the protection of the public through proper application of this order. While it is desirable to have definitive guidelines in this area, every inspection is unique and requires individual analysis.
 - a. Administrative action is defined as a warning letter, warning conference, revocation, imposition of civil fine, and/or suspension of a federal firearms license, including a recommendation of denial of an original or renewal application, and alternate action to revocation. The issuance of ATF F 5030.5, Report of Violations, is not an administrative action but rather a documentation of Gun Control Act violations disclosed during an inspection.
 - b. This policy is for internal guidance only and is law enforcement sensitive. It is not intended—and should not be construed—to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States and its agencies, officers, or employees.
 5. BACKGROUND. This order sets forth the general policy guidelines for administrative action recommendations for FFLs.
 - a. This is a national policy for determining administrative actions to promote consistent and equitable resolutions of violations of the Gun Control Act of 1968 (GCA), 18 U.S.C. Chapter 44. The field should pursue all administrative actions in relation to the cited violations and their circumstances. The nature of the violations, their impact on public safety, and ATF's ability to reduce violent crime are significant considerations in determining the appropriate administrative action. ATF may also consider aggravating and mitigating factors. This order will allow for the most efficient use of ATF resources while maintaining the goal of compliance throughout the industry.

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- b. ATF inspects FFLs to ensure compliance with Federal firearms laws, educate them on their responsibilities and verify they are complying with the provisions of the GCA and its implementing regulations. Compliance with the GCA by the firearms industry is an essential part of combatting crime gun violence and enhancing public safety as outlined in ATF's Strategic Plan.
- c. Pursuant to 18 U.S.C. § 923(e), ATF may revoke a federal firearms license for willful violations of the GCA and its implementing regulations, including all of the violations discussed in this order and any other violation of the GCA. The term willful means a purposeful disregard of, or a plain indifference to, or reckless disregard of a known legal obligation. ATF may also revoke or suspend a license or impose a civil fine for certain knowing violations of the Brady Handgun Violence Prevention Act and the Child Safety Lock Act of 2005. See 18 U.S.C. §§ 922(t)(5) and 924(p).

6. REFERENCES.

- a. ATF O 1100.168C, Delegation Order—Delegation of Authorities within the Bureau of Alcohol, Tobacco, Firearms and Explosives, dated 11/5/18.
- b. ATF O 3200.1B, Monitored Case Program, dated 10/20/21.
- c. ATF O 5000.19A, Industry Operations Manual, dated 4/4/18.
- d. Title 27 CFR Part 478.
- e. Title 18 U.S.C. § 922.
- f. Title 18 U.S.C. § 923.
- g. Title 18 U.S.C. § 924.

7. POLICY.

- a. Unified Administrative Action Policy and Procedures.
 - (1) This order establishes a unified plan of action for resolution of violations through administrative action. The plan groups types of violations into categories for which specific administrative actions are recommended.
 - (2) This national policy will assist Special Agents in Charge (SACs), DIOs, Area Supervisors (AS), and Industry Operations Investigators (IOIs) in making appropriate recommendations.
 - (3) Each inspection has unique and sometimes complex circumstances. Therefore, even in cases where violations appear willful, the field should consider the following questions when recommending administrative action:
 - (a) [REDACTED]
 - (b) [REDACTED]
 - (c) [REDACTED]
 - (d) [REDACTED]

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(e)



- (4) ATF has zero tolerance for willful violations that can directly affect public safety and ATF's ability to trace firearms recovered in violent crimes. Therefore, revocation is the assumed action, unless extraordinary circumstances exist, when violations are cited that include:
- (a) Transfer of a firearm to a prohibited person knowing or having reasonable cause to believe that the transferee is a prohibited person.
 - (b) Failure to: 1) contact the National Instant Criminal Background Check System (NICS) (or equivalent State Point of Contact (POC)) for a background check prior to transfer of a firearm; 2) obtain a qualifying alternative permit in lieu of a background check; or 3) wait 3 business days after contacting NICS or the appropriate POC where the system has not notified the FFL that the transfer may proceed, or in cases where the transferee/buyer is under 21, transferring a firearm prior to receiving a final NICS response where a delay of up to 10 business days has not elapsed when NICS notified the FFL that additional research was required. This includes:
 - i Return of consignment firearms,
 - ii Pawn redemption of firearms,
 - iii Acceptance of an invalid alternate permit or nonqualifying alternative permit in lieu of NICS,
 - iv Transfer of a firearm more than 30 days after an initial NICS check without conducting a new NICS check, unless the purchaser is found not to be a prohibited person, such transactions occur on three (3) or more occasions, the FFL has a significant history of noncompliance with the GCA, there are independent objective indicia that the violation was willful, or the same violation has been cited in prior inspections within the previous 5 years.
 - v Transfer of a firearm prior to receiving a final NICS or applicable State POC response where three days have not elapsed since the FFL contacted the system, or in cases where the transferee/buyer is under 21, transferring a firearm prior to receiving a final NICS response where a delay of up to 10 business days has not elapsed when NICS notified the FFL that additional research was required to determine if the prospective transferee had a prohibiting record under 18 U.S.C. § 922 (d).
 - (c) Failure to respond to a firearm trace request within 24 hours after receipt of request.
 - (d) Falsification of records required under the GCA or making a false or fictitious written statement in the FFL's required records or in applying for a firearms license. Withholding or misrepresenting material information in applying for a license.
 - (e) Refusing ATF right of entry and inspection during hours of operation at the licensed premises.

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- b. Report of Violations. The field will issue a Report of Violations to the FFL for all violations identified during the inspection. This action does not require a determination of willfulness.
- c. Warning Letter. The field may issue a warning letter (WL) when violations of 27 CFR Part 478 merit a formal documented action on the part of ATF beyond the Report of Violations. The AS may decide that a WL is not necessary based on the nature and number of violations, improvement in compliance with firearms laws and regulations, FFL's compliance history, time elapsed since previous inspection and other relevant factors. Sending a WL to an FFL does not require a determination of willfulness. Violations that generally merit a WL as the minimum administrative action include, but are not limited to, the following:
 - (1) Failure to timely and/or correctly maintain records of receipt, manufacture, importation, or other acquisition on 5 percent or more of the FFL's total acquisitions during the inspection period, with a minimum of 10 instances.
 - (2) Failure to timely and/or correctly maintain records of sales or other disposition on 5 percent or more of the FFL's total dispositions during the inspection period, with a minimum of 10 instances.
 - (3) Failure by the FFL to obtain complete and accurate information for any item(s) on Form 4473, question 21, or failure to ensure the buyer signs and dates the Form 4473 (to include failing to have the buyer recertify their answers if the transfer takes place on a different date than the original signature) on 5 percent or more of Forms 4473 examined, except when any purchaser is prohibited.
 - (4) Failure to record valid and complete transferee identification on 10 percent or more of the Forms 4473 examined.
 - (5) Failure to record any transferee identification on 10 percent or more of the Forms 4473 examined.
 - (6) Failure to file ATF F 3310.4, Report of Multiple Sale or Other Disposition of Pistols and Revolvers or ATF F 3310.12, Report of Multiple Sale or Other Disposition of Certain Rifles, (Southwest Border states only) when legally required and with a minimum of five instances.
 - (7) Missing firearms after inventory reconciliation (e.g., no records of disposition, required or otherwise).
 - (8) Failure to retain required GCA records for transferred firearms for period of time specified by regulation.
 - (9) Transfer of a rifle/shotgun to a resident of another State that violates State law.
 - (10) Failure to obtain a completed Form 4473 and failure to conduct a NICS check or obtain alternative permit for:
 - (a) The transfer of a firearm to a law enforcement officer for personal use, if the transferee is not prohibited; or
 - (b) The transfer of a firearm out of business inventory to an FFL responsible person (other than a sole proprietor) if the transferee is not prohibited.
 - (11) FFL fails to notify ATF about a change of control.
 - (12) FFL is engaged in an activity not authorized by the Federal firearms license (e.g., engaging in manufacturing firearms without a manufacturer's license).

- (13) Failure to timely report upon discovery of the theft or loss of a firearm to either ATF or local law enforcement.
 - (14) Failure to record NICS or State POC background check information on 10 percent or more of Forms 4473 examined, with a minimum of 10 instances.
 - (15) ATF has previously cited the FFL in a Report of Violations within the previous 5 years and the current inspection reveals repeated similar violation(s) with no significant improvement.
- d. Warning Conference. A warning conference (WC) lets a DIO or AS assess the FFL's potential to achieve compliance and determine any potential risks to public safety and firearm traceability. It does not require a determination of willfulness.
- (1) A WC is generally appropriate when the FFL has previously been the subject of a WL or WC, and the current inspection indicates similar repeat violations. It may also be appropriate to hold a WC for an FFL without a history of previous violations or a WL in certain circumstances. The DIO may decide that a WL or no administrative action is appropriate based on the nature and number of violations, improvement in compliance with firearms laws and regulations, compliance history, time elapsed since any previous administrative action, and other relevant factors.
 - (2) If the violations involve a corporation, ATF must invite a corporate responsible person to the WC.
 - (3) During the WC, ATF should provide the FFL with specific instructions to achieve GCA compliance and emphasize the mutual goal of ATF and the industry to safeguard the public.
 - (4) Examples of violations that generally merit a WC as the minimum administrative action, include but are not limited to the following:
 - (a) Transfer of a firearm other than a rifle or shotgun (including a frame or receiver) to an out-of-state resident.
 - (b) Failure to mark imported or manufactured firearms appropriately.
 - (c) Failure to report theft or loss to both ATF and local law enforcement.
 - (d) Conducting business at locations not authorized as an extension of the licensed business premises.
 - (e) Failure to obtain a completed Form 4473 and failure to conduct a NICS check or obtain alternative permit for:
 - i The transfer of a firearm to a law enforcement officer for personal use, if the transferee is not prohibited, and is a repeat violation;
 - ii The transfer of a firearm out of business inventory to an FFL responsible person (other than a sole proprietor), if the transferee is not prohibited, and is a repeat violation; or
 - iii The transfer of a firearm after an initial NICS check 30-day expiration, without conducting a new NICS check, provided the purchaser is found not to be a prohibited person, such

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transactions occur on no more than two (2) occasions, and the same violation has not been cited in prior inspections within the previous 5 years.

- (f) FFL has previously been the subject of a WL or WC within the previous 5 years and the current inspection reveals repeated similar violation(s) with no significant improvement.
- (5) If the FFL does not respond to the WC notification letter and there is evidence the violations are willful, the DIO should proceed with revoking (or denying a renewal application for) the Federal firearms license.
- (6) Additionally, the DIO may decide after meeting with the FFL, or after offering an opportunity for compliance, to proceed with revocation (denial) if the DIO believes the public interest is best served by revoking or denying renewal of the Federal firearms license. In any situation in which the DIO seeks revocation or denial of renewal, notification of the proposed course of action must be made through Field Management Staff, FISB [REDACTED]@atf.gov).
- (7) In instances in which it is determined that the violations were not willful and/or the FFL is likely to come into compliance, the WC shall be the final administrative action.
- (8) The WC may include ATF Counsel and will discuss means to achieve compliance. The AS or DIO may request the FFL submit written proposals designed to achieve GCA compliance.

e. Revocation Under 18 U.S.C. § 923(e).

- (1) ATF must establish willfulness to proceed with revocation under 18 U.S.C. § 923(e). This section is intended to supplement section 7(a)(4) of this policy and does not replace or countermand that section.
- (2) ATF does not have to establish a history of prior violations to demonstrate willfulness. Accordingly, consistent with section 7(a)(4), ATF will revoke a federal firearms license, absent extraordinary circumstances on initial violations, if those violations inherently demonstrate willfulness, such as transferring a firearm to a prohibited person; failing to run a background check prior to transferring a firearm to a non-licensee; falsifying records, or making false statements; failing to respond to an ATF tracing request; refusing to permit ATF to conduct an inspection; or allowing a straw sale of a firearm to occur. ATF may also revoke for any other willful first-time violation as it deems appropriate.
- (3) ATF should also consider revocation when an FFL has willful violation(s) of the GCA and when factors are present that have a direct impact on public safety such as:
 - (a) [REDACTED]
 - (b) [REDACTED]
 - (c) [REDACTED]
 - (d) [REDACTED]
- (4) ATF can establish the knowledge element of willfulness in several ways:
 - (a) Establish the FFL has a history of similar, repeat violations, and documentation that an IOI discussed them with the FFL. The FFL's

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compliance history can include other efforts by ATF (including qualification inspections) to inform the FFL about its legal responsibilities.

- (b) Use inspection reports to establish willfulness even if the inspection found no violations (i.e., acknowledgment of Federal firearms regulations).
 - (c) Statements or admissions communicated by the FFL or its employee(s), as well as actions by the FFL or its employee(s) during an inspection that demonstrate knowledge of regulations and concurrence with the IOI's findings.
 - (d) Publications and information provided to the FFL which explain the FFL's legal responsibilities.
 - (e) Demonstrate that the FFL has complied with the specific regulation on other occasions.
 - (f) Demonstrate that the FFL has substantial experience as an FFL.
- (5) ATF Field Counsel must evaluate the facts and circumstances surrounding an FFL's alleged violation(s). During Counsel's review, a copy of the Industry Operations Monitored Case Briefing Paper will be submitted to FISB. It can be later removed from the Monitored Case Program (MCP) if the Field Division decides not to pursue MCP actions or if Counsel determines that the case does not satisfy the elements of the violations. (See 10.d.(3) for Regional Associate Chief Counsel (ACC) concurrence).
- (6) Revocation is an appropriate licensing action under section 923(e) and is appropriate in response to the discovery of the following willful violations which can directly impact public safety. Consistent with section 7(a)(4), the below five items merit revocation of the license if committed willfully unless extraordinary circumstances exist. In extraordinary circumstances, an alternative recommendation may be made. All inspections with instances of (a)-(e) violations below, must come to the Deputy Assistant Director (DAD) (IO) for approval through the MCP. NOTE: The fact that there is only a single violation of subsections (a)-(e) below does not, unless explicitly stated above, constitute extraordinary circumstances and will not be an acceptable reason for an alternate recommendation.
- (a) Transfer of a firearm to a prohibited person while knowing or having reasonable cause to believe that the transferee is a prohibited person.
 - (b) Failure to conduct a NICS check or obtain alternative permit or fail to retrieve a NICS (or equivalent State POC background check system) response prior to the transfer of a firearm. This includes:
 - i Return of consignment firearms,
 - ii Pawn redemption of firearms,
 - iii Acceptance of an invalid alternate permit or nonqualifying alternative permit in lieu of NICS,
 - iv Transfer of a firearm after an initial NICS check 30-day expiration, without conducting a new NICS check, unless (a) the purchaser is found not to be a prohibited person, (b) such transactions occurred on three (3) or more occasions, (c) the FFL has a significant history of noncompliance with the GCA,

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(d) there are independent, objective indicia that the violation was willful or (e) the same violation has not been cited in prior inspections within the previous 5 years.

v Transfer of a firearm prior to receiving a final NICS response or applicable State POC background response where three (3) days have not elapsed since the FFL contacted the system, or in cases where the transferee/buyer is under 21, transferring a firearm prior to receiving a final NICS response where a delay of up to 10 business days has not elapsed when NICS notified the FFL that additional research was required to determine if the prospective transferee had a prohibiting record under 18 U.S.C. § 922(d).

- (c) Failure to respond to a firearm trace request within 24 hours after receipt of the request. (Contact National Tracing Center to obtain necessary information to fully evaluate potential failure of FFL to respond to a trace request).
- (d) Falsification of records required under the GCA or making a false or fictitious written statement in the FFL's required records or in applying for a firearms license. Withholding or misrepresenting material information in applying for a license.
- (e) Refuse ATF right of entry and inspection during hours of operation at the licensed premises.

Revocation is also an appropriate licensing action in response to the discovery of the below willful violations:

- (f) Allow an employee who is a prohibited person to have actual or constructive possession of a firearm while knowing or having reasonable cause to believe that the employee is a prohibited person.
- (g) The FFL transfers a firearm knowing or having reasonable cause to believe that the transferee of record is not the actual buyer (i.e. a straw purchase).
- (h) Failure by the FFL to create a required GCA record, or discontinued use of required GCA records.
- (i) Failure to execute an ATF Form 4473.
- (j) Failure to account for acquired firearms which records indicate were in inventory within the previous 5 years after reconciliation for which disposition could not be accounted for in required GCA records (e.g. acquisition and disposition record, Form 4473) and is a repeat violation of increased frequency.
- (k) Discovery of a firearm with an obliterated serial number in FFL's inventory.
- (l) Transfer of a firearm to an underage person.
- (m) The FFL has been the subject of a WC in lieu of Revocation within the previous 5 years and the current inspection reveals repeated similar violations(s) with no significant improvement.

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- (n) Any other GCA violation not specifically addressed in this order where revocation may be appropriate.

f. Fines/Suspensions/Revocation under 18 U.S.C. §§ 922(t) or 922(z).

- (1) ATF may revoke, suspend, and/or impose a civil fine for certain knowing violations of the Brady Handgun Violence Prevention Act and the Child Safety Lock Act of 2005. See 18 U.S.C. §§ 922(t), 922(z) and 924(p). In each situation, the proposed sanction (revocation, suspension, and/or fine) must be specifically spelled out in the Notice to Revoke or Suspend License and/or Impose a Civil Fine. The FFL has the same rights to review as in other GCA administrative hearings.
- (2) ATF can revoke, suspend, and/or fine an FFL pursuant to 18 U.S.C. § 922(t)(5). This allows for revocation, suspension for not more than 6 months, and/or a civil fine for the transfer of a firearm and failure to conduct a NICS check required by 18 U.S.C. § 922(t)(1), where NICS was operating, and the person would have been denied had a NICS check been conducted. The transfer of the firearm and the failure to conduct the NICS check must be done knowingly.
- (3) ATF can revoke, or suspend, and/or fine an FFL pursuant to 18 U.S.C. § 924(p) for failure to comply with 18 U.S.C. § 922(z)(1) (providing a secure gun storage or safety device with each transfer of a handgun). With certain exceptions, 18 U.S.C. § 924(p) allows for the revocation, suspension for not more than 6 months, and/or a civil fine for the knowing transfer of a handgun to a non-licensee without a secure gun storage or safety device.
- (4) A Notice to Revoke or Suspend License and/or Impose a Civil Fine will be issued when violations of 18 U.S.C. §§ 922(t)(1), 922(z) and/or 924(p) are cited. Except in situations approved by the DAD (IO), all three options on the form will be selected and the maximum fine and suspension will be proposed. All settlements prior to or after a hearing, must be approved by the DAD (IO) and Deputy Chief Counsel prior to finalizing any agreement.
- (5) Notification of Civil Fine imposed must be made to Federal Firearms Licensing Center and Financial Management Division via memo.
- (6) ATF Field Counsel must evaluate the facts and circumstances surrounding an FFL's alleged violation(s). During Counsel's review, a copy of the Industry Operations Monitored Case Risk Assessment Briefing Paper will be submitted to FISB. It can be later removed from the MCP if the Field Division decides not to pursue revocation, denial, suspension, and/or fine, or if Counsel determines the case does not satisfy the elements of the violations. (See paragraph 10.d.(3) for ACC concurrence.)

g. Denials under 18 U.S.C. § 923(d).

- (1) An application for a Federal firearms license may only be denied if the applicant does not meet one or more of the licensing criteria set forth in 18 U.S.C. § 923(d). Generally, ATF will deny an application for renewal of a Federal firearms license based on willful violations of the GCA and the same criteria and procedures outlined for revocation under section 923(e) in section 7 above.
- (2) ATF will deny applications in which an applicant: failed to provide material information required on the application or the applicant is less than 21 years old, a prohibited person, made a material false statement on the application, or is a prior willful violator of the GCA. [REDACTED]

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- [REDACTED]
- (3) ATF Field Counsel must evaluate the facts and circumstances surrounding an applicant's alleged violation(s). During Counsel's review, a copy of the Industry Operations Monitored Case Risk Assessment Briefing Paper will be submitted to FISB. It can be later removed from the MCP if the Field Division decides not to pursue denial. (See 10.d.(3) for Regional ACC concurrence.)

h. Alternate Actions.

- (1) For inspections that merit consideration of revocation for violations outlined in paragraph 7.e.(6)(a)-(e), extraordinary circumstances must exist before the DIO proposes an alternate recommendation, and those extraordinary circumstances must be thoroughly explained in the DIO's recommendation. NOTE: One instance of a violation outlined in paragraph 7.e.(6)(a)-(e) above does not constitute extraordinary circumstances and will not be an acceptable reason for an alternate recommendation.
- (2) Appropriate alternate recommendations to revocation include an AS led WC or a DIO led WC. Who conducts the warning conference will depend on the totality of the circumstances surrounding the inspection results. A warning letter is rarely an acceptable alternate recommendation to revocation.
- (3) For inspections that merit consideration of revocation in which the DIO proposes an alternate recommendation, the inspection is required to be submitted to the MCP for DAD (IO) approval. (ATF O 3200.1B, Monitored Case Program.)

i. Other Administrative Resolutions.

- (1) Pursuant to 27 CFR 478.72-74, the DIO may afford the FFL/applicant the opportunity to submit facts and arguments for review and consideration and make offers of settlement or offers of a final resolution involving an agreed upon revocation before or after the issuance of a Notice to Revoke/Deny. Such submissions of settlements/offers are required to occur outside of an administrative hearing and require DAD (IO) approval. An example of settlement could include a request for a temporary closure period when the FFL institutes remedial measures.
- (2) Following the issuance of the Notice to Revoke/Deny, a DIO may consider alternatives to issuing a Final Notice of Denial of Application, Revocation, Suspension, and/or Fine of a Federal firearms license with the concurrence of the DAD (IO). The DIO should consult and work closely with Field Counsel on the negotiation of terms and conditions to which ATF may appropriately agree to settle or resolve. The DAD (IO) must approve the final written settlement document and if the revocation is based on the violations outlined in paragraph 7.e.(6)(a)-(e), get approval from the Director prior to the field proceeding.
- [REDACTED]

8. GENERAL GUIDANCE. The Division management team may consider the appropriate administrative actions. The DIO will seek advice of Field Counsel and the ACC (East/Central/West), when seeking Administrative Actions for DAD (IO) approval and the Assistant Director, Field Operations when considering the appropriate administrative action.
- a. This order does not mandate doing any administrative action in a sequential or consecutive order. For example, a WC may be held or revocation sought after the first inspection if violations impact public safety or obstruct firearms traceability. Conversely, a WL may be issued even if the prior inspection resulted in a WC.
 - b. The DIO or AS will conduct WCs.
 - c. The DIO will ensure the timely initiation of administrative action. For inspections that are alternates to revocation for items specified in paragraph 7.e.(6)(a)-(e) above, the actions need to occur within 30 days of the notice from the DAD (IO) that the Director has been briefed and concurs with the action. The post-conference letter for cases requiring a WC should be issued no later than 90 days after final DIO review unless there are mitigating circumstances. The AS should issue a WL within 15 days of his or her review.
 - d. The area office should submit cases involving potential denials/revocations to the DIO within 30 days of the inspection submission date. The DIO has 120 days, inclusive of Counsel review, upon receipt of the inspection to issue the Notice to Revoke/Deny. Field Counsel will have a maximum of 60 days to review and prepare the Notice in final form for submission to the DIO for review and issuance. The DAD (IO) will be notified by the DIO via FISB if these periods are not met.
 - e. 
 - f. If the DIO issues a Notice to Revoke/Deny and the FFL requests a hearing and then withdraws the request, or if the FFL does not request a hearing, the DIO will issue a Final Notice of Revocation.
9. HEADQUARTERS POLICY REVIEW AND ALTERNATE RECOMMENDATIONS.
- a. ATF must handle inspections and investigations with recommendations for administrative actions that meet the criteria of the MCP (e.g., revocations, denials, imposition of civil fine, suspension and/or alternate to revocation/denial etc.) per ATF O 3200.1B, Monitored Case Program.
 - b. Alternate recommendations to revocation (see section 7.h) require concurrence of the DAD (IO) before proceeding. Alternate recommendations to revocation for items specified in 7.e.(6)(a)-(e) above, will be briefed to the Director, or their designee, by the DAD (IO) on a monthly basis. NOTE: One instance of a violation of 7.e.(6)(a)-(e) above does not constitute extraordinary circumstances and will not be an acceptable reason for an alternate recommendation.

10. FIELD RESPONSIBILITIES. Responsibilities for field personnel and management are as follows:a. Industry Operations Investigator. The IOI:

- (1) Will conduct the inspection per established ATF guidelines, including use of the ATF approved case management system. If an IOI uncovers violations, the IOI will obtain and preserve all available evidence and document the violations to show if the violations were willful, including copies of Forms 4473 and Acquisition and Disposition records since only documented violations will be cited in the Notice. The IOI will then make the appropriate recommendation based on the guidelines contained herein and forward the inspection to the AS.
- (2) Must communicate with and notify the AS of violations, findings, and other circumstances impacting public safety upon discovery.

b. Area Supervisor. The AS:

- (1) Will review all firearms inspection reports and associated exhibits maintained within the ATF approved case management system to ensure the IOI's recommendation meets established guidelines and evidentiary requirements, they adequately performed all relevant inspection work steps, and they correctly entered all necessary data.
- (2) Must communicate with the DIO and notify the DIO of violations, findings, and other circumstances impacting public safety upon discovery.
- (3) Independently evaluate the IOI's recommendation and insert their recommendation in the ATF approved case management system. If they disagree with the IOI recommendation, the AS will document the reason(s) within the recommendation section of the ATF approved case management system. The AS must submit cases meriting WC, revocation, denial, fine, or suspension to the DIO within 30 days of the IOI submission date.

c. Director of Industry Operations. The DIO shall:

- (1) Review all inspections that recommend a WC and/or alternate thereof. The DIO shall complete a recommendation in the ATF approved case management system and return to the AS within 15 calendar days.
- (2) Review all inspections resulting in a recommendation of denial, revocation, suspension, fine, or alternate to revocation and complete a recommendation in the ATF approved case management system. Additionally, the DIO must provide justification through the Industry Operations Monitored Case Risk Assessment Briefing Paper and submit to FISB.
- (3) Request legal advice from Field Counsel in all potential alternate recommendations to revocation. Request Field Counsel and ACC legal advice for all denials, revocations, suspensions, and fines.
- (4) Advise the SAC of any administrative actions that deal with potential denials, revocations, suspensions, fines, alternates to revocations, and other administrative resolutions.
- (5) Following a hearing requested pursuant to either 27 C.F.R. §§ 478.72 or 478.74, the DIO must conclude whether the Government has met its burden of proof by a preponderance of the evidence that the elements required to issue a Final Notice of Denial of Application, Revocation, Suspension and/or Fine of Firearms License, ATF Form 5300.1. If the DIO believes such elements have not been

ATF O 5370.1F
01/13/2023

proven, including the willfulness required to sustain a denial under 18 U.S.C. § 923(d)(1)(C) or revocation under 18 U.S.C. § 923(e), the DIO must fully brief the DAD (IO) as to the basis for this determination.

(6) Works with Field Counsel, monitors all settlements as set forth above.

d. Counsel.

(1) At the request of the DIO, Field Counsel will review all inspection reports and exhibits in the ATF approved case management system and provide legal advice in all administrative actions.

(2) [REDACTED]
[REDACTED] As noted above, ATF may also revoke or suspend a license or impose a civil fine for certain violations of 18 U.S.C. §§ 922(t)(5) and 924(p). [REDACTED]
[REDACTED]

(3) The ACC for the applicable Field Division will review and approve all proposed Notices and administrative resolutions for legal soundness, and compliance with this policy prior to final submission to MCP and implementation of these actions.

(4) Works with the DIO, monitors all settlements as set forth above.

e. Special Agent in Charge. The SAC has ultimate division responsibility to ensure that this national policy is properly enforced. To this end, they may establish additional controls in their division.

11. AVAILABILITY. The forms outlined in this order are available at ATFConnect>Forms and Policy>Forms. The manual outlined in this order is available at ATFConnect>Directorates>Field Operations>Industry Operations>IOI Manual.

12. RECORDS RETENTION REQUIREMENTS. Documents outlined in this order must be retained in accordance with ATF O 1340.5A, Records Management Program and ATF O 1340.7A, ATF Records Control Schedule.

13. QUESTIONS. If you have any questions regarding this order, please contact Field Management Staff, [REDACTED].

KRISTEN
DETINEO

Assistant Director
(Office of Field Operations)

Digitally signed by KRISTEN
DETINEO
Date: 2023.01.13 18:55:33
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Exhibit 4

Bureau of Alcohol, Tobacco, Firearms and Explosives

ATF

Fact Sheet

Public Affairs Division - Washington DC



Contact: Public Affairs Division

May 2014

www.atf.gov

FEDERAL FIREARMS LICENSE REVOCATION PROCESS

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is responsible for licensing persons engaged in manufacturing, importing, and dealing in firearms. ATF also ensures that those who are licensed to engage in those businesses do so in compliance with applicable laws and regulations. It is critical that Federal Firearms Licensees (FFL) comply with the Gun Control Act (GCA) and its implementing regulations in order to assist law enforcement efforts, prevent the diversion of firearms from lawful commerce to the illegal market, ensure successful tracing of firearms, and to protect the public.

ATF industry operations investigators (IOI) conduct inspections of FFLs to ensure compliance with the law and regulations and to educate licensees on the specific requirements of those laws and regulations. IOIs assist with business practices designed to improve compliance with the GCA. If violations are discovered during the course of an FFL inspection, the tools that ATF has available to guide the FFL into correction of such violations and to ensure future compliance include issuing a Report of Violations, sending a warning letter, and holding a warning conference with the industry member. Despite these actions, on rare occasions ATF encounters a licensee who fails to comply with the laws and regulations and demonstrates a lack of commitment to improving his or her business practices. In such cases where willfulness is demonstrated, ATF's obligation to protect public safety may require revocation of the FFL.

There about 74,500 FFLs engaged in business in fiscal year 2013. During that time, ATF conducted more than 10,500 firearms compliance inspections and sought revocation of firearms licenses on 81 occasions.

Part of ATF's core mission is to protect the public from violent crime involving the use of firearms. The FFLs who willfully violate the laws and regulations preventing FFL from accomplishing its mission to protect the public we serve are few. Willfulness is not defined in the regulations, but is defined by case law to mean the intentional disregard of a known legal duty or plain indifference to a licensee's legal obligations. In the case of an FFL who has willfully violated the law, has shown an intentional disregard for regulatory requirements, or has knowingly participated in criminal acts, revocation often becomes the only viable option. It should be noted, however, that ATF does not revoke for every violation it finds; and that revocation actions are seldom initiated until after an FFL has been educated

on the requirements of the laws and regulations and given an opportunity to voluntarily comply with them but has failed to do so. Violations commonly cited in revocation cases include failure to account for firearms, failure to verify and document purchaser eligibility, failure to maintain records requisite for successful firearms tracing, and failure to report multiple sales of handguns.

The revocation process begins when an IOI recommends revocation following an inspection. The recommendation is subject to a rigorous, thorough internal review process. The authority to revoke rests with ATF's Directors of Industry Operations (DIO) located at one of ATF's 25 field divisions. If the DIO concurs with revocation of the license, the report is reviewed by ATF field division counsel for legal sufficiency.

To ensure consistency throughout the country, the DIO notifies the Deputy Assistant Director of Field Operations (Industry Operations) (DAD [IO]) located at the Bureau headquarters in Washington, D.C., of the decision to pursue a potential revocation and provides a synopsis of the case. The DAD (IO) will advise the DIO if the matter should proceed in the field division. If the matter is highly complex or sensitive, or if the licensee's operations and alleged violations are taking place in several field divisions, it will be resolved at the headquarters level.

If revocation is pursued, procedures are followed as specified under Title 27 Code of Federal Regulations Part 478. The licensee is provided with a Notice of Revocation that includes findings describing the reasons for pursuing revocation. The licensee has 15 days from receipt of the notice to request a hearing. The licensee may be represented by an attorney at the hearing and may bring employees and documentation to address the violations cited in the notice. ATF is generally represented at hearings by ATF Counsel and the IOIs who conducted the inspection(s) resulting in the revocation recommendation.

During a hearing, the licensee has the opportunity to challenge the violations and establish that the violations were not willful. Based on the evidence presented at the hearing by the licensee and ATF, the hearing officer submits a report of findings to the DIO. Based upon the hearing testimony, exhibits presented during the hearing, and the hearing officer's findings, the DIO decides whether to continue with the revocation. If the DIO's decision is to revoke following a hearing, or in cases where a hearing is not requested by the FFL, then a Final Notice of Revocation is sent to the licensee with a summary of the findings and the legal conclusions that warrant revocation.

A licensee who receives a Final Notice of Revocation may, within 60 days of receipt of the Final Notice, file a petition for *de novo* review with the U.S. District Court.

If the licensee makes a request to the DIO to allow continuance of business operations, the DIO may allow the licensee to operate during the appeal process. If the DIO

Page 3

prohibits continuance of operations during judicial review because of the risk to public safety, the FFL can appeal to the court to continue operations during the review process.

#

Exhibit 5



Fact Sheet - Facts and Figures for Fiscal Year 2018

May, 2019

Fast Facts

1. ATF closed 8,141 cases that had been recommended for prosecution in 2018 or a previous fiscal year.
2. ATF has 9,651 active explosive licensees and permittees and ATF has 135,314 active federal firearms licensees.
3. ATF conducted 10,323 firearm compliance inspections in 2018.

Personnel

- Special Agents (1811): 2,634
- Industry Operations Investigators: 842 onboard
 - (641 IOIs are deployed to inspection activity)
- Administrative/Professional/Technical: 1,634
- Total Full-time Employees: 5,110
- Field Divisions: 25

Cases:

ATF closed 8,141 cases that had been recommended for prosecution in 2018 or a previous fiscal year.

- Recommended for prosecution: 10,691
- Indicted cases: 7,630
- Convicted cases: 5,485
- Criminal group and gang cases: 1,108



Defendants:

- Recommended for prosecution: 16,669
- Prior Arrests: 143,290 or an average of 8.6 prior arrests per defendant recommended for prosecution.
- Prior Convictions: 38,159 or an average of 2.4 prior convictions per defendant recommended for prosecution.
- Defendants indicted: 11,822
- Number convicted: 8,155
- Received life sentence: 37
- Received death sentences: 1

In fiscal year 2018 case and defendant data presents a snapshot in time of matters proceeding through the various phases of the judicial process. The typical ATF case recommended for prosecution remains open over a period of approximately 4 years. The snapshot presents actual judicial activity in the fiscal year regardless of the year the matter was recommended for prosecution. Consequently, the categories "cases," defendants "indicted," "convicted," and "sentenced" are not subsets those cases recommended for prosecution in 2018. The reader is cautioned not to calculate, for example, "percentage indicted" based upon the presented data as the case indicted may have been presented in a previous fiscal year.

Initiated criminal investigations to these specific areas:

- Number of firearms cases: 35,839
- Number of arson cases: 1,932
- Number of explosives cases: 1,103
- Number of alcohol and tobacco cases: 67

Firearms Licensees:

ATF has 135,314 active Federal Firearms Licensees (FFL)

- Type 01-Dealer: 56,460
- Type 02-Pawnbroker: 7,674
- Type 03-Collector: 54,228
- Type 06-Manufacturer of Ammunition: 2,157
- Type 07-Manufacturer of Firearms: 12,889
- Type 08-Importer: 1,164
- Type 09-Dealer of Destructive Devices: 108
- Type 10-Manufacturer of Destructive Devices: 388
- Type 11-Importer of Destructive Devices: 246

ATF0453

Inspections:

ATF conducted the following firearm compliance inspections: 10,323

Firearms compliance inspections resulted in the following recommendations [1]:

- No violations: 4,379 (42.42%)
- Report of violations: 1,834 (17.77%)
- Warning letter: 1,088 (10.54%)
- Warning conference: 371 (3.59%)
- Surrendered in lieu of revocations: 34 (0.33%)
- Revocations/Denials: 49 (0.47%)
- Other (out of business, etc.): 2,568 (24.88%)

Most frequently cited violations:

- Transferee did not properly complete Section A, F 4473 - 27 CFR 124(c)(1)
- Failure to timely record entries in bound record (Acquisition and Disposition Book) - 27 CFR 478.125e
- Failure to complete forms as indicated in instructions (this violation is often cited when the licensee failed to properly complete a form, but there is not a separate regulatory citation addressing the omitted or mis-documented item) - 27 CFR 478.21 (a)-(b)
- Licensee did not record on F 4473 the date on which NICS was contacted - 27 CFR 478.124 (c)(3)(iv)
- Licensee did not sign and date F 4473 - 27 CFR 478.124 (c)(5)
- Licensee failed to obtain and/or document purchaser's Identification document - 27 CFR 478.124(c)(3)(i)
- Licensee failed to report multiple handgun sales - 27 CFR 478.126a
- Licensee failed to properly identify firearm on F 4473 - 27 CFR 124(c)(4)
- Licensee failed to contact NICS and wait stipulated time prior to transfer of firearm - 27 CFR 478.102(a)
- Licensee failed to record the type, model, caliber or gauge, and serial number of each complete firearm manufactured or otherwise acquired - 27 CFR 478.123(a)

Number of firearms inventory discrepancies found during compliance inspections:

- Initial discrepancies: 1,163,980
- Final discrepancies (after reconciliation): 15,461

Firearms application inspections conducted: 11,893

- 9,550 approved
- 2,343 denied, abandoned, withdrawn

Explosives Licensees:

ATF has 9,651 active Federal Explosives License and Permits (FEL/P)

- Manufacturers: 2,174
- Importers: 529
- Dealers: 466
- Dealer in black powder: 392
- Limited permit: 79
- User: 6,011

Inspections:

- Explosives compliance inspections conducted: 4,573
- Explosives application inspections conducted: 979

Explosive compliance inspections resulted in the following recommendations:

- No violations: 3,247 (71.1%)
- Report of violations: 222 (4.9%)
- Warning letter: 180 (3.9%)
- Warning conference: 52 (1.1%)
- Revocations sought: 14 (0.3%)
- Other (Out of Business, etc.): 854 (18.7%)

Most frequent cited violations:

- 27 CFR 555.127 - Failure to maintain an accurate Daily Summary of Magazine Transactions
- 27 CFR 555.215 - Failure to comply with House Keeping Guidelines
- 27 CFR 555.29 - Failure to comply with Storage requirements.
- 27 CFR 555.57(b) - Failure to timely notify the following changes: Responsible Persons, and Employee Possessors
- 27 CFR 555.125(b)(3) - Records Maintained by Permittees - Failure to enter required information (Date of Acquisition, Name/Brand of Manufacturer, ID marks, etc.)

Imports and National Firearms Act (NFA):

- NFA registration applications (and transfer applications): 339,278
- NFA registrations processed (total weapons): 1,422,353

ATF0454

- NFA making and transfer tax collected: \$33,371,970
- NFA special occupation tax collected: \$6,753,004
- Imports Form 6 non-immigrant alien processed: 9,267
- Imports Form 6 processed: 7,779
- Total import permit applications: 17,505

All taxes collected for NFA goes to the general fund of the U.S. Treasury Department.

Tracing

ATF's National Tracing Center (NTC) is the only organization authorized to trace U.S. and foreign manufactured firearms for international, Federal, State and local law enforcement agencies. NTC provides critical information that helps domestic and international law enforcement agencies solve firearms crimes, detect firearms trafficking, and track the intrastate, interstate, and international movement of crime guns.

- NTC processed more than 440,000 trace requests

Certified Fire Investigators (CFI)

ATF's CFIs provide support for fire and arson investigations throughout the entire United States, its territories and other countries.

- ATF initiated 1,932 fire and arson investigations

National Integrated Ballistic Information Network (NIBIN)

NIBIN provides federal, state and local law enforcement, forensic science, and prosecutors with an automated ballistic imaging system that will aid their investigations by using digital images of shell casings to link violent crimes involving firearms and subsequently identify firearm users or "trigger pullers."

- NIBIN partners have confirmed more than 255,000 NIBIN leads including 54,686 in fiscal year 2018

Laboratories

In fiscal year 2018, ATF's laboratories accomplished the following:

- Received 2,902 requests for analysis and testing
- Completed analysis on 2,720 forensic cases (FSL)
- Performed 142 laboratory case testing experiments (FRL)
- Performed 237 laboratory research testing experiments (FRL)
- Provided 133 days of expert testimony in the courts
- Worked 353 days at crime scenes
- Provided 795 days of instruction for federal, state and local investigators and forensic examiners

Budget

The agency's FY2018 enacted budget is approximately \$1.294 billion.

###

[1] Numbers provided are for the most notable areas and do not include all items identified by an industry operation investigator during an inspection.

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Exhibit 6



Fact Sheet - Facts and Figures for Fiscal Year 2019

June, 2020

Fast Facts

1. ATF closed 7,110 cases that were recommended for prosecution in previous years up to and including FY 2019.
2. ATF has 9,512 active explosive licensees and permittees and 130,048 active federal firearms licensees.
3. ATF conducted 13,079 firearm compliance inspections in 2019.

Personnel

| | |
|--|-------|
| Special agents | 2,597 |
| Industry operations investigators (IOIs) | 811 |
| Administrative/professional/technical | 1,650 |
| Total full-time employees | 5,058 |

Personnel in Field Divisions

Outside of headquarters in Washington, DC, ATF has 25 field divisions across the country.

| | |
|--|-------|
| Special agents | 2,274 |
| IOIs | 770 |
| Administrative/professional/technical | 547 |
| Total full-time employees in field divisions | 3,591 |

Cases and Defendants

Case and defendant data presents a snapshot in time of matters proceeding through the various phases of the judicial process. The typical ATF case recommended for prosecution remains open over a period of approximately 4 years.

Cases and defendants indicted, convicted, and sentenced are not subsets of cases and defendants recommended for prosecution in FY 2019. The snapshot presents actual judicial activity in the fiscal year regardless of the year the matter was recommended for prosecution. For example, "percentage indicted" should not be calculated based upon the presented data, as the case indicted may have been presented in a previous fiscal year.

Cases

| | |
|---|--------|
| Total cases recommended for prosecution | 11,319 |
| Indicted cases | 8,360 |
| Convicted cases | 6,887 |
| Criminal group and gang cases | 1,690 |

Of the total cases that were recommended for prosecution in previous years up to and including FY19, ATF closed 7,110 cases.

Defendants

| | |
|-----------------------------|---------|
| Recommended for prosecution | 17,206 |
| Prior arrests | 150,540 |
| Prior convictions | 39,272 |
| Defendants indicted | 12,441 |

ATF0456

| | |
|--------------------------|-------|
| Number convicted | 9,773 |
| Received life sentence | 48 |
| Received death sentences | 1 |

The data show an average of 8.7 prior arrests and 2.3 prior convictions per defendant recommended for prosecution.

Criminal Investigations Initiated

| | |
|-------------------------------------|--------|
| Number of firearms cases | 35,790 |
| Number of arson cases | 2,052 |
| Number of explosives cases | 1,088 |
| Number of alcohol and tobacco cases | 11 |

Firearms Licensees

As of FY19, there were 130,048 active federal firearms licensees (FFLs).

| | |
|--|--------|
| Type 01: Dealer | 53,746 |
| Type 02: Pawnbroker | 7,314 |
| Type 03: Collector | 52,193 |
| Type 06: Manufacturer of Ammunition | 1,885 |
| Type 07: Manufacturer of Firearms | 13,030 |
| Type 08: Importer | 1,108 |
| Type 09: Dealer of Destructive Devices | 129 |
| Type 10: Manufacturer of Destructive Devices | 392 |
| Type 11: Importer of Destructive Devices | 251 |

Inspections

ATF conducted **13,079 firearm compliance inspections** in FY 2019.

Firearms compliance inspections resulted in the following recommendations:

| | | |
|-------------------------------------|-------|--------|
| No violations | 6,911 | 52.84% |
| Report of violations | 2,594 | 19.83% |
| Warning letter | 1,482 | 11.33% |
| Warning conference | 415 | 3.17% |
| License surrendered/out of business | 1,634 | 12.49% |
| Revocations/denials | 43 | 0.33% |

Most Frequently Cited Violations

| | |
|-------------------------------------|--|
| <u>27 CFR 478.124(c)(1).</u> | Failure to obtain a completed ATF F 4473 |
| <u>27 CFR 478.125(e).</u> | Failure to maintain an accurate/complete/timely Acquisition and Disposition (A&D) record |
| <u>27 CFR 478.21(a).</u> | Failure to complete forms as indicated in instructions |
| <u>27 CFR 478.124 (c)(3). (iv).</u> | Failure to record NICS contact information on ATF F 4473 |
| <u>27 CFR 478.124 (c)(5).</u> | Failure by transfer to sign and/or date ATF F 4473 |
| <u>27 CFR 478.124(c)(3). (i).</u> | Failure to verify or record purchaser's identification document on ATF F 4473 |

| | |
|------------------------------------|---|
| <u>27 CFR 478.126a</u> | Failure to report multiple sales or other dispositions of pistols and revolvers |
| <u>27 CFR 478.124(c)(4)</u> | Failure to properly record firearms information on ATF F 4473 |
| <u>27 CFR 478.102(a)</u> | Failure to complete a NICS/POC background check |
| <u>27 CFR 478.123(a)</u> | Failure to maintain an accurate/complete/timely manufacture or acquisition record |

Firearms Application Inspections

ATF conducted 9,418 application inspections. Of those inspections, 7,679 were approved and 1,739 were denied, abandoned or withdrawn.

Explosives Licensees

As of FY19, there were 9,512 active federal explosives licenses and permits (FEL/FEPS).

| | |
|--------------------------------|-------|
| Manufacturers | 2,134 |
| Importers | 554 |
| Dealers | 580 |
| Dealers in black powder | 353 |
| Limited permits | 189 |
| Users | 5,822 |

Inspections

ATF conducted 3,727 explosives compliance inspections in FY 2019.

Explosive compliance inspections resulted in the following recommendations:

| | | |
|--|-------|--------|
| No violations | 3,001 | 80.52% |
| Report of violations | 152 | 4.08% |
| Warning letter | 120 | 3.22% |
| Warning conference | 59 | 1.58% |
| License surrendered/out of business | 388 | 10.41% |
| Revocations sought | 7 | 0.19% |

Most Frequently Cited Violations

| | |
|--------------------------------|--|
| <u>27 CFR 555.127</u> | Failure to maintain an accurate Daily Summary of Magazine Transactions (DSMT) |
| <u>27 CFR 555.215</u> | Failure to comply with housekeeping guidelines |
| <u>27 CFR 555.54(a)</u> | Failure to report change of address |
| <u>27 CFR 555.29</u> | Failure to comply with storage requirements |
| <u>27 CFR 555.57(b)</u> | Failure to timely notify the following changes: Responsible Persons, and Employee Possessors |

Explosives Application Inspections

ATF conducted 881 application inspections. Of those inspections, 753 were approved and 128 denied, abandoned or withdrawn.

Imports and National Firearms Act (NFA)

| | |
|--|------------------------------------|
| NFA registration applications (and transfer applications) | 370,347 |
| NFA registrations processed (total weapons) | 342,860 forms 1,949,822 weapons |

| | |
|--|--------------|
| NFA making and transfer tax collected | \$37,300,000 |
| NFA special occupation tax collected | \$7,000,000 |
| Imports Form 6 non-immigrant alien processed | 8,280 |
| Imports Form 6 processed | 7,113 |
| Total import permit applications | 15,393 |

Note: All taxes collected for NFA goes to the general fund of the U.S. Treasury Department.

Tracing

ATF's National Tracing Center (NTC) is the only organization authorized to trace U.S. and foreign manufactured firearms for local, state, federal and international law enforcement agencies. NTC provides critical information that helps domestic and international law enforcement agencies solve firearms crimes, detect firearms trafficking, and track the intrastate, interstate, and international movement of crime guns.

NTC processed more than 450,000 trace requests in FY 2019.

Certified Fire Investigators (CFI)

ATF's CFIs provide support for fire and arson investigations throughout the entire United States, its territories and other countries.

ATF initiated 2,052 fire and arson investigations in FY 2019.

National Integrated Ballistic Information Network (NIBIN)

NIBIN provides local, state and federal law enforcement, forensic science, and prosecutors with an automated ballistic imaging system that will aid their investigations by using digital images of shell casings to link violent crimes involving firearms and subsequently identify firearm users in violent crimes.

| | |
|--------------|---------|
| Acquisitions | 387,247 |
| NIBIN leads | 67,639 |
| NIBIN hits | 6,48 |

Laboratories

In FY 2019, ATF's laboratories accomplished the following:

- Received 2,386 requests for analysis and testing
- Completed analysis on 2,567 forensic cases (FSL)
- Performed 270 laboratory case testing experiments (FRL)
- Performed 255 laboratory research testing experiments (FRL)
- Provided 127 days of expert testimony in the courts
- Worked 231 days at crime scenes
- Provided 812 days of instruction for federal, state and local investigators and forensic examiners

Budget

The agency's FY 2019 enacted budget is approximately \$1.317 billion.

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and Explosives
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Exhibit 7



Fact Sheet - Facts and Figures for Fiscal Year 2020

Español

April, 2021

Fast Facts

1. ATF closed 6,251 cases that were recommended for prosecution in previous years up to and including FY 2020.
2. ATF has 9,403 active explosive licensees and permittees and 130,525 active federal firearms licensees.
3. ATF conducted 5,827 firearm compliance inspections in FY 2020.

Personnel

| | |
|---|-------|
| Special agents | 2,653 |
| Industry operations investigators (IOIs) | 760 |
| Administrative/professional/technical | 1,669 |
| Total full-time employees | 5,082 |

Personnel in Field Divisions

Outside of headquarters in Washington, DC, ATF has 25 field divisions across the country.

| | |
|---|-------|
| Special agents | 2,341 |
| IOIs | 728 |
| Administrative/professional/technical | 538 |
| Total full-time employees in field divisions | 3,607 |

Cases and Defendants

Case and defendant data presents a snapshot in time of matters proceeding through the various phases of the judicial process. The typical ATF case recommended for prosecution remains open over a period of approximately 4 years.

Cases and defendants indicted, convicted, and sentenced are not subsets of cases and defendants recommended for prosecution in FY 2020. The snapshot presents actual judicial activity in the fiscal year regardless of the year the matter was recommended for prosecution. For example, "percentage indicted" should not be calculated based upon the presented data, as the case indicted may have been presented in a previous fiscal year.

ATF0460

Cases

| | |
|--|-------|
| Total cases recommended for prosecution | 8,025 |
| Indicted cases | 6,934 |
| Convicted cases | 5,181 |
| Criminal group and gang cases | 1,639 |

Of the total cases that were recommended for prosecution in previous years up to and including FY20, ATF closed 6,251 cases.

Defendants

| | |
|------------------------------------|--------|
| Recommended for prosecution | 10,012 |
| Prior arrests | 70,439 |
| Prior convictions | 18,192 |
| Defendants indicted | 10,077 |
| Number convicted | 7,204 |
| Received life sentence | 4 |
| Received death sentences | 24 |

The data show an average of 7.0 prior arrests and 1.8 prior convictions per defendant recommended for prosecution.

Criminal Investigations Initiated

| | |
|--|--------|
| Firearms cases initiated | 39,449 |
| Arson cases initiated | 2,252 |
| Explosives cases initiated | 976 |
| Alcohol and tobacco cases initiated | 12 |

Firearms Licensees

As of FY20, there were 130,525 active federal firearms licensees (FFLs).

| | |
|--|--------|
| Type 01: Dealer | 52,795 |
| Type 02: Pawnbroker | 7,114 |
| Type 03: Collector | 52,729 |
| Type 06: Manufacturer of Ammunition | 1,807 |
| Type 07: Manufacturer of Firearms | 14,126 |
| Type 08: Importer | 1,136 |
| Type 09: Dealer of Destructive Devices | 127 |
| Type 10: Manufacturer of Destructive Devices | 422 |
| Type 11: Importer of Destructive Devices | 269 |

Inspections

ATF conducted **5,827 firearm compliance inspections** in FY 2020.

Firearms compliance inspections resulted in the following recommendations (**updated/expanded information pending**):

| | | |
|-------------------------------------|-------|-------|
| No violations | 3,277 | 56.2% |
| Report of violations | 1,289 | 22.1% |
| Warning letter | 804 | 13.8% |
| Warning conference | 306 | 5.3% |
| License surrendered/out of business | 96 | 1.6% |
| Revocations/denials | 40 | 0.7% |
| Other dispositions | 15 | 0.3% |

Most Frequently Cited Violations

| | |
|---|--|
| <u>27 CFR 478.125(e).</u> | Failure to maintain an accurate/complete/timely acquisition and disposition (A&D) record of firearms |
| <u>27 CFR 478.124(c)(1).</u> | Failure to obtain a completed ATF F 4473 |
| <u>27 CFR 478.21(a).</u> | Failure to complete forms as prescribed |
| <u>27 CFR 478.124(c)(3).</u> <u>(iv).</u> | Failure to record NICS contact information on an ATF F 4473 |
| <u>27 CFR 478.123(a).</u> | Failure to maintain an accurate/complete/timely manufacture or acquisition record |
| <u>27 CFR 478.124(c)(5).</u> | Failure by transferor to sign and/or date an ATF F 4473 |
| <u>27 CFR 478.124(c)(4).</u> | Failure to record firearm information on an ATF F 4473 |
| <u>27 CFR 478.124(c)(3).</u> <u>(i).</u> | Failure to verify or record identification document on ATF F 4473 |
| <u>27 CFR 478.123(b).</u> | Failure to maintain an accurate/complete/timely licensee disposition record |
| <u>27 CFR 478.126a</u> | Failure to report multiple sales or other dispositions of pistols and revolvers |

Firearms Application Inspections

ATF conducted 10,525 application inspections. Of those inspections, 8,385 were approved and 237 were denied. The remaining 1,903 applications were abandoned or withdrawn.

Explosives Licensees

As of FY20, there were 9,403 active federal explosives licenses and permits (FEL/FEPs).

| | |
|--------------------------------|-------|
| Manufacturers | 2,103 |
| Importers | 557 |
| Dealers | 571 |
| Dealers in black powder | 340 |
| Limited permits | 57 |
| Users | 5,775 |

Inspections

ATF conducted 2,407 explosives compliance inspections in FY 2020.

Explosive compliance inspections resulted in the following recommendations:

| | | |
|--|-------|-------|
| No violations | 2,051 | 85.2% |
| Report of violations | 84 | 3.5% |
| Warning letter | 82 | 3.4% |
| Warning conference | 19 | 0.8% |
| License surrendered/out of business | 23 | 1.0% |
| Revocations sought | 6 | 0.2% |
| Other dispositions | 142 | 5.9% |

Most Frequently Cited Violations

| | |
|--|--|
| <u>27 CFR 555.127</u> | Failure to timely/accurately enter all required explosive inventory identification and quantity information in a daily summary of magazine transactions (per magazine) |
| <u>27 CFR 555.124(c)(2)</u> | Failure to record the (brand) name of manufacturer or name of importer of explosive material(s) in the permanent record (Dealer) |
| <u>27 CFR 555.123(b)(2)</u> | Failure to record the manufacturer's mark of identification of explosive material(s) in the permanent record (Manufacturer) |
| <u>27 CFR 555.125(b)(3)(vi)</u> | Failure to record the name, address and license/permit number of the person from whom explosive material(s) are received in the permanent record (User) |
| <u>27 CFR 555.29</u> | Unlawful storage of explosive materials |

Explosives Application Inspections

ATF conducted 835 application inspections. Of those inspections, 702 were approved and 13 denied. The remaining 120 applications were abandoned or withdrawn.

Imports and National Firearms Act (NFA)

| | |
|--|--|
| NFA registration applications (and transfer applications) | 487,745 |
| NFA registrations processed (total weapons) | 512,315 forms 2,353,436 weapons |
| NFA making and transfer tax collected | \$51,700,000 |
| NFA special occupation tax collected | \$8,000,000 |
| Permanent Import Form 6 permit applications (firearms, ammunition and defense articles) | 8,207 |
| Temporary Import Form 6 permit applications for non-immigrant aliens | 3,167 |
| Total import permit applications | 11,374 |

Note: All taxes collected for NFA go to the general fund of the U.S. Treasury Department.

Tracing

ATF's National Tracing Center (NTC) is the only organization authorized to trace U.S. and foreign manufactured firearms for local, state, federal and international law enforcement agencies. NTC provides critical information that helps domestic and international law enforcement agencies solve firearms crimes, detect firearms trafficking, and track the intrastate, interstate, and international movement of crime guns.

NTC processed more than 490,800 trace requests in FY 2020.

Certified Fire Investigators

ATF's Certified Fire Investigators (CFIs) provide support for fire and arson investigations throughout the entire United States, its territories and other countries.

ATF initiated 2,252 fire and arson investigations in FY 2020.

National Integrated Ballistic Information Network (NIBIN)

NIBIN provides local, state and federal law enforcement, forensic science, and prosecutors with an automated ballistic imaging system that will aid their investigations by using digital images of shell casings to link violent crimes involving firearms and subsequently identify firearm users in violent crimes.

| | |
|---------------------|---------|
| Acquisitions | 472,948 |
| NIBIN leads | 104,206 |
| NIBIN hits | 6,775 |

Laboratories

In FY 2020, ATF's laboratories accomplished the following:

- Received 1,734 requests for analysis and testing
- Completed analysis on 941 forensic cases (FSL)

ATF0465

- Performed 113 laboratory case testing experiments (FRL)
- Performed 84 laboratory research testing experiments (FRL)
- Provided 25.5 days of expert testimony in the courts
- Worked 175 days at crime scenes
- Provided 235 days of instruction for federal, state and local investigators and forensic examiners

Budget

The agency's FY 2020 enacted budget is approximately \$1.4 billion.



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



PROTECTING THE PUBLIC
SERVING OUR NATION

Exhibit 8



Fact Sheet - Facts and Figures for Fiscal Year 2021

August, 2022

Personnel

| | |
|---------------------------------------|-------|
| Special Agents | 2,631 |
| Industry Operations Investigators | 790 |
| Administrative/professional/technical | 1,672 |
| Total full-time employees | 5,093 |

Cases and Defendants

Case and defendant data presents a snapshot in time of matters proceeding through the various phases of the judicial process. The typical ATF case recommended for prosecution remains open over a period of approximately 4 years.

Cases and defendants indicted, convicted, and sentenced are not subsets of cases and defendants recommended for prosecution in FY 2021. The snapshot presents actual judicial activity in the fiscal year regardless of the year the matter was recommended for prosecution. For example, "percentage indicted" should not be calculated based upon the presented data, as the case indicted may have been presented in a previous fiscal year.

Cases

| | |
|-----------------------------------|--------|
| Firearms cases initiated | 37,003 |
| Arson cases initiated | 2,075 |
| Explosives cases initiated | 984 |
| Cases recommended for prosecution | 11,224 |
| Indicted cases | 7,532 |
| Convicted cases | 5,967 |

Defendants

| | |
|-----------------------------|--------|
| Recommended for prosecution | 16,497 |
| Defendants indicted | 11,083 |
| Defendants convicted | 7,901 |

ATF0469

The data show an average of **8.22 prior arrests** and **2.27 prior convictions per defendant recommended for prosecution**.

Firearms Licensees

As of FY21, there were **136,846 active federal firearms licensees (FFLs)**.

| | |
|--|--------|
| Type 01: Dealer | 53,893 |
| Type 02: Pawnbroker | 6,986 |
| Type 03: Collector | 53,379 |
| Type 06: Manufacturer of Ammunition | 2,252 |
| Type 07: Manufacturer of Firearms | 17,599 |
| Type 08: Importer | 1,804 |
| Type 09: Dealer of Destructive Devices | 151 |
| Type 10: Manufacturer of Destructive Devices | 489 |
| Type 11: Importer of Destructive Devices | 293 |

Inspections

ATF conducted **6,639 firearm compliance inspections** in FY 2021.

Firearms compliance inspections resulted in the following recommendations:

| | |
|----------------------|-------|
| No violations | 4,232 |
| Report of violations | 985 |
| Discontinued | 789 |
| Warning letter | 454 |
| Warning conference | 149 |
| Revocations/Denials | 27 |
| Other dispositions | 3 |

Most Frequently Cited Violations

| | |
|---|--|
| <u>27 CFR 478.21(a).</u> | Failure to complete forms as prescribed |
| <u>27 CFR 478.125(e).</u> | Failure to maintain an accurate/complete/timely acquisition and disposition (A&D) record of firearms |
| <u>27 CFR 478.123(a).</u> | Failure to maintain an accurate/complete/timely manufacture or acquisition record |
| <u>27 CFR 478.124(c). (1).</u> | Failure to obtain a completed ATF F 4473 |
| <u>27 CFR 478.124(c). (3)(iv).</u> | Failure to record NICS contact information on an ATF F 4473 |
| <u>27 CFR 478.123(b).</u> | Failure to maintain an accurate/complete/timely licensee disposition record |
| <u>27 CFR 478.124(c). (5).</u> | Failure by transferor to sign and/or date an ATF F 4473 |
| <u>27 CFR 478.124(c). (3)(i).</u> | Failure to verify or record identification document on ATF F 4473 |
| <u>27 CFR 478.126a</u> | Failure to report multiple sales or other dispositions of pistols and revolvers |
| <u>27 CFR 478.124(c). (4).</u> | Failure to record firearm information on an ATF F 4473 |

Firearms Application Inspections

ATF conducted **15,181 firearms application inspections**. Of those inspections, **10,545 were approved** and **20 were denied**. The remaining **4,616 applications were abandoned or withdrawn**.

Explosives Licensees

As of FY21, there were **9,054 active federal explosives licenses and permits (FEL/FEPs)**.

| | |
|------------------------|-------|
| Manufacturers | 1,989 |
| Importers | 429 |
| Dealers | 804 |
| Limited permits | 55 |

Explosives Application Inspections

ATF conducted **923 explosives application inspections**. Of those inspections, **744 were approved** and **2 were denied**. The remaining **177 applications were abandoned or withdrawn**.

ATF conducted **3,847 explosive compliance inspections** resulting in the following recommendations:

| | |
|--|-------|
| No Violations | 2,973 |
| ROV Only | 126 |
| Discontinued | 455 |
| Warning Letter | 125 |
| Warning Conference | 32 |
| Contemplated Revocation Notice Sent | 3 |
| Revocation | 1 |

Top 10 Violations

| | | |
|------------------------------------|---|-----|
| <u>27 CFR 555.127</u> | Failure to timely/accurately enter all required explosive inventory identification and quantity information in a daily summary of magazine transaction (per magazine) | 955 |
| <u>27 CFR 555.122(b)</u> | Failure to timely record the acquisition/importation of explosive material(s) in a permanent record (Importer) | 106 |
| <u>27 CFR 555.121(a)(2)</u> | Failure to keep permanent records at business premises for five years | 69 |
| <u>27 CFR 555.106(a)</u> | Unlawful distribution of explosive materials to a nonlicensee/nonpermittee | 36 |
| <u>27 CFR 555.57(b)</u> | Failure to timely report change of responsible person/employee possessor (within 30 days of change) | 32 |
| <u>27 CFR 555.29</u> | Unlawful storage of explosive materials | 31 |
| <u>27 CFR 555.215</u> | Failure to keep explosive storage magazines clean, dry and free of grit, paper, empty packages/containers and rubbish | 28 |
| <u>27 CFR 555.123(b)(1)</u> | Failure to record the date of acquisition/manufacture of explosive material(s) in the permanent record (Manufacturer) | 27 |
| <u>27 CFR 555.210(a)(2)</u> | Failure to meet minimum construction requirements of an outdoor type IV magazine | 27 |
| <u>27 CFR 555.125(b)(4)</u> | Failure to timely create a separate record of information for distribution of surplus stocks of explosive material(s) to another licensee/permittee (User) | 24 |

Imports and National Firearms Act (NFA)

| | |
|--|------------------------------------|
| NFA registration applications (and transfer applications) | 689,822 |
| NFA registrations processed (total weapons) | 546,224 forms 2,731,716 weapons |
| NFA making and transfer tax collected | \$78,564,959.72 |
| NFA special occupation tax collected | \$9,165,887.65 |
| Permanent Import Form 6 permit applications (firearms, ammunition and defense articles) | 12,290 |
| Temporary Import Form 6 permit applications for non-immigrant aliens | 2,801 |
| Total import permit applications | 14,334 |

Note: All taxes collected for NFA go to the general fund of the U.S. Treasury Department.

Tracing

ATF's National Tracing Center (NTC) is the only organization authorized to trace U.S. and foreign manufactured firearms for local, state, federal and international law enforcement agencies. NTC provides critical information that helps domestic and international law enforcement agencies solve firearms crimes, detect firearms trafficking, and track the intrastate, interstate, and international movement of crime guns.

NTC processed more than **548,186 trace requests** in FY 2021.

Certified Fire Investigators

ATF's Certified Fire Investigators (CFIs) provide support for fire and arson investigations throughout the entire United States, its territories and other countries.

National Integrated Ballistic Information Network (NIBIN)

NIBIN provides local, state and federal law enforcement, forensic science, and prosecutors with an automated ballistic imaging system that will aid their investigations by using digital images of shell casings to link violent crimes involving firearms and subsequently identify firearm users in violent crimes.

| | |
|------------------------------------|---------|
| NIBIN evidence acquisitions | 575,727 |
| NIBIN leads & hits | 153,711 |
| NIBIN locations | 266 |

Laboratories

In FY 2021, ATF's laboratories accomplished the following:

ATF0473

- Analyzed **1,241 forensic cases**
- Completed **1,400+ fire research activities**
- Performed **633 laboratory research and testing experiments**
- Performed **117 electro-mechanical evidence examinations**

Budget

The agency's FY 2021 enacted budget was approximately **\$1.4 billion**.



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U.S Department of Justice
Bureau of Alcohol, Tobacco, Firearms
and Explosives
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Exhibit 9



WHO WE ARE

WHAT WE DO

RESOURCES

[Home](#) » [Resource Center](#)

Fact Sheet - Facts and Figures for Fiscal Year 2022

January, 2023

Personnel

| | |
|---------------------------------------|-------|
| Special Agents | 2,586 |
| Industry Operations Investigators | 816 |
| Administrative/professional/technical | 1,697 |
| Total full-time employees | 5,099 |

Cases and Defendants

Case and defendant data presents a snapshot in time of matters proceeding through the various phases of the judicial process. The typical ATF case recommended for prosecution remains open over a period of approximately 4 years.

Cases and defendants indicted, convicted, and sentenced are not subsets of cases and defendants recommended for prosecution in FY 2022. The snapshot presents actual judicial activity in the fiscal year regardless of the year the matter was recommended for prosecution. For example, "percentage indicted" should not be calculated based upon the presented data, as the case indicted may have been presented in a previous fiscal year.

Cases

| | |
|--|--------|
| Firearms cases initiated | 34,436 |
| Arson cases initiated | 2,242 |
| Explosives cases initiated | 1,194 |
| Firearms cases recommended for prosecution | 10,138 |
| Indicted cases | 6,315 |
| Convicted cases | 5,338 |

Defendants



ATF0475

| | |
|-----------------------------|--------|
| Recommended for prosecution | 15 583 |
| Defendants indicted | 9 287 |
| Defendants convicted | 7 293 |

There are 7.8 prior arrests and 2.16 prior convictions per defendant recommended for prosecution

Firearms Licensees

As of February 2022, there are 136,563 active federal firearms licensees (FFLs) and 43,494 firearms licenses issued (to include renewals).

| | |
|--|--------|
| Type 01: Dealer | 52 910 |
| Type 02: Pawnbroker | 6 740 |
| Type 03: Collector | 52 814 |
| Type 06: Manufacturer of Ammunition | 2 212 |
| Type 07: Manufacturer of Firearms | 19 059 |
| Type 08: Importer | 1 886 |
| Type 09: Dealer of Destructive Devices | 154 |
| Type 10: Manufacturer of Destructive Devices | 482 |
| Type 11: Importer of Destructive Devices | 306 |

Inspections

ATF conducted 6,979 firearm compliance inspections in FY 2022

For each inspection, ATF determined the disposition of the inspection

| | |
|--------------------------|-------|
| No violations | 3 806 |
| Report of violations | 1 247 |
| Resolved as discontinued | 1 037 |
| Warning letter | 606 |
| Warning conference | 131 |
| Revocation | 90 |
| Other dispositions | 62 |

Most Frequently Cited Violations

| | | |
|--------------------------|-------------------------------|--------|
| 27 CFR 478.125(e) | For record keeping | 33 526 |
| 27 CFR 478.21(a) | For record keeping | 22 320 |
| 27 CFR 478.124(c)(1) | For ATF F 4473 | 18 526 |
| 27 CFR 478.124(c)(5) | For record keeping ATF F 4473 | 10 132 |
| 27 CFR 478.123(a) | For record keeping | 10 114 |
| 27 CFR 478.124(c)(3)(iv) | For record keeping ATF F 4473 | 10 097 |
| 27 CFR 478.124(c)(3)(i) | For record keeping ATF F 4473 | 5 913 |
| 27 CFR 478.123(b) | For record keeping | 5 641 |
| 27 CFR 478.124(c)(4) | For record keeping ATF F 4473 | 5 304 |
| 27 CFR 478.126a | For record keeping | 4 407 |

Firearms Application Inspections

ATF conducted 11,156 firearms application inspections. 7,922 were approved and 18 were denied. There were 3,216 application inspections were abandoned or withdrawn.

Explosives Licensees

As of 2022 there were 9,461 active federal explosives licenses and permits. There were

| | |
|--|-------|
| Manufacturers | 2 088 |
| Importers | 594 |
| Dealers licenses (includes black powder) | 859 |
| Limited permits | 50 |
| User permits | 5 870 |

Explosives Inspections

ATF conducted 944 explosives application inspections. 737 were approved and 3 were denied. Ten 204 application inspections were abandoned or withdrawn.

ATF conducted 3,101 explosive compliance inspections resulting in the following dispositions:

| | |
|----------------------|-------|
| No violations | 2 470 |
| Report of violations | 44 |
| Warning letter | 158 |
| Warning conference | 23 |
| Discontinued | 386 |
| Revocation | 12 |
| Resolved not revoked | 8 |
| Other dispositions | 0 |

Top 10 Violations

| | | |
|-----------------------|---|-----|
| 27 CFR 555.127 | For the purpose of this section, the term "explosive" means any material which is so classified by the Secretary of the Department of Justice as being an explosive, and which is used in connection with the manufacture, sale, possession, or transportation of firearms, or in connection with the manufacture, sale, possession, or transportation of explosives. | 999 |
| 27 CFR 555.123(c) (2) | For the purpose of this section, the term "explosive" means any material which is so classified by the Secretary of the Department of Justice as being an explosive, and which is used in connection with the manufacture, sale, possession, or transportation of firearms, or in connection with the manufacture, sale, possession, or transportation of explosives. | 260 |
| 27 CFR 555.123(c) (3) | For the purpose of this section, the term "explosive" means any material which is so classified by the Secretary of the Department of Justice as being an explosive, and which is used in connection with the manufacture, sale, possession, or transportation of firearms, or in connection with the manufacture, sale, possession, or transportation of explosives. | 260 |
| 27 CFR 555.206(a) | For the purpose of this section, the term "explosive" means any material which is so classified by the Secretary of the Department of Justice as being an explosive, and which is used in connection with the manufacture, sale, possession, or transportation of firearms, or in connection with the manufacture, sale, possession, or transportation of explosives. | 79 |
| 27 CFR 555.129 | For the purpose of this section, the term "explosive" means any material which is so classified by the Secretary of the Department of Justice as being an explosive, and which is used in connection with the manufacture, sale, possession, or transportation of firearms, or in connection with the manufacture, sale, possession, or transportation of explosives. | 70 |
| 27 CFR 555.207(a) (8) | For the purpose of this section, the term "explosive" means any material which is so classified by the Secretary of the Department of Justice as being an explosive, and which is used in connection with the manufacture, sale, possession, or transportation of firearms, or in connection with the manufacture, sale, possession, or transportation of explosives. | 66 |
| 27 CFR 555.106(a) | For the purpose of this section, the term "explosive" means any material which is so classified by the Secretary of the Department of Justice as being an explosive, and which is used in connection with the manufacture, sale, possession, or transportation of firearms, or in connection with the manufacture, sale, possession, or transportation of explosives. | 55 |
| 27 CFR 555.208(b) (2) | For the purpose of this section, the term "explosive" means any material which is so classified by the Secretary of the Department of Justice as being an explosive, and which is used in connection with the manufacture, sale, possession, or transportation of firearms, or in connection with the manufacture, sale, possession, or transportation of explosives. | 55 |

ATF0478

| | | |
|----------------------------------|------------------------------|----|
| 27 CFR 555.125(b) (3)(iii) | F r r rd r r r d r r rd r | 53 |
| 27 CFR 555.29 | r r | 48 |

Imports and National Firearms Act (NFA)

| | |
|--|---------------|
| NFA registration applications (and transfer applications) | 764 814 |
| NFA registrations processed (total weapons)/count of forms | 709 508 |
| NFA registrations processed (total weapons)/count of weapons | 3 059 054 |
| NFA making and transfer tax collected | 91 462 604 64 |
| NFA special occupation tax collected | 9 569 698 25 |

A d r FA r d Tr r D r

Tracing

ATF Tr r T r d r d r
r d r r r d r d r r T
r d r r d d r r
r r r d r r r d r r d r
r
T r d r 623,654 trace requests F 2022

Certified Fire Investigators

ATF r d Fr r F r d r r r d r
r r d rr r d r r

National Integrated Ballistic Information Network (NIBIN)

r d d d r r r d r r
d d r d r d r r r
r r r d d r r r
r

| | |
|--|---------|
| | ATF0479 |
|--|---------|

| | |
|---------------------------|---------|
| NIBIN acquisitions | 631,533 |
| NIBIN leads | 189,197 |
| NIBIN hits | 5,913 |
| NIBIN locations | 278 |

Laboratories

In FY 2022, [ATF's laboratories](#) accomplished the following:

| | |
|--|-------|
| ATF laboratory requests for analysis and testing | 1,437 |
| ATF laboratory completed analysis requests | 1,209 |
| DNA submissions from fired cartridge cases | 17 |
| DNA submissions from fired cartridge cases yielding results | 11 |
| Fire Research Laboratory engineering cases | 8 |
| Fire Research Laboratory research experiments | 230 |
| Fire Research Laboratory case test experiments | 194 |
| Fire Research Laboratory forensic cases analyzed | 37 |
| Fire Research Laboratory fire research activities | 22 |

Budget

The agency's FY 2022 enacted budget was approximately **\$1.5 billion**.

Keep up with the latest ATF updates:

WHO WE ARE

About
Executive Staff
Organization
Structure
Our History

WHAT WE DO

Firearms
Explosives
Arson
Alcohol & Tobacco

NEWS

Press Releases
Advisories
Reward Notices
Media/Congressional
Contacts

CAREERS

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Industry Operations
Investigator
EEO and Disability
Information

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Most Wanted
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GOVERNMENT
Privacy Policy
Legal Policies &
Disclaimers
USA.gov
No Fear Act
Whistleblower

ATF0480

Exhibit 10

JUNE 23, 2021

Remarks by President Biden and Attorney General Garland on Gun Crime Prevention Strategy

State Dining Room

4:55 P.M. EDT

ATTORNEY GENERAL GARLAND: Good afternoon, Mr. President. It's good to be here with you, and with local elected and community leaders, and with representatives of law enforcement.

Protecting our communities from violent crime is a top priority for the Department of Justice and one of our most important responsibilities.

I'm glad the President brought us together today to discuss a subject of such importance to the public we serve. As our participants in today's roundtable have noted, the increase in violent crime in 2020 and early 2021 is deeply troubling.

That is why, last month, the Justice Department launched a comprehensive violent crime reduction strategy. This strategy is built around four principles: setting strategic enforcement priorities; fostering trust with and earning legitimacy in our communities; investing in community-based prevention and intervention programs; and measuring the results of these efforts through a decrease in violent crime, not merely by arrests and convictions, as if they were ends in themselves.

Now, we know that the lion's share of violent crime reduction work is shouldered by our state, local, Tribal, and territorial law enforcement partners. Core to our strategy is targeted support of the critical work that you will be doing in the weeks and months ahead.

ATF0019

Every one of our U.S. attorney's offices is working with its local partners to establish an immediate plan to address the spike in violent crime that typically occurs during the summer. And the law enforcement components of the Department are making enhanced resources available to help prevent and disrupt violent crime, and to focus on the most dangerous, most violent offenders.

The Department is also strengthening our Project Safe Neighborhoods — our cornerstone initiative that brings together law enforcement and community stakeholders to develop solutions to pressing violent crime problems.

Community-led efforts are vital to preventing violence before it occurs. The Justice Department has available over \$1 billion in funding through over a dozen grant programs that can be used to support evidence-based, community violence intervention strategies.

And I want to say that's what I found particularly useful in our discussion just a few minutes ago — was the fact that there are such evidence-based programs available. And I'm hoping that you will get together with us so that we can spread those across the country — as well, of course, funding your own.

A properly functioning criminal justice system is essential to our efforts, as well. The Department has grant funding available to help cities resume court operations and services that were curtailed during the COVID-19 pandemic. That includes funding for technology and equipment for courts to address the backlog of cases and enhance access to justice.

We know that an effective violent crime reduction strategy must also address the illegal trafficking of firearms and focus on keeping guns out of the wrong hands. And so the Department is delivering on the promises we made here at the White House in April.

On May 7th, we issued a proposed rule to help address the proliferation of ghost guns. On June 7th, we issued a proposed rule to clarify that pistols equipped with certain stabilizing braces are subject to the same statutory restrictions as easily concealable, short-barreled rifles. And on the same day,

We are now taking further steps. First, we will hold gun dealers that break the rules accountable for their actions. Most federally licensed firearms dealers operate legally in selling guns to individuals who have passed background checks. But those dealers that willfully violate the law increase the risk that guns will fall into the wrong hands.

Absent extraordinary circumstances, ATF will initiate proceedings to revoke the licenses of dealers that willfully violate the law by failing to conduct required background checks, falsifying records, failing to respond to trace requests, refusing to permit ATF to conduct inspections, or transferring firearms to persons who are prohibited from owning them.

Second, we are seeking funding to increase ATF's dealer inspection capacity and improve its effectiveness. ATF has very limited inspection resources. The President's Fiscal 2022 Budget requests resources to add inspection positions in every field division. The effectiveness of the enforcement program depends on the ability to identify and focus on those dealers that pose the greatest risk to public safety.

Starting today, ATF will make clear to investigators in every field division that, as they prioritize inspections, they must consider the extent to which firearms sold by a dealer are later used in criminal activity.

Third, we will improve information sharing with state, local, Tribal, and territorial partners to help bring more intelligence and law enforcement resources to bear — as well as with the public, to increase our own accountability.

Today, ATF has a point of contact in every field division to receive information from mayors, police chiefs, and other local leaders about firearms dealers they believe are acting unlawfully.

And starting next month, ATA — ATF will begin sharing inspection data with the 16 states that license or regulate firearms dealers themselves.

Case 1:22-cv-01063-DAE Document 53-1 Filed 03/18/24 Page 79 of 120
Also beginning next month, ATF will publicly post information about inspection frequency and outcomes disaggregated by field division, providing for enhanced transparency and accountability.

Fourth, we are launching a concerted effort to crack down on gun traffickers. Yesterday, the Department announced that it will establish five new cross-jurisdictional law enforcement strike forces within the next 30 days. The strike forces will focus on addressing significant firearms trafficking corridors that fuel violence in New York, Chicago, Los Angeles, the San Francisco Bay Area, and Washington, D.C., as well as in cities and towns along the way.

The Justice Department's violent crime reduction strategy and our initiatives to stem the rising tide of illegal — illegal guns will save lives. But these steps alone will not solve the problem of violent crime. Success depends on all of us joining together: those of you in this room, the many like you across the country who are working to keep their communities safe, and the people of our communities themselves.

I would now like to introduce President Biden, who has emphasized the importance of this issue and who has my gratitude for gathering us together today.

Thank you.

THE PRESIDENT: Thank you, General. Let me — before I begin, thank the participants in our roundtable today: two mayors — three mayors, chiefs of police, attorneys general, and community organizers who have been doing significant work in bringing down violent crime in their communities. There is no one — one answer that fits everything. And it's about being engaged and multiple organizations being engaged.

So, I want to thank you for the time you spent with us today. And I warned you: I'm coming back at you again for more information. (Laughter.)

And we just met, as I said, with a bipartisan group of mayors, law enforcement, and community leaders. And we discussed a comprehensive strategy that I'm releasing today to combat the epidemic of gun violence and

Case 1:22-cv-01063-DAE Document 53-1 Filed 03/18/24 Page 80 of 120
other violent crime that we've been seeing in our country for far too long,
that has spiked since the start of the pandemic over a year ago.

Crime has — historically rises during the summer. And as we emerge from this pandemic with the country opening back up again, the traditional summer's — summer spike may even be more pronounced than it usually would be.

For folks at home, here's what you need to know: I've been at this a long time and there are things we know that work that reduce gun violence and violent crime, and things that we don't know about. But things we know about: Background checks for purchasing a firearm are important; a ban on assault weapons and high-capacity magazines — no one needs to have a weapon that can fire over 30, 40, 50, even up to 100 rounds unless you think the deer are wearing Kevlar vests or something; community policing and programs that keep neighborhoods safe and keep folks out of trouble.

These efforts worked. They saved lives. But over time, these policies were gutted and were woefully underfunded.

In our conversation today, we talked about our strategy to supercharge what works while we continue to push the Congress to act on sensible gun violence legislation.

First, we discussed cracking down, as you heard from the Attorney General, on rogue gun dealers. We know that if there is a strict enforcement of background checks, then fewer guns get into the hands of criminals. Background checks have thus far kept more than 3 million guns out of the hands of felons — convicted felons, fugitives, domestic abusers, and others prohibited from being able to purchase a gun. And there are still too many loopholes in that system.

And, today, enough rogue gun dealers feel like they can get away with selling guns to people who aren't legally allowed to own them.

And I might add: The Second Amendment, from the day it was passed, limited the type of people who could own a gun and what type of weapon you could own. You couldn't buy a cannon.

Those who say the blood of lib- — “the blood of patriots,” you know, and all the stuff about how we’re going to have to move against the government. Well, the tree of liberty is not watered with the blood of patriots. What’s happened is that there have never been — if you wanted or if you think you need to have weapons to take on the government, you need F-15s and maybe some nuclear weapons.

The point is that there has always been the ability to limit — rationally limit the type of weapon that can be owned and who can own it.

The last time we had data on this issue of who is purchasing guns was more than 20 years ago. Five percent of gun dealers — it turns out, in the study we did — showed that 90 percent of illegal guns were found at the crime scenes sold by 5 percent of gun dealers. Five percent sold 90 percent of the guns found at crime scenes.

And the — these merchants of death are breaking the law for profit. They’re selling guns that are killing innocent people. It’s wrong. It’s unacceptable. And as the Attorney General said, we’re going to crack down on those gun dealers and the violent criminals they knowingly arm.

In April, I announced that the Justice Department is going to be issuing an annual report on gun trafficking so we can update that data.

Today, the Department is announcing, as I just did, a major crackdown on — to stem the flow of guns used to commit violent crimes. It’s zero tolerance for gun dealers who willfully violate key existing laws and regulations. Let me repeat: zero tolerance.

If you willfully sell a gun to someone who is prohibited from possessing it, if you willfully fail to run a background check, if you willfully falsify a record, if you willfully fail to cooperate with the tracing requests or inspections, my message to you is this: We’ll find you, and we will seek your license to sell guns. We’ll make sure you can’t sell death and mayhem on our streets. It’s an outrage. It has to end, and we’ll end it. Period.

Second, we discussed disrupting illegal gun trafficking. Now, the gun lobby

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wants you to believe that cities that are the toughest gun — have the toughest gun laws still have the highest rates of gun violence, as was pointed out by the group we had today in our roundtable. They — the violence is so — they argue, “Why do you need those gun laws if they don’t work in cities that have tough laws?” Don’t believe it.

Here’s the truth: Today’s conversation with Mayor Scott of Baltimore, for example, echoed what we know to be the case, and you hear it from mayors across the country. Mayors have the power to help shape and enforce the laws in their cities, but they can’t control the laws in neighboring cities and states, even though the gun legally bought there is — often ends up in their streets.

Mayor Scott says that 80 percent of the guns in Baltimore were acquired outside the city — outside the city. There’s little he can do about that, so we have to act.

As part of our strategy, the Justice Department is creating five new strike forces to crack down on illegal gun trafficking in the corridors supplying weapons to cities like New York; Chicago; Los Angeles; Washington, D.C.; and the Bay Area.

With these strike forces, local and federal law enforcement and prosecutors are going to be able to better coordinate the prosecution of illegal gun trafficking across city and state lines, so illegal guns sold from the back door of a gun shop in Virginia don’t end up at a murder scene in Baltimore. And if they do, then local and federal law enforcement can better coordinate to trace illegal gun sales back to the shady gun dealer and hold them accountable.

Police Chief Murray of the Baltimore [sic] — excuse me, Police Chief Merritt [sic] — Police Chief Murphy Paul of Baton Rouge, Louisiana, talked about how he’s coordinating more closely with the Bureau of Alcohol, Tobacco, and Firearms; the ATF; and the Federal Bureau of Investigation — the FBI — to help take on criminal organizations committing violent crimes in the city.

This kind of coordination is essential to keeping the weapons of war out of the hands of dangerous criminals, fugitives, and gangs, as well as organized

Third, we discussed historic funding — we discussed historic funding for states, cities, and counties, and Tribes for law enforcement and crime prevention. You know, they've not only had to fight this pandemic, they've also had to deal with economic crisis that has decimated their budgets — forced them to cut essential services, including law enforcement and social services.

And amid the COVID-19 pandemic, they've had to deal with a second public health crisis: gun violence. The American Rescue Plan, which we passed in the first 100 days of my administration, is providing much-needed, historic relief to bring back those law enforcement jobs and social service jobs.

Much of this relief has already arrived. The rest is on its way. And we're now providing more guidance on how they can use the \$350 billion nationally that the American Rescue Plan has available to help reduce crime and address the root causes.

For example, cities experiencing an increase in gun violence were able to use the American Rescue Plan dollars to hire police officers needed for community policing and to pay their overtime.

Mayors will also be able to buy crime-fighting technologies, like gunshot detection systems, to better see and stop gun violence in their communities. They can use the funding to scale up wraparound services for the residents as well, including substance abuse and mental health services that we know will make a difference in prevention of crime.

Here's another example that reminds me of the old saying my mom used to use. She'd say, "An idle mind is the devil's workshop." Well, school's out for the summer. Teenagers are in tough neighborhoods, no — who are in tough neighborhoods — no jobs, more trouble.

We know summer job training — summer jobs, training, and recreation for young people work. They help make sure young people pick up a paycheck instead of a pistol. One study found a Boston summer jobs program for youth reduction reduced violent crimes by 35 percent in Boston.

Another study found that a program that offers high school students in Chicago a good summer job and an adult mentor and behavioral therapy led to a 45 percent drop in violence.

We can invest in more of these programs with the American Rescue Plan. And here's another thing states, cities, counties, and Tribes can do with that funding: When someone finishes their time in prison, they can't just give them — we can't just continue to give them 25 bucks and a bus ticket. They end up right back where they started and got them in trouble in the first place — or no option for being able to provide for access to public housing or for schools or for — for mentors to help them find their way, and the stuff that prevents recidivism and helps them integrate in a society. That's changing with guidance we're issuing today.

The American Rescue Plan funding can help formerly incarcerated people get skills training, apprenticeships, and work experience so they can gain stability and security and a chance for a better life, rather than going back to exactly what they left.

Attorney General Greenwald of New Jersey and Mayor Daniel- — and Mayor Daniella Levine Cava of Miami-Dade talked about their efforts to lift up those kinds of communit- their — the kinds of community programs that reduce gun violence, keep communities safe, and make real, positive difference in people's lives.

And for folks at home, the American Rescue Plan, which is a once-in-a-generation investment to reduce violence in America, is available. I'm proud of it. It means more police officers, more nurses, more counselors, more social workers, more community violence interrupters to help resolve issues before they escalate into crimes.

It means we go after the people who flood our streets with guns and the bad actors who decide to use them to further terrorize the communities. It means saving lives. And Congress should in no way take away this funding. It's already been appropriated.

In fact, a few weeks ago, the bipartisan United States Conference of Mayors,

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the National League of Cities, National Association of Counties — they all came out forcefully against efforts to reclaim American Rescue Plan funds that have already been allocated to the state, cities, and counties, and Tribes. This is not a time to turn our backs on law enforcement or our communities.

Fourth, we discussed the need to support community violence intervention. These are local programs that utilize trusted messengers and community members and leaders to work directly with people who are most likely to commit gun crimes or become victims of gun crimes.

We know who they are. They intervene before it's too late — these — these interrupters — turn down the temperature, halt the cycle of retaliation, connect people to social services. And it works. Community violence intervention programs have shown a reduction in violence of up to 60 percent in many places.

We heard from two community leaders that do this work. Eddie, thank you for coming from Chicago to — you're really — quite frankly, it was impressive — your presentation. And — and DeVone Boggan from Richmond, California.

Eddie was formerly incarcerated for gun homicide, and DeVone lost his brother to gun violence. And Eddie worked as a violence interrupter. Now he runs a program that provides high-risk men with cognitive behavioral — cognitive behavioral therapy to help them react to the impulses by slowing down rather than following through on the violence. It puts them in — he — puts them in paid jobs to change their trajectory. The program has reduced sh- — has reduced shootings by 40 percent.

DeVone runs a program across California and six other states that enroll high-risk individuals in peace fellowships, complete with intensive mentoring and social services. It's saving lives. In Sacramento, for example, 91 percent of participants stayed away from gun violence.

States and cities should invest the American Rescue Plan funds in those kinds of anti-violent crime programs. And today, I'm announcing that the White House will be working with 15 jurisdictions that are doing exactly that —

And Mayor Steve Allender of Rapid City, South Dakota — a Republican and a former chief of police himself — joined us today and will be a part of this effort to help disrupt cycles of crime and violence in his community and nearby Tribal communities.

We need more mayors to follow and I'm going to be pushing to keep — pushing for more of these proven programs, which are part of the American Jobs Plan and my budget.

Fifth, and I'll close with this: We talked about the lives we lost — have already been lost and the lives that we can save. We talked about how much pain and loss so many people have experienced and so many people have now accepted as their fate here in America.

We have an opportunity to come together now — as Democrats and Republicans, as fellow Americans — to fulfill the first responsibility of government and our democracy: to keep each other safe. Enough.

That means Congress passing sensible gun prevention, violence prevention initiatives is warra- — is — makes sense: background checks, ban on assault weapons, repeal of the liability shield for gun manufacturers.

It means the Senate reauthorizing the Violence Against Women Act — my proudest legislative accomplishment — to close the so-called “boyfriend loophole” — its “boyfriend and stalking loophole” — to keep guns out of the hands of abusers. We added the provision saying, “If you have a stay-away order — you are stalking someone and you're told that has to stop — you can't own a weapon.”

Every single month, an average of 57 women are shot and killed by an intimate partner. We can help stop that.

It means confirming my outstanding nominee for — to lead the ATF — excuse me, the ATF: David Chipman. It's been without a leader for a while. The top job has been un- — unconfirmed for much too long. A career and

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distinguished ATF official for 25 years, David is eminently qualified for the job that we desperately need to fill.

As Vice President, I pushed hard to lift the freeze on gun violence research at the C- — the Center for Disease Control, the CDC. Guess what? Why should they not be able to study gun violence and what causes it? But there's been a block on it. I want to unfreeze that.

As President, my budget doubles funding for the gun violence research at the CDC and the National Institutes of Health — the NIH — to study gun violence as a public health threat that it is.

And while we keep pushing there, Vice President Harris and I also — and our entire administration are continuing to be — will continue taking action where we can. Let's stop the proliferation of ghost guns, as we announced back in April with the Attorney General.

We need to support the development of smart gun technologies. This doesn't affect responsible gun owners or Second Amendment rights. It helps keep guns out of the hands of people who shouldn't have them in the first place, from a child who accidentally picks up a — picks it up, to a burglar or violent criminal trying to steal it and use it.

And we need to keep building on the gun violence and crime-prevention strategy we're laying out today.

Folks, this shouldn't be a red or blue issue; it's an American issue. We're not changing the Constitution; we're enforcing it — being reasonable. We're taking on the bad actors doing bad and dangerous things to our communities and to our country.

Talk to most responsible gun owners and hunters. They'll tell you there's no possible justification for having 100 rounds in a magazine of a gun. Like I've said before: What do you think, the deer are wearing Kevlar vests?

Responsible gun owners will tell you that there are too many people today who are able to buy a gun but shouldn't be able to buy a gun.

The bottom line is this: Let's show the world and show ourselves that democracy works and that we can come together as one nation. We can do this and save lives.

So, thank you. God bless you all. And may God protect our troops.

And again, I thank you all for participating. But the bad news for you all is, I'm coming back. I need your continued help. So, thank you very, very much.

And, General, thank you. Appreciate it.

Q Mr. President, are you still holding out hope that Congress can pass another assault weapons ban?

THE PRESIDENT: I never give up hope.

Q How do you feel about the bipartisan infrastructure deal that's been released?

THE PRESIDENT: I'll tell you that when I get the final numbers tonight.

Q Mr. President, what do you feel is the most effective thing that government can do to change the mindset of those who feel compelled to pull the triggers of these guns?

THE PRESIDENT: By being engaged in a whole range of programs. We talked today — everything from mental health programs to engaging people early on and letting them know there is other options. Making sure that when a child is young, they have access to a real education, and they get started off on the right foot.

Making sure that when someone gets out of prison, they're not denied public housing, they don't have to go back under the bridge where they were living before — that they're able to get help for healthcare, et cetera, and reengaging them in the neighborhood, giving them some hope, some

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opportunity. And in the meantime, making sure that those folks who are
taking advantage of them by taking advantage of their — their situation are,
in fact, held accountable.

Thank you all so much.

Q Once you take care of the voting rights bill, do you think it's time to reform
the filibuster?

THE PRESIDENT: I think it's time to pass the voting rights bill.

5:24 P.M. EDT

Exhibit 11



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Office of Field Operations

www.atf.gov

July 14, 2021

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MEMORANDUM : All Special Agents in Charge
All Directors, Industry Operations

FROM: Acting Assistant Director Field Operations

SUBJECT: Implementation of the Administration's
Comprehensive Strategy to Prevent and Respond to
Gun Crime and Ensure Public Safety

On June 23, 2021, President Biden and Attorney General Garland announced the Administration's Comprehensive Strategy to Prevent and Respond to Gun Crime and Ensure Public Safety. ATF's role in the Strategy is essential, and includes refocusing our FF inspection and administrative action policies. As we have previously discussed, to ensure ATF effectively executes our role in the Strategy, effective immediately, all Field Divisions shall implement the following:

1. Field divisions shall in all instances utilize Crime Intelligence Analytics (A) and other data driven tools in determining prioritization of inspection resources. The factors that shall be considered include, but are not limited to, the following:
 - a. The extent to which firearms sold by the dealer are later used in criminal activity
 - b. The time between the sale of a firearm and its use in a crime
 - c. The number of recoveries associated with shootings, domestic violence, and other violent offenses and
 - d. Additional information developed by local law enforcement partners.

ATF0033

All Special Agents in charge
 All Directors, Industry Operations

-2-

2 Absent extraordinary circumstances, an inspection that results in a finding that an FF has willfully committed any of the following violations shall result in a revocation recommendation:

- a. The transfer of a firearm to a prohibited person
- b. Failing to conduct a required background check
- c. Falsification of records, such as a firearms transaction form
- d. Failing to respond to an ATF tracing request
- e. Refusing to permit ATF to conduct an inspection in violation of the law.

ATF will be amending ATF 30.1, Federal Firearms Administrative Action Policy and Procedures to incorporate these requirements. The updated order will also set forth revised procedures for processing FF inspections that result in findings of violations listed above or other violations that merit revocation, but that may warrant an alternate recommendation after consideration of whether extraordinary circumstances exist. Inspections where the Director, Industry Operations determines an alternate recommendation to revocation is appropriate shall continue to be routed to the Deputy Assistant Director, Industry Operations, Office of Field Operations A. The A will approve or deny the recommendation and advise the field division, accordingly. The circumstances of those cases will be briefed to the ATF Director each month during the Director's Monitored Case Briefings.

Additionally, FF inspections conducted in states that separately license firearms dealers that result in violations of state law or revocation, shall be shared with the regulatory counterpart in that state. Any questions about what information can be shared outside ATF should be routed to Division Counsel.

If you have any questions, please contact Chief, Field Management Staff, [REDACTED]
 [REDACTED]

George J. Auder

ATF0034

Exhibit 12

On June 26, 2023, Industry Operations Investigator (IOI) Iquetta Porter, from the Austin Satellite office initiated a Full Firearms Compliance Inspection (Manufacturer) at the licensed business premises of CTC HGC, LLC., dba Central Texas Gun Works (hereafter referred to as CTGW). Mr. Michael Denard Cargill, Responsible Person/Manager, was identified by a Texas Driver's License, interviewed, and assisted with this inspection. IOI Porter conducted an NCIC/JWIN Criminal History check on Mr. Cargill, there were no disabling hits found. An additional NFORCE query resulted in no open or closed criminal cases on Mr. Cargill. A Federal Licensing System (FLS) query was also conducted to ensure no special attention flags, and or pending criminal enforcement cases existed for this license. The FLS report revealed no on-going criminal investigations (See attached). This inspection was an un-announced inspection. Please Note: NCIC/JWIN criminal history checks and NFORCE queries, were also conducted on the RP; there were no disabling factors found.

Please note: Starting June 27, through June 30, 2023, IOI's in attendance included Iquetta Porter, Nicholas Headrick, and Jeffrey Okonski.

CTC HGC, LLC., is licensed as a Type 07- Manufacturer of Firearms. The licensee currently acquires and disposes of long guns, handguns, and NFA weapons; minor manufacturing and basic gunsmithing of firearms are conducted. CTC HGC currently does not build firearms from raw materials, therefore, does not maintain heavy manufacturing tools or equipment. Basic gunsmithing tools and pressing machines are present on-site. To date, no firearm/ammunition manufacturing operations of any kind have been conducted, however, Mr. Cargill stated he intends to continue operating under the Type 07 license, as he may opt to conduct these operations at some future time. A review of the licensees submitted AFMER reports also reflect zero firearms manufactured (Please see attached).

Mr. Cargill, RP, informed IOI Porter that 95% of his business operations include retail transfers of new firearms with only 5% consisting of used firearms. CTC HGC sells weapons to the general public, military/law enforcement personnel, and occasionally conducts transfers to other FFL holders. CTC HGC does not conduct consignment or private party transfers and does not import firearms or deal in collectable or antique firearms. The licensee currently operates as a retail, sporting goods store and sells ammunition and firearm accessories. A search of the National Firearm Registration and Transfer Record (NFRTR) reflects that the licensee is qualified as an SOT dealer and is current on their SOT fee for FY2023. Majority of NFA transfers include suppressors, however, a small amount of SBR's are sold from the premises.

Mr. Michael Cargill, RP, conducts classroom training for Texas LTC permits from the business premises twice a week, which is then followed by practical firearms training and qualification at a local gun range. Beginning handgun training and home security training are also additional services offered. Mr. Cargill is certified as a Texas LTC Instructor, a National Rifle Association (NRA) Instructor, a School Safety Instructor and a Private Security Instructor.

CTC HGC does not currently conduct business at gun shows and has no plans to attend gun shows in the immediate future.

CTC HGC currently maintains one FFL at this time, however, has applied for another FFL in hopes of transitioning the records from a manual record-keeping practice to a full electronic system. Mr. Cargill

informed IOI Porter that once approved for the new FFL, he will transfer all inventory (including NFA) to the new FFL (Refer to Spartan assignment #FAI 56766/Refer to FFL #5-74-13132) and permanently close the previous A & D record. Once the records have all been transferred over, he will then submit all ATF records as required. IOI Porter fully explained all requirements to Mr. Cargill and provided her contact information so that she could assist him in closing out the license when ready. CTC HGC, LLC., has been licensed with ATF under FFL #5-74-05901, since September of 2012.

Please note: Mr. Cargill individually, does not have any additional FFL's with ATF. The licensee is also aware that all ATF records are to be maintained separate under each FFL license upon approval.

IOI Porter inquired if CTC HGC, advertised via a business website, and Mr. Cargill, RP, stated that their company does utilize a personal business website for advertising, however, no transactions are conducted online. The website is currently listed under WWW.centraltexasgunworks.com. Firearms are acquired from Lipsey's, Sports South, LLC, RSR and on occasion, the general public. The licensee currently stocks a moderate amount of NFA weapons; however, the majority of sales involve handguns and long guns.

The business premises are located at 321 W. Ben White, #203, Austin, TX 78704; no zoning restrictions apply. This retail store front includes three storage closets and two firearms safes. It should be noted that there are several storage areas throughout the shop and IOI Porter recommends that all rooms/closets are checked for inventory upon conducting an inspection. There are no additional businesses being conducted from the licensed premises and no additional businesses owned by Mr. Cargill, RP. Mr. Cargill does host the "Come and Talk It" weekly radio program, on AM Radio Station 1370, in Austin, Texas, however, this is conducted at an off-site location and not associated with his firearms business. No off-site storage is utilized.

Only the RP, Mr. Michael Cargill, and one employee (Gun shop Manager), has full access to the NFA firearms inventory and all ATF records. The remaining four employees only have initial access to the front weapons inventory and one overflow storage area. In order to maintain security measures, employees must gain approval/authorization from Mr. Cargill to remove NFA weapons from storage. All additional for sale weapons are secured within one of two walk-in safes. All paper copied ATF records are stored within a filing cabinet located in Mr. Cargill's LTC classroom. The current computerized A & D software (Fastbound) is located in the front of the store with only Mr. Cargill, RP, having full access of the date entries. All servers are currently located in-house and stored on-site at the licensed business premises. Mr. Cargill currently leases the servers directly from Fastbound.

The current business premises are suitable for the operations conducted by CTC HGC. Mr. Cargill is aware of ATF's right of entry and is aware that the premises and records are subject to inspection.

No responsible persons were added or removed through the course of the inspection and there were no signs of hidden ownership detected. A JWIN criminal history query was conducted on Mr. Cargill with no disabling hits found. Please refer to the Eligibility Section regarding Business Structure for further information.

At the time of inspection, CTC HGC, LLC., did not request a variance and is not currently operating under any approved variance requests.

On June 26, 2023, a full inventory check was initiated by comparing each firearm to the computerized (Fastbound) A & D record. This inventory was conducted utilizing a gun to book method, with assistance provided by Mr. Cargill and his store manager. The licensee currently maintains his A & D record as outlined under 27 CFR 478.123 and was found to be in the proper format as required. This 100% inventory check resulted in a total of 705 total firearms (NFA included) within inventory and 703 open entries; resulting in two discrepancies found. There were no missing firearms reported as a result of this inspection or during the period of inspection.

As a result, the licensee was issued a Report of Violations, ATF Form 5030.5, under 27 CFR 478.123(a), for failing to ensure the proper completion of the required Acquisition and Disposition record on a total of two known instances (Refer to the ROV).

The licensee acquired 6232 firearms and disposed of 6278 firearms during the period of inspection. A complete review of ATF Forms 4473 for the period, covering June 26, 2022, through August 1, 2022, were conducted by IOI 's in attendance and an approved sampling of 200 + 10% of the ATF Forms 4473 for the remainder of the review from August 1, 2022, through June 26, 2023, were also conducted. The sample included ATF Forms 4473 from every month within the remainder of the inspection period. This sampling was approved by the Houston Field Division, Director of Industry Operations (DIO) and is attached for review.

A total of 2158 ATF Forms 4473 were reviewed by the IOI's present. All ATF Forms 4473 are filed chronologically by the date of disposition. The ATF Forms 4473 are also marked with the Transferors Serial Number which correlates to each entry within the respective A & D record.

As a result of the ATF Forms 4473 review, the licensee was cited for three additional violations. Please refer to the Violation section for further information.

A JWIN/NCIC check was conducted Mr. Cargill which resulted in no disabling hits. Two purchasers, along with their firearms purchased were also queried through JWIN/NCIC; no disabling hits were found.

No referrals were made by IOI Porter and no violations were issued with regard to suspicious/prohibited purchasers. There were no direct trafficking indicators discovered.

IOI Porter obtained a firearm trace history report (VCAB) for CTC HGC, LLC. The report period covered from June 20, 2022, to June 22, 2023, this licensee had 32 successful trace requests. There were two firearms reported stolen in the last twelve months. There were no open trace requests discovered during the inspection period. There were no discrepancies noted involving trace activity. A full review of all multiple sale transactions which occurred in the past 12 months totaled 605 and included a total of 1,236 total firearms being transferred.

The FFL Audit Log reported a total of four denied transactions which occurred from May 20, 2023, to June 23, 2023, and three hundred seventy-three non-denied (proceed) transactions which occurred between that time frame. A total of 122 denied forms were reviewed during the previous 5 years of business, with 25 of those denials occurring in the past 12 months. All transactions listed on the FFL Audit Log were reviewed and the NTN numbers were compared to ensure positive identification of transactions; no discrepancies were found. During the inspection, IOI's cross checked approximately 200 firearms from acquisition to disposition, utilizing the A & D record and ATF Forms 4473, in order to determine if any errors had been made; there were no discrepancies found.

During the period of inspection, no transactions were made to law enforcement officials who utilized their LE credentials during the inspection period. A thorough review of these transactions were discussed in case they occur in the future. Mr. Cargill, RP, had no additional questions regarding these transactions and is completing the forms as required. No suspicious purchasers or prohibited persons were indicated by Mr. Cargill, RP, nor detected by IOI Porter.

Mr. Cargill along with the entire staff, is aware that NICS checks are required to be conducted on personal firearms purchases for all law enforcement officials who are not issued Texas Concealed Handgun Licenses (TX CHL).

CTC HGC, LLC., holds a Special Occupational Tax (SOT) Stamp for 2023/2024, allowing the licensee to engage in the dealing of NFA firearms. On June 23, 2023, IOI Porter received the requested NFA National Firearm Registration and Transfer Record (NFRTR) for CTC HGC, LLC. This report confirmed the SOT was paid, and correctly displays a total of 223 NFA weapons. IOI Porter also reviewed CTC HGC NFA forms and found no discrepancies. Mr. Cargill, RP, submits all Form requests via the NFA E Form portal and maintains copies via the NFA E Form application site, as well as hard copies which are filed in his office.

IOI Porter discussed standard operating procedures regarding the Acquisition and Disposition (A & D) record as well as the ATF Form 4473, with Mr. Cargill, RP. The internal controls were evaluated through the course of this inspection by observation and interview process. IOI Porter thoroughly reviewed ATF Forms 4473 and Acquisition and Disposition record-keeping requirements with Mr. Cargill, RP. As stated above, CTC HGC, LLC., maintains an electronic A&D record (NFA and GCA) utilizing the Fast Bound software program. Majority of A & D entries are solely made by Mr. Cargill, RP. On occasion, Mr. Cargill does allow two out of his four Senior employees to annotate transfers within the A & D record, however, all entries are double checked for accuracy.

Regarding Standard operating procedures for ATF Form 4473, Mr. Cargill stated that all employees have been thoroughly trained on how to properly complete ATF Forms 4473 and conduct firearm transfers to non-licensees. All ATF Forms 4473 are now triple checked for accuracy and then filed chronologically by date of transfer. All records are maintained on-site within a locked file cabinet located in Mr. Cargill's training classroom. Standard operating procedures were found to be adequate.

The licensee is in compliance with the Youth Handgun Safety Act and all gun safety and storage device requirements. There were no other noteworthy findings discovered by IOI Porter as a result of this inspection.

On July 21, 2023, IOI Porter conducted a closing conference with Mr. Michael Cargill, Responsible Person/Owner, of CTC HGC, LLC., in order to review ATF Federal Firearms Regulations. Please note: Also in physical attendance was IOI Jeffrey Okonski and Mr. Jacob Meckler (personal Attorney of Mr. Cargill). Listening via a conference call, was Mr. Matt Miller and Mr. Nick Berry, both Attorney's, also representing Mr. Cargill.

Emphasis was placed on proper recordkeeping, NFA transactions and inventory requirements. IOI Porter also provided and reviewed ATF final rule 2021R-08F, "Factoring Criteria for Firearms with Attached Stabilizing Braces, with Mr. Cargill. IOI Porter also discussed the revocation process and provided a handout regarding the revocation process which included restrictions regarding selling firearms after revocation, expiration or surrender of an FFL. Mr. Cargill stated that he understood.

IOI Porter also discussed the Report of Violations (ROV) in detail and offered the opportunity to ask questions and respond to the violation. Mr. Cargill stated that he understood the violations disclosed and Mr. Cargill signed and dated the ROV. IOI Porter provided a copy of the ROV to the licensee for his ATF records.

IOI Porter reviewed the Acknowledgement of Federal Firearms Regulations with Mr. Cargill, allowing opportunity to ask questions and provided the following reference material: ATF Form 4473, Federal Firearms Licensee Firearms Inventory Theft/Loss Report (ATF Form 3310.11), Report of Interstate Firearms Shipment/Theft Loss (ATF Form 3310.6) Report of Multiple Sale or Other Disposition of Pistols and Revolvers (ATF Form 3310.4)/Report of Multiple Sale of Rifles, and IOI Porter's contact information. Mr. Cargill, RP, stated that he understood these regulations and signed and dated the Acknowledgement of Federal Firearms Regulations (See attached). Mr. Cargill was emailed a copy of the Acknowledgment for his business records.

This inspection concluded on July 21, 2023 with a recommendation of Report of Violations Only and no recall inspection.

Exhibit 13

131 Cong. Rec. S23-03, 131 Cong. Rec. S23-03 (1985)

131 Cong. Rec. S23-03, 1985 WL 708013

*1 Congressional Record — Senate

Proceedings and Debates of the 99th Congress, First Session

Thursday, January 3, 1985

S. 49-PROTECTING FIREARM OWNERS' CONSTITUTIONAL
RIGHTS, CIVIL LIBERTIES, AND RIGHTS TO PRIVACY

Mr. DOLE. Mr. President, I send a bill to the desk on behalf of Senator MCCLURE, Senator HATCH, Senator SYMMS, Senator THURMOND, and Senator DENTON and ask for first reading.

The PRESIDING OFFICER. The clerk will read.

The assistant legislative clerk read as follows:

A bill (S. 49) to protect firearm owners' constitutional rights, civil liberties, and rights to privacy.

Mr. DOLE. Mr. President, I ask that the bill be read a second time.

Mr. BYRD. Mr. President, I object. I do so not as any indication that I might be opposed to the substance of the bill-I may very well be supportive of it. But, in order to fulfill the functions required under rule XIV and get the bill on the calendar, which is what the authors of the bill hope to do, I have objected.

The PRESIDING OFFICER. Objection is heard.

Mr. MCCLURE. Mr. President, I am today introducing legislation which would correct some of the more egregious abuses in the 1968 Gun Control Act. With one minor exception-made necessary to accommodate legislative changes made by the 98th Congress-the bill is identical to an amendment on last year's continuing resolution. That amendment was supported on two separate occasions by Senate votes of 63-31 and 77-20, respectively. The single change would shift the responsibility for storing and maintaining out-of-business and multiple sales records from the General Services Administrator to the National Archivist. It was originally the intent of the administration and the Senate that the Archives, which was previously a part of the General Services Administration, be the repository for these records. However, because the 98th Congress severed the Archives from the GAO, it is now necessary to specify this in statutory language.

My staff and I have discussed this matter with the chairman of the Senate Judiciary Committee and his staff; and it is our opinion that, because this bill is very similar to a proposal approved unanimously by the Senate Judiciary Committee last year, it would be appropriate to bring it directly onto the Senate calendar under rule XIV.

When Congress enacted the Gun Control Act of 1968, it intended to curb violent firearms crime by controlling the sale, transportation, and possession of guns. Did this approach work? No; it did not. Extensive hearings and study of the actual enforcement of this law clearly show that the ones who bear the brunt of this law are not necessarily the most dangerous criminals. The ones who have been harassed by the enforcement of this act are often innocent men and women who have bungled their paperwork. Punishment has been swift and severe. While genuine criminals are all too often let free to roam the streets, these law-abiding gun owners and dealers have had their property unconstitutionally seized and held and their businesses and lives ruined. People who have done their best to comply with the law are forced to bear the stigma of Federal felons.

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*2 We have a duty to provide for the legal protection of the citizens of this country, and when the force of the law is directed at the innocent, and does nothing to the guilty, we are neglecting that duty.

My colleagues on the Judiciary Committee have worked long and hard, as I have, to hammer out changes in the law that will prevent the abuses we have seen. This law touches on many people, on many branches of the Government. We have labored to balance the need for effective law enforcement with the right of honest citizens to constitutional protections. We have all spent time ironing out our differences on this complicated and emotionally charged issue.

At length, we arrived at a compromise that solved the major problems. I have met with representatives from different groups in the firearms rights community, and I believe that we now have a piece of legislation that everyone can honestly support. The bill was unanimously voted out of committee.

The Firearm Owners Protection Act is designed to correct demonstrated abuses in present law. It would make the following reforms:

Define "engaging in the business" to clarify who needs a Federal firearms license;

Liberalize the interstate sale of firearms when these sales are legal in both State of sale, and State of purchase;

Mandate an element of criminal intention for prosecution and conviction of Federal firearms law violations;

Clarify procedures for dealer sales of firearms from his private collection;

Permit inspection of dealer's records for reasonable cause;

Require mandatory penalties for the use of a firearm during a Federal crime;

Limit seizure of firearms;

Provide for the return of seized firearms, and grant attorney's fees in spiteful or frivolous suits;

Allow the interstate transportation of unloaded, inaccessible firearms.

The bill would not do the following:

Allow "mail order" sales of firearms;

Allow unlicensed pawn shop gun sales;

Restrict legitimate inspection of records.

In short, this bill has been painstakingly crafted to focus law enforcement on the kinds of Federal firearms law violations most likely to contribute to violent firearms crime. Enactment of this amendment into law will insure that the intent of Congress is carried out.

We must compel the enforcing agency to stop harassing honest people and to direct their efforts at the violent criminals who give all gun owners a bad name. This can only be done by changing present Federal firearms law. We must change that law.

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Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 49

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress finds that the rights of citizens to keep and bear arms under the second amendment to the United States Constitution; their rights to security against illegal and unreasonable searches and seizures under the fourth amendment; their protections against uncompensated taking of property, double jeopardy, and assurance of due process of law under the fifth amendment; and their rights against unconstitutional exercise of authority under the ninth and tenth amendments; require additional legislation to correct existing firearms statutes and enforcement policies. The Congress further finds that additional legislation is required to reaffirm its intent, as expressed in section 101 of title I of the Gun Control Act of 1968, that "it is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting, trapshooting, target shooting, personal protection, or any other lawful activity, . . ." or "to discourage or eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes."

TITLE I-AMENDMENTS TO TITLE 18, UNITED STATES CODE (18 U.S.C. 921-928)

AMENDMENTS TO SECTION 921

*3 SEC. 101. Section 921 of title 18, United States Code, is amended-

(1) in subsection (a)(10) by deleting the words "manufacture of" and inserting in lieu thereof the words "business of manufacturing";

(2) in subsection (a)(11)(A) by deleting the words "or ammunition";

(3) in subsection (a)(12) by deleting the words "or ammunition";

(4) in subsection (a)(13) by deleting the words "or ammunition";

(5) by amending subsection (a)(20) to read as follows:

"(20) The term 'crime punishable by imprisonment for a term exceeding one year' shall not include (A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or (B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less: Provided, however, That what constitutes a conviction shall be determined in accordance with the law of the jurisdiction in which the proceedings were held: Provided further, That any conviction which has been expunged, or set aside or for which a person has been pardoned or has had his or her civil rights restored shall not be considered a conviction under the provisions of this Act, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms."; and

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(6) in subsection (a) by inserting new paragraphs (21) and (22) after paragraph (20), to read as follows: "(21) The term 'engaged in the business' means-

"(A) As applied to a manufacturer of firearms, a person who devotes time, attention, and labor to manufacturing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms manufactured.

"(B) As applied to a manufacturer of ammunition, a person who devotes time, attention, and labor to manufacturing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition manufactured.

"(C) As applied to a dealer in firearms, as defined in [section 921\(a\)\(11\)\(A\)](#), a person who 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. The term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or hobby, or who sells all or part of his personal collection of firearms.

"(D) As applied to a dealer in firearms, as defined in [section 921\(a\)\(11\)\(B\)](#), a person who devotes time, attention, and labor to engaging in such activity as a regular course of trade or business with the principal objective of livelihood and profit. The term shall not include a person who makes occasional repairs of firearms or who occasionally fits special barrels, stocks, or trigger mechanisms to firearms.

*4 "(E) As applied to an importer of firearms, a person who devotes time, attention, and labor to importing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms imported.

"(F) As applied to an importer of ammunition, a person who devotes time, attention, and labor to importing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition imported.

"(22) The term 'with the principal objective of livelihood and profit' means that the intent underlying the sale or disposition of firearms is predominantly one of obtaining livelihood and pecuniary gain, as opposed to other intents, such as improving or liquidating a personal firearms collection.

AMENDMENTS TO SECTION 922

SEC. 102. [Section 922 of title 18, United States Code](#), is amended-

(1) by amending subsection (a)(1) to read as follows:

"(1) for any person (A) except a licensed importer, licensed manufacturer, or licensed dealer to engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce; and (B) except a licensed importer or licensed manufacturer to engage in the business of importing or manufacturing ammunition, or in the course of such business, to ship, transport, or receive any ammunition in interstate or foreign commerce";

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(2) in subsection (a)(2)-

(A) By deleting the words "or ammunition"; and

(B) by deleting the words "or licensed dealer for the sole purpose of repair or customizing," and inserting in lieu thereof the words, "licensed dealer, or licensed collector,";

(3) by amending clause (B) of subsection (a)(3) to read as follows: "(B) shall not apply to the transportation or receipt of a firearm obtained in conformity with the provisions of subsection (b)(3) of this section,";

(4) in subsection (b)-

(A) by deleting in paragraph (2) "or ammunition" each place it appears;

(B) by deleting clause (A) in paragraph (3) and inserting in lieu thereof the following: "(A) shall not apply to the sale or delivery of any firearm to a resident of a State other than a State in which the licensee's place of business is located if the sale, delivery and receipt fully comply with the legal conditions of sale in both such States: Provided, however, That any licensed manufacturer, importer or dealer shall be presumed, in the absence of evidence to the contrary, to have had actual knowledge of the State laws and published ordinances of both States,";

(C) by inserting "and" before "(B)" in paragraph (3);

(D) by striking out ", and" in clause (B) of paragraph (3) and inserting in lieu thereof a semicolon;

(E) by repealing clause (C) of paragraph (3); and

*5 (F) by deleting from paragraph (5) "or ammunition except .22 rimfire ammunition";

(5) in subsection (d)-

(A) by deleting "licensed importer, licensed manufacturer, licensed dealer, or licensed collector" the first time they appear and inserting in lieu thereof "person";

(B) by deleting in paragraph (3) the word "or" following the semicolon;

(C) by replacing the period in paragraph (4) with a semicolon; and

(D) by inserting after paragraph (4) the following:

"(5) who, being an alien, is illegally or unlawful in the United States;

"(6) who has been discharged from the Armed Forces under dishonorable conditions; or

"(7) who, having been a citizen of the United States, has renounced his citizenship.";

(6) in subsection (g)-

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(A) by deleting the words "is under indictment for, or who" in paragraph (1);

(B) by deleting in paragraph (3) the word "or" following the semicolon;

(C) by inserting after paragraph (4) the following:

"(5) who, being an alien, is illegally or unlawfully in the United States;

"(6) who has been discharged from the Armed Forces under dishonorable conditions; or

"(7) who, having been a citizen of the United States, has renounced his citizenship;" and

(D) by deleting the words "to ship or transport any firearm or ammunition in interstate or foreign commerce" and inserting in lieu thereof the words "to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.";

(7) in subsection (h)-

(A) by inserting after the word "any" and before the word "person" the words "individual who to his knowledge and while being employed by any";

(B) by deleting the words "is under indictment for, or who" in paragraph (1);

(C) by deleting in paragraph (3) the word "or" following the semicolon;

(D) by inserting after paragraph (4) the following:

"(5) who, being an alien, is illegally or unlawful in the United States;

"(6) who has been discharged from the Armed Forces under dishonorable conditions; or

"(7) who having been a citizen of the United States, has renounced his citizenship;" and

(E) by deleting the words "to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce" and inserting in lieu thereof the words "in the course of such employment to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.";

(8) by inserting after subsection (m) a new subsection to read as follows:

"(n) It shall be unlawful for any person who is under indictment for a crime punishable by imprisonment for a term exceeding one year to ship or transport in interstate or foreign commerce any firearm or ammunition or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce."

AMENDMENTS TO SECTION 923

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*6 SEC. 103. [Section 923 of title 18, United States Code](#), is amended-

(1)(A) in subsection (a)-

(i) by deleting the words "No person shall engage in business as a firearms or ammunition importer, manufacturer, or dealer until he has filed an application with, and received a license to do so from the Secretary." and inserting in lieu thereof the words "No person shall engage in the business of importing, manufacturing, or dealing in firearms, or importing or manufacturing ammunition, until he has filed an application with and received a license to do so from the Secretary."; and

(ii) by deleting the words "and contain such information", and inserting in lieu thereof the words "and contain only that information necessary to determine eligibility for licensing.";

(B) in subsection (a)(3)(B) by deleting the words "or ammunition for firearms other than destructive devices";

(2) in subsection (b) by striking out "and contain such information", and inserting in lieu thereof "and contain only that information necessary to determine eligibility for licensing";

(3) in subsection (c) by adding at the end thereof the following: "Provided, however, That nothing in this chapter shall be construed to prohibit a licensed manufacturer, importer, or dealer from maintaining and disposing of a personal collection of firearms, subject only to such restrictions as apply in this chapter to dispositions by a person other than a licensed manufacturer, importer, or dealer: Provided further, That if any firearm is so disposed of by a licensee within one year of its transfer from his business inventory into his personal collection or if such disposition or any acquisition is made for the purpose of willfully evading the restrictions placed upon licensees by this chapter, then such firearm shall be deemed part of his business inventory.";

(4) in subsection (e) by inserting before the word "Violated" the word "willfully";

(5) in subsection (f)-

(A) by inserting the words "de novo" before the word "judicial" in paragraph (3);

(B) by adding the words ", whether or not such evidence was considered at the hearing held under paragraph (2)." after the words "to the proceeding" in paragraph (3); and

(C) by inserting at the end thereof the following new paragraph:

"(4) If criminal proceedings are instituted against a licensee alleging violations of this chapter or regulations promulgated thereunder, and the licensee is acquitted of such charges, or such proceedings are terminated, other than upon motion of the Government prior to trial upon such charges, the Secretary shall be absolutely barred from denying or revoking any license granted under the provisions of this chapter where such denial or revocation is based in whole or in part on the facts which form the basis of such criminal charges. No proceedings for the revocation of a license shall be instituted by the Secretary more than one year after the filing of the indictment or information.";

*7 (6) by amending subsection (g) to read as follows:

"(g)(1) Each licensed importer, licensed manufacturer, and licensed dealer, shall maintain such records of importation, production, shipment, receipt, sale, or other disposition, of firearms at his place of business for such period, and in such form, as the Secretary may by regulations prescribe. Such importers, manufacturers and dealers shall not be required to submit to the

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Secretary reports and information with respect to such records and the contents thereof, except as explicitly required by the Act entitled 'An to protect firearms owners' constitutional rights, civil liberties and rights to privacy'. The Secretary, when he has reasonable cause to believe a violation of this law has occurred, and that evidence thereof may be found on such premises may, upon demonstrating such cause before a Federal magistrate, and securing from him a warrant authorizing entry, enter during business hours the premises (including places of storage) of any licensed firearms importer, licensed manufacturer, licensed dealer, licensed collector or any licensed importer or manufacturer of ammunition, for the purposes of inspecting or examining (1) any records or documents required to be kept by such licensed importer, licensed manufacturer, licensed dealer, or licensed collector under the provisions of this chapter or regulations issued under this chapter, and (2) any firearms or ammunition kept or stored by such licensed importer, licensed manufacturer, licensed dealer, or licensed collector, at such premises. The Secretary may inspect the inventory and records of a licensed importer, licensed manufacturer, or licensed dealer without such cause or warrant, (A) for a reasonable inquiry during the course of a criminal investigation of a person or persons other than the licensee; or (B) no more than once in any twelve consecutive months, upon reasonable notice, but no criminal charges shall be brought against the licensee based upon such inspection except for willful violations of the recordkeeping requirements of this chapter or sales or other dispositions of firearms to prohibited persons; or (C) when such inspections or inquiries may be required for determining the disposition of one or more particular firearms in the course of a bona fide criminal investigation. The Secretary may inspect the inventory and records of a licensed collector without such reasonable cause or warrant (A) no more than once in any twelve consecutive month period, upon reasonable notice, but no criminal charges shall be brought against such licensee based upon such inspection except for willful violations of the recordkeeping requirements of this chapter or sales or other dispositions of firearms to prohibited persons; or (B) when such inspections or inquiries may be required for determining the disposition of one or more particular firearms in the course of a bona fide criminal investigation. At the election of a licensed collector, the annual inspection of records and inventory permitted under this paragraph shall be performed at the office of the Secretary designated for such inspections which is located in closest proximity to the premises where the inventory and records of such licensed collector are maintained. Such procedure shall not be construed as authorizing the Secretary to seize any records or other documents other than those records or documents constituting material evidence of a violation of law. If the Secretary seizes such records or documents, copies shall be provided the licensee within a reasonable time. The Secretary may make available to any Federal, State, or local law enforcement agency any information which he may obtain by reason of the provisions of this chapter with respect to the identification of persons prohibited from purchasing or receiving firearms or ammunition who have purchased or received firearms or ammunition, together with a description of such firearms or ammunition and he may provide information to the extent such information may be contained in the records required to be maintained by the provisions of this chapter, when so requested by any Federal, State, or local law enforcement agency.

*8 "(2) Each licensed collector shall maintain in a bound volume the nature of which the Secretary may by regulations prescribe, records of the receipt, sale, or other disposition, of firearm. Such records shall include the name and addresses of a firearm. Such collector shall not be required to submit of a firearms. Such collector shall not be required to submit to the Secretary reports and information with respect to such records and the contents thereof, except as explicitly required by the Act entitled 'An Act to protect firearms owners' constitutional rights, civil liberties and rights to privacy'.

"(3)(A) Within thirty days of the absolute discontinuance of the business of a licensee, any records maintained by such licensee under this chapter shall be delivered to the joint custody of the Archivist of the United States and the Secretary to be stored in a records center maintained and operated by the Archivist, unless state law or local ordinance requires delivery to another authority, in which event the Archivist and the Secretary may arrange for delivery to such authority.

"(B) The Secretary shall have access to records stored under this paragraph solely for the purposes of tracing firearms, organizing and preserving such records, and certifying to facts on the basis of such records in any court or any administrative proceeding of the United States or of any state. The Secretary may remove such records from the record center maintained by the Archivist only in connection with proceedings in any court or any administrative proceeding of the United States or of any state.

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“(C) the Archivist may promulgate regulations governing the storage, processing and servicing of records stored under this paragraph: Provided, That no such regulations may restrict the authority of the Secretary under this paragraph to have access to or to remove such records.

”(D) Notwithstanding any other provision of law, the Archivist shall dispose of records kept by licensed dealers and licensed collectors, and records relating to the disposition of firearms kept by manufacturers and importers, and stored under this paragraph twenty years after such records are received by the Archivist and the Secretary.

”(4)(A) each licensee shall, when required by letter issued by the Secretary, and until notified to the contrary in writing by the Secretary, submit on a form specified by the Secretary, for the periods and at the times specified in such letter, all record information required by this chapter or such lesser record information as the Secretary in his letter may specify.

”(B) The Secretary may authorize the information to be submitted in a manner other than that prescribed in subparagraph (A) of this paragraph when it is shown by a licensee that an alternate method of reporting is reasonably necessary and will not unduly hinder the effective administration of this chapter.

”(C) No warrant shall issue nor shall any criminal charges be brought against the licensee based solely upon information provided pursuant to the provisions of this paragraph.

*9 ”(5)(A) Each licensee shall prepare a report of multiple sales or other disposition whenever the licensee sells or otherwise disposes of, at one time or during any five consecutive business days, two or more pistols, or revolvers, or any combination of pistols and revolvers totaling two or more, to an unlicensed person. The report shall be prepared on a form specified by the Secretary and forwarded to the office specified thereon not later than the close of business on the day that the multiple sale or other disposition occurs.

”(B) Ten years after receiving any report submitted under subparagraph (A) of this paragraph, the Secretary shall deliver such report to the joint custody of the Archivist of the United States and the Secretary to be stored in a records center maintained and operated by the Archivist, subject to the provisions of [sections 923\(g\)\(3\) \(B\) and \(C\)](#) of this title. Notwithstanding any other provision of law, the Archivist shall dispose of records stored under this subparagraph ten years after such records are received by the Archivist and the Secretary.

”(C) No record, form, or information delivered, submitted, or forwarded pursuant to this paragraph or paragraph (3) or (4) of this subsection may be kept by the Secretary at a centralized location, nor shall it be entered into a computer for storage or retrieval.”; and

(7) by amending subsection (j) to read as follows:

”(j) A licensed importer, licensed manufacturer, or licensed dealer may, under regulations prescribed by the Secretary, conduct business temporarily at a location other than the location specified on the license if such other location is in the State which is specified on the license. Records of receipt and disposition of firearms transactions conducted at such temporary location shall include the location of the sale or other disposition and shall be entered in the permanent records of the licensee and retained on the location specified on the license. Nothing in this subsection shall authorize any licensee to conduct business in or from any motorized or towed vehicle. Notwithstanding the provisions of subsection (a) of this section, a separate fee shall not be required of a licensee with respect to business conducted under this subsection. Except for records directly related to receipts, sales, or other dispositions of firearms made at the temporary premises within the period of time the licensed importer, licensed manufacturer, or licensed dealer conducted the business of which such receipts, sales, or other dispositions were a part, nothing in this subsection shall be construed to authorize the Secretary to inspect or examine the inventory or records of a licensed

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importer, licensed manufacturer, or licensed dealer at any location other than the location specified on the license. Nothing in this subsection shall be construed to diminish in any manner any right to display, sell or otherwise dispose of firearms or ammunition which is in effect prior to the date of enactment of the Act entitled 'An Act to protect firearms owners' constitutional rights, civil liberties and rights to privacy'."

AMENDMENTS TO SECTION 924

*10 SEC. 104. [Section 924 of title 18, United States Code](#), is amended-

(1) by amending subsection (a) to read as follows:

"(a) Whoever-

"(1) knowingly makes any false statement or representation with respect to the information required by the provisions of this chapter to be kept in the records of a person licensed under this chapter, or in applying for any license or exemption or relief from disability under the provisions of this chapter;

"(2) knowingly violates subsections (a)(4), (a)(6), (f), (g), (h), (i), (j), or (k) of [section 922](#);

"(3) knowingly imports or brings into the United States or any possession thereof any firearm or ammunition in violation of [section 922\(l\)](#);

"(4) knowingly violates any provisions of this section; or

"(5) willfully violates any other provision of this chapter,

shall be fined not more than \$5,000, or imprisoned not more than five years, or both, and shall become eligible for parole as the Board of Parole shall determine: Provided, That no person shall be prosecuted under this subsection where the conduct of such person involves simple carelessness."

(2) by amending subsection (c) to read as follows:

"(c)(1) Whoever, during and in relation to any crime of violence, including a crime of violence which provides for an enhanced punishment if committed by the use of deadly or dangerous weapon or device, for which he may be prosecuted in a court of the United States, uses a firearm, or carries a firearm in furtherance of any such crime of violence, shall, in addition to the punishment provided for such crime of violence, be sentenced to imprisonment for a term of five years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to imprisonment for a term of ten years. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection, nor shall the term of imprisonment imposed under this subsection run concurrently with any other term of imprisonment including that imposed for the crime of violence in which the firearm was used or carried. No person sentenced under this subsection shall be eligible for parole during the term of imprisonment imposed herein: Provided, That no person shall be sentenced under this subsection if he establishes to the satisfaction of the court that the use of the firearm or destructive device was to protect his person or the person of another from the good faith perception of immediate danger other than the danger which was the direct result of the commission of or attempt to commit a felony by either such person and the court must find that a sentence under this subsection would constitute a severe and substantial miscarriage of justice and such court must provide in writing each finding of fact and law necessary to establish the applicability of this proviso.

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***11** "(2) For purposes of this subsection the term 'crime of violence' means an offense that is a felony and-

"(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

"(B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense."

(3) by amending subsection (d) to read as follows:

"(d)(1) Any firearm or ammunition involved in or used in any knowing violation of subsections (a)(4), (a)(6), (f), (g), (h), (i), or (k) of [section 922](#), or knowing importation or bringing into the United States or any possession thereof any firearm or ammunition in violation of [section 922\(l\)](#), or knowing violation of [section 924](#), or willful violation of any other provision of this chapter or any rule or regulation promulgated thereunder, or any violation of any other criminal law of the United States, or any firearm or ammunition intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1954 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter: Provided, That upon acquittal of the owner or possessor, or dismissal of the charges against him other than upon motion of the Government prior to trial, the seized firearms or ammunition shall be returned forthwith to the owner or possessor or to a person delegated by the owner or possessor unless the return of the firearms or ammunition would place the owner or possessor or his delegate in violation of law. Any action or proceeding for the forfeiture of firearms or ammunition shall be commenced within one hundred and twenty days after such seizure.

"(2)(A) In any action or proceeding for the return of firearms or ammunition seized under the provisions of this chapter, the court shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

"(B) In any other action or proceeding under the provisions of this chapter, the court, when it finds that such action was without foundation, or was initiated vexatiously, frivolously, or in bad faith, shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

"(C) Only those firearms or quantities of ammunition particularly named and individually identified as involved in or used in any violation of the provisions of this chapter or any rule or regulation issued thereunder, or any other criminal law of the United States, or as intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure, forfeiture, and disposition.

***12** "(3) The offenses referred to in paragraphs (1) and (2)(C) of this subsection are-

"(A) any crime of violence, as that term is defined in [section 924\(c\)\(2\)](#) of this title;

"(B) any offense punishable under the Controlled Substances Act ([21 U.S.C. 801](#) et seq.) or the Controlled Substances Import and Export Act ([21 U.S.C. 951](#) et seq.);

"(C) any offense described in [sections 922\(a\)\(1\), 922\(a\)\(3\), 922\(a\)\(5\), or 922\(b\)\(3\)](#) of this title, where the firearm or ammunition intended to be used in any such offense is involved in a pattern of activities which includes a violation of any offense described in [sections 922\(a\)\(1\), 922\(a\)\(3\), 922\(a\)\(5\), or 922\(b\)\(3\)](#) of this title;

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”(D) any offense described in [section 922\(d\)](#) of this title where the firearm or ammunition is intended to be used in such offense by the transferor of such firearm or ammunition;

”(E) any offense described in [sections 922\(i\), 922\(j\), 922\(l\), 922\(n\), or 924\(b\)](#) of this title; and

”(F) any offense which may be prosecuted in a court of the United States which involves the exportation of firearms or ammunition.”.

AMENDMENTS TO SECTION 925

SEC. 105. [Section 925 of title 18, United States Code](#), is amended-

(1) in subsection (c)-

(A) by deleting the words ”has been convicted of a crime punishable by imprisonment for a term exceeding one year (other than a crime involving the use of a firearm or other weapon or a violation of this chapter or of the National Firearms Act)” and inserting in lieu thereof the words ”is prohibited from processing, shipping, transporting, or receiving firearms or ammunition”;

(B) by inserting the word ”transportation,” after the word ”shipment”;

(C) by deleting the words ”and incurred by reason of such conviction,”; and

(D) by adding after the words ”the public interest.” the words ”Any person whose application for relief from disabilities is denied by the Secretary may file a petition with the United States district court for the district in which he resides for a judicial review of such denial. In a proceeding conducted under this subsection, the scope of judicial review shall be governed by [section 706 of title 5, United States Code](#). The court may in its discretion admit additional evidence where failure to do so would result in a miscarriage of justice.”; and

*13 (2) in subsection (d)-

(A) by deleting the words ”may authorize” and inserting in lieu thereof the words ”shall authorize”;

(B) by deleting the words ”the person importing or bringing in the firearm or ammunition establishes to the satisfaction of the Secretary that”; and

(C) by deleting in paragraph (3) the words ”generally recognized an particularly”; and

(D) by deleting the words ”may permit” and inserting in lieu thereof the words ”shall permit”.

AMENDMENTS TO [SECTION 925](#)

SEC. 106. [Section 926 of title 18, United States Code](#), is amended by-

(1) inserting ”(a)” before ”The Secretary” the first place it appears;

131 Cong. Rec. S23-03, 131 Cong. Rec. S23-03 (1985)

(2) inserting the word "only" after the word "prescribe";

(3) deleting the words "as he deems reasonable" and inserting in lieu thereof the words "as are";

(4) deleting the words "The Secretary shall give reasonable public notice, and afford interested parties opportunity for hearing, prior to prescribing such rules and regulations" and inserting in lieu thereof the words: "Provided, That no such rule or regulation promulgated after the effective date of this Act may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or any political subdivision thereof, nor that any system of registration of firearms, firearms owners, or firearms transactions or dispositions be established: Provided further, That nothing in this section shall be deemed to expand or restrict the Secretary's authority to inquire into the disposition of one or more firearms pursuant to a criminal investigation."; and

(5) inserting at the end thereof the following:

"(b) The Secretary shall give not less than ninety days public notice, and shall afford interested parties opportunity for hearing, prior to prescribing such rules and regulations.

"(c) The Secretary shall not prescribe regulations that require purchasers of black powder under the exemption provided in [section 845\(a\)\(5\) of title 18, United States Code](#), to complete affidavits or forms attesting to that exemption."

AMENDMENTS TO SECTION 927

SEC. 107. [Section 927 of title 18, United States Code](#), is amended by inserting before the period at the end thereof the following: "Provided however, That any provision of any legislation enacted, or of any rule or regulation promulgated, by any State or a political subdivision which prohibits or has the effect of prohibiting the transportation of a firearm or ammunition in interstate commerce through such State, when such firearm is unloaded and not readily accessible, shall be null and void."

EFFECTIVE DATE

SEC. 108. (1) All amendments (including any repeals) made by this Act shall become effective one hundred and eighty days after the date of enactment of this Act. At that time the Secretary shall publish and provide to all licensees a compilation of the State laws and published ordinances of which licensees are presumed to have knowledge pursuant to chapter 44 of title 18, United States Code, as amended by this Act. All amendments to such State laws and published ordinances as contained in the aforementioned compilation shall be published in the Federal Register, revised annually, and furnished to each person licensed under chapter 44 of title 18, United States Code, as amended by this Act.

*14 The provisions of sections 103(5)(C), 104(2), 105, and 107 of this Act shall be applicable to any action, petition, or appellate proceeding pending on the effective date of this Act. In considering any petitions for Presidential pardons submitted by persons convicted of violations of chapter 44 of title 18, United States Code, prior to the effective date of this Act, the Congress recommends that consideration be given to whether the violation would have been punishable under this Act, and to the purposes and findings contained in the preamble thereto.

TITLE II-AMENDMENTS TO TITLE VII OF THE OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968

131 Cong. Rec. S23-03, 131 Cong. Rec. S23-03 (1985)

SEC. 201. Title VII of the Omnibus Crime Control and Safe Streets Act of 1968 ([sections 1201](#), [1202](#), and [1203 of the appendix to title 18, United States Code](#)) is hereby repealed.

End of Document

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Exhibit 14

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

**MICHAEL CARGILL and
CTC HGC, LLC,
*Plaintiffs,***

V.

Civil Action No. _____

BUREAU OF ALCOHOL, TOBACCO, §
FIREARMS AND EXPLOSIVES; ATF §
DIRECTOR STEVEN DETTELBACH, §
in his official capacity; ATTORNEY §
GENERAL MERRICK GARLAND, §
in his official capacity; UNITED STATES §
DEPARTMENT OF JUSTICE; and §
UNITED STATES OF AMERICA, §
Defendants. §

DECLARATION OF MICHAEL CARGILL

I, Michael Cargill, hereby declare as follows:

1. My name is Michael Cargill. I am over the age of eighteen years old, and I am fully competent to make this declaration. I have personal knowledge of the facts stated in this declaration, and all such facts are true and correct.
2. I own and operate Central Texas Gun Works in Austin, Texas.
3. I own CTC HGC, LLC and hold a federal firearms license through it.
4. I sell firearms and complete transfers. In the year before my 2018 inspection, I completed around 6500 sales and transfers. I will complete at least 8,000 sales and transfers this year and likely closer to 10,000.
5. In addition to selling and transferring firearms, I offer license to carry handguns classes, safety classes, and beginner firearm classes.

6. In conjunction with the classes I offer, students spend time at a firing range to practice using a firearm.
7. After the 2018 inspection, I received a "Report of Violations" that totaled 35 violations.
8. It listed four different types of violations: (1) failure to ensure that all of the information called for on the ATF Form 4473 as indicated by the headings and the instructions on or pertaining to the form was accurately or completely furnished (7 occurrences); (2) failure to obtain a complete or accurately executed ATF Form 4473 from the non-licensee completing the form, prior to making an over-the-counter transfer of a firearm (25 occurrences); (3) failure to attach supporting documentations in Question 18c (2 occurrences); and (4) failure to accurately or completely record on the ATF Form 4473 the date on which the licensee contacted NICS (1 occurrence).
9. None of these violations were willful, and none resulted in a prohibited possessor obtaining a firearm.
10. The ATF did not recommend revocation. The Report of Violations simply instructed me to ensure that all information on the ATF 4473 was filled out accurately and supporting documentation is attached when necessary.
11. I seek to abide by the Gun Control Act, and I teach my students the relevant federal, state, and local firearms laws so that they can be law abiding gun owners as well.

12. Since my 2018 inspection, I have instituted remedial measures in order to comply with the law, including purchasing a software system that better tracks transactions and required background checks.
13. I fear the ATF will still attempt to revoke my license even though I have made every effort to comply with the Gun Control Act.

Pursuant to 28 U.S.C. § 1746, I, Michael Cargill, declare under penalty of perjury that the foregoing is true and correct.

Executed on the 18th day of October, 2022, in Austin, Texas.



MICHAEL CARGILL

Exhibit 15

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MICHAEL CARGILL and
CTC HGC, LLC,
Plaintiffs,

V.

Civil Action No. 1:22-cv-01063

BUREAU OF ALCOHOL, TOBACCO,
FIREARMS AND EXPLOSIVES; ATF
DIRECTOR STEVEN DETTELBACH,
in his official capacity; ATTORNEY
GENERAL MERRICK GARLAND,
in his official capacity; UNITED STATES
DEPARTMENT OF JUSTICE; and
UNITED STATES OF AMERICA,
Defendants.

SECOND DECLARATION OF MICHAEL CARGILL

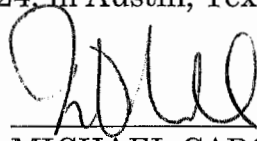
I, Michael Cargill, hereby declare as follows:

1. My name is Michael Cargill. I am over the age of eighteen years old, and I am fully competent to make this affidavit. I have personal knowledge of the facts stated in this affidavit, and all such facts are true and correct.
2. I own and operate Central Texas Gun Works in Austin, Texas.
3. I own CTC HGC, LLC and hold a federal firearms license through it.
4. As a result of ATF's 2018 and 2023 inspections of CTC HGC, LLC, I have instituted remedial measures in order to comply with the law, including training and equipment that have totaled to approximately \$7,500.
5. I have purchased four new computers, two that my customers now use and two that my employees now use, to fill out the required forms.

6. I have undergone the costly process of moving all CTC HGC, LLC's inventory into a computer system.
7. I have purchased a software system, unique for Federal Firearms Licensees, that better tracks transactions and required background checks, and must pay a monthly subscription to use it.
8. I have undergone the cost to train my employees to use the software and review its finished product, and to pay them for the hours they spend doing so.
9. I fear the ATF will still attempt to revoke my license even though I have made every effort to comply with the Gun Control Act.

Pursuant to 28 U.S.C. § 1746, I, Michael Cargill, declare under penalty of perjury that the foregoing is true and correct.

Executed on the 15th day of March, 2024, in Austin, Texas.

A handwritten signature in black ink, appearing to read 'Michael Cargill', written over a horizontal line.

MICHAEL CARGILL