

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**THE NATIONAL SHOOTING SPORTS  
FOUNDATION, INC.,**

**Plaintiff,**

**V.**

**B. TODD JONES, Acting Director,  
Bureau of Alcohol, Tobacco, Firearms  
& Explosives, in his official capacity,**

**Defendant.**

**Civil Action No. 1:11-cv-01401-RMC**  
**(consolidated with 11-cv-1402)**

**DEFENDANT'S STATEMENT OF MATERIAL**  
**FACTS IN SUPPORT OF HIS MOTION FOR SUMMARY JUDGMENT**

Pursuant to Local Civil Rule 7(h), Defendant submits this statement of material facts in support of his motion for summary judgment.

1. The Gun Control Act, 18 U.S.C. § 921 et seq., requires federal firearms licensees to maintain records of “receipt, sale, or other disposition of firearms . . . as [ATF] may by regulations prescribe.” 18 U.S.C. § 923(g)(1)(A).

2. ATF has prescribed a regulation requiring federal firearms licensees (“FFLs”) to complete a Firearms Transaction Record, ATF Form 4473, any time a licensee transfers a firearm to a nonlicensee. 27 C.F.R. § 478.124.

3. A completed Form 4473 must contain the transferee's name, address, date and place of birth; country of citizenship; a certification by the transferee that he or she is the buyer of the firearm and is not prohibited from receiving or possessing the firearm(s) to be transferred; and

the firearm's manufacturer, type, model, gauge or caliber, and serial number. 27 C.F.R. § 478.124.

4. In 1975, ATF began requiring the reporting of the "sale or other disposition of two or more pistols or revolvers at one time, or during any five consecutive business days." 40 Fed. Reg. 19,201 (May 2, 1975).

5. Congress codified this requirement in 1986 as part of the Firearm Owners Protection Act, Pub. L. No. 99-308, 100 Stat. 449. 18 U.S.C. § 923(g)(5)(A).

6. Principal among ATF's responsibilities is the tracing of firearms recovered during a law enforcement investigation, in order to link suspects to the firearms used to commit a crime. Declaration of Arthur Herbert ("Herbert Decl.") ¶ 4; A.R. at 262.

7. When a firearm is recovered by law enforcement officials, specific identifying information relating to the firearm, including its serial number, caliber, make, and model, is entered into the ATF Firearms Tracing System. Also included is a crime code, the location where the firearm was recovered, and the person found in possession of the firearm and his or her associates (if known). Herbert Decl. ¶ 6; A.R. at 48.

8. In most circumstances, ATF will use this identifying information to contact the firearm's manufacturer and determine where the gun was originally sold. Herbert Decl. ¶¶ 7, 40. ATF will then examine the retail dealer's transaction records to glean information about the original purchaser as well as whether other firearms were purchased at the same time by the non-licensed purchaser, and whether the firearm, recovery location, purchaser, possessor, associates, or retail dealer are associated with other trace results. Id. ¶ 7.

9. After recovering a firearm from a crime scene, ATF will check the firearm's identifying information, such as the serial number, against data in its records of multiple sales. Herbert Decl. ¶ 41. If the serial number on the recovered weapon matches one in the tracing system, ATF is able to quickly identify the dealer from whom the firearm was purchased as well as the purchaser of the firearm. Id.

10. In the absence of multiple sales reports with which to cross-reference a firearm's serial number, ATF must contact the manufacturer(s) or importer, then the wholesaler (if applicable), and then the retail dealer to identify the purchaser. Herbert Decl. ¶¶ 40-41.

11. ATF also uses multiple sales reports to verify firearms dealers' records, detect unlawful activity, and generate investigative leads regarding straw purchasers and trafficking patterns. A.R. at 285.

12. The illicit trafficking of drugs and firearms across the Southwest Border has contributed to an escalation of violence in Mexico. Herbert Decl. ¶¶ 18-20.

13. Mexican drug cartels responsible for that violence present a significant organized crime threat to the United States. Herbert Decl. ¶ 21.

14. A large proportion of the firearms fueling Mexican drug violence originate in the United States. A.R. at 38.

15. Based on ATF data regarding firearms recovered in Mexico that were submitted for tracing and successfully traced to a non-licensed purchaser between December 1, 2006 and August 31, 2010, the top four source locations by State were Texas, Arizona, California, and New Mexico. A.R. at 55, 250.

16. Mexican drug cartels have recently begun to arm themselves with more powerful rifles in order to facilitate their drug trafficking operations, including the AR type/variant .223 caliber rifle and the AK type/variant 7.62 caliber rifle. Herbert Decl. ¶ 35.

17. The Justice Department's Inspector General recommended that ATF and the Department of Justice "explore options for seeking a requirement for reporting multiple sales of long guns." A.R. at 288-289.

18. The Government Accountability Office also noted that "limitations on reporting requirements for multiple sales" were a "significant challenge" for ATF in combating the trafficking of arms across the Southwest Border, and recommended that this issue be "address[ed] by the agency." A.R. at 39-40, 42.

19. The demand letter challenged in this suit requires federally-licensed dealers and pawnbrokers operating in Texas, Arizona, New Mexico, and California, to report multiple sales within five consecutive business days to the same unlicensed person of semi-automatic rifles with a caliber greater than .22 that are capable of accepting a detachable magazine. Herbert Decl. ¶ 48; A.R. at 775-776.

20. The Department of Justice announced the multiple sales reporting requirement on July 11, 2011. Press Release, Dep't of Justice, Statement of Deputy Attorney General James Cole Regarding Information Requests for Multiple Sales of Semi-Automatic Rifles with Detachable Magazines (July 11, 2011), *available at* <http://www.justice.gov/opa/pr/2011/July/11-dag-900.html>.

21. Approximately two weeks later, ATF sent a letter to FFLs in the four Southwest Border States officially informing them of the reporting requirement. A.R. 775-776.

22. The requirement went into effect on August 14, 2011. A.R. 775-776.

23. The dealer must complete a Report of Multiple Sale or Other Disposition of Rifles (Form 3310.12), and send this report to ATF's National Tracing Center by the close of business on the day that a reportable multiple sale occurs. Herbert Decl. ¶¶ 48, 57; A.R. at 775-779.

24. Prior to issuing this demand letter, in December 2010, ATF publicly announced that it would submit a proposed information collection request to the Office of Management and Budget for approval. 75 Fed. Reg. 79,021 (Dec. 17, 2010).

25. ATF filed a second 30-day request for public comments in April 2011. 76 Fed. Reg. 24,058 (April 29, 2011).

26. As of July 2011, the number of affected federal firearms licensees ("FFLs") in the four states is approximately 8707. The total number of FFLs with Type 01 and 02 licenses in the U.S. is approximately 55,566. The total number of FFLs nationwide is approximately 122,597. Herbert Decl. ¶ 56.

27. Between August 14, 2011 and September 15, 2011, ATF has received 334 reports of multiple sales of rifles, corresponding to 803 total firearms (45 from Arizona, corresponding to 106 firearms; 67 from California, corresponding to 169 firearms; 10 from New Mexico, corresponding to 25 firearms; and 212 from Texas, corresponding to 503 firearms). Herbert Decl. ¶ 59.

Dated: September 23, 2011

Respectfully submitted,

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/s/ Daniel Riess

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 23rd day of September, 2011, I caused the foregoing document to be served via electronic case filing.

/s/ Daniel Riess

Daniel Riess