



## A FOCUSED NATIONAL STRATEGY TO ADDRESS THE SCOURGE OF ILLEGAL GUNS

Illegal guns are a serious problem in America. *From 1996 through 2005, there were almost 5 million violent crimes committed with firearms in this country.*<sup>1</sup> That is an average of about 136 violent gun crimes every day. Moreover, in the last couple of years, the problem has grown much worse. From 2004 to 2005, violent gun crime increased an alarming 49.4 percent.<sup>2</sup> This was part of the “largest single year percent increase in violent crime in 14 years.”<sup>3</sup> Unfortunately, this sharp upward trend appears to have continued in 2006, according to a report issued by the Police Executive Research Forum,<sup>4</sup> and preliminary data from the FBI.<sup>5</sup> Almost 60% of gun homicides occur in our nation’s major cities.<sup>6</sup>

President Bush himself once called for a “focused national strategy” to combat the problem of illegal guns.

Although progress has been made in fighting violent crime, America remains far too violent with a violent crime rate among the highest in the industrialized world... A teenager is more likely to die from a gunshot than from all natural causes of death combined. This is unacceptable in America. For our children's sake, this Nation must reclaim our neighborhoods and streets. We need a focused national strategy to ensure that every community vigorously combats the problem of gun violence.<sup>7</sup>

The Brady Center and its legislative and grassroots affiliate, the Brady Campaign to Prevent Gun Violence, are the largest citizen organizations working to reduce gun violence in

---

<sup>1</sup> See U.S. Department of Justice (“DOJ”), Bureau of Justice Statistics, *Non-fatal firearm-related violent crimes 1993-2005*; DOJ, *Homicide Trends in the U.S.* To arrive at this total, non-fatal gun crime must be added to gun homicides.

<sup>2</sup> *Id.*

<sup>3</sup> Police Executive Research Forum, *Chief Concerns: A Gathering Storm – Violent Crime in America 1* (October 2006).

<sup>4</sup> *Id.* at 13.

<sup>5</sup> See DOJ, *2006 Preliminary Semiannual Uniform Crime Report*. See also Dan Eggen, *Violent Crime Reports Surge by 4 Percent in First Half of 2006: Numbers Show Robbery Reports Jump Nearly 10 Percent Over Same Period Last Year*, Wash. Post, Dec. 19, 2006, at A1.

<sup>6</sup> See DOJ, *Homicide Trends in the U.S.* <http://www.ojp.usdoj.gov/bjs/homicide/city.htm#vcity>.

<sup>7</sup> See Project Safe Neighborhoods, *Letter from the President*, <http://www.psn.gov/Presidentsletter.html>.

Unfortunately, Congress cut back funding for this significant program in 2004. See Eric Lichtblau, *Key Antigun Program Loses Direct Financing*, N.Y. Times, Dec. 2, 2004, at A32.

America. We agree that a “focused national strategy” is necessary to combat the problem of illegal guns. This memorandum briefly outlines such a strategy.<sup>8</sup>

## A. THE PROBLEM OF ILLEGAL GUNS

America’s major cities have been flooded with illegal guns. Since 1996, when the Clinton Administration launched the Youth Crime Gun Interdiction Initiative (YCGII) as a 17-city demonstration project aimed at reducing youth firearms violence, more and more major cities have teamed with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to comprehensively trace the thousands of crime guns recovered by local law enforcement each year. A staggering picture of illegal guns has emerged.

Increased crime gun tracing has led to more than **2 million** crime guns being seized by local law enforcement and traced by ATF over the last 10 years.<sup>9</sup> This vast pool of illegal guns demonstrates how easily the criminal element can gain access to lethal weaponry. However, as the Director of ATF has pointed out, “[u]nlike narcotics or other contraband, the criminals’ supply of guns does not begin in clandestine factories or with illegal smuggling.”<sup>10</sup> Instead, **virtually every gun used in crime started out in the legal market**, identified by a serial number and sold by a gun dealer licensed by the federal government.<sup>11</sup> Moreover, crime guns move rapidly from the legal market to illegal use. One economist has estimated that 15% of the 2.1 million handguns produced in America in 1995 were used in a violent crime by the end of 2000.<sup>12</sup>

The underground market for guns is largely a product of the diversion of massive numbers of guns from licensed gun shops into the hands of criminals.<sup>13</sup> Studies of this diversion show, for example, that almost 60% of the guns traced to crime by ATF originated with only about 1% of the nation’s gun dealers.<sup>14</sup> They also show that about 30% of the guns traced to

---

<sup>8</sup> A more comprehensive analysis can be found in a recent Brady Center report, *Shady Dealings: Illegal Gun Trafficking From Licensed Gun Dealers* (January 2007), <http://www.gunlawsuits.org/xshare/pdf/reports/shady-dealings.pdf>.

<sup>9</sup> See Brady Center, *Without A Trace: How the Gun Lobby and the Government Suppress the Truth About Guns and Crime* 9 (April 2006), <http://www.bradycenter.org/xshare/pdf/reports/giw.pdf>. Even this huge number significantly undercounts the number of crime guns seized nationwide, as not all law enforcement agencies trace all of the crime guns they seize each year.

<sup>10</sup> ATF, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers*, at iii (June 2000).

<sup>11</sup> See ATF, *A Progress Report: Gun Dealer Licensing and Illegal Gun Trafficking*, at i (1997) (“Virtually all new firearms used in crime first pass through the legitimate distribution system of federal licensed firearms dealers.”).

<sup>12</sup> Expert Report of Lucy Allen, *NAACP v. American Arms* (E.D.N.Y. 2003).

<sup>13</sup> See *A Progress Report*, *supra* note 11, at 15 (“There is a large problem of diversion to the illegal market from licensed gun establishments.”).

<sup>14</sup> ATF, *Commerce in Firearms in the United States*, at 2 (February 2000). Numerous other studies and reports have confirmed this concentration of illegal supply among high-risk dealers. See, e.g., Glenn L. Pierce, LeBaron Briggs & David A. Carlson, *The Identification of Patterns in Firearms Trafficking: Implications for Focused Enforcement Strategies, A Report to the United States Dep’t of Treasury, Bureau of Alcohol, Tobacco and Firearms Office of Enforcement*, 12-13 (1995); Report of Sen. Charles E. Schumer, *A Few Bad Apples: Small Number of Gun Dealers the Source of Thousands of Crimes* (Jun. 1999) (finding that 137 of the worst dealers accounted for 34,000 of crime guns over three years); Philip J. Cook & Anthony Braga, *Comprehensive Firearms Tracing: Strategic and Investigative Uses of New Data on Firearms Markets*, 43 ARIZ. L. REV. 277 (2001).

crime were traced within three years of their retail sale, a short “time to crime” that ATF regards as a strong indicator of gun trafficking out of retail shops.<sup>15</sup>

Based on its own gun trafficking investigations, ATF has concluded that corrupt gun dealers are the source of the largest number of firearms diverted to the illegal market.<sup>16</sup> Moreover, random inspections by ATF of licensed gun dealers nationwide have found that a large percentage have violated the federal firearms laws. For example, in 1993, ATF found that 34% of gun dealers had federal firearms violations.<sup>17</sup> In 1998, ATF found that 56% of dealers and 30% of pawnbrokers selling 50 or more guns had federal firearms violations.<sup>18</sup> In addition, 18% of the dealers and 45% of the pawnbrokers had guns missing from inventory in the 1998 survey. In 2000, a more focused inspection of gun dealers that have sold 10 or more guns traced to crime found that the vast majority of them – 75% – had federal firearms violations.<sup>19</sup>

Corruption among licensed gun dealers has even been recognized within the gun industry. For example, ATF’s 1993 inspection report led one gun industry insider to call for a “proactive industry strategy” to address the “serious potential for illegal firearms transactions through ostensibly ‘legal’ ... channels,” and “minimiz[e] the possibility of illegal transaction through unscrupulous [gun dealers].”<sup>20</sup> Bill Bridgewater, head of the National Alliance of Stocking Gun Dealers, testified to Congress about the serious problem of corrupt gun dealers,<sup>21</sup> while his organization published alarms in its newsletter, the *Alliance Voice*.<sup>22</sup> Industry whistleblower Robert Ricker, a former lobbyist for the National Rifle Association and an industry trade group, has testified that major gun manufacturers were aware throughout the 1990s that their guns were being diverted into the illegal market by gun dealers, but decided to take no action for fear it would amount to an admission of responsibility for the problem.<sup>23</sup> Former Smith & Wesson executive Robert Hass and Kansas gun dealer Robert Lockett have also testified about the gun industry’s complicity in continuing to supply corrupt gun dealers.<sup>24</sup>

Additional evidence of diversion can be found in the largely consistent pattern of interstate movement of firearms into the illegal market. Crime guns in states with strong gun laws tend to originate with gun dealers in states with weak gun laws. Thus, about 85% of the crime guns in New York City originate with gun dealers outside New York State, primarily

---

<sup>15</sup> ATF, Youth Crime Gun Interdiction Initiative, *Crime Gun Trace Reports (2000) National Report (July 2002)*, at ix.

<sup>16</sup> ATF, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers* at x (June 2000).

<sup>17</sup> ATF *Operation Snapshot* 8 (July 1993).

<sup>18</sup> ATF, *Operation Snapshot: An Analysis of the Retail Regulated Firearm Industry* 12 (1998).

<sup>19</sup> ATF, *ATF Regulatory Actions: Report to the Secretary on Firearms Initiatives*, at iii (November 2000).

<sup>20</sup> Memorandum of Douglas Painter, National Shooting Sports Foundation Marketing Director, to Robert Delfay, NSSF Executive Director (July 13, 1993).

<sup>21</sup> *Federal Firearms Licensing: Hearings Before the Subcommittee on Crime and Criminal Justice, House Judiciary Committee*, 103d Cong. 86-99 (1993).

<sup>22</sup> See Brian J. Siebel, *Gun Industry Immunity: Why the Gun Industry’s “Dirty Little Secret” Does Not Deserve Congressional Protection*, 73 *UMKC Law Review* 931 (2005).

<sup>23</sup> See *id.* at 933-34.

<sup>24</sup> See *id.* at 934-35. See also Brady Center Legal Action Project, *Smoking Guns: Exposing the Gun Industry’s Complicity in the Illegal Gun Market* 14-23 (2003) (discussing internal gun industry materials), <http://www.bradycenter.org/xshare/pdf/reports/smokingguns.pdf>.

dealers in Southern states with weak laws.<sup>25</sup> Crime guns in states with weak gun laws tend to be “homegrown”; that is, to originate with dealers in those states. Thus, over 80% of the crime guns in Houston, Atlanta, Indianapolis, and New Orleans originate with gun dealers in their home states.<sup>26</sup> The attached table gives a city-by-city breakdown of interstate gun movement for the year 2000 of the YCGII participant cities, along with evidence that many of these guns were likely illegally trafficked.<sup>27</sup>

This pattern suggests that strong gun laws have an important impact on the illegal gun market. Strong state gun laws tend to deprive criminals of local sources of crime guns, requiring them to exploit out-of-state sources.<sup>28</sup> Seen another way, however, the pattern also indicates that the strong gun laws of some states are undercut by the weak gun laws of other states. The key point is this: ***criminals have ready access to illegal guns in large part because of the massive movement of guns from licensed gun dealers into the illegal market.*** This diversion from the legal to the illegal market fuels gun crime in urban areas in states with weak gun laws as well as in states with strong gun laws.

## **B. A NATIONAL STRATEGY TO CURB THE SUPPLY OF ILLEGAL GUNS**

The message of a focused national strategy is simple and compelling: ***any serious national effort to attack gun crime must attack the sources of crime guns.*** Moreover, because guns so easily cross state lines, the ultimate solution to the illegal gun problem must involve stronger federal laws. Strengthening state laws can provide momentum for enacting the broader federal laws that are needed.

### **1. Strengthen ATF’s Authority to Crack Down on Corrupt Gun Dealers**

Although ATF has long recognized that corrupt dealers are a major source of trafficked guns, the gun lobby has succeeded in persuading Congress to place severe limits on the Bureau’s authority to regulate licensed dealers and force corrupt dealers out of business.<sup>29</sup> A focused national strategy, therefore, should call for freeing ATF from irrational constraints on its ability to protect the American people from illegal guns. This directly responds to the NRA’s argument that “we don’t need new laws; we need to enforce existing laws.” The argument is a fallacy, in part because new laws are needed to strengthen ATF’s enforcement ability.<sup>30</sup>

---

<sup>25</sup> ATF, Youth Crime Gun Interdiction Initiative, *Crime Gun Trace Reports (New York)(2000)* 7 (July 2002).

<sup>26</sup> ATF, Youth Crime Gun Interdiction Initiative, *The Illegal Youth Firearms Market in 27 Communities* (October 1998).

<sup>27</sup> For example, not only were an average of 14% of crime guns seized within a year of being sold by gun dealers, but a tiny number of gun dealers were responsible for supplying between 18% and 70% of crime guns in each city.

<sup>28</sup> See Daniel Webster, et al, *Relationship between licensing, registration, and other gun sales laws and the source state of crime guns*, 184 *Injury Prevention* (2001).

<sup>29</sup> See Brady Center, *The NRA: A Criminal’s Best Friend: How the National Rifle Association Has Handcuffed Federal Gun Law Enforcement* (October 2006) (detailing NRA’s campaign to weaken federal gun laws), <http://www.bradycenter.org/xshare/pdf/reports/criminals-best-friend.pdf>.

<sup>30</sup> See *Shady Dealings*, *supra* note 8, at 23-33 (discussing the flaws in federal gun laws and what should be done).

**a. Remove limits on ATF's power to inspect gun dealers**

In the Firearms Owners' Protection Act of 1986 (McClure-Volkmer Act), Congress, at the behest of the NRA, put severe limits on ATF's enforcement authority, including a limitation of one unannounced enforcement inspection per year. This limitation should be repealed. ATF's inspection program is also limited by its inadequate resources. The Justice Department's Inspector General estimated that, at its current rate of inspections, ***it would take ATF more than 22 years to inspect all federal firearm licensees.***<sup>31</sup> Therefore, a focused national strategy must include far more resources to enable ATF to do its job.

**b. Remove limits on ATF's power to revoke the licenses of corrupt dealers**

Despite the fact that ATF inspections often reveal multiple violations of law by gun dealers, the revocation of a dealer's license to sell guns is a rare event. In FY 2003, ATF did 1,812 inspections that uncovered regulatory violations, ***with an average of over 80 violations per dealer.***<sup>32</sup> Despite this large number of dealers with multiple violations, ATF issued only 54 notices of license revocation that year. In part, this is due to the McClure-Volkmer Act, which imposed a requirement that ATF prove, in order to revoke a dealer's license, that the dealer had "willfully" violated the law.<sup>33</sup> This is a showing of evil intent normally reserved for criminal liability. The "willfulness" standard should be abolished and replaced with a requirement that the dealer "knowingly" violated the law.

**c. Give ATF new authority to fine and suspend dealers**

When faced with a dealer who has violated the law, ATF only has the option of pursuing license revocation proceedings, which may take several years, or taking no action at all. ATF generally may not impose any fines or temporary license suspensions on gun dealers. Many dealers who commit crimes end up retaining their licenses for years.<sup>34</sup> Indeed, under current law, a licensed gun dealer indicted for a felony ***can continue to sell guns until he is convicted and all of his legal appeals are exhausted.***<sup>35</sup> ATF should be given additional authority to fine or suspend licensees it believes have violated the law and, at the very least, should be able to suspend licensees once they have been convicted of a crime.

**d. Give ATF authority to require dealer inventory inspections**

In August 2000, ATF issued a proposed rule requiring licensed gun dealers to do annual physical inventories, after finding that dealer inventory errors were occurring at a "high rate."<sup>36</sup> If this proposed rule had been in effect, it might have prevented the 2002 sniper shootings in the Washington, D.C. metropolitan area. After the sniper suspects were apprehended, their assault rifle was recovered and traced to Tacoma, Washington gun dealer Bull's Eye Shooter Supply.

---

<sup>31</sup> U.S. Dept. of Justice, Office of the Inspector General, *Inspections of Firearms Dealers by the Bureau of Alcohol, Tobacco, Firearms and Explosives*, Report No. I-2004-005 (July 2004), at iii.

<sup>32</sup> *Id.* at vi.

<sup>33</sup> See 18 U.S.C. § 923(e).

<sup>34</sup> See, e.g., *Smoking Guns*, *supra* note 24, at 3-4 (discussing examples).

<sup>35</sup> See 18 U.S.C. § 925(b).

<sup>36</sup> ATF, *Commerce in Firearms in the United States* 28 (2000).

Bull's Eye had no record of selling the gun and did not even know it was missing. The snipers' gun was just one of more than 230 firearms missing from the dealer's inventory during the previous three years.<sup>37</sup> Not only did ATF fail to issue the final physical inventory rule, but Congress again did the NRA's bidding by passing a rider to the Justice Department appropriations bill barring the Bureau from spending any monies to issue and enforce such a rule. This rider must be stripped from future appropriations bills.

*e. Increase the penalty for violations of firearm record keeping laws*

As the sniper case shows, the failure of a dealer to keep proper records may well involve guns that improperly find their way into the hands of violent criminals. Despite the massive violations of Bull's Eye Shooter Supply, neither the company nor its owner was charged with a criminal violation of federal gun laws (although the owner's license was revoked and he was prosecuted for tax law violations).<sup>38</sup> This is likely due to the fact that violations of firearm record keeping laws have been punishable only as misdemeanors, not as felonies, ever since federal law was weakened in the Firearms Owners' Protection Act of 1986.<sup>39</sup> Given that these laws "are intended to deter the illegal transfer of firearms to prohibited persons"<sup>40</sup> their violation should be a federal felony.

*f. Give ATF the authority to issue mandatory dealer security standards*

Every year, dealers report thousands of firearms stolen or missing from their premises. Every stolen gun, by definition, enters the illegal market. Although ATF has promulgated security standards for gun dealers, they are entirely voluntary.<sup>41</sup> ATF has taken the position that it does not have the statutory authority to make these standards mandatory. Congress should give the Bureau that authority.

**2. Give the Public, and Law Enforcement, Access to Crime Gun Information**

ATF's crime gun tracing program not only helps local police solve gun crimes; it also yields a massive amount of information about crime guns that helps law enforcement, and the public, understand how the illegal gun market is supplied.<sup>42</sup> During the Clinton Administration, ATF dramatically increased the volume of this data through its Youth Crime Gun Interdiction Initiative that encouraged major cities to trace every gun confiscated by police in connection with criminal investigations. The number of traces rose to more than 250,000 per year.

---

<sup>37</sup> See *Gun Industry Immunity*, *supra* note 22, at 921-23 (discussing evidence against Bull's Eye).

<sup>38</sup> The owner, Brian Borgelt, was recently given probation on the tax law violations. See *Former Gun Store Owner Sentenced to Probation in Tax Case*, *Seattle Post-Intelligencer*, Jan. 12, 2006.

<sup>39</sup> See *Commerce in Firearms*, *supra* note 14, at C-3.

<sup>40</sup> DOJ, *Inspections of Firearms Dealers*, *supra* note 31, at 3.

<sup>41</sup> See ATF, *Safety and Security Information for Federal Firearms Licensees* (March 1998).

<sup>42</sup> See ATF, *1994 Firearms Enforcement Investigative Report* 19 (1995) ("Historically, firearms trace studies have proven to be an excellent tool in identifying illegal firearms trafficking patterns, illegal purchasers, problem firearms dealers, and source areas of supplying firearms."); ATF, *Youth Crime Gun Interdiction Initiative, Crime Gun Trace Analysis Reports: The Illegal Youth Firearms Markets in 27 Communities* 1 (1999) ("The Performance Report shows that the most important factor leading to trafficking investigations involving juveniles and youth was analysis of trace and multiple sales records."); ATF, *Crime Gun Trace Reports* 53 (2002) ("Trace information and analysis of cases are contributing to a more precise picture of the structure of the illegal firearms market.").

ATF long provided public access to various versions of its crime gun trace database. The information has been used by researchers and law enforcement to track gun trafficking patterns, assess the success of gun laws, identify the retail dealers contributing the most guns to the illegal market and the manufacturers and distributors who supply those dealers, and support municipal and other lawsuits against the gun industry.

Trace data has added greatly to the public's store of knowledge about the connection between retail gun dealers and the illegal market.<sup>43</sup> For this reason, its release to the public has been quite threatening to the gun industry. As a result, Congress, at the urging of the gun lobby, has attached a series of riders to Justice Department appropriations bills prohibiting ATF from disclosing trace data (and multiple sale data), even if the data is subpoenaed by a federal court.<sup>44</sup> The latest rider even bars the use in civil suits of the data that already has been released.<sup>45</sup> These riders were prompted by the use of trace data to support lawsuits against the gun industry and, in particular, New York City's pending suit. However, they have far broader implications and essentially shut down the flow of valuable information to the public about the sources of crime guns. It is essential that they be deleted from future appropriations bills.

### **3. Strengthen and Extend Brady Background Checks**

Since the Brady Act was signed into law by President Clinton in 1993, it has stopped an estimated 1.4 million convicted felons and other prohibited persons from buying guns from licensed retail dealers.<sup>46</sup> It must, however, be strengthened and expanded.

#### ***a. Retain Brady Act records***

The Bush Administration and Congress have weakened the Brady Act by requiring the virtually immediate destruction of records documenting sales of guns to approved purchasers. This policy is seriously misguided, and serves to protect corrupt gun sellers, criminals, and potential terrorists.

Prior to the Bush Administration, the Department of Justice retained the background check records on approved gun sales for ninety days to ensure that the National Instant Criminal Background Check System (NICS), established pursuant to the Brady Act, was working properly and that criminals were not being mistakenly approved for gun purchases. Attorney General John Ashcroft, however, proposed shortening the period of NICS record retention to 24 hours, a change later enacted into statutory law as yet another Justice Department appropriations rider,<sup>47</sup> and made final through regulation.<sup>48</sup> Citing his concern over the privacy of gun owners, Mr.

---

<sup>43</sup> See, e.g., *supra* note 14 (listing numerous reports and studies that have analyzed trace data to shed light on how guns are diverted into the illegal market).

<sup>44</sup> Consolidated Appropriations Act of 2005, Pub. L. No. 108-447, 118 Stat. 2859 (Dec. 8, 2004). These riders are collectively known as the "Tiahrt Amendments" after their sponsor, Rep. Todd Tiahrt (R-Kansas).

<sup>45</sup> Consolidated Appropriations Act of 2006, Pub. L. No. 109-108.

<sup>46</sup> U.S. Dept. of Justice, Bureau of Justice Statistics, *Background Checks for Firearm Transfers, 2005* at 2 (Nov. 2006).

<sup>47</sup> Section 616 of P.L. 108-447, 118 Stat. 2915.

<sup>48</sup> 69 Federal Register 43892, July 23, 2004, codified at 28 CFR § 25.9(b)(iii).

Ashcroft ignored a General Accounting Office (now the Government Accountability Office) report that estimated that a change to a 24-hour destruction policy could result in hundreds of criminals, terrorists and other prohibited gun buyers being mistakenly approved for gun purchases.<sup>49</sup> Without NICS records, law enforcement has no opportunity to retrieve these mistakenly-sold guns to protect against their use in crime. The Justice Department Inspector General also found that the 24-hour destruction policy makes it easier for corrupt dealers “to falsify the NICS check to hide a knowing transfer of a gun to a prohibited person.”<sup>50</sup> This dovetails with the findings of a recent study that dealers whose clientele are denied gun sales as a result of Brady background checks are much more likely to sell guns traced to crime than dealers without such clientele.<sup>51</sup>

The Brady Act must be strengthened by allowing a reasonable time for record retention. If a federal “one-gun-a-month” law were enacted to ban multiple sales, such a record retention policy also would be needed to ensure that buyers are not able to circumvent the law by visiting several gun shops and buying single handguns at each shop.

***b. Broaden categories of prohibited purchasers***

The Brady Act can only block gun sales to persons prohibited by federal law from buying guns. The current categories of prohibited buyers are narrow, thus permitting the sale of guns to high-risk persons. For example, ***persons appearing on terrorist watch lists are not prohibited persons*** and can be barred from buying guns from dealers only if they happen to fall within another prohibited class. Thus, some of the same people who are denied the right to get on an airplane can still go out and buy a gun from a licensed dealer.

In addition, although a misdemeanor involving domestic violence bars a sale, other violent misdemeanors do not, even though studies show that violent misdemeanors are predictors of other more serious violent behavior.<sup>52</sup> The current categories of prohibited persons should be broadened to block sales to additional high-risk persons.

***c. Extend Brady background checks to all private sales***

The greatest limitation in the Brady Act is that it applies only to sales by licensed gun dealers, not to private transfers between unlicensed persons. Experts estimate that about 40% of gun sales are between private persons, at gun shows and elsewhere. Although a handful of states require background checks at gun shows, in most states private sales are completely unregulated.

---

<sup>49</sup> General Accounting Office Report, GAO-02-653, *Potential Effects of Next-Day Destruction of NICS Background Check Records*, (July 2002).

<sup>50</sup> DOJ, *Inspections of Firearms Dealers*, *supra* note 31, at 53.

<sup>51</sup> See Garen J. Wintemute, Philip J. Cook, & M.A. Wright, *Risk Factors Among Handgun Retailers for Frequent and Disproportionate Sales of Guns Used in Violent and Firearm Related Crimes*, 11 *Injury Prevention* 361-62 (2005).

<sup>52</sup> See Garen J. Wintemute, et al., *Prior misdemeanor convictions as a risk factor for later violent and firearm-related criminal activity among authorized purchasers of handguns*, 280 *Journal of the American Medical Association* 2083-87 (1998).

This permits massive avoidance of the background check requirement of the Brady Act.<sup>53</sup> Ultimately, our national gun policy should be: *no background check, no sale, regardless of who the seller is or where the sale is made.*

A policy of universal background checks should also include a policy of universal, centralized record keeping. Current federal law requires licensed dealers to maintain records of gun purchases, but bars the centralization and computerization of gun sale records. However, private sales are not recorded and there is no requirement that the dealer gun sale records be submitted to the federal government.<sup>54</sup> Thus, when ATF traces a gun used in crime, the trail stops with the retail sale by a licensed dealer. These irrational limitations on crime gun tracing hamper law enforcement and make it particularly difficult to prosecute “straw buyers” who are under no legal obligation to report gun transfers to actual buyers.

Federal policy should move toward a system that would allow authorities to do computerized traces of any crime gun, allowing the instant identification of the last legal owner of the gun before it moved into the illegal market. Being able to go straight to this source would give law enforcement much hotter leads to help them identify the criminal who misused the gun. If the law also required gun owners to timely report missing or stolen guns to federal authorities, gun buyers could not so easily conceal gun transfers to prohibited purchasers.

#### 4. Curb Large-Volume Gun Sales

Gun traffickers keep costs down and maximize profits by buying large numbers of guns, usually handguns, from gun shops, often using “straw buyers” with clean criminal records allowing them to pass Brady Law background checks.<sup>55</sup> Indeed, federal law enforcement authorities have long regarded the purchase of multiple handguns by a single buyer in a single transaction as an “indicator” that the buyer intends to traffic the guns to the illegal market.<sup>56</sup> For this reason, if someone buys two or more handguns in a five-day period, federal law treats the purchase as so suspect that it must be reported to ATF.

Multiple sales, however, are not illegal under federal law and they continue to be a major source of supply for gun traffickers. Handguns sold in multiple sales accounted for 20% of all handguns sold and traced to crime in 2000.<sup>57</sup> In a particularly egregious recent example, a licensed gun dealer/distributor named Charles Brown sold hundreds of guns at Ohio gun shows to straw purchasers for gun trafficker James Bostic, *including 87 handguns in a single transaction.* Those guns were systematically trafficked from Ohio into New York State, where they have been used in dozens of crimes.<sup>58</sup> Examples of people victimized by crimes involving multiple-sale guns include two New Jersey police officers that were shot with a gun sold as part

---

<sup>53</sup> See ATF, *Gun Shows: Brady Checks and Crime Gun Traces* 6 (1999) (“A review of ATF’s recent investigations indicates that gun shows provide a forum for illegal firearms sales and trafficking.”).

<sup>54</sup> The exception is records of gun dealers who are out of business, which are transferred to ATF.

<sup>55</sup> See *Following the Gun*, *supra* note 10, at xi (straw purchasing was the most common channel of diversion in federal firearms investigations).

<sup>56</sup> See *Commerce in Firearms*, *supra* note 14, at 22.

<sup>57</sup> See *Crime Gun Trace Reports*, *supra* note 15, at ix.

<sup>58</sup> See *Gun Industry Immunity*, *supra* note 22, at 916-20.

of a 12-handgun sale by a West Virginia gun dealer,<sup>59</sup> several victims of a hate-crime spree through Illinois and Indiana fueled with a gun bought from a gun trafficker that systematically acquired more than 70 handguns from a single Illinois dealer,<sup>60</sup> and a Philadelphia woman who lost her seven-year-old son to a gun trafficked from an upstate-Pennsylvania dealer.<sup>61</sup>

Curbing large-volume sales must be a key part of a new national strategy.<sup>62</sup> Three states, California, Maryland and Virginia, have enacted laws restricting handgun purchases to one per month. The Brady Center's study of Virginia's law showed that prior to the law, 38% of all guns originating in the Southeast and traced in the Northeast came from Virginia gun shops. After the law took effect, that percentage dropped to 16%.<sup>63</sup> However, because gun traffickers can simply use new "source" states, the ultimate solution is a federal law.

## 5. Use Technological Advances to Fight Illegal Guns

A focused national strategy also should urge the use of new technology to fight illegal guns. Two prominent examples deserve special attention.

First, due to litigation and the work of public health advocates, there is movement in the gun industry toward the "personalization" of guns to permit their use only by authorized owners. Most major gun companies have begun to market models of guns with internal locks requiring a unique key. This is the first step in the direction of true personalization. More sophisticated systems are under development, including fingerprint identification. In concept, personalization could have an important impact on the crime gun market, because guns stolen from their authorized owners could not be fired.<sup>64</sup>

Another promising developing area is technology to link bullets and cartridge casings found at crime scenes with specific firearms. Some states already have a ballistics identification program to match bullets found at crime scenes with guns sold. In addition, legislation has been introduced in California to require all new semiautomatic handguns sold in California to be equipped with "microstamping" technology to link used cartridge casings recovered at crime scenes with particular firearms. If the federal government were to implement a functioning ballistics identification system, as well as a system of computerized documentation of gun transactions, a single casing at a crime scene could lead police, within hours, to the identification of the owner of the crime gun, who would then be accountable for what he/she did with the gun.

---

<sup>59</sup> *Id.* at 923-25 (discussing *Lemongello v. Will Jewelry and Loan* case).

<sup>60</sup> *Id.* at 926-27 (discussing *Anderson v. Bryco Arms* case).

<sup>61</sup> *Id.* at 925-26 (discussing *Jefferson v. Rossi* case).

<sup>62</sup> As far back as 1976, the U.S. House of Representatives recognized that more than a reporting requirement for multiple sales was needed and recommended that a national one-handgun-per-month law be enacted. *See* U.S. House of Representatives, *Federal Firearms Act of 1976*, H.R. Rep. No. 94-1103 at 54, 64-65 (1976); *id.* at 73 ("Moreover, it has become evident that this illicit firearms trafficking has been facilitated by the absence of Federal controls upon the multiple sale of handguns.").

<sup>63</sup> Douglas Weil & Rebecca Knox, *Effects of Limiting Handgun Purchases on Interstate Transfer of Firearms*, 275 *Journal of the American Medical Association* 1759, 1760 (1996).

<sup>64</sup> *See* National Academy of Engineering, *Owner-Authorized Handguns*, at 39-43 (2003) (summarizing presentation of Dr. Philip Cook outlining criminological benefits of personalized handguns).

The crime-solving potential for such a system would be monumental – so much so that it could function as a strong deterrent to the use of guns as instrumentalities of crime.

## **CONCLUSION**

There is a growing awareness that too little has been done to combat illegal gun trafficking. Because of weak laws at the federal and state level and recent efforts to make them even weaker, it is simply too easy for gun traffickers to arm dangerous criminals. Yet there are many reasonable steps that could be taken to dry up the illegal gun market. As always, an ounce of prevention is worth a pound of cure. If we make it harder for criminals to get guns, there will be fewer gun violence victims killed or injured. By helping to keep guns out of the wrong hands, the Brady Campaign and Brady Center's campaign against gun trafficking will save lives and make our neighborhoods safer.

**Youth Crime Gun Interdiction Initiative City-By-City Gun Trafficking Indicators (2000)**

City	Number of Crime Guns	Percentage of Crime Guns Purchased In-State	Median Time-to-Crime (in years)	Percentage of Guns With Time-to-Crime of 3 Years or Less	Percentage of Guns With Time-to-Crime of 1 Year or Less	A High Percentage of Crime Guns Have Been Sold by Very Few Dealers	Percentage of Guns With Obliterated Serial Numbers
Albuquerque, NM	900	77%	4.7	43	24	7 dealers supplied 37% of traced guns	4.1
Anaheim, Long Beach, & Santa Ana, CA	139	68%	8.8	14	0	6 dealers supplied 42% of traced guns	0
Atlanta, GA	1,141	82%	3.1	49	25	5 dealers supplied 40% of traced guns	3.9
Austin, TX	295	80%	6.2	33	18	2 dealers supplied 19% of traced guns	1
Baltimore, MD	4,295	62%	6.8	26	11	8 dealers supplied 33% of traced guns	9.7
Baton Rouge, LA	1,068	84%	4.2	43	21	10 dealers supplied 54% of traced guns	1.6
Birmingham, AL	1,851	87%	6	29	12	10 dealers supplied 57% of traced guns	0.1
Boston, MA	896	42%	7.9	19	9	6 dealers supplied 24% of traced guns	10.8
Buffalo, NY	836	64%	6.6	30	14	3 dealers supplied 43% of traced guns	0.4
Camden, NJ	165	23%	6.1	27	10	6 dealers supplied 29% of traced guns	11.4
Charlotte-Mecklenburg, NC	2,041	71%	4.4	41	20	6 dealers supplied 45% of traced guns	1.9
Chicago, IL	8,570	50%	6.2	29	12	12 dealers supplied 41% of traced guns	9.1
Cincinnati, OH	877	71%	5.4	38	19	4 dealers supplied 32% of traced guns	2.7
Cleveland, OH	979	83%	6.5	33	16	3 dealers supplied 43% of traced guns	2.1
Dallas, TX	3,005	78%	6.6	29	15	9 dealers supplied 24% of traced guns	5.9
Denver-Aurora, CO	937	66%	4.9	38	20	4 dealers supplied 29% of traced guns	1
Detroit, MI	3,771	41%	6.9	26	11	8 dealers supplied 18% of traced guns	7
Gary, IN	792	87%	2.6	53	29	5 dealers supplied 65% of traced guns	0.6
Greensboro, Winston-Salem, Highpoint, NC	699	65%	4.6	39	16	5 dealers supplied 19% of traced guns	4.9
Houston, TX	3,909	82%	7.1	26	13	13 dealers supplied 32% of traced guns	0.2
Indianapolis, IN	3,592	89%	3.1	49	24	10 dealers supplied 70% of traced guns	0.8
Jacksonville, FL	1,366	77%	6.7	24	8	7 dealers supplied 32% of traced guns	3.5
Jersey City, NJ	184	15%	6.4	31	12	7 dealers supplied 33% of traced guns	3.9
Las Vegas, NV	636	58%	4.5	39	18	4 dealers supplied 32% of traced guns	4.1
Los Angeles, CA	3,877	79%	8	17	8	9 dealers supplied 43% of traced guns	3.1
Louisville, KY	1,637	75%	5.5	38	18	4 dealers supplied 40% of traced guns	1.4
Memphis, TN	3,244	62%	5.1	35	17	6 dealers supplied 36% of traced guns	2.3
Miami, FL	3,204	86%	6.5	28	13	9 dealers supplied 51% of traced guns	2.7
Milwaukee, WI	2,283	75%	4.6	41	20	4 dealers supplied 53% of traced guns	3.2
Minneapolis, MN	949	69%	5.3	34	14	5 dealers supplied 39% of traced guns	3
Nashville, TN	2,297	70%	5.4	33	16	14 dealers supplied 37% of traced guns	2.8
New Orleans, LA	1,965	82%	5	39	17	2 dealers supplied 33% of traced guns	2.9
New York, NY	6,284	16%	7.4	24	11	51 dealers supplied 26% of traced guns	13.5
Newark, NJ	584	15%	6.5	28	14	26 dealers supplied 41% of traced guns	12.1
Oakland, CA	595	74%	8	19	6	1 dealer supplied 46% of traced guns	4.6
Oklahoma City, OK	856	72%	6.5	25	9	4 dealers supplied 33% of traced guns	2
Philadelphia, PA	3,041	76%	3.8	44	22	8 dealers supplied 50% of traced guns	17.2
Phoenix, AZ	4,778	81%	5.1	35	18	19 dealers supplied 51% of traced guns	0.2
Pittsburgh, PA	2,481	81%	7.8	16	7	7 dealers supplied 53% of traced guns	3.4
Portland, OR	857	66%	6	30	14	9 dealers supplied 35% of traced guns	0.8
Richmond, VA	1,109	85%	4.6	38	22	3 dealers supplied 52% of traced guns	3.4
Saltinas, CA	327	75%	6.7	24	9	2 dealers supplied 43% of traced guns	8.6
San Jose, CA	1,476	85%	9	19	7	4 dealers supplied 44% of traced guns	2
San Antonio, TX	1,294	84%	6.9	26	11	18 dealers supplied 44% of traced guns	0.7
Seattle, WA	223	78%	4.1	46	22	6 dealers supplied 41% of traced guns	3
St. Louis, MO	2,612	53%	7.6	18	6	16 dealers supplied 31% of traced guns	3.3
Stockton, CA	352	81%	9.2	17	7	4 dealers supplied 50% of traced guns	0.4
Tampa, FL	1,055	74%	6.7	25	10	9 dealers supplied 51% of traced guns	0.8
Tucson, AZ	2,135	82%	4	43	24	7 dealers supplied 46% of traced guns	1.8
Washington, DC	1,959	3%	5.7	31	12	5 dealers supplied 20% of traced guns	6.2
<b>TOTALS</b>	<b>94418</b>	<b>68%</b>	<b>5.946</b>	<b>31.62</b>	<b>14.62</b>		<b>3.922</b>