

MISSING GUNS: LOST AND DANGEROUS



**THOUSANDS OF GUNS DISAPPEAR
FROM GUN MANUFACTURERS
WITHOUT BACKGROUND CHECKS
OR RECORDS OF SALE**

**BRADY CENTER TO PREVENT GUN VIOLENCE
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ACKNOWLEDGEMENTS

The Brady Center to Prevent Gun Violence is a national non-profit organization working to reduce the tragic toll of gun violence in America through education, research, and legal advocacy. Through its project Gun Industry Watch, the Brady Center works to monitor and publicly expose practices that contribute to gun violence, with the goal of bringing about life-saving industry reform. The programs of the Brady Center complement the legislative and grassroots mobilization efforts of its sister organization, the Brady Campaign to Prevent Gun Violence and its network of Million Mom March Chapters.

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THOUSANDS OF GUNS DISAPPEAR FROM GUN MANUFACTURERS
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EXECUTIVE SUMMARY

Every day over the last two and a half years, an average of at least 18 firearms left licensed gun manufacturers' plants nationwide without a record of sale, according to a Brady Center to Prevent Gun Violence analysis of data released in August 2011 by the Bureau of Alcohol, Tobacco, Firearms and Explosives.

From 2009 to the middle of 2011, at least 16,485 firearms left gun manufacturer's inventory without a record of being legally sold.¹

The 16,485 "missing" guns are likely a vast undercount of the total number of guns that disappeared from gun manufacturers in the last two and a half years.

This report follows a January 2011 Brady Center report, "Missing Guns," that found that the nation's gun dealers also "lost" more than 62,000 firearms since 2008.²

From 2009 to the middle of 2011, at least 16,485 firearms left gun manufacturers' inventory without a record of being legally sold, an average of at least 18 firearms disappearing from inventory every day.

The missing guns are noted at ATF compliance inspections of gun manufacturers. Nationwide there are 4,487 licensed gun manufacturers,³ but due to funding restrictions ATF conducts compliance inspections each year at only about one-fifth of the nation's licensed gun dealers and manufacturers.⁴

Firearms that disappear from gun manufacturers' plants without records of sale are frequently trafficked by gun traffickers and prized by criminals. Guns taken from gun manufacturing plants may also be removed before they have been stamped with serial numbers, making them virtually untraceable.

Father of Two Killed With Gun Taken From Massachusetts Gun Maker's Factory

After Danny Guzman, a father of two young daughters, was gunned down with a firearm taken from Kahr Arms' Massachusetts gun manufacturing plant, in July 2011, Kahr agreed to pay nearly \$600,000 to settle a lawsuit brought by the Brady Center to Prevent Gun Violence's Legal Action Project.⁵

The suit charged that Kahr Arms allowed drug addicts and criminals to work at its Worcester, Mass. manufacturing plant and take unsecured guns from the plant that had not been stamped with serial numbers.⁶

The lawsuit also charged that a drug-addicted employee with a criminal record took a Kahr Arms gun from the plant, and the gun was used to kill Danny Guzman and injure another man on December 24, 1999.⁷

The settlement was the largest damages payment ever by a gun manufacturer charged with negligence leading to the criminal use of a gun.⁸

Weak Gun Laws Allow Unsecure Gun Manufacturing Plants

Despite the serious public safety risks created when guns are obtained by criminals and other dangerous persons, federal laws are so weak that they do not require gun manufacturers and dealers to maintain even minimal security or inventory controls.

In 2000, ATF proposed that gun manufacturers and dealers be required to take one physical inventory of their firearms each year to ensure that all firearms were accounted for in their shops.⁹ However, at the behest of the gun lobby, Congress in 2004 approved an appropriations provision proposed by then-Rep. Todd Tiahrt (R-KS), known as the “Tiahrt Amendment.” This Amendment blocked ATF from requiring gun manufacturers and dealers to track their inventory – and that prohibition remains the law today.¹⁰

The Tiahrt Amendment also contains a secrecy provision that blocks public and media requests for data about guns missing from gun manufacturers and dealers, including which gun manufacturers are the source of the 16,485 “missing” guns.¹¹

President Obama promised during his 2008 campaign to “repeal the Tiahrt Amendment,” but has instead kept the prohibition on ATF requiring gun manufacturer and dealer inventory audits and the data secrecy provision in his budget proposals.¹²

The Brady Center obtained the data for 2009 to 2011 from an ATF report presented to the gun industry in August 2011.¹³ ATF did not reveal which gun manufacturers were responsible for the 16,485 missing guns.



Firearms that Disappear from Gun Manufacturers' Plants Without Records of Sale Are Prized by Criminals: Father of Two Gunned Down With "Missing" Gun

On December 24, 1999, Danny Guzman, a young father of two daughters, was shot and killed in front of a Worcester, Massachusetts nightclub. Six days later, police recovered the murder weapon, a 9 mm Kahr Arms handgun without a serial number, behind an apartment building. The loaded gun had been found by a four-year-old child.¹⁴

The family of Danny Guzman charged that Kahr Arms negligently operated its manufacturing plant without security or inventory controls and failed to screen its employees for drug addiction or criminal backgrounds.¹⁵

The suit charged that the gun used to kill Danny Guzman was taken by Kahr Arms employee Mark Cronin, who Kahr Arms hired despite a public record of drug addiction, theft to support that addiction, alcohol abuse, and violence, including several assault charges. Cronin stated that he was able to take guns from the Kahr Arms factory at will, before the guns had serial numbers stamped on them. At the time, Worcester Police Captain Paul F. Campbell called Kahr Arms' recordkeeping so "shoddy" that it was possible to remove weapons without detection.¹⁶

In July 2011, Kahr Arms agreed to pay nearly \$600,000 to end the case, and the settlement is the largest damages payment ever by a gun manufacturer charged with negligence leading to the criminal use of a gun. The settlement is also significant because it was made after enactment of the Protection of Lawful Commerce in Arms Act ("PLCAA"), a federal gun law that the gun industry contends shields it from most liability cases. By agreeing to the settlement, Kahr Arms averted a pending motion challenging the applicability and constitutionality of the PLCAA.¹⁷

Kahr Arms had moved to dismiss the case, arguing that the PLCAA bars such cases. In response to Kahr Arms' dismissal motion, Brady Center attorneys argued that the statute does not immunize gun companies, and is unconstitutional. Prior to enactment of the gun industry liability protection law, the court had ruled that the Guzman family's claims were meritorious and should proceed to trial.

Kahr Arms' CEO is Kook Jin Moon, son of the Reverend Sun Myung Moon, leader of the Unification Church.



A Kahr Arms Ad Touts Its Guns' Concealability

The Tiahrt Amendment Blocks ATF From Requiring That Gun Manufacturers Secure Their Firearms and Blocks Public Requests for Missing Gun Data

Weak federal gun laws allow gun manufacturers and dealers to operate without security or inventory controls. Under federal law, a gun manufacturer or dealer is not required to secure its inventory from loss or theft or take an inventory of its firearms to account for any that are lost or stolen.

This lack of any security or inventory requirement for gun manufacturers and dealers makes it easy for gun sellers to claim falsely that firearms they have sold illegally and “off-the-books,” were lost or stolen. Federal law requires that gun manufacturers and dealers report guns that are lost or stolen,¹⁸ but does not require them to undertake any effort to determine whether guns are missing from their inventory.

In 2000, ATF proposed that gun manufacturers and dealers be required to take one physical inventory of their firearms each year to ensure that all firearms were accounted for in their shops.¹⁹

At the behest of the gun lobby, however, before ATF finalized its proposed inventory rule, Congress in 2004 approved an appropriations provision proposed by then-Rep. Todd Tiahrt (R-KS), known as the “Tiahrt Amendment.” This Amendment blocked ATF from requiring that gun manufacturers and dealers track their inventory - and that prohibition remains the law today.²⁰

The Tiahrt Amendment also contains a secrecy provision that blocks public and media requests for data about guns missing from gun manufacturers and dealers, including which gun manufacturers are the source of the 16,485 “missing” guns.²¹

The Brady Center obtained the data for 2009 to 2011 from an ATF report presented to the gun industry in August 2011. ATF did not reveal which gun manufacturers were responsible for the 16,485 missing guns.²²

President Obama promised during his 2008 campaign to “repeal the Tiahrt Amendment,” but instead has kept the Tiahrt Amendment’s prohibition on ATF requiring gun dealer inventory audits and the gun dealer data secrecy provision in his budget proposals.²³



Guns Missing From Select U.S. Gun Manufacturers, 2009 to mid-2011

	2009	2010	Mid-2011	Total
Firearms Initially Missing From Inventory as Determined By ATF at Gun Manufacturer Inspections	20,503	15,303	95,294	131,100
Firearms Still Missing From Inventory After Search of Gun Manufacturer Inventory and Records	11,178	3,765	1,542	16,485

These numbers are likely a vast undercount of guns unaccounted for in gun manufacturer inventories, as they are based on ATF compliance inspections of less than one-fifth of gun sellers each year.

Source: ATF, Inspections of Licensed Importers and Manufacturers, Joint Conference of the NFATCA, FAIR Trade Group and NSSF, August 2, 2011.



CONCLUSION

Every day over the last two and a half years, at least 18 firearms left licensed gun manufacturers' plants without any record of sale. From 2009 to the middle of 2011, at least 16,485 firearms left gun manufacturer's inventory without a record of being legally sold.

Reckless gun manufacturers who allow thousands of guns to leave their manufacturing plants without background checks pose a severe danger to our communities. These guns flood the criminal market with firearms and endanger us all.

Every day that goes by without basic controls on gun manufacturer inventories is another day that at least 18 guns, on average, flow from gun makers to the criminal market without background checks or records of sale, endangering our families and our communities.

Congress should repeal the Tiahrt Amendment that blocks ATF from requiring that gun manufacturers and dealers conduct annual inventories and that shields data about missing guns from public information requests. The threat of civil liability, as in the case of Kahr Arms, is an important deterrent, but gun manufacturers and dealers must also be required to secure their inventory as a condition of receiving a federal firearms license.



ENDNOTES

¹ ATF, Inspections of Licensed Importers and Manufacturers, Joint Conference of the NFATCA, FAIR Trade Group and NSSF, August 2, 2011, at 12, available at <http://www.atf.gov/firearms/industry/fipb-presentations/Importer%20Association%20August%202011%20Final.pdf>.

² Brady Center to Prevent Gun Violence, Missing Guns, Jan. 2011, available at <http://www.bradycenter.org/xshare/pdf/reports/Missing-Guns-report.pdf>.

³ ATF, Inspections of Licensed Importers and Manufacturers, Joint Conference of the NFATCA, FAIR Trade Group and NSSF, August 2, 2011, at 2, available at <http://www.atf.gov/firearms/industry/fipb-presentations/Importer%20Association%20August%202011%20Final.pdf>.

⁴ ATF, ATF Fact Sheet – FFL Compliance Inspections, Jun. 2008, available at <http://www.atf.gov/publications/factsheets/factsheet-ffl-compliance.html> (in FY 2007, ATF inspected 10,000 federal firearm licensees).

⁵ Brady Center to Prevent Gun Violence, Kahr Arms Gun Maker Pays Record Damages For Shootings,

Largest Payment Ever By Gun Manufacturer for Negligence Leading to Shooting, Jul. 26, 2011, available at <http://bradycampaign.org/media/press/view/1422/>.

⁶ Id.

⁷ Id.

⁸ Id.

⁹ Bureau of Alcohol, Tobacco, Firearms and Explosives, Proposed Rule: RIN 1512-AC08, Commerce in Firearms and Ammunition--Annual Inventory of Firearms (99R-502P), Fed. Reg., Aug. 28, 2000 (Volume 65, Number 167).

¹⁰ Brady Center to Prevent Gun Violence, Gun Lobby-Backed Efforts: Tiahrt Amendment, available at <http://bradycampaign.org/legislation/gunlobbybacked/Tiahrt>.

¹¹ Id.

¹² Brady Center to Prevent Gun Violence, President Obama's First Year: Failed Leadership, Lost Lives, Jan. 2010, at 7, available at <http://www.bradycenter.org/xshare/reports/fedleg/obama-1styear-report.pdf>.

¹³ ATF, Inspections of Licensed Importers and Manufacturers.

¹⁴ Brady Center to Prevent Gun Violence, Kahr Arms Gun Maker Pays Record Damages For Shootings, Largest Payment Ever By Gun Manufacturer for Negligence Leading to Shooting, Jul. 26, 2011, available at <http://bradycampaign.org/media/press/view/1422/>.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id.

¹⁸ 18 U.S.C. § 923(g)(6).



¹⁹ Bureau of Alcohol, Tobacco, Firearms and Explosives, Proposed Rule: RIN 1512-AC08, Commerce in Firearms and Ammunition--Annual Inventory of Firearms (99R-502P), Fed. Reg., Aug. 28, 2000 (Volume 65, Number 167).

²⁰ Brady Center to Prevent Gun Violence, Gun Lobby-Backed Efforts: Tiahrt Amendment, available at <http://bradycampaign.org/legislation/gunlobbybacked/Tiahrt>.

²¹ Id.

²² ATF, Inspections of Licensed Importers and Manufacturers, Joint Conference of the NFATCA, FAIR Trade Group and NSSF, August 2, 2011, at 12, available at <http://www.atf.gov/firearms/industry/fipb-presentations/Importer%20Association%20August%202011%20Final.pdf>.

²³ Brady Center to Prevent Gun Violence, President Obama's First Year: Failed Leadership, Lost Lives, Jan. 2010, at 7, available at <http://www.bradycenter.org/xshare/reports/fedleg/obama-1styear-report.pdf>.

