

## Firearms Trafficking

The term “firearms trafficking” refers to the illegal diversion of legally owned guns from lawful commerce into unlawful commerce. Because all crime guns initially start out as legal products, the term “trafficking” has a different meaning than it does when used in connection with the manufacture or sale of illegal products, such as unlawful drugs.

In June of 2000, the Department of the Treasury and Bureau of Alcohol, Tobacco and Firearms (ATF) published a comprehensive report of firearms trafficking in the United States. That report, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers*,<sup>1</sup> analyzed 1,530 trafficking investigations during the period July 1996 through December 1998. The investigations involved a total of 84,128 diverted firearms.

## Trafficking Channels

ATF found that firearms traffickers use a variety of channels to divert firearms from the lawful to the unlawful market. The most frequently used channels included:

- **Corrupt dealers.** Federally licensed firearms dealers were associated with the largest number of diverted guns (over 40,000), even though they were involved in less than 10 percent of the investigations. The violations included transfers to prohibited purchasers, failure to keep required records, making false entries in record books and conducting out-of-state transfers.
- **Gun shows.** [Gun shows](#) involved the second highest number of diverted firearms (26,000). The investigations involved both licensed and unlicensed sellers. ATF found that the “access to anonymous sales and large numbers of secondhand firearms makes gun shows attractive to criminals.”
- **Straw purchasers.** A “[straw purchaser](#)” is a person who buys firearms on behalf of a convicted felon, juvenile or other prohibited purchaser. ATF found that straw purchasing was the most common channel in trafficking investigations. Although the average number of firearms trafficked per straw purchase investigation was relatively small, nearly 26,000 firearms were associated with these investigations.
- **Unlicensed sellers.** Unlicensed sellers (i.e., persons other than federally licensed dealers) were involved in about a fifth of the trafficking investigations and associated with nearly 23,000 diverted guns. Unlicensed sellers included those who knowingly sold firearms from their personal collection to criminals, as well as interstate gun runners who sold firearms to gangs and drug organizations.
- **Firearms theft.** Firearms stolen from dealers, residences and common carriers were involved in over a quarter of the investigations and were associated with over 9,000 trafficked firearms.

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<sup>1</sup> Bureau of Alcohol, Tobacco and Firearms, U.S. Dep’t of Treasury, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers* (June 2000), at [http://www.mayorsagainstillegalguns.org/downloads/pdf/Following\\_the\\_Gun%202000.pdf](http://www.mayorsagainstillegalguns.org/downloads/pdf/Following_the_Gun%202000.pdf).

The ATF report also found that gun traffickers play a critical role in violent crime. Over half of the investigations involved firearms known to have been involved in subsequent criminal investigations, including investigations of homicide, robbery and assault. Approximately 45 percent of the trafficking investigations involved convicted felons.

### **Crime Gun Trace Data**

Crime gun trace data is a tool that can be used to identify firearms traffickers and trafficking routes. This information is generated when law enforcement recovers a firearm from a crime scene and requests that ATF conduct an investigation to determine who originally sold and purchased the gun. This data is crucial to individual criminal investigations and, when aggregated, can reveal patterns regarding who is trafficking firearms and how they are being trafficked.

Despite its crucial role in combatting gun trafficking, Congress has restricted access to crime gun trace data since 2003. Currently, ATF is prohibited from releasing crime gun trace data except to law enforcement in connection with and for use in a criminal investigation or prosecution, or to a federal agency for national security or intelligence purposes. In addition, the data is immune from legal process and inadmissible except in ATF administrative proceedings or civil actions.<sup>2</sup>

ATF is permitted, however, to release aggregate statistical crime gun trace information to the public. In 2010, Mayors Against Illegal Guns (“MAIG”) released a report analyzing this aggregate data to present a picture of gun trafficking patterns in the United States. The report, *Trace the Guns: The Link between Gun Laws and Interstate Gun Trafficking*,<sup>3</sup> examines the per capita rate at which states export crime guns. A crime gun export is defined in the report as a gun sold by a dealer in one state and subsequently recovered at a crime scene in a different state. The report makes several important findings:

1. The per capita rate at which states export crime guns varies dramatically. In 2009, the ten states with the highest crime gun export rates – Mississippi, West Virginia, Kentucky, Alaska, Alabama, South Carolina, Virginia, Indiana, Nevada and Georgia – averaged export rates that were more than double the national average and more than seven times the average rate of the ten states that export the least crime guns.<sup>4</sup>
2. States with the highest export rates have shorter “Time-to-Crime” (“TTC”) measurements than states with low export rates. TTC is the time between the purchase of a firearm from a licensed dealer and the subsequent recovery of the firearm in connection with a crime. ATF considers TTC “the most important piece of information of a traced firearm”<sup>5</sup> aside from information about the purchaser. A short TTC – less than 2 years – is considered a

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<sup>2</sup> Commerce, Justice, Science, and Related Agencies Appropriations Act, 2010, Pub. L. No. 111-117, 123 Stat. 3034 (2009). The provisions have been known as the “Tiahrt Amendments” after their sponsor, U.S. Representative Todd Tiahrt (R-KS).

<sup>3</sup> Mayors Against Illegal Guns, *Trace the Guns: The Link between Gun Laws and Interstate Gun Trafficking* (Sept. 2010), at [http://www.mayorsagainstillegalguns.org/downloads/pdf/trace\\_the\\_guns\\_report.pdf](http://www.mayorsagainstillegalguns.org/downloads/pdf/trace_the_guns_report.pdf).

<sup>4</sup> *Id.* The lowest crime gun export rates were in the District of Columbia, Hawaii, New York, New Jersey, Massachusetts, California, Minnesota, Rhode Island, Illinois and Michigan.

<sup>5</sup> ATF Press Release, *ATF Shares 2008 NY State Crime Gun Data* (July 8, 2009), at <http://www.atf.gov/press/releases/2009/07/070809-ny-atf-shares-trace-data.html>.

strong indicator that a firearm has been trafficked<sup>6</sup> (gun owners typically own firearms for an average of 13 years).<sup>7</sup> The association between high export rates and low TTC indicates that crime guns exported from the high rate states are being trafficked, as opposed to being moved from state to state through legal channels.

3. The report also found an association between lax state gun laws, high crime gun export rates and short TTC's. MAIG compared state export data based on the existence of ten state laws that are considered critical to reducing gun trafficking.<sup>8</sup> These laws:
  1. Penalize straw purchasing;
  2. Penalize falsification of purchaser information;
  3. Penalize failure to conduct background checks when required;
  4. Require background checks on handguns sold at gun shows;
  5. Require purchase permits for all handgun sales;
  6. Provide law enforcement discretion in issuing concealed weapon permits;
  7. Restrict firearm possession by violent misdemeanants;
  8. Require reporting of lost or stolen firearms;
  9. Allow local governments to regulate firearms; and
  10. Allow or requiring inspection of gun dealers.

For each law above, MAIG compared states that have enacted the law to states that have not done so. In each case, the states that have enacted a given law export crime guns at significantly lower rates than the states that have not enacted the law. For example, the combined average export rate of states that require the reporting of lost or stolen firearms is 6.2 firearms per 100,000 inhabitants. The combined average export rate for states that do not require reporting of lost or stolen firearms is 16.1 per 100,000 inhabitants. Similarly, the combined average TTC of the states that have not enacted a given law from the above list is shorter than the national average while states that have enacted the law have a combined average TTC that is longer the national average.<sup>9</sup> According to MAIG, this association supports the argument that stronger regulation of firearms may reduce gun trafficking.

### **ATF Underfunded**

An investigation by The Washington Post explored gun trafficking and ATF's limited ability to investigate and penalize firearms dealers who contribute to trafficking.<sup>10</sup> According to the Washington Post, ATF's efforts are significantly hindered by a lack of sufficient funding. The number of ATF agents – 2,500 – has not changed since 1972. During the same period of time, the staffs of other government agencies have increased dramatically (for example, the staff of the

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<sup>6</sup> *Id.*

<sup>7</sup> Phillip J. Cook and Jens Ludwig, *Guns in America*, Police Foundation 1997.

<sup>8</sup> *Trace the Guns*, *supra* note 3 at 10-30.

<sup>9</sup> *Id.*

<sup>10</sup> Sari Horwitz and James V. Grimaldi, *ATF's Oversight Limited in Face of Gun Lobby*, Wash. Post, Oct. 26, 2010, at <http://www.washingtonpost.com/wp-dyn/content/article/2010/10/25/AR2010102505823.html?sub=AR>.

Drug Enforcement Agency more than tripled during the time period).<sup>11</sup> As a result of inadequate staffing, ATF was able to inspect less than 10% of FFL's in 2009<sup>12</sup> and, on average, dealers are inspected only once a decade.<sup>13</sup> This is especially alarming given the fact that, as noted above, federally licensed firearms dealers are associated with the largest number of trafficked guns.<sup>14</sup>

Federal legislation has been introduced to further weaken ATF. Such legislation would, among other things, make it harder to prosecute, and weaken penalties for, gun sales law violations; ease dealer record reporting requirements; and raise the standard required for the revocation of a license from a licensed dealer who has violated the law.<sup>15</sup> Conversely, ATF-strengthening legislation has been introduced that would authorize ATF to hire additional investigators and agents and would crack down on "high-risk" gun dealers, such as those who are linked to short TTC crime gun traces and/or have violated federal firearms laws in the past.<sup>16</sup>

### **U.S. Firearms Trafficking to Mexico**

Our nation's lax oversight of gun dealers, as well as the absence of federal and state laws that would help curb gun trafficking, adversely impact our neighbors, especially Mexico. According to data from ATF, approximately 87% of firearms seized by Mexican authorities and traced over Fiscal Years 2004-2008 originated in the U.S.<sup>17</sup> Further estimates finding the U.S. as the overwhelming source of illegal guns in Mexico are even higher: around 90% to 95% of guns seized in drug crimes in Mexico originate in the U.S.<sup>18</sup>

Since Mexico's laws regarding the possession of guns by civilians are strict,<sup>19</sup> the Mexican drug cartels obtain the firearms that fuel drug-related violence legally – and easily – in the U.S. A June 2009 U.S. Government Accountability Office (GAO) report detailing U.S. efforts to fight firearms trafficking into Mexico found that U.S. government restrictions on collecting and reporting information on gun purchases, lack of background check requirements for private gun transfers, and limits on reporting requirements for multiple gun sales were leading factors demonstrating how readily available U.S. firearms are to Mexican cartels.<sup>20</sup> Another study points out that the near absence of ammunition sales regulation in the U.S. also contributes to the

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<sup>11</sup> *Id.*

<sup>12</sup> William J. Krouse, Congressional Research Service, *The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF): Budget and Operations*, at 11 (2010).

<sup>13</sup> *ATF's Oversight Limited in Face of Gun Lobby*, *supra* note 10.

<sup>14</sup> *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers*, *supra* note 1.

<sup>15</sup> *See, e.g.*, ATF Reform and Modernization Act, H.R. 2296, 111<sup>th</sup> Cong. (2009); S. 941, 111<sup>th</sup> Cong. (2009).

<sup>16</sup> *See, e.g.*, Gun Trafficking Prevention Act of 2009, H.R. 4298, 111<sup>th</sup> Cong. (2009); S. 2878, 111<sup>th</sup> Cong. (2009).

<sup>17</sup> U.S. Gov't Accountability Office, *Firearms Trafficking: U.S. Efforts to Combat Arms Trafficking to Mexico Face Planning and Coordination Challenges* 3, 15 (June 2009), at <http://www.gao.gov/products/GAO-09-709>.

<sup>18</sup> Spencer S. Hsu, *U.S.-Mexico Task Force Seeks Renewed Ban on Assault Weapons*, Wash. Post, Nov. 13, 2009 at <http://www.washingtonpost.com/wp-dyn/content/article/2009/11/12/AR2009111211331.html> (reporting statements from Mexican officials finding that 90% of guns seized in drug crimes in Mexico and submitted for tracing to ATF originate in the U.S., including most assault rifles); and Alicia A. Caldwell, *ATF: Most Illegal Guns in Mexico Come from U.S.*, Associated Press, Aug. 11, 2008 (ATF states that nearly all illegal guns seized in Mexico – 90 to 95 percent – originally come from the U.S.).

<sup>19</sup> *See* Brady Center to Prevent Gun Violence, *Exporting Gun Violence: How Our Weak Gun Laws Arm Criminals in Mexico and America* 7 (Mar. 2009) at <http://www.bradycenter.org/xshare/pdf/reports/exporting-gun-violence.pdf>.

<sup>20</sup> U.S. Gov't Accountability Office, *supra* note 17, at 24–28.

cross-border trafficking problem.<sup>21</sup> Even ATF admits that the increased incidence of gun trafficking into Mexico from the U.S. is influenced by a readily accessible source of guns originating primarily in the secondary market, at U.S. gun shows, flea markets and other private sales locations.<sup>22</sup>

An issue brief produced by MAIG addressed the issue of firearms trafficked into Mexico.<sup>23</sup> Using the ATF crime gun trace data described above, MAIG analyzed the numbers of crime guns exported into Mexico by U.S. states. Not surprisingly, the four states with the highest number of exports were the four that share a border with Mexico – Arizona, California, New Mexico and Texas. However, after controlling for population, MAIG found that three of these states – Arizona, New Mexico and Texas – each exported firearms to Mexico at a rate that is 169% higher than any other state and more than three times as high as California. MAIG noted that California has enacted several of the laws listed above as critical to combatting gun trafficking, while Arizona New Mexico and Texas have not enacted these laws.<sup>24</sup> This data again supports the argument that strong state firearms laws may be the key to reducing gun trafficking.

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<sup>21</sup> Colby Goodman and Michel Marizco, *U.S. Firearms Trafficking to Mexico: New Data and Insights Illuminate Key Trends and Challenges* 30, Woodrow Wilson International Center for Scholars, September 2010, at <http://www.wilsoncenter.org/news/docs/U.S.%20Firearms%20Trafficking%20to%20Mexico-%20Goodman%20Final.pdf>.

<sup>22</sup> William Hoover, ATF Assistant Director for Field Operations, Statement Before the United States House of Representatives Committee on Foreign Affairs, Subcommittee on the Western Hemisphere (Feb. 7, 2008), at <http://foreignaffairs.house.gov/110/hoo020708.htm>.

<sup>23</sup> Mayors Against Illegal Guns, *Issue Brief: The Movement of Illegal Guns Across the U.S.-Mexico Border*, Sept. 2010, at [http://www.mayorsagainstillegalguns.org/downloads/pdf/issue\\_brief\\_mexico\\_2010.pdf](http://www.mayorsagainstillegalguns.org/downloads/pdf/issue_brief_mexico_2010.pdf).

<sup>24</sup> *Id* at 3.