Forensic, Social and Criminal Law Regulation of ATF Operation: Applicable Provisions for Record-Keeping, Investigation and Registration

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Abstract

For some time, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) [1, 2] was a unit of the Department of the Treasury, authorized to conduct inspections, once during any 12-month period and without a warrant, for compliance with statutory requirements, or in the course of a criminal investigation of a person other than the licensee, or where the disposition of firearms must be determined (the Gun Control Act (GCA), 18 U.S.C.

§ 923(g)(1)(B)). ATF is also authorized to inspect inventory and records by securing from a Federal magistrate judge a relevant warrant (18 U.S.C. § 923(g)(1)(A)). Customs officers may also inspect any firearms or related articles imported or exported from the U.S. Limitations on the rights of certain persons, associated with manufacturing, importing and dealing in firearms in the United States. Provisions of the Gun Control Act (GCA) stipulate that it is unlawful for certain categories of persons to ship, transport, receive or possess firearms (18 U.S.C. § 922(g)). It is also unlawful to sell or otherwise dispose of firearms to the persons (18 U.S.C. § 922(d)): who are under indictment for a crime punishable by imprisonment for a term exceeding one year; who have been convicted of a crime punishable by imprisonment for a term exceeding one year; who are fugitives from justice; who are unlawful users of or addicted to any controlled substance; who are illegally or unlawfully in the United States; who have been discharged from the Armed Forces under dishonorable conditions; who, having been a citizen of the United States, have renounced their citizenship; who are subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or have been convicted of a misdemeanor crime of domestic violence (as stipulated by the Omnibus Consolidated Appropriations Act, 1997, Pub. L. 104-208, effective 30 September 1996) (18 U.S.C. § 922(g), § 922(n)).

Keywords: types of firearms prohibited for free circulation, U. S. National Tracing Center, applicable provisions for record-keeping, investigation, registration.

Introduction Under the Arms Export Control Act (AECA), licenses may not be awarded to persons convicted under: Section 38 of the AECA, 22 U.S.C. § 2778; Section 11 of the Export Administration Act of 1979, 60 U.S.C. App. 2410; 18 U.S.C. §§ 793, 794, or 798 concerning military espionage or obtaining secret information; Section 16 of the Trading With the Enemy Act. 50 U.S.C. § 16; Section 30A of the Securities Exchange Act of 1934. 15 U.S.C. § 78dd-1, or Section 104 of the Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-2; 18 U.S.C. Ch. 105: Sabotage; Section 4(b) of the Internal Security Act of 1950. 50 U.S.C. § 783(b) on communication of classified information; Sections 57, 92, 101, 104, 222, 224, 225, or 226 of the Atomic Energy Act of 1954. 42 U.S.C. §§ 2077, 2122, 2131, 2234, 2272, 2275 and 2276; Section 601 of the National Security Act of 1947. 50 U.S.C. § 421: Protection of identities of certain United States undercover intelligence officers, agents, informants, and sources; 17 U.S.C. § 371 on conspiracy to commit any of the offenses referred to above [13]; the International Emergency Economic Powers Act. 50 U.S.C. §§ 1702 and 1705.

Types of firearms prohibited for free circulation in the United States. Federal firearms laws prohibit possession and transactions with certain types of firearms, namely: to transfer or possess a machinegun (18 U.S.C. § 922(o)); to manufacture, import, sell, or possess any firearm that is not detectable as the Security Exemplar (18 U.S.C. § 922(p)); to manufacture, transfer, or possess any semiautomatic assault weapons (18 U.S.C. § 922(v)); to receive or possess a firearm [3] which is not registered in the National Firearms Registration and Transfer Record (26 U.S.C. § 5861(d)).

U.S. statutory provisions prohibiting certain actions concerning firearms and

ammunition thereto. Federal firearms laws also contain criminal law rules that prohibit certain actions concerning firearms and ammunition thereto. It is unlawful, for example: for any person in connection with the acquisition of any firearm [3] from a licensee, knowingly to make any false or fictitious statement or to furnish any false, fictitious, or misrepresented identification (18 U.S.C. § 922(a)(6)); for any person to manufacture or import armor piercing ammunition, and for any manufacturer or importer to sell or deliver such ammunition (18 U.S.C. § 922(a)(7), § 922(a)(8)); to steal firearms (18 U.S.C. § 922(i), § 924(k), § 924(l)); to transport, ship, possess, or transfer any stolen firearm or stolen ammunition (18 U.S.C. § 922(j)); to transport, ship, or receive any firearm which has had its serial number removed (18 U.S.C. § 922(k)); to possess firearms in school zones (18 U.S.C. § 922(q)); to sell or transfer a handgun to a juvenile (under 18 years), and for any person who is a juvenile to knowingly possess a handgun (18 U.S.C. § 922(x)); to use or carry weapons during and in relation to any crime of violence or drug trafficking crime (18 U.S.C. § 924(c)); to export illegally shotguns or ammunition thereto, which are controlled by the Department of Commerce (50 U.S.C. App. 2410A); to smuggle goods into the United States (18 U.S.C. § 545); to enter goods by means of false statements (18 U.S.C. § 542); to enter goods upon a false classification (§ 541) [4].

Penalties for non-compliance with applicable laws regulating the circulation of firearms in the United States. Federal laws impose stricter penalties on repeat offenders for carrying or using a firearm when committing a crime of violence or drug trafficking crime. 18 U.S.C. § 924(c) provides for a term of imprisonment of not less than 5 years for carrying or using a firearm when committing a crime of violence or drug trafficking crime. The person is sentenced to a term of imprisonment of not less than 10 years if a short-barreled rifle, short-barreled shotgun, or semiautomatic assault weapon was used; or to a term of imprisonment of not less than 30 years if a machinegun or a destructive device, or if a firearm equipped with a firearm silencer or firearm muffler was used. In the event of numerous convictions, the person is sentenced under the same subsection to a term of imprisonment of not less than 20 years, and if the firearm involved is a machinegun or a destructive device, or is equipped with a silencer or muffler — to imprisonment for life. 18 U.S.C. § 924(e), concerning offenses committed by persons who use firearms professionally, imposes a minimum term of imprisonment of not less than 15 years for persons violating section 922(g), persons convicted

of three grave offenses or serious drug offenses [5].

The National Instant Criminal Background Check System (NICS) for persons intending to buy firearms in the United States. The Brady Handgun Violence Prevention Act (Brady Act) is a public law that provides for the establishment of the National Instant Criminal Background Check System (NICS) (30 November 1998). Mandated by the Brady Act, NICS was established for Federal Firearms Licensees (FFLs) to contact by telephone, or other electronic means, for information to be supplied immediately on whether the transfer of a firearm to a potential buyer would be in violation of Section 922 (g) or (n) of title 18, United States Code, or state law. The NICS is a national system that checks available records on persons who may be disqualified from receiving firearms. The FBI developed the system through a cooperative effort with ATF and local and state law enforcement agencies. The NICS is a computerized background check system of potential firearms buyers, designed to respond instantly on most background check inquiries, which are processed for 30 seconds, so the FFLs receive an almost immediate response [6].

Firearms. Under the law (section 921(a) of title 18, United States Code), they include the following: any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; the firearm frame or receiver. That part of a firearm which provides housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive the barrel (27 CFR § 178.11). This definition does not apply to the term “antique firearm” [7].

The U. S. National Tracing Center. ATF’s National Tracing Center (NTC), located in Falling Waters, West Virginia, is the world’s only organisation capable of tracing a firearm seized at the scenes of juvenile crimes, at the request of any federal, state, local and foreign law enforcement agencies. Furthermore, the NTC collects and analyzes data on large-scale sales of firearms, suspicious weapons, stolen weapons, and firearms with obliterated serial numbers. The center also maintains a data archive of previously issued federal firearms licenses. Firearms tracing is the systematic tracking of the movement of illegally circulated firearms used in crime or recovered from minors, beginning with their first sale by the manufacturer or importer through the distribution chain (wholesaler/distributor/retailer) to the first retail purchaser. Tracking the stages in firearms circulation allows the law enforcement officers to

identify suspects, find stolen firearms and determine their owners. The NTC applies the most effective and productive technique of legislative investigation into the ways of firearms distribution. Firearms manufacturers, importers, wholesalers and retailers in the U.S. and abroad join their efforts to identify the channels of weapons distribution, responding to any queries with specific information available in their archives about the manufacture, import or sale of weapons. Thanks to its licensing powers, ATF is the only federal agency that has access to such information. Under the law, licensed firearms sellers are required to provide information about firearms movement at ATF's request. Besides, the NTC stores more than 100 million records of transactions performed by out-of-business licensed firearms sellers. These records may reveal illegal supply channels for firearms and to search for such firearms in the event of crime. The law requires that all licensed firearms sellers transfer their records to the NTC after they go out of business. Recently, cooperation between the firearms manufacturers and ATF has evolved in the establishment of a hotline between firearms retailers, wholesalers, and the NTC. This has contributed to higher efficiency of tracing the firearms distribution. The section below focuses on the information that may be useful for law enforcement officials from the INTERPOL member countries in preparing trace requests for specific firearms, should they have any questions related to weapons trace, or when seeking assistance from the NTC that was established to facilitate investigative operations by law enforcement agencies, especially on any complex issues associated with weapon circulation in the United States [8].

Firearms tracing procedures in the United States. Requests to trace firearms may be submitted to the NTC by any federal, state, or local law-enforcement agency. Requests may be relayed through a local ATF office or sent directly to the center by means of NLETS (National Law Enforcement Telecommunications System), the mail, telephone, or fax. The NTC will conduct a trace to the individual purchaser; to a licensee in the originating state; to a government or law-enforcement office; or to a point where all possibility for a successful trace has been exhausted, whichever comes first. Provisions of title 18, United States Code, chapter 44 stipulate that licensed firearms manufacturers and dealers are required to report the weapons registration, acquisition and disposition. Until 1968, dealers had virtually kept no records, therefore it is believed that the circulation of firearms manufactured or imported before 1968 cannot be traced. For ATF to be able to trace the firearms movement and to obtain

the required information from federally licensed manufacturers, importers and dealers, it is essential that an accurate and complete description of firearms is provided. Law enforcement officers and investigators must ensure the completeness and accuracy of the firearms description in the trace request forwarded to the NTC [9].

When using the NTC services, the following should be kept in mind:

Checklist for tracing firearms: 1. Firearms cannot be traced without a serial number, although at times they may be traced with a partial serial number. Ensure that any letter adjacent to the serial number are also recorded on the trace form. In the case of a partial serial number, contact the NTC for guidelines. 2. Most firearms cannot be traced without a model. Therefore, always include the model. 3. Foreign-made firearms cannot be traced if the importer's name is not reported. Licensed importers are required to mark the firearm with their name, city and state, and the country of origin. In many cases, this information will appear on the barrel in an abbreviated form. 4. Surplus military firearms are generally untraceable, unless the firearm is marked with an importer's name. Many foreign and domestic surplus military firearms have been imported in recent years and can be traced if the importer's name is reported [10]. ATF Form 3312.1, Crime Gun Information Request/Referral Form, should be used to request a firearms trace. It is important that the information on the form be as complete as possible. Forms may be obtained from any ATF office or from the NTC directly. Below are some basic guidelines for completing this form to make a request for identifying the channels of movement for a specific firearm. All markings on firearms are essential and should be included in ATF Form 3312.1. Where necessary, any special instructions may be noted in the REMARKS box of the request form. For example, if you wish the trace to be stopped at the wholesaler, or if the trace is only needed to prove interstate movement, this should be stated. (Note: Specify manufacturer, wholesaler, or retailer when referring to type of dealer). The requester must list his/her name, full departmental address (including postcode), telephone number (including area code), email address, and organization code for law-enforcement officers [11].

Always indicate the priority in accordance with the following standards: Urgent, if the firearm was used to attack a law enforcement officer, in a crime of violence and/or information is essential to apprehend or hold suspect. A reason for urgency must accompany this category, or this priority will not be initiated. All urgent requests have the highest priority; Routine, if a

firearm trace is needed to complete investigation. All routine requests are processed on a first come, first served basis. The National Criminal Information Center (NCIC), Treasury Enforcement Communication Systems (TECS), and/or State computer systems should be checked prior to the submission of the trace. If the firearm is considered stolen, the information about its disappearance is entered in the REMARKS box [11, 12].

The following list of detailed weapon characteristics will have a significant impact on the successful search outcome

Manufacturer. Always include the entire name of the manufacturer shown on the firearm. If manufacturer is unknown, all the markings that appear on the weapon should be provided. Sometimes the manufacturer can be determined by the country and city of manufacturer or by the proof of other marks.

Importer. The importer's exact name and the weapon marking should be also included.

Type. Indicate pistol, revolver, shotgun. Any handgun that does not have a cylinder is classified as a pistol. Also indicate if single-action or double-action capability. Differentiate between rifle and carbine. If it is a shotgun or rifle, indicate when multi-barrel or combination gun.

Model. The model designation can be a letter or numerical designation, brand name or a combination thereof.

Caliber or gauge. Always specify .22 short 22 LR, or .22 Magnum caliber; 9mm short (380) or 9mm Parabellum caliber. Be sure to include any names with the caliber, since 9mm Corto and 9mm Kurz indicate 9mm short (380) caliber.

Serial number. Always include letter prefix, suffix, code numbers or letters over or under the serial number. If a different serial number appears in several places, indicate location of each.

Country of origin. This information may appear on the frame or receiver, under the grips or other hidden locations. The country of origin is extremely helpful when requesting foreign firearms traced.

Recommended firearms trace request options are given below.

Requesting a firearms trace through the National Law Enforcement Telecommunications System (NLETS). Standard electronic forms for NLETS firearms requests are available to all users. In the event that standard electronic request forms are

unavailable in any state, the agency may forward such requests to the NTC through NLETS using a free-form NLETS notice. By using the NCIC code for ATF Headquarters (DCATFOOOO), the message in the following format is sent:

FROM: Los Angeles, California, Police Department. **TO:** ATF National Firearms Tracing Center **SUBJ:** Request for Firearms Trace

PRIORITY:

URGENT. Please trace the following firearm:

1. Rohm. 2. RG Industries, Miami, Fl. 3. Revolver. 4. RG-3. 5. 38 caliber. 6. 6-shot. 7. 4 inches. 8. Blue. 9. Serial number 163802. 10. Germany. If additional information is needed, or when returning trace results, forward to Inspector (full name), Precinct No. 1, telephone (number with area code) [13].

Requests may be sent by facsimile machines. Using a facsimile machine, a trace request may be forwarded to the NTC directly at a specially designated telephone number. Where necessary, an NTC representative may also be contacted by telephone. If any problems with identifying the type of firearm or obtaining other necessary information about the weapon occur, it is important to contact the NTC for help. Advice on these matters may also be provided by ATF's Firearms and Ammunition Technology Division. Making firearms trace requests is recommended even if minimal information about such firearms is available.

The batch-uploading firearm-trace request enables law enforcement agencies or their branches to export batches containing necessary data to the NTC directly.

Conclusions Law enforcement authorities that seize large numbers of criminal firearms each year may use this option to reduce the time spent on transmitting firearms-related information requests. In order to become eligible for using the batch uploading feature, agencies or divisions must have detailed and authentic data about firearms, including their description, as well as about the owner and the place of seizure entered in the agency (unit) computer database. The NTC-provided simple software is used for batch uploading, allowing for "batches" of data to be submitted electronically from the designated agency (unit) to the NTC, thereby automatically initiating data search across all criminal firearms included in the transmitted "batch". Thanks to the batch uploading feature, the NTC can provide the agency (unit) with a complete picture of illicit transactions involving crime firearms seized within their jurisdiction. For any additional information about batch uploading, ATF's National

Tracing Center should be contacted.

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