

RECOMMENDED ACTION MEMO

Agency: Bureau of Alcohol, Tobacco, Firearms & Explosives (ATF)
Topic: Expanding the Release of Gun Trace Data
Date: November 2020

Recommendation: Release more aggregate information about gun traces, including: (1) monthly trace data on recovered crime guns, (2) data about guns originating in the US that have been recovered in all foreign countries, and (3) data identifying the states in the US that are sources of guns used in crimes in each foreign country.

I. Summary

Description of recommended executive action

The Bureau of Alcohol, Tobacco, Firearms & Explosives (ATF) conducts gun traces on behalf of federal, state, tribal, local, and foreign law enforcement agencies to determine the sources of guns recovered after use in crime. The trace data in general is widely accessible to federal and state investigators, who may use the data to identify illegal firearms trafficking leads and trends. But the data is far less transparent to members of the public outside law enforcement. Legislators, policy makers, and researchers in particular need more information to identify and implement data-driven solutions to gun crimes and violence.

The ATF currently releases some aggregate statistical trace data annually. This data [includes](#) the number of crime guns recovered in each state that are traced to each other state in the relevant year. The ATF also releases the [total number](#) of guns recovered in Mexico, Central America, and the Caribbean and traced to the US each year, but does not specify to which state in the US these guns are traced. The ATF also does not release any numbers for guns traced to the US but recovered in countries outside these regions.

Under this proposal, the ATF would release full data on these topics on a monthly basis to allow the public to better address crime guns and violence in their communities.

Overview of process and time to enactment

The actions described above are currently within the ATF's authority, and as such, no further regulatory action would be needed. As discussed below, while a provision included in appropriations bills from 2004 through 2007 could have been interpreted to prohibit the release of some of this information, the provision was amended in 2008 to explicitly allow its release. As such, the ATF could simply begin releasing the aggregate trace data, including more detailed information about traces of guns recovered internationally, on a monthly basis, as opposed to the current annual basis. This information could be published on its website in a form similar to the trace data that is already published there.

II. Current state

The ATF is the lead federal agency charged with investigating and preventing gun violence. This role gives the agency unique insight into the larger nationwide trends that state and local law enforcement agencies cannot provide. Along with this role comes a responsibility to inform the public about these trends, so that policymakers and the public can properly focus their own efforts to reduce gun violence in their communities.

Firearm tracing involves the systematic tracking of firearms from manufacturer to purchaser for the purpose of aiding law enforcement in identifying firearm ownership and persons suspected of being involved in criminal activity. When tracing a firearm, as described in a report from the Government Accountability Office, the ATF “must take a number of steps to trace a crime gun, including, as applicable, contacting the importer, manufacturer, and wholesaler of the firearm in order to identify the ... retailer who sold the firearm to the first retail purchaser.”¹ Firearm tracing is dependent on the sales and acquisition records that federal firearms licensees (FFLs), including gun manufacturers, importers, and dealers, are required to keep. The ATF conducts gun traces by following the chain of distribution of a gun. FFLs must provide the ATF, upon request, with purchaser details from these transfer records within 24 hours of receipt, to assist in crime gun tracing.²

Obama administration action

Under the Obama administration, efforts to ensure the integrity and publication of gun trace data increased. On January 16, 2013, President Obama released a memorandum to federal agencies, requiring them to submit any firearm taken into their custody to the National Tracing Center to be traced.³ As described below, the ATF is authorized to aggregate the results of these crime gun traces and release the aggregated statistical data, which can provide important information about the sources of crime guns and trends in gun trafficking. During the Obama administration, the ATF increased its publication of such data significantly by issuing annual reports disclosing certain information on crime gun recovery and source state data.⁴

Trump administration action

The Trump administration has not changed the ATF’s practices related to the release of gun trace data initiated under the Obama administration.

¹ Government Accountability Office, “U.S. Efforts to Combat Arms Trafficking to Mexico Face Planning and Coordination Challenges,” June 2009, <https://www.gao.gov/assets/300/291223.pdf>.

² 18 U.S.C. 923(g)(7). See also 27 CFR § 478.25a.

³ Memorandum of January 16, 2013, Tracing of Firearms in Connection With Criminal Investigations, Memorandum for the Heads of Executive Departments and Agencies, 78 Fed. Reg. 4301 (The President January 22, 2013).

⁴ See e.g., Bureau of Alcohol, Tobacco, Firearms & Explosives, “Firearms Trace Data - 2014,” accessed October 14, 2020, <https://www.atf.gov/about/firearms-trace-data-2014>.

Currently, the ATF releases data revealing the states where crime guns that are recovered in the US and traced originate on a yearly basis. For example, information readily available on the ATF's website indicates that, of the 7,689 firearms that were recovered and traced in New York State in calendar year 2018:

- 1,170 firearms were traced to firearms licensees (gun dealers, manufacturers and importers) in that state
- 582 firearms were traced to licensees in Georgia
- 473 firearms were traced to licensees in Virginia
- 388 firearms were traced to licensees in Florida
- 337 firearms were traced to licensees in Pennsylvania⁵

Similar information is provided for firearms recovered in each state of the US.

The information the ATF releases regarding traces of guns recovered in Canada, Mexico, Central America, and the Caribbean is nowhere near as detailed, however.⁶ These reports break down the guns that were traced based on the countries where they are recovered, but not the source states in the US where the firearms originated. For example, the calendar year 2019 report for Central America reveals that 592 firearms that were manufactured in the US were recovered in El Salvador in that year.⁷ The report does not indicate where in the US they originated, however.

III. Proposed action

This proposal would change three elements of the ATF's practices regarding the public release of gun trace data on the ATF's website.

1. The ATF would release detailed gun trace data on a monthly basis, rather than on a yearly basis.

⁵ Bureau of Alcohol, Tobacco, Firearms & Explosives, Office of Strategic Information and Intelligence, "New York: Data Source: Firearms Tracing System January 1, 2018 - December 31, 2018," accessed October 14, 2020, <https://www.atf.gov/file/137211/download>

⁶ See e.g. Bureau of Alcohol, Tobacco, Firearms & Explosives, Office of Strategic Information and Intelligence, "Canada: Data Source: Firearms Tracing System, January 1, 2011-December 31, 2016," accessed October 14, 2020, <https://www.atf.gov/firearms/docs/report/firearms-trace-data-canada-cy-11-16pdf/download> (reporting on crime guns recovered in Canada in 2016); Bureau of Alcohol, Tobacco, Firearms & Explosives, "Mexico: Data Source: Firearms Tracing System, January 1, 2011-December 31, 2016," accessed October 14, 2020, <https://www.atf.gov/firearms/docs/report/firearms-trace-data-mexico-cy-11-16pdf> (reporting on crime guns recovered in Mexico in 2016); Bureau of Alcohol, Tobacco, Firearms & Explosives, "News Release: ATF Releases International Firearms Trace Data Report," August 9, 2017, <https://www.atf.gov/news/pr/atf-releases-international-firearms-trace-data-report-0> (reporting on crime guns recovered in Central America in 2016).

⁷ Bureau of Alcohol, Tobacco, Firearms & Explosives, Office of Strategic Information and Intelligence, "Central America: Data Source: Firearms Tracing System January 1, 2019 - December 31, 2019," accessed October 14, 2020, <https://www.atf.gov/file/144881/download>.

2. The ATF would expand the gun trace data it releases to include the number of guns recovered in each individual foreign country, not just Canada, Mexico, Central America, and the Caribbean.
3. In the ATF reports, the numbers of guns recovered in each foreign country would be broken down by the source state in the US to which they are traced.

IV. Legal justification

The ATF's authority to gather and release information to the public about its gun traces is clear, so long as it does not release information that would interfere with criminal investigations, such as the names and identities of suspects, informants, or other individuals involved. The ATF's lack of transparency and reticence to provide complete information may be due to: (A) a lack of confidence in the utility of the data, (B) the agency's interpretation of two appropriations riders (the Tiahrt Amendment and the centralization and consolidation rider), or (C) concerns regarding a potential impact on foreign affairs. None of these factors should prevent the ATF from releasing this data.

A. Utility of the data

State and local policymakers and the public lack the same access to crime gun trace data as law enforcement authorities, who may use real-time trace data to identify specific leads and detailed trafficking trends. Nonetheless, the public may greatly benefit from information about gun trafficking within and outside their state to better inform critical public safety decisions. For too long, however, the information the ATF publishes for the public has not been timely. For example, the 2019 data was published only on August 24, 2020.⁸ Consequently, the public lacks timely data to measure gun trafficking trends and patterns effectively. In addition, because this data is released on a yearly, rather than monthly basis, the public is deprived of any real-time source of information about trends or changes in patterns of gun trafficking between the beginning and end of that year.

State and local policymakers and the public could use this information in multiple ways. Local gun violence prevention advocates, for example, might lobby law enforcement to monitor and inspect local gun dealers more frequently, if they know that gun trafficking from their locality has increased. State legislators might decide to impose more oversight of gun dealers if they discover that gun dealers in their state are a growing source of guns for crimes in other states. In sum, the public could use this data to better understand specific trafficking trends in their jurisdictions, and to create and implement enhanced data-driven policies to target gun crime.

The lack of full transparency and detailed information about traces of guns recovered abroad is particularly concerning because of the role of the US in international gun trafficking. Starting in

⁸ Bureau of Alcohol, Tobacco, Firearms & Explosives, "Firearms Trace Data - 2019," accessed October 14, 2020, <https://www.atf.gov/resource-center/firearms-trace-data-2019>.

2008, policymakers have become increasingly aware that guns originally sold by FFLs in the US are being trafficked to Mexico, Central America, and the Caribbean, and used in crimes.⁹

In order to help law enforcement deter and identify gun trafficking across the southern border, beginning in 2010, the ATF used trace data to issue Demand Letter 3. Demand Letter 3 is sent monthly to FFLs who are licensed dealers or pawnbrokers in Arizona, California, New Mexico and Texas. These FFLs must report all transactions in which an unlicensed person acquired, at the same time or within 5 consecutive business days, two or more semi-automatic rifles larger than .22 caliber with the ability to accept a detachable magazine.

The purpose of Demand Letter 3 is to combat the trafficking of guns across the border into Mexico. The ATF issued Demand Letter 3 only to FFLs in four states based on relevant trace data. For example, the ATF has stated that from 2008 through 2010, prior to the implementation of Demand Letter 3, 4,568 of the 5,799 (nearly 80%) rifles greater than .22 caliber recovered and traced in Mexico originated from retailers in these four states.¹⁰ From 2004 to 2008, 70% of the firearms seized and traced in Mexico came from Texas, California and Arizona.¹¹

Currently, the ATF publishes certain information on guns recovered and traced in Mexico, but does not publicly identify the US states where these guns originate.¹² Publishing detailed and monthly trace data on crime guns recovered in Mexico—for example, the types of guns recovered and traced, and source states where the guns originated—would further assist policymakers in identifying crime gun trends, and should be a critical component of any new ATF trace-data publication initiative.

Demand Letter 3 undoubtedly helps the ATF track the sale of the types of guns used more frequently in criminal activity in Mexico. Demand Letter 3 may also deter those who intend to smuggle guns across the southern border from seeking guns in the four states where it applies. It is not known publicly whether these four states continue to be the states where these gun traffickers primarily buy guns, however.

Lastly, the ATF releases no public data about guns originating from the US and recovered outside the Western Hemisphere. Yet, guns from the US are also trafficked to other countries. A recent article in *the New York Times*, entitled “How American Guns Are Fueling U.K. Crime,”

⁹ See e.g., PS Newswire, “ATF Releases Government Of Mexico Firearms Trace Data,” April 26, 2012, <https://www.prnewswire.com/news-releases/atf-releases-government-of-mexico-firearms-trace-data-149098025.html> (announcing release of trace data for US guns recovered in Mexico from 2007-2011); see also Bureau of Alcohol, Tobacco, Firearms & Explosives, “Mexico,” accessed October 14, 2020, <https://www.atf.gov/file/2751/download> (disclosing similar data for 2009-2014).

¹⁰ See *10 Ring Precision, Inc. v. Jones*, 722 F.3d 711, 723 (5th Cir. 2013).

¹¹ See *id.*; see also Bureau of Alcohol, Tobacco, Firearms & Explosives, “Mexico,” accessed October 14, 2020, <https://www.atf.gov/file/2751/download>.

¹² See e.g., Bureau of Alcohol, Tobacco, Firearms & Explosives, “Mexico,” accessed October 14, 2020, <https://www.atf.gov/file/2751/download>.

noted that 782 American guns have been discovered by UK police since 2017.¹³ This number is shocking, and should lead policymakers to consider the impact of our weak guns laws, not just here in the US, but abroad as well. Publication of trace data addressing US guns recovered and traced in other countries—outside the Western Hemisphere—would further benefit policy makers worldwide in their efforts to combat international firearms trafficking.

B. Appropriations riders

1. The Tiahrt amendment

The Tiahrt amendment, as enacted in 2003, was a response to successful litigation generally requiring the ATF to release trace data.¹⁴ The general rule established by the Tiahrt amendment barring disclosure of trace data, including information about FFL gun sales and transfers, is as follows:

.... no funds appropriated under this or any other Act may be used to disclose part or all of the contents of the Firearms Trace System database maintained by the National Trace Center of the Bureau of Alcohol, Tobacco, Firearms and Explosives or any information required to be kept by licensees pursuant to section 923(g) of title 18, United States Code, or required to be reported pursuant to paragraphs (3) and (7) of such section ...¹⁵

While in 2003 Tiahrt included limited exceptions to this bar on disclosure, in general, the bar was broad, far-reaching, and repeated in various iterations in subsequent years. Despite the limited nature of the Tiahrt amendment, it had a detrimental effect on the ATF public disclosures. Consequently, in 2005, Congress included a new exemption to the disclosure bar to allow publication of the number of firearms each licensed importer and manufacturer produced, imported, or exported. The legislative history for that amendment provides that:

[T]he Committee is concerned that the previous language has been interpreted to prevent publication of a long-running series of statistical reports on products regulated by ATF. This was never the intention of the Committee, and the new language should also make clear that those reports may continue to be published in their usual form as they pose none of the concerns associated with law enforcement sensitive information.¹⁶

Then in 2008, the rider was again amended to include an exception for aggregate data:

¹³ Jane Bradley, “How American Guns Are Fueling U.K. Crime,” *N.Y. Times*, August 12, 2020, <https://www.nytimes.com/2020/08/12/world/europe/handguns-smuggling-murder-us-uk.html>.

¹⁴ See e.g., *Chicago v. U.S. Department of Treasury*, 287 F.3d 628 (7th Cir. 2002); *NAACP v. AA Arms, et al.*, 210 F.R.D. 268 (E.D.N.Y. 2002); *City of New York v. B.L. Jennings et. al.*, 2004 U.S. Dist. LEXIS 3097 (E.D.N.Y. Mar. 2, 2004).

¹⁵ Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. No. 112-55, 125 Stat. 552, 609-10 (2011). See also Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, 118 Stat. 3, 53 (2004) (very similar language).

¹⁶ H.R. Rep. 108-576, at 30 (2004).

...except that this provision shall not be construed to prevent:... (C) the publication of ... statistical aggregate data regarding firearms traffickers and trafficking channels, or firearms misuse, felons, and trafficking investigations...¹⁷

This language has been included in every iteration of the Tiahrt amendment since then, including the 2012 version that was made permanent through the use of futurity language.¹⁸

It is clear that Congress contemplated the publication of extensive statistical aggregate trace data when it amended the Tiahrt amendment in 2008. In fact, following the 2008 amendment, the ATF, in 2014, began to release annual data identifying the [number of crime guns](#) recovered and traced in each state that were traced to other states. The data requested by this memo would merely increase the frequency with which this data is released—that is, monthly as opposed to annually. Additionally, the data requested by this memo would increase the frequency and scope of the released data applicable to US-sourced guns traced in other countries, and also identify the source state of guns traced in those countries. Nothing in the Tiahrt amendment, as described above, precludes the increased frequency or expansion of these proposed data releases.

2. The Centralization and Consolidation rider

Another appropriations rider, which first appeared in 1978 and was made permanent in 2012, prohibits the ATF from using funds “in connection with consolidating or centralizing, within the Department of Justice, the records, or any portion thereof, of acquisition and disposition of firearms maintained by Federal firearms licensees.”¹⁹ Any investigation into gun trafficking may necessarily involve gathering two or more records of firearm sales as evidence of trafficking by the same person or group of people. Nevertheless, this rider does not prevent the ATF from investigating gun trafficking, since bringing select records together, when they may indicate trafficking, does not constitute “consolidating or centralizing” such records. Multiple courts have reiterated, “The plain meaning of consolidating or centralizing does not prohibit the mere collection of some limited information. Both consolidating and centralizing connote a large-scale enterprise relating to a substantial amount of information.”²⁰

Furthermore, the consolidation and centralization rider does not prevent the publication of aggregate information derived from these records. Even though this rider has been included in appropriations laws since 1978, this rider did not prevent the ATF from the aggregate statistical

¹⁷ Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, 121 Stat. 1844, 1903-04 (2007).

¹⁸ Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. No. 112-55, 125 Stat. 552, 609-10 (2011) (adding in the futurity language “during the current fiscal year and in each fiscal year thereafter”); Consolidated Appropriations Act, 2010, Pub. L. No. 111-117, 123 Stat. 3034, 3129 (2009); Omnibus Appropriations Act, 2009, Pub. L. No. 111-8, 123 Stat. 524, 575 (2009).

¹⁹ Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. No. 112-55, 125 Stat. 552, 4 (2011).

²⁰ *Ron Peterson Firearms, LLC v. Jones*, 760 F.3d 1147, 1161 (10th Cir. 2014) (quoting *Blaustein & Reich, Inc. v. Buckles*, 365 F.3d 281, 289 (4th Cir. 2004)). See also *Nat'l Shooting Sports Found., Inc. v. Jones*, 716 F.3d 200, 212-14 (D.C. Cir. 2013).

data the ATF currently provides. There is no reason why the rider on consolidating and centralizing gun sales records should be interpreted to prevent the ATF from issuing more such data more promptly.

The ATF clearly has the authority, if not the obligation, to publish expanded gun trace data on a regular basis as proposed herein. There are no legal obstacles to the publication of this information. Given the importance of this information for policymakers and ultimately for public safety, the ATF should expand its release of gun trace data as soon as possible.

C. Implications for foreign affairs

As described above, the data that the ATF currently releases regarding crime guns that originate in, but are recovered and traced outside the US, is significantly narrower than the data released on guns recovered inside the US. Perhaps as a matter of international comity, the ATF is being cautious with regards to the release of this information. However, there is no evidence that foreign law enforcement wishes to withhold this information. Public disclosure of this crime gun trace data presents clear advantages, since it allows policymakers, advocates, and the public to identify and propose data-driven solutions to international crime gun trafficking.

Next steps

The ATF's limited public disclosure of crime gun trace data lawfully may be expanded both in frequency and content. The public's understanding of gun trafficking worldwide would benefit, and policymakers would be better able to address the underlying sources of crime guns. The ATF should expand its release of trace data as soon as possible.