

RECOMMENDED ACTION MEMO

Agency: Bureau of Alcohol, Tobacco, Firearms & Explosives (ATF)
Topic: Gun Trafficking Report
Date: November 2020

Recommendation: Resume compiling aggregate information about the ATF's illegal gun trafficking investigations, and make this information available to policymakers, academics, and the public.

I. Summary

Description of recommended executive action

Twenty years ago, the Bureau of Alcohol, Tobacco, Firearms & Explosives (ATF) released a comprehensive report on trends in its gun-trafficking investigations entitled [Following the Gun: Enforcing Federal Laws Against Firearm Traffickers](#). This report, which was based on an analysis of the ATF's criminal investigations into gun trafficking from 1996 through 1998, provided invaluable information about illegal gun trafficking that policymakers have relied on ever since.¹ Gun trafficking has changed since that time, however, and policymakers require updated information.

To inform the development of smart policies and programs narrowly tailored to address the most common sources of illegal gun trafficking, the ATF, under the incoming administration, should produce an annual report, similar to *Following the Gun*, to analyze recent firearms trafficking investigations, crime gun trace data, and other key information.

Overview of process and time to enactment

Producing a gun trafficking report is currently within the ATF's authority, and as such, no further regulatory or sub-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 this information, in 2008, the provision was amended explicitly to allow its release.

As such, the ATF could simply begin the analysis for an updated gun trafficking report, using data the agency already collects. In order to do this, the ATF would need to conduct a review of its firearms trafficking investigations during the preceding one-year period, and their disposition by prosecutors and courts. The ATF may wish to contract with independent researchers, or researchers in another agency within the DOJ, to conduct this review. After conducting this

¹ US Department of Treasury, Bureau of Alcohol, Tobacco and Firearms, "Following the Gun: Enforcing Federal Laws Against Firearm Traffickers," June 2000, https://lawcenter.giffords.org/wp-content/uploads/2020/06/Following-the-Gun_Enforcing-Federal-Laws-Against-Firearms-Traffickers.pdf.

review, the ATF should be able to produce the first of these public reports by June 2022. Similar reports should be produced annually thereafter.

II. Current state

The ATF is the lead federal agency charged with investigating and preventing gun trafficking and 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. *Following the Gun* was an appropriate way for the ATF to fulfill this responsibility, and the ATF should once again release this information. While the ATF's authority to do so has been clear since 2008, the ATF has failed to do so.

The ATF report in the year 2000

Following the Gun, which was released in June 2000, was the result of an effort to gather and analyze information about all of the ATF investigations into firearms trafficking during the period from July 1996 through December 1998. To report on the gun trafficking problem and the federal enforcement response to it, the ATF documented and analyzed all criminal investigations that it undertook during that period that involved firearms traffickers.² This information yielded an abundance of data about firearms traffickers and trafficking channels, as described in detail in 21 numerical tables and 54 pages of narrative descriptions.

As defined in the *Following the Gun* report, "firearms trafficking" refers to the illegal diversion of legally owned firearms from lawful commerce into unlawful commerce, often for profit.³ *Following the Gun* revealed how every year, tens of thousands of guns enter the illegal market through a number of channels, including straw purchases; corrupt gun dealers; sales by unlicensed sellers, who aren't required to conduct background checks; gun thefts; and bulk gun purchases.⁴ *Following the Gun* revealed a number of key insights into firearms trafficking.

- **Straw purchases.** Purchases in which a gun is purchased from a licensed dealer on behalf of someone else are the most common channel identified in trafficking investigations.⁵
- **Federal firearms licensees:** Federally licensed gun manufacturers, dealers, and importers are "a particular threat to public safety when they fail to comply with the law"; although they were involved in under 10% of the trafficking investigations, these

² *Id.* at ix.

³ *Id.* at 3.

⁴ ATF calculated that 46.3% of ATF's firearm trafficking investigations during the study period involved firearms trafficked through straw purchasers, 20.5% through unlicensed sellers, 13.9% through gun shows and flea markets, and 24% through theft. *Id.* at 11.

⁵ *Id.* at xi.

businesses were associated with the largest number of diverted firearms—over 40,000 guns.⁶

- Private sellers: Unlicensed sellers, who may purchase guns from licensed dealers, then sell the guns on the secondary market, are not required under federal law to conduct background checks.⁷ The report noted that almost 60% of the trafficking investigations it reviewed involved second hand guns, *i.e.*, guns sold or transferred through private sellers.⁸

Policymakers' continued reliance on the 2000 report

Since *Following the Gun* was published, policymakers at both the federal and state level aiming to reduce gun violence have continued to rely on the report in their efforts to address gun trafficking.⁹

For example, to address the role private sales play in gun trafficking, many states, including Colorado, Delaware, New Mexico, and New York have enacted “universal background check” laws, which require a background check before the sale of a gun even if the seller is unlicensed.¹⁰ In February 2019, the House of Representatives passed a bill modeled on these laws.¹¹ Similarly, in January 2019, due to the large number of guns associated with corrupt or negligent gun dealers, and after a decade-old fight in the legislature, Illinois finally enacted the “Combating Illegal Gun Trafficking Act,” a law that comprehensively regulates firearms dealers in the state by requiring them to obtain a state license, use proper security measures, and conduct background checks on employees.¹²

In 2014, even the Supreme Court of the United States cited *Following the Gun* for the proposition that straw purchases play a large role in gun trafficking.¹³ In 2013, the Senate Judiciary Committee cited *Following the Gun* in its report on the “Stop Illegal Gun Trafficking Act of 2013” (S. 54, 113th Cong. (2013)).¹⁴ These are just examples of the many times policymakers have relied on the data provided by *Following the Gun* as the best description of the activities of gun traffickers and law enforcement responses to these activities.

⁶ *Id.* at x.

⁷ *Id.* at 4.

⁸ *Id.* at x.

⁹ See, e.g., William J. Krouse, “Gun Control: Federal Law and Legislative Action in the 114th Congress,” Congressional Research Service, April 19, 2017, 14, <https://fas.org/sqp/crs/misc/R44655.pdf> (citing *Following the Gun* for its description of gun trafficking).

¹⁰ See Giffords Law Center to Prevent Gun Violence, “Universal Background Checks,” accessed June 10, 2020, <https://lawcenter.giffords.org/gun-laws/policy-areas/background-checks/universal-background-checks/>.

¹¹ H.R. 8, 116th Cong. (2019).

¹² Combating Illegal Gun Trafficking Act, Pub. Act 100-1178 (enacted, January 18, 2019).

¹³ *Abramski v. United States*, 573 U.S. 169, 180 (2014).

¹⁴ Sen. Report 113-9 (April 13, 2013).

Changes in gun trafficking

Gun trafficking has changed since the ATF released *Following the Gun* in 2000. In the intervening two decades, prohibited purchasers have found new and dangerous methods for obtaining guns. However, the lack of updated information about these methods is hindering policymakers' ability to make informed decisions about the forms of gun trafficking that threaten public safety most.

With respect to unlicensed sellers, *Following the Gun* provided gun shows as an example of the context for their gun transactions. At the time *Following the Gun* was published, "Gun shows were a major trafficking channel, involving the second highest number of trafficked guns per investigation (more than 130), and associated with approximately 26,000 illegally diverted firearms."¹⁵ However, since that time, the internet has grown and evolved, and enormous numbers of unlicensed gun sellers now sell guns to strangers online.¹⁶ The internet has made it increasingly easy for dangerous people to take advantage of the private sale loophole by arranging gun sales with unlicensed sellers in online chatrooms, social media sites, auctions, and classified ad platforms. Predictably, the online market has become an attractive source of weapons for people who cannot pass a background check at a gun store.

One can assume online marketplaces have now taken the place of gun shows as the focal point for unlicensed gun sales, but without more data from the ATF, we cannot be sure. Advocates have done their best to gather information about the scope of online gun sales and the role they play in gun trafficking,¹⁷ but much remains unclear. We know even less about the ATF's response, in terms of criminal investigations, to the problem of online gun trafficking.

Another modern form of gun trafficking, virtually unknown at the time *Following the Gun* was published, involves so-called "ghost guns." Ghost guns do not have a serial number and are untraceable. Ghost guns have grown in popularity, increasingly used in illegal firearm trafficking and found at crime scenes.

Ghost guns are attractive to criminals because they lack the markings necessary for law enforcement to trace them. In the traditional manufacturing process, the firearm manufacturer or importer will affix a serial number and markings that identify the manufacturer or importer, make, model, and caliber. Using this information, the ATF can track firearms from the manufacturer or importer through the distribution chain to the first retail purchaser.¹⁸ The ATF works extensively

¹⁵ *Id.* at xi.

¹⁶ See Giffords Law Center to Prevent Gun Violence, "Interstate and Online Gun Sales," accessed June 11, 2020, <https://lawcenter.giffords.org/gun-laws/policy-areas/background-checks/interstate-and-online-gun-sales/>.

¹⁷ See, e.g., Everytown for Gun Safety, "Online and Off the Record: Washington State's Vast Internet Gun Market," July 31, 2017, <https://everytownresearch.org/reports/online-and-off-the-record/>.

¹⁸ See Giffords Law Center to Prevent Gun Violence, "Ghost Guns," accessed June 11, 2020, <https://lawcenter.giffords.org/gun-laws/policy-areas/hardware-ammunition/ghost-guns/>.

with other law enforcement agencies to trace firearms using this technique—in 2017 alone, the ATF conducted more than 408,000 traces.¹⁹

Ghost guns, which can be self-assembled using kits or common household tools, or parts of which can be 3D printed, are increasingly used by illegal gun-trafficking rings across the country. A 2015 bust of a ghost-gun trafficking ring in Long Island, revealed ghost guns as the “new frontier of illegal firearms trafficking.”²⁰ In July 2018, the Los Angeles Police Department broke up a brazen ghost-gun trafficking enterprise in Los Angeles.²¹ Individuals have been caught manufacturing and selling untraceable guns in locations across the country.²² For example, in April 2018, a New Jersey grand jury indicted a man for unlawfully manufacturing and selling untraceable guns after law enforcement seized nearly three dozen weapons from his home, including nearly 20 untraceable guns.²³ Congress and the states are now presented with this growing threat, but to address it, they need better information about the extent of the problem. An updated version of *Following the Gun* would provide this information.

III. Proposed action

To inform the development of smart policies and programs narrowly tailored to address the most common sources of illegal gun trafficking, the ATF under the incoming administration should produce an annual report analyzing recent firearms trafficking investigations, crime gun trace data, and other key information. As the ATF first did for *Following the Gun*, the ATF should publish the results in a comprehensive report that identifies predominant firearms trafficking channels and sources of trafficked firearms.

In producing the report, the ATF should consider the following.

¹⁹ US Department of Treasury, Bureau of Alcohol, Tobacco and Firearms, “ATF By the Numbers,” June 14, 2018, <https://www.atf.gov/resource-center/infographics/atf-numbers>.

²⁰ Office of the Attorney General of the State of New York, “A.G. Schneiderman Announces Thirty-Two Count Indictment of Two Defendants Charged with Illegally Trafficking Untraceable ‘Ghost Guns,’” news release, September 21, 2015, <https://ag.ny.gov/press-release/ag-schneiderman-announces-thirty-two-count-indictment-two-defendants-charged-illegally>.

²¹ Richard Winton, “L.A. Gangs Stockpile Untraceable ‘Ghost Guns’ that Members Make Themselves,” *Los Angeles Times*, July 6, 2018, <http://www.latimes.com/local/lanow/la-me-la-gangsters-homemade-guns-20180706-story.html>.

²² E.g., Tamara Sacharczyk, “Unregistered, Untraceable Guns Recovered in Massachusetts,” WWLP News 22, March 28, 2018, <https://www.wwlp.com/news/i-team/unregistered-untraceable-guns-recovered-in-massachusetts/1086053922>; Alex Ceneviva, “Bridgeport Police Confiscate Ghost Guns,” WTNH News 8, August 2, 2018, <https://www.wtnh.com/news/connecticut/fairfield/bridgeport-police-confiscate-ghost-guns/1341726044>; Lauren Sellow, “Warrant: Authorities Began Investigating Southington Man Charged with Firearm Offenses When He Tried to Sell Homemade Rifle Online,” *Record-Journal*, November 21, 2018, <http://www.myrecordjournal.com/News/Southington/Southington-News/Police-Southington-man-charged-after-raid-at-Darling-Street-apartment.html>.

²³ Maxwell Reil, “Man indicted after selling ‘ghost gun’ in Hammonton,” *Atlantic City Press*, April 13, 2018, https://www.pressofatlanticcity.com/news/man-indicted-after-selling-ghost-gun-in-hammonton/article_16aa48bc-519c-50d5-b66b-748689e9c5b4.html.

- Outside research assistance. In order to produce *Following the Gun*, the ATF contracted with outside researchers affiliated with accredited institutions of higher education with expertise in criminology. These criminologists, Dr. Anthony A. Braga of Harvard University and Dr. Joel Garner of the Joint Centers for Justice Studies, designed surveys through which the ATF's special agents in charge provided information about the firearms trafficking investigations they are responsible for.²⁴ The researchers reviewed the results of these surveys and firearms trafficking investigations, and assisted the ATF in tabulating and categorizing firearms trafficking investigations for the report. In order to do this, the researchers had access to information necessary to validate the survey results, including case disposition and sentencing information available from the Bureau of Justice Statistics; directly from federal, state, or local courts; the Executive Office for US Attorneys; or the Administrative Office of the US Courts. The researchers oversaw the analysis of the survey results and the drafting of the report.

- Data included in the report (trafficking statistics). Like *Following the Gun*, the new reports should include comprehensive information about gun trafficking, including:
 - the number of firearms trafficking investigations during the period
 - the number of firearms involved
 - an estimate of the proportion of the diverted firearms that were seized by agents in connection with investigations
 - a description of how the trafficking investigations were initiated, including the number and percentage that were initiated through multiple sales records, crime gun trace data analysis, inspections of licensees, or licensees' reporting of lost or stolen firearms
 - a description of the role of firearms tracing in firearms trafficking investigations, and the number of investigations in which firearms tracing was used as an investigative tool
 - the number and percentage of investigations that involved each type of firearms trafficking²⁵
 - the total, average, and median number of trafficked firearms involved in each type of firearms trafficking investigation
 - descriptions of several representative firearms traffickers and their sentences

- Data included in the report (FFLs). *Following the Gun* included data that illuminated the role of federal firearm licensees in gun trafficking, and the new reports should include similar data. In particular, the report should include:

²⁴ ATF ensured that each of its Special Agents in Charge responded to the survey by providing information on all firearms trafficking investigations in their respective areas to their respective Field Divisions, and each of its Field Divisions submitted this information about investigations to ATF Headquarters, including ongoing investigations and perfected cases referred for prosecution. More information about the process can be found in Appendix B of *Following the Gun*.

²⁵ This includes straw purchases; unlicensed sellers; gun shows and flea markets; firearms stolen from licensees; firearms stolen from residences; firearms trafficked by licensed firearms dealers; street criminals buying and selling firearms from unknown sources; firearms stolen from common carriers; and online or internet sales.

- the number and percentage of firearms-trafficking investigations involving licensees for each type of firearms trafficking
 - of the firearms trafficking investigations that involved a licensee, the number and percentage that operated out of a retail store, pawnshop, or residence
 - a comparison of the number of firearms associated with firearms trafficking investigations involving a licensee, and the number of firearms associated with firearms trafficking investigations that did not involve a licensee
 - data regarding the relationships between straw purchasers and other individuals involved in trafficking the same firearms
- Data included in the report (ghost guns). Given the threat posed by ghost guns, the ATF's new report should also include the number and percentage of firearms trafficking investigations that involved ghost guns, and the average number of ghost guns (versus firearms that are not ghost guns) involved in each case involving ghost guns.
 - Data included in the report (crime guns). *Following the Gun* set forth important data on firearms trafficking investigations that involved firearms known to have been subsequently involved in an additional crime. The new reports should include similar data, including:
 - the proportion of firearms trafficking investigations that involved firearms known to have been subsequently involved in an additional crime, including homicide, robbery, assault, and illegal gun possession
 - the number and percentage of firearms-trafficking investigations in which a youth or juvenile was involved as a possessor, straw purchaser, thief, robber, or trafficker
 - the number and percentage of firearms-trafficking investigations that involved a firearm recovered after use in each of the main categories of gun crime, including homicide, robbery, assault, felon-in-possession, juvenile possession, and other illegal possession cases
 - a discussion of the involvement of convicted felons in firearms trafficking, including data regarding their roles as thieves, straw purchasers, actual buyers in straw purchases, licensees, former licensees, or other traffickers
 - information about the geographical context of gun trafficking, including the number and percentage of firearms-trafficking investigations that involved interstate, intrastate, international firearms trafficking, or some combination of these types
 - a discussion of how trafficking in stolen and secondhand guns impacts the gun tracing process, and the number and percentage of firearm trafficking investigations that involved new, secondhand, or stolen firearms, or some combination of these categories.
 - Data included in the report (criminal justice response): The 2000 report described the criminal justice response to the ATF gun trafficking investigations. The new reports

should include similar data, except that additional information should be provided to break down the data by race. This information should include:

- the crimes firearms traffickers were charged with, and convicted of, and the number and percentage of investigations and defendants that were involved in the crimes
 - how and whether firearms trafficking investigations were recommended for prosecution, and the reasons why firearm trafficking investigations were not recommended for prosecution
 - of the firearms trafficking investigations that were referred to prosecutors, the total number of the referrals, the percentage of trafficking case referrals that prosecutors accepted, and the number of defendants involved in the cases, broken down by race
 - the number of firearms traffickers found guilty and sentenced in federal, state, and local courts, broken down by race
 - the percentage of the defendants in these cases who received sentences of incarceration, broken down by race
 - the sentence length and term of probation for relevant groups of defendants, broken down by race
 - the percentage of the referrals to state or local prosecutors (versus federal authorities)
 - of the cases that prosecutors accepted, the percentage in which the prosecutors proceeded with other charges not related on their face to firearms trafficking
 - a description of the role of United States attorneys and state and local law enforcement and prosecutors in firearms trafficking investigations
 - descriptions of several representative firearms traffickers and their sentences
 - challenges and obstacles to the prosecution and enforcement of the law against straw purchasers, unlicensed dealers, corrupt licensees, and large-scale traffickers
- Breakdown of report data by state. In order to ensure the report provided a description of the larger context for these investigations, *Following the Gun* included a breakdown of some data by state. Such data is critical, as it reflects the ultimate success or failure of anti-trafficking policies in jurisdictions around the country. It also reveals which jurisdictions may be declining to engage at all with anti-trafficking efforts. As such, the new reports should include:
 - breakdown of the number and percentage of firearms trafficking investigations by state
 - the percentage of firearms trafficking investigations in which state or local law enforcement agencies participated

IV. Legal justification

The ATF's authority to gather and release information about its gun trafficking investigations is clear, so long as it does not release information that would interfere with these investigations,

such as the names and identities of suspects, informants, or other individuals involved. Yet, the ATF has not provided this kind of information since the year 2000. The ATF's failure to provide this information in the years since *Following the Gun* may be due in part to the agency's interpretation of two appropriations riders: (1) the Tiahrt Amendment, and (2) the centralization and consolidation rider.

The first of these riders, known as the Tiahrt amendment, limits the information the ATF may disclose to the public.²⁶ However, since 2008, the Tiahrt amendment explicitly authorizes the ATF to issue reports like *Following the Gun*.

The second rider prohibits the ATF from consolidating or centralizing gun-sale records. This rider did not prevent the ATF from issuing *Following the Gun*, and does not prevent it from now issuing updated reports.

1. The Tiahrt Amendment

Language of the Tiahrt amendment and its exception

The Tiahrt amendment prohibits disclosure of firearms tracing information; information about gun sales and transfers included in the records of federal firearms licensees; and information that these licensees are required to report to the ATF. The general rule established by the Tiahrt amendment is that:

.... 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 ...²⁷

A version of this language first appeared in 2003 and was repeated in various iterations in subsequent years. Despite the limited nature of the Tiahrt amendment, it had a detrimental effect on the ATF's public disclosures. Consequently, in 2005, Congress included the first version of the exceptions provision in the Tiahrt amendment. This exception focused on 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

²⁶ Other riders included in appropriations bills related to guns are also sometimes referred to as "Tiahrt amendments," but are not relevant here.

²⁷ 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).

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.²⁸

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

...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...²⁹

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.³⁰

This language purposefully mirrors the language that the ATF used in *Following the Gun*, which repeatedly used the terms “traffickers,” “trafficking channels,” and “trafficking investigations.” As noted above, the report also included 21 tables of “statistical aggregate data.”

In *Following the Gun*, the ATF defined “firearms trafficking” as “the illegal diversion of legally owned firearms from lawful commerce into unlawful commerce, often for profit.”³¹The report also explained the closely related term “trafficking channels”:

Firearms traffickers are using a variety of channels to divert firearms, and investigations usually involve multiple trafficking channels, such as a corrupt FFL [federal firearms licensee] and a straw purchaser, or theft and unlicensed dealing. ...³²

The report also defined the term “firearms-trafficking investigation” and used a data set based on this definition.³³As noted above, this information yielded an abundance of data about firearms traffickers and trafficking channels, such as the number and percentage of the ATF investigations that involved each of the identified channels.

It is clear that Congress contemplated reports like *Following Gun* when it added the exception for the publication of statistical aggregate data regarding firearms traffickers and trafficking channels. Still, despite this exception, the ATF has released almost no data on firearms traffickers, trafficking channels, or trafficking investigations in the last decade and a half. The

²⁸H.R. Rep. 108-576, at 30 (2004).

²⁹ Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, 121 Stat. 1844, 1903-04 (2007).

³⁰ 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).

³¹ US Department of Treasury, Bureau of Alcohol, Tobacco and Firearms, “Following the Gun: Enforcing Federal Laws Against Firearm Traffickers,” June 2000, 3, <https://lawcenter.giffords.org/wp-content/uploads/2020/06/Following-the-Gun-Enforcing-Federal-Laws-Against-Firearms-Traffickers.pdf>.

³² *Id.* at x.

³³ *Id.* at ix.

ATF's failure to release this information has not only impeded progress on the issue of gun trafficking, but also flies in the face of Congress's intent in including this exception.

The ATF's failure to implement the exception

The only information concerning firearms traffickers, trafficking channels, or firearms trafficking investigations that the ATF has released in recent years identifies the [number of crime guns](#) recovered in each state that have been traced to other states. This information arguably concerns "trafficking channels,"³⁴ but was not included in *Following the Gun*. Congress clearly intended the term "trafficking channels" to refer to more than geographical information. Yet, the information released provides the public with hardly any information about firearms traffickers, and zero insight into the ATF's trafficking investigations.

In addition to the vast amount of numerical data, *Following the Gun* also included descriptive information about the various categories of gun traffickers, trafficking channels, and trafficking investigations. This information was included to identify, label, and explain the categories that the numerical data represented.

Arguably, the Tiahrt amendment prohibits the release of certain data that is not "statistical" or "aggregate." However, significant descriptive information, such as that included in *Following the Gun*, falls within the meaning of the term "statistical aggregate data."

According to a basic statistics textbook, there are two main types of "statistical data": (1) categorical data, and (2) numerical data. "Categorical data are generally non-numeric or qualitative, in the sense that each individual item is a description rather than a number."³⁵ While not numerical, the descriptive information about gun-trafficking investigations in *Following the Gun* is categorical, statistical data.

The term "aggregate data" is used generally in the law to refer to statistical information that does not disclose any individual person involved.³⁶ The term "aggregate" in this context indicates that the ATF is authorized to categorize trafficking cases, and provide total numbers and percentage of traffickers, trafficking cases, and trafficked firearms that fall within specific categories, provided that it does not disclose the name or other personally identifiable information about a particular trafficker, gun purchaser, or gun seller. The term necessarily implies that the ATF is authorized to identify categories and label them with descriptive information; otherwise, there would be no information to aggregate.

³⁴ However, firearms that are traced are not necessarily trafficked. A person who purchases a gun from a licensed dealer lawfully and later uses it in a crime has not engaged in firearms trafficking, since he or she has not diverted the firearm into unlawful commerce. Law enforcement in that case would trace the firearm directly to the violent criminal who used it.

³⁵ Gosling, Jenny. *Introductory Statistics*. Pascal Press, 1995.

<https://books.google.com/books?id=zDVcG46aBTOC&printsec=frontcover#v=onepage&q&f=false>.

³⁶ See, e.g., 7 U.S.C. § 2276.

Disclosure to researchers for the purpose of the report

The ATF may be construing the Tiahrt amendment to prevent the disclosure of information to outside researchers, thus limiting its authority to replicate the process used to produce *Following the Gun*. The Tiahrt amendment broadly prohibits disclosure to most individuals, with law enforcement agencies as the primary exceptions.

However, the exception to the Tiahrt amendment explicitly prohibits the Tiahrt amendment from being “construed to prevent” the publication of the relevant statistical data. Government agencies, like the ATF, are therefore under an obligation to avoid interpreting the Tiahrt amendment in any way that would prevent the publication of this data. Based on this exception, it's clear that the ATF can hire external researchers and disclose protected data to those researchers. Should the ATF decide to use internal government researchers, those from the Bureau of Justice Statistics would also be able to do this work.

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.”³⁷ 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.”³⁸

Furthermore, the consolidation and centralization rider does not prevent the publication of aggregate information derived from these records and the related investigations. Even though this rider has been included in appropriations laws since 1978, this rider did not prevent the ATF from issuing the original *Following the Gun*. There is no reason why the rider on consolidating and centralizing gun sales records should be interpreted to prevent the ATF from issuing further trafficking reports now.

The ATF clearly has the authority, if not the obligation, to issue reports like *Following the Gun* on a regular basis. There are no legal obstacles to the publication of the information in these

³⁷ Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. No. 112-55, 125 Stat. 552, 4 (2011).

³⁸ *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).

reports. Given the importance of this information for policymakers and ultimately for public safety, the ATF should begin regularly producing these reports again as soon as possible.