

No. _____

IN THE

Supreme Court of the United States

HEON JONG YOO, ALSO KNOWN AS HANK YOO
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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I. QUESTIONS PRESENTED

In exercising aspects of the Second Amendment right to purchase and keep firearms, citizens are required to undertake certain steps.

A Bureau of Alcohol, Tobacco Firearms and Explosives (ATF) Form 4473 is a form used to purchase firearms in the United States in order to identify the purchaser and seller, and in order to facilitate a background check of the purchaser. Various crimes may be associated with the form.

ATF Form 4473's are used, on average, thousands of times each day across these United States, and resolution of the following important issues associated with crimes committed when filling out the form is, therefore, a matter of national significance.

At the core, Mr. Yoo questions the preeminence of an ever-changing executive agency-created form and executive agency legal interpretations that create criminal liability for firearms transferees.

The questions presented are:

- A. Are the instructions on an ATF Form 4473 evidence of a jurisdictional fact such that the jurisdictional element of the statutory offense found at 18 U.S.C. § 924(a)(1)(A) is surplus, and does present tense testimony concerning the licensure of a firearms dealer also refer to the past in order to establish that same jurisdictional fact?

B. Do statutes, Courts, or the Bureau of Immigration Appeals determine what is a “National” of the United States for purposes of a Form 4473?

C. Do statutes, Courts, or the Bureau of Alcohol, Tobacco Firearms and Explosives determine what information is required to be kept by a federal firearms licensee for purposes of 18 U.S.C. § 924(a)(1)(A)?

II. PARTIES TO THE PROCEEDING

The parties to this case are fully named in the case caption: Mr. Heon Jong Yoo and the United States of America. There are no co-parties in the case.

III. CORPORATE DISCLOSURE STATEMENT

Petitioner is an individual.

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VI. PETITION FOR CERTIORARI

Petitioner Heon Jong Yoo, an inmate currently confined in the Federal Medical Center in Fort Worth, Texas, respectfully petitions for a Writ of Certiorari to permit briefing in aid to review of the judgment of the United States Court of Appeals for the Fifth Circuit.

VII. OPINIONS BELOW

The following proceedings are directly related to this Petition:

A. UNITED STATES DISTRICT COURT (TRIAL)

Petitioner was convicted of seven violations of 18 U.S.C. § 924(a)(1)(A) and one violation of 18 U.S.C. § 922(g) in *United States v. Heon Jong Yoo*, No. 6:18-cr-00016-RWS-KNM, 2019 U.S. Dist. LEXIS 147635, 2019 WL 3812218 (E.D. Tex., Mar. 7, 2019), *Appendix B*(1) (Judgment).

B. UNITED STATES COURT OF APPEALS (DIRECT APPEAL)

Petitioner's conviction was overturned, in part, by the United States Court of Appeals for the Fifth Circuit in the unreported opinion of *United States v. Heon Jong Yoo*, No. 19-40465, 813 Fed. Appx. 949, 2020 U.S. App. LEXIS 17648, 2020 WL 3025444 (June 4, 2020); *Appendix A*(1) (Opinion).

The Court of Appeals also denied Petitioner's Petition for Rehearing. *Appendix (C)*(1) (Order).

VIII. JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1254(1).

The Fifth Circuit entered its judgment on June 4, 2020 and denied rehearing on June 30, 2020. This Petition is timely in accordance with Sup. Ct. Rule 13 as amended by the Court's March 19, 2020 COVID-19 Order regarding filing deadlines.

IX. STATUTORY AND REGULATORY PROVISIONS INVOLVED

A. 18 U.S.C. § 922¹

B. 18 U.S.C. § 924²

C. 27 C.F.R. § 478.124³

D. 8 U.S.C. § 1101⁴

X. STATEMENT OF THE CASE

Mr. Yoo is a permanent resident of the United States of America, a Citizen of the Republic of Korea, and—during the salient interval of his life—a college student. He represented himself at trial in the United States District Court for the Eastern District of Texas.

While a college student, Mr. Yoo was involuntarily committed to treatment under New Jersey's temporary, *ex parte* procedure twice. First, in April 2013, Mr.

¹ Due to length, the entirety is included in Appendix at (E)(1), APPX 22.

² Due to length, the entirety is included in Appendix at (E)(2), APPX 42.

³ Due to length, the entirety is included in Appendix at (E)(3), APPX 50.

⁴ Due to length, the entirety is included in Appendix at (E)(4), APPX 54.

Yoo agreed to be transported by the Rutgers University Police Department (RUPD) to a hospital for evaluation. There, a screener, a physician, and a psychiatrist determined that Mr. Yoo met the criteria for mental illness, was a danger to himself or others, and should be involuntarily committed to a mental institution. Based on their certifications, a New Jersey superior court judge found probable cause to believe that Mr. Yoo was in need of involuntary commitment. The judge issued a "Temporary Order for the Involuntary Commitment of an Adult," ordering that Mr. Yoo be committed to a hospital "pending a court hearing" in approximately two weeks. Mr. Yoo was discharged from the hospital four days before the scheduled hearing.

RUPD took Mr. Yoo to a hospital for another evaluation in September 2015. Once again, a screener, physician, and psychiatrist determined that Yoo met the criteria for mental illness and that he should be committed. And, once again, a New Jersey superior court judge ordered that Mr. Yoo be temporarily committed "pending a court hearing" 12 days later. Mr. Yoo was discharged six days before the scheduled hearing.

A few months later, in January 2016, Mr. Yoo tried to buy a gun. But because the National Instant Criminal Background Check System (NICS) revealed that Mr. Yoo had been "adjudicated as mental defective/committed to a mental institution," his purchase was denied. The FBI explained, upon Mr. Yoo's inquiry, that he was a "prohibited person" under one of the 10 possible categories listed in §§ 921 and 922 but did not specify which one applied.

Mr. Yoo kept trying (often successfully) to buy firearms from 2016-2017. Each time, he had to fill out the Form 4473 issued by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In response to a question on that form, Mr. Yoo stated that he was a Citizen (or National of the United States) seven different times.

Following a trial in which he represented himself, he was found guilty of two categories of offenses: first, seven violations (Counts 1-7) of 18 U.S.C. § 924(a)(1)(A) and, second, a single violation of 18 U.S.C. § 922(g) (Count 8). He received sentences of 60 months' imprisonment for each of Counts 1-7, and 97 months' imprisonment for Count 8. *Appendix D(2)* (Judgment). All sentences were to run concurrently. *Id.* The Count 8 conviction was subsequently overturned by the Court of Appeals; the former seven violations (Count 1-7) are the subject of this Petition.

The gravamen of the offense in each of the remaining violations is that Mr. Yoo mis-reported his country of citizenship on the ATF Form 4473 used to purchase firearms. He identified himself as a U.S. Citizen and/or National of the United States.

On appeal, Mr. Yoo argued the jurisdictional point that there was no evidence that the firearms licensees in question were licensed at the time of the firearms transactions found in Counts 1-7. He also argued that, as to all Counts that he—as a U.S. National—could identify himself as a Citizen of the United States on the Form 4473 used to variously purchase and attempt to purchase firearms. Finally, Mr. Yoo argued that his country of citizenship is not “information required to be kept” by firearms licensees within the meaning of 18 U.S.C. § 924(a)(1)(A).

The Court of Appeals correctly concluded that Mr. Yoo's temporary hospitalization in New Jersey, based on an *ex parte* order, signed by a judge without a hearing, did not constitute "commitment to a mental institution" within the meaning of 18 U.S.C. § 922(g)(4). Accordingly, the judgment of conviction as to Count 8 was reversed. As of this writing, Mr. Yoo has not been resentenced.

The Court of Appeals also decided each of Mr. Yoo's points concerning his seven convictions under 18 U.S.C. § 924(a)(1)(A). First, the Court of Appeals determined that the *instructions* on a Form 4473—stating that it should only be used by a licensed firearms dealer—was evidence sufficient to establish that the firearms dealers were licensed at the time of each transaction in order sustain convictions in Counts 1-5. The Court of Appeals then determined that Mr. Yoo is not a “U.S. National,” thereby affirming his convictions under Counts 6-7. And finally, the Court of Appeals held that “information required to be kept [by a licensee, for purposes of 18 U.S.C. § 924(a)(1)(A)]” included Mr. Yoo's nation of citizenship.

The Court of Appeals assumed jurisdiction over the appeal pursuant to 18 U.S.C. § 3231 and 18 U.S.C. § 1291, as it was an appeal from a final judgment of conviction and sentence in the United States District Court for the Eastern District of Texas.

XI. REASONS TO GRANT THE PETITION

- A. Are the instructions on an ATF Form 4473 evidence of a jurisdictional fact such that the jurisdictional element of the statutory offense found at 18 U.S.C. § 924(a)(1)(A) is surplus, and does present tense testimony concerning the

licensure of a firearms dealer also refer to the past in order to establish that same jurisdictional fact?

The Gun Control Act of 1968, Pub. L. No. 90-618, 82 Stat 1213 (1968), regulates the manufacture and sale of firearms and ammunition. *See* 18 U.S.C. §§ 921-31. In particular, it prohibits federally licensed firearms dealers from selling firearms to certain categories of individuals, such as any person under 21 or any person convicted of a felony. *See, e.g., id.* at § 922(b), (d), (g). In 1993, Congress gave greater effect to those prohibitions by enacting the Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993). The “Brady Act” requires federally licensed firearms dealers to initiate criminal background checks to determine whether state or federal law prohibits potential purchasers from purchasing or possessing firearms before selling to them. *See id.* at § 103(b). To facilitate those background checks, the Brady Act directed the Attorney General to establish the national instant criminal background check system (“NICS”). *See id.* at § 102(a). The Attorney General delegated management of the system to the Federal Bureau of Investigations (“FBI”). *See* 28 C.F.R. § 25.3. Accordingly, the NICS is managed by the FBI Criminal Justice Information Services Division's NICS Operations Center. *Id.*

In the first eight months of 2020—through August 31, 2020, the FBI reports that it performed 25,934,334 “NICS Firearm Background Checks.” https://www.fbi.gov/file-repository/nics_firearm_checks_-_month_year.pdf. *Appendix F(5)*. Since 1998 when its records begin, 358,938,400 background checks have been done. *Id.* In sum, an average of several thousand Form 4473’s for backgrounds checks are executed every day in the United States.

The Government Accountability Office has studied cases such as these. *Government Accountability Office*, (2018) “Few Individuals Denied Firearms Purchases Are Prosecuted and ATF Should Assess Use of Warning Notices in Lieu of Prosecutions” GAO Publication No. 18440 Washington, D.C.: U.S. Government Printing Office. <https://www.gao.gov/assets/700/694290.pdf>. *Appendix F(4)*. A very small number of false statement cases are prosecuted every year. ATF policy provides for warnings in lieu of prosecutions, and hand-delivered notices where aggravating circumstances exist, such as where a “prohibited person committed a violent felony or made multiple attempts to purchase firearms.” *See Id.* at 25. United States Attorneys’ Offices “generally do not accept standard denials that only involve a violation related to falsified information.” *Id.* at 34. Here, Mr. Yoo was wrongly designated a prohibited person in light of the reversal of his conviction under 18 U.S.C. § 922. It is unlikely that Mr. Yoo would have been prosecuted at all but for the wrongful prohibited person designation, based on the GAO’s report.

NICS background checks proceed in two stages. First, the dealer collects information from the potential purchaser and provides some of that information to the NICS Operations Center. *See* 27 C.F.R. § 478.124. The dealer obtains from each potential purchaser a completed firearms transaction record ("Form 4473"). *See id.* Form 4473 asks for certain identifying information. *Id.* The dealer then contacts the NICS Operations Center and provides the purchaser's name, sex, race, date of birth, and state of residence to initiate the background check. *See* 28 C.F.R. § 25.7(a). Then, the NICS Operations Center uses the potential purchaser's information to search

several databases for signs that the potential purchaser is prohibited from purchasing or possessing firearms. *See id.* at § 25.6. If that search produces disqualifying information, the NICS Operations Center informs the dealer that the transaction should be denied. *Id.* at (c)(1)(iv)(C). If that search produces no signs of disqualifying information, the NICS Operations Center informs the dealer that the transactions may proceed. *Id.* at (c)(1)(iv)(A).

As noted by this Court in *Abramski v. United States*, 573 U.S. 169, 134 S. Ct. 2259 (2014), “certain classes of people—felons, drug addicts, and the mentally ill, to list a few—may not purchase or possess any firearm. And to ensure they do not, [18 U.S.C.] §922(d) forbids a licensed dealer from selling a gun to anyone it knows, or has reasonable cause to believe, is such a prohibited buyer.” *Abramski*, 573 U.S. at 172, 134 S. Ct. at 2263 (citing *Huddleston v. United States*, 415 U. S. 814, 825, 94 S. Ct. 1262, 39 L. Ed. 2d 782 (1974)). The statute further insists that the dealer keep certain records, to enable federal authorities both to enforce the law’s verification measures and to trace firearms used in crimes. *Id.* (citing H. R. Rep. No. 1577, 90th Cong., 2d Sess., 14 (1968)). A dealer must maintain the identifying information mentioned above (i.e., name, age, and residence) in its permanent files. *Abramski*, 573 U.S. at 173, 134 S. Ct. at 2263 (citing 18 U.S.C. §922(b)(5)).

At trial, Petitioner argued that the government’s proposed jury instructions omitted the critical language “information required to be kept” on the Form 4473 as a jury finding in regard to the offenses alleged under 18 U.S.C. § 924(a)(1)(A) and 922(a)(6). ROA.19-40465.3340-3342. Citing the *Abramski* case, Appellant argued

that 18 U.S.C. § 922 (b)(5) specified what information “must be kept” and proposed a corresponding charge for the jury. ROA.19-40465.3343. Succinctly, the issue was whether “everything” on the Form 4473 was “required to be kept” by FFLs, or only certain information on the Form 4473 for purposes of the indicted offenses.

Abramski was a “straw purchase” case, whereby one individual purchases a firearm on behalf of another. It was undisputed that Mr. Yoo was purchasing firearms for himself. Mr. Abramski was convicted under two statutes: 18 U.S.C. § 922(a)(6) and the statute at issue in this case, 18 U.S.C. § 924(a)(1)(A). “That provision is broader than §922(a)(6) in one respect: It does not require that the false statement at issue be ‘material’ in any way. At the same time, §924(a)(1)(A) includes an element absent from § 922(a)(6): The false statement must relate to “information required by this chapter to be kept in [a dealer’s] records.” *Abramski v. United States*, 573 U.S. 169, 191, 134 S. Ct. 2259, 2274 (2014).

This Court declined to decide whether criminal liability attaches to *ultra vires* questions on the Form 4473. *Abramski v. United States*, 573 U.S. 169, 192 n.11, 134 S. Ct. 2259, 2274 (2014). This Court considered question 11.a. of the form, which asks,

“Are you the actual transferee/buyer of the firearm(s) listed on this form? Warning: You are not the actual buyer if you are acquiring the firearm(s) on behalf of another person. If you are not the actual buyer, the dealer cannot transfer the firearm(s) to you.”

The Court found this question to fundamental to the lawfulness of a gun sale, and therefore not *ultra vires*. *Id.* The question was also, obviously, of critical importance in a straw purchase, such as the one under consideration in *Abramski*.

To establish a violation of § 924(a)(1)(A), the government must prove that: (1) the dealer was a federally licensed firearms dealer at the time the events occurred; (2) the defendant made a false statement or representation in a record that the licensed firearms dealer was required by federal law to maintain; and (3) the defendant made the false statement with knowledge of its falsity.

United States v. Pena, 541 F. App'x 453, 455 (5th Cir. 2013) (quoting *United States v. Abramski*, 706 F.3d 307, 316-17 (4th Cir. 2013), *aff'd*, 134 S. Ct. 2259, 189 L. Ed. 2d 262 (2014)).

The requirement that the FFL be licensed at the time the events occurred is jurisdictional. *United States v. Reid*, 595 F. App'x 280, 282 (5th Cir. 2014). *United States v. Prince*, 647 F.3d 1257, 1267 (10th Cir. 2011) ("§ 924(a)(1)(A)'s records requirement is simply a jurisdictional hook. It provides authority for the United States to criminalize false statements made to firearms dealers."); *United States v. Green*, 544 F.2d 746, 747 (4th Cir. 1976) ("The fact that the dealer was licensed serves only to establish a basis for federal jurisdiction.").

In *Reid*, cited above, the Fifth Circuit gave several examples of how—in the context of an 18 U.S.C. § 924(a)(1)(A) prosecution, concerning Form 4473 statements—to Government could prove that an FFL was licensed at the time of the transaction,

However, we have never considered a case where the Government introduced as little evidence on the licensing element as it did here. The Government did not produce copies or originals of the dealers' licenses. Nor did the Government produce a license application with an expiration date, as it did in *Snell*. Nor did the Government call any employees from Bachman Pawn or Academy Sports to testify that the dealers were federally licensed at the time of Reid's offenses.

United States v. Reid, 595 F. App'x 280, 284 (5th Cir. 2014). No such evidence was presented in Mr. Yoo's case and it appears that the prosecution, at trial, was unaware of this jurisdictional requirement. In its Responsive Brief at the Court of Appeals, the Government attempted to construct a jurisdictional argument that the publicly-available Form 4473 itself establishes that the FFL's were licensed at the time of the transactions wherein it says, "[t]his form should only be used for sales of a firearm where the seller is licensed under 18 U.S.C. § 923" (as to the version of the form used in Counts 1-5).

As to individuals purchasing firearms, § 924(a)(1)(A) directly concerns the Form 4473, which contains the "information required to be kept" by an FFL as to that individual. So, in essence, the Fifth Circuit has undone the first, jurisdictional, element of such a prosecution because, in every case, there will be a Form 4473, in evidence. In Mr. Yoo's case, each FFL witness testified in the present tense that it was licensed. The Fifth Circuit's decision that the form itself establishes the jurisdictional element—a decision of national consequence and one of first impression—would render an FFL witnesses' testimony unnecessary in most cases.

Further, as noted above, "This form should only be used for sales of a firearm where the seller is licensed under 18 U.S.C. § 923" does not appear on the later (2016) version of the Form 4473's pertaining to Counts 6-7. Accordingly, as to all Counts, the Fifth Circuit looked to the present-tense ("is," "am," "are") testimony of the FFL witnesses and found that their testimony that they were licensed at the time of trial—or even had been licensed at some time in the past—as sufficient to establish the

jurisdictional element for transaction that took place years earlier. *Opinion* at p.4, n.7. As a general matter, “Congress’ use of a verb tense is significant in construing statutes.” *United States v. Wilson*, 503 U.S. 329, 333, 112 S. Ct. 1351 (1992). The Dictionary Act, which is fully applicable to construing criminal statutes, *see United States v. A&P Trucking Co.*, 358 U.S. 121, 123, 79 S. Ct. 203, 3 L. Ed. 2d 165 & n.2, 358 U.S. 121, 79 S. Ct. 203, 3 L. Ed. 2d 165 (1958), provides that “[i]n determining the meaning of any Act of Congress, unless the context indicates otherwise . . . words used in the present tense include the future as well as the present.” 1 U.S.C. § 1. Finally, construing a present-tense verb as a past-tense verb defies common sense, which is a traditional province of a jury.

B. Do statutes, Courts, or the Bureau of Immigration Appeals determine what is a “National” of the United States for purposes of a Form 4473?

Whether Mr. Yoo is a “National of the United States” is a significant matter because the 2016 Form 4473’s in Counts 6-7 expressly indicate that he should check “U.S. Citizen” if he is a National, and the specific question on the 2016 Form 4473 that he is accused of falsely answering is, according to the ATF, merely a clarification of several former questions which asked the same thing (Counts 1-5) in a 2012 edition of the form. The precise portion of the form is,

12.a. Country of Citizenship: *(Check/List more than one, if applicable. Nationals of the United States may check U.S.A.)*

☐ United States of America (U.S.A.) ☐ Other Country/Countries (Specify)

ATF Form 4473 (2016), Appendix (F)(3).

The government demonstrated that Appellant was not a Citizen of the United States, but did not demonstrate that Appellant was not a National of the United States, which would be necessary to demonstrate that he made a false statement by his checkmark. After the issue of “National of the United States” (used in the transcript interchangeably with “U.S. National”) was raised by Appellant in questioning, the government merely established that not all Nationals of the United States are citizens, and that Appellant was not a Citizen.

“The term 'National of the United States' means (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States." 8 U.S.C. § 1101(a)(22). The INA is silent as to what constitutes a "a person who . . . owes permanent allegiance to the United States." "The term 'National of the United States' means (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States." 8 U.S.C. § 1101(a)(22). As previously recognized, "[t]he INA is silent as to what constitutes a ‘a person who...owes permanent allegiance to the United States.’" The Fifth Circuit, agreeing with other circuits, followed an interpretation of “owes permanent allegiance to the United States” to mean that a defendant is a National only “by birth of completing the naturalization process.” *Opinion* at 5. The general reasoning supporting that statement has been adopted by several courts of appeals.

The Government’s extreme reliance on the Form 4473, including its instructions and headings, fails here in the context of a Form 4473 response. The

statute, as well as the form, in its Counts 1-5 version, clearly distinguishes between U.S. Citizens and Nationals; yet the definition of “owes permanent allegiance to the United States” adopted by the Fifth Circuit (“...by completing the naturalization process”)—which appears nowhere on the form—renders the instruction on the 2016 Form 4473 at 12.a. “Country of Citizenship” (in the image, above, and concerning Counts 6-7), to wit, “Nationals of the United States may check U.S.A.,” entirely surplus and renders the distinction between a National and a Citizen meaningless in 8 U.S.C. § 1101. A person who has completed the naturalization process *is* a citizen of the United States of America. Accordingly, a National is something else and the “allegiance” referred to in the statute must be something less; otherwise, Congress’ expressed words are being ignored.

This is not a small distinction. A court should interpret a statute so that every word of the statute has meaning. "All parts of a statute, if possible, are to be given effect." *Fidelity Federal Sav. & Loan Assn. v. De La Cuesta*, 458 U.S. 141, 163, 73 L. Ed. 2d 664, 102 S. Ct. 3014 (1982) [citations omitted]. *See also Beisler v. C.I.R.*, 814 F.2d 1304, 1307 (9th Cir. 1987) ("We should avoid an interpretation of a statute that renders any part of it superfluous and does not give effect to all of the words used by Congress.") [citation omitted]. The first and most important canon of statutory construction is the presumption “that a legislature says in a statute what it means and means in a statute what it says there.” *Conn. Nat’l Bank v. Germain*, 503 U.S. 249, 253-54, 112 S. Ct. 1146, 117 L. Ed. 2d 391 (1992). “When the words of a statute are unambiguous, then, this first canon is also the last: ‘judicial inquiry is complete.’”

Id. at 254 (quoting *Rubin v. United States*, 449 U.S. 424, 430, 101 S. Ct. 698, 66 L. Ed. 2d 633 (1981)). When the statute is ambiguous, however, canons may provide "rules of thumb that help courts determine the meaning of legislation." *Id.* at 253. The superfluity canon guides a court to infer that Congress did not intend to make any portion of a statute superfluous, and therefore "we must give effect to every word of a statute wherever possible." *Leocal v. Ashcroft*, 543 U.S. 1, 12, 125 S. Ct. 377, 160 L. Ed. 2d 271 (2004).

Here, the statute in question is 8 U.S.C. § 1101. "The term 'National of the United States' means (A) a citizen of the United States, or (B) a person who, *though not a citizen of the United States*, owes permanent allegiance to the United States." 8 U.S.C. § 1101(a)(22) (emphasis added). Thus, all Citizens are Nationals, but not all Nationals are Citizens. The Government, at trial, had the burden of proving that Mr. Yoo was not a non-citizen National at trial. Mr. Yoo presented evidence and argument that he was a National; the Government merely presented evidence that he was not a *Citizen*, and the Court conflated the two terms.

Counts 6 and 7 occurred roughly one year later than the first five Counts, under a slightly modified version of the Form 4473.

There is a potential split amongst the circuits concerning the definition of "National" and Mr. Yoo falls clearly in that divide. He is a permanent resident of the United States and testified that he took an oath in an attempt to join the military.

A "national of the United States" may also be "a person who, though not a citizen of the United States, owes permanent allegiance to the United States." 8 U.S.C. § 1101(a)(22). The district court found that because Dr. Soto was a permanent

resident alien of the United States who had applied for United States citizenship, he was indeed "a national of the United States." We agree--an application for citizenship is the most compelling evidence of permanent allegiance to the United States short of citizenship itself.

United States v. Morin, 80 F.3d 124, 126 (4th Cir. 1996). *Morin* was later abrogated in *Fernandez v. Keisler*, 502 F.3d 337, 343-47, 349-51 (4th Cir. 2007), but based solely on deference to a Board of Immigration Appeals interpretation that the phrase "owes allegiance...reflects a legal relationship between an individual and a sovereign." See *In re Navas-Acosta*, 23 I. & N. Dec. 586, 588 (BIA 2003). Thus, Courts of Appeals have generally decided that manifestations of permanent allegiance do not, by themselves, render a person a U.S. national.

A statute's silence on a given issue does not confer gap-filling power on an agency unless the question is in fact a gap—an ambiguity tied up with the provisions of the statute. *United States v. Home Concrete & Supply, LLC*, 566 U.S. 478, 487, 132 S. Ct. 1836, 1843 (2012). The BIA's interpretation of the unambiguous phrase "holds permanent allegiance to the United States" has thus spawned an interpretation that renders only those born in certain places such as American Samoa, and between certain dates in Puerto Rico, Guam, the U.S. Virgin Islands, and the Philippines and actual Citizens as "Nationals." On this basis, he was convicted.

Questions 14 and 12.a. on the respective forms (concerning nationality) did not have any further instructions within the body of the form, leaving thousands of daily form-fillers to their own devices to determine what a "National" is and is not. Mr. Yoo demonstrated, at a trial, that he was permanent resident of the United States and took an oath of allegiance to the United States when

he attempted to join the military. Mr., Yoo's testimony in that regard was unchallenged, and the Government merely established that Mr. Yoo is not a Citizen.

The Courts of Appeals have adopted an agency interpretation of the definition of "allegiance" when the term is not ambiguous, and did so in a way that renders the distinction between "Citizen" and "National" in 8.U.S.C. § 1011(a)(22) superfluous. Accordingly, Mr. Yoo respectfully petitions this Court to determine whether the term is ambiguous and, if not whether a manifest injustice was done in his convictions.

C. Do statutes, Courts, or the Bureau of Alcohol, Tobacco Firearms and Explosives determine what information is required to be kept by a federal firearms licensee for purposes of 18 U.S.C. § 924(a)(1)(A)?

As noted above, thousands of Forms 4473's are used every day in the United States. Unlike a previous case determined by this Court, this is not a straw purchase case; Mr. Yoo's transactions and attempted transactions were for his own purchases and no one else. In light of the Fifth Circuit's reversal of Mr. Yoo's conviction for possession of a firearm by a prohibited person, Mr. Yoo's purchases and attempted purchases of firearms would have otherwise been, in hindsight, lawful. What remains are Mr. Yoo's convictions under 18 U.S.C. § 924(a)(1)(A) for making false statements of his citizenship on seven forms. Mr. Yoo has maintained throughout this criminal case that his nationality is not "information required to be kept," within the meaning of his remaining offenses of conviction.

To establish a violation of § 924(a)(1)(A), the government must prove that: (1) the dealer was a federally licensed firearms dealer at the time the events occurred; (2) the defendant made a

false statement or representation in a record that the licensed firearms dealer was *required by federal law to maintain*; and (3) the defendant made the false statement with knowledge of its falsity.

(emphasis added). *United States v. Pena*, 541 F. App'x 453, 455 (5th Cir. 2013) (quoting *United States v. Abramski*, 706 F.3d 307, 316-17 (4th Cir. 2013), *aff'd*, 134 S. Ct. 2259, 189 L. Ed. 2d 262 (2014)).

At trial, Petitioner argued that the Government's proposed jury instructions omitted the critical language "information required to be kept" on the Form 4473 as a jury finding in regard to the offenses alleged under 18 U.S.C. § 924(a)(1)(A) and 922(a)(6). Citing the *Abramski* case, Petitioner argued that 18 U.S.C. § 922 (b)(5) specified what information "must be kept" and proposed a corresponding charge for the jury. Succinctly, the issue was whether "everything" on the ever-changing Form 4473 was "required to be kept" by FFLs, or only certain information on the Form 4473 was "required to be kept" for purposes of the indicted offenses.

Abramski was a "straw purchase" case, whereby one individual purchases a firearm on behalf of another. It was undisputed that Mr. Yoo was purchasing firearms for himself. Mr. Abramski was convicted under two statutes: 18 U.S.C. § 922(a)(6) and the statute at issue in this case, 18 U.S.C. § 924(a)(1)(A). "That provision is broader than §922(a)(6) in one respect: It does not require that the false statement at issue be "material" in any way. At the same time, §924(a)(1)(A) includes an element absent from §922(a)(6): The false statement must relate to "information required by this chapter to be kept in [a dealer's] records." *Abramski v. United States*, 573 U.S. 169, 191, 134 S. Ct. 2259, 2274 (2014).

This Court declined to decide whether criminal liability attaches to *ultra vires* questions on the Form 4573. *Abramski v. United States*, 573 U.S. 169, 192 n.11, 134 S. Ct. 2259, 2274 (2014). This Court considered question 11.a. of the form, which asks,

“Are you the actual transferee/buyer of the firearm(s) listed on this form? Warning: You are not the actual buyer if you are acquiring the firearm(s) on behalf of another person. If you are not the actual buyer, the dealer cannot transfer the firearm(s) to you.”

The Court found this question to be fundamental to the lawfulness of a gun sale, and therefore not *ultra vires*. *Id.* The question was also, obviously, of critical importance in a straw purchase, such as the one under consideration in *Abramski*.

The statute makes clear that the federal firearms licensee must keep records of sales of firearms on forms that the Attorney General prescribes. *See* 18 U.S.C. § 923(g)(1)(A). The form is generally prescribed in 27 C.F.R. § 478.124(a)-(b) and embodied in the Form 4473. However, the information to be gathered is specified in 18 U.S.C. § 922(b)(5) (“name, age, and place of residence of such person if the person is an individual.”) and the scheme for what information is gathered is specified in 18 U.S.C. § 922(s). The licensed transferor (FFL licensee) may not transfer a firearm to a non-licensed person unless the transferor has “received from the transferee a statement of the transferee containing the information described in paragraph (3).” 18 U.S.C. § 922(s)(1)(A)(i)(I). According to 18 U.S.C. § 922(s)(3),

The statement referred to in paragraph (1)(A)(i)(I) shall contain *only*—(A)the name, address, and date of birth appearing on a valid identification document (as defined in section 1028(d)(1) [4]) of the transferee containing a photograph of the transferee and a description of the identification used;...

(emphasis added). Implicit in the use of the word “transferee” is the necessity of determining who will receive the firearm. This principle was discussed in *Abramski* and the Court concluded that a question on the form, “Are you the actual transferee/buyer of the firearm(s) listed on this form?” spoke to the very purpose of the exercise in completing the form (to determine the true buyer’s name, age, and place of residence and, accordingly, was fundamental to the lawfulness of the firearm sale.

However, as noted above, the Court did not address *ultra vires* questions on the Form 4473, and considered Question 11.a. to be “miles away” from the sort of *ultra vires* question (favorite color) suggested by Justice Scalia in his dissent. Here, Mr. Yoo relies on 18 U.S.C. § 922 (b)(5) and 18 U.S.C. § 922(s)(3), the latter of which states that the *information* the transferor must receive is “only” that listed—the list does not include citizenship. Under the principle of *expressio unius est exclusio alterius*, there can be no other result. It would be, and is, an odd result that Congress specified that only certain information be gathered, then for the Attorney General to prescribe that more information—including citizenship—be gathered and require that it be gathered in order to complete a firearms transfer, then an answer to that question is subject of criminal liability. As Mr. Yoo has argued and argues here, this is a violation of due process under the Fifth Amendment.

XII. CONCLUSION

Petitioner respectfully requests that this Court grant his Petition for Writ of Certiorari so the stated issues may be fully briefed.

October 20, 2020.

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XIII. APPENDIX

A. The opinions, orders, findings of fact, and conclusions of law, whether written or orally given and transcribed, entered in conjunction with the judgment sought to be reviewed.

1) Court of Appeals' Opinion

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 19-40465

United States Court of Appeals
Fifth Circuit

FILED

June 4, 2020

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

HEON JONG YOO, also known as Hank Yoo,

Defendant - Appellant

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:18-CR-16-1

Before DAVIS, GRAVES, and DUNCAN, Circuit Judges.

PER CURIAM:*

Heon Jong Yoo was convicted on eight counts under the Gun Control Act: seven counts of making a false statement to a federally licensed gun dealer, in violation of 18 U.S.C. § 924(a)(1)(A), and one count of possession of a firearm by a prohibited person, in violation of § 922(g)(4). Because the evidence was sufficient to establish each element of § 924(a)(1)(A), we AFFIRM Yoo's conviction as to Counts 1-7. But because Yoo was not "committed to a mental

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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institution” within the meaning of § 922(g)(4), we REVERSE the judgment of conviction as to Count 8.

I. BACKGROUND

Heon Jong Yoo was involuntarily committed to treatment under New Jersey’s temporary, ex parte procedure twice. First, in April 2013, Yoo agreed to be transported by the Rutgers University Police Department (RUPD) to a hospital for evaluation. There, a screener, a physician, and a psychiatrist determined that Yoo met the criteria for mental illness, was a danger to himself or others, and should be involuntarily committed to a mental institution. Based on their certifications, a New Jersey superior court judge found probable cause to believe that Yoo was in need of involuntary commitment. The judge issued a “Temporary Order for the Involuntary Commitment of an Adult,” ordering that Yoo be committed to a hospital “pending a court hearing” in about two weeks. Yoo was discharged from the hospital four days before the scheduled hearing.

RUPD took Yoo to a hospital for another evaluation in September 2015. Once again, a screener, physician, and psychiatrist determined that Yoo met the criteria for mental illness and that he should be committed. And, once again, a New Jersey superior court judge ordered that Yoo be temporarily committed “pending a court hearing” 12 days later. Yoo was discharged six days before the scheduled hearing.

A few months later, in January 2016, Yoo tried to buy a gun. But because the National Instant Criminal Background Check System (NICS) revealed that Yoo had been “adjudicated as mental defective/committed to a mental institution,” his purchase was denied. The FBI explained, upon Yoo’s inquiry, that he was a “prohibited person” under one of the 10 possible categories listed in §§ 921 and 922, but did not specify which one applied.

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Yoo kept trying (often successfully) to buy firearms from 2016-2017. Each time, he had to fill out the Form 4473 issued by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In response to a question on that form, Yoo stated that he was a citizen of the United States seven different times. He correctly identified his country of citizenship as South Korea—not the United States—twice.

Ultimately, Yoo was convicted of eight crimes under the Gun Control Act: seven counts of making a false statement to a federally licensed firearms dealer, in violation of § 924(a)(1)(A) (Counts 1-7), and one count of possession of a firearm by a prohibited person, in violation of § 922(g)(4) (Count 8). Yoo timely appeals his conviction.

II. § 924(a)(1)(A)

To establish a violation of § 924(a)(1)(A), the Government must prove that: “(1) the dealer was a federally licensed firearms dealer at the time the events occurred; (2) the defendant made a false statement or representation in a record that the licensed firearms dealer was required by federal law to maintain; and (3) the defendant made the false statement with knowledge of its falsity.”¹

A.

First, Yoo argues the Government failed to establish that the gun dealers named in Counts 1-7 were federally licensed. Because this element is jurisdictional,² we must determine whether the evidence was sufficient to establish it.³

¹ *United States v. Pena*, 541 F. App’x 453, 455 (5th Cir. 2013) (quoting *United States v. Abramski*, 706 F.3d 307, 316-17 (4th Cir. 2013), *aff’d* 573 U.S. 169 (2014)).

² *United States v. Reid*, 595 F. App’x 280, 283 (5th Cir. 2014).

³ *United States v. Schultz*, 17 F.3d 723, 725 (5th Cir. 1994).

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The Government need not produce each dealer’s federal license.⁴ For example, we have held that an ATF agent’s testimony that he “knew that the [dealer] was a licensed firearms dealer,”⁵ and an employee’s testimony that the dealer “had a valid license during the relevant period”⁶ was enough.

Here, there was sufficient evidence that Superior Firearms, First Cash Pawn, Academy Sports, and Cash America Pawn were federal firearms licensees (FFLs) at the time of Yoo’s offenses. The Form 4473 used by the dealers implicated in Counts 1-5 states on its face that “This form should only be used for sales of a firearm where the seller is licensed under 18 U.S.C. § 923.” Moreover, the jury heard testimony from employees of each dealer about its status as an FFL.⁷

B.

Next, Yoo argues the evidence was insufficient to prove that he made a false statement by selecting “USA” in response to the Form 4473’s “country of citizenship” question. An October 2016 revised version of the Form 4473 states that “Nationals of the United States” may select “USA.” Yoo argues that the Government failed to prove he wasn’t a U.S. national.

This argument only applies to Counts 6 and 7. The dealers associated with Counts 1-5 used the Form 4473 version revised in April 2012—and that version did *not* allow U.S. nationals to identify as U.S. citizens.

⁴ *United States v. Frazier*, 547 F.2d 272, 273 (5th Cir. 1977).

⁵ *Id.*

⁶ *United States v. Ballard*, 18 F.3d 935 (5th Cir. 1994).

⁷ The owner of Superior Firearms testified that “[w]e are a federal firearms licensed gun dealer,” that he has “own[ed] the FFL” for nine years, and that, “as an FFL,” Superior Firearms is required to keep each Form 4473. The jury heard testimony that only federally licensed dealers can submit the Form 4473 to the ATF for a background check, and the owner of Superior Firearms testified that he “got an immediate denial from the ATF.” Employees testified that First Cash Pawn (involved in Counts 2, 3, and 4) is an FFL. Academy Sports employees (Count 5) also testified that it is in FFL. Likewise, employees of Cash America Pawn (Counts 6 and 7) testified that it is an FFL and that it is required to keep each Form 4473.

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The Government produced evidence that a U.S. national is a person “who [was] born in the territories of the United States, specifically, American Samoa and the Commonwealth of Northern Mariana Islands.”⁸ Yoo argues now, as he did at trial, that a definition of “national” from the Immigration and Nationality Act should apply. Under that definition, a national is “(A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.”⁹

Yoo’s argument fails under either definition. In *Omolo v. Gonzales*, we considered both definitions and held that “a person may become a national only by birth or by completing the naturalization process.”¹⁰ Yoo’s administrative file, which was introduced into evidence, showed that he had not completed the naturalization process. Accordingly, the evidence was sufficient for the jury to find that Yoo was not a national of the United States.

C.

Recall that under § 924(a)(1)(A), it is a crime to make a false statement “with respect to the information required by this chapter to be kept in the records” of a federally licensed gun dealer. Yoo argues that an applicant’s country of citizenship is not “information required by this chapter.” Yoo is incorrect.

“This chapter” means chapter 44 of title 18 of the United States Code. A statute within chapter 44 directs gun dealers to “maintain such records . . . as the Attorney General may by regulations prescribe.”¹¹ “Because of that statutory section, the information that the Attorney General’s regulations compel a dealer to keep is information ‘required by this chapter.’”¹² One of

⁸ This definition derives from 8 U.S.C. § 1408.

⁹ 8 U.S.C. § 1101(a)(22).

¹⁰ 452 F.3d 404, 409 (5th Cir. 2006).

¹¹ 18 U.S.C. § 923(g)(1)(A).

¹² *Abramski v. United States*, 573 U.S. 169, 192 (2014).

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those regulations instructs dealers to “obtain a 4473 from the transferee showing,” among other things, “the transferee’s country of citizenship[.]”¹³ Moreover, since the regulations require that licensed dealers retain each Form 4473, “a false answer on that form . . . pertains to information a dealer is statutorily required to maintain.”¹⁴

For these reasons, Yoo’s convictions on Counts 1-7 of the superseding indictment are AFFIRMED.

III. § 922(g)(4)

Under § 922(g)(4), it is a crime for any person “who has been adjudicated as a mental defective or who has been committed to a mental institution” to “possess[,] in or affecting commerce, any firearm or ammunition.”¹⁵ Yoo argues he was not “committed” to a mental institution as a matter of law.¹⁶

Whether Yoo has been “committed” within the meaning of § 922(g)(4) is a question of federal law, but courts look to state commitment law for guidance.¹⁷ In New Jersey, an action for commitment to treatment can be commenced by a screening service.¹⁸ First, a mental health screener must determine whether the person meets the criteria for “mental illness” and whether they pose a threat to themselves, others, or property. If the screener finds that the person meets that standard and that there are no less restrictive alternatives, a “screening document” is prepared. Next, a physician evaluates the person and issues a “screening certificate” if it finds the same criteria

¹³ 27 C.F.R. § 478.124(c)(1).

¹⁴ *Abramski*, 573 U.S. at 192.

¹⁵ 18 U.S.C. § 922(g)(4).

¹⁶ Section 922(g)(4) does not define “committed,” but ATF regulations provide the following guidance: “A formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority . . . The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution.” 27 C.F.R. § 478.11.

¹⁷ *United States v. Giardina*, 861 F.2d 1334, 1335 (5th Cir. 1988).

¹⁸ N.J. Ct. R. § 4:74-7.

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satisfied.¹⁹ Finally, a psychiatrist evaluates the person under the same standard, and if she agrees, issues a “clinical certificate.”

The county adjuster presents the screening document, screening certificate, and clinical certificate to a New Jersey superior court judge, who “shall immediately review them in order to determine whether there is probable cause to believe that the person is in need of involuntary commitment to treatment.”²⁰ If the court finds probable cause based on those documents, “it shall issue a temporary order authorizing the assignment of the person to an outpatient treatment provider or the admission or retention of the person in the custody of the facility . . . pending a final hearing.”²¹

The final commitment hearing must take place within 20 days of the order of temporary commitment. At the final hearing, each patient has the right to be present, to be represented by counsel, to present evidence, and to cross-examine witnesses.²² After that hearing, the court shall enter a final order of commitment if it finds “by clear and convincing evidence presented at the hearing that the patient is in need of continued involuntary commitment to treatment.”²³

Yoo went through the screening process twice. Both times, a New Jersey superior court judge found probable cause, based on the certificates completed by a screener, physician, and psychiatrist, to issue an order of temporary

¹⁹ At this point, the person may be involuntarily admitted to a psychiatric unit, where they must be evaluated by a psychiatrist within 72 hours.

²⁰ N.J.S.A. § 30:4-27.10(f).

²¹ N.J.S.A. § 30:4-27.10(g); *see also* N.J. Ct. R. 4:74-7(c) (“The court may enter an order of temporary commitment to treatment . . . pending final hearing if it finds probable cause, based on the documents filed . . . to believe that the person is in need of involuntary commitment to treatment”).

²² N.J.S.A. § 30:4-27.14.

²³ N.J. Ct. R. § 4:74-7(f)(1); *see also* § 4:74-7(e) (“No final order of commitment to treatment shall be entered except upon hearing conducted in accordance with the provisions of these rules”).

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commitment. But both times, Yoo was discharged before the final commitment hearing.

So, the question narrows to whether New Jersey’s ex parte procedure for temporary orders of involuntary commitment constitutes “commitment to a mental institution” under § 922(g)(4). The only federal court to consider the issue (the District of Maine) said yes.²⁴ At the time, the First Circuit (where the district court was located) had held that temporary involuntary commitment without an adversarial hearing is “commitment” under the statute.²⁵

The First Circuit overturned that line of cases in *United States v. Rehlander*.²⁶ There, both defendants had been hospitalized under Maine’s ex parte, emergency procedure,²⁷ but were never committed under Maine’s full-scale, adversarial procedure.²⁸ The court reasoned that, after *District of Columbia v. Heller*,²⁹ the right to possess a firearm “is no longer something that can be withdrawn by government on a permanent and irrevocable basis without due process.”³⁰ And, in enacting § 922, “nothing suggests that Congress had in mind temporary hospitalizations supported only by ex parte procedures.”³¹ Accordingly, the court concluded that “section 922 should not be

²⁴ *United States v. Miller*, 366 F. Supp. 2d 128 (D. Me. 2005).

²⁵ See *United States v. Chamberlain*, 159 F.3d 656, 665 (1st Cir. 1998); *United States v. Holt*, 464 F.3d 101, 105-6 (1st Cir. 2006).

²⁶ 666 F.3d 45 (1st Cir. 2012).

²⁷ This procedure required (1) an application by a health officer or law enforcement officer, (2) a medical practitioner’s certificate, and (3) endorsement by a judge that the application and certificate are “regular and in accordance with the law.” Me. Rev. Stat. tit. 34-B, § 3863.

²⁸ The formal commitment procedure requires an adversary hearing, counsel for the patient and an opportunity to testify and to call and cross-examine witnesses. The court must determine whether there is clear and convincing evidence that the patient is mentally ill and poses a likelihood of serious harm, and whether better alternative arrangements exist.

²⁹ 554 U.S. 570 (2008) (announcing an individual constitutional right to possess a firearm).

³⁰ *Rehlander*, 666 F.3d at 48.

³¹ *Id.* at 50.

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read to encompass a temporary hospitalization attended only by [Maine’s] ex parte procedures[.]”³²

Similarly, we held that Louisiana’s (slightly different) ex parte procedure for temporary involuntary hospitalization did not constitute “commitment” in *United States v. Giardina*.³³ At the time, Louisiana law allowed a “mentally ill person” to be involuntarily admitted for “observation, diagnosis, and treatment” for up to 15 days under an emergency certificate issued by a physician.³⁴ A court order was required to detain the person any longer. Like Yoo, Giardina was discharged before those 15 days were up. We concluded that “[t]emporary, emergency detentions for treatment of mental disorders or difficulties, which do not lead to formal commitments under state law, do not constitute the commitment envisioned by 18 U.S.C. § 922.”³⁵

We conclude that Yoo’s temporary hospitalization based on an ex parte order, signed by a judge without a hearing, does not constitute “commitment to a mental institution” within the meaning of § 922(g)(4).³⁶ Accordingly, the judgment of conviction as to Count 8 is REVERSED.

IV. CONCLUSION

For these reasons, Yoo’s conviction as to Counts 1-7 are AFFIRMED, and his conviction as to Count 8 is REVERSED.

³² *Id.* at 49.

³³ 861 F.2d 1334 (5th Cir. 1988).

³⁴ *Id.* at 1336.

³⁵ *Id.* at 1337.

³⁶ See also *United States v. McIlwain*, 772 F.3d 688, 697 (11th Cir. 2014) (finding “commitment” where defendant “received a formal hearing, was represented by an attorney, and the state probate court heard sworn testimony and made substantive findings of fact that it included in its formal order of commitment”); *United States v. Hansel*, 474 F.2d 1120, 1123 (8th Cir. 1973) (“There is nothing in [§ 922(g)(4)] which indicates an intent to prohibit the possession of firearms by persons who had been hospitalized for observation and examination, where they were found not to be mentally ill”).

B. Any other opinions, orders, findings of fact, and conclusions of law entered in the case by courts or administrative agencies, and, if reference thereto is necessary to ascertain the grounds of the judgment, of those in companion cases (each document shall include the caption showing the name of the issuing court or agency, the title and number of the case, and the date of entry).

1) None

C. Any order on rehearing, including the caption showing the name of the issuing court, the title and number of the case, and the date of entry.

1) Order on Petition for Rehearing

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19-40465

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

HEON JONG YOO, also known as Hank Yoo,

Defendant - Appellant

Appeal from the United States District Court
for the Eastern District of Texas

ON PETITION FOR REHEARING

Before DAVIS, GRAVES, and DUNCAN, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing is *denied*.

ENTERED FOR THE COURT:

W. Eugene Duncan
UNITED STATES CIRCUIT JUDGE

D. The judgment sought to be reviewed if the date of its entry is different from the date of the opinion or order required in sub subparagraph (i) of this subparagraph.

1) Court of Appeals' Judgment

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19-40465

United States Court of Appeals
Fifth Circuit

FILED

June 4, 2020

Lyle W. Cayce
Clerk

D.C. Docket No. 6:18-CR-16-1

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

HEON JONG YOO, also known as Hank Yoo,

Defendant - Appellant

Appeal from the United States District Court for the
Eastern District of Texas

Before DAVIS, GRAVES, and DUNCAN, Circuit Judges.

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

It is ordered and adjudged that the judgment of the District Court is affirmed in part and reversed in part.

2) Trial Court's Judgment

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS TYLER DIVISION

UNITED STATES OF AMERICA

v.

HEON JONG YOO§ **JUDGMENT IN A CRIMINAL CASE**

§

§

§ Case Number: **6:18-CR-00016-001**§ USM Number: **27731-078**§ **Pro Se (Jeff Lynn Haas, stand-by counsel)**

§ Defendant's Attorney

THE DEFENDANT:

<input type="checkbox"/>	pleaded guilty to count(s)	
<input type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input checked="" type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	1s-8s of the Superseding Indictment

The defendant is adjudicated guilty of these offenses:

Title & Section / Nature of Offense

18:924(a)(1)(A) False Statement With Respect To Information Required To Be Kept By Federal

Firearms Licensee

18:922(g)(4) and 924(a)(2) Possession of Firearm by Prohibited Person

Offense Ended

04/06/2018

04/06/2018

Count

1s-7s

8s

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)☒ Count(s) 1-7 of the Indictment ☐ is ☒ are dismissed on the motion of the United States

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

May 14, 2019

Date of Imposition of Judgment



Signature of Judge

ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE

Name and Title of Judge

May 15, 2019

Date

19-40465.2220

DEFENDANT: HEON JONG YOO
CASE NUMBER: 6:18-CR-00016-RWS-KNM(1)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

97 months: 60 months on each of Counts 1 through 7 of the Superseding Indictment and 97 months as to Count 8 of the Superseding Indictment, all to be served concurrently.

- ☒ The court makes the following recommendations to the Bureau of Prisons:
- That the defendant receive appropriate mental health treatment while imprisoned.
 - That the defendant be credited for time served from April 6, 2018.
 - That the Bureau of Prisons designate FCI Texarkana or FCI Seagoville as the place of confinement if determined to be appropriate and space is available.

- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district:

☐ at ☐ a.m. ☐ p.m. on

☐ as notified by the United States Marshal.

- ☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

- ☐ before 2 p.m. on
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By
DEPUTY UNITED STATES MARSHAL

DEFENDANT: HEON JONG YOO
CASE NUMBER: 6:18-CR-00016-RWS-KNM(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **three (3) years. This term consists of three (3) years on each count to be served concurrently.**

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

DEFENDANT: HEON JONG YOO
CASE NUMBER: 6:18-CR-00016-RWS-KNM(1)

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at www.txep.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: HEON JONG YOO
CASE NUMBER: 6:18-CR-00016-RWS-KNM(1)

SPECIAL CONDITIONS OF SUPERVISION

As a condition of supervised release, immediately upon release from confinement, you must be surrendered to a duly authorized immigration official for deportation proceedings in accordance with the established procedures provided by the Immigration and Nationality Act, 8 U.S.C. § 1101, et seq. If ordered deported, you must remain outside of the United States. In the event you are not deported, or for any reason re-enter the country after having been deported, you must comply with all conditions of supervised release, to include reporting to the nearest United States Probation Office within 72 hours of release by immigration officials or re-entry into the country.

You must provide the probation officer with access to any requested financial information for purposes of monitoring your efforts to obtain and maintain lawful employment.

You must participate in any combination of psychiatric, psychological, or mental health treatment programs and follow the rules and regulations of that program, until discharged. This includes taking any mental health medication as prescribed by your treating physician. The probation officer, in consultation with the treatment provider, will supervise your participation in the program. You must pay any cost associated with treatment and testing.

DEFENDANT: HEON JONG YOO
CASE NUMBER: 6:18-CR-00016-RWS-KNM(1)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$800.00		\$.00	\$.00

- ☐ The determination of restitution is deferred until *An Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

- ☐ Restitution amount ordered pursuant to plea agreement \$
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- | | | |
|---|-------------------------------|--|
| <input type="checkbox"/> the interest requirement is waived for the | <input type="checkbox"/> fine | <input type="checkbox"/> restitution |
| <input type="checkbox"/> the interest requirement for the | <input type="checkbox"/> fine | <input type="checkbox"/> restitution is modified as follows: |

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: HEON JONG YOO
CASE NUMBER: 6:18-CR-00016-RWS-KNM(1)

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A** ☒ Lump sum payments of \$ 800.00 due immediately, balance due
☐ not later than _____, or
☒ in accordance ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B** ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C** ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D** ☐ Payment in equal 20 (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E** ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F** ☒ Special instructions regarding the payment of criminal monetary penalties:
It is ordered that the Defendant shall pay to the United States a special assessment of \$800.00 for Counts 1s, 2s, 3s, 4s, 5s, 6s, 7s and 8s , which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to: the Clerk, U.S. District Court. Fine & Restitution, 211 West Ferguson Street Rm 106, Tyler, TX 75701.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

See above for Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☒ The defendant shall forfeit the defendant's interest in the following property to the United States:

Any and all firearms, ammunition and accessories seized from the defendant, including, but not limited to, the following:

- (1) Para 1911 Expert .45 caliber pistol (Serial No. 000210NW)
- (2) 458 rounds of unknown manufacturer and caliber ammunition

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVT Assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

E. Material required by subparagraphs 1(f) or 1(g)(i)

- 1) 18 U.S.C. § 922

18 USCS § 922, Part 1 of 3

Current through Public Law 116-158, approved August 14, 2020.

United States Code Service > TITLE 18. CRIMES AND CRIMINAL PROCEDURE (§§ 1 — 6005) > Part I. Crimes (Chs. 1 — 123) > CHAPTER 44. Firearms (§§ 921 — 931)

§ 922. Unlawful acts [Caution: See prospective amendment note below.]

(a) It shall be unlawful—

(1) for any person—

(A) except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce; or

(B) except a licensed importer or licensed manufacturer, to engage in the business of importing or manufacturing ammunition, or in the course of such business, to ship, transport, or receive any ammunition in interstate or foreign commerce;

(2) for any importer, manufacturer, dealer, or collector licensed under the provisions of this chapter [[18 USCS §§ 921](#) et seq.] to ship or transport in interstate or foreign commerce any firearm to any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, except that—

(A) this paragraph and subsection (b)(3) shall not be held to preclude a licensed importer, licensed manufacturer, licensed dealer, or licensed collector from returning a firearm or replacement firearm of the same kind and type to a person from whom it was received; and this paragraph shall not be held to preclude an individual from mailing a firearm owned in compliance with Federal, State, and local law to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector;

(B) this paragraph shall not be held to preclude a licensed importer, licensed manufacturer, or licensed dealer from depositing a firearm for conveyance in the mails to any officer, employee, agent, or watchman who, pursuant to the provisions of section 1715 of this title [[18 USCS § 1715](#)], is eligible to receive through the mails pistols, revolvers, and other firearms capable of being concealed on the person, for use in connection with his official duty; and

(C) nothing in this paragraph shall be construed as applying in any manner in the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States differently than it would apply if the District of Columbia, the Commonwealth of Puerto Rico, or the possession were in fact a State of the United States;

(3) for any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector to transport into or receive in the State where he resides (or if the person is a corporation or other business entity, the State where it maintains a place of business) any firearm purchased or otherwise obtained by such person outside that State, except that this paragraph (A) shall not preclude any person who lawfully acquires a firearm by bequest or intestate succession in a State other than his State of residence from transporting the firearm into or receiving it in that State, if it is lawful for such person to purchase or possess such firearm in that State, (B) shall not apply to the transportation or receipt of a firearm obtained in conformity with subsection (b)(3) of this section, and (C) shall not apply to the transportation of any firearm acquired in any State prior to the effective date of this chapter [effective Dec. 16, 1968];

(4)for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, to transport in interstate or foreign commerce any destructive device, machinegun (as defined in [section 5845 of the Internal Revenue Code of 1954](#) [1986] [[26 USCS § 5845](#)]), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Attorney General consistent with public safety and necessity;

(5)for any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) to transfer, sell, trade, give, transport, or deliver any firearm to any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) who the transferor knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the transferor resides; except that this paragraph shall not apply to (A) the transfer, transportation, or delivery of a firearm made to carry out a bequest of a firearm to, or an acquisition by intestate succession of a firearm by, a person who is permitted to acquire or possess a firearm under the laws of the State of his residence, and (B) the loan or rental of a firearm to any person for temporary use for lawful sporting purposes;

(6)for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter [[18 USCS §§ 921](#) et seq.];

(7)for any person to manufacture or import armor piercing ammunition, unless—

(A)the manufacture of such ammunition is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

(B)the manufacture of such ammunition is for the purpose of exportation; or

(C)the manufacture or importation of such ammunition is for the purpose of testing or experimentation and has been authorized by the Attorney General;

(8)for any manufacturer or importer to sell or deliver armor piercing ammunition, unless such sale or delivery—

(A)is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

(B)is for the purpose of exportation; or

(C)is for the purpose of testing or experimentation and has been authorized by the Attorney General; [and]

(9)for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, who does not reside in any State to receive any firearms unless such receipt is for lawful sporting purposes.

(b)It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver—

(1)any firearm or ammunition to any individual who the licensee knows or has reasonable cause to believe is less than eighteen years of age, and, if the firearm, or ammunition is other than a shotgun or rifle, or ammunition for a shotgun or rifle, to any individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age;

(2)any firearm to any person in any State where the purchase or possession by such person of such firearm would be in violation of any State law or any published ordinance applicable at the place of

sale, delivery or other disposition, unless the licensee knows or has reasonable cause to believe that the purchase or possession would not be in violation of such State law or such published ordinance;

(3)any firearm to any person who the licensee knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the licensee's place of business is located, except that this paragraph (A) shall not apply to the sale or delivery of any rifle or shotgun to a resident of a State other than a State in which the licensee's place of business is located if the transferee meets in person with the transferor to accomplish the transfer, and the sale, delivery, and receipt fully comply with the legal conditions of sale in both such States (and any licensed manufacturer, importer or dealer shall be presumed, for purposes of this subparagraph, in the absence of evidence to the contrary, to have had actual knowledge of the State laws and published ordinances of both States), and (B) shall not apply to the loan or rental of a firearm to any person for temporary use for lawful sporting purposes;

(4)to any person any destructive device, machinegun (as defined in [section 5845 of the Internal Revenue Code of 1954](#) [1986] [\[26 USCS § 5845\]](#)), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Attorney General consistent with public safety and necessity; and

(5)any firearm or armor-piercing ammunition to any person unless the licensee notes in his records, required to be kept pursuant to section 923 of this chapter [\[18 USCS § 923\]](#), the name, age, and place of residence of such person if the person is an individual, or the identity and principal and local places of business of such person if the person is a corporation or other business entity.

Paragraphs (1), (2), (3), and (4) of this subsection shall not apply to transactions between licensed importers, licensed manufacturers, licensed dealers, and licensed collectors. Paragraph (4) of this subsection shall not apply to a sale or delivery to any research organization designated by the Attorney General.

(c)In any case not otherwise prohibited by this chapter [\[18 USCS §§ 921 et seq.\]](#), a licensed importer, licensed manufacturer, or licensed dealer may sell a firearm to a person who does not appear in person at the licensee's business premises (other than another licensed importer, manufacturer, or dealer) only if—

(1)the transferee submits to the transferor a sworn statement in the following form:

"Subject to penalties provided by law, I swear that, in the case of any firearm other than a shotgun or a rifle, I am twenty-one years or more of age, or that, in the case of a shotgun or a rifle, I am eighteen years or more of age; that I am not prohibited by the provisions of chapter 44 of title 18, United States Code [\[18 USCS §§ 921 et seq.\]](#), from receiving a firearm in interstate or foreign commerce; and that my receipt of this firearm will not be in violation of any statute of the State and published ordinance applicable to the locality in which I reside. Further, the true title, name, and address of the principal law enforcement officer of the locality to which the firearm will be delivered are

Signature..... Date....."

and containing blank spaces for the attachment of a true copy of any permit or other information required pursuant to such statute or published ordinance;

(2)the transferor has, prior to the shipment or delivery of the firearm, forwarded by registered or certified mail (return receipt requested) a copy of the sworn statement, together with a description of the firearm, in a form prescribed by the Attorney General, to the chief law enforcement officer of the transferee's place of residence, and has received a return receipt evidencing delivery of the statement or has had the statement returned due to the refusal of the named addressee to accept such letter in accordance with United States Post Office Department [United States Postal Service] regulations; and

(3)the transferor has delayed shipment or delivery for a period of at least seven days following receipt of the notification of the acceptance or refusal of delivery of the statement.

A copy of the sworn statement and a copy of the notification to the local law enforcement officer, together with evidence of receipt or rejection of that notification shall be retained by the licensee as a part of the records required to be kept under section 923(g) [[18 USCS § 923\(g\)](#)].

(d)It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person—

(1)is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2)is a fugitive from justice;

(3)is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act ([21 U.S.C. 802](#)));

(4)has been adjudicated as a mental defective or has been committed to any mental institution;

(5)who, being an alien—

(A)is illegally or unlawfully in the United States; or

(B)except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act ([8 U.S.C. 1101\(a\)\(26\)](#)));

(6)[who] has been discharged from the Armed Forces under dishonorable conditions;

(7)who, having been a citizen of the United States, has renounced his citizenship;

(8)is 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 engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that—

(A)was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and

(B)

(i)includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii)by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9)has been convicted in any court of a misdemeanor crime of domestic violence.

This subsection shall not apply with respect to the sale or disposition of a firearm or ammunition to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector who pursuant to subsection (b) of section 925 of this chapter [[18 USCS § 925](#)] is not precluded from dealing in firearms or ammunition, or to a person who has been granted relief from disabilities pursuant to subsection (c) of section 925 of this chapter [[18 USCS § 925](#)].

(e)It shall be unlawful for any person knowingly to deliver or cause to be delivered to any common or contract carrier for transportation or shipment in interstate or foreign commerce, to persons other than licensed importers, licensed manufacturers, licensed dealers, or licensed collectors, any package or other container in which there is any firearm or ammunition without written notice to the carrier that such firearm or ammunition is being transported or shipped; except that any passenger who owns or legally possesses a firearm or ammunition being transported aboard any common or contract carrier for movement with the passenger in interstate or foreign commerce may deliver said firearm or ammunition into the custody of the pilot, captain, conductor or operator of such common or contract carrier for the duration of the trip without violating any of the

provisions of this chapter [[18 USCS §§ 921](#) et seq.]. No common or contract carrier shall require or cause any label, tag, or other written notice to be placed on the outside of any package, luggage, or other container that such package, luggage, or other container contains a firearm.

(f)

(1)It shall be unlawful for any common or contract carrier to transport or deliver in interstate or foreign commerce any firearm or ammunition with knowledge or reasonable cause to believe that the shipment, transportation, or receipt thereof would be in violation of the provisions of this chapter [[18 USCS §§ 921](#) et seq.].

(2)It shall be unlawful for any common or contract carrier to deliver in interstate or foreign commerce any firearm without obtaining written acknowledgement of receipt from the recipient of the package or other container in which there is a firearm.

(g)It shall be unlawful for any person—

(1)who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2)who is a fugitive from justice;

(3)who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act ([21 U.S.C. 802](#)));

(4)who has been adjudicated as a mental defective or who has been committed to a mental institution;

(5)who, being an alien—

(A)is illegally or unlawfully in the United States; or

(B)except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act ([8 U.S.C. 1101\(a\)\(26\)](#)));

(6)who has been discharged from the Armed Forces under dishonorable conditions;

(7)who, having been a citizen of the United States, has renounced his citizenship;

(8)who is subject to a court order that—

(A)was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B)restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)

(i)includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii)by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9)who has been convicted in any court of a misdemeanor crime of domestic violence,

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(h)It shall be unlawful for any individual, who to that individual's knowledge and while being employed for any person described in any paragraph of subsection (g) of this section, in the course of such employment—

(1)to receive, possess, or transport any firearm or ammunition in or affecting interstate or foreign commerce; or

(2)to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(i)It shall be unlawful for any person to transport or ship in interstate or foreign commerce, any stolen firearm or stolen ammunition, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

(j)It shall be unlawful for any person to receive, possess, conceal, store, barter, sell, or dispose of any stolen firearm or stolen ammunition, or pledge or accept as security for a loan any stolen firearm or stolen ammunition, which is moving as, which is a part of, which constitutes, or which has been shipped or transported in, interstate or foreign commerce, either before or after it was stolen, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

(k)It shall be unlawful for any person knowingly to transport, ship, or receive, in interstate or foreign commerce, any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered, or to possess or receive any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered and has, at any time, been shipped or transported in interstate or foreign commerce.

(l)Except as provided in section 925(d) of this chapter [[18 USCS § 925\(d\)](#)], it shall be unlawful for any person knowingly to import or bring into the United States or any possession thereof any firearm or ammunition; and it shall be unlawful for any person knowingly to receive any firearm or ammunition which has been imported or brought into the United States or any possession thereof in violation of the provisions of this chapter [[18 USCS §§ 921](#) et seq.].

(m)It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector knowingly to make any false entry in, to fail to make appropriate entry in, or to fail to properly maintain, any record which he is required to keep pursuant to section 923 of this chapter [[18 USCS § 923](#)] or regulations promulgated thereunder.

(n)It shall be unlawful for any person who is under indictment for a crime punishable by imprisonment for a term exceeding one year to ship or transport in interstate or foreign commerce any firearm or ammunition or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(o)

(1)Except as provided in paragraph (2), it shall be unlawful for any person to transfer or possess a machinegun.

(2)This subsection does not apply with respect to—

(A)a transfer to or by, or possession by or under the authority of, the United States or any department or agency thereof or a State, or a department, agency, or political subdivision thereof; or

(B)any lawful transfer or lawful possession of a machinegun that was lawfully possessed before the date this subsection takes effect [effective May 19, 1986].

(p)

(1)It shall be unlawful for any person to manufacture, import, sell, ship, deliver, possess, transfer, or receive any firearm—

(A)that, after removal of grips, stocks, and magazines, is not as detectable as the Security Exemplar, by walk-through metal detectors calibrated and operated to detect the Security Exemplar; or

(B)any major component of which, when subjected to inspection by the types of x-ray machines commonly used at airports, does not generate an image that accurately depicts the shape of the component. Barium sulfate or other compounds may be used in the fabrication of the component.

(2)For purposes of this subsection—

(A)the term “firearm” does not include the frame or receiver of any such weapon;

(B)the term “major component” means, with respect to a firearm, the barrel, the slide or cylinder, or the frame or receiver of the firearm; and

(C)the term “Security Exemplar” means an object, to be fabricated at the direction of the Attorney General, that is—

(i)constructed of, during the 12-month period beginning on the date of the enactment of this subsection, 3.7 ounces of material type 17-4 PH stainless steel in a shape resembling a handgun; and

(ii)suitable for testing and calibrating metal detectors:

Provided, however, That at the close of such 12-month period, and at appropriate times thereafter the Attorney General shall promulgate regulations to permit the manufacture, importation, sale, shipment, delivery, possession, transfer, or receipt of firearms previously prohibited under this subparagraph that are as detectable as a “Security Exemplar” which contains 3.7 ounces of material type 17-4 PH stainless steel, in a shape resembling a handgun, or such lesser amount as is detectable in view of advances in state-of-the-art developments in weapons detection technology.

(3)Under such rules and regulations as the Attorney General shall prescribe, this subsection shall not apply to the manufacture, possession, transfer, receipt, shipment, or delivery of a firearm by a licensed manufacturer or any person acting pursuant to a contract with a licensed manufacturer, for the purpose of examining and testing such firearm to determine whether paragraph (1) applies to such firearm. The Attorney General shall ensure that rules and regulations adopted pursuant to this paragraph do not impair the manufacture of prototype firearms or the development of new technology.

(4)The Attorney General shall permit the conditional importation of a firearm by a licensed importer or licensed manufacturer, for examination and testing to determine whether or not the unconditional importation of such firearm would violate this subsection.

(5)This subsection shall not apply to any firearm which—

(A)has been certified by the Secretary of Defense or the Director of Central Intelligence, after consultation with the Attorney General and the Administrator of the Federal Aviation Administration, as necessary for military or intelligence applications; and

(B)is manufactured for and sold exclusively to military or intelligence agencies of the United States.

(6)This subsection shall not apply with respect to any firearm manufactured in, imported into, or possessed in the United States before the date of the enactment of the Undetectable Firearms Act of 1988 [enacted Nov. 10, 1988].

(q)

(1)The Congress finds and declares that—

(A)crime, particularly crime involving drugs and guns, is a pervasive, nationwide problem;

(B)crime at the local level is exacerbated by the interstate movement of drugs, guns, and criminal gangs;

(C)firearms and ammunition move easily in interstate commerce and have been found in increasing numbers in and around schools, as documented in numerous hearings in both the Committee on the Judiciary [of] the House of Representatives and the Committee on the Judiciary of the Senate;

(D)in fact, even before the sale of a firearm, the gun, its component parts, ammunition, and the raw materials from which they are made have considerably moved in interstate commerce;

(E)while criminals freely move from State to State, ordinary citizens and foreign visitors may fear to travel to or through certain parts of the country due to concern about violent crime and gun violence, and parents may decline to send their children to school for the same reason;

(F)the occurrence of violent crime in school zones has resulted in a decline in the quality of education in our country;

(G)this decline in the quality of education has an adverse impact on interstate commerce and the foreign commerce of the United States;

(H)States, localities, and school systems find it almost impossible to handle gun-related crime by themselves—even States, localities, and school systems that have made strong efforts to prevent, detect, and punish gun-related crime find their efforts unavailing due in part to the failure or inability of other States or localities to take strong measures; and

(I)the Congress has the power, under the interstate commerce clause and other provisions of the Constitution, to enact measures to ensure the integrity and safety of the Nation's schools by enactment of this subsection.

(2)

(A)It shall be unlawful for any individual knowingly to possess a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the individual knows, or has reasonable cause to believe, is a school zone.

(B)Subparagraph (A) does not apply to the possession of a firearm—

(i)on private property not part of school grounds;

(ii)if the individual possessing the firearm is licensed to do so by the State in which the school zone is located or a political subdivision of the State, and the law of the State or political subdivision requires that, before an individual obtains such a license, the law enforcement authorities of the State or political subdivision verify that the individual is qualified under law to receive the license;

(iii)that is—

(I)not loaded; and

(II)in a locked container, or a locked firearms rack that is on a motor vehicle;

(iv)by an individual for use in a program approved by a school in the school zone;

(v)by an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;

(vi)by a law enforcement officer acting in his or her official capacity; or

(vii)that is unloaded and is possessed by an individual while traversing school premises for the purpose of gaining access to public or private lands open to hunting, if the entry on school premises is authorized by school authorities.

(3)

(A)Except as provided in subparagraph (B), it shall be unlawful for any person, knowingly or with reckless disregard for the safety of another, to discharge or attempt to discharge a firearm that has

moved in or that otherwise affects interstate or foreign commerce at a place that the person knows is a school zone.

(B) Subparagraph (A) does not apply to the discharge of a firearm—

- (i)** on private property not part of school grounds;
- (ii)** as part of a program approved by a school in the school zone, by an individual who is participating in the program;
- (iii)** by an individual in accordance with a contract entered into between a school in a school zone and the individual or an employer of the individual; or
- (iv)** by a law enforcement officer acting in his or her official capacity.

(4) Nothing in this subsection shall be construed as preempting or preventing a State or local government from enacting a statute establishing gun free school zones as provided in this subsection.

(r) It shall be unlawful for any person to assemble from imported parts any semiautomatic rifle or any shotgun which is identical to any rifle or shotgun prohibited from importation under section 925(d)(3) of this chapter [[18 USCS § 925\(d\)\(3\)](#)] as not being particularly suitable for or readily adaptable to sporting purposes except that this subsection shall not apply to—

- (1)** the assembly of any such rifle or shotgun for sale or distribution by a licensed manufacturer to the United States or any department or agency thereof or to any State or any department, agency, or political subdivision thereof; or
- (2)** the assembly of any such rifle or shotgun for the purposes of testing or experimentation authorized by the Attorney General.

(s)

(1) Beginning on the date that is 90 days after the date of enactment of this subsection [enacted Nov. 30, 1993] and ending on the day before the date that is 60 months after such date of enactment, it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer a handgun (other than the return of a handgun to the person from whom it was received) to an individual who is not licensed under section 923 [[18 USCS § 923](#)], unless—

(A) after the most recent proposal of such transfer by the transferee—

(i) the transferor has—

- (I)** received from the transferee a statement of the transferee containing the information described in paragraph (3);
- (II)** verified the identity of the transferee by examining the identification document presented;
- (III)** within 1 day after the transferee furnishes the statement, provided notice of the contents of the statement to the chief law enforcement officer of the place of residence of the transferee; and
- (IV)** within 1 day after the transferee furnishes the statement, transmitted a copy of the statement to the chief law enforcement officer of the place of residence of the transferee; and

(ii)

- (I)** 5 business days (meaning days on which State offices are open) have elapsed from the date the transferor furnished notice of the contents of the statement to the chief law enforcement officer, during which period the transferor has not received information from the chief law enforcement officer that receipt or possession of the handgun by the transferee would be in violation of Federal, State, or local law; or

- (II) the transferor has received notice from the chief law enforcement officer that the officer has no information indicating that receipt or possession of the handgun by the transferee would violate Federal, State, or local law;
 - (B) the transferee has presented to the transferor a written statement, issued by the chief law enforcement officer of the place of residence of the transferee during the 10-day period ending on the date of the most recent proposal of such transfer by the transferee, stating that the transferee requires access to a handgun because of a threat to the life of the transferee or of any member of the household of the transferee;
 - (C)
 - (i) the transferee has presented to the transferor a permit that—
 - (I) allows the transferee to possess or acquire a handgun; and
 - (II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and
 - (ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of the law;
 - (D) the law of the State requires that, before any licensed importer, licensed manufacturer, or licensed dealer completes the transfer of a handgun to an individual who is not licensed under section 923 [[18 USCS § 923](#)], an authorized government official verify that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of law;
 - (E) the Attorney General has approved the transfer under [section 5812 of the Internal Revenue Code of 1986](#) [[26 USCS § 5812](#)]; or
 - (F) on application of the transferor, the Attorney General has certified that compliance with subparagraph (A)(i)(III) is impracticable because—
 - (i) the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;
 - (ii) the business premises of the transferor at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer; and
 - (iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.
- (2) A chief law enforcement officer to whom a transferor has provided notice pursuant to paragraph (1)(A)(i)(III) shall make a reasonable effort to ascertain within 5 business days whether receipt or possession would be in violation of the law, including research in whatever State and local recordkeeping systems are available and in a national system designated by the Attorney General.
- (3) The statement referred to in paragraph (1)(A)(i)(I) shall contain only—
 - (A) the name, address, and date of birth appearing on a valid identification document (as defined in section 1028(d)(1) [[18 USCS § 1028\(d\)\(1\)](#)]) of the transferee containing a photograph of the transferee and a description of the identification used;
 - (B) a statement that the transferee—
 - (i) is not under indictment for, and has not been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year, and has not been convicted in any court of a misdemeanor crime of domestic violence;
 - (ii) is not a fugitive from justice;

(iii) is not an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act [[21 USCS § 802](#)]);

(iv) has not been adjudicated as a mental defective or been committed to a mental institution;

(v) is not an alien who—

(I) is illegally or unlawfully in the United States; or

(II) subject to subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act ([8 U.S.C. 1101\(a\)\(26\)](#)));

(vi) has not been discharged from the Armed Forces under dishonorable conditions; and

(vii) is not a person who, having been a citizen of the United States, has renounced such citizenship;

(C) the date the statement is made; and

(D) notice that the transferee intends to obtain a handgun from the transferor.

(4) Any transferor of a handgun who, after such transfer, receives a report from a chief law enforcement officer containing information that receipt or possession of the handgun by the transferee violates Federal, State, or local law shall, within 1 business day after receipt of such request, communicate any information related to the transfer that the transferor has about the transfer and the transferee to—

(A) the chief law enforcement officer of the place of business of the transferor; and

(B) the chief law enforcement officer of the place of residence of the transferee.

(5) Any transferor who receives information, not otherwise available to the public, in a report under this subsection shall not disclose such information except to the transferee, to law enforcement authorities, or pursuant to the direction of a court of law.

(6)

(A) Any transferor who sells, delivers, or otherwise transfers a handgun to a transferee shall retain the copy of the statement of the transferee with respect to the handgun transaction, and shall retain evidence that the transferor has complied with subclauses (III) and (IV) of paragraph (1)(A)(i) with respect to the statement.

(B) Unless the chief law enforcement officer to whom a statement is transmitted under paragraph (1)(A)(i)(IV) determines that a transaction would violate Federal, State, or local law—

(i) the officer shall, within 20 business days after the date the transferee made the statement on the basis of which the notice was provided, destroy the statement, any record containing information derived from the statement, and any record created as a result of the notice required by paragraph (1)(A)(i)(III);

(ii) the information contained in the statement shall not be conveyed to any person except a person who has a need to know in order to carry out this subsection; and

(iii) the information contained in the statement shall not be used for any purpose other than to carry out this subsection.

(C) If a chief law enforcement officer determines that an individual is ineligible to receive a handgun and the individual requests the officer to provide the reason for such determination, the officer shall provide such reasons to the individual in writing within 20 business days after receipt of the request.

(7) A chief law enforcement officer or other person responsible for providing criminal history background information pursuant to this subsection shall not be liable in an action at law for damages—

(A)for failure to prevent the sale or transfer of a handgun to a person whose receipt or possession of the handgun is unlawful under this section; or

(B)for preventing such a sale or transfer to a person who may lawfully receive or possess a handgun.

(8)For purposes of this subsection, the term “chief law enforcement officer” means the chief of police, the sheriff, or an equivalent officer or the designee of any such individual.

(9)The Attorney General shall take necessary actions to ensure that the provisions of this subsection are published and disseminated to licensed dealers, law enforcement officials, and the public.

(t)

(1)Beginning on the date that is 30 days after the Attorney General notifies licensees under section 103(d) of the Brady Handgun Violence Prevention Act [note to this section] that the national instant criminal background check system is established, a licensed importer, licensed manufacturer, or licensed dealer shall not transfer a firearm to any other person who is not licensed under this chapter [[18 USCS §§ 921](#) et seq.], unless—

(A)before the completion of the transfer, the licensee contacts the national instant criminal background check system established under section 103 of that Act [note to this section];

(B)

(i)the system provides the licensee with a unique identification number; or

(ii)3 business days (meaning a day on which State offices are open) have elapsed since the licensee contacted the system, and the system has not notified the licensee that the receipt of a firearm by such other person would violate subsection (g) or (n) of this section; and

(C)the transferor has verified the identity of the transferee by examining a valid identification document (as defined in section 1028(d) of this title [[18 USCS § 1028\(d\)](#)]) of the transferee containing a photograph of the transferee.

(2)If receipt of a firearm would not violate section 922 (g) or (n) [[18 USCS § 922\(g\)](#) or (n)] or State law, the system shall—

(A)assign a unique identification number to the transfer;

(B)provide the licensee with the number; and

(C)destroy all records of the system with respect to the call (other than the identifying number and the date the number was assigned) and all records of the system relating to the person or the transfer.

(3)Paragraph (1) shall not apply to a firearm transfer between a licensee and another person if—

(A)

(i)such other person has presented to the licensee a permit that—

(I)allows such other person to possess or acquire a firearm; and

(II)was issued not more than 5 years earlier by the State in which the transfer is to take place; and

(ii)the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a firearm by such other person would be in violation of law;

(B)the Attorney General has approved the transfer under [section 5812 of the Internal Revenue Code of 1986](#) [[26 USCS § 5812](#)]; or

(C)on application of the transferor, the Attorney General has certified that compliance with paragraph (1)(A) is impracticable because—

(i)the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;

(ii)the business premises of the licensee at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer (as defined in subsection (s)(8)); and

(iii)there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

(4)If the national instant criminal background check system notifies the licensee that the information available to the system does not demonstrate that the receipt of a firearm by such other person would violate subsection (g) or (n) or State law, and the licensee transfers a firearm to such other person, the licensee shall include in the record of the transfer the unique identification number provided by the system with respect to the transfer.

(5)If the licensee knowingly transfers a firearm to such other person and knowingly fails to comply with paragraph (1) of this subsection with respect to the transfer and, at the time such other person most recently proposed the transfer, the national instant criminal background check system was operating and information was available to the system demonstrating that receipt of a firearm by such other person would violate subsection (g) or (n) of this section or State law, the Attorney General may, after notice and opportunity for a hearing, suspend for not more than 6 months or revoke any license issued to the licensee under section 923 [[18 USCS § 923](#)], and may impose on the licensee a civil fine of not more than \$5,000.

(6)Neither a local government nor an employee of the Federal Government or of any State or local government, responsible for providing information to the national instant criminal background check system shall be liable in an action at law for damages—

(A)for failure to prevent the sale or transfer of a firearm to a person whose receipt or possession of the firearm is unlawful under this section; or

(B)for preventing such a sale or transfer to a person who may lawfully receive or possess a firearm.

(u)It shall be unlawful for a person to steal or unlawfully take or carry away from the person or the premises of a person who is licensed to engage in the business of importing, manufacturing, or dealing in firearms, any firearm in the licensee's business inventory that has been shipped or transported in interstate or foreign commerce.

(v), (w)[Repealed]

(x)

(1)It shall be unlawful for a person to sell, deliver, or otherwise transfer to a person who the transferor knows or has reasonable cause to believe is a juvenile—

(A)a handgun; or

(B)ammunition that is suitable for use only in a handgun.

(2)It shall be unlawful for any person who is a juvenile to knowingly possess—

(A)a handgun; or

(B)ammunition that is suitable for use only in a handgun.

(3)This subsection does not apply to—

(A)a temporary transfer of a handgun or ammunition to a juvenile or to the possession or use of a handgun or ammunition by a juvenile if the handgun and ammunition are possessed and used by the juvenile—

(i) in the course of employment, in the course of ranching or farming related to activities at the residence of the juvenile (or on property used for ranching or farming at which the juvenile, with the permission of the property owner or lessee, is performing activities related to the operation of the farm or ranch), target practice, hunting, or a course of instruction in the safe and lawful use of a handgun;

(ii) with the prior written consent of the juvenile's parent or guardian who is not prohibited by Federal, State, or local law from possessing a firearm, except—

(I) during transportation by the juvenile of an unloaded handgun in a locked container directly from the place of transfer to a place at which an activity described in clause (i) is to take place and transportation by the juvenile of that handgun, unloaded and in a locked container, directly from the place at which such an activity took place to the transferor; or

(II) with respect to ranching or farming activities as described in clause (i), a juvenile may possess and use a handgun or ammunition with the prior written approval of the juvenile's parent or legal guardian and at the direction of an adult who is not prohibited by Federal, State or local law from possessing a firearm;

(iii) the juvenile has the prior written consent in the juvenile's possession at all times when a handgun is in the possession of the juvenile; and

(iv) in accordance with State and local law;

(B) a juvenile who is a member of the Armed Forces of the United States or the National Guard who possesses or is armed with a handgun in the line of duty;

(C) a transfer by inheritance of title (but not possession) of a handgun or ammunition to a juvenile; or

(D) the possession of a handgun or ammunition by a juvenile taken in defense of the juvenile or other persons against an intruder into the residence of the juvenile or a residence in which the juvenile is an invited guest.

(4) A handgun or ammunition, the possession of which is transferred to a juvenile in circumstances in which the transferor is not in violation of this subsection shall not be subject to permanent confiscation by the Government if its possession by the juvenile subsequently becomes unlawful because of the conduct of the juvenile, but shall be returned to the lawful owner when such handgun or ammunition is no longer required by the Government for the purposes of investigation or prosecution.

(5) For purposes of this subsection, the term "juvenile" means a person who is less than 18 years of age.

(6)

(A) In a prosecution of a violation of this subsection, the court shall require the presence of a juvenile defendant's parent or legal guardian at all proceedings.

(B) The court may use the contempt power to enforce subparagraph (A).

(C) The court may excuse attendance of a parent or legal guardian of a juvenile defendant at a proceeding in a prosecution of a violation of this subsection for good cause shown.

(y) Provisions relating to aliens admitted under nonimmigrant visas.

(1) Definitions. In this subsection—

(A) the term "alien" has the same meaning as in section 101(a)(3) of the Immigration and Nationality Act ([8 U.S.C. 1101\(a\)\(3\)](#)); and

(B) the term "nonimmigrant visa" has the same meaning as in section 101(a)(26) of the Immigration and Nationality Act ([8 U.S.C. 1101\(a\)\(26\)](#)).

(2) Exceptions. Subsections (d)(5)(B), (g)(5)(B), and (s)(3)(B)(v)(II) do not apply to any alien who has been lawfully admitted to the United States under a nonimmigrant visa, if that alien is—

(A) admitted to the United States for lawful hunting or sporting purposes or is in possession of a hunting license or permit lawfully issued in the United States;

(B) an official representative of a foreign government who is—

(i) accredited to the United States Government or the Government's mission to an international organization having its headquarters in the United States; or

(ii) en route to or from another country to which that alien is accredited;

(C) an official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State; or

(D) a foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business.

(3) Waiver.

(A) Conditions for waiver. Any individual who has been admitted to the United States under a nonimmigrant visa may receive a waiver from the requirements of subsection (g)(5), if—

(i) the individual submits to the Attorney General a petition that meets the requirements of subparagraph (C); and

(ii) the Attorney General approves the petition.

(B) Petition. Each petition under subparagraph (B) shall—

(i) demonstrate that the petitioner has resided in the United States for a continuous period of not less than 180 days before the date on which the petition is submitted under this paragraph; and

(ii) include a written statement from the embassy or consulate of the petitioner, authorizing the petitioner to acquire a firearm or ammunition and certifying that the alien would not, absent the application of subsection (g)(5)(B), otherwise be prohibited from such acquisition under subsection (g).

(C) Approval of petition. The Attorney General shall approve a petition submitted in accordance with this paragraph, if the Attorney General determines that waiving the requirements of subsection (g)(5)(B) with respect to the petitioner—

(i) would be in the interests of justice; and

(ii) would not jeopardize the public safety.

(z) Secure gun storage or safety device.

(1) In general. Except as provided under paragraph (2), it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer any handgun to any person other than any person licensed under this chapter [[18 USCS §§ 921](#) et seq.], unless the transferee is provided with a secure gun storage or safety device (as defined in section 921(a)(34) [[18 USCS § 921\(a\)\(34\)](#)]) for that handgun.

(2) Exceptions. Paragraph (1) shall not apply to—

(A)

(i) the manufacture for, transfer to, or possession by, the United States, a department or agency of the United States, a State, or a department, agency, or political subdivision of a State, of a handgun; or

(ii) the transfer to, or possession by, a law enforcement officer employed by an entity referred to in clause (i) of a handgun for law enforcement purposes (whether on or off duty); or

(B) the transfer to, or possession by, a rail police officer directly employed by or contracted by a rail carrier and certified or commissioned as a police officer under the laws of a State of a handgun for purposes of law enforcement (whether on or off duty);

(C) the transfer to any person of a handgun listed as a curio or relic by the Secretary pursuant to section 921(a)(13) [[18 USCS § 921\(a\)\(13\)](#)]; or

(D) the transfer to any person of a handgun for which a secure gun storage or safety device is temporarily unavailable for the reasons described in the exceptions stated in section 923(e) [[18 USCS § 923\(e\)](#)], if the licensed manufacturer, licensed importer, or licensed dealer delivers to the transferee within 10 calendar days from the date of the delivery of the handgun to the transferee a secure gun storage or safety device for the handgun.

(3) Liability for use.

(A) In general. Notwithstanding any other provision of law, a person who has lawful possession and control of a handgun, and who uses a secure gun storage or safety device with the handgun, shall be entitled to immunity from a qualified civil liability action.

(B) Prospective actions. A qualified civil liability action may not be brought in any Federal or State court.

(C) Defined term. As used in this paragraph, the term “qualified civil liability action”—

(i) means a civil action brought by any person against a person described in subparagraph (A) for damages resulting from the criminal or unlawful misuse of the handgun by a third party, if—

(I) the handgun was accessed by another person who did not have the permission or authorization of the person having lawful possession and control of the handgun to have access to it; and

(II) at the time access was gained by the person not so authorized, the handgun had been made inoperable by use of a secure gun storage or safety device; and

(ii) shall not include an action brought against the person having lawful possession and control of the handgun for negligent entrustment or negligence per se.

[Appendix A repealed]

History

HISTORY:

Added June 19, 1968, [P. L. 90-351](#), Title IV, § 902, [82 Stat. 228](#); Oct. 22, 1968, [P. L. 90-618](#), Title I, § 102, [82 Stat. 1216](#); Dec. 21, 1982, [P. L. 97-377](#), Title I, § 165(a), [96 Stat. 1923](#); May 19, 1986, [P. L. 99-308](#), § 102, [100 Stat. 451](#); Aug. 28, 1986, [P. L. 99-408](#), § 2, [100 Stat. 920](#); Nov. 11, 1988, [P. L. 100-649](#), § 2(a), [102 Stat. 3816](#); Nov. 18, 1988, [P. L. 100-690](#), Title VII, Subtitle B, § 7060(c), [102 Stat. 4404](#); Nov. 29, 1990, [P. L. 101-647](#), Title XVII, § 1702(b)(1), Title XXII, §§ 2201, 2202, 2204(b), Title XXXV, § 3524 [104 Stat. 4844](#), 4856, 4857, 4924; Nov. 30, 1993, [P. L. 103-159](#), Title I, § 102(a)(1), (b), Title III, § 302(a)–(c), [107 Stat. 1536](#), 1539, 1545; Sept. 13, 1994, [P. L. 103-322](#), Title XI, Subtitle A, §§ 110102(a), 110103(a), 110106, Subtitle B, § 110201(a), Subtitle D, § 110401(b), (c), Subtitle E, §§ 110511, 110514, Title XXXII, Subtitle I, §§ 320904, 320927, Title XXXIII, § 330011(i), [108 Stat. 1996](#), 1998, 2000, 2010, 2014, 2019, 2125, 2131, 2145; Oct. 11, 1996, [P. L. 104-294](#), Title VI, § 603(b), (c)(1), (d), (e), (f)(1), (g), [110 Stat. 3503](#), 3504; Sept. 30, 1996, [P. L. 104-208](#), Div A, Title I, § 101(f) [Title VI, §§ 657, 658(b)], [110 Stat. 3009-369](#), 3009-372; Oct. 21, 1998, [P. L. 105-277](#), Div A, § 101(b) [Title I, § 121], [112 Stat. 2681-71](#); Nov.

2, 2002, *P. L. 107-273*, Div B, Title IV, § 4003(a)(1), *116 Stat. 1811*; Nov. 25, 2002, *P. L. 107-296*, Title XI, Subtitle B, § 1112(f)(4), (6), *116 Stat. 2276*; Oct. 26, 2005, *P. L. 109-92*, §§ 5(c)(1), 6(a), *119 Stat. 2099, 2101*; Dec. 4, 2015, *P. L. 114-94*, Div A, Title XI, Subtitle D, § 11412(c)(2), *129 Stat. 1688*.

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2) 18 U.S.C. § 924

18 USCS § 924, Part 1 of 4

Current through Public Law 116-158, approved August 14, 2020.

United States Code Service > TITLE 18. CRIMES AND CRIMINAL PROCEDURE (§§ 1 — 6005) > Part I. Crimes (Chs. 1 — 123) > CHAPTER 44. Firearms (§§ 921 — 931)

§ 924. Penalties [Caution: See prospective amendment notes below.]

(a)

(1) Except as otherwise provided in this subsection, subsection (b), (c), (f), or (p) of this section, or in section 929 [[18 USCS § 929](#)], whoever—

(A) knowingly makes any false statement or representation with respect to the information required by this chapter [[18 USCS §§ 921](#) et seq.] to be kept in the records of a person licensed under this chapter [[18 USCS §§ 921](#) et seq.] or in applying for any license or exemption or relief from disability under the provisions of this chapter [[18 USCS §§ 921](#) et seq.];

(B) knowingly violates subsection (a)(4), (f), (k), or (q) of section 922 [[18 USCS § 922](#)];

(C) knowingly imports or brings into the United States or any possession thereof any firearm or ammunition in violation of section 922(l) [[18 USCS § 922\(1\)](#)]; or

(D) willfully violates any other provision of this chapter [[18 USCS §§ 921](#) et seq.],

shall be fined under this title, imprisoned not more than five years, or both.

(2) Whoever knowingly violates subsection (a)(6), (d), (g), (h), (i), (j), or (o) of section 922 [[18 USCS § 922](#)] shall be fined as provided in this title, imprisoned not more than 10 years, or both.

(3) Any licensed dealer, licensed importer, licensed manufacturer, or licensed collector who knowingly—

(A) makes any false statement or representation with respect to the information required by the provisions of this chapter [[18 USCS §§ 921](#) et seq.] to be kept in the records of a person licensed under this chapter [[18 USCS §§ 921](#) et seq.], or

(B) violates subsection (m) of section 922 [[18 USCS § 922](#)],

shall be fined under this title, imprisoned not more than one year, or both.

(4) Whoever violates section 922(q) [[18 USCS § 922\(q\)](#)] shall be fined under this title, imprisoned for not more than 5 years, or both. Notwithstanding any other provision of law, the term of imprisonment imposed under this paragraph shall not run concurrently with any other term of imprisonment imposed under any other provision of law. Except for the authorization of a term of imprisonment of not more than 5 years made in this paragraph, for the purpose of any other law a violation of section 922(q) [[18 USCS § 922\(q\)](#)] shall be deemed to be a misdemeanor.

(5) Whoever knowingly violates subsection (s) or (t) of section 922 [[18 USCS § 922](#)] shall be fined not more than \$1,000, imprisoned for not more than 1 year, or both.

(6)

(A)

(i) A juvenile who violates section 922(x) [[18 USCS § 922\(x\)](#)] shall be fined under this title, imprisoned not more than 1 year, or both, except that a juvenile described in clause (ii) shall be

sentenced to probation on appropriate conditions and shall not be incarcerated unless the juvenile fails to comply with a condition of probation.

(ii) A juvenile is described in this clause if—

(I) the offense of which the juvenile is charged is possession of a handgun or ammunition in violation of section 922(x)(2); and

(II) the juvenile has not been convicted in any court of an offense (including an offense under section 922(x) [[18 USCS § 922\(x\)](#)] or a similar State law, but not including any other offense consisting of conduct that if engaged in by an adult would not constitute an offense) or adjudicated as a juvenile delinquent for conduct that if engaged in by an adult would constitute an offense.

(B) A person other than a juvenile who knowingly violates section 922(x) [[18 USCS § 922\(x\)](#)]—

(i) shall be fined under this title, imprisoned not more than 1 year, or both; and

(ii) if the person sold, delivered, or otherwise transferred a handgun or ammunition to a juvenile knowing or having reasonable cause to know that the juvenile intended to carry or otherwise possess or discharge or otherwise use the handgun or ammunition in the commission of a crime of violence, shall be fined under this title, imprisoned not more than 10 years, or both.

(7) Whoever knowingly violates section 931 [[18 USCS § 931](#)] shall be fined under this title, imprisoned not more than 3 years, or both.

(b) Whoever, with intent to commit therewith an offense punishable by imprisonment for a term exceeding one year, or with knowledge or reasonable cause to believe that an offense punishable by imprisonment for a term exceeding one year is to be committed therewith, ships, transports, or receives a firearm or any ammunition in interstate or foreign commerce shall be fined under this title, or imprisoned not more than ten years, or both.

(c)

(1)

(A) Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime—

(i) be sentenced to a term of imprisonment of not less than 5 years;

(ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and

(iii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.

(B) If the firearm possessed by a person convicted of a violation of this subsection—

(i) is a short-barreled rifle, short-barreled shotgun, or semiautomatic assault weapon, the person shall be sentenced to a term of imprisonment of not less than 10 years; or

(ii) is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, the person shall be sentenced to a term of imprisonment of not less than 30 years.

(C) In the case of a violation of this subsection that occurs after a prior conviction under this subsection has become final, the person shall—

(i) be sentenced to a term of imprisonment of not less than 25 years; and

(ii) if the firearm involved is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, be sentenced to imprisonment for life.

(D) Notwithstanding any other provision of law—

(i) a court shall not place on probation any person convicted of a violation of this subsection; and

(ii) no term of imprisonment imposed on a person under this subsection shall run concurrently with any other term of imprisonment imposed on the person, including any term of imprisonment imposed for the crime of violence or drug trafficking crime during which the firearm was used, carried, or possessed.

(2) For purposes of this subsection, the term “drug trafficking crime” means any felony punishable under the Controlled Substances Act ([21 U.S.C. 801](#) et seq.), the Controlled Substances Import and Export Act ([21 U.S.C. 951](#) et seq.), or chapter 705 of title 46 [[46 USCS §§ 70501](#) et seq.].

(3) For purposes of this subsection the term “crime of violence” means an offense that is a felony and—

(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

(4) For purposes of this subsection, the term “brandish” means, with respect to a firearm, to display all or part of the firearm, or otherwise make the presence of the firearm known to another person, in order to intimidate that person, regardless of whether the firearm is directly visible to that person.

(5) Except to the extent that a greater minimum sentence is otherwise provided under this subsection, or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries armor piercing ammunition, or who, in furtherance of any such crime, possesses armor piercing ammunition, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime or conviction under this section—

(A) be sentenced to a term of imprisonment of not less than 15 years; and

(B) if death results from the use of such ammunition—

(i) if the killing is murder (as defined in section 1111 [[18 USCS § 1111](#)]), be punished by death or sentenced to a term of imprisonment for any term of years or for life; and

(ii) if the killing is manslaughter (as defined in section 1112 [[18 USCS § 1112](#)]), be punished as provided in section 1112 [[18 USCS § 1112](#)].

(d)

(1) Any firearm or ammunition involved in or used in any knowing violation of subsection (a)(4), (a)(6), (f), (g), (h), (i), (j), or (k) of section 922 [[18 USCS § 922](#)], or knowing importation or bringing into the United States or any possession thereof any firearm or ammunition in violation of section 922(l) [[18 USCS § 922\(1\)](#)], or knowing violation of section 924 [[18 USCS § 924](#)], or willful violation of any other provision of this chapter [[18 USCS §§ 921](#) et seq.] or any rule or regulation promulgated thereunder, or any violation of any other criminal law of the United States, or any firearm or ammunition intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1954 [Internal Revenue Code of 1986] [[26 USCS §§ 1](#) et seq.] relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code [[26 USCS § 5845\(a\)](#)], shall, so far as applicable, extend to seizures and forfeitures under the provisions of this

chapter [[18 USCS §§ 921](#) et seq.]: *Provided*, That upon acquittal of the owner or possessor, or dismissal of the charges against him other than upon motion of the Government prior to trial, or lapse of or court termination of the restraining order to which he is subject, the seized or relinquished firearms or ammunition shall be returned forthwith to the owner or possessor or to a person delegated by the owner or possessor unless the return of the firearms or ammunition would place the owner or possessor or his delegate in violation of law. Any action or proceeding for the forfeiture of firearms or ammunition shall be commenced within one hundred and twenty days of such seizure.

(2)

(A) In any action or proceeding for the return of firearms or ammunition seized under the provisions of this chapter [[18 USCS §§ 921](#) et seq.], the court shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

(B) In any other action or proceeding under the provisions of this chapter [[18 USCS §§ 921](#) et seq.], the court, when it finds that such action was without foundation, or was initiated vexatiously, frivolously, or in bad faith, shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

(C) Only those firearms or quantities of ammunition particularly named and individually identified as involved in or used in any violation of the provisions of this chapter [[18 USCS §§ 921](#) et seq.] or any rule or regulation issued thereunder, or any other criminal law of the United States or as intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure, forfeiture, and disposition.

(D) The United States shall be liable for attorneys' fees under this paragraph only to the extent provided in advance by appropriation Acts.

(3) The offenses referred to in paragraphs (1) and (2)(C) of this subsection are—

(A) any crime of violence, as that term is defined in section 924(c)(3) of this title [[18 USCS § 924\(c\)\(3\)](#)] [subsec. (c)(3) of this section];

(B) any offense punishable under the Controlled Substances Act ([21 U.S.C. 801](#) et seq.) or the Controlled Substances Import and Export Act ([21 U.S.C. 951](#) et seq.);

(C) any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of this title [[18 USCS § 922\(a\)\(1\)](#), [922\(a\)\(3\)](#), [922\(a\)\(5\)](#), or [922\(b\)\(3\)](#)] where the firearm or ammunition intended to be used in any such offense is involved in a pattern of activities which includes a violation of any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of this title [[18 USCS § 922\(a\)\(1\)](#), [922\(a\)\(3\)](#), [922\(a\)\(5\)](#), or [922\(b\)\(3\)](#)];

(D) any offense described in section 922(d) of this title [[18 USCS § 922\(d\)](#)] where the firearm or ammunition is intended to be used in such offense by the transferor of such firearm or ammunition;

(E) any offense described in section 922(i), 922(j), 922(l), 922(n), or 924(b) of this title [[18 USCS § 922\(i\)](#), [922\(j\)](#), [922\(l\)](#), [922\(n\)](#), or [924\(b\)](#)]; and

(F) any offense which may be prosecuted in a court of the United States which involves the exportation of firearms or ammunition.

(e)

(1) In the case of a person who violates section 922(g) of this title [[18 USCS § 922\(g\)](#)] and has three previous convictions by any court referred to in section 922(g)(1) of this title [[18 USCS § 922\(g\)\(1\)](#)] for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a

probationary sentence to, such person with respect to the conviction under section 922(g) [[18 USCS § 922\(g\)](#)].

(2)As used in this subsection—

(A)the term “serious drug offense” means—

- (i)**an offense under the Controlled Substances Act ([21 U.S.C. 801](#) et seq.), the Controlled Substances Import and Export Act ([21 U.S.C. 951](#) et seq.), or chapter 705 of title 46 [[46 USCS §§ 70501](#) et seq.], for which a maximum term of imprisonment of ten years or more is prescribed by law; or
- (ii)**an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act ([21 U.S.C. 802](#))), for which a maximum term of imprisonment of ten years or more is prescribed by law;

(B)the term “violent felony” means any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult, that—

- (i)**has as an element the use, attempted use, or threatened use of physical force against the person of another; or
- (ii)**is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another; and

(C)the term “conviction” includes a finding that a person has committed an act of juvenile delinquency involving a violent felony.

(f)In the case of a person who knowingly violates section 922(p) [[18 USCS § 922\(p\)](#)], such person shall be fined under this title, or imprisoned not more than 5 years, or both.

(g)Whoever, with the intent to engage in conduct which—

- (1)**constitutes an offense listed in section 1961(1) [[18 USCS § 1961\(1\)](#)],
- (2)**is punishable under the Controlled Substances Act ([21 U.S.C. 801](#) et seq.), the Controlled Substances Import and Export Act ([21 U.S.C. 951](#) et seq.), or chapter 705 of title 46 [[46 USCS §§ 70501](#) et seq.],
- (3)**violates any State law relating to any controlled substance (as defined in section 102(6) of the Controlled Substances Act ([21 U.S.C. 802\(6\)](#))), or
- (4)**constitutes a crime of violence (as defined in subsection (c)(3)),

travels from any State or foreign country into any other State and acquires, transfers, or attempts to acquire or transfer, a firearm in such other State in furtherance of such purpose, shall be imprisoned not more than 10 years, fined in accordance with this title, or both.

(h)Whoever knowingly transfers a firearm, knowing that such firearm will be used to commit a crime of violence (as defined in subsection (c)(3)) or drug trafficking crime (as defined in subsection (c)(2)) shall be imprisoned not more than 10 years, fined in accordance with this title, or both.

(i)

(1)A person who knowingly violates section 922(u) [[18 USCS § 922\(u\)](#)] shall be fined under this title, imprisoned not more than 10 years, or both.

(2)Nothing contained in this subsection shall be construed as indicating an intent on the part of Congress to occupy the field in which provisions of this subsection operate to the exclusion of State laws on the same subject matter, nor shall any provision of this subsection be construed as invalidating

any provision of State law unless such provision is inconsistent with any of the purposes of this subsection.

(j)A person who, in the course of a violation of subsection (c), causes the death of a person through the use of a firearm, shall—

(1)if the killing is a murder (as defined in section 1111 [[18 USCS § 1111](#)]), be punished by death or by imprisonment for any term of years or for life; and

(2)if the killing is manslaughter (as defined in section 1112 [[18 USCS § 1112](#)]), be punished as provided in that section.

(k)A person who, with intent to engage in or to promote conduct that—

(1)is punishable under the Controlled Substances Act ([21 U.S.C. 801](#) et seq.), the Controlled Substances Import and Export Act ([21 U.S.C. 951](#) et seq.), or chapter 705 of title 46 [[46 USCS §§ 70501](#) et seq.];

(2)violates any law of a State relating to any controlled substance (as defined in section 102 of the Controlled Substances Act, [21 U.S.C. 802](#)); or

(3)constitutes a crime of violence (as defined in subsection (c)(3)),

smuggles or knowingly brings into the United States a firearm, or attempts to do so, shall be imprisoned not more than 10 years, fined under this title, or both.

(l)A person who steals any firearm which is moving as, or is a part of, or which has moved in, interstate or foreign commerce shall be imprisoned for not more than 10 years, fined under this title, or both.

(m)A person who steals any firearm from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector shall be fined under this title, imprisoned not more than 10 years, or both.

(n)A person who, with the intent to engage in conduct that constitutes a violation of section 922(a)(1)(A) [[18 USCS § 922\(a\)\(1\)\(A\)](#)], travels from any State or foreign country into any other State and acquires, or attempts to acquire, a firearm in such other State in furtherance of such purpose shall be imprisoned for not more than 10 years.

(o)A person who conspires to commit an offense under subsection (c) shall be imprisoned for not more than 20 years, fined under this title, or both; and if the firearm is a machinegun or destructive device, or is equipped with a firearm silencer or muffler, shall be imprisoned for any term of years or life.

(p) Penalties relating to secure gun storage or safety device.

(1)In general.

(A)Suspension or revocation of license; civil penalties. With respect to each violation of section 922(z)(1) [[18 USCS § 922\(z\)\(1\)](#)] by a licensed manufacturer, licensed importer, or licensed dealer, the Secretary may, after notice and opportunity for hearing—

(i)suspend for not more than 6 months, or revoke, the license issued to the licensee under this chapter [[18 USCS §§ 921](#) et seq.] that was used to conduct the firearms transfer; or

(ii)subject the licensee to a civil penalty in an amount equal to not more than \$2,500.

(B)Review. An action of the Secretary under this paragraph may be reviewed only as provided under section 923(f) [[18 USCS § 923\(f\)](#)].

(2)Administrative remedies. The suspension or revocation of a license or the imposition of a civil penalty under paragraph (1) shall not preclude any administrative remedy that is otherwise available to the Secretary.

History

HISTORY:

Added June 19, 1968, [P. L. 90-351](#), Title IV, § 902, [82 Stat. 233](#); Oct. 22, 1968, [P. L. 90-618](#), Title I, § 102, *82 Stat. 1223*; Jan. 2, 1971, [P. L. 91-644](#), Title II, § 13, *84 Stat. 1890*; Oct. 12, 1984, [P. L. 98-473](#), Title II, Ch II, § 223(a), Ch X, Part D, § 1005, [98 Stat. 2038](#), 2138; May 19, 1986, [P. L. 99-308](#), § 104(a), *100 Stat. 456*; Oct. 27, 1986, [P. L. 99-570](#), Title I, Subtitle I, § 1402, [100 Stat. 3207-39](#); Nov. 11, 1988, *P. L. 100-649*, § 2(b), *102 Stat. 3817*; Nov. 18, 1988, *P. L. 100-690*, Title VI, Subtitle G, § 6211, Subtitle N, §§ 6451, 6460, 6462, Title VII, Subtitle B, §§ 7056, 7060(a), *102 Stat. 4361*, 4371, 4373, 4374, 4402, 4403; Nov. 29, 1990, *P. L. 101-647*, Title XI § 1101, Title XVII, § 1702(b)(3), Title XXII, §§ 2203(d), 2204(c), Title XXXV, §§ 3526-3529, *104 Stat. 4829*, 4845, 4857, 4924; Nov. 30, 1993, *P. L. 103-159*, Title I, § 102(c), Title III, § 302(d), *107 Stat. 1541*, 1545; Sept. 13, 1994, *P. L. 103-322*, Title VI, § 60013, Title XI, Subtitle A, §§ 110102(c), 110103(c), Subtitle B, § 110201(b), Subtitle D, § 110401(e), Subtitle E, §§ 110503, 110504(a), 110507, 110510, 110515(a), 110517, 110518, Title XXXIII, §§ 330002(h), 330003(f)(2), 330011(i), (j), 330016(1)(H), (K), (L), *108 Stat. 1973*, 1998, 1999, 2011, 2015, 2016, 2018–2020, 2140, 2141, 2145, 2147; Oct. 11, 1996, *P. L. 104-294*, Title VI, § 603(m)(1), (n), (o), (p)(1), (q)–(s), *110 Stat. 3505*; Nov. 13, 1998, *P. L. 105-386*, § 1(a), *112 Stat. 3469*; Nov. 2, 2002, *P. L. 107-273*, Div B, Title IV, § 4002(d)(1)(E), Div C, Title I, Subtitle A, § 11009(e)(3), *116 Stat. 1809*, 1821; Dec. 9, 2003, *P. L. 108-174*, § 1(2), (3), *117 Stat. 2481*; Oct. 26, 2005, *P. L. 109-92*, §§ 5(c)(2), 6(b), *119 Stat. 2100*, 2102; Oct. 6, 2006, *P. L. 109-304*, § 17(d)(3), *120 Stat. 1707*; Dec. 21, 2018, *P. L. 115-391*, Title IV, § 403(a), *132 Stat. 5221*, 5222.

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3) 27 C.F.R. 148.124

27 CFR 478.124

This document is current through the August 25, 2020 issue of the Federal Register. Title 3 is current through August 7, 2020.

Code of Federal Regulations > TITLE 27 -- ALCOHOL, TOBACCO PRODUCTS AND FIREARMS > CHAPTER II -- BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES, DEPARTMENT OF JUSTICE > SUBCHAPTER B -- FIREARMS AND AMMUNITION > PART 478 -- COMMERCE IN FIREARMS AND AMMUNITION > SUBPART H -- RECORDS

§ 478.124 Firearms transaction record.

(a) A licensed importer, licensed manufacturer, or licensed dealer shall not sell or otherwise dispose, temporarily or permanently, of any firearm to any person, other than another licensee, unless the licensee records the transaction on a firearms transaction record, Form 4473: Provided, That a firearms transaction record, Form 4473, shall not be required to record the disposition made of a firearm delivered to a licensee for the sole purpose of repair or customizing when such firearm or a replacement firearm is returned to the person from whom received.

(b) A licensed manufacturer, licensed importer, or licensed dealer shall retain in alphabetical (by name of purchaser), chronological (by date of disposition), or numerical (by transaction serial number) order, and as a part of the required records, each Form 4473 obtained in the course of transferring custody of the firearms.

(c)

(1) Prior to making an over-the-counter transfer of a firearm to a nonlicensee who is a resident of the State in which the licensee's business premises is located, the licensed importer, licensed manufacturer, or licensed dealer so transferring the firearm shall obtain a Form 4473 from the transferee showing the transferee's name, sex, residence address (including county or similar political subdivision), date and place of birth; height, weight and race of the transferee; the transferee's country of citizenship; the transferee's INS-issued alien number or admission number; the transferee's State of residence; and certification by the transferee that the transferee is not prohibited by the Act from transporting or shipping a firearm in interstate or foreign commerce or receiving a firearm which has been shipped or transported in interstate or foreign commerce or possessing a firearm in or affecting commerce.

(2) In order to facilitate the transfer of a firearm and enable NICS to verify the identity of the person acquiring the firearm, ATF Form 4473 also requests certain optional information. This information includes the transferee's social security number. Such information may help avoid the possibility of the transferee being misidentified as a felon or other prohibited person.

(3) After the transferee has executed the Form 4473, the licensee:

(i) Shall verify the identity of the transferee by examining the identification document (as defined in § 478.11) presented, and shall note on the Form 4473 the type of identification used;

(ii) [Reserved]

(iii) Must, in the case of a transferee who is an alien admitted to the United States under a nonimmigrant visa who states that he or she falls within an exception to, or has a waiver from, the prohibition in section 922(g)(5)(B) of the Act, have the transferee present applicable documentation establishing the exception or waiver, note on the Form 4473 the type of documentation provided, and attach a copy of the documentation to the Form 4473; and

(iv) Shall comply with the requirements of § 478.102 and record on the form the date on which the licensee contacted the NICS, as well as any response provided by the system, including any identification number provided by the system.

(4) The licensee shall identify the firearm to be transferred by listing on the Form 4473 the name of the manufacturer, the name of the importer (if any), the type, model, caliber or gauge, and the serial number of the firearm.

(5) The licensee shall sign and date the form if the licensee does not know or have reasonable cause to believe that the transferee is disqualified by law from receiving the firearm and transfer the firearm described on the Form 4473.

(d) Prior to making an over-the-counter transfer of a shotgun or rifle under the provisions contained in § 478.96(c) to a nonlicensee who is not a resident of the State in which the licensee's business premises is located, the licensee so transferring the shotgun or rifle, and such transferee, shall comply with the requirements of paragraph (c) of this section.

(e) Prior to making a transfer of a firearm to any nonlicensee who is not a resident of the State in which the licensee's business premises is located, and such nonlicensee is acquiring the firearm by loan or rental from the licensee for temporary use for lawful sporting purposes, the licensed importer, licensed manufacturer, or licensed dealer so furnishing the firearm, and such transferee, shall comply with the provisions of paragraph (c) of this section.

(f) Form 4473 shall be submitted, in duplicate, to a licensed importer, licensed manufacturer, or licensed dealer by a transferee who is purchasing or otherwise acquiring a firearm by other than an over-the-counter transaction, who is not subject to the provisions of § 478.102(a), and who is a resident of the State in which the licensee's business premises are located. The Form 4473 shall show the name, address, date and place of birth, height, weight, and race of the transferee; and the title, name, and address of the principal law enforcement officer of the locality to which the firearm will be delivered. The transferee also must date and execute the sworn statement contained on the form showing, in case the firearm to be transferred is a firearm other than a shotgun or rifle, the transferee is 21 years or more of age; in case the firearm to be transferred is a shotgun or rifle, the transferee is 18 years or more of age; whether the transferee is a citizen of the United States; the transferee's State of residence; the transferee is not prohibited by the provisions of the Act from shipping or transporting a firearm in interstate or foreign commerce or receiving a firearm which has been shipped or transported in interstate or foreign commerce or possessing a firearm in or affecting commerce; and the transferee's receipt of the firearm would not be in violation of any statute of the State or published ordinance applicable to the locality in which the transferee resides. Upon receipt of such Forms 4473, the licensee shall identify the firearm to be transferred by listing in the Forms 4473 the name of the manufacturer, the name of the importer (if any), the type, model, caliber or gauge, and the serial number of the firearm to be transferred. The licensee shall prior to shipment or delivery of the firearm to such transferee, forward by registered or certified mail (return receipt requested) a copy of the Form 4473 to the principal law enforcement officer named in the Form 4473 by the transferee, and shall delay shipment or delivery of the firearm to the transferee for a period of at least 7 days following receipt by the licensee of the return receipt evidencing delivery of the copy of the Form 4473 to such principal law enforcement officer, or the return of the copy of the Form 4473 to the licensee due to the refusal of such principal law enforcement officer to accept same in accordance with U.S. Postal Service regulations. The original Form 4473, and evidence of receipt or rejection of delivery of the copy of the Form 4473 sent to the principal law enforcement officer, shall be retained by the licensee as a part of the records required to be kept under this subpart.

(g) A licensee who sells or otherwise disposes of a firearm to a nonlicensee who is other than an individual, shall obtain from the transferee the information required by this section from an individual authorized to act on behalf of the transferee. In addition, the licensee shall obtain from the individual acting on behalf of the transferee a written statement, executed under the penalties of perjury, that the firearm is being acquired for the use of and will be the property of the transferee, and showing the name and address of that transferee.

(h) The requirements of this section shall be in addition to any other recordkeeping requirement contained in this part.

(i) A licensee may obtain, upon request, an emergency supply of Forms 4473 from any Director of Industry Operations. For normal usage, a licensee should request a year's supply from the ATF Distribution Center (See § 478.21).

(Paragraph (c) approved by the Office of Management and Budget under control numbers 1140-0045, 1140-0020, and 1140-0060; paragraph (f) approved by the Office of Management and Budget under control number 1140-0021; all other recordkeeping approved by the Office of Management and Budget under control number 1140-0020)

Statutory Authority

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

[5 U.S.C. 552](#)(a); [18 U.S.C. 921](#)-931; [44 U.S.C. 3504](#)(h).

History

[\[33 FR 18555\]](#), Dec. 14, 1968, as amended by [49 FR 14942](#), Apr. 16, 1984; [51 FR 39625](#), Oct. 29, 1986; [53 FR 10502](#), Mar. 31, 1988; [62 FR 19442, 19444](#), Apr. 21, 1997; [63 FR 58272, 58279](#), Oct. 29, 1998; [64 FR 17291](#), Apr. 9, 1999; [67 FR 5422, 5426](#), Feb. 5, 2002; redesignated and amended at [68 FR 3744, 3750](#), Jan. 24, 2003; [73 FR 57239, 57241](#), Oct. 2, 2008; [77 FR 33625, 33630](#), June 7, 2012; [77 FR 33630, 33634](#), June 7, 2012]

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4) 8 U.S.C. § 1011

8 USCS § 1101, Part 1 of 3

Current through Public Law 116-158, approved August 14, 2020.

United States Code Service > TITLE 8. ALIENS AND NATIONALITY (Chs. 1 — 15) > CHAPTER 12. IMMIGRATION AND NATIONALITY (§§ 1101 — 1537) > GENERAL PROVISIONS (§§ 1101 — 1107)

§ 1101. Definitions

(a)As used in this Act—

(1)The term “administrator” means the official designated by the Secretary of State pursuant to section 104(b) of this Act [[8 USCS § 1104\(b\)](#)].

(2)The term “advocates” includes, but is not limited to, advises, recommends, furthers by overt act, and admits belief in.

(3)The term “alien” means any person not a citizen or national of the United States.

(4)The term “application for admission” has reference to the application for admission into the United States and not to the application for the issuance of an immigrant or nonimmigrant visa.

(5)The term “Attorney General” means the Attorney General of the United States.

(6)The term “border crossing identification card” means a document of identity bearing that designation issued to an alien who is lawfully admitted for permanent residence, or to an alien who is a resident in foreign contiguous territory, by a consular officer or an immigration officer for the purpose of crossing over the borders between the United States and foreign contiguous territory in accordance with such conditions for its issuance and use as may be prescribed by regulations. Such regulations shall provide that (A) each such document include a biometric identifier (such as the fingerprint or handprint of the alien) that is machine readable and (B) an alien presenting a border crossing identification card is not permitted to cross over the border into the United States unless the biometric identifier contained on the card matches the appropriate biometric characteristic of the alien.

(7)The term “clerk of court” means a clerk of a naturalization court.

(8)The terms “Commissioner” and “Deputy Commissioner” mean the Commissioner of Immigration and Naturalization and a Deputy Commissioner of Immigration and Naturalization, respectively.

(9)The term “consular officer” means any consular, diplomatic, or other officer or employee of the United States designated under regulations prescribed under authority contained in this Act, for the purpose of issuing immigrant or nonimmigrant visas or, when used in title III [[8 USCS §§ 1401](#) et seq.], for the purpose of adjudicating nationality.

(10)The term “crewman” means a person serving in any capacity on board a vessel or aircraft.

(11)The term “diplomatic visa” means a nonimmigrant visa bearing that title and issued to a nonimmigrant in accordance with such regulations as the Secretary of State may prescribe.

(12)The term “doctrine” includes, but is not limited to, policies, practices, purposes, aims, or procedures.

(13)

(A)The terms “admission” and “admitted” mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.

(B)An alien who is paroled under section 212(d)(5) [[8 USCS § 1182\(d\)\(5\)](#)] or permitted to land temporarily as an alien crewman shall not be considered to have been admitted.

(C)An alien lawfully admitted for permanent residence in the United States shall not be regarded as seeking an admission into the United States for purposes of the immigration laws unless the alien—

(i)has abandoned or relinquished that status,

(ii)has been absent from the United States for a continuous period in excess of 180 days,

(iii)has engaged in illegal activity after having departed the United States,

(iv)has departed from the United States while under legal process seeking removal of the alien from the United States, including removal proceedings under this Act and extradition proceedings,

(v)has committed an offense identified in section 212(a)(2) [[8 USCS § 1182\(a\)\(2\)](#)], unless since such offense the alien has been granted relief under section 212(h) or 240A(a) [[8 USCS § 1182\(h\)](#) or [1229b\(a\)](#)], or

(vi)is attempting to enter at a time or place other than as designated by immigration officers or has not been admitted to the United States after inspection and authorization by an immigration officer.

(14)The term “foreign state” includes outlying possessions of a foreign state, but self-governing dominions or territories under mandate or trusteeship shall be regarded as separate foreign states.

(15)The term “immigrant” means every alien except an alien who is within one of the following classes of nonimmigrant aliens—

(A)

(i)an ambassador, public minister, or career diplomatic or an ambassador, public minister, or career diplomatic or consular officer who has been accredited by a foreign government recognized de jure by the United States and who is accepted by the President or by the Secretary of State, and the members of the alien’s immediate family;

(ii)upon a basis of reciprocity, other officials and employees who have been accredited by a foreign government recognized de jure by the United States, who are accepted by the Secretary of State, and the members of their immediate families; and

(iii)upon a basis of reciprocity, attendants, servants, personal employees, and members of their immediate families, of the officials and employees who have a nonimmigrant status under (i) and (ii) above;

(B)an alien (other than one coming for the purpose of study or of performing skilled or unskilled labor or as a representative of foreign press, radio, film, or other foreign information media coming to engage in such vocation) having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure;

(C)an alien in immediate and continuous transit through the United States, or an alien who qualifies as a person entitled to pass in transit to and from the United Nations Headquarters District and foreign countries, under the provisions of paragraphs (3), (4), and (5) of section 11 of the Headquarters Agreement with the United Nations (*61 Stat. 758*) [[22 USCS § 287](#) note];

(D)

(i)an alien crewman serving in good faith as such in a capacity required for normal operation and service on board a vessel, as defined in section 258(a) [[8 USCS § 1288\(a\)](#)] (other than a fishing vessel having its home port or an operating base in the United States), or aircraft, who

intends to land temporarily and solely in pursuit of his calling as a crewman and to depart from the United States with the vessel or aircraft on which he arrived or some other vessel or aircraft;

(ii) an alien crewman serving in good faith as such in any capacity required for normal operations and service aboard a fishing vessel having its home port or an operating base in the United States who intends to land temporarily in Guam or the Commonwealth of the Northern Mariana Islands and solely in pursuit of his calling as a crewman and to depart from Guam or the Commonwealth of the Northern Mariana Island with the vessel on which he arrived;

(E) an alien entitled to enter the United States under and in pursuance of the provisions of a treaty of commerce and navigation between the United States and the foreign state of which he is a national, and the spouse and children of any such alien if accompanying or following to join him: (i) solely to carry on substantial trade, including trade in services or trade in technology, principally between the United States and the foreign state of which he is a national; (ii) solely to develop and direct the operations of an enterprise in which he has invested, or of an enterprise in which he is actively in the process of investing, a substantial amount of capital; or (iii) solely to perform services in a specialty occupation in the United States if the alien is a national of the Commonwealth of Australia and with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed with the Secretary of Labor an attestation under section 212(t)(1) [[8 USCS § 1182\(t\)\(1\)](#)];

(F)(i) an alien having a residence in a foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study consistent with section 214(l) at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in an accredited language training program in the United States, particularly designated by him and approved by the Attorney General after consultation with the Secretary of Education, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student, and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn, (ii) the alien spouse and minor children of any alien described in clause (i) if accompanying or following to join such an alien, and (iii) an alien who is a national of Canada or Mexico, who maintains actual residence and place of abode in the country of nationality, who is described in clause (i) except that the alien's qualifications for and actual course of study may be full or part-time, and who commutes to the United States institution or place of study from Canada or Mexico;

(G)

(i) a designated principal resident representative of a foreign government recognized de jure by the United States, which foreign government is a member of an international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act ([59 Stat. 669](#)), accredited resident members of the staff of such representatives, and members of his or their immediate family;

(ii) other accredited representatives of such a foreign government to such international organizations, and the members of their immediate families;

(iii) an alien able to qualify under (i) or (ii) above except for the fact that the government of which such alien is an accredited representative is not recognized de jure by the United States, or that the government of which he is an accredited representative is not a member of such international organization, and the members of his immediate family;

(iv) officers, or employees of such international organizations, and the members of their immediate families;

(v)attendants, servants, and personal employees of any such representative, officer, or employee, and the members of the immediate families of such attendants, servants, and personal employees;

(H)[Caution: For expiration of amendments made to this subparagraph by Act Nov. 12, 1999, P. L. 106-95, see § 2(e) of such Act, which appears as [8 USCS § 1182](#) note.] an alien (i)(a) [Deleted] (b) subject to section 212(j)(2) [[8 USCS § 1182\(j\)\(2\)](#)] who is coming temporarily to the United States to perform services (other than services described in subclause (a) during the period in which such subclause applies and other than services described in subclause (ii)(a) or in subparagraph (O) or (P)) in a specialty occupation described in section 214(i)(1) [[8 USCS § 1184\(i\)\(1\)](#)] or as a fashion model, who meets the requirements for the occupation specified in section 214(i)(2) [[8 USCS § 1184\(i\)\(2\)](#)] or, in the case of a fashion model, is of distinguished merit and ability, and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under section 212(n)(1) [[8 USCS § 1182\(n\)\(1\)](#)], or (b1) who is entitled to enter the United States under and in pursuance of the provisions of an agreement listed in section 214(g)(8)(A) [[8 USCS § 1184\(g\)\(8\)\(A\)](#)], who is engaged in a specialty occupation described in section 214(i)(3) [[8 USCS § 1184\(i\)\(3\)](#)], and with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed with the Secretary of Labor an attestation under section 212(t)(1) [[8 USCS § 1182\(t\)\(1\)](#)], or (c) who is coming temporarily to the United States to perform services as a registered nurse, who meets the qualifications described in section 212(m)(1) [[8 USCS § 1182\(m\)\(1\)](#)], and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that an unexpired attestation is on file and in effect under section 212(m)(2) [[8 USCS § 1182\(m\)\(2\)](#)] for the facility (as defined in section 212(m)(6)) [[8 USCS § 1182\(m\)\(6\)](#)] for which the alien will perform the services; or (ii)(a) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform agricultural labor or services, as defined by the Secretary of Labor in regulations and including agricultural labor defined in [section 3121\(g\) of the Internal Revenue Code of 1986](#) [[26 USCS § 3121\(g\)](#)], agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938 ([29 U.S.C. 203\(f\)](#)), and the pressing of apples for cider on a farm, of a temporary or seasonal nature, or (b) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform other temporary service or labor if unemployed persons capable of performing such service or labor cannot be found in this country, but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession; or (iii) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training; and the alien spouse and minor children of any such alien specified in this paragraph if accompanying him or following to join him, in a training program that is not designed primarily to provide productive employment;

(I)upon a basis of reciprocity, an alien who is a bona fide representative of foreign press, radio, film, or other foreign information media, who seeks to enter the United States solely to engage in such vocation, and the spouse and children of such a representative, if accompanying or following to join him;

(J)an alien having a residence in a foreign country which he has no intention of abandoning who is a bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or skill, or other person of similar description, who is coming temporarily to the United States as a participant in a program designated by the Director of the United States Information Agency, for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training and who, if he is coming to the United States to participate in a program under which he will receive graduate medical education or training, also meets the requirements of section 212(j) [[8 USCS §](#)

[1182\(j\)](#)], and the alien spouse and minor children of any such alien if accompanying him or following to join him;

(K)subject to subsections (d) and (p) of section 214 [\[8 USCS § 1184\]](#), an alien who—

(i)is the fiancée or fiancé of a citizen of the United States (other than a citizen described in section 204(a)(1)(A)(viii)(I) [\[8 USCS § 1154\(a\)\(1\)\(A\)\(viii\)\(I\)\]](#)) and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after admission;

(ii)has concluded a valid marriage with a citizen of the United States (other than a citizen described in section 204(a)(1)(A)(viii)(I) [\[8 USCS § 1154\(a\)\(1\)\(A\)\(viii\)\(I\)\]](#)) who is the petitioner, is the beneficiary of a petition to accord a status under section 201(b)(2)(A)(i) [\[8 USCS § 1151\(b\)\(2\)\(A\)\(i\)\]](#) that was filed under section 204 [\[8 USCS § 1154\]](#) by the petitioner, and seeks to enter the United States to await the approval of such petition and the availability to the alien of an immigrant visa; or

(iii)is the minor child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien;

(L)subject to section 214(c)(2) [\[8 USCS § 1184\(c\)\(2\)\]](#), an alien who, within 3 years preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge, and the alien spouse and minor children of any such alien if accompanying him or following to join him;

(M)(i) an alien having a residence in a foreign country which he has no intention of abandoning who seeks to enter the United States temporarily and solely for the purpose of pursuing a full course of study at an established vocational or other recognized nonacademic institution (other than in a language training program) in the United States particularly designated by him and approved by the Attorney General, after consultation with the Secretary of Education, which institution shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant nonacademic student and if any such institution fails to make reports promptly the approval shall be withdrawn, (ii) the alien spouse and minor children of any alien described in clause (i) if accompanying or following to join such an alien, and (iii) an alien who is a national of Canada or Mexico, who maintains actual residence and place of abode in the country of nationality, who is described in clause (i) except that the alien's course of study may be full or part-time, and who commutes to the United States institution or place of study from Canada or Mexico;

(N)

(i)the parent of an alien accorded the status of special immigrant under paragraph (27)(I)(i) (or under analogous authority under paragraph (27)(L)), but only if and while the alien is a child, or

(ii)a child of such parent or of an alien accorded the status of a special immigrant under clause (ii), (iii), or (iv) of paragraph (27)(I) (or under analogous authority under paragraph (27)(L));

(O)an alien who—

(i)has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim or, with regard to motion picture and television productions a demonstrated record of extraordinary achievement, and whose achievements have been recognized in the field through extensive documentation, and seeks to enter the United States to continue work in the area of extraordinary ability;

(ii)

(I) seeks to enter the United States temporarily and solely for the purpose of accompanying and assisting in the artistic or athletic performance by an alien who is admitted under clause (i) for a specific event or events,

(II) is an integral part of such actual performance,

(III)(a) has critical skills and experience with such alien which are not of a general nature and which cannot be performed by other individuals, or (b) in the case of a motion picture or television production, has skills and experience with such alien which are not of a general nature and which are critical either based on a pre-existing longstanding working relationship or, with respect to the specific production, because significant production (including pre- and post-production work) will take place both inside and outside the United States and the continuing participation of the alien is essential to the successful completion of the production, and

(IV) has a foreign residence which the alien has no intention of abandoning; or

(iii) is the alien spouse or child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien;

(P) an alien having a foreign residence which the alien has no intention of abandoning who—

(i)(a) is described in section 214(c)(4)(A) [[8 USCS § 1184\(c\)\(4\)\(A\)](#)] (relating to athletes), or (b) is described in section 214(c)(4)(B) [[8 USCS § 1184\(c\)\(4\)\(B\)](#)] (relating to entertainment groups);

(ii)

(I) performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and

(II) seeks to enter the United States temporarily and solely for the purpose of performing as such an artist or entertainer or with such a group under a reciprocal exchange program which is between an organization or organizations in the United States and an organization or organizations in one or more foreign states and which provides for the temporary exchange of artists and entertainers, or groups of artists and entertainers;

(iii)

(I) performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and

(II) seeks to enter the United States temporarily and solely to perform, teach, or coach as such an artist or entertainer or with such a group under a commercial or noncommercial program that is culturally unique; or

(iv) is the spouse or child of an alien described in clause (i), (ii), or (iii) and is accompanying, or following to join, the alien;

(Q) an alien having a residence in a foreign country which he has no intention of abandoning who is coming temporarily (for a period not to exceed 15 months) to the United States as a participant in an international cultural exchange program approved by the Secretary of Homeland Security for the purpose of providing practical training, employment, and the sharing of the history, culture, and traditions of the country of the alien's nationality and who will be employed under the same wages and working conditions as domestic workers;

(R) an alien, and the spouse and children of the alien if accompanying or following to join the alien, who—

(i)for the 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States; and

(ii)seeks to enter the United States for a period not to exceed 5 years to perform the work described in subclause (I), (II), or (III) of paragraph (27)(C)(ii);

(S)subject to section 214(k) [[8 USCS § 1184\(k\)](#)], an alien—

(i)who the Attorney General determines—

(I)is in possession of critical reliable information concerning a criminal organization or enterprise;

(II)is willing to supply or has supplied such information to Federal or State law enforcement authorities or a Federal or State court; and

(III)whose presence in the United States the Attorney General determines is essential to the success of an authorized criminal investigation or the successful prosecution of an individual involved in the criminal organization or enterprise; or

(ii)who the Secretary of State and the Attorney General jointly determine—

(I)is in possession of critical reliable information concerning a terrorist organization, enterprise, or operation;

(II)is willing to supply or has supplied such information to Federal law enforcement authorities or a Federal court;

(III)will be or has been placed in danger as a result of providing such information; and

(IV)is eligible to receive a reward under section 36(a) of the State Department Basic Authorities Act of 1956 [[22 USCS § 2708\(a\)](#)],

and, if the Attorney General (or with respect to clause (ii), the Secretary of State and the Attorney General jointly) considers it to be appropriate, the spouse, married and unmarried sons and daughters, and parents of an alien described in clause (i) or (ii) if accompanying, or following to join, the alien;

(T)

(i)subject to section 214(o) [[8 USCS § 1184\(o\)](#)], an alien who the Secretary of Homeland Security, or in the case of subclause (III)(aa) the Secretary of Homeland Security, in consultation with the Attorney General, determines—

(I)is or has been a victim of a severe form of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000 [[22 USCS § 7102](#)];

(II)is physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry thereto, on account of such trafficking, including physical presence on account of the alien having been allowed entry into the United States for participation in investigative or judicial processes associated with an act or a perpetrator of trafficking;

(III)

(aa)has complied with any reasonable request for assistance in the Federal, State, or local investigation or prosecution of acts of trafficking or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime;

(bb)in consultation with the Attorney General, as appropriate, is unable to cooperate with a request described in item (aa) due to physical or psychological trauma; or

(cc)has not attained 18 years of age; and

(IV)the alien would suffer extreme hardship involving unusual and severe harm upon removal; and

(ii)if accompanying, or following to join, the alien described in clause (i)—

(I)in the case of an alien described in clause (i) who is under 21 years of age, the spouse, children, unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause, and parents of such alien;

(II)in the case of an alien described in clause (i) who is 21 years of age or older, the spouse and children of such alien; or

(III)any parent or unmarried sibling under 18 years of age, or any adult or minor children of a derivative beneficiary of the alien, as of an alien described in subclause (I) or (II) who the Secretary of Homeland Security, in consultation with the law enforcement officer investigating a severe form of trafficking, determines faces a present danger of retaliation as a result of the alien's escape from the severe form of trafficking or cooperation with law enforcement.

(iii)[Deleted]

(U)

(i)subject to section 214(p) [[8 USCS § 1184\(p\)](#)], an alien who files a petition for status under this subparagraph, if the Secretary of Homeland Security determines that—

(I)the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii);

(II)the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) possesses information concerning criminal activity described in clause (iii);

(III)the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity described in clause (iii); and

(IV)the criminal activity described in clause (iii) violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States;

(ii)if accompanying, or following to join, the alien described in clause (i)—

(I)in the case of an alien described in clause (i) who is under 21 years of age, the spouse, children, unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause, and parents of such alien; or

(II)in the case of an alien described in clause (i) who is 21 years of age or older, the spouse and children of such alien; and

(iii)the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting (as defined in [section 1351 of title 18, United](#)

[States Code](#)); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes; or

(V)subject to section 214(q) [\[8 USCS § 1184\(q\)\]](#), an alien who is the beneficiary (including a child of the principal alien, if eligible to receive a visa under section 203(d) [\[8 USCS § 1153\(d\)\]](#)) of a petition to accord a status under section 203(a)(2)(A) [\[8 USCS § 1153\(a\)\(2\)\(A\)\]](#) that was filed with the Attorney General under section 204 [\[8 USCS § 1154\]](#) on or before the date of the enactment of the Legal Immigration Family Equity Act [enacted Dec. 21, 2000], if—

(i)such petition has been pending for 3 years or more; or

(ii)such petition has been approved, 3 years or more have elapsed since such filing date, and—

(I)an immigrant visa is not immediately available to the alien because of a waiting list of applicants for visas under section 203(a)(2)(A) [\[8 USCS § 1153\(a\)\(2\)\(A\)\]](#); or

(II)the alien's application for an immigrant visa, or the alien's application for adjustment of status under section 245 [\[8 USCS § 1255\]](#), pursuant to the approval of such petition, remains pending.

(16)The term “immigrant visa” means an immigrant visa required by this Act and properly issued by a consular officer at his office outside of the United States to an eligible immigrant under the provisions of this Act.

(17)The term “immigration laws” includes this Act and all laws, conventions, and treaties of the United States relating to the immigration, exclusion, deportation, expulsion, or removal of aliens.

(18)The term “immigration officer” means any employee or class of employees of the Service or of the United States designated by the Attorney General, individually or by regulation, to perform the functions of an immigration officer specified by this Act or any section thereof.

(19)The term “ineligible to citizenship,” when used in reference to any individual, means, notwithstanding the provisions of any treaty relating to military service, an individual who is, or was at any time, permanently debarred from becoming a citizen of the United States under section 3(a) of the Selective Training and Service Act of 1940, as amended (54 Stat. 885; 55 Stat. 844), or under section 4(a) of the Selective Service Act of 1948, as amended (62 Stat. 605; 65 Stat. 76) [section 4(a) of the Military Selective Service Act, [50 USCS § 3803\(a\)](#)], or under any section of this Act, or any other Act, or under any law amendatory of, supplementary to, or in substitution for, any of such sections or Acts.

(20)The term “lawfully admitted for permanent residence” means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.

(21)The term “national” means a person owing permanent allegiance to a state.

(22)The term “national of the United States” means (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

(23)The term “naturalization” means the conferring of nationality of a state upon a person after birth, by any means whatsoever.

(24)[Repealed]

(25)The term “noncombatant service” shall not include service in which the individual is not subject to military discipline, court martial, or does not wear the uniform of any branch of the armed forces.

(26)The term “nonimmigrant visa” means a visa properly issued to an alien as an eligible nonimmigrant by a competent officer as provided in this Act.

(27)The term “special immigrant” means—

(A)an immigrant, lawfully admitted for permanent residence, who is returning from a temporary visit abroad;

(B)an immigrant who was a citizen of the United States and may, under section 324(a) or 327 of title III [[8 USCS §§ 1435\(a\)](#) or [1438](#)], apply for reacquisition of citizenship;

(C)an immigrant, and the immigrant's spouse and children if accompanying or following to join the immigrant, who—

(i)for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii)seeks to enter the United States—

(I)solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II)before September 30, 2015, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III)before September 30, 2015, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in [section 501\(c\)\(3\) of the Internal Revenue Code of 1986](#) [[26 USCS § 501\(c\)\(3\)](#)]) at the request of the organization in a religious vocation or occupation; and

(iii)has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i);

(D)an immigrant who is an employee, or an honorably retired former employee, of the United States Government abroad, or of the American Institute in Taiwan, and who has performed faithful service for a total of fifteen years, or more, and his accompanying spouse and children: *Provided*, That the principal officer of a Foreign Service establishment (or, in the case of the American Institute in Taiwan, the Director thereof), in his discretion, shall have recommended the granting of special immigrant status to such alien in exceptional circumstances and the Secretary of State approves such recommendation and finds that it is in the national interest to grant such status;

(E)an immigrant, and his accompanying spouse and children, who is or has been an employee of the Panama Canal Company or Canal Zone Government before the date on which the Panama Canal Treaty of 1977 (as described in section 3(a)(1) of the Panama Canal Act of 1979 [[22 USCS § 3602\(a\)\(1\)](#)]) enters into force, who was resident in the Canal Zone on the effective date of the exchange of instruments of ratification of such Treaty, and who has performed faithful service as such an employee for one year or more;

(F)an immigrant, and his accompanying spouse and children, who is a Panamanian national and (i) who, before the date on which such Panama Canal Treaty of 1977 enters into force, has been honorably retired from United States Government employment in the Canal Zone with a total of 15 years or more of faithful service, or (ii) who, on the date on which such Treaty enters into force, has been employed by the United States Government in the Canal Zone with a total of 15 years or more of faithful service and who subsequently is honorably retired from such employment or continues to be employed by the United States Government in an area of the former Canal Zone;

(G)an immigrant, and his accompanying spouse and children, who was an employee of the Panama Canal Company or Canal Zone Government on the effective date of the exchange of instruments of ratification of such Panama Canal Treaty of 1977, who has performed faithful service for five years or more as such an employee, and whose personal safety, or the personal safety of whose spouse or children, as a direct result of such Treaty, is reasonably placed in danger because of the special nature of any of that employment;

(H)an immigrant, and his accompanying spouse and children, who—

- (i)**has graduated from a medical school or has qualified to practice medicine in a foreign state,
- (ii)**was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date,
- (iii)**entered the United States as a nonimmigrant under subsection (a)(15)(H) or (a)(15)(J) before January 10, 1978, and
- (iv)**has been continuously present in the United States in the practice or study of medicine since the date of such entry;

(I)

(i)an immigrant who is the unmarried son or daughter of an officer or employee, or of a former officer or employee, of an international organization described in paragraph (15)(G)(i), and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least seven years between the ages of five and 21 years, and (II) applies for a visa or adjustment of status under this subparagraph no later than his twenty-fifth birthday or six months after the date of enactment of the Immigration Technical Corrections Act of 1988 [enacted Oct. 24, 1988], whichever is later;

(ii)an immigrant who is the surviving spouse of a deceased officer or employee of such an international organization, and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the death of such officer or employee, and (II) files a petition for status under this subparagraph no later than six months after the date of such death or six months after the date of enactment of the Immigration Technical Corrections Act of 1988 [enacted Oct. 24, 1988], whichever is later;

(iii)an immigrant who is a retired officer or employee of such an international organization, and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the officer or employee's retirement from any such international organization, and (II) files a petition for status under this subparagraph no later than six months after the date of such retirement or six months after the date of enactment of the Immigration and Nationality Technical Corrections Act of 1994 [enacted Oct. 25, 1994], whichever is later; or

(iv)an immigrant who is the spouse of a retired officer or employee accorded the status of special immigrant under clause (iii), accompanying or following to join such retired officer or employee as a member of his immediate family;

(J)an immigrant who is present in the United States—

(i)who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;

(ii)for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

(iii)in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status, except that—

(I)no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction; and

(II)no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act;

(K)an immigrant who has served honorably on active duty in the Armed Forces of the United States after October 15, 1978, and after original lawful enlistment outside the United States (under a treaty or agreement in effect on the date of the enactment of this subparagraph) for a period or periods aggregating—

(i)12 years and who, if separated from such service, was never separated except under honorable conditions, or

(ii)6 years, in the case of an immigrant who is on active duty at the time of seeking special immigrant status under this subparagraph and who has reenlisted to incur a total active duty service obligation of at least 12 years,

and the spouse or child of any such immigrant if accompanying or following to join the immigrant, but only if the executive department under which the immigrant serves or served recommends the granting of special immigrant status to the immigrant;

(L)an immigrant who would be described in clause (i), (ii), (iii), or (iv) of subparagraph (I) if any reference in such a clause—

(i)to an international organization described in paragraph (15)(G)(i) were treated as a reference to the North Atlantic Treaty Organization (NATO);

(ii)to a nonimmigrant under paragraph (15)(G)(iv) were treated as a reference to a nonimmigrant classifiable under NATO-6 (as a member of a civilian component accompanying a force entering in accordance with the provisions of the NATO Status-of-Forces Agreement, a member of a civilian component attached to or employed by an Allied Headquarters under the "Protocol on the Status of International Military Headquarters" set up pursuant to the North Atlantic Treaty, or as a dependent); and

(iii)to the Immigration Technical Corrections Act of 1988 or to the Immigration and Nationality Technical Corrections Act of 1994 were a reference to the American Competitiveness and Workforce Improvement Act of 1998[; or]

(M)subject to the numerical limitations of section 203(b)(4) [[8 USCS § 1153\(b\)\(4\)](#)], an immigrant who seeks to enter the United States to work as a broadcaster in the United States for the International Broadcasting Bureau of the Broadcasting Board of Governors [United States Agency for Global Media], or for a grantee of the Broadcasting Board of Governors [United States Agency for Global Media], and the immigrant's accompanying spouse and children.

(28)The term "organization" means, but is not limited to, an organization, corporation, company, partnership, association, trust, foundation or fund; and includes a group of persons, whether or not incorporated, permanently or temporarily associated together with joint action on any subject or subjects.

(29)The term "outlying possessions of the United States" means American Samoa and Swains Island.

(30)The term “passport” means any travel document issued by competent authority showing the bearer’s origin, identity, and nationality if any, which is valid for the admission of the bearer into a foreign country.

(31)The term “permanent” means a relationship of continuing or lasting nature, as distinguished from temporary, but a relationship may be permanent even though it is one that may be dissolved eventually at the instance either of the United States or of the individual, in accordance with law.

(32)The term “profession” shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.

(33)The term “residence” means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent.

(34)The term “Service” means the Immigration and Naturalization Service of the Department of Justice.

(35)The term [terms] “spouse,” “wife,” or “husband” do not include a spouse, wife, or husband by reason of any marriage ceremony where the contracting parties thereto are not physically present in the presence of each other, unless the marriage shall have been consummated.

(36)The term “State” includes the District of Columbia, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.

(37)The term “totalitarian party” means an organization which advocates the establishment in the United States of a totalitarian dictatorship or totalitarianism. The terms “totalitarian dictatorship” and “totalitarianism” mean and refer to systems of government not representative in fact, characterized by (A) the existence of a single political party, organized on a dictatorial basis, with so close an identity between such party and its policies and the governmental policies of the country in which it exists, that the party and the government constitute an indistinguishable unit, and (B) the forcible suppression of opposition to such party.

(38)The term “United States,” except as otherwise specifically herein provided, when used in a geographical sense, means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.

(39)The term “unmarried,” when used in reference to any individual as of any time, means an individual who at such time is not married, whether or not previously married.

(40)The term “world communism” means a revolutionary movement, the purpose of which is to establish eventually a Communist totalitarian dictatorship in any or all the countries of the world through the medium of an internationally coordinated Communist political movement.

(41)The term “graduates of a medical school” means aliens who have graduated from a medical school or who have qualified to practice medicine in a foreign state, other than such aliens who are of national or international renown in the field of medicine.

(42)The term “refugee” means (A) any person who is outside any country of such person’s nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, or (B) in such special circumstances as the President after appropriate consultation (as defined in section 207(e) of this Act [[8 USCS § 1157\(e\)](#)]) may specify, any person who is within the country of such person’s nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The term “refugee” does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion. For purposes of determinations under this Act, a person who has been

forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, shall be deemed to have been persecuted on account of political opinion, and a person who has a well founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well founded fear of persecution on account of political opinion.

(43)The term “aggravated felony” means—

- (A)**murder, rape, or sexual abuse of a minor;
- (B)**illicit trafficking in a controlled substance (as defined in section 102 of the Controlled Substances Act [[21 USCS § 802](#)]), including a drug trafficking crime (as defined in [section 924\(c\) of title 18, United States Code](#));
- (C)**illicit trafficking in firearms or destructive devices (as defined in [section 921 of title 18, United States Code](#)) or in explosive materials (as defined in section 841(c) of that title);
- (D)**an offense described in [section 1956 of title 18, United States Code](#) (relating to laundering of monetary instruments) or section 1957 of that title (relating to engaging in monetary transactions in property derived from specific unlawful activity) if the amount of the funds exceeded \$10,000;
- (E)**an offense described in—
 - (i)**section 842 (h) or (i) of title 18, United States Code, or section 844 (d), (e), (f), (g), (h), or (i) of that title (relating to explosive materials offenses);
 - (ii)**section 922(g) (1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r) or 924 (b) or (h) of title 18, United States Code (relating to firearms offenses); or
 - (iii)**[section 5861 of the Internal Revenue Code of 1986](#)[[26 USCS § 5861](#)] (relating to firearms offenses);
- (F)**a crime of violence (as defined in [section 16 of title 18, United States Code](#), but not including a purely political offense) for which the term of imprisonment [is] at least one year;
- (G)**a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment [is] at least one year;
- (H)**an offense described in section 875, 876, 877, or [1202 of title 18, United States Code](#) (relating to the demand for or receipt of ransom);
- (I)**an offense described in section 2251, 2251A, or [2252 of title 18, United States Code](#) (relating to child pornography);
- (J)**an offense described in [section 1962 of title 18, United States Code](#) (relating to racketeer influenced corrupt organizations), or an offense described in section 1084 (if it is a second or subsequent offense) or 1955 of that title (relating to gambling offenses), for which a sentence of one year imprisonment or more may be imposed;
- (K)**an offense that—
 - (i)**relates to the owning, controlling, managing, or supervising of a prostitution business;
 - (ii)**is described in section 2421, 2422, or [2423 of title 18, United States Code](#) (relating to transportation for the purpose of prostitution) if committed for commercial advantage; or
 - (iii)**is described in any of sections 1581–1585 or 1588–[1591 of title 18, United States Code](#) (relating to peonage, slavery, involuntary servitude, and trafficking in persons);
- (L)**an offense described in—

(i)section 793 (relating to gathering or transmitting national defense information), 798 (relating to disclosure of classified information), 2153 (relating to sabotage) or 2381 or 2382 (relating to treason) of title 18, United States Code;

(ii)section 601 of the National Security Act of 1947 [[50 USCS § 421](#)] (relating to protecting the identity of undercover intelligence agents);

(iii)section 601 of the National Security Act of 1947 [[50 USCS § 421](#)] (relating to protecting the identity of undercover agents);

(M)an offense that—

(i)involves fraud or deceit in which the loss to the victim or victims exceeds \$10,000; or

(ii)is described in [section 7201 of the Internal Revenue Code of 1986](#) [[26 USCS § 7201](#)] (relating to tax evasion) in which the revenue loss to the Government exceeds \$10,000;

(N)an offense described in paragraph (1)(A) or (2) of section 274(a) [[8 USCS § 1324\(a\)\(1\)\(A\)](#) or (2)] (relating to alien smuggling), except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this Act[;]

(O)an offense described in section 275(a) or 276 [[8 USCS § 1325\(a\)](#) or [1326](#)] committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph;

(P)an offense (i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of [section 1543 of title 18, United States Code](#), or is described in section 1546(a) of such title (relating to document fraud) and (ii) for which the term of imprisonment is at least 12 months, except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this Act;

(Q)an offense relating to a failure to appear by a defendant for service of sentence if the underlying offense is punishable by imprisonment for a term of 5 years or more;

(R)an offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which the term of imprisonment is at least one year;

(S)an offense relating to obstruction of justice, perjury or subornation of perjury, or bribery of a witness, for which the term of imprisonment is at least one year;

(T)an offense relating to a failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony for which a sentence of 2 years' imprisonment or more may be imposed; and

(U)an attempt or conspiracy to commit an offense described in this paragraph.

The term applies to an offense described in this paragraph whether in violation of Federal or State law and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years. Notwithstanding any other provision of law (including any effective date), the term applies regardless of whether the conviction was entered before, on, or after the date of enactment of this paragraph.

(44)

(A)The term “managerial capacity” means an assignment within an organization in which the employee primarily—

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) or, if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority.

A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

(B) The term “executive capacity” means an assignment within an organization in which the employee primarily—

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

(C) If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, the Attorney General shall take into account the reasonable needs of the organization, component, or function in light of the overall purpose and stage of development of the organization, component, or function. An individual shall not be considered to be acting in a managerial or executive capacity (as previously defined) merely on the basis of the number of employees that the individual supervises or has supervised or directs or has directed.

(45) The term “substantial” means, for purposes of paragraph (15)(E) with reference to trade or capital, such an amount of trade or capital as is established by the Secretary of State, after consultation with appropriate agencies of Government.

(46) The term “extraordinary ability” means, for purposes of section 101(a)(15)(O)(i) [\[8 USCS § 1101\(a\)\(15\)\(O\)\(i\)\]](#), in the case of the arts, distinction.

(47)

(A) The term “order of deportation” means the order of the special inquiry officer, or other such administrative officer to whom the Attorney General has delegated the responsibility for determining whether an alien is deportable, concluding that the alien is deportable or ordering deportation.

(B) The order described under subparagraph (A) shall become final upon the earlier of—

- (i) a determination by the Board of Immigration Appeals affirming such order; or
- (ii) the expiration of the period in which the alien is permitted to seek review of such order by the Board of Immigration Appeals.

(48)

(A) The term “conviction” means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where—

(i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and

(ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

(B) Any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.

(49) The term “stowaway” means any alien who obtains transportation without the consent of the owner, charterer, master or person in command of any vessel or aircraft through concealment aboard such vessel or aircraft. A passenger who boards with a valid ticket is not to be considered a stowaway.

(50) The term “intended spouse” means any alien who meets the criteria set forth in section 204(a)(1)(A)(iii)(II)(aa)(BB), 204(a)(1)(B)(ii)(II)(aa)(BB), or 240A(b)(2)(A)(i)(III) [[8 USCS § 1154\(a\)\(1\)\(A\)\(iii\)\(II\)\(aa\)\(BB\)](#), [1154\(a\)\(1\)\(B\)\(ii\)\(II\)\(aa\)\(BB\)](#), or [1229b\(b\)\(2\)\(A\)\(i\)\(III\)](#)].

(51) The term “VAWA self-petitioner” means an alien, or a child of the alien, who qualifies for relief under—

(A) clause (iii), (iv), or (vii) of section 204(a)(1)(A) [[8 USCS § 1154\(a\)\(1\)\(A\)](#)];

(B) clause (ii) or (iii) of section 204(a)(1)(B) [[8 USCS § 1154\(a\)\(1\)\(B\)](#)];

(C) section 216(c)(4)(C) [[8 USCS § 1186\(c\)\(4\)\(C\)](#)];

(D) the first section of [Public Law 89-732](#) ([8 U.S.C. 1255](#) note) (commonly known as the Cuban Adjustment Act) as a child or spouse who has been battered or subjected to extreme cruelty;

(E) section 902(d)(1)(B) of the Haitian Refugee Immigration Fairness Act of 1998 ([8 U.S.C. 1255](#) note);

(F) section 202(d)(1) of the Nicaraguan Adjustment and Central American Relief Act [[8 USCS § 1255](#) note]; or

(G) section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 [note to this section] (division C of *Public Law 104-208*).

(52) The term “accredited language training program” means a language training program that is accredited by an accrediting agency recognized by the Secretary of Education.

(b) As used in titles I and II [[8 USCS §§ 1101](#) et seq., [1151](#) et seq.]—

(1) The term “child” means an unmarried person under twenty-one years of age who is—

(A) a child born in wedlock;

(B) a stepchild, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred;

(C) a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in or outside the United States, if such legitimation takes place before the child reaches the age of eighteen years and the child is in the legal custody of the legitimating parent or parents at the time of such legitimation;

(D) a child born out of wedlock, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother or to its natural father if the father has or had a bona fide parent-child relationship with the person;

(E)

(i) a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years or if the child has

been battered or subject to extreme cruelty by the adopting parent or by a family member of the adopting parent residing in the same household: *Provided*, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act; or

(ii) subject to the same proviso as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) or subparagraph (F)(i); (II) was adopted by the adoptive parent or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child was adopted while under the age of 18 years;

(F)

(i) a child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 201(b) [8 USCS § 1151(b)], who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption; who has been adopted abroad by a United States citizen and spouse jointly, or by an unmarried United States citizen who is at least 25 years of age, at least 1 of whom personally saw and observed the child before or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who have or has complied with the preadoption requirements, if any, of the child's proposed residence: *Provided*, That the Attorney General is satisfied that proper care will be furnished the child if admitted to the United States: *Provided further*, That no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act; or

(ii) subject to the same provisos as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) or subparagraph (E)(i); (II) has been adopted abroad, or is coming to the United States for adoption, by the adoptive parent (or prospective adoptive parent) or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child is under the age of 18 at the time a petition is filed in his or her behalf to accord a classification as an immediate relative under section 201(b) [8 USCS § 1151(b)]; or

(G)

(i) a child, younger than 16 years of age at the time a petition is filed on the child's behalf to accord a classification as an immediate relative under section 201(b) [8 USCS § 1151(b)], who has been adopted in a foreign state that is a party to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, done at The Hague on May 29, 1993, or who is emigrating from such a foreign state to be adopted in the United States by a United States citizen and spouse jointly or by an unmarried United States citizen who is at least 25 years of age, *Provided*, That—

(I) the Secretary of Homeland Security is satisfied that proper care will be furnished the child if admitted to the United States;

(II) the child's natural parents (or parent, in the case of a child who has one sole or surviving parent because of the death or disappearance of, abandonment or desertion by, the other parent), or other persons or institutions that retain legal custody of the child, have freely given their written irrevocable consent to the termination of their legal relationship with the child, and to the child's emigration and adoption;

(III) in the case of a child having two living natural parents, the natural parents are incapable of providing proper care for the child;

(IV)the Secretary of Homeland Security is satisfied that the purpose of the adoption is to form a bona fide parent-child relationship, and the parent-child relationship of the child and the natural parents has been terminated (and in carrying out both obligations under this subclause the Secretary of Homeland Security may consider whether there is a petition pending to confer immigrant status on one or both of such natural parents); and

(V)in the case of a child who has not been adopted—

(aa)the competent authority of the foreign state has approved the child's emigration to the United States for the purpose of adoption by the prospective adoptive parent or parents; and

(bb)the prospective adoptive parent or parents has or have complied with any pre-adoption requirements of the child's proposed residence; and

(ii)except that no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter; or

(iii)subject to the same provisos as in clauses (i) and (ii), a child who—

(I)is a natural sibling of a child described in clause (i), subparagraph (E)(i), or subparagraph (F)(i);

(II)was adopted abroad, or is coming to the United States for adoption, by the adoptive parent (or prospective adoptive parent) or parents of the sibling described in clause (i), subparagraph (E)(i), or subparagraph (F)(i); and

(III)is otherwise described in clause (i), except that the child is younger than 18 years of age at the time a petition is filed on his or her behalf for classification as an immediate relative under section 201(b) [[8 USCS § 1151\(b\)](#)].

(2)The terms “parent,” “father,” or “mother” mean a parent, father, or mother only where the relationship exists by reason of any of the circumstances set forth in (1) above, except that, for purposes of paragraph (1)(F) (other than the second proviso therein) and paragraph (1)(G)(i) in the case of a child born out of wedlock described in paragraph (1)(D) (and not described in paragraph (1)(C)), the term “parent” does not include the natural father of the child if the father has disappeared or abandoned or deserted the child or if the father has in writing irrevocably released the child for emigration and adoption.

(3)The term “person” means an individual or an organization.

(4)The term “immigration judge” means an attorney whom the Attorney General appoints as an administrative judge within the Executive Office for Immigration Review, qualified to conduct specified classes of proceedings, including a hearing under section 240 [[8 USCS § 1229a](#)]. An immigration judge shall be subject to such supervision and shall perform such duties as the Attorney General shall prescribe, but shall not be employed by the Immigration and Naturalization Service.

(5)The term “adjacent islands” includes Saint Pierre, Miquelon, Cuba, the Dominican Republic, Haiti, Bermuda, the Bahamas, Barbados, Jamaica, the Windward and Leeward Islands, Trinidad, Martinique, and other British, French, and Netherlands territory or possessions in or bordering on the Caribbean Sea.

(c)As used in title III [[8 USCS §§ 1401](#) et seq.]—

(1)The term “child” means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere, and, except as otherwise provided in sections 320 and 321 of title III [[8 USCS §§ 1431](#), [1432](#)], a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years (except to the extent that the child is described in subparagraph (E)(ii) or (F)(ii) of subsection (b)(1)), and the child is in the

legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

(2)The terms “parent,” “father,” and “mother” include in the case of a posthumous child a deceased parent, father, and mother.

(d)[Repealed]

(e)For the purposes of this Act—

(1)The giving, loaning, or promising of support or of money or any other thing of value to be used for advocating any doctrine shall constitute the advocating of such doctrine; but nothing in this paragraph shall be construed as an exclusive definition of advocating.

(2)The giving, loaning, or promising of support or of money or any other thing of value for any purpose to any organization shall be presumed to constitute affiliation therewith; but nothing in this paragraph shall be construed as an exclusive definition of affiliation.

(3)Advocating the economic, international, and governmental doctrines of world communism means advocating the establishment of a totalitarian Communist dictatorship in any or all of the countries of the world through the medium of an internationally coordinated Communist movement.

(f)For the purposes of this Act—

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was—

(1)a habitual drunkard;

(2)[Repealed]

(3)a member of one or more of the classes of persons, whether inadmissible or not, described in paragraphs (2)(D), (6)(E), and (10)(A) of section 212(a) of this Act [[8 USCS § 1182\(a\)](#)]; or subparagraphs (A) and (B) of section 212(a)(2) [[8 USCS § 1182\(a\)\(2\)](#)] and subparagraph (C) thereof [of such section] (except as such paragraph relates to a single offense of simple possession of 30 grams or less of marihuana), if the offense described therein, for which such person was convicted or of which he admits the commission, was committed during such period;

(4)one whose income is derived principally from illegal gambling activities;

(5)one who has been convicted of two or more gambling offenses committed during such period;

(6)one who has given false testimony for the purpose of obtaining any benefits under this Act;

(7)one who during such period has been confined, as a result of conviction, to a penal institution for an aggregate period of one hundred and eighty days or more, regardless of whether the offense, or offenses, for which he has been confined were committed within or without such period;

(8)one who at any time has been convicted of an aggravated felony (as defined in subsection (a)(43)); or

(9)one who at any time has engaged in conduct described in section 212(a)(3)(E) [[8 USCS § 1182\(a\)\(3\)\(E\)](#)] (relating to assistance in Nazi persecution, participation in genocide, or commission of acts of torture or extrajudicial killings) or 212(a)(2)(G) [[8 USCS § 1182\(a\)\(2\)\(G\)](#)] (relating to severe violations of religious freedom).

The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character. In the case of an alien who makes a false statement or claim of citizenship, or who registers to vote or votes in a Federal, State, or local election (including an initiative, recall, or referendum) in violation of a lawful restriction of such registration or voting to citizens, if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United

States prior to attaining the age of 16, and the alien reasonably believed at the time of such statement, claim, or violation that he or she was a citizen, no finding that the alien is, or was, not of good moral character may be made based on it.

(g)For the purposes of this Act any alien ordered deported or removed (whether before or after the enactment of this Act [enacted June 27, 1952]) who has left the United States, shall be considered to have been deported or removed in pursuance of law, irrespective of the source from which the expenses of his transportation were defrayed or of the place to which he departed.

(h)For purposes of section 212(a)(2)(E) [[8 USCS § 1182\(a\)\(2\)\(E\)](#)], the term “serious criminal offense” means—

(1)any felony;

(2)any crime of violence, as defined in [section 16 of title 18 of the United States Code](#); or

(3)any crime of reckless driving or of driving while intoxicated or under the influence of alcohol or of prohibited substances if such crime involves personal injury to another.

(i)With respect to each nonimmigrant alien described in subsection (a)(15)(T)(i)—

(1)the Secretary of Homeland Security, the Attorney General, and other Government officials, where appropriate, shall provide the alien with a referral to a nongovernmental organization that would advise the alien regarding the alien's options while in the United States and the resources available to the alien; and

(2)the Secretary of Homeland Security shall, during the period the alien is in lawful temporary resident status under that subsection, grant the alien authorization to engage in employment in the United States and provide the alien with an “employment authorized” endorsement or other appropriate work permit.

History

HISTORY:

Act June 27, 1952, ch 477, Title I, § 101, [66 Stat. 166](#); Sept. 11, 1957, [P. L. 85-316](#), §§ 1, 2, [71 Stat. 639](#); July 7, 1958, [P. L. 85-508](#), § 22, [72 Stat. 351](#); March 18, 1959, [P. L. 86-3](#), § 20(a), [73 Stat. 13](#); Sept. 21, 1961, [P. L. 87-256](#), § 109(a), (b), [75 Stat. 534](#); Sept. 26, 1961, [P. L. 87-301](#), §§ 1, 2, 7, [75 Stat. 650](#), 653; Oct. 3, 1965, [P. L. 89-236](#), §§ 8, 24, [79 Stat. 916](#), 922; Nov. 2, 1966, [P. L. 89-710](#), [80 Stat. 1104](#); April 7, 1970, [P. L. 91-225](#), § 1, [84 Stat. 116](#); Dec. 16, 1975, [P. L. 94-155](#), [89 Stat. 824](#); Oct. 12, 1976, [P. L. 94-484](#), Title VI, § 601(b), (e), [90 Stat. 2301](#), 2302; Oct. 20, 1976, [P. L. 94-571](#), § 7(a), [90 Stat. 2706](#); Oct. 12, 1976, [P. L. 94-484](#), Title VI, § 602(c), as added Aug. 1, 1977, [P. L. 95-83](#), Title III, § 307(q)(3), [91 Stat. 395](#); Aug. 17, 1977, [P. L. 95-105](#), Title I, § 109(b)(3), [91 Stat. 847](#); Sept. 27, 1979, [P. L. 96-70](#), Title III, Ch 1, § 3201(a), [93 Stat. 496](#); March 17, 1980, [P. L. 96-212](#), Title II, § 201(a), [94 Stat. 102](#); Dec. 29, 1981, [P. L. 97-116](#), §§ 2, 5(d)(1), 18(a), [95 Stat. 1611](#), 1614, 1619; Oct. 30, 1984, [Priv. L. 98-47](#), § 3, [98 Stat. 3435](#); Oct. 21, 1986, [P. L. 99-505](#), § 1, [100 Stat. 1806](#); Nov. 6, 1986, [P. L. 99-603](#), Title III, Part A, § 301(a), Part B, §§ 312, 315(a), [100 Stat. 3411](#), 3434, 3439; Nov. 14, 1986, [P. L. 99-653](#), §§ 2, 3, [100 Stat. 3655](#); Oct. 1, 1988, [P. L. 100-459](#), Title II, § 210(a), [102 Stat. 2203](#); Oct. 24, 1988, [P. L. 100-525](#), §§ 2(o)(1), 8(b), 9(a), [102 Stat. 2613](#), 2617, 2619; Nov. 18, 1988, [P. L. 100-690](#), Title VII, Subtitle J, § 7342, [102 Stat. 4469](#); Nov. 21, 1989, [P. L. 101-162](#), Title VI, § 611(a), [103 Stat. 1038](#); Dec. 18, 1989, [P. L. 101-238](#), § 3(a), [103 Stat. 2100](#); Feb. 16, 1990, [P. L. 101-246](#), Title I, Part C, § 131(b), [104 Stat. 31](#); Nov. 29, 1990, [P. L. 101-649](#), Title I, Subtitle B, Part 2, § 123, Subtitle D, §§ 151(a), 153(a), Subtitle E, § 161(f)(2)(A), Title II, Subtitle A, §§ 203(c), 204(a), (c), 205(c)(1), (d), (e), 206(c), 207(a), 208, 209, Title IV, § 407(a)(2), Title V, Subtitle A, §§ 501(a), 509(a), Title VI, § 603(a)(1), [104 Stat. 4995](#), 5004, 5005, 5012, 5018, 5019, 5020, 5023, 5026, 5027, 5040, 5048, 5051, 5082; Oct. 1, 1991, [P. L. 102-110](#), § 2(a), [105 Stat. 555](#); Dec. 12, 1991, [P. L. 102-232](#), Title II, §§ 203(a), 205(a)–(c), 206(b), (c)(1), (d), 207(b), 302(e)(8)(A), 303(a)(5)(A), (7)(A), 305(m)(1), 306(a)(1), 309(b)(1), [105 Stat. 1737](#), 1740, 1741, 1746, 1747, 1748, 1750, 1751, 1758; April 30, 1994, [P. L. 103-236](#), Title I, Part C, § 162(h)(1), [108](#)

Stat. 407; Sept. 13, 1994, *P. L. 103-322*, Title XIII, § 130003(a), *108 Stat. 2024*; Oct. 5, 1994, *P. L. 103-337*, Div C, Title XXXVI, § 3605, *108 Stat. 3113*; Oct. 25, 1994, *P. L. 103-416*, Title II, §§ 201, 202, 214, 219(a), 222(a), *108 Stat. 4310*, 4311, 4314, 4316, 4320; Nov. 15, 1995, *P. L. 104-51*, § 1, *109 Stat. 467*; April 24, 1996, *P. L. 104-132*, Title IV, Subtitle D, § 440(b), (e), *110 Stat. 1277*; Sept. 30, 1996, *P. L. 104-208*, Div C, Title I, Subtitle A, § 104(a), Title III, Subtitle A, §§ 301(a), 308(d)(3)(A), (4)(A), (e)(3), (f)(1)(A), (B), Subtitle B, §§ 321(a), (b), 322(a)(1), (2)(A), Subtitle E, § 361(a), Subtitle F, § 371(a), Title VI, Subtitle A, § 601(a), Subtitle B, § 625(a)(2), Subtitle E, § 671(a)(3)(B), (b)(5), (e)(2), *110 Stat. 3009-555*, 3009-575, 3009-617, 3009-620, 3009-621, 3009-627, 3009-629, 3009-644, 3009-645, 3009-689, 3009-700, 3009-721, 3009-722, 3009-723; Oct. 6, 1997, *P. L. 105-54*, § 1(a), *111 Stat. 1175*; Nov. 26, 1997, *P. L. 105-119*, Title I, § 113, *111 Stat. 2460*; Oct. 21, 1998, *P. L. 105-277*, Div C, Title IV, § 421, Div G, Title XXII, Ch 2, § 2222(e), *112 Stat. 2681-657*, 2681-819; Oct. 30, 1998, *P. L. 105-319*, § 2(b), (d)(2), *112 Stat. 3014*, 3015; Nov. 12, 1999, *P. L. 106-95*, § 2(a), (c), *113 Stat. 1312*, 1316; Dec. 7, 1999, *P. L. 106-139*, § 1(a), (b)(1), *113 Stat. 1696*; Oct. 6, 2000, *P. L. 106-279*, Title III, § 302(a), (c), *114 Stat. 838*, 839; Oct. 28, 2000, *P. L. 106-386*, Div A, § 107(e)(1), (4), Div B, Title V, §§ 1503(a), 1513(b), *114 Stat. 1477*, 1479, 1518, 1534; Oct. 30, 2000, *P. L. 106-395*, Title II, § 201(a)(1), *114 Stat. 1633*; Nov. 1, 2000, *P. L. 106-409*, § 2(a), *114 Stat. 1787*; Nov. 22, 2000, *P. L. 106-536*, § 1(a), *114 Stat. 2560*; Dec. 21, 2000, *P. L. 106-553*, § 1(a)(2), *114 Stat. 2762*; Jan. 16, 2002, *P. L. 107-125*, § 2(b), *115 Stat. 2403*; Oct. 4, 2002, *P. L. 107-234*, § 1(4), *116 Stat. 1481*; Nov. 2, 2002, *P. L. 107-274*, § 2(a), (b), *116 Stat. 1923*; Sept. 3, 2003, *P. L. 108-77*, Title IV, § 402(a)(1), *117 Stat. 939*; Oct. 15, 2003, *P. L. 108-99*, § 1, *117 Stat. 1176*; Dec. 19, 2003, *P. L. 108-193*, §§ 4(b)(1), (5), 8(a)(1), *117 Stat. 2878*, 2879, 2886; Dec. 10, 2004, *P. L. 108-449*, § 1(a)(2)(B), (3)(A), (b)(1), *118 Stat. 3469*, 3470; Dec. 17, 2004, *P. L. 108-458*, Title V, Subtitle E, § 5504, *118 Stat. 3741*; May 11, 2005, *P. L. 109-13*, Div B, Title V, § 501(a), *119 Stat. 321*; Oct. 18, 2005, *P. L. 109-90*, Title V, § 536, *119 Stat. 2087*; Jan. 5, 2006, *P. L. 109-162*, Title VIII, Subtitle A, §§ 801, 805(d), Subtitle B, § 811, Subtitle C, § 822(c)(1), *119 Stat. 3053*, 3056, 3057, 3063; July 27, 2006, *P. L. 109-248*, Title IV, § 402(b), *120 Stat. 623*; May 8, 2008, *P. L. 110-229*, Title VII, Subtitle A, § 702(j)(1)–(3), *122 Stat. 866*; Oct. 10, 2008, *P. L. 110-391*, § 2(a), *122 Stat. 4193*; Dec. 23, 2008, *P. L. 110-457*, Title II, Subtitle A, § 201(a), Subtitle D, § 235(d)(1), *122 Stat. 5052*, 5079; March 20, 2009, *P. L. 111-9*, § 1, *123 Stat. 989*; Oct. 28, 2009, *P. L. 111-83*, Title V, § 568(a)(1), *123 Stat. 2186*; Nov. 30, 2010, *P. L. 111-287*, § 3, *124 Stat. 3058*; Dec. 14, 2010, *P. L. 111-306*, § 1(a), *124 Stat. 3280*; Sept. 28, 2012, *P. L. 112-176*, § 3, *126 Stat. 1325*; March 7, 2013, *P. L. 113-4*, Title VIII, § 801, Title XII, Subtitle B, Part II, §§ 1221, 1222, *127 Stat. 110*, 144; Jan. 17, 2014, *P. L. 113-76*, Div K, Title VII, § 7083, *128 Stat. 567*.

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F. Any other material the petitioner believes essential to understand the petition.

1) District Court Jury Instructions

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	No. 6:18-CR-16-RWS-KNM
	§	
HEON JONG YOO	§	
a/k/a "HANK YOO"	§	

JURY INSTRUCTIONS

JURY INSTRUCTION NO. 1
COURT'S INSTRUCTIONS TO THE JURY
AT THE CONCLUSION OF TRIAL

Members of the Jury:

In any jury trial there are, in effect, two judges. I am one of the judges; the other is the jury. It is my duty to preside over the trial and to decide what evidence is proper for your consideration. It is also my duty at the end of the trial to explain to you the rules of law that you must follow and apply in arriving at your verdict.

First, I will give you some general instructions which apply in every case, for example, instructions about burden of proof and how to judge the believability of witnesses. Then I will give you some specific rules of law about this particular case, and finally I will explain to you the procedures you should follow in your deliberations.

JURY INSTRUCTION NO. 2
DUTY TO FOLLOW INSTRUCTIONS

You, as jurors, are the judges of the facts. But in determining what actually happened—that is, in reaching your decision as to the facts—it is your sworn duty to follow all of the rules of law as I explain them to you.

You have no right to disregard or give special attention to any one instruction, or to question the wisdom or correctness of any rule I may state to you. You must not substitute or follow your own notion or opinion of what the law is or ought to be. It is your duty to apply the law as I explain it to you, regardless of the consequences.

It is also your duty to base your verdict solely upon the evidence, without prejudice or sympathy. That was the promise you made and the oath you took before being accepted by the parties as jurors, and they have the right to expect nothing less.

JURY INSTRUCTION NO. 3
PRESUMPTION OF INNOCENCE, BURDEN
OF PROOF, REASONABLE DOUBT

The superseding indictment or formal charge against the defendant is not evidence of guilt. Indeed, the defendant is presumed by the law to be innocent. The defendant begins with a clean slate. The law does not require a defendant to prove his innocence or produce any evidence at all.

The government has the burden of proving defendant's guilt beyond a reasonable doubt, and if it fails to do so, you must acquit the defendant. While the government's burden of proof is a strict or heavy burden, it is not necessary that the defendant's guilt be proven beyond all possible doubt. It is only required that the government's proof exclude any "reasonable doubt" concerning the defendant's guilt.

A "reasonable doubt" is a doubt based upon reason and common sense after careful and impartial consideration of all the evidence in the case. Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in making the most important decisions of your own affairs.

JURY INSTRUCTION NO. 4
EVIDENCE—EXCLUDING WHAT IS NOT EVIDENCE

As I told you earlier, it is your duty to determine the facts. To do so, you must consider only the evidence presented during the trial. Evidence is the sworn testimony of the witnesses, including stipulations, and the exhibits. The questions, statements, objections, and arguments made by the lawyers are not evidence.

The function of the lawyers is to point out those things that are most significant or most helpful to their side of the case, and in so doing to call your attention to certain facts or inferences that might otherwise escape your notice. In the final analysis, however, it is your own recollection and interpretation of the evidence that controls in the case. What the lawyers say is not binding upon you.

During the trial I sustained objections to certain questions and exhibits. You must disregard those questions and exhibits entirely. Do not speculate as to what the witness would have said if permitted to answer the question or as to the contents of an exhibit. Also, certain testimony or other evidence has been ordered stricken from the record and you have been instructed to disregard this evidence. Do not consider any testimony or other evidence which has been stricken in reaching your decision. Your verdict must be based solely on the legally admissible evidence and testimony.

Also, do not assume from anything I may have done or said during the trial that I have any opinion concerning any of the issues in this case.

Except for the instruction to you on the law, you should disregard anything I may have said during the trial in arriving at your own findings as to the facts.

JURY INSTRUCTION NO. 5
EVIDENCE—INFERENCES—DIRECT AND CIRCUMSTANTIAL

In considering the evidence, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts which have been established by the evidence.

Do not be concerned about whether evidence is “direct evidence” or “circumstantial evidence.” You should consider and weigh all of the evidence that was presented to you.

“Direct evidence” is the testimony of one who asserts actual knowledge of a fact, such as an eye witness. “Circumstantial evidence” is proof of a chain of events and circumstances indicating that something is or is not a fact.

The law makes no distinction between the weight you may give to either direct or circumstantial evidence. But the law requires that you, after weighing all of the evidence, whether direct or circumstantial, be convinced of the guilt of the defendant beyond a reasonable doubt before you can find him guilty.

JURY INSTRUCTION NO. 6
CREDIBILITY OF WITNESSES

I remind you that it is your job to decide whether the government has proven the guilt of a defendant beyond a reasonable doubt. In doing so, you must consider all of the evidence. This does not mean, however, that you must accept all of the evidence as true or accurate.

You are the sole judges of the credibility or “believability” of each witness and the weight to be given the witness’s testimony. An important part of your job will be making judgments about the testimony of the witnesses [including the defendant] who testified in this case. You should decide whether you believe what each person had to say, and how important that testimony was. In making that decision I suggest that you ask yourself a few questions: Did the person impress you as honest? Did the witness have any particular reason not to tell the truth? Did the witness have a personal interest in the outcome of the case? Did the witness have any relationship with either the government or the defense? Did the witness seem to have a good memory? Did the witness clearly see or hear the things about which he testified? Did the witness have the opportunity and ability to understand the questions clearly and answer them directly? Did the witness’s testimony differ from the testimony of other witnesses? These are a few of the

considerations that will help you determine the accuracy of what each witness said.

The testimony of a defendant should be weighed and his credibility evaluated in the same way as that of any other witness.

Your job is to think about the testimony of each witness you have heard and decide how much you believe of what each witness had to say. In making up your mind and reaching a verdict, do not make any decisions simply because there were more witnesses on one side than on the other. Do not reach a conclusion on a particular point just because there were more witnesses testifying for one side on that point. You will always bear in mind that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

JURY INSTRUCTION NO. 7
IMPEACHMENT BY PRIOR INCONSISTENCIES

The testimony of a witness may be discredited by showing that the witness testified falsely concerning a material matter, or by evidence that at some other time the witness has said or done something, or has failed to say or do something, which is inconsistent with the testimony the witness gave at this trial.

Earlier statements of a witness were not admitted in evidence to prove that the contents of those statements are true. You may not consider the earlier statements to prove that the content of an earlier statement is true; you may only use earlier statements to determine whether you think the earlier statements are consistent or inconsistent with the trial testimony of the witness and therefore whether they affect the credibility of that witness.

If you believe that a witness has been discredited in this manner, it is your exclusive right to give the testimony of that witness whatever weight you think it deserves.

JURY INSTRUCTION NO. 8
EXPERT OPINION TESTIMONY

During the trial you heard the testimony of expert witnesses. If scientific, technical, or other specialized knowledge might assist the jury in understanding the evidence or in determining a fact in issue, a witness qualified by knowledge, skill, experience, training, or education may testify and state an opinion concerning such matters.

Merely because such a witness has expressed an opinion does not mean, however, that you must accept this opinion. You should judge such testimony like any other testimony. You may accept it or reject it and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, and all other evidence in the case.

JURY INSTRUCTION NO. 9
ON OR ABOUT

You will note that the superseding indictment charges that the offense was committed on or about a specified date. The government does not have to prove that the crime was committed on that exact date, so long as the government proves beyond a reasonable doubt that a defendant committed the crimes on dates reasonably near the dates stated in the superseding indictment.

GOVERNMENT’S PROPOSED JURY INSTRUCTION NO. 10
CAUTION—CONSIDER ONLY THE CRIME CHARGED

You are here to decide whether the government has proven beyond a reasonable doubt that a defendant is guilty of the crimes charged. The defendant is not on trial for any act, conduct, or offense not alleged in the superseding indictment. Neither are you concerned with the guilt of any other person or persons not on trial as a defendant in this case, except as you are otherwise instructed.

JURY INSTRUCTION NO. 11
SINGLE DEFENDANT – MULTIPLE COUNTS

A separate crime is charged in each count of the superseding indictment. Each count, and the evidence pertaining to it, should be considered separately. The fact that you may find the defendant guilty or not guilty as to one of the crimes charged should not control your verdict as to any other.

JURY INSTRUCTION NO. 12
CONFESSION – STATEMENT – VOLUNTARINESS

In determining whether any statement, claimed to have been made by the defendant outside of court and after an alleged crime has been committed, was knowingly and voluntarily made, you should consider the evidence concerning such a statement with caution and great care. You should give such weight to the statement as you feel it deserves under all the circumstances.

You may consider in that regard such factors as the age, sex, training, education, occupation, and physical and mental condition of the defendant, his treatment while under interrogation, and all the other circumstances in evidence surrounding the making of the statement.

JURY INSTRUCTION NO. 13
IDENTIFICATION TESTIMONY

In any criminal case the government must prove not only the essential elements of the offense or offenses charged, as hereafter defined, but must also prove, beyond a reasonable doubt, the identity of the defendant as the perpetrator of the alleged offenses.

In evaluating the identification testimony of a witness you should consider all of the factors already mentioned concerning your assessment of the credibility of any witness in general, and should also consider whether the witness had an adequate opportunity to observe the person in question at the time or times about which the witness testified. You may consider all matters, including the length of time the witness had to observe the person in question, the prevailing conditions at that time in terms of visibility or distance and the like, and whether the witness had known or observed the person at earlier times.

You may also consider the circumstances surrounding the identification itself including, for example, the manner in which the defendant was presented to the witness for identification, and the length of time that elapsed between the incident in question and the next opportunity the witness had to observe the defendant.

If, after examining all of the testimony and evidence in the case, you have a reasonable doubt as to the identity of the defendant as the perpetrator of the offense charged, you must find the defendant not guilty.

JURY INSTRUCTION NO. 14
SIMILAR ACTS

You have heard evidence of acts of a defendant which may be similar to those charged in the superseding indictment, but which were committed on other occasions. You must not consider any of this evidence in deciding if a defendant committed the acts charged in the superseding indictment. However, you may consider this evidence for other, very limited, purposes.

If you find beyond a reasonable doubt from other evidence in this case that a defendant did commit the acts charged in the superseding indictment, then you may consider evidence of the similar acts allegedly committed on other occasions to determine:

Whether a defendant had the state of mind or intent necessary to commit the crime charged in the superseding indictment; or

Whether a defendant had a motive or the opportunity to commit the acts charged in the superseding indictment; or

Whether a defendant acted according to a plan or in preparation for commission of a crime; or

Whether a defendant committed the acts for which he is on trial by accident or mistake.

These are the limited purposes for which any evidence of other similar acts may be considered.

JURY INSTRUCTION NO. 15
POSSESSION

“Possession,” as that term is used in these instructions, may be one of two kinds: actual possession or constructive possession.

A person who knowingly has direct physical control over a thing, at a given time, is in actual possession of it.

A person who, although not in actual possession, knowingly has both the power and the intention, at a given time, to exercise dominion or control over a thing, either directly or through another person or persons, is in constructive possession of it.

Possession may be sole or joint. If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint.

You may find that the element of possession is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession, either alone or jointly with others.

JURY INSTRUCTION NO. 16
“KNOWINGLY”—TO ACT / DELIBERATE IGNORANCE

The word “knowingly,” as that term has been used from time to time in these instructions, means that the act was done voluntarily and intentionally, not because of mistake or accident.

You may find that a defendant had knowledge of a fact if you find that a defendant deliberately closed his eyes to what would otherwise have been obvious to him. While knowledge on the part of the defendant cannot be established merely by demonstrating that the defendant was negligent, careless, or foolish, knowledge can be inferred if the defendant deliberately blinded himself to the existence of a fact.

JURY INSTRUCTION NO. 17
INTERSTATE COMMERCE - DEFINED

Interstate commerce means commerce or travel between one state, territory, or possession of the United States and another state, territory, or possession of the United States, including the District of Columbia.

JURY INSTRUCTION NO. 18
COMMERCE - DEFINED

Commerce includes travel, trade, transportation, and communication.

JURY INSTRUCTION NO. 19
CAUTION—PUNISHMENT

If a defendant is found guilty, it will be my duty to decide what the punishment will be. You should not be concerned with punishment in any way. It should not enter your consideration or discussion.

JURY INSTRUCTION NO. 20
COUNTS 1-7

Counts 1 through 7 of the superseding indictment charge the defendant, **Heon Jong Yoo**, with making false statements with respect to information required to be kept by a federal firearms licensee, in violation of 18 U.S.C. § 924(a)(1)(A).

Title 18, United States Code, Section 924(a)(1)(A) makes it a crime for anyone to knowingly make any false statement or representation with respect to the information required by this chapter to be kept in the records of a person licensed under this chapter or in applying for any license or exemption or relief from disability under the provisions of this chapter.

For you to find the defendant guilty of these crimes, you must be convinced that the government has proved each of the following beyond a reasonable doubt:

First: That the defendant made a false statement in the ATF Form 4473;

Second: That the defendant made the statement to a federally-licensed firearms dealer;

Third: That the defendant knew the statement was false.

A statement is “false” if it was untrue when it was made.

JURY INSTRUCTION NO. 21
COUNT 8

Count 8 of the superseding indictment charges the defendant, **Heon Jong Yoo**, with possession of a firearm by a prohibited person, in violation of 18 U.S.C. § 922(g)(4).

Title 18, United States Code, Section 922(g)(4) makes it a crime for any person who has been committed to a mental institution to possess in or affecting commerce any firearm or ammunition.

For you to find the defendant guilty of this crime, you must be convinced that the government has proved each of the following beyond a reasonable doubt:

First: That the defendant knowingly possessed a firearm, as charged in the superseding indictment;

Second: That the defendant had been committed to a mental institution before the defendant possessed the firearm;

Third: That the firearm possessed traveled in interstate commerce.

As a matter of law, Count 8 does not include a person who is hospitalized for observation and examination where they were not found to be mentally ill.

JURY INSTRUCTION NO. 22
NO NEED FOR UNANIMITY AS TO FIREARM

It is not necessary for the government to prove that the defendant possessed all five firearms which he is alleged to have possessed. It is only necessary that you find that the government has proven beyond a reasonable doubt that the defendant possessed a firearm.

JURY INSTRUCTION NO. 23
DUTY TO DELIBERATE—VERDICT FORM

To reach a verdict, whether it is guilty or not guilty, all of you must agree. Your verdict must be unanimous on each count of the superseding indictment. Your deliberations will be secret. You will never have to explain your verdict to anyone.

It is your duty to consult with one another and to deliberate in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence with your fellow jurors. During your deliberations, do not hesitate to reexamine your own opinions and change your mind if convinced that you were wrong. But do not give up your honest beliefs as to the weight or effect of the evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times, you are judges-- of the facts. Your duty is to decide whether the government has proved the defendant guilty beyond a reasonable doubt.

When you go to the jury room, the first thing that you should do is select one of your number as your foreperson, who will help to guide your deliberations and will speak for you here in the courtroom.

A form of verdict has been prepared for your convenience.

The foreperson will write the unanimous answer of the jury in the space provided for each count of the superseding indictment, either guilty or not guilty. At the conclusion of your deliberations, the foreperson should date and sign the verdict.

If you need to communicate with me during your deliberations, the foreperson should write the message and give it to the marshal. I will either reply in writing or bring you back into the court to answer your message.

Bear in mind that you are never to reveal to any person, not even to the court, how the jury stands, numerically or otherwise, on any count of the superseding indictment, until after you have reached a unanimous verdict.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

UNITED STATES OF AMERICA

202

V.

20

20

No. 6:18-CR-16-RWS-KNM

20

HEON JONG YOO

2

a/k/a "HANK YOO"

20

VERDICT OF THE JURY

As to Count 1 of the superseding indictment,

We, the jury, find the Defendant, **Heon Jong Yoo, a/k/a “Hank Yoo,”**



(Guilty)

(Not Guilty)

As to Count 2 of the superseding indictment,

We, the jury, find the Defendant, **Heon Jong Yoo, a/k/a “Hank Yoo,”**



(Guilty)

(Not Guilty)

As to Count 3 of the superseding indictment,

We, the jury, find the Defendant, **Heon Jong Yoo, a/k/a “Hank Yoo,”**



(Guilty)

(Not Guilty)

As to Count 4 of the superseding indictment,

We, the jury, find the Defendant, **Heon Jong Yoo, a/k/a “Hank Yoo,”**



(Guilty)

(Not Guilty)

As to Count 5 of the superseding indictment,

We, the jury, find the Defendant, **Heon Jong Yoo, a/k/a "Hank Yoo,"**

X (Guilty) (Not Guilty)

As to Count 6 of the superseding indictment,

We, the jury, find the Defendant, **Heon Jong Yoo, a/k/a "Hank Yoo,"**

X (Guilty) (Not Guilty)

As to Count 7 of the superseding indictment,

We, the jury, find the Defendant, **Heon Jong Yoo, a/k/a "Hank Yoo,"**

X (Guilty) (Not Guilty)

As to Count 8 of the superseding indictment,

We, the jury, find the Defendant, **Heon Jong Yoo, a/k/a "Hank Yoo,"**

X (Guilty) (Not Guilty)

11/15/2018
Date


Foreperson

2) Exemplary Form 4473 (2012 version)

Firearms Transaction Record Part I - Over-the-Counter

WARNING: You may not receive a firearm if prohibited by Federal or State law. The information you provide will be used to determine whether you are prohibited under law from receiving a firearm. Certain violations of the Gun Control Act, 18 U.S.C. §§ 921 *et seq.*, are punishable by up to 10 years imprisonment and/or up to a \$250,000 fine.

Transferor's Transaction
Serial Number (If any)

Prepare in original only. All entries must be handwritten in ink. Read the Notices, Instructions, and Definitions on this form. "PLEASE PRINT."

Section A - Must Be Completed Personally By Transferee (Buyer)

1. Transferee's Full Name Last Name		First Name		Middle Name (If no middle name, state "NMN")			
2. Current Residence Address (U.S. Postal abbreviations are acceptable. Cannot be a post office box.) Number and Street Address		City		County	State	ZIP Code	
3. Place of Birth U.S. City and State		-OR- Foreign Country	4. Height Ft. _____ In. _____	5. Weight (Lbs.)	6. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female	7. Birth Date Month _____ Day _____ Year _____	
8. Social Security Number (Optional, but will help prevent misidentification)			9. Unique Personal Identification Number (UPIN) if applicable (See Instructions for Question 9.)				
10.a. Ethnicity <input type="checkbox"/> Hispanic or Latino <input type="checkbox"/> Not Hispanic or Latino		10.b. Race (Check one or more boxes.) <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Black or African American <input type="checkbox"/> White <input type="checkbox"/> Asian <input type="checkbox"/> Native Hawaiian or Other Pacific Islander					
11. Answer questions 11.a. (see exceptions) through 11.l. and 12 (if applicable) by checking or marking "yes" or "no" in the boxes to the right of the questions.							
a. Are you the actual transferee/buyer of the firearm(s) listed on this form? Warning: You are not the actual buyer if you are acquiring the firearm(s) on behalf of another person. If you are not the actual buyer, the dealer cannot transfer the firearm(s) to you. (See Instructions for Question 11.a.) Exception: If you are picking up a repaired firearm(s) for another person, you are not required to answer 11.a. and may proceed to question 11.b.						Yes <input type="checkbox"/>	No <input type="checkbox"/>
b. Are you under indictment or information in any court for a felony , or any other crime, for which the judge could imprison you for more than one year? (See Instructions for Question 11.b.)						Yes <input type="checkbox"/>	No <input type="checkbox"/>
c. Have you ever been convicted in any court of a felony , or any other crime, for which the judge could have imprisoned you for more than one year, even if you received a shorter sentence including probation? (See Instructions for Question 11.c.)						Yes <input type="checkbox"/>	No <input type="checkbox"/>
d. Are you a fugitive from justice?						Yes <input type="checkbox"/>	No <input type="checkbox"/>
e. Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance?						Yes <input type="checkbox"/>	No <input type="checkbox"/>
f. Have you ever been adjudicated mentally defective (which includes a determination by a court, board, commission, or other lawful authority that you are a danger to yourself or to others or are incompetent to manage your own affairs) OR have you ever been committed to a mental institution? (See Instructions for Question 11.f.)						Yes <input type="checkbox"/>	No <input type="checkbox"/>
g. Have you been discharged from the Armed Forces under dishonorable conditions?						Yes <input type="checkbox"/>	No <input type="checkbox"/>
h. Are you subject to a court order restraining you from harassing, stalking, or threatening your child or an intimate partner or child of such partner? (See Instructions for Question 11.h.)						Yes <input type="checkbox"/>	No <input type="checkbox"/>
i. Have you ever been convicted in any court of a misdemeanor crime of domestic violence? (See Instructions for Question 11.i.)						Yes <input type="checkbox"/>	No <input type="checkbox"/>
j. Have you ever renounced your United States citizenship?						Yes <input type="checkbox"/>	No <input type="checkbox"/>
k. Are you an alien illegally in the United States?						Yes <input type="checkbox"/>	No <input type="checkbox"/>
l. Are you an alien admitted to the United States under a nonimmigrant visa? (See Instructions for Question 11.l.) If you answered "no" to this question, do NOT respond to question 12 and proceed to question 13.						Yes <input type="checkbox"/>	No <input type="checkbox"/>
12. If you are an alien admitted to the United States under a nonimmigrant visa, do you fall within any of the exceptions set forth in the instructions? (If "yes," the licensee must complete question 20c.) (See Instructions for Question 12.) If question 11.l. is answered with a "no" response, then do NOT respond to question 12 and proceed to question 13.						Yes <input type="checkbox"/>	No <input type="checkbox"/>
13. What is your State of residence (if any)? (See Instructions for Question 13.)		14. What is your country of citizenship? (List/check more than one, if applicable. If you are a citizen of the United States, proceed to question 16.) <input type="checkbox"/> United States of America <input type="checkbox"/> Other (Specify) _____		15. If you are not a citizen of the United States, what is your U.S.-issued alien number or admission number?			

I certify that my answers to Section A are true, correct, and complete. I have read and understand the Notices, Instructions, and Definitions on ATF Form 4473. I understand that answering "yes" to question 11.a. if I am not the actual buyer is a crime punishable as a felony under Federal law, and may also violate State and/or local law. I understand that a person who answers "yes" to any of the questions 11.b. through 11.k. is prohibited from purchasing or receiving a firearm. I understand that a person who answers "yes" to question 11.l. is prohibited from purchasing or receiving a firearm, unless the person also answers "Yes" to question 12. I also understand that making any false oral or written statement, or exhibiting any false or misrepresented identification with respect to this transaction, is a crime punishable as a felony under Federal law, and may also violate State and/or local law. I further understand that the repetitive purchase of firearms for the purpose of resale for livelihood and profit without a Federal firearms license is a violation of law (See Instructions for Question 16).

16. Transferee's/Buyer's Signature

17. Certification Date

Section B - Must Be Completed By Transferor (Seller)

18. Type of firearm(s) to be transferred (check or mark all that apply):

☐ Handgun ☐ Long Gun ☐ Other Firearm (Frame, Receiver, etc.
(rifles or See Instructions for Question 18.)
shotguns)

19. If sale at a gun show or other qualifying event.

Name of Event

City, State

20a. Identification (e.g., Virginia Driver's license (VA DL) or other valid government-issued photo identification.) (See Instructions for Question 20.a.)

Issuing Authority and Type of Identification

Number on Identification

Expiration Date of Identification (if any)

Month

Day

Year

20b. Alternate Documentation (if driver's license or other identification document does not show current residence address) (See Instructions for Question 20.b.)

20c. Aliens Admitted to the United States Under a Nonimmigrant Visa Must Provide: Type of documentation showing an exception to the nonimmigrant visa prohibition. (See Instructions for Question 20.c.)

Questions 21, 22, or 23 Must Be Completed Prior To The Transfer Of The Firearm(s) (See Instructions for Questions 21, 22 and 23.)

21a. Date the transferee's identifying information in Section A was transmitted to NICS or the appropriate State agency: (Month/Day/Year)

Month

Day

Year

21b. The NICS or State transaction number (if provided) was:

21c. The response initially provided by NICS or the appropriate State agency was:

☐ Proceed
☐ Denied
☐ Cancelled

☐ Delayed

[The firearm(s) may be transferred on
_____ (Missing Disposition
Information date provided by NICS) if State law
permits (optional)]

21d. If initial NICS or State response was "Delayed," the following response was received from NICS or the appropriate State agency:

☐ Proceed _____ (date)

☐ Denied _____ (date)

☐ Cancelled _____ (date)

☐ No resolution was provided within 3 business days.

21e. (Complete if applicable.) After the firearm was transferred, the following response was received from NICS or the appropriate State agency on: _____ (date). ☐ Proceed ☐ Denied ☐ Cancelled

21f. The name and Brady identification number of the NICS examiner (Optional)

(name)

(number)

22. ☐ No NICS check was required because the transfer involved only National Firearms Act firearm(s). (See Instructions for Question 22.)

23. ☐ No NICS check was required because the buyer has a valid permit from the State where the transfer is to take place, which qualifies as an exemption to NICS (See Instructions for Question 23.)

Issuing State and Permit Type

Date of Issuance (if any)

Expiration Date (if any)

Permit Number (if any)

Section C - Must Be Completed Personally By Transferee (Buyer)

If the transfer of the firearm(s) takes place on a different day from the date that the transferee (buyer) signed Section A, the transferee must complete Section C immediately prior to the transfer of the firearm(s). (See Instructions for Question 24 and 25.)

I certify that my answers to the questions in Section A of this form are still true, correct and complete.

24. Transferee's/Buyer's Signature

25. Recertification Date

Transferor (Seller) Continue to Next Page
STAPLE IF PAGES BECOME SEPARATED

Section D - Must Be Completed By Transferor (Seller)

26. Manufacturer and/or Importer <i>(If the manufacturer and importer are different, the FFL should include both.)</i>	27. Model	28. Serial Number	29. Type <i>(pistol, revolver, rifle, shotgun, receiver, frame, etc.) (See instructions for question 29)</i>	30. Caliber or Gauge

30a. Total Number of Firearms <i>(Please handwritten by printing e.g., one, two, three, etc. Do not use numerals.)</i>	30b. Is any part of this transaction a Pawn Redemption? <input type="checkbox"/> Yes <input type="checkbox"/> No
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30c. For Use by FFL *(See Instructions for Question 30c.)*

Complete ATF Form 3310.4 For Multiple Purchases of Handguns Within 5 Consecutive Business Days

31. Trade/corporate name and address of transferor <i>(seller) (Hand stamp may be used.)</i>	32. Federal Firearms License Number <i>(Must contain at least first three and last five digits of FFL Number X-XX-XXXXX.) (Hand stamp may be used.)</i>
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The Person Transferring The Firearm(s) Must Complete Questions 33-36. For Denied/Cancelled Transactions, The Person Who Completed Section B Must Complete Questions 33-35.

I certify that my answers in Sections B and D are true, correct, and complete. I have read and understand the Notices, Instructions, and Definitions on ATF Form 4473. On the basis of: (1) the statements in Section A (and Section C if the transfer does not occur on the day Section A was completed); (2) my verification of the identification noted in question 20a (and my reverification at the time of transfer if the transfer does not occur on the day Section A was completed); and (3) the information in the current State Laws and Published Ordinances, it is my belief that it is not unlawful for me to sell, deliver, transport, or otherwise dispose of the firearm(s) listed on this form to the person identified in Section A.

33. Transferor's/Seller's Name <i>(Please print)</i>	34. Transferor's/Seller's Signature	35. Transferor's/Seller's Title	36. Date Transferred
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NOTICES, INSTRUCTIONS AND DEFINITIONS

Purpose of the Form: The information and certification on this form are designed so that a person licensed under 18 U.S.C. § 923 may determine if he or she may lawfully sell or deliver a firearm to the person identified in Section A, and to alert the buyer of certain restrictions on the receipt and possession of firearms. This form should only be used for sales or transfers where the seller is licensed under 18 U.S.C. § 923. The seller of a firearm must determine the lawfulness of the transaction and maintain proper records of the transaction. Consequently, the seller must be familiar with the provisions of 18 U.S.C. §§ 921-931 and the regulations in 27 CFR Part 478. In determining the lawfulness of the sale or delivery of a long gun *(rifle or shotgun)* to a resident of another State, the seller is presumed to know the applicable State laws and published ordinances in both the seller's State and the buyer's State.

After the seller has completed the firearms transaction, he or she must make the completed, original ATF Form 4473 *(which includes the Notices, General Instructions, and Definitions)*, and any supporting documents, part of his or her permanent records. Such Forms 4473 must be retained for at least 20 years. Filing may be chronological *(by date)*, alphabetical *(by name)*, or numerical *(by transaction serial number)*, as long as all of the seller's completed Forms 4473 are filed in the same manner. **FORMS 4473 FOR DENIED/CANCELLED TRANSFERS MUST BE RETAINED:** If the transfer of a firearm is denied/cancelled by NICS, or if for any other reason the transfer is not complete after a NICS check is initiated, the licensee must retain the ATF Form 4473 in his or her records for at least 5 years. Forms 4473 with respect to which a sale, delivery, or transfer did not take place shall be separately retained in alphabetical *(by name)* or chronological *(by date of transferee's certification)* order.

If you or the buyer discover that an ATF Form 4473 is incomplete or improperly completed after the firearm has been transferred, and you or the buyer wish to make a record of your discovery, then photocopy the inaccurate form and make any necessary additions or revisions to the photocopy. You only should make changes to Sections B and D. The buyer should only make changes to Sections A and C. Whoever made the changes should initial and date the changes. The corrected photocopy should be attached to the original Form 4473 and retained as part of your permanent records.

Over-the-Counter Transaction: The sale or other disposition of a firearm by a seller to a buyer, at the seller's licensed premises. This includes the sale or other disposition of a rifle or shotgun to a nonresident buyer on such premises.

State Laws and Published Ordinances: The publication (ATF P 5300.5) of State firearms laws and local ordinances ATF distributes to licensees.

Exportation of Firearms: The State or Commerce Departments may require you to obtain a license prior to export.

Section A

Question 1. Transferee's Full Name: The buyer must personally complete Section A of this form and certify *(sign)* that the answers are true, correct, and complete. However, if the buyer is unable to read and/or write, the answers *(other than the signature)* may be completed by another person, excluding the seller. Two persons *(other than the seller)* must then sign as witnesses to the buyer's answers and signature.

When the buyer of a firearm is a corporation, company, association, partnership, or other such business entity, an officer authorized to act on behalf of the

business must complete Section A of the form with his or her personal information, sign Section A, and attach a written statement, executed under penalties of perjury, stating: (A) the firearm is being acquired for the use of and will be the property of that business entity and (B) the name and address of that business entity. If the buyer's name in question 1. is illegible, the seller must print the buyer's name above the name written by the buyer.

Question 2. Current Residence Address: U.S. Postal abbreviations are acceptable. (e.g., St., Rd., Dr., PA, NC, etc.). Address cannot be a post office box. County and Parish are one and the same.

If the buyer is a member of the Armed Forces on active duty acquiring a firearm in the State where his or her permanent duty station is located, but does not reside at his or her permanent duty station, the buyer must list both his or her permanent duty station address and his or her residence address in response to question 2. If you are a U.S. citizen with two States of residence, you should list your current residence address in response to question 2 (e.g., if you are buying a firearm while staying at your weekend home in State X, you should list your address in State X in response to question 2).

Question 9. Unique Personal Identification Number (UPIN): For purchasers approved to have information maintained about them in the FBI NICS Voluntary Appeal File, NICS will provide them with a Unique Personal Identification Number, which the buyer should record in question 9. The licensee may be asked to provide the UPIN to NICS or the State.

Question 11.a. Actual Transferee/Buyer: For purposes of this form, you are the actual transferee/buyer if you are purchasing the firearm for yourself or otherwise acquiring the firearm for yourself (e.g., redeeming the firearm from pawn/retrieving it from consignment, firearm raffle winner). You are also the actual transferee/buyer if you are legitimately purchasing the firearm as a gift for a third party. **ACTUAL TRANSFEREE/BUYER EXAMPLES:** Mr. Smith asks Mr. Jones to purchase a firearm for Mr. Smith. Mr. Smith gives Mr. Jones the money for the firearm. Mr. Jones is **NOT** THE ACTUAL TRANSFEREE/BUYER of the firearm and must answer "NO" to question 11.a. The licensee may not transfer the firearm to Mr. Jones. However, if Mr. Brown goes to buy a firearm with his own money to give to Mr. Black as a present, Mr. Brown is the actual transferee/buyer of the firearm and should answer "YES" to question 11.a. However, you may not transfer a firearm to any person you know or have reasonable cause to believe is prohibited under 18 U.S.C. § 922(g), (n), or (x). **Please note: EXCEPTION:** If you are picking up a repaired firearm(s) for another person, you are not required to answer 11.a. and may proceed to question 11.b.

Question 11.b. - 11.i. Definition of Prohibited Person: Generally, 18 U.S.C. § 922 prohibits the shipment, transportation, receipt, or possession in or affecting interstate commerce of a firearm by one who: has been convicted of a misdemeanor crime of domestic violence; has been convicted of a felony, or any other crime, punishable by imprisonment for a term exceeding one year (*this does not include State misdemeanors punishable by imprisonment of two years or less*); is a fugitive from justice; is an unlawful user of, or addicted to, marijuana or any depressant, stimulant, or narcotic drug, or any other controlled substance; has been adjudicated mentally defective or has been committed to a mental institution; has been discharged from the Armed Forces under dishonorable conditions; has renounced his or her U.S. citizenship; is an alien illegally in the United States or an alien admitted to the United States under a nonimmigrant visa; or is subject to certain restraining orders. Furthermore, section 922 prohibits the shipment, transportation, or receipt in or affecting interstate commerce of a firearm by one who is under indictment or information for a felony, or any other crime, punishable by imprisonment for a term exceeding one year.

Question 11.b. Under Indictment or Information or Convicted in any Court: An indictment, information, or conviction in any Federal, State, or local court. An information is a formal accusation of a crime verified by a prosecutor.

EXCEPTION to 11.c. and 11.i.: A person who has been convicted of a felony, or any other crime, for which the judge could have imprisoned the person for more than one year, or who has been convicted of a misdemeanor crime of domestic violence, is not prohibited from purchasing, receiving, or possessing a firearm if: (1) under the law of

the jurisdiction where the conviction occurred, the person has been pardoned, the conviction has been expunged or set aside, or the person has had their civil rights (*the right to vote, sit on a jury, and hold public office*) taken away and later restored AND (2) the person is not prohibited by the law of the jurisdiction where the conviction occurred from receiving or possessing firearms. Persons subject to this exception should answer "no" to 11.c. or 11.i., as applicable.

Question 11.f. Adjudicated Mentally Defective: A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease: (1) is a danger to himself or to others; or (2) lacks the mental capacity to contract or manage his own affairs. This term shall include: (1) a finding of insanity by a court in a criminal case; and (2) Those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility.

Committed to a Mental Institution: A formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily. The term includes commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution. Please also refer to Question 11.c. for the definition of a prohibited person.

EXCEPTION to 11. f. NICS Improvement Amendments Act of 2007: A person who has been adjudicated as a mental defective or committed to a mental institution is not prohibited if: (1) the person was adjudicated or committed by a **department or agency of the Federal Government**, such as the United States Department of Veteran's Affairs ("VA") (as opposed to a State court, State board, or other lawful State authority); and (2) either: (a) the person's adjudication or commitment for mental incompetency was set-aside or expunged by the adjudicating/committing agency; (b) the person has been fully released or discharged from all mandatory treatment, supervision, or monitoring by the agency; or (c) the person was found by the agency to no longer suffer from the mental health condition that served as the basis of the initial adjudication.

Persons who fit this exception should answer "no" to Item 11.f. This exception does not apply to any person who was adjudicated to be not guilty by reason of insanity, or based on lack of mental responsibility, or found incompetent to stand trial, in any criminal case or under the Uniform Code of Military Justice.

Question 11.h. Definition of Restraining Order: Under 18 U.S.C. § 922, firearms may not be sold to or received by persons subject to a court order that: (A) was issued after a hearing which the person received actual notice of and had an opportunity to participate in; (B) restrains such person from harassing, stalking, or threatening an intimate partner or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and (C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury. An "intimate partner" of a person is: the spouse or former spouse of the person, the parent of a child of the person, or an individual who cohabitates or cohabitating with the person.

Question 11.i. Definition of Misdemeanor Crime of Domestic Violence: A Federal, State, local, or tribal offense that is a misdemeanor under Federal, State, or tribal law and has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with, or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim. The term includes all misdemeanors that have as an element the use or attempted use of physical force or the threatened use of a deadly weapon (e.g., *assault and battery*), if the offense is committed by one of the defined parties. (*See Exception to 11.c. and 11.i.*) A person who has been convicted of a misdemeanor crime of domestic violence also is not prohibited unless: (1) the person was represented by a lawyer or gave up the right to a lawyer; or (2) if the person was entitled to a jury, was tried by a jury, or gave up the right to a jury trial. Persons subject to this exception should answer "no" to 11.i.

Question 11.I. An alien admitted to the United States under a nonimmigrant visa includes, among others, persons visiting the United States temporarily for business or pleasure, persons studying in the United States who maintain a residence abroad, and certain temporary foreign workers. The definition does **NOT** include permanent resident aliens nor does it apply to nonimmigrant aliens admitted to the United States pursuant to either the Visa Waiver Program or to regulations otherwise exempting them from visa requirements.

An alien admitted to the United States under a nonimmigrant visa who responds “yes” to question 11.I. must provide a response to question 12 indicating whether he/she qualifies under an exception.

Question 12. Exceptions to the Nonimmigrant Alien Response: An alien admitted to the United States under a nonimmigrant visa is not prohibited from purchasing, receiving, or possessing a firearm if the alien: (1) is in possession of a hunting license or permit lawfully issued by the Federal Government, a State, or local government, or an Indian tribe federally recognized by the Bureau of Indian Affairs, which is valid and unexpired; (2) was admitted to the United States for lawful hunting or sporting purposes; (3) has received a waiver from the prohibition from the Attorney General of the United States; (4) is an official representative of a foreign government who is accredited to the United States Government or the Government’s mission to an international organization having its headquarters in the United States; (5) is en route to or from another country to which that alien is accredited; (6) is an official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State; or (7) is a foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business.

Persons subject to one of these exceptions should answer “yes” to questions 11.I. and 12 and provide documentation such as a copy of the hunting license or letter granting the waiver, which must be recorded in 20.c. If the transferee (*buyer*) answered “yes” to this question, the licensee must complete 20.c.

The seller should verify supporting documentation provided by the purchaser and must attach a copy of the provided documentation to this ATF Form 4473, Firearms Transaction Record.

Question 13. State of Residence: The State in which an individual resides. An individual resides in a State if he or she is present in a State with the intention of making a home in that State. If an individual is a member of the Armed Forces on active duty, his or her State of residence also is the State in which his or her permanent duty station is located.

If you are a U.S. citizen with two States of residence, you should list your current residence address in response to question 2 (*e.g., if you are buying a firearm while staying at your weekend home in State X, you should list your address in State X in response to question 2.*)

Question 16. Certification Definition of Engaged in the Business: Under 18 U.S.C. § 922 (a)(1), it is unlawful for a person to engage in the business of dealing in firearms without a license. A person is engaged in the business of dealing in firearms if he or she devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms. A license is not required of a person who only makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his or her personal collection of firearms.

Section B

Question 18. Type of Firearm(s): Check all boxes that apply. “Other” refers to frames, receivers and other firearms that are not either handguns or long guns (rifles or shotguns), such as firearms having a pistol grip that expel a shotgun shell, or National Firearms Act (NFA) firearms.

If a frame or receiver can only be made into a long gun (*rifle or shotgun*), it is still a frame or receiver not a handgun or long gun. However, they still are “firearms” by definition, and subject to the same

GCA limitations as any other firearms. See Section 921(a)(3)(b). 18 U.S.C. Section 922(b)(1) makes it unlawful for a licensee to sell any firearm other than a shotgun or rifle to any person under the age of 21. Since a frame or receiver for a firearm, to include one that can only be made into a long gun, is a “firearm other than a shotgun or rifle,” it cannot be transferred to anyone under the age of 21. Also, note that multiple sales forms are not required for frames or receivers of any firearms, or pistol grip shotguns, since they are not “pistols or revolvers” under Section 923(g)(3)(a).

Question 19. Gun Shows: If sale at gun show or other qualifying event sponsored by any national, State, or local organization, as authorized by 27 CFR § 478.100, the seller must record the name of event and the location (*city and State*) of the sale in question 19.

Question 20a. Identification: List issuing authority (*e.g., State, County or Municipality*) and type of identification presented (*e.g., Virginia driver’s license (VA DL), or other valid government-issued identification*).

Know Your Customer: Before a licensee may sell or deliver a firearm to a nonlicensee, the licensee must establish the identity, place of residence, and age of the buyer. The buyer **must** provide a valid government-issued photo identification to the seller that contains the buyer’s name, residence address, and date of birth. The licensee must record the type, identification number, and expiration date (*if any*) of the identification in question 20.a. A driver’s license or an identification card issued by a State in place of a license is acceptable. Social Security cards are not acceptable because no address, date of birth, or photograph is shown on the cards. A combination of government-issued documents may be provided. For example, if a U.S. citizen has two States of residence and is trying to buy a handgun in State X, he may provide a driver’s license (*showing his name, date of birth, and photograph*) issued by State Y and another government-issued document (*such as a tax document*) from State X showing his residence address. If the buyer is a member of the Armed Forces on active duty acquiring a firearm in the State where his or her permanent duty station is located, but he or she has a driver’s license from another State, you should list the buyer’s military identification card and official orders showing where his or her permanent duty station is located in response to question 20.a.

Question 20.b. Alternate Documentation: Licensees may accept a combination of valid government-issued documents to satisfy the identification document requirements of the law. The required valid government-issued photo identification document bearing the name, photograph, and date of birth of transferee may be supplemented by another valid, government-issued document showing the transferee’s residence address. This alternate documentation should be recorded in question 20.b., with issuing authority and type of identification presented. A combination of government-issued documents may be provided. For example, if a U.S. citizen has two States of residence and is trying to buy a handgun in State X, he may provide a driver’s license (*showing his name, date of birth, and photograph*) issued by State Y and another government-issued document (*such as a tax document*) from State X showing his residence address.

Question 20c. Documentation for Aliens Admitted to the United States Under a Nonimmigrant Visa: See instructions for Question 11.I. Types of acceptable documents would include a valid hunting license lawfully issued in the United States or a letter from the U.S. Attorney General granting a waiver.

Question(s) 21, 22, 23, NICS BACKGROUND CHECKS: 18 U.S.C. § 922(t) requires that prior to transferring any firearm to an unlicensed person, a licensed importer, manufacturer, or dealer must first contact the National Instant Criminal Background Check System (NICS). NICS will advise the licensee whether the system finds any information that the purchaser is prohibited by law from possessing or receiving a firearm. For purposes of this form, contacts to NICS include contacts to State agencies designated to conduct NICS checks for the Federal Government. **WARNING:** Any seller who transfers a firearm to any person they know or have reasonable cause to believe is prohibited from receiving or possessing a firearm violates the law, even if the seller has complied with the background check requirements of the Brady law.

After the buyer has completed Section A of the form and the licensee has completed questions 18-20, and before transferring the firearm, the licensee must contact NICS (*read below for NICS check exceptions*.) However, the licensee should NOT contact NICS and should stop the transaction if: the

buyer answers “no” to question 11.a.; the buyer answers “yes” to any question in 11.b.-11.l., unless the buyer only has answered “yes” to question 11.l. and also answers “yes” to question 12; or the buyer is unable to provide the documentation required by question 20.a, b, or c.

At the time that NICS is contacted, the licensee must record in question 21.a-c: the date of contact, the NICS (*or State*) transaction number, and the initial response provided by NICS or the State. The licensee may record the Missing Disposition Information (MDI) date in 21.c. that NICS provides for delayed transactions (*States do not provide this number*). If the licensee receives a “*delayed*” response, before transferring the firearm, the licensee must record in question 21.d. any response later provided by NICS or the State or that no resolution was provided within 3 business days. If the licensee receives a response from NICS or the State after the firearm has been transferred, he or she must record this information in question 21.e. **Note:** States acting as points of contact for NICS checks may use terms other than “*proceed*,” “*delayed*,” “*cancelled*,” or “*denied*.” In such cases, the licensee should check the box that corresponds to the State’s response. Some States may not provide a transaction number for denials. However, if a firearm is transferred within the three business day period, a transaction number is required.

NICS Responses: If NICS provides a “*proceed*” response, the transaction may proceed. If NICS provides a “*cancelled*” response, the seller is prohibited from transferring the firearm to the buyer. If NICS provides a “*denied*” response, the seller is prohibited from transferring the firearm to the buyer. If NICS provides a “*delayed*” response, the seller is prohibited from transferring the firearm unless 3 business days have elapsed and, before the transfer, NICS or the State has not advised the seller that the buyer’s receipt or possession of the firearm would be in violation of law. (See 27 CFR § 478.102(a) for an example of how to calculate 3 business days.) If NICS provides a “*delayed*” response, NICS also will provide a Missing Disposition Information (MDI) date that calculates the 3 business days and reflects when the firearm(s) can be transferred under Federal law. States may not provide an MDI date. *Please note State law may impose a waiting period on transferring firearms.*

EXCEPTIONS TO NICS CHECK: A NICS check is not required if the transfer qualifies for any of the exceptions in 27 CFR § 478.102(d). Generally these include: (a) transfers where the buyer has presented the licensee with a permit or license that allows the buyer to possess, acquire, or carry a firearm, and the permit has been recognized by ATF as a valid alternative to the NICS check requirement; (b) transfers of National Firearms Act weapons approved by ATF; or (c) transfers certified by ATF as exempt because compliance with the NICS check requirements is impracticable. See 27 CFR § 478.102(d) for a detailed explanation. If the transfer qualifies for one of these exceptions, the licensee must obtain the documentation required by 27 CFR § 478.131. A firearm must **not** be transferred to any buyer who fails to provide such documentation.

Section C

Question 24 and 25. Transfer on a Different Day and Recertification: If the transfer takes place on a different day from the date that the buyer signed Section A, the licensee must again check the photo identification of the buyer at the time of transfer, and the buyer must complete the recertification in Section C at the time of transfer.

Section D

Immediately prior to transferring the firearm, the seller must complete all of the questions in Section D. In addition to completing this form, the seller must report any multiple sale or other disposition of pistols or revolver on ATF Form 3310.4 (see 27 CFR § 478.126a).

Question(s) 26, 27, 28, 29 and 30, Firearm(s) Description: These blocks should be completed with the firearm(s) information. Firearms manufactured after 1968 should all be marked with a serial number. Should you acquire a firearm that is not marked with a serial number; you may answer question 28 with “NSN” (No Serial Number), “N/A” or “None.”

If more than five firearms are involved in a transaction, the information required by Section D, questions 26-30, must be provided for the additional firearms on a separate sheet of paper, which must be attached to the ATF Form 4473 covering the transaction.

Types of firearms include: pistol, revolver, rifle, shotgun, receiver, frame and other firearms that are not either handguns or long guns (rifles or shotguns), such as firearms having a pistol grip that expel a shotgun shell or National Firearms Act (NFA) firearms.

Additional firearms purchases by the same buyer may not be added to the form after the seller has signed and dated it. A buyer who wishes to purchase additional firearms after the seller has signed and dated the form must complete a new ATF Form 4473. The seller must conduct a new NICS check.

Question 30c. This box is for the FFL’s use in recording any information he or she finds necessary to conduct business.

Question 32 Federal Firearms License Number: Must contain at least the first three and last five digits of the FFL number, for instance X-XX-XXXXX.

Question 33-35 Transferor/Sellers Information: For “denied” and “cancelled” NICS transactions, the person who completed Section B must complete Section D, questions 33-35.

Privacy Act Information

Solicitation of this information is authorized under 18 U.S.C. § 923(g). Disclosure of the individual’s Social Security number is voluntary. The number may be used to verify the buyer’s identity.

Paperwork Reduction Act Notice

The information required on this form is in accordance with the Paperwork Reduction Act of 1995. The purpose of the information is to determine the eligibility of the transferee to receive firearms under Federal law. The information is subject to inspection by ATF officers and is required by 18 U.S.C. §§ 922 and 923.

The estimated average burden associated with this collection is 30 minutes per respondent or recordkeeper, depending on individual circumstances. Comments about the accuracy of this burden estimate and suggestions for reducing it should be directed to Reports Management Officer, Document Services Section, Bureau of Alcohol, Tobacco, Firearms and Explosives, Washington, DC 20226.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Confidentiality is not assured.

3) Exemplary Form 4473 (2016 version)

Firearms Transaction Record

WARNING: You may not receive a firearm if prohibited by Federal or State law. The information you provide will be used to determine whether you are prohibited from receiving a firearm. Certain violations of the Gun Control Act, 18 U.S.C. 921 et. seq., are punishable by up to 10 years imprisonment and/or up to a \$250,000 fine.

Transferor's/Seller's
Transaction Serial
Number (If any)

Read the Notices, Instructions, and Definitions on this form. Prepare in original only at the licensed premises ("licensed premises" includes business temporarily conducted from a qualifying gun show or event in the same State in which the licensed premises is located) unless the transaction qualifies under 18 U.S.C. 922(c). All entries must be handwritten in ink. "PLEASE PRINT."

Section A - Must Be Completed Personally By Transferee/Buyer

1. Transferee's/Buyer's Full Name (If legal name contains an initial only, record "IO" after the initial. If no middle initial or name, record "NMN".)

Last Name (Including suffix (e.g., Jr, Sr, II, III))

First Name

Middle Name

2. Current State of Residence and Address (U.S. Postal abbreviations are acceptable. Cannot be a post office box.)

Number and Street Address

City

County

State

ZIP Code

3. Place of Birth

U.S. City and State

-OR-

Foreign Country

4. Height

Ft. _____

In. _____

5. Weight

(Lbs.) _____

6. Sex

☐ Male

☐ Female

7. Birth Date

Month _____

Day _____

Year _____

8. Social Security Number (Optional, but will help prevent misidentification)

9. Unique Personal Identification Number (UPIN) if applicable (See Instructions for Question 9.)

10.a. Ethnicity

☐ Hispanic or Latino

☐ Not Hispanic or Latino

10.b. Race (In addition to ethnicity, select one or more race in 10.b. Both 10.a. and 10.b. must be answered.)

☐ American Indian or Alaska Native

☐ Black or African American

☐ White

☐ Asian

☐ Native Hawaiian or Other Pacific Islander

11. Answer the following questions by checking or marking "yes" or "no" in the boxes to the right of the questions.

Yes No

a. Are you the actual transferee/buyer of the firearm(s) listed on this form? **Warning: You are not the actual transferee/buyer if you are acquiring the firearm(s) on behalf of another person. If you are not the actual transferee/buyer, the licensee cannot transfer the firearm(s) to you. Exception: If you are picking up a repaired firearm(s) for another person, you are not required to answer 11.a. and may proceed to question 11.b. (See Instructions for Question 11.a.)**

☐ ☐

b. Are you under indictment or information in any court for a **felony**, or any other crime for which the judge could imprison you for more than one year? (See Instructions for Question 11.b.)

☐ ☐

c. Have you ever been convicted in any court of a **felony**, or any other crime for which the judge could have imprisoned you for more than one year, even if you received a shorter sentence including probation? (See Instructions for Question 11.c.)

☐ ☐

d. Are you a fugitive from justice? (See Instructions for Question 11.d.)

☐ ☐

e. Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance? **Warning: The use or possession of marijuana remains unlawful under Federal law regardless of whether it has been legalized or decriminalized for medicinal or recreational purposes in the state where you reside.**

☐ ☐

f. Have you ever been adjudicated as a mental defective **OR** have you ever been committed to a mental institution? (See Instructions for Question 11.f.)

☐ ☐

g. Have you been discharged from the Armed Forces under **dishonorable** conditions?

☐ ☐

h. Are you subject to a court order restraining you from harassing, stalking, or threatening your child or an intimate partner or child of such partner? (See Instructions for Question 11.h.)

☐ ☐

i. Have you ever been **convicted** in any court of a misdemeanor crime of domestic violence? (See Instructions for Question 11.i.)

☐ ☐

12.a. Country of Citizenship: (Check/List more than one, if applicable. Nationals of the United States may check U.S.A.)

☐ United States of America (U.S.A.)

☐ Other Country/Countries (Specify)

Yes No

12.b. Have you ever renounced your United States citizenship?

☐ ☐

12.c. Are you an alien **illegally** or **unlawfully** in the United States?

☐ ☐

12.d.1. Are you an alien who has been admitted to the United States under a nonimmigrant visa? (See Instructions for Question 12.d.)

☐ ☐

12.d.2. If "yes", do you fall within any of the exceptions stated in the instructions?

☐ N/A

☐ ☐

13. If you are an alien, record your U.S.-Issued Alien or Admission number (AR#, USCIS#, or I94#):

Previous Editions Are Obsolete

Transferee/Buyer Continue to Next Page
STAPLE IF PAGES BECOME SEPARATED

I certify that my answers in Section A are true, correct, and complete. I have read and understand the Notices, Instructions, and Definitions on ATF Form 4473. I understand that answering "yes" to question 11.a. if I am not the actual transferee/buyer is a crime punishable as a felony under Federal law, and may also violate State and/or local law. I understand that a person who answers "yes" to any of the questions 11.b. through 11.i and/or 12.b. through 12.c. is prohibited from purchasing or receiving a firearm. I understand that a person who answers "yes" to question 12.d.1. is prohibited from receiving or possessing a firearm, unless the person answers "yes" to question 12.d.2. and provides the documentation required in 18.c. I also understand that making any false oral or written statement, or exhibiting any false or misrepresented identification with respect to this transaction, is a crime punishable as a felony under Federal law, and may also violate State and/or local law. I further understand that the repetitive purchase of firearms for the purpose of resale for livelihood and profit without a Federal firearms license is a violation of Federal law. (See Instructions for Question 14.)

14. Transferee's/Buyer's Signature

15. Certification Date

Section B - Must Be Completed By Transferor/Seller

16. Type of firearm(s) to be transferred (check or mark all that apply):

☐ Handgun ☐ Long Gun (rifles or shotguns) ☐ Other Firearm (frame, receiver, etc. See Instructions for Question 16.)

17. If transfer is at a qualifying gun show or event:

Name of Function: _____

City, State: _____

18.a. Identification (e.g., Virginia Driver's license (VA DL) or other valid government-issued photo identification.) (See Instructions for Question 18.a.)

Issuing Authority and Type of Identification

Number on Identification

Expiration Date of Identification (if any)

Month

Day

Year

18.b. Supplemental Government Issued Documentation (if identification document does not show current residence address) (See Instructions for Question 18.b.)

18.c. Exception to the Nonimmigrant Alien Prohibition: If the transferee/buyer answered "YES" to 12.d.2. the transferor/seller must record the type of documentation showing the exception to the prohibition and attach a copy to this ATF Form 4473. (See Instructions for Question 18.c.)

Questions 19, 20, or 21 Must Be Completed Prior To The Transfer Of The Firearm(s) (See Instructions for Questions 19, 20 and 21.)

19.a. Date the transferee's/buyer's identifying information in Section A was transmitted to NICS or the appropriate State agency:

Month

Day

Year

19.b. The NICS or State transaction number (if provided) was:

19.c. The response initially (first) provided by NICS or the appropriate State agency was:

☐ Proceed

☐ Delayed

☐ Denied

☐ Cancelled

[The firearm(s) may be transferred on _____ if State law permits (optional)]

19.d. The following response(s) was/were later received from NICS or the appropriate State agency:

☐ Proceed _____ (date)

☐ Overturned

☐ Denied _____ (date)

☐ Cancelled _____ (date)

☐ No response was provided within 3 business days.

19.e. (Complete if applicable.) After the firearm was transferred, the following response was received from NICS or the appropriate State agency on:

_____ (date).

☐ Proceed

☐ Denied

☐ Cancelled

19.f. The name and Brady identification number of the NICS examiner. (Optional)

(name)

(number)

19.g. Name of FFL Employee Completing NICS check. (Optional)

20. ☐ No NICS check was required because a background check was completed during the NFA approval process on the individual who will receive the NFA firearm(s), as reflected on the approved NFA application. (See Instructions for Question 20.)

21. ☐ No NICS check was required because the transferee/buyer has a valid permit from the State where the transfer is to take place, which qualifies as an exemption to NICS. (See Instructions for Question 21.)

Issuing State and Permit Type

Date of Issuance (if any)

Expiration Date (if any)

Permit Number (if any)

Section C - Must Be Completed Personally By Transferee/Buyer

If the transfer of the firearm(s) takes place on a different day from the date that the transferee/buyer signed Section A, the transferee/buyer must complete Section C immediately prior to the transfer of the firearm(s). (See Instructions for Question 22 and 23.)

I certify that my answers to the questions in Section A of this form are still true, correct, and complete.

22. Transferee's/Buyer's Signature

23. Recertification Date

Transferor/Seller Continue to Next Page
STAPLE IF PAGES BECOME SEPARATED

Section D - Must Be Completed By Transferor/Seller Even If The Firearm(s) is Not Transferred

24. Manufacturer and Importer (If any) (If the manufacturer and importer are different, the FFL must include both.)	25. Model (If Designated)	26. Serial Number	27. Type (See Instructions for Question 27.)	28. Caliber or Gauge
1.				
2.				
3.				
4.				

REMINDER - By the Close of Business Complete ATF Form 3310.4 For Multiple Purchases of Handguns Within 5 Consecutive Business Days

29. Total Number of Firearms Transferred (Please <i>handwrite</i> by printing e.g., zero, one, two, three, etc. Do not use numerals.)	30. Check if any part of this transaction is a pawn redemption. <input type="checkbox"/> Line Number(s) From Question 24 Above:
31. For Use by Licensee (See Instructions for Question 31.)	32. Check if this transaction is to facilitate a private party transfer. <input type="checkbox"/> (See Instructions for Question 32.)
33. Trade/corporate name and address of transferor/seller and Federal Firearm License Number (Must contain at least first three and last five digits of FFL Number X-XX-XXXXX.) (Hand stamp may be used.)	

The Person Transferring The Firearm(s) Must Complete Questions 34-37.**For Denied/Cancelled Transactions, the Person Who Completed Section B Must Complete Questions 34-36.**

I certify that: (1) I have read and understand the Notices, Instructions, and Definitions on this ATF Form 4473; (2) the information recorded in Sections B and D is true, correct, and complete; and (3) this entire transaction record has been completed at my licensed business premises ("licensed premises" includes business temporarily conducted from a qualifying gun show or event in the same State in which the licensed premises is located) unless this transaction has met the requirements of 18 U.S.C. 922(c). Unless this transaction has been denied or cancelled, I further certify on the basis of — (1) the transferee's/buyer's responses in Section A (and Section C, if applicable); (2) my verification of the identification recorded in question 18 (and my re-verification at the time of transfer, if Section C was completed); and (3) State or local law applicable to the firearms business — it is my belief that it is not unlawful for me to sell, deliver, transport, or otherwise dispose of the firearm(s) listed on this form to the person identified in Section A.

34. Transferor's/Seller's Name (Please print)	35. Transferor's/Seller's Signature	36. Transferor's/Seller's Title	37. Date Transferred
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NOTICES, INSTRUCTIONS, AND DEFINITIONS

Purpose of the Form: The information and certification on this form are designed so that a person licensed under 18 U.S.C. 923 may determine if he/she may lawfully sell or deliver a firearm to the person identified in Section A, and to alert the transferee/buyer of certain restrictions on the receipt and possession of firearms. The transferor/seller of a firearm must determine the lawfulness of the transaction and maintain proper records of the transaction. Consequently, the transferor/seller must be familiar with the provisions of 18 U.S.C. 921-931 and the regulations in 27 CFR Parts 478 and 479. In determining the lawfulness of the sale or delivery of a rifle or shotgun to a resident of another State, the transferor/seller is presumed to know the applicable State laws and published ordinances in both the transferor's/seller's State and the transferee's/buyer's State. (See ATF Publication 5300.5, State Laws and Published Ordinances.)

Generally, ATF Form 4473 must be completed at the licensed business premises when a firearm is transferred over-the-counter. Federal law, 18 U.S.C. 922(c), allows a licensed importer, manufacturer, or dealer to sell a firearm to a nonlicensee who does not appear in person at the licensee's business premises only if the transferee/buyer meets certain requirements. These requirements are set forth in section 922(c), 27 CFR 478.96(b), and ATF Procedure 2013-2.

After the transferor/seller has completed the firearms transaction, he/she must make the completed, original ATF Form 4473 (which includes the Notices, General Instructions, and Definitions), and any supporting documents, part of his/her permanent records. Such Forms 4473 must be retained for at least 20 years and after that period may be submitted to ATF. Filing may be chronological (by date of disposition), alphabetical (by name of purchaser), or numerical (by transaction serial number), as long as all of the transferor's/seller's completed Forms 4473 are filed in the same manner.

FORMS 4473 FOR DENIED/CANCELLED TRANSFERS MUST BE RETAINED: If the transfer of a firearm is denied/cancelled by NICS, or if for any other reason the transfer is not completed after a NICS check is initiated, the licensee must retain the ATF Form 4473 in his/her records for at least 5 years. Forms 4473 with respect to which a sale, delivery, or transfer did not take place shall be separately retained in alphabetical (by name of transferee) or chronological (by date of transferee's certification) order.

If the transferor/seller or the transferee/buyer discovers that an ATF Form 4473 is incomplete or improperly completed after the firearm has been transferred, and the transferor/seller or the transferee/buyer wishes to correct the omission(s) or error(s), photocopy the inaccurate form and make any necessary additions or revisions to the photocopy. The transferor/seller should only make changes to Sections B and D. The transferee/buyer should only make changes to Section A and C. Whoever made the changes should initial and date the changes. The corrected photocopy should be attached to the original Form 4473 and retained as part of the transferor's/seller's permanent records.

Exportation of Firearms: The State or Commerce Departments may require a firearms exporter to obtain a license prior to export. **Warning:** Any person who exports a firearm without proper authorization may be fined not more than \$1,000,000 and/or imprisoned for not more than 20 years. See 22 U.S.C. 2778(c).

Section A

The transferee/buyer must personally complete Section A of this form and certify (sign) that the answers are true, correct, and complete. However, if the transferee/buyer is unable to read and/or write, the answers (other than the signature) may be completed by another person, excluding the transferor/seller. Two persons (other than the transferor/seller) must then sign as witnesses to the transferee's/buyer's answers and signature/certification in question 14.

When the transferee/buyer of a firearm is a corporation, company, association, partnership, or other such business entity, an officer authorized to act on behalf of the business must complete Section A of the form with his/her personal information, sign Section A, and attach a written statement, executed under penalties of perjury, stating: (A) the firearm is being acquired for the use of and will be the property of that business entity; and (B) the name and address of that business entity.

Question 1. If the transferee's/buyer's name in question 1 is illegible, the transferor/seller must print the transferee's/buyer's name above the name written by the transferee/buyer.

Question 2. Current Residence Address: A rural route (RR) may be accepted provided the transferee/buyer lives in a State or locality where it is considered a legal residence address. County and Parish are one and the same.

If the transferee/buyer is a member of the Armed Forces on active duty, his/her State of residence is the State in which his/her permanent duty station is located. If the service member is acquiring a firearm in a State where his/her permanent duty station is located, but resides in a different State, the transferee/buyer must list both his/her permanent duty station address and his/her residence address in response to question 2. If the transferee/buyer has two States of residence, the transferee/buyer should list his/her current residence address in response to question 2 (e.g., if the transferee/buyer is purchasing a firearm while staying at his/her weekend home in State X, he/she should list the address in State X in response to question 2).

Question 9. Unique Personal Identification Number (UPIN): For transferees/buyers approved to have information maintained about them in the FBI NICS Voluntary Appeal File, NICS will provide them with a UPIN, which the transferee/buyer should record in question 9. The licensee should provide the UPIN when conducting background checks through the NICS or the State POC.

Question 10.a. and 10.b. Federal regulations (27 CFR 478.124(c)(1)) require licensees to obtain the race of the transferee/buyer. This information helps the FBI and/or State POC make or rule out potential matches during the background check process and can assist with criminal investigations. Pursuant to Office of Management and Budget (OMB), effective January 1, 2003, all Federal agencies requiring collection of race and ethnicity information on administrative forms and records, were required to collect this information in a standard format. (See 62 FR 58782) The standard OMB format consists of two categories for data on ethnicity: "Hispanic or Latino," and "Not Hispanic or Latino" and five categories for data on race: American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White.

Ethnicity refers to a person's heritage. Persons of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race, are considered Hispanic or Latino.

Race - one or more of the following responses must be selected: (1) American Indian or Alaska Native - A person having origins in any of the original peoples of North and South America (including Central America), and who maintains a tribal affiliation or community attachment; (2) Asian - A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam; (3) Black or African American - A person having origins in any of the Black racial groups of Africa; (4) Native Hawaiian or Other Pacific Islander - A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands; and (5) White - A person having origins in any of the original peoples of Europe, the Middle East, or North Africa. Any other race or ethnicity that does not fall within those indicated, please select the closest representation.

Question 11.a. Actual Transferee/Buyer: For purposes of this form, a person is the actual transferee/buyer if he/she is purchasing the firearm for him/herself or otherwise acquiring the firearm for him/herself. (e.g., *redeeming the firearm from pawn, retrieving it from consignment, firearm raffle winner*). A person is also the actual transferee/buyer if he/she is legitimately purchasing the firearm as a bona fide gift for a third party. A gift is not bona fide if another person offered or gave the person completing this form money, service(s), or item(s) of value to acquire the firearm for him/her, or if the other person is prohibited by law from receiving or possessing the firearm.

Actual TRANSFEREE/buyer examples: Mr. Smith asks Mr. Jones to purchase a firearm for Mr. Smith (*who may or may not be prohibited*). Mr. Smith gives Mr. Jones the money for the firearm. Mr. Jones is **NOT THE**
Page 4 of 6

ACTUAL TRANSFEREE/BUYER of the firearm and must answer "NO" to question 11.a. The licensee may not transfer the firearm to Mr. Jones. However, if Mr. Brown buys the firearm with his own money to give to Mr. Black as a gift (*with no service or tangible thing of value provided by Mr. Black*), Mr. Brown is the actual transferee/buyer of the firearm and should answer "YES" to question 11.a. However, the transferor/seller may not transfer a firearm to any person he/she knows or has reasonable cause to believe is prohibited under 18 U.S.C. 922(g), (n) or (x). **EXCEPTION:** If a person is picking up a repaired firearm(s) for another person, he/she is not required to answer 11.a. and may proceed to question 11.b.

Question 11.b. - 12. Generally, 18 U.S.C. 922(g) prohibits the shipment, transportation, receipt, or possession in or affecting interstate commerce of a firearm by one who: has been convicted of a felony in any Federal, State or local court, or any other crime, punishable by imprisonment for a term exceeding one year (*this does not include State misdemeanors punishable by imprisonment of two years or less*); is a fugitive from justice; is an unlawful user of, or addicted to, marijuana or any depressant, stimulant, or narcotic drug, or any other controlled substance; has been adjudicated as a mental defective or has been committed to a mental institution; has been discharged from the Armed Forces under dishonorable conditions; is subject to certain restraining orders; convicted of a misdemeanor crime of domestic violence under Federal, State or Tribal law; has renounced his/her U.S. citizenship; is an alien illegally in the United States or an alien admitted to the United States under a nonimmigrant visa. Furthermore, section 922(n) prohibits the shipment, transportation, or receipt in or affecting interstate commerce of a firearm by one who is under indictment or information for a felony in any Federal, State or local court, or any other crime, punishable by imprisonment for a term exceeding one year. An information is a formal accusation of a crime verified by a prosecutor.

A member of the Armed Forces must answer "yes" to 11.b. or 11.c. if charged with an offense that was either referred to a General Court Martial, or at which the member was convicted. Discharged "under dishonorable conditions" means separation from the Armed Forces resulting from a dishonorable discharge or dismissal adjudged by a General Court-Martial. That term does not include any other discharge or separation from the Armed Forces.

EXCEPTION: A person who has been convicted of a felony, or any other crime, for which the judge could have imprisoned the person for more than one year, or who has been convicted of a misdemeanor crime of domestic violence, is not prohibited from purchasing, receiving, or possessing a firearm if: (1) under the law of the jurisdiction where the conviction occurred, the person has been pardoned, the conviction has been expunged or set aside, or the person has had their civil rights (*the right to vote, sit on a jury, and hold public office*) taken away and later restored, AND (2) the person is not prohibited by the law of the jurisdiction where the conviction occurred from receiving or possessing firearms. Persons subject to this exception, or who receive relief from disabilities under 18 U.S.C. 925(c), should answer "no" to the applicable question.

Question 11.d. Fugitive from Justice: Any person who has fled from any State to avoid prosecution for a felony or a misdemeanor; or any person who leaves the State to avoid giving testimony in any criminal proceeding. The term also includes any person who knows that misdemeanor or felony charges are pending against such person and who leaves the State of prosecution.

Question 11.f. Adjudicated as a Mental Defective: A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease: (1) is a danger to himself or to others; or (2) lacks the mental capacity to contract or manage his own affairs. This term shall include: (1) a finding of insanity by a court in a criminal case; and (2) those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility.

Committed to a Mental Institution: A formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily. The term includes commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution.

EXCEPTION: Under the NICS Improvement Amendments Act of 2007, a person who has been adjudicated as a mental defective or committed to a mental institution in a State proceeding is not prohibited by the adjudication or commitment if

the person has been granted relief by the adjudicating/committing State pursuant to a qualifying mental health relief from disabilities program. Also, a person who has been adjudicated as a mental defective or committed to a mental institution by a department or agency of Federal Government is not prohibited by the adjudication or commitment if either: (a) the person's adjudication or commitment was set-aside or expunged by the adjudicating/committing agency; (b) the person has been fully released or discharged from all mandatory treatment, supervision, or monitoring by the agency; (c) the person was found by the agency to no longer suffer from the mental health condition that served as the basis of the initial adjudication/commitment; or (d) the adjudication or commitment, respectively, is based solely on a medical finding of disability, without an opportunity for a hearing by a court, board, commission, or other lawful authority, and the person has not been adjudicated as a mental defective consistent with section 922(g)(4) of title 18, United States Code; (e) the person was granted relief from the adjudicating/committing agency pursuant to a qualified mental health relief from disabilities program. **Persons who fall within one of the above exceptions should answer "no" to question 11.f.** This exception to an adjudication or commitment by a Federal department or agency does **not** apply to any person who was adjudicated to be not guilty by reason of insanity, or based on lack of mental responsibility, or found incompetent to stand trial, in any criminal case or under the Uniform Code of Military Justice.

Question 11.h. Qualifying Restraining Orders: Under 18 U.S.C. 922, firearms may not be sold to or received by persons subject to a court order that: (A) was issued after a hearing which the person received actual notice of and had an opportunity to participate in; (B) restrains such person from harassing, stalking, or threatening an intimate partner or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and (C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury. An "intimate partner" of a person is: the spouse or former spouse of the person, the parent of a child of the person, or an individual who cohabitates or has cohabited with the person.

Question 11.i. Misdemeanor Crime of Domestic Violence: A Federal, State, local, or tribal offense that is a misdemeanor under Federal, State, or tribal law and has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with, or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim. The term includes all misdemeanors that have as an element the use or attempted use of physical force or the threatened use of a deadly weapon (*e.g., assault and battery*), if the offense is committed by one of the defined parties. (*See Exception to 11.b. - 12.*) A person who has been convicted of a misdemeanor crime of domestic violence also is not prohibited unless: (1) the person was represented by a lawyer or gave up the right to a lawyer; or (2) if the person was entitled to a jury, was tried by a jury, or gave up the right to a jury trial. Persons subject to this exception should answer **"no"** to 11.i.

Question 12.d. Immigration Status: An alien admitted to the United States under a nonimmigrant visa includes, among others, persons visiting the United States temporarily for business or pleasure, persons studying in the United States who maintain a residence abroad, and certain temporary foreign workers. These aliens must answer "yes" to this question and provide the additional documentation required under question 18.c. Permanent resident aliens and aliens legally admitted to the United States pursuant to either the Visa Waiver Program or to regulations otherwise exempting them from visa requirements may answer "no" to this question and are not required to submit the additional documentation under question 18.c.

Question 13. U.S.-issued Alien Number or Admission Number: U.S.-issued alien and admission numbers may be found on the following U.S. Department of Homeland Security documents: Legal Resident Card or Employment Authorization Card (AR# or USCIS#); Arrival/Departure Record, Form I94, or Form 797A (I94#). Additional information can be obtained from www.cbp.gov. If you are a U.S. citizen or U.S. national then this question should be left blank.

Question 14. Under 18 U.S.C. 922(a)(1), it is unlawful for a person to engage in the business of dealing in firearms without a license. A person is engaged in the business of dealing in firearms if he/she devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal

objective of livelihood and profit through the repetitive purchase and resale of firearms. A license is not required of a person who only makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his/her personal collection of firearms.

Section B

Question 16. Type of Firearm(s): "Other" refers to frames, receivers and other firearms that are neither handguns nor long guns (rifles or shotguns), such as firearms having a pistol grip that expel a shotgun shell, or National Firearms Act (NFA) firearms, including silencers.

If a frame or receiver can only be made into a long gun (*rifle or shotgun*), it is still a frame or receiver not a handgun or long gun. However, frames and receivers are still "firearms" by definition, and subject to the same GCA limitations as any other firearms. See Section 921(a)(3)(B). Section 922(b)(1) makes it unlawful for a licensee to sell any firearm other than a shotgun or rifle to any person under the age of 21. Since a frame or receiver for a firearm, to include one that can only be made into a long gun, is a "firearm other than a shotgun or rifle," it cannot be transferred to anyone under the age of 21, nor can these firearms be transferred to anyone who is not a resident of the State where the transfer is to take place. Also, note that multiple sales forms are not required for frames or receivers of any firearms, or pistol grip shotguns, since they are not "pistols or revolvers" under Section 923(g)(3)(A).

Question 17. Qualifying Gun Show or Event: As defined in 27 CFR 478.100, a gun show or event is a function sponsored by any national, State, or local organization, devoted to the collection, competitive use, or other sporting use of firearms, or an organization or association that sponsors functions devoted to the collection, competitive use, or other sporting use of firearms in the community.

Question 18.a. Identification: Before a licensee may sell or deliver a firearm to a nonlicensee, the licensee must establish the identity, place of residence, and age of the transferee/buyer. The transferee/buyer **must** provide a valid government-issued photo identification document to the transferor/seller that contains the transferee's/buyer's name, residence address, and date of birth. A driver's license or an identification card issued by a State in place of a license is acceptable. Social Security cards are not acceptable because no address, date of birth, or photograph is shown on the cards. A combination of government-issued documents may be provided. See instructions for question 18.b. Supplemental Documentation.

If the transferee/buyer is a member of the Armed Forces on active duty acquiring a firearm in the State where his/her permanent duty station is located, but he/she has a driver's license from another State, the transferor/seller should list the transferee's/buyer's military identification card and official orders showing where his/her permanent duty station is located in response to question 18.a. Licensees may accept electronic PCS orders to establish residency.

Question 18.b. Supplemental Documentation: Licensees may accept a combination of valid government-issued documents to satisfy the identification document requirements of the law. The required valid government-issued photo identification document bearing the name, photograph, and date of birth of transferee/buyer may be supplemented by another valid, government-issued document showing the transferee's/buyer's residence address. This supplemental documentation should be recorded in question 18.b., with the issuing authority and type of identification presented. For example, if the transferee/buyer has two States of residence and is trying to buy a handgun in State X, he may provide a driver's license (*showing his name, date of birth, and photograph*) issued by State Y and another government-issued document (*such as a tax document*) from State X showing his residence address. A valid electronic document from a government website may be used as supplemental documentation provided it contains the transferee's/buyer's name and current residence address.

Question 18.c. Exceptions to the Nonimmigrant Alien Prohibition and Acceptable Documentation: An alien admitted to the United States under a nonimmigrant visa is not prohibited from purchasing, receiving, or possessing a firearm if the alien: (1) is in possession of a hunting license or permit lawfully issued by the Federal Government, a State or local government, or an Indian tribe federally recognized by the Bureau of Indian Affairs, which is valid and unexpired; (2) was admitted to the United States for lawful hunting or sporting purposes; (3) has received a waiver from the prohibition from the Attorney General of the United States; (4) is an official representative of a foreign government who is accredited to the United States Government or the Government's mission to an international organization having its

headquarters in the United States; (5) is an official representative of a foreign government who is en route to or from another country to which that alien is accredited; (6) is an official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State; or (7) is a foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business.

Question 19. NICS BACKGROUND CHECKS: 18 U.S.C. 922(t) requires that prior to transferring any firearm to an unlicensed person, a licensed importer, manufacturer, or dealer must first contact the National Instant Criminal Background Check System (NICS). NICS will advise the licensee whether the system finds any information that the purchaser is prohibited by law from possessing or receiving a firearm. For purposes of this form, contacts to NICS include State agencies designated as points-of-contact ("or POCs") to conduct NICS checks for the Federal Government.

The licensee should NOT contact NICS and must stop the transaction if there is reasonable cause to believe that the transferee/buyer is prohibited from receiving or possessing a firearm, including if: the transferee/buyer answers "no" to question 11.a.; the transferee/buyer answers "yes" to any question in 11.b. - 11.i. or 12.b. - 12.c.; the transferee/buyer has answered "yes" to question 12.d.1., and answered "no" to question 12.d.2.; or the transferee/buyer cannot provide the documentation required by questions 18.a, b, or c. **WARNING:** Any person who transfers a firearm to any person he/she knows or has reasonable cause to believe is prohibited from receiving or possessing a firearm violates the law, even if the transferor/seller has complied with the Federal background check requirements.

At the time that NICS is contacted, the licensee must record in question 19.a. - 19.c.: the date of contact, the NICS (*or State*) transaction number, and the initial (first) response provided by NICS or the State. The licensee may record the date the firearms may be transferred to the transferee/buyer (also known as the Missing Disposition Information (MDI) date) in 19.c. that NICS provides for delayed transactions (*States may not provide this date*). If the licensee receives any subsequent response(s) before transferring the firearm, the licensee must record in question 19.d. any response later provided by NICS or the State, or that no response was provided within 3 business days. If the transaction was denied and later overturned in addition to checking the "Proceed" and entering the date, the licensee must also check the "Overturned" box and, if provided, attach the overturn certificate issued by NICS or the State POC to the ATF Form 4473. If the licensee receives a response from NICS or the State after the firearm has been transferred, he/she must record this information in question 19.e. **Note:** States acting as points of contact for NICS checks may use terms other than "*proceed*," "*delayed*," "*cancelled*," or "*denied*." In such cases, the licensee should check the box that corresponds to the State's response. Some States may not provide a transaction number for denials. However, if a firearm is transferred within the three business day period, a transaction number is required.

NICS responses: If NICS provides a "*proceed*" response, the transaction may proceed. If NICS provides a "*cancelled*" or "*denied*" response, the transferor/seller is prohibited from transferring the firearm to the transferee/buyer. If NICS provides a "*delayed*" response, the transferor/seller is prohibited from transferring the firearm unless 3 business days have elapsed and, before the transfer, NICS or the State has not advised the transferor/seller that the transferee's/buyer's receipt or possession of the firearm would be in violation of law. (See 27 CFR 478.102(a) for an example of how to calculate 3 business days.) If NICS provides a "*delayed*" response, NICS also will provide a Missing Disposition Information (MDI) date that calculates the 3 business days and reflects when the firearm(s) can be transferred under Federal law. States may not provide an MDI date. *State law may impose a waiting period on transferring firearms.*

Questions 20 and 21. NICS Exceptions: A NICS check is not required if the transfer qualifies for any of the exceptions in 27 CFR 478.102(d). Generally these include: (a) transfers of National Firearms Act firearms to an individual who has undergone a background check during the NFA approval process; (b) transfers where the transferee/buyer has presented the licensee with a permit or license that allows the transferee/buyer to possess, acquire, or carry a firearm, and the permit has been recognized by ATF as a valid alternative to the NICS check requirement; or (c) transfers certified by ATF as exempt because compliance with the NICS check requirements is impracticable. If the transfer qualifies for one of these exceptions, the licensee must obtain the documentation required by 27 CFR 478.131. A firearm must **not** be transferred to any transferee/buyer who fails to provide such documentation.

A NICS check must be conducted if an NFA firearm has been approved for transfer to a trust, or to a legal entity such as a corporation, and no background check was conducted as part of the NFA approval process on the individual who will receive the firearm. Individuals who have undergone a background check during the NFA application process are listed on the approved NFA transfer form.

Section C

Questions 22 and 23. Transfer on a Different Day and Recertification: If the transfer takes place on a different day from the date that the transferee/buyer signed Section A, the licensee must again check the photo identification of the transferee/buyer at the time of transfer.

Section D

Question 24-28. Firearm(s) Description: These blocks must be completed with the firearm(s) information. Firearms manufactured after 1968 by Federal firearms licensees should all be marked with a serial number. Should you acquire a firearm that is legally not marked with a serial number (i.e. pre-1968); you may answer question 26 with "NSN" (No Serial Number), "N/A" or "None."

If more than four firearms are involved in a transaction, the information required by Section D, questions 24-28, must be provided for the additional firearms on a separate sheet of paper, which must be attached to this ATF Form 4473.

Types of firearms include, but are not limited to: pistol, revolver, rifle, shotgun, receiver, frame and other firearms that are neither handguns nor long guns (rifles or shotguns), such as firearms having a pistol grip that expel a shotgun shell (pistol grip firearm) or NFA firearms (machinegun, silencer, short-barreled shotgun, short-barreled rifle, destructive device or "any other weapon").

Additional firearms purchases by the same transferee/buyer may not be added to the form after the transferor/seller has signed and dated it. A transferee/buyer who wishes to acquire additional firearms after the transferor/seller has signed and dated the form must complete a new ATF Form 4473 and undergo a new NICS check.

Question 31. This item is for the licensee's use in recording any information he/she finds necessary to conduct business.

Question 32. Check this box, or write "Private Party Transfer" in question 31, if the licensee is facilitating the sale or transfer of a firearm between private unlicensed individuals in accordance with ATF Procedure 2013-1. This will assist the licensee by documenting which transaction records correspond with private party transfers, and why there may be no corresponding A&D entries when the transfer did not proceed because it was denied, delayed, or cancelled.

Privacy Act Information

Solicitation of this information is authorized under 18 U.S.C. 923(g). Disclosure of this information by the transferee/buyer is mandatory for the transfer of a firearm. Disclosure of the individual's Social Security number is voluntary. The number may be used to verify the transferee's/buyer's identity.

For information about the routine uses of this form see System of Records Notice Justice/ATF-008, Regulatory Enforcement Records System (68 FR 163558, January 24, 2003).

Paperwork Reduction Act Notice

The information required on this form is in accordance with the Paperwork Reduction Act of 1995. The purpose of the information is to determine the eligibility of the transferee to receive and possess firearms under Federal law. The information is subject to inspection by ATF officers and is required by 18 U.S.C. 922 and 923.

The estimated average burden associated with this collection is 30 minutes per respondent or recordkeeper, depending on individual circumstances. Comments about the accuracy of this burden estimate and suggestions for reducing it should be directed to Reports Management Officer, IT Coordination Staff, Bureau of Alcohol, Tobacco, Firearms and Explosives, Washington, DC 20226.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Confidentiality is not assured.

4) GAO Report 18-440



Report to the Ranking Member,
Subcommittee on Commerce, Justice,
Science, and Related Agencies,
Committee on Appropriations, House of
Representatives

September 2018

LAW ENFORCEMENT

Few Individuals
Denied Firearms
Purchases Are
Prosecuted and ATF
Should Assess Use of
Warning Notices in
Lieu of Prosecutions

GAO Highlights

Highlights of [GAO-18-440](#), a report to the Ranking Member, Subcommittee on Commerce, Justice, Science and Related Agencies, Committee on Appropriations, House of Representatives.

Why GAO Did This Study

In 2017, approximately 25.6 million firearm-related background checks were processed through NICS, and about 181,000 of the attempted purchases at the federal and state levels combined were denied because the individual was prohibited from possessing a firearm under federal or state law. Individuals who certify that they are not prohibited from purchasing or receiving a firearm and are subsequently determined to be prohibited could be subject to investigation, and if prosecuted, a fine, imprisonment, or both.

GAO was asked to examine firearms denials. This report (1) describes the extent to which federal and selected state law enforcement agencies investigate and prosecute firearms denial cases; (2) examines related challenges faced by these agencies; and (3) describes the circumstances that lead to investigations and prosecutions. GAO reviewed laws and regulations; analyzed federal and state data from 2011 through 2017; and interviewed officials from ATF headquarters, 6 of 25 ATF field divisions (the 6 that investigated the most cases), and the 13 states that process all NICS checks within their state. Results from state interviews are not generalizable but provide insights on state practices.

What GAO Recommends

GAO recommends that ATF assess the extent to which ATF field divisions use warning notifications as an enforcement tool, which would inform whether changes to policy are needed. DOJ concurred with GAO's recommendation.

View [GAO-18-440](#). For more information, contact Gretta L. Goodwin, 202-512- 8777 goodwin@gao.gov.

September 2018

LAW ENFORCEMENT

Few Individuals Denied Firearms Purchases Are Prosecuted and ATF Should Assess Use of Warning Notices in Lieu of Prosecutions

What GAO Found

Investigations and prosecutions. Federal and selected state law enforcement agencies that process firearm-related background checks through the National Instant Criminal Background Check System (NICS) collectively investigate and prosecute a small percentage of individuals who falsify information on a firearms form (e.g., do not disclose a felony conviction) and are denied a purchase. Federal NICS checks resulted in about 112,000 denied transactions in fiscal year 2017, of which the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) referred about 12,700 to its field divisions for further investigation. U.S. Attorney's Offices (USAO) had prosecuted 12 of these cases as of June 2018.

Table: Federal National Instant Criminal Background Check System (NICS) Firearms Denial Cases Investigated and Prosecuted, Fiscal Year 2017

Federal NICS Transactions	Denials	ATF Field Division Investigations	United States Attorney's Offices Prosecutions
8,606,286	112,090	12,710	12

Source: GAO Analysis of Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and FBI data. | GAO-18-440

At the state level, officials from 10 of 13 selected states said they did not investigate or prosecute firearm denials, some citing competing resource demands and the lack of statutes with which states prosecute as reasons. The remaining 3 states investigated a high proportion of firearms denials. One of the 3 states reported about 1,900 referrals for prosecution in 2017 and about 470 convictions.

Challenges. ATF and selected states reported challenges in investigating and prosecuting firearms denials. Officials from six selected ATF field divisions said that investigating the increasing number of denial cases referred to field divisions—which increased from about 5,200 in fiscal year 2011 to about 12,700 in fiscal year 2017—has been time intensive and required use of their limited resources. ATF policy provides that field divisions may send “warning notices” to denied persons in lieu of prosecution, but ATF has not assessed field divisions’ use of these notices, which could provide greater awareness of their deterrence value and inform whether any policy changes are needed. Officials from the Executive Office for United States Attorneys said that prosecuting denial cases can require significant effort and may offer little value to public safety compared to other cases involving gun violence. Selected state officials said that denial investigations can take law enforcement officials away from their core duties. State prosecutors said gathering evidence to prove individuals knew they were prohibited was a challenge.

Types of cases. ATF field divisions investigate denial cases based on USAO criteria and generally only refer cases to USAOs for prosecution when aggravating circumstances exist, such as violent felonies or multiple serious offenses over a short period of time. Officials from two of three selected states refer all denial cases for investigation, while one state uses risk-based criteria for selecting cases that include conditions such as felony convictions and misdemeanor crimes of domestic violence. Prosecutors from these three states said they generally pursue cases that involve indications of violence, though individual prosecutors had differing priorities based on public safety concerns.

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Abbreviations

ATF	Bureau of Alcohol, Tobacco, Firearms and Explosives
DENI	Denial Enforcement and NICS Intelligence
EOUSA	Executive Office for United States Attorneys
FBI	Federal Bureau of Investigation
FFL	federal firearms licensee
FICS	Firearms Instant Check System
FTC	Firearms Transaction Center
NICS	National Instant Criminal Background Check System
OSP	Oregon State Police
POC	Point of Contact
PSP	Pennsylvania State Police
USAO	United States Attorney's Office
VSP	Virginia State Police

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September 5, 2018

The Honorable José E. Serrano
Ranking Member
Subcommittee on Commerce, Justice, Science, and Related Agencies
Committee on Appropriations
House of Representatives

Dear Mr. Serrano:

In 2017, approximately 25.6 million firearm-related background checks were processed through the Federal Bureau of Investigation's (FBI) National Instant Criminal Background Check System (NICS), and about 181,000 (about 1 percent) of the attempted purchases were denied because the individual was prohibited from possessing a firearm under federal or state law.¹ To purchase a firearm from a federal firearms licensee (FFL)—or gun dealer—individuals are required to complete the Alcohol, Tobacco, Firearms and Explosives (ATF) Form 4473, certifying that they are not prohibited from purchasing or receiving a firearm under federal or state law. Individuals who sign the form and are later determined through a background check to be prohibited could be subject to investigation, and if prosecuted, a fine, imprisonment, or both.²

¹Under 18 U.S.C. § 922(g), persons are generally prohibited from possessing or receiving a firearm if they (1) have been convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year; (2) are a fugitive from justice; (3) are an unlawful user of or addicted to any controlled substance; (4) have been adjudicated as a "mental defective" or committed to a mental institution; (5) are aliens illegally or unlawfully in the United States, or certain other aliens admitted under a nonimmigrant visa; (6) have been dishonorably discharged from the military; (7) have renounced their U.S. citizenship; (8) are under a qualifying domestic violence restraining order; or (9) have been convicted of a misdemeanor crime of domestic violence. In addition, 18 U.S.C. § 922(n) prohibits (10) persons under indictment for a crime punishable by imprisonment for a term exceeding 1 year from receiving a firearm. Individual states may have prohibiting factors in addition to those in federal law.

²Under 18 U.S.C. § 922(a)(6), it is unlawful for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a federal firearms licensee, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such federal firearms licensee with respect to any fact material to the lawfulness of the sale or other disposition of the firearm or ammunition. In addition, generally under 18 U.S.C. § 924(a)(1)(A), it is unlawful for a person to knowingly make any false statement or representation with respect to the information required to be kept in the records of a federal firearms licensee.

For 29 states, the District of Columbia, and U.S. territories, the FBI's NICS Section is responsible for processing all NICS background checks and referring denied transactions to ATF. ATF is responsible for determining which denied transactions to investigate and refer to a United States Attorney's Office (USAO) for prosecution. The other 21 states use state or local criminal justice agencies to process some or all of their own NICS background checks. Thirteen of these 21 states process all of their own NICS checks, and are known as point-of-contact (POC) states. The remaining 8 states conduct NICS checks on persons who attempt to purchase a handgun, while the FBI conducts checks on long gun purchasers. These states are known as partial POC states.³

You requested that we examine the extent to which individuals who are prohibited from purchasing firearms and attempt to purchase a firearm face investigation and prosecution. This report:

- describes the extent to which federal and selected state law enforcement agencies investigate and prosecute firearms denial cases,⁴
- examines the challenges, if any, that federal and selected state law enforcement agencies face in investigating and prosecuting firearms denial cases, and
- describes the circumstances that lead to the investigation and prosecution of persons denied firearms.

To address the first objective, we analyzed federal data from the FBI's NICS system and ATF's case management systems for fiscal years 2011 through 2017 to determine the number of firearms denials by state and prohibiting category and identify trends in the number of denials the ATF's Denial Enforcement NICS Intelligence (DENI) Branch referred to ATF

³According to a Department of Justice-funded report, states may elect POC or non-POC status for various reasons, such as a state's attitude toward gun ownership, since many POC states have prohibiting legislation that is stricter than federal laws and regulations (with respect to categories of people prohibited from possessing firearms). Additionally, there may be an economic incentive for states to elect non-POC status, since implementing and operating a POC may cost a state more money than it can collect in fees charged to federal firearms licensees for conducting background checks.

⁴Our selected states consisted of the 13 POC states that process all of their own NICS checks: California, Colorado, Connecticut, Florida, Hawaii, Illinois, Nevada, New Jersey, Oregon, Pennsylvania, Tennessee, Utah, and Virginia.

field divisions.⁵ For federal prosecutions, we reviewed information from ATF's case management system that identified NICS cases that were prosecuted. For state investigations and prosecutions, we selected the 13 POC states that perform their own background checks for all firearms transactions to determine their policies regarding the investigation and prosecution of persons denied firearms purchases. For the states that investigate firearms denials, we analyzed state police data on the number of denials, the prohibiting category for the denials, and the number of these denials that were referred to state or local law enforcement for investigation for fiscal years 2011 through 2017. We spoke to investigators and prosecutors in these states to discuss the investigative processes followed and the frequency of prosecution.

To address the second objective, for federal denial investigations, we interviewed officials from the six ATF field divisions that received approximately 60 percent of the total standard denial referrals across ATF's 25 field divisions from fiscal years 2011 through 2017 about the investigative process for standard and delayed denial investigations and the challenges, if any, these investigations posed to ATF staff.⁶ We also discussed the types of cases that each of these field divisions referred to the USAO for prosecution. Further, we interviewed Executive Office for United States Attorneys (EOUSA) officials to discuss the circumstances that would lead a USAO to prosecute a firearms denial case and the challenges, if any, faced in these prosecutions. We also evaluated ATF's investigative procedures and internal controls in place against the *Standards for Internal Control in the Federal Government*.⁷ For state denial investigations, we interviewed state troopers and local law enforcement to learn about their investigative procedures, and any challenges investigators may face. We also spoke with multiple prosecutors from each of these states and discussed the prosecutor offices' policy for accepting these denial cases, how often these cases

⁵ATF's DENI Branch researches and analyzes NICS denials received from the FBI NICS Section, and refers denials that meet certain criteria to ATF field offices for further investigation.

⁶If the FBI or state agency completes a background check within 3 business days and determines that a person should be denied, such denials are referred to as "standard denials" and do not involve the potential transfer of a firearm. If the FBI or state agency cannot complete a background check within 3 business days, the gun dealer may transfer the firearm pursuant to federal law, unless state law provides otherwise.

⁷GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014).

were prosecuted in these localities and the challenges each faced when prosecuting these cases.

To address the third objective, for federal denials, we analyzed criteria that the 34 USAO districts within our six selected ATF field divisions have established to determine which denials ATF should send to its field offices for further investigation. We then visited ATF's DENI Branch to observe how denials are screened and discuss internal controls for ensuring that ATF referrals to its field divisions follow the criteria. We also analyzed ATF data on denials to identify the prohibited categories of the cases that were referred to ATF field divisions from 2011 through 2017, the investigations that were referred to USAOs for prosecution and those that were ultimately prosecuted by USAOs. Officials from our six selected ATF field divisions also provided examples of denial cases investigated and referred for prosecution. These case examples included the specific circumstances that convinced the field division to investigate and refer the case for prosecution. We also researched legal databases to identify the specific circumstances of the cases prosecuted, the statutes used to charge the defendants, and the outcome of the cases. Further, we interviewed EOUSA officials about how USAOs determine the circumstances that would lead a USAO to prosecute a firearms denial case. For state denial investigations, we spoke with state and local investigators from the three states that investigate and prosecute firearms denials to determine the circumstances that may lead to a prosecution. We also spoke with multiple prosecutors from the same states and asked them to describe the characteristics of cases they are more likely to prosecute, as well as those they are less likely to prosecute.

To assess the reliability of federal and state data on investigations and prosecutions of individuals denied firearms purchases related to all three objectives, we reviewed the internal controls in place within these systems and interviewed federal and state officials about their procedures for creating these data. We determined that these data were sufficiently reliable for the purpose of our reporting objectives. Also, for all objectives, while we did not speak to a representative sample of federal and state investigators and prosecutors, our interviews provided valuable insights about how these investigations and prosecutions are conducted and prioritized. Appendix I contains a more detailed discussion of our scope and methodology.

We conducted this performance audit from March 2017 through September 2018 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the

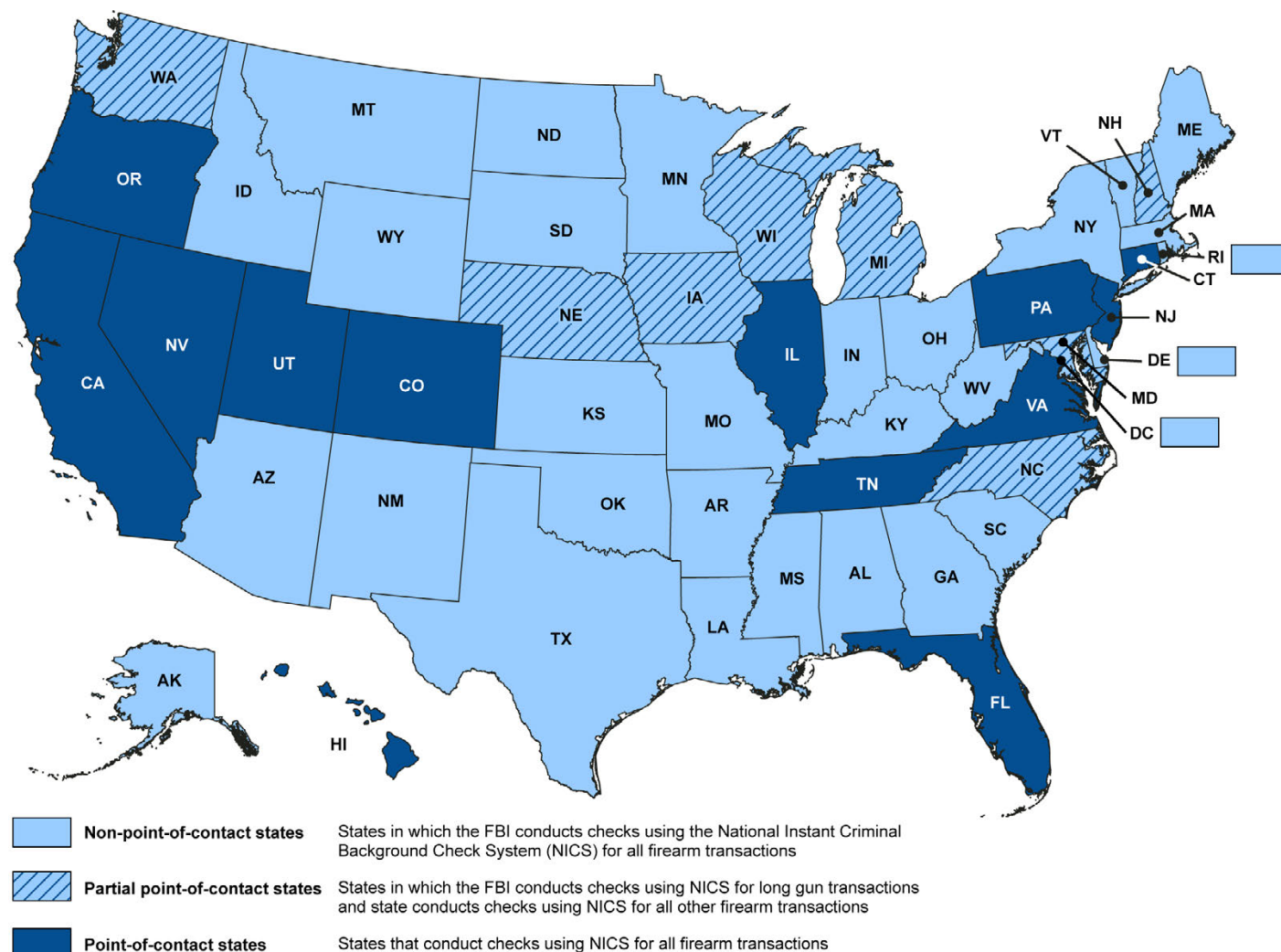
audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Roles and Responsibilities Under the Brady Handgun Violence Prevention Act of 1993 (referred to hereafter as the “Brady Act”) and implementing regulations, the FBI and designated state and local criminal justice agencies use NICS to conduct background checks on individuals seeking to purchase firearms from an FFL or obtain permits to possess, acquire, or carry firearms.⁸ The mission of the FBI’s NICS Section is to enhance national security and public safety by providing the timely and accurate determination of a person’s eligibility to possess firearms in accordance with federal law. Figure 1 shows the states where the FBI performs background checks for all transactions, as well as POC and partial POC states.

⁸Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993).

Figure 1: State Policy for Implementing the Federal Bureau of Investigation's (FBI) National Instant Criminal Background Check System (NICS) as of May 2018



Source: GAO analysis of Department of Justice data; Map Resources (map). | GAO-18-440

ATF—one of several Department of Justice law enforcement components—is responsible for investigating criminals and criminal organizations that use firearms, arson, or explosives in violent criminal activity, among other things. ATF is also responsible for investigating criminal and regulatory violations of federal firearms, explosives, arson, and alcohol and tobacco-smuggling laws subject to the direction of the Attorney General, as well as any other function related to the investigation

of violent crime or domestic terrorism that is delegated to ATF by the Attorney General.⁹

U.S. Attorneys prosecute criminal cases brought forward by the federal government, prosecute and defend civil cases in which the United States is a party, and collect debts owed to the federal government that are administratively uncollectible. U.S. Attorneys investigate and prosecute a wide range of criminal activities—including, but not limited to, international and domestic terrorism, corporate fraud, public corruption, violent crime, and drug trafficking. Each U.S. Attorney exercises wide discretion in the use of his or her resources to further the priorities of the local jurisdictions and needs of their communities. The Executive Office for United States Attorneys (EOUSA) represents the 93 U.S. Attorneys that prosecute federal cases. Among other things, EOUSA provides guidance, management direction, and oversight to USAOs.

Firearms Purchase Background Check Process

During a NICS check, the FBI and POC states use descriptive data provided by an individual—such as name and date of birth—to search various databases containing criminal history and other relevant records. These databases include the Interstate Identification Index, the National Crime Information Center, and the NICS Indices.

- The Interstate Identification Index includes, among other things, information on persons who are indicted for, or have been convicted of, a crime punishable by imprisonment for a term exceeding 1 year or have been convicted of a misdemeanor crime of domestic violence.
- The National Crime Information Center includes criminal justice-related records pertaining to wanted persons (fugitives) and persons subject to protection orders, among other things.
- The NICS Indices were created for use in connection with NICS background checks and contain information on persons determined to be prohibited from possessing or receiving a firearm.

NICS checks determine whether or not an individual is disqualified by federal or state law from possessing firearms. As shown in figure 2:

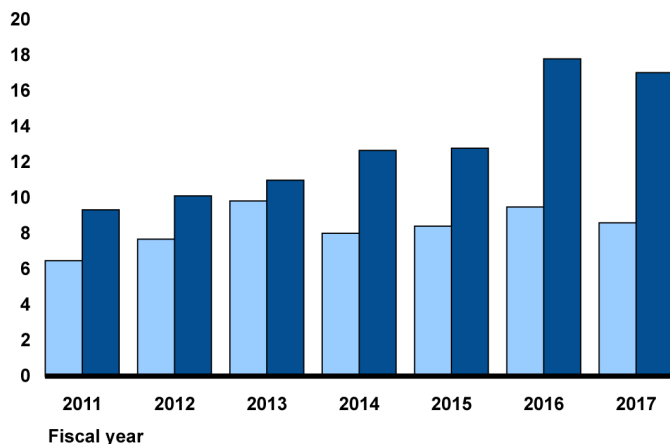
⁹See 28 C.F.R. § 0.130.

- Federal NICS transactions increased from about 6.5 million in fiscal year 2011 to about 8.6 million in fiscal year 2017. Federal NICS denials increased from about 77,000 in fiscal year 2011 to about 112,000 in fiscal year 2017.
- POC state transactions—which include both full and partial POC states—increased from about 9.3 million in fiscal year 2011 to about 17 million in fiscal year 2017.¹⁰ POC state denials increased from about 45,000 in fiscal year 2011 to about 69,000 in fiscal year 2017.

Figure 2: Federal and State National Instant Criminal Background Check System (NICS) Checks and Denials, Fiscal Years 2011 through 2017

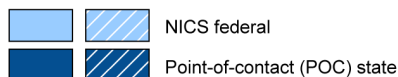
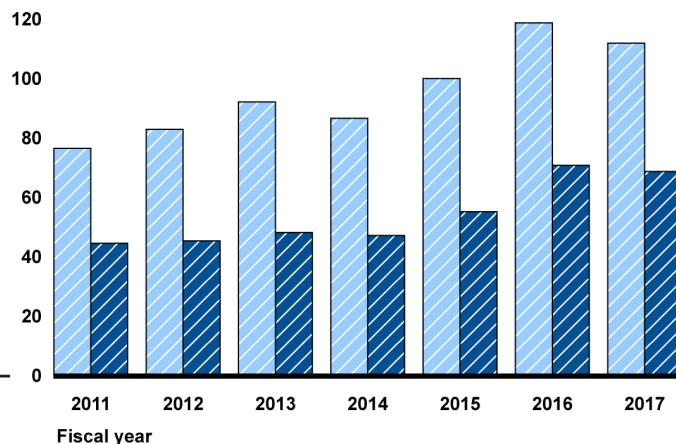
Background checks

Number of background checks (in millions)



Denials

Number of denials (in thousands)



Source: GAO analysis of Federal Bureau of Investigation data. | GAO-18-440

Note: Thirteen states process all of their own NICS checks—known as point-of-contact (POC) states—while 8 states, known as partial POC states, conduct NICS checks related to handguns, while the FBI conducts checks related to long guns in those states. POC state figures include handgun data from partial POC states, while NICS figures include long gun data from partial POC states.

¹⁰State background check figures include transactions where a deny status was electronically transmitted by the state to NICS. Some states, for example, submit denials for permit-related background checks. In addition, the count of background checks from each state may not necessarily represent a firearm purchase. For example, a state may conduct recurring background checks on every holder of a concealed-carry permit, amounting to millions of background checks in the state every year.

If the FBI or state agency completes a background check within 3 business days and determines that a person should be denied, such denials are referred to as “standard denials” and do not involve the potential transfer of a firearm. If the FBI or state agency cannot complete a background check within 3 business days, the FFL may transfer the firearm pursuant to federal law,¹¹ unless state law provides otherwise.¹² When the FBI makes a denial determination after 3 business days—called a “delayed denial”—the FBI determines if the FFL transferred the firearm to the individual, and if so, refers these cases to ATF for retrieval of the firearm if the individual is confirmed to be prohibited from possessing a firearm.

States may establish requirements regarding background check processing times, including waiting periods, beyond the federal requirement. States also may include state databases in addition to NICS indices when conducting background checks. In POC states, FFLs initiate a NICS check by contacting one or more state organizations, such as a state or local law enforcement agency, to query NICS databases and related state files. If necessary, the state organization then conducts any required follow-up research.

States may use different methods to conduct background checks. Examples of these varying methods include the following:

- Instant Check: Requires an FFL to transmit a buyer’s application to a checking agency by telephone or computer. The agency is required to respond immediately or as soon as possible.
- Purchase Permit: Requires a buyer to obtain, after a background check, a government-issued document (such as a permit, license, or identification card) that must be presented to an FFL before the buyer can receive a firearm.

¹¹18 U.S.C. § 922(t)(1)(B)(ii).

¹²States can establish their own firearms laws, such as additional prohibiting categories or additional time frames for completing checks before a dealer may transfer the firearm. If the state is a non-POC state and the FBI conducts the check, the FBI will provide the FFL with the allowable transfer date under federal law and the FFL will use state guidelines for when a firearm transfer may take place. Pursuant to 28 C.F.R. § 25.9, the FBI can continue to research the transaction for potentially prohibiting information for up to 90 days at which time information related to the transaction is to be destroyed to comply with federal record retention requirements.

-
- Exempt Carry Permit: State concealed weapons permits, issued after a background check, exempt the holder from a new check at the time of purchase under an ATF ruling or state law.
 - Other: Requires an FFL to transmit an application to a checking agency, which delays transfer until a waiting period expires or the agency completes a check.
-

Federal Process After a Firearm Denial

After a federal NICS denial, ATF can take enforcement actions through criminal investigation and referral for prosecution to a USAO, as making false written statements on the ATF Form 4473 is a crime punishable as a felony under federal law by up to 10 years in prison and up to a \$250,000 fine.¹³ Any fines that result from a firearm denial are criminal fines assessed through prosecution as part of a plea agreement or sentencing.¹⁴ ATF does not have the statutory authority to issue fines or take any civil action against individuals whose firearm applications are denied and are suspected of providing false information during the attempted purchase.

Investigations

For federal denied transactions, the FBI's NICS Section sends information about each denial to ATF's DENI Branch. The DENI Branch is responsible for researching each transaction to determine whether the case should be referred to one of ATF's 25 field divisions for possible investigation. The DENI Branch is to refer all delayed denial cases—which may require recovery of a firearm—and standard denial cases that meet USAO investigative referral criteria for each corresponding judicial district.¹⁵ An ATF NICS coordinator in each field division is to distribute

¹³See 18 U.S.C. §§ 922(a)(6), 924(a)(2), and 3571(b)(3). A copy of the ATF Form 4473 is included in appendix II.

¹⁴Generally, a plea agreement is a negotiation between the criminal defendant and his attorney on one side and the prosecutor on the other, in which the defendant agrees to plead "guilty" or "no contest" to some crimes, in return for reduction of the severity of the charges, dismissal of some of the charges, the prosecutor's willingness to recommend a particular sentence, or some other benefit to the defendant.

¹⁵According to ATF Order 3140.1A (Denial Enforcement and NICS Intelligence Branch Referrals and Investigations, August 9, 2017), ATF field divisions are required to annually review the referral guidelines agreed upon with U.S. Attorneys to better ensure that the DENI Branch would refer only cases to the field divisions that the USAO would likely consider for prosecution. ATF Order 3140.1A canceled ATF Order 3140.1 (Denial Enforcement and NICS Intelligence Branch Referrals and Investigations, November 12, 2014), which had substantially similar language related to annual review of referral guidelines.

In addition to recovery of a firearm for delayed denial cases, all firearms denial investigations may involve verifying the purchaser's prohibited status, gathering relevant supporting documentation such as mental health or court files, and communicating with prosecutors regarding the prosecutorial merit of the case, according to ATF officials.¹⁶ Figure 3 shows the general NICS background check process when purchasing a firearm from an FFL in either a NICS or POC state.

```

graph LR
    Start[Dealer contacts FBI or POC state to initiate background check] --> ImmediateProceed[Immediate proceed]
    Start --> ImmediateDenial[Immediate denial]
    Start --> DelayedReview[Delayed for additional review]
    
    ImmediateDenial --> AppealDenial1[Applicant may appeal denial]
    
    DelayedReview --> Trans3Days[Transaction determination made after 3 business days]
    DelayedReview --> TransWithin3Days[Transaction determination made within 3 business days]
    
    Trans3Days --> DelayedDenial[Delayed denial   
 (denied after 3 business days)]
    Trans3Days --> Proceed3Days[Dealer may proceed after 3 business days]
    Trans3Days --> Unresolved[Unresolved]
    
    TransWithin3Days --> Proceed[Proceed]
    TransWithin3Days --> Deny[Deny]
    
    DelayedDenial --> AppealDenial1
    Deny --> AppealDenial2[Applicant may appeal denial]
    
    AppealDenial1 --> Transferred[A determination is made if the firearm was transferred to the applicant]
    AppealDenial2 --> Transferred
    
    Transferred --> RetrievalAction[If the dealer transferred the firearm, firearm retrieval action is initiated]
    RetrievalAction --> ATFReferral[Referred to ATF or state/local authority for potential firearm retrieval]
  
```

ATF: Bureau of Alcohol, Tobacco, Firearms and Explosives
FBI: Federal Bureau of Investigation

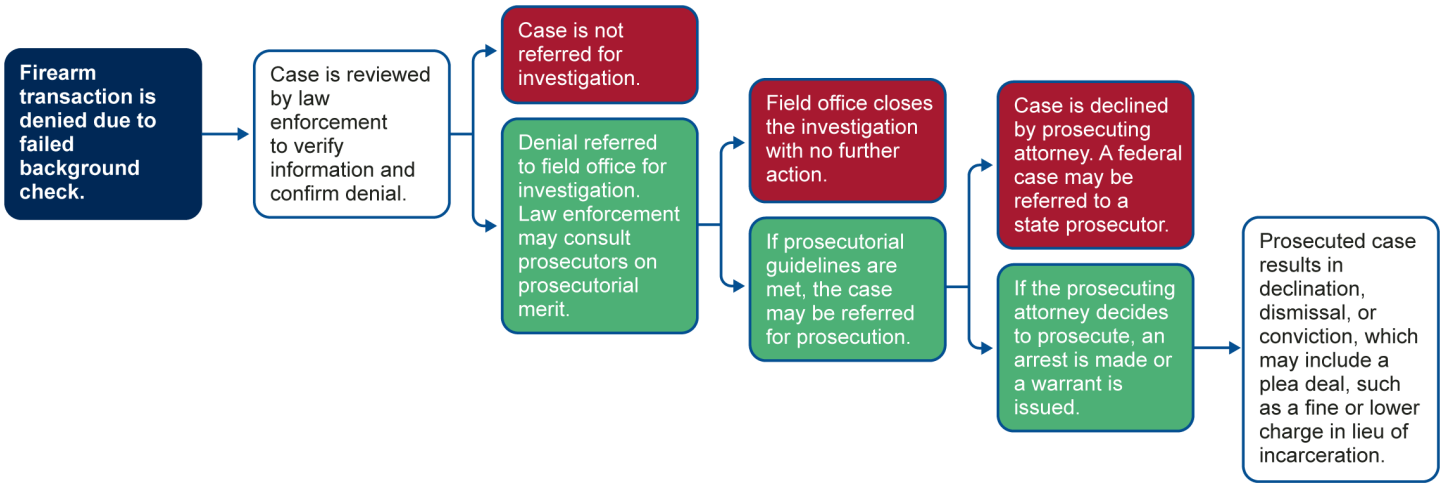
Source: GAO analysis of FBI data. | GAO-18-440

Among the denials that ATF investigates (delayed and standard), each field office also determines which cases should be referred to a USAO for possible prosecution. If the ATF field office determines that the subject is

Page 11

a prohibited person and local prosecutorial guidelines are met, the field office may refer the case for prosecution. ATF agents may discuss potential referrals with prosecutors to try to obtain USAO acceptance before ATF formally refers a case for possible prosecution. A case that is not deemed appropriate for federal prosecution may be referred to a state prosecutor. If the U.S. Attorney decides to prosecute, an arrest is made or a warrant is issued. Figure 4 shows the general process for the investigation and prosecution of standard firearms denials.

Figure 4: Process for Investigating and Prosecuting Firearms Denials



Source: GAO analysis of Department of Justice information. | GAO-18-440

Note: The process for investigating a firearm denial may vary between federal and state jurisdictions, and from state to state. This graphic represents a general framework.

State Processes After a Firearm Denial

POC states vary in their procedures and standards for investigating and prosecuting persons denied firearms transactions. For example, these states may or may not investigate and prosecute prohibited persons who violate state gun control laws. In some states, the agency conducting background checks notifies the state or local police, depending on which has jurisdiction, where the transaction occurred. The local agency is then responsible for investigating and assisting in the prosecution of the case by state or local prosecutors. Other states have units with statewide jurisdiction that screen cases before deciding whether a referral should be made to a state police trooper or local law enforcement agency for investigation. A POC state may also refer denials for further investigation to the nearest ATF field office. In POC states, a firearm retrieval associated with a delayed denial may be handled by local law enforcement, a statewide firearms unit, or ATF. State and local

prosecutors, whether the district attorney, county or city prosecutor, or the state Attorney General's office, represent the state for cases arising under state law. Occasionally, federal and state law may prohibit similar types of criminal conduct, allowing both federal and state prosecutors to pursue the case.

Federal and Selected State Law Enforcement Agencies Collectively Investigate and Prosecute a Small Percentage of Firearms Denials

In fiscal year 2017, ATF referred about 13,000 firearms denials to its field divisions for investigation, of which USAOs had prosecuted 12 cases as of June 2018. In March 2018, the Attorney General issued a memo that directed all United States Attorneys to enhance prosecution of cases involving individuals who make false statements on the ATF Form 4473. Officials from 10 of our 13 selected POC states said that they do not investigate or prosecute NICS denials.

ATF Referred about 13,000 Firearms Denials to Its Field Divisions for Investigation in Fiscal Year 2017, of Which USAOs Have Prosecuted 12 Cases

At the federal level, the FBI's NICS Section referred 112,090 denied transactions to ATF's DENI Branch in fiscal year 2017, of which ATF referred 12,710 (about 11 percent) to its field divisions for further investigation. The 12,710 referred cases consisted of 3,993 delayed denials and 8,717 standard denials. According to ATF headquarters officials, the DENI Branch refers all delayed denials to ATF field divisions for additional investigation because these cases could potentially require the recovery of a firearm that was transferred to a prohibited person. The DENI Branch uses investigative guidelines established by USAOs that cover 94 judicial districts to determine if standard denials should be referred to the respective ATF field division for investigation. USAO criteria may include individuals who are violent felons, have an active protection order, or have made multiple attempts to purchase a firearm in the past after being denied, among other offenses.¹⁷ Based on our analysis of ATF data, the number of firearms denials the DENI Branch referred to ATF field divisions for investigation increased from 5,208 in fiscal year 2011 to 12,710 in fiscal year 2017—an increase of 141

¹⁷USAO referral criteria are discussed in more detail later in this report.

percent. We discuss the reported impact of this increase in referrals on ATF staff later in the report.

Of the 12,710 referrals ATF sent to its field divisions in fiscal year 2017 for investigation, USAOs considered 50 cases for prosecution, and prosecuted a total of 12 cases (9 delayed denial and 3 standard denial) as of June 2018, according to ATF data (see table 1).¹⁸ An additional 10 cases were pending or awaiting prosecution as of June 2018. Overall, USAOs filed about 54,000 criminal cases in fiscal year 2016, of which about 9,200 involved firearm-related matters.¹⁹ According to Department of Justice officials, in fiscal year 2017, USAOs also filed about 54,000 criminal cases, of which about 10,400 involved firearm-related matters.

Table 1: National Instant Criminal Background Check System (NICS) Denial Cases Investigated and Prosecuted, Fiscal Years (FY) 2016 and 2017

NICS Investigations and Prosecutions	Standard Denials		Delayed Denials		Total	Total
	FY 2016	FY 2017	FY 2016	FY 2017	FY 2016	FY 2017
NICS denials Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) referred to its field divisions for investigation	7,524	8,717	3,543	3,993	11,067	12,710
NICS denials ATF field divisions referred to U.S. Attorney's Offices for prosecution	13	12	32	38	45	50
NICS denials prosecuted	3	3	10	9	13	12 ^a

Source: GAO Analysis of Bureau of Alcohol, Tobacco, Firearms and Explosives data. | GAO-18-440

Notes: In fiscal year 2016, there were 9.5 million federal NICS background checks, of which 119,000 were denied. In fiscal year 2017, there were 8.6 million federal NICS background checks, of which 112,000 were denied. Under federal law, a Federal Firearms Licensee may transfer a firearm if a background check has not been completed within 3 business days unless state law provides otherwise. If the Federal Bureau of Investigation or state agency makes a denial determination after a firearm transfer has taken place, it is known as a delayed denial. If the Federal Bureau of Investigation or state agency completes a background check within 3 business days and determines that a person should be denied, it is known as a standard denial.

^aAn additional 10 cases were pending or awaiting prosecution as of June 2018.

¹⁸In most cases, ATF DENI does not refer denials to field divisions in POC states. This would include field divisions in California, Florida, Illinois, and Pennsylvania, among others.

¹⁹See, *Department of Justice, United States Attorneys Statistical Report, Fiscal Year 2016*. Firearm-related figures represent criminal cases in which a firearms offense was charged under 18 U.S.C. §§ 922 or 924.

We also asked state officials from states within our six selected ATF field divisions whether they investigated and prosecuted these denials.²⁰ Officials from four of these six states said that ATF has not been referring firearms denials to them, so investigation and prosecution of firearms denials was not being done in their state. State officials from two of the six states said that they either occasionally receive referrals from ATF, which are investigated and submitted for local prosecution or they are not aware whether they receive referrals from ATF because they do have a dedicated team to investigate these cases. Officials from all 6 states said they have laws that prohibit persons from purchasing and/or possessing firearms based on prohibitions, such as a prior felony or misdemeanor convictions, but do not have laws that prohibit persons from falsifying information on ATF's form 4473 during the NICS background check. These states also cited some limitations for investigating these referrals such as lack of statutory authority within their state agency and resource constraints.

Attorney General Memo to Enhance Prosecution of Persons Denied Firearms Purchases

On March 12, 2018, the Attorney General issued a memo that directed all United States Attorneys to enhance prosecution of cases involving false statements on the ATF Form 4473, which the memo refers to as “lie-and-try” cases.²¹ The memo specifically stated that every United States Attorney must coordinate with the ATF Special Agent-in-Charge in the local district to review and revise, as necessary, local prosecution and referral guidelines to ensure vigorous and appropriate prosecution of these cases. The memo also stated that these guidelines should place particular emphasis on cases against violent persons, including—but not limited to—denials involving individuals convicted of violent felonies, misdemeanor crimes of domestic violence, or subject to protective orders, and denials involving fugitives where the underlying offense is a violent felony or misdemeanor crime of domestic violence. Further, the memo stated that the review and any resulting revisions should ensure that district-specific prosecution and referral guidelines reflect the Department

²⁰We identified the state in each field division that generated the most firearms denials and contacted state law enforcement authorities about their policy for investigating and prosecuting firearms denials in their states.

²¹The Attorney General's memo stated that “criminals and other prohibited persons who attempt to thwart the background check process by lying on the required forms threaten to undermine this important crime prevention tool. Such conduct cannot be tolerated. We must vigilantly protect the integrity of the background check system through appropriate prosecution of those who attempt to circumvent the law.”

of Justice's renewed commitment to reducing violent crime. The memo required that all United States Attorneys certify that the review has been completed and all necessary adjustments made within 45 days.

According to EOUSA officials, as of early May 2018, about 90 percent of USAOs had coordinated with their respective ATF field divisions to discuss revisions in USAO referral guidelines for standard denial cases. The officials added that in response to the Attorney General's memo, some USAOs narrowed criteria to focus resources on particular denials, such as those involving an attempted purchaser with a history of violent crime, or prioritized denials with recent prohibitions, such as a domestic violence conviction in the past year. In other cases, ATF officials said that USAOs broadened criteria, which may result in more potential cases from which to select for investigation and referral for prosecution. ATF officials also said that some USAOs added investigation referral criteria (for individuals prohibited from possessing firearms) to include elements outside the list of federal prohibitors, such as denied individuals with ties to gang activity or terrorism. These attributes outside of NICS prohibiting categories would require further investigation at the local level by ATF, according to officials. While ATF officials have the expectation that the revised criteria would increase the overall workload on ATF field divisions, ATF officials said that it is too early to discern how these changes will impact ATF and the number of denial cases prosecuted by USAOs. EOUSA officials suggested that firearm-related prosecutions may well increase in the future, but added that any increase that results does not necessarily mean that firearms denial prosecutions would increase.

Ten of 13 POC States Do Not Investigate Firearms Denials, But the Remaining 3 Investigate a High Percentage of Denials

Officials from 10 of our 13 selected POC states said that they do not investigate or prosecute any NICS denials, sometimes citing resource availability or the lack of state statutes as the reason. Officials from these 10 states said that while their state does not investigate or prosecute firearms denials, their state may take other actions following a denial. These possible actions may include informing local jurisdictions of the denial for possible investigation, and possible arrest if the denied individual has an active warrant. Other actions cited include revoking a state firearms owner identification card and possibly seizing any firearms; informing ATF of a delayed denial so ATF can retrieve the firearm; and providing the information on each denial to the FBI for input into FBI databases used to perform NICS checks.

Officials and data from the remaining three POC states—Oregon, Pennsylvania, and Virginia—indicate that these states investigate a high

proportion of firearms denials. These states have statutes that prohibit providing falsified information on a state or federal firearms form as well as statutes that penalize the attempt to purchase firearms by individuals prohibited from such purchases.²²

Oregon: Prior to 2014, the state generally did not investigate firearms denials, according to state officials. In 2014, the state changed its policy based on concerns about firearm-related crimes. Specifically, beginning in late 2014, Oregon began investigating all firearms denials, which resulted in more than 2,500 firearms denial investigations in both 2016 and 2017. According to state data, there were between 2,000 and 2,400 firearms denials annually from 2011 to 2013. According to the two Oregon county prosecutors we interviewed, from late 2014 through 2017, their offices accepted about 141 of the more than 700 firearms denial investigations referred to their offices, with most prosecuted successfully.

Pennsylvania: Prior to 2014, the state investigated a relatively small percentage of firearms denials per year using risk-based criteria, according to state police officials. In 2014, the state changed its policy to investigate all firearms denials. According to state police reports, in 2016, approximately 6,500 denial cases were referred for investigation, of which about 1,600 were referred for prosecution and 356 resulted in convictions. For 2017, the state reported that approximately 5,500 denial cases were referred for investigations, of which 1,907 investigations were referred for prosecution, resulting in 472 convictions.

²²See e.g., Or. Rev. Stat. § 162.075 (under Oregon law, a person commits the crime of false swearing if the person makes a false sworn statement or a false unsworn declaration, knowing it to be false which is a Class A misdemeanor), Or. Rev. Stat. § 166.425 (under Oregon law, a person commits the crime of unlawfully purchasing a firearm if the person, knowing that he/she is prohibited by state law from owning or possessing a firearm or having a firearm under the person's custody or control, purchases or attempts to purchase a firearm, which is a Class A misdemeanor). 18 Pa. Cons. Stat. § 6111 (under Pennsylvania law, any person, purchaser or transferee commits a felony of the third degree if, in connection with the purchase, delivery or transfer of a firearm knowingly and intentionally makes any materially false oral statement; makes any materially false written statement, including a statement on any form promulgated by Federal or State agencies; or willfully furnishes or exhibits any false identification intended or likely to deceive the seller, licensed dealer or licensed manufacturer), Va. Code Ann. § 18.2-308.2:2(K) (under Virginia law, any person that willfully and intentionally makes a materially false statement on the consent form required under Virginia law for certain firearm transactions or on such firearm transaction records as may be required by federal law, shall be guilty of a Class 5 felony). For more information on state firearms-related statutes see appendices III, IV and V.

Virginia: Virginia has investigated firearms denials since 1989, according to state officials. Virginia does not refer all firearms denials for investigation, but instead uses risk-based criteria to refer a subset of prohibited categories for investigation, according to these officials.²³ The number of referrals for investigation in Virginia has increased from about 770 in 2011 to around 1,700 in 2016 and 2017. Virginia prosecutors we interviewed in three jurisdictions from localities where a high volume of firearms denial referrals occur said they tend to work with Virginia state troopers who specialize in denial investigations and reported high prosecution rates for the cases they accept.²⁴ The prosecutors noted that most convictions do not go to trial and are reduced to less severe violations and most of the penalties imposed tend to be probation, but there is the occasional jail term. For example, one Virginia prosecutor said that jail sentences are rare, but for a felon with a record of violence, sentences of 7 to more than 24 months in jail have been imposed.

Unlike federal denial investigation referrals where about 30 percent of the total is for delayed denials, the vast majority of investigations and prosecutions within these three states are related to standard denials. Officials within these states explained that background checks that result in delayed denials are fairly uncommon. According to Pennsylvania officials, in Pennsylvania this is because of state background check policies that provide additional time, 15 days, to complete background checks if a denial is possible, but not clear initially. If the 15-day period expires without an approved transfer, the transaction is not denied, but the firearm is not transferred. According to officials in all three states, FFLs generally will not transfer a firearm until the background checks are completed.

²³These prohibited categories include those with felony indictments, all felony convictions including juvenile felonies, misdemeanor crimes of domestic violence convictions, active protective orders, and mental health issues, among others.

²⁴According to a state official, Virginia did not have data on the total number of investigations referred or accepted for prosecution.

ATF and Selected States Cited Challenges Investigating and Prosecuting Firearms Denials; ATF Has Not Assessed Field Divisions' Use of Warning Notices

ATF officials from our six selected field divisions said that investigating firearms denials can be challenging because of the high volume and require use of their limited resources. ATF has not assessed field divisions' use of warning notices in lieu of prosecution, which could provide greater awareness of their deterrence value.²⁵ EOUSA officials said that denial cases are difficult to prosecute and offer less value for public safety than other prosecutions. State officials said that denial investigations compete with other investigations and can be difficult to successfully prosecute.

ATF and EOUSA Officials Described Denial Investigations and Prosecutions as High Volume and Require Use of Their Limited Resources

Federal Denial Investigations

ATF officials from our six selected field divisions—which combined received approximately 60 percent of the total standard denials that ATF referred to field divisions from fiscal years 2011 through 2017—said that investigating firearms denials can be challenging for various reasons. ATF field divisions have taken some steps to help mitigate these challenges, but ATF headquarters could benefit from enhancing its oversight of some aspects of the investigations process.

According to officials from our six selected field divisions, one challenge to investigating and prosecuting firearms denials is the high volume of firearms denial referrals for investigation that ATF sends to field divisions. According to ATF headquarters officials, the DENI Branch has agreed to send these referrals to field divisions based on criteria each ATF field

²⁵A warning notice, either oral or in writing, is given to prohibited persons who have attempted to purchase a firearm to inform them that they are prohibited from purchasing firearms and that the attempted purchase is a violation of federal law.

division has established with USAOs within their division. In fiscal year 2017, ATF's DENI Branch referred 1,889 delayed denial cases to our six selected field divisions—which field divisions are required to investigate—and 5,435 standard denials cases, which they are to consider for further investigation. In the six field divisions, the number of standard denial referrals more than tripled from fiscal years 2011 to 2017, and in two field divisions, the number of standard referrals in 2017 was more than five times the number in 2011. For example, in one field division, the number of standard referrals was 166 in 2011 and increased to 1,064 in 2017. ATF officials did not know why the number of standard and delayed denials had increased during this period.

Officials from all six of our selected ATF field divisions also said that investigating denial cases can be time-intensive and require use of their limited resources. The officials said that delayed denials can be particularly time-intensive because they are required to be investigated and the investigation involves a defined set of actions, including the possible retrieval of the firearm. For example, these investigations typically involve steps to verify the prohibition of the individual, including obtaining court records; contacting the individual and FFL that sold the firearm; and arranging to retrieve the firearm for those individuals found to be prohibited.²⁶ A fiscal year 2016 ATF funding request through the annual congressional budget justification submission noted the drain on investigative resources because of the requirement for ATF to follow-up on delayed denials.²⁷ While the investigation of standard denials also can take time, officials from our six selected field divisions said they have greater discretion over whether or not to investigate these denials. For example, each field division has discretion to screen all or some of the standard denials, which can include confirming the person was correctly denied and contacting the denied individual and the firearms dealer.

Officials from all of the six selected field divisions said that, in light of the high volume and time-intensiveness of denial cases, they have taken various steps to prioritize the types of cases to investigate. For example, per ATF policy, field divisions prioritize delayed denials over standard denials because a prohibited person may be in possession of a firearm.

²⁶According to ATF case management records, about 20 percent of the delayed denial cases closed in fiscal year 2017 were closed because the individual was found to not be prohibited and the denial was made in error.

²⁷Congressional Budget Submission, Bureau of Alcohol, Tobacco, Firearms and Explosives, Fiscal Year 2016.

Federal Prosecutions of Firearms Denials

Officials from three of the six field divisions said that after verifying that the applicant is prohibited by reviewing the criminal history attached to the case file, they generally close standard denials without further investigation. The officials added that while these cases may meet USAO criteria and be referred to a field division for investigation, they ultimately do not have prosecutive merit based on coordination with prosecutors who have experience in prosecuting these cases. Officials from one field division said that they typically do not devote resources to verifying the prohibited status, and instead triage standard denials based on certain criteria, such as a recent violent felony or domestic violence conviction. Accordingly, officials in that field division only refer to a criminal investigator for further review what they consider the greatest threats to public safety.

EOUSA officials said that USAOs generally do not accept and prosecute denial cases that do not involve aggravating circumstances, as these cases can require significant effort for prosecutors relative to the short length of punishment and may offer little value to public safety because the offender does not obtain the firearm, compared to other cases involving gun violence.²⁸ The officials added that USAOs filed about 9,200 firearm-related cases in fiscal year 2016 and about 10,400 in fiscal year 2017, but that cases involving falsifying information when attempting to purchase a firearm generally are only a small fraction of USAO efforts. Instead, USAOs primarily focus on cases where persons obtain firearms and are prohibited persons or use the firearms in connection with a criminal offense.²⁹ According to ATF DENI Branch data, the majority of the 25 cases that USAOs prosecuted in fiscal years 2016 and 2017 that involved firearms denials (standard and delayed) resulted in reaching plea agreements with the defendants.

Federal law provides that it is unlawful “for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of

²⁸Additional information on aggravating circumstances is discussed later in this report.

²⁹According to EOUSA officials, USAOs filed a total of approximately 54,000 cases in fiscal year 2017.

the sale or other disposition of such firearm or ammunition”³⁰

Generally, to convict someone for making a false statement on the ATF Form 4473, the prosecutor must establish beyond a reasonable doubt that the seller was a FFL; the defendant made a false statement or used a false identification while acquiring or attempting to acquire a firearm; the defendant knew the statement or identification was false; and the false statement or identification was intended to, or likely to, deceive a FFL about the lawfulness of the firearm sale. EOUSA officials said that prosecutions for falsifying information are very challenging because of the requirement to prove intent, and can become further complicated because the purchaser may not know that he or she is prohibited and was not intentionally trying to deceive an FFL. The officials added that these cases are not appealing to judges and juries from a public safety standpoint. They also said that they find juries questioning why the case is being prosecuted in instances when the individual did not get the gun, resulting in juries refusing to convict these individuals or jury nullification.³¹

EOUSA officials said that the number of prosecutions of firearms denials can be low, particularly in standard denial cases where the system worked and the subject did not obtain a firearm, and because of the priority often given to other cases involving gun violence. EOUSA officials said that delayed denial cases can require less effort to prosecute than standard denials, since USAOs do not need to prove an individual’s intent in making a false statement in purchasing the firearm, only that the prohibited individual is intentionally in possession of a firearm.³² For instance, generally, to obtain a conviction for a felon in possession of a firearm, the prosecution must establish beyond a reasonable doubt that the defendant had previously been convicted of a crime punishable by imprisonment for a term of more than 1 year; the defendant knowingly possessed a firearm; and the firearm previously passed in interstate

³⁰18 U.S.C. § 922(a)(6).

³¹“Jury nullification” is a jury’s knowing and deliberate rejection of the evidence or refusal to apply the law either because the jury wants to send a message about some social issue that is larger than the case itself or because the result dictated by law is contrary to the jury’s sense of justice, morality, or fairness.

³²Under 18 U.S.C. § 922(g), it is unlawful for certain persons, such as someone who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year or who has been convicted in any court of a misdemeanor crime of domestic violence, to possess or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

commerce. However, officials from our six selected field divisions said that as long as a firearm is recovered from the prohibited person and the person is cooperative, ATF is unlikely to refer delayed denial investigations to USAOs for prosecution.

**ATF Has Not Assessed
Field Divisions' Use of
Warning Notices in Lieu of
Prosecution**

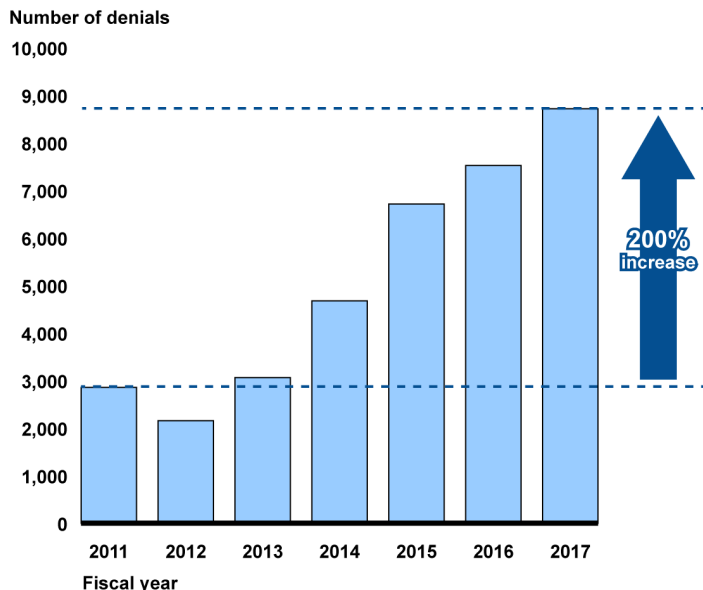
While officials from all six selected ATF field divisions said that investigating the increasing number of denial cases can be time-intensive and require use of their limited resources, ATF headquarters has not assessed the extent to which field divisions' use warning notices in lieu of prosecutions or whether any policy changes could enhance their use as a deterrence tool.

**Increase in Denial
Investigations**

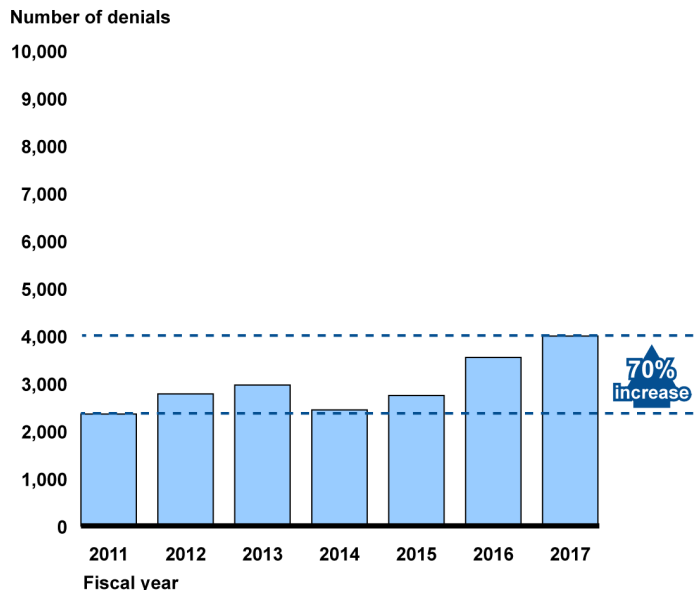
Standard denial cases ATF referred to field divisions for investigation grew by more than 200 percent ATF-wide from fiscal years 2011 through 2017, and by more than 300 percent within our six selected field divisions. Moreover, delayed denial referrals grew by about 70 percent ATF-wide and by 70 percent within our six selected field divisions during this period. Figure 5 shows the increase in standard and delayed denial cases ATF referred to its field divisions for investigation from fiscal years 2011 through 2017.

Figure 5: Firearms Denial Cases Referred to Bureau of Alcohol, Tobacco, Firearms and Explosives Field Divisions for Investigation, Fiscal Years 2011 through 2017.

Standard denials



Delayed denials



Source: GAO analysis of Bureau of Alcohol, Tobacco, Firearms and Explosives data. | GAO-18-440

Note: Under federal law, a federal firearms licensee (gun dealer) may transfer a firearm to an individual if a background check has not been completed within 3 business days unless state law provides otherwise. If the FBI or state agency makes a denial determination after a firearm transfer has taken place, it is known as a delayed denial. If the FBI or state agency completes a background check within 3 business days and determines that a person should be denied, it is known as a standard denial.

At the same time, ATF data show that special agent staffing across our six selected field divisions collectively only increased by one special agent from fiscal years 2011 through 2017. Officials from five of our six selected field divisions said that the increasing number of NICS denial cases received from ATF headquarters for investigation has posed a burden on staff resources.

Field divisions are required to investigate all delayed denial referrals, but have discretion as to how thoroughly they investigate standard denial

referrals.³³ Officials from all six selected field divisions said that, to date, one of the ways they have been able to adjust to the increasing volume of standard denial referrals has been by closing them with limited investigation or sending warning notices to the prohibited individuals. However, based on trends over the last 7 years, the number of standard and delayed denial referrals for investigation could continue to increase. In addition, the Attorney General's March 2018 memo to USAOs directing that the prosecution of false statements on the ATF Form 4473 be enhanced may impact how, and how many, denial investigations ATF performs.

Use of Warning Notices

For all delayed denials, ATF policy requires field divisions to contact prohibited persons within three days of being assigned the case to advise the person of their prohibition. According to ATF headquarters officials, warning notices are intended to inform the individual that he or she is prohibited from purchasing a firearm, should not attempt to purchase a firearm again, and may be subject to prosecution. For delayed denials, ATF policy also requires field divisions to send a written warning notice in all instances where the special agent is unable to make contact with the prohibited person within 3 business days, or when other circumstances exist, such as extraordinary distance or inclement weather. Officials from our six selected field divisions said that while warning notices for delayed denials are not always delivered in writing, all individuals involved in delayed denials receive a warning in some form—e.g., written, oral, or via text message—from the ATF special agent investigating the denial. Officials from one field division said that they send text messages to denied purchasers in lieu of warning letters because they are less intimidating to prohibited persons, the texts save time and money, and are more effective in helping retrieve firearms.

For standard denials, warning notifications are not required. Specifically, ATF policy provides that field divisions may send warning notices to

³³ATF Order 3140.1A, Denial Enforcement and NICS Intelligence Branch Referrals and Investigations, August 9, 2017 Canceled ATF Order 3140.1, Denial Enforcement and NICS Intelligence Branch Referrals and Investigations. November 12, 2014. The updated ATF order delineates the field division's roles and responsibilities separately for receiving and investigating standard and delayed denials. Also, for standard denials, the order provides that the investigating special agent will initiate investigative activity within 10 business days of receiving the referral. The previous order provided that the investigating special agent initiate investigative activity within 5 business days. In addition, the order provides protocols for the special agent to query ATF's Automated National Instant Criminal Background Check System Referral Application database to determine whether the subject was previously denied the purchase of a firearm by the FBI NICS.

denied persons “where appropriate and in lieu of prosecution.”³⁴

However, in instances where aggravating circumstances exist, such as if the prohibited person committed a violent felony or made multiple attempts to purchase firearms, ATF policy provides that consideration should be given to hand-deliver the notice to the prohibited person. The 6 selected field divisions varied in the extent to which they sent warning notices related to standard denials. Specifically, three of the six divisions had established a practice to send notices to all prohibited persons. Officials from these three divisions said that such letters are intended to (1) educate the denied person that he or she is prohibited from purchasing firearms, (2) deter the individual from attempting future purchases, and (3) serve as evidence during any subsequent investigation or prosecution that the individual knew that he or she was prohibited from purchasing a firearm. Officials from one of these field divisions also said that the practice of addressing standard denials by sending warning notices is a good use of limited resources while addressing a public safety concern.

Of the three field divisions that routinely send warning notices for all standard denials, two send them via certified mail, while the other sends letters via standard mail due to limited resources. According to officials from these three field divisions, the costs associated with mailing warning notices also includes staff time to locate recipient information and mail the letters, in addition to supervisory review, as is done in at least one field division. A group supervisor in one of these field division’s sub-offices said that while their field division primarily uses certified mail, the sub-office hand delivers these notices for all standard and delayed denials. Officials from one of these three field divisions said that they confirm the prohibited status of individuals before sending the warning notices, while officials at another field division said they do not confirm the prohibited status prior to mailing but that the notice includes information on how to appeal the denial. These three divisions received an average of about 800 standard denials in fiscal year 2017.

Officials from the three divisions that do not routinely send warning notices for standard denials said that notices are only sent for standard denials in rare cases. Such cases can include when there are aggravating circumstances. Criminal activity or not cooperating with the ATF—after the attempted purchase are examples of aggravating circumstances.

³⁴ATF Order 3140.1A.

Officials from one field division stated that warning notices were used for standard denials by individual agents in the past, but there was no field division policy to do so routinely. Officials from another field division said that due to limited resources, the decision was made to not send these notices, though they said the notices could be an effective deterrent for prohibited individuals from trying to possess a firearm or attempting to purchase from an FFL. ATF headquarters officials said that under ATF policy, the decision whether to send warning notices for all standard denials is made by individual field divisions.³⁵ Therefore, they did not know the extent to which each of the 25 divisions used this practice.

Standards for Internal Control in the Federal Government call on federal managers to design control activities to achieve an agency's objectives.³⁶ These controls can include using quality information to make informed decisions, such as how best to achieve ATF's objectives given limited resources; evaluating ATF's performance in achieving key objectives; and addressing risks, including its limited resources to investigate or prosecute denial cases. While ATF policy provides that individual field divisions determine their use of warning notices, ATF headquarters is uniquely positioned to assess use of the notices across all field divisions. Assessing the extent to which ATF field divisions use warning notices for standard denials would provide ATF headquarters with greater awareness regarding agency-wide efforts to use the notices as a deterrence tool in lieu of prosecution. As assessment could also better inform ATF as to whether the application of certain practices to all field divisions could be a feasible and effective use of limited investigative resources, given the small number of standard denial cases prosecuted each year, and revise related policies if appropriate.

³⁵ATF Order 3140.1A.

³⁶GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014).

Selected States Reported That Denial Investigations Compete with Other Investigations and Cases Can Be Difficult to Successfully Prosecute

State Denial Investigations

State police supervisors in all three states (Oregon, Pennsylvania, and Virginia) that investigate denials said investigators are generally assigned to denial investigations as their time permits. Supervisors also said these investigations are generally considered time consuming and can sometimes impact other duties. State police supervisors said that these investigations can be disruptive to operations by taking troopers away from their core duties, such as traffic enforcement and response, except where troopers are dedicated to conducting these investigations. State troopers echoed this point, adding that denial investigations are difficult to conduct given the amount of documentation needed for prosecution when they have other duties. Local law enforcement officials in Oregon and Pennsylvania also said that denial investigations are disruptive, as they are usually forwarded to officers when they are on patrol, sometimes many weeks or months after the firearms background check was initiated.

Investigators in all three states also said they face challenges assisting with prosecutions of denied persons, including gathering the necessary documentation to prove the individual knew they were prohibited. For example, Virginia troopers said that obtaining records on out-of-state convictions and mental health prohibitions, and locating documentation on older convictions, can be especially difficult. Troopers in Oregon and Virginia commented that in their experience, there can be some degree of inaccuracy in the criminal records in their state. For example, they said that arrests and prosecution results may not be accurately reflected in the criminal history of the denied person. When the trooper checks the actual record, it is sometimes discovered that the person is not prohibited. A Virginia trooper said this is especially common for juvenile convictions.

Oregon and Virginia officials said they have been able to mitigate these challenges by utilizing specialized troopers to conduct denial investigations. These troopers are taken off line and generally perform denial investigations almost exclusively. In both states, these specialized troopers conduct a large portion of the denial investigations in these states or in designated locations within the state. Virginia State Police

officials told us that some areas within police divisions that receive a high volume of denials for investigation use specialized troopers that spend all or most of their time investigating firearms denials. These Virginia troopers reported that they have become more efficient than troopers that do not specialize because the repetition of performing multiple investigations improves the learning curve and the quality of their investigations. Virginia State Police officials said that while any area may assign troopers to work exclusively on denial investigations, most areas either cannot afford to remove a trooper from road coverage or do not investigate enough cases involving persons denied firearms to make it an effective use of resources. According to Oregon officials, five specialized troopers in the state investigated more than 1,100 of the almost 2,600 firearms denials referred for investigation in 2016. These troopers covered the denials for several metropolitan areas in Oregon and cited efficiencies in conducting and referring investigations for prosecution.

State Denial Prosecutions

State prosecutors we interviewed in the three states that conducted denial investigations said the primary challenge in prosecuting denial cases is in gathering the evidence needed to prove that the individuals knew they were prohibited. They added that the difficulty in gathering evidence for certain prohibited categories also make those prosecutions more difficult. For example, obtaining records related to old convictions, out of state convictions, and mental health prohibitions are common challenges. There are also challenges due to record retention policies for specific prohibitions. For example, a Virginia prosecutor said that prosecuting denials for misdemeanor crimes of domestic violence convictions in Virginia that are more than 10 years old is difficult because these records may be destroyed under state law after 10 years. Oregon state investigators we interviewed said that, under state statutes, successfully prosecuting someone for falsifying information on firearms purchase forms requires proving that the person “knowingly and willingly” falsified information on the form, which can be difficult to prove. One Pennsylvania investigator also said that denied individuals may not understand the questions on the forms and genuinely believe they are not prohibited.

Prosecutors we interviewed who worked with specialized investigators reported that they have worked closely with these troopers to facilitate successful prosecutions. For example, an Oregon prosecutor we spoke to utilizes a case reporting process where the trooper advises the prosecutor of the strong cases to be considered for prosecution. This allows prosecutors to focus their attention on the cases more likely to be successfully prosecuted. In one Virginia county, the prosecutor’s office

provides troopers a checklist of important points the trooper should address to make a strong case for prosecution. Virginia prosecutors in jurisdictions served by a specialized trooper said that they confer with the troopers regularly and are able to successfully prosecute a high percentage of the denial investigations these troopers conduct.³⁷

Firearms Denial Investigations and Prosecutions Are Generally Based on Aggravating Circumstances in Addition to Criminal Records

While individuals are denied firearms purchases because they are prohibited from possessing firearms under federal or state law, federal denial investigations and prosecutions are generally based on additional aggravating circumstances. The three states that investigate denial cases have established priorities for investigating and prosecuting such cases.

ATF Investigations Most Frequently Involve Convicted Felons, but Aggravating Circumstances Are Generally Needed for Prosecution Referrals

The types of standard and delayed denial cases investigated by ATF field divisions and referred to USAOs for prosecution are determined by multiple factors, including the prohibiting category (e.g., felony conviction), criminal history of the denied individual, USAO investigative referral criteria, and the nature of the ATF investigation itself.

- Of the almost 21,000 delayed denials the ATF DENI Branch referred to ATF field divisions for investigation from fiscal years 2011 through 2017, 32 percent were denied for being convicted felons, 23 percent for a qualifying misdemeanor crime of domestic violence, and 19 percent for being an unlawful user of, or addicted to, a controlled substance. As discussed earlier, all delayed denials are referred to the appropriate field division for investigation.
- Of the almost 36,000 standard denials the ATF DENI Branch referred to field divisions for investigation during this time period, 36 percent were denied for being convicted felons, 30 percent for a qualifying protective order, and 16 percent for a conviction for a qualifying misdemeanor crime of domestic violence. For standard denials, USAO investigative referral criteria, not the prohibiting category itself,

³⁷We were unable to verify any claimed prosecution rates.

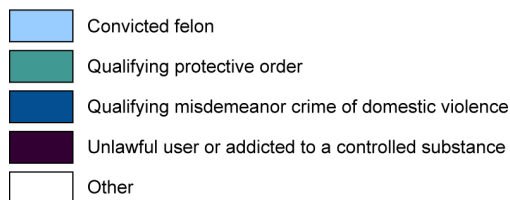
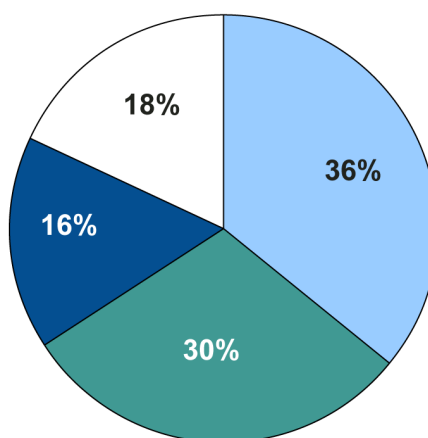
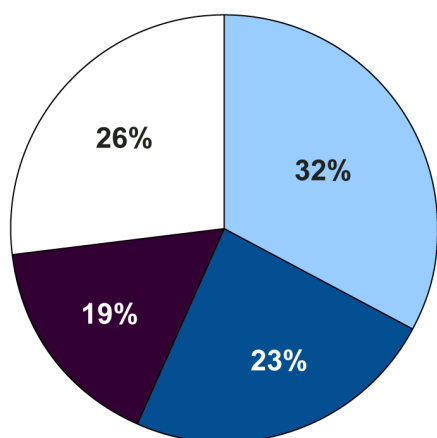
determines which cases are referred for investigation.

From fiscal years 2015 through 2017, the number of delayed denials referred to ATF field divisions for investigation increased by 46 percent (from 2,742 to 3,993). This increase was driven by cases in which the prohibiting category was drug-related, which increased by about 300 referrals (60 percent increase); involved misdemeanor crimes of domestic violence, which increased by about 250 referrals (34 percent increase); and involved felony convictions, which increased by about 280 referrals (34 percent increase). Also during this period, the number of standard denials referred to ATF field divisions for investigation increased by 30 percent (from 6,715 to 8,717). This increase was driven by misdemeanor crimes of domestic violence, which increased by about 626 referrals (62 percent increase), and felony convictions, which increased by about 659 referrals (25 percent increase). Cases in which the prohibiting category was related to mental health or protection orders also increased by 42 percent (about 200 referrals) and 21 percent (about 300 referrals), respectively. Figure 6 shows the breakdown of investigation referrals by prohibiting category from fiscal years 2011 through 2017.

Figure 6: Standard and Delayed Denials Referred to Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Field Divisions for Investigation by Prohibiting Category, Fiscal Years 2011 through 2017

Three prohibited categories account for 74 percent of all delayed denials referred to ATF for investigation from 2011 to 2017

Three prohibited categories account for 82 percent of all standard denials referred to ATF for investigation from 2011 to 2017



Source: GAO analysis of ATF data. | GAO-18-440

The types of denial cases that ATF's DENI Branch refers to field divisions for investigation are determined by the USAO referral criteria established in the district in which the purchase took place. Based on our analysis of the standard denial referral criteria for the 34 USAO districts that cover the six selected ATF field divisions as of February 2017, there are similarities in the criteria used across these USAO districts. For example, most of the 34 districts direct ATF to refer standard denials for investigation if the cases involved recent convictions for violent crimes or convictions for misdemeanor crimes of domestic violence. Also, about two-thirds of the 34 USAO districts direct ATF to refer cases in which prohibited persons have made two or more attempts to buy firearms while prohibited. In addition to the 10 prohibitions listed under federal law, other referral criteria used by USAO districts include prohibited individuals who are also suspected terrorists or associates of suspected terrorists; known

gang members or members of criminal organizations; or suspected of gun trafficking.

Aggravating Circumstances Resulting in a Prosecuted Firearms Denial Case

An individual attempted to purchase a firearm while under indictment for first degree robbery, in which the subject used a woman to set up an exchange of sex for marijuana. During the exchange, the subject robbed and shot the victim. The subject was charged with two felonies—falsifying information on the background check form and illegal possession of a firearm while under indictment. The subject pled guilty to both charges and was sentenced to 24 months in prison and 3 years supervisory release.

Source: Bureau of Alcohol, Tobacco, Firearms and Explosives. | GAO-18-440

The denial cases ATF field divisions refer to USAOs for prosecution generally include aggravating circumstances in addition to the factors discussed above related to an individual's criminal history. According to ATF officials in one field division, these aggravating circumstances could include violent felonies or multiple serious offenses in a short period of time, especially if these occurred in close proximity to the timing of the attempted firearms purchase. For example, a prohibited person with multiple armed robberies or actively involved in gang activity could be considered to have aggravating circumstances. The officials described a recent incident where an individual was found in possession of PCP three times in a span of a couple months, then bought a firearm and fired it at an occupied dwelling. This was considered a clear example, and the individual was prosecuted for making a false statement as well as illegal possession of a firearm stemming from the delayed denial. Additional examples provided by ATF officials from our 6 selected field divisions of recent cases ATF referred for prosecution include:

- An individual purchased a firearm from an FFL and sold that firearm to a prohibited person. The original purchaser was later denied (delayed denial) due to a prior drug conviction. The purchaser was charged with illegally possessing a firearm, making a false statement in the purchase of a firearm, and making a "straw purchase," which is when an individual illegally purchases a firearm on behalf of another person. According to ATF, this individual was sentenced to 1 year in federal custody and 3 years of supervisory release.
- An individual was charged with making false statements in the attempted purchase of a firearm. The individual did not receive the firearm as a result of a standard denial. During the investigation, the subject was not cooperative, and had an extensive criminal history in multiple states dating back 35 years, including several contacts with law enforcement on domestic violence and protective orders. The subject was charged with falsifying a background check form, to which he pled guilty and was sentenced to 12 months in prison.
- An individual under indictment for armed criminal action committed first-degree robbery in which he used a woman to set up an exchange of sex for marijuana. During the exchange, the subject robbed and shot the victim. The subject later attempted to purchase a firearm and was able to obtain the firearm as a result of a delayed denial. Later, a completed NICS check revealed that he was a prohibited person for

being under indictment, and was subsequently arrested later that week. The subject was perceived as a threat to the community and charged with two felonies, falsifying the background check form, and illegal possession of a firearm while under indictment. He pled guilty to both charges and was sentenced to 24 months in prison and 3 years supervisory release.

Of the 12 examples from our six selected field divisions provided, 9 involved delayed denials and 3 involved standard denials. Eleven of the 12 cases have been completed as of May 2018. Of the 9 cases charged in federal court, 1 case was declined by prosecutors, and the other 8 resulted in guilty pleas. These guilty pleas resulted in penalties ranging from time served to 33 months in prison, along with additional punishments such as probation, fines, and mandated treatment programs. Of the 3 cases charged in state court, 2 resulted in guilty pleas and 1 had not been resolved as of May 2018. Of the 10 cases pursued by federal and state prosecutors that resulted in guilty pleas, 7 cases involved a subject with a history of drug crimes, 6 involved violent crimes, and 4 involved domestic violence. Additional information on these case examples can be found in appendix VI.

According to officials from our six selected ATF field divisions, standard denial referrals may meet USAOs criteria and be referred to a field division for investigation, but almost always do not have prosecutive merit based on coordination with prosecutors. The officials noted that USAOs generally do not accept standard denials that only involve a violation related to falsified information. The officials also said that minor crimes, such as burglary, from decades ago would likely not be a high enough threat for prosecution. For delayed denial cases, officials from the 6 field divisions said that if a firearm is retrieved or otherwise recovered from the prohibited person—and the person is cooperative—ATF is unlikely to refer these investigations to USAOs for prosecution unless there are aggravating circumstances.

Oregon, Pennsylvania, and Virginia Investigate a Large Proportion of Firearms Denials and Prioritize Certain Prohibitions, but a Small Number are Prosecuted

State Investigations

The types of denial cases that are referred for investigation in Oregon, Pennsylvania, and Virginia are determined in part by the priorities the states have set for such referrals. For Oregon and Pennsylvania, which investigate all firearms denials, these priorities include cases involving stolen guns, purchasers with active warrants, active protection orders, and prior felony convictions. In these states, convictions of a crime punishable by more than one year (i.e. felony convictions) are the most common reasons for denial. Virginia investigates a subset of all denials based on risk, and has a policy to prioritize denials that is similar to Oregon and Pennsylvania—active warrants, active protection orders, as well as mental health issues.

According to Virginia state police officials, denials can be referred for investigation if they involve one or more of a set of prohibiting categories.³⁸ In 2017, these amounted to about 50 percent of the almost 3,600 denials recorded. Virginia state police officials said that investigations tend to be handled in the order they arrive, regardless of prohibited category. Two troopers said that Virginia residents with exclusive Virginia criminal histories jump to the top of their lists because the records for these individuals will be easiest to obtain. The investigators in these Virginia jurisdictions said they tend to refer most of their investigations for prosecution, regardless of the prohibited category, if there is evidence to support the falsified information charge. Pennsylvania investigators and supervisors generally said that no priority is given to the denial investigation referrals they receive. They said

³⁸According to Virginia state police officials, prohibitions that trigger an automatic investigation in Virginia include felony conviction, including juvenile felony conviction, or felony indictment; misdemeanor crime of domestic violence; protective order; involuntary mental health treatment; nonimmigrant or illegal alien; and dishonorable discharge from the military.

investigations tend to be handled on a first in first out basis, regardless of the prohibiting category of the denied person. One supervisory trooper said that since these investigations are usually sent to the field 2 to 3 months after the transaction has occurred, they are generally considered low priority when compared to assaults, robberies, and other crimes a trooper investigates. Oregon state police management and troopers told us they prioritize cases involving stolen guns, purchasers with active warrants, active protection orders, and prior felony convictions. Local law enforcement agencies that investigate denial cases in Oregon told us they do not prioritize any cases—except for active warrants—handling them in order as they are received.

Investigators in all three states said that the criminal histories of those investigated tend to be minor. For example, outside of the prohibiting offenses that led to persons being denied, most of these individuals' criminal histories tend to consist of old prohibiting offenses like non-violent felonies, or drug possession, with few gun violations noted. Investigators in these three states said that this may be because individuals with the most severe criminal histories do not attempt to purchase firearms through FFLs. However, one investigator said that individuals who were denied based on misdemeanor crimes of domestic violence tend to have multiple charges in their background.

State Prosecutions

State investigators said prosecutors' interest or willingness to prosecute is a key determinant for whether a case is referred for prosecution. One investigator also said he may check with prosecutors early in an investigation to determine the likelihood of prosecution. According to Oregon troopers, denial investigations that are recommended for prosecution often involve convictions for felonies, misdemeanor crimes of domestic violence, and restraining orders. The troopers said that the strength of the case—including the adequacy and availability of proof the individual knew he or she was prohibited and falsified information—determines which cases are referred to prosecutors.

Prosecutors from all three states said that they generally pursue cases against individuals who have indications of violence, including protection orders, domestic violence, and felony convictions. Individual prosecutors also identified specific prohibiting categories, based on public safety concerns, as their priorities for prosecution. An Oregon prosecutor said there is a good public safety argument for prosecuting denials based on domestic violence, mental health, and felony prohibitions when there is probable cause. However, for other prohibiting categories, such as being on probation or being a drug user, the officials said that prosecuting these

denial cases is not very useful based on the amount of effort required to prosecute. A Virginia prosecutor cited domestic violence and protection orders as being prosecuted most often. A Pennsylvania prosecutor said that his county prosecutes most of the referrals it receives, with denials for multiple instances of driving under the influence, mental health, and domestic violence being the most common.

State prosecutors we interviewed also said the cases they accept for prosecution may be influenced by the fact that certain types of cases are harder to prove. For example, they said that denials involving mental health, drug users, and misdemeanor crimes of domestic violence are often harder to prove, due in part to the difficulty in obtaining related records. The officials added that cases involving out-of-state and older convictions are also not prosecuted as often as other cases due to the difficulty in obtaining records. State prosecutors also said that there are certain circumstances where prosecutors are reluctant to pursue prosecution—such as cases where prohibitions occurred as a juvenile—where a firearms denial conviction would establish an adult criminal record where no criminal record had previously existed.

According to the prosecutors we contacted, the criminal histories of denied individuals generally involved minor violations other than the prohibiting offense. Prosecutors said the criminal history of the individual can play a role in whether felony charges are filed, as opposed to misdemeanor charges, and for sentencing. For example, one Virginia prosecutor said that he will file felony charges for a denial case only for cases in which an individual was denied based on an active protection order or serious felony in his county. Another Virginia prosecutor said that there is consideration of both criminal history—convictions for violent felonies or misdemeanors, especially—as well as multiple arrests where no conviction resulted, when deciding whether to charge the denied person with a felony or misdemeanor. The prosecutor noted, however, that denial cases tend not to be violent felons or hardened criminals. According to a Pennsylvania prosecutor, almost all cases are ultimately charged with misdemeanors. The prosecutor noted, however, that the state recently brought multiple felony charges against a person who was denied a firearms purchase based on a murder conviction in 1973.

These prosecutors also stated that they often try to plead denial cases whenever possible, as these cases often do not result in convictions when they go to trial. For example, a prosecutor in Pennsylvania told us about one denial case that went to trial where the jury found the denied person not guilty. The defendant was prohibited from purchasing a

firearm based on convictions for repeatedly driving while under the influence, a misdemeanor with a potential prison term of 5 years in that state. The attorney said the jury believed that it was a pointless prosecution for a firearm's denial offense. In Virginia, one prosecutor also described a case where a person was denied because of a mental health prohibition, and the person was found not guilty of the charges of falsifying information when attempting to purchase the firearm. He attributed this to a sympathetic defendant and jury reluctance to impose a criminal conviction on an individual without a criminal record.³⁹

Further, state officials said that the penalties handed down when denied individuals are convicted tended to be minor. The Oregon prosecutors said that common penalties are fines (usually in the hundreds of dollars) and probation ranging up to 1 year depending on the criminal background of the denied person. According to a Pennsylvania state police official, in some instances the charges are pled down to a lesser violation, such as disorderly conduct, which result in an approximately \$300 fine. The two Pennsylvania prosecutors we interviewed said that most denial prosecutions in their jurisdictions are pled down to misdemeanors, eliminating the need for a trial. According to the prosecutors, common penalties for misdemeanor convictions include probation and the requirement to pay court costs (upwards of \$1,000 in one county). The prosecutors added that there is an occasional jail sentence for denied felons with substantial criminal records that can result in about 1 to almost 2 years in jail. Prosecutors across the states said that they try to plead cases—thus avoiding trial—whenever possible. One Pennsylvania prosecutor said that cases without strong evidence that cannot be pled are sometimes dropped because conviction would be difficult. Another Pennsylvania prosecutor said jury apathy in one strong case led to fewer denial cases. Virginia prosecutors said that most convictions are for misdemeanor charges and result in probation, fines, and court costs. They did say, however, that jail time has resulted for denied individuals with violent felony convictions.

Conclusions

At the federal level, the number of firearms denial cases ATF has referred to its field divisions for investigation has increased substantially over recent years, which has placed a burden on field division resources. At the same time, field division resources have not increased, and the

³⁹This case is an example of “jury nullification.”

number of USAO prosecutions remains low—totaling 12 in fiscal year 2017. Assessing the extent to which ATF field divisions use warning notices for standard denials in lieu of prosecution would provide ATF headquarters greater awareness of agency-wide deterrence efforts, and better inform the agency as to whether any policy changes are needed.

Recommendation for Executive Action

We recommend that the Deputy Director, Head of the Bureau of Alcohol, Tobacco, Firearms and Explosives assess the extent to which ATF field divisions use warning notices for standard denials in lieu of prosecution and determine whether any policy changes are needed.
(Recommendation 1)

Agency Comments

We provided a draft of this report to DOJ for review and comment. DOJ concurred with our recommendation to ATF and provided technical comments, which we incorporated in this report where appropriate.

We are sending copies of this report to the appropriate congressional committees, the Attorney General, the Deputy Director, Head of the Bureau of Alcohol, Tobacco, Firearms and Explosives, and other interested parties. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512- 8777 or goodwing@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions are listed in appendix VII.

Sincerely yours,



Gretta L. Goodwin
Director, Homeland Security and Justice

Appendix I: Objectives, Scope and Methodology

Our objectives in this report were to (1) describe the extent to which federal and selected state law enforcement agencies investigate and prosecute firearms denial cases; (2) examine the challenges, if any, that federal and selected federal and selected state law enforcement agencies face in investigating and prosecuting firearms denial cases; and (3) describe the circumstances that lead to the investigation and prosecution of persons denied firearms.

To describe the extent that federal and selected state law enforcement agencies investigate and prosecute firearms denials, we reviewed published reports regarding federal and state law enforcement efforts to investigate and prosecute firearms denials. For federal efforts, we requested data from the Federal Bureau of Investigation's (FBI) National Instant Criminal Background Check System (NICS) regarding firearms denials provided to the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) by state and prohibiting category for fiscal years 2011 through 2017. We reviewed the internal controls in place for these data and determined that the data were reliable for our purposes. We requested and received data from the ATF Automated National Instant Criminal Background Check System Referral Application and the NForce Case Management System that showed how many of these denials, both standard and delayed, were forwarded from ATF's Denial Enforcement NICS Intelligence (DENI) Branch to ATF field divisions, broken out by the prohibiting category of the denials.¹ This provided us the total count of denials that ATF may investigate nationwide. To assess the reliability of these data we reviewed internal controls and the data quality assurance program of ATF. We determined that these data were reliable for the purpose of our reporting objectives.

To examine federal prosecutions of denied persons, we requested information from ATF's case management system that identified the NICS cases that were prosecuted, including those instances where a conviction was recorded. For state investigations and prosecutions, we selected the 13 states that perform their own background checks for all firearms transactions and searched their state police and state agency websites to

¹The ATF Automated National Instant Criminal Background Check System Referral Application is ATF's database for information relating to all firearm denials received from the FBI NICS Section. ATF's DENI Branch uses the database to refer firearm denial cases to ATF field divisions for investigation. NForce is a case management system that supports ATF's law enforcement operations, including opening and closing cases, and referring cases for investigation.

identify the state's background check units, or staff associated with this function and inquired about their policy regarding the investigation of persons denied firearms purchase. From these contacts we determined that 10 of these selected states did not perform investigations, while 3 point-of-contact (POC) states did investigate these denials.

We analyzed data from the state police in Oregon, Pennsylvania and Virginia that identified the number of firearms denials recorded, the prohibiting category of the denials, and the number of these denials referred to state or local law enforcement for investigation. To assess the reliability of these data we interviewed knowledgeable individuals about the procedures for creating these data, and reviewed the internal controls in place within these systems. We determined that this data was reliable for the purpose of our reporting objectives. We spoke to state and local investigators and prosecutors in these states to discuss the investigative processes followed and the frequency of prosecution. Though these prosecutors tended to lack hard data on the number of these cases prosecuted and the outcome of these prosecutions, they were able to share their experiences prosecuting these cases, and to estimate the approximate quantity of these cases that have been addressed by their offices. We believe their experiences provide an understanding of the demands these prosecutions place on prosecutors' offices and the value these prosecutions have for the jurisdiction in question.

To describe the challenges, if any, federal and selected state law enforcement agencies face in investigating and prosecuting firearms denials, for federal denial investigations, we used the denial referral data provided by ATF to identify the field divisions that received the most denial referrals for investigation. We found that 6 field divisions received about 60 percent of the total ATF standard denial referrals over the 2011 through 2017 fiscal year period. These six field divisions also received more than half of the delayed denial referrals distributed to the 25 ATF field divisions over that time period. To assess the reliability of the referral data and the case data, we discussed the internal controls in place with knowledgeable officials and received a copy of the ATF quality assurance plan for review. We determined that the data was reliable for the purposes of our reporting objectives.

We contacted officials in these six field divisions and discussed the investigative process for standard and delayed denial investigations as well as the challenges these investigations posed to the ATF staff in these field divisions. We also evaluated ATF's investigative procedures and internal controls in place against the *Standards for Internal Control in*

*the Federal Government.*² We also discussed the types of cases that each field division referred to the appropriate USAO for prosecution, and were provided detailed examples from ATF headquarters of these denial cases for each of the six field divisions. We spoke to EOUSA officials to discuss the circumstances that would lead a USAO to prosecute a firearms denial and the challenges faced in these prosecutions. For state denial investigation challenges we spoke to state troopers and local law enforcement to learn about the procedures for conducting these investigations, the challenges that investigators face, and how and when these firearms denial investigations are referred to prosecutors. We also spoke with multiple prosecutors from each of these states and discussed their offices' policies for accepting these denial cases, how often these cases were prosecuted in these localities and the general outcome of the cases. Though we did not speak to a representative sample of prosecutors across our selected states, we believe their views provide insights into the types of challenges faced by prosecutors in those states.

To identify the circumstances that lead to investigations and prosecutions of firearms denials, we reviewed federal denial investigations by visiting the ATF DENI Branch, the office that uses USAO criteria to screen federal NICS denials for referral to ATF field divisions. There, we observed how denials are screened and discussed internal controls. We also requested USAO referral criteria from the 34 USAO districts that comprise the six ATF field divisions that received the most denial referrals from 2011 to 2017. We also analyzed standard and delayed denial referral data that captured the prohibited categories of the referrals to those field divisions. Further, we analyzed standard and delayed denial case data for the investigations that were referred for prosecution for fiscal years 2015 through 2017, and those that were ultimately prosecuted. To assess the reliability of the data we discussed the internal controls in place for entering the data and the quality assurance plan in place after data was entered. We determined that the data was reliable for the purposes of our reporting objectives.

Officials from our 6 selected ATF field divisions also provided examples of denial cases investigated and referred for prosecution. These case examples included the specific circumstances that convinced the field division to investigate and refer the case for prosecution. For these

²GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014).

federal denial prosecutions, we identified firearms denial cases in PACER and LEXIS for the years 2015, 2016 and 2017 to identify the specific circumstances of the cases prosecuted, the statutes used to charge the defendants, and the outcome of the cases.³ We also spoke to EOUSA officials and discussed the reasons that certain denial cases were prosecuted while thousands of others are not. For state denial investigation circumstances, we spoke with state and local investigators from the three selected states that investigate and prosecute denials and discussed the circumstances—to include state priorities, the prohibiting category and criminal history of those investigated—that resulted in state firearms denial to be referred for prosecution. We also spoke with multiple prosecutors from the same states and asked them to describe the characteristics of cases they are more likely to prosecute, as well as those they are less likely to prosecute. While we did not speak to a representative sample of investigators and prosecutors from these states, we believe their experiences and viewpoints provide insights into how these investigations and prosecutions are conducted and prioritized in these states.

We conducted this performance audit from March 2017 through September 2018 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

³PACER is an electronic public access service that allows users to obtain case and docket information online from federal appellate and district courts. PACER provides access to certain criminal complaints, motions, and other case file documents and docket information.

Appendix II: Bureau of Alcohol, Tobacco, Firearms and Explosives Form 4473

U.S. Department of Justice Bureau of Alcohol, Tobacco, Firearms and Explosives		OMB No. 1140-0020	
Firearms Transaction Record			
WARNING: You may not receive a firearm if prohibited by Federal or State law. The information you provide will be used to determine whether you are prohibited from receiving a firearm. Certain violations of the Gun Control Act, 18 U.S.C. 921 et. seq., are punishable by up to 10 years imprisonment and/or up to a \$250,000 fine. Read the Notices, Instructions, and Definitions on this form. Prepare in original only at the licensed premises ("licensed premises" includes business temporarily conducted from a qualifying gun show or event in the same State in which the licensed premises is located) unless the transaction qualifies under 18 U.S.C. 922(c). All entries must be handwritten in ink. "PLEASE PRINT."			Transferor's/Seller's Transaction Serial Number (If any)
Section A - Must Be Completed Personally By Transferee/Buyer			
1. Transferee's/Buyer's Full Name (If legal name contains an initial only, record "IO" after the initial. If no middle initial or name, record "NMN") Last Name (Including suffix (e.g., Jr, Sr, II, III)) First Name Middle Name			
2. Current State of Residence and Address (U.S. Postal abbreviations are acceptable. Cannot be a post office box.) Number and Street Address City County State ZIP Code			
3. Place of Birth U.S. City and State -OR- Foreign Country		4. Height Ft. In.	5. Weight (Lbs.)
		6. Sex <input type="checkbox"/> Male <input type="checkbox"/> Female	7. Birth Date Month Day Year
8. Social Security Number (Optional, but will help prevent misidentification)		9. Unique Personal Identification Number (UPIN) if applicable (See Instructions for Question 9.)	
10.a. Ethnicity <input type="checkbox"/> Hispanic or Latino <input type="checkbox"/> Not Hispanic or Latino		10.b. Race (In addition to ethnicity, select one or more race in 10.b. Both 10.a. and 10.b. must be answered.) <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Black or African American <input type="checkbox"/> White <input type="checkbox"/> Asian <input type="checkbox"/> Native Hawaiian or Other Pacific Islander	
11. Answer the following questions by checking or marking "yes" or "no" in the boxes to the right of the questions.			
a. Are you the actual transferee/buyer of the firearm(s) listed on this form? Warning: You are not the actual transferee/buyer if you are acquiring the firearm(s) on behalf of another person. If you are not the actual transferee/buyer, the licensee cannot transfer the firearm(s) to you. Exception: If you are picking up a repaired firearm(s) for another person, you are not required to answer 11.a. and may proceed to question 11.b. (See Instructions for Question 11.a.)			Yes No <input type="checkbox"/> <input type="checkbox"/>
b. Are you under indictment or information in any court for a felony, or any other crime for which the judge could imprison you for more than one year? (See Instructions for Question 11.b.)			<input type="checkbox"/> <input type="checkbox"/>
c. Have you ever been convicted in any court of a felony, or any other crime for which the judge could have imprisoned you for more than one year, even if you received a shorter sentence including probation? (See Instructions for Question 11.c.)			<input type="checkbox"/> <input type="checkbox"/>
d. Are you a fugitive from justice? (See Instructions for Question 11.d.)			<input type="checkbox"/> <input type="checkbox"/>
e. Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance? Warning: The use or possession of marijuana remains unlawful under Federal law regardless of whether it has been legalized or decriminalized for medicinal or recreational purposes in the state where you reside.			<input type="checkbox"/> <input type="checkbox"/>
f. Have you ever been adjudicated as a mental defective OR have you ever been committed to a mental institution? (See Instructions for Question 11.f.)			<input type="checkbox"/> <input type="checkbox"/>
g. Have you been discharged from the Armed Forces under dishonorable conditions?			<input type="checkbox"/> <input type="checkbox"/>
h. Are you subject to a court order restraining you from harassing, stalking, or threatening your child or an intimate partner or child of such partner? (See Instructions for Question 11.h.)			<input type="checkbox"/> <input type="checkbox"/>
i. Have you ever been convicted in any court of a misdemeanor crime of domestic violence? (See Instructions for Question 11.i.)			<input type="checkbox"/> <input type="checkbox"/>
12.a. Country of Citizenship: (Check/List more than one, if applicable. Nationals of the United States may check U.S.A.) <input type="checkbox"/> United States of America (U.S.A.) <input type="checkbox"/> Other Country/Countries (Specify)			
			Yes No <input type="checkbox"/> <input type="checkbox"/>
12.b. Have you ever renounced your United States citizenship?			<input type="checkbox"/> <input type="checkbox"/>
12.c. Are you an alien illegally or unlawfully in the United States?			<input type="checkbox"/> <input type="checkbox"/>
12.d.1. Are you an alien who has been admitted to the United States under a nonimmigrant visa? (See Instructions for Question 12.d.)			<input type="checkbox"/> <input type="checkbox"/>
12.d.2. If "yes", do you fall within any of the exceptions stated in the instructions?			<input type="checkbox"/> N/A <input type="checkbox"/>
13. If you are an alien, record your U.S.-Issued Alien or Admission number (AR#, USCIS#, or I94#):			
Previous Editions Are Obsolete Transferee/Buyer Continue to Next Page Page 1 of 6 STAPLE IF PAGES BECOME SEPARATED			
ATF E-Form 4473 (5300.9) Revised October 2016			

**Appendix II: Bureau of Alcohol, Tobacco,
Firearms and Explosives Form 4473**

<p>I certify that my answers in Section A are true, correct, and complete. I have read and understand the Notices, Instructions, and Definitions on ATF Form 4473. I understand that answering "yes" to question 11.a. if I am not the actual transferee/buyer is a crime punishable as a felony under Federal law, and may also violate State and/or local law. I understand that a person who answers "yes" to any of the questions 11.b. through 11.i and/or 12.b. through 12.c. is prohibited from purchasing or receiving a firearm. I understand that a person who answers "yes" to question 12.d.1. is prohibited from receiving or possessing a firearm, unless the person answers "yes" to question 12.d.2. and provides the documentation required in 18.c. I also understand that making any false oral or written statement, or exhibiting any false or misrepresented identification with respect to this transaction, is a crime punishable as a felony under Federal law, and may also violate State and/or local law. I further understand that the repetitive purchase of firearms for the purpose of resale for livelihood and profit without a Federal firearms license is a violation of Federal law. (See Instructions for Question 14.)</p>			
14. Transferee's/Buyer's Signature			15. Certification Date
Section B - Must Be Completed By Transferor/Seller			
16. Type of firearm(s) to be transferred (check or mark all that apply): <input type="checkbox"/> Handgun <input type="checkbox"/> Long Gun (rifles or shotguns) <input type="checkbox"/> Other Firearm (frame, receiver, etc. See Instructions for Question 16.)		17. If transfer is at a qualifying gun show or event: Name of Function: _____ City, State: _____	
18.a. Identification (e.g., Virginia Driver's license (VA DL) or other valid government-issued photo identification.) (See Instructions for Question 18.a.) Issuing Authority and Type of Identification _____		Number on Identification _____	Expiration Date of Identification (if any) Month _____ Day _____ Year _____
18.b. Supplemental Government Issued Documentation (if identification document does not show current residence address) (See Instructions for Question 18.b.)			
18.c. Exception to the Nonimmigrant Alien Prohibition: If the transferee/buyer answered "YES" to 12.d.2, the transferor/seller must record the type of documentation showing the exception to the prohibition and attach a copy to this ATF Form 4473. (See Instructions for Question 18.c.)			
Questions 19, 20, or 21 Must Be Completed Prior To The Transfer Of The Firearm(s) (See Instructions for Questions 19, 20 and 21.)			
19.a. Date the transferee's/buyer's identifying information in Section A was transmitted to NICS or the appropriate State agency: Month _____ Day _____ Year _____		19.b. The NICS or State transaction number (if provided) was:	
19.c. The response initially (first) provided by NICS or the appropriate State agency was: <input type="checkbox"/> Proceed <input type="checkbox"/> Delayed <input type="checkbox"/> Denied [The firearm(s) may be transferred on _____ if State law permits (optional)] <input type="checkbox"/> Cancelled		19.d. The following response(s) was/were later received from NICS or the appropriate State agency: <input type="checkbox"/> Proceed _____ (date) <input type="checkbox"/> Overturned <input type="checkbox"/> Denied _____ (date) <input type="checkbox"/> Cancelled _____ (date) <input type="checkbox"/> No response was provided within 3 business days.	
19.e. (Complete if applicable.) After the firearm was transferred, the following response was received from NICS or the appropriate State agency on: _____ (date). <input type="checkbox"/> Proceed <input type="checkbox"/> Denied <input type="checkbox"/> Cancelled			
19.f. The name and Brady identification number of the NICS examiner. (Optional) _____ (name) _____ (number)		19.g. Name of FFL Employee Completing NICS check. (Optional)	
20. <input type="checkbox"/> No NICS check was required because a background check was completed during the NFA approval process on the individual who will receive the NFA firearm(s), as reflected on the approved NFA application. (See Instructions for Question 20.) 21. <input type="checkbox"/> No NICS check was required because the transferee/buyer has a valid permit from the State where the transfer is to take place, which qualifies as an exemption to NICS. (See Instructions for Question 21.)			
Issuing State and Permit Type _____		Date of Issuance (if any) _____	Expiration Date (if any) _____
		Permit Number (if any) _____	
Section C - Must Be Completed Personally By Transferee/Buyer			
If the transfer of the firearm(s) takes place on a different day from the date that the transferee/buyer signed Section A, the transferee/buyer must complete Section C immediately prior to the transfer of the firearm(s). (See Instructions for Question 22 and 23.)			
I certify that my answers to the questions in Section A of this form are still true, correct, and complete.			
22. Transferee's/Buyer's Signature			23. Recertification Date
Transferor/Seller Continue to Next Page STAPLE IF PAGES BECOME SEPARATED			
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Section D - Must Be Completed By Transferor/Seller Even If The Firearm(s) is Not Transferred				
24. Manufacturer and Importer (If any) (If the manufacturer and importer are different, the FFL must include both.)	25. Model (If Designated)	26. Serial Number	27. Type (See Instructions for Question 27.)	28. Caliber or Gauge
1.				
2.				
3.				
4.				

REMINDER - By the Close of Business Complete ATF Form 3310.4 For Multiple Purchases of Handguns Within 5 Consecutive Business Days

29. Total Number of Firearms Transferred (Please <i>handwrite</i> by printing e.g., zero, one, two, three, etc. Do not use numerals.)	30. Check if any part of this transaction is a pawn redemption. <input type="checkbox"/> Line Number(s) From Question 24 Above:
31. For Use by Licensee (See Instructions for Question 31.)	32. Check if this transaction is to facilitate a private party transfer. <input type="checkbox"/> (See Instructions for Question 32.)
33. Trade/corporate name and address of transferor/seller and Federal Firearm License Number (Must contain at least first three and last five digits of FFL Number X-XX-XXXXX.) (Hand stamp may be used.)	

The Person Transferring The Firearm(s) Must Complete Questions 34-37.
For Denied/Cancelled Transactions, the Person Who Completed Section B Must Complete Questions 34-36.

I certify that: (1) I have read and understand the Notices, Instructions, and Definitions on this ATF Form 4473; (2) the information recorded in Sections B and D is true, correct, and complete; and (3) this entire transaction record has been completed at my licensed business premises ("licensed premises" includes business temporarily conducted from a qualifying gun show or event in the same State in which the licensed premises is located) unless this transaction has met the requirements of 18 U.S.C. 922(c). Unless this transaction has been denied or cancelled, I further certify on the basis of — (1) the transferee's/buyer's responses in Section A (and Section C, if applicable); (2) my verification of the identification recorded in question 18 (and my re-verification at the time of transfer, if Section C was completed); and (3) State or local law applicable to the firearms business — it is my belief that it is not unlawful for me to sell, deliver, transport, or otherwise dispose of the firearm(s) listed on this form to the person identified in Section A.

34. Transferor's/Seller's Name (Please print)	35. Transferor's/Seller's Signature	36. Transferor's/Seller's Title	37. Date Transferred
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NOTICES, INSTRUCTIONS, AND DEFINITIONS

Purpose of the Form: The information and certification on this form are designed so that a person licensed under 18 U.S.C. 923 may determine if he/she may lawfully sell or deliver a firearm to the person identified in Section A, and to alert the transferee/buyer of certain restrictions on the receipt and possession of firearms. The transferor/seller of a firearm must determine the lawfulness of the transaction and maintain proper records of the transaction. Consequently, the transferor/seller must be familiar with the provisions of 18 U.S.C. 921-931 and the regulations in 27 CFR Parts 478 and 479. In determining the lawfulness of the sale or delivery of a rifle or shotgun to a resident of another State, the transferor/seller is presumed to know the applicable State laws and published ordinances in both the transferor's/seller's State and the transferee's/buyer's State. (See ATF Publication 5300.5, *State Laws and Published Ordinances*.)

Generally, ATF Form 4473 must be completed at the licensed business premises when a firearm is transferred over-the-counter. Federal law, 18 U.S.C. 922(c), allows a licensed importer, manufacturer, or dealer to sell a firearm to a nonlicensee who does not appear in person at the licensee's business premises only if the transferee/buyer meets certain requirements. These requirements are set forth in section 922(c), 27 CFR 478.96(b), and ATF Procedure 2013-2.

After the transferor/seller has completed the firearms transaction, he/she must make the completed, original ATF Form 4473 (which includes the Notices, General Instructions, and Definitions), and any supporting documents, part of his/her permanent records. Such Forms 4473 must be retained for at least 20 years and after that period may be submitted to ATF. Filing may be chronological (by date of disposition), alphabetical (by name of purchaser), or numerical (by transaction serial number), as long as all of the transferor's/seller's completed Forms 4473 are filed in the same manner.

FORMS 4473 FOR DENIED/CANCELLED TRANSFERS MUST BE RETAINED: If the transfer of a firearm is denied/cancelled by NICS, or if for any other reason the transfer is not completed after a NICS check is initiated, the licensee must retain the ATF Form 4473 in his/her records for at least 5 years. Forms 4473 with respect to which a sale, delivery, or transfer did not take place shall be separately retained in alphabetical (by name of transferee) or chronological (by date of transferee's certification) order.

If the transferor/seller or the transferee/buyer discovers that an ATF Form 4473 is incomplete or improperly completed after the firearm has been transferred, and the transferor/seller or the transferee/buyer wishes to correct the omission(s) or error(s), photocopy the inaccurate form and make any necessary additions or revisions to the photocopy. The transferor/seller should only make changes to Sections B and D. The transferee/buyer should only make changes to Section A and C. Whoever made the changes should initial and date the changes. The corrected photocopy should be attached to the original Form 4473 and retained as part of the transferor's/seller's permanent records.

Exportation of Firearms: The State or Commerce Departments may require a firearms exporter to obtain a license prior to export. **Warning:** Any person who exports a firearm without proper authorization may be fined not more than \$1,000,000 and/or imprisoned for not more than 20 years. See 22 U.S.C. 2778(c).

Section A

The transferee/buyer must personally complete Section A of this form and certify (sign) that the answers are true, correct, and complete. However, if the transferee/buyer is unable to read and/or write, the answers (other than the signature) may be completed by another person, excluding the transferor/seller. Two persons (other than the transferor/seller) must then sign as witnesses to the transferee's/buyer's answers and signature/certification in question 14.

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When the transferee/buyer of a firearm is a corporation, company, association, partnership, or other such business entity, an officer authorized to act on behalf of the business must complete Section A of the form with his/her personal information, sign Section A, and attach a written statement, executed under penalties of perjury, stating: (A) the firearm is being acquired for the use of and will be the property of that business entity; and (B) the name and address of that business entity.

Question 1. If the transferee's/buyer's name in question 1 is illegible, the transferor/seller must print the transferee's/buyer's name above the name written by the transferee/buyer.

Question 2. Current Residence Address: A rural route (RR) may be accepted provided the transferee/buyer lives in a State or locality where it is considered a legal residence address. County and Parish are one and the same.

If the transferee/buyer is a member of the Armed Forces on active duty, his/her State of residence is the State in which his/her permanent duty station is located. If the service member is acquiring a firearm in a State where his/her permanent duty station is located, but resides in a different State, the transferee/buyer must list both his/her permanent duty station address and his/her residence address in response to question 2. If the transferee/buyer has two States of residence, the transferee/buyer should list his/her current residence address in response to question 2 (*e.g., if the transferee/buyer is purchasing a firearm while staying at his/her weekend home in State X, he/she should list the address in State X in response to question 2*).

Question 9. Unique Personal Identification Number (UPIN): For transferees/buyers approved to have information maintained about them in the FBI NICS Voluntary Appeal File, NICS will provide them with a UPIN, which the transferee/buyer should record in question 9. The licensee should provide the UPIN when conducting background checks through the NICS or the State POC.

Question 10.a. and 10.b. Federal regulations (27 CFR 478.124(c)(1)) require licensees to obtain the race of the transferee/buyer. This information helps the FBI and/or State POC make or rule out potential matches during the background check process and can assist with criminal investigations. Pursuant to Office of Management and Budget (OMB), effective January 1, 2003, all Federal agencies requiring collection of race and ethnicity information on administrative forms and records, were required to collect this information in a standard format. (See 62 FR 58782) The standard OMB format consists of two categories for data on ethnicity: "Hispanic or Latino," and "Not Hispanic or Latino" and five categories for data on race: American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White.

Ethnicity refers to a person's heritage. Persons of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race, are considered Hispanic or Latino.

Race - one or more of the following responses must be selected: (1) American Indian or Alaska Native - A person having origins in any of the original peoples of North and South America (including Central America), and who maintains a tribal affiliation or community attachment; (2) Asian - A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam; (3) Black or African American - A person having origins in any of the Black racial groups of Africa; (4) Native Hawaiian or Other Pacific Islander - A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands; and (5) White - A person having origins in any of the original peoples of Europe, the Middle East, or North Africa. Any other race or ethnicity that does not fall within those indicated, please select the closest representation.

Question 11.a. Actual Transferee/Buyer: For purposes of this form, a person is the actual transferee/buyer if he/she is purchasing the firearm for him/herself or otherwise acquiring the firearm for him/herself (*e.g., redeeming the firearm from pawn, retrieving it from consignment, firearm raffle winner*). A person is also the actual transferee/buyer if he/she is legitimately purchasing the firearm as a bona fide gift for a third party. A gift is not bona fide if another person offered or gave the person completing this form money, service(s), or item(s) of value to acquire the firearm for him/her, or if the other person is prohibited by law from receiving or possessing the firearm.

Actual TRANSFEREE/buyer examples: Mr. Smith asks Mr. Jones to purchase a firearm for Mr. Smith (*who may or may not be prohibited*). Mr. Smith gives Mr. Jones the money for the firearm. Mr. Jones is **NOT THE**
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ACTUAL TRANSFEREE/BUYER of the firearm and must answer "NO" to question 11.a. The licensee may not transfer the firearm to Mr. Jones. However, if Mr. Brown buys the firearm with his own money to give to Mr. Black as a gift (*with no service or tangible thing of value provided by Mr. Black*), Mr. Brown is the actual transferee/buyer of the firearm and should answer "YES" to question 11.a. However, the transferor/seller may not transfer a firearm to any person he/she knows or has reasonable cause to believe is prohibited under 18 U.S.C. 922(g), (n) or (x). **EXCEPTION:** If a person is picking up a repaired firearm(s) for another person, he/she is not required to answer 11.a. and may proceed to question 11.b.

Question 11.b. - 12. Generally, 18 U.S.C. 922(g) prohibits the shipment, transportation, receipt, or possession in or affecting interstate commerce of a firearm by one who: has been convicted of a felony in any Federal, State or local court, or any other crime, punishable by imprisonment for a term exceeding one year (*this does not include State misdemeanors punishable by imprisonment of two years or less*); is a fugitive from justice; is an unlawful user of, or addicted to, marijuana or any depressant, stimulant, or narcotic drug, or any other controlled substance; has been adjudicated as a mental defective or has been committed to a mental institution; has been discharged from the Armed Forces under dishonorable conditions; is subject to certain restraining orders; convicted of a misdemeanor crime of domestic violence under Federal, State or Tribal law; has renounced his/her U.S. citizenship; is an alien illegally in the United States or an alien admitted to the United States under a nonimmigrant visa. Furthermore, section 922(n) prohibits the shipment, transportation, or receipt in or affecting interstate commerce of a firearm by one who is under indictment or information for a felony in any Federal, State or local court, or any other crime, punishable by imprisonment for a term exceeding one year. An information is a formal accusation of a crime verified by a prosecutor.

A member of the Armed Forces must answer "yes" to 11.b. or 11.c. if charged with an offense that was either referred to a General Court Martial, or at which the member was convicted. Discharged "under dishonorable conditions" means separation from the Armed Forces resulting from a dishonorable discharge or dismissal adjudged by a General Court-Martial. That term does not include any other discharge or separation from the Armed Forces.

EXCEPTION: A person who has been convicted of a felony, or any other crime, for which the judge could have imprisoned the person for more than one year, or who has been convicted of a misdemeanor crime of domestic violence, is not prohibited from purchasing, receiving, or possessing a firearm if: (1) under the law of the jurisdiction where the conviction occurred, the person has been pardoned, the conviction has been expunged or set aside, or the person has had their civil rights (*the right to vote, sit on a jury, and hold public office*) taken away and later restored, AND (2) the person is not prohibited by the law of the jurisdiction where the conviction occurred from receiving or possessing firearms. Persons subject to this exception, or who receive relief from disabilities under 18 U.S.C. 925(e), should answer "no" to the applicable question.

Question 11.d. Fugitive from Justice: Any person who has fled from any State to avoid prosecution for a felony or a misdemeanor; or any person who leaves the State to avoid giving testimony in any criminal proceeding. The term also includes any person who knows that misdemeanor or felony charges are pending against such person and who leaves the State of prosecution.

Question 11.f. Adjudicated as a Mental Defective: A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease: (1) is a danger to himself or to others; or (2) lacks the mental capacity to contract or manage his own affairs. This term shall include: (1) a finding of insanity by a court in a criminal case; and (2) those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility.

Committed to a Mental Institution: A formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily. The term includes commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution.

EXCEPTION: Under the NICS Improvement Amendments Act of 2007, a person who has been adjudicated as a mental defective or committed to a mental institution in a State proceeding is not prohibited by the adjudication or commitment if

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the person has been granted relief by the adjudicating/committing State pursuant to a qualifying mental health relief from disabilities program. Also, a person who has been adjudicated as a mental defective or committed to a mental institution by a department or agency of Federal Government is not prohibited by the adjudication or commitment if either: (a) the person's adjudication or commitment was set-aside or expunged by the adjudicating/committing agency; (b) the person has been fully released or discharged from all mandatory treatment, supervision, or monitoring by the agency; (c) the person was found by the agency to no longer suffer from the mental health condition that served as the basis of the initial adjudication/commitment; or (d) the adjudication or commitment, respectively, is based solely on a medical finding of disability, without an opportunity for a hearing by a court, board, commission, or other lawful authority, and the person has not been adjudicated as a mental defective consistent with section 922(g)(4) of title 18, United States Code; (e) the person was granted relief from the adjudicating/committing agency pursuant to a qualified mental health relief from disabilities program. **Persons who fall within one of the above exceptions should answer "no" to question 11.f.** This exception to an adjudication or commitment by a Federal department or agency does not apply to any person who was adjudicated to be not guilty by reason of insanity, or based on lack of mental responsibility, or found incompetent to stand trial, in any criminal case or under the Uniform Code of Military Justice.

Question 11.h. Qualifying Restraining Orders: Under 18 U.S.C. 922, firearms may not be sold to or received by persons subject to a court order that: (A) was issued after a hearing which the person received actual notice of and had an opportunity to participate in; (B) restrains such person from harassing, stalking, or threatening an intimate partner or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and (C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury. An "intimate partner" of a person is: the spouse or former spouse of the person, the parent of a child of the person, or an individual who cohabitates or has cohabitated with the person.

Question 11.i. Misdemeanor Crime of Domestic Violence: A Federal, State, local, or tribal offense that is a misdemeanor under Federal, State, or tribal law and has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with, or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim. The term includes all misdemeanors that have as an element the use or attempted use of physical force or the threatened use of a deadly weapon (e.g., *assault and battery*), if the offense is committed by one of the defined parties. (See *Exception to 11.b. - 12.*) A person who has been convicted of a misdemeanor crime of domestic violence also is not prohibited unless: (1) the person was represented by a lawyer or gave up the right to a lawyer; or (2) if the person was entitled to a jury, was tried by a jury, or gave up the right to a jury trial. Persons subject to this exception should answer "no" to 11.i.

Question 12.d. Immigration Status: An alien admitted to the United States under a nonimmigrant visa includes, among others, persons visiting the United States temporarily for business or pleasure, persons studying in the United States who maintain a residence abroad, and certain temporary foreign workers. These aliens must answer "yes" to this question and provide the additional documentation required under question 18.c. Permanent resident aliens and aliens legally admitted to the United States pursuant to either the Visa Waiver Program or to regulations otherwise exempting them from visa requirements may answer "no" to this question and are not required to submit the additional documentation under question 18.c.

Question 13. U.S.-issued Alien Number or Admission Number: U.S.-issued alien and admission numbers may be found on the following U.S. Department of Homeland Security documents: Legal Resident Card or Employment Authorization Card (AR# or USCIS#); Arrival/Departure Record, Form I94, or Form 797A (I94#). Additional information can be obtained from www.dhs.gov. If you are a U.S. citizen or U.S. national then this question should be left blank.

Question 14. Under 18 U.S.C. 922(a)(1), it is unlawful for a person to engage in the business of dealing in firearms without a license. A person is engaged in the business of dealing in firearms if he/she devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal

objective of livelihood and profit through the repetitive purchase and resale of firearms. A license is not required of a person who only makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his/her personal collection of firearms.

Section B

Question 16. Type of Firearm(s): "Other" refers to frames, receivers and other firearms that are neither handguns nor long guns (rifles or shotguns), such as firearms having a pistol grip that expel a shotgun shell, or National Firearms Act (NFA) firearms, including silencers.

If a frame or receiver can only be made into a long gun (*rifle or shotgun*), it is still a frame or receiver not a handgun or long gun. However, frames and receivers are still "firearms" by definition, and subject to the same GCA limitations as any other firearms. See Section 921(a)(3)(B). Section 922(b)(1) makes it unlawful for a licensee to sell any firearm other than a shotgun or rifle to any person under the age of 21. Since a frame or receiver for a firearm, to include one that can only be made into a long gun, is a "firearm other than a shotgun or rifle," it cannot be transferred to anyone under the age of 21, nor can these firearms be transferred to anyone who is not a resident of the State where the transfer is to take place. Also, note that multiple sales forms are not required for frames or receivers of any firearms, or pistol grip shotguns, since they are not "pistols or revolvers" under Section 923(g)(3)(A).

Question 17. Qualifying Gun Show or Event: As defined in 27 CFR 478.100, a gun show or event is a function sponsored by any national, State, or local organization, devoted to the collection, competitive use, or other sporting use of firearms, or an organization or association that sponsors functions devoted to the collection, competitive use, or other sporting use of firearms in the community.

Question 18.a. Identification: Before a licensee may sell or deliver a firearm to a nonlicensee, the licensee must establish the identity, place of residence, and age of the transferee/buyer. The transferee/buyer must provide a valid government-issued photo identification document to the transferor/seller that contains the transferee's/buyer's name, residence address, and date of birth. A driver's license or an identification card issued by a State in place of a license is acceptable. Social Security cards are not acceptable because no address, date of birth, or photograph is shown on the cards. A combination of government-issued documents may be provided. See instructions for question 18.b. Supplemental Documentation.

If the transferee/buyer is a member of the Armed Forces on active duty acquiring a firearm in the State where his/her permanent duty station is located, but he/she has a driver's license from another State, the transferor/seller should list the transferee's/buyer's military identification card and official orders showing where his/her permanent duty station is located in response to question 18.a. Licensees may accept electronic PCS orders to establish residency.

Question 18.b. Supplemental Documentation: Licensees may accept a combination of valid government-issued documents to satisfy the identification document requirements of the law. The required valid government-issued photo identification document bearing the name, photograph, and date of birth of transferee/buyer may be supplemented by another valid, government-issued document showing the transferee's/buyer's residence address. This supplemental documentation should be recorded in question 18.b., with the issuing authority and type of identification presented. For example, if the transferee/buyer has two States of residence and is trying to buy a handgun in State X, he may provide a driver's license (*showing his name, date of birth, and photograph*) issued by State Y and another government-issued document (*such as a tax document*) from State X showing his residence address. A valid electronic document from a government website may be used as supplemental documentation provided it contains the transferee's/buyer's name and current residence address.

Question 18.c. Exceptions to the Nonimmigrant Alien Prohibition and Acceptable Documentation: An alien admitted to the United States under a nonimmigrant visa is not prohibited from purchasing, receiving, or possessing a firearm if the alien: (1) is in possession of a hunting license or permit lawfully issued by the Federal Government, a State or local government, or an Indian tribe federally recognized by the Bureau of Indian Affairs, which is valid and unexpired; (2) was admitted to the United States for lawful hunting or sporting purposes; (3) has received a waiver from the prohibition from the Attorney General of the United States; (4) is an official representative of a foreign government who is accredited to the United States Government or the Government's mission to an international organization having its

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headquarters in the United States; (5) is an official representative of a foreign government who is en route to or from another country to which that alien is accredited; (6) is an official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State; or (7) is a foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business.

Question 19. NICS BACKGROUND CHECKS: 18 U.S.C. 922(t) requires that prior to transferring any firearm to an unlicensed person, a licensed importer, manufacturer, or dealer must first contact the National Instant Criminal Background Check System (NICS). NICS will advise the licensee whether the system finds any information that the purchaser is prohibited by law from possessing or receiving a firearm. For purposes of this form, contacts to NICS include State agencies designated as points-of-contact ("or POCs") to conduct NICS checks for the Federal Government.

The licensee should NOT contact NICS and must stop the transaction if there is reasonable cause to believe that the transferee/buyer is prohibited from receiving or possessing a firearm, including if: the transferee/buyer answers "no" to question 11.a.; the transferee/buyer answers "yes" to any question in 11.b. - 11.i. or 12.b. - 12.c.; the transferee/buyer has answered "yes" to question 12.d.1., and answered "no" to question 12.d.2.; or the transferee/buyer cannot provide the documentation required by questions 18.a, b, or c. **WARNING:** Any person who transfers a firearm to any person he/she knows or has reasonable cause to believe is prohibited from receiving or possessing a firearm violates the law, even if the transferor/seller has complied with the Federal background check requirements.

At the time that NICS is contacted, the licensee must record in question 19.a. - 19.c.: the date of contact, the NICS (or State) transaction number, and the initial (first) response provided by NICS or the State. The licensee may record the date the firearms may be transferred to the transferee/buyer (also known as the Missing Disposition Information (MDI) date) in 19.c. that NICS provides for delayed transactions (*States may not provide this date*). If the licensee receives any subsequent response(s) before transferring the firearm, the licensee must record in question 19.d. any response later provided by NICS or the State, or that no response was provided within 3 business days. If the transaction was denied and later overturned in addition to checking the "Proceed" and entering the date, the licensee must also check the "Overturned" box and, if provided, attach the overturn certificate issued by NICS or the State POC to the ATF Form 4473. If the licensee receives a response from NICS or the State after the firearm has been transferred, he/she must record this information in question 19.e. **Note:** States acting as points of contact for NICS checks may use terms other than "proceed," "delayed," "cancelled," or "denied." In such cases, the licensee should check the box that corresponds to the State's response. Some States may not provide a transaction number for denials. However, if a firearm is transferred within the three business day period, a transaction number is required.

NICS responses: If NICS provides a "proceed" response, the transaction may proceed. If NICS provides a "cancelled" or "denied" response, the transferor/seller is prohibited from transferring the firearm to the transferee/buyer. If NICS provides a "delayed" response, the transferor/seller is prohibited from transferring the firearm unless 3 business days have elapsed and, before the transfer, NICS or the State has not advised the transferor/seller that the transferee's/buyer's receipt or possession of the firearm would be in violation of law. (See 27 CFR 478.102(a) for an example of how to calculate 3 business days.) If NICS provides a "delayed" response, NICS also will provide a Missing Disposition Information (MDI) date that calculates the 3 business days and reflects when the firearm(s) can be transferred under Federal law. States may not provide an MDI date. *State law may impose a waiting period on transferring firearms.*

Questions 20 and 21. NICS Exceptions: A NICS check is not required if the transfer qualifies for any of the exceptions in 27 CFR 478.102(d). Generally these include: (a) transfers of National Firearms Act firearms to an individual who has undergone a background check during the NFA approval process; (b) transfers where the transferee/buyer has presented the licensee with a permit or license that allows the transferee/buyer to possess, acquire, or carry a firearm, and the permit has been recognized by ATF as a valid alternative to the NICS check requirement; or (c) transfers certified by ATF as exempt because compliance with the NICS check requirements is impracticable. If the transfer qualifies for one of these exceptions, the licensee must obtain the documentation required by 27 CFR 478.131. A firearm must not be transferred to any transferee/buyer who fails to provide such documentation.

A NICS check must be conducted if an NFA firearm has been approved for transfer to a trust, or to a legal entity such as a corporation, and no background check was conducted as part of the NFA approval process on the individual who will receive the firearm. Individuals who have undergone a background check during the NFA application process are listed on the approved NFA transfer form.

Section C

Questions 22 and 23. Transfer on a Different Day and Recertification: If the transfer takes place on a different day from the date that the transferee/buyer signed Section A, the licensee must again check the photo identification of the transferee/buyer at the time of transfer.

Section D

Question 24-28. Firearm(s) Description: These blocks must be completed with the firearm(s) information. Firearms manufactured after 1968 by Federal firearms licensees should all be marked with a serial number. Should you acquire a firearm that is legally not marked with a serial number (i.e. pre-1968); you may answer question 26 with "NSN" (No Serial Number), "N/A" or "None."

If more than four firearms are involved in a transaction, the information required by Section D, questions 24-28, must be provided for the additional firearms on a separate sheet of paper, which must be attached to this ATF Form 4473.

Types of firearms include, but are not limited to: pistol, revolver, rifle, shotgun, receiver, frame and other firearms that are neither handguns nor long guns (rifles or shotguns), such as firearms having a pistol grip that expel a shotgun shell (pistol grip firearm) or NFA firearms (machinegun, silencer, short-barreled shotgun, short-barreled rifle, destructive device or "any other weapon").

Additional firearms purchases by the same transferee/buyer may not be added to the form after the transferor/seller has signed and dated it. A transferee/buyer who wishes to acquire additional firearms after the transferor/seller has signed and dated the form must complete a new ATF Form 4473 and undergo a new NICS check.

Question 31. This item is for the licensee's use in recording any information he/she finds necessary to conduct business.

Question 32. Check this box, or write "Private Party Transfer" in question 31, if the licensee is facilitating the sale or transfer of a firearm between private unlicensed individuals in accordance with ATF Procedure 2013-1. This will assist the licensee by documenting which transaction records correspond with private party transfers, and why there may be no corresponding A&D entries when the transfer did not proceed because it was denied, delayed, or cancelled.

Privacy Act Information

Solicitation of this information is authorized under 18 U.S.C. 923(g). Disclosure of this information by the transferee/buyer is mandatory for the transfer of a firearm. Disclosure of the individual's Social Security number is voluntary. The number may be used to verify the transferee's/buyer's identity.

For information about the routine uses of this form see System of Records Notice Justice/ATF-008, Regulatory Enforcement Records System (68 FR 163558, January 24, 2003).

Paperwork Reduction Act Notice

The information required on this form is in accordance with the Paperwork Reduction Act of 1995. The purpose of the information is to determine the eligibility of the transferee to receive and possess firearms under Federal law. The information is subject to inspection by ATF officers and is required by 18 U.S.C. 922 and 923.

The estimated average burden associated with this collection is 30 minutes per respondent or recordkeeper, depending on individual circumstances. Comments about the accuracy of this burden estimate and suggestions for reducing it should be directed to Reports Management Officer, IT Coordination Staff, Bureau of Alcohol, Tobacco, Firearms and Explosives, Washington, DC 20226.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Confidentiality is not assured.

Appendix III: Investigation and Prosecution of Firearms Denials in Oregon

This appendix includes information on the investigation and prosecution of individuals denied firearms purchases in the state of Oregon.

Firearms Background Checks

In the state of Oregon, the Oregon State Police (OSP) Firearms Unit serves as the point of contact responsible for conducting background checks for firearms transactions. OSP's Firearms Instant Check System (FICS) unit conducts criminal background checks to determine the eligibility of individuals attempting to transfer or purchase a firearm. Oregon law requires that gun dealers request that the OSP conduct a criminal history record check on the purchaser before a firearm is delivered to a purchaser.¹ Dealers may submit these requests either by telephone or online. The FICS unit determines from criminal records and other available information whether the purchaser is disqualified under state or federal law from completing the transfer or is otherwise prohibited by state or federal law from possessing a firearm.

Generally, for gun shows,² Oregon law prohibits a transferor who is not a gun dealer from transferring a firearm unless the transferor requests a criminal background check prior to completing the transfer, receives a unique approval number from OSP indicating that the recipient is qualified to complete the transfer, and has the recipient complete the form for transfer of a firearm at a gun show, or completes the transfer through a gun dealer.³ Generally, for private firearms sales, Oregon law requires a transferor to complete the transfer of a firearm to a transferee through a gun dealer.⁴ Prior to the transfer of the firearm, both the transferor and the transferee must appear in person before a gun dealer, with certain exceptions, with the firearm and request that the gun dealer perform a criminal background check on the transferee.⁵

¹Or. Rev. Stat. §§ 166.412(2)(d), 166.432, and 166.434.

²Pursuant to Or. Rev. Stat. § 166.432(2)(b), a "gun show" is defined as "an event at which more than 25 firearms are on site and available for transfer."

³Or. Rev. Stat. § 166.438.

⁴Or. Rev. Stat. § 166.435(2).

⁵Or. Rev. Stat. § 166.435.

Process for Conducting a Background Check

When a FICS background check is requested, Oregon law requires the seller to provide information about the firearm—so OSP can ensure it has not been reported stolen—and the purchaser in order to conduct a criminal history check.⁶ If the purchaser is qualified, a unique approval number is provided to complete the transaction. The dealer then enters this number on the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) background check form (Form 4473), and a thumbprint form, which is attached to the Form 4473 and retained for 5 years. By statute, if OSP is unable to determine if the purchaser is approved or denied within 30 minutes, OSP is required to notify the dealer and provide an estimate of when the check will be completed.⁷ These checks are placed in a pending/delayed status until sufficient record information can be obtained to complete the request.

Federal law provides that if the FBI or state agency cannot complete a background check within 3 business days and make a final determination (i.e., proceed or denied), the Federal Firearms Licensee (FFL) may transfer the firearm pursuant to federal law, unless state law provides otherwise.⁸ Regardless of the FFL's decision to transfer or not transfer the firearm, OSP will continue to research missing information in order to complete the background check request and provide either an approval number or notice that the person is denied for the FFL's records. Typically, a case is placed in "pend" status because the record is missing information necessary to make a final determination. For example, domestic violence charges may not include details about the relationship needed to make a determination; state, local, or federal agencies may not have the resources to respond in a timely manner to requests for missing information; or it may be unclear whether prior charges were a felony or misdemeanor.

When a transaction is denied, it is either labeled a Priority FICS Call, and is dispatched to the first available trooper or local law enforcement officer, or it is labeled a Cold FICS Call, and dispatched to the appropriate OSP

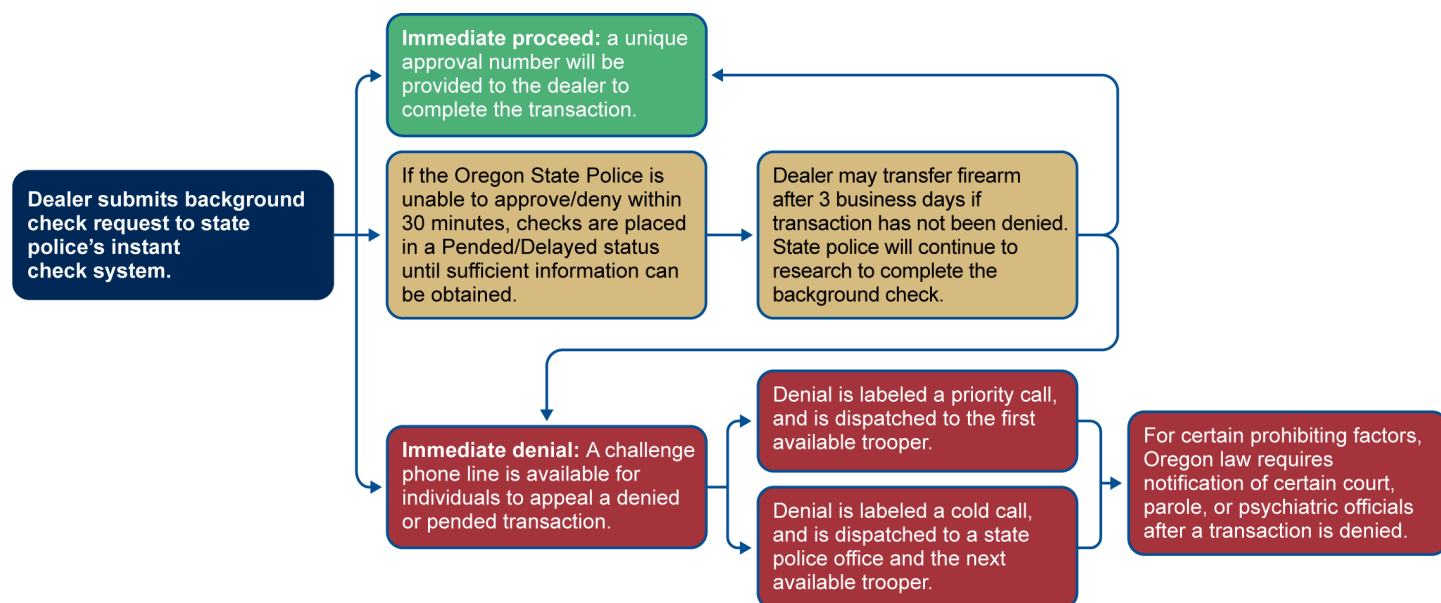
⁶Or. Rev. Stat. § 166.412(2)(d)(E).

⁷Or. Rev. Stat. 166.412(3)(b).

⁸18 U.S.C. § 922(t)(1)(B)(ii). States can establish their own firearms laws, such as additional prohibiting categories or additional time frames for completing checks before a dealer may transfer the firearm. See Or. Rev. Stat. § 166.412(3)(c).

office and next available trooper or local law enforcement officer. Priority calls are those that involve a convicted felon, a serviceable warrant, a stolen gun, or a restraining/stalking order. Oregon Executive Order 16-12 requires notification of certain officials after a transaction is denied if the prohibited person is on probation, on parole or post-prison supervision, subject to a court-issued release agreement or protective order, or subject to supervision by a Psychiatric Security Review Board.⁹ Figure 7 shows the process for purchasing a firearm from a dealer in Oregon.

Figure 7: Process for Purchasing a Firearm from a Dealer in Oregon



Source: GAO analysis of Oregon State Police data and information provided by officials. | GAO-18-440

According to OSP officials, 95 to 97 percent of background checks are approved and less than 1 percent are denied within minutes of initiation, while roughly 3 to 5 percent are placed in pend/delay status. According to FICS officials, about 95 percent of pend/delay transactions are ultimately approved.

A challenge phone line is available for individuals who have been denied or pending and wish to find out the reason, or to challenge a denial

⁹Or. Exec. Order 16-12 (July 15, 2016).

determination. The gun dealer may be asked to fax the ATF form 4473 and thumbprint form to the FICS Unit to assist in the challenge process. The purchaser is provided a reference number upon request to be used to appeal the determination through the Federal Bureau of Investigation's (FBI) National Instant Criminal Background Check System (NICS) program.

Denials and Prohibited Categories

Oregon law prohibits individuals that have been convicted of certain offenses from possessing firearms. For example, Oregon prohibits the possession of a firearm by any person found to have mental illness and subject to a court order for treatment or commitment that prohibits them from purchasing or possessing a firearm as a result of mental illness.¹⁰ Finally, an individual is prohibited if while a minor, was found to be within the jurisdiction of the juvenile court for having committed an act which, if committed by an adult, would constitute a felony or misdemeanor involving violence and was discharged from the jurisdiction of the juvenile court within the last 4 years.¹¹ Table 2 shows Oregon firearms denials by prohibiting categories.

¹⁰Or. Rev. Stat. § 166.250.

¹¹Or. Rev. Stat. § 166.250. A "misdemeanor involving violence" under Or. Rev. Stat. § 166.250, is defined in Or. Rev. Stat. § 166.470 as a misdemeanor described in Or. Rev. Stat. §§ 163.160 (relating to the crime of assault in the fourth degree); 163.187 (relating to the crime of strangulation); 163.190 (relating to the crime of menacing); 163.195 (relating to the crime of recklessly endangering another person); or 166.155(1)(b) (relating to the crime of intimidation in the second degree by intentionally subjecting another person to offensive physical contact because of the person's perception of the other's race, color, religion, sexual orientation, disability, or national origin).

Table 2: Oregon Firearm Denials by Prohibiting Category, Fiscal Years 2011 through 2017

Prohibiting Category	2011	2012	2013	2014	2015	2016	2017	TOTAL
Mental Health Adjudicated	52	37	40	45	82	80	71	407
Wanted Person	204	232	257	212	204	156	50	1,315
Convicted of a Felony	663	768	756	544	525	522	303	4,081
Pre-Trial for a Felony Crime	65	80	50	45	62	55	42	399
Restraining Order	54	49	49	25	34	35	21	267
Probation	508	603	507	406	478	399	289	3,190
Conviction of Violent Misdemeanor in Last 4 Years	188	251	201	165	209	188	138	1,340
Dishonorable Discharge of Armed Forces	1	1	3	0	4	2	1	12
Illegal Alien / Renounced Citizenship	12	7	14	22	31	44	19	149
Convicted Domestic Abuse	159	206	75	64	166	86	76	832
Misdemeanor Disqualifier from Another State	8	11	13	2	6	4	4	48
Unlawful User of a Controlled Substance	53	88	55	26	61	21	26	330
Other (Federal)	34	98	123	87	45	49	10	446
TOTAL Denials	2,001	2,431	2,143	1,643	1,907	1,641	1,050	12,816
TOTAL Transactions	197,888	259,513	263,283	233,878	262,838	302,726	287,080	

Source: Oregon State Police Firearms Instant Check System. | GAO-18-440

From 2011 through 2017, prohibited persons convicted of a felony was the most common category among firearm denials, followed by individuals on probation, individuals convicted of a violent misdemeanor in the previous 4 years, and wanted persons. The two largest prohibiting categories, convicted felons and individuals on probation, made up 32 percent and 24 percent, respectively, of all denials in 2016. In 2017, convicted felons fell to 29 percent and individuals on probation increased to 28 percent. Wanted persons, the fourth largest group in 2016, made up 10 percent of all denials that year, but fell to less than 5 percent of all denials in 2017. Total firearms denials fluctuated during that span from more than 2,400 denials in 2012, to 1,050 in 2017. From 2015 to 2017, denials declined each year. Total firearm transactions fluctuated as well, but generally increased during that span, increasing from less than 200,000 in 2011 to over 287,000 in 2017. From 2015 to 2017, denials fell by 45 percent while total transactions increased by 9 percent.

Investigations of Denials

Oregon has had the policy of investigating all persons denied a firearms purchase since 2014. Prior to 2014, OSP only investigated a small percentage of persons denied firearms purchases, with a priority placed on denied persons with an active warrant.

According to OSP, the FICS unit provides the initial source of information in a denial investigation packet, which generally includes but is not limited to:

- FICS Transaction Report, which includes information regarding the denied transfer, the subject firearm, the point of sale location, the denied transferee, and the specific reason for denial;
- Oregon Criminal History data;
- Interstate Identification Index information;
- FBI's NICS information; and
- Court records, police reports, or other records specific to the individual transferee and the denial in question.

Before an investigation is started, OSP must determine whether the investigation should be conducted by OSP or local law enforcement. If the jurisdiction where the transaction took place has an agreement with OSP to receive training on firearms investigations, then the local law enforcement agency will conduct the investigation. Otherwise, OSP will conduct the investigation. In 2016, 26 percent of denial investigations were conducted by local law enforcement, up from 22 percent in 2015. The percentage covered by local law enforcement rose to 28 percent in 2017. In September 2017, three large local jurisdictions agreed to receive firearms denial referrals from OSP. For the last three months of 2017 the proportion of denials referred to local law enforcement was about 33 percent.

OSP has five troopers dedicated full-time to FICS denial investigations in specific locations across the state. These troopers have essentially been pulled off of regular patrol duties and dedicated full-time to firearms denial investigations, according to OSP officials. These troopers cover the denials for most of the major metropolitan areas in Oregon. Except for the highest priority cases, the denial cases are tasked to the dedicated FICS troopers if the case falls within their geographical area of responsibility. According to Oregon officials, the five specialized troopers in the state

investigated more than 1,100 of the almost 2,600 firearms denials referred for investigation in 2016.

OSP troopers are required through OSP executive leadership directives to investigate each FICS case and submit the case, with all available facts and evidence, to the appropriate District Attorney's Office for review, regardless of findings. With this information, the prosecutor makes an independent charging decision. When there is a recommendation included with the investigator's report, it is most often to not file charges, either because the evidence indicates no crime was committed, or because there are specific mitigating circumstances involved in the case. Finally, OSP generates a report tracking denial investigations and the dispositions of any new criminal cases initiated after the investigation is completed. There is no current mechanism for reporting actions taken following an investigation and therefore OSP has no data regarding the total number of prosecutions accepted and convictions obtained.

Statutes Used

According to OSP officials, potential state level criminal conduct associated with denied firearm transfers are established in Oregon Revised Statutes Chapters 162 and 166. These crimes include but are not limited to:

- Or. Rev. Stat. § 162.075 False swearing.
- Or. Rev. Stat. § 166.250 Unlawful possession of firearms.
- Or. Rev. Stat. § 166.270 Possession of weapons by certain felons.
- Or. Rev. Stat. § 166.416 Providing false information in connection with a firearm transfer.
- Or. Rev. Stat. § 166.418 Improperly transferring a firearm.
- Or. Rev. Stat. § 166.425 Unlawfully purchasing a firearm.
- Or. Rev. Stat. § 166.435 Firearm transfers by unlicensed persons; requirements; exceptions; penalties.
- Or. Rev. Stat. § 166.470 Limitations and conditions for sales of firearms.

Prosecution of Firearm Denials

Generally, Oregon's Constitution requires the election by districts of a sufficient number of prosecuting attorneys (District Attorneys), who are the law officers of the state, and of the counties within their respective districts, and are to perform duties pertaining to the administration of

law.¹² District Attorney responsibilities may include, but are not limited to, representing the district in felony prosecutions, misdemeanor prosecutions, grand jury proceedings, mental commitment hearings, family abuse prevention hearings, and juvenile delinquency hearings.

After a trooper completes an investigation, they submit a report to the District Attorney's office. A prosecuting attorney then reviews the case and decides whether to charge an individual or individuals with a crime. When a case is not prosecuted, a rejection memo is provided to the trooper that submitted the report. According to two Oregon county prosecutors we interviewed, from late 2014 through 2017, their offices accepted about 140 of the more than 700 firearms denial investigations referred to their offices, with most prosecuted successfully. According to OSP officials, the most common types of cases resulting in convictions are related to misdemeanor domestic violence convictions, followed closely by prior felony convictions. The officials said that a new working group was created in 2016 to review gun relinquishment protocols in domestic violence cases, review outcomes and make recommendations to improve the safety of domestic violence survivors. With regard to sentencing, these prosecutors said common penalties in firearms denial cases include fines (usually in the hundreds of dollars), and probation ranging up to 1 year, depending on the criminal background of the denied individual.

According to OSP, data is not collected on what prosecutions and convictions result from investigations by prohibited category. However, anecdotally, investigators and prosecutors said the prohibiting category of convicted felons is the most common among persons prosecuted for FICS denials. Prosecution outcomes are not automatically reported back to OSP; each county's District Attorney must be contacted to obtain their agency's respective case outcome data. Reporting disposition of firearms denial cases back to FICS is voluntary and can be done via an online form. The participating local agencies are requested to report back to OSP on the findings of their investigations; however, this reporting is voluntary and according to FICS officials, many agencies do not consistently submit this information.

¹²Ore. Const. art. VII, § 17.

Appendix IV: Investigation and Prosecution of Firearms Denials in Pennsylvania

This appendix includes information on the investigation and prosecution of individuals denied firearms purchases in the state of Pennsylvania.

State Firearms Background Checks

Since 1998, Pennsylvania has served as a Point-of-Contact (POC) state for the National Instant Criminal Background Check System (NICS) operated by the Federal Bureau of Investigation (FBI). The Pennsylvania State Police (PSP) acts as the state point of contact for NICS for determining an individual's eligibility to acquire, possess, transfer, and carry firearms. PSP conducts instant records checks using the Pennsylvania Instant Check System (PICS). PICS uses a voice response component and a web-based application that allows users to initiate firearm and license to carry (also known as concealed carry) background check requests.

In Pennsylvania, a licensed importer, manufacturer or dealer is required to request by means of a telephone call that the PSP conduct a criminal history, juvenile delinquency history and a mental health check prior to selling or delivering any firearm to another unlicensed person.¹ In addition, the firearm may not be transferred until the licensed importer, manufacturer or dealer has received a unique approval number for that inquiry from the PSP and recorded the date and number on the application or record of sale form.² Generally, for any person that is not a licensed importer, manufacturer or dealer who wants to sell or transfer a firearm to an unlicensed person, the person must do so at the place of business of a licensed importer, manufacturer, dealer or county sheriff's office and follow the procedures related to the transfer of a firearm for a licensed importer, manufacturer or dealer.³

Process for Conducting a Background Check

At the point of purchase, once the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) Form 4473 background check form is submitted, a PICS automated firearms check is initiated. The licensed firearms dealer

¹18 Pa. Cons. Stat. § 6111(b)(3).

²18 Pa. Cons. Stat. § 6111(b)(4).

³18 Pa. Cons. Stat. § 6111(c). Generally, there are exclusions related to these procedures for transfers between certain relatives and for long guns under 18 Pa. Cons. Stat. § 6111(c) and (f).

contacts the PICS unit to determine if the applicant is eligible to purchase a firearm. The initial PICS check, which takes about 10 to 15 minutes, searches the state's repositories and NICS to identify any criminal history records or prohibitions. State databases searched as part of the check includes but are not limited to:

- Pennsylvania criminal history records;
- Juvenile records, contained within the criminal history record file;
- Mental Health File, containing involuntary commitment information and adjudication of incompetence;
- Pennsylvania Protection From Abuse File;
- Pennsylvania Wanted/Missing Persons File; and
- Bureau of Motor Vehicle records.

If there is no record in the system for the applicant, the transaction can be approved automatically without any manual evaluation. The gun dealer is provided a unique approval number, which is required to authorize the transfer of the firearm.⁴

Any firearm purchase check that hits on a record is transferred to a PICS operator. According to PSP officials, if a PICS operator cannot immediately approve or deny a firearm purchase on the phone, the firearm purchase application is put in "research" status, and the PICS unit has 15 days to determine if the firearm purchase can proceed. During this period, the PICS staff attempts to obtain clarifying information from the state's repositories. In many of these instances, the PICS staff needs to obtain the final disposition to an arrest, according to PICS officials. If after 15 days, PICS staff cannot make a determination, the applicant's status becomes "undetermined" and the applicant is not allowed to purchase the firearm.

If the automated check comes back with a red flag, the applicant is denied the purchase, and the information is sent to the PICS Challenge Unit, according to PSP officials. Generally, any person who is denied the right to receive, sell, transfer, possess or carry a firearm as a result of the procedures may challenge the accuracy of that person's criminal history, juvenile delinquency history or mental health record pursuant to a denial

⁴18 Pa. Cons. Stat. § 6111(b)(4).

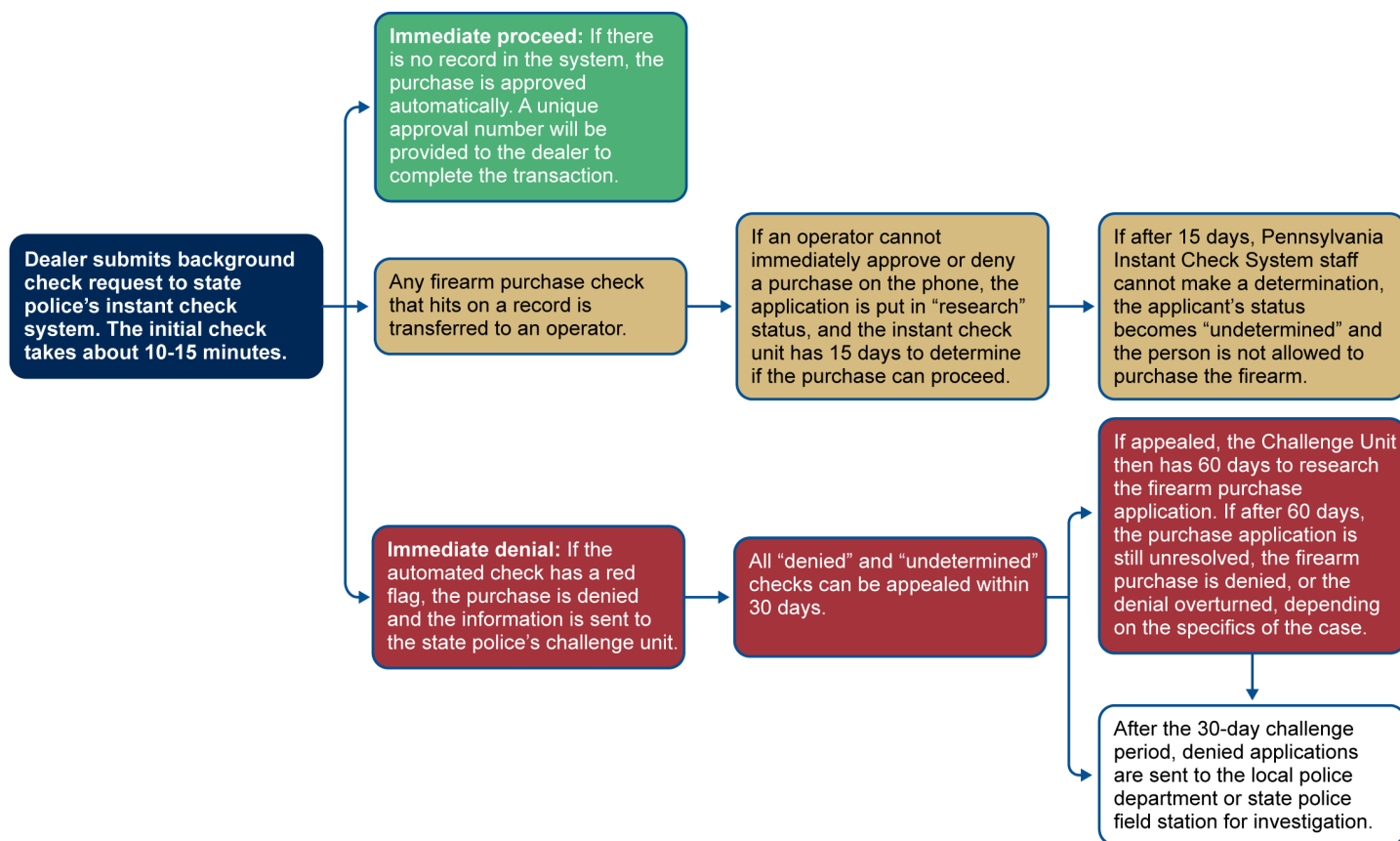
by the instant records check by submitting a challenge to PSP within 30 days from the date of the denial.⁵ If challenged, PSP is required to conduct a review of the accuracy of the information forming the basis for the denial and has the burden of proving the accuracy of the record. Within 20 days after receiving the challenge, PSP is required to notify the challenger of the basis for the denial and provide the challenger an opportunity to provide additional information for the purposes of the review. PSP is to communicate its final decision to the challenger within 60 days of the receipt of the challenge with the decision containing all of the information which formed a basis for the decision.⁶ If after the challenge period the denial is upheld, the PICS Section sends the denied firearm application to the local police department or state police field station to investigate for falsification of the background check form and potentially refer the case for prosecution, according to PSP officials.

In addition to handling firearms denial appeals, the Challenge Unit prepares case files for appeals through the Office of the Attorney General, testifies at appeal hearings when required, and attends and testifies at relief hearings for restoration of firearms rights, which are conducted in the various county courts of common pleas throughout the state. Finally, the Challenge Unit handles enforcement investigations involving individuals who knowingly and intentionally provide false information in the attempt to acquire a firearm in violation of Pennsylvania law. Figure 8 shows the process for purchasing a firearm from a dealer in Pennsylvania.

⁵18 Pa. Cons. Stat. § 6111.1(e)(1).

⁶18 Pa. Cons. Stat. § 6111.1(e)(2). Under 18 Pa. Const. Stat. § 6111.1(e)(3) and (4), if a challenge is ruled invalid, the person has the right to appeal the decision to the Attorney General within 30 days of the decision and the Attorney General is to conduct a hearing de novo in accordance with the Administrative Agency Law for Pennsylvania. The decision of the Attorney General may be appealed to the Commonwealth Court by the aggrieved party.

Figure 8: Process for Purchasing a Firearm from a Dealer in Pennsylvania



Source: GAO analysis of Pennsylvania State Police data and information provided by officials. | GAO-18-440

According to PSP officials, in 2017, the PICS conducted about 1.1 million background checks for licensed firearm dealers, sheriffs and law enforcement throughout the state. Of these requests, 56 percent were approved within minutes by the system, while an additional 41 percent were approved during the initial check with operator assistance. The remaining 3 percent were placed in research status to obtain additional information. The Challenge Unit reversed 32 percent of all state background check denial challenges, which include licenses to carry, in 2017.

According to Pennsylvania officials, the state of Pennsylvania does not have delayed denials, in which a firearm is transferred to an individual before determining whether the individual is prohibited from purchasing or

possessing a firearm under state or federal law, and the purchase is subsequently denied. Generally, under Pennsylvania law, a licensed importer, manufacturer or dealer may not sell or deliver any firearm to an unlicensed person until having received a unique approval number from PSP.⁷

State History of
Denials and
Prohibited Categories

Pennsylvania law prohibits individuals that have been convicted of certain offenses from possessing firearms. For example, under Pennsylvania law, an individual who has been convicted of driving under the influence of alcohol or controlled substance on three or more separate occasions within a 5-year period is prohibited from possessing a firearm.⁸ One prosecutor told us that most of the denials in his county stemmed from second and third offense DUI convictions. Table 3 shows Pennsylvania firearms denials by prohibiting category.

Table 3: Pennsylvania Firearms Denials by Prohibiting Category, Fiscal Years 2014 through 2017

Prohibiting Category	2014	2015	2016	2017	Total
Crime punishable by more than 1 year or misdemeanor punishable by more than 2 years	2,519	2,896	2,974	2,436	10,825
Under Indictment	338	265	214	210	1,027
Fugitive from Justice	373	465	506	351	1,695
Unlawful User / Addicted to a Controlled Substance	481	538	541	563	2,123
Adjudicated Mental Health	941	1061	1123	951	4,076
Illegal / Unlawful Alien	10	20	25	17	72
Dishonorable Discharge	6	2	6	1	15
Protection/Restraining Order for Domestic Violence	251	274	294	284	1,103
Misdemeanor Crime of Domestic Violence Conviction	290	322	281	268	1,161
State Prohibitor	298	454	377	304	1,433
Federally Denied Persons File	33	40	32	54	159
Other (Possible Straw Sale, No Valid Photo ID, Dealer Cancelled Sale)	870	330	358	525	2,083
Total Denials	6,410	6,667	6,731	5,964	25,772

Source: Pennsylvania Instant Check System | GAO-18-440

Note: All denials above are standard denials, which do not include the transfer of a firearm. PSP recorded zero delayed denials in this time frame, according to PSP officials.

⁷18 Pa. Cons. Stat. § 6111(b)(4).

⁸18 Pa. Cons. Stat. § 6105(c)(3).

According to PSP officials, from 2014—when Pennsylvania began investigating denials—through 2017, the most common category was “persons convicted of a crime punishable by more than one year or a misdemeanor punishable by more than two years,” which comprised 42 percent of all denials. The second most common prohibiting category was mental health-related denials, at 16 percent. During this span, the number of denials increased from 2014 to 2016, only to decline in 2017.

State Investigation of Denials

Since 2014, PICS policy has been to investigate all firearm denials, according to PSP officials. Prior to 2013, Pennsylvania used risk-based criteria to investigate a much smaller percentage of denials. Criteria used included violent felonies, drug trafficking, domestic violence, involuntary mental health commitment, active warrants, and straw purchases, among others. After PSP began investigating all firearms denials in 2014, according to PSP officials, the number of denials remained largely the same, but the number of investigations rose from 620 to 4,154. PSP officials told us they believe that the policy to investigate all denials acts as a deterrent, and that as prohibited individuals learn that investigations follow a denial these individuals will not attempt to purchase a firearm.

According to PSP officials, as PICS refers all confirmed firearms denials for investigation, PICS does not use screening criteria to make determinations about whether firearms denials should be referred for investigation, or which denials are more likely to be accepted for prosecution. However, PICS does prioritize and determine which denials involve more serious criminal violations. According to PSP’s Firearms Unit staff, many referrals are not pursued based on the investigator’s assessment of the case or a prosecutor’s declination of the case when the referral was received.

The PSP partners with local law enforcement to investigate firearms denials. Investigations are split up between the PSP and municipal police departments based on the jurisdiction of where the applicant submitted the firearms purchase. In 2016, 68 percent of cases referred for investigation were referred to state police, while 32 percent were referred to local law enforcement. In 2017, cases referred to local law enforcement increased to 62 percent, while 38 percent were referred to state police. If the subject is federally prohibited, a case may be referred to ATF for investigation, though based on our analysis this is relatively uncommon. In 2015 and 2016, 16 and 5 cases, respectively, were referred to ATF for investigation, while in 2017 one case was referred to ATF.

Firearms denials are automatically funneled into a state investigative database where an investigation file is created according to PSP officials. When a denial is referred to a PSP troop⁹ for investigation, it is assigned to a state investigator if the state police has jurisdiction. If local law enforcement has jurisdiction, the PSP troop or PSP investigation staff will pass the referral to local law enforcement, according to PSP officials. Though some PSP units have investigators that specialize in firearm denials cases, generally denial investigations are assigned to the next available investigator, according to PSP officials.

After an investigation is assigned, the investigator will review all provided documentation and verify that the subject is actually prohibited, according to PSP officials. The investigator will then pull an incident number and take steps to obtain necessary documentation. The investigator will then respond to the location of the violation, review the ATF Form 4473, and attempt to interview the employee who handled the attempted transaction. Finally, the investigator will locate and interview the subject of the denial. Cases are not prioritized for investigation because all firearms denials are investigated and are immediately assigned to an investigator upon receipt from PICS, according to PSP officials. While no denial categories are designated as priority, protective orders may be investigated more vigorously when there is an indication of violence, according to PSP officials. PSP does not track the length of time or resources required for conducting investigations of firearms purchase denials, according to PSP officials.

Some jurisdictions may send the subject a letter to notify them that they are prohibited and under investigation, according to PSP officials. Other jurisdictions may send a letter only when prosecutors decide not to press charges, explaining to the recipient why they were denied, that they are not eligible to purchase a firearm, and that they could have been prosecuted for that reason.

If the case is considered for prosecution, the investigator may meet with the District Attorney's office and review the case for prosecutorial merit, according to PSP officials. If prosecution is sought, the investigator will type up the charges, process the subject, and arraign. If prosecution is approved, the investigator will notify the Firearms Unit and attend all court

⁹This is the preferred term for PSP investigative unit; for other states the term "unit" will be used.

proceedings. The investigating unit is to inform PSP's Firearms Unit of the outcome of the prosecution.

Statutes Used

According to prosecutors and PSP officials, denials are primarily referred for prosecution on the basis of the violations under:

- 18 Pa. Cons. Stat. § 4904 - Unsworn falsification to authorities
- 18 Pa. Cons. Stat. § 6111(g)(4) - Sale or transfer of firearms.¹⁰
- 18 Pa. Cons. Stat. § 6105 - Persons not to possess, use, manufacture, control, sell or transfer firearms.

Prosecution of Firearms Denials

According to PSP officials, in Pennsylvania, the District Attorney is the chief law enforcement officer for each county, and in most instances, cases are accepted for prosecution based on their discretion. As such, discretionary decisions vary by county, and there are no internal criteria. District Attorneys may also refer cases for prosecution to the State Attorney General due to lack of resources or a conflict of interest. Trials for firearms denials are extremely rare in Pennsylvania, according to prosecutors that we spoke with. Only a small percentage of referred denials are ultimately prosecuted, mostly due to the difficulty proving the suspect "knowingly and willingly" provided false information on the background check application, according to PSP officials.

According to PSP officials, the conviction rate for firearms denial cases is about 10 percent of all denials referred for investigation. Based on our discussions with Pennsylvania prosecutors and PSP Firearms Division staff, most cases that are prosecuted result in misdemeanor pleas, rather than felony convictions, and common penalties are probation and fines. One county prosecutor told us that most convictions reduced to a misdemeanor are for "statement under penalty," a third degree misdemeanor. Other cases might be pled down to misdemeanor disorderly conduct, which carries a \$300 fine, according to PSP officials. According to county prosecutors that we spoke with, there is an occasional prison sentence for denied felons which can result in about 12

¹⁰The subsection cited relates to making any materially false oral or written statement, including a statement on any form promulgated by federal or state agencies or willfully furnishing or exhibiting any false identification intended or likely to deceive the seller, licensed dealer, or manufacturer.

months in prison, and have resulted in sentences of almost 2 years in prison.

One prosecutor told us the most frequent firearms prohibitor among convictions is a crime punishable by greater than 1 year in prison, such as a second or subsequent DUI conviction within 10 years, as many of those are graded as misdemeanors of the first degree, punishable by up to 5 years in prison. Typically, when asked, these individuals are unaware of the maximum penalty. Another state prosecutor we spoke with stated that the most prosecuted prohibiting categories also involved felony DUIs, as well as matters related to mental health and domestic violence. He added that, typically, more recent crimes are treated with more severity. One county prosecutor told us they prioritize prosecution of persons with a history of violent behavior.

According to state police officials, upon conclusion of a prosecuted case, the investigator will document the disposition of the court. The entire investigative process is documented in a PSP incident report, which includes all interviews, queries made, investigative steps taken, and consultation with the District Attorney. The result of the investigation is then forwarded to the PSP investigation staff. Finally, an email summarizing the entire investigative process is sent to the Troop Crime Commander, Troop Administrative Manager, and the PSP Firearms Unit. Table 4 shows the disposition of firearms denial cases in Pennsylvania.

Table 4: Disposition of Firearm Denial Cases in Pennsylvania, 2014 through 2017

Disposition	2014	2015	2016	2017
Referred for Investigation	4,154	4,661	6,468	5,465
Arrests Made	782	2,312	733	842
Convictions	367	1,091	356	472
Prosecution Declined	569	1,104	1,244	1,435

Source: Pennsylvania State Police. | GAO-18-440

While no annual statistics are recorded at the unit level, according to PSP officials, the state of Pennsylvania does track prosecutions resulting from firearms denials. In 2016, there were convictions in about half of the approximately 730 arrests made and about 6,500 denials referred for investigation. This represents a 39 percent increase in referrals over 2015, but a 67 percent decline in convictions and 68 percent decline in arrests. In 2017, the number of cases referred for investigation declined

by 16 percent to about 5,500. Numbers for 2016 and 2017, including arrests, convictions, and prosecutions returned to numbers more representative of a typical year, according to PSP officials.¹¹ Neither PSP nor the municipal departments track enforcement actions associated with investigations, or the specific sentencing results of investigations referred for prosecution beyond whether the investigation resulted in a conviction or declination.

¹¹ According to PSP officials, 2015 data for arrests, convictions, and prosecutions declined appear elevated compared to the following year due to a significant carryover from 2014, which was the first year that PSP investigated all firearm denial cases. According to the Firearms Unit, the increase in cases declined in 2016 was due to reduced willingness of prosecutors to pursue these cases.

Appendix V: Investigation and Prosecution of Firearms Denials in Virginia

This appendix includes information on the investigation and prosecution of individuals denied firearms purchases in the state of Virginia.

State Firearms Background Checks

The Virginia Firearms Transaction Center (FTC), established in 1989, performs background checks at the point of sale by accessing state and federal databases. The FTC is the federally designated point of contact for the National Instant Criminal Background Check System (NICS), and is responsible for any investigations of firearms denials. The Virginia State Police (VSP) is responsible for conducting background checks using VCheck, Virginia's Internet-based instant background check program, and for enforcing state and federal laws related to firearms purchases in Virginia. Under Virginia law, generally, a licensed dealer is required to obtain written consent and other identifying information—including but not limited to the name, date of birth, gender, race, citizenship, and Social Security number of a potential unlicensed purchaser—and provide the Department of State Police with this information and request criminal history record information by a telephone call to or other communication authorized by the State Police prior to selling, renting, trading, or transferring any firearm from the dealer's inventory.¹

The FTC provides personnel to conduct transactions onsite at anticipated high volume gun shows. Pursuant to Virginia law, the Department of State Police are to be available at every firearms show held in Virginia to make determinations, in accordance with the procedures set out for background checks required for the transfer of certain firearms, of whether a prospective purchaser or transferee is prohibited under state or federal law from possessing a firearm.² One prosecutor we spoke with estimated that 25 percent of his illegal possession cases are from private sales at gun shows. At a gun show, when an individual attempts to purchase a firearm from a licensed dealer, the individual has to complete the state background check form (SP-65B) and the federal form (ATF 4473) and the FTC will conduct a full NICS check. Should the transaction be denied, the trooper may arrest the applicant depending on the reason for the denial. A Virginia prosecutor explained that in his jurisdiction when two private parties, neither of whom is a FFL, initiate a sale outside of the state transaction system, troopers may approach the purchaser and ask

¹Va. Code Ann. § 18.2-308.2:2.

²Va. Code Ann. § 54.1-4201.2.

questions related to his or her eligibility to purchase a firearm. If the purchaser appears to be prohibited based on their testimony they may be subject to arrest as well.

Process for Conducting a Background Check

For transactions conducted through an FFL, the gun dealer submits a background check request to VSP via a toll free number or through an online application. Upon receipt of the request, VSP reviews the applicant's criminal record information to determine if the applicant is prohibited from possessing or transporting a firearm by state or federal law. This check includes a review of an applicant's entire criminal history, with no exclusion based on when the prohibiting offense occurred, according to FTC officials. For example, a recent prohibiting felony conviction is treated the same as the same conviction from decades ago.

The applicant's information is submitted to the FTC, where it is checked against databases at the federal and state level. Information is screened through NICS, National Crime Information Center, and the Virginia Criminal Information Network. The FTC provides an instant response to approve the transaction or place it in delayed, research status. Databases maintained by VSP and accessible by the Virginia Criminal Information Network include:

- Virginia's wanted and missing persons files and protective orders;
- Virginia's criminal history record files; and
- Virginia's database of adjudications of legal incompetence and incapacity, and involuntary commitments to mental institutions.

If the instant VCheck search indicates that the purchaser is approved, a unique computer-generated approval number that is required to transfer the firearm is provided to the dealer to complete the transaction. If a possible identification is made in the state or federal databases, the instant check produces a "delayed" status and a review is conducted to determine identification and eligibility of the purchaser. If a background check enters delayed status, the dealer will be requested to provide additional information about the purchaser. The dealer is to be notified immediately upon a final determination of eligibility. Pursuant to federal law, if the dealer has not been notified of a final determination by the end of the third business day, the dealer may complete the sale and transfer of the firearm. If a firearm is transferred prior to a final determination of

eligibility, the dealer is requested to notify VSP immediately. When a delayed transaction is ultimately approved or denied, the FTC updates the dealer on the status of the transaction by telephone or online depending on how it was entered. When research efforts have been exhausted, if no clear reason to deny is identified, the transaction is approved. More than 99 percent of delayed applications are resolved before 30 days, according to FTC officials.

All transactions that are not immediately approved and enter delayed status are assigned a priority level, based on the possible prohibiting category. Virginia investigates a subset of all denials based on risk, but prioritizes denials with active warrants, active protection orders, mental health issues, and certain felony convictions. According to VSP officials, a “priority 1” transaction is a possible hit for mental health reasons, a protective order, or a possible wanted subject. A “priority 2” transaction is any possible hit in NICS, such as convicted felons and out-of-state mental health cases. A “priority 3” transaction is any hit in the Interstate Identification Index, or Virginia’s Computerized Criminal History. According to VSP officials, convicted felons are normally a priority 3 unless they appear in the NICS database. A “priority 4” transaction is a hit from U.S. Immigration and Customs Enforcement, namely an alien or immigrant attempting to purchase a firearm, or a possible request for information, such as a Be On The Lookout or Alert notice, from a police agency or the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). According to VSP officials, while a transaction may be given an initial priority level, VSP moves some priority 3 and 4 hits to the front of the list, such as those involving recent felony indictments or a misdemeanor crime of domestic violence. Denial decisions undergo supervisory review to verify that the denial is correct and accurate, including a review of the police report to document findings, and to ensure that the prohibited person’s rights have not been restored, according to VSP officials.

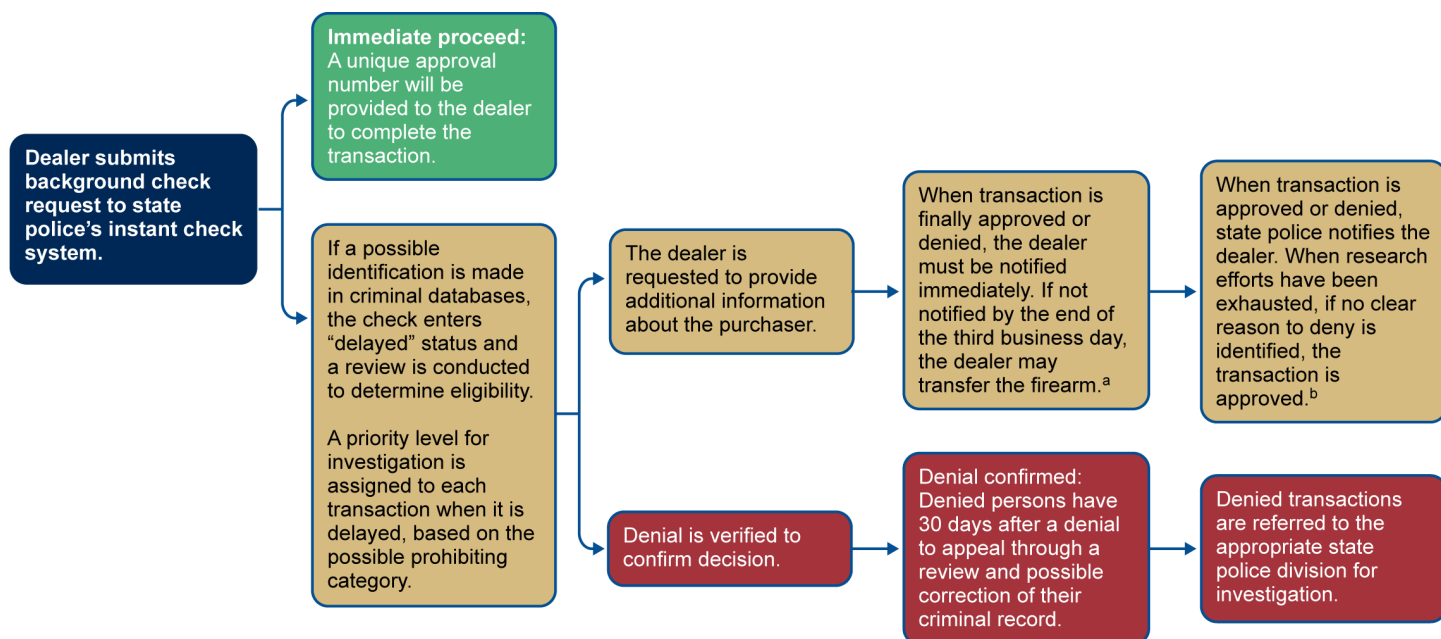
According to a VSP official, in practice, there are rarely any transactions in Virginia in which a firearm is transferred before the purchaser is determined to be ineligible, known as a delayed denial. According to an FTC official, there were no delayed denials in the previous 2 years. After 3 business days of conducting a background check, at which time firearms dealers may transfer a firearm, firearms dealers typically contact the FTC to notify them of the possible transfer, and ask whether to hold the gun for a few more days, according to VSP officials. If the FTC believes the purchaser will ultimately be denied, they will suggest the firearm be held, but it is up to the dealer to decide whether to do so. The

FTC will also ask to speak with the purchaser to explain that if they accept the firearm and are later denied, VSP would have to send an officer to retrieve the firearm and charges may be filed against the purchaser for illegal possession of the firearm. VSP will then advise that if unsure of his or her prohibited status, the applicant should wait until the background check is complete.

According to a VSP official, there are advantages to being a point-of-contact state, such as the ability to provide better service to citizens and to build relationships with FFLs that would not be possible as a NICS state. For example, VSP conducts training sessions and regular outreach to firearms dealers. VSP officials estimate that in 80 percent of cases involving firearms purchases on behalf of a prohibited person, sometimes referred to as “straw purchases,” leads come from dealers notifying VSP of something suspicious. According to VSP officials, straw purchases are treated very seriously, and can result in prison sentences of 5 to 10 years.³ Figure 9 shows the process for purchasing a firearm from a dealer in Virginia.

³Va. Code Ann. § 18.2-308.2:2(M) (generally prohibiting the purchase of a firearm with the intent to resell or otherwise provide such firearm to any person known or believed to be ineligible to purchase or receive from a dealer a firearm for whatever reason as a Class 4 felony with a mandatory minimum term of imprisonment of 1 year; and if the violation involves a transfer of more than one firearm, a mandatory minimum term of imprisonment of 5 years).

Figure 9: Process for Purchasing a Firearm from a Dealer in Virginia



Source: GAO analysis of Virginia State Police data and information provided by officials. | GAO-18-440

^aAccording to a VSP official, in practice, there are rarely any transactions in Virginia in which a firearm is transferred before the purchaser is determined to be ineligible, known as a delayed denial.

^bMore than 99 percent of delayed applications are resolved before 30 days, according to FTC officials.

Individuals denied the right to purchase a firearm may exercise a right of access, review, and correction of criminal history record information or institute a civil action within 30 days of the denial.⁴ Typically, after a denial, individuals are provided a Virginia Firearms Transaction Program brochure or referred to the VSP website for appeal procedures if they believe that they are not prohibited by state or federal law from purchasing or possessing a firearm. These individuals may contact the FTC via phone or e-mail to discuss the determination and provide additional information, provide fingerprinting to facilitate future transactions, request a correction of record, or institute a civil action. Denied persons may also challenge the accuracy of the record in writing to the FBI.

⁴Va. Code Ann. § 18.2-308.2:2(E).

State History of Denials and Prohibited Categories

Generally, individuals prohibited from either purchasing or possessing a firearm under Virginia law include, but are not limited to:

- any person who has been convicted of a felony, or adjudicated delinquent as a juvenile 14 years of age or older at the time of certain offenses (including murder, kidnapping, robbery by threat or presentation of firearms, or rape), or under the age of 29 who was adjudicated delinquent as a juvenile 14 years of age or older at the time of the offense of a delinquent act which would be a felony if committed by an adult;⁵
- any person who has been acquitted by reason of insanity and committed to the custody of the Commissioner of Behavioral Health and Developmental Services on a charge of treason, any felony or certain offenses punishable as a misdemeanor or certain ordinances of any county, city, or town similar to other outlined offenses;⁶
- any person who is subject to certain protective orders;⁷ or
- any person who, within a 36 consecutive month period, has been convicted under Virginia law of two misdemeanor offenses for possession of controlled substance or marijuana without a valid prescription or order of a practitioner while acting in the course of his professional practice within 5 years from the date of the second conviction.⁸

The top prohibiting categories for individuals denied firearms purchases are felony convictions, which comprise 21 percent of all denials from 2011 through 2017, followed by drug-related prohibitions (19 percent), and mental health-related prohibitions (13 percent). One prosecutor we spoke with said that denials tend to not involve violent career criminals, and typically involve non-violent felonies, such as grand larceny, or involve drugs, and most occurred 20 years ago or more. From 2011 to 2017, the total number of denials increased from about 2,000 to about 3,600, an increase of almost 80 percent, while the total number of transactions

⁵Va. Code Ann. §18.2-308.2(A).

⁶Va. Code Ann. §18.2-308.1:1(A).

⁷Va. Code Ann. §18.2-308.1:4.

⁸Va. Code Ann. § 18.2-308.1:5 (related to prohibition of the purchase or transport of a handgun by a person convicted of particular misdemeanors).

increased from about 320,000 to about 500,000, an increase of more than 50 percent. Table 5 shows Virginia firearms denials by prohibiting category.

Table 5: Virginia Firearm Denials by Prohibiting Category, Fiscal Years 2011 through 2017

Prohibiting Category	2011	2012	2013	2014	2015	2016	2017	Total
Felony Conviction	520	609	602	492	551	688	706	4,168
Protective/Restraining Order	138	175	202	186	227	261	272	1,461
Misdemeanor Domestic Violence ^a	80	63	48	401	490	522	487	2,091
Pending Felony Charge/Indictment	68	89	79	89	94	99	111	629
Drug Related Prohibition	363	509	493	500	551	632	740	3,788
Mental Health	235	340	316	308	340	440	496	2,475
Warrant of Arrest	282	306	312	297	337	383	250	2,167
Military Dishonorable Discharge	2	5	2	3	1	0	5	18
Purchaser ID Requirements Not Met	118	131	103	170	213	190	225	1,150
Federal Misdemeanor Disqualifier	76	125	140	98	121	134	142	836
NICS Denied Persons File	34	49	42	32	50	77	69	353
Illegal Alien / Nonimmigrant	35	55	38	63	54	62	66	373
Other ^b	50	30	35	22	19	15	15	186
Total Denials	2,001	2,486	2,412	2,661	3,048	3,503	3,584	19,695
Total Transactions	321,166	432,387	479,253	405,838	444,627	505,722	487,846	

Source: Virginia Firearms Transaction Center. | GAO-18-440

Note: This table contains consolidated category titles based on FBI denial category titles. State prohibiting categories may not correlate directly to federal categories, in part because states have the authority to prohibit persons from purchasing firearms based on state-specific disqualifiers. Data for "Attempt to Exceed Handgun Limit" has been omitted from totals for 2011-2012.

^aMisdemeanor Domestic Violence denials appear artificially low prior to 2014 due to a legal redefinition effective 2014 stemming from the Supreme Court case *United States v. Castleman*, 134 S. Ct. 1405 (2014), according to a VSP official.

^b"Other" includes Invalid Purchase Certificate, Attempt to Purchase Handgun by Non-Resident, Invalid or Unauthorized Seller ID Number, and Attempt to Exceed Trade Limit.

State Investigation of Denials

Virginia has investigated firearms denials since its instant check system was introduced in 1989. Virginia does not refer all firearms denials for investigation, instead using risk-based criteria to refer a sub-set of prohibited categories for investigation.⁹ The following conditions trigger an automatic investigation for a firearms denial:

- felony conviction, including juvenile felony conviction, or felony indictment;
- misdemeanor crime of domestic violence;
- protective order;
- involuntary mental health treatment;
- nonimmigrant or illegal alien; and
- dishonorable discharge from the military.

All Virginia denial investigations are handled by VSP with the exception of some fugitive and warrant-related, protective order, and mental health cases, as well as purchases at gun shows, which may involve municipal or local police, according to VSP officials. When FTC's background check unit refers a case for investigation involving mental health or protective orders (both which are priority 1), the package is sent to both the VSP division and the local police department.

According to VSP officials, to initiate a denial investigation, FTC sends requests for investigation to the VSP division headquarters, where it is referred to the appropriate section where the gun transaction took place, then to a state trooper to conduct the investigation. A file with a copy of both the federal background form, ATF Form 4473, and the state background check form, SP-65, is sent to the investigating trooper. The trooper then collects necessary information, such as information about the denial from VCheck, the criminal history of the purchaser, and court records. As necessary, the investigator verifies the information in the FTC file at the FFL, and interviews the subject. Part of the investigation involves trying to prove the purchaser "willingly and knowingly" answered falsely on the state and federal forms.

⁹These prohibited categories include those with felony convictions, misdemeanor domestic violence convictions, protective orders, mental health issues, and felony warrants, among others.

Some VSP sections, typically those in more densely populated areas, have troopers dedicated exclusively to firearms denial investigations due to the higher volume of denials in those areas.

According to VSP officials, every area may assign troopers to work exclusively on firearms denial investigations. However, most areas either cannot afford to remove a trooper from road coverage availability, or don't investigate enough firearms denial cases to make it an effective use of resources. These sections assign denial investigations to troopers on a case by case basis.

Prosecutors are often consulted as to whether a case will be prosecuted, where the prosecutor comments on the strength of the case based on the evidence available, according to investigators and prosecutors we spoke with. Investigators told us that prosecutors are generally more agreeable to taking on firearms denial cases involving recent felony convictions.

They also said that if the case is accepted for prosecution, the trooper will obtain warrants to make an arrest. If the Commonwealth Attorney finds that the case does not have prosecutorial merit, the case is closed and the name of the Commonwealth Attorney consulted is put in the case management system report, according to a VSP official. Table 6 shows Virginia denial investigations from fiscal years 2011 through 2017.

Table 6: Virginia Firearm Denials and Investigations, Fiscal Years 2011 through 2017

	2011	2012	2013	2014	2015	2016	2017
Background Checks	321,166	432,387	479,253	405,838	444,627	505,722	487,846
Denials	3,377	3,444	2,412	2,661	3,048	3,503	3,584
Investigations	772	700	961	1,079	1,705	1,681	1,703
Percent of Denials Investigated	22.9	20.3	39.8	40.5	55.9	48.0	47.5

Source: Virginia State Police | GAO-18-44

Note: Firearm denial numbers include firearm purchases and concealed handgun permits, according to VSP officials.

According to VSP officials, the time spent on denial investigations depends on the type of denial, location, and the information needed to bring charges or close the case. However, on average a case may involve about 4 hours of investigation. Officials in another division stated that in-state convictions can range from 4 to 6 hours of investigative work, while out-of-state convictions can take significantly more time, from 4 to

15 hours. Obtaining records from out of state can be difficult, and can take weeks or months. For example, one state requires a fee per conviction copy, which requires a check to be mailed, processed, and then for the files to be mailed back to the investigator. VSP officials told us that cases involving straw purchases can take 50 hours or more, however, these cases can result in longer prison sentences of 5 to 10 years.¹⁰ They added that additional time may be spent on search warrants, examining video from firearms stores, reviewing phone records, and conducting interviews. Further, denial investigations involving dishonorable discharges and mental health denials from out of state typically take the longest to investigate, in part because some states won't release these records for the purpose of prosecution. Locating old felony documentation is also a challenge for investigators, according to VSP officials.

Statutes Used

According to investigators and prosecutors, the most common state statutes used for attempted firearm purchases include:

- Va. Code Ann. § 18.2-308.2:2(K) Willfully and intentionally making a materially false statement on the consent form;
- Va. Code Ann. § 18.2-308.1:3 (Usually prosecuted as an attempt) Prohibition against purchase or possession of a firearm by someone involuntarily admitted or ordered to outpatient mental health treatment; and
- Va. Code Ann. § 18.2-308.1:4 (Usually prosecuted as an attempt) Prohibition against purchase or transport of a firearm by someone subject to a protective order.

According to a VSP official, other common statutes include:

- Va. Code Ann. § 18.2-26 Attempt to commit a non-capital felony
- Va. Code Ann. § 18.2-27 Attempt to commit a misdemeanor

¹⁰Va. Code Ann. § 18.2-308.2:2(M) (generally prohibiting the purchase of a firearm with the intent to resell or otherwise provide such firearm to any person known or believed to be ineligible to purchase or receive from a dealer a firearm for whatever reason as a Class 4 felony with a mandatory minimum term of imprisonment of one year; and if the violation involves a transfer of more than one firearm, a mandatory minimum term of imprisonment of five years).

- Va. Code Ann. § 18.2-308.1:2 Purchase or possession of firearm by persons adjudicated legally incompetent or mentally incapacitated
- Va. Code Ann. § 18.2-308.1:5 Prohibition against someone previously convicted of certain drug offenses
- Va. Code Ann. § 18.2-308.2:01 Purchase or possession of firearm by a non-citizen not lawfully in the United States
- Va. Code Ann. § 18.2-308.2 Convicted felon in possession of a firearm
- Va. Code Ann. § 18.2-308.2:2 (L1) Attempt to solicit or persuade any dealer to participate in a straw purchase
- Va. Code Ann. § 18.2-308.2:2 (M) Commit a straw purchase

State Prosecution of Firearms Denials

Virginia's chief prosecutors, the Commonwealth's Attorneys, are elected at-large for a 4-year term. They are responsible for prosecuting all felonies and some misdemeanors, in addition to handling certain civil matters. According to a prosecutor we spoke with, Commonwealth's Attorneys offices receive referrals for prosecution directly from state troopers.

We interviewed Virginia investigators and prosecutors from four counties, including from localities where a high volume of firearms denial referrals occur. These prosecutors said they tend to work with Virginia troopers who specialize in denial investigations and report high prosecution rates for the cases they accept. One investigator with a high referral rate to prosecutors told us he benefits from operating in a high-volume, relatively compact jurisdiction, while in other parts of the state, investigators may have to cross several counties to gather the paperwork needed to establish a denial case, interview the purchaser, and make an arrest. According to a county prosecutor, a key component of successful prosecutions is a willing Commonwealth Attorney because charging decisions are at their discretion. An investigator and prosecutor that work together stated that in some jurisdictions, attorneys may not welcome firearms denial cases, while in other jurisdictions specialized investigators working with an attorney willing to prosecute these cases for public safety and deterrence value can yield a high prosecution rate.

Two county prosecutors we spoke with said approximately 90 percent of firearms denial convictions are pled down to misdemeanors, and the penalties imposed tend to include probation or community service, but there is an occasional prison sentence. According to investigators and

prosecutors we spoke with, some prosecutors prefer to avoid the use of fines while others may use them occasionally.

Of the few cases that go to trial, according to prosecutors, most go before a judge rather than a jury, and typically involve a felon in possession of a firearm, resulting in a felony conviction and likely probation. Judges have discretion to reduce sentences, while juries are constrained to issuing more severe sentences if they find the defendant guilty, and typically hand down more prison time, according to prosecutors we spoke with.

The severity of penalties handed down for firearms denials depends on the prohibited category, according to one county prosecutor. Another prosecutor said protective order violations tend to be easier to prosecute because the records are available and indicate a clear violation. Other cases where accurate records are difficult to obtain, such as juvenile denials, mental health denials, and out of state cases, prosecutions are difficult to prosecute, according to investigators and prosecutors.

One prosecutor told us that a subject's criminal history also makes a big difference as to whether they might receive a harsher or more lenient sentence. Several prosecutors we spoke with said that while prison sentences are rare, for a felon with a history of violence, sentences of 7 months to more than 24 months in prison have been imposed. One prosecutor told us they typically agree to no prison time on a felony conviction unless there are indicators of violence on the record, such as destruction of property or assault and battery. If a person has no record, the prosecutor would be far more willing to forego a felony and sometimes even a misdemeanor, and propose community service instead. One prosecutor questioned whether it makes sense to make a person a felon over a firearms denial; however, if a person has a consistent misdemeanor history of getting into trouble then they would be less convinced that this particular offense is out of character and may not make any non-felony offers. Prosecutors also may reduce the charges to disorderly conduct or providing false information to police during a plea in these cases to try to get a conviction, according to one prosecutor.

Data on prosecutions, dismissals, and convictions resulting from investigations, are not collected at the state level, and are only accessible at the VSP divisions that conduct investigations and the courts where they are prosecuted, according to Virginia officials.

Appendix VI: Examples of Firearms Denial Cases Referred for Prosecution

Table 7 shows examples of firearms denial cases that our six selected ATF field divisions referred to U.S. Attorney's Offices for prosecution during fiscal years 2014 through 2017, including the types of circumstances that could lead to referral for prosecution, the range of charges filed, and the severity of sentences that resulted. All the cases involved 18 U.S.C. § 922(a)(6), falsifying a background check form. While all were not ultimately charged under that statute, they were selected for investigation by ATF for that reason. Occasionally, federal and state law may prohibit similar types of criminal conduct, allowing both federal and state prosecutors to pursue the case. U.S. Attorney's Offices may also refer a case to a state prosecutor that is not deemed appropriate for federal prosecution.

Table 7: Examples of Firearm Denial Cases Referred for Prosecution

Case	Potential Prohibiting Categories (Circumstances of Arrest) ¹	Type of Denial	Charged in State/Federal Court	Charges	Disposition	Sentence
1	Felony Conviction (probation violation and evading federal agents)	Delayed	Federal	18 U.S.C. § 922(a)(6): Falsifying background check form 18 U.S.C. § 922(g)(1): Prohibited due to prior felony	Pled guilty to 18 U.S.C. § 922(g)(1)	Sentenced to time served
2	Convicted Felon (straw purchase and evading federal agents)	Delayed	Federal	18 U.S.C. § 922(a)(6): Falsifying background check form 18 U.S.C. § 922(g)(1): Prohibited due to prior felony 18 U.S.C. § 924(a)(1)(A): Falsifying forms causing FFL to falsify records	Pled guilty to 18 U.S.C. § 922(g)(1)	1 year federal custody and 3 years supervisory release
3	History of violent crime, multiple attempts to purchase (knowingly used expired concealed weapons license)	Delayed	Federal	18 U.S.C. § 922(g)(1): Prohibited due to prior felony	Pled guilty to 18 U.S.C. § 924(a)(1)(A), False statement in acquisition of a firearm	24 months probation with conditions, \$100 special assessment
4	Under indictment for robbing and shooting victim, involving drugs	Delayed	Federal	18 U.S.C. § 922(a)(6): Falsifying background check form 18 U.S.C. § 922(n): Illegal possession of a firearm while under indictment	Pled guilty to 18 U.S.C. § 922(n) and 18 U.S.C. § 922(a)(6)	24 months in prison and 3 years supervisory release

**Appendix VI: Examples of Firearms Denial
Cases Referred for Prosecution**

Case	Potential Prohibiting Categories (Circumstances of Arrest) ¹	Type of Denial	Charged in State/Federal Court	Charges	Disposition	Sentence
5	Misdemeanor crime of domestic violence	Delayed	Federal	18 U.S.C. § 922(g)(9): Prohibited due to prior domestic violence charge	Charges declined by prosecutors	No charges
6	Dealing drugs, violation of restraining order	Delayed	Federal	18 U.S.C. § 922(a)(6): Falsifying background check form 18 U.S.C. § 922(n): Illegal possession of a firearm while under indictment	Pled guilty to 18 U.S.C. § 922(n)	3 months federal custody and 1 year supervisory release
7	Active warrants (possible straw purchase, drug possession)	Standard	Federal	18 U.S.C. § 922(g)(3): Prohibited due to drugs 18 U.S.C. § 924(a)(2): Knowingly possessed firearm illegally.	Pled guilty to 18 U.S.C. § 922(g)(3).	33 months in prison, 3 years supervisory release, \$100 (MPA), 500 hour intensive drug treatment program
8	Under indictment for drug trafficking	Standard	Federal	18 U.S.C. § 922(a)(6): Falsifying background check form 18 U.S.C. § 922(n): Illegal possession of a firearm while under indictment Indicted on additional drug charges.	Pled guilty to 18 U.S.C. § 922(a)(6) for lying about being under indictment	18 months in prison, three years supervised release
9	Controlled substance, domestic violence (violent criminal history)	Standard	Federal	18 U.S.C. § 922(a)(6): Falsifying background check form	Pled guilty to 18 U.S.C. § 922(a)(6)	12 months in prison
10	Misdemeanor crime of domestic violence and drug use	Delayed	State	Illegal possession of a firearm (state charge for misdemeanor domestic violence), State charge for false purchase	Pled Guilty to state charge for false purchase	12 months in prison
11	Drug conviction in last 5 years (Under indictment for state firearm and drug charges)	Delayed	State	Illegal possession of a firearm and a state drug charges	Plea agreement in state court. Pled guilty to 2 state narcotics charges.	60 months probation and a \$1,000 fine for each narcotics charge
12	Prior conviction for domestic violence	Delayed	State	Felony falsifying a background check form (domestic violence)	Not yet resolved	State charges

Source: Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and Executive Office for United States Attorneys (EOUSA). | GAO-18-440

Note: "Circumstances of arrest," indicated in parentheses where applicable, refer to developments after the attempted purchase of the firearm.

Cited statutes generally include:

**Appendix VI: Examples of Firearms Denial
Cases Referred for Prosecution**

18 U.S.C. § 922(g): Prohibited person possessing or receiving a firearm.

18 U.S.C. § 922(a)(6): Person knowingly falsifying a background check form.

18 U.S.C. § 922(n): Person illegally possesses a firearm while under indictment.

18 U.S.C. § 924(a)(2): Person knowingly violating specific subsections of 18 U.S.C. § 922 resulting in fine, imprisonment, or both.

18 U.S.C. § 924(a)(1)(A): Person knowingly making a false statement or representation with respect to information required to be kept by a gun dealer.

Appendix VII: GAO Contacts and Staff Acknowledgements

GAO Contact

Gretta L. Goodwin, (202) 512-8777, goodwing@gao.gov

Staff Acknowledgements

In addition to the contact named above Eric Erdman (Assistant Director) and Anthony DeFrank (Analyst-in-Charge) managed this assignment. Daniel Kuhn, James Lawson, Billy Commons, Susan Hsu, Michele C. Fejfar, and Eric D. Hauswirth made significant contributions to the work.

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5) FBI NICS Firearms Background Checks

NICS Firearm Background Checks: Month/Year

November 30, 1998 - August 31, 2020

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Totals
1998											21,196	871,644	892,840
1999	591,355	696,323	753,083	646,712	576,272	569,493	589,476	703,394	808,627	945,701	1,004,333	1,253,354	9,138,123
2000	639,972	707,070	736,543	617,689	538,648	550,561	542,520	682,501	782,087	845,886	898,598	1,000,962	8,543,037
2001	640,528	675,156	729,532	594,723	543,501	540,491	539,498	707,288	864,038	1,029,691	983,186	1,062,559	8,910,191
2002	665,803	694,668	714,665	627,745	569,247	518,351	535,594	693,139	724,123	849,281	887,647	974,059	8,454,322
2003	653,751	708,281	736,864	622,832	567,436	529,334	533,289	683,517	738,371	856,863	842,932	1,008,118	8,481,588
2004	695,000	723,654	738,298	642,589	542,456	546,847	561,773	666,598	740,260	865,741	890,754	1,073,701	8,687,671
2005	685,811	743,070	768,290	658,954	557,058	555,560	561,358	687,012	791,353	852,478	927,419	1,164,582	8,952,945
2006	775,518	820,679	845,219	700,373	626,270	616,097	631,156	833,070	919,487	970,030	1,045,194	1,253,840	10,036,933
2007	894,608	914,954	975,806	840,271	803,051	792,943	757,884	917,358	944,889	1,025,123	1,079,923	1,230,525	11,177,335
2008	942,556	1,021,130	1,040,863	940,961	886,183	819,891	891,224	956,872	973,003	1,183,279	1,529,635	1,523,426	12,709,023
2009	1,213,885	1,259,078	1,345,096	1,225,980	1,023,102	968,145	966,162	1,074,757	1,093,230	1,233,982	1,223,252	1,407,155	14,033,824
2010	1,119,229	1,243,211	1,300,100	1,233,761	1,016,876	1,005,876	1,069,792	1,089,374	1,145,798	1,368,184	1,296,223	1,521,192	14,409,616
2011	1,323,336	1,473,513	1,449,724	1,351,255	1,230,953	1,168,322	1,157,041	1,310,041	1,253,752	1,340,273	1,534,414	1,862,327	16,454,951
2012	1,377,301	1,749,903	1,727,881	1,427,343	1,316,226	1,302,660	1,300,704	1,526,206	1,459,363	1,614,032	2,006,919	2,783,765	19,592,303
2013	2,495,440	2,309,393	2,209,407	1,714,433	1,435,917	1,281,351	1,283,912	1,419,088	1,401,562	1,687,599	1,813,643	2,041,528	21,093,273
2014	1,660,355	2,086,863	2,488,842	1,742,946	1,485,259	1,382,975	1,402,228	1,546,497	1,456,032	1,603,469	1,803,397	2,309,684	20,968,547
2015	1,772,794	1,859,584	2,012,488	1,711,340	1,580,980	1,529,057	1,600,832	1,745,410	1,795,102	1,976,759	2,243,030	3,314,594	23,141,970
2016	2,545,802	2,613,074	2,523,265	2,145,865	1,870,000	2,131,485	2,197,169	1,853,815	1,992,219	2,333,539	2,561,281	2,771,159	27,538,673
2017	2,043,184	2,234,817	2,433,092	2,045,564	1,942,677	1,901,768	1,742,546	1,925,146	1,967,104	2,030,391	2,382,788	2,586,138	25,235,215
2018	2,030,530	2,333,193	2,767,699	2,223,213	2,002,992	1,935,691	1,835,318	2,073,296	1,956,681	2,086,895	2,393,043	2,543,385	26,181,936
2019	2,165,094	2,053,886	2,644,851	2,334,249	2,349,309	2,312,309	2,030,661	2,366,824	2,207,312	2,393,609	2,574,752	2,936,894	28,369,750
2020	2,702,702	2,802,467	3,740,688	2,911,128	3,091,455	3,931,607	3,639,224	3,115,063					25,934,334
2021													

TOTAL 358,938,400

NOTE: These statistics represent the number of firearm background checks initiated through the NICS. They do not represent the number of firearms sold. Based on varying state laws and purchase scenarios, a one-to-one correlation cannot be made between a firearm background check and a firearm sale.