

APPENDIX A

Memorandum Decision, Filed November 2, 2020

FILED

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NOV 2 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

SEAN RONALDO ALEXANDER,

Defendant-Appellant.

No. 17-50258

D.C. No.
2:16-cr-00471-RGK-3

MEMORANDUM*

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

FRANCISCO JUANTONIO HILT, AKA
Frebo,

Defendant-Appellant.

No. 17-50353
19-50308

D.C. No.
2:16-cr-00471-RGK-2

Appeal from the United States District Court
for the Central District of California
R. Gary Klausner, District Judge, Presiding

Argued and Submitted October 6, 2020
Pasadena, California

Before: HURWITZ, BRESS, and BUMATAY, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Sean Alexander and Francisco Hilt (“Defendants”) were convicted of multiple charges for illegal sales of firearms. They appeal their convictions and the district court’s denial of Hilt’s motion for a new trial. We affirm.

1. There was sufficient evidence for the jury to find that Alexander and Hilt engaged in a “regular course of trade or business” of unlicensed dealing in firearms under 18 U.S.C. §§ 922(a)(1)(A), 921(a)(21)(C). Alexander participated in four sales from December 2015 to May 2016, and Hilt participated in five sales from December 2015 to February 2016. In addition, Defendants expended considerable effort aside from the enumerated transactions, such as obtaining the firearms, making sales to others, and soliciting purchases from a confidential informant. The government also presented evidence that Defendants were motivated by profit. A rational jury considering this evidence could find that Alexander and Hilt devoted time, attention, and labor to dealing in firearms as a regular course of business.

2. We review for plain error Defendants’ claim that the government submitted an improper legal theory to the jury in its closing argument by stating that “two transactions are enough to hold them guilty.” Defendants’ argument fails. The statement was part of the government’s argument that Defendants agreed to violate 18 U.S.C. § 922(a)(1)(A). *See United States v. Moe*, 781 F.3d 1120, 1124 (9th Cir. 2015) (“[A]n agreement to accomplish an illegal objective” is an element of

conspiracy.). Accordingly, the statement was permissible in the context of the conspiracy charge. Regardless, given the significant evidence of many firearm sales over a period of months, any error in the closing argument was not prejudicial.

3. Section 922(a)(1)(A) is not void for vagueness as applied to Defendants. “[T]he void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.” *Beckles v. United States*, 137 S. Ct. 886, 892 (2017) (quoting *Kolender v. Lawson*, 461 U.S. 352, 357 (1983)). The statute was sufficiently clear to give Defendants notice that their seven sales, conducted for profit and over a number of months, fell within its proscription. In particular, § 922(a)(1)(A)’s reference to “engag[ing] in the business” of dealing in firearms is not void for vagueness. The “use of terms such as ‘business’ and ‘dealing’” are “well defined in the law.” *United States v. Van Buren*, 593 F.2d 125, 126 (9th Cir. 1979) (per curiam). The definition of “engaged in the business” at § 921(a)(21)(C), enacted after *Van Buren*, only added clarity to § 922(a)(1)(A).

4. The district court did not abuse its discretion in denying Hilt’s pretrial motion to compel the production of the confidential informant’s identity. *United States v. Napier*, 436 F.3d 1133, 1136 (9th Cir. 2006). “To obtain disclosure of the identity of a confidential informant, a defendant must show a need for the information.”

United States v. Spires, 3 F.3d 1234, 1238 (9th Cir. 1993). “[M]ere suspicion that information will prove helpful is insufficient” *United States v. Wong*, 886 F.2d 252, 256 (9th Cir. 1989). Hilt did not argue why the informant’s identity would further his entrapment defense. In addition, the government disclosed the informant’s criminal record, benefits provided, and communications with Hilt. Under these circumstances, the district court acted within its discretion in ordering the government to disclose the informant’s identity one week prior to trial should the government decide to call him as a witness. Additionally, because Hilt discovered, and the government confirmed, the informant’s identity only nine days after the court’s denial of the motion to compel, any error did not prejudice Hilt’s substantial rights. *United States v. Amlani*, 111 F.3d 705, 712 (9th Cir. 1997).

5. The government did not violate its obligations under *Brady v. Maryland*, 373 U.S. 83 (1963), by failing to produce the confidential informant’s name; the transcripts and records of his testimony in state and federal criminal cases; and evidence of the informant’s violence, drug addiction, or mental illness. To violate *Brady*, the government’s failure to disclose evidence must be material, such that it creates “a reasonable probability that the outcome would have been different” and “that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.” *Amado v. Gonzalez*, 758 F.3d 1119, 1140 (9th Cir. 2014) (simplified).

Setting aside the government's arguments that it did not possess certain of the information at the relevant time, Defendants failed to satisfy *Brady*'s materiality requirement. Hilt primarily argues that the information would have supported his entrapment defense, but he does not explain how. Hilt suggests that the fact that the informant grew up in Hilt's neighborhood, his history of working for law enforcement, and law enforcement's need for an informant in that neighborhood show that the informant targeted or lured Hilt. But none of this evidence would demonstrate inducement or a lack of predisposition as required for entrapment. *See United States v. Si*, 343 F.3d 1116, 1125 (9th Cir. 2003). Likewise, Hilt fails to connect either element of entrapment to the informant's history of violence, drug addiction, or mental illness, or to the informant's testimony in the state case.¹

Nor does the possible impeachment value of this material warrant reversing Defendants' convictions. In Hilt's view, the informant's unreliability is demonstrated by the dismissal of the state case in which he testified and the informant's threat of violence to his girlfriend. But this evidence does not put the whole case in a different light so as to undermine confidence in the verdict, especially since each of the firearms transactions between the informant and

¹ For the same reason, this evidence would not support his motion to dismiss for outrageous conduct. *See United States v. McClelland*, 72 F.3d 717, 721 (9th Cir. 1995) (Dismissals for outrageous conduct must meet "extremely high standard" and be "grossly shocking and . . . outrageous," such as where the government "completely fabricat[ed] the crime.").

Defendants was video-recorded. *Banks v. Dretke*, 540 U.S. 668, 698–701 (2004) (noting that suppressed evidence is not material where other evidence provided “strong support” for conviction); *Amado*, 758 F.3d at 1140.

6. Defendants’ Sixth Amendment confrontation rights were not violated as a result of the informant not testifying under his true name. At trial, the government requested “to [not] distribute any documents with [the informant’s] actual name.” The government also asked, “Is it fine if we refer to the confidential informant simply as the confidential informant?” The district court did not plainly err in granting the request.

Defendants argue that the district court’s decision violated the Confrontation Clause. But the court’s order was limited to the government’s use of the informant’s real name and did not correspondingly limit Defendants’ cross-examination. In any case, Defendants failed to show any prejudice from their purported inability to use the informant’s true name. Any suggestion that the jury would assume that Defendants threatened the informant since the government did not use his name is wholly speculative.

7. The indictment and jury instructions for Hilt’s felon-in-possession charges under 18 U.S.C. § 922(g)(1) were not plainly erroneous. A violation of § 922(g)(1) requires that the defendant know that he had been convicted of a crime punishable by more than one year’s imprisonment at the time of his possession. *See Rehaif v.*

United States, 139 S. Ct. 2191, 2194 (2019); *United States v. Benamor*, 937 F.3d 1182, 1186 (9th Cir. 2019). Though the omission of this knowledge element from the indictment and jury instructions was erroneous, it did not affect Hilt’s substantial rights. *Benamor*, 937 F.3d at 1188–89.

The government presented evidence that Hilt pled no contest in July 1999 to violating California Health & Safety Code § 11359. Though he received only a suspended sentence, 3 years’ probation, and 60 days in county jail, the violation was a felony. Cal. Health & Safety Code § 11359 (1999) (requiring that one who violates the section “shall be punished by imprisonment in the state prison”); Cal. Penal Code § 17 (1999) (“A felony is a crime which is punishable with death or by imprisonment in the state prison.”). The record shows that he was informed of the drug offense’s maximum penalty. *See* Cal. Penal Code § 18 (1999) (providing a penalty of 16 months, two years, or three years’ imprisonment). Hilt also admitted during a post-arrest interview that he knew he could not possess guns because of his felony conviction.

8. The jury instructions were not plainly erroneous as to Hilt’s convictions for the sale of firearms to a prohibited person under 18 U.S.C. § 922(d)(1). The charges against Hilt were predicated on his sales of firearms to the informant, who is undisputedly a felon. While the jury instruction substituted “convicted felon” for the statutory phrase “convicted of a crime punishable by imprisonment for a term

exceeding one year,” 18 U.S.C. § 922(d)(1), any error did not affect Hilt’s substantial rights. Hilt acknowledges that the informant told him that he was a felon. Such information gave Hilt “reasonable cause to believe” the informant had been convicted of a crime punishable by more than a year in prison, as required by the statute. 18 U.S.C. § 922(d)(1); *see also Felony*, Random House Webster’s College Dictionary 484 (1999) (defining felony as “an offense of graver character than a misdemeanor and usu. punished by imprisonment for more than one year”).

9. Defendants argue that their convictions should be reversed for cumulative error. But reversal on grounds of cumulative error is not available where “evidence of guilt is otherwise overwhelming.” *Parle v. Runnels*, 505 F.3d 922, 928 (9th Cir. 2007). Each sale to the informant was video- and audio-recorded, and Defendants’ voices and faces were identifiable. The government also presented text messages between Defendants and the informant detailing their planned transactions. Accordingly, reversal for cumulative error is inappropriate.

10. Hilt’s 13-year sentence was not an abuse of discretion. *See United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc). He argues that he was learning disabled, severely abused as a child, and extremely poor all of his life, while his prior crimes were misdemeanors involving marijuana and traffic offenses. But the court took those facts into account and imposed a below-Guidelines sentence. *Cf. United*

States v. Amezcua-Vasquez, 567 F.3d 1050, 1055 (9th Cir. 2009) (explaining that a sentence within the Guidelines range is usually reasonable).

* * *

For the foregoing reasons, the district court's judgments are **AFFIRMED**.

APPENDIX B

Order denying rehearing, Filed January 4, 2021

FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAN 4 2021

MOLLY C. DWYER, CLERK
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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

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SEAN RONALDO ALEXANDER,

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D.C. No.
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Central District of California,
Los Angeles

ORDER

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

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FRANCISCO JUANTONIO HILT, AKA
Frebo,

Defendant-Appellant.

No. 17-50353
19-50308

D.C. No.
2:16-cr-00471-RGK-2

Before: HURWITZ, BRESS, and BUMATAY, Circuit Judges.

The panel unanimously voted to deny the petition for panel rehearing or rehearing en banc. Fed. R. App. P. 40. The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on it. Fed. R. App. P. 35. The petition for panel rehearing or rehearing en banc, Docket No. 92, is therefore DENIED.

APPENDIX C

18 U.S.C. § 922

18 USCS § 922

Current through PL 115-108, approved 1/8/18, with gaps of PL's 115-91 and 115-97.

United States Code Service - Titles 1 through 54 > TITLE 18. CRIMES AND CRIMINAL PROCEDURE > PART I. CRIMES > CHAPTER 44. FIREARMS

Notice

🚩 *Part 1 of 3.* You are viewing a very large document that has been divided into parts.

§ 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

(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.)

(As amended Dec. 4, 2015, [P.L. 114-94](#), Div A, Title XI, Subtitle D, § 11412(c)(2), [129 Stat. 1688](#).)

Annotations

Notes

References in text:

"Director of Central Intelligence", referred to in this section, to the extent that it refers to the Director's capacity as the head of the intelligence community, is deemed to be a reference to the Director of National Intelligence and to the extent that it refers to the Director's capacity as the head of the Central Intelligence Agency, is deemed to be a reference to the Director of the Central Intelligence Agency, pursuant to § 1081(a) and (b) of Act Dec. 17, 2004, [P.L. 108-458](#), which appears as [50 USCS § 401](#) note.

Explanatory notes:

"1986" has been inserted in brackets in subsecs. (a)(4) and (b)(4) pursuant to § 2 of Act Oct. 22, 1986, [P.L. 99-514](#), which redesignated the Internal Revenue Code of 1954 (Act Aug. 16, 1954, ch 736) as the Internal Revenue Code of 1986. In redesignating the Internal Revenue Code of 1954 as the Internal Revenue Code of 1986, Congress provided, in Act Oct. 22,