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The Honorable Paul H. O'Neill
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Secretary O'Neill:

I am writing to transmit the results of a General Accounting Office investigation that reveals significant problems with the regulation of gun dealers in the United States. This undercover investigation was conducted by GAO's Office of Special Investigations. It demonstrates the surprising ease with which criminals can use fake gun dealer licenses to bypass criminal background checks and obtain large numbers of firearms.

GAO's report describes a regulatory system in which dealers who sell to other dealers are not required to authenticate the purchasing dealer's federal firearm license (FFL). The report identifies specific examples in which dealers sold guns to persons using fake dealer licenses. And it raises serious concerns about the website of the Bureau of Alcohol, Tobacco, and Firearms (ATF), concluding that it "enables individuals to obtain information that can be used to counterfeit legitimate FFL licenses in order to illegally purchase firearms."¹

I urge you to review the enclosed GAO report and to take action to prevent the abuses it identifies.

I. BACKGROUND

Last year, I asked GAO to conduct an investigation into the effectiveness of the National Instant Criminal Background Check System (NICS), which is the system used by gun dealers to conduct background checks on individuals seeking to purchase guns. In that investigation, GAO

¹U.S. General Accounting Office, *Purchase of Firearms Using a Counterfeit Federal Firearms License*, 4 (Mar. 13, 2002) (GAO-02-383R).

concluded that NICS was not effective in preventing individuals who use false identification from buying guns.²

As a follow-up to that investigation, I asked GAO to investigate the effectiveness of the federal system for licensing gun dealers. Under federal law, anyone “engage[d] in the business of importing, manufacturing, or dealing in firearms” is required to obtain a federal firearms license.³ Dealers must submit photographs and fingerprints as part of their application, and they must certify that their business complies with all state and local laws.⁴ Dealers also must pay a fee⁵ and maintain records of all sales.⁶

According to ATF, “the salient feature of a license that makes it desirable is that it enables the holder to purchase firearms in interstate commerce from other licensees.”⁷ As license holders, dealers are entitled to purchase unlimited quantities of firearms without being subject to criminal background checks.⁸ Moreover, when an unlicensed person buys more than one gun from a dealer, a “multiple sales report” must be filed with ATF.⁹ The purpose of this

²See Minority Staff Report, Special Investigations Division, House Committee on Government Reform, *Lying & Buying: Using False Information to Obtain Firearms* (Mar. 21, 2001); U.S. General Accounting Office, *Firearms Purchased From Federal Firearm Licensees Using Bogus Identification* (March 2001) (GAO-01-427). The GAO investigation concluded that criminals can bypass NICS by using fake driver’s licenses with fictitious names that have no associated criminal histories.

³18 U.S.C. §923(a).

⁴27 C.F.R. §178.44.

⁵*Id.*

⁶18 U.S.C. §923(g)(1)(A).

⁷Department of the Treasury, Bureau of Alcohol, Tobacco, and Firearms, *Commerce in Firearms in the United States*, 11 (February 2000); see also 27 C.F.R. §178.41(b) (stating that a license “shall . . . entitle the licensee to transport, ship, and receive firearms . . . in interstate or foreign commerce”).

⁸*Id.*

⁹18 U.S.C. §923(g)(3)(A) (requiring multiple sales reports for purchases of more than one gun at one time or more than one gun within five consecutive business days).

requirement is to alert ATF to suspicious conduct that could suggest illegal gun trafficking.¹⁰ When dealers sell to each other, however, this provision does not apply.

In order to make exchanges, dealers must check that the other dealer has a license.¹¹ They do this by obtaining a signed copy of the transferee's license.¹² Unlike a driver's license, however, the actual dealer license issued by ATF contains no pictures of the dealer, no watermarks, and no lamination or other features to prevent alteration. Photocopies of gun dealer licenses are perfectly acceptable as long as the licensee signs his or her name to the copy. In fact, the applicable ATF regulations encourage this practice, making clear that "the original license may be reproduced and certified by the licensee for use."¹³

GAO's undercover investigation was designed to assess how easily criminals could avoid criminal background checks by forging federal gun dealer licenses and using them to make unlimited firearms purchases. The enclosed report presents the results of this investigation.

II. FORGING AND USING GUN DEALER LICENSES

GAO's investigators found that forging a dealer license is a relatively simple process that can be done using an ordinary home computer. The GAO agents who conducted this investigation reported that they were able to forge a dealer license using off-the-shelf software. They counterfeited a Mississippi gun dealer's license and inserted a different address, business name, and dealer number. They then printed out this fake license and used it to purchase a Kel-Tec P-32 semiautomatic pistol, which was subsequently shipped to the address listed on the fake license.

In addition to showing that dealer licenses can be forged easily, the GAO investigation also demonstrated that criminals have few regulatory impediments to using these forged licenses. In its report, GAO explained that gun dealers are not required to verify the authenticity of licenses when they sell weapons to each other. In other words, whenever one gun dealer makes a

¹⁰Department of the Treasury, Bureau of Alcohol, Tobacco, and Firearms, *Crime Gun Trace Analysis Reports: The Illegal Youth Firearms Markets in 27 Communities*, 18 (February 1999) (explaining that the multiple sales report "is a significant investigative tool for illegal trafficking investigations" and that "crime guns later found with obliterated serial numbers are frequently purchased in multiple sales").

¹¹27 C.F.R. §178.94.

¹²*Id.*

¹³27 C.F.R. §178.95.

sale to another gun dealer, neither is required to verify that the other is in fact a legitimate dealer by checking the validity of the license presented.

GAO reported that the previous Administration recognized these problems and attempted to address them by creating the "eZ-Check" system. This system, which is operated as a website by ATF,¹⁴ allows dealers to log on and authenticate dealer information before proceeding with sales. Unfortunately, this system is not mandatory. As a result, it is completely within the discretion of dealers to decide whether to verify licenses. If a dealer decides not to check the system, for example, and sells guns to criminals using fake dealer licenses, the dealer is not held responsible.

III. FLAWS IN THE EZ-CHECK SYSTEM

GAO also raised serious concerns about the eZ-Check system becoming a potential tool for would-be counterfeiters. This is because ATF's website promotes and facilitates access to detailed license information about valid dealers. Specifically, the website contains instructions on how to obtain a complete list of all gun dealers currently operating in the United States. The website describes this list in detail, explaining that it includes dealer names, business names, phone numbers, and even license numbers.

Apparently, ATF has an arrangement with a contractor who provides this information in bulk form and in a range of different formats, such as computer tape and disk, print-outs, and Cheshire and adhesive labels. ATF offers to customize the list, such as by state, zip code, region, or type of dealer. Although the website advertises a full volume of all 93,000 U.S. gun dealers for about \$60, GAO agents reported that they obtained at no charge a free sample displaying complete license information on 50 Virginia dealers.

GAO registered concern with these ATF policies. Although the eZ-Check system was designed to "aid the firearms industry in preventing the fraudulent use of federal firearms licenses by individuals who alter copies," GAO concluded that "easy access to license numbers via the ATF Web site may facilitate the counterfeiting of federal firearms licenses."¹⁵ According to GAO, this system "enables individuals to obtain information that can be used to counterfeit legitimate FFL licenses in order to illegally purchase firearms."¹⁶

Indeed, the GAO investigators found that they could even obtain dealer information

¹⁴See <http://www.atf.treas.gov/firearms/ffl/index.htm>.

¹⁵GAO-02-383R, *supra* note 1, at 4.

¹⁶*Id.*

directly through the ATF website, without going through the contractor. When they logged on to the website and entered a valid dealer license number, they were able to access full information on numerous other dealers by simply changing a single digit on the license number. According to GAO, "we found that if a user logs onto the system and enters the number of a legitimate FFL license, but changes the last number of the license, the name, address and license number of another legitimate FFL may appear on the screen."¹⁷

IV. EXAMPLES OF THE USE OF FALSE DEALER LICENSES

Because dealers can bypass criminal background checks and obtain an unlimited number of guns, a criminal who possesses a fake dealer license can be a great threat to public safety. To assess the significance of this threat, my staff contacted ATF to request data on how frequently false FFL licenses are used to acquire weapons. Unfortunately, ATF could not provide data on the number of cases involving false FFLs the agency has prosecuted. In general, however, the use of false forms of identification to acquire weapons is a serious problem. A June 2000 ATF report states that 13% of ATF trafficking investigations involved "providing false information to acquire firearms"¹⁸ and that 28% of trafficking investigations that resulted in criminal charges involved "making false statements to acquire firearms."¹⁹

A Department of Justice official recently made this observation:

There's almost no way to really tell how often it happens that an individual will alter a license in order to purchase guns from these wholesale distributors. In fact, there's no requirement that the distributor actually check the validity of the license itself. So, therefore, it could be happening frequently. We just don't know When a police officer pulls over a driver for a driving infraction, the officer is able to go to a computer to check the validity of the driver's driver's license to determine whether or not this person even has a valid license. We don't have the same protections with gun trafficking or the gun trade.²⁰

¹⁷*Id.*

¹⁸Department of the Treasury, Bureau of Alcohol, Tobacco, and Firearms, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers*, 27 (June 2000) (tracking a period from July 1996 through December 1998).

¹⁹*Id.* at 33.

²⁰KQED & Center for Investigative Reporting, *Bay Window: Gunshots — Gun Trafficking and Violence in the Bay Area* (August 2001) (statement of Rebecca Hardie, Assistant United States Attorney).

During its investigation, GAO found several cases in which criminals have forged gun dealer licenses and used them to buy firearms. One case in New Jersey involved two teenagers who used their home computer to forge a dealer license. They used the license to buy multiple guns over the internet and had them shipped to their suburban home without even speaking to a dealer. Another case in California involved a criminal who edited a copy of his own expired dealer license. ATF officials informed my staff of several other specific criminal cases as well.

One example that illustrates how much damage can be done through the use of false FFLs is the case of Sean Twomey of Oakland, California. In the largest gun trafficking case in the history of the San Francisco Bay Area, Mr. Twomey was able to alter a dealer license using an Adobe Photo Shop software program. In less than a year, he illegally purchased approximately 1,187 guns, which were delivered directly to his apartment. Mr. Twomey sold these guns to criminals, minors, and others not entitled to possess them.

Mr. Twomey, who is serving a six-year prison sentence, explained in an interview how easily he was able to forge the license and use it to buy a huge number of weapons:

In the gun business, all you have to do is to send a copy, a signed copy, of a license to sell firearms. That's it. It's up to the gun distributors to verify if the license is valid or not All I did was print it off of my printer. Print copies, sign it with blue ink, send it in. . . . If you want 50 Lorcins, send me 50 Lorcins. I'm concerned about the money. I don't — at the time — I don't care about, "this man's buying 50 guns from me." 'Cause it's all money. To my knowledge, I was, like, supplying the entire Bay Area.²¹

Mr. Twomey also explained that the gun dealer he was purchasing from never raised any objections:

I'm buying all these guns from them. They should get a red flag to say, "Why is this guy buying 50 Lorcins one week and 25 Lorcins the next week?" "Why's he buying 40 TEC-9's?" They've been in business a long time. They know people don't, gun dealers don't, buy 40 Lorcins one week, 40 Lorcins next week.²²

The dealer who sold the weapons to Mr. Twomey never asked any questions, however. To the contrary, the dealer's salesperson, who was paid on commission, apparently felt that verifying Mr. Twomey's license might risk losing a potentially lucrative source of business:

He could have bought 1,000 a day. I wouldn't have cared. I would have sent it right on

²¹*Id.*

²²*Id.*

to him. You know, I mean, I just felt it wasn't my place to really ask him, "What are you doing with all these guns," you know? So, I didn't, I didn't think anything of it.²³

To date, more than 100 of Mr. Twomey's guns have been recovered in crimes, including two homicides, two armed robberies, multiple narcotics cases, and an attempted assault on a police officer. According to local officials, the full impact of Mr. Twomey's case has not yet been realized, and they expect to continue recovering guns illegally purchased by Mr. Twomey for many years to come. According to an official at the Oakland Police Department:

I think we'll be seeing Twomey's guns for years. And they're going to be used in crimes for years That's a lot of work for us. And it's going to be a lot of work for Bay Area law enforcement for years to catch up to what Twomey did in eight months.²⁴

V. CONCLUSION AND RECOMMENDATIONS

The GAO report and the cases described above depict a regulatory scheme in which criminals can forge gun dealer licenses easily, bypass background checks, and buy multiple guns for use in criminal activity. Moreover, ATF itself may be unwittingly adding to these problems by promoting dealer license information on its website.

Gun industry representatives seem to believe these findings do not highlight a flaw in the current regulatory system governing dealer licenses. According to Robert Delfay, President of the National Shooting Sports Foundation, a trade organization that represents the gun industry:

Now, perhaps a distributor could have noticed an error or discrepancy on a license earlier, but if they didn't, again, that's unfortunate, but it's just sort of, life. And we wish, everyone wishes, certain problems in life could be headed off earlier. Sometimes they're not.²⁵

I disagree completely with this fatalistic approach. I believe concrete steps can be taken to address these problems, and I urge you to immediately take the following three actions:

- First, you should examine the current gun dealer licensing requirements and adopt ways to make dealer licenses more difficult to forge. Although I recognize that even more advanced licenses could still be subject to forgery, the current licenses seem to offer

²³*Id.* (statement of Latoya Lige, Salesperson, Southern Ohio Guns International, Inc.).

²⁴*Id.* (statement of Gary Tolleson, Sergeant, Oakland Police Department).

²⁵*Id.* (statement of Robert Delfay, President, National Shooting Sports Foundation).

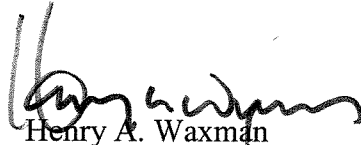
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criminals few technical challenges at all.

- Second, you should require that all dealers verify the authenticity and accuracy of licenses from other dealers, whether they are purchasing or selling guns. Making the eZ-Check system mandatory would be one step toward accomplishing this goal. Holding dealers responsible for selling to individuals with invalid dealer licenses would be another positive step.
- Third, ATF should immediately cease advertising on its website how individuals can obtain the names, addresses, and FFL license numbers of gun dealers. Moreover, as the GAO report recommends, you should eliminate the last five digits from the dealer license information on publicly available dealer lists.

Thank you for your prompt attention to this matter. I look forward to working with you on this important public safety issue.

Sincerely,



Henry A. Waxman
Ranking Minority Member

Enclosure

cc: The Honorable David M. Walker