



Department of Justice

STATEMENT OF

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BEFORE THE

**SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE**

FOR A HEARING ENTITLED

**“PROPOSALS TO REDUCE GUN VIOLENCE:
PROTECTING COMMUNITIES WHILE RESPECTING THE SECOND AMENDMENT”**

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United States Department of Justice
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Subcommittee on the Constitution, Civil Rights and Human Rights

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Good morning, Chairman Durbin, and Members of the Subcommittee, it is a privilege to appear before you today on behalf of the Department of Justice. As the United States Attorney for the Western District of Virginia, I am pleased to speak with you about the continuing work of the United States Attorney community and the Department of Justice to address gun-related violence. In particular, I want to talk to you today about our efforts to bring to justice those individuals and criminal organizations who have endangered our communities and undermined public safety through the illegal possession and use of firearms.

Recent tragedies at Sandy Hook Elementary School in Newtown, Connecticut; at a nursing school in Oakland, California; at a movie theater in Aurora, Colorado; and at a Sikh Temple in Oak Creek, Wisconsin have reminded us of the overwhelming tragedy caused by gun-related violence. In my district, we experienced the same kind of tragedy several years ago, on the campus of Virginia Tech. We also confront the awful reality of gun violence in the diverse communities in which we serve, from Chicago, Illinois to Roanoke, Virginia. All of these incidents reinforce our continuing obligation to enforce the federal firearms laws we currently have, and of the need to find additional tools to help prevent violent crime in all its forms.

As the chief federal law enforcement officer in my district, I have taken an oath to uphold the Constitution and the laws of the United States. Like my fellow United States Attorneys, I am duty-bound to do everything within my authority to ensure the safety of the citizens of our communities. As a former line prosecutor who has handled numerous violent crime cases, including one trial involving 17 defendants charged with a total of 31 murders, I have seen firsthand the crucial role that federal law enforcement plays in this effort. My colleagues and I consider it a solemn obligation and a privilege to bear the responsibility of keeping our people safe, and today I want to discuss with you what we have done to address the particular challenges of gun-related violence – through both prevention and enforcement efforts.

I. Combatting Violent Crime is a Key Department of Justice Priority.

Attorney General Holder has consistently emphasized that combatting violent crime and fostering safe communities is a top priority of the Department of Justice. To that end, he has tasked the United States Attorneys with the responsibility to develop localized strategies to

apprehend and prosecute individuals, street gangs, and other criminal organizations that engage in gun-related violence. In a meeting of federal prosecutors in New Orleans dedicated to the protection of our communities in July of 2010, Attorney General Holder urged United States Attorneys to be more than mere “case processors” and to embrace the additional role of “problem solvers” when it comes to the gun violence plaguing our communities. He instructed us “to bring innovative, evidence-based solutions to the work of addressing our most overwhelming and intractable challenges – namely, the prevalence and consequences of gun-, gang-, and drug-related violence, as well as the devastating impact of childhood exposure to violence.” We continue to follow these instructions in our ongoing efforts to protect our children and communities while holding violent offenders accountable for their criminal actions.

Each United States Attorney, working with federal, state, local and tribal prosecutors, law enforcement, and community leaders, has implemented a district-specific, anti-violence strategy, consistent with the Attorney General’s direction. These local strategies provide specific plans that combine targeted enforcement with support for crime prevention and viable offender reentry. We work closely with our state and local partners to apply this comprehensive approach to violence prevention in communities both large and small, urban and rural.

Our work reflects the priority we put on preventing gun violence in every district in the country. We must continually strive to make the most of the finite number of federal prosecutors, agents, and state and local officers we have deployed in this fight. This requires us to work smarter by gathering intelligence and targeting our enforcement efforts at the most dangerous and complicated criminal justice threats in our communities. By doing so, we are bringing impactful cases that help change neighborhoods. This data-driven approach makes us more effective. We work cooperatively with state and local law enforcement to identify and support their efforts where it makes the most sense for them to be in the lead. We continue to do all we can to vigorously prosecute gun crime, relying on close coordination with ATF and our other federal, state, and local partners in a targeted approach.

II. Prevention

As the Attorney General has said repeatedly, any effective response to a criminal justice challenge must combine enforcement with prevention – violent crime is no exception. In this regard, preventing prohibited persons from even obtaining a firearm is a crucial component in the overall strategy to reduce gun-related violence. Federal law precludes certain categories of “prohibited persons” from receiving or possessing firearms, including those who have been convicted of, or are currently under indictment for, a felony; are an unlawful user of a controlled substance; have been involuntarily committed to a mental institution; are illegally or unlawfully present in the United States; have been dishonorably discharged from the Armed Forces; have renounced their citizenship; are subject to a domestic violence order of protection; or have been

convicted of a misdemeanor crime of domestic violence.

Federal law also requires licensed gun dealers to ensure that they are not selling firearms to prohibited persons. Specifically, before a federal firearms licensee (FFL) can transfer a firearm to an unlicensed individual, the dealer must request a background check through the FBI's National Instant Criminal Background Check System (NICS) to determine whether the prospective transfer would violate federal or state law. During the NICS check, personal information provided by the prospective firearms purchaser is used to search national databases containing criminal history and other relevant records to determine if the person is disqualified by law from receiving or possessing a firearm. The information in NICS is largely furnished by state and local governments, and we're doing all we can to create incentives and provide assistance to state actors to ensure that NICS information is complete and thorough.

Since it was created in 1998, the NICS background check system has kept more than 1.5 million guns out of the wrong hands. That's why expansion of this system is so vital to public safety. Many individuals who are prohibited by law from purchasing a firearm have been stopped from making a firearms purchase. Approximately 83,000 of these sales were prevented in FY 2012 in states that rely on the FBI to process the background checks.

Of course, these denials only represent instances where the prohibited person attempted to purchase a firearm from a FFL. Under current law, in most states, when a prohibited person attempts that same purchase from an unlicensed seller at a gun show, from an unlicensed private individual, or from any source other than a licensed FFL, no background check is required. As a result, prohibited persons are able to evade background checks. A recent case in the Western District of Oklahoma provides a good example of the problem. Local law enforcement officers in Oklahoma City observed a previously convicted felon and gang member of the Southside Locos – a violent street gang known for its long history of violent crime – visit multiple vendors at a local gun show. Law enforcement officers watched as the felon deliberately avoided purchasing firearms from any of the FFLs in attendance. Instead, he purchased, without any paper trail, a machine pistol with a high-capacity magazine and another gun from non-licensed vendors who were not required to perform background checks. It was only because this individual was already known to law enforcement and law enforcement happened to be on-site at the time he visited the gun show that this gang member was prosecuted by the United States Attorney's Office for being a felon in possession of a firearm, and was sentenced to 46 months in federal prison. Without this unique confluence of events, this prohibited person would have had all too-easy access to firearms.

Cases like these provide strong support for universal background checks. Without a comprehensive background check system, it is too easy for violent criminals to seek out sellers – whether at gun shows, on the Internet, or in the Yellow Pages – who are not licensed dealers,

who the criminals know do not require paperwork. And unlicensed sellers of these guns, whether at a gun show or for any private sale, would have no systematized way of being informed of the defendant's felony record unless they conduct the transaction through an FFL. The most effective way to ensure that the only people able to buy guns are those who are legally able to own them is to require background checks for all private sales. This rule should admit some important, limited exceptions – such as certain transfers between family members and temporary transfers for hunting and sporting purposes. Except for these private, non-commercial transfers, however, any sale of a firearm should trigger the background check requirement. Quite simply, requiring universal background checks is our best opportunity to keep firearms out of dangerous hands and to help keep our children and communities safe.

III. Criminal Enforcement

Enforcement of the federal firearms laws is one of the Department's core missions and the primary focus of our approach to combatting violent crime. We use the firearms laws to apprehend violent offenders, those who possess firearms illegally, and those who facilitate gun distribution and gun trafficking.

United States Attorneys recognize that “one-size-does-not-fit-all” and that the prosecution strategies for firearms offenses will vary depending on the nature of the problem in a given judicial district or community. Our enforcement strategies must necessarily take into account differences in state laws and state prosecution priorities. With many firearms cases, the question is not whether any given defendant will be prosecuted – they will be. The question is whether it is most effective for the case to be prosecuted at the federal or state level. Working in conjunction with our state and local partners, United States Attorneys make strategic judgments about the most effective approach for their district. Our overall goal is the pursuit of impactful cases that help change neighborhoods, not simply locking up everyone with a gun. We have to develop good intelligence about where the need is greatest and be smart about how we deploy our investigative and prosecutorial resources. Notwithstanding variations from district-to-district, the mission remains the same across the country: apprehending those who threaten the safety of our children, our families, and our communities. Yet, despite our commitment to enforcing the laws, more must be done to enhance the laws available to law enforcement to keep our communities safe.

A. Prosecutions of Prohibited Persons in Possession of Firearms and Those Who Sell to Them.

One component of our enforcement strategy across the country is keeping prohibited persons, such as the convicted felon in the Western District of Oklahoma described above, from obtaining and possessing firearms. Our statistics are reflective of our work in this area. The

statistical report released by the Executive Office of United States Attorneys (EOUSA) reveals that the number of defendants charged nationwide with violations of 18 U.S.C. § 922 or 18 U.S.C. § 924 – which, generally speaking, prohibit the sale, receipt, or possession of firearms to prohibited persons and the use of firearms to commit other crimes – remained fairly consistent from FY 2007 to FY 2011, ranging from 11,421 in FY 2010 to 12,087 in FY 2007. These numbers are significantly higher than they were back in FY 2000 (when the total was 8,054), FY 2001 (when the total was 8,845), and FY 2002 (when the total was 10,634). In FY 2005, when federal gun prosecutions peaked at 13,062, there were 17,128 murders nationwide according to the FBI’s uniform crime report data. Since FY 2005, murders nationwide have declined by 13.7 percent. The number of defendants prosecuted federally for gun crimes has declined by 9.6 percent.

On the supply side, we prosecute individuals who are engaged in the business of dealing with firearms without a license and who ignore or disregard the law preventing gun sales to prohibited persons. A recent case in my district is a good example. Don Simonpietri ran a pawn shop in Front Royal, Virginia. After losing his federal firearms license in 2005, he continued to sell multiple firearms from the pawn shop and at gun shows in Virginia. Undercover agents working with a task force of agents from the ATF, the Virginia State Police, and the Shenandoah County Sheriff’s Office made several controlled purchases of firearms from Mr. Simonpietri, each time indicating to him that the purchaser was a convicted felon. Mr. Simonpietri sold guns – including an AR-15 Bushmaster assault rifle – to these undercover officers acting as felons. On one occasion, Mr. Simonpietri directed the sale to the undercover officer through a “straw purchaser” who he did not believe was a felon, in direct violation of law. ATF agents later seized 1,350 guns from Mr. Simonpietri at his pawn shop and his residence. In 2010, my office charged Mr. Simonpietri and three others with unlawful firearms transfers, resulting in forfeiture of all 1,350 guns and jail sentences for all four defendants.

B. Prosecutions of Firearms Trafficking and Straw Purchasing Cases

In addition to prosecuting prohibited persons illegally in possession of firearms and illegal gun dealers who sell to them, the Department emphasizes building and prosecuting firearms trafficking and straw purchasing cases. A recent prosecution from the Southern District of Mississippi is an excellent example. After an investigation of gun trafficking among the Simon City Royals street gang and its affiliates, the United States Attorney’s Office secured a 30-count indictment charging 15 defendants with firearms-conspiracy charges. The defendants were part of a group that procured and sold weapons to the gang. In November of 2012, 12 of these defendants – only one of whom was a previously convicted felon – were sentenced. One defendant received a sentence of only 33 months in prison and another defendant received a sentence of only 41 months. Similarly, ATF and ICE investigators in the Middle District of Florida developed information about a firearms ring that was moving more than 200 guns from

Florida to Puerto Rico. Last year, the trafficker pled guilty and was sentenced to 38 months of imprisonment.

We pursue these trafficking cases despite the fact that they present an enormous challenge for federal agents and prosecutors. United States Attorneys have only a limited range of statutory “tools” in our collective tool-box, and the penalties for many of these offenses remain relatively low. These cases are also made more difficult by the fact that no single federal statute is specifically devoted to punishing firearms trafficking or straw purchasing. This requires prosecutors to try to find other gun-related criminal statutes that can be applied to the facts of a particular trafficking scheme. While we can and do use every tool we have to bring unlawful gun traffickers to justice, without more meaningful penalties for those who traffic in firearms, we will continue to find it difficult to dismantle the criminal networks that exploit these statutory gaps.

C. Prosecutions of “Lie and Try” Cases

There has been much public discussion lately about the Department’s prosecution philosophy with regard to individuals who improperly attempt to purchase a firearm by lying to an FFL. We do prosecute these cases. For example, the United States Attorney’s Office in Maine recently prosecuted a defendant who falsely completed an application form in the attempted acquisition of a Colt, Model 1911A1, .45 Caliber pistol. The defendant did not reveal that he was subject to a domestic violence protection order obtained by his abused, live-in girlfriend. He was denied the firearm and subsequently prosecuted for violating 18 U.S.C. §922(a)(6), which prohibits making false representations in connection with the acquisition of a firearm. He was convicted at trial and sentenced to six months’ imprisonment. The victim’s family expressed deep appreciation for the officers and prosecutors who helped avert a potentially lethal domestic incident. Despite the nominal sentence, this case provides an example of the type of “lie and try” case that it makes sense for the Department to prosecute, given the defendant’s history of violence, the existence of a domestic violence protection order, and the fact that the woman he had abused continued to reside in the home they had previously shared together.

For the most part, however, the Department prioritizes prosecuting prohibited persons who actually *obtain* guns – people who have gotten around the background check system and acquired weapons illegally – rather than those who attempted to purchase a firearm through the background check system but were unsuccessful. In cases where a prohibited person attempted to purchase a firearm and was denied as a result of the background check, the system worked at the front end. That prohibited person was prevented from obtaining the gun he was attempting to purchase. In some cases, the prohibited person may not have known that they were prohibited and, therefore, may not have committed the crime of making an intentional misrepresentation

when filling out the form. As I said before, United States Attorneys around the country work with our state and local counterparts to make thoughtful decisions about how to use our finite prosecution resources to best protect public safety in our communities.

D. Use of Statutory and Sentencing Guidelines Enhancements in Violent Crime Cases

Lastly, federal prosecutors rely on gun charges and sentencing enhancements in broader violent crime cases. Section 924(c) of Title 18 provides a mandatory, consecutive sentence when a gun is used to commit a federal crime. While that provision is not perfect, I can say that we use that overall statute in connection with a variety of underlying crimes – everything from drug sales to robberies to homicides. Similarly, the Sentencing Guidelines provide for an enhancement in the defendant’s recommended sentencing range if he or she uses a firearm during the course of any criminal offense. We use these provisions to hold violent offenders accountable. The serious penalties they carry allow us to obtain actionable intelligence about drug organizations, violent street gangs, and other criminal enterprises. These provisions help us build the kind of large, impactful cases that we have prioritized.

IV. Conclusion

In sum, we need to implement both front and back end solutions to the problem of gun violence in America. As the Attorney General articulated in his anti-violence strategy, the combination of prevention and enforcement works. As we try to prevent kids from joining gangs, we must prevent unlawful firearms transfers and ensure that we do all we can to keep guns out of the hands of dangerous persons. We must also react swiftly and with certainty when people break the law. We have to make impactful cases that remove dangerous criminals and their guns out of our communities. Our efforts to stop gun violence must be targeted and coordinated. Nothing less will be successful.

Those of us who work within the Department of Justice are doing what we can to rid communities across the country from the scourge of gun violence. We are implementing a comprehensive strategy, working in tandem with our state partners, and letting reliable intelligence guide our work. We will continue to do all we can to rise to this challenge and promote public safety. The legislative proposals put forth by the President would provide much needed additional tools for us to deploy in this important effort.

Thank you for the opportunity to appear before you today and to reiterate my commitment and the commitment of my colleagues in the Department of Justice to ensure the safety of our families and the peace of our communities.