

Responses to Questions of Senator Charles Schumer

Hearing before the Senate Judiciary Committee on September 26, 2007 *Executive Nomination of Michael J. Sullivan to be Director, Bureau of Alcohol, Tobacco, Firearms and Explosives*

Questions for Acting Director Michael J. Sullivan

At your confirmation hearing last week, you agreed to provide me with written follow-up responses for which you did not have immediate answers available. The questions were as follows:

1. Russell Timoshenko, a New York Police Department detective, was gunned down during a traffic stop last July in Brooklyn, New York. It appears that, following the shooting, the NYPD requested data from ATF about crime guns originating in Virginia. Reports have indicated that the ATF refused to provide any aggregate trace data in response to the request. Can you please provide a description of the NYPD's (or any other entity's) trace data requests in connection with the Timoshenko shooting, and the reasons for any denials thereof?

RESPONSE: ATF traced the firearms recovered from the Timoshenko crime scene and provided all available trace information to the NYPD within hours of recovery of the firearms. ATF has no record of any other trace request in connection with the Timoshenko shooting other than the submission and immediate return of successful trace information to NYPD.

2. Were any requests in connection with the Timoshenko shooting denied because of the restrictions imposed by what is commonly known as the "Tiahrt" amendment, or current Congressional appropriations restriction that prevent ATF from disclosing information contained in the Firearms Trace System Database?

RESPONSE: ATF traced the firearms recovered from the Timoshenko crime scene and provided all available trace information to the NYPD within hours of recovery of the firearms. ATF has no record of any other trace request in connection with the Timoshenko shooting other than the submission and immediate return of successful trace information to NYPD.

3. What, if anything in the Tiahrt amendment prevents the ATF from sharing aggregate trace data about a particular FFL with a requesting jurisdiction?

RESPONSE: The Tiahrt Amendment does not prohibit ATF from sharing with law enforcement aggregate trace data. However, it has long been ATF's policy not to disseminate trace data which includes information such as the retail FFL or the first retail purchaser. This type of data is law enforcement sensitive and would have the potential to jeopardize ongoing investigations.

4. Language that passed the Senate Appropriations Committee earlier this year introduces two new restrictions on the sharing of trace data on firearms: (1) an explicit prohibition on law enforcement entities sharing trace data with each other; and (2) a provision requiring law enforcement officials to certify, under penalty of prosecution, that they will not use trace data requests for interdiction efforts or other trend analysis. Do you support the passage of these additional restrictions?

RESPONSE: The Shelby Amendment does not prohibit sharing among and between law enforcement agencies because the Amendment contains the following caveat, "That nothing in the previous proviso shall be construed to prevent the sharing or exchange of such information among and between Federal, State, tribal, local or foreign law enforcement agencies or Federal, State, or local prosecutors, or national security, intelligence, or counterterrorism officials, provided that such information, regardless of its source, is shared, exchanged, or used solely in connection with bona fide criminal investigations or bona fide criminal prosecutions or for national security or intelligence purposes."

The Department of Justice does not believe that the "certification" language included in the Shelby Amendment imposes any new or additional requirement on law enforcement. The Gun Control Act (GCA), 18 U.S.C. 923(g)(7) allows ATF to seek trace data only in connection with a bona fide criminal investigation. As a result, there has always been a requirement that law enforcement trace requests to ATF also be connected to a legitimate law enforcement investigation. In recognition of the GCA requirement, ATF's trace request form requires the requesting agency to enter an NCIC crime code in connection with its trace request. That requirement is a form of certification that is already part of the trace process. If a law enforcement officer presently falsifies information on the trace data request form, he or she could be subject to prosecution under 18 U.S.C. 1001 in the same manner as anyone who lies on a federal form in any context. That is true under the current trace process, and is completely independent of any appropriations language.

5. In your estimation, to what extent would the passage of the two additional restrictions described above affect the ATF's ability to slow the movement of illegal guns through the country?

RESPONSE: For the reasons set forth in the response to the previous question, I do not believe that these provisions would have any significant effect on ATF's enforcement efforts.

6. On May 2, 2007, you wrote in the Boston Herald that "Once a requesting agency receives sensitive trace data from ATF, it becomes the agency's data to share with other law enforcement entities as it deems appropriate." Are your comments compatible with the additional restrictions on information sharing that appears in the language, described above, that has passed the Senate Appropriations Committee?

RESPONSE: For the reasons set forth in the Response to Question 4, I believe that the proposed Senate amendment is compatible with ATF's position on local law enforcement agencies sharing information with other local law enforcement agencies.

In addition, I would greatly appreciate answers to the following:

7. Does the existing Tiahrt amendment language prohibit the ATF from sharing aggregate information dealing with the tracing of weapons from a particular state, which were recovered in a particular jurisdiction?

RESPONSE: I believe that ATF is authorized to provide aggregate trace data to requesting jurisdictions, including information on top source states for firearms recovered in a particular jurisdiction.

8. To what extent has the amount or type of information provided to jurisdictions pursuant to trace data reports changed since the passage of the Tiahrt amendment?

RESPONSE: The types of information included in the reports has not substantially changed. Although trace studies or reports were not disseminated during 2002-2007, there were several reasons for that result, including budgetary constraints.

9. To what extent does the issuance of such reports conflict the current Congressional appropriations restrictions imposed by the Tiahrt amendment? If there is no conflict, what in your or the ATF's analysis leads to that conclusion?

RESPONSE: I do not believe that the Tiahrt Amendment prohibits the publishing of reports. In every appropriation since the inception of the Tiahrt Amendment in 2003, Congress has also enacted language requiring that ATF Tracing Studies contain a disclaimer to make it clear that trace data cannot be used to draw broad conclusions about firearms-related crime (See, e.g., Section 621 of the Science, State, Justice, Commerce, and Related Agencies Appropriations Act of 2006, P.L.109-108). The inclusion of this provision indicates that ATF may publish tracing studies.