

**ATF Director Confirmation Hearing
Questions for the Record
for
Senator Durbin**

The following are submitted as responses to questions for the record from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Director Confirmation Hearing:

1. Mr. Jones, crime gun tracing is one of the most important tools that law enforcement can use to help solve crimes. I have urged every law enforcement agency in Illinois to report the guns they recover in crimes to ATF for tracing to determine where that gun was first sold at retail and to generate leads for criminal investigations. As more crime gun tracing takes place, law enforcement can also better understand trends and patterns in criminal gun trafficking.

While thousands of law enforcement agencies regularly report their crime guns to ATF for tracing, there are many agencies that do not do so - even though ATF's eTrace system is free and easy for law enforcement agencies to use. I plan to introduce legislation to incentivize all law enforcement agencies to trace 100 percent of their recovered crime guns. **Will you work with me to promote this goal of 100 percent crime gun tracing among state and local law enforcement agencies?**

RESPONSE: Yes. Crime gun tracing is a cornerstone of ATF's strategic plan. ATF is committed to assisting all law enforcement agencies in tracing 100 percent of their recovered firearms. As of June 19, 2013, there are 4,722 law enforcement agencies throughout the United States that have direct access to ATF's eTrace application. According to the Department of Justice Bureau of Justice Statistics there are a total of 17,985 recognized law enforcement agencies in the United States. Firearms tracing significantly assists law enforcement in solving violent crimes and generating thousands of leads that may otherwise be available. By tracing firearms recovered by law enforcement authorities, ATF is able to discern patterns of names, locations, and weapon types. This information provides invaluable leads that aid in identifying persons engaged in the diversion of firearms into illegal commerce, linking suspects to firearms in criminal investigations, identifying potential traffickers, and detecting intrastate, interstate, and international patterns in sources.

2. Mr. Jones, just so it is clear to anyone unfamiliar with crime gun tracing, can you explain how ATF's crime gun tracing system is not a national registry of lawfully-owned firearms?

RESPONSE: ATF does not maintain any type of national firearms registry and is prohibited by statute from doing so. ATF only traces firearms for law enforcement agencies where the firearm is involved or suspected to have been involved in a crime. During data entry into the Firearms Tracing System (FTS), the law enforcement officer must enter a "crime code" or the system will not permit the trace to

proceed. These limitations on data input ensure that only firearms associated with a bona fide investigation are traced. The data in the FTS is not part of a national firearms registry, and is limited to information necessary for tracing crime guns as authorized under the Gun Control Act (GCA). The Government Accountability Office (GAO) has addressed this very issue in a comprehensive report and concluded that the FTS was not a violation of either the GCA or ATF's appropriation restriction. See GAO Report "Federal Firearms Licensee Data: ATF's Compliance with Statutory Restrictions" (GAO/GGD 96-174), dated September 11, 1996.

3. Mr. Jones, the gun lobby and its allies in Congress often criticize ATF for not doing enough to enforce the gun laws on the books. However, when it comes to straw purchasing – which is one of the main ways that criminals get guns – the laws on the books are terribly weak. Under current federal law straw purchases can only be prosecuted as paperwork offenses, and it is difficult to get a conviction and rare to see a significant sentence imposed. **Would it help crack down on gun crime if Congress created a tough federal straw purchasing statute instead of the current paperwork offense?**

RESPONSE: Yes. The trafficking of firearms to violent criminals, gangs, and drug trafficking organizations, whether into our cities or across the Southwest border, presents a grave threat to public safety. Straw purchasers, individuals without a criminal record who purchase firearms for drug dealers, violent criminals, firearms traffickers, and prohibited persons are the linchpin of most firearms trafficking operations. Straw purchasers, often acquiring a relatively small number of firearms in each transaction, make it possible for firearms traffickers to effectively circumvent the background check and recordkeeping requirements of Federal law, ultimately putting guns into the hands of criminals. Under current law, there is no statute specifically directed at straw purchasing. Instead, prosecutors rely primarily on 18 U.S.C. § 922(a)(6), which prohibits making a material false statement, typically on a Firearms Transaction Record, ATF Form 4473, in connection with the purchase of a firearm from a Federal Firearms Licensee (FFL), and 18 U.S.C. § 924(a)(1)(A), which prohibits making a false statement with regard to any information that FFLs are required by law to keep on file. These violations are often perceived as technical "paperwork" violations, which result in penalties that are too low to serve as a meaningful deterrent, provide for consistent and proportionate sentences, or genuinely account for the violence associated with gun trafficking. Due in large part to the low penalties they face, defendants arrested for straw purchasing or related conduct have little or no incentive to cooperate with law enforcement. This lack of cooperation frustrates efforts to identify other members and leaders of trafficking schemes, and build cases against those individuals and their organizations. A tough federal straw purchasing statute with meaningful penalties and a broad forfeiture provision would encourage straw purchasers to cooperate with law enforcement, deter future straw purchasers, and deprive drug trafficking and violent criminal organizations of the proceeds they use to acquire additional weapons or otherwise support their illicit activities.

4. Mr. Jones, it has come to light that guns can be manufactured almost entirely out of plastic using 3-D printer technology. While these guns typically can only be fired once or a few times before breaking, they pose serious security concerns because they can pass unnoticed through metal detectors.

The Undetectable Firearms Act of 1988 requires that guns contain a certain amount of metal in them so that they can be noticed by metal detectors. However, this law expires at the end of 2013. **What would be the risk of harm if this law is not re-authorized? How would airports, courthouses, schools, and government buildings be vulnerable to undetectable weapons?**

RESPONSE: ATF has been working closely with the FBI, U.S. Secret Service and TSA on 3-D printing of plastic firearms and the risks to public safety posed by these undetectable firearms. Since these firearms cannot be detected by metal detectors, they increase the risk that would-be assassins, terrorists and murderers would be able to bring these firearms through security at our nation's airports, courthouses, schools and legislative bodies in order to commit acts of violence. When Congress passed the original Undetectable Firearms Act of 1988, technologies such as 3-D printing did not exist, and self-manufactured plastic firearms were only a theoretical risk. Today that risk is real. These firearms can be made by individuals using existing technology that can be purchased or leased. We believe it is likely this technology will improve as time advances allowing individuals to make more sophisticated undetectable firearms.

5. Mr. Jones, when we last met in my office we discussed the work that ATF is doing on the ground fighting crime in neighborhoods in Chicago, East St. Louis, Rockford and elsewhere in Illinois. We discussed how ATF has long been used as a punching bag by the gun lobby and its allies in Washington, but whenever you talk to state and local law enforcement agencies who are facing armed criminals on the streets, they are glad to have ATF there by their side. **I want to thank you and the brave men and women of the Chicago ATF Field Division for the work they are doing in Illinois to fight violent crime, and ask if there are additional steps Congress can take to assist in the fight against violent gun crime in Illinois.**

RESPONSE: As I referenced in my testimony at the confirmation hearing, ATF is facing an unprecedented attrition rate in its Special Agent population. By 2017, approximately 40 percent of ATF's Special Agent population will be retirement eligible. The President's FY 2014 budget proposal contains essential additional resources for ATF Special Agent hiring. These resources would allow ATF to begin hiring new Special Agents next year, and allow us to use our existing highly-experienced Senior Agent cadre to help train and mentor those new agents, before we lose to retirement those Senior Agents and their wealth of knowledge. ATF Special Agents are the core of our criminal investigative processes. ATF Special Agents work side by side with State and local law enforcement, such as the Chicago Police Department and the Illinois State Police, and

the local US Attorneys' Offices, to combat violent crime and enhance public safety. Absent budget support to address Special Agent attrition, the resulting decrease in our Special Agent population would lessen our ability to deploy agents to the field to work closely with our state and local law enforcement partners. Experience has shown that these partnerships are among the most effective means of curbing violent crime. Hence, the need for Congressional support for additional hiring resources for ATF in FY 2014 and ensuing years is essential to assisting the fight against violent firearm crime in cities like Chicago and throughout the nation.

6. Mr. Jones, like all federal law enforcement agencies ATF has been impacted by the budget sequester.

a. **Is the sequester impacting ATF's ability to help combat gun crime in Illinois?**

RESPONSE: Yes. ATF's FY 2013 budget was reduced by \$58 million due to sequestration, and contributed to an overall decrease of \$82 million in resources this year. As a result, ATF has been unable to hire Special Agents as vigorously as needed and has deferred the hiring of hundreds of critical non-agent personnel. We have also been forced to cut back services provided through contractual support, and have reduced travel and professional development training. All resources provided to ATF are used to execute our primary mission of fighting violent crime. Therefore, sequestration, and any other resource reductions, will have a direct impact on ATF's ability to execute this mission. The priority of ATF is to work with state and local law enforcement for the positive advancement of public safety and violent crime reduction in our nation's communities. Dedication of ATF's resources is prioritized to enable the agency to best fight violent crime while other agency responsibilities may be disadvantaged. Furthermore, as mentioned in the response to Question 5 above, ATF is facing an unprecedented attrition rate in its Special Agent population. ATF Special Agents are the core of our criminal investigative processes. Sequestration has made Special Agent hiring very challenging. Therefore, additional hiring resources, such as those included in the President's FY 2014 budget proposal, are essential to assisting the fight against violent firearm crime in cities like Chicago and throughout the nation.

b. **Does ATF have the manpower it needs in Illinois and elsewhere to effectively investigate and fight gun crime?**

RESPONSE: I am mindful of the austere fiscal challenges facing the Department of Justice, and ATF continues to identify and adjust existing resources to maintain the absolutely essential law enforcement programs and services that we are charged with providing to the American people in the fight against violent crime. However, ATF's funding over the last decade has struggled to keep pace with the growing threats of violent gun crime, violent gangs, and illegal firearms trafficking. This has affected ATF's capacity to properly replace essential law enforcement equipment for Special Agents and surveillance technology, and to plan for the attrition of an increasingly aging Special Agent population. With respect to manpower, by 2017, approximately 40 percent of ATF's Special Agent population will be retirement eligible. The President's FY 2014 budget proposal contains essential additional resources for Special Agent hiring that

would allow for ATF to begin addressing essential attrition replacement hiring. These resources would allow ATF to begin hiring new Special Agents next year, and allow us to use our existing highly-experienced Senior Agent cadre to help train and mentor those new agents, before we lose to retirement those Senior Agents and their wealth of knowledge.