

Questions for the Record
Bureau of Alcohol, Tobacco, Firearms and Explosives
U.S. Department of Justice
“See Something, Say Something: Oversight of the Parkland Shooting and Legislative
Proposals to Improve School Safety”
Hearing Before the Committee on the Judiciary
United States Senate
March 14, 2018

Questions from Chairman Grassley

- 1. The FBI received several detailed tips in 2017 and 2018 about Nikolas Cruz and his propensity for violence. In fact, one such tip provided the FBI with the address and phone number of the individual Cruz was living with and information demonstrating Cruz’s violent tendencies, including the possibility he may shoot up a school. Despite this information, we know the FBI failed to take action, assuming the tip would be provided to local law enforcement with jurisdiction over the school. Although the FBI was the law enforcement agency that received the tip, in reviewing this tragedy, it is important to understand what ATF would have done had it been the agency to have received the information.**
 - a. What, if anything, would ATF have done differently had it been the agency that received information about an individual intending to commit a violent act with a firearm?**

Response:

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) shares information and intelligence pursuant to its jurisdiction with other law enforcement agencies, including those at the state, local, and federal levels through operational activities in the field, participation in fusion centers and various task forces. During field-based investigations, ATF interacts with other law enforcement agencies on a daily basis throughout the nation. ATF also facilitates information sharing with agencies at all levels of government through participation in various task forces, including Joint Terrorism Task Forces (JTTF), High Intensity Drug Trafficking Area (HIDTA) task forces, and many formed to address local and/or regional issues. On the national level, ATF shares information through intelligence and law enforcement centers such as the Organized Crime Drug Enforcement Task Force (OCDETF), International Organized Crime Intelligence and Operations Center, the National Joint Terrorism Task Force and others, especially relating to transnational organized crime and issues that may have a nexus to terrorism.

At the time of the Parkland shooting, ATF had well-established procedures in place to review and act on tips from the public and referrals from law enforcement partners about threats to public safety. Grounded in an analysis of best practices and lessons learned from actual events, these procedures were designed to ensure that ATF promptly assess and appropriately act upon information received about threats to public safety, particularly those involving firearms. Nevertheless, as Deputy Director Brandon testified at the hearing, following the Parkland

tragedy, he ordered a comprehensive review of ATF's procedures regarding tips to ensure that those procedures have not become outdated, and apply lessons-learned from the events prior to the Parkland shooting.

As a result of that comprehensive review, ATF determined that its procedures could be improved by centralizing responsibility for assessment and responding to tips in each field division's Crime Gun Intelligence Center (CGIC), and by leveraging new technologies. ATF promptly acted on this assessment, implementing updated protocols and policies, and developing and deploying a new electronic tip tracking system, "i-TIP." Deployed on March 5, 2018, i-TIP allows ATF to electronically document, disseminate, and track tips to ensure consistent and effective follow-through.

- b. Does ATF have any policies or protocols that would guide employees in deciding what actions to take if they receive such information? If yes, could you provide those policies to the Committee? If not, does ATF plan to develop policies?**

Response:

As Deputy Director Brandon testified at the hearing, the procedures ATF had in place prior to Parkland were designed to ensure its employees took appropriate, effective action when threat information was received. With respect to tips from the public, that process addressed direct tip calls received by agents in field offices, tip information received through ATF's national toll-free tip lines, e-mail and online tips, and text messages through a mobile device application deployed in 2016. A duty agent in each field division was designated to document, assess, and investigate tips directly received in the field, while the Joint Support and Operations Center, which is staffed 24/7, was responsible for handling tips received through e-mail and text messages and for all tips received after business hours and on weekends. As noted in response to Question 1a, above, since Parkland, ATF has further strengthened these procedures by centralizing responsibility for assessment and response to tips in each field division's CGIC, and by developing and deploying the i-TIP system. i-TIP provides ATF employees who receive threat information with a standardized, auditable electronic platform on which to document those tips, and it automatically routes the tip information to the appropriate ATF CGIC supervisor for review and analysis. ATF's updated protocols then require the CGIC to document the result of the assessment and take appropriate follow up action. These generally fall into three categories:

- the information is determined to not be credible (requiring a written explanation);
- the information is referred to an external agency (local, state, federal) for further investigation or action; or
- the information is referred to an ATF field office for further investigation or action.

When a tip is determined to be urgent, such as a credible school threat, ATF takes or requests immediate action to mitigate the threat.

Various law enforcement information portals (secure internet-based systems) provide ATF an additional mechanism to share information with other law enforcement agencies, especially those at the state and local levels. ATF owned systems include the Bomb Arson Tracking System (BATS), which allows agencies to share information about bombings, illicit activity related to explosives, arsons, and suspicious fires; GangNet, which provides information pertaining to criminal gangs; and eTrace, which provides the ability to initiate crime gun tracing and share that information as needed with other agencies. Systems managed by separate law enforcement entities, but regularly utilized by ATF, include: the Homeland Security Information Network (HSIN); Law Enforcement Enterprise Portal (LEEP); and the Regional Information Sharing System. Finally, ATF regularly participates in training seminars, where it shares mission related/investigative intelligence with other law enforcement agencies.

2. **During your opening statement to the Committee, you discussed ATF's development and deployment of a new electronic tip collection and dissemination tool named iTip. You stated that this tool was created following a review of ATF's existing procedures for receiving tips through each of its 25 field divisions and through its Joint Support and Operations Center (JSOC).**
 - a. **Are all 25 ATF field divisions currently using iTip as their primary means of collecting and disseminating tips? If not, how many of the field divisions have yet to implement the system, and when is it expected that all of the divisions will be in compliance with this new ATF policy?**

Response:

All ATF employees have access to submit i-TIP, including all 25 field divisions and Headquarters components. All 25 ATF field divisions are currently using i-TIP as their primary means of collecting and disseminating tips. As of November 1, 2018, all 25 ATF field divisions have entered approximately 2,300 i-TIP into the system.

- b. **Is the JSOC also utilizing iTip to collect and disseminate tips? If so, are the field divisions able to access information which was collected by the JSOC and vice versa? Or stated another way, are tips collected through the iTip system viewable and searchable by all 25 field divisions and the JSOC to ensure that each entity can search the data collected by the others; therefore, enabling one field division (or JSOC) to determine whether a name or other tip matches the name or information previously documented in iTip by another field division (or JSOC)?**

Response:

The Joint Support and Operations Center (JSOC) records all information received in the JSOC Daily Log and forwards the information to the appropriate field division. The field division is then required to record the information into the i-TIP system. The i-TIP system can be searched by keyword, field division, type of tip, and urgency of the tip. The field divisions and the JSOC can conduct searches.

Questions from Senator Durbin

3. **President Trump said he wants to issue a regulation banning bump stocks, which enabled the shooter in Las Vegas last October to fire 1,100 rounds in just a few minutes and turn a concert into a war zone. Attorney General Sessions recently announced that the Justice Department has submitted a notice of proposed regulation to the Office of Management and Budget to clarify that bump stocks should be considered as prohibited machine guns. However, on January 30, 2017, President Trump issued an executive order stating that when an agency promulgates a new regulation, the agency must identify at least two existing regulations to be repealed.**
- a. **Is it your understanding that if ATF issues a new regulation banning bump stocks, ATF will be required to identify two other regulations for elimination? Or has this two-for-one requirement been waived for this particular regulatory effort?**

Response:

The requirements of Executive Order 13771, including its “two for one” provision, will be addressed if and when a final rule addressing bump stocks is promulgated.

- b. **If the Trump Administration does require ATF to repeal two existing gun regulations on the books, which regulations would ATF consider repealing?**

Response:

We are not in a position to identify specific regulatory provisions as of this writing.

- c. **Is repealing existing ATF regulations on the books an effective strategy to reduce gun violence?**

Response:

Public safety is always a primary consideration whenever ATF takes any action to regulate or deregulate under the authority provided by the Gun Control Act.

- d. **Why hasn't the Trump Administration supported a legislative approach to banning bump stocks, rather than pursuing a regulatory route that might require the repeal of other existing regulations on the books?**

Response:

Questions concerning the Administration's legislative agenda is outside of ATF's purview.

4. **If ATF issues a bump stock regulation and the gun lobby brings a lawsuit challenging the regulation, is it your understanding that the Trump Administration will defend the regulation in court against the gun lobby's challenge?**

Response:

The Department of Justice routinely defends regulations against such challenges brought in court.

- 5. Does ATF have the resources to inspect all federally licensed gun dealers on an annual basis to ensure that they are following applicable laws and to ensure that their business practices are not leaving the dealer susceptible to straw purchases or gun thefts?**

Response:

ATF has approximately 615 field industry operations investigators (IOIs) who are responsible for conducting Federal Firearms and Explosives Licensee inspections. The Safe Explosives Act (SEA) of 2002 mandates that ATF inspect all Federal Explosives Licensees and Permittees (FEL/FEPs) at least once every three years. Given this statutorily required workload, ATF typically inspects 12 percent of Federal Firearms Licensees (FFLs) (dealers) annually.

- 6. Does ATF inspect every federally-licensed gun dealer in Illinois on an annual basis?**

Response:

ATF does not inspect every FFL in the State of Illinois on an annual basis. In Fiscal Year (FY) 2017, the State of Illinois had 2,407 active FFLs and 282 active FEL/FEPs subject to inspection. During this period, ATF's 13 IOIs in Illinois completed 721 compliance inspections on FFLs and FELs/FEPs in Illinois.

- 7. Does ATF have the authority to ensure that federally-licensed gun dealers have adequate training, security, and surveillance measures in place to prevent straw purchases and gun thefts?**

Response:

ATF does not have explicit authority under the Gun Control Act and its implementing regulations to compel FFLs to conduct training, implement security, or have surveillance in place to prevent straw purchases and gun thefts. However, ATF IOIs provide training to applicants for FFLs to help identify and stop straw purchases and discuss voluntary "best practices" to ensure the safety and security of the applicant's business premises during qualification inspections. IOIs provide additional training to help FFLs better prevent diversion of firearms and to ensure their firearms inventory is secure during compliance inspections. Additionally, ATF holds FFL seminars in each of its field divisions and works with firearms industry trade groups to promote voluntary measures that will help prevent FFLs from being victims of firearm thefts. An example of these efforts is Operation Secure Store. Operation Secure Store is a collaborative effort between ATF and the National Shooting Sports Foundation that seeks to educate and inform FFLs as to how they can enhance the security of their businesses to prevent firearms thefts. ATF has also implemented fflAlert, which is a program that notifies FFLs when a

robbery or burglary of an FFL has occurred in their area. All of these efforts are taken by ATF in recognition of its responsibility to work with the firearms industry to protect the public and reduce violent crime.

8. Should states promote better training, security, and surveillance at gun dealers in order to crack down on straw purchases, thefts, and other illicit gun sales?

Response:

ATF supports additional efforts to promote best practices among FFLs to prevent straw purchases, thefts, and illicit gun sales.

9. ATF reports that there were 577 burglaries from gun dealers in 2017 – a 71% increase since 2013. There were a total of 7,841 guns stolen from dealers in 2017 – a 133% increase since 2013. Since 2013, more than 27,000 guns have been stolen in gun dealer burglaries according to ATF statistics. Many of these guns are later recovered in crimes. I have introduced a bill called the SECURE Firearm Storage Act that would require federally-licensed gun dealers to secure all guns in their inventory when the stores are closed, either by putting them in a safe or fastening the guns to an anchored steel rod.

a. Do you agree that we need to do more to address the growing problem of thefts from gun dealers?

Response:

Investigations of thefts from FFLs are one of ATF's highest priorities. ATF supports additional efforts to promote best practices among FFLs to prevent thefts.

b. Will you commit to work with me on this issue?

Response:

Yes, we are happy to work with you to identify additional ways to address this issue.

Questions from Senator Klobuchar

10. I would also like to hear from you about the 2016 GAO report that found that it took longer to deny a firearm purchase because of a misdemeanor domestic violence conviction than for any other prohibiting category. I understand that the 6,700 cases in which firearms were transferred to people with misdemeanor domestic violence convictions as a result of these processing delays were later referred to ATF for the retrieval of those firearms.

What actions did ATF take in response to this, and how many of those firearms were recovered?

Response:

ATF views delayed denial transactions—those in which a prohibited person has actually obtained a firearm—as the cases posing the greatest public safety threat. By ATF policy, all delayed denials are researched and forwarded to the appropriate ATF field division’s National Instant Criminal Background Check System (NICS) Coordinator within 48 hours of receipt from the Federal Bureau of Investigation (FBI), as ATF may need to move promptly to recover a firearm that was transferred at the end of the three-day waiting period.

As noted in the Government Accountability Office (GAO) Report, approximately 6,700 delayed denials associated with “MCDV Records” were referred to ATF by the FBI. ATF’s NICS Referral Database contains 6,245 referrals for convictions for a misdemeanor crime of domestic violence and 537 referrals for open protection orders that were received from the FBI for possible firearms retrieval between FY 2006 and FY 2015. In an additional 95 investigations, ATF determined that no firearm transfer had occurred.

A review of summary data in ATF’s case management system indicates that in 5,266 instances, or 77.6 percent of the referrals, ATF seized or interdicted the firearm. In three percent of the instances, ATF was unable to locate the alleged offender and in 18 percent of the instances, ATF is unable to ascertain the final disposition without an in-depth manual research into the case management system.

ATF expends significant effort on achieving a quick response to all delayed denial investigations. The top priority in delayed denial investigations is ensuring that a prohibited person does not remain in possession of the transferred firearm. Upon confirming the prohibited status of the transferee, ATF takes immediate steps to locate the transferee and secure the firearm by either taking it into ATF custody, or otherwise ensuring the prohibited person relinquishes possession and control of the firearm (e.g., by returning the firearm to the FFL or transferring it to a non-prohibited person outside the prohibited person’s household).

Questions from Senator Blumenthal

11. Under 28 C.F.R. § 25.6(c)(1)(iv)(B), also known as the “default proceed” provision, a federal firearm licensee may proceed with a gun sale or transfer if the FBI does not complete the applicant’s NICS background check within 3 business days. For the following questions, please provide specific data for every month since January 2007:

- a. How many “firearm retrieval referrals” did the FBI forward to the ATF because the FBI determined, after the lapse of 3 business days, that an individual was prohibited from purchasing or possessing a firearm?

Response:

ATF received 540,725 NICS Denial Referrals from the FBI between October 1, 2012 and September 30, 2017, including 519,847 Standard Denials (no firearm was reported to be transferred) and 20,878 Delayed Denials (a firearm was transferred to an allegedly prohibited person). Further review of these delayed denials received by ATF showed that 15,416 may have involved a prohibited firearms transaction requiring further investigation.

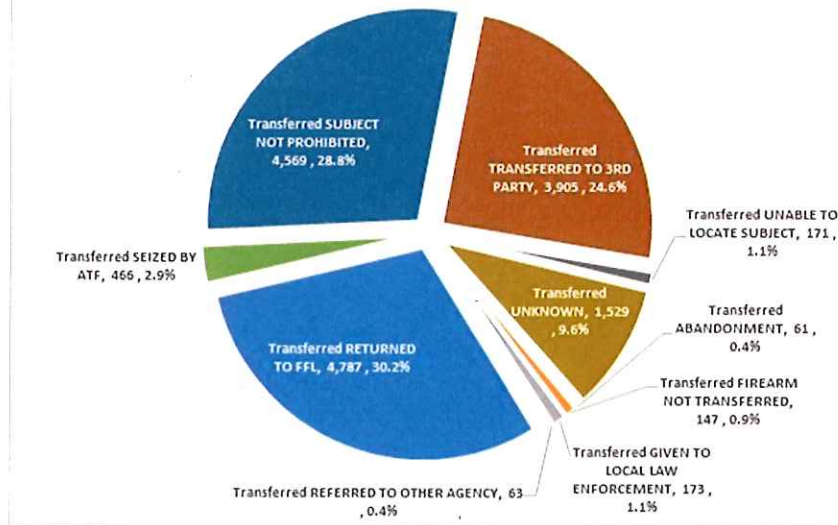
- b. How many firearms did the ATF actually retrieve from individuals who the FBI determined, after the lapse of 3 business days, were prohibited from purchasing or possessing a firearm?

Response:

ATF expends significant effort on achieving a quick response to delayed denial investigations. The top priority in delayed denial investigations is ensuring that a prohibited person does not remain in possession of the transferred firearm. Upon confirming the prohibited status of the transferee, ATF takes immediate steps to locate the transferee and secure the firearm by either taking it into ATF custody, or otherwise ensuring the prohibited person relinquishes possession and control (e.g., by returning the firearm to the FFL or transferring it to a non-prohibited person outside the prohibited person’s household).

Although ATF’s case management system does not afford the ability to track firearm retrievals by month, the attached spreadsheet depicts the final disposition of interdicted firearms based on the month and year the investigation was closed. This is our closest approximation to your request. Based upon a review of summary ATF investigative data, in 84 percent of all delayed denial investigations closed between October 2012 and September 2017, ATF has ascertained accountability for the involved firearm(s). Firearms that were initially taken into custody by ATF and subsequently released to a lawful possessor are reported according to their final disposition.

Interdiction of Firearms in Delayed Denial Investigations



- c. **Generally, how long does the process take for ATF to retrieve firearms from an individual who the FBI determined was prohibited from purchasing or possession of a firearm? This data does not need to be reported by month.**

Response:

ATF's case management system does not readily afford the ability to track the number of days between receipt of a delayed denial referral and "retrieval" of the firearm in question. As a general indicator, in the 15,852 delayed denial referral investigations that have been concluded during the aforementioned period, 51 percent were fully completed in under 30 days, and 73 percent were fully completed in less than 60 days.