

# **Exhibit A**

**(Part 1, Pgs. 1 - 674)**

**Bureau of Alcohol, Tobacco, Firearms, and Explosives**

	)	
	)	Docket No. ATF 2017R-22
<b>Bump-Stock-Type Devices</b>	)	
	)	RIN 1140-AA52
	)	

**Firearms Policy Coalition and Firearms Policy Foundation's  
Comments in Opposition to Proposed Rule ATF 2017R-22**

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**Bureau of Alcohol, Tobacco, Firearms, and Explosives**

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**Firearms Policy Coalition and Firearms Policy Foundation’s  
Comments in Opposition to Proposed Rule ATF 2017R-22**

On March 29, 2018, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF” or the “Agency”) published a Notice of Proposed Rulemaking (“NPR”) in the Federal Register at Volume 83, pages 13442 through 13457, to institute this rulemaking proceeding with respect to firearms regulated under the National Firearms Act (“NFA”), 26 U.S.C. §§ 5801-5872. ATF’s current regulations under the NFA are codified at 27 C.F.R. Part 479.

Firearms Policy Coalition (FPC) is a grassroots, non-partisan, 501(c)(4) public benefit organization. It is interested in this rulemaking because FPC’s mission is to protect and defend the Constitution of the United States and the People’s rights, privileges and immunities deeply rooted in this Nation’s history and tradition, especially the inalienable, fundamental, and individual right to keep and bear arms; to protect, defend, and advance the means and methods by which the People of the United States may exercise those rights, including, but not limited to, the acquisition, collection, transportation, exhibition, carry, care, use, and disposition of arms for all lawful purposes, including, but not limited to, self-defense, hunting, and service in the appropriate militia for the common defense of the Republic and the individual liberty of its citizens; to foster and promote the shooting sports and all lawful uses of arms; and to foster and promote awareness of, and public engagement in, all of the above and defend the Constitution of

the United States, especially the fundamental, individual Second Amendment right to keep and bear arms. In response to the NPR, FPC offers this public comment for consideration with respect to the proposed rule.

Firearms Policy Foundation (FPF) is a grassroots, non-partisan, 501(c)(3) public benefit organization. It is interested in this rulemaking because FPF's mission is to protect and defend the Constitution of the United States and the People's rights, privileges and immunities deeply rooted in this Nation's history and tradition, especially the inalienable, fundamental, and individual right to keep and bear arms; to protect, defend, and advance the means and methods by which the People of the United States may exercise those rights, including, but not limited to, the acquisition, collection, transportation, exhibition, carry, care, use, and disposition of arms for all lawful purposes, including, but not limited to, self-defense, hunting, and service in the appropriate militia for the common defense of the Republic and the individual liberty of its citizens; to foster and promote the shooting sports and all lawful uses of arms; and to foster and promote awareness of, and public engagement in, all of the above and defend the Constitution of the United States, especially the fundamental, individual Second Amendment right to keep and bear arms. In response to the NPR, FPF offers this public comment for consideration with respect to the proposed rule.

FPC and FPF oppose the proposed rulemaking for the reasons set forth below and in the Exhibits to this Comment incorporated herein by reference. For ease of reference and given that FPC's and FPF's interests are aligned, the use of "FPC" throughout this Comment incorporates or otherwise constitutes both FPC and FPF.

**I. PROCEDURAL IRREGULARITIES HAVE DENIED INTERESTED PERSONS A MEANINGFUL OPPORTUNITY TO COMMENT ON THE PROPOSED RULEMAKING**

ATF has repeatedly violated the basic obligations designed to permit *meaningful* public participation in this rulemaking proceeding. Despite efforts by FPC and other interested persons to encourage compliance with the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 501-559, other statutory provisions governing rulemaking, and fundamental due process, ATF has persisted on a course that ensures a waste of time and resources by all involved. It should be clear that ATF cannot proceed to promulgate a final rule without publishing a proper NPR and providing the necessary opportunity for *meaningful* public comment.

**A. *ATF Failed to Make Available the Underlying Determinations, Evidence and Other Information Upon Which It Purportedly Relied in Formulating its Proposed Rule***

On March 30, 2018, the day after ATF published NPR in this matter, Firearms Industry Consulting Group (“FICG”), on behalf of FPC, submitted an expedited FOIA Request “for all ATF determinations relative to devices referred to as ‘bump stocks’ and ‘bump-fire stocks’ by ATF in its proposed rulemaking (ATF 2017R-22, RIN 1140-AA52, Fed. Register No. 2018-06292 - <https://www.regulations.gov/document?D=ATF-2018-0002-0001>), as well as, all ATF Form 9310.3A ‘Correspondence Approval and Clearance’ forms relative to each determination, and any versions or drafts of the determinations, which were different than the final

determination” since ATF failed to include these, or any other “supporting documents,” in the docket folder.<sup>1</sup> See Exhibit 1.



As of the filing of this Comment, not only has ATF declined to make public any of the requested and necessary supporting documents – *especially its own determinations that bump stocks and bump-fire stocks do not constitute firearms, let alone machineguns*<sup>2</sup> – but has additionally failed to respond to FICG’s expedited FOIA or even assign a number to it.<sup>3</sup> Moreover, while acknowledging that it has received “correspondence[s] from members of the United States

<sup>1</sup> As reflected in the FOIA Request, “[t]he use of the word ‘determinations’ shall be understood to mean any correspondence, whether in electronic or paper form, by ATF to any person, which shall include any individual, Member of Congress, corporation, limited liability company, and partnership, regarding the lawfulness or unlawfulness of any bump stock or bump-fire stock device, whether a sample device was submitted or not to ATF.”

<sup>2</sup> ATF admits that there are at least “ten letter rulings between 2008 and 2017” (83 Fed. Reg. at 13445); none of which have been made available by ATF. 83 Fed. Reg. at 13445.

<sup>3</sup> FICG submitted its request on March 30, 2018. As is common practice for ATF, it has failed to comply with 5 U.S.C. § 552(a)(6)(A)(i).



Senate and the United States House of Representatives, as well as nongovernmental organizations, requesting that ATF examine its past classifications and determine whether bump-stock-type devices currently on the market constitute machineguns under the statutory definition” (83 Fed. Reg. at 13446), ATF has failed to also provide these in the docket.

As a result, ATF still has not provided any of the documents underlying the NPR either in the docket or in response to the FOIA request.

It has long been understood that “[t]he process of notice and comment rule-making is not to be an empty charade. It is to be a process of reasoned decision-making. One particularly important component of the reasoning process is the opportunity for interested parties to participate in a meaningful way in the discussion and final formulation of rules.” *Connecticut Light & Power Co. v. NRC*, 673 F.2d 525, 528 (D.C. Cir. 1982). “If the [NPR] fails to provide an accurate picture of the reasoning that has led the agency to the proposed rule, interested parties will not be able to comment meaningfully upon the agency’s proposals.” *Id.* at 530. Providing access to materials like FPC requested – in addition to those that ATF has acknowledged in the NPR as the basis for the rulemaking – has long been recognized as essential to a meaningful opportunity to participate in the rulemaking process.

The APA “requires the agency to make available to the public, in a form that allows for meaningful comment, the data the agency used to develop the proposed rule.” *American Medical Ass’n, v. Reno*, 57 F.3d 1129, 1132-33 (D.C. Cir. 1995) (quoting *Engine Mfrs. Ass’n v. EPA*, 20 F.3d 1177, 1181 (D.C. Cir. 1994)). In order to ensure that rules are not promulgated on the basis of data that to a “critical degree, is known only to the agency,” the agency must make available the “methodology” of tests and surveys relied upon in the NPR. *Portland Cement Ass’n v. Ruckelshaus*, 486 F.3d 375, 392-93 (D.C. Cir. 1973).

An agency commits serious procedural error when it fails to reveal the basis for a proposed rule in time to allow for meaningful commentary. *Connecticut Power & Light*, 673 F.2d at 530-31.

The notice and comment requirements

are designed (1) to ensure that agency regulations are tested via exposure to diverse public comment, (2) to ensure fairness to affected parties, and (3) to give affected parties an opportunity to develop evidence in the record to support their objections to the rule and thereby enhance the quality of judicial review.

*International Union, United Mine Workers of America v. Mine Safety & Health Admin.*, 407 F.3d 1250, 1259 (D.C. Cir. 2005).

In this rulemaking proceeding, ATF not only refused to make available its own prior determinations that “bump stocks”, “bump-fire stocks”, and “bump-stock-devices” were not firearms, *let alone*, machineguns, and communications received from Congress and other organizations, but more importantly, as discussed in Sections I., B., and IV., D., *infra*, ATF has failed to provide any evidence that a “bump stock”, “bump-fire stock”, or a “bump-stock-device” was ever utilized in a single crime. As the putative use of a bump stock in the Las Vegas shooting is the purported underlying basis for this rulemaking (83 Fed. Reg. at 13443, 13444, 13446, 13447, 13452, 13454) the lack of evidentiary support is mind-boggling – especially in light of legitimate national concerns involving the media and governmental agencies misleading the public on a variety of issues – and constitutes a serious procedural error, as the absence of such evidence supports that there are no verified instances of a bump stock being utilized criminally and neither ATF nor FBI have confirmed the use of a bump-stock-device in any crime.<sup>4</sup>

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<sup>4</sup> An expedited Freedom of Information Act request was submitted to both ATF and FBI requesting “Any and all records documenting the use of a bump-fire type stock being used by anyone on or about October 1, 2017 at the Mandalay Bay shooting incident in Las Vegas,  
(footnote continued)

The lack of access to these materials has seriously hindered the ability of interested persons to address everything that underlies the apparent unsupported assertions in the NPR. Bringing forth any such material in support of a final rule will do nothing to remedy the fact that those materials were not available to inform the interested persons preparing public comments. If ATF intends to take any further action relative to this rulemaking, it needs first to lay the foundation for a proposal and then expose that foundation to meaningful critique.

**B. *ATF Failed to Describe a Single Situation Illustrating the Problem it Purports to Address; The Entire Rulemaking Seems to Rest on Multiple False Premises***

In the docket, ATF failed to provide evidence of a single instance where a “bump stock” or “bump-fire stock” was confirmed to be utilized in the commission of a crime.<sup>5</sup> Even more disconcerting, in order to argue a putative benefit of this rulemaking, ATF relies on public comments from an ANPR, stating:

“As reported by public comments, this proposed rule would affect the criminal use of bump-stock-type devices in mass shootings, such as the Las Vegas shooting incident... Banning bump-stock-type devices *could* reduce casualties in an incident involving a weapon fitted with a bump-stock-type device, as well as assist first responders when responding to incidents, because it prevents shooters from using a device that allows them to shoot a semiautomatic firearm automatically.”

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(footnote continued)

Nevada; and Any and all records documenting the use of a bump-fire type stock used during the commission of any crime to date.” To date, neither ATF nor FBI has confirmed the use of a bumpfire stock in the commission of any crime. *See* “Analysis and Commentary Regarding: Docket Number: ATF 2017R-22 & Bump-Stock-Type-Devices”, ID: ATF-2018-0002-31210, Tracking Number: 1k2-93f3-s09b at 4 and 62 – 63, *available electronically at* – <https://www.regulations.gov/document?D=ATF-2018-0002-31210>, in “Email 013 (Historic Arms) rec 5-29-18 – Part4” as pdf pages 1 – 2.

<sup>5</sup> *Id.*

83 Fed. Reg. 13454 (emphasis added). These purported benefits are equally illusory and misleading. First, ATF presents no evidence that bump-stock-type devices have actually ever been used in any mass shooting incidents.<sup>6</sup> As further discussed *infra* in Section IV., D., even in relation to the Las Vegas incident upon which the NPR relies (83 Fed. Reg. at 13443, 13444, 13446, 13447, 13452, 13454), the Las Vegas Metropolitan Police Department Preliminary Investigative Report *only* indicates that some weapons were outfitted with bump-stock-type devices but provides no indication that any bump-stock-device was utilized. *See*, Exhibit 2.<sup>7</sup> Second, ATF contends that casualties *could* be reduced in such an incident without demonstrating that there have been *any* casualties attributable to the devices.<sup>8</sup> ATF has also failed to address the fact, as discussed in Sections IV., B. and C., that not only is a bump-stock unnecessary to bump-fire a firearm but that practiced shooters can match, *if not exceed*, the speed of a bump fire device, *with far superior accuracy*, unassisted by such a device. *See*, Exhibits 3 and 4.<sup>9</sup> Moreover, as stated by former ATF Acting Chief of FTB Rick Vasquez, “[a] factory semi-automatic

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<sup>6</sup> Interestingly, ATF relies solely on prior “public comments” to suggest that a bump stock device was utilized in Las Vegas (83 Fed. Reg. 13454), while thereafter declaring that bump stock devices “*could* be used for criminal purposes.” (83 Fed. Reg. 13455)(emphasis added). The use of the word “could” reflects that such use is a *possible* future, not past, occurrence. Thus, ATF is acknowledging that but for public conjecture, it has *no* evidence that a bump stock device has been utilized in a crime and only hypothesizes that a bump stock device “could be used for criminal purposes.” *See also* Fn. 4, *supra*.

<sup>7</sup> A copy of the report is also available online at – [https://www.lvmpd.com/en-us/Documents/1\\_October\\_FIT\\_Report\\_01-18-2018\\_Footnoted.pdf](https://www.lvmpd.com/en-us/Documents/1_October_FIT_Report_01-18-2018_Footnoted.pdf).

<sup>8</sup> Relying on nothing more than a “conclusory statement would violate principles of reasoned decisionmaking.” *Foundation on Economic Trends v. Heckler*, 756 F.2d 143, 154 (D.C. Cir. 1985); *see also Pearson v. Shalala*, 164 F.3d 650, 659 (D.C. Cir. 1999).

<sup>9</sup> Copies of the videos are also available online – Iraqveteran8888, Worlds Fastest Shooter vs Bump Fire! – Guns Reviews, YouTube (Oct. 13, 2014), <https://www.youtube.com/watch?v=JTb6hsSkV1w> and Miculek.com, AR-15 5 shots in 1 second with fastest shooter ever, Jerry Miculek (Shoot Fast!), YouTube (June 20, 2013) [https://www.youtube.com/watch?v=v3gf\\_5MR4tE&t](https://www.youtube.com/watch?v=v3gf_5MR4tE&t).

and fully-automatic (*i.e.* machinegun) firearm, manufactured by the same manufacturer, will have identical cyclic rates,<sup>10</sup> unless the machinegun version has some form of rate reducing mechanism; whereby, the machinegun version may have a slower cyclic rate than the semi-automatic version.” *See* Exhibit 32.<sup>11</sup> Thus, not only can an individual exceed the rate of fire of a bump-stock-device with greater accuracy, but an individual can equal, and sometime exceed, the rate of fire of an actual machinegun.

Third, as also addressed by the Savage Comment<sup>12</sup> and the Expert Declaration of Vasquez (*see* Exhibit 32), the technique of bump firing merely utilizes the recoil impulse that *all* semi-automatic firearms generate, every time the firearm discharges. More importantly, as discussed by the Expert Declaration of Vasquez and the Savage Comment, and reflected *infra* in Sections IV., A. and E., including as depicted in video exhibits related thereto, contrary to ATF’s interpretive jiggery-pokery in the NPR that

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<sup>10</sup> As expert Vasquez explains, “[t]he cyclic rate of a firearm is neither increased nor decreased by the use of a bump-stock-device, as the cyclic rate of a particular firearm is the mechanical rate of fire, which can be explained in laymen’s terms as how fast the firearm cycles (*i.e.* loads, locks, fires, unlocks, ejects), which is an objective, not subjective, mechanical standard.” *See* Exhibit 32.

<sup>11</sup> This was also addressed by Firearm Engineer Len Savage on page 2 of his Comment, where he declares that all semi-automatic firearms:

“can fire as fast as a machinegun version. Their cyclic rates are identical to the machinegun version. Their essential operating mechanisms are identical, same ammo, same mag[azines], same reciprocating mass. The only small physical difference is the machineguns described have a mechanical level that ‘automatically’ starts the new cycle as soon as the previously cycle ends. Some semiautomatic firearms can even fire faster than the full auto version because the machinegun versions having some form of rate reducing mechanism.”

*See* Analysis and Commentary Regarding: Docket Number: ATF 2017R-22 & Bump-Stock-Type-Devices, ID: ATF-2018-0002-31210, Tracking Number: 1k2-93f3-s09b, available *electronically at* – <https://www.regulations.gov/document?D=ATF-2018-0002-31210>, in “Email 013 (Historic Arms) rec 5-29-18”.

<sup>12</sup> *Id.*

bump-stock devices “convert an otherwise semiautomatic firearm into a machinegun by functioning as a *self-acting* or *self-regulating* mechanism” (83 Fed. Reg. 13443), in reality, a bump-stock-device is neither self-acting nor self-regulating and requires the trigger to be fully released, reset and fully pulled, before a subsequent round can be fired.

<sup>13</sup> To the extent ATF contends otherwise, then all semi-automatic firearms are “self-acting” or “self-regulating,” since, as discussed *infra* in Section IV., B., the technique of bump firing can be easily achieved solely with one’s finger while operating a *factory* semi-automatic firearm.

Thus, to the extent ATF contends that bump-stock-devices are self-acting, self-regulating or otherwise harness the recoil energy of the firearm, then *all* semi-automatic firearms are self-acting, self-regulating or otherwise harness the recoil energy of the firearm. Under the logic and contentions employed in the NPR, ATF would seemingly be entitled and empowered to regulate *all* semi-automatic firearms in the same manner as they seek to do for bump-stock devices, whereby all semi-automatic firearms could be reclassified by fiat, transmuted into unlawfully-posessed and proscribed contraband items, and, accordingly, force forfeiture (and provide for seizure) and destruction of these items,

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<sup>13</sup> As also addressed in the Expert Declaration of Vasquez:

The bump-stock-device does not permit automatic fire by harnessing the recoil energy of the firearm. Harnessing the energy would require the addition of a device such as a spring or hydraulics that could automatically absorb the recoil and use this energy to activate itself. If it did harness the recoil energy, the bump-stock equipped firearm in the video would have continued to fire, while the shooter’s finger remained on the trigger, after pulling it rearwards without requiring the shooter to release and reset the trigger and then pull the trigger completely reward for a subsequent round to be fired.

...

A firearm in a bumpstock/slidefire stock cannot be a machinegun because it requires an individual to activate the forward motion of the stock when the firearm is fired. Additionally, it requires a thought process of the individual to continually pull the trigger when the stock is pulled forward bringing the trigger into contact with the finger.

without any just compensation being paid—never-mind the statutes, let alone the Constitution.<sup>14</sup>

In fact, Eric Larson clairvoyantly published an article in March of 1998 in the Gun Journal, entitled *How Firearm Registration Abuse & the “Essential Operational Mechanism” of Guns May Adversely Affect Gun Collectors*, in which he raised concern over ATF banning all semi-automatic firearms through these types of “interpretations” of law. *See* Exhibit 24.

Fourth, ATF suggests that this rule will assist first responders by preventing shooters from using the devices; however, ATF does not elaborate on how exactly a firearm outfitted with a bump-stock-type device impedes first responders in any way that a differently configured firearm does not.

Finally, ATF laughably suggests that it is addressing a negative externality of the commercial sale of bump-stock-type devices. This negative externality is “that they could be used for criminal purposes.” 83 Fed. Reg. at 13449. This suggestion is not supported by any evidence aside from the unproven allegation of their use in the Las Vegas

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<sup>14</sup> If “the eight-year assault on . . . Second Amendment freedoms [came] to a crashing end” with President Trump’s election and inauguration, then a new assault on individual liberties and lawfully acquired and possessed private property apparently came to a crushing beginning in this NPR. *See, Trump at NRA convention: ‘Eight-year assault’ on gun rights is over*, Fox News, April 28, 2018, online at <http://www.foxnews.com/politics/2017/04/28/trump-at-nra-convention-eight-year-assault-on-gun-rights-is-over.html>. But the “President then directed the Department of Justice . . . to dedicate all available resources to complete the review of the comments received [in response to the ANPRM], and, as expeditiously as possible, to propose for notice and comment a rule banning all” bump-stock devices. Federal Register / Vol. 83, No. 61 at 13446 (NPR Section III). Indeed, it is difficult to reconcile President Trump’s statement that “[he] will never, ever infringe on the rights of the people to keep and bear arms,” *Trump at NRA convention, supra*, with the NPR. As the NPR admits, it a direct result of his *personal* directive to lawlessly seek an unlawful total, confiscatory ban on bump-stock devices (and criminalize the law-abiding people who possess them) in spite of the Executive Branch’s lack of legal and constitutional authority to do so.

incident. Further, any suggestion that a device responsible for substantial, and lawful, market activity should be banned because it has a *potential* to be used for criminal purposes is a mind-blowing and preposterous proposition that supports the banning of virtually all consumer products, such as vehicles (given the number of individuals who utilize them while unlawfully under the influence of drugs or alcohol and cause significant numbers of injuries and deaths <sup>15</sup>, and those who use them to carry out terrorist attacks). <sup>16</sup>

If the sole example ATF has to offer is the conjectured use of a bump-stock-equipped firearm during the Las Vegas shooting, there is simply *no evidence of any problem* that existing criminal law does not address, let alone a statistically-significant one. Murder is already unlawful, right? And if serious criminal laws have no meaningful *deterrent* effect, what then is the objective of this NPR, if not to subject law-abiding people who did not commit any crime to pain of criminal penalty and loss of their property?

**C. *ATF Failed to Permit a Ninety-Day Comment Period and Procedural Irregularities Have Denied Interested Persons a Meaningful Opportunity to Comment on the Proposed Rulemaking***

18 U.S.C. § 926(b) requires that ATF provide “not less than ninety days public notice,

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<sup>15</sup> “Every day, 29 people in the United States die in motor vehicle crashes that involve an alcohol-impaired driver. This is one death every 50 minutes. The annual cost of alcohol-related crashes totals more than \$44 billion.” *See, e.g., “Impaired Driving: Get the Facts”* (citing sources, internal footnotes omitted), Centers for Disease Control and Prevention, online at [https://www.cdc.gov/motorvehiclesafety/impaired\\_driving/impaired-driv\\_factsheet.html](https://www.cdc.gov/motorvehiclesafety/impaired_driving/impaired-driv_factsheet.html).

<sup>16</sup> *See, https://www.usatoday.com/story/news/2016/07/14/dozens-dead-nice-france-after-truck-plows-into-crowd-mayor-says/87101850. See also, http://abcnews.go.com/International/truck-hits-pedestrians-busy-barcelona-street/story?id=49272618.*



and shall afford interested parties opportunity for hearing, before prescribing such rules and regulations.”

*First and foremost, FPC demands, pursuant to Section 926(b) and ATF’s offer in the NPR (83 Fed. Reg. 13456),<sup>17</sup> that they be provided an opportunity to be heard at a hearing before ATF prescribes any rule or regulation in relation to this NPR.<sup>18</sup>*

In this rulemaking proceeding, numerous procedural irregularities and issues have arisen that have precluded the public a meaningful opportunity to respond and have caused some to believe that the comment period was closed, since the very start of the comment period; thus, depriving the public of the ninety day comment period that is required by law.

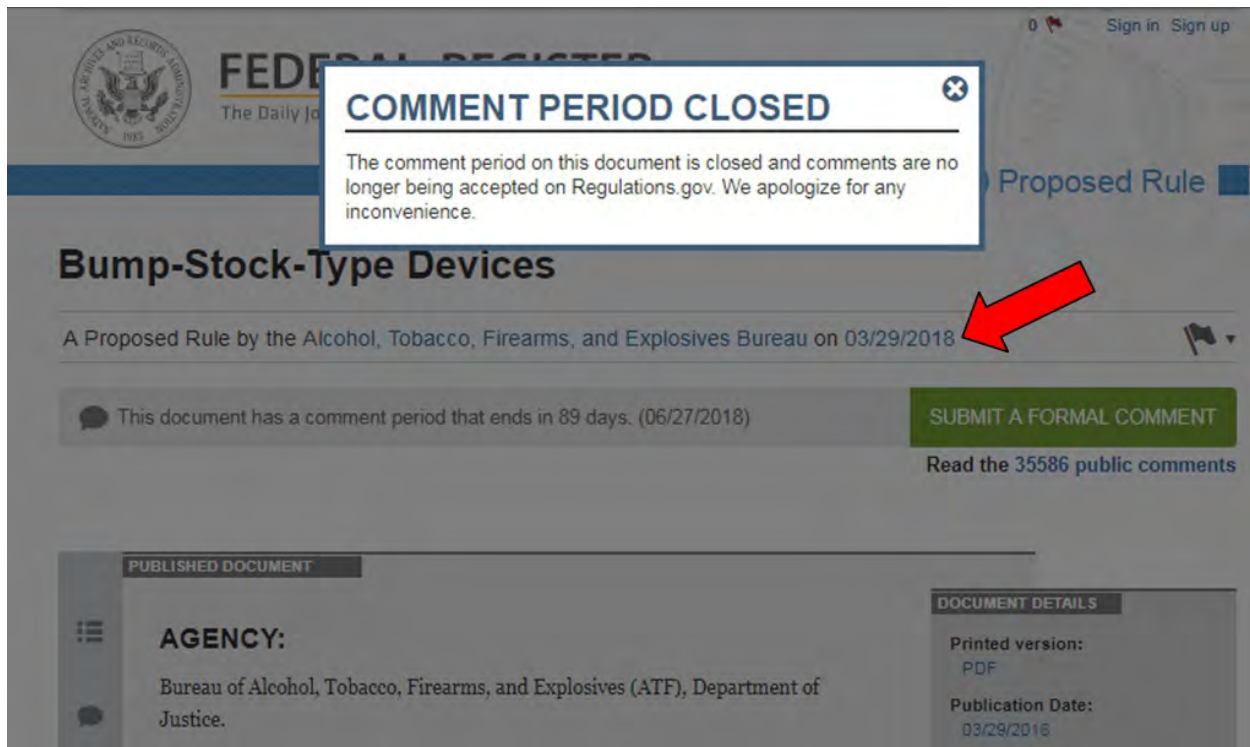
Immediately, upon the publication of the NPR on March 29, 2018, numerous individuals were advised on FederalRegister.gov<sup>19</sup> “COMMENT PERIOD CLOSED – The comment period on this document is closed and comments are no longer being accepted on Regulations.gov. We apologize for any inconvenience.”

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<sup>17</sup> Contrary to ATF’s assertion in the NPR that the Director of ATF has discretion in whether to grant a public hearing, Section 926(b) requires ATF to hold a public hearing when such is requested, as the statutory language provides that the Attorney General “*shall* afford interested parties opportunity for hearing, before prescribing such rules and regulations.” (Emphasis added). If it were discretionary, the Congress would have utilized a permissive word like “may” instead of the command “shall”.

<sup>18</sup> Although requesting a hearing in a comment is sufficient, based on the request in the NPR, a separate letter was sent to Acting Director Brandon on behalf of FPC requesting an opportunity to be heard at a hearing. *See* Exhibit 34.

<sup>19</sup> The specific link is <https://www.federalregister.gov/documents/2018/03/29/2018-06292/bump-stock-type-devices>



As is reflected in the above image, taken from the subject Web site, the notice that the comment period was closed was in relation to this proposed rulemaking regarding Bump-Stock-Type devices of “03/29/2018” and also reflects that the comment period was not supposed to end until “06/27/2018”; however, individuals were denied the opportunity to comment.

Even when individuals reached out online to the Federal Register regarding their inability to submit comments, the Federal Register responded by saying that it isn’t its problem <sup>20</sup>:

<sup>20</sup> It would seem that, at a minimum, the Federal Register’s Web site and social media accounts are managed by the same parties responsible for the [www.healthcare.gov](http://www.healthcare.gov) debacle that precluded individuals from being able to register for Obamacare, which led the Inspector General of the Department of Health and Human Services to issue a scathing report over the incompetence of those responsible. See <http://www.mcall.com/news/local/watchdog/mc-obamacare-website-failure-watchdog-20160224-column.html>.



But the procedural irregularities and issues didn't end there. On April 2, 2018, Carl Bussjaeger published an article, which was later updated, *[Update] Bumbling Machinations on Bump Stocks? See, Exhibit 5*.<sup>21</sup> In his article, he details the trials and tribulations of trying to find the appropriate docket, based on the NPR in this matter, and the differing number of comments putatively submitted and available for review between three separate dockets. When he submitted an inquiry to ATF regarding these issues, without explaining why there are three separate related dockets, ATF Senior Industry Operations Investigator Katrina Moore responded that he should use <https://www.regulations.gov/document?D=ATF-2018-0002-0001>; yet, ATF

<sup>21</sup> A copy of the article is also available online at – <http://zelmanpartisans.com/?p=5071>. See also, <http://zelmanpartisans.com/?p=5055>.

failed to relay that information to the public at large or place notices on the other two related dockets informing interested individuals of the location where they can submit their comments.

When other federal administrative agencies have failed to provide a statutorily mandated comment period or issues arose during the comment period, whereby the comment period was thwarted by technological or other delays, those agencies have extended the applicable comment periods. *See, e.g.,* Department of the Interior -- Fish & Wildlife Service, *Endangered and Threatened Wildlife and Plants; Extending the Public Comment Periods and Rescheduling Public Hearings Pertaining to the Gray Wolf (Canis lupus) and the Mexican Wolf (Canis lupus baileyi)*, 78 Fed. Reg. 64192 (Oct. 28, 2013); Environmental Protection Agency, *Extension of Review Periods Under the Toxic Substances Control Act; Certain Chemicals and Microorganisms; Premanufacture, Significant New Use, and Exemption Notices, Delay in Processing Due to Lack of Authorized Funding*, 78 Fed. Reg. 64210 (Oct. 28, 2013); Department of the Interior -- Fish & Wildlife Service, *New Deadlines for Public Comment on Draft Environmental Documents*, 78 Fed. Reg. 64970 (Oct. 30, 2013); Department of Labor -- Occupational Safety and Health Administration, *Occupational Exposure to Crystalline Silica; Extension of Comment Period; Extension of Period to Submit Notices of Intention to Appear at Public Hearings; Scheduling of Public Hearings*, 78 Fed. Reg. 35242 (Oct. 31, 2013); Department of Agriculture -- Food and Nutrition Service, *Supplemental Nutrition Assistance Program: Trafficking Controls and Fraud Investigations; Extension of Comment Period*, 78 Fed. Reg. 65515 (Nov. 1, 2013); Federal Communications Commission, *Revised Filing Deadlines Following Resumption of Normal Commission Operations*, 78 Fed. Reg. 65601 (Nov. 1, 2013); Federal Trade Commission, *Ganley Ford West, Inc.; Timonium Chrysler, Inc.; TRENDnet, Inc.; Pinnacle Entertainment, Inc.; Honeywell International, Inc.; Nielsen Holdings, Inc., et al.*;

*Polypore International, Inc.; Mylan, Inc., et al.; Actavis, Inc., et al.; Agency Information Collection Activities (Consumer Product Warranty Rule, Regulation O, Affiliate Marketing Rule)*, 78 Fed. Reg. 65649 (Nov. 1, 2013); Federal Communications Commission, *Revised Filing Deadlines Following Resumption of Normal Commission Operations*, 78 Fed. Reg. 66002 (Nov. 4, 2013). In this rulemaking proceeding, by refusing to extend the comment period and failing to notify interested parties of the correct docket for filing comments, ATF failed to mitigate the harm caused by these procedural irregularities and issues that were resultant from ATF's own conduct and actions. Thus, ATF has failed to provide the statutorily-mandated public comment period and caused public confusion as to whether or not the comment period was open or closed and the appropriate docket for the filing of comments. More disconcerting is that this is not the first time that ATF has acted in this manner during the rulemaking process.<sup>22</sup>

**D. ATF's Prior Lack of Candor Demonstrates a Heightened Need for Procedural Regularity**

The litany of procedural irregularities in this proceeding would undermine the efforts of an agency with a sterling reputation for fairness and candor. ATF has a well-documented record of "spinning" facts and engaging in outright deception of the courts, Congress, and the public. Many of the examples of such conduct arise precisely in the area of regulation of NFA firearms

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<sup>22</sup> See, Firearms Industry Consulting Group's comment in response to ATF-41P, RIN: 1140-AA43, available at <https://www.regulations.gov/document?D=ATF-2013-0001-8364>, wherein it documents in Section I the numerous procedural irregularities and issues that denied interested persons a meaningful opportunity to comment on the proposed rulemaking. For brevity, FPC incorporates into this Comment all exhibits attached to the Comment of Firearms Industry Consulting Group in the response to ATF-41P. All of Firearms Industry Consulting Group's exhibits in response to ATF-41P are available at <https://www.regulations.gov/document?D=ATF-2013-0001-8364>.

as detailed in the Motion in Limine filed in *United States v. Friesen*, CR-08-041-L (W.D. Okla. Mar. 19, 2009). *See* Exhibit 6. In light of that record, there is an even greater need for ATF to provide the underlying documents that would permit scrutiny of whether it has fairly characterized issues in the NPR, engaged in a fair consideration of alternatives, only inadvertently provided misleading information about its proposed rule in relation to the Las Vegas incident and operation of bump-stock-devices, omitted pertinent documents – especially its own determinations that bumpstocks were *not even firearms*, let alone, machineguns – from the docket only through an oversight, and only accidentally failed to provide a 90-day comment period.

1. *ATF's "Institutional Perjury" Before the Courts*

ATF's NFA Branch Chief, Thomas Busey, advised ATF employees in the course of a training program that the National Firearms Registration and Transfer Record ("NFRTR") database had an error rate "between 49 and 50 percent" in 1994. Exhibit 6, p. 14. Yet, despite acknowledging such a high error rate, he observed that "when we testify in court, we testify that the database is 100 percent accurate. That's what we testify to, and we will always testify to that." *Id.* Judges have overturned their own imposition of criminal convictions upon learning of this information, *see, e.g., id.*, pp. 16-17, information that should have routinely been provided to defense counsel in advance of trial as *Brady* material.<sup>23</sup> *See also id.*, p. 6. It is difficult to imagine a more powerful admission that an agency had knowingly, repeatedly misled courts.

This blatant "institutional perjury" took place not only in the context of criminal prosecutions but also in support of numerous probable cause showings for search warrants.

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<sup>23</sup> In *Brady v. Maryland*, 373 U.S. 83 (1963), the Supreme Court required that government investigators and prosecutors provide criminal defendants with potentially exculpatory information.

Indeed, NFA Branch Chief Busey expressly addressed that situation. Despite acknowledging an NFRTR error rate of 49 to 50 percent, he told his ATF audience “we know you're basing your warrants on it, you're basing your entries on it, and you certainly don't want a Form 4 waved in your face when you go in there to show that the guy does have a legally-registered [NFA firearm]. I've heard that happen.” *Id.*, p. 15.

Using data obtained from ATF in response to FOIA requests, Eric M. Larson demonstrated that ATF apparently had added registrations to the NFRTR years after the fact, reflecting the correction of errors apparently never counted as errors. *Id.*, pp. 21-28. While reassuring courts as to the accuracy of the NFRTR, at the same time ATF seemed to be adding missing information to the database when confronted with approved forms that had not been recorded in the database. *Id.*, pp. 26-28. As a result of the questions raised by Mr. Larson, both ATF and the Treasury Department Inspector General conducted investigations. *Id.*, pp. 29-31.

In the course of the resulting investigations, ATF's Gary Schaible recanted sworn testimony he had given years earlier in a criminal prosecution. *Id.*, pp. 30-33. The Inspector General's October 1998 report rejected Mr. Schaible's effort to explain away his prior sworn testimony, concluding: “National Firearms Act (NFA) documents had been destroyed about 10 years ago by contract employees. We could not obtain an accurate estimate as to the types and number of records destroyed.” *Id.*, pp. 32-33. It is difficult to understand how ATF could routinely provide Certificates of Nonexistence of a Record (“CNRs”) to courts without disclosing that an unknown number of records were destroyed rather than processed for the NFRTR.<sup>24</sup>

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<sup>24</sup> In *Friesen* itself, the prosecution introduced duplicate ATF records of the approved transfer of a NFA firearm (bearing the identical serial number), but differing in the date of approval.

(footnote continued)

## 2. *ATF's Deception in Congressional Oversight*

In response to a Congressional inquiry, a DOJ Inspector General advised that a request for documents that reflected errors in the NFRTR had been “fully processed” when, in fact, the documents had merely been sent to another component – ATF itself – so as to delay disclosure. *See Exhibit 6*, pp. 12-14. Moreover, ATF changed the meaning of terms like “significant” errors thereby frustrating any attempt to ascertain the true error rate. *See id.*, p. 19. So too, when a congressionally-mandated audit found a “critical error” rate in the NFRTR of 18.4%, the Treasury Department Inspector General seemingly manipulated audit procedures at the instigation of the NFA Branch so as to produce a more acceptable figure. *Id.*, pp. 35-39.

Congress remained sufficiently concerned about inaccuracies in the NFRTR to appropriate \$1 million (in Fiscal Years 2002 and 2003) for ATF to address remaining issues. *Id.*, p. 39. In 2007, however, Dr. Fritz Scheuren advised Congress that “serious material errors” continued to plague the NFRTR that ATF “has yet to acknowledge”. *Id.*, p. 41.

As recently as June 2012, failure to answer questions about ATF's botched “Fast and Furious” gun-walking operation prompted the House of Representatives to find Attorney General Holder in both civil and criminal contempt. *See Exhibit 7*.

## 3. *ATF's Misleading of the Public*

When, after a prolonged period of evasion, ATF finally produced a transcript of NFA Branch Chief Busey's remarks in the training session in response to FOIA requests, the transcript had been “corrected” by ATF's Gary Schaible to minimize damage to ATF. *See Exhibit 6*, p. 17.

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(footnote continued)

*Exhibit 6*, pp. 48-49. ATF could not explain the situation. *Id.*, p. 49. Nor could ATF find the original documents underlying the computerized entries. *Id.*, p. 52.



Among those corrections, Mr. Schaible asserted that he was unaware that any ATF employee had ever testified that the NFRTR was 100% accurate.

In order to frustrate public inquiries into the Waco Raid, ATF participated in a game of “shifting the paperwork and related responsibilities” among DOJ components and other law enforcement agencies. *Id.*, pp. 13-14.

Former Acting Chief of the NFA Branch, Mr. Schaible, testified that ATF repeatedly – in 2000, 2001, 2002, 2003, 2005, 2008 – approved NFA transfer forms without following procedures to update the information in the NFRTR. *See* Exhibit 8, pp. 398-414. The consequence of those failures was that members of the public received contraband machineguns accompanied by genuine ATF-approved forms indicating that the purchaser had acquired a legally-registered firearm, only to have ATF subsequently seize the machineguns from innocent purchasers.

\* \* \*

ATF’s long record of shading the truth to mislead courts, Congress, and the public, underscores the serious nature of the procedural irregularities in this rulemaking. In order to permit meaningful public participation, ATF must provide access to the materials it has placed in issue.

## **II. ATF’S PROPOSED RULE RAISES IMPORTANT CONSTITUTIONAL ISSUES**

Because judicial review of any final rule promulgated by ATF may consider not only compliance with the APA but also all alleged violations of the U.S. Constitution, *see, e.g., Porter v. Califano*, 592 F.2d 770, 780 (5<sup>th</sup> Cir. 1979), it is incumbent upon ATF to take such

considerations into account in this rulemaking proceeding.<sup>25</sup> Where, as here, agency rulemaking would inherently impact constitutional rights, that impact is among the matters the APA requires the agency to consider in evaluating regulatory alternatives and to address in a reasoned explanation for its decision. *See R.J. Reynolds Tobacco Co. v. FDA*, 696 F.2d 1205 (D.C. Cir. 2012); *Pearson v. Shalala*, 164 F.3d 650 (D.C. Cir. 1999).

#### **A. The Second Amendment**

Nowhere in the NPR did ATF demonstrate the slightest awareness that it is proposing to regulate in an area involving fundamental constitutional rights. Congress has not amended the NFA since the U.S. Supreme Court confirmed that “the Second Amendment conferred an individual right to keep and bear arms.” *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008). Consequently, it would seem exceptionally important for ATF to consider the background constitutional issues in formulating policy, particularly as ATF’s proposed rule would *outright ban* bump-stock devices, thereby burdening the exercise of this constitutional right held by law-abiding citizens. Where fundamental, individual constitutional rights are at issue, an agency engaged in rulemaking cannot rely on a conclusory assertion in order to “supplant its burden to demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree.” *Ibanez v. Florida Dep’t of Business & Professional Regulation*, 512 U.S. 136, 146 (1994). Yet, in direct defiance of this Supreme Court dictate, as discussed *supra* and *infra* in Sections I., B. and IV., D., ATF has failed to provide any evidence

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<sup>25</sup> Agency determinations with respect to constitutional issues, however, are not entitled to any deference on judicial review. *See J.J. Cassone Bakery, Inc. v. NLRB*, 554 F.3d 1041, 1044 (D.C. Cir. 2009) (*quoting Lead Indus. Ass’n Inc. v. EPA*, 647 F.2d 1130, 1173-74 (D.C. Cir. 1980)).

that (1) bump-stock devices have actually ever been used in the facilitation of a crime,<sup>26</sup> (2) that casualties *could* be reduced in an incident involving a bump stock, since there is no evidence demonstrating that there have been any causalities attributable to bump-stock devices, (3) that this rule will assist first responders, and (4) that “they could be used for criminal purposes” any differently than any other item that is currently available throughout the United States. Rather, ATF relies solely on the conclusory assertions of public comments to an Advanced Notice of Proposed Rulemaking to determine the benefits of the very rulemaking it is considering. In soliciting potential benefits from the public and suggesting them without evidence, ATF has run afoul of the words of wisdom contained in another decision issued by the Supreme Court stating that “[w]e are in danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change.” *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 416 (1922).

While ATF claims that this rule is necessary to carry out the will of Congress, as discussed *infra* in Section III., ATF lacks the authority to alter the definition of a machinegun as it was enacted by the Congress. Even Senator (and ranking member of the Senate Judiciary Committee) Diane Feinstein, the lead sponsor of the now-expired federal ban on so-called “assault weapons” and author or sponsor of voluminous other proposed gun control legislation, declared that “ATF lacks authority under the law to ban bump-fire stocks. Period.” *See*, Exhibit 9.

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<sup>26</sup> *See* Fns. 4, 6, *supra*.

## **Feinstein: Congress Shouldn't Pass the Buck on Bump-Fire Stocks**

Oct 11 2017

Washington—In response to comments by Speaker Paul Ryan (R-Wis.) saying that the Bureau of Alcohol, Tobacco and Firearms should address bump-fire stocks, Ranking Member of the Senate Judiciary Committee Dianne Feinstein (D-Calif.) today released the following statement:

"The ATF lacks authority under the law to ban bump-fire stocks. Period. The agency made this crystal clear in a 2013 letter to Congress, writing that 'stocks of this type are not subject to the provisions of federal firearms statutes.' Legislation is the only answer and Congress shouldn't attempt to pass the buck."

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Even a broken clock is right twice a day, and, similarly, Senator Feinstein is correct in her assessment of the ATF's lack of authority for its bump-stock NPR.

Furthermore, as discussed *supra* in Section I., A., ATF only states that it received correspondence from an undisclosed number of members and failed to place that/those correspondence(s) into the docket. The will of Congress cannot simply be derived from the writings of a small number of Senators or Representatives – especially writings outside of the legislative record – nor has it been in the past.<sup>27</sup>

While it is impossible to know for certain, given the NPR's dearth of analysis and discussion of the Second Amendment, it may well be that the ATF, without stating so, believes that the NPR does not violate the fundamental, individual right to keep and bear arms by considering bump-stock devices to be both "dangerous and unusual weapons" and "not commonly possessed by law-abiding citizens for lawful purposes today." *Caetano v. Massachusetts*, 136 S. Ct. 1027, 1031-1032 (2016). But as the Court recently reminded in

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<sup>27</sup> See Exhibit 10, pp. 4 – 5, also available at [https://perlmutter.house.gov/uploadedfiles/atf\\_response\\_04.16.13.pdf](https://perlmutter.house.gov/uploadedfiles/atf_response_04.16.13.pdf)

*Caetano*, the controlling rule set forth in *Heller* “is a conjunctive test: A weapon may not be banned unless it is *both* dangerous *and* unusual.” *Id.*, at 1031 (emphasis in original). However, ATF does not discuss these factors, and instead walks right past the necessary analysis (and the Court’s clear direction). The NPR fails to show that a bump-stock device is both “dangerous and unusual,” or even that it would materially affect the dangerousness of any firearm so equipped, which are already dangerous *per se*. The ATF’s proposed total ban self-evidently lacks necessary tailoring – indeed, its lack of tailoring underscores its overwhelming breadth – and amounts to the total destruction of the right of law-abiding people to keep and bear the affected items for self-defense and other lawful purposes.

## **B. *The Fifth Amendment***

ATF’s proposed rule violates the Due Process and Takings clauses of the Fifth Amendment to the U.S. Constitution by failing to provide notice to affected parties of a compelled forfeiture or destruction, entrapping otherwise law-abiding citizens, and failing to provide just compensation for the property in question.

### **1. *The Proposed Rulemaking Violates Due Process***

#### **i. ATF has Failed to Provide Notice and Opportunity to Response to All Interested Parties**

Although, as discussed *supra* in Section I., A., ATF has failed to place into the docket any of its prior ten determinations between 2008 and 2017 that bump-stock-devices *do not even*

*constitute firearms*, let alone, machineguns (83 Fed. Reg. at 13445), <sup>28</sup> it is admitted by ATF that it publicly approved of the bump-stock-type devices, which, per ATF (83 Fed. Reg. at 13451), is believed to have resulted in *over half a million* bump-stock-devices being produced and sold. Furthermore, to the extent the NPR applies to slamfire shotguns and firearms, Gatling guns, and triggers, there are tens of millions of such firearms and devices in private ownership. Yet, ATF has failed to provide individual notice to all those known to own or possess a bump-stock-device, let alone those owning or possessing slamfire shotguns and firearms, as well as, Gatling guns, and triggers; thereby, potentially depriving those individuals of an opportunity to respond, in direct violation of due process. As there can be no dispute, as discussed *infra* Section II., B., 1., i., that those owning and possessing bump-stock-devices and other firearms and devices covered by the NPR, have a vested property interest in their firearms and devices, ATF was required, at a minimum, to take all possible steps to identify those known to own or possess these firearms and devices and provide them, each, with notice of this rulemaking proceeding, since it directly affects their property interests.

ii. The Rulemaking Proposal Constitutes Entrapment Given ATF's Prior Approvals and Public's Reliance Thereon

Although ATF publicly approved bump-stock-devices on at least ten occasions between 2008 and 2017 (83 Fed. Reg. at 13445; *see also* Exhibit 10) and issued ATF Ruling 2004-5 <sup>29</sup> and Revenue Ruling 55-528, 1955-2 C.B. 482, in relation to Gatling guns, it now seeks to severely criminalize the possession of those very same bump-stock-devices – and potentially

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<sup>28</sup> FPC believes that they have found three of the ten determinations that were issued between 2008 and 2017, which are attached as Exhibit 10. *See also*, <https://www.cbsnews.com/news/can-the-atf-regulate-bump-stocks-the-device-used-by-the-las-vegas-shooter/>; [https://perlmutter.house.gov/uploadedfiles/atf\\_response\\_04.16.13.pdf](https://perlmutter.house.gov/uploadedfiles/atf_response_04.16.13.pdf).

<sup>29</sup> Available at <https://www.atf.gov/file/83561/download>

“slamfire” shotguns and firearms, Gatling guns, and triggers – at the expense of law-abiding individuals who have relied on those determinations, followed appropriate procedures and complied with the law. This sudden change in position after eight years of reliance by the public on determinations to the contrary, clearly constitutes entrapment since the agency invited reliance on its consistent decisions and now seeks to unfairly impose criminal penalties for the public’s reliance, with potential punishment of 10 years imprisonment, pursuant to 18 U.S.C. § 924(a)(2). As declared by the U.S. Supreme Court, “[e]ntrapment occurs only when criminal conduct was the ‘product of the creative activity of law-enforcement officials.’ . . . a line must be drawn between the trap for the unwary innocent and the trap for the unwary criminal.” *Sherman v. United States*, 356 U.S. 369, 372 (1958) (internal citation omitted). The Court continued that it is unconstitutional for the Government to beguile an individual “into committing crimes which he otherwise would not have attempted.” *Id.* at 376. In this matter, by changing the definition of a machinegun, ATF seeks to entrap citizens who have simply purchased a federally-approved firearm accessory. Thus, ATF has set a trap with, by their own estimate, the potential to ensnare 520,000 law-abiding citizens;<sup>30</sup> whereby, those law-abiding citizens can be imprisoned for up to 10 years, without even receiving individual notice of ATF’s reversal of position. 83 Fed. Reg. 13451.

## 2. *The Proposal Constitutes a Taking Without Just Compensation*

### i. The Fifth Amendment Precludes a Regulatory Taking

ATF’s proposed rule will force law-abiding citizens to forfeit or destroy their lawfully

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<sup>30</sup> The actual number may be significantly larger – possibly triple or quadruple the stated number – depending on all the firearms and devices to which the NPR applies, as discussed *supra* and *infra*.

purchased, owned, and possessed property, in violation of the Fifth Amendment. The Takings Clause of the Fifth Amendment to the U.S. Constitution provides that when private property, real or personal, is taken or destroyed by the government, the government must pay just compensation to the person(s) whom the property was taken from. *Horne v. Dep't of Agric.*, 135 S. Ct. 2419, 2425-28 (2015) (applying Takings Clause to personal property); *Pumpelly v. Green Bay & Mississippi Canal Co.*, 80 U.S. 166, 177 (1871) (applying Takings Clause to destroyed property not used for public purpose). The general rule states that a regulatory action constitutes a taking under the Fifth Amendment when the action goes *too far* in regulating private property. *Mahon*, 260 U.S. at 415. Moreover, the Supreme Court has declared that “[a] ‘taking’ may be more readily found when the interference with property can be characterized as a physical invasion by government, than when interference arises from some public program adjusting the benefits and burdens of economic life.” *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 124 (1978). As this regulation is clearly not meant to adjust the benefits or burdens of economic life, the compelled forfeiture or destruction of bump-stock-devices and other firearms and devices covered by the NPR constitutes a physical invasion and taking by government; and therefore, ATF must address and provide for the payment of just compensation to each individual who would be deprived of their property under the NPR.

As reflected in the Verified Declaration of Damien Guedes, he purchased a Bump Fire Systems’ bump-stock-device, only after ensuring the legality of the device and relying on ATF’s determination to Bump Fire System that the device was lawful and did not constitute a machinegun. *See* Exhibit 15. Matthew Thompson, likewise, issued a Verified Declaration stating that he purchased a Slide Fire bump-stock-device, only after ensuring the legality of the device and relying on ATF’s determination to Slide Fire that the device was lawful and neither



constituted a firearm nor a machinegun. *See* Exhibit 16. Thus, both Mr. Guedes and Mr. Thompson, in reliance on ATF's prior determinations, purchased bump-stock-devices, which ATF now seeks to reclassify<sup>31</sup> as a machinegun – in violation of the *ex post facto* clause of the U.S. Constitution, discussed *infra* – and seeks to force their surrender or destruction of the bump-stock-devices, in the absence of just compensation,<sup>32</sup> all in violation of the takings clause of the U.S. Constitution.

Since ATF failed to address the takings aspects of this proposed rule, including, as discussed *supra* and *infra*, its potential application to shotguns and firearms that are capable of “slamfiring”, as well as, Gatling guns, and triggers, interested parties have been denied meaningful review of ATF's position in this regard; however, to the extent ATF contends that an individual would lack a possessory interest in a bump-stock-device and other firearms and devices covered by the NPR as a result of the proposed rule being enacted, the U.S. Supreme Court has already held that while an individual may lose his/her possessory interest in a firearm or other tangible or intangible object, the individual does not lose his/her property or ownership interest in the object. *Henderson v. United States*, 135 S.Ct. 1780, 1785 (2015) (holding that even where an individual is prohibited from purchasing and possessing firearms, he/she still retains a property interest in firearms previously acquired.). Furthermore, as the proposed rule constitutes a *per se* taking, the Government must provide just compensation. *Nixon v. United States*, 978 F.2d 1269, 1284 (D.C. Cir. 1992). Thus, even if ATF enacted the proposed rule, it would still be responsible for paying just compensation to each person deprived of his/her property.

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<sup>31</sup> *See* 83 Fed. Reg. 13348, where ATF acknowledges that the proposal is a reclassification.

<sup>32</sup> As reflected in the declarations, Mr. Guedes paid a total of \$105.99 for his bump-stock-device and Mr. Thompson paid a total of \$134.00 for his bump-stock-device.

ii. Cost-Impact Statement Fails to Address Just Compensation for the Taking

Once again, ATF has denied interested individuals meaningful review and opportunity to comment by failing to address the economic impact when factoring in the just compensation that it is constitutionally-obligated to pay law-abiding citizens, who own bump-stock-devices and other firearms and devices covered by the NPR, if it proceeds with the proposed rule. While ATF provides detailed tables concerning the anticipated economic loss to producers, retailers, and consumers, the proposed rule fails to provide information on how the Government will fulfill its obligation to compensate affected individuals for the taking. As reflected in the proposal, ATF assumes “an average sale price for bump-stock-devices from 2012-2017 [of] \$200.00,” while acknowledging that the prices ranged from \$179.95 to \$425.95. 83 Fed. Reg. 13451. The proposal then declares the primary estimated cost to be \$96,242,750.00 based on ATF’s primary estimate of 520,000 bump-stock-devices having been produced. *Id.* However, multiplying ATF’s stated average price of \$200.00 by the primary estimate yields a value of \$104,000,000.00, not \$96,242,750.00 as stated in Table 3. Moreover, by averaging the acknowledged prices for bump-stock-devices, a proper average sale price should be \$302.95, which would result in a primary estimated cost of \$157,534,000.00 in just compensation being due. Additionally, both estimated costs may be grossly under-estimated given ATF’s proposed changes to 27 C.F.R. § 447.11 and 27 C.F.R. 478.11, since they would seemingly include any device – inclusive of rubber bands and belt loops. More disconcerting, as mentioned on page 6 of the Savage Comment,<sup>33</sup> the proposed rule would seemingly apply to hundreds of thousands, if not millions, of shotguns and

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<sup>33</sup> See “Analysis and Commentary Regarding: Docket Number: ATF 2017R-22 & Bump-Stock-Type-Devices”, ID: ATF-2018-0002-31210, Tracking Number: 1k2-93f3-s09b at 4 and 62 – 63, available electronically at – <https://www.regulations.gov/document?D=ATF-2018-0002-31210>, in “Email 013 (Historic Arms) rec 5-29-18 ” as pdf pages 1 – 2.

other firearms, which are capable of “slamfiring”<sup>34</sup> which would constitute “firing without additional physical manipulations of the trigger by the shooter.” It would also seemingly overrule – without any notice and opportunity to comment – ATF Ruling 2004-5<sup>35</sup> and Revenue Ruling 55-528, 1955-2 C.B. 482, in relation to Gatling guns and result in reclassification of their status – *i.e.* turning the millions of owners into felons overnight and without just compensation being provided. Given that the price, per Gatling gun, can be as high as \$124,000.00, if not more, the reclassification of Gatling guns would result in a substantial upward calculation of the cost estimate in this matter.

How much is a Gatling gun?		
Narrow Your Search		
Item	Title Click Headers to Sort	Price
771029939	Colt 1874 Camel Gatling gun (C9743)	\$124,000.00
770122834	REAL- WORKING GATLING GUN FULLY- FUNCTIONAL 45 LC	\$6,995.00
770033106	Colt 1877 Bulldog 10 Barrel Gatling Gun Carriage NEW Wood Never Touched the Ground! CGG1877HS	\$55,000.00
35 more rows		
Gatling Gun For Sale – Buy a Gatling Gun Online at GunBroker.com <a href="https://www.gunbroker.com/Gatling-Gun/Browse.aspx?Keywords=Gatling+Gun">https://www.gunbroker.com/Gatling-Gun/Browse.aspx?Keywords=Gatling+Gun</a>		

<sup>34</sup> See Colton Bailey, *Slam Fire Shotgun? This One Shoots Multiple Rounds Without Releasing The Trigger*, Wide Open Spaces, (Feb. 13, 2017), available at <http://www.wideopenspaces.com/slam-fire-shotgun-shoots-multiple-rounds-without-releasing-the-trigger>.

<sup>35</sup> Available at <https://www.atf.gov/file/83561/download>.

Even more disconcerting, as discussed *infra* in Section V., given ATF's argle-bargle and interpretive jiggery-pokery, the NPR can be construed as applying also to triggers and fingers,<sup>36</sup> which again, would result in a skyrocketing upward calculation of the cost estimate in this matter.

Regardless of the estimate considered, ATF has failed to address any appropriations available to it or, more generally, the Department of Justice to fund these takings and any such fund, if limited solely to bump-stock-devices, must have a high estimate of \$221,494,000.00 (\$425.95 x 520,000) available to ensure that all individuals are justly compensated. If, on the other hand, the proposal will apply to shotguns and other firearms capable of "slamfiring", as well as Gatling guns, triggers and fingers,<sup>37</sup> there must be an allocation of no less than \$50,000,000,000,000.00.

Thus, before ATF can proceed in this matter, it must provide logistical information as a part of its cost-impact statement detailing how it plans to pay compensation including, but not limited to, the compensation rate, timeline for completing payment, source of the funding, and sequestration of an appropriate amount in an account restricted to paying just compensation in this matter. Thereafter, it must provide interested parties with a meaningful opportunity to respond, which, per 18 U.S.C. § 926(b), cannot be shorter than ninety days.

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<sup>36</sup> The average value under state and federal workers compensation acts across the U.S. for the loss of an index finger is \$24,474.00, with the federal value being \$86,788.00. Accordingly, as a federal rate is set, at a minimum, ATF would be required to utilize this value. *See* Exhibit 31, also *available at* - <https://projects.propublica.org/graphics/workers-compensation-benefits-by-limb>.

<sup>37</sup> With there being between 270,000,000 and 310,000,000 gun owners in the U.S. (*see* <http://www.pewresearch.org/fact-tank/2013/06/04/a-minority-of-americans-own-guns-but-just-how-many-is-unclear>), the takings alone in relation to fingers, utilizing the low 270 million gun owner estimate, would be \$23,432,760,000,000.00 or 270,000,000 x \$86,788.00.

**C. *The Ex Post Facto Clause***

Pursuant to Article 1, Section 9, Clause 3 of the U.S Constitution, “No Bill of Attainder or ex post facto Law shall be passed.” The U.S. Supreme Court in *Calder v. Bull*, 3 U.S. 386 (1798) held that an *ex post facto* law includes, *inter alia*, “[e]very law that makes an action done before the passing of the law, and which was innocent when done, criminal; and punishes such action.” The Court later recognized that the provision reached far enough to prohibit any law which, “in relation to the offence or its consequences, alters the situation of a party to his disadvantage.” *Collins v. Youngblood*, 497 U.S. 37, 47 (1990).

1. *ATF’s Proposal Acknowledges that Bump-stocks are not Covered by the Definition of a Machinegun and Retroactively Criminalizes Lawful Conduct*

On at least two occasions in the proposed rulemaking, ATF acknowledges that the current definition of a machinegun does not cover bump-stock-type devices<sup>38</sup> that it now seeks to regulate. 83 Fed. Reg. 13444, 13448. ATF then explicitly declares that if the final rule is consistent with the proposal, there will be no mechanism for current holders of bump-stock-type devices – or any other firearm or device covered by the NPR – to register them and will therefore be compelled to dispose of them. 83 Fed. Reg. 13448. There is no dispute, and ATF readily admits, that its proposed rule would change the definition of a machinegun; thereby, affecting numerous sections of federal law and immediately turning, *at a minimum*, half a million law-abiding citizens into criminals overnight. ATF’s proposal neither includes a grandfather provision nor a safe harbor, even for a limited period of time. More disconcerting – as if such

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<sup>38</sup> It likewise does not cover rubber bands, belt loops, slamfire shotguns and firearms, Gatling guns, triggers, or fingers.

were fathomable in anything but an Orwellian nightmare – is the fact that those possessing bump-stock-devices will have no knowledge of whether any final rule will be implemented, the text of that rule, and the date, as the final rule would become effective immediately upon the signature of Attorney General Sessions, without prior publication to the public. But that’s no big deal, right? It’s only 10 years in jail and \$250,000.00, per violation. Thank God that Article 1, Section 9, Clause 3 precludes such.<sup>39</sup>

Just as there can be no dispute that the current definition of machinegun does not cover bump-stock-devices, rubber bands, belt loops, “slamfire” shotguns and firearms, Gatling guns, triggers, and fingers, as evidenced by the proposed rule seeking to modify the regulatory definition of machinegun, there can be no dispute that the proposed rule violates the *ex post facto* Clause, even though it is a regulatory action because the “sanction or disability it imposes is ‘so punitive in fact’ that the law ‘may not legitimately be viewed as civil in nature.’” *United States v. O’Neal*, 180 F.3d 115, 122 (4th Cir. 1999) (quoting *U.S. v. Ursery*, 518 U.S. 267, 288 (1996)).

### **III. ATF’S PROPOSAL EXCEEDS ITS STATUTORY AUTHORITY**

From the outset, it is clear that the NFA was designed to provide a basis for prosecution of “gangsters” with untaxed, unregistered firearms and not as a regulation of law-abiding citizens who complied with the law. ATF has turned the statutory scheme on its head, imposing ever more draconian burdens on law-abiding citizens who seek to make and acquire NFA firearms

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<sup>39</sup> FPC make this statement pursuant to their First Amendment rights under the U.S. Constitution to the extent that ATF has not seemingly sought to abrogate that inalienable right in the NPR, although ATF has declared its intent, in violation of the First Amendment, not to consider comments containing what it deems to be “inappropriate language” for which FPC will vigorously challenge in court.

while diverting resources to do so from investigating and prosecuting criminals who use illegal means to obtain NFA firearms.

ATF describes the NFA in terms that go beyond the statutory text. According to ATF's Website, the NFA's "underlying purpose was to curtail, *if not prohibit*, transactions in NFA firearms." <http://www.atf.gov/content/firearms/firearms-industry/national-firearms-act> (emphasis added). It describes the \$200 tax imposed by the NFA as having been designed "to discourage *or eliminate* transactions in these firearms." *Id.* (emphasis added). But Congress has never "prohibited" NFA firearms or "eliminated" the ability to transfer them provided the tax is paid and registration procedures are followed.

#### **A. Congress Prohibited "Undue or Unnecessary" Restrictions**

Congress has, in fact, legislated to *limit* the authority of ATF to impose more burdens on law-abiding citizens. Congress was aware of ATF's over-zealous interpretation of the NFA when it enacted the Firearms Owners' Protection Act ("FOPA"), Pub. L. 99-308, 110 Stat. 449 (1986). It would be an understatement to say that Congress thought ATF had reached the maximum boundary of its rulemaking and enforcement authority. Well aware of ATF's history, as discussed *supra* in Section I., D., made clear in FOPA that ATF's regulation and enforcement activities of *legal* owners of firearms – like those who seek to register firearms under the NFA – had already gone too far. Congress found that not only were statutory changes needed to protect *lawful* owners of firearms, but that "enforcement policies" needed to be changed as well. FOPA § 1(b). In doing so, Congress reaffirmed that "it is not the purpose of this title to place *any undue or unnecessary* Federal *restrictions or burdens* on law-abiding citizens with respect to the acquisition, possession, or use of firearms," *id.* (emphasis added), signaling in the strongest

possible language that ATF should not impose yet additional burdens on law-abiding citizens, especially in light of the existing criminal laws prohibiting, *inter alia*, murder, manslaughter, aggravated assault, *etc.* Yet, that is precisely what ATF's proposed rule would do.

**B. *Independent of FOPA, ATF Lacks Statutory Authority As the Congress Defined What Constitutes a Machinegun***

Even without consideration of FOPA, there are ample reasons to doubt that Congress authorized ATF to formulate the proposed regulation, as Congress, itself, defined what constitutes a machinegun when enacting the NFA in 1934 and the GCA in 1968 and numerous members of Congress have stated that ATF lacks the authority to redefine what constitutes a machinegun. As an administrative agency cannot override a congressional enactment, ATF lacks authority and jurisdiction to amend or otherwise modify the definition of a machinegun as enacted by the Congress.

In the original NFA as enacted in 1934, and reaffirmed in enacting the GCA in 1968, the Congress expressly defined what constitutes a machinegun. 18 U.S.C. § 921(a)(23) states “[t]he term ‘machinegun’ has the meaning given such term in section 5845(b) of the National Firearms Act (26 U.S.C. 5845(b)).” 26 U.S.C. § 5845(b) declares:

The term “machinegun” *means* any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person.

(Emphasis added).



ATF proposes to expand the definition of what a “machinegun” means by adding the following two sentences to the end of the current definition found in 27 C.F.R. §§ 478.11 and 479.11.<sup>40</sup>

For purposes of this definition, the term “automatically” as it modifies “shoots, is designed to shoot, or can be readily restored to shoot,” means functioning as the result of a self-acting or self-regulating mechanism that allows the firing of multiple rounds through a single function of the trigger; and “single function of the trigger” means a single pull of the trigger. The term “machine gun” includes bump-stock-type devices, i.e., devices that allow a semiautomatic firearm to shoot more than one shot with a single pull of the trigger by harnessing the recoil energy of the semiautomatic firearm to which it is affixed so that the trigger resets and continues firing without additional physical manipulation of the trigger by the shooter.

83 Fed. Reg. 13457.

And, lest there be no dispute, even Senator Diane Feinstein declared that “ATF lacks authority under the law to ban bump-fire stocks. Period.” *See* Exhibit 9. And ATF previously admitted to Congress that it “does not have authority to restrict [bump-stock devices’] lawful possession, use or transfer.” *See* Exhibit 10, p. 5. More importantly, as confirmed by J. Thomas Manger, President of the Major Cities Chiefs Association and Chief of Police of Montgomery County, in his testimony before the Senate Judiciary Committee, ATF Acting Director Thomas Brandon admitted that “ATF does not now have the authority under Federal law to bar [bump-stock-devices] and *new legislation is required to do so.*” *See* Exhibit 30, p. 3 (emphasis added).

And the courts have agreed that such an alteration is beyond the power of ATF. “As a rule, [a] definition which declares what a term ‘means’ ... excludes any meaning that is not stated.” *Colautti v. Franklin*, 439 U.S. 379, 392–393, n. 10, 99 S.Ct. 675, 58 L.Ed.2d 596 (1979). Congress clearly defined the meaning of the term “machinegun” as evidenced by its use of the

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<sup>40</sup> The definition of “machinegun” contained in 27 C.F.R. §§ 478.11 and 479.11 mirrors the definition Congress gave the term in 26 U.S.C. § 5845(b).

phrase “[t]he term ‘machinegun’ *means*.”<sup>41</sup> Even if ATF could define the terms “automatically” and “single function of the trigger”, which is disputed, ATF lacks the authority to unilaterally declare an item to be a machine gun when it falls outside the statutory parameters, particularly by incorporating it into the definition itself.<sup>42</sup>

“If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.” *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-843 (1984).

“Congress knows to speak in plain terms when it wishes to circumscribe, and in capacious terms when it wishes to enlarge, agency discretion.” *City of Arlington, Tex. V. F.C.C.*, 569 U.S. 290, 296 (2013).

Here, there can be no question that the intent of Congress was clear. Congress sought to regulate firearms that: 1) shoot, 2) were designed to shoot, or 3) can be readily restored to shoot, 4) automatically more than one shot, without manual reloading, 5) by a single function of the trigger. This can be gleaned from an analysis of the debate surrounding the passage of the legislation. “Mr. Frederick.[] The distinguishing feature of a machine gun is that by a single pull of the trigger the gun continues to fire as long as there is any ammunition in the belt or in the magazine. Other guns require a separate pull of the trigger for every shot fired, and *such guns are not properly designated as machineguns*. A gun...which is capable of firing more than one shot by single pull of the trigger, a single function of the trigger, is properly regarded, in my

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<sup>41</sup> Even Dictionary.com defines the term “Machine Gun” to mean “a small arm operated by a mechanism, able to deliver rapid and continuous fire as long as the trigger is pressed.” Available at: <http://www.dictionary.com/browse/machine-gun>. ATF taking such a nuanced approach to parsing specific terms to shoehorn a particular group of accessories into the definition flies in the face of the statutory text’s plain meaning.

<sup>42</sup> See 18 U.S.C. 926(a) “The Attorney General may prescribe *only such rules and regulations as are necessary* to carry out provisions of this chapter...” (Emphasis added).

opinion, as a machine gun.” Exhibit 29, National Firearms Act: Hearings Before the Committee on Ways and Means, H.R. Rep. No. 9066, 73rd Cong. 2nd Sess. at 40 (1934) (emphasis added).

For the purposes of this analysis, a machinegun can be distilled down to: a firearm which shoots automatically more than one shot, without manual reloading, by a single function of the trigger. Congress also sought to regulate the frames or receivers of such weapons, along with any parts that could be used to make or convert a firearm into a machinegun. Such an interpretation is in line with prior court and agency decisions. *See Staples v. United States*, 511 U.S. 600 (1994) (“The National Firearms Act criminalizes possession of an unregistered ‘firearm,’ 26 U.S.C. § 5861(d), including a ‘machinegun,’ § 5845(a)(6), which is defined as a weapon that automatically fires more than one shot with a single pull of the trigger, § 5845(b).”); *see also Id.* at n1 (“As used here, the terms ‘automatic’ and ‘fully automatic’ refer to a weapon that fires repeatedly with a single pull of the trigger. That is, once its trigger is depressed, the weapon will automatically continue to fire until its trigger is released or the ammunition is exhausted. Such weapons are ‘machineguns’ within the meaning of the Act.”).<sup>43</sup>

Moreover, the Government has previously argued to a Federal Court that a bump-stock-device was not a machinegun. “While the shooter receives an assist from the natural recoil of the weapon to accelerate subsequent discharge, the rapid fire sequence in bump firing is *contingent*

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<sup>43</sup> *See also* ATF Rul. 2004-5 quoting George C. Nonte, Jr., *Firearms Encyclopedia* 13 (Harper & Rowe 1973) (the term “automatic” is defined to include “any firearm in which a single pull and continuous pressure upon the trigger (or other firing device) will produce rapid discharge of successive shots so long as ammunition remains in the magazine or feed device – in other words, a machine gun”); Webster’s II New Riverside-University Dictionary (1988) (defining automatically as “acting or operating in a manner essentially independent of external influence or control”); John Quick, Ph.D., *Dictionary of Weapons and Military Terms* 40 (McGraw-Hill 1973) (defining automatic fire as “continuous fire from an automatic gun, lasting until pressure on the trigger is released”).

*on shooter input* in pushing the weapon forward, rather than mechanical input, and is *thus not an automatic function of the weapon.*” See Exhibit 25, page 22.

The statutory language is explicitly clear as to what constitutes a machinegun and is inclusive of parts that can be used to assemble a functioning firearm. ATF acknowledges that bump-stock-devices are not currently able to be regulated as machineguns because it seeks to amend the definition to specifically include them and other firearms and devices covered by the NPR, discussed *supra* and *infra*. Notably absent from the statutory text is language, specifically or implicitly, naming parts that can be used in conjunction with a firearm, which is not a machinegun, to *simulate* automatic fire.

**C. *ATF is Statutorily Prohibited From Retroactively Applying the NPR***

ATF has acknowledged that it is precluded from taking any action with regard to the reclassification of bump-stock-devices manufactured prior to at least March 29, 2018. As noted in ATF Rul. 82-8, the reclassification of SM10 and SM11A1 pistols and SAC carbines as machineguns, under the National Firearms Act, was not applicable to those firearms manufactured before or assembled before June 21, 1982 pursuant to 26 U.S.C. § 7805(b). 26 U.S.C. § 7805(b) states:

Retroactivity of regulations.--

(1) In general.--Except as otherwise provided in this subsection, no temporary, proposed, or final regulation relating to the internal revenue laws shall apply to any taxable period ending before the earliest of the following dates:

(A) The date on which such regulation is filed with the Federal Register.

(B) In the case of any final regulation, the date on which any proposed or temporary regulation to which such final regulation relates was filed with the Federal Register.

(C) The date on which any notice substantially describing the expected contents of any temporary, proposed, or final regulation is issued to the public.

More recently, in enacting ATF-41F (81 Fed. Reg. 2658 through 2723), ATF seemingly invoked Section 7805(b) in declining to retroactively apply the final rule and instead permitting a six month delay in implementation of the final rule and acknowledging that all applications submitted prior to the effective date would be adjudged by the law as it existed prior to the final rule, regardless of whether the application was approved before the effective date of the final rule.

Thus, any final regulation that is promulgated has no effect on bump-stock-devices and other firearms and devices covered by the NPR, which were manufactured, at a minimum, prior to the date of publication of this NPR in the Federal Register.

#### **IV. ATF'S PROPOSAL IS ARBITRARY AND CAPRICIOUS**

Contrary to the contention in the proposed rulemaking, bump-firing is neither the result of any particular firearm accessory, device or part nor the modification thereof. Rather, it is a technique that can be utilized with the intrinsic capabilities of most *factory* semi-automatic firearms, including the rifles, such as the AR-15, and pistols, such as the 1911. As reflected *infra* and admitted by ATF (83 Fed. Reg. 13454), bump-firing can be done with a belt loop, a rubber band, or just one's finger. More importantly, no device – whether bump stock, belt loop, rubber band or finger – changes the intrinsic capability of the firearm to be bump-fired. This is made explicitly evident by Jerry Miculek, who can not only shoot faster than an individual employing bump-fire but can shoot far more accurately.<sup>44</sup>

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<sup>44</sup> See Exhibits 3 and 4.

Thus, the proposed rule in this matter is so completely arbitrary and capricious that it will not withstand scrutiny. *See, Motor Vehicle Manufacturers Association v. State Farm Auto Mutual Insurance Co.*, 463 U.S. 29, 42-44 (1983).

**A. *ATF's Interpretative Jiggery-Pokery is Pure Applesauce***

As reflected in the expert report of former ATF Acting Chief of the Firearms Technology Branch Rick Vasquez, bump-stock-devices do not constitute a machinegun, as they are not designed to shoot more than one shot by a single function of the trigger. *See* Exhibit 32. Specifically, he declares that a “Slide Fire [stock] does not fire automatically with a single pull/function of the trigger” and as a result, “ATF could not classify the slide fire as a machinegun or a machinegun conversion device, as it did not fit the definition of a machinegun as stated in the GCA and NFA.” *Id.* More importantly, although ATF has failed to disclose it in the NPR or docket, the Slide Fire determination “was sent to Chief Counsel and higher authority for review. After much study on how the device operates, the opinion, based on definitions in the GCA and NFA, was that the Slide Fire was not a machinegun nor a firearm, and, therefore, did not require any regulatory control.” *Id.*

Thus, regardless of the interpretative jiggery-pokery employed by ATF in the NPR, at the end of the day, it is pure applesauce.

**B. *Belt Loops, Rubber Bands and Fingers, OH MY!***

Reflecting the absolutely arbitrary and capricious nature of this rulemaking, ATF admits – albeit at the end of the proposal in the “Alternatives” section – that an individual does not require a bump-stock-device in order to bump-fire a factory semi-automatic firearm. 83 Fed.

Reg. 13454. In fact, ATF readily acknowledges that bump-firing can be lawfully achieved through the “use [of] rubber bands, belt loops, or [to] otherwise train their trigger finger to fire more rapidly,” in a clear statement of its intent to unequally apply the law. *Id.*

Numerous videos and articles are available reflecting individuals bump-firing with everything from their finger to belt loops and rubber bands. For example, P.M.M.G. TV posted a video in 2006 of a rubber band being utilized to bump fire a factory semi-automatic firearm. *See* Exhibit 11.<sup>45</sup> In 2011, StiThis1, posted a video of him utilizing his belt loop to bump-fire his AK-47. *See* Exhibit 12.<sup>46</sup>

More importantly, reflecting that no device is necessary to bump-fire a factory semi-automatic firearm, ThatGunGuy45 posted a video of him bump-firing an AK-47 style rifle with his finger. *See* Exhibit 13.<sup>47</sup> Similarly, M45 posted a video of him bump-firing both an AK-47 and AR-15 solely with his finger. *See* Exhibit 14.<sup>48</sup> In no better example, former ATF Acting Chief of the Firearms Technology Branch Rick Vasquez, who previously reviewed bump-stock-devices – specifically the Slide Fire bump-stock – while with ATF, after declaring that a bump-stock-device is not statutorily or regulatorily a machinegun,<sup>49</sup> demonstrates the

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<sup>45</sup> A copy of the video is also available online – Shooting Videos, *Rapid manual trigger manipulation (Rubber Band Assisted)*, YouTube (Dec. 14, 2006), [https://www.youtube.com/watch?v=PVfwFP\\_RwTQ&t](https://www.youtube.com/watch?v=PVfwFP_RwTQ&t).

<sup>46</sup> A copy of the video is also available online – StiThis1, *AK-47 75 round drum Bumpfire!!!*, YouTube (Sept. 5, 2011), <https://www.youtube.com/watch?v=-03y3R9o6hA>.

<sup>47</sup> A copy of the video is also available online – ThatGunGuy45, *‘Bump Fire’ without a bump-fire stock, courtesy of ThatGunGuy45*, YouTube (Oct. 13, 2017), [https://www.youtube.com/watch?v=-9fD\\_BX-af0&t](https://www.youtube.com/watch?v=-9fD_BX-af0&t).

<sup>48</sup> A copy of the video is also available online – M45, *How to bumpfire without bumpfire stock*, YouTube (Oct. 8, 2017), <https://www.youtube.com/watch?v=7RdAhTxyP64&t>. *See also*, wrbuford13, *How To: Bump fire a semi-automatic rifle from the waist*, YouTube (May 25, 2011), <https://www.youtube.com/watch?v=wZCO-06qRgY>.

<sup>49</sup> During his interview, he declares “[i]f Congress wants to change the law and come up with a new interpretation, then ATF will follow that new interpretation. But until they do that, they have to go by the [law] they have today.”

ability of a factory semi-automatic AR-15 and AK-47 to bump-fire solely with his finger. *See* Exhibit 17.<sup>50</sup> Expert Vasquez then goes on to declare, in response to a question of what if Congress bans bump-fire devices, “[w]hat are they going to ban? If they come out today and say the Slide Fire Stock or the binary trigger by name is made illegal, they’re going to have to make illegal the operating principle.” *Id.*

Beyond showing that the proposed rulemaking in this matter is completely arbitrary and capricious, as no device is even necessary to bump-fire a factory semi-automatic firearm, these videos and others that are available on YouTube and other social media platforms, reflect that law-abiding citizens have been bump-firing long before Al Gore invented the internet;<sup>51</sup> and yet, ATF cannot produce a single shred of evidence of a bump-stock-device *ever* having been utilized in a crime.

**C. *The Jerry Miculek Example – He’s One Bad Mother... Shut Your Mouth (And: Oh No! They Banned Jerry!)***

As mentioned *supra*, Jerry Miculek not only can shoot faster than an individual employing a bump-stock-device but can shoot far more accurately. *See* Exhibit 3 and 4.<sup>52</sup> Even more evident of the completely arbitrary and capricious nature of this proceeding is the video compendium of Mr. Miculek’s abilities and achievements, which depicts that “he did it. He did 8

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<sup>50</sup> A copy of the video is also available online – Vice News, *Meet One Of The Analysts Who Determined That Bump Stocks Were Legal*, YouTube (Oct. 11, 2017), <https://www.youtube.com/watch?v=kryIJrD5eQ&t>.

<sup>51</sup> It has to be true – he said it on live TV... <https://www.youtube.com/watch?v=BnFJ8cHAlco>.

<sup>52</sup> Copies of the videos are also available online – Iraqveteran8888, *Worlds Fastest Shooter vs Bump Fire!* – Guns Reviews, YouTube (Oct. 13, 2014), <https://www.youtube.com/watch?v=JTb6hsSkV1w> and Miculek.com, *AR-15 5 shots in 1 second with fastest shooter ever, Jerry Miculek (Shoot Fast!)*, YouTube (June 20, 2013) [https://www.youtube.com/watch?v=v3gf\\_5MR4tE&t](https://www.youtube.com/watch?v=v3gf_5MR4tE&t).



rounds in one second, on one target. He did 8 rounds on four targets in 1.06 [seconds]. Six shots and reload and six shots in 2.99 seconds.” *See* Exhibit 18.<sup>53</sup> Thus, as individuals can achieve, with greater accuracy, faster cyclic rates than those utilizing bump-stock-devices, the underlying premise of this proceeding is completely arbitrary and capricious.

More disconcerting is that to the extent ATF contends in the NPR that it is carrying out some unverified and unsupported contention of Congress to ban anything mimicking the rate of fire of a machinegun<sup>54</sup> (83 Fed. Reg. 13447) – a rate of which varies greatly<sup>55</sup> and neither has a commonly accepted average rate nor a proposed rate by ATF – Mr. Miculek would seemingly be banned by any final promulgated rule, in violation of his Constitutional Rights and reflecting the sheer absurdity of this NPR.

**D. *Whoops, We Did it Again! ATF Misleads the Public Regarding the Use of Bumpstock Devices in the Las Vegas Shooting***

As discussed *supra* in Section I., B., while implying that a bump-stock-device was utilized in the Las Vegas shooting, ATF has failed to provide evidence of a single instance where a bump-stock-device was utilized in the commission of a crime and neither ATF nor FBI have confirmed the use of a bump-stock-device in any crime. Instead, ATF relies solely on prior

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<sup>53</sup> A copy of the video is also available online – *Fastest Shooter OF ALL TIME! Jerry Miculek | Incredible Shooting Montage*, DailyMotion (2014), <https://www.dailymotion.com/video/x2yl8b8>.

<sup>54</sup> In fact, ATF’s assertion is contradicted by the testimony in enacting the NFA – previously cited to by ATF in federal court proceedings – which reflects the Congress’ intent that guns which “require a separate pull of the trigger for every shot fired, ... *are not property designated as machineguns*.” Exhibit 29, p. 40.

<sup>55</sup> For example, the Metal Storm gun has a cyclic rate of fire of 1,000,000 rounds (that isn’t a typo), per minute (*see*, <http://www.businessinsider.com/worlds-fastest-gun-2016-2>), a minigun has a rate of fire of 6,000 rounds, per minute (*id.*), and some have as slow of a cyclic rate as 200 rounds, per minute (*see*, <https://encyclopedia2.thefreedictionary.com/Cyclic+rate>).

“public comments,” which are merely conjecture, to suggest that a bump-stock-device was utilized in Las Vegas (83 Fed. Reg. 13454),<sup>56</sup> while thereafter declaring that bump-stock devices “*could* be used for criminal purposes.” (83 Fed. Reg. 13455)(emphasis added). The use of the word “could” reflects that such use is merely speculative and limited to a *possible* future, not past, occurrence. More importantly, as ATF is involved in the investigation into the Las Vegas shooting, it is in the unique position to have evidence reflecting the use of bump-stock-devices in the shooting, if such devices were utilized; yet, it has not only failed to submit any evidence even suggesting the use of bump-stock-devices in the Las Vegas shooting but has failed to even contend, based on its own knowledge, that such devices were utilized. Additionally, the Las Vegas Metropolitan Police Department Preliminary Investigative Report likewise provides no indication that any bump-stock-devices *were* utilized in the shooting. *See*, Exhibit 2.<sup>57</sup>

Thus, ATF acknowledges that but for public conjecture, it has *no* evidence or knowledge that a bump stock device has been utilized in a crime and only hypothesizes that a bump-stock device “could be used for criminal purposes.” Moreover, as discussed *supra* in Section I., D., based on ATF’s lack of candor before the courts, Congress, and the public, any contention by ATF that such devices were utilized in the Las Vegas shooting must be dismissed, in the absence of independently-verifiable evidence in support.

Further, ATF’s argument as to why they need to be regulated is misleading.

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<sup>56</sup> Given ATF’s prior use of proxies in rulemaking proceedings to support its contentions, these alleged “public comments” cannot be taken at face value, especially in the absence of any evidentiary support. *See* Firearms Industry Consulting Group’s comment in response to ATF-41P, RIN: 1140-AA43, available at <https://www.regulations.gov/document?D=ATF-2013-0001-8364>, wherein it documents in Section G the ATF’s use of proxies in rulemaking proceedings to support its own contentions.

<sup>57</sup> A copy of the report is also available online at – [https://www.lvmpd.com/en-us/Documents/1\\_October\\_FIT\\_Report\\_01-18-2018\\_Footnoted.pdf](https://www.lvmpd.com/en-us/Documents/1_October_FIT_Report_01-18-2018_Footnoted.pdf).

Commenters also argued that banning bump-stock-type devices will not significantly impact public safety. Again, the Department disagrees. The shooting in Las Vegas on October 1, 2017, highlighted the destructive capacity of firearms equipped with bump-stock-type devices and the carnage they can inflict. *The shooting also made many individuals aware that these devices exist—potentially including persons with criminal or terrorist intentions—and made their potential to threaten public safety obvious. The proposed regulation aims to ameliorate that threat.*

83 Fed. Reg. 13447. (Emphasis added).

This position is no more valid than asserting that drill presses and the internet need to be regulated because individuals with criminal or terrorist intentions can readily access a drill press to manufacture a machine gun after viewing a video on the internet, or even fabricate a firearm from a chunk of raw aluminum. (Nevermind the fact that a person can purchase ammonium nitrate and nitromethane, or pressure cookers, to build a bomb.) In the land of hypotheticals, anything and everything could be perceived to be and categorized as a potential threat to public safety. But a hypothetical should not and cannot be the premise of a proposed regulation.

**E. *We Lied To You Once (Shame On Us). We Lied To You More Times Than We Can Count (Shame On You For Having Your Eyes Wide Shut). The Continuing Lies Espoused By ATF Regarding The Functionality Of Bump-Stock-Devices***

In the Summary for the NPR, ATF claims that bump-stock-devices

allow a shooter of a semiautomatic firearm to initiate a *continuous firing cycle with a single pull of the trigger*. Specifically, these devices convert an otherwise semiautomatic firearm into a machinegun *by functioning as a self-acting or self-regulating mechanism* that harnesses the recoil energy of the semiautomatic firearm in a manner that *allows the trigger to reset and continue firing without additional physical manipulation of the trigger by the shooter*. Hence, a semiautomatic firearm to which a bump-stock-type device is attached is able to produce automatic fire with *a single pull of the trigger*.

83 Fed. Reg. 13442 (emphasis added).

Even setting aside former Acting Chief of the Firearms Technology Branch Richard Vasquez's expert report disputing ATF's current contention (discussed *supra* in Section IV., A.,

and Exhibit 28) and before addressing the video evidence of the outright falsity of these assertions, let us first review the known determinations issued by ATF and the sworn testimony and pleadings submitted by ATF to the courts regarding bump-stock-devices.

On June 07, 2010, ATF issued a determination letter to Slide Fire, holding that

The stock has *no automatically functioning mechanical parts or springs* and *performs no automatic mechanical function* when installed. In order to use the installed device, *the shooter must apply constant forward pressure with the non-shooting hand and constant rearward pressure with the shooting hand*. Accordingly, we find that the “bump-stock” is a firearm part and is not regulated as a firearm under the Gun Control Act or the National Firearms Act.

See Exhibit 10 (emphasis added.)

Thus, ATF has already admitted that the Slide Fire stock does not operate automatically and is neither self-acting nor self-regulating. But what about Bump Fire Systems’ bump-stock-device? Glad you asked.

On April 2, 2012, ATF issued a determination letter to Bump Fire Systems, declaring that

The FTB live-fire testing of the submitted devices indicates that if, as a shot is fired, an *intermediate* amount of pressure is applied to the fore-end with the support hand, the shoulder stock device will recoil sufficiently rearward to allow *the trigger to mechanically reset*. Continued intermediate pressure applied to the fore-end will then push the receiver assembly forward until the trigger re-contacts the shooter’s stationary firing hand finger, allowing a subsequent shot to be fired. In this manner, the shooter pulls the firearm forward to fire each shot, *the firing of each shot being accomplished by a single trigger function*.

...

Since your device is *incapable of initiating an automatic firing cycle* that continues until either the finger is released or the ammunition supply is exhausted, FTB find that it is **not** a machinegun as defined under the NFA, 26 U.S.C. 5845(b), or the Gun Control Act, 18 U.S.C. 921(a)(23).

See Exhibit 10 (emphasis in original, emphasis added.)

Once again, now in relation to Bump Fire Systems’ bump-stock device, ATF found that bump-stock-devices are incapable of automatic firing and require a mechanical reset of the

trigger – no different than any other semi-automatic firearm – and thus, are not capable of a continuous firing cycle with a single pull of the trigger.

But, in sworn testimony and pleadings submitted to the courts, ATF contended bump-stock-devices were machineguns, right? Nope.

As reflected on page 20 of the U.S. Government’s Brief in Support of Cross Motion for Summary Judgment and in Opposition to Plaintiff’s Motion for Summary Judgment in *Freedom Ordinance Mfg. Inc., v. Thomas E. Brandon*:

An ATF expert testified that a true trigger activating devices [i.e. bump-stock-devices], although giving the impression of functioning as a machine gun, are not classified as machine guns because *the shooter still has to separately pull the trigger each time he/she fires the gun by manually operating a lever, crank, or the like.*

See Exhibit 25 (emphasis added).

Hence, ATF in sworn testimony and pleadings submitted to the United States District Court, Southern District of Indiana, admitted that the function of bump-stock-devices requires the shooter to separately pull the trigger each time he/she fires the gun, which is two-levels removed from being a machinegun.<sup>58</sup>

So, the question becomes, was ATF lying then, or is it lying now? There can be no dispute, it’s lying now.

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<sup>58</sup> The use of the terminology two-levels removed from being a machinegun is in relation to the explicit definition of machinegun that was enacted by the Congress in 26 U.S.C. § 5845(b), which for a firearm to constitute a machinegun, requires it to shoot “automatically more than one shot ... by a single function of the trigger.” As acknowledged by ATF, since the trigger is pulled (*i.e.* a single function of the trigger) and then released (*i.e.* a second and separate single function of the trigger), before the subsequent round can be fired, a bump-stock-device is two-levels removed from being a machinegun, as it still would not constitute a machinegun, even if a subsequent round was discharged on the release of the trigger. ATF has determined that this is a proper analysis of Section 5845(b) in approving binary triggers, which permit the discharge of a round on both the pull and release of the trigger.

In response to this NPR, a video was recorded depicting the actual function of a bump-stock-device. *See* Exhibit 28.<sup>59</sup> *See also* Exhibit 33 Declaration of Jonathan Patton. As reflected in the video, a magazine full of ammunition is placed into an AR-15 type firearm that has a Slide Fire bump-stock-device<sup>60</sup> installed onto it. The shooter then proceeds to fire the bump-stock equipped firearm with the stock in the locked position.<sup>61</sup> As depicted, the bump-stock-device neither self-acts nor self-regulates and the shooter proceeds to fire several rounds, without the bump-stock automatically firing more than one round, per function of the trigger.<sup>62</sup> <sup>63</sup> The video clearly depicts the trigger being pulled, the gun firing a round, the bolt carrier group cycling and the trigger being released and reset. In fact, for a subsequent round to be fired, two single and separate functions of the trigger are necessary – the release of the trigger and the subsequent pull of the trigger, which is no different than any other factory semi-automatic firearm. The shooter then proceeds to unlock the stock so that it can move freely on the buffer tube and fire the gun one handed. Once again, the video clearly depicts the trigger being pulled, the gun firing a round, the bolt carrier group cycling and the trigger being released and reset. At not point does the gun fire more than one round per function of the trigger.

Additionally, the close-ups reveal, contrary to ATF's contention (83 Fed. Reg. 13447), that "additional physical manipulation of the trigger by the shooter" *is necessary* for subsequent

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<sup>59</sup> A copy of the video is also available online – Adam Kraut, Esq. and Patton Media and Consulting, *Bump Stock Analytical Video*, (June 14, 2018), *available at* <https://youtu.be/1OyK2RdO63U>.

<sup>60</sup> The actual device is a Slide Fire SSAR-15 SBS.

<sup>61</sup> This position is the same as any other AR-15 type firearm with an adjustable stock.

<sup>62</sup> Thus, contrary to the NPR, bump-stock-devices do not cause a continuous firing cycle with a single pull of the trigger.

<sup>63</sup> If the bump-stock-device actually turned the firearm into a machinegun, the entire magazine of ammunition would have been expended, when the shooter maintained constant pressure on the trigger. *See* Exhibit 26. A copy of the video is also available online – Molon Labe, *hogan 7 m16.wmv*, YouTube (Oct. 25, 2011), is <https://www.youtube.com/watch?v=NwQ1aZnVLFA>.

rounds to be discharged. Of course, all of this is irrefutably consistent with ATF's prior determinations and sworn testimony and pleadings submitted to the courts.

So what if the shooter shoots the bump-stock equipped AR-15 in the manner depicted by the NPR – *i.e.* while “maintaining constant forward pressure with the non-trigger hand on the barrelshroud or fore-grip of the rifle, and maintaining the trigger finger on the device’s extension ledge with constant rearward pressure?” 83 Fed. Reg. 13443. Clearly, it will shoot automatically, right? It self-acts and self-regulates, right? Nope.

When the shooter maintains constant forward pressure with the non-trigger hand on the barrelshroud or fore-grip of the rifle, while maintaining the trigger finger on the device’s extension ledge with constant rearward pressure, after the first shot is discharged, the trigger must be released, reset, and pulled completely rearward, before the subsequent round is discharged – again no different than any factory semi-automatic firearm. Moreover, as evidenced by the close-ups, contrary to ATF’s assertion (83 Fed. Reg. 13443, 13447), “bump-stock-type devices [*do not*] allow multiple rounds to be fired when the shooter maintains pressure on the extension ledge of the device,” as the shooter in the video specifically maintains pressure on the extension ledge of the device the entire time; and yet, only a single round is discharged each time.

Surely, the video must not depict the actual function of a bump-stock-device, right? Wrong.

Former Acting Chief of the FTB and expert Rick Vasquez was responsible for reviewing and making a determination on the Slide Fire stock, when it was submitted to the FTB for evaluation and classification. *See* Exhibit 32. After concluding that the Slide Fire stock was neither a firearm nor a machinegun under the NFA and GCA, the determination was “reviewed

by ATF Chief Counsel and higher authorities within ATF and affirmed.” *Id.* More recently, he reviewed the *Bump Stock Analytical* video (Exhibit 28) and declared that it “fully, explicitly, and accurately depicts the function of bump-stock-devices, including, but not limited to, the function and operation of the firearm’s trigger, which is exactly consistent with my evaluation and review of the Slide Fire stock during my tenure with ATF and my Slide Fire Analysis.” *Id.* He then goes on to explain that as depicted in the video:

- a. The bump-stock-device neither self-acts nor self-regulates, as the bump-stock never fires, in any of the three possible ways to fire a bump-fire-device, more than one round, per function of the trigger, even while the shooter maintained constant pressure on the extension ledge. In fact, as explicitly and accurately depicted in the slow motion portions, the bump-stock-device requires two functions of the trigger before a subsequent round can be discharged (*i.e.* after the firearm is discharged for the first time, the trigger must be fully released, reset, and then fully pulled rearward for a subsequent round to be discharged);<sup>64</sup>
- b. Bump-stock-devices do not permit a continuous firing cycle with a single pull of the trigger, as the video clearly depicts that the trigger must be released, reset, and fully pulled rearward before the subsequent round can be fired;<sup>65</sup>
- c. The bump-stock-device requires additional physical manipulation of the trigger by the shooter, as the video clearly depicts that the trigger must be released, reset, and fully pulled rearward before the subsequent round can be fired;
- d. Even when the shooter maintains constant forward pressure with the non-trigger hand on the barrel shroud or fore-grip of the rifle, and maintains the trigger finger on the device’s extension ledge with constant rearward pressure, after the first shot is discharged, the trigger must be released, reset, and pulled completely

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<sup>64</sup> It must be noted, as made explicitly clear in the slow motion portions of the video, that the bump-stock-device actually requires over-releasing of the trigger, as the shooter’s finger travels past the trigger reset by approximately a half-inch, before beginning the sequence to fire a subsequent round (*e.g.* video at 3:46 – 3:51; 3:52 – 3:55; 3:56 – 4:00). Thus, the video makes extremely evident and clear that bump-stock-devices are actually slower than a trained shooter, as a trained shooter, such as Jerry Miculek, would immediately begin the sequence to fire a subsequent round after the trigger resets.

<sup>65</sup> If the device had permitted continuous firing cycle with a single pull of the trigger, the video would depict a scenario identical to Exhibit 26 of Firearm Policy Coalition’s Comment (*also available at* <https://www.youtube.com/watch?v=NwQ1aZnVLFA>), where it clearly and accurately depicts the emptying of the entire magazine, while the shooter maintains constant pressure on the trigger.



rearward, before the subsequent round is discharged. *See* video at 3:47 – 4:01. This is no different than any factory semi-automatic firearm; and,

- e. The bump-stock-device does not permit automatic fire by harnessing the recoil energy of the firearm. Harnessing the energy would require the addition of a device such as a spring or hydraulics that could automatically absorb the recoil and use this energy to activate itself. If it did harness the recoil energy, the bump-stock equipped firearm in the video would have continued to fire, while the shooter's finger remained on the trigger, after pulling it rearwards without requiring the shooter to release and reset the trigger and then pull the trigger completely reward for a subsequent round to be fired.

So where does this leave us? It leaves us with ATF's prior determinations and sworn testimony and pleadings submitted to the courts as being legally and factually indisputable, with the contrary statements in the NPR being solely designed to carry out a false narrative on the functionality of bump-stock-devices and to appease Attorney General Jeff Sessions and President Donald Trump.<sup>66</sup>

Surely, ATF hasn't sought to *further* mislead the public, right? Wrong.

Once again in the NPR, ATF contends that "[s]hooters use bump-stock-type devices with semiautomatic firearms to *accelerate the firearm's cyclic firing rate* to mimic automatic fire" (83. Fed. Reg. 13444)(emphasis added); yet, as discussed *supra* in Section I., B. and supported by Expert Declaration of Vasquez and the Savage Comment, the mechanical cyclic rate of both the semi-automatic and fully-automatic versions of a firearm are *identical* (and thus cannot be accelerated), except where the manufacturer purposely slows the rate of fire for the machinegun-version; whereby, in such instances, the semi-automatic-version can *exceed* the cyclic rate of the machinegun-version.

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<sup>66</sup> *See* Memorandum of February 20, 2018 to Attorney General Sessions from President Donald Trump, "directing the Department of Justice to dedicate all available resources to complete the review of the comments received, and, as expeditiously as possible, to propose for notice and comment a rule banning all devices that turn legal weapons into machineguns," *available at* <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-application-definition-machinegun-bump-fire-stocks-similar-devices>.

**F. *The Akins Accelerator Difference***

There is a fundamental difference in the manner in which the Akins Accelerator works versus a bump-fire-device.<sup>67</sup> The Government had previously described the function of the Akins Accelerator in a brief filed in Federal Court.

To operate the Akins Accelerator, the shooter pulled the trigger one time, initiating an automatic firing sequence, which in turn caused the rifle to recoil within the stock, permitting the trigger to lose contact with the finger and manually reset (move forward). Springs then forced the rifle forward in the stock, forcing the trigger against the finger, which cause the weapon to discharge the ammunition until the shooter released the constant pull the ammunition is exhausted. *Put another way, the recoil and spring-powered device cause the firearm to cycle back and forth, impacting the trigger finger, which remained rearward in a constant pull, without further impact by the shooter, thereby creating an automatic firing effect.*

See Exhibit 25. (Emphasis added).

However, as the video (*see* Exhibit 28) and Expert Vasquez's Declaration (*see* Exhibit 32) reflect, a single pull of the trigger on a firearm equipped with a bump-fire-device does not cause the firearm to cycle back and forth automatically. In order to have the firearm cycle and fire another round, mechanical input from the shooter is required. The shooter must both pull the trigger to the rear and push forward on the fore end of the firearm. Absent any additional input in a forward direction by the shooter, the firearm fires only a single round, even where the trigger is continuously held to the rear. Perhaps the description is best stated by the Government's own brief. "While the shooter receives an assist from the natural backfire of the weapon to accelerate subsequent discharge, *the rapid fire sequence in bumpfiring is contingent on shooter input,*

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<sup>67</sup> While FPC do not agree that an Akins Accelerator constitutes a machinegun, they acknowledge the 11<sup>th</sup> Circuit's opinion in *Akins v. U.S.*, 312 Fed.Appx. 197 (11<sup>th</sup> Cir. 2009) and assume that court's holding for the purposes of this analysis.

*rather than mechanical input, and thus it cannot shoot ‘automatically’.*” See Exhibit 25.

(Emphasis added).

As is clearly demonstrated in the video, Expert Vasquez’s Declaration and by the Government’s own argument, bump-stock-devices are only capable of being fired in a rapid manner<sup>68</sup> when the shooter him or herself adds mechanical input with a forward push on the fore end of the firearm; however, such affirmative action by the shooter does not result in the bump-stock-device turning the firearm into a machinegun. Otherwise, Jerry Miculek and others will be banned by the implementation of the NPR.

## **V. ATF’S PROPOSAL IS OVERLY VAGUE AND CONTRADICTORY**

ATF’s proposed regulation is overly vague and potentially encapsulates a number of firearms and other products<sup>69</sup> that are commercially available.

Notably, ATF’s proposed definition includes

“..devices that allow a semiautomatic firearm to shoot more than one shot with a single pull of the trigger by harnessing the recoil energy of the semiautomatic firearm to which it is affixed so that the trigger resets and continues firing without additional physical manipulation of the trigger by the shooter.”

83 Fed. Reg. 13457. This language could incorporate a variety of triggers that are currently on the market, which are lawfully possessed and utilized. Utilizing the same flawed logic ATF used to turn a bump-stock-devices into a machine gun, ATF would merely need to assert that by

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<sup>68</sup> As discussed *supra* throughout Section IV. and in the Declaration of Expert Vasquez, this still requires the trigger to be released, reset, and pulled completely rearward, before a subsequent round is discharged; thereby, requiring two separate and distinct functions of the trigger, which precludes any finding that the device is a machinegun or otherwise causes the firearm to which it is attached to fire “automatically”.

<sup>69</sup> As discussed *supra*, beyond regulating bump-stock-devices, it would also seemingly include, rubber bands, belt loops, fingers, “slamfire” shotguns and firearms, Gatling guns, triggers, and other devices (*e.g.* Hellfire trigger mechanisms).

placing forward pressure on the gun while holding the trigger to the rear and allowing the recoil energy of the firearm to move the firearm enough to reset the trigger, that the trigger could constitute a bump-stock-device, resulting in a variety of products designed for the competition shooter to be banned overnight. Likewise, as discussed *supra* in Section IV., the technique of bump firing only requires the use of one's finger – as admitted by ATF in numerous court filings – thereby resulting in ATF's ability to contend that fingers, *in and of themselves*, are bump-stock-devices under the NPR. Moreover, the proposal could also apply to everything from rubber bands and belt loops to slamfire shotguns and firearms.

Such interpretations would leave thousands of gun owners unsure as to the status of their particular firearm, device, or even finger, creating an influx of requests for determinations<sup>70</sup> from ATF and making compliance with the proposed regulation the equivalent of navigating a minefield without proper guidance. Moreover, as discussed *infra* in Section II, it raises a plethora of constitutional issues in relation to the Second and Fifth Amendment and Article I, Section 9, Clause 3 of the U.S. Constitution.

Even if one were to set the vagueness issues aside, the NPR is contradictory as it contends that bump-stock-devices must be outlawed, while permitting rubber bands, belt loops and fingers, which operate in an identical manner as bump-stock-devices. Specifically, in the NPR, ATF contends that bump-stock-devices can “mimic automatic fire when added to semiautomatic rifles” which Congress sought to outlaw (83 Fed. Reg. 13447); yet, thereafter, in Alternative 2 (83 Fed. Reg. 13454), declares that “individuals wishing to replicate the effects of bump-stock-type devices could also use rubber bands, belt loops, or otherwise train their trigger

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<sup>70</sup> Such determinations would be of questionable value given ATF's contention in the NPR that it can overturn its own determination on a whim or to appease politicians by utilizing interpretive jiggery-pokery.

finger to fire more rapidly.” As discussed *supra* in Section IV. and the video exhibits specified therein, individuals can bump fire factory semi-automatic firearms with rubber bands, belt loops, and their fingers and some shooters, like Jerry Miculek, can not only shoot faster than an individual employing a bump-stock-device but can shoot far more accurately. Thus, this entire NPR is contradictory to its stated purpose and underlying authority.

## **VI. ATF FAILED TO CONSIDER VIABLE AND PRECEDENTIAL ALTERNATIVES**

In the proposal, ATF offers three alternatives. *See* 83 Fed. Reg. 13454. While FPC fully supports ATF moving forward under Alternative 1,<sup>71</sup> to the extent that ATF decides to move forward with some form of rule – despite the major constitutional, statutory, precedential and procedural issues presented by this rulemaking – there are viable alternatives, not previously considered, that would mitigate some of the constitutional and other issues.

### **A. FPC Supports “Alternative 1”**

FPC fully support ATF not taking any further action in this rulemaking proceeding. Moreover, as discussed throughout this Comment, ATF is foreclosed – constitutionally, statutorily, precedentially and procedurally – from taking any action as described in the NPR.<sup>72</sup>

### **B. The Amnesty Alternative**

Pursuant to Section 207(d) of 82 Stat. 1235, also known as the Gun Control Act of 1968,

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<sup>71</sup> “Alternative 1 – No change alternative. This alternative would leave the regulations in place as they currently stand. Since there would be no changes to regulations, there would be no cost, savings, or benefits to this alternative.”

<sup>72</sup> To the extent ATF ignores the many issues raised in this and other comments, and moves forward with a final rule, FPC will likely seek judicial relief to invalidate and enjoin the enforcement of any final rule.

(*see* Exhibit 19), the Attorney General <sup>73</sup> has the power to establish amnesty periods for up to ninety days. In fact, an amnesty was previously held between November 2, 1968, to December 1, 1968 and ATF promulgated a regulation – 26 C.F.R. § 179.120, entitled “Registration of Firearms” (*see* Exhibit 20) – which established the amnesty and procedures relating to the registration of unregistered NFA firearms. Moreover, as discussed *infra* in Section VI., C., ATF more recently provided a seven-year registration and amnesty period for Streetsweepers and USAS-12 firearms, when it reclassified them under the NFA.

Thus, contrary to ATF’s assertion that “there is no means by which the possessor may register a firearm retroactively, including a firearm that has been reclassified” (83 Fed. Reg. 13348), the Attorney General can provide for an amnesty so that the 520,000-some-odd proscribed bump-stock-devices, and all other firearms and devices covered by the NPR, can be lawfully registered, thereby saving a minimum of \$221,494,000.00 in just compensation being paid out by ATF while imposing its regulatory scheme under the NFA, which proponents of gun control, such as Senator Feinstein, desire. *See* Exhibit 21. <sup>74</sup> Given that the primary estimate suggests that around 520,000 bump-stock-devices are in circulation (not inclusive of other firearms and devices for which the NPR seemingly applies), the Attorney General should at least provide for a seven-year amnesty/registration period, as was provided when ATF reclassified the Streetsweeper and USAS-12 shotguns, which is discussed *infra* in Section VI., C. Alternatively, the Attorney General should issue an initial amnesty period of ninety days and provided 50 or

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<sup>73</sup> While the provision refers to the “Secretary of the Treasury,” the Homeland Security Act of 2002, Pub. L. 107-296, 116 Stat. 2135 (2002), transferred the functions of ATF from the Department of the Treasury to the Department of Justice, under the general authority of the Attorney General. 26 U.S.C. 7801(a)(2); 28 U.S.C. 599A(c)(1). Thus, it is now the Attorney General that has the authority to institute an amnesty.

<sup>74</sup> A copy of Senator Feinstein’s proposal [http://www.feinstein.senate.gov/public/index.cfm/files/serve/?File\\_id=10993387-5d4d-4680-a872-ac8ca4359119](http://www.feinstein.senate.gov/public/index.cfm/files/serve/?File_id=10993387-5d4d-4680-a872-ac8ca4359119).

more applications are received between the 30<sup>th</sup> and 60<sup>th</sup> days, the amnesty period should be extended in increments of ninety days, until such time that less than 50 applications are received during an extension period.

Furthermore, pursuant to the logical outgrowth doctrine <sup>75</sup> and the numerous issues with the National Firearms Registration and Transfer Record (“NFRTR”) – especially the deprivation of due process in civil and criminal proceedings (*see* Exhibits 6, 21 <sup>76</sup> and 22 <sup>77</sup>) – the amnesty should permit the registration of *any* unregistered NFA firearm, not just bump-stock-devices and those items subject to the instant NPR, since such is consistent with the Congress’ intent that all NFA firearms be registered to the individual possessing them. <sup>78</sup>

**C. *ATF’s Reclassification of the Streetsweeper and USAS 12 and Seven Year Registration/Amnesty that Followed***

In the alternative, as ATF admits that the NPR is a reclassification of the definition of machinegun to include bump-stock-devices (83 Fed. Reg. 13448), it must treat the reclassification equally to how it treated its prior reclassifications of the Streetsweeper and USAS 12 shotguns, for which it provided a seven-year registration and amnesty period.

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<sup>75</sup> *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158 (2007).

<sup>76</sup> A copy of the article is available at – Joshua Prince, *Violating Due Process: Convictions Based on the National Firearms Registration and Transfer Record When its ‘Files are Missing’*, (Sept. 28, 2008), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2752028](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2752028).

<sup>77</sup> A copy of Eric Larson’s testimony and exhibits of April 3, 1998, before the House Committee on Appropriations is available online at <http://www.nfaa.org/documents/1998testimony.pdf>.

<sup>78</sup> *See* U.S. Senate, *Gun Control Act of 1968, Title II-Amendments to the National Firearms Act*, Report No 1501, 90th Cong., 2nd Sess., at 43 (Washington, GPO, 1968), *available at* <http://www.nfaa.org/documents/SenateReport1501-GCA1968.pdf>, declaring that the Congress intends that “every [NFA] firearm in the United States should be registered to the person possessing the firearm.”

In a July 12, 2012, ATF Quarterly Roll Call Lesson Plan, the ATF Firearms Technology Branch admits that based on ATF's March 1, 1994 reclassification of the Striker-12/Streetsweeper and USAS-12 shotguns,<sup>79</sup> individuals were provided from March 1, 1994 through May 1, 2001 – more than seven years – to register these reclassified NFA firearms. *See* Exhibit 23, p. 3.

Accordingly, to the extent ATF moves forward with a final rule, ATF must provide a seven-year amnesty/registration period for individuals to register their bump-stock-devices.

#### **D. ATF's Reclassification of Open Bolt Macs**

As discussed by the Savage Comment on pages 3 – 4<sup>80</sup>, ATF Ruling 82-8 held that ATF was reclassifying semi-automatic SM10 and SM11A1 pistols and SAC carbines as machineguns and as a result of the ruling:

“With respect to the machinegun classification of the SM10 and SM11A1 pistols and SAC carbines, under the National Firearms Act, pursuant to 26 U.S.C. § 7805(b), this ruling *will not be applied* to SM10 and SM11A1 pistols and SAC carbines manufactured or assembled before June 21, 1982. Accordingly, SM10 and SM11A1 pistols and SAC carbines, manufactured or assembled on or after June 21, 1982, will be subject to all the provisions of the National Firearms Act and 27 C.F.R. Part 179.”

Emphasis added.

Thus, as discussed *supra* in Section III., C., 26 U.S.C. § 7805(b) precludes – and ATF has acknowledged – ATF's ability to retroactively reclassify firearms and devices as machineguns and require their registration and compliance with the NFA. Consistent with Section 7805(b), if

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<sup>79</sup> *See*, ATF Rulings 94-1 and 94-2.

<sup>80</sup> *See* Analysis and Commentary Regarding: Docket Number: ATF 2017R-22 & Bump-Stock-Type-Devices, ID: ATF-2018-0002-31210, Tracking Number: 1k2-93f3-s09b, available electronically at – <https://www.regulations.gov/document?D=ATF-2018-0002-31210>, in “Email 013 (Historic Arms) rec 5-29-18”.



ATF reclassifies a firearm or device, it may only require compliance with the NFA in relation to those firearms and devices that were “manufactured or assembled on or after” the date of its reclassification ruling. Moreover, the existence of approximately 50,000 of these reclassified firearms and their lawful possession and transfer absent compliance with the NFA,<sup>81</sup> was testified to by former ATF Acting Chief of the Firearms Technology Branch Rick Vasquez in *U.S. v. One Historic Arms Model 54RCCS*, No. 1:09-CV-00192-GET. *See* Exhibit 27.

Accordingly, ATF is statutorily precluded from applying any final rule in this matter to any firearms or devices that were “manufactured or assembled” before at least March 29, 2018 – the date of publication of this NPR in the Federal Register.

Even if, *arguendo*, ATF were not statutorily prohibited, to ensure equal application of the law, its past actions and the public reliance thereon, it must likewise permit all firearms or devices covered by the NPR in this matter to be grandfathered without requisite compliance with the NFA.

**E. *Revision of Proposed Changes to 27 C.F.R. §§ 447.11, 478.11, and 479.11***

Although FPC vigorously disputes ATF’s constitutional, statutory, regulatory, procedural and precedential authority to regulate bump-stock-devices and intends to challenge any final rule adopting any proposal other than Alternative 1, FPC contends that ATF must limit its proposed regulatory changes to the definition proposed by Congress in H.R. 4477.<sup>82</sup>

In the NPR (83 Fed. Reg. 13457), ATF proposes amending to 27 C.F.R. §§ 447.11, 478.11, and 479.11 “by adding two sentences at the end of the definition to reads as follows:

---

<sup>81</sup> *Id.*

<sup>82</sup> *See* <https://www.congress.gov/bill/115th-congress/house-bill/4477/text>.

*Machine gun.* \* \* \* For purposes of this definition, the term ‘automatically’ as it modifies ‘shoots, is designed to shoot, or can be readily restored to shoot,’ means functioning as the result of a self-acting or self-regulating mechanism that allows the firing of multiple rounds through a single function of the trigger; and ‘single function of the trigger’ means a single pull of the trigger. The term ‘machine gun’ includes bump-stock-type devices, *i.e.*, devices that allow a semiautomatic firearm to shoot more than one shot with a single pull of the trigger by harnessing the recoil energy of the semiautomatic firearm to which it is affixed so that the trigger resets and continues firing without additional physical manipulation of the trigger by the shooter. \* \* \* ”

As such, ATF’s proposal, as discussed throughout this Comment, is far more encompassing than the more limited definition proposed by Congress in H.R. 4477. Accordingly, ATF should revise its proposal to be consistent with the Congress’ proposal; whereby, the definition of machinegun in 27 C.F.R. §§ 447.11, 478.11, and 479.11 could, *at the absolute most*, be amended by adding one sentence at the end of the definition to read as follows:

*Machine gun.* \* \* \* For purposes of this definition, the term ‘automatically’ as it modifies ‘shoots, is designed to shoot, or can be readily restored to shoot,’ means a device that—

- (1) attaches to a semiautomatic rifle (as defined in section 921(a)(28) of title 18, United States Code);
- (2) is designed and intended to repeatedly activate the trigger without the deliberate and volitional act of the user pulling the trigger each time the firearm is fired;
- and (3) functions by continuous forward pressure applied to the rifle’s fore end in conjunction with a linear forward and backward sliding motion of the mechanism utilizing the recoil energy when the rifle is discharged.

## VII. POLICY CONSIDERATIONS DO NOT SUPPORT ATF'S PROPOSED RULE

In arguing that bump-stock devices are or create a machinegun, the proposed rule demonstrates a complete reversal of prior policy – prior policy, as discussed *supra* in Section I., A., that ATF has failed to provide in the rulemaking docket and for which the absence of, precludes meaningful review and comment by interested persons.

But even if numerous procedural irregularities did not bar ATF from promulgating a final rule in this proceeding, and neither the U.S. Constitution nor the scope of statutory authority served as an obstacle, there are ample reasons ATF should not proceed with its proposed rule. *First*, ATF's assumptions lack statistical validity. *Second*, ATF's reasoning relies on false premises. *Third*, the costs of the proposed rule are much greater than ATF acknowledged.

### A. ATF's Assumptions Lack Statistical Validity

As pertinent to a statistical inquiry, the overarching basis asserted in the NPR – the putative use of a bump-stock-device in the Las Vegas shooting – demands investigation and reflects that at a maximum,<sup>83</sup> only one instance exists<sup>84</sup>, where a bump-stock-device was utilized, while acknowledging that there is no quantifiable benefit to the proposal. Thus, to the extent ATF can proceed in this matter, the *first*, and most vital, issue is whether ATF identified a statistically significant basis to conclude that the existing system of regulation should be revised, especially in light of the absence of a quantifiable benefit. As discussed at length *supra* in Sections I., B. and IV., D., ATF relies solely on prior “public comments” – for which, those

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<sup>83</sup> As discussed *supra* in Section IV., D., FPC dispute that there exists any evidence even suggesting that a bump-stock-device was utilized in the Las Vegas incident and demands, given ATF's lack of candor to the courts, Congress and the public, that any such contention by ATF be dismissed, in the absence of independently, verifiable evidence in support.

<sup>84</sup> Which to date has neither been confirmed by ATF or FBI. *See* Fn. 4, *supra*.

“public comments” may be proxies of ATF<sup>85</sup> – to suggest that a bump-stock-device was utilized in Las Vegas (83 Fed. Reg. 13454), while thereafter declaring that bump stock devices “*could* be used for criminal purposes.” 83 Fed. Reg. 13455 (emphasis added). The second issue, with respect to estimating the costs that would be imposed by ATF’s proposed rule, ATF fails to address the just compensation that is necessary for the proposed rule, as is discussed *supra* in Section II., B., 2.

Despite the number of bump-stock-devices grossly exceeding 520,000 (when including rubber bands, belt loops, fingers, triggers, Gatling guns, and “slamfire” shotguns and firearms), ATF’s entire rulemaking effort is apparently premised on no more than one unverified instance where a bump-stock-device was alleged to have been utilized unlawfully, even though such products have been on the market for over a decade. Even with ATF’s too-low estimate of bump-stock-devices in commerce, one alleged instance represents such a minute, statistically-insignificant fraction that no statistically-valid prediction could even be made about this putative problem. ATF has failed to make available in the docket any information regarding the Las Vegas shooting that would permit meaningful inquiry into whether it is at all representative of the problem ATF claims now requires attention, or that the NPR reflects a substantive, tailored, germane, or proportional response to any such problem.

If, nonetheless, ATF were to go forward with its effort to formulate and impose a new rule, whatever benefits ATF claims, would seem to require discount to reflect the sole instance in which there is any reason to believe the new rule would provide additional protection. That is, the *marginal* benefit of added restrictions would be on the order of 1/520,000 or, stated

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<sup>85</sup> See Section IV., D., and Fn. 56, *supra*.

otherwise, the marginal cost needs to be multiplied by a factor of at least 520,000/1 to be measured against the total benefit.

\* \* \*

There is no statistically-significant (if any at all) evidence of the problem ATF purports to address with the proposed rule, even if one credits the sole anecdote. In weighing costs and benefits of the proposed rule, ATF must discount the benefits (or multiply the costs) to reflect the sole example from the large population of individuals who own or have access to bump-stock-devices and the fact that based on ATF's own proposal, individuals would still be able to bump fire with rubber bands, belt loops and their fingers.

**B. *ATF Relies On Multiple False Premises***

As discussed at length *supra* in Sections IV., D. and E., ATF's proposed rule is based on multiple false premises. Other than one unsupported allegation, there is no evidence – *let alone substantive statistical evidence* – of misuse of bump-stock-devices. Moreover, as made explicitly clear by the video (Exhibit 28) and Vasquez's Expert Declaration, a bump-stock-device does not self-act, self-regulate, nor harnesses energy and thus cannot meet the statutory definition of a machinegun. Thus, ATF has failed to explain, let alone demonstrate, the need for a change in regulations or shown sufficient authority to implement its desired changes. And perhaps worse, ATF appears to be purposely misleading the public on the *actual* function of bump-stock-devices, which cannot be countenanced.

## CONCLUSION

ATF has, once again, made a mockery of rulemaking proceedings by engaging in numerous improper and bad-faith tactics that deny meaningful public participation. As shown in these and other comments, the instant NPR is terminally-ridden with procedural defects. As a result, ATF cannot promulgate any final rule that hopes to survive judicial review without starting anew. And ATF's proposed legislation-by-fiat stretches far beyond its statutory authority, ignores important separation of powers principles, and attempts to usurp that which is solely the domain of Congress. But even if ATF were to somehow overcome those fundamental problems, the fact remains that its proposal is built upon a statistically-invalid assumption, a false premise, and flawed policy arguments. To be sure, ATF failed to quantify *any* benefit from the proposed rule, and substantially undercounted the cost it would impose, including a failure to consider (as is its duty) all related costs. The proposed rule is demonstrably un-workable, and many less-burdensome alternatives exist to address any legitimate concerns that might be identified in a proper and procedurally-sound rulemaking.

Finally, even if ATF did initiate a new, proper, and procedurally-sound proposed rulemaking about bump-stock devices, and even if there existed sufficient statutory authority *and* good cause to issue such a rule, there is ample reason to question whether a proposed reclassification of bump-stock-devices as machineguns is consistent with the U.S. Constitution, including but not limited to the Second and Fifth Amendments, as well as Article I, Section 9. ATF fails completely to consider, let alone provide for, the just compensation that would be due to those who would be affected by its proposed rule. Indeed, as discussed above, the proposed rule is unconstitutional, both facially and as applied to law-abiding people who possess and own devices subject to the ATF's proposed rule.

For all of the reasons set forth above, the NPR should be withdrawn and summarily discarded, or, in the alternative, ATF should elect Alternative 1 and abandon the proposed rulemaking in its entirety.

Respectfully submitted on behalf of  
Firearms Policy Coalition and  
Firearms Policy Foundation



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Joshua Prince, Esq.  
*Chief Counsel*



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Adam Kraut, Esq.  
*Attorney*

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June 19, 2018

**Exhibit List**

- Exhibit 1: FICG Expedited FOIA dated March 30, 2018
- Exhibit 2: LVMPD Preliminary Investigative Report, January 18, 2018
- Exhibit 3: Video: Iraqveteran8888, *Worlds Fastest Shooter vs Bump Fire! – Guns Reviews*, YouTube, October 13, 2014
- Exhibit 4: Video: Miculek.com, *AR-15 5 shots in 1 second with fastest shooter ever, Jerry Miculek (Shoot Fast!)*, YouTube, June 20, 2013
- Exhibit 5: Carl Bussjaeger, *[Update] Bumbling Machinations on Bump Stocks?*, April 2, 2018 and *[Updated] Bump-fire Rule: “Comments Not Accepted”*, March 30, 2018
- Exhibit 6: Motion in Limine, *United States v. Friesen*, CR-08-041-L (W.D. Okla. Mar. 19, 2009)
- Exhibit 7: John Bresnahan and Seung Min Kim, *Attorney General Eric Holder held in contempt of Congress*, June 28, 2012
- Exhibit 8: Testimony of Gary Schaible, *United States v. Rodman, et al.*, CR-10-01047-PHX-ROS
- Exhibit 9: Senator Diane Feinstein, *Feinstein: Congress Shouldn’t Pass the Buck on Bump-Fire Stocks*, October 11, 2017
- Exhibit 10: ATF Determinations
- Exhibit 11: Video: Shooting Videos, *Rapid manual trigger manipulation (Rubber Band Assisted)*, YouTube, December 14, 2006
- Exhibit 12: Video: StiThis1, *AK-47 75 round drum Bumpfire!!!*, YouTube, September 5, 2011
- Exhibit 13: Video: ThatGunGuy45, *‘Bump Fire’ without a bump-fire stock, courtesy of ThatGunGuy45*, YouTube, October 13, 2017
- Exhibit 14: Video: M45, *How to bumpfire without bumpfire stock*, YouTube, October 8, 2017
- Exhibit 15: Verified Declaration of Damien Guedes
- Exhibit 16: Verified Declaration of Matthew Thompson



- Exhibit 17: Video: Vice News, *Meet One Of The Analysts Who Determined That Bump Stocks Were Legal*, YouTube, October 11, 2017
- Exhibit 18: Video: *Fastest Shooter OF ALL TIME! Jerry Miculek | Incredible Shooting Montage*, DailyMotion, 2014
- Exhibit 19: Gun Control Act of 1968, 82 Stat. 1235
- Exhibit 20: 26 C.F.R. § 179.120
- Exhibit 21: Joshua Prince, *Violating Due Process: Convictions Based on the National Firearms Registration and Transfer Record When its 'Files are Missing'*, September 28, 2008
- Exhibit 22: Eric Larson's testimony and exhibits of April 3, 1998, before the House Committee on Appropriations
- Exhibit 23: ATF Quarterly Roll Call Lesson Plan, July 12, 2012
- Exhibit 24: Eric M. Larson, *How Firearms Registration Abuse & the "Essential Operational Mechanism" of Guns May Adversely Affect Gun Collectors*, Gun Journal, March 1998
- Exhibit 25: U.S. Government's Brief in Support of Cross Motion For Summary Judgment And In Opposition to Plaintiff's Motion For Summary Judgment, *Freedom Ordinance Mfg. Inc., v. Thomas E. Brandon*, Case No. 3:16-cv-243-RLY-MPB
- Exhibit 26: Video: Molon Labe, *hogan 7 m16.wmv*, YouTube, October 25, 2011
- Exhibit 27: Testimony of ATF Senior Analyst Richard Vasquez in *U.S. v. One Historic Arms Model 54RCCS*, No. 1:09-CV-00192-GET
- Exhibit 28: Video: Adam Kraut Esq. and Patton Media and Consulting, *Bump Stock Analytical Video*, June 14, 2018
- Exhibit 29: National Firearms Act: Hearings Before the Committee on Ways and Means, H.R. Rep. No. 9066, 73rd Cong. 2nd Sess. April 16, 18, and May 14, 15, and 16 1934
- Exhibit 30: Testimony of Police Chief J. Thomas Manger
- Exhibit 31: ProPublica, *Workers' Comp Benefits: How Much is a Limb Worth?*, March 5, 2015
- Exhibit 32: Verified Declaration of former ATF Acting Chief of FTB Rick Vasquez

Exhibit 33: Verified Declaration of Jonathan Patton of Patton Media and Consulting

Exhibit 34: FICG's Letter on Behalf of FPC to Acting Director Brandon

Exhibit 35: FPC's Letter in Opposition to the ANPR of January 25, 2018

**Exhibit 1**  
**(FICG Expedited FOIA)**

# FIREARMS INDUSTRY CONSULTING GROUP

A Division of Civil Rights Defense Firm, P.C.

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March 30, 2018

Stephanie M. Boucher  
Disclosure Division  
Bureau of Alcohol, Tobacco, Firearms and Explosives  
99 New York Avenue, NE  
Washington, DC 20226

RE: Firearms Policy Foundation (FPF) and Firearms Industry Consulting Group (FICG) vs. U.S. Department of Justice - Bureau of Alcohol, Tobacco, Firearms and Explosives - Bump Stock Rulemaking  
Docket Number: ATF-2018-0001  
**EXPEDITED Freedom of Information Act (FOIA) Request**

**VIA EMAIL: FOIAMail@ATF.gov**

Dear Stephanie Boucher,

Pursuant to the federal Freedom of Information Act, 5 U.S. Code § 552 (hereinafter "FOIA"), I submit the following request for documents from the Bureau of Alcohol, Tobacco, Firearms and Explosives (hereinafter "ATF"). If the requested documents are not available from ATF, I respectfully request that you forward this request to the appropriate agency that maintains the requested records or advise me of the identity of any such agency.

Status of Requester: I am attorney and scholar of firearms laws and related issues. I have been published by the Pennsylvania Bar Institute in a number of publications for attorneys on firearms law issues and maintain an active blog on firearms law issues at <http://blog.princelaw.com/category/firearms-law/>. As a result, I ask that you classify this request as made by a freelance journalist and I have been previously found, on numerous occasions, to be a freelance journalist for purposes of FOIA by ATF, FBI and DDTTC. In the alternative, I am requesting a fee waiver. This waiver is applicable under the Freedom of Information Act of 1986. It specifies, "[a] fee waiver or reduction can only be granted if the information furnished to the requester is likely to contribute significantly to the public understanding of the operations or

activities of the government and not primarily in the commercial interest of the requester." As this request is in relation to issues of public importance that will significantly assist the public in understanding the ATF's position in relation to its current rulemaking regarding bump stocks (ATF 2017R-22, RIN 1140-AA52, Fed. Register No. 2018-06292 - <https://www.regulations.gov/document?D=ATF-2018-0002-0001>), a fee waiver is appropriate. Although Firearms Industry Consulting Group ("FICG") has been retained by Firearms Policy Foundation ("FPF"), a 501(c)3 non-profit public benefit organization, in relation to this rulemaking, as both FPF and FICG intend to publicly post all documents received in response to this FOIA, any response will be provided to the public and is for the benefit of the public.

While I believe that my purposes fall directly within the standard set forth for a freelance journalist or, alternatively, for a "Fee Waiver," if you find that my purposes do not, I will agree to pay the appropriate fees up to \$100.00. If you estimate that the cost will exceed \$100.00, please advise me the estimated costs exceeding \$100, and I will make a decision on whether to proceed. Nonetheless, even with my agreement to pay, I retain the right to appeal any decision based on the fee waiver; and if successful, the return of any money, which was inappropriately paid, in relation to this FOIA.

Expedited Request: Pursuant to 5 U.S.C. § 552, I am requesting expedited review of this FOIA, as ATF has entered into rulemaking relative to the requested documents (ATF 2017R-22, RIN 1140-AA52, Fed. Register No. 2018-06292 - <https://www.regulations.gov/document?D=ATF-2018-0002-0001>), for which individuals, including myself, only have until June 27, 2018 to respond. As ATF has failed to include the requested documents in the docket and the absence of the requested documents would deny the public - including FPF, FICG, and myself - due process and the ability to formulate legal arguments and meaningful opportunity to participate in the rulemaking process, this request is proper for expedited review and processing. If the requested documents are not provided promptly, there will be an inadequate opportunity to review them and formulate meaningful comments before the deadline of June 27, 2018. Consistent with 5 U.S.C. § 552(a)(6)(E)(ii), I am requesting, as required, that a determination be made within 10 days.

Subject Matter of Request: This is a request for all ATF determinations relative to devices referred to as "bump stocks" and "bump-fire stocks" by ATF in its proposed rulemaking (ATF 2017R-22, RIN 1140-AA52, Fed. Register No. 2018-06292 - <https://www.regulations.gov/document?D=ATF-2018-0002-0001>), as well as, all ATF Form 9310.3A "Correspondence Approval and Clearance" forms relative to each determination, and any versions or drafts of the determinations, which were different than the final determination. The use of the word "determinations" shall be understood to mean any correspondence, whether in electronic or paper form, by ATF to any person, which shall include any individual, Member of Congress, corporation, limited liability company, and partnership, regarding the lawfulness or unlawfulness of any bump stock or bump-fire stock device, whether a sample device was submitted or not to ATF. A copy of two such known determinations are attached hereto as Exhibit A.

Temporal Scope of Request: Please limit your search for responsive documents to the period January 1, 2000 to the present.

Request for "Vaughn Index": In the event all or any part of an otherwise responsive document is withheld subject to a claim that one or more FOIA exemptions apply, please provide an index identifying the document or part thereof, by author(s), addressee(s), date, subject matter, and the



Case 1:18-cv-02988-DLF Document 9-1 Filed 12/26/18 Page 78 of 675  
specific exemption asserted as a basis for failing to produce the complete document. If a document is withheld only in part, please mark the redacted document to indicate the deletion.

Waiver of Inspection: If search and copying costs are not estimated to exceed \$100.00, please send a copy of the documents to me at the address referenced below.

Request for Timely Action: As mandated by FOIA, 5 U.S.C. § 552(a)(6)(A)(i), I request your reply within twenty business days. The requested documents relate to a matter of current public concern so that time is of the essence. In the event you have any questions concerning this request, please contact me as soon as possible. I would be pleased to clarify any perceived ambiguity informally or to discuss ways to narrow my request so as to ensure a timely response.

Contact Information: Please direct all communications to me at:

Joshua Prince  
646 Lenape Rd  
Bechtelsville, PA 19505  
888-202-9297 ext 81114  
[joshua@CivilRightsDefenseFirm.com](mailto:joshua@CivilRightsDefenseFirm.com)

Certification: I certify everything in this request, including request for expedited review and processing to true and correct to the best of my knowledge and belief.

Thank you in advance for your attention to this matter.

Yours truly,  
Firearms Industry Consulting Group

  
Joshua G. Prince  
[joshua@civilrightsdefensefirm.com](mailto:joshua@civilrightsdefensefirm.com)

jgp/web  
Matter no. 10377



Home

## Bump-Stock-Type Devices

Docket Folder Summary [View all documents and comments in this Docket](#)

**Docket ID:** ATF-2018-0002    **Agency:** Alcohol Tobacco Firearms and Explosives Bureau (ATF)    **Parent Agency:** Department of Justice (DOJ)

**RIN:** 1140-AA52    **Impacts and Effects:** None    **CFR Citation:** 27 CFR 478,27 CFR 479    **Priority:** Economically Significant

[+ View More UA and Regulatory Plan Information and Docket Details](#)

### Primary Documents [View All \(1\)](#)



#### Bump-Stock Type Device

**Proposed Rule**    **Posted:** 03/29/2018    **ID:** ATF-2018-0002-0001

[Comment Now!](#)

Due Jun 27, 2018 11:59 PM ET

### Supporting Documents

*No documents available.*

## **Exhibit 2**

**(LVMPD Preliminary Investigative Report)**





Joseph Lombardo, Sheriff

**FORCE INVESTIGATION TEAM**

Lieutenant Dennis O'Brien  
Sergeant Jerry MacDonald  
Detective Trevor Alsup  
Detective Marc Colon  
Detective Breck Hodson  
Detective Craig Jex  
Detective Jason Leavitt  
Detective Joseph Patton  
Detective Blake Penny

**HOMICIDE**

Lieutenant Dan McGrath  
Sergeant John Harney  
Sergeant Matt Sanford  
Sergeant Jon Scott  
Detective Maureen Bogatay  
Detective Dolphis Boucher  
Detective Chris Bunn  
Detective Lora Cody  
Detective Mitchell Dosch  
Detective Jarrod Grimmett  
Detective John Hoffman  
Detective Ryan Jaeger  
Detective Gary King  
Detective Kristen Long  
Detective Gerald Mauch  
Detective Jason McCarthy  
Detective Fred Merrick  
Detective Terri Miller  
Detective Cliff Mogg  
Detective Robert Ochsenhirt  
Detective Tate Sanborn  
Detective Tod Williams

**LVMPD Preliminary Investigative  
Report  
1 October / Mass Casualty Shooting**

LVMPD Event: 171001-3519  
Division of Occurrence: Tourist Safety Division  
Date of Incident: 10-01-2017  
Time of Call: 2205 hours  
Incident Locations: Mandalay Bay Resort and Casino  
3950 S. Las Vegas Blvd.  
Las Vegas, NV 89119

Las Vegas Village  
3901 S. Las Vegas Blvd.  
Las Vegas, NV 89119

Suspect: Stephen Paddock

Date of report: 01-18-18

Submitted by: Detective Trevor Alsup, P# 5782

Signature: T. Alsup 5782

Approved by: Sergeant Jerry MacDonald, P# 4660

Signature: J. MacDonald 4660

Approved by: Lieutenant Dennis O'Brien, P# 6192

Signature: D. O'Brien 6192

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## **I. INTRODUCTION**

On October 1, 2017, over 22,000 people came together to enjoy a country music festival in Las Vegas, Nevada. On the third and final night of the festival, a lone gunman opened fire into the crowd from the 32<sup>nd</sup> floor of the Mandalay Bay Resort and Casino. The gunfire continued for over ten minutes, resulting in the deaths of 58 innocent concert goers and injuring more than 700. With law enforcement closing in, the suspect took his own life.

It is not standard practice for the Las Vegas Metropolitan Police Department (LVMPD) to issue an investigative overview related to an open case. Due to the magnitude of this investigative response and the number of victims associated with this incident, Sheriff Joseph Lombardo felt it was important to author an overview of all investigative work accomplished in the aftermath of 1 October. This report is not intended to be a comprehensive and final account of the facts and evidence gathered but rather an overview of the investigation. The investigation into this incident is on-going and a full comprehensive report will be released upon its completion.

This report will reflect the number and identities of victims known to the Las Vegas Metropolitan Police Department to date. This information is vital in order to grant assistance, properly categorize the level of crime and most importantly, honor those who fell prey to this horrific act of violence.

The Las Vegas Metropolitan Police Department would like to recognize and thank all our local, state and federal law enforcement partners for their assistance with this investigation.

## **II. INCIDENT DETAILS**

On October 1, 2017 Stephen Paddock began shooting into the crowd attending the Route 91 Music Festival from his hotel room on the 32<sup>nd</sup> floor of the Mandalay Bay. As a result, 58 people died and over 700 were injured. An extensive, joint investigation involving the LVMPD and the Federal Bureau of Investigation (FBI) began immediately after the incident. Every facet of Paddock's life was explored.

At the time of the incident Paddock was 64 years old. He owned residences in Mesquite and Reno, Nevada and lived with his girlfriend, Marilou Danley. Paddock had limited law enforcement contact and no criminal history.

Paddock embarked on numerous international trips beginning in 2012, these included trips to Europe, Asia and South America. Most of Paddock's international travel was unaccompanied. Paddock also took multiple cruises with destinations in the Bahamas, Alaska and Mexico.

Through interviews with Paddock's relatives and acquaintances investigators learned Paddock lived a seemingly normal life. He was married at least once and divorced. He worked as an accountant and in the family real estate business.

From 1982 through September of 2016, Paddock purchased 29 firearms. These purchases consisted of handguns, shotguns and one rifle. From October 2016 through September 2017, Paddock purchased over 55 firearms. Most of the firearms purchased from 2016 through 2017 were rifles in various calibers along with over 100 firearm related items through numerous retailers. The firearm related items included scopes, cases, bump stocks and ammunition.

## The Ogden

On September 17, 2017, Paddock checked into The Ogden where he was booked through September 28, 2017 which overlapped his reservation at Mandalay Bay. The Ogden is a condominium complex located in downtown Las Vegas, Nevada. Paddock stayed in three different units during this time.

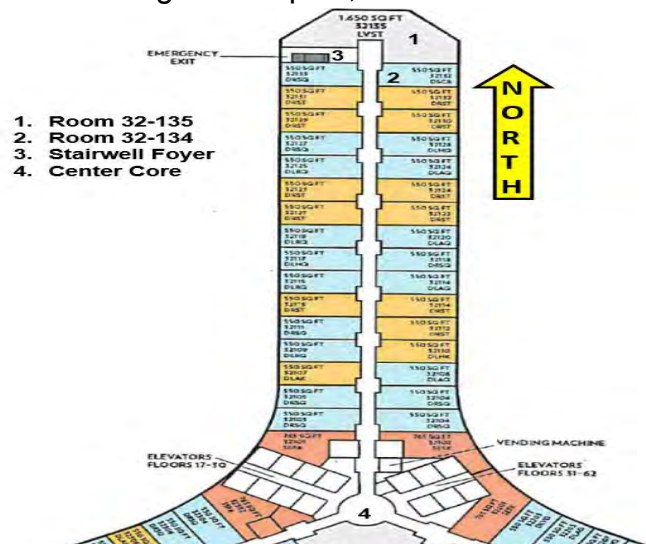
Paddock's stay at The Ogden coincided with the Life is Beautiful music festival. Similar to the Route 91 Music Festival, the Life is Beautiful event was held in an open air venue from September 22, 2017, through September 24, 2017.

While staying at The Ogden, Paddock exhibited behavior which was similar to his time spent at Mandalay Bay. Paddock left for long periods of time, returning to Mesquite, Nevada, flying to Reno, Nevada and traveling to Arizona. Paddock was observed numerous times gambling at downtown Las Vegas casinos. Paddock was also observed moving numerous suitcases from his vehicle to the various units he rented.

## Mandalay Bay Hotel & Casino

On Monday, September 25, 2017, Paddock checked into room 32-135 of the Mandalay Bay Hotel and Casino with a scheduled check-out date of October 2, 2017. On Friday September 29, 2017, Paddock checked into room 32-134 which connected with room 32-135 via connecting doors.

From September 25, 2017, through October 1, 2017, Paddock transported multiple suitcases to his room on several occasions. Paddock also left the Mandalay Bay on multiple occasions for long periods of time, often returning to Mesquite, Nevada.





## Route 91 Harvest Festival



October 1, 2017, was the final day of the Route 91 Harvest Festival held at the Las Vegas Village concert venue located at 3901 S. Las Vegas Boulevard. The site is an open air concert venue approximately 15 acres in size. It is bordered by Las Vegas Boulevard to the west, Reno Avenue to the north, Giles Street to the east and Mandalay Bay Road to the south.

The festival was a three day country music concert with multiple entertainers. On October 1, 2017, the concert began at 1500 hours. Jason Aldean, the last performer, was scheduled to take the main stage at 2140 hours. Over 22,000 people were attending the final day of the festival.

## Incident

On October 1, 2017, at approximately 2118 hours, Mandalay Bay Security Officer Jesus Campos was assigned to check several Hotel Service Optimization System (HotSOS)<sup>1</sup> alarms from various rooms inside the hotel. Room 32-129 was the last of the rooms Security Officer Campos was assigned to check.

Security Officer Campos was on the 30<sup>th</sup> floor and responded to the 32<sup>nd</sup> floor via the stairwell in the north end of the 100 wing. Security Officer Campos attempted to enter the hallway to the 100 wing but the door would not open. He took the stairs to the 33<sup>rd</sup> floor and used the guest

<sup>1</sup> A HotSOS Alarm is triggered by a guest room door that is left ajar for a predetermined amount of time.

elevator to access the 32<sup>nd</sup> floor. Once on the 32<sup>nd</sup> floor, Security Officer Campos entered the foyer leading to the stairwell. He discovered an "L" bracket screwed into the door and door frame which prevented it from opening. Security Officer Campos called his dispatch center with the house phone located in the foyer to report the discovery. The security dispatch center then called the engineering section to have the door checked.

Security Officer Campos heard what he described as a rapid drilling sound coming from room 32-135 after he hung up the phone. As he walked down the 100 wing hallway, Campos heard what he described as automatic gunfire coming from the area of room 32-135 and realized he had been shot in the left calf. He took cover in the alcove of rooms 32-122 and 32-124 and utilized both his cellular phone and radio to notify his dispatch he was shot. Security Officer Campos advised he was shot with a BB or pellet gun. While waiting for other security personnel to arrive Security Officer Campos continued to hear gunfire coming from the room.

Engineer Stephen Schuck finished fixing a leak in room 62-207 when he was directed to respond to the 32<sup>nd</sup> floor reference the bracket preventing the stairwell door from opening. Engineer Schuck used the service elevator in the 200 wing to access the 32<sup>nd</sup> floor. When he arrived on the 32<sup>nd</sup> floor, he gathered his tools and equipment and walked from the 200 wing to the 100 wing.

As Engineer Schuck walked up the hallway of the 100 wing, he observed Security Officer Campos poke his head out of an alcove. Engineer Schuck then heard rapid gunfire coming from the end of the 100 hallway which lasted approximately 10 seconds. When the gunfire stopped, he heard Security Officer Campos tell him to take cover. Engineer Schuck stepped into an alcove and gunfire again erupted down the hallway coming from room 32-135. The gunfire lasted a few seconds then stopped. The gunfire started again after a brief pause but Engineer Schuck believed it was directed outside and not down the hallway.

Inside the Las Vegas Village over fifty LVMPD personnel were on overtime assignments for the Route 91 Harvest Festival. The initial gunshots were heard on an officer's Body Worn Camera (BWC). Officers and concertgoers initially believed the gunfire to be fireworks. As Paddock targeted the concertgoers with gunfire, officers quickly determined they were dealing with an active shooter and broadcast the information over the radio.

The crowd inside the Las Vegas Village started reacting to the gunfire and Jason Aldean ran off the stage. Officers and concertgoers began treating victims who were struck by gunfire. They also tried to get concertgoers out of the venue in a safe manner. Officers determined the gunfire was coming from an elevated position, possibly from the Mandalay Bay Hotel. Medical personnel were requested for multiple people struck by gunfire.

As the active shooter incident was occurring, two LVMPD officers were in the security office of the Mandalay Bay handling a call for service reference two females who were in custody for trespassing. The officers heard the radio broadcast of gunfire at the Route 91 Harvest Festival. Both officers, along with security personnel, exited the security office and responded towards the Las Vegas Village. As they were making their way through the casino, security personnel advised the officers of an active shooter on the 32<sup>nd</sup> floor of the hotel.<sup>2</sup> The officers then directed

<sup>2</sup>Information obtained from LVMPD BWC.

security to escort them to that location. The officers and security personnel entered the Center Core guest elevators and were again advised the shooter was on the 32<sup>nd</sup> floor. The officers made a tactical decision to respond to the 31<sup>st</sup> floor and take the stairwell to the 32<sup>nd</sup> floor.

LVMPD officers converged on the Las Vegas Village and Mandalay Bay. Officers formed multiple Strike Teams and entered the Mandalay Bay from various entrance points. A team of officers including a Special Weapons and Tactics (SWAT) Operator reached the 32<sup>nd</sup> floor via the stairwell in the 100 wing. Officers did not hear gunfire coming from room 32-135. Officers were able to manually breach the “L” bracket on the stairwell door and gain access to the hallway. Officers immediately observed a food service cart which had wires running from it to room 32-134 and prepared themselves for the possibility of an Improvised Explosive Device (IED). The decision was made to use an explosive breach to make entry into room 32-135.

After a successful breach of the doors to room 32-135, officers entered the room and found Paddock deceased on the floor. Paddock appeared to have a self-inflicted gunshot wound to the head. Officers cleared the remainder of the room and observed multiple rifles in various locations throughout the room as well as hundreds of expended casings. A second explosive breach was utilized to gain access to room 32-134 through the connecting doors. Immediately after the breach a SWAT officer negligently discharged his rifle. Officers cleared room 32-134 finding several rifles in the room.

Officers, medical personnel, and concertgoers continued the evacuation of victims in the Las Vegas Village venue. Several triage sites were established in the venue and surrounding area. Injuries ranged from being minor in nature to fatal. Hundreds of wounded were transported to area hospitals by ambulance and privately owned citizen vehicles.

### **Sequence of Events**

The details listed below were gathered from several different sources<sup>3</sup>. For the purpose of this section, the sequence of events will begin on September 25<sup>th</sup> when Paddock checked into the Mandalay Bay and end with the LVMPD officers making entry into Paddock’s room. ***All times in this section are approximates based upon different time sources and different time stamps which were all utilized to document this section of the report. All dates and times listed below occurred in the year 2017.***

On or around September 9<sup>th</sup> Paddock made his room reservation for a Vista Suite ending in 235 but not a specific floor. On September 20<sup>th</sup> Paddock was internally<sup>4</sup> assigned to room 33-235. On September 21<sup>st</sup> Paddock was internally changed to room 32-235. On September 24<sup>th</sup> Paddock was assigned to room 32-135.

<sup>3</sup> LVMPD Officer Body Worn Cameras; UBER Video; Interviews to include officers, civilians & Mandalay Bay Employees; Mandalay Bay Video Surveillance; Lock Interrogation Documents; Cell Phone Videos & Records.

<sup>4</sup> All internal changes to Paddock’s rooms were done by a Mandalay Bay computer without Paddock’s knowledge.

## **September 25<sup>th</sup> through October 1<sup>st</sup>**

### **September 25<sup>th</sup>**

#### **Overview:**

At approximately 1533 hours, Paddock checked into room 32-135 of the Mandalay Bay under his name. Paddock booked the connecting room (32-134) for September 29<sup>th</sup> through October 2<sup>nd</sup>. When Paddock checked into room 32-134 on September 29<sup>th</sup>, he did so under his girlfriend, Danley's, name. Paddock was set to check out of both rooms on October 2<sup>nd</sup>. From approximately 1603 to 1656 hours, Paddock was seen at Mizuya Sushi (inside the Mandalay Bay), he then drove his vehicle from self-park to valet<sup>5</sup>, and returned to the front desk with five suitcase bags.

- At approximately 1656 hours, a bellman met Paddock and escorted him to room 32-135. Paddock requested to go through the service elevators and not through the guest elevators. According to interviews, this request is not uncommon for guests of the hotel. Paddock rolled one bag and a bellman used a luggage cart for the other four bags.
- From approximately 2137 to 2140 hours, Paddock had his vehicle removed from valet and Paddock left the Mandalay Bay.
- At approximately 2300 hours, Paddock arrived in Mesquite, Nevada.

### **September 26<sup>th</sup>**

#### **Overview:**

Paddock spent time at his home in Mesquite, Nevada, Downtown Las Vegas and Mandalay Bay.

- From approximately 1012 to 1455 hours, according to cell phone records, Paddock's cell phone showed in Mesquite, Nevada.
- At approximately 1535 hours, Paddock completed a wire transfer in Mesquite, Nevada of \$50,000 from his Wells Fargo account to an account in the Philippines.
- From approximately 2012 to 2100 hours, Paddock drove from Mesquite, Nevada to The Ogden.
- From approximately 2102 to 2216 hours, Paddock walked around and gambled at the El Cortez Hotel.
- At approximately 2223 hours, Paddock returned to The Ogden.
- At approximately 2234 hours, Paddock departed The Ogden and drove to Mandalay Bay.
- From approximately 2245 to 2252 hours, Paddock valeted his vehicle at Mandalay Bay and took six suitcases (located on a luggage cart) and one rolling suitcase (Paddock rolled the suitcase himself) up to room 32-135 by way of the service elevator with help of a bellman. (The bellman who escorted Paddock on the September 25<sup>th</sup> was different than the bellman who escorted Paddock on the September 26<sup>th</sup>.)
- At approximately 2308 hours, Paddock began gambling at Mandalay Bay and continued gambling into the next morning.

<sup>5</sup> Confirmed by valet ticket #275263147



## **September 27<sup>th</sup>**

### Overview:

Paddock spent several hours gambling at Mandalay Bay. Paddock spoke with his VIP host reference wanting the "Vista Suite" at the end of the hall with the double doors. Paddock was insistent on the suite and connecting room. Paddock wanted to be in the 200 wing as it had a better view, according to him. Paddock was upset about the room, but was not angry. Paddock never mentioned the reason why he wanted a connecting room.

- At approximately 0713 hours, Paddock stopped gambling, which he was doing continuously since the previous night.
- At approximately 1556 hours, Paddock placed a room service order for two entrees totaling \$94.33.
- At approximately 1632 hours, room 32-135 was cleaned by hotel staff. Paddock remained in the room as it was cleaned.
- At approximately 2003 hours, Paddock was seen in the valet area of Mandalay Bay with two rolling suitcases. Paddock had his vehicle removed from valet and left the Mandalay Bay at approximately 2015 hours.
- At approximately 2029 hours, Paddock arrived at The Ogden and entered a room at approximately 2031 hours.
- From approximately 2045 to 2200 hours, Paddock left The Ogden and drove to Mesquite, Nevada, where he arrived at approximately 2200 hours.
- At approximately 2300 hours, Paddock arrived at the Walmart in Mesquite, Nevada. He purchased luggage, razor blades, fake flowers, a vase, and a styrofoam ball.

## **September 28<sup>th</sup>**

### Overview:

In Mesquite, Nevada, Paddock purchased a .308 bolt action rifle, deposited \$14,000 into a Wells Fargo account, and wire transferred \$50,000 to an account in the Philippines. Paddock visited a gun range in Mesquite, Nevada, before traveling back to the Mandalay Bay.

- From approximately 0227 to 1420 hours, Paddock's cell phone was located in Mesquite, Nevada according to cell phone records.
- From approximately 1444 to 1501 hours, Paddock made a \$14,000 deposit at Wells Fargo and transferred \$50,000 to a bank in the Philippines.
- At approximately 1523 hours, Paddock purchased a .308 bolt action rifle from a gun store in Mesquite, Nevada.
- From approximately 1723 to 1803 hours, Paddock was seen driving in the area of the City of Mesquite Landfill / gun range located at 3200 Mesquite Heights Road, in a rural area of Mesquite, Nevada.
- From approximately 2042 to 2146 hours, Paddock traveled from Mesquite, Nevada to the Mandalay Bay and parked in valet. Paddock was seen entering the Mandalay Bay with two rolling suitcases and a laptop bag.
- At approximately 2218 hours, Paddock began gambling at Mandalay Bay and continued gambling into the next morning.

## **September 29<sup>th</sup>**

### Overview:

A second refrigerator was delivered to Paddock's room (32-135). Staff was asked to only change linen's and take out the trash in room 32-135. A staff member was told by Paddock not to vacuum 32-135 and not to remove the food service cart from the room. Staff was asked specifically to change sheets and towels in room 32-134 and inform Paddock when room 32-134 was completed. Paddock remained in room 32-135 and used his laptop as the rooms were being cleaned.

- At approximately 0543 hours, Paddock stopped gambling, which he was doing continuously since the previous night.
- From approximately 1228 to 1314 hours, Paddock ate at Mizuya Sushi Sake and then returned to room 32-135.
- At approximately 1400 hours, rooms 32-135 and 32-134 were cleaned by hotel staff.
- At approximately 1506 hours, Paddock checked into room 32-134 (under Danley's name) from the VIP check in counter at the Mandalay Bay.
- At approximately 1508 hours, Paddock took the guest elevator to the 32<sup>nd</sup> floor.
- At approximately 1509 hours, Paddock entered room 32-134.
- From approximately 1509 to 0100 (September 30<sup>th</sup>) hours, Paddock remained inside rooms 32-134 and 32-135.
- At approximately 2311 hours, a room service ticket totaling \$102.99 was charged to room 32-134.

## **September 30<sup>th</sup>**

### Overview:

Paddock traveled to Mesquite, Nevada twice from Mandalay Bay. Paddock placed "Do Not Disturb" signs on both 32-135 and 32-134. Paddock gambled for a couple of hours and brought more suitcases up to his room.

- At approximately 0100 hours, Paddock drove to Mesquite, Nevada.
- At approximately 0556 hours, Paddock returned to the Mandalay Bay with four suitcases.
- From approximately 1204 to 1215 hours hotel staff serviced the private mini bar of room 32-134. (Paddock placed the "Do Not Disturb" signs on the room doors sometime after 1215 hours.)
- Between approximately 1300 to 1400 hours, Paddock was asked if he would like rooms 32-135 and 32-134 cleaned. Paddock declined.
- From approximately 1452 hours to 1508 hours, Paddock removed his vehicle from valet and parked in the self-parking garage.
- At approximately 1512 hours, Paddock was observed exiting the parking garage elevator with two suitcase rolling bags.
- At approximately 1520 hours, Paddock was seen in a guest elevator with the two rolling suitcases and took them to his room.
- At approximately 1952 hours, Paddock drove from Mandalay Bay to Mesquite, Nevada and arrived at approximately 2057 hours.

**October 1<sup>st</sup>**Overview:

From approximately 0206 to 2040 hours, Paddock departed Mesquite, Nevada and returned to Mandalay Bay. He spent several hours gambling, brought more suitcases to his room, and ordered room service.

- At approximately 0206 hours, Paddock left Mesquite, Nevada.
- At approximately 0305 hours, Paddock arrived at the self-parking garage at the Mandalay Bay.
- From approximately 0324 to 0734 hours, Paddock walked around the casino and gambled. Paddock used both his own and Danley's players cards.
- At approximately 0737 hours, Paddock returned to his room.
- From approximately 1222 to 1226 hours, Paddock moved his vehicle from the self-park garage to valet<sup>6</sup>. This valet transaction was the only parking transaction during his stay at Mandalay Bay that was completed in Danley's name.
- At approximately 1229 hours, Paddock was observed waiting for an elevator with two rolling suitcases. There was also a third bag hanging from one of the rolling suitcases.
- At approximately 1233 hours, a room service ticket was opened for room 32-134.
- At approximately 1317 hours, Mandalay Bay valet parked Paddock's vehicle in "Garage East", space #317.<sup>7</sup>
- At approximately 1337 hours, the room service ticket<sup>8</sup> was closed out for room 32-134 in Danley's name. The check totaled \$67.60 and included two entrees.
- From 1423 to 1940 hours, the doors for rooms 32-134 and 32-135 were manipulated multiple times. For example, the doors were opened, closed and the dead bolt locks were engaged and disengaged several times.

From approximately 2040 to 2205 hours, a series of events led up to the mass shooting conducted by Paddock:

- At approximately 2040 hours, a HotSOS alarm was generated for room 32-129.
- At approximately 2118 hours, the HotSOS call was assigned to Security Officer Campos via his cellphone. Security Officer Campos was assigned five HotSOS calls during the 2118 hours cellphone call. According to interviews of hotel staff, it is common practice to assign HotSOS calls to security officers and then immediately close out the HotSOS tickets prior to a security officers actually checking out the room. Security Officer Campos handled the HotSOS call for room 32-129 last.
- At approximately 2136 hours, the dead bolt to room 32-135 was engaged.
- At approximately 2140 hours, Jason Alden started his performance at the Route 91 Festival.
- At approximately 2146 hours, the dead bolt to room 32-134 was engaged.

<sup>6</sup> Valet ticket #275274484

<sup>7</sup> This is the same space detectives located the vehicle in after the shooting

<sup>8</sup> Room service ticket #51592684

### **Approximately 2146 to 2204 hours**

- Security Officer Campos entered the service elevator at approximately 2146 hours and got off on the 30<sup>th</sup> floor at approximately 2147 hours.
- Security Officer Campos walked to the stairwell in the 100 wing of the 30<sup>th</sup> floor and walked up to the 32<sup>nd</sup> floor.
- Security Officer Campos could not gain entry to the 32<sup>nd</sup> floor due to the door being barricaded.<sup>9</sup>
- Security Officer Campos walked up the stairs to the 33<sup>rd</sup> floor. Security Officer Campos walked down the 100-Wing of the 33<sup>rd</sup> floor to Center Core. He took a guest elevator to the 32<sup>nd</sup> floor.
- At approximately 2200 hours, Security Officer Campos exited the guest elevator and walked up the 100 Wing toward room 32-129. Security Officer Campos checked room 32-129 and found it was secure. Security Officer Campos walked into the foyer leading to the stairwell and observed the “L” bracket screwed into the door and frame.
- At approximately 2204 hours, Security Officer Campos picked up a house phone located inside the small foyer leading to the stairwell and called security dispatch to report the “L” bracket on the door to the stairs. Security dispatch transferred the call to maintenance dispatch. The maintenance dispatcher then transferred Security Officer Campos to the maintenance supervisor’s cell phone.

From approximately 2205 to 2216 hours, Paddock committed a mass shooting that left 58 people dead and over 700 hundred injured:

### **Approximately 2205 hours**

- Engineer Schuck was contacted by the maintenance dispatcher via his radio.
- Paddock fired two single gunshots into the Las Vegas Village area.
- Paddock fired an undetermined amount of gunshots into the Las Vegas Village area.

### **Approximately 2206 hours**

- Security Officer Campos ended the phone call and hung up the house phone. After hanging up the phone, Security Officer Campos heard what he described as rapid drilling noises.
- Paddock fired approximately 100 rounds into the Las Vegas Village area.
- Security Officer Campos began walking down the 100-wing toward Center Core.
- Engineer Schuck was told by his supervisor to go to the 32<sup>nd</sup> floor.
- LVMPD unit 169SE broadcast over the Convention Center Area Command (CCAC) radio channel, “169SE, we got shots fired, 415A at the Route 91. Sounded like an automatic firearm.”
- Paddock fired rounds down the hallway at Security Officer Campos. Security Officer Campos was struck in the left calf with a bullet fragment. He took cover in the alcove between rooms 32-124 and 32-122.

<sup>9</sup> The investigation would reveal the door leading from the stairwell to the 32<sup>nd</sup> floor was barricaded by an “L” bracket screwed into the door and the door frame.

- Security Officer Campos told his dispatcher via his radio, “Hey there’s shots fired in, uh, 32-135.”
- Engineer Schuck’s dispatcher told him specifically where to go on the 32<sup>nd</sup> floor. Engineer Schuck left room 62-207 and walked to the service elevators with his equipment cart. The service elevators are located in the 200-wing of the hotel.

**Approximately 2207 hours,**

- Paddock fired approximately 95 rounds into the Las Vegas Village area.
- LVMPD Officers Varsin and Hendrex left the Mandalay Bay Security Office with two armed Mandalay Bay Security Officers.
- Paddock fired approximately 100 rounds into the Las Vegas Village area.
- Paddock fired approximately 94 rounds into the Las Vegas Village area.

**Approximately 2208 hours**

- Paddock fired the 1<sup>st</sup> round at the fuel tank. (Missed tank)
- LVMPD CAD event# 171001-3519 was generated for the shooting incident.

**Approximately 2209 hours**

- Paddock fired the 2<sup>nd</sup> round at the fuel tank. (Missed tank)
- Paddock fired the 3<sup>rd</sup> round at the fuel tank. (Missed tank)
- Paddock fired the 4<sup>th</sup> round at the fuel tank. (Missed tank)
- Paddock fired the 5<sup>th</sup> round at the fuel tank. 1<sup>st</sup> strike into the fuel tank. (Top strike)
- Paddock fired the 6<sup>th</sup> round at the fuel tank. 2<sup>nd</sup> strike into fuel tank. (Lower strike) The investigation was unable to determine when the 7<sup>th</sup> and 8<sup>th</sup> rounds were fired at the fuel tank.<sup>10</sup>
- Paddock fired an undetermined number of rounds into the Las Vegas Village area.

**Approximately 2210 hours**

- Engineer Schuck arrived at the Center Core of the 32<sup>nd</sup> floor and walked up the 100-wing toward room 32-135. As he walked, Engineer Schuck heard what he believed to be a jack hammer sound in the distance. Engineer Schuck quickly realized it was automatic gunfire.<sup>11</sup> After the gunshots stopped, Security Officer Campos yelled at Engineer Schuck to take cover.
- Engineer Schuck turned and took cover in the alcove between rooms 32-119 and 32-117. Paddock fired rounds down the hallway at Engineer Schuck. He was not struck by gunfire. Engineer Schuck attempted to open room 32-117 with his master key card however the dead bolt lock was engaged and he was unable to gain entry into the room.
- Engineer Schuck stated over his radio, “Shannon, call the police. Someone’s firing a rifle on the 32<sup>nd</sup> floor down the hallway.”

<sup>10</sup> There were eight .308 casings located inside of room 32-134

<sup>11</sup> The investigation determined at the time Engineer Schuck heard the gunfire, Paddock fired the approximately 21 rounds, referred to above, at the Las Vegas Village area.

**Approximately 2211 hours**

- LVMPD Officers Varsin and Hendrex arrived at the Center Core area of the 31<sup>st</sup> floor and began walking up the 100-wing along with armed security officers from Mandalay Bay.
- Paddock fired approximately 80-100 rounds into the Las Vegas Village area.
- Paddock fired approximately 95 rounds into the Las Vegas Village area.

**Approximately 2212 hours**

- Two armed Mandalay Bay security officers exited the guest elevator on the 32<sup>nd</sup> floor and went to the Center Core.
- Paddock fired approximately 80-90 rounds into the Las Vegas Village area.
- Paddock fired an unknown number of rounds into the Las Vegas Village area. LVMPD Officers Clarkson and Cook were struck by gunfire during this volley.
- A Mandalay Bay security officer who was with LVMPD Officers Varsin and Hendrex advised over his radio, "We can hear rapid fire above us. We are on the 31<sup>st</sup> floor. We can hear it above us."

**Approximately 2213 hours**

- Paddock fired an unknown number of rounds into the Las Vegas Village area.

**Approximately 2215 hours**

- Paddock fired two separate volleys of an unknown number of rounds into the Las Vegas Village area.

**Approximately 2216 hours**

- LVMPD Officers Varsin and Hendrex along with Mandalay Bay security officers made entry into the stairwell on the 31<sup>st</sup> floor.

**Approximately 2218 hours**

- The heat detection indicator from inside room 32-135 detected no further readings from inside of the room.

**Approximately 2241 hours**

- A Strike Team which included K9 Sergeant Bitsko, K9 Officer Newton, SWAT Officer Hancock and Detective Walford ascended the stairs from the 30<sup>th</sup> floor. The Strike Team made entry and cleared the 31<sup>st</sup> floor.

**Approximately 2256 hours**

- The Strike Team reentered the stairwell from the 31<sup>st</sup> floor and walked up to the 32<sup>nd</sup> floor.

**Approximately 2257 hours**

- K9 Sergeant Bitsko and SWAT Officer Hancock manually breached the door barricaded with the "L" bracket.

### **Approximately 2320 hours**

- The Strike Team conducted an explosive breach into room 32-135 and made entry. The Strike Team reported Paddock was down from an apparent self-inflicted gunshot wound to the head.

### **Approximately 2326 hours**

- The Strike Team made a second explosive breach from inside of room 32-135 into room 32-134 through the connecting doors. Immediately after the explosive breach an LVMPD SWAT Officer negligently fired a three round burst from his rifle. The rounds fired from the SWAT officer's rifle struck a chair, an entertainment center/cabinet and a wall.

After the Strike Team finished rendering rooms 32-134 and 32-135 safe, the scene was secured until investigative personnel arrived and assumed control of the 32<sup>nd</sup> floor.

## **III. VICTIMS**

### **Deceased**

Victims 1-31 were pronounced deceased by the coroner investigator who responded to the Las Vegas Village venue and surrounding areas. The remaining victims were pronounced by the attending physician at the corresponding medical facility they were transported to. After all autopsies were performed, the Clark County Office of the Coroner Medical Examiner (CCOCME) ruled the cause and manner of death for all deceased victims to be gunshot wound(s) and homicide.

#### **1. Jack Reginald Beaton**

Age 54

Clark County Coroner's Office Case Number: 17-10060

Clark County Coroner's Office Seal Number: 727327

Time of Death: 10-02-2017 at 0545 hours

#### **2. Christopher Louis Roybal**

Age 28

Clark County Coroner's Office Case Number: 17-10061

Clark County Coroner's Office Seal Number: 727302

Time of Death: 10-02-2017 at 0545 hours

#### **3. Lisa Marie Patterson**

Age 46

Clark County Coroner's Office Case Number: 17-10062

Clark County Coroner's Office Seal Number: 732484

Time of Death: 10-02-2017 at 0545 hours

**4. Adrian Allan Murfitt**

Age 35

Clark County Coroner's Office Case Number: 17-10063

Clark County Coroner's Office Seal Number: 737364

Time of Death: 10-02-2017 at 0545 hours

**5. Hannah Lassette Ahlers**

Age 34

Clark County Coroner's Office Case Number: 17-10065

Clark County Coroner's Office Seal Number: 732473

Time of Death: 10-02-2017 at 0545 hours

**6. Austin William Davis**

Age 29

Clark County Coroner's Office Case Number: 17-10066

Clark County Coroner's Office Seal Number: 727385

Time of Death: 10-02-2017 at 0545 hours

**7. Stephen Richard Berger**

Age 44

Clark County Coroner's Office Case Number: 17-10067

Clark County Coroner's Office Seal Number: 732488

Time of Death: 10-02-2017 at 0545 hours

**8. Stacey Ann Etcheber**

Age 50

Clark County Coroner's Office Case Number: 17-10068

Clark County Coroner's Office Seal Number: 727388

Time of Death: 10-02-2017 at 0545 hours

**9. Christiana Duarte**

Age 22

Clark County Coroner's Case Number: 17-10069

Clark County Coroner's Seal Number: 732404

Time of Death: 10-02-2017 at 0545 hours

**10. Lisa Romero-Muniz**

Age 48

Clark County Coroner's Case Number: 17-10070

Clark County Coroner's Seal Number: 732458

Time of Death: 10-02-2017 at 0545 hours

**11. Heather Lorraine Alvarado**

Age 35

Clark County Coroner's Office Case Number: 17-10071

Clark County Coroner's Office Seal Number: 732423

Time of Death: 10-02-2017 at 0545 hours



**12. Denise Cohen**

Age 58

Clark County Coroner's Case Number: 17-10072

Clark County Coroner's Office Seal Number: 732474

Time of Death: 10-02-2017 at 0545 hours

**13. Kurt Allen Von Tillow**

Age 55

Clark County Coroner's Office Case Number: 17-10073

Clark County Coroner's Office Seal Number: 732489

Time of Death: 10-02-2017 at 0545 hours

**14. Brennan Lee Stewart**

Age 30

Clark County Coroner's Case Number: 17-10074

Clark County Coroner's Seal Number: 732414

Time of Death: 10-02-2017 at 0545 hours

**15. Derrick Dean Taylor**

Age 56

Clark County Coroner's Office Case Number: 17-10075

Clark County Coroner's Office Seal Number: 732445

Time of Death: 10-02-2017 at 0545 hours

**16. Kelsey Breanne Meadows**

Age 28

Clark County Coroner's Office Case Number: 17-10076

Clark County Coroner's Office Seal Number: 732486

Time of Death: 10-02-2017 at 0545 hours

**17. Jennifer Topaz Irvine**

Age 42

Clark County Coroner's Office Case Number: 17-10077

Clark County Coroner's Office Seal Number: 727384

Time of Death: 10-02-2017 at 0545 hours

**18. William W. Wolfe Jr.**

Age 42

Clark County Coroner's Office Case Number: 17-10078

Clark County Coroner's Office Seal Number: 732415

Time of Death: 10-02-2017 at 0545 hours

**19. Carly Anne Kreibaum**

Age 33

Clark County Coroner's Office Case Number: 17-10079

Clark County Coroner's Office Seal Number: 732478

Time of Death: 10-02-2017 at 0545 hours

**20. Laura Anne Shipp**

Age 50

Clark County Coroner's Office Case Number: 17-10080

Clark County Coroner's Office Seal Number: 732451

Time of Death: 10-02-2017 at 0545 hours

**21. Carrie Rae Barnette**

Age 34

Clark County Coroner's Office Case Number: 17-10085

Clark County Coroner's Office Seal Number: 727391

Time of Death: 10-02-2017 at 0545 hours

**22. Jordyn Nicole Rivera**

Age 21

Clark County Coroner's Office Case Number: 17-10101

Clark County Coroner's Office Seal Number: 732469

Time of Death: 10-02-2017 at 0545 hours

**23. Victor Loyd Link**

Age 55

Clark County Coroner's Office Case Number: 17-10102

Clark County Coroner's Office Seal Number: 732497

Time of Death: 10-02-2017 at 0545 hours

**24. Candice Ryan Bowers**

Age 40

Clark County Coroner's Office Case Number: 17-10103

Clark County Coroner's Office Seal Number: 732417

Time of Death: 10-02-2017 at 0545 hours

**25. Jordon Alan McIlldoon**

Age 23

Clark County Coroner's Office Case Number: 17-10053

Clark County Coroner's Office Seal Number: 732487

Time of Death: 10-02-2017 at 0545 hours

**26. Keri Lynn Galvan**

Age 31

Clark County Coroner's Office Case Number: 17-10054

Clark County Coroner's Office Seal Number: 732499

Time of Death: 10-02-2017 at 0545 hours

**27. Dorene Anderson**

Age 49

Clark County Coroner's Office Case Number: 17-10057

Clark County Coroner's Office Seal Number: 727313

Time of Death: 10-02-2017 at 0545 hours

**28. Neysa C. Tonks**

Age 46

Clark County Coroner's Office Case Number: 17-10058

Clark County Coroner's Office Seal Number: 727306

Time of Death: 10-02-2017 at 0545 hours

**29. Melissa V. Ramirez**

Age 26

Clark County Coroner's Office Case Number: 17-10059

Clark County Coroner's Office Seal Number: 732407

Time of Death: 10-02-2017 at 0545 hours

**30. Brian Scott Fraser**

Age 39

Clark County Coroner's Office Case Number: 17-10056

Clark County Coroner's Office Seal Number: 732408

Time of Death: 10-02-2017 at 0545 hours

**31. Tara Ann Roe**

Age 34

Clark County Coroner's Office Case Number: 17-10055

Clark County Coroner's Office Seal Number: 732441

Time of Death: 10-02-2017 at 0545 hours

**32. Bailey Schweitzer**

Age 20

Clark County Coroner's Office Case Number: 17-10051

Clark County Coroner's Office Seal Number: 732420

Time of Death: 10-01-2017 at 2307 hours

**33. Patricia Mestas**

Age 67

Clark County Coroner's Office Case Number: 17-10049

Clark County Coroner's Office Seal Number: 727390

Time of Death: 10-01-2017 at 2250 hours

**34. Jennifer Parks**

Age 36

Clark County Coroner's Office Case Number: 17-10052

Clark County Coroner's Office Seal Number: 727359

Time of Death: 10-01-2017 at 2300 hours

**35. Angela Gomez**

Age 20

Clark County Coroner's Office Case Number: 17-10050

Clark County Coroner's Office Seal Number: 732413

Time of Death: 10-01-2017 at 2253 hours

**36. Denise Burditus**

Age 50

Clark County Coroner's Office Case Number: 17-10082

Clark County Coroner's Office Seal Number: 731590

Time of Death: 10-02-2017 at 0047 hours

**37. Cameron Robinson**

Age 28

Clark County Coroner's Office Case Number: 17-10083

Clark County Coroner's Office Seal Number: 732437

Time of Death: 10-01-2017 at 2301 hours

**38. James Melton**

Age 29

Clark County Coroner's Office Case Number: 17-10084

Clark County Coroner's Office Seal Number: 727311

Time of Death: 10-01-2017 at 2320 hours

**39. Quinton Robbins**

Age 20

Clark County Coroner's Office Case Number: 17-10046

Clark County Coroner's Office Seal Number: 731535

Time of Death: 10-01-2017 at 2315 hours

**40. Charleston Hartfield**

Age 34

Clark County Coroner's Office Case Number: 17-10086

Clark County Coroner's Office Seal Number: 727353

Time of Death: 10-01-2017 at 2230 hours

**41. Erick Silva**

Age 21

Clark County Coroner's Office Case Number: 17-10087

Clark County Coroner's Office Seal Number: 725563

Time of Death: 10-01-2017 at 2230 hours

**42. Teresa Nicol Kimura**

Age 38

Clark County Coroner's Office Case Number: 17-10088

Clark County Coroner's Office Seal Number: 725567

Time of Death: 10-01-2017 at 2230 hours

**43. Susan Smith**

Age 53

Clark County Coroner's Office Case Number: 17-10089

Clark County Coroner's Office Seal Number: 725552

Time of Death: 10-01-2017 at 2230 hours

**44. Dana Leann Gardner**

Age 52

Clark County Coroner's Office Case Number: 17-10090

Clark County Coroner's Office Seal Number: 725569

Time of Death: 10-01-2017 at 2250 hours

**45. Thomas Day Jr.**

Age 54

Clark County Coroner's Office Case Number: 17-10091

Clark County Coroner's Office Seal Number: 725591

Time of Death: 10-01-2017 at 2341 hours

**46. John Joseph Phippen**

Age 56

Clark County Coroner's Office Case Number: 17-10092

Clark County Coroner's Office Seal Number: 725568

Time of Death: 10-02-2017 at 0244 hours

**47. Rachel Kathleen Parker**

Age 33

Clark County Coroner's Office Case Number: 17-10093

Clark County Coroner's Office Seal Number: 725561

Time of Death: 10-01-2017 at 2230 hours

**48. Sandra Casey**

Age 34

Clark County Coroner's Office Case Number: 17-10094

Clark County Coroner's Office Seal Number: 725550

Time of Death: 10-01-2017 at 2230 hours

**49. Jessica Klymchuk**

Age 34

Clark County Coroner's Office Case Number: 17-10095

Clark County Coroner's Office Seal Number: 727322

Time of Death: 10-01-2017 at 2230

**50. Andrea Lee Anna Castilla**

Age 28

Clark County Coroner's Office Case Number: 17-10096

Clark County Coroner's Office Seal Number: 727381

Time of Death: 10-01-2017 at 2301 hours

**51. Carolyn Lee Parsons**

Age 31

Clark County Coroner's Office Case Number: 17-10097

Clark County Coroner's Office Seal Number: 727382

Time of Death: 10-01-2017 at 2300 hours

**52. Michelle Vo**

Age 32

Clark County Coroner's Office Case Number: 17-10098

Clark County Coroner's Office Seal Number: 727355

Time of Death: 10-01-2017 at 2244 hours

**53. Rocio Guillen**

Age 40

Clark County Coroner's Office Case Number: 17-10099

Clark County Coroner's Office Seal Number: 732409

Time of Death: 10-01-2017 at 2318 hours

**54. Christopher Hazencomb**

Age 44

Clark County Coroner's Office Case Number: 17-10105

Clark County Coroner's Office Seal Number: 732444

Time of Death: 10-02-2017 at 1044 hours

**55. Brett Schwanbeck**

Age 61

Clark County Coroner's Office Case Number: 17-10081

Clark County Coroner's Office Seal Number: 732471

Time of Death: 10-03-2017 at 1328 hours

**56. Rhonda M. LeRocque**

Age 42

Clark County Coroner's Office Case Number: 17-10045

Clark County Coroner's Office Seal Number: 542385

Time of Death: 10-02-2017 at 0023 hours

**57. Austin Cooper Meyer**

Age 24

Clark County Coroner's Office Case Number: 17-10047

Clark County Coroner's Office Seal Number: 540045

Time of Death: 10-01-2017 at 2257 hours

**58. Calla-Marie Medig**

Age 28

Clark County Coroner's Office Case Number: 17-10048

Clark County Coroner's Office Seal Number: 539069

Time of Death: 10-01-2017 at 2246 hours

## **Living Victims**

Documenting the living victims in this case has been a work in progress since October 1<sup>st</sup>. Source material poured into the LVMPD's Force Investigation Team (FIT) office post October 1<sup>st</sup> and is still being received.<sup>12</sup>

LVMPD recognizes that the approximate 22,000 people who attended the Route 91 festival are all victims. That number does not take into consideration the hundreds and possibly thousands that were walking along the Las Vegas Strip at the time of the shooting outside the Las Vegas Village venue. The goal of the FIT team was to document those who actually sustained any type of physical injury, no matter the degree. As previously stated in the introduction to this report, this information is vital in order to grant assistance, properly categorize the level of crime and most importantly, honor those who fell prey to this horrific act of violence.

## **IV. SUSPECT**

An extensive joint investigation involving the LVMPD and the Federal Bureau of Investigation (FBI) began immediately after the incident into the life of Paddock. Every facet of Paddock's life was explored.

At the time of the incident Paddock was 64 years old. He owned residences in Mesquite and Reno, Nevada and lived with his girlfriend Marilou Danley. Danley was in the Philippines at the time of the incident. She left the country on September 14, 2017, and returned on October 3, 2017. Upon arriving in the United States, Danley was interviewed by investigators several times. Interviews were also conducted with other relatives and acquaintances reference Paddock's background.

Danley stated Paddock's demeanor changed over the course of the last year. According to her, Paddock had become "distant" and their relationship was no longer intimate. Paddock was described as "germaphobic" and had strong reactions to smells. Over the course of the last year Paddock began to buy firearms and Danley believed it was a hobby of his.

During a stay at the Mandalay Bay in the beginning of September 2017, Danley recalled Paddock behaving strangely. The two were staying in room 60-235 and she observed Paddock constantly looking out the windows of the room which overlooked the Las Vegas Village venue. Paddock would move from window to window looking at the site from different angles.

Paddock's ex-wife, Peggy Reiko Paddock, described Paddock as intelligent and great with numbers. She further stated he worked as an Internal Revenue Service Agent. Paddock later worked as an auditor for Lockheed Martin and Boeing. According to her, Paddock began purchasing real estate properties with his mother and renovating them. Paddock bought and sold numerous properties throughout the years and, as far as she knew, sold the last property in 2010.

<sup>12</sup> Source material consisted of information from local area hospitals, notes taken by Crime Scene Analysts who responded to local area hospitals to document the injured, voluntary statements from actual victims and witnesses, and lastly, incident crime reports filed by hundreds of victims who sustained injury but waited to travel home to receive medical care. Also included was a separate listing of victims provided by the FBI.

Paddock made numerous claims to friends and family that he consistently felt ill, in pain or fatigued. An interview was conducted with a physician in Las Vegas who identified himself as Paddock's primary care physician since 2009. He last saw Paddock as a patient on or around October 2016 for an annual checkup. He recalled the only major ailment Paddock had was a slip and fall accident at a casino approximately 3 years earlier, which caused a muscle tear.

The physician described Paddock as "odd" in behavior with "little emotion" shown. He believed Paddock may have had bipolar disorder however, Paddock did not want to discuss that topic further with him. Paddock also refused anti-depressant medication but accepted prescriptions for anxiety. He noted Paddock seemed fearful of medications, often refusing to take them. He did not believe Paddock was abusing any medications.

Most of the people interviewed acknowledged Paddock's gambling habits. Paddock was known to gamble tens of thousands of dollars at a time and played at numerous casinos. Paddock was often given complimentary rooms and meals at the casinos he frequented due to the amount of money he gambled.

From 1982 through September of 2016, Paddock purchased approximately 29 firearms. These purchases consisted of handguns, shotguns and one rifle. From October 2016 through September 2017, Paddock purchased over 55 firearms along with firearm related accessories. Most of the firearms were rifles of various calibers. With the exception of the revolver, every firearm recovered in the Mandalay Bay was bought after September 2016.

During the course of the investigation it was learned Paddock had very limited contact with law enforcement. Paddock was stopped by police on occasion for traffic related offenses receiving only traffic citations. No arrest history was found for Paddock.

## **V. WITNESS INTERVIEWS**

The following information was taken from witness statements and compiled into a chronological description of the events.

On 10-01-2017, LVMPD had 51 personnel assigned to work special events overtime for the Route 91 Festival. The personnel staffing consisted of one lieutenant, five sergeants, forty-four officers and one civilian. The event had officers staffed from 1300-0100 hours with officers arriving and securing at various times.

The specific assignments for the event were West Traffic (1 sergeant, 10 officers), East Traffic (1 sergeant, 10 officers), Interior Entry / Gates (1 sergeant, 6 officers), Interior Early Squad (1 sergeant, 8 officers), Interior Late Squad (1 sergeant, 8 officers), Event Coordinator (1 officer) and Command Post (1 officer, 1 civilian). The assignments were supervised by Lieutenant Spencer who was designated as the Incident Commander for the festival.<sup>13</sup>

<sup>13</sup> Specific officers and assigned locations can be found on the Assignment List, ICS Form 204 for the event.



At approximately 2118 hours, Mandalay Bay Security Officer Campos was working his normal duties when he was notified of several HotSOS calls in the 100 Wing tower that he was assigned to monitor. The standard operating procedure for the Mandalay Bay security staff once an alarm is received is to call the room and attempt to contact the guest. If there is no answer, a security officer will be sent to check the door. These HotSOS calls are common and occur numerous times throughout the day. The security dispatcher will typically close the alarm out once a security officer is assigned. Security Dispatcher Brett Buck notified Security Officer Campos to check several HotSOS calls. Room 32-129 was last on his list to check.

Security Officer Campos was on the 30<sup>th</sup> floor and en-route to room 32-129 via the stairwell located at the north end of the 100 wing. Security Officer Campos attempted to enter the hallway of the 32<sup>nd</sup> floor through the small foyer and discovered the door was locked. The doors are always open due the stairwell being a fire escape and county codes require they remain unlocked at all times. The door has a handle but no locking mechanism.

Security Officer Campos stated he walked down the stairwell to the 31<sup>st</sup> floor, entered the hallway and walked to the Center Core. He used the guest elevator to go to the 32<sup>nd</sup> floor. Video surveillance showed Security Officer Campos actually went to the 33<sup>rd</sup> floor, then took a guest elevator down to the 32<sup>nd</sup> floor.

Security Officer Campos proceeded directly to the end of the 100 wing hallway, opened the inner door of the foyer entrance to the stairwell and observed the "L" bracket screwed into the door frame and door that opens into the stairwell. He realized this is what kept the door secured. Security Officer Campos utilized the house phone mounted inside the foyer to notify the security dispatcher of the bracket. The security dispatcher passed the call to the engineering section.

Security Officer Campos hung up the phone, heard what he described as a loud rapid drilling sound coming from room 32-135. He recalled the drilling sounded like it was coming from deep inside the room.

While walking toward the Center Core, Security Officer Campos heard gunfire coming from room 32-135 and ran down the hallway. Security Officer Campos realized he was shot in his left calf as he took cover in the alcove of rooms 32-122 and 32-124. Using both his radio and cell phone, Security Officer Campos advised the security dispatcher he had been shot in the leg with a BB / Pellet gun and was injured. He stayed in this position on the phone with the dispatcher while waiting for help. Security Officer Campos heard more gunshots coming from inside 32-135, but no rounds were coming down the hallway.

As country music singer Jason Aldean performed on stage, LVMPD officers working the interior of the event heard what they described as fireworks going off. Officer Hutchason and Special Events Coordinator Rodriguez, who were in the Command Post with security personnel, used the video monitors to look for the source of the noise. Upon recognizing the source of the noise to be gunfire, Coordinator Rodriguez directed all officers to change their radios to the CCAC radio channel. Coordinator Rodriguez monitored both the Events radio channel and CCAC radio channel throughout the incident.

LVMPD officers inside the Las Vegas Village recognized the sounds were coming from the southwest. Part of the crowd started to move towards the exits. Shortly after hearing the initial gunfire, LVMPD officers heard the first long burst of what they described as automatic gunfire. Once officers recognized the sound to be gunfire, they immediately searched for the gunman.

Security personnel along with LVMPD officers were in the security office of Mandalay Bay with two females being detained for trespass. They became aware via the radio of an active shooter call. Security Manager Oelke headed towards the Luxor side of the property when another call came over the radio that a security officer<sup>14</sup> had been shot with a pellet gun in the tower of the Mandalay Bay.

Security Manager Oelke ran to the Center Core guest elevators of the Mandalay Bay and met with Security Managers Sottile, Umstott and LVMPD Officers Hendrex and Varsin. As they arrived at the elevators, Engineering Supervisor Shannon Alsbury was holding the elevator door open. Engineer Alsbury was using a key to lock out the elevator and keep it from being stopped by guests trying to get on. There was conflicting information on the exact location of the shooter(s) whether it was on the 31<sup>st</sup>, 32<sup>nd</sup>, or the 33<sup>rd</sup> floors. While on the elevator they decided to check all three floors.

As the door opened on the 31<sup>st</sup> floor, Security Managers Oelke and Umstott and LVMPD Officers Hendrex and Varsin exited and walked up the 100 wing upon hearing gunshots coming from an unknown direction. Security Manager Sottile and Engineer Alsbury continued to the 32<sup>nd</sup> floor on the elevator.

At the Las Vegas Village, LMVPD officers observed the crowd move away from the southwest portion of the venue. They believed an active shooter was in that area. As officers moved toward the stage they heard several more bursts of gunfire. Officers directed citizens to get on the ground as they looked for a gunman. As officers moved through the crowd, they observed several citizens wounded and deceased. Officer Polion advised LVMPD Dispatch of shots fired and multiple casualties. The radio traffic was accidentally broadcast on SEAC radio channel.

Officers assigned to the venue near Reno Avenue and Las Vegas Boulevard began to move south along the Boulevard. They believed the gunfire was coming from the south end of Las Vegas Village. As they moved southbound, officers directed civilians away from the area. The officers received direct gunfire and took cover behind a wall as bullets impacted around them. Between bursts of gunfire, officers continued to assist evacuating civilians and administering first aid to the wounded.

Officers assigned to the venue near Mandalay Bay Drive and Las Vegas Boulevard heard the initial gunshots followed by a long burst of gunfire. Detective Balonek, who was on Mandalay Bay Drive east of Las Vegas Boulevard, believed the gunfire was coming from inside the Las Vegas Village, or from an elevated position. He retrieved his binoculars from his vehicle and scanned the north facing tower of Mandalay Bay. Approximately three-quarters of the way up the tower on the north end, Detective Balonek observed a silhouette of a male standing in a shooting position several feet back from a window. Detective Balonek could see the smoke from the male shooting, however, no muzzle flashes were observed. Detective Balonek could not get

<sup>14</sup> Security Officer Campos

on the radio so he switched to the Northeast Area Command channel and broadcasted the shooters location.

At the same time inside Mandalay Bay, Engineer Schuck was in room 62-207 working on a leak when he was directed by his radio dispatcher and supervisor to respond to the 32<sup>nd</sup> floor stairwell in the 100 wing to remove the "L" bracket that Security Officer Campos had called and reported. Engineer Schuck utilized the 200 wing service elevator to go down to the 32<sup>nd</sup> floor. He gathered his drill and other small tools needed to remove the bracket and walked through the Center Core from the 200 wing to the 100 wing. Engineer Schuck walked approximately one third of the way up the hallway when he observed Security Officer Campos poke his head into the hallway from a space between two rooms on Engineer Schuck's right hand side.

Engineer Schuck heard the sound of rapid gunfire coming from the end of the hallway. Security Officer Campos looked out from his position and yelled for Engineer Schuck to take cover. Engineer Schuck immediately took a step to his left into the alcove between two rooms. Gunfire erupted down the hallway towards his direction. Engineer Schuck felt the concussion of the rounds pass by where he was taking cover. An unknown object struck him in his back without causing serious injuries other than a small bruise. Engineer Schuck also stated he could see blood coming from Security Officer Campos' calf area.

Below on the 31<sup>st</sup> floor, LVMPD Officers Varsin and Hendrex along with Security Managers Oelke and Umstott walked up the 100 wing when they heard gunfire coming from the 32<sup>nd</sup> floor. They moved to the stairwell at the end of the hall. As they got closer to the stairwell, the gunfire continued and they smelled gunpowder. They entered the 100 wing stairwell and proceeded up to the door of the 32<sup>nd</sup> floor. They posted up to block any possible escape by the shooter.

Detective Clarkson, assigned to the event in uniform, was on Las Vegas Boulevard north of Mandalay Bay Drive when he heard the initial shots and radio traffic advising of multiple casualties inside of the Las Vegas Village. Detective Clarkson and other officers took cover and began searching for the shooter believing the shots were coming from the west. As patrol cars and a prisoner transport van arrived at the intersection, Detective Clarkson and other officers moved towards the vehicles for cover with the intention to move to Mandalay Bay.

CCAC patrol officers responded to the scene to assist. Officers Cook and Haynes arrived near Las Vegas Boulevard and Mandalay Bay Drive and parked their patrol vehicle. Officers Cook and Haynes moved towards the group that Detective Clarkson was with.

As the officers moved behind the patrol vehicles, they started receiving direct gunfire which impacted the ground and patrol vehicles around them. Detective Clarkson received a gunshot wound to the neck while taking cover behind a patrol vehicle. Officer Cook was struck by a bullet in his right bicep that continued into his chest.

While behind the vehicles, the officers realized the gunfire was coming from an elevated position and was directed at the patrol vehicles. During breaks in the gunfire, officers moved in teams of two from the patrol vehicle to a block wall for better cover. Detective Clarkson and Officer Cook were both transported to the hospitals by separate LVMPD vehicles.

As the gunfire continued, officers inside the event moved through the Las Vegas Village and provided direction for people trying to exit. This included the actions of Officer Hartfield who was attending the concert in an off-duty capacity and was mortally wounded while taking police action. Officers located wounded persons and began first aid measures and coordinated medical efforts with off-duty medical personnel who were attending the concert.

Officers also directed people to the exits and towards positions of cover and concealment. Exterior officers on the east side of the Las Vegas Village were swarmed by people as they fled the gunfire. Officers directed them to continue east and north as they recognized the gunfire was coming from Mandalay Bay. As officers began to encounter wounded civilians, casualty collection points were set up and first aid was rendered. Officers assisted in getting the wounded to hospitals via ambulances, private vehicles and patrol cars.

Exterior officers on the west side of the Las Vegas Village along Las Vegas Boulevard encountered people as they fled the venue. Officers knew the gunfire was coming from Mandalay Bay and directed people to stay behind cover and move to the north, away from gunfire. Officers encountered several wounded people and provided first aid until they could be taken to medical personnel. As officers moved south they formed Strike Teams and moved towards Mandalay Bay.

Sergeants Richmond, Riddle, and Van Nest each formed Strike Teams from overtime officers and patrol officers responding to the venue. The Strike Teams moved west across Las Vegas Boulevard and into the parking lot of the Luxor Hotel, then south onto the Mandalay Bay property. Upon entering Mandalay Bay, Strike Teams coordinated efforts with other LVMPD officers and security personnel already inside the casino.

As Strike Teams entered the hotel through the main valet, they met hotel security and were directed to the Center Core guest elevators. Each group was given information the shooter was possibly on the 29<sup>th</sup> or 31<sup>st</sup> floors and taken there by elevator. After each group of officers were taken to the upper floors, they instructed the hotel security guards to lock out the elevators. A Strike Team, which included two SWAT officers, was taken to the Foundation Room located on the top floor. Once inside the bar, officers began to move occupants to a safe location and clear the bar.

On the 32<sup>nd</sup> floor, Security Officer Campos and Engineer Schuck were still pinned down in the hallway. Engineer Schuck heard another round of rapid gunfire and believed it was being fired towards the outside of the building. During a small break in the gunfire, Engineer Schuck and Security Officer Campos ran from their position back towards the Center Core. Engineer Schuck was checked for injuries by Engineer Alsbury who arrived on the 32<sup>nd</sup> floor with armed Mandalay Bay Security Officers. Engineer Schuck stated the gunfire continued for several more long rapid fire volleys with short breaks between volleys. He described the breaks in fire lasting only 5-6 seconds before the gunfire would continue.

As LVMPD officers arrived on the 32<sup>nd</sup> Floor, they proceeded up the 300 wing, officers made entry into rooms and searched for occupants. Engineer Schuck redirected the officers to the 100 wing where the shooting had been coming from. The sound of gunfire had ceased so the officers conducted slow and methodical evacuations as they moved up the hallway.

After hearing the update of the shooters location, SWAT Officer O'Donnell and two patrol officers left the group clearing the Foundation Room and responded to the 32<sup>nd</sup> floor. Upon exiting the elevator, they encountered several officers already on the floor. The officers were moving up the hallway towards the suspect's room.

Engineer Shuck locked out the elevators to keep guests from ascending the tower.

Police personnel on the 32<sup>nd</sup> floor included a sergeant, SWAT officer, and patrol officers from the Las Vegas Village and responding officers from various area commands. As occupants were evacuated from their rooms, they were moved to the elevator bank and down the tower. Officers discovered a small infant alone in one of the rooms. As evacuations continued, the nanny for the infant was located in a room across the hall and reunited with the child. The officers stopped evacuations approximately two thirds of the way up the hall.

At the Las Vegas Village, people who were hiding in multiple locations were evacuated. Officers located several people hiding underneath the concert stage and inside tour buses located next to the stage. Additional teams of officers arrived and swept the remaining areas of the Las Vegas Village. Once evacuations were completed, the scene was secured around the Las Vegas Village.

SWAT Officer Hancock, along with K9 Sergeant Bitsko and K9 Officer Newton went to the 31<sup>st</sup> floor and came up the stairs to the 32<sup>nd</sup> floor. At the door, they met with LVMPD Officers Hendrex and Varsin and Mandalay Bay security personnel. Officer Hancock attempted to open the first of two doors to enter the hallway but could not due to the "L" bracket described earlier.

After the Strike Team arrived in the stairwell, SWAT Officer Hancock and K9 Sergeant Bitsko manually breached the inner door leading to the foyer of the 32<sup>nd</sup> floor. From the foyer, the door was cracked open enough to see the doors to rooms 32-135 and 32-134. Both doors were closed and a room service cart was located in front of room 32-134. A white table cloth was draped over the service cart with various items on top of the table cloth. Officers observed wires leading from the service cart to room 32-134 and believed the suspect may have set some type of improvised explosive device.

A decision was made to enter room 32-135 utilizing an explosive breach. Officers in the stairwell notified the officers in the hallway that an explosive breach would be utilized. Over the radio they became aware of the extent of injuries inside the Las Vegas Village. No gunfire had been heard from the suspect's room for approximately 40 minutes. It was decided entry was necessary to the room to determine if the suspect was still inside and to stop any further shooting from the room. SWAT Lieutenant Huddler was advised by SWAT Officer Hancock that the door to room 32-135 was going to be breached using explosives. K9 Officer Newton stepped into the hallway and utilized a ballistic shield to provide cover for SWAT Officer Hancock as he set the breach on the door while K9 Sergeant Bitsko covered the door to 32-134. K9 Sergeant Bitsko observed a camera on the food cart in the hallway. He covered the camera, and turned it away from the doorway while Officer Hancock hung the explosive on the door to room 32-135. Once the charge was hung on the door, the officers returned to the stairwell.

The approval for the breach was given by SWAT Lieutenant Huddler. The officers were notified over the radio, the door to room 32-135 was going to be breached and to take cover. K9 Sergeant Bitsko utilized the ballistic shield to keep the door from the foyer to the hallway open in case the explosion damaged it. SWAT Officer Hancock observed approximately 12 officers now in the stairwell behind him. He designated those that would be making entry into the suspect's room and others would be the downed officer rescue unit if needed.

The entry team consisted of K9 Sergeant Bitsko, K9 Officer Newton, SWAT Officer Hancock, Officers Donaldson, Trzpis and Walford. Officers Burns and Thiele were assigned to post at the door upon the team's entry to guard the hallway. The explosive breach was made into room 32-135 and broadcasted over the radio. The officers opened the stairwell door enough to see the doorway to 32-135 and observed the breach was successful and the door was open into the room. Inside the room, they observed a rifle with a scope and bipod on the floor just inside the door. The officers waited for approximately 30 seconds before leaving the stairwell to see if there was any reaction from Paddock.

Moving slowly and methodically, K9 Officer Newton entered first into the hallway with the shield followed by the officers from stairwell. SWAT Officer O'Donnell and Officer Magsaysay joined the Strike Team as they entered Paddock's room.

From behind the shield, the Strike Team made entry into room 32-135. The team split into 2 teams as they entered. Team 1 went left into a bedroom and cleared it. Team 2 went to the right and yelled Paddock was down. After clearing the bedroom, Team 1 held at the doorway into the main living area of the room.

Team 2 encountered Paddock lying on the floor on his back. A small frame revolver was observed on the ground above Paddock's head. Apparent blood was located on the revolver and a pool of blood had formed around Paddocks head. The officers believed Paddock had a self-inflicted gunshot wound. The large window at Paddock's feet was broken out and the curtain was blowing into the room. On the floor next to the Paddock's feet was a small sledge hammer and Paddock was laying on top of a rifle. The officers also observed several more rifles, spent ammunition throughout the living area, and several loaded magazines.

Team 2 continued through the living area to the right and encountered a closed, locked connecting door leading to the adjoining room 32-134. Team 1 moved through the living space up to Team 2 near the closed connector door. SWAT Officer Hancock and Officer Walford attempted to kick the door open but determined it was a solid wood door inside a metal frame. It was decided a second explosive breach was needed to gain entry into the adjoining room.

SWAT Officer Hancock breached the door. Immediately following the explosive breach, SWAT Officer O'Donnell, had one negligent discharge of a three round burst from his rifle. Officers in the hallway heard the shots fired and broadcasted shots had been fired inside the room. Officers flooded into room 32-134 through the breached adjoining connector door.

As room 32-134 was cleared, several rifles were found inside the room. A small hallway separated the main area of the room from the bathroom and main door. Another food service cart draped in a white table cloth was in this hallway. On the cart was a laptop computer which

was on and the monitor showed a live feed of the hallway where the officers had come from. Inside the room, one of the large windows was also broken out.

A complete recheck of the rooms was made to ensure a person was not hiding under any furniture. Several suitcases were observed throughout the rooms. Many of the suitcases contained several loaded magazines. Officers also observed a camera attached to the peephole on the main door of room 32-135. Once the recheck was completed, the SWAT and K9 officers left the room due to reports of other shootings at other locations.

Sergeant Matchko was in the hallway and entered the rooms once they were cleared. Along with officers still in the room, Sergeant Matchko secured the crime scene. Sergeant Matchko was contacted by the command post and advised to attempt to locate any information reference Paddock. Sergeant Matchko directed officers to look throughout the room in an attempt to locate any cell phones or identification for Paddock. Identification and cellular phones were located, as well as several room keys and player cards with Paddock and Danley's name on it. Pictures of the items were taken and sent to the command post as ordered. The officers also rolled Paddock onto his side to check for identification but found none. After the search for identification was completed, the officers exited and secured the room.

As officers cleared the Las Vegas Village, multiple reports of active shooters along Las Vegas Boulevard at various hotel properties were broadcasted. Several officers from the exterior Las Vegas Village posts joined Strike Teams and left to address those reports. As the active shooter reports were cleared and determined to be unfounded, officers assigned to the Las Vegas Village responded back to the command post for reassignment.

Officers assigned to the Las Vegas Village remained on post until they were relieved the next morning. Officers maintained the security of the Las Vegas Village and the 32<sup>nd</sup> floor of the Mandalay Bay crime scene as detectives and Crime Scene Analysts responded and began the investigation.

## **VI. SCENE DESCRIPTIONS**

### **Route 91 Venue**

Responsibility for documenting the venue scene was transferred from the LVMPD Homicide Section to the FBI Evidence Recovery Team on October 2, 2017 at approximately 1445 hours. The following scene description of the Las Vegas Village venue was authored by the LVMPD Homicide Section.

The Route 91 Harvest Festival was an open air music event held at the Las Vegas Village. The festival was dimly lit with street lights, variable stage lighting and lights from temporary light stands on the perimeter. There was a chain link fence, with dark netting surrounding the entire venue. On the west perimeter of the venue there was a decorative concrete block wall between Las Vegas Boulevard South and the chain link fencing. This wall ran nearly the entire length of the west side of the venue, from East Mandalay Bay Road to East Reno Avenue.

The surface of the venue consisted of black asphalt, with defined seating areas covered with artificial grass on both the northwest and south ends of the venue and vendors throughout. The northwest artificial grass area was used for lawn chair seating. The large artificial grass areas on the southern end was surrounded by seating, food vendors and portable bathrooms. A large seating area with elevated bleachers and a covered VIP area was oriented near the southwest corner of the venue. Four (4) pedestrian gates ran along the west side of the venue.

The Coca-Cola suites, additional seating areas, vendors, the medical tent and three (3) pedestrian gates were located on the east side of the venue. The event's Command Post (CP), a television broadcast tent and one (1) pedestrian gate were oriented on the north end of the venue.

The main stage was oriented on the south side of the venue. The main stage was covered by green roofing and the sides were covered with black mesh. The main stage viewing area was located in the southern portion of the venue, north of the main stage and was divided into two (2) seating areas by metal pedestrian fencing. The fencing ran from a production tent, located in the center of the viewing area, and eventually encompassed the main stage. In addition to the fencing separating the east and west side grass areas, the production tent and vendors, helped to define the two (2) areas. Production vehicles, concert buses, and trailers were oriented south of the main stage.

#### **Location and Description of the Bodies**

A total of thirty one (31) bodies were located, documented, and eventually recovered from the inside of the venue and on the exterior perimeter. Clark County Coroner Investigators responded and assisted the LVMPD Homicide Detectives and Crime Scene Analysts conduct the preliminary death investigations. Each victim was given an individual Clark County Coroner's Case and Seal Number. The time of death was determined to be 0545 hours for those recovered from the venue and exterior perimeter. Davis Funeral Home responded and transported the deceased to the CCOCME for a complete examination.





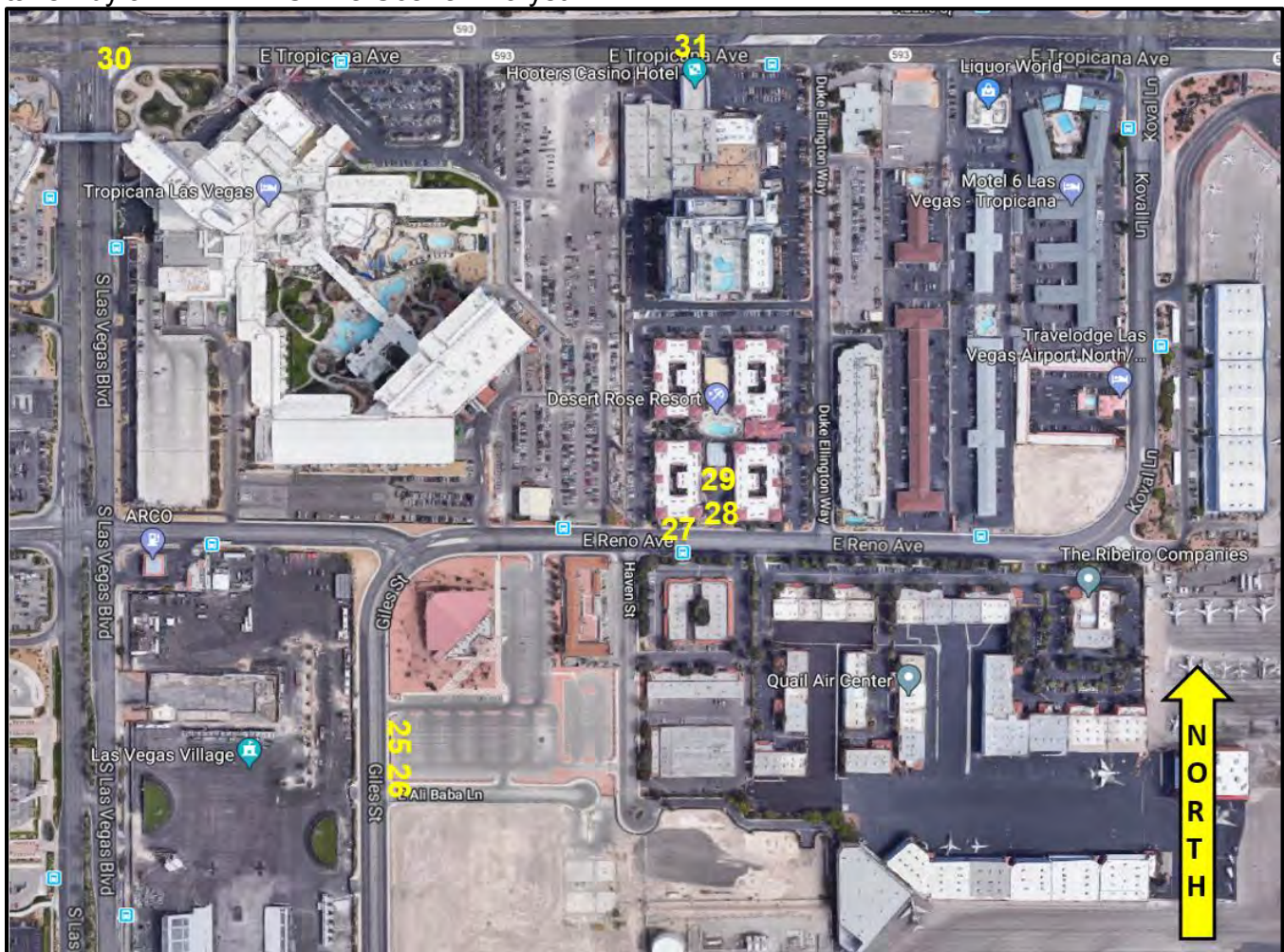
1. Jack Reginald Beaton
2. Christopher Louis Roybal
3. Lisa Marie Patterson
4. Adrian Allan Murfitt
5. Hannah Lassette Ahlers
6. Austin William Davis
7. Stephen Richard Berger
8. Stacey Ann Etcheber
9. Christiana Duarte
10. Lisa Romero-Muniz
11. Heather Lorraine Alvarado
12. Denise Cohen
13. Kurt Allen Von Tillow
14. Brennan Lee Stewart
15. Derrick Dean Taylor
16. Kelsey Breanne Meadows
17. Jennifer Topaz Irvine
18. William W. Wolfe Jr.
19. Carly Anne Kreibaum
20. Laura Anne Shipp



Four (4) bodies were located and recovered near the medical tent in the northeast portion of the venue.

- 21. Carrie Rae Barnette
- 22. Jordyn Nicole Rivera
- 23. Victor Loyd Link
- 24. Candice Ryan Bowers

Seven additional victims were located and recovered from the exterior perimeter. Their body positions and locations suggested they had been placed at these locations. The descriptions of their injuries were obtained from the Clark County Coroner Investigator and the photographs taken by an LVMPD Crime Scene Analyst.



- 25. Jordon Alan McIldoon
- 26. Keri Lynn Galvan
- 27. Dorene Anderson
- 28. Neysa C. Tonks
- 29. Melissa V. Ramirez
- 30. Brian Scott Fraser
- 31. Tara Ann Roe

The remaining victims were transported to various hospitals throughout the greater Las Vegas valley and pronounced deceased at their respective locations. Clark County Coroner Investigators responded and assisted the LVMPD Crime Scene Analyst with documentation of the decedents' injuries. Each victim was given an individual Clark County Coroner's Case and Seal Number. The time of death was determined by the treating physicians. Davis and Hites Funeral Home Services transported all victims from the hospital to the CCOCME for a complete examination. The descriptions of their injuries were obtained from photographs taken by LVMPD Crime Scene Analyst.

#### **DESERT SPRINGS HOSPITAL**

- 32. Bailey Schweitzer
- 33. Patricia Mestas
- 34. Jennifer Parks
- 35. Angela Gomez

#### **SPRING VALLEY HOSPITAL**

- 36. Denise Burditus
- 37. Cameron Robinson
- 38. James Melton

#### **VALLEY HOSPITAL**

- 39. Quinton Robbins

#### **SUNRISE HOSPITAL**

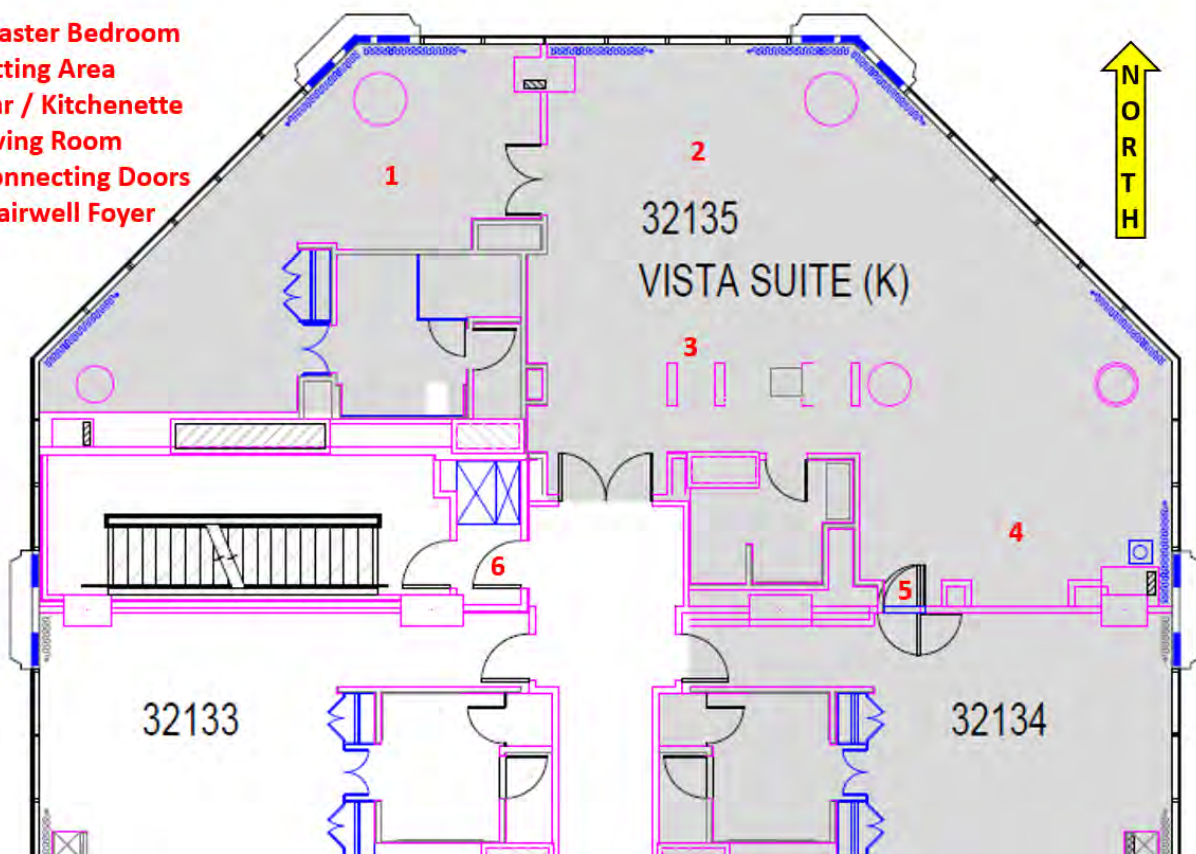
- 40. Charleston Hartfield
- 41. Erick Silva
- 42. Teresa Nicol Kimura
- 43. Susan Smith
- 44. Dana Leann Gardner
- 45. Thomas Day Jr.
- 46. John Joseph Phippen
- 47. Rachel Kathleen Parker
- 48. Sandra Casey
- 49. Jessica Klymchuk
- 50. Andrea Lee Anna Castilla
- 51. Carolyn Lee Parsons
- 52. Michelle Vo
- 53. Rocio Guillen
- 54. Christopher Hazencomb
- 55. Brett Schwanbeck

## UMC HOSPITAL

56. Rhonda M. LeRocque  
57. Austin Cooper Meyer  
58. Calla-Marie Medig

## Mandalay Bay 32<sup>nd</sup> Floor

1. Master Bedroom
2. Sitting Area
3. Bar / Kitchenette
4. Living Room
5. Connecting Doors
6. Stairwell Foyer



## Scene

The scene was located in the 100-wing of the 32<sup>nd</sup> floor of the Mandalay Bay. The 100-wing consisted of a north-south oriented hallway with even numbered rooms on the east side and odd numbered rooms on the west side. The rooms ranged in number from 32-101 to 32-135. Room 32-135 was at the far north end of the 100-wing with south facing double entry doors. Room 32-134 was at the north end of the 100-wing and was a connecting room to 32-135. Room 32-134 was east of the entry to 32-135, with a single entry door that faced west. A door leading to a foyer room which led to the stairs was at the north end of the hallway, west of the entry to 32-135, with a single entry door that faced east.

## **100-Wing Hallway**

The hallway consisted of alcoves containing access to four rooms, two rooms on the east side of the hallway and two rooms on the west side of the hallway, with a segment of the hallway between each alcove. Each alcove had a ceiling mounted light with two light shades, an exterior blue shade and an interior white shade, as well as a light sconce on the walls between the doors.

Decorative molding was mounted to the walls the entire length of the hallway. There were numerous bullet fragments throughout the hallway floor, from the north side of the alcove of rooms 32-101 through 32-104 to the alcove of 32-133 through 32-135.

A room service cart containing numerous plates, food items, and silverware was on the east side of the hallway, in front of room 32-134. A black "Logitech" camera with connected wires was on top of the cart, at the south end. The camera was positioned in a south direction (down the hallway) and taped to a plate. A white camera with connected wires was attached to the lower portion of the cart, at the north end. The camera was positioned in a south direction (down the hallway). Wires from both of the above described cameras went under the door and into room 32-134.

## **Room 32-135**

Room 32-135 was a hotel suite located at the far north end of the hallway with south facing double entry doors. The east door had two bullet holes above the door handle. The bullets traveled north to south, entering the interior side of the door and exiting the exterior (hallway). A camera was taped to the interior side of the east door inserted into the peephole. A hole was partially drilled into the bottom of the south wall, east of the entry doors. The west door was damaged (occurred during the explosive breach) and unattached to the door frame. The door was lying on the floor inside of the suite. There were bullet holes in the west door, with the bullets traveling north to south, entering the interior side and exiting the exterior (hallway).

The suite consisted of a south foyer room, a west bedroom (master bedroom) with attached bathroom, and a north sitting area, a central bar/kitchenette, and a second bathroom east of the central bar/kitchenette. A southeast living room which contained a couch, chairs, an entertainment center/cabinet and a wall mounted TV. A connecting door which led to room 32-134 was located southeast of the living room on the south wall. The entire north end of the suite consisted of floor to ceiling windows.

## **Foyer Inside Room 32-135**

The foyer had a table along the west wall. There was a white "Babysense" camera pointed in the direction of the front entry doors at the south end of the table, and a black mini refrigerator at the north end with a white styrofoam cooler on top. There were casings scattered on the floor of the foyer, and on the table along the west wall. A black rifle with the muzzle pointed south, was at the northeast portion of the foyer on the floor.

An east-west hallway extended from the east side of the foyer. A black rifle on a bipod with the muzzle pointed west, and a drill bit partially covered by a white towel were at the west end of the hallway on the floor.

### **West Bedroom (Master Bedroom)**

The bedroom was located west of the sitting area. There were east facing double entry doors located northwest of the foyer in the west wall of the sitting area. The room had a desk with a chair along the north wall, just inside the entry doors. There were tools on the desk and the chair. A trashcan was on the floor east of the desk that had numerous empty ammunition boxes inside. There was also a white bag on the floor that had empty ammunition boxes inside as well as a broken Dell laptop computer. Two boxes containing empty ammunition boxes were on the floor behind the entry doors.

A pillar was west of the desk. An empty red gym bag and an "Anran" home security system box were on the floor west of the pillar. A chaise lounge was along the south wall with an open suitcase containing clothing inside and a drill on top. There were chargers plugged into the south wall, west of the chaise lounge.

The bed was along the south wall with nightstands on either side. The following items were located on the bed: a Dell laptop computer, a passport in the name of "Stephen Paddock", four Home Depot gift cards, a checkbook, and a cash out voucher for the Palms Casino dated 8/28/17. There were three suitcases west of the bed: two of which were empty and one had clothing inside. A television was on a dresser to the north of the bed. There were drill bits and tools on the top of the dresser. Eight empty rifle magazines were on the floor below the west end of the dresser. An open suitcase with a tool box inside was east of the dresser. A closet was in the wall east of the bed with a single shirt and a white bathrobe hanging inside.

The attached southeast bathroom had a tub along the north wall with two glass vacuum suction holders on top of the tub ledge, a sink counter along the south wall with toiletries to include a prescription for "Diazepam 10 MG" in the name of "Steve Paddock", and two inhalers. The toilet room was to the east with a pair of boxers and a pair of shoes on the floor.

### **Sitting Area**

The sitting area was north of the foyer. Floor to ceiling windows covered by curtains extended along the length of the north end of the suite. There was a couch along the north side of the room, a coffee table south of the couch, and two chairs pushed together (facing one another) south of the coffee table. Pillars were located along the north wall near the northwest corner and along the north wall near the northeast corner of the sitting area, at the northwest corner of the living room.

A rifle magazine was between the west and central couch cushions of the north couch. The coffee table was covered by white towels. A rifle and an empty rifle magazine were on the coffee table. There were four rifles sitting on the pushed together chairs and a rifle magazine on the north arm of the east chair. One rifle was on the floor east of the chairs. There were two suitcases



on the floor east of the coffee table containing numerous loaded rifle magazines. An empty rifle magazine was on the floor, east of the suitcases.

There was a stack of 14 loaded rifle magazines on the west side of the northeast pillar. A blue plastic tube with a snorkel mouthpiece attached with green tape to the east end and a black funnel with a fan inside at the west end extended from the east side of the suitcases, across the coffee table, to the west side of the room, adjacent to the doors of the west bedroom.

A chair facing south, with a side table to the east, were at the west end along the northeast bank of windows. The window located immediately east of the northwest pillar was shattered with glass on the floor below it. Numerous casings were on the floor at the base of the window, south into the room, and on the seat of the chair. A blue and yellow "Estwing" hammer was on the floor at the east side of the northeast pillar, south of the broken window. The head of the hammer had tape wrapped around it. The curtains in place over the broken window were damaged. Two rifles with bipods were on the floor south of the chair.

A high top table was centrally located along the northeast bank of windows with a loaded rifle magazine on the southeast end of the table. An open suitcase was on the floor south of the table with numerous loaded rifle magazines inside. A rifle with a bipod was on the floor southeast of the table. There were casings on the floor surrounding the table.

#### **Decedent Stephen Paddock**

Paddock was on the floor south of the chair and side table. He was wearing black pants, a long sleeve brown shirt, black gloves, and grey shoes. Paddock was on his back with his head to the south, feet to the north, and arms at his sides. There was apparent blood surrounding his nose and mouth, and on the floor under his head. There was also apparent blood on the front of his shirt. A rifle was on the floor under his legs. A grey box cutter was on the floor between his feet. There were casings on the floor surrounding him. A silver/black colored "Smith & Wesson" revolver with apparent blood on it was on the floor south of Paddock's head.

#### **Bar/Kitchenette**

The central bar/kitchenette was south of the sitting area east of the foyer and north of the east-west hallway. There was a north bar counter (east-west orientation) with three chairs on the north side of the counter. There were three rifles on the floor north of the west end of the counter with a backpack under them. One rifle was on the seat of the westernmost chair; one rifle was on the seat of the easternmost chair; and one rifle was located on the west end of the bar counter. An empty silver colored rolling case was on the floor north of the counter, at the east end. A Luxor sticker and a "29" sticker were on the back of the case.

At the west end of the bar counter was an "Anran" monitor with a video feed to the previously described camera on the lower portion of the room service cart in the hallway, a laptop computer, which provided a live feed to the camera attached to the peephole of the door, and a Samsung cell phone in a black case.

Centrally located on the bar counter were bank cards and other cards in the name of "Stephen Paddock" and room key card packets. At the east end of the bar counter was a black holster, a black glove, binoculars, blue hat, brown wallet, tape roll, credit cards and a Nevada ID in the name of "Stephen Paddock", a Player's card in the name of "Marilou Danley", valet ticket, a notepad with "unplug phones" written on it, and a white handheld monitor, as well as a black ZTE cell phone with the front and back cameras covered with tape and a Samsung Galaxy S6 active in a black case.

At the southwest corner of the bar was a sink. There were two loaded rifle magazines and a "Tundra" fire extinguisher on the sink counter.

### **Living Room**

The southeast living room was east of the bar/kitchenette at the east end of the east-west hallway. There was a television mounted on the south wall with an entertainment center/cabinet below, a couch to the north and east, and an orange chair to the west. The couch cushions were off of the east couch and piled on the north couch and on the floor. A table was along the north side of the north couch with four chairs.

A side table was west of the north couch. A "Meade" spotting scope was on the floor north of the side table. A pink piece of paper with written measurements on one side was on the floor west of the east couch.<sup>15</sup>

An open black suitcase containing soft rifle cases inside was on the floor north of the cabinet. There were three casings on the floor west of the side table and at the east end of the east-west hallway.<sup>16</sup>

There was a bullet hole through the east arm of the orange chair; two bullet holes into the cabinet along the south wall; and one bullet hole into the south wall, between the entertainment center/cabinet and the connecting door to 32-134.<sup>17</sup>

There were two suitcases along the west wall. A blue large bag with numerous towels, soft rifle cases, and scope covers inside were also along the west wall.

### **Room 32-134**

Room 32-134 was a single connecting hotel room, south of 32-135. The connecting door was located at the south end of room 32-135 in the southwest corner of the southeast living room. There was damage to the south adjoining door frame<sup>18</sup> and the damaged door was on the floor inside room 32-134. The main entry door to the room was west facing, accessing the hallway. A room service cart with an open laptop computer on the east end was in the entry hallway, east

<sup>15</sup> This was the same note originally located on the table near Paddock's body. The wind blew it off of the table to this location.

<sup>16</sup> These casings came from the SWAT Officer's rifle.

<sup>17</sup> These bullet holes came from the SWAT Officer's rifle.

<sup>18</sup> Occurred during the second explosive breach



of the entry door. There were wires connected from the laptop that ran under the entry door. There was a video feed visible on the laptop of the hallway looking south from the previously described black "Logitech" camera attached to the hallway room service cart.

The room was furnished with two beds with a nightstand in between along the south wall, a desk, dresser, and chair along the north wall, a television mounted on the north wall, and floor to ceiling windows on the east. The southernmost window was shattered with glass on the floor below it. There were nine loaded rifle magazines on top of the dresser. The dresser drawers were open and the bottom was broken. There were three rifles with bipods on the east bed and several casings. One cartridge case was on the floor west of the east bed. There were two rifles on the west bed, one of which was a bolt action. A pair of black gloves was on the west side of the west bed. A pair of tan sandals were on the floor north of the west bed. A bullet hole was in the north wall corresponding with a hole in the south wall of the living room, and one bullet hole was in the comforter at the north end of the east bed.

There were two closets along the west wall with the door to the attached southwest bathroom. The bathroom had a sink counter along the south side and tub to the north. Clothing was on the floor under the sink counter along with a trashcan. There was a snorkel tube located inside the trashcan.

## **VII. EVIDENCE RECOVERY**

### **Physical Evidence**

During the course of the investigation, several items of evidentiary value were located and impounded by LVMPD Crime Scene Analysts and FBI Evidence Recovery Team. The following is a summary of key pieces of evidence located during searches of multiple locations.

Picture numbers listed below correspond with pictures attached in Appendix A of this report.

#### **Mandalay Bay Location**

##### **32<sup>nd</sup> Floor – 100 Wing – Stairwell Foyer Room (Picture 1)**

Metal "L" bracket with three screws securing it to the interior door/frame.
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##### **32<sup>nd</sup> Floor – 100 Wing Hallway (Pictures 2-4)**

Two surveillance cameras from room service cart outside room 32-134.
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Bullet fragments
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##### **32<sup>nd</sup> Floor – Room 32-135 – Main Room (Pictures 5-17)**

Make	Model	Serial Number	Description
Colt	M4 Carbine	LE451984	AR-15 .223/5.56 with a bump stock, vertical fore grip and 100 round magazine. Front sight only.
Noveske	N4	B15993	AR-15 .223/5.56 with a bump stock, vertical fore grip and 40 round magazine. EOTech optic.

LWRC	M61C	24-18648	AR-15 .223/5.56 with a bump stock, vertical fore grip and 100 round magazine. No sights or optics.
POF USA	P-308	UA-1600204	AR-10 .308/7.62 with a bipod, scope and 25 round magazine.
Christensen Arms	CA-15	CA04625	AR-15 .223 Wylde with a bump stock, vertical fore grip and 100 round magazine. No sights or optics.
POF USA	P-15	PE-1600179	AR-15 .223/5.56 with a bump stock, vertical fore grip and 100 round magazine. No sights or optics.
Colt	Competition	CCR014544	AR-15 .223/5.56 with a bump stock, vertical fore grip and 100 round magazine. No sights or optics.
Smith & Wesson	342 AirLite Ti	CDZ7618	.38 caliber revolver with 4 cartridges, 1 expended cartridge case.
LWRC	M61C	5P03902	AR-15 .223/5.56 with a bump stock, vertical fore grip and 100 round magazine. EOTech optic.
FNH	FM15	FND000905	AR-10 .308/7.62 with a bipod, scope and 25 round magazine.
Daniel Defense	DD5V1	DD5007426	AR-10 .308/7.62 with a bipod, scope and 25 round magazine.
FNH	FN15	FNB024293	AR-15 .223/5.56 with a bump stock, vertical fore grip and 100 round magazine. EOTech optic.
POF USA	P15	03E-1603178	AR-15 .223/5.56 with a bump stock, vertical fore grip and 100 round magazine. EOTech optic.
Colt	M4 Carbine	LE564124	AR-15 .223/5.56 with a bump stock, vertical fore grip and 100 round magazine.
Daniel Defense	M4A1	DDM4123629	AR-15 .223/5.56 with a bump stock, vertical fore grip and 100 round magazine. EOTech optic.
LMT	Def. 2000	LMT81745	AR-15 .223/5.56 with a bump stock, vertical fore grip and 100 round magazine. No sights or optics.
Daniel Defense	DDM4V11	DDM4078072	AR-15 .223/5.56 with a bump stock, vertical fore grip. No magazine. EOTech optic.
Sig Sauer	SIG716	23D020868	AR-10 .308/7.62 with a bipod, red dot optic and 25 round magazine.
Daniel Defense	DD5V1	DD5008362	AR-10 .308/7.62 with a bipod and scope. No magazine.
Blue plastic hose with funnel, fan and SCUBA mouthpiece attached.			

Surveillance camera mounted to room door peephole.
Baby monitor camera (not mounted).
Surveillance camera mounted to room door peephole.
Small sledge hammer.
Laptop computer.
Surveillance camera monitor.
Spotting scope.
Binoculars.
Expendable .223/5.56 cartridge casings (approximately 1,050).
Cellular phones.
Nevada Driver's License – Stephen Paddock.
Mlife players card – Marilou Danley.
Polymer 40 round AR-15 magazines (loaded).
Steel 100 round AR-15 magazines (loaded).
Polymer 25 round AR-10 magazines (loaded).
Live Ammunition (approximately 5,280).
Handwritten note with distance/bullet drop calculations.
Suitcases, duffel bags, soft rifle cases, towels.

**32<sup>nd</sup> Floor – Room 32-135 – Bedroom Suite (Picture 18)**

Laptop computer (on bed).
Disassembled laptop computer missing hard drive (on floor).
Power hand drills.
Empty ammunition boxes and plastic bags.
Scuba mask.
Loose ammunition.
Miscellaneous hand tools and drill bits.
Miscellaneous screws and mounting brackets.
Suitcases, towels.
Empty rifle magazines

**32<sup>nd</sup> Floor – Room 32-134 – Hotel Room (Pictures 19-21)**

Make	Model	Serial Number	Description
FNH	FN15	FNCR000383	AR-15 .223/5.56 with a bump stock, vertical fore grip and 100 round magazine. No sights or optics.
Ruger	American	695-93877	.308 caliber bolt action rifle with scope.
LMT	LM308MWS	LMS18321	AR-10 .308/7.62 with a bipod and red dot scope. No magazine.
Ruger	SR0762	562-13026	AR-10 .308/7.62 with a bipod, scope and 25 round magazine.
LMT	LM308MWS	LMS18300	AR-10 with a bipod, scope and 25 round magazine.
Laptop computer connected to hallway surveillance cameras.			
Polymer 25 round AR-10 magazines (loaded).			
Expendable .308/7.62 cartridge casings (8).			

**Mandalay Bay – East Valet – Space 317 (Paddock’s Vehicle. Pictures 22-24)**

2017 Chrysler Pacifica, Nevada/74D401 towed to FBI garage.
20x2 pound containers of exploding targets.
10x1 pound containers of exploding targets.
2x20 pound bags of explosive precursors.
Polymer 25 round AR-10 .308/7.62 magazines (loaded).
Polymer 40 round AR-15 .223/5.56 magazines (loaded).
Boxed ammunition.
Suitcases, towels.

**McCarran Airport – Fuel Tanks – East Mandalay Bay Road/Haven Street (Pictures 25-27)**

Bullet fragments
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**1372 Babbling Brook Court Mesquite, Nevada (Paddock’s House)**

Make	Model	Serial Number	Description
Smith & Wesson	SW99	SAB5974	9mm semi-automatic pistol.
Smith & Wesson	M&P9	HDU4086	9mm semi-automatic pistol.
Glock	17	BCGM344	9mm semi-automatic pistol.
Mossberg	500	V0397109	12 gauge pump action shotgun.
Sig Sauer	516	20J036999	AR-15 .223/5.56 rifle with a bipod and scope.
Arma-Lite	SPRM001	M-10-13530	AR-15 .223/5.56 rifle with a bipod and scope.
Mossberg	590	V0433557	12 gauge pump action shotgun.
LWRC	M61C-IC-A5	24-19038	AR-15 .223/5.56 rifle with a bipod and scope.
Mossberg	590	V0348193	12 gauge pump action shotgun.
Mossberg	930	AF0001141	12 semi-automatic gauge shotgun.
Arma-Lite	SPRM001	M-10-12006	AR-15 .223/5.56 rifle with a bipod and scope.
Sig Sauer	516	20K046207	AR-15 .223/5.56 rifle, with a bipod. No sights or optics.
Lantac	LA-R15 Raven	LT-0297	AR-15 .223 Wylde rifle with a bipod and scope.
Mossberg	590	P833785	12 gauge pump action shotgun.
Arsenal	Saiga 12	H09423015L	AK-47 style semi-automatic 12 gauge shotgun.
Arsenal	Saiga 12	H07420684	AK-47 style semi-automatic 12 gauge shotgun.
Beretta	92F	C856302	9mm semi-automatic pistol.
FN	5.7	386215450	5.7mm semi-automatic pistol.
Handgun, shotgun, rifle ammunition.			
Exploding targets.			
Computer related items.			

Soft body armor.
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**1735 Del Webb Parkway, Reno, Nevada (Paddock's House)**

Make	Model	Serial Number	Description
Smith & Wesson	340	DCA2099	.357 caliber revolver.
Beretta Pietro	92A1	A098515Z	9mm semi-automatic pistol.
Remington Arms	870 Tactical	RS90036Z	12 gauge pump action shotgun.
Mossberg	590	V0187184	12 gauge pump action shotgun.
Glock	17 Gen4	BBVN828	9mm semi-automatic pistol.
Smith & Wesson	M&P9	HHA9534	9mm semi-automatic pistol.
Smith & Wesson	M&P9	HDL4053	9mm semi-automatic pistol.
Firearm ammunition.			
Rifle magazines.			
Computer related items.			

**Ammunition**

Several types of ammunition were located within rooms 32-135 and 32-134 loaded into rifle magazines for both the AR-15 and AR-10 style rifles. The AR-15 .223/5.56 rifle magazines were loaded with hollow point and polymer tipped hollow point ammunition. The AR-10 .308/7.62 rifle magazines and the bolt action rifle were loaded with Tracer, Frangible Incendiary, Armor Piercing and Armor Piercing Incendiary ammunition.

A complete breakdown of the ammunition types loaded in the firearms, rifle magazines and expended cartridge casings will be documented in the final report.

**DNA**

Several items of evidentiary value were collected for DNA analysis. At the time of this report the DNA evidence collected has not yielded any significant results or indication that anyone else was in the room.

**Digital**

There were approximately 1,965 leads investigated. There were approximately 21,560 hours of video and 251,099 images obtained by investigators of the LVMPD and the FBI. Analysis found 529 sightings of Paddock.

Four laptop computers and three cellphones were located in 32-135 and 32-134. All laptop computers and cellphones were given the FBI to be forensically analyzed. The forensic analysis on all electronics located in 32-134 and 32-135 has been completed and the results of the analysis is listed below.

## **Evidence Item HP Laptop Computer Recovered in Room 32-134**

### **Browser Artifacts**

The HP laptop computer contained internet artifacts from the following cloud storage services: Dropbox.com, Box.com, and Microsoft One Drive. Dropbox and Microsoft One Drive were installed on the laptop. Box.com was accessed through a web browser.

### **Google Maps**

On 05-18-17 Google Map searches were performed for Venice Beach and Fenway Park.

The following queries were also made with Google Maps:

- Royal Rooters' Club, Boston, MA
- Blandford Street. Station, United States
- Boston University Questrom School of Business
- Boston Hotel Buckminster, Beacon Street, Boston, MA
- Boston Arts Academy
- Official Red Sox Team Store
- Official Red Sox Team Store, 19 Yawkey Way, Boston, MA
- Venice Ale House
- Fairmont Miramar Hotel, Santa Monica, CA
- The Bungalow, 101 Wilshire Boulevard, Santa Monica, CA

### **Google Search Queries**

On 05-18-17, searches were performed for "summer concerts 2017," "grant park functions," "biggest bear," "La Jolla Beach," "open air concert venues," "biggest open air concert venues in USA," and "how crowded does Santa Monica Beach get."

On 09-04-17, searches were performed for "Las Vegas rentals," "Las Vegas condo rentals," "Las Vegas high rise condos rent," and "Las Vegas Ogden for rent."

On 09-05-17, searches were performed for "life is beautiful expected attendance," "life is beautiful single day tickets," and "life is beautiful Vegas lineup."

On 09-15-17, searches were performed for "swat weapons," "ballistics chart 308," "SWAT Las Vegas," "ballistic," and "do police use explosives."

### **Bing Search Queries**

On 09-05-17, searches were performed for "Mandalay Bay Las Vegas," "Route 91 harvest festival 2017 attendance," and "Route 91 harvest festival 2017."

The following websites were accessed using an IE private browser:

- <http://lineup.lifeisbeautiful.com/>
- <https://www.google.com/maps?hl=en&tab=wl>
- <https://lifeisbeautiful.com/ticket/>
- <http://search.topvegascondos.com/i/the-ogden-downtown-las-vegas-condos-forrent>
- [https://www.google.com/?gws\\_rd=ssl#q=how+crowded+does+santa+monica+beach+get&spf=1495082236761](https://www.google.com/?gws_rd=ssl#q=how+crowded+does+santa+monica+beach+get&spf=1495082236761)
- <https://www.vividseats.com/blog/category/all-concerts/>
- <https://www.vividseats.com/blog/fenway-park-concerts-and-seating>
- <https://www.vividseats.com/blog/the-14-best-outdoor-concert-venues-in-the-us>
- <http://tsminteractive.com/what-are-the-most-crowded-beaches-in-america/>
- <https://www.yelp.com/biz/santa-monica-state-beach-santa-monica>
- <https://www.vividseats.com/blog/memorial-day-weekend-2017.html>

The following websites were accessed using Internet Explorer:

- [www.grantparkmusicfestival.com/](http://www.grantparkmusicfestival.com/) 05-18-17 0419 hours
- [www.ticketmaster.com/](http://www.ticketmaster.com/) 05-18-17 at 0427 hours
- [ticketmaster.com/](http://ticketmaster.com/) 05-18-17 at 0431 hours
- [www.sandiego.org/](http://www.sandiego.org/) 05-18-17 at 0505 hours
- [sandiego.org/](http://sandiego.org/) 05-18-17 at 0505 hours
- [www.vividseats.com/](http://www.vividseats.com/) 05-18-17 at 0540 hours
- [www.lasvegascondoexperts.com/](http://www.lasvegascondoexperts.com/) 09-04-17 at 2212 hours
- [lasvegashighrisetour.com/](http://lasvegashighrisetour.com/) 09-04-17 at 2213 hours
- [www.thehighrisegroup.com/](http://www.thehighrisegroup.com/) 09-04-17 at 2214 hours

### **Evidence Item Dell Laptop Computer Recovered in Room 32-135**

Computer forensic analysis of a Dell laptop Model E5570 revealed numerous internet searches for open air venues. Additionally, several hundred images of child pornography were located on the computer's hard drive. The investigation into the source of these images is ongoing. The following internet searches from this laptop are indicated below:

#### **Google Search Queries**

- How tall is Mandalay Bay/ Unknown date
- NV gun shows/ 09-02-17 & 09-30-17
- Life is Beautiful 2017/ 09-20-2017
- Excalibur Hotel & Casino/ 09-23-17
- Las Vegas Academy of the Arts Performing Arts Center/ 09-23-17
- Fremont Hotel & Casino/ 09-23-17
- El Cortez Hotel & Casino/ 09-23-17
- Family Courts & Services Center/ 09-23-17
- Gary Reese Freedom Park/ 09-23-17

- Cashman Center/ 09-23-17
- Cashman Field/ 09-23-17
- Neon Museum/ 09-23-17
- The Mob Museum/ 09-23-17
- Discovery Children's Museum/ 09-23-17 & 09-26-17
- Arizona Charlie's Decatur/ 09-23-17
- Where is hard drive located on e5570/ 09-28-17
- NHRA schedule 2017/ 09-30-17

## **VIII. SUSPECT AUTOPSY**

On 10-06-17, at approximately 1625 hours, under CCOCME case 17-10064 and FBI incident number 4-LV-2215061 an autopsy was performed on the body of Paddock at the CCOCME by Doctor Lisa Gavin.

### **Decedent**

Name:	Paddock, Stephen
Date of birth:	04-09-53
Gender:	Male
Ethnicity:	Caucasian
Height:	73 inches
Weight:	224 lbs
Hair:	Gray
Eyes:	Brown

Body bag seal #541486 removed at 1625 hours.

### **Specific Photography:**

- Body bag seal
- Clothed body
- Pre-cleaned unclothed body
- Post-cleaned unclothed body
- Injuries
- X-Rays

The following persons were in attendance:

- 1) Clark County Coroner Fudenberg
- 2) Forensic Pathologist Doctor Gavin
- 3) Detective Alsup
- 4) Detective Colon
- 5) SCSA Fletcher
- 6) FBI ERT Agents (2)
- 7) Forensic Technician Rosales



The following items of evidence were retained by the FBI's Evidence Recovery Team:

- 1) One brown long sleeved shirt.
- 2) One pair of black pants.
- 3) One pair of white socks.
- 4) One pair of black slip-on shoes.
- 5) One pair of blue underwear.
- 6) Paper tissue from the decedent's ears.
- 7) Print exemplars.
- 8) One projectile recovered from the decedent's head.

## **Synopsis**

On October 6, 2017, detectives from the LVMPD along with a LVMPD Crime Scene Analyst, attended the autopsy of Stephen Paddock at the CCOCME. Also present were members of the FBI Evidence Recovery Team who retained all collected evidence.

The exam room was secured by Clark County Coroner, John Fudenberg. Forensic Pathologist Doctor Lisa Gavin performed the autopsy with one assistant.

The decedent was x-rayed, photographed and cleaned prior to Doctor Gavin's exam. Preliminarily, the injuries noted were on the posterior of both calves and a gunshot wound to the upper palette inside the decedent's mouth with obvious damage to the upper teeth.

The cause of Paddock's death was an interoral gunshot wound and the manner of death was ruled a suicide.

## **IX. INVESTIGATION**

### **Mandalay Bay Hotel Room**

LVMPD officers located several documents, to include photographs, identifying Paddock as the suspect who was lying on the floor with an apparent gunshot wound to the head. Also located inside the room investigators found documentation related to Danley who was later identified as the longtime girlfriend of Paddock.

Located throughout the 100-wing hallway from the double doors of room 32-135 to the alcove wall of room 32-105 were over 200 bullet strikes. The bullet strikes consisted of actual impacts and holes. These strikes were caused by approximately 35 rounds fired down the 100-wing from inside of room 32-135.

Law Enforcement and the CCOCME took custody of Paddock's body. The body was photographed and transported to the CCOCME where an autopsy was conducted.

The room was secured for evidence recovery. The FBI Evidence Recovery Team responded and took the lead role on documentation and recovery of all evidence inside the hotel rooms and hallway.

Located inside the master bedroom of suite 32-135 were hand drills, drill bits, several miscellaneous tools, and equipment Paddock used to drill holes, run wires, and set up surveillance cameras that showed the 100 wing hallway. Inside the bedroom were several empty ammunition boxes, live rounds, loaded rifle magazines, duffle bags, suitcases, two laptop computers (one of which was broken and missing the hard drive), snorkeling kit bag, diving mask, circular glass cutter with suction cup and miscellaneous personal items.

Located throughout the main living area of the suite were 18 rifles, one handgun, rifle casings, and loaded magazines. A blue plastic tube, was fashioned with a fan on one end and snorkel mouthpiece on the other end. A spotting scope on a tripod was on the floor near Paddocks body and a slip of paper was on a small table with hand written distances on it. Several suitcases and bags were throughout the main room containing personal items and loaded rifle magazines. A laptop computer was located on the bar and connected to a live feed camera attached to the peephole of the main door to suite 32-135.

Room 32-134 was an adjoining room to suite 32-135 used by Paddock. Located inside the room were five rifles, casings, live ammunition and several loaded magazines. A pair of gloves were located on one of the beds and sandals were located on the floor near the bed. Inside the bathroom, a snorkel tube was located in the trash. A room service receipt and a cardboard box with mailing labels was also located in the bathroom. In the walkway leading to the door to the main hallway was a food service cart. A laptop computer was located on the food service cart. It was connected to two live feed cameras and a battery pack with wires connecting it to the cameras on the food service cart in the 100 wing hallway.

All evidence located and recovered inside suite 32-135 and room 32-134 indicated Paddock was capable of watching people in the hallway. There was no suicide note or manifesto located inside either room.

### **Paddock's Vehicle**

Paddock's vehicle was located in Mandalay Bay East Valet, 2<sup>nd</sup> floor, space 317 by investigators. The vehicle a 2017 Chrysler Pacific bearing Nevada plate 79D401 had been backed into space 317 and was locked. The key for the vehicle was obtained from valet.

A search warrant was obtained and at 0325 hours, detectives with the LVMPD All-Hazard Regional Multi agency Operations and Response Section (ARMOR) broke a window to the vehicle, to allow an explosive detection dog access to the scent from inside the vehicle. A U.S. Marshall explosive detection K9 moved around the vehicle and gave an alert to the presence of explosive precursors.

Detectives secured the area on the belief there were explosive precursors within the vehicle. ARMOR detectives requested LVMPD dispatch notify the Las Vegas Fire and Rescue Chemical, Biological, Radiological, Nuclear and Explosive Task Force (CBRNE) respond. Las Vegas Fire Rescue responded with their CBRNE vehicle along with FBI bomb technicians. Located inside the vehicle were five bags which were x-rayed and removed by the FBI.

Upon rendering the vehicle safe, the vehicle and all items located inside were photographed. All items removed from the vehicle were placed back inside and the vehicle was sealed. The vehicle was subsequently towed from the Mandalay Bay Hotel to a secure FBI facility for a thorough search and evidence collection.

Evidence collected from inside Paddock's vehicle included loaded rifle magazines for both AR-15 and AR-10 style rifles. Also collected were 20 two pound containers of exploding targets, 10 one pound containers of exploding targets and 2 twenty pound bags of explosive precursors.

### **Paddock's Mesquite Residence**

LVMPD detectives responded to Paddock's residence in Mesquite, Nevada. The residence was located at 1372 Babbling Brook Court. Detectives obtained and served a search warrant at this location. Inside the residence, seven shotguns, five handguns, six rifles, exploding targets, firearm ammunition, rifle magazines and computer related items were recovered. These items were impounded and turned over to the FBI for processing.

### **Paddock's Reno Residence**

FBI Agents responded to Paddock's residence in Reno, Nevada. The residence was located at 1735 Del Webb Parkway, Reno, Nevada. Agents obtained and served a search warrant at this location. Inside of the residence were two shotguns, five handguns, firearm ammunition, rifle magazines and computer related items. The items were recovered by the FBI for processing.

### **Search Warrants and Legal Notices**

The investigative process required information to be obtained from numerous sources and venues to include but not limited to:

- Hotels and Casinos
- Firearms related businesses
- Residences of Stephen Paddock
- Vehicles of Stephen Paddock
- Internet providers
- Telephone companies
- Online retail businesses
- Email companies

During the course of the investigation law enforcement authored approximately 1,062 legal notices. These legal notices were to obtain information or items from venues related to the investigation. These legal documents included but are not limited to:

- Administrative Subpoenas
- Court Orders
- Search Warrants
- Grand Jury Subpoenas

## **Law Enforcement Tips and Leads**

All tips or items that needed to be investigated or followed up were coordinated by the FBI and the LVMPD. These leads were tracked using the Operational Response and Investigative Online Network or ORION system through the FBI.

Investigators conducted interviews with 43 people directly associated with Paddock. These included 24 gambling associates, 11 acquaintances and 8 blood relatives.

## **X. PRELIMINARY FINDINGS FROM THE 1 OCTOBER INVESTIGATION**

Investigators determined key findings as a result of this investigation:

- Paddock acted alone. Thousands of hours of digital media were reviewed and after all the interviews conducted, no evidence exists to indicate Paddock conspired with or acted in collusion with anybody else. This includes video surveillance, recovered DNA<sup>19</sup> and analysis of cellular phones and computers belonging to Paddock.
- No suicide note or manifesto was found. Of all the evidence collected from rooms 32-135 and 32-134, there was no note or manifesto stating Paddock's intentions. The only handwritten documentation found in either room was the small note indicating measurements and distances related to the use of rifles.
- There was no evidence of radicalization or ideology to support any theory that Paddock supported or followed any hate groups or any domestic or foreign terrorist organizations. Despite numerous interviews with Paddock's family, acquaintances and gambling contacts, investigators could not link Paddock to any specific ideology.
- Paddock committed no crimes leading up to the October 1<sup>st</sup> mass shooting. All the weapons he purchased to include all the ammunition, were purchased legally. This includes all the purchases Paddock made at gun stores as well as online purchases. Paddock did not commit a crime until he fired the first round into the crowd at the Las Vegas Village.
- Reference the 1,965 investigated leads, 21,560 hours of video, 251,099 images obtained and 746 legal notices filed or sent, nothing was found to indicate motive on the part of Paddock or that he acted with anyone else.
- Security Officer Campos was not shot with a BB gun but rather sustained a gunshot wound from one of the rounds fired by Paddock down the hallway of the 100 wing on the 32<sup>nd</sup> floor. Security Officer Campos did in fact have a pre-planned vacation to Mexico to go visit his father and Security Officer Campos asked law enforcement for permission to make this trip.

<sup>19</sup> Deoxyribonucleic Acid

- One aspect of the investigation focused on Paddock's financials. The investigation proved Paddock was self-funded through his gambling and past real estate transactions. He was indebted to no one and in fact paid all his gambling debts off prior to the shooting.
- The investigation revealed several indicators of intent on the part of Paddock. Those indicators are as follows:
  1. Paddock had a reservation for a hotel during the Lollapalooza music festival held at Grant Park in Chicago, Illinois during the month of August. Like Route 91, the Lollapalooza festival was held in an open air venue. Paddock specifically requested a room overlooking the venue when he made the reservation. The reservation was cancelled two days prior to the check-in date.
  2. Paddock made lodging reservations during the Life is Beautiful music festival held in Downtown Las Vegas, Nevada. The festival was also an open air music venue attended by thousands of people. Paddock requested units overlooking the venue. Paddock reserved three different units during the period and all faced the venue. Paddock was observed in video surveillance transporting several suitcases from his vehicle to the units he reserved. Paddock was alone for the trip and was never accompanied by anyone for more than a casual conversation. Investigators have been unable to determine if Paddock intended an attack during this festival or if he used it as a means to plan a future attack.
  3. Paddock conducted several internet searches while planning his actions. Search terms included open air concert venues, Las Vegas SWAT tactics, weapons and explosives. Paddock also searched for various gun stores.
  4. The purchasing of over 55 firearms, which were mostly rifles in various calibers, from October 2016 – September 2017. He also bought over 100 firearm related items through various retailers during that period.
  5. During a stay in early September 2017, Paddock requested specific rooms that overlooked the Las Vegas Village. According to Danley, Paddock spent time looking at the Las Vegas Village venue from different angles and windows while inside the room.

## Appendix A

Picture 1



(Door leading to the stairwell secured by "L" bracket)

Picture 2



(View from 100 hallway towards room 32-135)

Picture 3



(Food Service Cart in hallway with camera)



Picture 4



(Food Service Cart in hallway with camera)

Picture 5



(View from entry of 32-135 towards the sitting area)

Picture 6



(View from foyer of room 32-135 towards the sitting area)



Picture 7



(View from sitting area towards the living room)

Picture 8



(View from sitting area towards the bar / kitchenette)

Picture 9



(View from sitting area towards the bar / kitchenette)



Picture 10



(View from sitting area towards master bedroom)

Picture 11



(View of connecting doors between room 32-135 and 32-134)

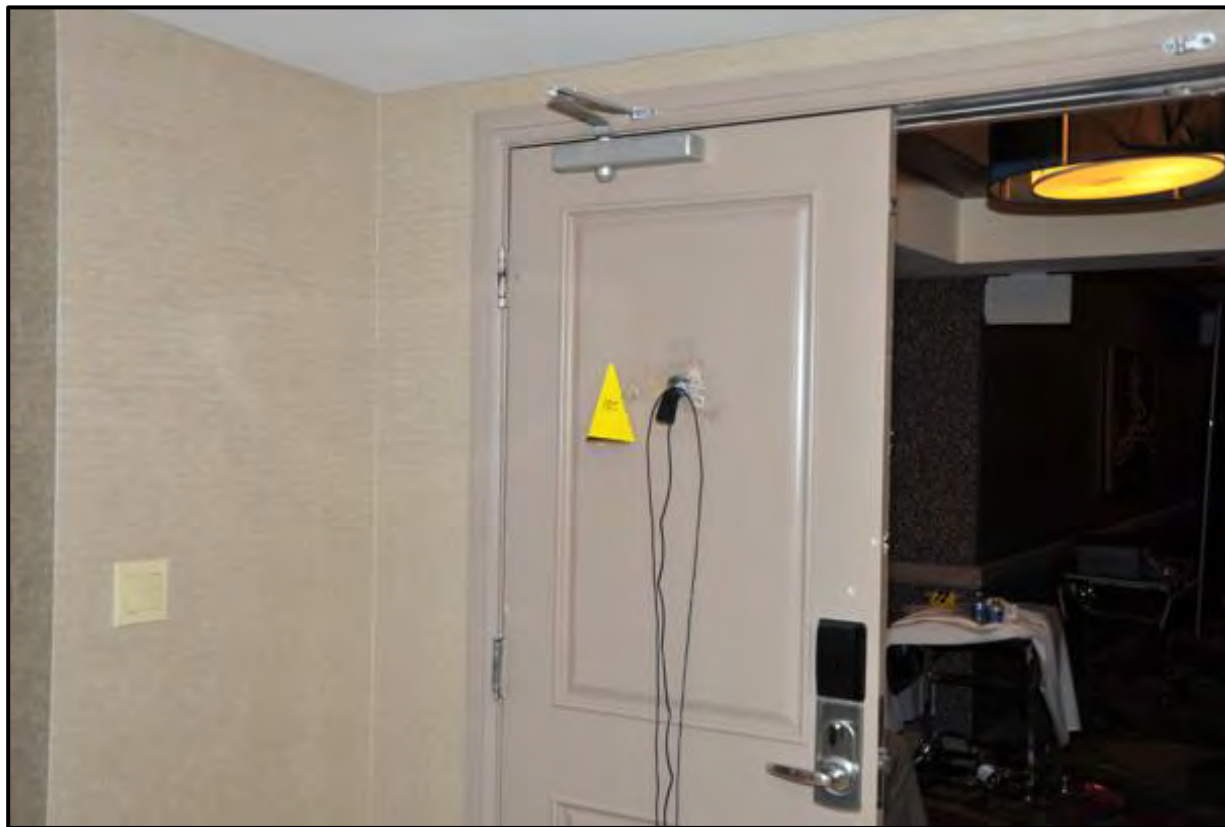


Picture 12



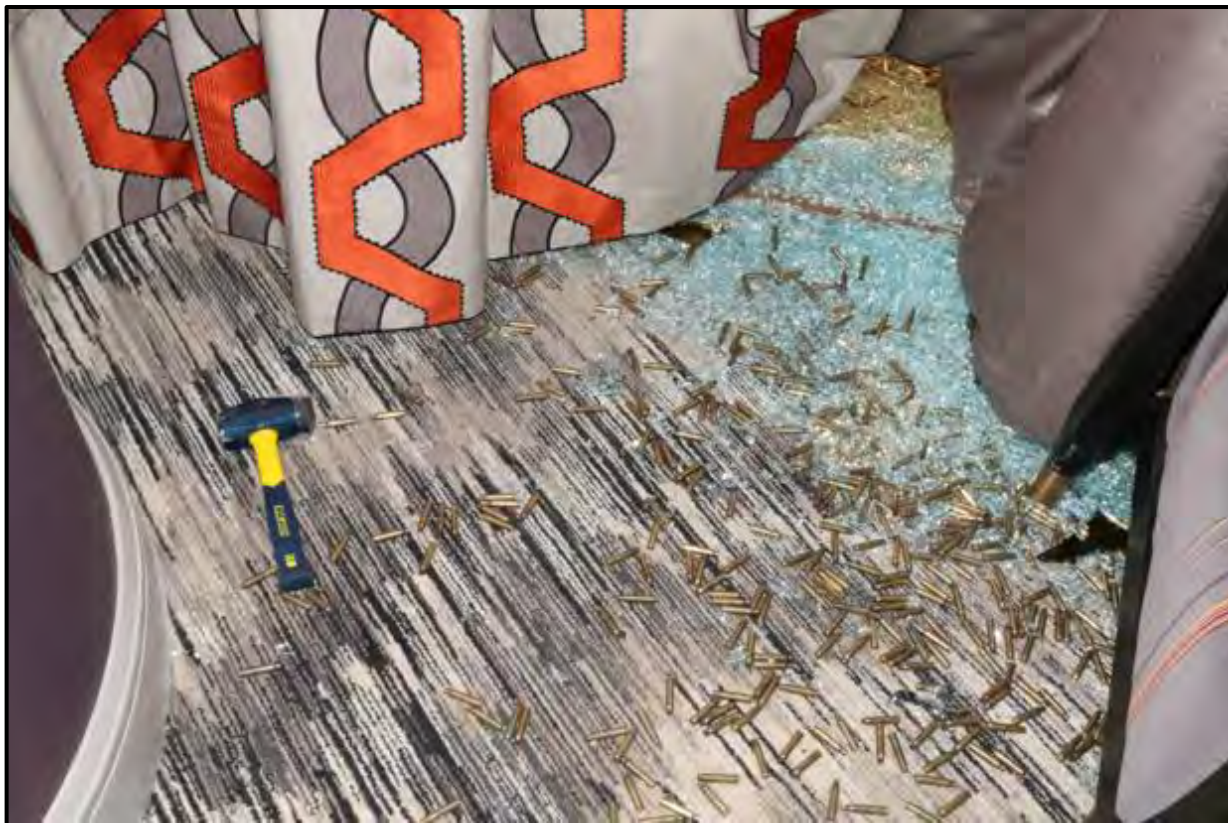
(Blue plastic hose with snorkel mouthpiece attached)

Picture 13



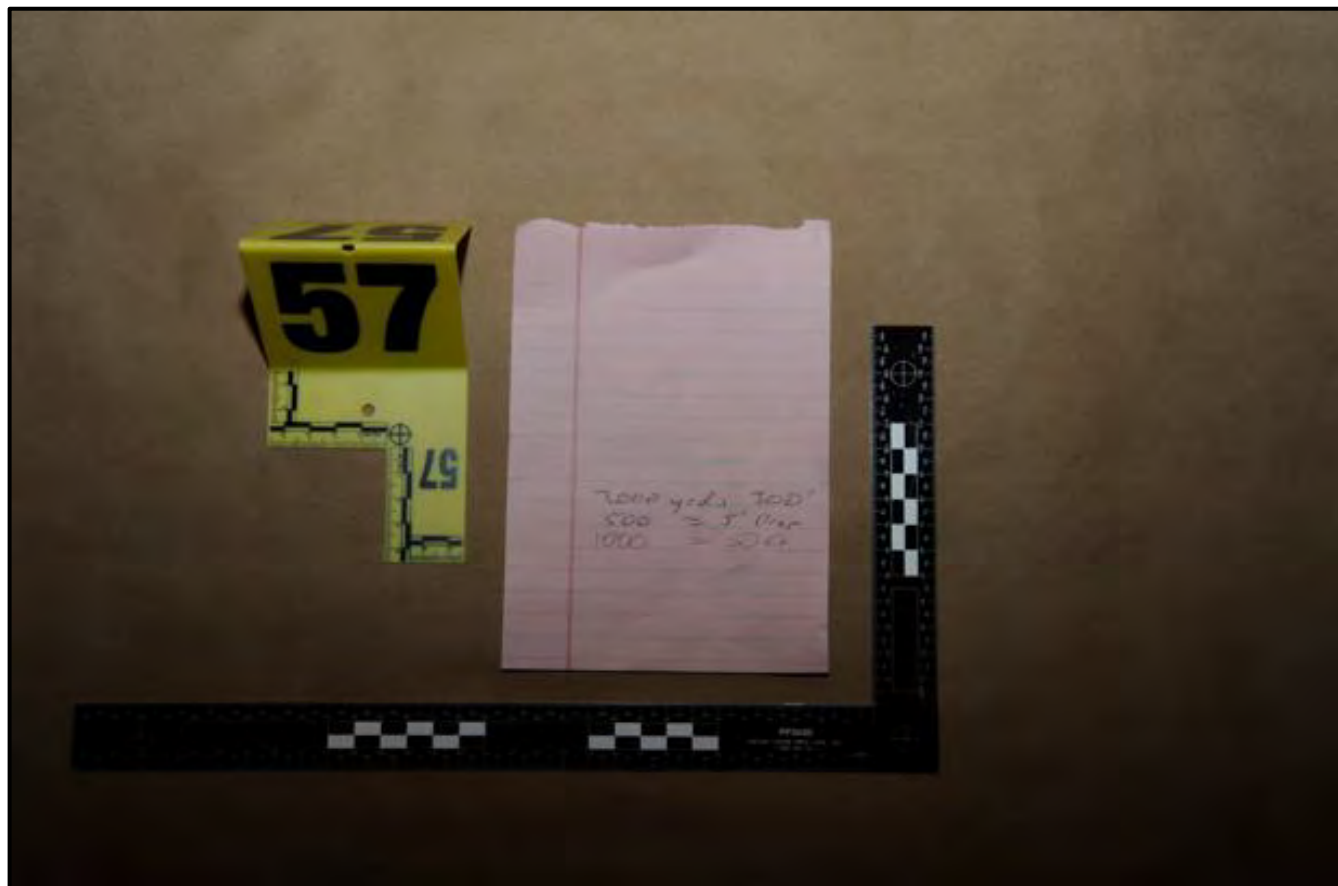
(Surveillance camera mounted to room door peephole)

Picture 14



(Small sledge hammer)

Picture 15



(Handwritten note with distance/bullet drop calculations)





Picture 17



(Damage to entry door of room 32-135)

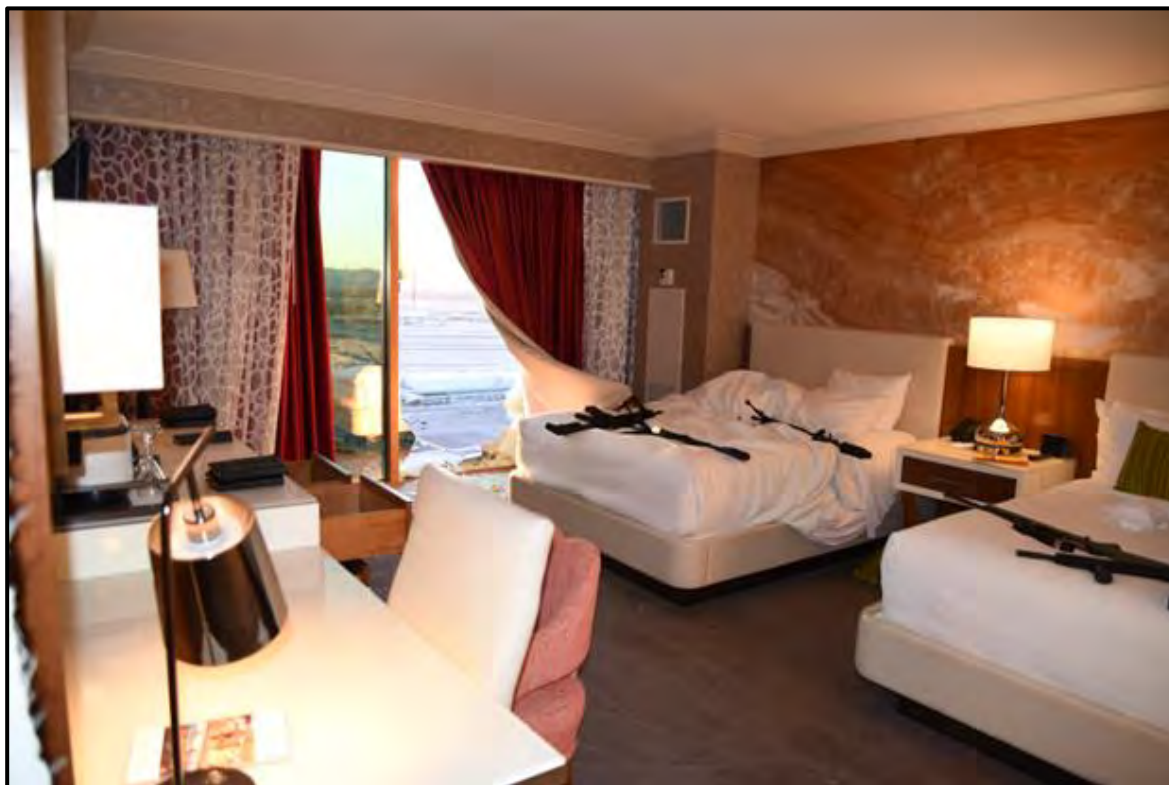


Picture 18



(Desk in master bedroom of 32-135 with SCUBA mask and power hand drill)

Picture 19



(Interior of room 32-134 from connecting doors)



Picture 20



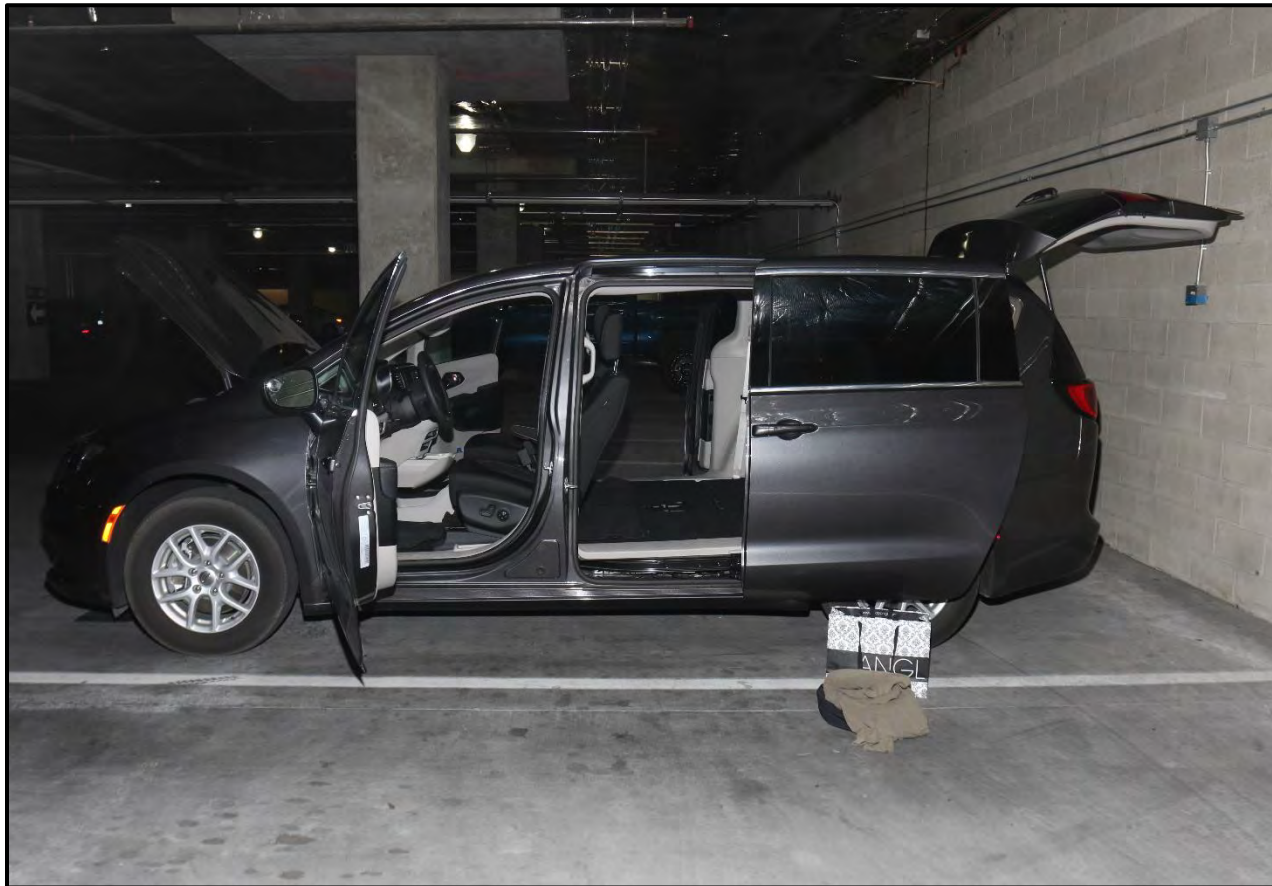
(Interior of room 32-134 towards bathroom)

Picture 21



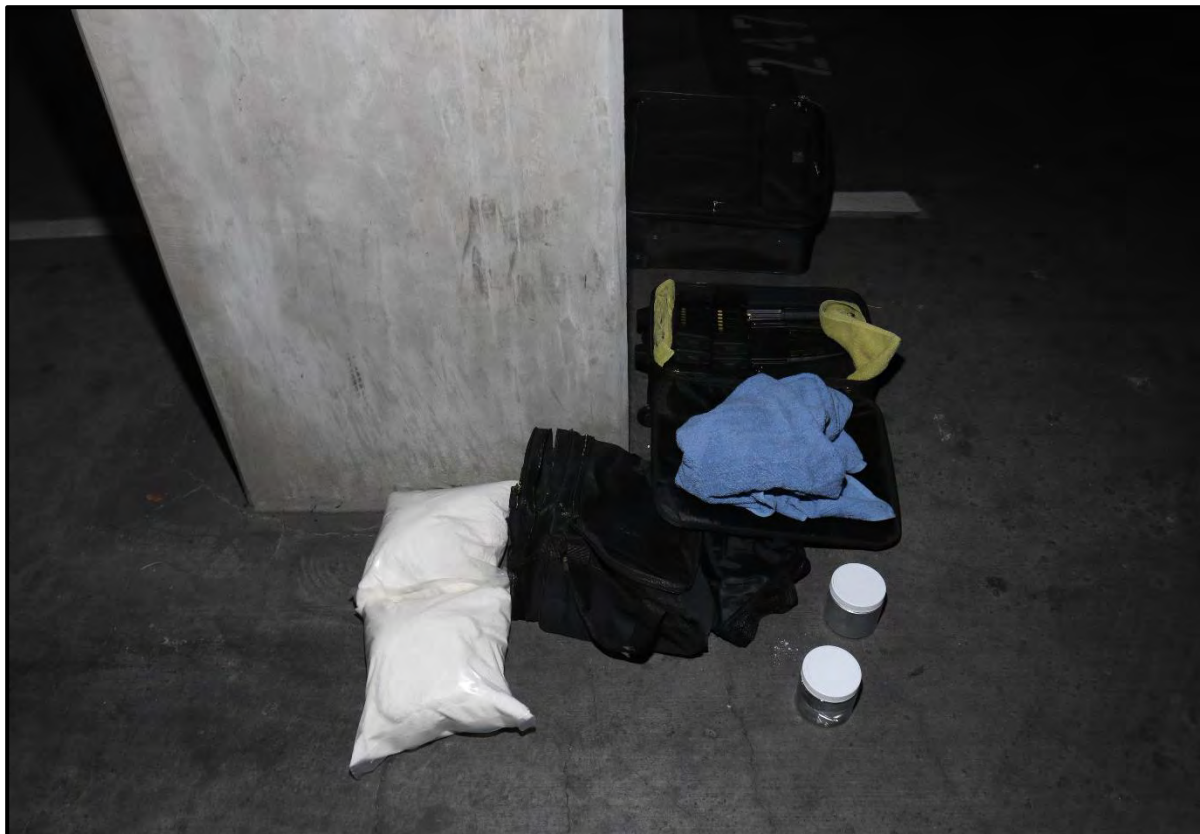
(Hallway of room 32-134 with food service cart and laptop connected to cameras in 100 hallway)

Picture 22



(Paddock's vehicle)

Picture 23



()

(Explosive precursors found in Paddock's vehicle)



Picture 24



(Exploding targets found in Paddock's vehicle)

Picture 25



(McCarran International Airport fuel tank with bullet strikes)

Picture 26



(Upper bullet strike)

Picture 27



(Lower bullet strike)

Picture 28





(View of the Las Vegas Village from room 32-135)

## **Exhibit 3**

***(Worlds Fastest Shooter vs Bump Fire! –  
Guns Reviews)***

## **Exhibit 4**

*(AR-15 5 shots in 1 second with fastest shooter ever, Jerry  
Miculek (Shoot Fast!))*

## **Exhibit 5**

***( [Update] Bumbling Machinations on Bump Stocks? and  
[Updated] Bump-fire Rule: “Comments Not Accepted” )***

# The Zelman Partisans

**AUTHORITARIAN SWINE, GUN CONTROL, POLITICS, SO MUCH STUPID!**

## [UPDATE] BUMBLING MACHINATIONS ON BUMP STOCKS?

APRIL 2, 2018 | CARL BUSSJAEGER | 1 COMMENT

*[See ATF update below]*

I've been chasing bump-fire stock commenting on regulations.gov this morning, [because it matters](#), trying to sort out the [issues with commenting](#). What I've found so far:

My layman's understanding is that new rules (Notice of Proposed Rulemaking, NPRM) have to be announced in the Federal Register, giving people a chance to voice their views on them, before the rules can be implemented. Sure, they can ignore us, but they have to let us yammer.

The only Federal Register [announcement for "Bump-Stock-Type Devices"](#) is "A Proposed Rule by the Alcohol, Tobacco, Firearms, and Explosives Bureau on 03/29/2018." That is **Docket No. 2017R-22**, which on federalregister.gov shows 35,709 public comments. Clicking the link to those comments takes you to the comments for December 2017's proposed rule. (Ditto for the [GPO PDF of the Federal Register](#).)

Regulations.gov is the web site where we — supposedly — get to voice those views.

Regulations.gov shows **two** dockets, neither of which is "Docket No. 2017R-22".

### **ATF-2018-0001:**

"Comments Not Accepted"

The comment I made on that, [1k2-92ad-9enm, 3/29/2018](#), shows *"This comment was received in Regulations.gov but is not yet posted. Please contact the agency directly for more information."*

A search for comments on ATF-2018-0001 shows *"35,709 results"*. But the result displayed are the comments from the December 2017 NPRM, *"Comment Period Closed, Jan 25, 2018 11:59 PM"*

ET”.

**Docket No. ATF-2018-0002:**

This docket shows different comment counts depending on the page you look at.

- [ATF-2018-0002](#)  
Commenting allowed, currently shows “3,673 Comments Received”.
- [ATF-2018-0002-0001](#)  
Commenting allowed, currently shows “1,864 Comments Received”.

But no comments on ATF-2018-002 can be found: “[0 results](#)”.

My comment on *this docket*, [1k2-92b5-589w](#), 3/30/2018, also shows “This comment was received in Regulations.gov but is not yet posted. Please contact the agency directly for more information.”

Please note: While ATF-2018-0001 was published on 3/29/2018 and could be considered the NPRM referred to in the Federal Register, ATF-2018-002 was not published until 3/30/2018, after comment were closed on the 3/29 docket.

**SUMMARY:** The “Bump-Stock-Type Devices” is being “tracked” under three different docket numbers. The Federal Register — where rules apparently must be legally published — shows *only* Docket No. 2017R-22, which you might recall is also the docket number for the [December 2017 NPRM](#).

But regulations.gov shows two dockets, neither published in the Federal Register, with different comment counts. And neither of my comments will display for *any* docket number.

It’s hard to tell with the ATF, but this *might* be bureaucratic incompetence rather than deliberate malice. Possibly some idiot did a copy/paste from the 2017 NPRM, and got the old docket number. When they tried to enter a new docket number to keep comments separated, they managed to enter two, screwing up the whole NPRM.

Or it might be deliberate machinations, with bureaucratic bumblng as [plausible deniability](#).

**Update, 4/2/2018, 11:55 AM EDT:** I have received a response from the ATF. As you can see, it fails to explain why commenting closed on one docket, or why there are two *other* separate (and not listed in the Federal Register) dockets. Comments are still separated across dockets in

counts, yet are not visible.

From: [Katrina.A.Moore@usdoj.gov](mailto:Katrina.A.Moore@usdoj.gov)

Subject: FW: Comments Closed on Bump-Fire Rule

*This is in response to your email to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). In your email, which you inquired why the commenting was closed on the Notice of Proposed Rulemaking in "Bump-Stock-Type Devices" after one day.*

*As you may know, ATF is responsible for enforcing the Gun Control Act of 1968 (GCA), as well as other Federal firearms laws. A significant part of the GCA concerns the licensing and recordkeeping requirements pertaining to the manufacture, importation, distribution and sale of firearms.*

*The direct link to comment on the subject notice is <https://www.regulations.gov/document?D=ATF-2018-0002-0001>*

*If you have any further comments or concerns, they may be directed to the Office of Regulatory Affairs (202) 648-7070.*

*In addition, there may be State laws that pertain to this proposed activity. Contact State Police units or the office of your State Attorney General ([www.naag.org](http://www.naag.org)) for information on any such requirements. You may also find information in ATF publication 5300.5: State Laws and Published Ordinances – Firearms.*

*We trust the foregoing has been responsive to your inquiry. Should you have additional questions, please contact your local ATF office. A listing of ATF office phone numbers can be found [here](#).*

Regards,

K Moore | Senior Industry Operations Investigator  
U.S. Department of Justice | Bureau of Alcohol, Tobacco, Firearms and Explosives  
Firearms Industry Programs Branch  
99 New York Avenue NE, Mail Stop 6.N-518  
Washington, DC 20226

**Update 2, 4/2/2018, 2:55PM EDT:**



The inconsistent comment counts are the same, but 431 comments can now be seen. Visible comments include some submitted today. However, neither of my comments submitted last week can be found anywhere. Since my comments have vanished, I have submitted a third attempt to voice my opinion: 1k2-92d6-aj9o, 4/2/2018:

*Comment Tracking Number Match*

*This comment was received in Regulations.gov but is not yet posted. Please contact the agency directly for more information.*

*Carl is an unpaid TZP volunteer. If you found this post useful, please consider dropping something in his tip jar. He could use the money, what with truck repairs and bills.*



◀ ATF    ◀ BANS    ◀ BUMP STOCK    ◀ BUMP-FIRE    ◀ BUMP-STOCK-TYPE DEVICES    ◀ COMMENTING    ◀ RULES

## ONE THOUGHT ON “[UPDATE] BUMBLING MACHINATIONS ON BUMP STOCKS?”



**Mutti**

APRIL 2, 2018 AT 12:30 PM

My personal comment has been unable to be submitted via the online form, therefore I suggest individuals FAX: (202) 648-9741 ATTN: Vivian Chu

or Mail:

Vivian Chu, Mailstop 6N-518, Office of Regulatory Affairs, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives, 99 New York Ave. NE, Washington DC 20226. ATTN: 2017R-22

—

Depending on how much effort one wants to put forward a copy of the FAX receipt and Comment can/should be sent to any of their elected officials who have involvement with the



oversight committee (example: House Judiciary Committee: <https://judiciary.house.gov/subcommittee/full-committee/>)

00331751

## The Zelman Partisans

**AUTHORITARIAN SWINE, GUN CONTROL**

# [UPDATED] BUMP-FIRE RULE: "COMMENTS NOT ACCEPTED"

MARCH 30, 2018 | CARL BUSSJAEGER | 9 COMMENTS

**ADDED 2:** jim notes in comments that the proposed rule can *now* be found [HERE](#).

That's nice. Except...

Scroll down. New docket number. Comment count is zero.

Related Dockets: None

Related RINs: None

Related Documents: None

That means this is not tied to the previous notice with existing comments, and those hundreds of comments that were made before are **GONE**.

Inquiries to the ATF, DOJ, Federal Register, and various congresscritters have gone unanswered. An automated response from the ATF reads, *"It is the goal of FIPB to respond to requests from firearms industry members and the general public within 120 days of receipt."*

Nice trick. If comments aren't going your way, kill the proposal, reissue it without telling anyone, and do over until you get the results you want to justify violating human/civil rights.

I have two comment receipts now, so I can check if the first is permanently evaporated, or if they'll... *restore* it.

**Original post (and update) follows:**

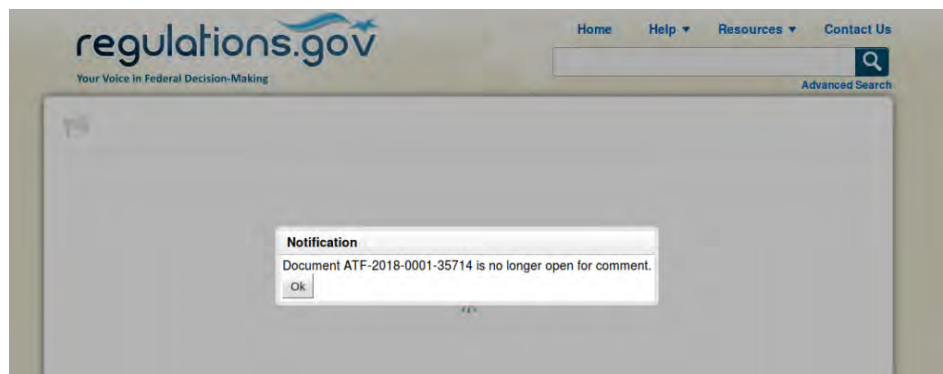
Something is up with the **Notice of Proposed Rulemaking** on "Bump-Stock Type Devices." I was there earlier this morning checking on comment totals: 941.

I thought of something else I wanted to see again a few minutes ago. I found this.



"Comments Not Accepted"

So I cleared cache/cookies/history/*et al* and attempted a new comment.



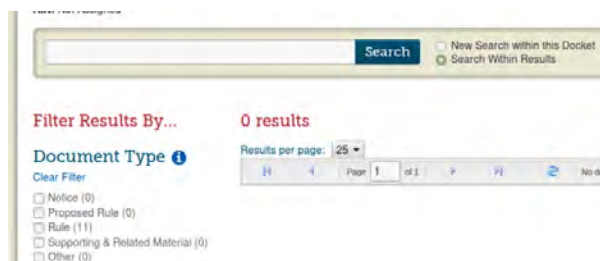
"Document ATF\_FRDOC\_0001-0036 is no longer open for comment."

That was supposed to be open for 90 days, until June 29, 2018.

Very odd. Anyone know what's going on?

**Added:** I also did a search on the comments submitted before it was closed (remember: there had been at least 941):





Inquiries have been made to DOJ and the Federal Register. No responses yet.

*Carl is an unpaid TZP volunteer. If you found this post useful, please consider dropping something in his tip jar. He could use the money, what with truck repairs and bills.*



◀ ATF    ◀ BANS    ◀ BUMP STOCK    ◀ BUMP-FIRE    ◀ BUMP-STOCK-TYPE DEVICES    ◀ DOJ

## 9 THOUGHTS ON "[UPDATED] BUMP-FIRE RULE: "COMMENTS NOT ACCEPTED""



**jim**

MARCH 30, 2018 AT 12:15 PM

You may submit comments, identified by docket number ATF 2017R-22, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the directions for submitting comments.

Fax: (202) 648-9741.

Mail: Vivian Chu, Mailstop 6N-518, Office of Regulatory Affairs, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives, 99 New York Ave. NE, Washington DC 20226. ATTN: 2017R-22.



**jim**

MARCH 30, 2018 AT 12:22 PM

Try this link:

<https://www.regulations.gov/document?D=ATF-2018-0002-0001>



★ **Carl Bussjaeger**

MARCH 30, 2018 AT 1:07 PM

That's nice, but according to that page the hundreds of comments already submitted are gone.



**Mike Murray**

APRIL 2, 2018 AT 11:38 AM

Thanks for that, Jim.

The link works, and I shamelessly used part of Carl Bussjaeger's refutation of mechanical concept that "it's a machine gun".

It's not, and if this passes it's one more step toward banning any semi-auto firearm. Bastards.



★ **Carl Bussjaeger**

APRIL 2, 2018 AT 11:59 AM

*"It's not, and if this passes it's one more step toward banning any semi-auto firearm."*

Exactly.

*"Bastards."*

Yep.



**Comrade X**

MARCH 30, 2018 AT 4:20 PM

Tyrants don't need no stinkin comments!



**jim**

MARCH 30, 2018 AT 4:57 PM

Roger that, too many games or too many secrets (remember that movie?). I hope people are waking up to the fact Dems and Repubs are the same animal. Stock up with everything you can get. Never again....



**Comrade X**

MARCH 31, 2018 AT 12:12 PM

I hate to be a broken record but ;Yep, a one party system; the big government party with two branches, a D & a R.



**pigpen51**

MARCH 30, 2018 AT 9:40 PM

I just had flashbacks of Richard Nixon. Yes, I am old enough to remember him talking on the television.

What I remember is him saying " The American people have a right to know if their president is a crook. Well, I am not a crook." Shortly, he resigned his office, because he was found to be a crook. And he knew that if he stayed he would be impeached. Based on his covering up the burglary into Watergate hotel, not for actually doing the burglary or even ordering it, but just trying to hide it.

So I think that I can agree with pretty much all that have spoken here that this is a crooked deal, that once the BATFE's saw the way that the comments were running, they simply did away with them and started over. And that it will happen again, until they get the results that they want. The Dems and the Repubs are one and the same, and that it is prudent to stock up, no matter what the political climate is.

00331764

## **Exhibit 6**

**(Motion in Limine, *United States v. Friesen*)**

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
)  
)  
Plaintiff, )  
vs. ) Case No. CR-08-041-L  
)  
)  
LARRY DOUGLAS FRIESEN, )  
)  
)  
Defendant. )

**DEFENDANT'S MOTION IN LIMINE TO PROHIBIT GOVERNMENT'S  
INTRODUCTION OR REFERENCE TO RECORDS MAINTAINED IN THE  
NATIONAL FIREARMS REGISTRATION AND TRANSFER RECORD**

COMES NOW the Defendant, Doug Friesen, and moves this Honorable Court to prohibit the Government from introducing, mentioning, or otherwise allude or refer to any records from the National Firearms Registration and Transfer Record (NFRTR). In support of said Motion, Defendant Friesen submits the following, to-wit:

The NFRTR is a data base administered by the Bureau of Alcohol, Tobacco, Firearms and Explosives<sup>1</sup> (ATF) to track legally owned machine guns and other "firearms"<sup>2</sup> required to be

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<sup>1</sup> The Bureau of Alcohol, Tobacco and Firearms was renamed the Bureau of Alcohol, Tobacco, Firearms and Explosives under legislation which transferred it from the Department of the Treasury to the Department of Justice, and its law enforcement and administrative functions from the Secretary of the Treasury to the Attorney General, on January 24, 2003. 6 U.S.C. § 531; 116 Stat. 2135 (2003).

<sup>2</sup> Under the NFA a "firearm" is a term of art, and means "(1) a shotgun having a barrel or barrels of less than 18 inches in length; (2) a weapon made from a shotgun if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length; (3) a rifle having a barrel or barrels of less than 16 inches in length; (4) a weapon made from a rifle if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length; (5) any other weapon, as defined in subsection (e); (6) a machinegun; (7) any silencer . . . and (8) a destructive device. The term 'firearm' shall not include an antique



registered under the National Firearms Act of 1934<sup>3</sup> (NFA). Said database is inaccurate and incomplete; its error rate is currently unknown; and that unless it can be independently and reliably validated, NFRTR data should be excluded as evidence in a criminal trial.

ATF routinely uses NFRTR data to justify seizing and forfeiting firearms it deems to be unregistered or illegally possessed, issuing search and/or arrest warrants, producing Certificates of Nonexistence of a Record (CNR) for NFA firearms at criminal trials which attest that no record of registration for particular firearms can be located in the NFRTR; determining that a specific firearm is not registered to a specific person; and for other law enforcement activities such as approving or disapproving applications to transfer ownership of NFA firearms.

There are no known data that reliably establish the current accuracy and completeness of the NFRTR. The last audit of the NFRTR according to Generally Accepted Government Auditing Standards (GAGAS), by the Treasury Department Inspector General (Treasury IG) in 1998, raises more questions than it answers. The reasons are that the audit (1) disclosed “critical error” rates of 4.3 percent and 18.4 percent for one category of NFRTR transactions, and (2) was limited in scope.<sup>4</sup> The bad news was reliably documented April 23, 1998, when Treasury IG auditor Gary Wilk reported in a Work Paper:

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firearm or any device (other than a machinegun or destructive device) which, although designed as a weapon, the Secretary finds by reason of the date of its manufacture, value, design, and other characteristics is primarily a collector's item and is not likely to be used as a weapon.” 26 U.S.C. § 5845(a).

<sup>3</sup> 26 U.S.C. § 5801 *et seq.*

<sup>4</sup> These errors apply to Form 4467 data, which may be more inaccurate than the 4.3% critical error rate which can be calculated from data the Treasury IG disclosed in its December 1998 audit report. Office of Inspector General, U.S. Department of Treasury, *Audit Report on Allegations Concerning the Bureau of Alcohol, Tobacco, and Firearms' Administration of the National Firearms Registration and Transfer Record*, OIG-99-018, Dec. 18, 1998 at 12, available at <http://www.nfaoa.org/documents/TreasuryOIG-99-018-1998.pdf>. (Hereafter December 1998 Treasury IG Report.) Treasury IG auditor Carol Borgan stated that “error definitions for critical data fields during sampling” include weapon serial number and registrant's last name (each must “be 100% correct”), and “weapon description”). Work Paper F-25, Feb. 29, 1998, available at [http://www.nfaoa.org/documents/Work\\_Papers\\_F.pdf](http://www.nfaoa.org/documents/Work_Papers_F.pdf). Treasury IG auditor Gary Wilk determined “our Discovery sample indicated a 18.4 percent error rate, one error per error Form

- **Form 4467 was a critical indicator for our audit. We determined, based on our discovery sample, that the combined error rate for original documentation and the computer database was 18.4 percent.**
- **We were able to determine that the error rate was in excess, with 95 percent confidence, +/- 7 percent, of the NFA Branch specified error rate limit of (+/-) 5 percent. Based on our Discovery error estimate we did not implement the full statistical sampling plan.**

**Conclusion:**

**The NFA database - National firearms Registration and Firearms Record (NFRTR) does not contain less than the 5 percent error rate limit for Critical data established by the Chief, Firearms and Explosives Division, ATF.**

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During a June 17, 1998, meeting at Treasury Department Office of Inspector General Headquarters to discuss the foregoing audit findings, an NFA Branch representative

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4467 in a 'Critical' field." Work Paper H-1 + Attachments H1-H143, April 6, 1998, available at [http://www.nfaoa.org/documents/Work\\_Papers\\_H.pdf](http://www.nfaoa.org/documents/Work_Papers_H.pdf).

Form 4467 ("Registration of Certain Firearms During November 1968") was used to register unregistered NFA firearms during an amnesty period from November 2, 1968, to December 1, 1968, established by the Gun Control Act of 1968 (P.L. 90-618; Stat. 1235, § 207(b)). The 1998 Treasury IG audit was limited to three categories of NFA transactions (approximately 3.3 percent of the total 2,571,766 transactions "for the years 1934 through July 31, 1998" (December 1998 report, id. at 2); none included Form 1, Form 2, Form 3, Form 4 and Form 5 categories, which account for 2,184,454 transactions (85 percent of total transactions). These forms differ according to whether the applicant is a private citizen, government agency, or Special Occupational Taxpayer (SOT) licensed to manufacture and/or deal in or import NFA firearms.

<sup>5</sup> Work Paper H-0, April 23, 1998 at 2, reviewed May 7, 1998, by Audit Manager Robert K. Bronstrup. In "Discovery" sampling, the auditor draws a random sample, typically 60 to 70 records or more, to determine the presence or absence of irregularities and the need for a full audit. If no irregularities are found, the data base is presumed to be error-free and a full audit is not conducted. If even 1 irregularity is found, the data base cannot be assumed to be error-free; the audit must be extended; and a larger sample drawn to reliably estimate the error rate for the data base. Herbert Arkin, *Handbook of Sampling for Auditing and Accounting*. New York: McGraw-Hill Book Company, 1984 at 132-140.

Treasury IG auditor Gary Wilk reported that after reviewing "528 records and documents" in Discovery sampling:

- **We discovered a total of 395 errors or omissions of which 176 were Critical to the NFA mission and the remaining 219 were Administrative.**

Work Paper H-0, April 23, 1998 at 1.

██████████ asked for an explanation of the analysis results obtained by the OIG audit of the physical and electronic records maintained by ATF and known as the NFRTR. ██████████ further, added that ██████████ reason for asking was that the results obtained by the OIG audit were disappointing at best and could have serious consequences for the ATF firearms registry mission.

6

After Treasury IG auditor Gary Wilk “offered that perhaps ATF would prefer to identify a term other than ‘critical’ as the identifier for the errors identified by this audit report,”<sup>7</sup> one or more NFA Branch representatives asked the Treasury IG auditors to change the definition of “critical error” to obtain a lower rate, and the auditors did so. The Treasury IG did not mention or publish the 18.4 percent rate (or any other error rate) in its December 1998 report or its October 1998 report; whether “critical errors” were present in other major NFRTR categories was not addressed.

The limited audit findings the Treasury IG published regarding errors in the NFRTR as shown in the table below, copied from the December 1998 Treasury IG report, are misleading. In part the reasons are that, as will be documented in this motion, the Treasury IG auditors did violated GAGAS under at least two major standards: (1) failing to extend the audit to determine the impact of the large number of “critical errors” disclosed as the result of Discovery sampling analysis, which required them to report their effects upon the audit results, in view of the auditors’ failure to fully disclose the results of their Discovery sampling analyses , and (2) failing to be organizationally independent. This motion will later discuss the implications of violating GAGAS.

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<sup>6</sup> Work Paper F-37, June 30, 1998 at 1, available at [http://www.nfaoa.org/documents/Work\\_Papers\\_F.pdf](http://www.nfaoa.org/documents/Work_Papers_F.pdf). In this Work Paper, Treasury IG auditor Gary Wilk “explained that our definition [of “critical error”] had come from our understanding” of definitions provided earlier by NFA Branch representatives, who now “appeared to obtain an improved appreciation of the specific requirements that determined the outcome of the audit.”

<sup>7</sup> Id. at 1.



### SUMMARY OF SAMPLE DISCREPANCIES

	FORM 4467	LETTER	OTHER	TOTAL
<b>Discrepancies on Registry Database Reports</b>				
<b>Name:</b>				
Missing	2	1	0	3
Incorrect	0	0	0	0
<b>Serial Number:</b>				
Missing	0	0	0	0
Incorrect	1	0	0	1
Computer Records Not Found	0	10	0	10
<b>Original Records Not Found</b>				
	0	4	16	20
Miscellaneous <sup>2</sup>	3	0	0	3
<b>TOTALS</b>	<b>6</b>	<b>15</b>	<b>16</b>	<b>37</b>

Source: Database analysis results are dependent on the retrieval methods used. The results shown above are based on a combination of data retrieval methods.

8

Sworn testimony in *Freisen* by NFRTR custodian Denise Brown in this Court on September 17, 2008, about the current accuracy of the NFRTR was not informative or encouraging. When asked by defense counsel “how accurate are the NFRTR records?” Custodian Brown replied: “I don’t have a number.” When asked to confirm whether “there are inaccuracies in them [NFRTR data], are there not, ma’am?,” she answered “Yes, there are.”<sup>9</sup>

ATF officials have willfully failed to disclose that ATF has (1) lost or destroyed firearm registration documents, (2) added registration documents provided by firearms owners to replace those which ATF lost, destroyed, or could not locate, (3) knowledge that the NFRTR contains

<sup>8</sup> December 1998 Treasury IG Report at 12, available at <http://www.nfaog.org/documents/TreasuryOIG-99-018-1998.pdf>.

<sup>9</sup> *United States of America vs. Larry Douglas Friesen*, Case No. CR-08-41L, United States District Court for the Western District of Oklahoma, Transcript of Jury Trial, Vols. I-VIII, Sept. 17-Oct. 1, 2008, before the Honorable Tim Leonard, U.S. District Judge at 75-76. (Hereafter *United States of America vs. Larry Douglas Friesen* (2008).)

serious material errors that affect the reliability of its certifications in federal court that a particular firearm is not registered to a defendant, and (4) from time to time, depending on the circumstances, inconsistently applied various definitions of “critical error” in characterizing errors in the NFRTR, as this motion will document. Their actions, reported in documents created and published by the Government since 1979, particularly during the 1990s and continuing to present, violate due process, and obstruct justice.<sup>10</sup> There is evidence, discussed throughout this motion, that ATF has been withholding *Brady* material<sup>11</sup> by failing to disclose potentially exculpatory evidence at criminal trials. Both the Attorney General and his predecessor (Secretary of the Treasury) have failed to establish a new amnesty period to correct errors in the NFRTR because firearm registration documents are missing, as will be shown is required by the Criminal Division of the Department of Justice. Consequently, ATF’s use of NFRTR data whose validity and reliability has not been independently established does not represent an acceptable standard for federal law enforcement in criminal prosecutions.

The Congress heard testimony in 1979 that ATF alleged J. Curtis Earl, a federally licensed NFA dealer, illegally possessed 475 unregistered firearms.<sup>12</sup> More than two decades later, the attorney who represented Mr. Earl informed a Subcommittee Chairman during a 2001 Congressional hearing about continuing inaccuracies in NFRTR records, that Mr. Earl

[T]urned to his file cabinet and began to produce the original records of their registration, and one by one the firearms came off the floor and back onto his

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<sup>10</sup> There are no published law review articles on the NFRTR, and little pertinent case law. The most comprehensive legal review of NFRTR issues to date is in an unpublished article. Joshua Prince, “Violating Due Process: Convictions Based on the National Firearms Registration and Transfer Record when its ‘Files are Missing’” (2008), available at [http://www.nfaoa.org/documents/Violating\\_Due\\_Process20Aug2008.pdf](http://www.nfaoa.org/documents/Violating_Due_Process20Aug2008.pdf)

<sup>11</sup> *Brady vs. Maryland*, 373 U.S. 83 (1963).

<sup>12</sup> Congressional Hearing, Committee on Appropriations, United States Senate, *Oversight Hearings on Bureau of Alcohol, Tobacco and Firearms*, 96th Cong., 1st Sess. at 39 (1979), available at [http://www.nfaoa.org/documents/1979\\_Hearing\\_Excerpts.pdf](http://www.nfaoa.org/documents/1979_Hearing_Excerpts.pdf).

racks. At the end, he could show that he had registered every single one of these 475 firearms. ATF's records were grossly incorrect.<sup>13</sup>

In November 1979, in response to a request by then-Senator James A. McClure, the Criminal Division of the Department of Justice stated if ATF determines that "a particular individual or weapon is registered" and ATF finds that its "files are missing," then "the only solution would be to declare another amnesty period."<sup>14</sup> Sections of this Memorandum that include the preceding quoted phrases are reproduced below.

No amnesty period was established as the result of Mr. Earl's case.

seventeen problem areas in the record system (see pp. 3-4). The most significant of these in terms of its effect on the validity of a certification is where both the index card and the registration record are missing. It must be explained, however, that the only way to determine whether this situation exists is by first knowing that a specific individual or weapon is registered and the finding that both files are missing. Obviously, if the individual has never registered a firearm or if the firearm has never been registered by anyone, no record whatsoever will exist. The report does not suggest that this problem actually existed and it cites no examples where both records were determined to be missing.<sup>5/</sup> Indeed, none of the ATF personnel we interviewed were aware of any case where this happened. Most of

5/ If this problem actually existed, the only solution would be to declare another amnesty period. The Secretary is empowered to do this under existing legislation.

<sup>15</sup>

<sup>13</sup> Letter to Ernest S. Istook, Jr., Chairman, Subcommittee on Treasury, Postal Service and General Government dated April 10, 2001, from David T. Hardy, Esq., available at <http://www.nfaa.org/documents/BardHard.pdf>.

<sup>14</sup> U.S. Department of Justice, Criminal Division, *Memorandum: Response to letter from Senator McClure*, by Philip B. Heymann and Lawrence Lippe, Nov. 29, 1979 at 4, available at <http://www.nfaa.org/documents/DOJAmnestyMemo1979.pdf>.

Under § 207(d) of the Gun Control Act of 1968, the Secretary of the Treasury (now the Attorney General) is empowered to administratively establish unlimited numbers of amnesty periods lasting up 90 days per amnesty period, with immunity from prosecution, "as the Secretary determines will contribute" to purposes of the NFA, upon publication in the *Federal Register* of his intention to do.

<sup>15</sup> Id. at 4.



In 1997, as the result of allegations by Eric M. Larson, a private citizen,<sup>16</sup> the Chairman, House Committee on Government Reform and Oversight, directed the Treasury IG to audit the NFRTR.<sup>17</sup> One of the audit reports, published in 1998, describes the use and results of Discovery sampling to establish there were “discrepancies” in three categories of NFRTR data, including missing or incorrect name; missing or incorrect serial number; computer records not found; and original records not found.<sup>18</sup> The Treasury IG failed to investigate a credible allegation that “ATF had registered firearms for which the agency had no documentation, but their owners did,”<sup>19</sup> and “did not include a review of the accuracy of ATF’s certifications in criminal prosecutions that no record of registration of a particular weapon could be found” in the NFRTR.<sup>20</sup>

Continuing efforts by citizens, federally licensed firearms dealers and gun collectors, and testimonies and statements from 1996 to 2001 at Congressional hearings involving the accuracy

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<sup>16</sup> Eric M. Larson has been a Senior Analyst, U.S. Government Accountability Office (GAO), since 1987. Mr. Larson’s research, Congressional testimonies from 1996 to 2001, and continuing work involving the NFRTR has been and continues to be done in his personal capacity as a private citizen, and does not represent the policy or position of GAO.

<sup>17</sup> Letter from Dan Burton, Chairman, Committee on Government Reform and Oversight, House of Representatives dated June 25, 1997, to the Honorable Valerie Lau, Inspector General, Department of the Treasury. Work Paper D-4, October 14, 1997, by Diane Kentner at 5, available at [http://www.nfaa.org/documents/Work\\_Papers\\_D.pdf](http://www.nfaa.org/documents/Work_Papers_D.pdf). Chairman Burton’s letter states: “From the correspondence and testimony I received . . . it appears that the concerns raised by Mr. Larson may be valid and legitimate. Consequently, I believe an investigation by the OIG into [his] allegations would be appropriate to reveal any possible improprieties or mismanagement at the ATF, and to recommend solutions that would improve and strengthen ATF’s registration and record-keeping of firearms.”

<sup>18</sup> December 1998 Treasury IG Report at 12, available at <http://www.nfaa.org/documents/TreasuryOIG-99-018-1998.pdf>. The 1998 Treasury IG reports do not use the term “critical error,” and instead refer to them as “discrepancies.”

<sup>19</sup> Congressional Research Service, *Memorandum: ATF’s National Firearms Registration and Transfer Record: Issues Regarding Data Accuracy, Completeness, and Reliability*, by William J. Krouse, Nov. 28, 2005 at 12, available at <http://www.nfaa.org/documents/CRSMemoNFRTR0001.pdf>. The memorandum also states: “While the OIG found discrepancies in the sampled records . . . the critical error rates were not given in the text of the audit report. Nevertheless, based on its own findings and ATF efforts to improve the NFRTR, the Treasury OIG chose not to perform a full sampling and audit of the NFRTR.” *Id.* at 14.

<sup>20</sup> *Id.* at 12.

and completeness of the NFRTR resulted in another Government examination of the NFRTR. In the June 2007 report of its “review” of the NFRTR, the Department of Justice Inspector General (Justice IG) stated:

We reviewed ATF processes related to requesting records checks from the NFRTR and determined that when an error is detected, the NFA Branch staff thoroughly research the NFRTR and the imaging database to find out if a weapon is actually registered. Additionally, the NFA requires owners to retain the approved NFA weapons application as proof of a weapon’s registration and make it available to ATF upon request. **If the NFA weapons owner can produce the registration paperwork, ATF assumes the error is in the NFRTR and fixes it in the database.**<sup>21</sup> [emphasis added]

The Justice IG’s finding that “ATF assumes the error is in the NFRTR and fixes it in the database” when firearms owners produce copies of their registration documents leaves unanswered questions. Commenting on the foregoing determination, Stephen P. Halbrook, a nationally and internationally recognized authority on U.S. firearms law, observed:

... if the owner or the executor of a deceased owner cannot find the registration paperwork, which may be lost or destroyed, and if the record cannot be found in the NFRTR, then a voluntary abandonment of the firearm may be induced or even a criminal prosecution initiated. On such issues the report is not sufficiently informative.<sup>22</sup>

The loss or destruction of an NFA firearm registration document by anyone is not a trivial matter because all violations of the NFA are serious felony offenses, and the penalties are substantial.<sup>23</sup> Persons who are convicted of illegal possession of a machine gun are singled out for particularly harsh treatment. The reason is that under Title 18 § 922(o), the Government is

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<sup>21</sup> U.S. Department of the Justice, Office of Inspector General, *The Bureau of Alcohol, Tobacco, Firearms and Explosives’ National Firearms Registration and Transfer Record*, 1-2007-006, June 2007 at 31, available at <http://www.nfaa.org/documents/DOJ-OIG2007NFRTRreport.pdf>. Hereafter June 2007 Justice IG Report.

<sup>22</sup> Stephen P. Halbrook. *Firearms Law Deskbook: Federal and State Criminal Practice*. 2008-2009 Edition. Thomson West Publishing, 2008 at 575.

<sup>23</sup> Violators may be fined not more than \$250,000, and imprisoned not more than 10 years, or both. In addition, any vessel, vehicle or aircraft used to transport, conceal or possess an unregistered NFA firearm is subject to seizure and forfeiture, as is the weapon itself. 49 U.S.C § 781-788, 26 U.S.C. § 5861 and § 5872.



not required to prove that a machine gun is not registered to convict a defendant of Possession of Unregistered Firearm.

The 2007 determination appears to meet the standard the Criminal Division of the Department of Justice established in 1979 for a new amnesty period as “the only solution” when ATF’s “files are missing.”

When Eric M. Larson filed a FOIA request to the Justice IG to obtain copies of the Work Papers created during its review of the NFRTR, to further clarify its determination, the Justice IG responded by sending them to ATF’s Disclosure Division for processing.<sup>24</sup>

It is unusual for an Inspector General to send Work Papers to an agency over which it has oversight responsibility for FOIA processing, because of the potential for conflict of interest it represents for both the agency and the Inspector General. Despite Mr. Larson’s repeated efforts to obtain them, ATF has thus far not provided copies of the requested Work Papers. A copy of the July 25, 2008, letter ATF sent to Mr. Larson after receiving the Work Papers from the Justice Department IG, appears on the next page.

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<sup>24</sup> Letter from Marilyn R. LaBrie, Disclosure Specialist, ATF dated July 25, 2008, to Eric M. Larson, bearing identifier REFER TO: 08-726.



**U.S. Department of Justice**

Bureau of Alcohol, Tobacco,  
Firearms and Explosives

JUL 25 2008

Washington, DC 20226

[www.atf.gov](http://www.atf.gov)

REFER TO: 08-726

Mr. Eric Larson  
P.O. Box 5497  
Takoma Park, MD 20913

Re: Work Papers – Report Number 1-2007-006

Dear Mr. Larson:

This is in reference to your Freedom of Information Act request, that you submitted to the Department of Justice. Your request was forwarded to this Agency together with a large volume of records.

It is our intent to grant your request in part. We are sorry that our processing has been delayed but we will endeavor to provide a response as soon as possible.

We are processing your request as an "all others requestor" therefore you are entitled to 100 free copies and 2 free hours of search. We will inform you if we anticipate any costs for copies that are not covered by the foregoing.

We regret the delay and will do all we can to provide a response.

Sincerely,

Marilyn R. LaBrie  
Team Leader, Disclosure Division

The Government still declines to establish an amnesty period to correct errors in the NFRTR. For example, in a January 14, 2009, letter, the Department of Justice Deputy Inspector General Paul K. Martin told Senator Barbara Mikulski, Chairman, Subcommittee on Commerce, Justice, Science and Related Agencies, Committee on Appropriations, the following:



U.S. Department of Justice

Office of the Inspector General

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January 14, 2009

The Honorable Barbara A. Mikulski  
United States Senate  
Hart Senate Office Building  
Suite 503  
Washington, D.C. 20510-2003

Attention: Benson Erwin

Dear Senator Mikulski:

We received your correspondence of October 28, 2008, forwarding a letter from Mr. Eric Larson regarding the Office of the Inspector General's (OIG) review of the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) management of the National Firearms Registration and Transfer Record (NFRTR) database and Mr. Larson's Freedom of Information Act (FOIA) request to the OIG. We will first address the concern with the OIG's review of the NFRTR and, second, with Mr. Larson's FOIA request.

Mr. Larson stated in his letter that he was concerned that the OIG did not review the "material inaccuracies" in the NFRTR and these errors "expose innocent firearms owners to legal jeopardy." Mr. Larson also asks the OIG to issue an opinion on the need for an amnesty period to register National Firearms Act (NFA) weapons. We are aware of Mr. Larson's concern about errors in the NFRTR and his desire for a new amnesty period for the registration of additional NFA weapons. However, our review focused on ATF's management of the NFRTR and the processing of NFA weapons' forms and did not address the issue of an amnesty period. The OIG has no opinion on the establishment of a new amnesty period in which to register NFA weapons. While our review found that there are some technical and programming issues that could cause administrative errors in records, we also found that ATF is taking the appropriate actions to correct these issues and is proactively correcting any errors found in individual records. Moreover, we found no instance in which errors in the NFRTR resulted in inappropriate criminal charges against individuals or federal firearms licensees.

Regarding Mr. Larson's FOIA request, the OIG received a FOIA request from Mr. Larson on July 26, 2007, seeking information pertaining to our review, including the work papers associated with the review. We have fully processed this request.

On August 16, 2007, we provided Mr. Larson with a copy of the report relating to our review. By letter dated September 18, 2007, we informed Mr. Larson that the work papers contained three categories of material: (1) documents that originated with other offices/agencies; (2) public source documents; and (3) documents generated by the OIG that contain information originating from other offices/agencies. We asked Mr. Larson whether he wanted copies of the public source material and whether he wished us to refer the material originating with the other offices/agencies to those entities. We also informed him that we would process the documents generated by the OIG after consultation with the other offices/agencies.

By letter dated September 27, 2007, Mr. Larson responded that he wanted copies of the public source documents and that we should make the referrals to the other entities. We thereafter referred to the Department of the Treasury and the ATF documents that originated with their offices. We informed Mr. Larson of these referrals, telling him that the Department of the Treasury and ATF would respond directly to him regarding the referred documents. We also sent Mr. Larson copies of the public source material.

After consulting with ATF regarding the OIG-generated material, we informed Mr. Larson on December 5, 2008, that these documents were exempt from disclosure pursuant to 5 U.S.C. §552(b)(5). We also informed Mr. Larson regarding his right to appeal our determination.

We are forwarding a copy of this letter to Mr. Larson.

Please feel free to contact us if you have additional questions about the work of the OIG.

Sincerely,



Paul K. Martin  
Deputy Inspector General

cc: Mr. Eric Larson

While Deputy Inspector General Martin correctly states “[w]e have fully processed” Mr. Larson’s FOIA request, his statement is misleading because the Justice IG transferred the documents Mr. Larson requested to ATF for FOIA processing. The Justice IG’s action is reminiscent of how the Government long avoided disclosing documents pertinent to Waco in



response to a FOIA request by shifting the paperwork and related responsibilities between the Department of Justice, ATF, and the Texas Rangers, before a Federal District Judge ordered a halt to such evasions and ordered that the documents be produced for his Court, and they were.<sup>25</sup>

**“Institutional Perjury”: The Busey Videotape and LeaSure**

The most recent efforts to persuade ATF to render the NFRTR accurate and complete originated from statements about its inaccuracy during an October 1995 “ROLL CALL TRAINING” session at ATF headquarters that was also videotaped.<sup>26</sup> During the session, which was broadcast throughout ATF, then-NFA Branch Chief Thomas Busey stated “ . . . **when we testify in court, we testify that the database [NFRTR] is 100 percent accurate. That’s what we testify to, and we will always testify to that. As you probably well know, that may not be 100 percent true.**”<sup>27</sup> (Emphasis added). Asserting the error rate in the NFRTR was recently reduced as the result of activities of a “quality review team,” Mr. Busey stated:

. . . when I first came in a year ago, our error rate was between 49 and 50 percent, so you can imagine what the accuracy of the NFRTR could be, if your error rate’s 49 to 50 percent. The error rate now is down to below 8 percent, and that’s total. That’s common errors and critical errors.<sup>28</sup>

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<sup>25</sup> David T. Hardy, *This Is Not An Assault: Penetrating the We of Official Lies Regarding the Waco Incident*. Xlibris Corporation, 2001 at 91-108.

<sup>26</sup> A certified copy of the session is transcribed under the title “ROLL CALL TRAINING, 10-95, TOM BUSEY.” *Treasury, Postal Service, and General Government Appropriations for Fiscal Year 1997*. Hearings Before a Subcommittee of the Committee on Appropriations, House of Representatives. 104th Cong., 2d Sess., Part 5 at 182-205, available at <http://www.nfaoa.org/documents/1996testimony.pdf>. (Hereafter Congressional Hearing, House of Representatives, *Treasury, Postal Service, and General Government Appropriations for Fiscal Year 1997*.)

<sup>27</sup> *Id.* at 192.

<sup>28</sup> *Id.* at 202. Mr. Busey was apparently referring to an internal ATF “Quality Review” initiative that “commenced operations on July 25, 1994,” according to a “productivity report” prepared February 9, 1996. *Treasury, Postal Service, and General Government Appropriations for Fiscal Year 1998*. Hearings Before a Subcommittee of the Committee on Appropriations, House of Representatives. 105th Cong., 1st Sess., Part 5 at 102, available at <http://www.nfaoa.org/documents/1997testimony.pdf>. (Hereafter Congressional Hearing, House of Representatives, *Treasury, Postal Service, and General Government Appropriations for Fiscal Year 1998*.)

In response to Mr. Larson’s FOIA request for information about the quality review initiative Mr. Busey described, ATF sent approximately 100 loose pages consisting of weekly reports and other documents. The result of the

Mr. Busey's statements that ATF personnel "always testify" in court that the NFRTR "is 100 percent accurate," and "[a]s you probably well know, that may not be 100 percent true," were termed "institutional perjury" by an attorney who learned of the videotape, obtained a transcript of Mr. Busey's statements by filing a FOIA request, and published an article about the incident.<sup>29</sup> During the session Mr. Busey also said the error rate in the NFRTR was between 49 percent and 50 percent in the year before he arrived, and "we know you're basing your warrants on it, you're basing your entries on it, and you certainly don't want a Form 4<sup>30</sup> waved in your face when you go in there to show that the guy does have a legally-registered [NFA firearm]. I've heard that's happened. I'm not sure."<sup>31</sup>

The videotape of Mr. Busey's remarks, now available on the Internet, has more impact than his published words. The reasons are that Mr. Busey's statements were not spontaneous remarks; Mr. Busey prepared his statements in advance, can be seen reading them, and smirks while saying: "I've heard that's happened. I'm not sure." In response to Mr. Larson's FOIA request for a copy of the Busey videotape, ATF responded:

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initiative is unclear because it is not apparent whether there was a final report, and there are no separate explanations or summaries of the weekly reports.

<sup>29</sup> "Institutional Perjury," by James H. Jeffries III, *Voice for the Defense*, Vol. 25, No. 8, October 1996 at 28-30; available at <http://www.nfaoa.org/documents/Jeffriesarticle.pdf>, reprinted in the *Congressional Record* (Extensions of Remarks), Vol. 142, August 2, 1996 at E1461-E1462, available at <http://www.nfaoa.org/documents/JeffriesCongRec.pdf>.

<sup>30</sup> ATF Form 4, currently titled "Application for Tax Paid Transfer and Registration of Firearm," is prepared in duplicate original and used to transfer the ownership of registered NFA firearms. After ATF approves the Form 4 application, ATF (1) keeps one approved copy for entry into the NFRTR, and (2) sends the other approved copy to the firearm owner (transferor), who must subsequently transfer the firearm (and the other approved copy) to the new owner (transferee) within a reasonable time or cancel the transfer. The NFA prohibits the physical transfer of the firearm by the transferor to the transferee before ATF approves the transfer.

<sup>31</sup> Congressional Hearing, House of Representatives, *Treasury, Postal Service, and General Government Appropriations for Fiscal Year 1997*, available at <http://www.nfaoa.org/documents/1996testimony.pdf>.

You have requested "a complete and unredacted copy of the videotape created by the Bureau of Alcohol, Tobacco and Firearms which pictures Mr. Thomas Busey, Chief, National Firearms Act Branch, during a "Roll Call Training Session, or about October 18, 1995". Your request is denied pursuant to Title 5, U.S.C. 552 (b)(6) as release of this video tape would constitute an invasion of Mr. Busey's privacy.

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The Busey videotape was used, in part, to overturn five convictions of John D. LeaSure for possession of unregistered firearms in a May 1996 bench trial, during which ATF Specialist Gary Schaible testified he was aware of "occasions . . . in the NFA Branch of clerks throwing away transmissions because they don't want to fool with them" rather than process them (Mr. LeaSure testified he FAXed registration documents to ATF in 1994, and ATF claimed it was unable to find a record of them).<sup>33</sup> Under cross-examination, when asked "that's one of the things [NFA Branch clerks throwing away documents] that could happen to you?" Mr. Schaible replied "Certainly."<sup>34</sup>

Citing Mr. Schaible's testimony (in which he also confirmed the Busey video had been broadcast throughout and was common knowledge within ATF Headquarters), the presiding Judge ruled " . . . it throws a disagreeable proposition on my finding somebody guilty on records when their chief man [Mr. Busey] says they were 49 percent wrong," and dismissed five

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<sup>32</sup> Letter from Marilyn R. LaBrie, Disclosure Specialist, ATF, to Eric M. Larson dated March 18, 1998, bearing symbols L:D:MRL 98-514. *Treasury, Postal Service, and General Government Appropriations for Fiscal Year 1999*. Hearings Before a Subcommittee of the Committee on Appropriations, House of Representatives. 105th Cong., 2d Sess., Part 5 at 170, available at <http://www.nfaoa.org/documents/1998testimony.pdf>. Hereafter Congressional Hearing, House of Representatives, *Treasury, Postal Service, and General Government Appropriations for Fiscal Year 1999*.

A videotape of the training session was obtained by an attorney who subpoenaed it for trial and made a copy when the U.S. Attorney that prosecuted the case failed to submit a timely order to the court to prohibit its public disclosure, available at [http://www.nfaoa.org/documents/rollcall\\_highlights.mp4](http://www.nfaoa.org/documents/rollcall_highlights.mp4).

<sup>33</sup> *United States of America vs. John Daniel LeaSure*, Crim. No. 4:95cr54, E.D. Va.—Newport News Div., Transcript of Proceedings before the Honorable John A. MacKenzie (May 21, 1996) at 42-43, available at <http://www.nfaoa.org/documents/LeaSureTrial.pdf>. (Hereafter *United States of America vs. John Daniel LeaSure* (1996).)

<sup>34</sup> *Id.* at 42-43.

convictions under the NFA for possession of unregistered firearms.<sup>35</sup> The *LeaSure* transcript states that Mr. Schiabile was a witness “called on behalf of the Government, having been first duly sworn, was examined and testified” to the above facts.<sup>36</sup> ATF did not appeal the verdict.

ATF acted to contain the damage resulting from Mr. Busey’s statements by (1) adding “corrections” by Mr. Schaible to transcribed copies of the videotape of Mr. Busey’s remarks disclosed by ATF in response to FOIA requests, and (2) requesting the Audit Services Division of the Department of the Treasury to audit the NFRTR. On February 13, 1996, Mr. Schaible stated under penalty of perjury that, to the best of his knowledge, no NFA Branch personnel have ever testified that the NFRTR is 100 percent accurate, and “the reference to an error rate of 49-50 percent is based on an informal, undocumented estimate by personnel from the Firearms and Explosives Regulatory Division.”<sup>37</sup>

In *Rith*, a 1999 court case that included a challenge to the accuracy and completeness of the NFRTR arising from the Busey videotape, after hearing opposing evidence the Court ruled “[t]he record establishes that the NFRTR database has sufficient guarantees of trustworthiness to satisfy the Sixth Amendment.”<sup>38</sup> The Court based its opinion on (1) statements by Mr. Busey that “a quality review team . . . instituted in 1994” had reduced “the critical-error rate to below three percent,” and (2) “a copy of an audit performed February 7, 1996, by the Audit Services Division of the Department of the Treasury” showing a 1.5 percent “critical-error” rate.<sup>39</sup> The

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<sup>35</sup> *Id.* at 45.

<sup>36</sup> *Id.* at 23.

<sup>37</sup> Congressional Hearing, House of Representatives, *Treasury, Postal Service, and General Government Appropriations for Fiscal Year 1997*, available at <http://www.nfaoa.org/documents/1996testimony.pdf>.

<sup>38</sup> *United States of America vs. Rith*, 164 F.3d 1323 at 1336, 51 Fed. R. Evid. Serv. 197 (10th Cir. 1999). Hereafter *United States of America vs. Rith* (1999).

<sup>39</sup> *Id.* at 1336.



Court added: “the accuracy of the registration check is buttressed by a second level review by a branch chief.”<sup>40</sup> It is unclear whether the Audit Services Division of the Department of the Treasury published a formal report of its 1996 audit of the NFRTR; the audit processes it followed are unknown and may not have been fully disclosed to the Court.

ATF and the Audit Services Division may have perpetrated a fraud upon the Court in *Rith*. The reasons are that (1) Mr. Busey’s statements about improvements in the “critical-error” may have been self-serving, (2) there is no evidence that a final report on the “quality review team” accomplishments was rendered, or that the results of the “accomplishments” and reduction of the “critical-error” rate were independently validated, (3) it is unclear whether the 1996 audit was conducted according to GAGAS, and (4) the Audit Services Division auditors may have been improperly influenced by NFA Branch representatives to manipulate the outcome of the audit.

The Audit Services Division is a sister component of ATF; has no oversight authority over ATF; and the purpose of the audit was to establish that the NFRTR was accurate enough to justify criminal prosecutions. It is improbable that one component of a federal law enforcement agency would engage in conduct that would reflect badly upon another component, or the agency itself; and questioning the legal basis for a federal law enforcement activity would be sensitive because of potential legal liabilities, such as overturning convictions and payments to citizens for damages for wrongful convictions.

There are reasons to doubt the independence of Treasury Department and other Government officials regarding their characterization of “errors” in the NFRTR. There are also reasons to question the validity and reliability of Mr. Busey’s characterization of what he termed

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<sup>40</sup> Id. at 1336.

“common errors” and “critical errors” and “error rate” in the October 1995 “ROLL CALL TRAINING” session because (1) these terms do not correspond to terms used by the quality control team, and (2) inspection of “Weekly — Quality Review Report” documents disclose that the quality review team manipulated the NFRTR error rate by changing the definition of “Significant Error” by renaming it “Error.”<sup>41</sup> Error and error rate reports created by the quality review team, obtained via a FOIA request by Mr. Larson, are not straightforward and their meaning is difficult to interpret; for example, one weekly report states:

~~Since 6/30/94 reviewed 25611 Errors 1567 Significant errors 373~~  
~~Common Error rate .01% Significant error rate .01%~~<sup>42</sup>

No valid and reliable overall error rate of any type could be identified from any of the documents because numbers of “Errors” and “Significant errors” were different among nearly 100 different weekly reports ATF disclosed in responding Mr. Larson’s FOIA request.

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<sup>41</sup> ATF’s “Quality Review” team manipulated the definition of “error” as follows. One document states: “On approximately October 3, 1994, we began defining and separating the significant errors from the common errors,” and this document defined “Significant Errors” as shown below:

**Significant Errors:**

1. Misspelled and/or Incomplete names.
2. Voided application--didn't indicate current firearms possessor.
3. \$200/\$5 remittance not posted.
4. Never mailed approved form to transferor
5. Approved wrong firearm to transferee.
6. Approved form never updated in NFRTR.

Congressional Hearing, House of Representatives, *Treasury, Postal Service, and General Government Appropriations for Fiscal Year 1998* at 103, available at <http://www.nfaa.org/documents/1997testimony.pdf>.

Another weekly report reclassified “Significant Errors” as “Errors” except for slightly changing one type of error, namely, “2. Voided application - - didn't indicate previous owner,” as shown below:

**Errors:**

1. Misspelled and/or Incomplete names.
2. Voided application--didn't indicate previous owner.
3. \$200/\$5 remittance not posted.
4. Never mailed approved form to transferor
5. Approved wrong firearm to transferee.
6. Approved form never updated in NFRTR.

Id. at 104.

<sup>42</sup> Id. at 103.

NFRTR Data Inaccuracies: Early Statistical Evidence, 1992 to 1996

Because of Mr. Busey's statements that records of Forms 4 could not be located in the NFRTR, Mr. Larson sought to determine if there was any independent statistical evidence that ATF had lost or destroyed NFA registration documents by analyzing publicly available NFRTR data on "NFA registration activity" from 1992 to 1996. Mr. Schaible's testimony *LeaSure* indicated that ATF may have added registration documents obtained from firearms owners to the NFRTR after discovering that NFA Branch clerks had thrown documents away rather than work on them.

Under a FOIA request, Mr. Larson obtained copies of reports of annual "NFA registration activity" from 1992 to 1996 from the NFA Branch, which list 11 categories of firearms registration activity represented in the NFRTR.<sup>43</sup> Inspection of the data indicates that some data lack face validity; that is, does not measure what it purports to measure. The reason is that there are records of NFA registration activity during and prior to the 1920s, a logical impossibility because the NFA was not enacted until 1934. Just as when a clock incorrectly strikes 13 on the hour, causing one to question what hour it really is and raising doubts about

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<sup>43</sup> The NFRTR data Mr. Larson obtained are available in Eric M. Larson, *Work Papers on Errors in the National Firearms Registration and Transfer Record, and Other Issues Regarding the Bureau of Alcohol, Tobacco, and Firearms*. Prepared for the Honorable Pete Sessions, House of Representatives, Washington, D.C., April 2, 1999 (unpublished), inserted at 5-6, available at <http://www.nfaoa.org/documents/Critiqueof1998IGreports.pdf>.

The NFRTR data categories are: Form 1, Form 3, Form 4, Form 5, Form 6, Form 9, Form 10, and Form 4467, and differ according to whether the applicant is a private citizen, government agency, or Special Occupational Taxpayer (SOT) licensed to manufacture, import, and/or deal in NFA firearms, and whether the transfer is tax paid or tax exempt. Form 2, currently titled "Notice of Firearms Manufactured or Imported," is a record of notice to ATF used exclusively by and sent to ATF by SOTs, not an application form. The "Letter" category has been used to register or transfer NFA firearms when ATF forms have not been available, but these transactions are uncommon.

Treasury IG auditors reported that ATF has not formally defined the "Other" category, and stated it included "a procedure where movie industry supply houses and movie industry property masters filed applications by telegraph in lieu of filing a Form 3 in order to expedite processing by ATF." October 1998 Treasury IG Report at 18, available at <http://www.nfaoa.org/documents/TreasuryOIG-99-009-1998.pdf>.

what hour it really was during all the other times the clock was supposed to be striking correctly on the hour during previous strikes, records of NFA registration activity before 1934 raise doubts about the accuracy of records of NFA registration activity for other years.

These data tables of NFA registration activity during 1992 to 1996 are reproduced below in the same form ATF sent them to Mr. Larson.

BUREAU OF ALCOHOL, TOBACCO AND FIREARMS NFA REGISTRATION ACTIVITY - ANNUAL COMPARISON											RUN: 2/01/93 13:31	
DATA THROUGH 12/31/92												
YEAR	F1	F2	F3	F4	F5	F6	F9	F10	LTR	4467	OTHER	TOTAL
1992	357	71296	26452	6527	46462	2	20385	289	40		30	172040
1991	224	78062	20914	5390	42117	1	36848	258			35	183049
1990	692	88893	22823	6807	56015	4	27877	289	43		134	203577
1989	271	69932	23605	8165	31190	12	18133	281	51		106	151754
1988	342	24860	39747	7699	8319	2	1473	403	66		458	83361
1987	409	17427	34492	8311	9388	2	745	324	144	1	717	71960
1986	935	69957	22944	5158	4888		528	381	181	3	749	195724
1985	645	14666	15512	3524	6245	1	1306	334	45	1	726	43005
1984	534	14846	14720	3911	5437	1	1506	294	3	3	335	41590
1983	458	11143	11132	3293	3872	27	248	367	4	1	29	29684
1982	324	7720	11417	2770	2671	9	1	481	2	3	37	25435
1981	270	7181	8148	3734	2718	24	1	341	10	1	18	22346
1980	163	3872	6830	3840	1636	6	1	329	7	4	23	15109
1979	108	3284	6988	2150	1513	13	6	353	5	1	20	14441
1978	88	1438	5498	1879	1257	7	1	729	5	4	17	10989
1977	77	1988	6886	1535	1737	2	1	590	14	1	22	11973
1976	38	878	10943	979	1754	20	5	457	3	39	26	15134
1975	78	1399	3279	567	1830	18	3	613	10		49	7846
1974	29	1017	2961	579	1688	9	3	507	15	5	8	6821
1973	16	1351	2833	353	1782	5	7	513	8	17	16	6181
1972	30	4017	1963	261	1511	14	9	639	33	84	19	8580
1971	24	2241	209	36	251	10		311	1959	26	19	5086
1970	38	191	19	10	24	16		1	1543	272	34	2140
1969	34	760	41	13	41	8	1		1148	2086	19	4465
1968	1510	1277	366	192	935	7		4	29	54487	37	58844
1967	909	1144	306	181	844	2			5	64	10	3465
1966	908	1293	435	134	1062	2				8	28	3856
1965	841	1246	428	142	1047	7		1	1	2	21	3736
1964	744	937	275	139	699	6		1		3	4	2888
1963	709	728	291	126	808	3	4		1	2	8	2672
1962	734	1111	272	204	789	3			1	14	7	3135
1961	889	1466	548	152	1338	5		1	4	2	4	4321
1960	790	657	314	148	654	28			2	6	1	2592
1950 TO 1959	6629	5955	2165	1150	2917	861	16	2	6	23	47	19771
1940 TO 1949	6574	7231	4784	381	4985	8455	5	2	4	9	57	32387
1930 TO 1939	11422	191	548	15	786	22	1	14	26	25	1200	14258
1920 TO 1929	12	4	12	2	7	1				6	9	53
1910 TO 1919	1	36	21	2	57	1	2	1	1	4	15	121
1900 TO 1909	12	304	32	22	178	6	24		6	58	3513	4147
TOTAL	38766	521183	349593	79573	258462	9614	109140	9110	5437	57187	8671	1398856

BUREAU OF ALCOHOL, TOBACCO AND FIREARMS										RUN: 1/04/94 7:11		
MFA REGISTRATION ACTIVITY - ANNUAL COMPARISON												
YEAR	F1	F2	F3	F4	F5	F6	F9	F10	LTR	4467	OTHER	TOTAL
1993	299	187362	27228	7749	67625		27905	405	11		25	238609
1992	357	75754	26834	6554	46561	2	20391	289	40		25	176809
1991	226	78157	20983	5400	42124	1	36834	258			33	184016
1990	692	89697	22858	6821	56884	4	27827	289	44		132	204448
1989	271	69927	23728	8176	31218	12	18133	281	51		104	151893
1988	342	24851	39767	7703	8370	2	1473	403	66		450	83427
1987	489	17491	34519	8318	9421	2	745	324	143	1	714	72087
1986	936	70211	22959	5162	4903		528	381	181	3	744	106008
1985	645	14728	15520	3526	6288	1	1386	334	45	1	725	43111
1984	534	14849	14723	3913	5437	1	1586	294	3	3	334	41681
1983	458	11142	11144	3204	3878	27	248	367	4	1	29	29782
1982	325	7728	11420	2771	2674	9	1	481	2	3	37	25451
1981	270	7108	8148	3735	2720	23	1	341	10	1	18	22375
1980	162	3873	6838	3840	1837	6	1	329	7	4	22	15111
1979	108	3285	6990	2158	1513	15	6	354	5	1	19	14444
1978	80	1438	5497	1878	1257	7	1	729	4	6	17	18906
1977	77	1987	6009	1535	1737	2	1	590	14	1	22	11975
1976	38	879	10945	979	1754	19	5	459	3	39	26	15138
1975	78	1399	5288	567	1831	18	3	613	18		49	7848
1974	29	1817	2961	579	1689	9	3	587	15	5	8	6822
1973	16	1351	2030	553	1783	5	7	513	8	17	15	6098
1972	30	4020	1963	261	1511	14	11	638	33	84	19	8584
1971	24	2242	209	36	251	18		311	1959	26	19	5087
1970	38	192	18	10	23	16		1	1566	272	32	2168
1969	36	760	43	15	42	8	1		1140	2818	18	4871
1968	1509	1278	368	193	935	7		4	29	54485	37	58845
1967	909	1143	306	181	844	2			5	64	10	3464
1966	908	1293	435	136	1062	2				8	20	3856
1965	841	1246	428	142	1047	7		1	2	2	21	3737
1964	744	937	275	139	699	6		1		3	4	2888
1963	709	728	291	124	888	3	4		1	2	8	2672
1962	734	1111	272	205	789	3			1	14	7	3136
1961	810	1466	548	152	1330	5		1	4	2	4	4322
1960	791	657	314	148	655	20			2	6	1	2594
1950 TO 1959	6629	5956	2164	1151	2915	860	16	2	6	23	47	19769
1940 TO 1949	6572	7238	4783	363	4908	8456	5	2	4	9	57	32309
1930 TO 1939	11422	191	548	15	706	22	1	14	26	25	1288	14250
1920 TO 1929	12	4	12	2	7	1				6	18	54
PRIOR TO 1920	1	36	21	2	37	1	2	1	1	4	15	121
UNKNOWN	12	328	32	23	263	6	24		6	58	3749	4493
TOTAL	39867	634228	337325	87413	318520	9612	136989	9517	5451	57189	8908	1644219

BUREAU OF ALCOHOL, TOBACCO AND FIREARMS												RUN: 1/26/95 18:03	
MFA REGISTRATION ACTIVITY - ANNUAL COMPARISON													
YEAR	F1	F2	F3	F4	F5	F6	F9	F10	LTR	4467	OTHER	TOTAL	
1994	1278	180150	22498	7838	62258		35392	2857	2		1	232246	
1993	309	108830	27638	7819	67739		28118	487	11		19	240861	
1992	358	76161	26878	6568	96587	2	28366	298	68		21	177271	
1991	225	78280	21018	5411	42243	1	36814	261			29	184282	
1990	691	89287	22888	6838	56066	4	27504	289	44		130	203733	
1989	271	69582	23755	8176	31138	12	18132	281	51		96	151494	
1988	341	25164	39769	7787	8386	2	1473	483	66	1	448	83760	
1987	412	17188	34536	8321	9441	2	745	328	144	1	788	71738	
1986	958	78278	22978	5172	4905		527	361	181	3	737	106092	
1985	645	14742	15534	3529	6281	1	1386	334	45	1	722	63148	
1984	535	14848	14738	3915	5637	1	1586	294	3	5	536	41688	
1983	454	11137	11145	3287	3878	27	248	367	4	1	26	29694	
1982	325	7724	11414	2778	2674	9	1	481	2	3	37	25440	
1981	270	7127	8152	3737	2720	23	1	342	18	1	18	22401	
1980	162	3873	6829	3844	1637	6	1	329	7	4	22	15114	
1979	108	3285	6988	2151	1515	13	6	354	5	1	18	14444	
1978	88	1438	5497	1879	1257	7	1	738	4	6	16	10987	
1977	77	1987	6010	1537	1737	2	1	598	14	1	22	11978	
1976	30	879	10947	983	1756	19	5	458	3	39	26	15145	
1975	79	1401	3288	567	1831	18	3	614	18		48	7851	
1974	29	1818	2941	579	1690	9	3	587	15	5	8	6824	
1973	16	1353	2832	353	1783	5	7	513	8	18	14	6182	
1972	38	4828	1963	261	1511	14	11	638	33	84	19	8584	
1971	24	2241	289	36	250	18		311	1968	26	19	5086	
1970	38	192	18	18	23	16		1	1567	271	32	2168	
1969	36	768	43	13	42	8	1		1148	2816	18	4877	
1968	1518	1277	568	193	935	7		4	29	54485	36	58844	
1967	909	1141	386	181	844	2			5	64	9	3461	
1966	902	1293	436	136	1859	2				8	28	3856	
1965	841	1246	429	142	1847	7		1	2	2	28	3737	
1964	764	934	276	139	698	6		1		3	4	2885	
1963	789	728	291	126	888	3	4		1	2	8	2672	
1962	734	1115	277	285	787	3			1	14	7	3143	
1961	818	1463	548	153	1329	5		1	4	2	4	4319	
1960	792	657	314	148	655	28			2	6	1	2595	
1958 TO 1959	6631	5952	2164	1152	2915	859	16	2	6	23	46	19766	
1948 TO 1949	6571	7230	4695	363	4914	8452	5	2	4	9	56	32301	
1938 TO 1939	11422	196	548	17	788	22	1	14	26	26	1268	14248	
1928 TO 1929	12	4	12	2	8	1				6	9	54	
PRIOR TO 1928	1	36	22	2	37	1	2	1	1	4	15	122	
UNKNOWN	38	329	33	26	273	6	24	1	4	57	3159	3944	
TOTAL	40362	735422	360421	95398	381802	9607	172224	12379	5456	57196	8252	1877919	



BUREAU OF ALCOHOL, TOBACCO AND FIREARMS											RUN: 1/22/96 11:28	
NFA REGISTRATION ACTIVITY - ANNUAL COMPARISON												
YEAR	F1	F2	F3	F4	F5	F6	F9	F10	LTR	6447	OTHER	TOTAL
1995	1124	95445	17277	8859	64367	2	31503	1492	19			221488
1994	1272	184681	22794	7878	62358		35384	2845	2			237138
1993	388	188282	27694	7837	67741		28117	406	11		18	248486
1992	358	76134	24883	4573	46593	2	28564	290	68		21	177258
1991	228	78255	21028	5428	42246	1	34884	262			25	186266
1990	691	89266	22912	4835	56878	4	27497	289	44		139	283728
1989	271	69548	23761	8181	31138	12	18128	281	51		94	151685
1988	341	25129	39798	7712	8588	2	1473	483	66	1	445	83758
1987	412	17181	36544	8338	9441	2	745	328	144	1	787	71749
1986	939	78531	22976	5174	4988		527	381	183	3	735	126328
1985	645	14758	15548	3532	6293	1	1386	334	45	1	728	43167
1984	535	14858	14737	3918	5437	1	1588	294	3	3	336	41618
1983	655	11136	11158	5297	3887	27	248	367	4	1	25	29787
1982	325	7751	11421	2778	2674	9	1	481	2	3	35	25473
1981	278	7132	8157	3741	2721	23	1	342	18	1	18	22416
1980	162	3876	6827	3846	1638	6	1	338	7	4	28	15117
1979	188	3205	6988	2151	1516	13	6	354	5	1	18	14445
1978	88	1438	5458	1878	1258	7	1	738	4	1	16	18938
1977	77	1987	6818	1537	1737	2	1	598	14	1	22	11978
1976	39	888	19948	983	1757	19	5	458	3	39	26	15148
1975	79	1482	3288	568	1835	18	3	614	18		48	7857
1974	29	1318	2942	379	1692	9	3	587	15	5	7	6824
1973	14	1353	2833	353	1781	5	7	313	9	18	13	6181
1972	58	4871	1964	262	1511	14	11	438	33	84	19	8587
1971	24	2242	289	34	231	18		311	1945	26	18	5892
1970	38	192	18	18	73	16		1	1347	271	32	2168
1969	36	781	43	13	42	8	1		1141	2817	17	4874
1968	1518	1292	348	194	935	7		4	29	34583	35	58877
1967	989	1141	384	181	844	2			5	64	9	3461
1966	982	1293	437	134	1859	2				8	29	3857
1965	863	1248	479	162	1847	7		1	2	2	28	3739
1964	744	934	276	139	698	8		1		3	4	2685
1963	789	728	291	126	888	3	4		1	2	8	2872
1962	734	1115	277	285	787	3			1	14	7	3143
1961	811	1463	348	153	1329	5		1	4	2	4	4328
1960	792	657	314	148	656	28			2	6	1	2596
1958 TO 1959	8433	5961	2168	1152	2916	859	16	2	6	23	45	19778
1948 TO 1949	6574	7231	4695	363	6917	8632	5	2	4	9	55	32387
1938 TO 1939	11427	198	547	17	718	22	1	14	28	27	1263	14252
1928 TO 1929	12	4	12	2	8	1				4	9	54
PRIOR TO 1928	1	36	21	2	38	1	2	1	1	4	13	128
UNKNOWN	68	349	32	25	334	6	24	1	9	57	3377	4274
TOTAL	41534	835388	578162	183538	647588	9689	283495	13888	5487	57216	8435	2186544



BUREAU OF ALCOHOL, TOBACCO AND FIREARMS											RUN: 1/06/97 0:32	
NFA REGISTRATION ACTIVITY - ANNUAL COMPARISON												
YEAR	F1	F2	F3	F4	F5	F6	F8	F10	LTB	4447	OTHER	TOTAL
1996	1253	96677	17197	6367	67769	1	40223	1262	21			230718
1995	1125	99075	17329	8086	66522	2	37332	1487	20			225178
1994	1273	104543	22796	7887	62351		35388	2868	7			237892
1993	301	100226	27716	7058	67752		28116	404	11		14	246392
1992	358	76127	26896	6577	66597	2	20363	298	48		18	177269
1991	224	78229	21038	5423	42275	1	36783	262			22	184257
1990	691	89257	22916	6841	56881	4	27496	289	46		129	203748
1989	271	69559	23769	8186	31143	12	18128	281	49		94	151492
1988	341	25125	34885	7714	8309	2	1473	483	66		445	83759
1987	416	17183	34557	8331	9445	2	745	320	142		786	71765
1986	839	78656	22988	5174	4946		527	381	178	1	731	186521
1985	645	14832	15539	3537	6375	1	1381	333	45		718	43331
1984	535	14852	14739	3919	5438	1	1507	294	3		336	41824
1983	455	11137	11349	3288	3889	27	248	367	4		25	29789
1982	526	7759	11424	2771	2676	9	1	481	2		14	25483
1981	271	7131	8162	3741	2722	25	1	342	18		18	22421
1980	162	3877	6826	3846	1638	6	1	338	7		29	15113
1979	188	3285	6987	2151	1516	15	6	354	5		18	14443
1978	88	1438	5561	1678	1250	7	1	738	4		15	18984
1977	77	1988	6814	1538	1748	2	1	591	14	1	19	11985
1976	38	888	18946	983	1758	19	5	458	3	36	26	15144
1975	79	1482	3288	569	1835	18	3	613	10		68	7857
1974	29	1818	2963	579	1498	9	3	549	15	5	7	6827
1973	16	1354	2833	354	1788	5	7	513	9	18	12	6181
1972	38	4821	1964	262	1513	14	11	639	33	85	78	8598
1971	24	2263	289	36	252	18		312	1965	26	18	5095
1970	39	192	18	18	23	14			1567	271	31	2167
1969	36	761	43	13	62	8	1		1148	2853	17	4114
1968	1511	1328	368	194	935	7			29	54585	35	58984
1967	909	1141	386	181	844	2			5	64	9	3461
1966	702	1293	437	136	1068	2				8	28	3858
1965	843	1246	429	142	1848	7			2	2	28	3739
1964	744	934	276	139	698	6				3	4	2894
1963	789	728	291	126	838	3	4		1	2	8	2672
1962	734	1115	277	205	787	3			1	14	7	3143
1961	812	1464	548	194	1338	5			4	2	4	4323
1960	792	657	314	148	656	28			2	6	1	2516
1958 TO 1959	6638	5961	2165	1152	2917	859	16	2	6	23	45	19784
1946 TO 1949	6575	7232	4697	364	4919	8456	4	2	4	18	54	32317
1938 TO 1939	11649	199	546	17	718	22	1	14	27	27	1247	14959
1928 TO 1929		4	4		1					5	5	19
PREVIOUS TO 1928		11	8		4						5	28
UNKNOWN	68	353	32	25	339	6	24	1	10	58	3872	4788
TOTAL	42818	933387	395342	118814	513671	9612	244717	15866	5518	57223	6876	2341578

Mr. Larson arranged the Form 4 data from 1992 to 1996 by and across single years to determine if the number of registrations changed over time. As shown in the following table, the total number of Form 4 registrations increased by 625 during 1992 to 1996, for registrations that occurred since 1934 by single years through 1996 and during unknown years (registrations for

years in and before 1968 have been combined). Mr. Larson reported these results in 1997 in Congressional testimony, as shown below.

Table 4

Form 4 (Tax-Paid) Transfers from 1934 to 1996, and During Unknown Years, as Reported by ATF During 1992 to 1996 in the National Firearms Registration and Transfer Record: Calculations Showing Results of Annual and Overall Changes Have Been Added

Year	1992	1993	Change	1994	Change	1995	Change	1996	Change	Change, 1992-96
	(1)	(2)	(2)-(1)=	(4)	(4)-(2)=	(6)	(6)-(4)=	(8)	(8)-(6)=	(9)
1996								6,367	0	0
1995						8,069	0	8,086	+27	+27
1994				7,838	0	7,870	+32	7,887	+17	+49
1993		7,749	0	7,819	+70	7,837	+18	7,850	+13	+101
1992	6,527	6,556	+29	6,568	+12	6,573	+5	6,577	+4	+50
1991	5,390	5,400	+10	5,411	+11	5,420	+9	5,423	+3	+33
1990	6,807	6,821	+14	6,830	+9	6,835	+5	6,841	+6	+34
1989	8,165	8,176	+11	8,176	0	8,181	+5	8,186	+5	+21
1988	7,699	7,703	+4	7,707	+4	7,712	+5	7,714	+2	+15
1987	8,311	8,318	+7	8,321	+3	8,330	+9	8,331	+1	+20
1986	5,158	5,162	+4	5,172	+10	5,174	+2	5,174	0	+16
1985	3,524	3,526	+2	3,529	+3	3,532	+3	3,537	+5	+13
1984	3,911	3,913	+2	3,915	+2	3,916	+1	3,919	+3	+9
1983	3,203	3,204	+1	3,207	+3	3,207	0	3,208	+1	+5
1982	2,770	2,771	+1	2,770	-1	2,770	0	2,771	+1	+1
1981	3,734	3,735	+1	3,737	+2	3,741	+4	3,741	0	+7
1980	3,040	3,040	0	3,044	+4	3,046	+2	3,046	0	+6
1979	2,150	2,150	0	2,151	+1	2,151	0	2,151	0	+1
1978	1,879	1,878	-1	1,879	+1	1,878	-1	1,878	0	-1
1977	1,535	1,535	0	1,537	+2	1,537	0	1,538	+1	+3
1976	979	979	0	983	+4	983	0	983	0	+4
1975	567	567	0	567	0	568	+1	569	+1	+2
1974	579	579	0	579	0	579	0	579	0	0
1973	353	353	0	353	0	353	0	354	+1	+1
1972	261	261	0	261	0	262	+1	262	0	+1
1971	36	36	0	36	0	36	0	36	0	0
1970	10	10	0	10	0	10	0	10	0	0
1969	13	13	0	13	0	13	0	13	0	0
1968	192	193	+1	193	0	194	+1	194	0	+2
< 1968	2,790	2,785	+5	2,792	+7	2,791	-1	2,983	+192	+203
Unknown	22	23	+1	26	+3	25	-1	25	0	+3
CHANGE			+92		+150		+100		+283	+625
Totals		79,573	87,413		96,338		103,558		110,014	

Data source: Bureau of Alcohol, Tobacco and Firearms. All numbers shown in boldface type were calculated by Eric M. Larson.

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Mr. Larson's analysis used arithmetic calculations to determine if there are changes in NFRTR data, which could mean that registrations were being added after the fact, years after

<sup>44</sup> Congressional Hearing, House of Representatives, *Treasury, Postal Service, and General Government Appropriations for Fiscal Year 1998* at 71, available at <http://www.nfaa.org/documents/1997testimony.pdf>. Mr. Larson found similar patterns of apparent additions of registrations for Forms 1, 2, 3, 5, 4467, and "Letter" and "Other" categories.

ATF approved the original registration and concluded NFRTR reporting for a given year. For example, the number of registrations for 1992 changed from 6,527 to 6,556 in 1993, a difference of 29; similarly, the number of registrations for 1992 changed from 6,568 in 1994 to 6,573 in 1995, an increase of 12. Inspection of these Form 4 data disclose that the number of registrations in 1992 (6,527) increased to 6,577 in 1996. Put another way, ATF added 50 registrations during 1992 to 1996, for the year 1992, which gives the appearance that ATF could have added 50 Forms 4 to the NFRTR during that period. Using the same arithmetic calculations to analyze total Form 4 registrations for all years from 1992 to 1996, Mr. Larson determined that total registrations increased by 625; again, the implication is that ATF may have added 625 Forms 4 to the NFRTR after being unable to locate them in the NFRTR, and NFA firearms owners provided ATF with copies of their approved Forms 4. Note that 203 registrations were added for years in or before 1968.

In an effort to determine whether he may have made any errors of fact or omission, Mr. Larson asked NFA Branch officials if the increases in registrations resulted from ATF added copies of lost or destroyed NFA registrations back into the NFRTR, after obtaining them from firearms owners, or if there was another explanation. NFA Specialist Gary N. Schaible told Mr. Larson if an error was detected on a form and the form was misclassified, it would be reclassified as a Form 4, a Form 4467 or whatever form was correct, and that it would be re-entered in the NFRTR in the year that the registration occurred.<sup>45</sup> Mr. Schaible also stated “I assume that’s happened,” in response to Mr. Larson’s question: “Has ATF ever added a firearm to the NFRTR, after a lawful owner produced a valid registration, because ATF had no record of the firearm in

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<sup>45</sup> Id. at 95.

the NFRTR?”<sup>46</sup> In addition to Mr. Schaible’s comments, NFA Branch Chief Nereida W. Levine told Mr. Larson in a January 7, 1997, letter that correcting errors in entering data according to Form number or year of registration “may result in an adjustment to previously generated statistics.”<sup>47</sup> NFA Branch Chief Levine concluded:

Finally, you asked whether a firearm would be added to the Registry if a person possessed a valid registration that was not in the Registry. The document that person possesses is his or her evidence of registration. It would be added to the National Firearms Registration and Transfer Record if the information was not already in the Record. 48

If no registrations were added to the NFRTR, explanations by NFA Branch representatives that changes in annual “NFA registration activity” could result from correcting errors in Form number and/or year of registration means such changes would be a “zero-sum” game, and represent classification errors. In other words, if the annual changes resulted from reclassified data, total registrations from all categories would not change.

To determine if the number of total registrations did not change, Mr. Larson analyzed total registrations (for all categories) for each year from 1992 to 1996 using the same arithmetic calculations he used to analyze Form 4 data. He found that total registrations increased each year and totaled 18,869 for the period from 1992 to 1996, and that registrations had been added to all NFRTR data categories for each year.

Mr. Larson concluded the discrepancies he observed in NFA registration activity, and statements by ATF representatives, required additional evidence to reliably determine the reason(s) for the increased number of reported registrations. While ATF personnel adding

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<sup>46</sup> Id. at 97. This question was asked and answered twice.

<sup>47</sup> Letter from Nereida W. Levine, Chief, NFA Branch, Bureau of Alcohol, Tobacco and Firearms, dated Jan. 7, 1997, to Eric M. Larson, bearing symbols E:RE:FN:GS. Congressional Hearing, House of Representatives, *Treasury, Postal Service, and General Government Appropriations for Fiscal Year 1999* at 110-111, available at <http://www.nfaa.org/documents/1998testimony.pdf>.

<sup>48</sup> Id. at 41.



registrations was one possible explanation, there was insufficient statistical and evidence upon which to reliably base such a conclusion. For example, there also could have been flaws in computer software, problems with reporting functions resulting from editing, inadequate internal quality controls or checks, and so forth, so Mr. Larson concluded that a formal investigation was needed, and did not present his findings as definitive. Because he was unable to conduct additional research according to standard social sciences practices, Mr. Larson asked appropriate Government officials to determine if ATF was adding registrations to the NFRTR.<sup>49</sup>

**Coverups in an internal ATF investigation, and audit of the NFRTR by the Treasury IG**

ATF and the Treasury IG conducted separate investigations in 1997 and 1998, respectively, of allegations by Mr. Larson that ATF had mismanaged the NFRTR, and there is valid and reliable evidence that each entity avoided determining whether ATF had added registrations. Each covered up facts and failed to diligently investigate Mr. Larson's complaint. All of Mr. Larson's allegations will not be reviewed in this motion, but it is instructive to note that the Treasury IG censored his most serious allegation. Although an audit Work Paper dated October 10, 1997, prepared Treasury IG auditor Diane Kentner, states the following:

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<sup>49</sup> Because NFRTR data are protected from disclosure under the NFA (26 U.S.C.A. § 5848) and considered "tax return" information prohibited from disclosure under the tax code (26 U.S.C.A. § 6103), it was not legally possible for Mr. Larson to visit the NFA Branch to inspect NFRTR data or observe procedures involving NFA registration activities conducted by NFA Branch personnel.

Because the names and addresses of individual NFA firearms owners and SOTs are also protected from disclosure, it was not possible for Mr. Larson to conduct ordinary social science research, such as drawing representative random samples to try and contact or survey them to investigate what their experiences may have been regarding NFA paperwork for guns in their inventory for which they had valid registration documents, but for which ATF could find no record in the NFRTR. Similarly, Mr. Larson was legally prohibited from accessing the computerized NFRTR data base, and thus was unable to inspect these data, run tabulations and cross-tabulations, or conduct other analyses.

(OIG Follow Up)

- Did ATF add additional firearms to the NFRTR that were originally registered on Form 1 or 4467 during 1934 to 1971, for which ATF lost or destroyed original records.

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there is no evidence in either of its 1998 reports on the NFRTR, or in the 1998 audit Work Papers, that the Treasury IG fully investigated Mr. Larson's allegation.

Mr. Larson's original allegation, reproduced below, states:

L. ATF employees have deliberately destroyed original firearm registration documents that they are required by law to maintain, as noted in sworn testimony in 1996 by ATF Special Agent Gary N. Schaible.<sup>51</sup> In analyses of data made public by ATF, I found that during 1902 to 1996, ATF may have added 119 or more firearms to the NFRTR which were originally registered on Form 1 or Form 4467 during 1934 to 1971, for which ATF lost or deliberately destroyed the original records. 51

The Treasury IG censored Mr. Larson's allegation in its October 1998 audit report, and is reproduced on the following page.

<sup>50</sup> Work Paper D-5, October 10, 1997 at 1, available at [http://www.nfaa.org/documents/Work\\_Papers\\_D.pdf](http://www.nfaa.org/documents/Work_Papers_D.pdf).

<sup>51</sup> Letter to Valerie Lau, Inspector General, Office of Inspector General, Department of the Treasury, dated May 10, 1997, from Eric M. Larson. Congressional Hearing, House of Representatives, *Treasury, Postal Service, and General Government Appropriations for Fiscal Year 1999* at 99, available at <http://www.nfaa.org/documents/1998testimony.pdf>.

Form 1 ("Registration of Firearms") was used from 1934 to 1968 to register unregistered NFA firearms; after 1968 it was titled "Application to Make and Register a Firearm" because the Gun Control Act of 1968 prohibited the registration of unregistered NFA firearms after the 1968 amnesty period expired (a citizen can "make" and register an NFA firearm by paying a \$200 tax and first obtaining ATF's approval to do so). ATF created Form 4467 "Registration of Certain Firearms in November 1968") under § 207(b) of the 1968 Act to accept registrations of unregistered firearms, with immunity from prosecution, during the amnesty period from November 2, 1968, to December 1, 1968.

The year 1971 specified in Mr. Larson's complaint relates to a different allegation that ATF had improperly registered unregistered NFA firearms after the 1968 amnesty period expired. Such registrations would violate the NFA, because "[n]o firearm may be registered by a person unlawfully in possession of the firearm after December 1, 1968, except that the Director, after publication in the FEDERAL REGISTER of his intention to do so, may establish periods of amnesty, not to exceed ninety (90) days in the case of a single period with such immunity from prosecution as the Director determines will contribute to the purposes of" the NFA, as stated ATF's published regulations in the *Code of Federal Regulations*, 1969 edition at 93. See 26 C.F.R. 179.120(a)(3)(b), available at <http://blog.princelaw.com/assets/2008/7/7/1969-CFR-ATF-amnesty-regs.pdf>.

## **Allegation 1. Destruction of Documents**

**“ATF employees have deliberately destroyed original firearms registration documents that they are required by law to maintain, as noted in sworn testimony in 1996 by [an ATF Specialist].”**

52

In the internal 1997 ATF investigation, which was completed before the Treasury IG started audit work to investigate Mr. Larson’s allegations, Mr. Schaible contradicted his testimony in *LeaSure* about NFA Branch employees destroying NFA documents in 1994 by stating under oath to ATF Special Agent and internal investigator Jeff Groh:

In response to Larson’s first allegation regarding testimony in U.S. District Court, made reference to certain documents being destroyed at the NFA Branch. . . stated he made the comments in reference to thousands of Title II firearms manufactured by . . . that were being exported to . . . Various manufacturers were forwarding the paperwork for these firearms. However, not all of the paperwork was entered properly into the NFA system. It was suspected that some of the contract employees had destroyed some of the documents in an effort to reduce case load. . . admits that Larson may have construed from his testimony that ATF employees were destroying documents, but this was not the case. . . suggested that if there was an increase in any NFA firearm registrations, it may have resulted from the changes made to reflect different form numbers being located and entered or from the transposition of registration dates on the original form. Such changes would have been added to the NFRTR. 53

The October 1998 Treasury IG report stated that Mr. Schaible

. . . was referring to an incident in 1988 when NFA Branch management suspected that two contract employees were disposing of documents. These contract employees were

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<sup>52</sup> October 1998 Treasury IG Report, at 7, available at <http://www.nfaaa.org/documents/TreasuryOIG-99-009-1998.pdf>.

<sup>53</sup> “[REDACTED], et al.” Report of Investigation, by [REDACTED], Bureau of Alcohol, Tobacco and Firearms, September 8, 1997 at 90. Congressional Hearing, House of Representatives, *Treasury, Postal Service, and General Government Appropriations for Fiscal Year 1999* at 102-103, available at <http://www.nfaaa.org/documents/1998testimony.pdf>.

Mr. Schaible’s reference to “Title II firearms” refers to Title II of the Gun Control Act of 1968 (Title II is also, but less commonly, known as the National Firearms Act of 1968); consequently, NFA firearms are also referred to as Title II firearms. Special Agent Groh, representing ATF Internal Investigations, contacted Mr. Larson and advised that he had been assigned to investigate his allegations, is the author of the foregoing Report of Investigation.



immediately removed from their assignment to the NFA Branch. The employees could not be hired or fired since they were employed by a contractor.<sup>54</sup>

In *LeaSure*, Mr. Schaible testified under oath he was aware of “occasions . . . in the NFA Branch of clerks throwing away transmissions because they don’t want to fool with them” rather than process them (Mr. LeaSure testified he FAXed registration documents to ATF in 1994, and ATF claimed it was unable to find a record of them).<sup>55</sup> Under cross-examination, asked “that’s one of the things [NFA Branch clerks throwing away documents] that could happen to you?,” Mr. Schaible replied “Certainly.”<sup>56</sup> In response to a question whether “people have been transferred and fired as a result of that, haven’t they,” Mr. Schaible answered: “The only situation I can remember is, no, they weren’t transferred. No, they weren’t fired. They eventually quit, yes, but, no, nothing like transferred or fired.” When asked “Did [ATF] ever continue anybody in that particular job after they threw something away, threw an important transmission away or destroyed it or put it in the shredder or whatever they did? [ATF] continued them doing that kind of work?” Mr. Schaible said “With monitoring, yes.”<sup>57</sup>

Regarding Mr. Schaible’s contradictory statements, made under oath, the October 1998 Treasury IG audit report concluded:

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<sup>54</sup> October 1998 Treasury IG Report at 7, available at <http://www.nfaoa.org/documents/TreasuryOIG-99-009-1998.pdf>.

<sup>55</sup> *United States of America vs. John Daniel LeaSure* (1996) at 42-43, available at <http://www.nfaoa.org/documents/LeaSureTrial.pdf>.

<sup>56</sup> *Id.* at 42-43.

<sup>57</sup> *Id.* at 43.

**Our review of the allegations showed that:**

- 1. National Firearms Act (NFA) documents had been destroyed about 10 years ago by contract employees. We could not obtain an accurate estimate as to the types and number of records destroyed.**

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The limited scope of the Treasury IG audit is troubling because Discovery sampling analysis disclosed a large number (176) of “critical errors”<sup>59</sup> which the Treasury IG failed to mention or publish in either of its 1998 audit reports, compared with 37 “discrepancies” it identified in its December 1998 report;<sup>60</sup> and despite finding large numbers of “critical errors,” there was no effort to reliably estimate the accuracy and completeness of the NFRTR.

The 1998 Treasury IG audit also raises reasonable doubt about the validity of Certificates of Nonexistence of a Record (CNR) that ATF provides to courts to certify that no record of registration for particular firearms can be located in the NFRTR. The reason is that the Treasury IG auditors formally declined to evaluate the accuracy of procedures ATF uses to search the NFRTR to legally justify issuing CNRs, which are also issued to attest that specific firearms are not registered to specific persons. NFRTR data are also routinely used for other law enforcement activities, including legal justifications for issuing search warrants.

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<sup>58</sup> October 1998 Treasury IG Report at 1, *available at* <http://www.nfaa.org/documents/TreasuryOIG-99-009-1998.pdf>.

<sup>59</sup> Work Paper H-0, April 23, 1998, at 1.

<sup>60</sup> December 1998 Treasury IG Report, at 12, *available at* <http://www.nfaa.org/documents/TreasuryOIG-99-018-1998.pdf>. The “discrepancies” identified in the December 1998 Treasury IG Report are identified as “critical errors” in audit Work Papers.

The “Objectives, Scope and Methodology” section of the December 1998 Treasury IG report states:

**Our scope did not include a review of the accuracy of ATF’s certifications in criminal prosecutions that no record of registration of a particular weapon could be found in the registry. We also did not evaluate the procedures that ATF personnel use to search the registry to enable them to provide an assurance to the court that no such registration exists in specific cases. Accordingly, this report does not provide an opinion as to the accuracy of the registry searches conducted by ATF.**

**Audit work was performed from October 1997 through May 1998. Our review generally covered ATF’s administration of the registry for the period October 1, 1996 through March 31, 1998.**

**Our work was conducted in accordance with Government Auditing Standards issued by the Comptroller of the United States, and included such audit tests as we determined necessary.**

According to the edition of *Government Auditing Standards* the Treasury IG used in its audit of the NFRTR, the Treasury IG auditors failed to comply with an applicable audit standard, “abuse,” as stated below:

Abuse is distinct from illegal acts and other noncompliance. When abuse occurs, no law, regulation, contract provision, or grant agreement is violated. **Rather, the conduct of a government program falls far short of societal expectations for prudent behavior.** Auditors should be alert to situations or transactions that could be indicative of abuse. **When information comes to the auditors’ attention (through audit procedures, tips, or other means) indicating that abuse may have occurred, auditors should consider whether the possible abuse could significantly affect the audit results. If it could, the auditors should extend the audit steps and procedures, as necessary, to determine if the abuse occurred and, if so, to determine its effect on the audit results [emphasis added].**<sup>62</sup>

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<sup>61</sup> Id. at 4.

<sup>62</sup> See Chapter 6, “Field Work Standards for Performance Audits.” *Government Auditing Standards*, by the Comptroller General of the United States. 1994 Revision. Washington, D.C.: U.S. Government Printing Office, 1994 at 75.

There is no statement in the 1998 Treasury IG reports that the auditors (1) considered whether decreasing the “critical error” rate at the request of the audited party at interest (NFA Branch representatives) to achieve a desired result “could significantly affect the audit results,” or (2) attempted “to determine its effect on the audit results.” In a Work Paper documenting the 1998 audit procedures and activities, the Audit Manager attested that “abuse” was not an issue:

	Ref.	Initials	N/A	Remarks
2.12 Auditors have been alert to situations or transactions that could be indicative of illegal acts or abuse, and have extended audit steps as necessary (GAS 6.26, 6.32, 6.35). (Support is statement in audit guidelines to be alert to these situations or transactions, and any related work performed.)	A-1	RKB		Report deals with allegations of ATF mismanagement of the results

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The conduct of the Treasury IG auditors, who under *Government Auditing Standards* are required to be “independent,”<sup>64</sup> clearly “falls far short of societal expectations for prudent behavior.” The reasons are that the Treasury IG auditors (1) manipulated audit procedures at the request of NFA Branch representatives for the purpose of deliberately decreasing the “critical error” rate of the NFRTR because the 18.4 percent “critical error” rate the Treasury IG auditors found was “disappointing at best and could have serious consequences for ATF’s firearm

<sup>63</sup> Work Paper Bundle A, page 5. The initials RKB are those of Treasury IG auditor Robert K. Bronstrup, identified in Work Paper A-1 as the “Lead Auditor”; and as “Audit Manager” in the October 1998 Treasury IG report at 27, and December 1998 Treasury IG report at 49.

<sup>64</sup> *Government Auditing Standards*, by the Comptroller General of the United States. 1994 Revision. Washington, D.C.: U.S. Government Printing Office, 1994 at 22. See Chapter 3, “General Standards,” which states: “In all matters relating to the audit work, the audit organization and the individual auditors, whether government or public, should be free from personal and external impairments to independence, should be organizationally independent, and should maintain an independent attitude and appearance.”

registry mission,” (2) left unanswered whether “critical errors” exist in other NFRTR categories, (3) failed to reliably estimate the “critical error” rate of the NFRTR, as required by Discovery sampling rules and procedures, by increasing the size of the sample and conducting additional analysis, (4) chose to avoid resolving reasonable doubts (created by their audit findings) about the accuracy and completeness of the NFRTR, and by extension the validity and reliability of ATF’s Certifications of Nonexistence of a Record (CNRs) that “provide an assurance to the court that no such registration [for an NFA firearm] exists in specific instances.”

**Congressional Hearings on the NFRTR from 1996 to 2001, and related issues**

Each year from 1996 to 2001, Mr. Larson and other concerned citizens provided testimony or statements to the Congress about the accuracy and completeness of the NFRTR.<sup>65</sup> The most important outcomes of these testimonies and statements were (1) the 1998 Treasury Department Inspector General audit of the NFRTR, and (2) appropriations language that allocated \$1 million to ATF, with instructions to use it to render the NFRTR accurate and complete. There is no evidence, however, that either of the foregoing outcomes rendered the NFRTR accurate and complete, or resulted in a valid and reliable estimate of the NFRTR error rate. Consequently, the accuracy of the NFRTR is still currently unknown.

The Treasury IG auditors did not follow GAGAS to reliably estimate the “critical error” rate of the NFRTR database, in part, because NFA Branch representatives inappropriately requested them to manipulate the definition of “critical error” to achieve a lower rate, but that is not the whole story. The reason is that the Treasury IG auditors requested an Assistant Director at the U.S. Government Accountability Office to advise them how to conduct Discovery

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<sup>65</sup> These Congressional testimonies and statements are listed in Mr. Larson’s VITA, which has been separately submitted to this Court, and include a variety of issues not relevant to *Friesen*; they are not listed or reviewed in this motion.

sampling in its 1998 audit,<sup>66</sup> and with knowledge of correct procedures for doing so declined to follow his advice. Consequently, the “critical error” rate for the NFRTR database was not estimated in the 1998 audit.

Mr. Larson’s requests to top Government officials with oversight responsibility over ATF to conduct meaningful oversight, particularly over ATF’s continuing mismanagement of the NFRTR, failed. For example, when Mr. Larson expressed concerns to Treasury Department Inspector General David C. Williams about the integrity of the 1998 audit based on the Treasury IG censoring his most serious allegation against ATF, and that the audit was conducted during a period that included the regime of the his corrupt predecessor (who resigned in 1998 following Senate hearings documenting her misconduct), Dennis S. Schindel, Assistant Inspector General for Audit, responded in a January 7, 1999, letter:

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<sup>66</sup> The Treasury IG auditors informally requested Barry Seltser, Assistant Director and Manager, Design, Methodology and Technical Assistance Group, U.S. Government Accountability Office (GAO), for advice in conducting sampling procedures and data analysis in its 1998 audit of the NFRTR. At a January 20, 1998, meeting at GAO Headquarters, which included Sidney Schwartz, Mathematical Statistician, GAO; Carol Burgan, Auditor [DELETED], Robert Bronstrup, Audit Manager, and Gary Wilk, Auditor:

**Mr. Seltser suggested that we use “discovery” sampling for the top three Forms that we were concerned about (Form 4467, Other, and Letter categories). In discovery sampling, about 60-70 items are selected from each category and tested for “critical” and “non-critical” errors. If no errors are found in this discovery sample, then we could make a statement about the category. If errors are found, then we must expand our sample based on a mathematical formula.**

Work Paper F-19, prepared by Carol Burgan, January 24, 1998 at 1.

The Treasury IG auditors did not follow Mr. Seltser’s recommendation to “expand our sample based on a mathematical formula” after discovering “critical errors” in the Discovery samples. Mr. Seltser’s advice was informal; representative of the kind of informal advice GAO typically and often renders to Executive Branch agencies upon request; and GAO was not involved in the Treasury IG’s 1998 audit of the NFRTR.



Dear Mr. Larson:

Mr. Williams has asked me to respond to your letter of November 5, 1998. In that letter you expressed concern that the previous Inspector General, Valerie Lau and others may have tried to compromise a congressionally directed audit of the firearm registration practices of the Bureau of Alcohol, Tobacco and Firearms (ATF). Since my office oversaw the work, I assured Mr. Williams and wish to assure you that no effort to influence the audit occurred.

<sup>67</sup>

In March 1999, Mr. Schindel told Mr. Larson the 1998 audit "determined there were errors in the [NFRTR] based on statistically valid sampling methodologies." He added that ATF "is operationally responsible for correcting the errors in the [NFRTR] data base," and it is "ATF's management responsibility to identify and correct all of the records that may be in error in the registry."<sup>68</sup>

Similarly, Mr. Larson expressed concerns to then-ATF Director John W. Magaw, who answered them in a November 19, 1999, letter:

Your allegations concerning my staff are totally without foundation. I have been advised of all your allegations concerning the Bureau of Alcohol, Tobacco and Firearms' (ATF) administration of the National Firearms Act (NFA), beginning with your attempts in 1987 to have certain firearms removed from the statute up through the recent issuance of the Office of the Inspector General (OIG) reports. I have reviewed the OIG reports and agree with my staff that most of your allegations are without merit.

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<sup>67</sup> Eric M. Larson, *Work Papers on Errors in the National Firearms Registration and Transfer Record, and Other Issues Regarding the Bureau of Alcohol, Tobacco, and Firearms*. Prepared for the Honorable Pete Sessions, House of Representatives, Washington, D.C., April 2, 1999 (unpublished), inserted at 36-37, available at <http://www.nfaa.org/documents/Critiqueof1998IGreports.pdf>.

<sup>68</sup> Letter from Dennis S. Schindel, Assistant Inspector General for Audit, Office of Inspector General, Office of Inspector General, Department of the Treasury dated March 25, 1999, to Eric M. Larson.



We have carefully considered the recommendations made by the OIG and are working to ensure that the NFRTR continues to be an accurate and reliable database of firearms transactions.

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The foregoing statements by Assistant Inspector General for Audit Schindel and ATF Director Magaw, each of whom were key Government officials who had major and significant federal law enforcement responsibilities in 1999, are not worthy of belief.

Congress appropriated \$500,000 for fiscal year 2002 for ATF to use “with the aim of reducing processing times and ensuring the completeness and accuracy of the NFRTR.”<sup>70</sup> The appropriations hearing records included questions by the Subcommittee on Treasury, Postal Service and General Government about the NFRTR, including the need for “[a]n independent, annual audit of the [NFRTR] database covering registration to retrieval,” and when it would be “possible to confirm the completeness and accuracy of the NFRTR.”<sup>71</sup> Congress again appropriated \$500,000 for fiscal year 2003 for improving ATF’s licensing and regulatory operations, “including making significant progress in correcting remaining inaccuracies within the NFRTR database.”<sup>72</sup>

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<sup>69</sup> Letter from John W. Magaw, Director, Bureau of Alcohol, Tobacco and Firearms dated November 19, 1999, to Eric M. Larson at 1 and 3, available at <http://www.nfaog.org/documents/MagawLetter1999toLarson.pdf>.

<sup>70</sup> Report No. 107-152, to accompany H.R. 2590, Treasury, Postal Service, and General Government Appropriations Bill, 2002. 107th Cong., 1st Sess., House of Representatives (2001) at 20. These funds were approved in The Treasury and General Government Appropriations Act, 2002, P.L. 107-67, 115 Stat. 514 (2001).

<sup>71</sup> “Regulatory Processes and Resources,” *Treasury, Postal Service, and General Government Appropriations for Fiscal Year 2002*. Hearings before a Subcommittee of the Committee on Appropriations, House of Representatives, 107th Congress, 1st Sess., Part 1 at 476-479.

<sup>72</sup> Report No. 107-575, to accompany H.R. 5120, Treasury, Postal Service and General Government Appropriations Bill, 2003. 107th Cong., 2d Sess., House of Representatives at 19 (2001). These funds were approved in Report No. 108-10, Conference Report to accompany H.J. Res. 2, 108th Cong., 1st Sess. at 1324-1325 (2003).

The Subcommittee was influenced by an independent statistical expert, Dr. Fritz J. Scheuren, who advised them in response to its request for his review of responses ATF provided to three questions asked by the Subcommittee.<sup>73</sup> Dr. Scheuren stated, in part:

**Technology question.** My reading of the OIG reports suggests that very serious problems were uncovered in ATF's recordkeeping systems. In fact, in my long experience, I cannot think of any instance where poorer results were obtained. I was greatly troubled, therefore, by ATF's comment that it "... found nothing in the OIG report to justify a statutory or administrative change..." The automation  
**Conclusions.** I can only offer a qualified opinion on the ATF's answers but if their responses are to be taken at face value, two conclusions arise: (1) ATF has serious material weaknesses in its firearm registration system which it has yet to acknowledge and (2) the ATF steps taken to improve its recordkeeping clearly lack thoroughness and probably lack timeliness as well.  
**Recommendations.** Let me offer three recommendations to the Committee for its consideration: (1) ATF should be asked to engage an outside audit organization to give a more complete assessment of the weaknesses in their existing firearms system. The scope of the OIG audit was too narrow. These audits should be annual, including a full test of the system from registration to retrieval. The Post Office has such audit practices and offers a model of the completeness needed. (2) ATF should be asked to conduct a thorough benchmarking effort looking at recordkeeping practices and how they are changing both within government and in organizations like insurance companies that have to keep files for long periods. This benchmarking will require another (separate) outside contractor experienced in conducting such studies. (3) The use of record linkage technologies to test and update the ATF firearms system to reduce its isolation are worth study. A match with the SSA decedent file is an example, but there are other government systems that might be looked at too. Possibly legislation would be needed but before seeking legislation ATF should engage one or more experts in record linkage techniques as consultants on the present "matchability" of the system and needs for its future "matchability."

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Dr. Scheuren's influence is evident in the following exchange between the Subcommittee and ATF, which subsequently occurred during ATF's appropriations hearing:

**Question:** An independent, annual audit of the database covering registration to retrieval?

**Answer:** We do not believe an independent audit of the database is needed. The ongoing efforts we are making to ensure the completeness and accuracy of the NFRTR by imaging and indexing the documents, performing database verification, and linking the retrieval system with the imaging system will result in strong internal controls for the NFRTR.

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<sup>73</sup> *Treasury, Postal Service, and General Government Appropriations for Fiscal Year 2002*. Hearings Before a Subcommittee of the Committee on Appropriations, House of Representatives. 107th Cong., 1st Sess., Part 3 at 23-25, available at <http://www.nfaa.org/documents/2001statement.pdf>. (Hereafter Congressional Hearings, House of Representatives, *Treasury, Postal Service, and General Government Appropriations for Fiscal Year 2002*.) Fritz J. Scheuren, Ph.D., a past elected President of the American Statistical Association, is currently Vice President, Statistics, National Opinion Research Center (NORC), University of Chicago.

<sup>74</sup> Letter from Fritz J. Scheuren dated May 23, 2000, to the Honorable Jim Kolbe, Chairman, Subcommittee on Treasury, Postal Service, and General Government. *Id.* at 24-25.

There is currently no evidence that ATF has satisfactorily complied with Congressional instructions to render the NFRTR accurate and complete. The Treasury IG terminated another NFRTR audit in 2002 before it was completed, and a former staff member stated: “We found there were still serious problems with the NFRTR data that, to the best of my knowledge, are still uncorrected.”<sup>76</sup>

In 2007, seven years after his Congressional statement, because private citizens expressed concerns to him about the accuracy and completeness of the NFRTR, Dr. Scheuren reanalyzed the NFRTR database situation. In a December 11, 2007, letter, to the Congress, Dr. Scheuren reiterated and expanded his concerns about the consequences of “serious material errors” in the NFRTR that ATF “has yet to acknowledge,” and added: “In my considered professional judgment, these errors render the NFRTR questionable as a source of evidence in federal law enforcement.”<sup>77</sup>

In or about 2006, possibly in response to the Justice IG’s “review” of the NFRTR, ATF created a new form entitled “Firearms Inspection Worknote: NFA Inventory Discrepancies,” a

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<sup>75</sup> Congressional Hearing, House of Representatives, *Treasury, Postal Service, and General Government Appropriations for Fiscal Year 2002*. Hearings Before a Subcommittee of the Committee on Appropriations, House of Representatives. 107th Cong., 1st Sess., Part 1 at 479, available at <http://www.nfaa.org/documents/NFRTRdocpack.pdf>, at Tab 4.

In October 2008, Mr. Larson filed a FOIA request to ATF for (1) documents pertinent to this “imaging system” and how it may help render the NFRTR accurate and complete by “imaging and indexing the documents,” including any evaluation of the accuracy and completeness of the “imaging system”; that is, whether complete documentation is available for firearms for original registration and each subsequent transfer; (2) documents that describe the search procedures ATF uses to provide assurances to the Court that no record of a firearm registration can be located in the NFRTR, and (3) a copy of the current NFRTR procedures manual. ATF has not provided any documents in response to any of the foregoing FOIA requests to date.

<sup>76</sup> For additional information, see Stephen P. Halbrook, *Firearms Law Deskbook: Federal and State Criminal Practice*. 2008-2009 Edition. Thomson West Publishing, 2008 at 572-573.

<sup>77</sup> Letter to the Honorable Alan B. Mollohan, Chairman, Subcommittee on Commerce, Justice, Science, and Related Agencies, Committee on Appropriations, House of Representatives dated December 11, 2007, by Fritz J. Scheuren, Vice President, Statistics, National Opinion Research Center, University of Chicago, at 1, available at [http://www.nfaa.org/documents/Scheuren\\_Committee\\_Chair\\_Letter.pdf](http://www.nfaa.org/documents/Scheuren_Committee_Chair_Letter.pdf).

copy of which Mr. Larson obtained by a FOIA request.<sup>78</sup> A copy of this form is reproduced as received by Mr. Larson from ATF on the following page.

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<sup>78</sup> Letter to Averill P. Graham, Chief, Disclosure Division, Bureau of Alcohol, Tobacco, Firearms and Explosives dated January 24, 2007, by Eric M. Larson, *available at* <http://www.nfaa.org/documents/FOIA-FRTRJan2007.pdf>.

**PURPOSE:** To reconcile discrepancies disclosed between the licensee's inventory/records

**SOURCE/SCOPE:**

**NOTE:**

<b>Licensee Name:</b>							<b>UI Number:</b>		
#	Manufacturer/Importer	Model	Type	Caliber/ Gauge	Serial Number	Date Transferred or Received	Transferred to or Received From:	Nature of the discrepancy	In Inventory Yes/No
	F	O	I	A					

**Prepared By:**

**Date:**

## NFA Inventory



In his January 2007 FOIA request, Mr. Larson also requested ATF to provide

- 2) Written or audio instructions to ATF personnel which provide guidance and/or definitions of what constitutes an “error” or “discrepancy” in the NFRTR. These would include classroom training materials, flash cards, a manual or similar guide, instructions imparted via DVD, videotape or similar mediums of communication. These instructions would most likely be given to ATF Inspectors, but may also be given to Legal Document Examiners, ATF Special Agents, and others.**

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ATF stated that a search failed to locate such documents responsive to Mr. Larson’s FOIA request, and he appealed. In a letter dated October 2, 2007, Janice Galli McLeod, Associate Director, Office of Information and Privacy, Department of Justice, stated:

After carefully considering your appeal, I am affirming ATF’s action on your request. ATF conducted a search for records responsive to your request and was unable to locate any records pertaining to the National Firearms Registration and Transfer Record documentation you referred to in your request. I have determined ATF’s response was correct.<sup>80</sup>

Associate Director McLeod’s statement may be valid and reliable evidence that ATF and the Department of Justice have improperly denied a FOIA request. It is hard to believe that a form ATF inspectors are supposed use to record “discrepancies” in the NFRTR database after encountering them during compliance inspections of SOTs would not have been given instructions regarding and procedures to follow in to reliably identify and report suspected “discrepancies,” when the stated “purpose” of the form is to “reconcile discrepancies” in the NFRTR. It is not reasonable to believe ATF has not defined the term “discrepancy,” because otherwise there would be no reason for the new form to exist.

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<sup>79</sup> Id. at 1.

<sup>80</sup> Letter to Eric M. Larson from Janice Gail McLeod, Associate Director, Office of Information and Policy, U.S. Department of Justice dated October 2, 2007, bearing identifiers RE: Appeal No. 07-1961, Request No. 07-458, BE:REG, available at <http://www.nfaog.org/documents/McLeodDOJletter2007.pdf>.

According to SOTs who have been inspected in or after 2006, ATF personnel who encounter a discrepancy in NFRTR data are required to assign each discrepancy a “control number” and forward the information to the National Firearms Act Branch for resolution. Are there not tabulations, analyses, and other performance measures used to evaluate the accuracy and completeness of the NFRTR? Are there no records of the type and number of discrepancies? Associate Director McLeod’s statement that no documents responsive to Mr. Larson’s FOIA request can be found at National Firearms Act Branch is unworthy of belief.

**Giambro: A 2007 federal court case involving the NFRTR**

In 2008, the United States Court of Appeals for the First Circuit upheld the validity of NFRTR data, including its use in twice creating a Certificate of Nonexistence of a Record, in affirming a conviction for Possession of Unregistered Firearm.<sup>81</sup> The Court of Appeals based its decision mainly on *Rith*, testimony on the NFRTR’s reliability by ATF Specialist Gary N. Schaible, and stated “[a]lthough both the *Rith* court and the district court here acknowledged past

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<sup>81</sup> *United States of America vs. Dario Giambro*, United States Court of Appeals for the First Circuit, No. 08-1044, October 2, 2008, available at <http://www.ca1.uscourts.gov/cgi-bin/getopn.pl?OPINION=08-1044P.01A>. Hereafter Court of Appeals, *United States of America vs. Dario Giambro* (2008).

The Court of Appeals decision was based on *United States vs. Dario Giambro*, United States District Court, District of Maine, Criminal Action, Docket No. 07-14-P-S. Transcript of Proceedings, before the Honorable George Singal, U.S. District Judge, Sept. 25, 2007, available at <http://www.nfaog.org/documents/GiambroTrial1.pdf>; rest of transcript continued at <http://www.nfaog.org/documents/GiambroTrial2.pdf>. Hereafter *United States of America vs. Dario Giambro* (2007).

The firearm, a Model 1908 Marble’s Game Getter Gun, is a low-powered small-game over-and-under combination gun (has .22 long rifle/.44 Game Getter barrels 12” in length) with a folding shoulder stock, and was designed mainly for trappers, hunters and outdoorsmen. The Model 1908 Game Getter is classified as “Any Other Weapon” under the NFA (26 U.S.C. § 5845(a)(5)), was last manufactured in 1914. In excellent condition, accompanied by the original box, a 12” barrel Model 1908 Game Getter is valued at \$2,500 or more. Ned Schwing, “Marble’s Game Getter Gun NFA, Curio or Relic,” 2005 *Standard Catalog of Firearms: The Collector’s Price & Reference Guide*, 15th Edition. Iola, Wisconsin: KP Books, 2004 at 728.



problems with the NFRTR, both emphasized that the ATF has addressed problems with the database and improved its reliability.”

The Court of Appeals did not state that it specifically reviewed either of the 1998 Treasury IG audit reports, or the 2007 Justice IG report (all were introduced in *Giambro*), in its opinion and went on at length to affirm the District Court decision to exclude Mr. Larson as an Expert Witness. In particular, the Court of Appeals cited the District Court finding that Mr. Larson’s motion in limine testimony<sup>82</sup> was not “based upon sufficient facts or data,” not “the product of reliable principles and methods,” and that Mr. Larson had not “applied the principles and methods reliably to the facts of the case.”<sup>83</sup> The Court of Appeals stated that “suppositions . . . and conjecture abound[ed]” in Mr. Larson’s testimony, and the District Court “was well within its discretion” to “conclude that . . . the data on which Larson based his analysis was ‘purely anecdotal.’”<sup>84</sup>

The Court of Appeals decision was criticized the same day it was published.<sup>85</sup>

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<sup>82</sup> *United States of America vs. Dario Giambro*, United States District Court, District of Maine, Criminal Action, Docket No. 07-14-P-S. Transcript of Proceedings before the Honorable George Z. Singal, United States District Judge, Sept. 24, 2007, available at <http://www.nfaoa.org/documents/GiambroMotionInLimine-LarsonTestimony.pdf>. Hereafter Larson testimony, *United States of America vs. Dario Giambro* (2007).

An enhanced version of Mr. Larson’s testimony, with insertions of the Exhibits to which he referred has been created for ease of reference to said Exhibits, is available at <http://www.nfaoa.org/documents/GiambroLarsonMotionInLimineTestimonyWithExhibits.pdf>.

<sup>83</sup> Court of Appeals, *United States of America vs. Dario Giambro* (2008).

<sup>84</sup> *Id.*

<sup>85</sup> See “CA1: First Bends to Help Government Prove Negative in Antique Gun Registration Case,” Oct. 2, 2008. The critique states: “*US v. Giambro*, No. 08-1044 affirms a conviction for possessing an antique gun. (He was acquitted of a number of state charges.) The least interesting issue is under 26 U.S.C. 5861(d), where the court holds that the defendant need not have specific knowledge of the registration requirement, but just knowledge of the statutory elements of the guns subject to the registration requirements. More interesting is the admission of the ATF’s ‘Certificates of Nonexistence’ of a registration record. The maker of the certificate testified. The First’s analysis isn’t that satisfactory. It basically says ‘other circuits have upheld their use’ even though there used to be problems. Finally, and without much analysis, the First says that it was fine for the District Court to exclude the testimony of an expert witness that had done some statistical analysis on the reliability of the ATF’s system of gun registration. Because the First speaks in broad, general terms (and throws around words like ‘Daubert’), it doesn’t

Mr. Larson's motion in limine testimony was based upon, and is not materially different from, most of the evidence presented in this motion. It was not until his motion in limine testimony in *Giambro* that Mr. Larson concluded ATF had been adding firearm registrations to the NFRTR after being confronted with NFA firearms owners with their copies of the registrations, based on the 2007 Justice IG report, and that is what he stated.<sup>86</sup> For more than a decade, Mr. Larson qualified his concerns that, e.g., ATF "may have" added registrations to the NFRTR after losing their copies or records of them, because Mr. Larson did not believe the evidence he cited was sufficiently conclusive.<sup>87</sup> It was only after the Justice IG report reported in 2007 that ATF had added registration documents to the NFRTR that he concluded otherwise (the Treasury IG confirmed his allegation that "National Firearms Act (NFA) documents had been destroyed").<sup>88</sup>

*Giambro* differs from *Friesen* because (1) Mr. Giambro never contended the NFRTR was inaccurate with respect to him, and told one of his attorneys he had not registered the firearm,<sup>89</sup>

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seem like it was taking this issue seriously." Available at <http://appellate.typepad.com/appellate/2008/10/cal-first-bends.html>.

<sup>86</sup> Larson testimony, *United States of America vs. Dario Giambro* (2007) at 67-68.

<sup>87</sup> It would have been inappropriate for Mr. Larson to attempt to estimate or publish (such as in a professional, refereed journal) a "critical error" rate of, e.g., ATF adding firearm registrations it had lost or destroyed to the NFRTR, because any such estimate would not have been based on valid and reliable evidence.

Results of Discovery sampling analysis by Treasury IG auditors in 1998 provided valid and reliable evidence of "critical errors" in the NFRTR database, but the auditors failed to extend the audit as GAGAS required and estimate the "critical error" rate, or explain the effect of these "critical errors" upon the audit. Because the NFA (26 U.S.C.A. § 5848) and the tax code (26 U.S.C. § 6103) each prohibit Mr. Larson from accessing these data, he was unable to estimate the "critical error" rate for NFRTR data.

<sup>88</sup> October 1998 Treasury IG Report at 1, available at <http://www.nfaa.org/documents/TreasuryOIG-99-009-1998.pdf>.

<sup>89</sup> An unexplored aspect of *Giambro* is whether his late father — from whom Mr. Giambro inherited the Game Getter and 203 other firearms, and who instructed him to always keep an accompanying "certificate" in the original wooden box provided by the manufacturer along with the gun — had registered the Game Getter or acquired it through a lawful transfer approved by ATF, and ATF withheld the registration record to enable a prosecution after Mr. Giambro was acquitted in state court of an unrelated firearm wounding charge on grounds of self-defense. This

(2) that attorney misunderstood the NFA and attempted to register the firearm on Mr. Giambro's behalf, and (3) both attorneys petitioned the District Judge to exclude Mr. Giambro's statements and the attempt by one attorney to register the firearm, because the NFA prohibits using information resulting from an attempt to register an NFA firearm in criminal prosecutions,<sup>90</sup> which could have predisposed the District Judge to fail to adequately consider evidence at trial that the NFRTR is inaccurate and incomplete.

**In *Friesen*, this Court questioned the reliability of NFRTR data**

On September 17, 2008, this Court expressed concerns about the validity and reliability of NFRTR data in *Friesen*, in part because the "government has relied almost exclusively" upon NFRTR data in "many of its exhibits."<sup>91</sup> In further explaining the reasons that "persuade[d] me to allow the testimony [of Dr. Scheuren] and overrule the motion" by the Government to exclude him as an Expert Witness, the Court stated:

One is, of course, the duplicate records of Exhibit 100, and then the government's record of the same firearms, which both appear — I've never heard satisfactorily explained why there were two of those records. Secondly, the other relationship to the issue over the accountability of the other guns that are on the government's chart. And thirdly, the issue,

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unexplored aspect is significant because (1) there are no independent checks on whether ATF personnel are truthful about their inability to locate a registration document, (2) as the evidence in this motion has reliably documented and contends, there is reasonable doubt regarding ATF's integrity in characterizing the accuracy and completeness of NFRTR data, (3) there has been no publicly known independent evaluation of the adequacy of the search procedures ATF uses to certify to a court that a particular firearm is not registered, and (4) it is not uncommon for persons who inherit registered NFA firearms to be unaware of the need to apply to have ownership of the firearm transferred to them. In such cases, as long as the firearm remains in the chain of inheritance, ATF does not typically initiate criminal action and allows a reasonable time for the firearm to be transferred to the lawful heir. Based on Mr. Giambro's statement, he did not register the Game Getter. It is unclear whether (1) the Game Getter was registered to Mr. Giambro's father (ATF attested that it was not), and (2) Mr. Giambro was aware of the legal requirement for a registered NFA firearm to be transferred to a lawful heir after the death of the registered owner. Because Mr. Giambro may have been suffering from mental illness to some extent, which could have further complicated his legal situation, he did not fully participate in his own defense. Mr. Giambro, whose assets include a \$3.5 million passbook savings account, chose to remain in jail for 5 months until trial because he believed the Government would make corrupt use of the bail money he would have had to post to be released.

<sup>90</sup> *United States of America vs. Dario Giambro*, United States District Court, District of Maine, Criminal Action, Docket No. 07-14-P-S. Motion in Limine re: Evidence of Disclosure of Information During Compliance Attempt (26 U.S.C. 5989), July 24, 2007, available at <http://www.nfaa.org/documents/GiambroPart6.pdf>.

<sup>91</sup> *United States of America vs. Larry Douglas Friesen* (2008), Vol. VI at 1012.

the fact that the government has relied almost exclusively on many of its exhibits which are records from the [NFRTR].<sup>92</sup>

Regarding this Court's first concern, NFRTR Custodian Denise Brown's failure to satisfactorily explain the existence in NFRTR records why there are two approved Forms 2 bearing different dates and the same serial number (E683) as that of the STEN machine gun that ATF acknowledges it lawfully transferred to Mr. Friesen in 1996, indicates a lack of knowledge of the NFRTR database and, possibly, of procedures NFA Branch personnel use to file or retrieve firearm registration documents (or records of them).<sup>93</sup>

Relevant to this Court's second concern was "the other relationship to the issue over the accountability of the other guns" the Government introduced into evidence to try and explain the characteristics of the STEN machine gun at issue in *Friesen*. ATF's characterization of "weapon description" of the STEN machine gun as a Mark II,<sup>94</sup> a point this motion will further

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<sup>92</sup> Id., Vol. VI at 1011-1012.

<sup>93</sup> Defense counsel asked NFRTR Custodian Denise Brown to explain the significance of a Form 2 dated April 20, 1986, entered as Defense Exhibit 100, bearing serial number E683, provided to the defense under Discovery. The Government said the NFRTR contains a record that a STEN machine gun bearing serial number E683 is registered to Mr. Friesen (Vol. I, Id. at 15). Custodian Brown testified that the firearm ATF approved for transfer to Mr. Friesen was "E683, STEN Mark II . . . approved February 22, 1996" (Id. at 48-49), and that the "birthing document" for that E683 STEN Mark II is a certified Form 2 dated May 14, 1986, submitted to ATF by manufacturer Charles Erb (Id. at 68).

<sup>94</sup> At issue in *Friesen* is whether the STEN machine gun bearing serial number E683 manufactured by Mr. Erb is the same one he manufactured, or if another STEN machine gun bearing serial number E683 was substituted in its place. Consequently, also at issue is the accuracy of the STEN "weapon description" based on (1) data from the NFRTR, and documentation in the custody of ATF, and (2) examinations of the STEN seized by ATF, by ATF officials, by Mr. Erb, by transferees who previously owned the STEN, and by a defense Expert Witness. The Government contends the STEN that ATF lawfully transferred to Mr. Friesen is a Mark II, based on the description on the Form 2 submitted by Mr. Erb (Id. at 15) and by previous transferees who were available to testify, all of whom denied that the STEN in *Friesen* was the STEN they had previously owned, and by others as described below. Because one previous transferee is deceased (Vol. IV at 674-675), descriptions by other previous transferees are not described in this motion.

After examining the firearm at trial in *Friesen*, Mr. Erb testified it was not the gun he manufactured "as E683" (Vol. IV at 590); was "made to resemble a STEN Mark III" (Id. at 574); and that the gun "is a MARK III" (Id. at 579). Len Savage, an Expert Witness for the defense who examined the STEN testified: "It appears to be a Sten Mark II-S tube that was completed with Sten Mark III components." Vol. VII at 1349. Mr. Erb testified: "The barrel is the same on a Mark III and a Mark II. They are the same length." Vol. IV at 589.

develop, is relevant to the Court's second concern. Defense counsel agrees that ATF approved the lawful transfer of a STEN machine gun bearing serial number E683 to Doug Friesen in 1996, and disagrees with the Government's characterization of that STEN as a Mark II. Defense counsel notes that to validate the its description of the STEN machine gun bearing serial number E683 as a Mark II, the Government sought "confirmatory" information that the Mark II description was valid and reliable. The Government sought this "confirmatory" information because Dr. Scheuren testified: "I find the existing [NFRTR] records are quite useful in an exploratory setting, but they are not accurate enough by themselves to be used in a confirmatory way," including "for purposes of prosecution."<sup>95</sup>

The Government asked Dr. Scheuren if NFRTR data could be reliably verified each time the firearm was transferred by independently obtaining such data from each transferee, he would consider the NFRTR data to be accurate for that firearm. Dr. Scheuren replied in the affirmative. On redirect, defense counsel asked " . . . although you didn't come here to testify about this, if there is a break in the link, for example, one of these witnesses didn't testify, would that cause you a concern?" Dr. Scheuren answered: "[I]f there was gap in the evidence, yes. If there was a chain of custody break, yes." The significance of Dr. Scheuren's answer is that "one of these witnesses" is a deceased transferee,<sup>96</sup> which breaks the chain of evidence.

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Also at issue is whether the STEN machine gun manufactured by Mr. Erb was (1) an unfinished tube, not a finished receiver, (2) finished by Mr. Erb as a STEN Mark II, (3) finished by someone other than Mr. Erb in as a STEN Mark II, Mark II-3, or Mark III, or (4) whether Mr. Erb registered air on one or both of the Forms 2 he submitted to ATF; that is, that Mr. Erb had not physically manufactured a STEN Mark II or a finished or unfinished receiver.

The issue of who manufactured or finished the STEN machine gun in *Friesen* has not been resolved.

<sup>95</sup> Id., Vol. VI at 1024.

<sup>96</sup> Id., Vol. IV at 674-675.



This Court's third concern about *Friesen* — “the fact that the government has relied almost exclusively on many of its exhibits which are records from the [NFRTR]”<sup>97</sup> — is justified for three major reasons.

First, the “critical error” rate of the NFRTR is currently unknown, and efforts to discern or estimate it even informally are compromised because (1) ATF officials changed the definition of a “Significant Error” in 1995 by renaming it an “Error,” and (2) Treasury IG auditors manipulated the definitions of “critical error” in 1998 at the request of NFA Branch representatives, to subjectively lower the “critical error” rate of the NFRTR. Dr. Scheuren testified that “in fact, their reworking of the original 1998 data is data fishing. And you cannot make a statement about the reliability, the probability of your being right with that data fishing, that exercise. So they should have done another audit sample.”<sup>98</sup>

Second, relevant to *Friesen*, there is no law or regulation that requires ATF to physically inspect an NFA firearm at the time of its original manufacture (or as a condition of or during any subsequent transfer), and ATF has not presented any evidence that it has done so. Because one transferee who possessed the STEN machine gun bearing serial number E683 is deceased, the chain of evidence has been broken and it is not possible to reliably confirm even by sworn statements of all living previous transferees that ATF's contention that STEN is a Mark II is correct. Even if all living transferees so testified, there is no logical reason for any of them to testify to a “weapon description” with which the Government disagrees, because doing so would put the onus of alleged illegal manufacture of the STEN upon that previous transferee and subject him to the hazards of prosecution.

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<sup>97</sup> Id., Vol. VI at 1012.

<sup>98</sup> Id., Vol. VI at 1030.

Third, although ATF has identified “weapon description” as a “critical” data field,<sup>99</sup> that is not the most critical problem with the NFRTR data ATF uses and the concern stated by this Court in *Friesen* about “the issue, the fact that the government has relied almost exclusively on many of its exhibits which are records from the [NFRTR].”<sup>100</sup> The reason is that based on ATF’s inability to physically locate original documents that literally are NFRTR data, there is reasonable doubt whether Exhibits based on NFRTR data that the Government entered into evidence in *Friesen* are based on valid and reliable evidence. During the 1998 audit ATF was unable to provide original documentation to validate computerized data routinely generated by the NFRTR. ATF’s inability to locate original documents to reliably validate computerized NFRTR data is an audit finding in the December 1998 Treasury IG report as follows:

ATF provided copies of other records to clarify the [37] discrepancies [reported in our audit results]. These other records, for example, included microfiche records and other registry database reports. We examined these records but we could not fully determine if the records sufficiently resolved the discrepancies.<sup>101</sup>

ATF’s inability to locate original documents, and the Treasury IG auditors’ inability to reliably validate computerized NFRTR data, is further discussed in an audit Work Paper that was not reviewed and signed by Audit Manager Robert K. Bronstrop until December 18, 1998, the

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<sup>99</sup> Treasury IG auditor Carol Burgan stated that “error definitions for critical data fields” include “weapon description.” Work Paper F-25, Feb. 19, 1998, at 1. During a January 21, 1998, meeting at ATF Headquarters that included ATF participants (“[redacted], Chief, Firearms and Explosives Division,” and [redacted]), Carol Burgan, Auditor [redacted], and Gary Wilk, Auditor, agreed that

**Critical errors would include: serial number of the weapon, name of weapon owner, address of owner, date of application (if applicable), date of birth, and weapon description. Address of owner is important however, owners do not have to report intrastate moves (only interstate).**

Work Paper F-22, January 26, 1998, prepared by Carol Burgan, at 1. Both Work Papers in this footnote available at [http://www.nfaoa.org/documents/Work\\_Papers\\_F.pdf](http://www.nfaoa.org/documents/Work_Papers_F.pdf).

<sup>100</sup> *United States of America vs. Larry Douglas Friesen* (2008), Vol. VI, at 1012.

<sup>101</sup> December 1998 Treasury IG Report, at 12, available at <http://www.nfaoa.org/documents/TreasuryOIG-99-018-1998.pdf>.



same day the December 1998 Treasury IG report was published, suggesting there was the most extreme of concerns about this audit finding. In fact, less than 3 weeks before the report was issued, Treasury IG auditor Gary Wilk determined and stated the following conclusion:

**Conclusion:** Examination of the ATF of the photo copied records did not permit this auditor to fully determine whether the discrepancies continued to exist within the computerized NFRTR database. The materials did not clearly demonstrate that the computer system, typically in use, provides reliable and valid data when a search is performed. ATF did demonstrate that they have the capacity to generate various information from various sources but the original documentation remains missing and the accuracy of the documentation provided cannot be assured.

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At the outset of *Friesen* on Sept. 17, 2008, this Court stated: “the evidence that I exclude . . . is [if] it’s not relevant to this case, or secondly, it’s not reliable evidence.”<sup>103</sup> The conclusion of Treasury IG auditor Gary Wilk constitutes reasonable doubt that computerized NFRTR data are valid and reliable. To the extent any Exhibits introduced by the Government in *Friesen* are based upon computerized NFRTR data, such exhibits may not be “reliable evidence” and should be excluded by this Court as evidence in a criminal trial unless the validity and reliability of the NFRTR data upon which such Exhibits are based can be independently and reliably validated.

In addition to other evidence presented in this motion that NFRTR data are inaccurate, incomplete and, therefore unreliable, there is also valid and reliable evidence that statements by ATF inspectors (including statements of ATF inspectors involved in *Friesen*), which are based on NFRTR data may not be reliable. The reason is that the 2007 “review” of the NFRTR by the Justice IG concluded:

. . . continuing management and technical deficiencies contribute to inaccuracies in the NFRTR database. For example, NFA Branch staff do not process applications or enter

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<sup>102</sup> Work Paper F-52, November 30, 1998, prepared by Gary Wilk, at 1, *available at* [http://www.nfaoa.org/documents/Work\\_Papers\\_F.pdf](http://www.nfaoa.org/documents/Work_Papers_F.pdf).

<sup>103</sup> *United States of America vs. Douglas Larry Friesen* (2008), Vol. 1, at 5.

data into the NFRTR in a consistent manner, which leads to errors in records and inconsistent decisions on NFA weapons applications. In addition, the NFA Branch has a backlog of record discrepancies between the NFRTR and inventories of federal firearms licensees that were identified during ATF compliance inspections. Further, the NFRTR's software programming is flawed and causes technical problems for those working in the database. **The lack of consistency in procedures and the backlog in reconciling discrepancies, combined with the technical issues, result in errors in the records, reports, and queries produced from the NFRTR. These errors affect the NFRTR's reliability as a regulatory tool when it is used during compliance inspections of federal firearms licensees.**<sup>104</sup> [emphasis added]

The Justice IG evaluators did not define the terms "error" or "discrepancy" in the 2007 report, and their "review" did not include determining the extent to which NFRTR data are accurate and complete. The 2007 Justice IG report acknowledges lack of an NFRTR procedures manual and inadequate training of staff.<sup>105</sup> "Supervisors' inadequate training led to variations in their direction and inconsistent decisions about approving or disapproving NFA weapons registration and transfer applications."<sup>106</sup>

**NFRTR data that cannot be independently and reliably validated should be excluded from a criminal trial**

The totality of evidence presented and documented in this motion establishes that federal law enforcement officials, and representatives of the Treasury Department, have willfully engaged in systematic efforts to cover up the fact that the NFRTR contains serious material errors, and that its error rate is currently unknown, among other issues relevant to *Friesen*. The Treasury Department's successor, the Department of Justice, has also declined to consider valid and reliable evidence that the NFRTR is inaccurate, incomplete and, therefore, unreliable.

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<sup>104</sup> June 2007 Justice IG Report at iii, available at <http://www.nfaoa.org/documents/DOJ-OIG2007NFRTRreport.pdf>.

<sup>105</sup> "The NFA Branch does not provide staff with a comprehensive standard operating procedures manual," and NFA Branch staff stated that they did not have adequate written direction on how to enter data such as abbreviations in the NFRTR . . . and who has responsibility for correcting errors in the NFRTR." *Id.* at v.

<sup>106</sup> *Id.* at v-vi.

Attestations or testimonies about NFRTR data by ATF and other Government officials are, as demonstrated in this motion, not worthy of belief.

The totality of the breadth, depth and diversity of reliably documented evidence presented in this motion justifies this Court prohibiting the Government from using any NFRTR data that cannot be independently and reliably validated in prosecuting Doug Friesen in a criminal trial.

Reasonable doubt about the accuracy and completeness of the NFRTR has been reliably established by a variety of documented evidence published by a diverse array of Government entities that include (1) the Executive Branch (Justice IG, Treasury IG, ATF, Audit Services Division of the Treasury Department); (2) the Legislative Branch (Congressional Research Service, the Congress in the *Congressional Record*, Congressional Hearings in 1979 and during 1996 to 2001; and “report language” in reports on appropriations bills; and (3) the Judicial Branch (the sworn testimony of and official documents presented by ATF officials in *Friesen*).

Also regarding the Judicial Branch, in 2007 the Government implied Mr. Larson’s research was not customary or diligent when he was asked by an Assistant United States Attorney during a federal court hearing to confirm that he “ . . . never had personal or direct access to any ATF documents internally? And you’ve never had personal or direct access to the NFRTR?”<sup>107</sup> Because NFRTR data are protected from disclosure under the NFA (26 U.S.C.A. § 5848), and are also considered “tax return” information prohibited from disclosure under the tax code (26 U.S.C.A. § 6103), it was not legally possible for Mr. Larson to obtain “personal or direct access” to the NFRTR and related documents under the NFA; moreover, neither could any other person, with the limited exception discussed below.

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<sup>107</sup> Larson Testimony, *United States of America vs. Dario Giambro* (2007) at 79, available at <http://www.nfaa.org/documents/GiambroMotionInLimine-LarsonTestimony.pdf>.

To any extent ATF may claim that NFRTR documents, data or records of them are protected “tax return” information that cannot be disclosed and decline to provide that information to defense counsel under any Discovery motion, ATF cannot decline to disclose that information to this Court. The reason is that after reviewing pertinent statutes, ATF determined in 1978:

**the return submitted by the transferor. Except for section 6103(o)(1) which authorizes the disclosure of subtitle E (i.e., Chapters 51-53) tax information to Federal employees whose official duties require such information, the only disclosure subsection regarding Chapter 53 returns and return information is section 6103(d) governing disclosure to State tax officials.**

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Since this Court is constituted by a Federal employee “whose official duties require such information,” there is no legal basis for ATF to refuse to disclose “tax return” information if it is relevant and required, including potentially exculpatory evidence under *Brady*. Accordingly, to the extent this Court believes it could be better informed about the accuracy and completeness, and validity and reliability, of NFRTR data by obtaining documents or information that may constitute “tax return” information, Doug Friesen respectfully requests this Court to consider compelling ATF to disclose such information for review by this Court for these proceedings.

### Conclusion

For the reasons set forth above, Defendant requests this Honorable Court grant a hearing on this motion and, thereafter to exclude, under F.R.E. 803(10), any evidence

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<sup>108</sup> Memorandum to Director, ATF, from ATF Chief Counsel regarding Freedom of Information Act Appeal of [redacted] dated August 18, 1980, bearing symbols CC-18,778 RMT, at 14, available at <http://www.nfaa.org/documents/ATFmemoTaxInfo6103.pdf>.

derived from a search of the NFRTR that has not been independently and reliably validated.

Respectfully Submitted.

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Larry Douglas Friesen

#### **CERTIFICATE OF SERVICE**

I hereby certify that on Thursday, March 19, 2009, I electronically transmitted the attached document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants: Mr. Edward J. Kumiega, Assistant United States Attorney.

S/ *Kendall A. Sykes*

## **Exhibit 7**

***( Attorney General Eric Holder held in  
contempt of Congress )***





## POLITICO

### Attorney General Eric Holder held in contempt of Congress

By: **John Bresnahan and Seung Min Kim**  
June 28, 2012 04:43 PM EST

The House has voted to hold Attorney General **Eric Holder** in contempt of Congress over his failure to turn over documents related to the **Fast and Furious** scandal, the first time Congress has taken such a dramatic move against a sitting Cabinet official.

The vote was 255-67, with 17 Democrats voting in support of a criminal contempt resolution, which authorizes Republicans leaders to seek criminal charges against Holder. This Democratic support came despite a round of behind-the-scenes lobbying by senior White House and Justice officials - as well as pressure from party leaders - to support Holder.

Two Republicans, Reps. Steve LaTourette (Ohio) Scott Rigell (Va.), voted against the contempt resolution.

Another civil contempt resolution, giving the green light for the House Oversight and Government Reform Committee to sue the Justice Department to get the Fast and Furious documents, passed by a 258-95 margin. Twenty-one Democrats voted for that measure.

But dozens of other Democrats marched off the floor in protest during the vote, adding even more drama to a tumultuous moment in the House chamber.

The heated House floor fight over Holder capped a historic day in Washington, coming just hours after the Supreme Court, just across the street from the Capitol, issued its landmark ruling upholding most of Barack Obama's health care law. The passions of the day were evident inside the Capitol, where Democrats accused Republicans of ginning up the contempt vote for political purposes while Republicans continued to charge the Justice Department with a cover up on the Fast and Furious scandal.

The fight over the Holder contempt resolution also drew intense interest from outside groups ranging from the NAACP to the National Rifle Association.

In a statement released by his office, Holder blasted the contempt votes as "politically motivated" and "misguided," and he singled out Rep. Darrell Issa (Calif.), chairman of the Oversight and Government Reform Committee and lead Republican on the Fast and Furious probe, for special criticism.

"Today's vote is the regrettable culmination of what became a misguided - and politically motivated - investigation during an election year," Holder said in his statement. "By advancing it over the past year and a half, Congressman Issa and others have focused on politics over public safety. Instead of trying to correct the problems that led to a series of flawed law enforcement operations, and instead of helping us find ways to better protect the brave law enforcement officers, like Agent Brian Terry, who keep us safe - they have led us to this unnecessary and unwarranted outcome."



Holder added: "Today's vote may make for good political theater in the minds of some, but it is – at base – both a crass effort and a grave disservice to the American people. They expect – and deserve – far better."

White House officials also slammed House Republicans for the unprecedented contempt vote. White House Communications Director Dan Pfeiffer said GOP congressional leaders "pushed for political theater rather than legitimate congressional oversight. Over the past fourteen months, the Justice Department accommodated congressional investigators, producing 7,600 pages of documents, and testifying at eleven congressional hearings... But unfortunately, a politically-motivated agenda prevailed and instead of engaging with the President in efforts to create jobs and grow the economy, today we saw the House of Representatives perform a transparently political stunt.

However, Speaker John Boehner (R-Ohio), in a brief interview with POLITICO, blamed Holder for the standoff. Boehner said the Justice Department wanted to turn over some Fast and Furious documents - but not all - if the House agreed to drop the contempt resolution, a deal that neither Boehner nor Issa was prepared to make.

"The idea that we're going to turn over some documents, and whatever we turn over is all you're gonna get and you have to guarantee that you're never going to seek contempt, no deal," Boehner said.

Boehner added that Holder never sought a personal meeting with him to resolve the fight, despite suggestions from some Obama administration officials that Holder asked to do so.

(Also on POLITICO: Report: Holder said no 'BS' on guns)

Issa also said the House had to take such a move in order to get to the bottom of the Fast and Furious scandal.

"Throughout this process, I have reiterated my desire to reach a settlement that would allow us to cancel today's vote," Issa said. "Our purpose has never been to hold the Attorney General in contempt. Our purpose has always been to get the information that the Committee needs to complete its work, and to which it is entitled."

Issa also pointed out that then Speaker Nancy Pelosi (D-Calif.) backed a call for a contempt resolution against the Bush White House over the firing of U.S. attorneys back in 2008, which he raised to counter Democratic charges of partisanship.

The practical, immediate impact of the contempt votes will be minimal. Holder remains as attorney general with strong backing from Obama, and any criminal referral after the contempt vote is unlikely to go far.

In a floor speech before the vote, Boehner stressed that Holder and the Justice Department needed to be held accountable for not providing sufficient answers to Congress about what happened during Fast and Furious.

"Now, I don't take this matter lightly. I frankly hoped it would never come to this," Boehner said. "But no Justice Department is above the law and no Justice Department is above the Constitution, which each of us has sworn to uphold."

(Also on POLITICO: Brown: Eric Holder should resign)

But the GOP-led move infuriated other Democrats, especially minority lawmakers, who see racism and unbridled partisanship in the Republican drive to sanction the first African-American to hold the attorney general post in U.S. history.

The Democratic walkout was led by the Congressional Black Caucus, many of whom gathered outside the Capitol while their GOP colleagues moved against Holder.

Rep. Elijah Cummings (Md.), the top Democrat on the Oversight and Government Reform, charged that Republicans, led by Issa, had been unfairly targeting Holder for months.

"They are finally about to get the prize they have been seeking for more than a year – holding the attorney general of the United States in contempt," Cummings said. "In reality, it is a sad failure. A failure of leadership, a failure of our constitutional obligations and failure of our responsibilities to the American people."

Rep. Gerald Connolly (D-Va.), who serves on the Oversight panel, called the vote "a craven, crass partisan move that brings dishonor to this body."

A procedural motion by Rep. John Dingell (D-Mich.), calling for further investigation before any contempt vote, was defeated by Republicans.

During the floor debate, a group of nine black lawmakers, led by Rep. Sheila Jackson Lee (D-Texas), raised a question of the privileges of the House, accusing Issa of interfering with the investigation and withholding critical information from Democrats. The motion disapproved of Issa for "interfering with ongoing criminal investigations, insisting on a personal attack against the attorney general of the United States and for calling the attorney general of the United States a liar on national television," which "discredit[ed] ... the integrity of the House." The motion was not allowed to proceed.

For his part, Issa insisted that the House must act in order to get to the bottom of what happened in the botched Fast and Furious program.

During this under cover operation, federal agents tracked the sale of roughly 2,000 weapons to straw buyers working for Mexican drug cartels. The sting operation failed, and weapons related to the Fast and Furious program were found at the shooting scene when a Border Patrol agent was killed in Dec. 2010.

Relying on what they said was inaccurate information supplied by the Bureau of Alcohol, Tobacco, Firearms and Explosives - which comes under DOJ - senior Justice officials told lawmakers in Feb. 2011 that no guns were allowed to "walk" to Mexico. That letter was later withdrawn by the Justice Department as inaccurate.

Issa has been investigating what happened during Fast and Furious for 16 months, and he subpoenaed the Justice Department last October. Since that time, his panel has been squabbling over what documents will be turned over. Justice officials note that 7,600 pages of Fast and Furious material has already been given to Issa, but the California Republican has demanded more.

Obama asserted executive privilege on some of the documents Issa is seeking shortly before the Oversight and Government voted on party lines to approve a contempt resolution against Holder.

Despite a face-to-face session between Issa and Holder recently, the two men never reached a compromise to end the standoff.

Since the Justice Department would have to seek an indictment of Holder - a department he oversees as attorney general - no criminal charges will be brought against him. Previous administrations, including the Bush administration in 2008, refused to seek criminal charges against White House officials when a Democratic-run House passed a criminal contempt resolution over the firing of U.S. attorneys.

Boehner's office, though, is expected to submit a criminal referral to the U.S. attorney for the District of Columbia, Ronald Machen, in the next few days, according to a Republican official.

Issa's aides have already begun discussions with the House General Counsel's office over the anticipated lawsuit against DOJ, but it is not clear when that the legal challenge will be filed.

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## **Exhibit 8**

**(Testimony of Gary Schaible)**

CR-10-01047-PHX-ROS(DKD), November 29, 2012

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

United States of America, )  
 )  
Plaintiff, )  
vs. ) CR-10-01047-PHX-ROS(DKD)  
Randolph Benjamin Rodman and Idan )  
C. Greenberg, )  
 )  
Defendants. )  
 ) November 29, 2012  
 ) 8:46 a.m.  
 )

**BEFORE: THE HONORABLE ROSLYN O. SILVER, CHIEF JUDGE**

**REPORTER'S TRANSCRIPT OF PROCEEDINGS**

Jury Trial - Day 3

(Pages 364 through 587)

Official Court Reporter:

**Elaine Cropper, RDR, CRR, CCP**

Sandra Day O'Connor U.S. Courthouse, Suite 312

401 West Washington Street, Spc. 35

Phoenix, Arizona 85003-2151

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Proceedings Reported by Stenographic Court Reporter

Transcript Prepared by Computer-Aided Transcription

United States District Court

CR-10-01047-PHX-ROS (DKD), November 29, 2012

I N D E XTESTIMONY

WITNESS	Direct	Cross	Redirect	Recross
GARY SCHAIBLE	370	388 414	422	443
DANIEL PINCKNEY	444	455 477	482	
KENDRA TATE	486	493 496	504	
JASON FRUSHOUR	511	519		
RALPH FOX	523	532	538	
SCOTT H. COLE	540	550	552	
JOHN BROWN	554			

E X H I B I T S

Number	Ident	Rec'd
3 86-0012729 model 1919 machine gun	542	
5 86-0013454 model 1919 machine gun	524	
19 A6042075 model 1919 machine gun-PICTURE ONLY	558	
23 820101086 model 1919 machine gun	569	
31 820101592 model 1919 machine gun	569	
42 Blue ribbon certification for 86-0012726	385	
48 Blue ribbon certification for A6041868	405	
49 Blue ribbon certification for A6041869	404	
53 Blue ribbon certification for A6042000	406	
54 Blue ribbon certification for A6042001	408	
55 Blue ribbon certification for A6042026	408	

United States District Court



GARY SCHAIBLE - Direct

P R O C E E D I N G S

(Jury enters.)

(Court was called to order by the courtroom deputy.)

(Proceedings begin at 8:46.)

THE COURT: Please be seated.

08:46:25

Good morning. We're ready to go.

All right. Counsel, ready?

MR. VANN: Yes, Your Honor. Gary Schaible.

GARY SCHAIBLE,

called as a witness herein by the Government, having been first  
duly sworn or affirmed to testify to the truth, was examined  
and testified as follows:

08:47:00

COURTROOM DEPUTY: State your name for the record,  
spell your last name, please.

THE WITNESS: My name is Gary Schaible.

08:47:08

S-C-H-A-I-B-L-E.

COURTROOM DEPUTY: Great. Have a seat right up here.

**DIRECT EXAMINATION**

BY MR. VANN:

Q. Good morning, Mr. Schaible.

08:47:42

A. Good morning.

Q. Can you please tell the jury what it is that you do?

A. I'm well, I'm assigned to the firearms and explosives  
division in bureau headquarters of Bureau of Alcohol, Tobacco,  
Firearms & Explosives and most of my time is spent in the NFA

08:47:58

United States District Court



GARY SCHAIBLE - Direct

1 branch, which is part of this division, and I would write  
2 letters, do rule-makings, provide -- well, not technical but  
3 interpretations of the statutory requirements of the National  
4 Firearms Act, occasionally process forms. I'm a custodian of  
5 the record, make sure it's maintained.

08:48:02

08:48:19

6 Q. And how long have you been employed at ATF?

7 A. 40 years.

8 Q. 40 years?

9 A. Yes.

10 Q. And in that 40 years, where was the majority of your time  
11 spent?

08:48:27

12 A. In the National Firearms Act branch.

13 Q. What positions have you held in the National Firearms Act  
14 branch?

15 A. I have been a supervisor coordinator. I have been the  
16 branch chief and a program manager which was retitled to  
17 pre-liaison analyst.

08:48:36

18 Q. All right. Now, before we get into the details of your  
19 job and of some the things related to this case, do you know  
20 either of the defendants sitting here today?

08:48:57

21 A. I know Mr. Rodman.

22 Q. You do know Mr. Rodman?

23 A. Yes.

24 Q. Please explain your relationship with Mr. Rodman to the  
25 jury.

08:49:09

United States District Court

GARY SCHAIBLE - Cross

1 A. Yes.

09:38:48

2 Q. Oh. Okay. I am mistaken. The memo that -- the letter  
3 that you wrote or the referral that you wrote indicated that  
4 one of the guns was in the possession of a licensed SOT in  
5 Virginia, John Brown?

09:39:04

6 A. That I believe is correct as far as the referral memo we  
7 sent to the field, yes.

8 Q. Correct. And the basis of that referral memo was the  
9 information that you received; right? And that's what I'm  
10 asking about.

09:39:19

11 A. Well, again, it started with what was on the Internet.

12 Q. Yes.

13 A. But we didn't receive any other information.

14 Q. But you wrote a letter with that fact in it when you wrote  
15 the letter to --

09:39:36

16 A. Right. I'm sorry. I interrupted you there. I'm sorry.

17 Q. Pardon?

18 A. I interrupted there. I'm sorry.

19 Q. The memo that you wrote, you personally wrote a memo for  
20 the signature of the Deputy Assistant Director to Phoenix;  
21 correct?

09:39:53

22 A. Correct.

23 Q. And in that letter, you stated that a licensed SOT in  
24 Virginia was in possession of one of the Clark firearms, did  
25 you not?

09:40:14

United States District Court

GARY SCHAIBLE - Cross

1 A. That was part of the information, correct.

09:40:15

2 Q. Okay. Well, that's what I asked about.

3 A. Okay.

4 Q. Now, Virginia is in the jurisdiction of the special agents  
5 in the Falls Church office; correct?

09:40:26

6 A. Correct.

7 Q. And did you make a referral to that office?

8 A. No.

9 Q. Do you know if anyone did?

10 A. I would have to guess yes but I don't know.

09:40:38

11 Q. Well, you do know that you were involved in the  
12 abandonment of one of the firearms in November; correct?

13 A. Yes. I'm not sure of the date exactly you're referring  
14 to. You're referring to November 2006.

15 Q. Correct. But you have personal recollection of that?

09:40:58

16 A. Yes. I was there.

17 Q. And you were present when a special agent from the Falls  
18 Church office accepted abandonment of one machine gun,  
19 A6042075; correct?

20 A. I don't know the number but I was there for the  
21 abandonment.

09:41:16

22 Q. Right. And who else was there, if you recall?

23 A. I know the agent was there, Doug Quartetti, someone from  
24 Firearms Tech. I'm not quite sure who.

25 Q. The agent, Doug Quartetti, where was he assigned?

09:41:33

United States District Court

## GARY SCHAIBLE - Cross

1 A. Falls Church.

09:41:37

2 Q. All right. And do you have any knowledge of how he became  
3 involved in the investigation?

4 A. No.

5 Q. Now, moving on to another subject, I'm going to go through  
6 a number of the certificates, Mr. Schaible, and I'll move as  
7 fast as I can. There's a lot of them there.

09:41:51

8 Let's take number 60. Do you have that?

9 A. Yes.

10 Q. Just a cursory review. You've seen what that is?

09:42:37

11 A. Yes.

12 Q. And what do you call that in the jargon of ATF, blue  
13 ribbon certificate?

14 A. A blue ribbon certificate, yes.

15 Q. That's a common name.

09:42:49

16 A. Yes.

17 Q. Would you explain to the members of the jury what a blue  
18 ribbon certificate is?

19 A. This is where someone in the NFA branch would do a search  
20 of the registry, the National Firearms Registration Transfer  
21 Record, and report the results where they would, you know, say  
22 that after a diligent search of the record, this is what I  
23 found or didn't find, would sign off on it. It would go, then,  
24 to the branch chief who would sign off on the blue cover sheet  
25 saying that they basically recognize the specialist's signature

09:43:01

09:43:24

United States District Court

GARY SCHAIBLE - Cross

1 in this case.

09:43:28

2 Q. In a few sentences, that is a certificate that everything  
3 within that packet is what's in the official record, the NFRTR;  
4 right?

5 A. Correct.

09:43:47

6 Q. Okay now, if you'll go to the first few pages, there is  
7 something called a screen shot.

8 A. Right.

9 Q. And would you describe what that is?

10 A. For each firearm in the registry, we maintain basically a  
11 transaction history starting with the first registration and  
12 basically moving up. So whoever it's registered to at the  
13 current time would appear on the top of the list and we do some  
14 color coding in there, that if it's a magenta color, as far as  
15 the database goes, that identifies the current registrant.

09:44:01

09:44:23

16 Q. And you -- in the top there, the serial number of the  
17 machine gun is described.

18 A. Correct.

19 Q. And the descriptive data, the manufacturer, the type of  
20 firearm, the model, the caliber, the barrel length and the  
21 overall length are all described on the top line; correct?

09:44:43

22 A. Correct.

23 Q. And that is the same information that appears on the Forms  
24 3 and Forms 4?

25 A. Right.

09:45:03

United States District Court

GARY SCHAIBLE - Cross

1 Q. Those are the six items of information; correct? 09:45:03

2 A. Correct.

3 Q. So that when -- this is a snapshot of the computer as it  
4 exists on the date that is in the upper right-hand corner?

5 A. I don't have a date in the upper right-hand corner. 09:45:23

6 Q. On the screen shot, you don't have a date and time?

7 A. No, not on the screen shot, no.

8 Q. All right. But since it's in the blue ribbon certificate,  
9 that date would be the effective date that this thing was  
10 prepared. This is a shot of the computer as it appeared on 09:45:50  
11 that date?

12 A. Correct.

13 Q. Now, if you'll look at -- do you have number 60?

14 A. Yes.

15 Q. The description is manufacturer, MIX; type; model. That's 09:46:03  
16 that. And the caliber is 9 millimeter. The barrel length is  
17 five seven five, 5.75 inches?

18 A. M'hum.

19 Q. And the overall length of the barrel is 11 inches;  
20 correct? 09:46:31

21 A. Correct.

22 Q. Now, if you would move down the forms to the form that  
23 went from Clark to my client, Mr. Rodman, for this machine gun.

24 A. Okay.

25 Q. How is the caliber barrel length and overall length -- 09:46:58

United States District Court

GARY SCHAIBLE - Cross

1 what appears on the form?

09:47:05

2 A. On the form it shows .30 caliber. The barrel length of 24  
3 and an overall length of 41.

4 Q. So each of those in the screen shot, the actual database  
5 is inaccurate; correct?

09:47:21

6 A. They differ, correct.

7 Q. Right.

8 And when the -- the person that approved it at that  
9 time, the examiner, the people that work for you are supposed  
10 to correct the record in the NFRTR to conform to the form if  
11 it's approved; right?

09:47:37

12 A. If what was shown on the form is correct, then yes.

13 Q. Well, if it's approved, that's what was approved; right?

14 A. That's what was approved. Whether it was picked up as an  
15 error is a different matter.

09:48:04

16 Q. Is it signed as approved?

17 A. Yes.

18 Q. So that the person who received this form received a form  
19 that is different than the description in the database?

20 A. Correct.

09:48:21

21 Q. Okay. And now if you'll move to the number 64. Do you  
22 have 64?

23 A. Yes.

24 Q. Would you read the description on the screen shot, just  
25 the caliber, barrel length, overall length?

09:49:02

United States District Court



GARY SCHAIBLE - Cross

1 A. Caliber, .45; barrel length 6.25; overall length, 11. 09:49:05

2 Q. And now on the Form 3 that came from Clark to Mr. Rodman,  
3 for that machine gun.

4 A. This is from Clark to Mr. Rodman you said?

5 Q. Yes. Caliber, barrel length, overall length. 09:49:35

6 A. Okay. It shows .30 caliber; barrel length of 24; overall  
7 length of 41.

8 Q. The variants in barrel length and overall length of three  
9 feet approximately; correct?

10 A. Yes. The overall length of 41. 09:50:03

11 Q. And once again, whoever approved that was supposed to  
12 change the description in the database and did not; correct?

13 A. Correct. If they subpoenaed that, there was something  
14 that we should look into.

15 Q. It would be something to look into. What was the date 09:50:26  
16 that it was approved?

17 A. September 21, 2000.

18 Q. And in 12 years nobody looked into it; correct?

19 A. As far as I know.

20 Q. Okay. Number 58. I think that was the one you had. 57, 09:50:40  
21 I'm sorry.

22 A. I have 64. Number 57.

23 Q. 57, yes.

24 A. Okay.

25 Q. And to save a little time, would the same discrepancies 09:51:03

United States District Court

GARY SCHAIBLE - Cross

1 appear in that one? For instance, what is the serial number? 09:51:09

2 A. A6042028.

3 Q. And what does the screen shot, the actual computer, say?

4 A. 9 millimeter, 5.75 barrel length, 11-inch overall length.

5 Q. Okay. So the same discrepancies appear in that one. 09:51:32

6 A. I am getting there. Yes. The form shows .30 caliber, a  
7 barrel length of 22 inches and an overall length of 49.

8 Q. So that this, the computer, is inaccurate as far as this  
9 machine gun is concerned as of today, as of the date of the  
10 blue ribbon certificate? 09:52:17

11 A. Again, they differ. The descriptions, yes.

12 Q. And the person that has the -- that it's registered to has  
13 a different gun than the one that's described in the database;  
14 correct?

15 A. Different caliber, barrel length, and overall length, yes. 09:52:35

16 Q. And the next one is 56. To save a little time, if you  
17 could view the same data, compare the screen shot with the  
18 transfer itself and tell me if the screen shot is accurate,  
19 whether the computer is accurate.

20 A. And this would be for the transfer from Mr. Clark to 09:53:13  
21 Mr. Rodman?

22 Q. Yes. This is serial number -- what?

23 A. A6042027 and, yes, our database shows 9 millimeter with a  
24 5.75 barrel length and an 11-inch overall length. The form  
25 shows .30 caliber with a 22-inch barrel length and a 49-inch 09:53:34

United States District Court

GARY SCHAIBLE - Cross

1 overall length.

09:53:39

2 Q. A different description; correct?

3 A. Correct.

4 Q. Inaccurate?

5 A. I'm sorry?

09:53:43

6 Q. Inaccurate. The database is inaccurate?

7 A. Or the form is inaccurate.

8 Q. Well, the form is approved.

9 A. Yes.

10 Q. So the database shows a different description than what's  
11 in the database?

09:53:51

12 A. And, again, should this have been picked up on? Maybe so.

13 Q. When was that approved, that form?

14 A. June 1, 2002.

15 Q. Two thousand and . . . ?

09:54:12

16 A. Two.

17 Q. So in 10 years nobody has picked that up?

18 A. Correct.

19 Q. Now, the next one is number 49, Mr. Schaible, the number?

20 A. A6041869.

09:54:42

21 Q. And the description on the form transferring it to  
22 Mr. Rodman?

23 A. On the form it shows .30 caliber, barrel length of 24,  
24 overall length of 41.

25 Q. So the database is inaccurate on this firearm?

09:55:16

United States District Court

GARY SCHAIBLE - Cross

1 A. Again, they differ. The database shows .45, 5.75, and 11. 09:55:20

2 Q. And what's the date of the transfer?

3 A. February 21, 2001.

4 Q. So that hadn't been picked up in 11 years?

5 A. Correct. 09:55:36

6 Q. And the next one is number 48.

7 A. Okay.

8 Q. Serial number?

9 A. A6041868.

10 Q. The description in the screen shot, the database? 09:56:12

11 A. Shows .45 caliber, 5.75 barrel and 11 overall.

12 Q. And the form transferring it from Clark to my client?

13 A. .30 caliber, 24-inch barrel length, 41-inch overall.

14 Q. Okay. The computer, once again, is inaccurate?

15 A. It's different. 09:56:37

16 Q. And the next one is number 69.

17 A. Okay.

18 Q. Serial number?

19 A. 820101457.

20 Q. And description? 09:57:10

21 A. In the database, it's a .45 caliber, the barrel length of  
22 6.25 and overall length of 11.

23 Q. And the form transferring it from Clark to Mr. Rodman?

24 A. Shows a caliber of .30, a barrel length of 22, and an  
25 overall of 36. 09:57:27

United States District Court

GARY SCHAIBLE - Cross

1 Q. Okay. And the date of the transfer?

09:57:28

2 A. February 20, 2008.

3 Q. Okay. So the database is inaccurate for that machine  
4 gun?

5 A. Different.

09:57:46

6 Q. And the final one for Mr. Rodman is number 68.

7 A. Okay.

8 Q. The serial number?

9 A. 820101546.

10 Q. And the description in the database?

09:58:27

11 A. .45 caliber, 6.25 barrel length, 11-inch overall.

12 Q. All right. And what is the description of that machine  
13 gun on the transfer form from Clark to my client?

14 A. It is .30 caliber, 22-inch barrel length, and 36-inch  
15 overall.

09:58:48

16 Q. Okay. And the date of that transfer is the same as the  
17 other; right?

18 A. I don't remember what the other one is. February 20,  
19 2008.

20 Q. February 20, correct. And the database is inaccurate once  
21 more. That is a different machine gun?

09:58:57

22 A. Shows a difference in description, yes.

23 Q. We're nearing the end. I'm sure you'll be happy to hear  
24 that.

25 The next one is number 53.

09:59:13

United States District Court

GARY SCHAIBLE - Cross

1 A. Okay.

09:59:37

2 Q. This is a serial number -- what is the serial number?

3 A. A6042000.

4 Q. And the description of the machine gun as it appears in  
5 the database?

09:59:55

6 A. .45 caliber, 5.5 -- I'm sorry, 5.75 barrel length, 11-inch  
7 overall.

8 Q. And the transfer form from Clark to -- who was the  
9 transferee on that one?

10 A. I'm sorry. Could you ask me that again?

10:00:15

11 Q. The Form 3 transferring it from Clark, who is the  
12 transferee?

13 A. From Mr. Clark, I show a transfer to Mr. Clark but  
14 nothing --

15 Q. It was never transferred?

10:00:58

16 A. -- nothing transferred from Mr. Clark.

17 Q. What is the description of the machine gun that was  
18 transferred to Mr. Clark?

19 A. Okay. It's not shown as a machine gun.

20 Q. It's not a --

10:01:10

21 A. It's shown as an any other weapon.

22 Q. Oh. Okay. And does the description match?

23 A. No.

24 Q. Okay. So that one is inaccurate?

25 A. Descriptions differ between a form and a database, yes.

10:01:25

United States District Court

GARY SCHAIBLE ~ Cross

1 Q. The database does not match the description of the 10:01:30  
2 registration form?

3 A. Right.

4 Q. Number 54, what's the serial number of that one?

5 A. I'm sorry, 54 or 64. 10:01:45

6 Q. 54. Five four.

7 A. Okay. That's A6042001.

8 Q. All right. And what is the -- how is that described in  
9 the computer?

10 A. .45 caliber, 5.75 barrel length, 11 overall. 10:02:21

11 Q. And how is that same machine gun described on the form  
12 transferring it from Mr. Clark to a Richard Simpson?

13 A. Okay. It is shown as a .30 caliber with a barrel length  
14 of 24 inches and an overall length of 40.

15 Q. And what's the date of that transfer? 10:02:50

16 A. October 2, 2003.

17 Q. All right. And so that one is inaccurate. The computer  
18 has an inaccurate description.

19 A. It has a different description, yes.

20 Q. Okay. Number 55. 10:03:05

21 A. Okay.

22 Q. What serial number is that?

23 A. It is A6042026.

24 Q. And the description in the computer, in the NFRTR?

25 A. Shows 9 millimeter, 5.75 barrel length, and an 11-inch 10:03:40

United States District Court



GARY SCHAIBLE - Cross

1 overall length.

10:03:46

2 Q. Now, that machine gun or machine gun with that serial  
3 number was transferred from Clark to Richard Simpson. Do you  
4 have the Form 3 there -- Form 4, I'm sorry.

5 A. Yes, sir.

10:04:00

6 Q. And how is that machine gun described there?

7 A. .30 caliber, 23-inch barrel, 45-inch overall.

8 Q. And so the -- once again, the database is inaccurate?

9 A. It is different, yes.

10 Q. Is it accurate?

10:04:20

11 A. Well, the 9 millimeter, 5.75, and 11 were what was  
12 reported upon manufacture I would believe?

13 Q. That would be on the Form 2 from the date of birth.  
14 Sometime before '86?

15 A. Right.

10:04:37

16 Q. Okay. And it had been transferred a number of times after  
17 that?

18 A. Yes, it has.

19 Q. And anytime the description changes and is approved, the  
20 database must be corrected; correct?

10:04:50

21 A. If the examiner picks up on it and sees a difference, yes.

22 Q. That's what the examiner is supposed to do?

23 A. Correct.

24 Q. All right.

25 Now, the next one is number 59.

10:05:05

United States District Court

GARY SCHAIBLE - Cross

1 A. Okay. 10:05:27

2 Q. What is the serial number of that, Mr. Schaible?

3 A. A6042030.

4 Q. All right. And what does the computer say is the

5 description of that machine gun? 10:05:40

6 A. 9 millimeter, 5.75 inch barrel, 11 overall.

7 Q. All right. And that machine gun or machine gun with that

8 serial number was transferred from Mr. Clark to Richard

9 Simpson, correct, on the Form 4?

10 A. Correct. 10:05:57

11 Q. And what is the date of that transfer?

12 A. March 24, 2003.

13 Q. All right. And how is that machine gun described on the

14 form?

15 A. .45 caliber, 10-inch barrel, 33-inch overall. 10:06:07

16 Q. Correct. Once again, the database is inaccurate.

17 A. It is different, yes, sir.

18 Q. The next-to-the-last one is number 63.

19 A. Okay.

20 Q. Serial number is what? 10:06:51

21 A. A6044921 (sic).

22 Q. And what's the description of that machine gun in the

23 database?

24 A. It's a .45 caliber, 5.75 barrel, and 11-inch overall.

25 Q. And that machine gun was transferred on a Form 4 from 10:07:11

United States District Court

GARY SCHAIBLE - Cross

1 Clark to Richard Simpson on what date?

10:07:16

2 A. October 2, 2003.

3 Q. And what is the description?

4 A. On the form that --

5 Q. On the form.

10:07:33

6 A. It shows .30 caliber, 19-inch barrel, 41-inch overall.

7 Q. And so, once again, we have an inaccurate description in  
8 the database.

9 A. A different one, yes, sir.

10 Q. Okay. And the final one is serial number -- or number 71,  
11 Exhibit 71.

10:07:50

12 A. Okay.

13 Q. What's the serial number on that one?

14 A. It is 820101589.

15 Q. And the description in the database?

10:08:29

16 A. .45 caliber, 11-inch barrel, 6.25 overall.

17 Q. And that machine gun was transferred from Clark to a  
18 Richard Simpson on what date on the Form 3 -- Form 4, I'm  
19 sorry.

20 A. March 22, 2005.

10:08:52

21 Q. And the description?

22 A. .30 caliber, 21.5-inch barrel, 49.5-inch overall.

23 Q. So that, once again, the database is inaccurate?

24 A. Yes, sir, there's a difference between the descriptions.

25 Q. All right. And the certificate that we talked about, the

10:09:15

United States District Court

## GARY SCHAIBLE - Cross

1 blue ribbon certificate, that form is used in criminal cases  
2 all over the country to prove the registration of -- the  
3 registration or non-registration of a machine gun; correct?

10:09:22

4 A. It would be the certified results of a search of the  
5 database, yes.

10:09:41

6 Q. In other words, that's evidence that that -- that unless  
7 the machine gun in question matches the description in the  
8 database, that firearm would be declared nonregistered; right?

9 A. Could you ask me that one again? I'm sorry.

10 Q. Yes. The blue ribbon certificate is evidence, provides  
11 evidence in criminal cases all over the country all the time of  
12 the registration, non-registration of a machine gun; correct?

10:10:07

13 A. Correct.

14 Q. And if it does not match the description in the database,  
15 it's declared nonregistered; right?

10:10:28

16 A. Well, in this case, the certificate says I certified that  
17 the following firearm is registered to Richard Alan Simpson and  
18 it gives that machine gun.

19 Q. They certified to the truth of the matter; correct?

20 A. Certified that it's registered to Mr. Simpson.

10:10:45

21 Q. Now, in view of this sampling that we've just gone  
22 through, would you be surprised to learn that all 34 of the  
23 firearms that Mr. Clark transferred, the database is  
24 inaccurate? Would that surprise you?

25 A. Well, again, I would say there's differences in what the

10:11:08

United States District Court

GARY SCHAIBLE - Cross

1 description is.

10:11:12

2 Q. Well, a difference in a description would be inaccurate,  
3 wouldn't it?

4 A. And the form is part of that process. If the form is  
5 inaccurate -- we're relying on what's submitted on the form to  
6 transfer these firearms. And the form is being filed by  
7 someone who says under the penalties of perjury, I declare that  
8 I've examined this application to the best of my knowledge and  
9 believe that it is true, correct, and complete. So somewhere  
10 along the line if a description changed, someone was saying  
11 under penalties of perjury that, you know, this is the  
12 description.

10:11:23

10:11:44

13 Q. Well, do you have any basis to believe that he did not  
14 describe the caliber and the barrel length and the overall  
15 length accurately on the form?

10:12:03

16 A. When you say "he," who do you mean?

17 Q. Oh. The transferor, Clark. Clark was the transferor in  
18 each one of those.

19 A. Well, he's filing it under penalties of perjury.

20 Q. In fact, you've had them in custody since 2008  
21 approximately. Has anyone told you that any of those  
22 descriptions were inaccurate?

10:12:21

23 A. No.

24 MR. SANDERS: I have no further questions, Your  
25 Honor.

10:12:36

United States District Court

GARY SCHAIBLE - Cross

1 THE COURT: Cross? Mr. Tate.

10:12:37

2 CROSS - EXAMINATION

3 BY MR. TATE:

4 Q. Good morning, Mr. Schaible. How are you, sir?

5 A. My voice is going.

10:12:54

6 Q. I understand.

7 Mr. Schaible, you've been with ATF in various jobs  
8 for about 40 years; correct?

9 A. Correct.

10 Q. And in that time, let's focus first on a period of time  
11 about 2006; okay? Let's focus on that period of time. What  
12 was your job in 2006?

10:13:10

13 A. It would have been -- I forget when my title changed but  
14 my title was either program manager or industry liaison for the  
15 NFA branch.

10:13:33

16 Q. Okay. And at that time, sometime during that period,  
17 let's see if we can put some kind of timeline, although I know  
18 that's about six years ago. You became aware of the Fickaretta  
19 memo; correct? Would that be fair to say?

20 A. I'm sorry, what memo is that?

10:13:50

21 Q. The memo from Theresa Fickaretta? You're not aware of the  
22 Theresa Fickaretta memo?

23 A. I have no idea which one you're referring to.

24 Q. Okay. All right. That's okay. You just told me no.

25 And at that time in 2006, you were made aware of by


10:14:02

United States District Court

## **Exhibit 9**

**( *Feinstein: Congress Shouldn't Pass the Buck  
on Bump-Fire Stocks* )**



United States Senator for California 

# DIANNE FEINSTEIN

## PRESS RELEASES

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### Feinstein: Congress Shouldn't Pass the Buck on Bump-Fire Stocks

Oct 11 2017

*Washington*—In response to comments by Speaker Paul Ryan (R-Wis.) saying that the Bureau of Alcohol, Tobacco and Firearms should address bump-fire stocks, Ranking Member of the Senate Judiciary Committee Dianne Feinstein (D-Calif.) today released the following statement:

“The ATF lacks authority under the law to ban bump-fire stocks. Period. The agency made this crystal clear in a 2013 letter to Congress, writing that ‘stocks of this type are not subject to the provisions of federal firearms statutes.’ Legislation is the only answer and Congress shouldn’t attempt to pass the buck.”

###

EN ESPAÑOL    

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**Exhibit 10**  
**(ATF Determinations)**



Bureau of Alcohol, Tobacco,  
Firearms and Explosives

Martinsburg, West Virginia 25405

www.atf.gov

JUN 07 2010

903050:MMK  
3311/2010-434

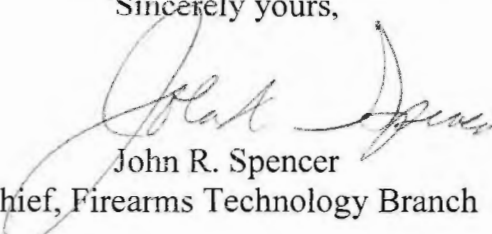
This is in reference to your submission and accompanying letter to the Firearms Technology Branch (FTB), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), asking for an evaluation of a replacement shoulder stock for an AR-15 type rifle. Your letter advises that the stock (referenced in this reply as a "bump-stock") is intended to assist persons whose hands have limited mobility to "bump-fire" an AR-15 type rifle. Your submission includes the following: a block to replace the pistol grip while providing retention for the selector stop spring; a hollow shoulder stock intended to be installed over the rear of an AR-15 fitting with a sliding-stock type buffer-tube assembly; and a set of assembly instructions.

The FTB evaluation confirmed that the submitted stock (see enclosed photos) does attach to the rear of an AR-15 type rifle which has been fitted with a sliding shoulder-stock type buffer-tube assembly. The stock has no automatically functioning mechanical parts or springs and performs no automatic mechanical function when installed. In order to use the installed device, the shooter must apply constant forward pressure with the non-shooting hand and constant rearward pressure with the shooting hand. Accordingly, we find that the "bump-stock" is a firearm part and is not regulated as a firearm under Gun Control Act or the National Firearms Act.

Per your telephoned instructions, we will contact you separately to make return delivery arrangements.

We thank you for your inquiry and trust that the foregoing has been responsive.

Sincerely yours,

  
John R. Spencer  
Chief, Firearms Technology Branch

Enclosure





## U.S. Department of Justice

Bureau of Alcohol, Tobacco,  
Firearms and Explosives

Martinsburg, West Virginia 25405

www.atf.gov

903050:MRC  
3311/2012-196

APR 02 2012

This is in reference to your correspondence to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Firearms Technology Branch (FTB), requesting FTB to evaluate an accompanying stock and determine if its design would violate any Federal statutes.

As background information, the National Firearms Act (NFA), 26 U.S.C. Section 5845(b), defines "**machinegun**" as—

*"...any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, **any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person.**"*

The FTB evaluation confirmed that you have submitted a plastic shoulder stock designed to function on an AR-15 type rifle (see enclosed photos). For your stock to function in the manner intended, it has to be attached to an AR-15 type platform that is assembled with a collapsible-stock receiver extension. Along with the shoulder stock, you have submitted what you have identified as a "receiver module." This module is a plastic block approximately 1-5/16 inches high, about 1-3/8 inches long, and approximately 7/8-inch wide. Additionally, there are two extensions, one on each side, that are designed to travel in the two slots configured on the shoulder stock. The receiver module replaces the AR-15 pistol grip.

Further, the submitted custom shoulder stock incorporates a pistol grip. This grip section has a cavity for the receiver module to move forward and backward. Additionally, two slots have been cut for the receiver module extensions to travel in. The upper section of the shoulder stock is designed to encapsulate the collapsible receiver extension. Further, the custom stock is



-2-

designed with a "lock pin." When the handle on the lock pin is facing in the 3- to 9-o'clock positions, the stock is fixed and will not move; and when the handle on the lock pin is facing in the 12- to 6-o'clock positions, the stock is movable.

The FTB live-fire testing of the submitted device indicates that if, as a shot is fired, an intermediate amount of pressure is applied to the fore-end with the support hand, the shoulder stock device will recoil sufficiently rearward to allow the trigger to mechanically reset. Continued intermediate pressure applied to the fore-end will then push the receiver assembly forward until the trigger re-contacts the shooter's stationary firing hand finger, allowing a subsequent shot to be fired. In this manner, the shooter pulls the firearm forward to fire each shot, the firing of each shot being accomplished by a single trigger function. Further, each subsequent shot depends on the shooter applying the appropriate amount of forward pressure to the fore-end and timing it to contact the trigger finger on the firing hand, while maintaining constant pressure on the trigger itself.

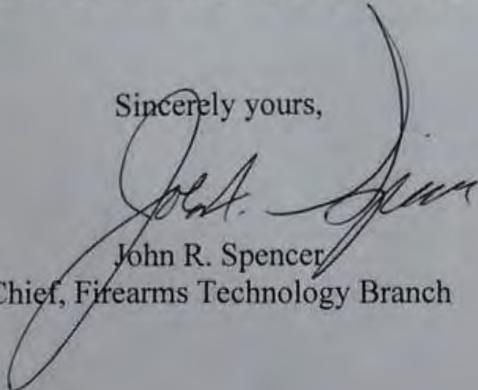
Since your device is incapable of initiating an automatic firing cycle that continues until either the finger is released or the ammunition supply is exhausted, FTB finds that it is not a machinegun as defined under the NFA, 26 U.S.C. 5845(b), or the Gun Control Act, 18 U.S.C. 921(a)(23).

Please be advised that our findings are based on the item as submitted. Any changes to its design features or characteristics will void this classification. Further, we caution that the addition of an accelerator spring or any other non-manual source of energy which allows this device to operate automatically as described will result in the manufacture of a machinegun as defined in the NFA, 5845(b).

To facilitate the return of your sample, to include the module, please provide FTB with the appropriate FedEx or similar account information within 60 days of receipt of this letter. If their return is not necessary, please fax FTB at 304-616-4301 with authorization to destroy them on your behalf.

We thank you for your inquiry and trust the foregoing has been responsive to your evaluation request.

Sincerely yours,



John R. Spencer  
Chief, Firearms Technology Branch

Enclosure



Bureau of Alcohol, Tobacco,  
Firearms and Explosives

*Assistant Director*

Washington, DC 20226  
www.atf.gov

APR 16 2013

The Honorable Ed Perlmutter  
U.S. House of Representatives  
Washington, DC 20515

Dear Congressman Perlmutter:

This is in response to your letter dated March 5, 2013, to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to rescind a previous evaluation letter and to classify all bump-fire stocks (to include specifically the Slide Fire Solutions stock) as machineguns.

As you have indicated, machineguns are defined in the National Firearms Title Act, 26 United States Code Chapter 53 Section 5845(b). The definition has four distinct parts. The first, as you point out, states that a machinegun is “any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a *single function of the trigger*.” The remaining portions of the definition go on to state that: “[t]he term shall also include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts *designed and intended, for use in converting a weapon into a machinegun*, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person.”

In the course of examining a number of bump-fire stocks, ATF found that none of these devices could shoot nor did they constitute firearm frames or receivers; therefore, the first portion of the machinegun definition can not apply. Those bump-fire stocks which were found to convert a weapon to shoot automatically were classified as machineguns and regulated accordingly—most notably, the Akins Accelerator. Other bump-fire stocks (such as the SlideFire Solutions stock) that ATF determined to be unable to convert a weapon to shoot automatically were not classified as machineguns.

Reviewing findings with respect to the Akins and Slide Solutions, ATF, in Ruling 2006-2, found that the Akins Accelerator incorporated a mechanism to automatically reset and activate the fire-control components of a firearm following the single input of a user. Thus, the Akins Accelerator acted to convert a semiautomatic firearm to shoot automatically. Conversely, the Slide Fire Solutions stock requires continuous multiple inputs by the user for each successive

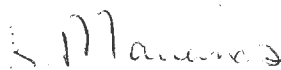
The Honorable Ed Perlmutter

shot. Similarly, other devices exist, such as the HellFire Trigger, which attach to and act upon the trigger of a firearm and also work to increase the rate or volume of fire of the firearm. Like the Slide Fire Solutions stock, the HellFire Trigger does not provide an automatic action—requiring instead continuous multiple inputs by the user for each successive shot.

Public safety is always a primary concern of ATF. We remain committed to the security of our Nation and the fight against violent crime. However, bump-fire stocks that do not fall within any of the classifications for firearm contained in Federal law may only be classified as firearms components. Stocks of this type are not subject to the provisions of Federal firearms statutes. Therefore, ATF does not have the authority to restrict their lawful possession, use, or transfer.

We hope this information proves helpful in responding to your constituent. Please let me know if we may be of further assistance.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "R. Marianos".

Richard W. Marianos  
Assistant Director  
Public and Governmental Affairs



## **Exhibit 11**

***( Rapid manual trigger manipulation  
(Rubber Band Assisted) )***

## **Exhibit 12**

**( *AK-47 75 round drum Bumpfire!!!* )**

## **Exhibit 13**

*( Bump Fire' without a bump-fire stock, courtesy of  
ThatGunGuy45 )*

## **Exhibit 14**

*( How to bumpfire without bumpfire stock )*

## **Exhibit 15**

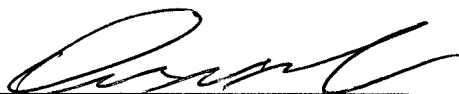
**(Declaration of Damien Guedes)**

**VERIFIED DECLARATION OF DAMIEN GUEDES**

I, Damien Guedes, am competent to state and declare the following based on my personal knowledge:

1. I am a resident of Whitehall Pennsylvania.
2. In 2014, I became interested in a bump stock device.
3. Prior to purchasing a Bump Fire Systems bump stock device, as I wanted to ensure the legality of the device, I went on Bump Fire Systems' website – [www.bumpfiresystems.com](http://www.bumpfiresystems.com) - to determine if the Bureau of Alcohol, Tobacco, Firearms and Explosives had approved the device.
4. Bump Fire Systems' website stated that it had obtained approval from ATF and provided me with a copy of ATF's April 2, 2012 determination letter. A copy of the letter is attached as Exhibit 1.
5. In reliance on ATF's determination letter of April 2, 2012, I purchased a Bump Fire Systems bump stock device at a cost of \$99.99, plus \$6.00 shipping, which I still own today. A redacted copy of the receipt is attached as Exhibit 2.
6. It is my understanding, based upon ATF's notice of proposed rulemaking – RIN 1140-AA52, Fed. Reg. No. 2018-06292 – that ATF intends to reclassify bump stock devices as machine guns in violation of Article 1, Section 9 of the United States Constitution (*i.e.* Ex Post Fact clause) and to require me to surrender or otherwise destroy my Bump Fire Systems bump stock device in the absence of any compensation, in violation of the Fifth Amendment to the United States Constitution.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge and belief. Executed on April 9, 2018.

  
\_\_\_\_\_  
Damien Guedes



# **Exhibit 1**



U.S. Department of Justice

Bureau of Alcohol, Tobacco,  
Firearms and Explosives

Martinsburg West Virginia 25405

www.atf.gov

903050:MRC  
3311/2012-196

APR 02 2012

This is in reference to your correspondence to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Firearms Technology Branch (FTB), requesting FTB to evaluate an accompanying stock and determine if its design would violate any Federal statutes.

As background information, the National Firearms Act (NFA), 26 U.S.C. Section 5845(b), defines "machinegun" as—

*"...any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, **any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person.**"*

The FTB evaluation confirmed that you have submitted a plastic shoulder stock designed to function on an AR-15 type rifle (see enclosed photos). For your stock to function in the manner intended, it has to be attached to an AR-15 type platform that is assembled with a collapsible-stock receiver extension. Along with the shoulder stock, you have submitted what you have identified as a "receiver module." This module is a plastic block approximately 1-5/16 inches high, about 1-3/8 inches long, and approximately 7/8-inch wide. Additionally, there are two extensions, one on each side, that are designed to travel in the two slots configured on the shoulder stock. The receiver module replaces the AR-15 pistol grip.

Further, the submitted custom shoulder stock incorporates a pistol grip. This grip section has a cavity for the receiver module to move forward and backward. Additionally, two slots have been cut for the receiver module extensions to travel in. The upper section of the shoulder stock is designed to encapsulate the collapsible receiver extension. Further, the custom stock is

-2-

designed with a "lock pin." When the handle on the lock pin is facing in the 3- to 9-o'clock positions, the stock is fixed and will not move; and when the handle on the lock pin is facing in the 12- to 6-o'clock positions, the stock is movable.

The FTB live-fire testing of the submitted device indicates that if, as a shot is fired, an intermediate amount of pressure is applied to the fore-end with the support hand, the shoulder stock device will recoil sufficiently rearward to allow the trigger to mechanically reset. Continued intermediate pressure applied to the fore-end will then push the receiver assembly forward until the trigger re-contacts the shooter's stationary firing hand finger, allowing a subsequent shot to be fired. In this manner, the shooter pulls the firearm forward to fire each shot, the firing of each shot being accomplished by a single trigger function. Further, each subsequent shot depends on the shooter applying the appropriate amount of forward pressure to the fore-end and timing it to contact the trigger finger on the firing hand, while maintaining constant pressure on the trigger itself.

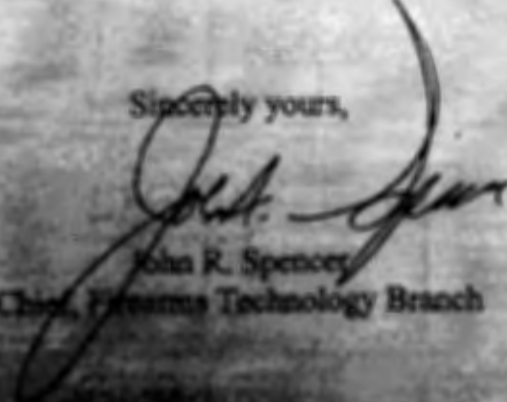
Since your device is incapable of initiating an automatic firing cycle that continues until either the finger is released or the ammunition supply is exhausted, FTB finds that it is not a machinegun as defined under the NFA, 26 U.S.C. 5845(b), or the Gun Control Act, 18 U.S.C. 921(a)(23).

Please be advised that our findings are based on the item as submitted. Any changes to its design features or characteristics will void this classification. Further, we caution that the addition of an accelerator spring or any other non-manual source of energy which allows this device to operate automatically as described will result in the manufacture of a machinegun as defined in the NFA, 5845(b).

To facilitate the return of your sample, to include the module, please provide FTB with the appropriate FedEx or similar account information within 60 days of receipt of this letter. If their return is not necessary, please fax FTB at 304-616-4301 with authorization to destroy them on your behalf.

We thank you for your inquiry and trust the foregoing has been responsive to your evaluation request.

Sincerely yours,

  
John R. Spencer  
Chief, Firearms Technology Branch

Enclosure

## **Exhibit 2**

From: **Bump Fire Systems** orders@bumpfiresystems.com  
Subject: Your BUMP FIRE SYSTEMS order receipt from October 30, 2014  
Date: October 30, 2014 at 22:27  
To: [REDACTED]

## Thank you for your order

Your order has been received and is now being processed. Your order details are shown below for your reference:

### Order: #2872

Product	Quantity	Price
AR15 BFSystem	1	\$99.99
<b>Cart Subtotal:</b>		\$99.99
<b>Shipping:</b>		\$6.00 via Flat Rate
<b>Payment Method:</b>		Credit Card
<b>Order Total:</b>		\$105.99

### Customer details

Email: [REDACTED]

Tel: [REDACTED]

### Billing address

Damien Guedes

[REDACTED]

Whitehall, Pennsylvania 18052

## **Exhibit 16**

**(Verified Declaration of Matthew Thompson)**

**VERIFIED DECLARATION OF MATTHEW THOMPSON**

I, Matthew Thompson, am competent to state and declare the following based on my personal knowledge:

1. I am a resident of Hamburg, Pennsylvania.
2. In 2017, I became interested in a bump stock device.
3. Prior to purchasing a Slide Fire bump stock device, as I wanted to ensure the legality of the device, I went on Slide Fire's website - <https://slidefire.com> - to determine if the Bureau of Alcohol, Tobacco, Firearms and Explosives had approved the device.
4. Slide Fire's website stated that it had obtained approval from ATF and provided me with a copy of ATF's June 7, 2010 determination letter. A copy of the letter is attached as Exhibit 1.
5. In reliance on ATF's determination letter of June 7, 2010, I purchased a Slide Fire bump stock device at a cost of \$134.00, which I still own today.
6. It is my understanding, based upon ATF's notice of proposed rulemaking – RIN 1140-AA52, Fed. Reg. No. 2018-06292 – that ATF intends to reclassify bump stock devices as machine guns in violation of Article 1, Section 9 of the United States Constitution (*i.e.* Ex Post Fact clause) and to require me to surrender or otherwise destroy my Slide Fire bump stock device in the absence of any compensation, in violation of the Fifth Amendment to the United States Constitution.



I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge and belief. Executed on April 19, 2018.

  
Matthew Thompson

# **Exhibit 1**



Bureau of Alcohol, Tobacco,  
Firearms and Explosives

Martinsburg, West Virginia 25405

www.atf.gov

JUN 07 2010

903050:MMK  
3311/2010-434

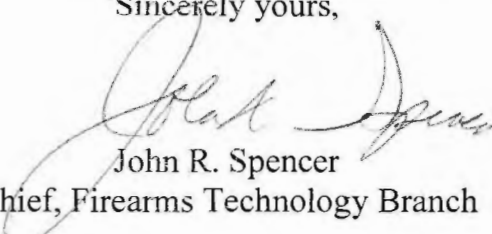
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Per your telephoned instructions, we will contact you separately to make return delivery arrangements.

We thank you for your inquiry and trust that the foregoing has been responsive.

Sincerely yours,

  
John R. Spencer  
Chief, Firearms Technology Branch

Enclosure