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June 16, 2014

Ms. Natisha Taylor
Bureau of Alcohol, Tobacco, Firearms, and Explosives
U.S. Department of Justice
99 New York Avenue NE
Washington, DC 20226

Subject: Comments on Agency Information Collection Activities: Report of
Multiple Sale or Other Disposition of Certain Rifles, ATF Form
3310.12: OMB Number 1140-0100

Dear Ms. Taylor:

These comments are submitted in response to the above-referenced Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") Notice of Agency Information Collection Activities, "Report of Multiple Sale or Other Disposition of Certain Rifles," 79 *Fed. Reg.* 21,284 (Apr. 15, 2014).

USJF opposes the proposed reporting requirement that Federal Firearms Licensees ("FFL's") submit reports on multiple rifle purchases, because ATF does not have the statutory authority to require FFLs report on multiple rifle sales.

The *Federal Register* Notice purports to extend an existing reporting requirement for certain multiple rifle sales. The Notice states:

"The purpose of this information collection is to require Federal Firearms Licensees to report **multiple sales** or other dispositions whenever the licensee sells or otherwise disposes of two or more **rifles** within any five consecutive business days with the following characteristics: (a) Semi automatic; (b) a caliber greater than .22; and (c) the ability to accept a detachable magazine." [79 *Fed. Reg.* at 21,285 (emphasis added).]

The Gun Control Act of 1968 has a similar provision, applicable only to handguns: "Each licensee shall prepare a report of **multiple sales** or other dispositions whenever the licensee sells or otherwise disposes of, at one time or during any five consecutive business days, two or more **pistols, or revolvers**, or any combination of pistols and revolvers totalling two or more, to an unlicensed person." 18 U.S.C. § 923(g)(3)(A) (emphasis added).

However, there is no provision in the Gun Control Act or any other federal law ever enacted requiring the reporting of multiple **rifle** sales. The ATF is well aware of this lack of statutory authority. In a Supporting Statement for the original new reporting requirement (which is being extended in the present Notice), the ATF cited the statutory requirement that the Gun Control Act requires reporting of multiple **handgun** sales to the same purchaser. *See* 18 U.S.C. § 923(g)(3)(A) (emphasis added). At the same time, the ATF recognized that: “[n]o similar requirement exists for **long guns**, regardless of the caliber, gauge, or suitability for sporting purposes.” Supporting Statement, p. 1 (emphasis added).

Without any such a statutory requirement, ATF’s authority to impose the reporting requirement of multiple rifle sales must be found in 18 U.S.C. § 923(g)(1)(A) which authorizes ATF to promulgate certain rules. However, this statute only authorizes the making of such rules and regulations as are needful to ensure that FFL’s “maintain such records of ... sale of firearms at his place of business for such period and in such form, as the Attorney General may ... prescribe.” (Emphasis added.) And that same subsection, however, provides that such licensed dealers “**shall not** be required to submit to the Attorney General **reports and information** with respect to such records and the contents thereof, **except as expressly required** by this section.” (Emphasis added.) Accordingly, since there is no express statutory requirement for rifles, this general authority to issue regulations cannot be relied upon.

The sole legal question therefore is whether there is any other provision of federal law which requires that FFLs report on multiple rifle sales.

The ATF asserts that “[t]he authority to require FFLs to submit information concerning multiple sales ... of certain rifles derives from 18 U.S.C. 923 (g)(5).” *Id.* It does not. Section 923(g)(5) authorizes the Attorney General to request by letter to report “all record information required to be kept by this chapter or such lesser record information as the Attorney General in such letter may specify.” Although that section would authorize records be kept on multiple **handgun** sales, it cannot be relied on with respect to multiple **rifle** sales.

The ATF here has exceeded its authority by requesting the multiple **rifle** sales reporting. Congress specifically identified the multiple firearm reporting that is required in 18 U.S.C. § 923(g)(3)(A), and that is limited to “**pistols, or revolvers, or any combination of pistols and revolvers.**” (Emphasis added.) By definition, that excludes all other firearms or combination of types of firearms that are not multiple pistols or revolvers. The ATF Form 3310.12 thus violates the canon of statutory construction *expression unius est exclusion alterius*. *See* A. Scalia & B. Garner, *Reading Law*, pp. 107-111 (West 2012).

Thus, ATF has *ultra vires* expanded the reporting requirements of section 923 to include that which has been excluded, in violation of subsection (g)(1)(A) — “dealers shall not be required to submit ... reports ... except as expressly required by this section.”

Conclusion

For the foregoing reasons, the United States Justice Foundation respectfully requests the ATF to withdraw its Form 3310.12.

Sincerely Yours,

A handwritten signature in black ink that reads "Michael Connelly". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Michael Connelly
Executive Director