To: Axelrod, Matthew (ODAG)[Matthew.Axelrod@usdoj.gov]
From: Burke, Dennis (USAAZ)
Sent: Fri 3/18/2011 9:27:23 PM
Subject: RE: 9th Circuit law

Here is a compilation of feedback I got from my office regarding your e-mail yesterday:

The problem exists in the 5th Circuit and 9th Circuit. By charging 924(a)(1)(A) we eliminate the need to prove materiality, but the statement must be a written statement in the records of the FFL.

United States v Moore, 109 F. 3d 1456 (9th Cir. 1997), under 922(a)(6) charge must prove the straw purchaser bought for a person who was ineligible to purchase firearms.

So, in using 924(a)(1)(A), we need not prove the materiality of the false statement, who the true purchaser was, to the lawfulness of the sale.

The 924 charge encompasses any false statement in FFL records, while the 922 requires that the statement be material to the lawfulness of the sale. The same guideline applies but the max for 922 is 10 years while the max for 924 is 5.

In our cases, we charged 924(a)(1)(A)—False Stmts In Regard to Acquisition of Firearms and 922(a)(1)(A)—Dealing in Firearms Without a License. We almost

always charge the false stmts under 924 not 922 because it is easier.

From: Axelrod, Matthew (ODAG) (SMO)
Sent: Thursday, March 17, 2011 12:02 PM
To: Burke, Dennis (USAAZ)
Subject: 9th Circuit law

Dennis,

Thanks for your participation in today's meeting. Having you there was very helpful. On question – is it really the law in the 9th Circuit that a straw purchase is not illegal unless the true purchaser of the firearm is a prohibited person? That doesn't seem right to me. Even if the true purchaser wasn't prohibited, couldn't you still charge a lie on the Form 4473 (in particular, to Question 11(a))?

Matt

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