

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE NATIONAL SHOOTING)
SPORTS FOUNDATION, INC.)
11 Mile Hill Road)
Newtown, Connecticut 06470)

Plaintiff,)

Civil Action No. _____

v.)

KENNETH MELSON,)
Acting Director,)
BUREAU OF ALCOHOL,)
TOBACCO, FIREARMS & EXPLOSIVES)
99 New York Avenue, NE)
Washington, DC 20226)

Defendant.)

VERIFIED COMPLAINT

Plaintiff, The National Shooting Sports Foundation, Inc. (“NSSF”), for its Verified Complaint against the defendant Kenneth Melson, Acting Director of the Bureau of Alcohol, Tobacco, Firearms & Explosives (“ATF”), states as follows:

NATURE OF ACTION

1. NSSF seeks declaratory and injunctive relief, including a writ of mandamus, against the Acting Director of ATF to prohibit him from enforcing ATF’s demand that federally licensed firearm dealers and pawnbrokers in California, Texas, Arizona and New Mexico submit information to ATF regarding their sales of certain rifles to unlicensed persons. NSSF seeks a declaration that ATF’s demand for information regarding these sales exceeds the scope of its statutory authority and violates federal statutory law. NSSF also requests preliminary and

permanent injunctions prohibiting ATF from demanding the information requested. NSSF and its members are committed to cooperating with ATF and other law enforcement agencies and assisting them in their efforts to investigate and enforce violations of firearms laws. However, Congress has conferred only limited authority on ATF to require federally-licensed firearms dealers to submit information regarding firearms sales. In this case, ATF's demand exceeds its authority and is prohibited under federal law.

THE PARTIES

2. NSSF is a Connecticut non-profit tax exempt corporation with its principal place of business in Connecticut. It is the trade association for the firearms, ammunition, and hunting and shooting sports industry. It has a membership of approximately 6,000 federally-licensed manufacturers, distributors and retailers. Among its members are companies that manufacture,, distribute, and sell shooting and hunting related goods and services; sportsmen's organizations,, public and private shooting ranges, gun clubs, publishers and individuals. NSSF's members include 789 federally-licensed firearms dealers located in California, Texas, Arizona and New Mexico. The NSSF's mission is to promote, protect and preserve hunting and the shooting sports by providing leadership in addressing industry challenges, advancing participation in and understanding of hunting and shooting sports, reaffirming and strengthening its members' commitment to the safe and responsible sale and use of their products, and promoting a political environment that is supportive of America's traditional hunting and shooting heritage and Second Amendment freedoms.

3. Acting ATF Director Kenneth Melson has been delegated the authority within the United States Department of the Treasury to administer and enforce the provisions of the Gun Control Act, as amended by the Firearm Owners Protection Act of 1986, presently codified at 18

U.S.C. §§ 921 *et seq.* Furthermore, the ATF is subject to Melson's supervision and control. He is being sued in his official capacity.

JURISDICTION

4. Subject matter jurisdiction exists in this Court pursuant to 28 U.S.C. § 1331 because the claims asserted arise under the laws of the United States and the United States is a party to this controversy. Subject matter jurisdiction also exists pursuant to 28 U.S.C. § 1361 because Plaintiff seeks a writ of mandamus to compel an officer or employee of the United States to perform a duty owed to the plaintiff.

VENUE

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e)(1) because ATF resides in this judicial district at 99 New York Avenue, NE, Washington D.C. 20226.

STANDING

6. The NSSF has standing to bring this action because the federally-licensed firearms dealers in California, Texas, Arizona and New Mexico who are members of the NSSF have been injured by ATF's demand and would have standing to bring this action in their own right. Furthermore, the interests NSSF seeks to protect in this action are germane to its organizational purpose and neither the claims made by the NSSF nor the relief it requests requires the participation of any of its individual members.

FACTS COMMON TO ALL COUNTS

7. By letters dated in July 2011, the ATF demanded that each of the approximately 8,500 federally-licensed firearms dealers in California, Texas, Arizona and New Mexico begin submitting to the ATF on August 14, 2011 information regarding their multiple sales of certain rifles or face criminal penalties and license revocation. ATF's intention is to create a database

containing information on purchasers of certain rifles in these four states. A representative copy of ATF's demand letter is attached as Exhibit A, and was received by NSSF member Sportsman's Warehouse, a federally-licensed firearms retailer with licensed stores located in, *inter alia*, Rocklin, California, Mesa, Tucson and Phoenix, Arizona, and Albuquerque, New Mexico.

8. ATF's decision to issue the demand letters and request information regarding multiple sales of certain rifles is a final agency action and not merely tentative or interlocutory in nature. A copy of Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives' Report of Multiple Sale or Other Disposition of Certain Rifles 30-day Notice, 76 Fed. Reg. 24,058 (April 29, 2011), is attached as Exhibit B. ATF's decision is an action by which rights or obligations have been determined and from which legal consequences will flow.

9. ATF has demanded in its letter to the approximately 8,500 federally-licensed firearms dealers in California, Texas, Arizona and New Mexico that the dealers submit reports of multiple sales or other dispositions whenever they sell or otherwise dispose of, at one time or during any five consecutive business days, two or more semi-automatic rifles capable of accepting a detachable magazine, and with a caliber greater than .22 to an unlicensed person. ATF has not specified a period of time in which the reporting obligation is to exist but has stated that the obligation will continue indefinitely. ATF has demanded that the information be submitted on ATF Form 3310.12, Report of Multiple Sale or Other Disposition of Certain Rifles. A copy of ATF Form 3310.12 is attached as Exhibit C.

10. The information demanded by ATF from federally-licensed firearms dealers in California, Texas, Arizona and New Mexico includes: the date of transfer; the firearm dealer's

business or trade name; the name, address, sex, race and date of birth of the buyer; and the model, serial number, manufacturer and caliber of the rifles sold.

11. The information demanded by ATF from federally-licensed firearms dealers in California, Texas, Arizona and New Mexico is to be submitted by the dealers to ATF's National Tracing Center in Kearnsyville, West Virginia where it will be recorded and maintained.

12. Federally-licensed firearms dealers are not statutorily required to maintain records reflecting the information demanded by ATF in its letter to these dealers and Congress has not conferred statutory authority on ATF to collect the information demanded. In response to the Department of Justice Office of Inspector General's review of proposed ATF action "seeking a requirement for reporting multiple sales of long guns[,]” the ATF itself questioned its authority to impose such a new legal requirement:

Summary of ATF Response. ATF concurred with this recommendation, but noted that it may require a change to the *Gun Control Act*, which is beyond ATF's and the Department's authority. ATF stated that it would explore the full range of options to seek information regarding multiple sales of long guns.

A copy of the pertinent segment of the U.S. Department of Justice Office of the Inspector General Evaluation and Inspections Division's *Review of ATF's Project Gunrunner* in November 2010, is attached as Exhibit D.

13. The information demanded by ATF is not requested in the context of ongoing bona fide criminal investigations. To the contrary, ATF has required each and every federally-licensed firearms dealer located in California, Texas, Arizona and New Mexico to submit the information and reports regardless of their proximity to the Mexican border and regardless of whether they make substantial sales of the rifles at issue, have a history of making sales of rifles recovered in Mexico or are perceived by ATF to be a target of illegal firearm traffickers. ATF's

arbitrary demand for information and reports from these federally-licensed firearms dealers is not incidental to any statutory function delegated to ATF by Congress.

14. Congress has restricted ATF's authority to require federally-licensed firearms dealers to submit information regarding their firearm sales. In pertinent part, 18 U.S.C. § 923(g)(1)(A), states as follows:

[e]ach licensed importer, licensed manufacturer, and licensed dealer shall maintain such records of importation, production, shipment, receipt, sale, or other disposition of firearms at his place of business for such period, and in such form, as the Attorney General may by regulations prescribe. Such importers, manufacturers, and 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.

18 U.S.C. § 923(g)(1)(A). Under 18 U.S.C. § 923(g)(1)(A), federally-licensed firearms dealers shall not be required to submit to ATF reports and information regarding their receipt, sale or other disposition of firearms except as expressly required 18 U.S.C. §§ 921 *et seq.*

15. Congress has restricted ATF's authority to collect records regarding firearms transactions or dispositions. Under 18 U.S.C. § 926(a), no rule or regulation may require records prepared by federally-licensed firearms dealers to "be recorded at or transferred to a facility owned, managed or controlled by the United States or any State or political subdivision thereof, nor that any system of registration of firearms, firearms owners, or firearms transactions or dispositions be established." *See* 18 U.S.C. § 926(a).

16. Congress has limited ATF's authority to demand information from federally-licensed firearms dealers by letter under 18 U.S.C. §923(g)(5)(a), which provides:

[e]ach licensee shall, when required by letter issued by the Attorney General, and until notified the contrary in writing by the Attorney General, submit on a form specified by the Attorney General, for periods and at the times specified in such letter, all record information required to be kept by this chapter or such lesser record information as the Attorney General in such letter may specify.

Under this statutory provision, ATF may only demand by letter record information, or lesser record information, that licensees are required to keep under the provisions of 18 U.S.C. §§ 921 *et seq.*

17. Federally-licensed firearms dealers are not required under 18 U.S.C. §§ 921 *et seq.* to keep information on or to track multiple sales or other dispositions of, at one time or during any five consecutive business days, two or more semi-automatic rifles capable of accepting a detachable magazine, and with a caliber greater than .22 to an unlicensed person.

18. Congress, in contrast, has conferred statutory authority on ATF under 18 U.S.C. § 923(g)(3)(A) to collect from federally-licensed firearms dealers information on multiple sales or other dispositions of “pistols and revolvers[.]” whenever the licensee sells or disposes of, at one time or during five consecutive business days, two or more pistols and revolvers to an unlicensed person. In requiring submission of information regarding the sale or disposition of pistols and revolvers, Congress chose to not require submission of information regarding the sale or disposition of any other type of firearm, including semi-automatic rifles capable of accepting a detachable magazine and with calibers greater than .22.

19. Federally-licensed firearms dealers located in California, Texas, Arizona and New Mexico, including those who are NSSF members (e.g., Sportsman’s Warehouse), have been and will continue to be injured by ATF’s demand that they submit reports of multiple sales or other dispositions of certain rifles. ATF’s demand imposes additional record keeping obligations and devotion of additional resources to meeting those obligations. In addition, impacted dealers will be required to devote additional, significant time and resources to training employees on the record keeping requirement, and will have to create new and additional record keeping procedures and systems to track sales of the rifles on different days to the same person. The

additional obligations imposed by ATF's demand and its related impact on the federally licensed firearms dealers in these four states are not shared by federally licensed firearms dealers nationwide. Further, because ATF has characterized "[t]he information as mandatory and required by statute (18 U.S.C. 923(g)(5)(A))" and those licensees receiving the demand letters are subject to criminal penalties pursuant to 18 U.S.C. §924(a)(1)(D), including fines and imprisonment, for failing to comply with the obligation described in the demand letters, even though their actions are inadvertent or *de minimis*. These licensees are also subject to license revocation proceedings pursuant to 18 U.S.C. §923(e) for failing to comply the obligation described in the demand letters

COUNT I – DECLARATORY RELIEF

20. NSSF incorporates its allegations in paragraphs 1 through 19 as though fully set forth herein.

21. NSSF seeks declaratory relief pursuant to Federal Rule of Civil Procedure 57 and 28 U.S.C. §§ 2201-2202.

22. ATF's demand for information on the multiple sales or other dispositions of certain rifles by federally-licensed firearms dealers in California, Texas, Arizona and New Mexico exceeds its authority under 18 U.S.C. §923(g)(1)(A) to require reports and information regarding firearm sales from licensees.

23. ATF's demand for information on the multiple sales or other dispositions of certain rifles by federally-licensed firearms dealers in California, Texas, Arizona and New Mexico violates 18 U.S.C. §926(a) by requiring records prepared by federally-licensed firearms dealers to "be recorded at or transferred to a facility owned, managed or controlled by the United States or any State or political subdivision thereof."

24. ATF's demand for information on the multiple sales or other dispositions of certain rifles by federally-licensed firearms dealers in California, Texas, Arizona and New Mexico exceeds its authority under 18 U.S.C. §923(g)(5)(A) to request record information by letter from licensees.

COUNT II – INJUNCTIVE RELIEF

25. NSSF incorporates its allegations in paragraphs 1 through 24 as though fully set forth herein.

26. Federally-licensed firearms dealers located in California, Texas, Arizona and New Mexico, including those who are NSSF members, will suffer imminent and irreparable injury should ATF enforce its letter demand for information and reports of multiple sales or other dispositions whenever they sell or otherwise dispose of, at one time or during any five consecutive business days, two or more semi-automatic rifles capable of accepting a detachable magazine, and with a caliber greater than .22 to an unlicensed person.

27. Federally-licensed firearms dealers located in California, Texas, Arizona and New Mexico, including those who are NSSF members, will have no adequate remedy at law should ATF enforce(s) its letter demand for information and reports of multiple sales or other dispositions whenever they sell or otherwise dispose of, at one time or during any five consecutive business days, two or more semi-automatic rifles capable of accepting a detachable magazine, and with a caliber greater than .22 to an unlicensed person.

28. There is a substantial likelihood of success on the merits of NSSF's claim that ATF's demand that federally-licensed firearms dealers in California, Texas, Arizona and New Mexico submit reports of multiple sales or other dispositions whenever they sell or otherwise dispose of, at one time or during any five consecutive business days, two or more semi-automatic

rifles capable of accepting a detachable magazine, and with a caliber greater than .22 to an unlicensed person exceeds ATF's statutory authority under 18 U.S.C. §923(g)(1)(A) and §923(g)(5)(A) and violates 18 U.S.C. §926(a).

29. The balance of hardships favors the federally-licensed firearms dealers located in California, Texas, Arizona and New Mexico, including those who are NSSF members, who would be required to submit reports of multiple sales or other dispositions of certain rifles, devote additional, significant resources to meeting those reporting obligations and create new and additional record keeping procedures and systems to track sales of the rifles on different days to the same person. In contrast, ATF would suffer no hardship because its actions exceed its statutory authority and violate federal law. An order enjoining ATF's enforcement of its demand for information would return recordkeeping requirements required of the federally-licensed firearms dealers to the status quo, and ATF can more appropriately focus its investigative efforts without imposing hardships on all 8,500 federally-licensed firearms dealers located in California, Texas, Arizona and New Mexico.

30. The public interest would not be adversely affected by an order enjoining ATF's enforcement of its demand for information from each of the approximately 8,500 federally-licensed firearms dealers in California, Texas, Arizona and New Mexico. ATF cannot justify its demand for information by showing that each of these dealers is a suspected target of illegal firearms traffickers or is suspected of being involved in illegal firearms trafficking. The public interest would be served by limiting ATF to actions coming within its statutorily-conferred authority.

RELIEF REQUESTED

WHEREFORE Plaintiff, National Shooting Sports Foundation, Inc., requests judgment be entered in its favor and against Defendant as follows:

1. Enter a declaratory judgment that the ATF's letter demanding that federally-licensed firearms dealers in California, Texas, Arizona and New Mexico submit reports of multiple sales or other dispositions whenever they sell or otherwise dispose of, at one time or during any five consecutive business days, two or more semi-automatic rifles capable of accepting a detachable magazine, and with a caliber greater than .22 to an unlicensed person exceeds ATF's statutory authority under 18 U.S.C. §923(g)(1)(A) and §923(g)(5)(A), and violates 18 U.S.C. §926(a), and is otherwise unlawful.

2. Issue preliminary and permanent injunctions and a writ of mandamus, requiring or otherwise compelling, defendant Melson and his officers, agents and employees, to:

- (a) refrain from mandating compliance with and completion of ATF Form 3310.12, Report of Multiple Sale or Other Disposition of Certain Rifles, and from enforcing ATF's demand that federally-licensed firearms dealers in California, Texas, Arizona and New Mexico submit reports of multiple sales or other dispositions whenever they sell or otherwise dispose of, at one time or during any five consecutive business days, two or more semi-automatic rifles capable of accepting a detachable magazine, and with a caliber greater than .22 to an unlicensed person;
- (b) destroy all ATF Form 3310.12, Report of Multiple Sale or Other Disposition of Certain Rifles, received; and

- (c) adhere to the operative language of 18 U.S.C. §926(a) stating in pertinent part that “[n]o such rule or regulation prescribed after the date of the enactment of the Firearms Owners’ Protection Act may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or any political subdivision thereof, nor that any system of registration of firearms, firearms owners, or firearms transactions or dispositions be established.”
3. Award plaintiff attorneys’ fees and costs.
 4. Grant such other and further relief as may be proper.

Respectfully submitted,

**THE NATIONAL SHOOTING
SPORTS FOUNDATION, INC.,**
Plaintiff

By: /s/_____

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