

Testimony of the Violence Policy Center
to the
Subcommittee on Commerce, Justice, Science, and Related Agencies
of the House Appropriations Committee
on
Funding Restrictions Imposed on the Bureau of Alcohol, Tobacco, Firearms and
Explosives Related to the Release of Crime Gun Trace Data
(Submitted via email on April 26, 2007)

The Violence Policy Center (VPC) appreciates the opportunity to submit testimony to the subcommittee on Commerce, Justice, Science, and Related Agencies in opposition to restrictions contained in previous appropriations for the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) prohibiting the release of information contained in the Firearms Trace System database (the so-called Tiahrt amendment). The Violence Policy Center is a national non-profit organization engaged in policy analysis and development to reduce firearms violence.

The restrictions on release of data contained in the Firearms Trace Database prohibit ATF from using appropriated funds to release crime gun trace data except to "a Federal, State, or local law enforcement agency or a prosecutor solely in connection with and for use in a bona fide criminal investigation or prosecution and then only such information as pertains to the geographic jurisdiction of the law enforcement agency requesting the disclosure." There is also a prohibition on use of the data in civil litigation. The restrictions have been in place in some form since fiscal year 2004.

The effect of these restrictions has been to cut off virtually all access for public officials, law enforcement agencies, and the American public to the information necessary to answer basic questions about firearms traced to crime and to develop effective strategies and policies to reduce gun violence.

Denying state and local officials and law enforcement personnel access to this basic information regarding guns traced to crime scenes handcuffs police and makes it virtually impossible for city officials who are working to crack down on illegal gun trafficking to identify the sources of crime guns that are increasingly being used in their communities.

Comprehensive data about crime gun traces is even more critical in light of increasing rates of gun violence and violent crime. The Bureau of Justice Statistics reports that the rate of firearms violence increased almost 50 percent between 2004 and 2005, from 1.4 to 2.0 victimizations per 1,000 persons age 12 or older.¹ Furthermore, the Police Executive Research Forum (PERF) has identified alarming trends in violent crime in 56 jurisdictions for the past 24 months. According to PERF:

[T]he 24-month trend, starting on January 1, 2005, is unmistakable: Among the jurisdictions filing reports with PERF, total homicides in 2006 were 10.21 percent higher than they were in 2004. Robberies increased 12.27 percent; aggravated assaults increased 3.12 percent; and aggravated assaults with a firearm increased 9.98 percent.²

The PERF findings highlight the urgent need to make every tool—including comprehensive crime gun trace data—available to help identify and interrupt the sources of illegal firearms.

Before the release of crime gun trace data was restricted, law enforcement agencies could access the data to assist in the development of effective strategies to target gun trafficking. For example, a local law enforcement agency could use trace data to identify gun dealers in its community that exhibit “trafficking indicators” such as multiple crime gun traces, short “time to crime” intervals for traced guns, or frequent multiple sales of handguns. Such information is no longer available since the Tiahrt rider allows release to law enforcement agencies only for use in a specific criminal investigation.

The data was also available to the general public under the Freedom of Information Act. In fact, the U.S. Court of Appeals for the Seventh Circuit observed that the restrictions on release imposed by the appropriations legislation “amounts to a change in substantive FOIA law in that it exempts from disclosure data previously available to the public.”³

The information was also compiled and released by ATF in its annual *Youth Crime Gun Interdiction Initiative* (YCGII). In the last version of the report, released in

¹ U.S. Department of Justice, Bureau of Justice Statistics Bulletin, “Criminal Victimization, 2005,” (September 2006).

² Police Executive Research Forum, *Violent Crime in America: 24 Months of Alarming Trends*, (2007).

³ *City of Chicago v. United States Department of Treasury, Bureau of Alcohol, Tobacco and Firearms*, 423 F3d 777 (7th Cir. 2005).

2002, ATF described the purpose of analyzing and disseminating the information:

The reports provide extensive analyses of crime gun traces submitted in calendar year 2000 by law enforcement officials in selected cities throughout the country participating in ATF's Youth Crime Gun Interdiction Initiative. The analysis of a large number of individual traces from many similar jurisdictions helps identify consistent crime gun patterns that may not be apparent from information in a single trace or traces from a single jurisdiction or State. **With information about patterns and trends, more violent criminals can be arrested more efficiently, more focused regulatory enforcement can be undertaken, and more gun crime and violence can be prevented.** [emphasis added]

Furthermore, there is simply no evidence to support the arguments made to justify restricting access to the crime gun trace data. Independent, respected entities, including the National Academy of Sciences and a U.S. Court of Appeals, have supported release of the restricted trace data to academics and the general public.

In 2004, in *Firearms and Violence: A Critical Review*, a committee of the National Academy of Sciences recommended that "appropriate access be given to data maintained by regulatory and law enforcement agencies, including the trace data maintained by the Bureau of Alcohol, Tobacco and Firearms...for research purposes."

Moreover, the claims made that release of tracing data could interfere with ongoing law enforcement investigations were roundly rejected by the U.S. Court of Appeals for the Seventh Circuit in 2002 (prior to imposition of the Tiahrt restrictions). In its opinion ordering release of the data that ATF sought to withhold under the Freedom of Information Act, the court stated:

ATF's hypothetical scenarios do not convince us that disclosing the requested records puts the integrity of any possible enforcement proceedings at risk....ATF has provided us with only far-fetched hypothetical scenarios...[A]rguments that the premature release of this data might interfere with investigations, threaten the safety of law enforcement officers, result in the intimidation of witnesses, or inform a criminal that law enforcement is on his trail are based solely on speculation.⁴

The court also noted that release of the data serves the public interest in that it provides a mechanism to evaluate ATF's effectiveness, helps control gun trafficking, and aids cities' ability to enforce their gun laws.

In short, the funding restrictions on ATF's release of crime gun trace data serve only to frustrate the efforts of law enforcement and policymakers to stop illegal

⁴ *City of Chicago v. United States Department of Treasury, Bureau of Alcohol, Tobacco and Firearms*, 287 F.3d 628 (7th Cir. 2002).

gun trafficking and help reduce gun-related crime. We respectfully request that these provisions not be included in ATF's fiscal year 2008 appropriations legislation.

Thank you for the opportunity to submit testimony on this vital public safety issue.

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