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Southern District of Texas

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HOUSTONIAN SENTENCED TO PRISON FOR LYING TO BUY GUNS

Weapons later found at crime scenes in Mexico

(HOUSTON) – John Phillip Hernandez, 25, of Houston, has been sentenced to prison for making false material statements to a federal firearms licensee in connection with the purchase of firearms which were eventually found at crime scenes in Mexico and Guatemala, acting United States Attorney Tim Johnson and Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Special Agent in Charge Dewey Webb announced today.

Hernandez pleaded guilty in July 2008 to the federal firearms charge admitting that in July 2006 he purchased two Bushmaster, Model 16M4, .223 caliber rifles falsely representing that he was the actual buyer of the firearms when, in fact, he was purchasing the firearms for another person.

“The illegal smuggling of firearms to Mexico must be stopped,” said acting United States Attorney Tim Johnson. “We will prosecute those who lie to buy firearms and seek the highest penalty allowed by law.”

“The case highlights ATF’s commitment to investigating and seeking prosecution of those responsible for not only straw purchasing but also for those that organize such purchases,” said Assistant Special Agent in Charge Robert Elder of ATF’s Houston Filed Division.

ATF began an investigation into Hernandez after a routine regulatory inspection of a local firearms dealer’s records showed the cash purchases of a large number of military-style firearms. Between June 2006 and June

2007, Hernandez personally bought 23 firearms for approximately \$24,800, including 15 assault rifles which were essentially identical civilian variants of the M-16 rifle used by the United States military. The other weapons he bought were also of military style and utility, including some firearms chambered in 5.7 x 28mm ammunition, which is a round reputed to be able to defeat body armor worn by police and which weapons are known as “mata policias” or “police killers” in Mexican drug trafficking organization circles. Hernandez made false statements on the ATF forms, which he was required to fill out before buying the firearms, stating he was not buying the firearms on behalf of another person when in fact he was. Federal law prohibits one person from purchasing firearms on another’s behalf except as a *bona fide* gift, which these firearms were clearly not.

The firearms unlawfully purchased by Hernandez we subsequently smuggled into Mexico. At this morning’s hearing in an effort to obtain the highest possible sentence, the United States informed the court to date many of these firearms purchased by Hernandez have been recovered at the scene of shocking crimes in Mexico. Approximately two months after its purchase by Hernandez, a Smith & Wesson, model MP15, .223 caliber assault rifle was recovered in connection with the kidnapping and murder of a businessman. Approximately 15 months after Hernandez’ purchase of a Bushmaster, model A2M2, .223 caliber assault rifle, it was recovered after a shoot-out between the Gulf Cartel drug trafficking organization enforcers known as “Los Zetas” and the Mexican Army in the state of Oaxaca. Seven months after its purchase, a Bushmaster, model 16M4, .223 caliber assault rifle was recovered from the offices of the state attorney general in Acapulco where more than a dozen armed men attacked and killed four police officers and three secretaries. That event has become know in Mexico as the “Acapulco Police Massacre.” Approximately nine months after Hernandez’ purchase of a Bushmaster, model XM15, .223 caliber assault rifle, it was recovered in the state of Veracruz along with an arsenal of weapons in a vehicle. Lastly, 19 months after Hernandez purchased another Bushmaster, model XM15, .223 caliber assault rifle, it was recovered at a vehicle checkpoint.

In addition to the 23 firearms Hernandez bought under his own name, he also enlisted others to buy similar weapons of his behalf under their names. These individuals made false statements in connection with those firearms transactions and are also under investigation. One individual allegedly recruited by Hernandez, Jesus Pineda, is presently charged and pending trial in the Southern District of Texas for making false statements to a federal firearms licensee. *An indictment is a formal accusation of criminal*

conduct, not evidence. A defendant is presumed innocent unless convicted through due process of law.

Altogether, Hernandez and those he recruited bought approximately 103 firearms. Many of those firearms have also been recovered in Mexico at the scene of crimes. The investigation continues.

At a hearing this morning, United States District Judge David Hittner found Hernandez was a leader of a group responsible for trafficking in 103 firearms before imposing a 97-month prison term which represents a four-level increase from the recommended maximum U.S. Sentencing Guideline level. Judge Hittner increased the recommended sentence by two years after finding that the recommended guideline sentence did not provide sufficient deterrence. Hernandez will also be required to serve a three-year-term of supervised release upon completing his term of imprisonment.

Hernandez has been in custody without bond since his arrest in May 2008 after a finding that he was both a flight risk and a danger to the community and will remain in federal custody to serve his sentence.

This case is a result of an ongoing investigating by special agents of the ATF into the illegal purchase and smuggling of firearms. Assistant U.S. Attorney Mark White prosecuted the case.

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