

TESTIMONY OF THE UNITED STATES DEPARTMENT OF JUSTICE

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FIREARMS TRAFFICKING

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BEFORE THE UNITED STATES SENTENCING COMMISSION

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INTRODUCTION

Good morning, Mr. Chairman and Commissioners –

My name is Richard Hertling, and I serve as Principal Deputy Assistant Attorney General for the Office of Legal Policy at the United States Department of Justice. I appreciate the opportunity to appear today to provide the Department's views on the United States Sentencing Commission's proposed changes to the Federal Sentencing Guidelines relating to offenses involving firearms. I would specifically like to acknowledge the work of the Commission's excellent staff and note particularly the leadership of Alan Dorhoffer and his team on the firearms issues I am here to discuss.

Firearms Trafficking

I will begin by addressing the Commission's proposed amendment to Guideline §2K2.1 to provide enhancements for defendants engaging in firearms trafficking. The Department strongly supports a significant enhancement in the penalties applicable to illegal firearms trafficking and believes that such an increase in penalties would aid the Department's efforts to reduce gun crime.

Firearms trafficking can be generally described as the illegal diversion of firearms out of lawful commerce. It is frequently the source of firearms used in violent crimes, especially violent crimes committed by gang members and drug dealers. Firearms traffickers are persons who violate existing laws and deliberately circumvent the background-check and record-keeping requirements of legal commerce in order to supply firearms to convicted felons, drug dealers, gang members, and other prohibited persons. A June 2000 report by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), entitled "Following the Gun: Enforcing Federal Laws Against Firearms Traffickers," noted that fully one half of the investigations classified as trafficking conducted by ATF between July 1996 and December 1998 involved at least one firearm recovered during a crime; 17 percent of these firearms were associated with homicide or robbery. The strong tie between trafficked firearms and violent crimes underscores the great harm of firearms trafficking.

The Sentencing Guidelines, however, currently treat firearms trafficking in a way that neither recognizes the harm caused by nor deters sufficiently those who traffic illegally in firearms. As a result, firearms traffickers may often receive sentences that do not match the seriousness of the harm caused by their offenses. Worse, such cases may simply not be prosecuted because the relatively low existing penalties may not merit the expenditure of scarce prosecutorial resources. The Department therefore supports changes to the Sentencing Guidelines providing for substantial enhancements for offenses related to firearms-trafficking schemes.

In deciding how to design such enhancements, it is important to recognize that the great majority of gun trafficking schemes are carried out through transactions involving relatively

small numbers of guns. There are a number of possible reasons for this pattern. Law enforcement may catch offenders with only a few guns in a scheme that has successfully trafficked a significant number of guns through multiple small sales. Law enforcement may intervene and stop trafficking operations early before large numbers of firearms can be trafficked. There is also an incentive for traffickers to restrict transactions to smaller numbers of handguns (the usual choice of guns used to commit crimes), in order to avoid possible detection through the multiple sales reports that FFLs must submit to ATF under the Gun Control Act when two or more handguns are sold to a transferee within 5 business days. In addition, a trafficker caught with small numbers of guns may believe he has a more credible claim that the guns are his personal firearms.

Another important point to recognize is that gun traffickers are frequently persons with no criminal background. Because of their lack of prohibiting background, such persons have easier access to firearms from lawful sources, thereby facilitating their trafficking schemes. For example, straw purchasers are individuals capable of passing a background check, who buy firearms not for their own use but for the purpose of supplying the firearms to another person who, generally, would fail a background check because of a prohibiting criminal record. Thus, straw purchasers who engage in firearms trafficking will generally not have a criminal history that would enhance their sentence.

Because the current Sentencing Guidelines base longer sentences for firearms offenses on the involvement of high numbers of firearms or the criminal background of the offender, traffickers can engage in schemes to transfer relatively small numbers of guns in the illegal firearms market with little fear of a substantial sentence. To provide one example, one of the