

# United States Senate

WASHINGTON, DC 20510

February 18, 2021

The Honorable Joseph R. Biden  
President of the United States  
The White House  
1600 Pennsylvania Avenue  
Washington, DC 20500

Dear Mr. President,

As you begin to make crucial appointments and staff up your Administration, we write to urge you to quickly nominate a permanent Director to the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) who is committed to increasing public safety, working with federal partners to investigate domestic terrorists, providing robust oversight of the firearms industry, and tackling our nation's gun violence epidemic. The ATF is the only federal law enforcement agency dedicated to enforcing our nation's gun laws. The agency has been overwhelmed for years and has lacked a permanent director since 2015.

While property crimes have decreased during the COVID-19 pandemic, violent crimes increased sharply despite stay-at-home orders.<sup>1</sup> 2020 was one of the deadliest years on record with an estimated 19,300 Americans killed in gun homicides or non-suicide related shootings, a 26 percent increase over 2018.<sup>2</sup> Data compiled by the Police Executive Research Forum found that firearm homicides in cities of all sizes across the country are likely driving this spike in gun violence: 57 percent of the 223 cities surveyed reported an increase in gun homicides between 2019 and 2020 and nearly 7 in 10 of these agencies reported a rise in nonfatal shooting incidents.<sup>3</sup>

Gun sales reached record highs with over 20 million background checks conducted for firearms sales, a 64 percent increase over the previous year and a 36 percent increase over the previous record set in 2016.<sup>4</sup> Both gun dealers and federal law enforcement struggled to keep pace with demand, causing fewer background checks to be completed within the allowed three business days and thus potentially transferred without a final disposition.<sup>5</sup> According to ATF data, there were 5,807 cases in which guns were sold to prohibited purchasers – on pace to double the

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<sup>1</sup> Reid Wilson, "Violent Crime Spikes, Property Crime Eases in Pandemic," *The Hill*, February 1, 2021, available at <https://thehill.com/homenews/news/536784-violent-crime-spikes-property-crime-eases-in-pandemic>; and

<sup>2</sup> "Past Summary Ledgers," Gun Violence Archive, available at <https://www.gunviolencearchive.org/past-tolls>

<sup>3</sup> Member Survey, Police Executive Research Forum, available at <https://www.policeforum.org/criticalissues26jan21>

<sup>4</sup> "NICS Firearm Checks: Month/Year by State and Type," U.S. Department of Justice, Federal Bureau of Investigations, January 2021, available at [https://www.fbi.gov/file-repository/nics\\_firearm\\_checks\\_-\\_month\\_year.pdf/view](https://www.fbi.gov/file-repository/nics_firearm_checks_-_month_year.pdf/view)

<sup>5</sup> Brad Brooks, "Spiking U.S. gun sales deluge FBI's background check system, cause delays," *Reuters*, September 15, 2020, available at <https://www.reuters.com/article/us-usa-guns-fbi/spiking-u-s-gun-sales-deluge-fbis-background-check-system-cause-delays-idUSKBN26622A>

number of sales to prohibited individuals in 2019.<sup>6</sup> Recovery of firearms that have been transferred to prohibited individuals is the job of ATF agents.

ATF agents were similarly responsible for responding to the Capitol insurrection on January 6<sup>th</sup>, and were among the first law enforcement members to secure the Capitol.<sup>7</sup> The agency is working alongside the FBI and DOJ to investigate and bring domestic terrorists involved in the insurrection to justice.<sup>8</sup> They must have a Director at the helm.

The next Director of the ATF must be committed to enacting policies that will allow the agency to fulfill its mission to protect communities and combat gun violence. We need someone with experience in firearms and domestic terrorism who is prepared to take decisive action at the ATF. We urge you to nominate a director who will:

1. Implement regulations to stop the proliferation of ghost guns.

The ATF has wrongly determined that critical federal and state gun safety laws, such as background checks, do not apply to “unfinished” frames or receivers that can be easily converted into functioning firearms. Ghost guns are untraceable firearms constructed by individuals using unfinished gun components and are often sold as easy-to-assemble kits that are completely unregulated. ATF estimates that approximately 10,000 ghost guns were recovered by law enforcement in 2019.<sup>9</sup> Likewise, in Washington, D.C., three ghost guns were recovered by police in 2017, 116 in 2019, and by December 17, 2020, over 280.<sup>10</sup>

In 2019, a 16-year-old student at Saugus High School used a .45-caliber handgun that was assembled from unfinished gun parts to shoot five of his classmates, killing a 14-year-old boy and a 16-year-old-girl. The ATF should clarify the definition of a firearm to include any frame or receiver that is designed to be part of a functioning firearm, or could easily be turned into one;

2. Issue a new regulation clarifying which gun sellers must get dealer licenses and run background checks.

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<sup>6</sup> Graham Kates, “‘The Charleston loophole’: Purchases by people barred from buying guns skyrocketed in 2020,” *CBS News*, February 4, 2021, available at <https://www.cbsnews.com/news/gun-purchases-charleston-loophole-2020/>

<sup>7</sup> Ryan Lucas, “Authorities Send Reinforcements To Help Secure The Capitol,” *NPR.org*, January 6, 2021, available at: <https://www.npr.org/sections/congress-electoral-college-tally-live-updates/2021/01/06/954109355/authorities-send-reinforcements-to-help-secure-the-capitol>

<sup>8</sup> “Thirteen Charged in Federal Court Following Riot at the United States Capitol,” U.S. Department of Justice, Office of Public Affairs, January 8, 2021, available at <https://www.justice.gov/opa/pr/thirteen-charged-federal-court-following-riot-united-states-capitol>

<sup>9</sup> Zusha Elinson, “Ghost-Gun Company Raided by Federal Agents,” *Wall Street Journal*, December 11, 2020, available at <https://www.wsj.com/articles/ghost-gun-company-raided-by-federal-agents-11607670296>

<sup>10</sup> Tom Jackman. “Attorneys General in D.C., Md. and Va. Support Lawsuit Demanding ATF Regulate ‘Ghost Guns,’” *Washington Post*, December 24, 2020. <https://www.washingtonpost.com/dc-md-va/2020/12/24/ghost-guns-litigation/>

The Brady Handgun Violence Prevention Act requires anyone “engaged in the business” of selling guns to obtain a federal license. The current regulation defining this term is vague and has allowed private individuals to illegally sell dozens, or even hundreds, of firearms without life-saving Brady background checks or oversight.

For example, in 2018, Thomas Caldwell, an unlicensed gun dealer in Wisconsin, sold a handgun to a four-time felon that was used to kill Cmdr. Paul Bauer, a police officer in Chicago. From 2015 to 2018, Mr. Caldwell had posted 202 ads for gun sales.<sup>11</sup> In Odessa, Texas, a gunman, prohibited from purchasing firearms, used weapons he bought from an unlicensed firearms dealer to kill seven people and wound 25 others.<sup>12</sup> The ATF must strengthen the regulation and clarify the number of private sales an individual can make before the seller is “engaged in the business” of selling firearms;

### 3. Modernize, strengthen, and prioritize oversight of the gun industry.

Tens of thousands of guns are trafficked into cities and into the hands of criminals every year. These guns can enter the illegal market through a variety of channels. The federal government must create the standards for regulating the gun industry. According to the most recently available data, a small percentage of gun dealers are responsible for the overwhelming majority of recovered crime guns,<sup>13</sup> yet the ATF frequently allows these businesses to continue transferring firearms to the public without repercussion.<sup>14</sup> The ATF must take steps to crackdown on bad apple gun dealers such as revoking licenses from dealers that consistently break federal laws, revising its internal standards for taking action against negligent Federal Firearms Licensees (FFLs), strengthening the application process to obtain or renew an FFL, and increasing record keeping requirements.

Moreover, the ATF’s compliance inspection system for the gun industry must be reformed. The ATF only inspects an average of 7 percent of FFLs per year (including only 12-13 percent of gun dealers, pawnshops, and manufacturers),<sup>15</sup> and rarely takes serious action against those FFLs who have consistently and seriously violated federal firearms laws while transferring guns;<sup>16</sup>

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<sup>11</sup> Jeremy Gerner, Annie Sweeney, “The feds were watching, but unlicensed gun dealer was still able to sell Glock that killed Chicago police officer,” *Chicago Tribune*, October 11, 2020, available at <https://www.chicagotribune.com/news/breaking/ct-met-paul-bauer-glock-handgun-20180928-story.html>

<sup>12</sup> “Lubbock man who sold Midland/Odessa shooter AR-15, sentenced to 2 years in prison,” KCBD.com, January 7, 2021, available at <https://www.kcbd.com/2021/01/07/lubbock-man-who-sold-midlandodessa-shooter-ar-sentenced-unlicensed-firearms-dealing/>

<sup>13</sup> “Commerce in Firearms in the United States,” U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives, February 2020, available at [https://brian.carnell.com/wp-content/uploads/2017/10/BATF\\_report\\_020400.pdf](https://brian.carnell.com/wp-content/uploads/2017/10/BATF_report_020400.pdf)

<sup>14</sup> Ali Watkins, “When Guns Are Sold Illegally, A.T.F. Is Lenient on Punishment,” *New York Times*, June 3, 2018, available at <https://www.nytimes.com/2018/06/03/us/atf-gun-store-violations.html>

<sup>15</sup> “Fact Sheet - Facts and Figures for Fiscal Year 2019,” U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives, June 2020, available at <https://www.atf.gov/resource-center/fact-sheet/fact-sheet-facts-and-figures-fiscal-year-2019>

<sup>16</sup> *Ibid.* Watkins (When Guns Are Sold Illegally)

4. Ensure public transparency by disseminating robust statistical data.

Since 2003, the ATF has cited a narrow interpretation of federal appropriations riders, known as the Tiahrt Amendments, as a restriction on its ability to share data on crime guns. The ATF must clarify that the appropriations riders do not restrict the Agency's ability to publish or release aggregate data on crime guns and gun trafficking;

5. Update critical reports and develop new ways to affirmatively share information about gun trafficking and the source of crime guns.

The ATF annually publishes its *Firearms Commerce in the United States* report,<sup>17</sup> however, since the 2001/2002 edition this report has only provided information on the firearms industry and ATF's regulatory role. Previously this report included detailed aggregate data about how firearms are diverted from FFLs to the illegal market, information that is invaluable to researchers and lawmakers. Additionally, the ATF has not updated its gun trafficking report, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers*, since 2000. This report reviewed the agency's trafficking investigations and their dispositions by prosecutors and courts. This report should be reissued annually and updated to include aggregate data on ghost guns; and

6. Require FFLs to notify the Department of Justice every time they complete a gun sale where a background check has been initiated but not completed to ensure the prioritization of completing background checks where a sale has been made.

Ensuring that federally prohibited individuals are not armed must be a top priority for law enforcement. While most background checks are completed instantly, approximately ten percent of checks require additional time to complete and three percent are delayed more than three business days.<sup>18</sup> From January to October 2020, there were over 450,000 checks that weren't completed within three days, and it's possible that the total number for all of 2020 may be closer to 600,000.<sup>19</sup> However, federal law allows these sales to proceed after three business days without the completion of a background check, allowing some individuals that are prohibited from purchasing a firearm to obtain a weapon. This loophole, called the "default proceed," and now known as the Charleston Loophole allowed an avowed white supremacist prohibited from owning a gun to purchase a firearm and kill nine Black parishioners at Emanuel African Methodist Episcopal (AME) Church in Charleston, South Carolina.<sup>20</sup>

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<sup>17</sup> Previous titled "Commerce in Firearms in the United States"

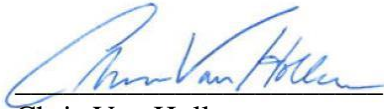
<sup>18</sup> "How COVID-19 has Made a Federal Background Check Loophole Even Deadlier," EverytownResearch.org, June 10, 2020, available at <https://everytownresearch.org/covid-default-proceed/>.

<sup>19</sup> "Undeniable: How Long-Standing Loopholes in the Background Check System Have Been Exacerbated by COVID-19," EverytownResearch.org, December 10, 2020, available at <https://everytownresearch.org/report/background-check-loopholes/?preview=true>

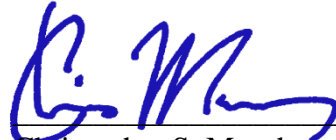
<sup>20</sup> German Lopez, "A legal loophole may let hundreds of thousands get a gun without a background check," *Vox*, March 6, 2019, available at <https://www.vox.com/2019/3/6/18253165/background-check-bill-charleston-loophole>

Our nation's gun violence epidemic has struck our schools, churches, families, and communities. We need a strong leader at the ATF who understands the extent of our nation's gun violence epidemic, is committed to ensuring that dangerous individuals don't gain access to firearms, and will take steps to combat the rise in gun violence in our country. Our nation cannot wait to take action, and we urge you to quickly nominate an ATF Director who will attack this crisis head on.

Sincerely,



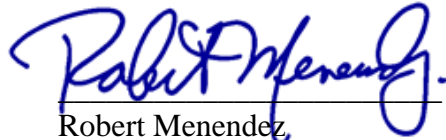
Chris Van Hollen  
United States Senator



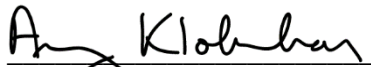
Christopher S. Murphy  
United States Senator



Richard Blumenthal  
United States Senator



Robert Menendez  
United States Senator



Amy Klobuchar  
United States Senator



Elizabeth Warren  
United States Senator



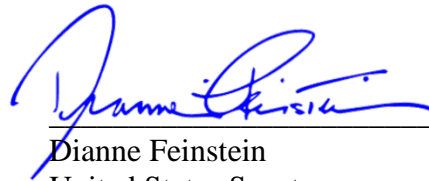
Cory A. Booker  
United States Senator



Edward J. Markey  
United States Senator



Ron Wyden  
United States Senator



Dianne Feinstein  
United States Senator



Kirsten Gillibrand  
United States Senator



Tammy Duckworth  
United States Senator