

United States Senate

WASHINGTON, DC 20510

June 27, 2018

The Honorable Thomas E. Brandon
Acting Director
Bureau of Alcohol, Tobacco, Firearms and Explosives
99 New York Avenue, NE
Washington, DC 20226

Dear Acting Director Brandon,

We write to express deep concern regarding the report from *The New York Times* discussing the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and its oversight of Federal Firearms Licensees (“firearm dealers”). The article raised serious concerns about ATF’s investigation and enforcement policies when firearm dealers were found to have committed regulatory violations that often resulted in the transfer of dangerous weapons to prohibited persons. We request more information regarding these practices, as well as any recommended changes to federal law that would allow the ATF to better enforce federal firearms laws.

The *Times*’ report highlighted a disturbing pattern in which ATF investigators found certain firearm dealers repeatedly violated federal law and failed multiple inspections.¹ In these instances, the investigators recommended to revoke the firearm dealers’ licenses, only to be reversed by ATF supervisors.

A firearm dealer willfully violates the law when he or she intentionally, knowingly, or recklessly violates his or her legal obligations.² The report in the *Times* noted multiple instances in which firearm dealers received citations for violations and then subsequently failed to comply with the law. These subsequent failures appeared to be severe, blatant violations, including failing to conduct background checks, threatening an ATF officer, and selling to a self-identified felon. These practices plainly put the public at risk of gun violence. Yet, despite the clear violations and their potentially deadly consequences, ATF overturned the recommendations from subordinate investigators to hold irresponsible firearm dealers accountable.

¹ Ali Watkins, *When Guns Are Sold Illegally, A.T.F. Is Lenient on Punishment*, N.Y. Times (Jun. 3, 2018), <https://www.nytimes.com/2018/06/03/us/atf-gun-store-violations.html>.

² *Armalite, Inc. v. Lambert*, 544, F.3d 644, 647-648 (6th Cir. 2008).

This initial reporting is deeply troubling, particularly since the ATF and the Justice Department have repeatedly pledged – publicly and otherwise – that they would rigorously enforce federal firearm laws.³ Consequently, we request that you provide us with answers to the following questions:

1. How many firearm dealers have been found to have violated federal law in more than one inspection that resulted in a prohibited person obtaining a firearm? Please describe the circumstances in which such firearm dealers faced some sort of administrative, civil, or criminal penalty.
2. Of the firearm dealers that received a recommendation for license revocation, how many had that recommendation overturned by an ATF supervisor or other executive, including ATF Directors of Industry Operations (DIO)? Please quantify how many times such a recommendation has been overturned by an ATF supervisor or DIO per year since 2010 to present.
3. We understand that ATF has a policy, bearing number ATF O 5370.1B, in effect to ensure consistency and fairness related to enforcement actions. A copy of this policy was previously disclosed in response to a FOIA request.⁴ Please provide the latest version of this policy, and inform us with specificity of any deviations from this policy. If the policy has not been updated since the 2013 version, please explain why.
4. Please provide the specific policies and procedures for an ATF supervisor or other official to overturn a subordinate investigator's recommendation that a firearm dealer face some sort of penalty for violating federal law.
5. To the extent regulatory violations were committed by a firearm dealer but no administrative, civil, or criminal enforcement action was taken against that firearm dealer due to constraints under federal law, please provide us with recommended changes to federal law. It is in the public's interest to ensure that robust federal

³ See *Review of the FY2019 Budget Request for the U.S. Dept. of Justice*, Subcomm. on Commerce, Justice, Science, and Related Agencies (Apr. 25, 2018), <https://www.appropriations.senate.gov/hearings/review-of-the-fy2019-budget-request-for-the-us-dept-of-justice>; see also *Firearm Accessory Regulation and Enforcing Federal and State Reporting to the National Instant Criminal Background Checks System (NICS)*, U.S. S. Comm. on the Judiciary (Dec. 6, 2017), <https://www.judiciary.senate.gov/meetings/firearm-accessory-regulation-and-enforcing-federal-and-state-reporting-to-the-national-instant-criminal-background-check-system-nics>; see also *Oversight of the U.S. Dept. of Justice*, U.S. S. Comm. on the Judiciary (Oct. 18, 2017), <https://www.judiciary.senate.gov/meetings/10/18/2017/oversight-of-the-us-department-of-justice>.

⁴ FOIA Request Response from Stephanie M. Boucher, Disclosure Div. Chief, Bureau of Alcohol, Tobacco, Firearms, & Explosives, to David T. Hardy (Dec. 14, 2015), <https://www.scribd.com/doc/299265807/Final-Response-2015-0677-for-December-14-2015-Release>.

laws are in place so that the ATF can effectively enforce firearms laws to protect our communities.

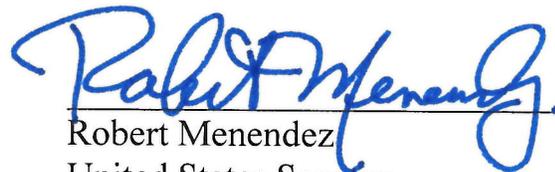
6. Please provide unredacted copies of all the documents you have provided in the following federal court action: *Brady Center to Prevent Gun Violence v. U.S. Department of Justice, et al.*, 1:17-cv-02130-RDM (District of Columbia).

Thank you for your attention to this matter. We look forward to your response.

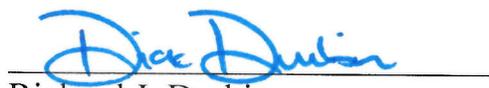
Sincerely,



Dianne Feinstein
United States Senator



Robert Menendez
United States Senator



Richard J. Durbin
United States Senator



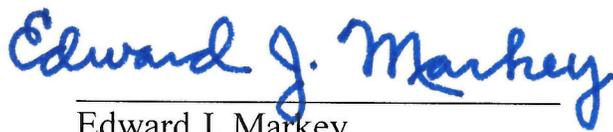
Richard Blumenthal
United States Senator



Brian Schatz
United States Senator



Christopher S. Murphy
United States Senator



Edward J. Markey
United States Senator