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Congress of the United States

House of Representatives

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LAWRENCE J. BRADY
STAFF DIRECTOR

July 15, 2011

Dear Colleague:

I am writing to invite you to co-sponsor the Stop Gun Trafficking and Strengthen Law Enforcement Act of 2011, which Rep. Carolyn Maloney and I introduced today, along with several other Members. The bill would establish a dedicated firearms trafficking statute to empower law enforcement officials to attack the criminal networks that supply weapons of war to murderous Mexican drug cartels. As documented in a report I issued on June 30, law enforcement witnesses appearing before the Oversight Committee have supported the establishment of a dedicated firearms trafficking statute, including ATF field agents who testified on June 15, as well as Acting ATF Director Kenneth Melson, who appeared for a transcribed interview on July 4.¹

This legislation would fill a major gap in the U.S. criminal code: there is no dedicated statute prohibiting firearms trafficking. Instead, traffickers who provide dozens or even hundreds of high-powered assault rifles to Mexican drug cartels are typically prosecuted under 18 U.S.C. § 922, which prohibits “engaging in a firearms business without a license.”² According to the Department of Justice Inspector General, prosecutors consider these laws to be “mere paperwork violations” and frequently decline to take the cases.³ The bill would give law enforcement officials the legal tools they need to counter the worst firearms traffickers without infringing on the legitimate rights of law-abiding citizens.

¹ House Committee on Oversight and Government Reform Minority Staff, *Outgunned: Law Enforcement Agents Warn Congress They Lack Adequate Tools to Counter Illegal Firearms Trafficking* (June 2011) (online at http://democrats.oversight.house.gov/index.php?option=com_content&task=view&id=5360&Itemid=49).

² 18 U.S.C. § 922(a)(1) states: “It shall be unlawful for any person except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce; or except a licensed importer or licensed manufacturer, to engage in the business of importing or manufacturing ammunition, or in the course of such business, to ship, transport, or receive any ammunition in interstate or foreign commerce.”

³ Department of Justice, Office of the Inspector General, *Review of ATF's Project Gunrunner* (Nov. 2010).

ATF Director States That a Firearms Trafficking Statute is “Absolutely” Needed

On July 4, 2011, Committee staff conducted a transcribed interview with Acting ATF Director Kenneth Melson. During the interview, Acting Director Melson stated that law enforcement officials “absolutely” needed a firearms trafficking statute in order to effectively attack criminal trafficking rings.⁴ He explained that the existing laws and penalties are too weak to be effective in disrupting large trafficking rings. With respect to current law, he stated:

The most it does, if you get a conviction, is to prevent them from buying guns again. But for the money they are getting, that may be worth it. And as I mentioned before, we don’t have much torque in order to convince them to cooperate because they know they are not getting much time.⁵

He added:

[W]hen you consider what they might get from a conviction as opposed to what might happen if they flip against somebody who is connected to the cartel and the consequences of that, you are just not going to get anyplace. And if people are comfortable with that, we can continue to do nothing but take off a couple guns here and a couple guns there.⁶

Acting Director Melson’s position was supported by other ATF officials interviewed by the Committee. For example, on June 28, 2011, Committee staff conducted a transcribed interview with William McMahon, the Deputy Assistant Director for Field Operations. He elaborated on the need for a firearms trafficking statute:

If you can actually charge someone with actually firearms trafficking, we have never been able to do that. We say it all the time, that we are locking up firearms traffickers but really what we are locking up are people who lie on a Federal form or people who deal without a license, if there were a license, it wouldn’t be illegal. So I think a firearms trafficking statute would be most helpful, coupled with some sentencing guidelines along with that.⁷

When asked whether the existence of such a statute “would have changed the impact in this particular case,” he replied:

⁴ House Committee on Oversight and Government Reform, Transcribed Interview of Kenneth Melson, at 84 (July 4, 2011).

⁵ House Committee on Oversight and Government Reform, Transcribed Interview of Kenneth Melson, at 88 (July 4, 2011).

⁶ *Id.*

⁷ House Committee on Oversight and Government Reform, Transcribed Interview of William McMahon, at 147-149 (June 28, 2011).

Sure, I can tie the network together a lot more quickly if you have that firearms traffic statute as opposed to the lying and buying violation because the lying and buying violation actually has to be proven every time that form is filled out and it is a knowing violation. So I have to prove that when you went in there at that moment of time and filled out that form, you knowingly were going to purchase this weapon for someone else. And that is very difficult to prove. But if I can—if I have a firearms trafficking statute that can tie in all the other things that we all know are suspicious when somebody is buying a gun, recoveries and the number and the type, that would be a lot more helpful to take these people off a lot more quicker and a lot more quickly and I think more substantially too where we actually have some real, you know, sentence behind it, real beef behind putting cuffs on them.⁸

Similarly, Special Agent Carlos Canino, the acting ATF attaché to Mexico, stated during his transcribed interview that there is an “epidemic” of illegal firearms trafficking to Mexico, and a “trafficking statute would be helpful.” He added: “What we want to do is we want to stop otherwise legal guns from getting into an illegal secondary market. You know, we want to stop these guys, violent criminals, from hurting people.”⁹

Committee staff also conducted a transcribed interview of William Newell, the former Special Agent-in-Charge of the Phoenix Field Division. He stated: “not having a statute that would address a pattern of activity by a group of individuals that are engaged in some form of diversion of firearms from legal to illegal creates a situation for us where we have to go and look at each individual transaction.”¹⁰

Special Agent Olindo Casa also reiterated this view during his transcribed interview. He stated: “There is really no trafficking, firearms trafficking statute, per se. It would be nice to have a trafficking statute per se or to enhance some of the penalties on even, on the straw purchasers, just to be a deterrent effect ... so we can really hammer these people and just put them in jail.”¹¹

Mexican Ambassador Also Calls on Congress to Take Action

In addition to U.S. law enforcement officials, the Mexican government is also calling on the United States to assist in its efforts to stem the flow of illegal assault weapons across the border. On June 30, 2011, the Mexican Ambassador to the United States, Arturo Sarukhan, sent

⁸ House Committee on Oversight and Government Reform, Transcribed Interview of William McMahon, at 147-149 (June 28, 2011).

⁹ House Committee on Oversight and Government Reform, Transcribed Interview of Carlos Canino, at 59-60 (June 16, 2011).

¹⁰ House Committee on Oversight and Government Reform, Transcribed Interview of William Newell, at 52 (June 8, 2011).

¹¹ House Committee on Oversight and Government Reform, Transcribed Interview of Olindo “Lee” Casa, at 81-82 (Apr. 28, 2011).

a letter to me expressing his firm support for congressional efforts to provide U.S. law enforcement with the tools they need to stop American firearms from getting into the hands of Mexican drug cartels. He stated:

I would like to express my gratitude for your dedication and perseverance to enact legislation and enforce existing laws to stop the flow of illegal weapons into Mexico. We thank you for the recommendations you present in the report released today, "Outgunned," which unequivocally concludes that there are several actions that the United States Congress and Administration can take to reduce the number of weapons that cross the border illegally.¹²

The Ambassador's letter echoes the comments made to me and Oversight Committee Chairman Darrell E. Issa during a congressional delegation to Mexico last month where we met with U.S. and Mexican government officials regarding the epidemic of gun violence and firearms trafficking plaguing that country. For example, John Feeley, the U.S. chargé d'affaires in Mexico, told us that weapons trafficking from the United States is fueling "war-like activities" by the drug cartels and that the United States needs to stop weapons trafficking before the firearms get to Mexico. He also stated: "By the time they get here, the horse is already out of the barn."¹³

For these reasons, I hope you will join our efforts to counter illegal firearms trafficking and help the government and people of Mexico as they combat this problem.

Sincerely,



Elijah E. Cummings
Ranking Member

¹² Letter from Ambassador Arturo Sarukhan to Rep. Elijah E. Cummings (June 30, 2011).

¹³ Briefing by John Feeley to Members of House Committee on Oversight and Government Reform (June 25, 2011).