

UNITED STATES DISTRICT COURT

for the

Northern District of Alabama

CIVIL COVER SHEET

JS 44 (Rev. 08/16)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFF(S) Lee, Sandra, Gun Owners of America, Inc. and Gun Owners Foundation
(b) County of Residence of First Listed Plaintiff Madison
(c) Attorneys (Firm Name, Address, and Telephone Number) M. Reed Martz, Esq. 302 Enterprise Drive, Ste. A, Oxford, MS 38655 662-234-1711
DEFENDANT(S) U.S. Justice Department, Bureau of Alcohol, Tobacco, Firearms and Explosives, and Lombardo, Regina, in her official capacity as Acting Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives
County of Residence of First Listed Defendant
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
U.S. Government Plaintiff
U.S. Government Defendant
Federal Question (U.S. Government Not a Party)
Diversity (Indicate Citizenship of Parties in Item III)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
DEFENDANT DEFENDANT

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT
PERSONAL INJURY
REAL PROPERTY
CIVIL RIGHTS
PRISONER PETITIONS
FORFEITURE/PENALTY
LABOR
IMMIGRATION
BANKRUPTCY
PROPERTY RIGHTS
SOCIAL SECURITY
FEDERAL TAX SUITS
OTHER STATUTES

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
5 U.S.C. § 702
Brief description of cause:

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P.
DEMAND \$
Prelim. Inj.
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions):
JUDGE
DOCKET NUMBER

DATE
SIGNATURE OF ATTORNEY OF RECORD

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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- I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), Fed. R. Civ. P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff.** Jurisdiction based on 28 U.S.C. §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
- (2) United States defendant.** When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- (3) Federal question.** This refers to suits under 28 U.S.C. § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- (4) Diversity of citizenship.** This refers to suits under 28 U.S.C. § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below. **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- (1) Original Proceedings.** Cases which originate in the United States district courts.
- (2) Removed from State Court.** Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C. § 1441. When the petition for removal is granted, check this box.
- (3) Remanded from Appellate Court.** Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- (4) Reinstated or Reopened.** Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- (5) Transferred from Another District.** For cases transferred under Title 28 U.S.C. § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- (6) Multidistrict Litigation – Transfer.** Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. § 1407.
- (8) Multidistrict Litigation – Direct File.** Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity exists.** Example: U.S. Civil Statute: 47 USC § 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, Fed. R. Civ. P. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION**

**SANDRA LEE,
GUN OWNERS OF AMERICA, INC., and
GUN OWNERS FOUNDATION**

PLAINTIFFS

v.

CAUSE No. _____

**U.S. JUSTICE DEPARTMENT,
BUREAU OF ALCOHOL, TOBACCO,
FIREARMS AND EXPLOSIVES, and
REGINA LOMBARDO, in her official capacity as
Acting Director, Bureau of Alcohol, Tobacco,
Firearms, and Explosives**

DEFENDANTS

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Of counsel

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Now come Plaintiffs, through Counsel, and for their Complaint state as follows:

Plaintiffs bring this action seeking a permanent injunction to return to the *status quo* as it existed prior to Defendants' July 22, 2019 "Alabama Public Safety Advisory to All Alabama Federal Firearms Licensees" ("PSA") which rescinded a prior ATF determination that, when transferring a firearm, Alabama federal firearm licensees ("FFLs") may accept an Alabama concealed carry permit in lieu of obtaining a background check from the FBI's National Instant Background Check System ("NICS"). Plaintiffs seek permanent injunctive relief restraining Defendants from enforcing the mandates of ATF's Alabama Public Safety Advisory. Finally, Plaintiffs seek a declaratory judgment that Alabama Code § 13A-11-75 qualifies as a matter of law for the exception provided for in 18 U.S.C. § 922(t)(3),¹ that Defendants' Alabama Public Safety Advisory is invalid because it exceeds the scope of Defendants' authority, and that Defendants have no power under federal law unilaterally to disqualify Alabama and its residents from the exemption provided for in § 922(t)(3).

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 702 and 28 U.S.C. § 1331. This Court has authority to grant the remedy Plaintiffs seek under 28 U.S.C. §§ 2201 and 2202 and 5 U.S.C. § 706.
2. Venue is proper in this district pursuant to 5 U.S.C. § 703 and 28 U.S.C. § 1391(e) and 1391(b)(2). The events giving rise to this claim occurred in Madison County, Alabama.

¹ 27 CFR § 478.102 is Defendants' regulation implementing 18 U.S.C. § 922(t)(3), which mirrors the statute in pertinent part.

PARTIES

3. Plaintiff Sandra Lee is a United States citizen, and resident of Huntsville, Alabama, located within Madison County within this district. She is a law-abiding person, and has no disqualification that would prevent her from acquiring, keeping, or bearing arms. Plaintiff Lee is a member of Gun Owners of America, Inc, and possesses a valid Alabama concealed carry permit. Were it not for the challenged agency action, Ms. Lee would be able to use her Alabama concealed carry permit in lieu of a background check to purchase firearms at federally licensed firearms dealers, as authorized by 18 U.S.C. § 922(t)(3).
4. Plaintiff Gun Owners of America, Inc. (“GOA”) is a California non-stock corporation with its principal place of business at 8001 Forbes Place, Springfield, VA 22151. GOA is organized and operated as a non-profit membership organization that is exempt from federal income taxes under IRC § 501(c)(4). GOA was incorporated in 1976 to preserve, protect, and defend the Second Amendment rights of gun owners. GOA has more than two million members, including many who are residents of the Northern District of Alabama, who possess Alabama concealed carry permits, and who would use them to purchase firearms, but for the challenged agency action.
5. Plaintiff Gun Owners Foundation (“GOF”) is a Virginia non-stock corporation, with its principal place of business in Virginia, at 8001 Forbes Place, Springfield, VA 22151. GOF is organized and operated as a non-profit legal defense and educational foundation that is exempt from federal income taxes under § 501(c)(3) of the U.S. Internal Revenue

Code. GOF is supported by gun owners across the country, including Alabama residents, and through contributions made through the Combined Federal Campaign.

6. Defendant U.S. Department of Justice (“DOJ”) is an executive agency within the federal government of the United States. DOJ is headquartered at 950 Pennsylvania Avenue NW, Washington, D.C. 20530. DOJ is the agency responsible for enforcing federal firearms laws.
7. Defendant Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) is a component within DOJ, and is headquartered at 99 New York Avenue NE, Washington, D.C. 20226. ATF investigates violations of and enforces compliance with federal firearms laws, and instructs licensees and the public on the requirements for use of the NICS system, which is administered by the Federal Bureau of Investigation.
8. Defendant Regina Lombardo is the Acting Director of ATF, currently the senior official at ATF, and thus is responsible for overseeing the agency’s action challenged herein.

STATEMENT OF FACTS

9. On April 30, 2020, Plaintiff Lee called “Mr. Big Guns,” a federal firearms licensee (“FFL”) located in Huntsville, Alabama, for the purpose of inquiring about purchasing a firearm with her current and valid Alabama concealed carry permit. Plaintiff Lee explained that she would like to visit the FFL’s location, and use her valid Alabama concealed carry permit for the purpose of purchasing a firearm. However, Plaintiff Lee was advised that sale of the firearm using her permit could not be completed unless she submitted to a FBI NICS background check, consistent with the ATF’s Alabama PSA.

Ms. Lee stated she wished to use her valid Alabama concealed carry permit in lieu of a NICS background check, as authorized by 18 U.S.C. § 922(t)(3). However, consistent with ATF instructions, the FFL refused to make the sale, and Ms. Lee was not able to purchase the firearm. But for Defendants' unlawful requirements, Ms. Lee would have completed the purchase of the firearm.

10. 18 U.S.C. § 922(t) mandates that a FFL may not transfer a firearm to an unlicensed person until the FFL first conducts a background check with the National Instant Criminal Background Check System ("NICS").

11. However, § 922(t)(3)(A) provides an exception to that requirement, if the transferee:

has presented to the licensee a permit that—

(I) allows such other person to possess or acquire a firearm; and

(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

(ii) **the law of the State provides** that such a permit **is to be issued** only after an authorized government official has verified that the information available to such official does not indicate that possession of a firearm by such other person would be in violation of law.... [Emphasis added.]²

12. On September 28, 2015, then-Attorney General of Alabama, Luther Strange, wrote a letter to Defendant ATF, "to request National Instant Criminal Background Check System (NICS) exception status for Alabama." Exhibit A.

² ATF's regulation at 27 CFR § 478.102 mirrors this language.

13. The Alabama Attorney General's letter stated that "[u]pon review, I believe that Alabama's concealed carry permit requirements — provided in Alabama Code § 13A-11-75 — satisfy the listed criteria."
14. The Alabama Attorney General pointed out that, consistent with the requirement of § 922(t)(3)(A), Alabama Code § 13A-11-75(b) mandates that "[p]rior to issuance or renewal of a permit, the sheriff shall contact available local, state, and federal criminal history data banks, including the National Instant Criminal Background Check System, to determine whether possession of a firearm by an applicant would be a violation of state or federal law."
15. On February 24, 2016, Defendant ATF wrote to acknowledge its agreement with the Alabama Attorney General's assessment, and issued an "Open Letter to All Alabama Federal Firearms Licensee" ("2016 Open Letter"). Exhibit B.
16. ATF's 2016 Open Letter stated that ATF "has reviewed Alabama's Permit to Carry Pistol ... and has determined that the permit qualifies as an alternative to the background check requirement."
17. ATF's 2016 Open Letter instructed Alabama FFLs that, when transferring firearms, they would be permitted to accept Alabama carry permits issued on or after August 1, 2013, in lieu of running a NICS check.
18. Alabama Code § 13A-11-75(b) has remained unchanged since that time.
19. On July 22, 2019, ATF issued a "Public Safety Advisory to All Alabama Federal Firearms Licensees," which states that "ATF's [prior 2016] determination was based on

the understanding that a full NICS check **would be** conducted....” Exhibit C (emphasis added).

20. The Alabama PSA further states that, “ATF also based this determination inherent in this decision [sic] was the understanding that an Immigration Alien Query (IAQ) **would be** conducted if a non-U.S. citizen applied for a CCP permit, and that all CCP permit application forms, regardless of the county of issuance, required the applicant’s place/country of birth and an alien or admission number pursuant to Ala. Code §13A-11-75(e).” Exhibit C (emphasis added).

21. The Alabama PSA states that, “ATF has determined that, notwithstanding the express requirements of Ala. Code §13A-11-75, Alabama CCP permits **have been**, and continue to be, issued to individuals without completion of a NICS check, or after a NICS denial.” Emphasis added.

22. The Alabama PSA states that, “In addition, ATF has determined that some Alabama counties **have not been** requiring non-U.S. citizen CCP permit applicants to submit the information necessary to run the IAQ, specifically, the place/country of birth and an alien registration or admission number.” Emphasis added.

23. The Alabama PSA admits that Alabama Code § 13A-11-75 (which has not changed relevant to this issue³ since approved by ATF in 2016) still qualifies for the exception in

³ The statute has been amended twice in the intervening period. See Act 2018-400, §1 (SB 113 - restricting a sheriff from placing a time constraint or other requirement upon the taking of possession of pistol permit) and Act 2019-440, §1 (to provide that if a person successfully appeals the revocation or denial of a pistol permit, the sheriff is required to issue or reinstate the pistol permit no later than the close of business on the fifth business day following the district court’s transmittal of its order to the sheriff).

18 U.S.C. § 922(t)(3), because it requires that permits are not to be issued without performing a NICS check and, where applicable, an Immigration Alien Query through U.S. Immigration and Customs Enforcement, or any successor agency. The statute further requires “the application form shall require information relating to the applicant's country of citizenship, place of birth, and any alien or admission number issued by U.S. Immigration and Customs Enforcement, or any successor agency.”

24. The Alabama PSA claims that the requirements of § 13A-11-75 are not being adhered to **in practice** by some local Alabama sheriffs.
25. The Alabama PSA asserts, contrary to the statute, that “the authority issuing the permit **must conduct** a NICS background check....” Emphasis added. The Alabama PSA claims, without providing evidence, that “[b]ecause county sheriffs **have issued** CCP permits s [sic] without completing a full NICS check, firearms have been transferred to felons and other prohibited individuals in violation of federal law....” Emphasis added.
26. The Alabama PSA asserts, again without providing any evidence, that “[a]t least some of these permits were issued to felons and other federally prohibited persons who used them to purchase firearms from Alabama FFLs without a NICS check.”
27. Thus, the Alabama PSA concludes, without citation to any specific statutory provision, that “the standards set forth in the Brady law require us to find that Alabama’s CCP permits no longer qualify as a NICS check alternative.”
28. The Alabama PSA instructs that “**effective immediately, FFLs in Alabama may no longer accept CCP permits as an alternative to a NICS check.**” (Emphasis original.)

29. The Alabama PSA was the first, but not the only, such letter that ATF has issued in recent months.
30. On October 23, 2019, ATF issued an “OPEN LETTER TO ALL MINNESOTA FEDERAL FIREARMS LICENSEES” (“Minnesota Letter”) which states that Minnesota permits may no longer be used in lieu of the NICS system.⁴
31. Then, on March 3, 2020, ATF issued a “PUBLIC SAFETY ADVISORY TO ALL MICHIGAN FEDERAL FIREARMS LICENSEES” (“Michigan PSA”),⁵ which revokes a prior March 2006 letter.
32. The Michigan PSA, like the Alabama PSA, acknowledges that the language of the relevant Michigan statute, MCL 28.426(2), still qualifies for a § 922(t)(3) exemption, because that statutory text requires a NICS check be run prior to the issuance of a Michigan CPL.
33. However, the Michigan PSA, like the Alabama PSA, claims that, “in spite of the specific Michigan statutory requirement, ATF recently received information ... that Michigan CPLs **have been**, and continue **to be** issued to certain applicants without a determination by Michigan officials as to whether the applicant is prohibited under federal law from possessing or transporting firearms.” Emphasis added.
34. These actions taken against Alabama, Minnesota, and Michigan are consistent with a memorandum issued on January 16, 2020, by Andrew R. Graham, ATF’s Deputy Assistant Director of Field Operations, to “All Directors, Industry Operations,”

⁴ <https://www.atf.gov/file/141161/download>

⁵ <https://www.atf.gov/firearms/docs/open-letter/public-advisory-all-michigan-ffls-03-03-20/download>

announcing an official ATF “NICS Alternative Permit Sampling Initiative” (“2020 Memo”). Exhibit D.

35. The 2020 Memo notes that “ATF has issued Open Letters recognizing that certain permits issued in 25 States meet the requirements of 922(t)(3).”
36. The 2020 Memo claims that “it is important for ATF to evaluate whether prohibited persons have still been able to obtain and use them [carry permits] to acquire firearms without a NICS background check.”
37. The 2020 Memo explains that “Field Operations is initiating a program in which IOIs [Industry Operations Investigators], during inspections of FFLs, will conduct a NICS re-check of a sampling of transactions where a State permit was used as an alternative to a NICS check....”
38. The 2020 Memo then instructs that IOIs are to randomly sample Forms 4473 obtained from completed transfers, and “conduct NICS re-checks” in order to determine if any transferees were actually prohibited persons.
39. The 2020 Memo concludes that, by May 30, 2020, “each field division will send consolidated results....”
40. Upon information and belief, as evidenced by its actions in the Alabama PSA, the Minnesota Letter, the Michigan PSA, and its 2020 Memo, ATF is implementing a new policy and has begun a campaign to frustrate Congressional intent and effectively negate the benefit to gun owners and dealers of 18 U.S.C. § 922(t)(3).

41. Plaintiffs believe that for politically-motivated reasons, ATF is currently undertaking a concerted effort to target all exempted states' for elimination from the § 922(t)(3) exception.
42. As evidenced by its 2020 Memo, part of ATF's campaign involves ordering its regulatory Industry Operation Investigators in various states, during inspections of dealers, to **randomly** (and in violation of federal regulation) run NICS checks on persons who **in the past** purchased firearms using various states' concealed carry permits, in lieu of a NICS check.
43. This ATF campaign is unlawful because, as the FBI makes clear, “[a]uthorized use of the NICS is limited to the purpose of obtaining information on whether receipt of a firearm by a **prospective transferee** would violate federal or state law. FFLs, their officers, employees, agents, and/or other representatives are permitted to request background checks of the NICS **only for the authorized purpose.**”⁶ Emphasis added. As the FBI explains, “[a]ccessing or using the NICS or permitting access or use of the NICS by another, for any unauthorized purpose, is a violation of Federal law, for which sanctions may include criminal prosecution; a civil fine not to exceed \$10,000; and subject to cancellation of NICS inquiry privileges.”
44. Indeed, 28 C.F.R. § 25.6(a) states unambiguously that only “FFLs may initiate a NICS background check,” and “only in connection with a **proposed** firearm transfer as required by the Brady Act.” Emphasis added.

⁶ <https://www.fbi.gov/services/cjis/nics/enrollment-instructions-for-ffls>

45. 28 C.F.R. § 25.6(j) outlines certain three enumerated exemptions from the prohibition on contacting NICS, the only potentially relevant one of which is “[r]esponding to an inquiry from the Bureau of Alcohol, Tobacco, Firearms, and Explosives in connection with a civil or criminal law enforcement activity....”
46. ATF’s 2020 Memo and “NICS Alternative Permit Sampling Initiative” does not constitute a “civil or criminal law enforcement activity”⁷ based on any investigation of wrongdoing by a dealer or specific purchaser, but rather a random and suspicionless random sampling of past sales in the hopes to disqualify states from the benefit of § 922(t)(3).
47. Neither the statute nor the regulation permit ATF to run suspicionless FBI background checks on buyers related to past completed sales of firearms, any time the agency wishes, such as during compliance inspections of dealers. That is not the purpose of the NICS system.
48. Upon information and belief, ATF’s 2020 Memo reveals a strategy designed to collect data to support ATF’s predetermined mission, in open hostility to Congress’ will as set out in § 922(t)(3), by assembling data to be used only to achieve a *de facto* repeal of § 922(t)(3) and force as many gun sales as possible to take place through the federal NICS system.

⁷ Similarly, 18 U.S.C. § 923(g)(1)(D) explains that, during compliance inspections of FFLs, ATF inspectors “shall not ... seize any records or other documents other than those records or documents constituting material evidence of a violation of law.”

49. Media and news sources have reported on various proposals by state and federal politicians to require “universal background checks.” To date, none of these proposals has been enacted into law at the federal level.
50. Moreover, Plaintiffs contend that none of these proposals would be constitutional.
51. Yet President Trump has indicated a willingness to “explore executive action” when it comes to gun control.⁸
52. Upon information and belief, the ATF’s Alabama PSA, Minnesota letter, Michigan PSA, and its 2020 Memo, represent the first steps in implementing ATF’s agenda to force as many gun sales into the federal background check system as possible, moving toward a “universal background check” system achieved through administrative agency action rather than congressional legislation.
53. Upon information and belief, the ATF campaign also constitutes part of an agency effort to create a prohibited national registry of gun owners, in violation of 18 U.S.C. § 926(a).
54. Upon information and belief, ATF’s Alabama PSA and 2020 Memo represent an attempt to feed additional information about specific gun transfers into an illegal ATF database.
55. Plaintiffs aver that 18 U.S.C. § 922(t)(3) does not authorize Defendants to investigate the concealed carry permitting process within the states. Nor does federal law provide any authority to Defendants to disqualify or “revoke” any states’ concealed carry permits from the § 922(t)(3) exemption.

⁸ <https://www.politico.com/story/2019/08/05/trump-executive-action-guns-1448612>

56. Qualification for exception under 18 U.S.C. § 922(t)(3) does not revolve around whether some or all state officials **in practice** conform their behavior to the requirements of state law in every instance. Rather, § 922(t)(3) is concerned only with whether state statutes meet certain requirements **as a matter of law**. Defendants admit the Alabama statute meets the necessary criteria on its face.
57. Plaintiffs have found no authority for Defendants' view of § 922(t)(3) in which a single instance of a sheriff not following Alabama law could thwart the intent of Congress and undermine the § 922(t)(3) exception for an entire state. , by failing to or refusing to properly and adequately screen one or more candidates for concealed carry permits.
58. Defendant ATF's unauthorized and unlawful Alabama PSA has harmed and continues to harm Plaintiff Lee, along with thousands of other Alabama concealed carry permit holders, many of whom (like Plaintiff Lee) are members and supporters of GOA.
59. As this case presents a pure question of law (whether the Alabama statute qualifies for the exception in § 922(t)(3)), requires no factual determinations, and involves no technical or scientific issues, there is no deference due to the agency's pure legal conclusion that Alabama permits may not be used in lieu of NICS.
60. Defendants have provided no standard for Alabama's disqualification, and no reasoned (much less adequate) explanation for their arbitrary reversal in position, when neither the federal statute nor the Alabama law at issue has changed in any way.

**FIRST CAUSE OF ACTION
(VIOLATION OF APA 5 U.S.C. § 706(2)(A))
ARBITRARY, CAPRICIOUS, ABUSE OF DISCRETION,
NOT IN ACCORDANCE WITH LAW**

61. Plaintiffs reallege the preceding paragraphs as though fully set forth herein.
62. Defendants' Alabama PSA constitutes "agency action" pursuant to 5 U.S.C. § 551(13) for purposes of review under the APA, 5 U.S.C. § 702.
63. Defendants' Alabama PSA adopts erroneous legal conclusions and asserts administrative authority that is contrary to the plain language of the statute and regulation.
64. Defendants' Alabama PSA constitutes a complete reversal of policy made without any reasoned explanation, and without application of any fixed standards.
65. Defendants' Alabama PSA is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with the law in violation of 5 U.S.C. § 706(2)(A). It also undermines the Congressional intent of § 922(t)(3).
66. Plaintiffs are adversely affected because they are being and will continue to be harmed by Defendants' action, in that they are prohibited from using their Alabama concealed carry permits as a lawful alternative to the NICS system.

**SECOND CAUSE OF ACTION
(VIOLATION OF APA 5 U.S.C. § 706(2)(A))
IN EXCESS OF STATUTORY JURISDICTION OR AUTHORITY**

67. Plaintiffs reallege the preceding paragraphs as though fully set forth herein.
68. Defendants' Alabama PSA is *ultra vires*, in excess of ATF's statutory jurisdiction or authority, in violation of 5 U.S.C. § 706(2)(C), as federal law does not grant the agency

authority to administratively review and enforce compliance with the provisions of 18 U.S.C. § 922(t)(3) and 27 CFR § 478.102.

**THIRD CAUSE OF ACTION
(VIOLATION OF APA 5 U.S.C. § 706(2)(D))
NOTICE AND COMMENT**

69. Plaintiffs reallege the preceding paragraphs as though fully set forth herein.
70. Defendants' Alabama PSA is a substantive or legislative rule because it purports to amend 27 C.F.R. § 478.102(d)(1)(iii) by imposing additional requirements beyond the "law of the State," changes the obligations and legal consequences for firearm purchasers and sellers in Alabama, and "effect[s] a change in existing law" because it "effectively amends a prior legislative rule." *Wilson v. Lynch*, 835 F.3d 1083, 1099 (9th Cir. 2016).
71. Before a substantive rule like the Alabama PSA may take effect, the APA requires the agency to issue a notice of proposed rulemaking that includes "either the terms or substance of the proposed rule or a description of the subjects and issues involved" in order to "give an interested person an opportunity to participate in the rule making through submission of written data, views, or arguments." 5 U.S.C. §§ 553(b)(3) and (c).
72. Defendants did not comply with this notice-and-comment requirement in promulgating the Alabama PSA. Rather, defendants merely purported to announce it as applicable to all firearms sales by FFLs in Alabama effective on July 22, 2019.
73. The fact that Defendants labeled their substantive rule change as a "Public Safety Advisory" does not excuse their violation of the APA or allow them to evade the notice-and-comment requirement of the APA. Alternatively, if the "Public Safety

Advisory” is not a substantive rule, this Court should declare the Alabama PSA of no effect and unenforceable.

74. Defendants’ action in promulgating the Alabama PSA has harmed and will continue to harm Plaintiffs and their members by impeding the ability of law abiding Alabama residents to acquire firearms pursuant to the provisions of federal law.

**FOURTH CAUSE OF ACTION
(VIOLATION OF 18 U.S.C. § 926(a))
NO NATIONAL GUN REGISTRY**

75. Plaintiffs reallege the preceding paragraphs as though fully set forth herein.

76. Defendants are prohibited by 18 U.S.C. § 926(a) from creating a national registry of firearms, firearm owners, or firearm transfers.

77. Federal law requires NICS checks for only a limited subset of firearm transfers, with no NICS check required for (among other things) many private sales, transfers between dealers, and FFL transfers with the transferee using a concealed carry permit under § 922(t)(3). Defendants’ Alabama PSA is an attempt to eliminate the § 922(t)(3) exemption, force more firearm transfers into the NICS system, and thereby collect information on more firearm buyers and transfers, in violation of the clear prohibition of § 926(a).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that the Court grant all appropriate relief, including:

A. The issuance of a permanent injunction, halting Defendants’ enforcement of the Alabama PSA;

- B. A declaratory judgment, pursuant to the Declaratory Judgment Act (28 U.S.C. §§ 2201-2202) or other applicable law, that holds unlawful and sets aside ATF's Alabama PSA, and declares that Alabama Code § 13A-11-75 qualifies for the exception contained in 18 U.S.C. § 922(t)(3), and that the Alabama PSA exceeds the scope of Defendants' authority;
- C. An order permanently enjoining Defendants from enforcing the Alabama PSA, or in any other way interfering with use of the Alabama concealed carry permit in lieu of a NICS check;
- D. An award of attorneys' fees and costs to Plaintiffs pursuant to Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(A), and any applicable statute or authority; and
- E. Any other relief, general or specific, that this Court in its discretion deems just and proper.

/s/ M. Reed Martz
M. Reed Martz*
302 Enterprise Dr, Ste A
Oxford, MS 38655
Phone: (662) 234-1711
reed@freelandmartz.com
**Counsel for Plaintiffs*

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Of counsel

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION**

SANDRA LEE, <i>et al.</i> ,)	
)	
Plaintiffs,)	Civil Action No. 20-cv-____
)	
v.)	
)	
U.S. JUSTICE DEPARTMENT, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

Verified Declaration of Sandra Lee

1. My name is Sandra Lee. I am a U.S. citizen and resident of Huntsville, Alabama. I make this declaration in support of the Complaint for Declaratory and Injunctive Relief. If called as a witness, I can testify to the truth of the statements contained therein.

2. I possess a valid and unexpired Alabama concealed carry permit, which expires in December of 2020. I would like to have the freedom now and in the future to purchase firearms at federally licensed firearms (FFL) dealers in Alabama using that permit, in lieu of submitting to an FBI NICS background check, as permitted and provided for under federal law.

3. On April 30, 2020, I called Mr. Big Guns, a federal firearms licensee (“FFL”) located in Huntsville, Alabama, for the purpose of purchasing a firearm

with my valid Alabama concealed carry permit. I explained that I would like to visit the FFL's location, and use my valid Alabama concealed carry permit for the purpose of purchasing a firearm.¹ However, I was advised that the sale of the firearm using my Alabama permit could not be completed unless I submitted to an FBI NICS background check, consistent with ATF's July 22, 2019 "Alabama Public Safety Advisory to All Alabama Federal Firearms Licensees."

4. I was informed by the FFL that Alabama FFLs are now required by ATF to conduct a NICS background check prior the transfer of a firearm to a non-licensee, even if that individual possesses a valid Alabama concealed carry permit.

5. The events or omissions giving rise to my suit occurred in Madison County, Alabama

6. I am a member of Plaintiff Gun Owners of America, who also seeks relief herein. If the injunction sought is not granted I, along with other Alabama concealed carry permit holders including GOA's members and supporters, will be irreparably harmed, as we will be prohibited from using our Alabama concealed

¹ Alabama's current April 3, 2020 shutdown order permits "firearms and ammunition manufacturers and retailers" to operate as "essential public services." See <https://governor.alabama.gov/assets/2020/04/Final-Statewide-Order-4.3.2020.pdf>

carry permits to purchase firearms, and will be subjected to an unnecessary federal NICS background check, all in contravention of federal law.

I, Sandra Lee, certify under penalty of perjury that the foregoing is true and correct.

Sandra Lee
Sandra Lee

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION**

SANDRA LEE, <i>et al.</i> ,)	
)	
Plaintiffs,)	Civil Action No. 20-cv-____
)	
v.)	
)	
U.S. JUSTICE DEPARTMENT, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

Verified Declaration of Erich M. Pratt

1. My name is Erich M. Pratt. I am a U.S. citizen and resident of Burke, Virginia. I make this declaration in support of the Complaint for Declaratory and Injunctive Relief. If called as a witness, I can testify to the truth of the statements contained therein.

2. I am the Senior Vice President of Gun Owners of America, Inc. (“GOA”), and the Senior Vice President of Gun Owners Foundation. These two organizations together have more than 2,000,000 members and supporters, many of whom reside in this district, and many of whom will be irreparably harmed if the injunction is not granted.

3. Many of GOA and GOF’s members and supporters possess valid Alabama concealed carry permits, and would like to have the freedom in the future

to purchase firearms at federally licensed firearms dealers using those concealed carry permits, as permitted under federal law, in lieu of submitting to an FBI NICS background check.

4. If the injunction is not granted, GOA and GOF's members and supporters will be irreparably harmed, as they will have no choice but to be subjected to an unnecessary federal NICS background check, in violation of federal law.

5. If GOA and GOF's members and supporters choose not to comply with this unlawful requirement, they will be deprived of the right to purchase firearms from federally licensed dealers.

I, Erich M. Pratt, certify under penalty of perjury that the foregoing is true and correct.



Erich M. Pratt



STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE
ATTORNEY GENERAL

501 WASHINGTON AVENUE
P.O. BOX 300152
MONTGOMERY, AL 36130-0152
(334) 242-7300
WWW.AGO.ALABAMA.GOV

September 28, 2015

Firearms Industry Programs Branch
Bureau of Alcohol, Tobacco, Firearms and Explosives
99 New York Avenue N.E.
Washington, DC 20226

Re: National Instant Criminal Background Check System exemption status

To Whom It May Concern:

I am writing to request National Instant Criminal Background Check System (NICS) exemption status for Alabama. In an email dated August 21, 2015, [REDACTED] provided my Office with information regarding the NICS alternative criteria enumerated in 18 U.S.C. § 922(t)(3) and BATFE's interpretation of such. Upon review, I believe that Alabama's concealed carry permitting requirements—provided in Alabama Code § 13A-11-75—satisfy the listed criteria. Below, please see our application of Alabama law to each of the requisite criterion that was provided.

1. "A full National Instant Criminal Background Check System (NICS) check must be conducted prior to issuance of a permit, including renewal"

Alabama Code § 13A-11-75(b) provides—in pertinent part—that, "Prior to issuance or renewal of a permit, the sheriff shall contact available local, state, and federal criminal history data banks, including the National Instant Criminal Background Check System, to determine whether possession of a firearm by an applicant would be a violation of state or federal law."

2. "The check must include the Immigration Alien Query (IAQ) for non-U.S. citizens; therefore, the applicant must submit the requisite information to run this check on or with the application, including place of birth, country of citizenship, and alien or admission number."

Alabama Code § 13A-11-75(d) provides: "If a person who is not a United States citizen applies for a permit under this section, the sheriff shall conduct an Immigration Alien Query through U.S. Immigration and Customs enforcement, or any successor agency, and the application form shall require information relating to the applicant's country of citizenship, place of birth, and any alien or admission

EXHIBIT A

number issued by U.S. Immigration and Customs Enforcement, or any successor agency. The sheriff shall review the results of these inquiries before making a determination of whether to issue a permit or renewal permit. A person who is unlawfully present in this state may not be issued a permit under this section.”

3. “State law must provide that a permit will be denied to any person prohibited by federal law from possessing or receiving firearms.”

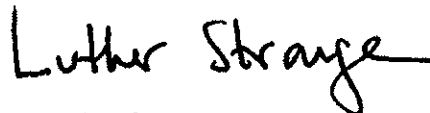
Alabama Code § 13A-11-75(a)(1)a.—in pertinent part—provides, “The sheriff of a county, upon application of any person residing in that county...shall issue or renew a permit for such person to carry a pistol in a vehicle or concealed on or about his or her person within this state...unless the sheriff determines that the person is prohibited from the possession of a pistol or firearm pursuant to state or federal law, or has a reasonable suspicion that the person may use a weapon unlawfully or in such a manner that would endanger the person’s self or others.” Furthermore, Alabama Code § 13A-11-75(a)(6) provides, “Nothing in this section shall be construed to permit a sheriff to disregard any federal law or regulation pertaining to the purchase or possession of a firearm.”

4. “A permit that qualifies as an alternative to the background check requirement can only be used for that purpose for five years from the date of issuance.”

Alabama Code § 13A-11-75(a)(1)a.—in pertinent part—provides, “The sheriff of a county, upon the application of any person residing in that county...shall issue or renew a permit for such person to carry a pistol in a vehicle or concealed on or about his or her person within this state for one to five year increments, as requested by the person seeking the permit, from the date of issue....”

For your convenience, copies of the email and statutes are enclosed. Thank you for your consideration of this matter.

Sincerely,



Luther Strange
Attorney General

LS:ch

Enclosure



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Washington, DC 20226

www.atf.gov

FEB 24 2016

OPEN LETTER TO ALL ALABAMA FEDERAL FIREARMS LICENSEES

The purpose of this open letter is to advise you of an important change to the procedure you may follow to comply with the Brady Handgun Violence Prevention Act (Brady Act), 18 U.S.C. § 922(t), when transferring a firearm to an unlicensed person.

The permanent provisions of the Brady Act took effect on November 30, 1998. The Brady Act, codified at 18 U.S.C. § 922(t) generally requires Federal firearms licensees (FFLs) to initiate a National Instant Criminal Background Check System (NICS) background check before transferring a firearm to an unlicensed person. However, the Brady Act contains exceptions to the NICS check requirement, including an exception for holders of certain State permits to possess, carry, or acquire firearms. The law and implementing regulations provide that permits issued within the past 5 years may qualify as alternatives to the NICS check if certain other requirements are satisfied. Most importantly, the authority issuing the permit must conduct a NICS background check and must deny a permit to anyone prohibited from possessing firearms under Federal, State, or local law.

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has reviewed Alabama's Permit to Carry Pistol in Vehicle or Concealed on Person and has determined that the permit qualifies as an alternative to the background check requirement. Please be advised that only permits issued pursuant to Alabama Code § 13A-11-75 on or after August 1, 2013, qualify as alternatives to the background check. If an unlicensed person presents a permit issued prior to August 1, 2013, the FFL must conduct a background check prior to transferring the firearm.

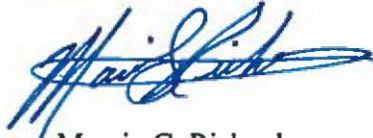
If you transfer a firearm to an unlicensed person pursuant to the permit alternative, you must comply with the following requirements:

1. Have the transferee complete and sign ATF Form 4473, Firearms Transaction Record.
2. Verify the identity of the transferee through a Government-issued photo identification (for example, a driver's license).
3. Verify that the permit was issued on or after August 1, 2013, and within the past 5 years by the State in which the transfer is to occur, and that the permit has not expired under State law.

EXHIBIT B

4. Either retain a copy of the transferee's permit and attach it to the Form 4473, or record on the Form 4473 any identifying number from the permit, the date of issuance, and the expiration date of the permit.

If you have any questions about Alabama's Permit to Carry Pistol in Vehicle or Concealed on Person qualifying as an alternative to the NICS check, please call ATF's Firearms Industry Programs Branch at (202) 648-7190.



Marvin G. Richardson
Assistant Director
Enforcement Programs and Services



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Enforcement Programs and Services

July 22, 2019

Washington, DC 20226

www.atf.gov

**PUBLIC SAFETY ADVISORY TO ALL ALABAMA FEDERAL FIREARMS
LICENSEES**

The purpose of this public safety advisory is to notify you of an important change to the procedure you may follow to comply with the Brady Handgun Violence Protection Act (Brady Act), codified at 18 U.S.C. § 922(t), when transferring a firearm to an unlicensed person.

The permanent provisions of the Brady Act took effect on November 30, 1998. The Brady Act generally requires Federal firearms licensees (FFLs) to initiate a National Instant Criminal Background Check System (NICS) check before transferring a firearm to an unlicensed person. However, the Brady Act contains exceptions to the NICS check requirement, including an exception for holders of certain state permits to possess, carry, or acquire firearms. The law and implementing regulations provide that permits issued within the past 5 years may qualify as alternatives to the NICS check if certain other requirements are satisfied. Most importantly, the authority issuing the permit must conduct a NICS background check and must deny a permit to anyone prohibited from possessing firearms under federal, state, or local law.

On February 24, 2016, ATF issued an Open Letter to All Alabama FFLs informing them that ATF had reviewed Ala. Code § 13A-11-75 and determined that Alabama's CCP permits issued on or after August 1, 2013, qualified as an alternative to a NICS check. ATF's determination was based on the understanding that a full NICS check would be conducted by an authorized government official pursuant to Ala. Code § 13A-11-75(b) and, if the check revealed that the individual was prohibited from possessing a firearm under federal or state law, the applicant would be denied pursuant to Ala. Code § 13A-11-75(a)(1).¹ ATF also based this determination inherent in this decision was the understanding that an Immigration Alien Query (IAQ) would be conducted if a non-U.S. citizen applied for a CCP permit, and that all CCP permit application forms, regardless of the county of issuance, required the applicant's place/country of birth and an alien or admission number pursuant to Ala. Code § 13A-11-75(e). Otherwise, the IAQ cannot be conducted.

Based on recent information received from the Federal Bureau of Investigation, Criminal Justice Information Services Division Audit Unit, and upon results of inspections conducted by ATF field offices, ATF has determined that, notwithstanding the express requirements of Ala. Code § 13A-11-75, Alabama CCP permits have been, and continue to be, issued to individuals without completion of a NICS check, or after a NICS denial. At least some of these permits were issued

¹ See also Ala. Code § 13A-11-75(a)(6) ("Nothing in this section shall be construed to permit a sheriff to disregard any federal law or regulation pertaining to the purchase or possession of a firearm.").

PUBLIC SAFETY ADVISORY TO ALL ALABAMA FEDERAL FIREARMS LICENSEES (cont.)

to felons and other federally prohibited persons who used them to purchase firearms from Alabama FFLs without a NICS check. In addition, ATF has determined that some Alabama counties have not been requiring non-U.S. citizen CCP permit applicants to submit the information necessary to run the IAQ, specifically, the place/country of birth and an alien registration or admission number.

Because county sheriffs have issued CCP permits without completing a full NICS check, firearms have been transferred to felons and other prohibited individuals in violation of federal law, thereby creating a substantial public safety concern. For this reason, the standards set forth in the Brady law require us to find that Alabama's CCP permits no longer qualify as a NICS check alternative. **In the interest of public safety, and effective immediately, FFLs in Alabama may no longer accept CCP permits as an alternative to a NICS check. Unless another exception applies, a NICS check must be conducted whenever you transfer a firearm to an unlicensed person even if the individual presents an unexpired CCP permit.**

If you have any questions about Alabama's Permit to Carry Pistol in Vehicle or Concealed on Person qualifying as an alternative to the NICS check, please call ATF's Firearms Industry Programs Branch at (202) 648-7190.



Marvin G. Richardson
Assistant Director
Enforcement Programs and Services



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Field Operations

January 16, 2020

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MEMORANDUM TO: All Directors, Industry Operations

FROM: Deputy Assistant Director (IO)
Office of Field Operations

SUBJECT: NICS Alternative Permit Sampling Initiative

The Gun Control Act at 18 U.S.C. § 922(t), generally requires FFLs to initiate a NICS background check before transferring a firearm to an unlicensed person. Under section 922(t)(3), the law allows an exception to the NICS check requirement for holders of qualifying State-issued permits to possess, carry, or acquire firearms. Permits issued within the past 5 years by the State in which the transfer is to take place qualify as alternatives to a NICS check if the law of the State provides that such a permit is to be issued only after an authorized State or local government official has verified that the information available to such official, including NICS check results, does not indicate that possession of a firearm by the applicant would be in violation of Federal, State, or local law. *See* 27 C.F.R. § 478.102(d)(1).

ATF has issued Open Letters recognizing that certain permits issued in 25 States meet the requirements of 922(t)(3). While ATF established criteria for these States to prevent the issuance of NICS alternative permits to prohibited persons, it is important for ATF to evaluate whether prohibited persons have still been able to obtain and use them to acquire firearms without a NICS background check. In order to address this important public safety issue, Field Operations is initiating a program in which IOs, during inspections of FFLs, will conduct a NICS re-check of a sampling of transactions where a State permit was used as an alternative to a NICS check to acquire firearms.

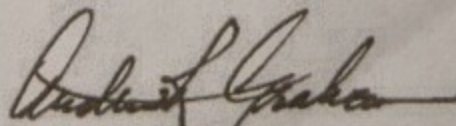
The sampling will be conducted under the following guidance:

1. The sampling will be only be conducted in States where ATF has issued an Open Letter recognizing a permit as an alternative to conducting a NICS check under 922(t)(3).

All Directors, Industry Operations

2. The sampling will be conducted during all firearms compliance inspections initiated between January 21 and April 24, 2020, where the FFLs conduct transfers to non-licensees.
3. The sampling will only occur during inspections already identified through domain assessments. Area offices should not alter their plans addressing how they will complete their domain assessment priorities.
4. During inspections, IOIs will use a systematic sampling method by reviewing ATF Forms 4473 and identifying 5 percent of transactions during the inspection period where firearms were acquired using a NICS alternative permit in lieu of the FFL conducting a background check. IOIs should always round upward when calculating the 5 percent sample size.
5. IOIs will conduct NICS re-checks through the LEEP portal for the sample of transactions identified. If the NICS re-check results in a denial or requires further research, IOIs will do the necessary research and work with counsel to determine if the transferee is prohibited.
6. If a transferee is found to be prohibited, the IOI will generate a suspicious activity report to their CGIC group for further investigation and, if appropriate, send a referral to the State authority that issued the permit in accordance with the procedures outlined in the IO Manual.
7. The CGIC shall provide the suspicious activity report and supporting investigative documentation to the NICS coordinator who shall proceed following the same protocol, per ATF O 3140.1A, as in a delayed denial with a substantiated disability. However, if the prohibition is a state violation only, the CGIC should refer the matter to the appropriate local law enforcement authority.
8. IOIs should not enter purchaser or transaction information into Spartan if the purchaser is not found to be prohibited.
9. No later than May 30th, 2020, each field division will send consolidated results in digital format using the worksheets provided to fmsisb@atf.gov. Field divisions should also inform FMS of any significant findings as they are identified.

Your assistance in completing this sampling is appreciated and will help Field Operations better identify possible concerns related to issuance and use of NICS alternate permits to acquire firearms without a NICS check. Questions regarding this sampling initiative should be directed to FMS Deputy Chief Kyle Lallensack.



Andrew R. Graham