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STOP ILLEGAL TRAFFICKING IN FIREARMS ACT OF 2013

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Filed, under authority of the order of the Senate of
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Mr. LEAHY, from the Committee on the Judiciary,
submitted the following

R E P O R T

together with

ADDITIONAL AND MINORITY VIEWS

[To accompany S. 54]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to which was referred the bill (S. 54) to increase public safety by punishing and deterring firearms trafficking, having considered the same, reports favorably thereon, with an amendment, and recommends that the bill, as amended, do pass.

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I. BACKGROUND AND PURPOSE OF THE STOP ILLEGAL TRAFFICKING IN FIREARMS ACT OF 2013

Illegal trafficking of firearms to violent criminals, gangs, and drug trafficking organizations presents a grave threat to public safety.¹ Investigations by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) have revealed that trafficked firearms are often diverted to criminals or criminal organizations and then used in serious and violent offenses.² An estimated 467,321 firearm-related violent crimes occurred in the United States in 2011, a 26 percent increase since 2008.³ Investigations show that convicted felons are heavily involved in firearms trafficking and its tragic consequences.⁴

Individuals known as “straw purchasers” play key roles in many firearms trafficking operations. Straw purchasers are typically individuals without a criminal record who buy firearms for drug dealers, violent criminals, or other prohibited persons, sometimes for payment in money or drugs. Straw purchasers are often friends, relatives, spouses, or partners of firearms traffickers. Straw purchasers usually acquire a relatively small number of firearms in each transaction, which helps to circumvent the background check requirements of Federal law. Firearms traffickers then sell and resell illegally obtained guns and transport them across state lines, contributing to the gun violence in our communities and along our borders.

Straw purchasing is common. In a 2011 survey of Federally licensed firearms dealers and pawn brokers, known as Federal Firearms Licensees (FFLs), over 67 percent reported experiencing at least one attempted straw purchase in the preceding year, and almost 10 percent reported monthly attempts.⁵ In the 46 percent of ATF trafficking investigations initiated between July 1996 and December 1998, straw purchasers were the source of the trafficked firearms. This was more than double the percentage of the next closest source.

Notably, prohibited persons such as felons and drug dealers currently are able to purchase firearms themselves through private sales that require no background check, yet these individuals continue to employ straw purchasers to buy from FFLs. Straw purchases from FFLs are favored in part because FFLs usually carry a greater variety of firearms, FFLs sell “clean” firearms with no link to criminality, and also because straw purchasing is easy. As one former gang member said, “Straw purchases are so easy it’s a

¹On December 24, 2012, William Spengler Jr. set fire to his house and ambushed firefighters from the West Webster, New York fire company. Mr. Spengler killed two firefighters and seriously wounded two others. Two of the firearms used in the attack were purchased for Mr. Spengler, who was prohibited under Federal law from purchasing firearms. The firearms were purchased by his neighbor on his behalf. Marc Santora, *Woman Helped Firefighters’ Killer Get Gun He Used in Ambush, Police Say*, N.Y. Times, December 28, 2012.

²Over half of trafficking investigations initiated between July 1996 and December 1998 involved at least one diverted firearm used in a crime. Twenty-five percent of the investigations involved one or more firearms used in an assault, and 17 percent involved one or more firearms used in a homicide. See ATF, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers*. June 2000.

³Wintemute GJ. *Background Checks for Firearms Transfers*. February 2013, at 3.

⁴Twenty-five percent of traffickers identified by investigations initiated between July 1996 and December 1998 were convicted felons.

⁵Wintemute GJ. “Frequency of and responses to illegal activity related to commerce in firearms: findings from the Firearms Licensee Survey.” *Inj Prev*. Published Online First: March 11, 2013, doi:10.1136/injuryprev-2012-040715, at 3.

no-brainer. Why buy a hot gun on the street when you can easily do a straw purchase?”⁶

Gun shows are another source of firearms for traffickers. In many States, both FFLs and unlicensed sellers sell firearms at gun shows. While FFLs must perform background checks, unlicensed sellers are not required to do so, so prohibited purchasers can buy firearms directly from unlicensed sellers.

Federal law enforcement officials lack the legal tools necessary to effectively combat illegal firearms trafficking, and for years they have raised the alarm that the existing legal framework is insufficient to deter those who would traffic in firearms. There is presently no Federal statute specifically prohibiting firearms trafficking or straw purchasing. This requires prosecutors to try to find other gun-related criminal statutes that can be applied to the facts of a particular trafficking scheme.

A report from the Department of Justice Inspector General concerning certain investigative tactics used by ATF relative to straw purchasing and firearms trafficking in Arizona illustrated the extent of the problem and the difficulties that law enforcement officials have in using existing laws to combat these practices.⁷ In testimony before the House Oversight and Government Reform Committee, an ATF agent witness, Peter Forcelli, who appeared to describe the investigative tactics that were the subject of congressional inquiry, described current Federal laws as “toothless,”⁸ and characterized the common perception that the penalties for a straw purchasing offense “were no more consequential than doing 65 in a 55 zone.”⁹

The most common criminal statutes used to charge straw purchasers do not specifically prohibit buying a firearm on behalf of another. Rather, they prohibit making material false statements in connection with the purchase of a firearm from an FFL. These offenses are too often perceived by judges and juries as “paperwork” violations, and the actual penalties for such offenses are too low to serve as either a meaningful deterrent or an effective incentive for defendants to cooperate with law enforcement against other members of the trafficking organization. In addition, prosecutions of these offenses can be challenging, given that the Government must prove beyond a reasonable doubt that the purchaser intentionally lied on the form, and did not merely make a mistake. In this context, it is important to note that simply failing a background check is *not* a crime, and there is no Federal criminal statute that specifically criminalizes the conduct of straw purchasing or gun trafficking.¹⁰

⁶Mayors Against Illegal Guns. *Inside Straw Purchasing: How Criminals Get Guns Illegally*. April 15, 2009, at 2.

⁷Office of the Inspector General, U.S. Department of Justice, *A Review of ATF's Operation Fast and Furious and Related Matters*, September 19, 2012.

⁸*Operation Fast and Furious: Reckless Decisions, Tragic Outcomes*: Hearing Before the H. Comm. on Oversight and Government Reform, 112th Cong. 108 (2011) (statement of Peter Forcelli).

⁹*Id.*

¹⁰The minority views assert that straw purchasers “likely would be deterred by current sentencing levels if the laws were actually being enforced”. To the contrary, law enforcement officials have consistently reported that straw purchasers are not deterred by current laws, none of which directly address straw purchasing. The minority views cite supposed expert testimony at Committee hearings that “the lack of prosecutions for attempts to purchase a gun on behalf of a prohibited person is a major problem.” The witnesses at these hearings said no such thing. Rather, they faulted the Department of Justice for not prosecuting individuals who failed back-

The Stop Illegal Trafficking in Firearms Act of 2013 addresses this problem, and fills in a gap in the criminal statutes. Contrary to the assertion in the minority views that this bill “is not tailored to suit the needs of law enforcement,” this legislation was in fact drafted *at the request of, and with the direct input of* law enforcement. The bill directly responds the long-standing complaint of law enforcement officials that no Federal statute specifically prohibits straw purchasing and gun trafficking, and accordingly has been endorsed by numerous national law enforcement organizations, including the National Fraternal Order of Police, the Federal Law Enforcement Officers Association, the Major Cities Chiefs Association, the FBI Agents Association, and the National Organization of Black Law Enforcement Executives. Notably, the minority views do not cite to any law enforcement officials who claim that the bill is not tailored to suit their needs.

This legislation creates, for the first time, specific Federal crimes prohibiting straw purchasing and gun trafficking. A new section 932 in the firearms statute makes it a crime to purchase a firearm from an FFL for, on behalf of, or at the request or demand of any other person. This codifies an intended restriction; anyone purchasing a firearm from an FFL must already sign a Form 4473 stating that he or she is the “actual buyer” of the firearm.¹¹ For purchases made from an unlicensed seller, this new section makes it a crime to purchase a gun for, on behalf of, or at the request or demand of a person prohibited from possessing a firearm, such as a convicted felon or a person adjudicated as mentally ill. The maximum sentence for this offense would be 15 years imprisonment, or 25 years imprisonment if the defendant knew or had reasonable cause to believe that any firearm involved would be used to commit a crime of violence.

The bill is narrowly tailored to target straw purchasers. The bill exempts legitimate transactions that are allowed under current law, including the purchase from an FFL of a firearm as a legitimate gift for another person, the retrieval by a third person of a firearm that is being repaired by a gunsmith, and the purchase of a firearm to be given to a bona fide winner of an organized raffle, contest, or auction conducted in accordance with law and sponsored by a national, State, or local organization or association.¹²

With regard to private sales that do not involve an FFL, the bill only prohibits purchases in which the seller knows or has reason-

ground checks. Straw purchasers do not fail background checks; their ability to pass a background check is what makes them a suitable straw purchaser.

¹¹The minority views claim that the bill “expands the reach of federal gun laws by prohibiting the purchase of a firearm on behalf of not only a prohibited person, but any person.” In reality, however, the bill does not prohibit any conduct that is currently allowed. Purchases on behalf of others are not permitted at FFLs currently, and the bill only prohibits purchases from non-FFLs on behalf of individuals already prohibited from possessing a firearm. The additional views of Senator Grassley recognize that the bill is “directed only at straw purchasers.” The additional views go on to state, however, that “[t]his allows people to buy for people as part of a legitimate business.” To be clear, the bill prohibits purchases on behalf of others from FFLs, and purchases on behalf of other prohibited persons from non-FFLs, regardless if the purchaser has a “legitimate business”.

¹²The minority views raise an unfounded concern with the raffle exception. Contrary to their suggestion, a volunteer or employee cannot be held liable under Section 932 for purchasing a firearm for a to-be-determined raffle winner if that raffle winner turns out to be a prohibited person. Liability under Section 932 is tied to the time of purchase of the firearm. If a purchaser has no knowledge of the identity of the raffle winner, the purchaser cannot be prosecuted under Section 932. Moreover, even if the identity of the raffle winner were known at the time of purchase, the purchaser could not be prosecuted unless he knew or had reasonable cause to believe that the winner was a prohibited person.

able cause to believe that he or she is purchasing the firearm on behalf of a person who belongs to one of the groups of individuals prohibited from possessing a firearm under Federal law. A purchaser who has no reasonable cause to believe that the other person is a convicted felon or has been adjudicated mentally ill, for instance, does not violate the law. This reasonable cause standard is the standard in current law for similar offenses.

With regard to private sales, the bill also makes it a crime to purchase a firearm from a private seller on behalf of someone who the purchaser knows or has reasonable cause to believe intends to use, carry, possess, sell, or otherwise dispose of the firearm in furtherance of a crime of violence or drug trafficking crime, or intends to export the firearm in violation of law. This straightforward provision targets the most dangerous straw purchases: those where the firearm is intended for use in a dangerous crime or will be sent to another country. Prohibiting these straw purchases should not be controversial, yet surprisingly the minority views object to these provisions.

The chief complaint in the minority views appears to be that Section 932(b)(2)(J) creates a new category of persons prohibited from being sold a firearm in a private sale: would-be criminals. The minority views suggest that a straw purchaser should not be subject to criminal liability because the actual buyer may decide not to use the firearm to commit a crime. Contrary to the suggestion in the minority views, however, Section 932(b)(2)(J) does *not* hold “the purchaser of a firearm, who later resells it, criminally liable for the future potential actions of a future buyer.” First, liability under Section 932 is tied to the time of purchase of the firearm. Thus, someone who buys a firearm but decides sometime after its purchase to re-sell the firearm is not covered by Section 932. Second, Section 932 holds the purchaser responsible only for what he knows or has reasonable cause to believe at the time of purchase. If the purchaser has little or no reason to know that the firearm will be used in a crime, he has not violated Section 932. Nor would the purchaser be criminally liable for crimes committed with the firearm—which would be violations of other laws, not Section 932.

The minority views complain that Section 932 places an undue burden on purchasers to determine whether the actual buyer plans to use the firearm in a crime or transfer the firearm to a third person who intends to use the firearm in a crime. Although it is reasonable to expect that one who purchases a gun for someone else at a private sale should have a duty to perform some due diligence to ensure that he is not buying a firearm for someone who intends to use it in a crime, Section 932(b)(2)(J) does not even require this. The provision simply prohibits these purchasers from buying firearms for people they know or have reasonable cause to believe intend to use the firearms in certain illegal activities like violent crime, based on the information known to them. The provision does not require purchasers to take affirmative steps to investigate the actual buyers, nor will it affect innocent parties who unwittingly purchase firearms for criminals. Simply put, under the provisions of this bill, a purchaser may not buy a gun for someone else at a private sale if the purchaser knows or has reasonable cause to believe—at the time of purchase—that the actual recipient intends to use the firearm in a crime. This is a commonsense measure that

has the support of law enforcement, and it should not be controversial. The bill also creates a new Federal firearms trafficking crime (Section 933) that makes it illegal to ship, transport, transfer, cause to be transported, or otherwise dispose of two or more firearms to someone that was known or reasonably believed to be prohibited from using or possessing a firearm under Federal law. This section also makes it a crime to receive from another person two or more firearms if the recipient knows or has reasonable cause to believe that such receipt would be in violation of Federal law. Violators of this new trafficking measure would be subject to a maximum sentence of 15 years imprisonment, or 25 years imprisonment if the defendant was an organizer, leader, supervisor, or manager of the trafficking activity.¹³

Besides creating new Federal crimes, the bill gives law enforcement the tools it needs to successfully investigate gun trafficking and break up sophisticated trafficking organizations. The bill authorizes the use of electronic surveillance for such cases, as well as for the felony firearms violations set forth in sections 922 and 924 of Title 18, and adds new sections 932 and 933 as predicate violations for racketeering and money laundering violations. The legislation also includes a forfeiture provision to deprive firearms traffickers and their organizations of proceeds that are often used to acquire additional weapons or otherwise support their illicit activities. Under this new forfeiture provision, a judge would be authorized to impose a fine equal to twice the amount of the gross proceeds acquired through the relevant criminal conduct.

The bill directs the United States Sentencing Commission to review and amend its guidelines and policy statements to ensure that persons convicted of offenses related to straw purchasing and firearms trafficking are subject to increased penalties in comparison to those currently provided by the guidelines and policy statements. This section makes clear Congress' intent that the applicable guideline penalties be increased and the guidelines and policy statements reflect the extremely serious nature of the straw purchasing and firearms trafficking offenses, and the need for an effective deterrent and appropriate punishment to prevent such offenses.

In addition to the creation of new crimes specifically prohibiting straw purchasing and firearms trafficking, the bill amends existing firearms law to further combat these offenses. Section 922(d) prohibits the sale or disposition of firearms or ammunition to certain categories of individuals who are known, or reasonably believed to be, prohibited under law from possessing a firearm. The bills expands this provision to prohibit the sale or disposition of firearms

¹³The minority views erroneously state that "a violation of Section 932(b)(J) carries a maximum sentence of 15 years while Section 932(c)(2) carries a 25 year maximum penalty for the same crime, transferring the firearm with reasonable cause to believe it will be used in a crime of violence." Setting aside the fact that (as the minority views consistently fail to recognize) the new Section 932 prohibits the *purchase* of a firearm, not its transfer, Section 932(b) does not contain the penalties for the crimes enumerated in the first place; those penalties are listed in Section 932(c)(1) and (2). A violation of Section 932(b)(2)(J), like a violation of any part of Section 932(b), has a maximum penalty of 15 years unless it was committed knowing or with reasonable cause to believe that a firearm will be used to commit a crime of violence, in which case the maximum penalty is 25 years.

The minority views also criticize the penalties in the bill as "unnecessarily high" while simultaneously suggesting that the higher 25-year maximum penalty should apply more broadly. The 25-year maximum penalty is appropriately reserved for organizers, leaders, supervisor, and managers of larger trafficking organizations, *i.e.* those consisting of five or more other persons. Providing enhanced penalties for leaders of organizations of this size is neither arbitrary nor unprecedented. See United States Sentencing Guidelines §3B1.1.

or ammunition to anyone whom the transferor knows or has reasonable cause to believe intends, after receipt of the item, to then transfer the item to a prohibited person, export the item illegally, or transfer the item in furtherance of a crime of violence or drug trafficking offense. This provision is designed to target sophisticated gun trafficking schemes that use multiple levels of straw purchasers to avoid detection and prosecution. The bill increases the maximum sentence from 10 to 15 years for violations of section 922(d), and also for 922(g), which prohibits those same categories of individuals (*e.g.*, convicted felons) from possessing firearms or ammunition.

Current law prohibits individuals from transferring a firearm with knowledge that the firearm will be used to commit a crime of violence or a drug trafficking crime. This statute, 18 U.S.C. section 924(h), requires the Government to prove that the defendant knew, at the time of transfer, that a firearm would actually be used in furtherance of a crime of violence or drug trafficking crime. This high standard allows traffickers to escape punishment in cases where they can claim that they strongly suspected, but did not know for certain, that a firearm would be used to commit a crime of violence or drug trafficking crime. The bill amends section 924(h) to prohibit the transfer of firearms or ammunition where the individual knows or has reasonable cause to believe that they will be used to commit one of the predicate offenses. In order to assist the efforts of law enforcement, particularly along the Southwest border, the bill also extends the prohibition to include violations of the Arms Export Control Act, the International Emergency Economic Powers Act, and the Foreign Narcotics Kingpin Designation Act.

In recent years, trafficking organizations have exported large quantities of firearms from the United States to Mexico to support Mexican drug trafficking organizations. The Mexican government submitted to the ATF for tracing 112,287 firearms recovered between 2007 and June 30, 2012. Tracing revealed that 76,853 of the firearms (68.4 percent) were sourced to the United States, meaning that the firearms were either manufactured in or legally imported to the United States.¹⁴ Current law, 18 U.S.C. Section 924(k), prohibits individuals from smuggling or otherwise bringing a firearm *into* the United States with the intent to engage in or promote a drug crime or violent crime. The bill expands this prohibition on firearms smuggling to cover the smuggling of firearms *out of* the United States in furtherance of drug trafficking or violent crimes. The bill also extends the prohibition to cover the smuggling of ammunition. The existing maximum sentence for smuggling firearms into the United States is increased to 15 years imprisonment, and the maximum sentence for the new crime of smuggling firearms *out of* the United States is set at 15 years imprisonment.

II. HISTORY OF THE BILL AND COMMITTEE CONSIDERATION

A. INTRODUCTION OF THE BILL

The Stop Illegal Trafficking in Firearms Act of 2013, S. 54 was introduced on January 22, 2013, by Senators Leahy and Durbin. The bill was referred to the Committee on the Judiciary. After the

¹⁴ ATF Firearms Tracing System.

bill's introduction, Senator Blumenthal joined as a co-sponsor. Since the bill was reported out of the Committee, Senators Collins, Gillibrand, Kirk, King, and Shaheen have joined as cosponsors.

B. COMMITTEE CONSIDERATION

1. *Hearings*

In the aftermath of the tragedy in Newtown, Connecticut, the Senate Committee on the Judiciary and the Subcommittee on the Constitution, Civil Rights, and Human Rights held two hearings relevant to straw purchasing and firearms trafficking. The Committee on the Judiciary held a hearing titled, "What Should America Do About Gun Violence?" on January 30, 2013. The witnesses at the hearing were Captain Mark Kelly, Americans for Responsible Solutions; David Kopel, Adjunct Professor at Denver University, Strum College of Law; James Johnson, Chief of the Baltimore County Police Department; Gayle Trotter, Attorney and Senior Fellow for the Independent Women's Forum; and Wayne LaPierre, Executive Vice President and Chief Executive Officer of the National Rifle Association. Former United States Representative Gabrielle Giffords gave brief remarks at the beginning of the hearing.

The Subcommittee on the Constitution, Civil Rights, and Human Rights held a hearing titled "Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment," on February 12, 2013. The witnesses at the hearing were Timothy Heaphy, United States Attorney for the Western District of Virginia; Laurence Tribe, Professor at Harvard Law School; Dr. Daniel Webster, Director and Professor at the John Hopkins Center for Gun Policy and Research; Sandra Wortham; Charles Cooper, Partner at Cooper & Kirk; and Suzanna Hupp.

The witness testimony for these hearings is available at:

<http://www.judiciary.senate.gov/hearings/hearing.cfm?id=8ddfce272f36de81e62e30d8153a7d3a>

<http://www.judiciary.senate.gov/hearings/hearing.cfm?id=eed1f8b2e83fd7365bee9cb8432af898>

2. *Executive Business Meetings*

This legislation, S. 54, was placed on the Committee's agenda for consideration on February 28, 2013. It was held over on that date.

On March 7, 2013, the Committee considered S. 54. Chairman Leahy offered a substitute amendment to the bill, and explained that the text of the substitute amendment was identical to S. 443, a bipartisan bill introduced earlier that week by Senators Leahy, Collins, Durbin, Gillibrand, and Kirk. The substitute amendment was adopted by unanimous consent.

Senator Grassley offered an amendment that would require the Attorney General, Deputy Attorney General, or Assistant Attorney General for the Criminal Division to personally authorize any Department of Justice operation where a Federal firearms licensee (FFL) is directed, instructed, enticed, or otherwise encouraged to sell a firearm to a straw purchaser. The amendment was adopted by unanimous consent.

The Committee then voted to report S. 54, the Stop Illegal Trafficking in Firearms Act, as amended, favorably to the Senate. The Committee proceeded by roll call vote as follows:

Tally: 11 Yeas, 7 Nays

Yeas (11): Leahy (D-VT), Feinstein (D-CA), Schumer (D-NY), Durbin (D-IL), Whitehouse (D-RI), Klobuchar (D-MN), Franken (D-MN), Coons (D-DE), Blumenthal (D-CT), Hirono (D-HI), Grassley (R-IA).

Nays (7): Hatch (R-UT), Sessions (R-AL), Graham (R-SC), Cornyn (R-TX), Lee (R-UT), Cruz (R-TX), Flake (R-AZ).

III. SECTION-BY-SECTION SUMMARY OF THE BILL

Sec. 1. Short title

The short title of the bill is the “Stop Illegal Trafficking in Firearms Act of 2013.”

Sec. 2. Table of Contents

This section contains the table of contents for the bill.

Sec. 3. Hadiya Pendleton and Nyasia Pryear-Yard anti-straw purchasing and firearms trafficking amendments

This section would create a new Section 932 in the firearms statute that would make it a crime to purchase a gun from a Federal Firearms Licensee (FFL) for, on behalf of, or at the request or demand of any other person.¹⁵ For purchases made from a private seller, this new section would make it a crime to purchase a gun for, on behalf of, or at the request or demand of someone who is prohibited from possessing a firearm (e.g., a convicted felon or someone adjudicated as mentally ill). The maximum sentence for this offense would be 15 years imprisonment, or 25 years imprisonment if the defendant knew or had reasonable cause to believe that any firearm involved would be used to commit a crime of violence. This section also ensures that convicted felons and other prohibited persons may not use pawn or consignment shops to circumvent this law, while including provisions expressly exempting other transactions that are allowed under current law, including: the lawful purchase from an FFL of a firearm as a legitimate gift for another person; the retrieval by a third person of a firearm repaired by a gunsmith; and the purchase of a firearm to be given to bona fide winners of an organized raffle, contest, or auction conducted in accordance with law and sponsored by a national, State, or local organization or association.

This section also creates a new Federal firearms trafficking statute (Section 933) that would make it illegal to ship, transport, transfer, cause to be transported, or otherwise dispose of two or more firearms to someone that was known or reasonably believed to be prohibited from using or possessing a firearm under Federal law. This section also makes it a crime to receive from another person two or more firearms if the recipient knows or has reasonable cause to believe that such receipt would be in violation of Federal law. In addition, the section makes it a crime to attempt or conspire to violate this gun trafficking statute. Violators of this new trafficking statute would be subject to a maximum sentence of 15 years imprisonment, or 25 years imprisonment if the defendant acted in concert with five or more other persons and was an organizer, leader, supervisor, or manager of the trafficking activity.

¹⁵It is important to note that anyone purchasing a firearm from an FFL must already sign a Form 4473 stating that he or she is the “actual buyer” of the firearm.

This section also includes a forfeiture provision that would deter straw purchasers and other firearms traffickers and deprive them and their organizations of proceeds that are often used to acquire additional weapons or otherwise support their illicit activities. Under this new forfeiture provision, a judge would be authorized to impose a fine equal to twice the amount of the gross proceeds acquired through the criminal conduct.

This section also authorizes the use of electronic surveillance for investigating cases involving straw purchasers and firearms traffickers, as well as the felony firearms violations set forth in 18 U.S.C. 922 and 924. This section also adds new sections 932 and 933 as predicate violations for racketeering and money laundering violations.

Finally, this section directs the United States Sentencing Commission to review and amend its guidelines and policy statements to ensure that persons convicted of offenses related to straw purchasing and firearms trafficking are subject to increased penalties in comparison to those currently provided by the guidelines and policy statements. This section makes clear Congress' intent that the applicable guideline penalties be increased and the guidelines and policy statements reflect the extremely serious nature of the straw purchasing and firearms trafficking offenses, and the need for an effective deterrent and appropriate punishment to prevent such offenses.

Sec. 4. Amendments to Section 922(d)

Under current law, 18 U.S.C. Section 922(d), it is unlawful for any person to sell or otherwise dispose of a firearm or ammunition to any person, knowing or having reasonable cause to believe that the person is prohibited from possessing a firearm for any of the reasons set forth in Section 922(d). This section of the bill prohibits the transfer of firearms to individuals the transferor knows or has reasonable cause to believe intend to: sell or otherwise dispose of the firearm or ammunition to a prohibited person, or in furtherance of a crime of violence or drug trafficking offense, or export the firearm or ammunition in violation of law.

Sec. 5. Amendments to Section 924(a)

This section increases the maximum sentence from 10 to 15 years for violations of Sections 922(d) and 922(g). Section 922(d) prohibits the sale or disposition of firearms or ammunition to certain categories of individuals who are known, or reasonably believed to be, prohibited under law from possessing a firearm. Section 922(g) prohibits those same categories of individuals (e.g., convicted felons) from possessing firearms or ammunition.

Sec. 6. Amendments to Section 924(h)

Current law prohibits individuals from transferring a firearm with knowledge that the firearm would be used to commit a crime of violence or a drug trafficking crime. This statute, 18 U.S.C. Section 924(h), requires the government to prove that the defendant knew, at the time of transfer, that a firearm would actually be used in furtherance of a crime of violence or drug trafficking crime. This section of the bill amends Section 924(h) to prohibit the transfer of firearms or ammunition when the individual knows or has reason-

able cause to believe that they will be used to commit one of the predicate offenses. In order to assist the efforts of law enforcement, particularly along the Southwest border, this section also extends the prohibition to include violations of the Arms Export Control Act, the International Emergency Economic Powers Act, and the Foreign Narcotics Kingpin Designation Act. This section also makes it unlawful to attempt or conspire to violate this provision.

Sec. 7. Amendments to Section 924(k)

Current law, 18 U.S.C. 924(k), prohibits individuals from smuggling or otherwise bringing a firearm into the United States with the intent to engage in or promote a drug crime or violent crime. This section expands this prohibition on firearms smuggling to cover the smuggling of firearms out of the United States in furtherance of drug trafficking or violent crimes. This section would also make it a crime to attempt or conspire to violate this provision, and extends the prohibition to cover the smuggling of ammunition. These amendments would assist law enforcement in their efforts to combat trafficking organizations that export large quantities of firearms and ammunition from the United States into Mexico to support Mexican drug trafficking organizations. The existing maximum sentence for smuggling firearms into the United States would be increased to 15 years imprisonment, and the maximum sentence for the new crime of smuggling firearms out of the United States would be set at 15 years imprisonment, as well.

Sec. 8. Limitation on Operations by the Department of Justice

This section would require the Attorney General, the Deputy Attorney General, or the Assistant Attorney General for the Criminal Division to review and approve certain investigative operations concerning firearms.

IV. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

The Committee sets forth, with respect to the bill, S. 54, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

MARCH 20, 2013.

Hon. PATRICK J. LEAHY,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 54, the Stop Illegal Trafficking in Firearms Act of 2013.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 54—Stop Illegal Trafficking in Firearms Act of 2013

CBO estimates that implementing S. 54 would have no significant cost to the federal government. Enacting the bill could affect direct spending and revenues; therefore, pay-as-you-go procedures

apply. However, CBO estimates that any effects would be insignificant for each year.

S. 54 would establish new federal crimes, expand or modify existing crimes, and increase penalties for offenses related to firearms trafficking. The bill would specifically ban the purchase of firearms on behalf of individuals who are prohibited from buying or possessing a firearm (known as “straw purchases”). As a result, the government might be able to pursue cases that it otherwise would not be able to prosecute. CBO expects that S. 54 would apply to a relatively small number of additional offenders, however, so any increase in costs for law enforcement, court proceedings, or prison operations would not be significant. Any such costs would be subject to the availability of appropriated funds.

Because those prosecuted and convicted under S. 54 could be subject to criminal fines, the federal government might collect additional fines if the legislation is enacted. Criminal fines are deposited as revenues in the Crime Victims Fund and later spent. CBO expects that any additional revenues and direct spending would not be significant because of the relatively small number of cases likely to be affected.

S. 54 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). S. 54 would impose a private-sector mandate, as defined in UMRA, by banning the purchase of firearms under certain conditions. CBO expects that relatively few transactions would become unlawful under the bill. Therefore, CBO estimates that the cost, if any, of complying with the mandate would be minimal and would fall well below the annual threshold for private-sector mandates (\$150 million in 2013, adjusted annually for inflation).

The CBO staff contacts for this estimate are Mark Grabowicz, for federal costs, and Paige Piper/Bach, for impacts on the private sector. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

V. REGULATORY IMPACT EVALUATION

In compliance with rule XXVI of the Standing Rules of the Senate, the Committee finds that no significant regulatory impact will result from the enactment of S. 54.

VI. CONCLUSION

Straw purchasing and firearms trafficking contribute to violent crime across the United States, yet no existing Federal law specifically targets these practices. Law enforcement has complained for years that current laws are insufficient and new tools are needed to combat sophisticated trafficking organizations. The Stop Illegal Trafficking in Firearms Act is a bipartisan bill that gives law enforcement the tools it needs to address these issues, while ensuring that innocent transfers remain legal. The Committee believes that Congress should come together to pass this vital legislation.

VII. ADDITIONAL AND MINORITY VIEWS

ADDITIONAL VIEWS FROM SENATOR GRASSLEY

Federal legislation addressing straw purchasing and gun trafficking will help strengthen efforts to combat illicit firearms.

When I conducted my oversight of the Justice Department's failed Operation Fast and Furious, I was told by whistleblowers that there were gaps in federal law concerning straw purchasers that should be addressed. And I agree.

As originally introduced, S. 54 contained no trafficking provisions. And it was far broader than the bill the Committee reported. For instance, it would have prohibited with minor exceptions all purchases of firearms by a person on behalf of someone else. That would have led to criminal liability for law-abiding gun owners, severely limited private sales of firearms, and destroyed legitimate business operations. Fortunately, during the time that the Committee considered the bill, Chairman Leahy adopted many, although not all, of my requested changes to the bill. These changes made the bill better and reduced the negative side effects of previous versions.

At the same time, the bill was broadened to include prohibitions on gun trafficking that Senator Gillibrand had originally proposed. In my view, that bill as introduced also raised significant concerns. I asked Senator Gillibrand to make changes to her bill as well, some of which were the same as I raised with regard to S. 54. The sponsors must have believed that these changes improved the bills because so many were included in the combined bill that the Committee reported. It is worth describing some of the many changes that have been made.

As introduced, the trafficking bill would have made a federal crime of transporting two or more guns if the person knew that the result would be a violation of state or local law. That would have given states and localities a one-way incentive to add new gun control measures and foist the cost of prosecution and incarceration on the federal government. It also would have created for the first time a situation in which violation of a state criminal law was an element of a federal offense. Similar problems arose with respect to language in the original S. 54. All of that language from both the trafficking and straw purchasing bills has been removed.

For the trafficking bill, I requested major and minor drafting suggestions, including clarifying what intent was necessary to commit the crime, harmonizing penalties, changing the gift exception, altering the directive for the Sentencing Commission, and others.

For the straw purchasing bill, it is now directed only at straw purchasers, not all transfers on behalf of another. This allows people to buy for people as part of a legitimate business. It preserves

private sales. Now the bill is directed to actual straw purchasers: those who purchase a gun on behalf of a prohibited person. And changes were made to the penalties the bill would impose. Language regarding sales to persons who do not reside in a state was revised at my suggestion. Language was removed concerning materiality of false statements on the forms. Rules for purchases from licensed dealers were separated from those for private sales. Unlike the original S. 54, the bill is now limited to engaging indirectly in conduct that is already illegal. It expressly tracks the language of current law in many respects. As a result of all these changes, the rights of law-abiding citizens are far more protected in ways that were not the case in either the original straw purchasing bill or the original trafficking bill.

With these positive changes, including inclusion of an amendment of mine that I will describe below, I voted to report this bill to the full Committee.

At the same time that I announced my willingness to report the bill, I noted that a number of Committee members believe that the bill needs more work before the Senate considers it. I myself have concerns regarding penalties the bill imposes compared with penalties for existing crimes, as well as concerns that the bill may establish traps for the unwary but law-abiding citizen. At the Committee markup, Chairman Leahy promised to work with me to address my concerns. Based on that understanding, and the adoption of my amendment, I voted to report the bill to the full Senate.

As part of my investigation into the Justice Department's flawed Operation Fast & Furious, an operation where nearly 2,000 firearms were sold to straw purchasers without plans to interdict or disrupt the firearms from falling into the wrong hands, we learned that the tactics used by the ATF were disclosed to the Assistant Attorney General for the Criminal Division, prior to their use. Specifically, we learned that the tactics used by the ATF in this flawed operation were disclosed to the Assistant Attorney General for the Criminal Division as part of wiretap applications. Those applications contained a detailed description of these flawed tactics of letting guns walk from gun dealers, into the hands of known or suspected straw purchasers. We later learned through interviews and public testimony from others, this information was provided to the Assistant Attorney General, Lanny A. Breuer.

The applications were signed by various Deputies of the Assistant Attorney General. These deputies claimed they were unaware of the tactics because signing these applications was a formality. They claimed they didn't understand that they were explicitly authorizing the risky tactics—even though field level supervisors through Main Justice were on board. This apparent lack of understanding by senior leadership about the risky strategies employed by the ATF represents a major failure at the Justice Department. It has cost the lives of at least one Federal agent, Border Patrol Agent Brian Terry, and others in violence throughout Mexico. Given the volume of firearms that were allowed to "walk" by the ATF, nearly 2,000, we won't know the true human cost of this failure and the countless victims it caused for years to come. A failure of this magnitude should *never* be repeated and it is our duty to expressly prohibit the Justice Department from conducting future

operations that employ similar tactics to those used in Fast & Furious.

To correct this, I offered an amendment at mark-up to provide reasonable limitations on the conduct of the Justice Department to prevent future operations of this sort. My amendment would require that the Attorney General, Deputy Attorney General, or Assistant Attorney General for the Criminal Division sign off on law enforcement operations where federal firearms licensees are directed or enticed into selling firearms to individuals the Justice Department believes are purchasing guns on behalf of another for illegal purposes.

This amendment would ensure better communication by requiring explicit written authorization for these types of tactics. It also requires that in these instances, the Justice Department have a plan that includes sufficient safeguards to prevent firearms from being transferred to third parties without reasonable steps for law enforcement to interdict the firearms. Operations with these types of tactics and risks should be signed off on at the highest level to ensure appropriate safeguards exist to prevent guns from walking.

My amendment provides a modest limitation to Justice Department operations, not by specifically limiting conduct, but by requiring approval from political appointees who should be held accountable for authorizing risky operations. If the Government is going to employ these types of tactics—and they shouldn't—at the least, the Department owes the American people an understanding of how these tactics came to be approved. This is a modest amendment designed to keep operational flexibility at the Department, provided senior officials acknowledge the tactics, approve them, and can be held responsible should the tactics fail. It is important and the Committee's vote to adopt it unanimously—despite the vocal opposition of the Justice Department—shows it.

Despite the adoption of my amendment, I continue to have reservations concerning the bill. Unless my concerns are fully resolved when S. 54 is considered by the full Senate, I will not vote for final passage of the bill. I reserve the right to support amendments on the floor that I believe would improve the bill. And I also reserve my right to oppose the bill when the full Senate considers it if amendments are added that I cannot support.

Nonetheless, I continue to believe that gun trafficking and straw purchasing are serious crimes that federal law does not adequately address. I very much hope that the process of improving the bill will continue when the full Senate considers S. 54.

CHUCK GRASSLEY.

MINORITY VIEWS FROM SENATORS HATCH, SESSIONS,
GRAHAM, CORNYN, LEE, CRUZ, AND FLAKE

In response to the tragic shooting in Newtown, Connecticut, the President proposed a plan calling for new gun laws that impose serious penalties for straw purchasing and gun trafficking. All members of the Committee agree straw purchasing and gun trafficking are serious problems. However, we cannot support S. 54 because it is not tailored to suit the needs of law enforcement and unnecessarily infringes on the constitutional rights of law-abiding citizens. The bill creates new categories of persons prohibited from being sold a firearm and establishes a number of vague new federal criminal offenses, the potentially far-reaching consequences of which are unclear.

As the majority views note, existing gun laws do not specifically prohibit the act of buying a firearm on behalf of another. But, current law does prohibit making a material false statement in connection with the purchase of a firearm from a federal firearm licensee (FFL) or making a false or fictitious oral or written statement, including stating you are the “actual buyer” rather than “acquiring the firearm(s) on behalf of another person,” or furnishing any false identification meant to deceive an FFL in connection with the purchase of a firearm.¹ It is also unlawful for any person to sell a firearm to a prohibited person, for a prohibited person to possess a firearm, and for a person to transfer a firearm knowing it will be used to commit a crime of violence or drug trafficking crime.²

This bill creates a new category of prohibited people—those who intend to break the law, but have not done so yet and may never act. Thus, this bill would make it illegal to purchase a firearm for a person who intends to sell or dispose of the firearm or ammunition to a prohibited person, or who intends to use, possess, or sell the firearm in furtherance of a crime of violence or drug trafficking offense, or who intends to export the firearm in violation of law. In current law, all of the existing classes of “prohibited persons” are categorized as such because they are capable of being identified in an objective manner based on their actions. Holding the purchaser of a firearm, who later resells it, criminally liable for the future potential actions of a future buyer is too attenuated. To be sure, it is the seller’s responsibility to reasonably know whether the person who seeks to purchase a firearm is prohibited from doing so under the law. However, it is dangerous to extend criminal liability to a seller of a firearm based on the subjective intent of the non-prohibited person who seeks to purchase a firearm with the intent to transfer it to someone else who may commit a crime. Under this

¹ 18 U.S.C. § 924(a)(1)(A); 18 U.S.C. § 922(a)(6).

² 18 U.S.C. § 922(d); 18 U.S.C. § 922(g); 18 U.S.C. § 924(h).

bill, the seller has a duty to accurately judge the intent of the purchaser regarding the yet unaccomplished acts of another.

According to the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), in 2011, the average time between the initial purchase of a firearm and the recovery of that firearm in a crime was more than 11 years.³ Judging whether the actual purchaser intends to use the firearm in furtherance of a crime of violence is difficult enough, but this bill goes a step further by asking a seller to judge whether the purchaser intends to sell the gun to another person who will then use it in a crime of violence or drug trafficking crime at some point in the future. The connection is far too attenuated to justify criminal liability on its account.

Similarly, the bill's raffle exception is not clear with respect to who would be liable for the purchase of a weapon that is given to a raffle or contest winner who is subsequently found to be a prohibited person. As the language of the exception states, the raffle, contest, or auction must be sponsored by a national, State, or local organization or association. As Senator Cornyn stated at the Executive Business Meeting, this bill could ensnare an innocent purchaser of a firearm who is merely a volunteer or employee of the organization and who plays no role in transferring the firearm to the raffle winner. According to the bill, this innocent volunteer or employee could be liable for purchasing a firearm for the winner of a raffle—who at the time of the purchase is unknown—and who is suffering from a mental disorder or is a convicted felon. The confusion surrounding this exception is exacerbated when one considers the penalty of forfeiture that would accompany a violation by someone who was not connected with the actual transfer of the firearm to the raffle winner.

Another concern is some of the penalties in this bill are unnecessarily high and some provisions will create confusion in the code. For example, a violation of Section 932(b)(J) carries a maximum sentence of 15 years while Section 932(c)(2) carries a 25 year maximum penalty for the same crime, transferring the firearm with reasonable cause to believe it will be used in a crime of violence. While it is important to send a message to criminals that violations of federal gun laws will have serious consequences, it is widely known that most straw purchasers do not have criminal records and likely would be deterred by current sentencing levels if the laws were actually being enforced. This Committee has held three hearings on the issue of gun violence during which we heard expert testimony stating the lack of prosecutions for attempts to purchase a gun on behalf of a prohibited person is a major problem. The Department of Justice argues it needs better tools to address these problems because they do not have enough resources to prosecute "lie and buy" offenses, which are perceived as "paperwork" violations and have low jury appeal. However, increasing statutory maximums to levels that far surpass current, unenforced statutory levels does not achieve the stated goal. Penalties are irrelevant if criminals are not prosecuted. It also seems incongruous to increase the maximum sentence for someone who sells a firearm to a pro-

³ATF, *Firearms Trace Data—2011*, <http://www.atf.gov/statistics/trace-data/2011-trace-data.html>

hibited person, such as a drug user, when some are contemplating legislation that would circumvent mandatory minimums for those who use guns in drug trafficking crimes.

Additionally, the bill creates a new federal firearms trafficking crime that carries a maximum sentence of 25 years if a violation is committed by a person who acts in concert with five or more persons and occupies a position of leadership in the group. We commend the effort to target organizations engaged in gun trafficking; however, designating a set number of persons with whom an organizer must act in concert to receive an increased sentence runs the risk of making the increased penalty irrelevant. Arbitrarily setting the number of persons who must act in concert at five could serve to encourage organizations to commit gun trafficking operations in smaller groups to evade the higher penalty.

We support the concept of legislation that directly addresses the issue of straw purchasing and trafficking. However, we cannot support S. 54, as it is needlessly complicated and expands the scope of the Committee's efforts past the issue of straw purchasing to include the criminalization of acts that should not be criminal. This bill does not narrowly address the existing "lie and buy" provisions. This bill expands the reach of federal gun laws by prohibiting the purchase of a firearm on behalf of not only a prohibited person, but any person. It is no consolation to the American people that the Department of Justice "assures" Congress it will not use these provisions to target law-abiding citizens who are "inadvertently" swept up by the unintended consequences of this bill, particularly when the only stated justification for that policy is a lack of resources at the Department.

ORRIN G. HATCH.
JEFF SESSIONS.
LINDSEY GRAHAM.
JOHN CORNYN.
MICHAEL S. LEE.
TED CRUZ.
JEFF FLAKE.

VIII. CHANGES TO EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S.54, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

TITLE 18—CRIMES AND CRIMINAL PROCEDURE

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CHAPTER 44—FIREARMS

* * * * *

- Sec. 921. Definitions
- Sec. 922. Unlawful acts
- Sec. 923. Licensing
- Sec. 924. Penalties
- Sec. 925. Exceptions: Relief from disabilities
- Sec. 925A. Remedy for erroneous denial of firearm
- Sec. 926. Rules and regulations
- Sec. 926A. Interstate transportation of firearms
- Sec. 926B. Carrying of concealed firearms by qualified law enforcement officers
- Sec. 926C. Carrying of concealed firearms by qualified retired law enforcement officers
- Sec. 927. Effect on State law
- Sec. 928. Separability
- Sec. 929. Use of restricted ammunition
- Sec. 930. Possession of firearms and dangerous weapons in Federal facilities
- Sec. 931. Prohibition on purchase, ownership, or possession of body armor by violent felons
- Sec. 932. *Straw purchasing of firearms*
- Sec. 933. *Trafficking in firearms*
- Sec. 934. *Forfeiture and fines*

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SEC. 922. UNLAWFUL ACTS

* * * * *

(d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person—

- (1) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
- (2) is a fugitive from justice;
- (3) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));
- (4) has been adjudicated as a mental defective or has been committed to any mental institution;
- (5) who, being an alien—
 - (A) is illegally or unlawfully in the United States; or
 - (B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as

that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101 (a)(26));

(6) who has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and

(B) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; **[or]**

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) has been convicted in any court of a misdemeanor crime of domestic violence. This subsection shall not apply with respect to the sale or disposition of a firearm or ammunition to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector who pursuant to subsection (b) of section 925 of this chapter is not precluded from dealing in firearms or ammunition, or to a person who has been granted relief from disabilities pursuant to subsection (c) of section 925 of this chapter**[.];**

(10) intends to sell or otherwise dispose of the firearm or ammunition to a person described in any of paragraphs (1) through (9); or

(11) intends to sell or otherwise dispose of the firearms or ammunition in furtherance of a crime of violence or drug trafficking offense or to export the firearm or ammunition in violation of law.

This subsection shall not apply with respect to the sale or disposition of a firearm or ammunition to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector who pursuant to subsection (b) of section 925 is not precluded from dealing in firearms or ammunition, or to a person who has been granted relief from disabilities pursuant to subsection (c) of section 925.

* * * * *

SEC. 924. PENALTIES

(a) * * *

(2) Whoever knowingly violates subsection (a)(6), **[(d), (g),]** (h), (i), (j), or (o) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both.

* * * * *

(8) Whoever knowingly violates subsection (d) or (g) of section 922 shall be fined under this title, imprisoned not more than 15 years, or both.

* * * * *

[(h) Whoever knowingly transfers a firearm, knowing that such firearm will be used to commit a crime of violence (as defined in subsection (c)(3)) or drug trafficking crime (as defined in subsection (c)(2)) shall be imprisoned not more than 10 years, fined in accordance with this title, or both.]

(h)(1) Whoever knowingly receives or transfers a firearm or ammunition, or attempts or conspires to do so, knowing or having reasonable cause to believe that such firearm or ammunition will be used to commit a crime of violence (as defined in subsection (c)(3)), a drug trafficking crime (as defined in subsection (c)(2)), or a crime under the Arms Export Control Act (22 U.S.C. 2751 et seq.), the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), the Foreign Narcotics Kingpin Designation Act (21 U.S.C. 1901 et seq.), or section 212(a)(2)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)(C)) shall be imprisoned not more than 25 years, fined in accordance with this title, or both.

(2) No term of imprisonment imposed on a person under this subsection shall run concurrently with any term of imprisonment imposed on the person under section 932.

* * * * *

[(k) A person who, with intent to engage in or to promote conduct that—

[(1) is punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46;

[(2) violates any law of a State relating to any controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802); or

[(3) constitutes a crime of violence (as defined in subsection (c)(3)), smuggles or knowingly brings into the United States a firearm, or attempts to do so, shall be imprisoned not more than 10 years, fined under this title, or both.]

(k)(1) A person who, with intent to engage in or to promote conduct that—

(A) is punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46;

(B) violates any law of a State relating to any controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802); or

(C) constitutes a crime of violence (as defined in subsection (c)(3)), smuggles or knowingly brings into the United States, a firearm or ammunition, or attempts or conspires to do so, shall be imprisoned not more than 15 years, fined under this title, or both.

(2) A person who, with intent to engage in or to promote conduct that—

(A) would be punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and

Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46, if the conduct had occurred within the United States; or

(B) would constitute a crime of violence (as defined in subsection (c)(3)) for which the person may be prosecuted in a court of the United States, if the conduct had occurred within the United States, smuggles or knowingly takes out of the United States, a firearm or ammunition, or attempts or conspires to do so, shall be imprisoned not more than 15 years, fined under this title, or both.

* * * * *

SEC. 932. STRAW PURCHASING OF FIREARMS

(a) For purposes of this section—

(1) the term “crime of violence” has the meaning given that term in section 924(c)(3);

(2) the term “drug trafficking crime” has the meaning given that term in section 924(c)(2); and

(3) the term “purchase” includes the receipt of any firearm by a person who does not own the firearm—

(A) by way of pledge or pawn as security for the payment or repayment of money; or

(B) on consignment.

(b) It shall be unlawful for any person (other than a licensed importer, licensed manufacturer, licensed collector, or licensed dealer) to knowingly purchase, or attempt or conspire to purchase, any firearm in or otherwise affecting interstate or foreign commerce—

(1) from a licensed importer, licensed manufacturer, licensed collector, or licensed dealer for, on behalf of, or at the request or demand of any other person, known or unknown; or

(2) from any person who is not a licensed importer, licensed manufacturer, licensed collector, or licensed dealer for, on behalf of, or at the request or demand of any other person, known or unknown, knowing or having reasonable cause to believe that such other person—

(A) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year;

(B) is a fugitive from justice;

(C) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(D) has been adjudicated as a mental defective or has been committed to any mental institution;

(E) is an alien who—

(i) is illegally or unlawfully in the United States; or

(ii) except as provided in section 922(y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26));

(F) has been discharged from the Armed Forces under dishonorable conditions;

(G) having been a citizen of the United States, has renounced his or her citizenship;

(H) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this subparagraph shall only apply to a court order that—

(i) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and

(ii)(I) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(II) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury;

(I) has been convicted in any court of a misdemeanor crime of domestic violence;

(J) intends to—

(i) use, carry, possess, or sell or otherwise dispose of the firearm or ammunition in furtherance of a crime of violence or drug trafficking crime; or

(ii) export the firearm or ammunition in violation of law;

(K)(i) does not reside in any State; and

(ii) is not a citizen of the United States; or

(L) intends to sell or otherwise dispose of the firearm or ammunition to a person described in any of subparagraphs (A) through (K).

(c)(1) Except as provided in paragraph (2), any person who violates subsection (b) shall be fined under this title, imprisoned for not more than 15 years, or both.

(2) If a violation of subsection (b) is committed knowing or with reasonable cause to believe that any firearm involved will be used to commit a crime of violence, the person shall be sentenced to a term of imprisonment of not more than 25 years.

(d) Subsection (b)(1) shall not apply to any firearm that is lawfully purchased by a person—

(1) to be given as a bona fide gift to a recipient who provided no service or tangible thing of value to acquire the firearm, unless the person knows or has reasonable cause to believe such recipient is prohibited by Federal law from possessing, receiving, selling, shipping, transporting, transferring, or otherwise disposing of the firearm; or

(2) to be given to a bona fide winner of an organized raffle, contest, or auction conducted in accordance with law and sponsored by a national, State, or local organization or association, unless the person knows or has reasonable cause to believe such recipient is prohibited by Federal law from possessing, purchasing, receiving, selling, shipping, transporting, transferring, or otherwise disposing of the firearm.

SEC. 933. TRAFFICKING IN FIREARMS

(a) It shall be unlawful for any person to—

(1) ship, transport, transfer, cause to be transported, or otherwise dispose of 2 or more firearms to another person in or otherwise affecting interstate or foreign commerce, if the transferor knows or has reasonable cause to believe that the use, carrying, or possession of a firearm by the transferee would be in violation of, or would result in a violation of, any Federal law punishable by a term of imprisonment exceeding 1 year;

(2) receive from another person 2 or more firearms in or otherwise affecting interstate or foreign commerce, if the recipient knows or has reasonable cause to believe that such receipt would be in violation of, or would result in a violation of, any Federal law punishable by a term of imprisonment exceeding 1 year; or

(3) attempt or conspire to commit the conduct described in paragraph (1) or (2).

(b)(1) Except as provided in paragraph (2), any person who violates subsection (a) shall be fined under this title, imprisoned for not more than 15 years, or both.

(2) If a violation of subsection (a) is committed by a person in concert with 5 or more other persons with respect to whom such person occupies a position of organizer, leader, supervisor, or manager, the person shall be sentenced to a term of imprisonment of not more than 25 years.

SEC. 934. FORFEITURE AND FINES

(a)(1) Any person convicted of a violation of section 932 or 933 shall forfeit to the United States, irrespective of any provision of State law—

(A) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation; and

(B) any of the person’s property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation.

(2) The court, in imposing sentence on a person convicted of a violation of section 932 or 933, shall order, in addition to any other sentence imposed pursuant to section 932 or 933, that the person forfeit to the United States all property described in paragraph (1).

(b) A defendant who derives profits or other proceeds from an offense under section 932 or 933 may be fined not more than the greater of—

(1) the fine otherwise authorized by this part; and

(2) the amount equal to twice the gross profits or other proceeds of the offense under section 932 or 933.

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CHAPTER 58—UNITED STATES SENTENCING COMMISSION

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SEC. 994. DUTIES OF THE COMMISSION

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DIRECTIVE TO SENTENCING COMMISSION.—Pursuant to its authority under section 994 of title 28, United States Code, and

in accordance with this section, the United States Sentencing Commission shall review and amend its guidelines and policy statements to ensure that persons convicted of an offense under section 932 or 933 of title 18, 1 United States Code and other offenses applicable to the straw purchases and firearms trafficking of firearms are subject to increased penalties in comparison to those currently provided by the guidelines and policy statements for such straw purchasing and firearms trafficking offenses. The Commission shall also review and amend its guidelines and policy statements to reflect the intent of Congress that a person convicted of an offense under section 932 or 933 of title 18, United States Code, who is affiliated with a gang, cartel, organized crime ring, or other such enterprise should be subject to higher penalties than an otherwise unaffiliated individual.

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CHAPTER 95—RACKETEERING

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SEC. 1956. LAUNDERING OF MONETARY INSTRUMENTS

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(c) As used in this section—

* * * * *

(7) the term “specified unlawful activity” means—

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(D) an offense under section 32 (relating to the destruction of aircraft), section 37 (relating to violence at international airports), section 115 (relating to influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member), section 152 (relating to concealment of assets; false oaths and claims; bribery), section 175c (relating to the variola virus), section 215 (relating to commissions or gifts for procuring loans), section 351 (relating to congressional or Cabinet officer assassination), any of sections 500 through 503 (relating to certain counterfeiting offenses), section 513 (relating to securities of States and private entities), section 541 (relating to goods falsely classified), section 542 (relating to entry of goods by means of false statements), section 545 (relating to smuggling goods into the United States), section 549 (relating to removing goods from Customs custody), section 554 (relating to smuggling goods from the United States), section 555 (relating to border tunnels), section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 657 (relating to lending, credit, and insurance institutions), section 658 (relating to property mortgaged or pledged to farm credit agencies), section 666 (relating to theft or bribery concerning programs receiving Federal funds), section 793, 794, or 798 (relating to espionage), section 831 (relating to prohibited transactions involving nuclear materials), section 844 (f) or

(i) (relating to destruction by explosives or fire of Government property or property affecting interstate or foreign commerce), section 875 (relating to interstate communications), section 922 (l) (relating to the unlawful importation of firearms), ~~section 924(n)~~ *section 924(n), 932, or 933* (relating to firearms trafficking), section 956 (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country), section 1005 (relating to fraudulent bank entries), 1006 (relating to fraudulent Federal credit institution entries), 1007 (relating to Federal Deposit Insurance transactions), 1014 (relating to fraudulent loan or credit applications), section 1030 (relating to computer fraud and abuse), 1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institution), section 1111 (relating to murder), section 1114 (relating to murder of United States law enforcement officials), section 1116 (relating to murder of foreign officials, official guests, or internationally protected persons), section 1201 (relating to kidnaping), section 1203 (relating to hostage taking), section 1361 (relating to willful injury of Government property), section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction), section 1708 (theft from the mail), section 1751 (relating to Presidential assassination), section 2113 or 2114 (relating to bank and postal robbery and theft), section 2252A (relating to child pornography) where the child pornography contains a visual depiction of an actual minor engaging in sexually explicit conduct, section 2260 (production of certain child pornography for importation into the United States), section 2280 (relating to violence against maritime navigation), section 2281 (relating to violence against maritime fixed platforms), section 2319 (relating to copyright infringement), section 2320 (relating to trafficking in counterfeit goods and services), section 2332 (relating to terrorist acts abroad against United States nationals), section 2332a (relating to use of weapons of mass destruction), section 2332b (relating to international terrorist acts transcending national boundaries), section 2332g (relating to missile systems designed to destroy aircraft), section 2332h (relating to radiological dispersal devices), section 2339A or 2339B (relating to providing material support to terrorists), section 2339C (relating to financing of terrorism), or section 2339D (relating to receiving military-type training from a foreign terrorist organization) of this title, section 46502 of title 49, United States Code, a felony violation of the Chemical Diversion and Trafficking Act of 1988 (relating to precursor and essential chemicals), section 590 of the Tariff Act of 1930 (19 U.S.C. 1590) (relating to aviation smuggling), section 422 of the Controlled Substances Act (relating to transportation of drug paraphernalia), section 38 (c) (relating to criminal violations) of the Arms Export Control Act, section 11 (relating to violations) of the Export Administration Act of 1979, section 206 (relating to penalties) of the Inter-

national Emergency Economic Powers Act, section 16 (relating to offenses and punishment) of the Trading with the Enemy Act, any felony violation of section 15 of the Food and Nutrition Act of 2008 (relating to supplemental nutrition assistance program benefits fraud) involving a quantity of benefits having a value of not less than \$5,000, any violation of section 543(a)(1) of the Housing Act of 1949 (relating to equity skimming), any felony violation of the Foreign Agents Registration Act of 1938, any felony violation of the Foreign Corrupt Practices Act, or section 92 of the Atomic Energy Act of 1954 (42 U.S.C. 2122) (relating to prohibitions governing atomic weapons) environmental crimes.

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CHAPTER 96—RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

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SEC. 1961. DEFINITIONS

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(1) “Racketeering Activity” means—

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(B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891–894 (relating to extortionate credit transactions), *section 932 (relating to straw purchasing)*, *section 933 (relating to trafficking in firearms)*, section 1028 (relating to fraud and related activity in connection with identification documents), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), section 1425 (relating to the procurement of citizenship or naturalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), sections 1461–1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1542 (relating to false statement in application and use of passport), section 1543 (relating to forgery or false use of passport), section 1544 (relating to misuse of passport), section 1546 (relating to fraud and misuse of visas, permits, and other documents), sections 1581–

1592 (relating to peonage, slavery, and trafficking in persons), [1] section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), section 1960 (relating to illegal money transmitters), sections 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2318 (relating to trafficking in counterfeit labels for phone records, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright), section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), section 2320 (relating to trafficking in goods or services bearing counterfeit marks), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341–2346 (relating to trafficking in contraband cigarettes), sections 2421–24 (relating to white slave traffic), sections 175–178 (relating to biological weapons), sections 229–229F (relating to chemical weapons), section 831 (relating to nuclear materials),

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CHAPTER 119—WIRE AND ELECTRONIC COMMUNICATIONS INTERCEPTION AND INTERCEPTION OF ORAL COMMUNICATIONS

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SEC. 2516. AUTHORIZATION FOR INTERCEPTION OF WIRE, ORAL, OR ELECTRONIC COMMUNICATIONS

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(1)(n) any felony violation of sections 922 [and 924], 924, 932, 933 of title 18, United States Code (relating to firearms);

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TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE

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SEC. 531. LIMITATION ON OPERATIONS BY THE DEPARTMENT OF JUSTICE.

The Department of Justice, and any of its law enforcement coordinate agencies, shall not conduct any operation where a Federal firearms licensee is directed, instructed, enticed, or otherwise encouraged by the Department of Justice to sell a firearm to an individual

if the Department of Justice, or a coordinate agency, knows or has reasonable cause to believe that such an individual is purchasing on behalf of another for an illegal purpose unless the Attorney General, the Deputy Attorney General, or the Assistant Attorney General for the Criminal Division personally reviews and approves the operation, in writing, and determines that the agency has prepared an operational plan that includes sufficient safeguards to prevent firearms from being transferred to third parties without law enforcement taking reasonable steps to lawfully interdict those firearms.

