

Key Facts about Federal Gun-Trafficking Cases

July 5, 2011

1. Facts about gun laws:

- a. Firearms and ammunition are legal products and not contraband. Contraband, such as unlawful narcotics, is subject to immediate seizure on sight by law enforcement. Firearms and ammunition, however, may only be seized if the government can prove the weapons or ammunition were in the past involved in the commission of a crime, or are intended to be used in a limited number of listed crimes to be committed in the future ((18 USC 924 (d) (1)). Finally, should any possessor of firearms or ammunition be acquitted of criminal charges against the possessor, the firearms or ammunition must be returned to that person immediately.
- b. A citizen's rights to firearms are protected under two constitutional provisions, the Second Amendment right to keep and bear arms, and the Fifth Amendment which prohibits government seizure of property without due process of law.
- c. Gun dealers are federal licensees. They are responsible for determining whether they are permitted to make a sale to an individual, or not. As federal licensees, gun dealers may make unlimited multiple sales of long guns, such as AK type rifles, to one individual without having to report a single sale to the government. They may sell unlimited rounds of ammunition without having to report the sale. All of this is permissible under federal law. Gun dealers are only required by federal law to report multiple handgun sales, not multiple long gun sales.
- d. Additionally, the government has no authority to promulgate a "No Sell" list, (like a "No Fly List") under which dealers with a Federal Firearms License (FFL) would be prohibited from selling any guns to any person on the list. The government cannot interfere with the operation of commerce and prohibit a gun store from making a lawful sale to suspects as to whom the government may have nothing more than mere suspicion. The federally licensed gun dealers are always allowed to decline a gun sale they find suspicious. A person otherwise allowed to buy a firearm is not prohibited from buying guns simply because law enforcement agents have designated them a "suspect," or have requested information from gun dealers about their previous firearms purchases. If this were not the law, agents could prohibit a person from buying a gun simply by designating them a "suspect" even though they have not been charged or convicted of any crime. (18 USC 922 (n) and 922 (g)).
- e. Purchasing multiple long guns in Arizona is legal. Transferring the guns to another person is legal. Selling them to another person is legal. Unless the government can prove that the guns were used or possessed in relation to a crime, are going to be used in relation to a crime, or that the purchaser lied when buying the guns, or that purchaser is engaged in the unlicensed business of selling firearms, law enforcement does not have a basis to seize guns from citizens.

- f. An Arizona citizen under federal firearms laws may purchase an unlimited number of AK-47 type rifles, AR-15 type rifles or a .50 caliber sniper rifle, and may later transfer them within the state to friends or strangers in a private sale or a private barter so long as the sale is not for the principle purpose of profit or livelihood. There is no federal law making such actions unlawful. (18 USC 922 (a) (1) (A) and 921 (a) (21) (C)).
- g. The U.S. Attorney's Office is using more resources prosecuting drug and immigration cases than ever before. In addition to looking for northbound drug and human smugglers, federal authorities are now attacking the southbound flow of cash and firearms that fuel the drug trade through aggressive firearms trafficking investigations and enhanced inspections at southbound Ports of Entry.

2. Firearms Trafficking Enforcement in Arizona:

The District of Arizona is prosecuting several other gun and ammunition-trafficking cases. Notable cases include:

U.S. v. **ATF**

From September 2009 to December 2010, 20 defendants are alleged to have conspired to purchase hundreds of firearms, including AK-47s type rifles, to be illegally exported to Mexico. The case involves at least several gun trafficking organizers/leaders. They and others were charged in a 53-count indictment for a conspiracy to traffic firearms and drugs for a Mexican drug cartel, as well as money laundering; **ATF**

ATF

U.S. v. ATF

ATF

ATF

ATF

3. Ammunition Trafficking Enforcement in Arizona:

Under current federal law, there are no reporting requirements for ammunition purchases — regardless of quantity. However, largely because of an increased focus on south-bound

inspections at border Points of Entry over the past two years, federal authorities in Arizona have seized over **82,000** rounds of ammunition bound for Mexican drug cartels. Notable prosecutions include:



ATF

4. Guns and ammunition cases by the numbers in the District of Arizona

Between October 1, 2010 and March 31, 2011:

- 185 gun related felony cases in Fiscal Year (FY) 2010 (up from 156 in FY09)
- 113 gun related felony cases in the first six months of FY11
- Over 82,000 rounds of ammo seized