

NLWJC - Kagan

DPC - Box 009 - Folder 004

Crime - Assault Weapons [2]



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

Crime - assault weapons

TO: RAHM EMANUEL
BRUCE REED
JOHN HILLEY
MARTHA FOLEY
BARBARA CHOW
JOHN PODESTA
SYLVIA MATHEWS
GENE SPERLING
JOSE' CERDA
ELENA KAGAN
PAUL WEINSTEIN
CHUCK MARR
JASON GOLDBERG

CC: JACK LEW
CHARLES KIEFFER

DATE: November 5, 1997
FROM: Alice Shuffield *AS*
RE: CJS Curios and Relics Letter

Attached is our current draft of the "curios and relics" letter. Subsequent to Hilley's talk with the Leadership, and Chuck Kieffer's conversation with Steve Cortese, we do not believe the letter will be necessary. The provision is not expected to be brought up in conference. However, there is a chance that Representative Mollohan will persist. We want to have our letter ready to send (with proper assurances that the provision would then be removed) in the event that he does try to attach the provision.

Please let me know (5-4790) by 1:00pm if you have concerns with our sending the letter should the need for it arise.

November 5, 1997

The Honorable Bob Livingston
Chairman
Committee on Appropriations
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The Administration strongly objects to the inclusion of any provision in the FY 1998 Commerce, Justice and State Appropriations Conference Report to allow for the importation of surplus military weapons. We have repeatedly opposed such provisions, and the President's senior advisers would recommend that he veto the bill if it includes language that would allow large quantities of surplus military weapons to be imported.

The Administration finds it unacceptable that -- in the same appropriations bill that funds the nation's law enforcement priorities, such as putting more police on our streets -- the Committee is considering language that could flood our streets with millions of military surplus weapons. These weapons, including M-1 Garands and M-1911 .45 caliber pistols, were designed for military purposes and provided to foreign governments as a form of military aid. Moreover, hundreds of these guns have already been recovered by law enforcement officers throughout the United States. Opening the door to more of these weapons would only serve to further undermine public safety.

We urge the Committee to reject this provision.

Sincerely,

Franklin Raines

Crime - assault weapons

THE WHITE HOUSE
WASHINGTON

November 4, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: CHARLES F.C. RUFF
BRUCE REED
RAHM EMANUEL

SUBJECT: "Sporterized" Assault Weapons Directive

This memorandum is in response to questions you raised concerning the options described in our memorandum of October 30 concerning the importation of "sporterized" assault weapons. Under Option 2, Treasury would suspend action on all pending applications and future permits but not suspend existing permits pending its full review of the sporting purposes criteria. As part of this approach, Treasury would review the importation and criminal use of sporterized weapons and suspend existing permits if the evidence so warranted. You asked how long it would take for Treasury to conduct this interim review and make such a decision.

We have been informed by attorneys at Treasury and ATF that the plan for the review process is still being written. The plan is expected to have 3 separate tracks running simultaneously, the first two of which could be completed within 5 to 10 weeks. The first track would involve gathering and analyzing law enforcement statistics and other information relating to the use of the imported weapons in criminal activity. These "tracing" figures and other anecdotal information could support, depending on their quality, the immediate suspension of existing permits.

The second track would focus on a technical analysis of the weapons, comparing them to other acceptable sporting rifles. This analysis would include reviewing the existing sporting purposes criteria and its application to the weapons at issue. This process is also estimated to take 5 to 10 weeks and could uncover new facts that would warrant immediate suspension of the existing permits.

The final track, which is expected to take 120 days, will focus on the actual purpose and use for which these weapons are acquired. This process will include a nationwide survey of the buyers and users of these weapons. This track offers the best chance for acquiring information supporting modification of the sporting purposes test to prohibit the importation of these weapons.

Treasury and ATF attorneys also noted that if there is a drastic increase in the numbers of weapons actually being imported through existing permits during the 120 day period, in conjunction with favorable facts gathered from any of the review tracks, our claim that sufficient circumstances exist to warrant the suspension of existing permits would be substantially stronger.

In sum, it is unlikely that the review process will uncover additional facts supporting the suspension of existing permits in less than 5 weeks. Based upon our conversations with the attorneys at Treasury and ATF, we believe a more accurate estimate is 10 weeks, but that the entire 120 day review may be necessary. And, as the Treasury and ATF attorneys emphasize, even the full 120 day review may not uncover sufficient additional information that would justify changing the sporting purposes test or suspending any existing permits.

Finally, our respective recommendations, as set forth in the attached October 30 memorandum, have not changed as a result of this additional information.

THE WHITE HOUSE

WASHINGTON

October 31, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: PHIL CAPLAN *Phil*
SEAN MALONEY *SM*

As you know, the directive on modified or "sporterized" assault weapons is ready except for one outstanding issue, as outlined in the attached Rahm/Bruce Reed memo. They seek a decision on whether the directive should temporarily suspend existing importation permits in addition to pending and future permits.

Background. ATF estimates that about 600,000 sporterized weapons can be imported under existing permits, including about 175,000 under a permit that ATF staff approved last week. (ATF approved the permit in the face of an informal departmental directive not to act on pending applications until the scope of this directive was determined.) Pending applications will permit importation of another million weapons. Everyone agrees your directive should (a) require Treasury to reexamine and, if necessary, modify the importation criteria to keep non-sporting weapons out; and (b) temporarily suspend the approval of all pending and future applications. The issue is whether to suspend also the permits ATF has already granted.

Options. You have three options: (1) suspend action only on pending and future permits; (2) suspend pending and future permits; require Treasury to monitor importation levels and criminal use of the weapons; and authorize Treasury to suspend existing permits during the review period if warranted; or (3) suspend pending, future and existing permits.

Views. There is no real support for Option 1. *Chuck Ruff and DOJ* support Option 2. They believe an existing-permit suspension (Option 3) would not survive in court -- there is not a sufficient factual basis for upholding such an action as there was in 1989 when a court last addressed this issue. Furthermore, they believe such a loss could cripple efforts to modify the importation criteria. *Rahm and Bruce* are comfortable with either Option 2 or Option 3. They note Option 3 looks stronger but may well result in a quick loss in court; Option 2 could be subject to criticism as "weaker" but may well hold up best over time. *Secretary Rubin* supports Option 3.

___ Option 1 ___ Option 2 ___ Option 3

THE WHITE HOUSE

WASHINGTON

October 30, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED
RAHM EMANUEL

SUBJECT: "Sporterized" Assault Weapons Directive

Attached is a draft directive on the importation of a new class of modified, or "sporterized," assault weapons. As you know, the 1994 Crime Bill bans 19 specific assault weapons, their duplicates, and certain other semiautomatic weapons with military-style features. The 1968 Gun Control Act more generally prohibits the importation of firearms that are not "generally recognized as particularly suitable or readily adaptable to sporting purposes." In recent years, certain gun manufacturers have redesigned "assault-type" weapons in minor ways to circumvent the 1994 ban and to meet the criteria currently used to apply the sporting purposes provision of the 1968 Act. This directive is intended to address importation of such redesigned weapons.

The directive essentially mirrors the action you took in 1993 to ban the importation of assault pistols and the action President Bush took in 1989 to ban the importation of assault rifles. Everyone agrees that the directive should: (1) require Treasury to reexamine, and if necessary, modify the criteria used to keep non-sporting weapons out of the country; and (2) temporarily suspend the approval of all pending and future applications for permits to import sporterized assault weapons. Although only a limited number of these firearms has come into the country since passage of the assault weapons ban (approximately 14,000 in 1994, 12,000 in 1995, 30,000 in 1996, and nearly 20,000 to date this year -- as opposed to nearly 160,000 in 1993), applications are now pending to import as many as 1.1 million more of these firearms. The directive would halt importation of these firearms while Treasury conducts its review -- and depending on the outcome of that review, could lead to a permanent ban on such weapons.

As you know, we have not yet resolved whether the Administration should take the additional step of temporarily suspending permits that already have been granted. While ATF originally estimated that 300,000 sporterized assault weapons could be legally imported under roughly 50 existing permits, the Bureau now puts the figure at about 600,000. The difference is due largely to ATF staff's approval last week of 3 permits for an additional 175,000 sporterized firearms -- action taken in the face of an informal departmental directive not to act on pending applications until the scope of this directive was determined.

We have asked Treasury, Justice, and White House Counsel to develop the strongest possible case for temporarily suspending existing permits. Justice litigators continue to have

serious doubts that we have a sufficient factual basis for taking this action. They point out that, in upholding the Bush Administration's suspension of existing permits in 1989, the court relied on a combination of specific facts, including: a large number of approved and pending permits for assault rifles; a 57% increase in the number of assault rifles recovered at crime scenes; and several highly publicized shootings involving assault rifles, such as the Stockton, CA murders. Arguably, the same combination of circumstances does not exist today. While the number of approved and pending permits is comparable, the 145% increase in the number of sporterized weapons traced since 1994 is largely attributable to an expanded tracing program (indeed, other makes of guns have shown a larger increase in tracings), and no highly publicized crimes have involved these weapons.

Given these circumstances, Justice litigators believe that a court is very likely to enjoin our suspension of existing permits. Justice also points out that a loss on this issue could undermine our ability to defend any future action taken by Treasury to modify the test for non-sporting weapons: for example, a court that believes we stepped over the line in suspending existing permits may doubt whether we have a bona fide basis for modifying the criteria used to apply the sporting purposes test. The Justice Department, however, has stated clearly that it will defend in court an Administration decision to suspend existing permits.

You have the following options with respect to the scope of the directive:

Option 1: Suspend action only on applications for pending and future permits (covering about 1.1 million firearms). Allow imports under the 50 existing permits (covering 600,000 firearms) during the review period. If Treasury ultimately changes the sporting purposes test, revoke permits for firearms inconsistent with the new criteria. Treasury and Justice lawyers believe this option is entirely defensible. Senator Feinstein and other Members of Congress would complain that this action is not sufficiently bold.

Option 2: Suspend action on pending and future permits, and require Treasury to closely monitor the levels of importation and criminal use of sporterized firearms during the review period. If during the review period, the Secretary determines that circumstances warrant additional action, including suspension of existing permits, then Treasury would be directed to take such action. Although this solution will not be acceptable to Senator Feinstein, it may dampen criticism from others -- and substantially reduce our litigation risk.

Option 3: In addition to suspending action on pending and future permits, temporarily suspend all existing permits (50 permits for 600,000 firearms) while ATF reviews the sporting purposes criteria. After this review, if Treasury changes the sporting purposes test, revoke permits for firearms inconsistent with the new criteria. Justice litigators believe that this option presents a substantial litigation risk and could undermine our ability to defend future action by Treasury to modify the sporting purposes test. Additionally, key Treasury staff would spend much of the review period in court -- and not necessarily working on re-examining the sporting purposes test.

Recommendation:

Chuck Ruff believes that, although it would be consistent with the Justice Department's professional obligations to defend the revocation of existing permits, there is a substantial risk that any ensuing litigation would ultimately undermine ATF's ability to make defensible changes in the sporting purposes criteria. Not only would discovery reveal the current weaknesses in ATF's analysis -- and thus potentially in the predicate for any changes it may propose -- but an adverse decision in the district court (and in the court of appeals) would adversely affect our ability to defend challenges to the new criteria. Thus, he would prefer Option 2.

We are comfortable with either Option 2 or Option 3. (Option 1 looks weak in not holding out even the possibility of a suspension of existing permits.) Option 3 looks stronger to start with, but may well result in a quick loss in court. Option 2 will be subject to immediate criticism by Feinstein and others, but may hold up best over time.

DRAFT - DRAFT - DRAFT

October xx, 1997

MEMORANDUM FOR THE SECRETARY OF THE TREASURY

Subject: Importation of Uzi and Galil Firearms

The historic Violent Crime Control and Law Enforcement Act of 1994 banned 19 specific assault weapons, duplicates of those 19 firearms and certain other semiautomatic weapons possessing various military style features. The Administration and Congress worked to ban these deadly firearms because -- as the weapon of choice for gangs and drug dealers -- they were being recovered at numerous crime scenes and resulting in criminals being better armed than some of the nation's law enforcement officers. Last year, in part as a result of the ban on assault weapons, fewer police officers were slain in the line of duty than in any year since 1960, and fewer law enforcement officers were killed by assault weapons.

In addition to the prohibitions contained in the 1994 ban on assault weapons, the 1968 Gun Control Act further restricts the importation of firearms unless they are determined to be particularly suitable for or readily adaptable for sporting purposes. To enforce this law, the Treasury Department has developed a factoring system to determine whether handguns meet this sporting purposes test and are thus importable. The Department also determined that semiautomatic assault type rifles do not meet the sporting purposes test and are not importable.

I am now informed that 2 of the 19 assault weapons that were specifically banned from importation in 1989, the Galil and the Uzi, have been redesigned in order to circumvent the ban. The Galil and Uzi, which are manufactured by Israeli Military Industries, were banned because -- in their military configurations -- they were found to have no legitimate sporting purpose. It is now appropriate to determine whether the redesigned weapons would have legitimate sporting purposes in this country and are suitable for continued importation under the provisions of the Gun Control Act of 1968.

My Administration has aggressively enforced all applicable laws to keep non-sporting firearms and other munitions posing a threat to public safety from entering the country. Therefore, I direct you to:

- 1) Take the necessary steps to reexamine and determine whether the sporting purposes test should be modified with respect to the importation of the Galil, Uzi and any other firearms that have been similarly adapted or re-engineered since the 1989 ban on the importation of semiautomatic assault rifles or the 1994 ban on semiautomatic assault weapons;

[Option 1]

- 2) *Effective immediately, suspend action on pending and future applications to import these weapons until this review is complete.*

[Option 2]

- 2) *Effective immediately, suspend action on pending and future applications to import these weapons until this review is complete; and*
- 3) *During this review period, closely monitor the continued importation and criminal use of these modified assault-type weapons, and -- if you determine that circumstances warrant additional action -- take any other appropriate action including the suspension of existing permits.*

[Option 3]

- 2) *Effective immediately, suspend all existing permits and action on pending and future applications for permits to import these weapons until this review is complete.*

Nothing herein shall be construed to require actions contrary to applicable provisions of law.



Jose Cerda III

10/21/97 03:30:00 PM

Record Type: Record

To: Phillip Caplan/WHO/EOP

cc: See the distribution list at the bottom of this message

Subject: Directive on Modified Assault Weapons -- Uzi and Galil

Phil:

Attached please find a proposed directive that DPC, Treasury and WH Counsel have been working on to respond to concerns that Senator Feinstein raised to the President in a recent meeting -- and to letters from some 30 Senators and 30 Members. The directive calls on Treasury to temporarily suspend the importation of certain modified assault weapons, including the Uzis and Galils that have been highlighted in press reports. About 35,000 of these weapons have come into the country over the past 2 years. The directive also asks Treasury to re-examine whether or not these weapons meet the "sporting purposes" test in the 1968 Gun Control Act. If -- after review -- they do not, they will be permanently banned from importation. This is the same action that President Bush took with assault rifles (like the AK-47) in 1989, and that President Clinton took in 1993 with respect to assault pistols.

Rahm asked me to get this to you forthwith. You can call him if you have any timing/process questions. Leanne and I would be happy to answer any other questions you may have from a policy perspective.

Jose'



ASSAULT.D

Message Copied To:

Michelle Crisci/WHO/EOP
Bruce N. Reed/OPD/EOP
Elena Kagan/OPD/EOP
Karen A. Popp/WHO/EOP
Tracey E. Thornton/WHO/EOP
Peter G. Jacoby/WHO/EOP
Leanne A. Shimabukuro/OPD/EOP

THE WHITE HOUSE

WASHINGTON

October 30, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED
RAHM EMANUEL

SUBJECT: "Sporterized" Assault Weapons Directive

Attached is a draft directive on the importation of a new class of modified, or "sporterized," assault weapons. As you know, the 1994 Crime Bill bans 19 specific assault weapons, their duplicates, and certain other semiautomatic weapons with military-style features. The 1968 Gun Control Act more generally prohibits the importation of firearms that are not "generally recognized as particularly suitable or readily adaptable to sporting purposes." In recent years, certain gun manufacturers have redesigned "assault-type" weapons in minor ways to circumvent the 1994 ban and to meet the criteria currently used to apply the sporting purposes provision of the 1968 Act. This directive is intended to address importation of such redesigned weapons.

The directive essentially mirrors the action you took in 1993 to ban the importation of assault pistols and the action President Bush took in 1989 to ban the importation of assault rifles. Everyone agrees that the directive should: (1) require Treasury to reexamine, and if necessary, modify the criteria used to keep non-sporting weapons out of the country; and (2) temporarily suspend the approval of all pending and future applications for permits to import sporterized assault weapons. Although only a limited number of these firearms has come into the country since passage of the assault weapons ban (approximately 14,000 in 1994, 12,000 in 1995, 30,000 in 1996, and nearly 20,000 to date this year -- as opposed to nearly 160,000 in 1993), applications are now pending to import as many as 1.1 million more of these firearms. The directive would halt importation of these firearms while Treasury conducts its review -- and depending on the outcome of that review, could lead to a permanent ban on such weapons.

As you know, we have not yet resolved whether the Administration should take the additional step of temporarily suspending permits that already have been granted. While ATF originally estimated that 300,000 sporterized assault weapons could be legally imported under roughly 50 existing permits, the Bureau now puts the figure at about 600,000. The difference is due largely to ATF staff's approval last week of 3 permits for an additional 175,000 sporterized firearms -- action taken in the face of an informal departmental directive not to act on pending applications until the scope of this directive was determined.

We have asked Treasury, Justice, and White House Counsel to develop the strongest possible case for temporarily suspending existing permits. Justice litigators continue to have

serious doubts that we have a sufficient factual basis for taking this action. They point out that, in upholding the Bush Administration's suspension of existing permits in 1989, the court relied on a combination of specific facts, including: a large number of approved and pending permits for assault rifles; a 57% increase in the number of assault rifles recovered at crime scenes; and several highly publicized shootings involving assault rifles, such as the Stockton, CA murders. Arguably, the same combination of circumstances does not exist today. While the number of approved and pending permits is comparable, the 145% increase in the number of sporterized weapons traced since 1994 is largely attributable to an expanded tracing program (indeed, other makes of guns have shown a larger increase in tracings), and no highly publicized crimes have involved these weapons.

Given these circumstances, Justice litigators believe that a court is very likely to enjoin our suspension of existing permits. Justice also points out that a loss on this issue could undermine our ability to defend any future action taken by Treasury to modify the test for non-sporting weapons: for example, a court that believes we stepped over the line in suspending existing permits may doubt whether we have a bona fide basis for modifying the criteria used to apply the sporting purposes test. The Justice Department, however, has stated clearly that it will defend in court an Administration decision to suspend existing permits.

You have the following options with respect to the scope of the directive:

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Option 2: Suspend action on pending and future permits, and require Treasury to closely monitor the levels of importation and criminal use of sporterized firearms during the review period. If during the review period, the Secretary determines that circumstances warrant additional action, including suspension of existing permits, then Treasury would be directed to take such action. Although this solution will not be acceptable to Senator Einstein, it may dampen criticism from others -- and substantially reduce our litigation risk.

Option 3: In addition to suspending action on pending and future permits, temporarily suspend all existing permits (50 permits for 600,000 firearms) while ATF reviews the sporting purposes criteria. After this review, if Treasury changes the sporting purposes test, revoke permits for firearms inconsistent with the new criteria. Justice litigators believe that this option presents a substantial litigation risk and could undermine our ability to defend future action by Treasury to modify the sporting purposes test. Additionally, key Treasury staff would spend much of the review period in court -- and not necessarily working on re-examining the sporting purposes test.

Recommendation:

Chuck Ruff believes that, although it would be consistent with the Justice Department's professional obligations to defend the revocation of existing permits, there is a substantial risk that any ensuing litigation would ultimately undermine ATF's ability to make defensible changes in the sporting purposes criteria. Not only would discovery reveal the current weaknesses in AT's analysis -- and thus potentially in the predicate for any changes it may propose -- but an adverse decision in the district court (and in the court of appeals) would adversely affect our ability to defend challenges to the new criteria. Thus, he would prefer Option 2.

We are comfortable with either Option 2 or Option 3. (Option 1 looks weak in not holding out even the possibility of a suspension of existing permits.) Option 3 looks stronger to start with, but may well result in a quick loss in court. Option 2 will be subject to immediate criticism by Einstein and others, but may hold up best over time.

October 31, 1997

MEMORANDUM FOR THE SECRETARY OF THE TREASURY

Subject: Importation of Modified Assault-Type Weapons

The historic Violent Crime Control and Law Enforcement Act of 1994 banned 19 specific assault weapons, duplicates of those 19 firearms and certain other semiautomatic weapons possessing various military style features. The Administration and Congress worked to ban these deadly firearms because -- as the weapon of choice for gangs and drug dealers -- they were being recovered at numerous crime scenes and resulting in criminals being better armed than some of the nation's law enforcement officers. Last year, in part as a result of the ban on assault weapons, fewer police officers were slain in the line of duty than in any year since 1960, and fewer law enforcement officers were killed by assault weapons.

In addition to the prohibitions contained in the 1994 ban on assault weapons, the 1968 Gun Control Act further restricts the importation of firearms unless they are determined to be particularly suitable for or readily adaptable for sporting purposes. To enforce this law, the Treasury Department has developed a factoring system to determine whether handguns meet this sporting purposes test and are thus importable. The Department also determined that semiautomatic assault type rifles do not meet the sporting purposes test and are not importable.

I am now informed that 2 of the 19 assault weapons that were specifically banned from importation in 1989, the Galil and the Uzi, have been redesigned in order to circumvent the ban. The Galil and Uzi, which are manufactured by Israel Military Industries, were banned because -- in their military configurations -- they were found to have no legitimate sporting purpose. It is now appropriate to determine whether the redesigned weapons would have legitimate sporting purposes in this country and are suitable for continued importation under the provisions of the Gun Control Act of 1968.

My Administration has aggressively enforced all applicable laws to keep non-sporting firearms and other munitions posing a threat to public safety from entering the country. Therefore, I direct you to:

- 1) Take the necessary steps to reexamine and determine whether the sporting purposes test should be modified with respect to the importation of the Galil, Uzi and any other firearms that have been similarly adapted or re-engineered since the 1989 ban on the importation of semiautomatic assault rifles or the 1994 ban on semiautomatic assault weapons;

- 2) Effective immediately, suspend action on pending and future applications to import these weapons until this review is complete; and
- 3) During this review period, closely monitor the continued importation and criminal use of these modified assault-type weapons, and -- if you determine that circumstances warrant additional action -- take any other appropriate action including the suspension of existing permits.

Nothing herein shall be construed to require actions contrary to applicable provisions of law.

October 31, 1997

MEMORANDUM FOR THE SECRETARY OF THE TREASURY

Subject: Importation of Modified Assault Weapons

The historic Violent Crime Control and Law Enforcement Act of 1994 banned 19 specific assault weapons, duplicates of those 19 firearms and certain other semiautomatic weapons possessing various military style features. The Administration and Congress worked to ban these deadly firearms because -- as the weapon of choice for gangs and drug dealers -- they were being recovered at numerous crime scenes and resulting in criminals being better armed than some of the nation's law enforcement officers. Last year, in part as a result of the ban on assault weapons, fewer police officers were slain in the line of duty than in any year since 1960, and fewer law enforcement officers were killed by assault weapons.

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- 2) Effective immediately, suspend action on pending and future applications to import these weapons until this review is complete.

Nothing herein shall be construed to require actions contrary to applicable provisions of law.

Crime-related weapons

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF

DECLARATION OF JOHN W. MAGAW, DIRECTOR
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

I, John W. Magaw, do hereby depose and say:

1. I am the Director, Bureau of Alcohol, Tobacco and Firearms ("ATF"), Department of the Treasury. This declaration is based upon personal knowledge and information furnished by my subordinates.

2. ATF was established as a Bureau by Department of Treasury Order No. 120-01 (June 1972), formerly Treasury Dep't Order No. 221, 37 Fed. Reg. 11,696 (1972). Pursuant to this order, the Director, ATF, was given authority to administer and enforce the provisions of law relating to alcohol, tobacco, firearms and explosives, including the provisions of the Gun Control Act of 1968 ("GCA"), as amended, 18 U.S.C. Chapter 44.

3. The GCA, 18 U.S.C. § 922(l), prohibits the importation of firearms into the United States except as provided in 18 U.S.C. § 925(d). Section 925(d) provides four exceptions to the importation prohibition. Generally, this section provides that ATF will approve the importation where the firearm:

a. is being imported for scientific or research purposes, or is for use in connection with competition or training (section 925(d)(1));

- 2 -

b. is an unserviceable firearm (section 925(d)(2));

c. is of a type which is generally recognized as particularly suitable for or readily adaptable to sporting purposes (section 925(d)(3)); or,

d. was previously taken out of the United States or a possession by the person who is bringing in the firearm (section 925(d)(4)).

4. The regulations implementing these provisions of law are found at 27 C.F.R. Part 178. Section 178.112 provides that no firearm may be imported without the authorization of the Director. The regulations call for the filing of an application which, if approved, serves as a permit to import the firearms listed on the application for the period specified.

5. In early 1989, ATF suspended the importation of several makes of semiautomatic assault-type rifles, pending a study as to whether these weapons were, as required under section 925(d)(3), "particularly suitable for or readily adaptable to sporting purposes." This suspended action on pending applications and the importation of firearms pursuant to previously approved permits.

6. The 1989 decision to suspend the firearms' importation was based on the growing concern that these types of weapons were increasingly involved in crime, and upon the fact that legitimate questions were presented as to whether these firearms met the sporting purposes test of the

- 3 -

statute. In addition, there was a dramatic increase in the numbers of semiautomatic assault-type rifles that importers were seeking to import into the United States. This temporary suspension during the study period was challenged and subsequently upheld in Gun South, Inc. v. Brady, 877 F.2d 858 (11th Cir. 1989).

7. Ultimately, under section 925(d), ATF banned the importation of semiautomatic assault-type rifles which had a variety of physical features and characteristics designed for military applications. These features distinguish the weapons from traditional sporting rifles. The features and characteristics are as follows:

- a. Military configuration (ability to accept a detachable magazine; folding/telescopic stocks; pistol grips; ability to accept a bayonet; flash suppressor; bipods; grenade launcher; and night sights);
- b. Whether the weapon is a semiautomatic version of a machinegun; and
- c. Whether the rifle is chambered to accept a centerfire cartridge case having a length of 2.25 inches or less.

8. Thereafter, on September 13, 1994, as part of the Violent Crime Control and Law Enforcement Act of 1994 ("1994 Crime Control Act"), Congress amended the GCA to make it unlawful, for a period of ten years, for a person or entity to manufacture, transfer or possess a "semiautomatic assault weapon." The prohibited weapons include semiautomatic

- 4 -

rifles listed by name and model, copies or duplicates of such firearms, and semiautomatic rifles that have the ability to accept a detachable magazine and have at least two of the listed assault weapon features (folding or telescopic stock; pistol grip that protrudes conspicuously beneath the action of the weapon; bayonet mount; a flash suppressor or threaded barrel designed to accommodate a flash suppressor; or a grenade launcher). 18 U.S.C. §§ 922(v)(1) and 921(a)(30).

9. CONGRESSIONAL FINDINGS

10. Since the enactment of these bans, minor modifications have been made to banned rifles. These modifications removed the military features that were the focus of the 1989 import ban. The subject rifles are virtually the same functionally and operationally as the banned firearms. Thus, these so-called sporterized versions of semiautomatic assault-type rifles may be imported into the country under the sporting purposes test as currently applied.

11. To illustrate this situation, one of the weapons now being imported is a modified Galil-type semiautomatic rifle known as the Galil Sporter. This firearm is derived from the Galil semiautomatic assault-type rifle which was banned from importation in 1989. These firearms are illustrated in Exhibit No. 1, which depicts a pre-ban Galil

- 5 -

and the Galil Sporter. In July 1990, ATF examined a Galil Sporter which had no folding stock, separate pistol grip, night sight, bayonet mount, flash suppressor, bipod mounts, threaded barrel muzzle or grenade launcher. All Galil-type semiautomatic rifles, irrespective of external configuration, use the same receiver, locking mechanism, fire control components, gas system and barrel. More recently, ATF examined another Galil Sporter. This rifle is in essentially the same configuration as the Galil Sporter semiautomatic rifle examined by ATF in 1990. The only difference in the most recently examined sample is that the opening through the side of the stock to allow proper ripping and firing of the weapon is larger than on the sample examined in 1990.

12. Because these sporterized versions function in virtually the same manner as banned semiautomatic assault-type rifles, questions are raised as to whether the sporting purposes test as currently applied adequately effectuates the statutory purpose.

13. [Immediate action with respect to the importation of the sporterized versions of semiautomatic assault-type rifles is necessary since these weapons may be used in crime and are a threat to public safety. (CRIME

EXAMPLES)??]. ATF cannot find examples + this paragraph will be deleted.

14. At the request of Federal, State and local law

230

- 6 -

enforcement officials, ATF's National Tracing Center performs traces of firearms for law enforcement purposes. Because police officers submitting trace requests do not always distinguish sporterized versions of semiautomatic assault-type rifles from the banned rifles, ATF's trace statistics cannot always segregate trace data on the sporterized rifles from the banned rifles. However, ATF's trace statistics specifically indicate that for Fiscal Year 1994, 58 sporterized semiautomatic assault-type rifles were traced; for Fiscal Year 1995, 135 such rifles were traced; and for Fiscal Year 1996, 115 such rifles were traced. For all assault-type rifles (including sporterized versions), the trace figures for Fiscal Year 1994 are ___; for Fiscal Year 1995 are ___; and for Fiscal Year 1996 are ___.

15. ATF has 266,000 applications to import sporterized versions of semiautomatic assault-type rifles pending. ATF has approved permits for importation of 342,421 such firearms. ATF's records indicate that ___ such rifles have been imported in the last 12 months.

only 10%
have been acted
upon

1996 - 33,296
1997 to date - 19,544

16. On DATE, ATF issued a letter to importers who had applications to import sporterized versions of semiautomatic assault-type rifles pending. ATF's letter advised the importers that there would be a delay in processing their applications, pending an assessment of whether their particular firearm met the statutory criteria for

333

- 7 -

importation. A copy of that letter is attached as Exhibit X.

17. On DATE, the Commissioner of the United States Customs Service was formally advised that ATF was suspending previously issued permits for the importation of sporterized versions of semiautomatic assault-type rifles and that Customs should prevent the introduction of these firearms into domestic commerce. The Commissioner was further advised that the suspension would remain in effect until a determination could be made of the firearms' importability. A copy of that letter is attached as Exhibit XX.

18. DESCRIPTION OF METHODOLOGY OF ATF'S STUDY

19. DESCRIPTION OF THE PARTICULAR FIREARM AT ISSUE.

20. A reason for taking such suspension action is ATF's past experience with the 1986 machinegun ban, 18 U.S.C. § 922(o). Prior to the effective date of that ban "manufacturers seeking to register machineguns prior to the cutoff date flooded the Bureau with applications." Sendra Corp. v. Magaw, 111 F.3d 162, 163 (D.C. Cir. 1997); E.J. Vollmer Co. v. Higgins, 23 F.3d 448, 450 (D.C. Cir. 1994). Thus, suspension of approved permits and pending applications is necessary to maintain the status quo while the study is being conducted.

- 8 -

I hereby declare under penalty of perjury that the foregoing is true and correct. Executed this ____ day of October 1997.

John W. Magaw

p:\lieberma\importdec.nol

877 F.2d 858 printed in FULL format.

GUN SOUTH, INC., Plaintiff-Appellee, v. NICHOLAS BRADY,
Secretary of the Treasury; STEPHEN E. HIGGINS, Director of
the Bureau of Alcohol, Tobacco and Firearms; WILLIAM VON
RABB, Commissioner of the United States Customs Service,
Defendants-Appellants

No. 89-7339

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

877 F.2d 858; 1989 U.S. App. LEXIS 9449

June 30, 1989

PRIOR HISTORY:

[**1] Appeal from the United States District Court for the Northern District of Alabama; No. CV-89-AR-0551-S; Acker, Judge.

COUNSEL: John R. Bolton, Asst. Attorney General, Civil Division, Washington, District of Columbia, Frank W. Donaldson, U.S. Attorney, George Batcheler, Birmingham, Alabama, John F. Cordeus, Off. of Atty. Gen., Civil Division, Washington, Mark B. Stern, Washington, District of Columbia, for Defendants-Appellants.

James C. Barton, Johnston, Barton, Proctor, Swedlaw & Naff, Robert S. Vance, Jr., Ralph H. Smith, Birmingham, Alabama, for Plaintiff-Appellee.

JUDGES: Fay and Hatchett, Circuit Judges, and Walter E. Hoffman, * Senior District Judge. Walter E. Hoffman, Senior District Judge, dissenting.

* Honorable Walter E. Hoffman, Senior U.S. District Judge for the Eastern District of Virginia, sitting by designation.

OPINIONBY: HATCHETT

OPINION: [*859] HATCHETT, Circuit Judge

The Secretary of the Treasury, the Director of the Bureau of Alcohol, Tobacco and Firearms, and the Commissioner of the United States Customs Service (collectively "the Government") appeal the district court's grant of an injunction to Gun South, Inc. ("GSI"). The district court ordered the Government to deliver to GSI rifles which had been approved for importation, but held by Customs upon arrival at the Birmingham, Alabama Airport. [**2] 711 F. Supp. 1054. For the reasons discussed below, we reverse the district court's decision and vacate the injunction.

FACTS

GSI is a wholesale gun dealer which the Bureau of Alcohol, Tobacco and Firearms ("the Bureau") has licensed to import firearms. In September, 1988, and February, 1989, GSI applied for permits to import Steyr-Mannlicher AUG semi-automatic rifles (AUG-SA rifles) because GSI learned that the Bureau had previously approved the importation of these rifles as firearms with a sporting purpose. Pursuant to its practice of routinely granting permits for previously

imported firearms, the Bureau issued GSI two permits. On October 4, 1988, the Bureau granted GSI a permit to import 1,700 AUG-SA rifles, and on February 22, 1989, the Bureau approved GSI's application to import an additional 3,000 AUG-SA rifles.

On January 23, 1989, GSI ordered 800 AUG-SA rifles and certain accessories under its October 4 permit. GSI obligated itself to pay \$ 700,000 toward a larger total purchase price, and GSI's bank guaranteed these funds.

On March 21, 1989, William Bennett, Director of the Office of National Drug Policy, speaking for the Secretary of the Treasury, announced a temporary suspension [**3] on the importation of five "assault-type" weapons, including the AUG-SA rifle. On March 29, 1989, the Bureau expanded the scope of the suspension to cover all assault-type weapons "indistinguishable in design, appearance and function to the original five." The Government imposed the temporary suspension to allow the Bureau to reassess its approval of several applications to import the suspended rifles. Under an accelerated review, the Bureau will review each permit to determine if it erroneously concluded that the rifles are "generally suitable for a sporting purpose." The Bureau will not revoke the permits before giving the affected importers notice and an opportunity to respond.

GSI requested a clarification of whether the suspension applied to weapons purchased under preexisting permits. In response to this inquiry, the Bureau informed GSI, at least twice, that the ban did not apply to weapons purchased under preexisting permits, but rather, the suspension only prevented the issuance of new permits. Despite these assurances, the Customs Service interdicted GSI's shipment of [*860] AUG-SA rifles at the Birmingham Airport even though GSI purchased such rifles under a permit issued prior [**4] to the suspension. Although the Government agreed to allow GSI to obtain custody of the AUG-SA rifles if GSI posted a bond guaranteeing that it would not resell or distribute such weapons, GSI declined such offer and brought this action.

PROCEDURAL HISTORY

On March 30, 1989, GSI filed this action in the Northern District of Alabama seeking a declaratory judgment, and preliminary and permanent injunctive relief. GSI sought to enjoin the Government from interfering with the delivery of firearms imported under its permits issued prior to the temporary suspension. On April 7, 1989, the district court consolidated GSI's preliminary injunction motion with a final adjudication of the merits of GSI's claims pursuant to Fed.R.Civ.P. 65(a)(2). Both sides provided further evidence and legal briefs.

On April 26, 1989, the district court denied the Government's summary judgment motion and issued a permanent injunction "enjoin[ing] any interference with the routine delivery of any and all weapons ordered by Gun South, Inc. in accordance with the terms and conditions of permits issued by [the Bureau] prior to the promulgation of the notice or notices of suspension purporting to affect the importation [**5] of the [firearm in question]." The district court found that the Government failed to present any evidence that the AUG-SA is not "generally recognized as particularly suitable or readily adaptable to sporting purposes." The court also found that the evidence demonstrated that the AUG-SA has the design of a sporting weapon. Based on these findings, the district court held that section 925(d)(3) of the Gun Control Act precluded the temporary suspension. See 18 U.S.C.A. @ 923(d)(3) (West 1976) (compels the Secretary of

the Treasury to authorize the importation of firearms "generally recognized as particularly suitable for or readily adaptable to sporting purposes."). After the district court concluded that GSI lacked an adequate legal remedy to redress any harm incurred from the suspension, the court ordered the Customs Service to release GSI's weapons for immediate delivery. Because the district court found the suspension unlawful, the court did not address GSI's constitutional challenges to the Government's actions.

On April 28, 1989, the district court denied the Government's motion for a stay pending appeal. On the same day, this court granted a temporary emergency stay pending [**6] the court's further action. On May 3, we extended the stay pending appeal and expedited the Government's appeal.

CONTENTIONS

The Government contends that the district court erred by concluding that the Bureau did not lawfully suspend the importation of the AUG-SA rifle for ninety days. The Government contends that section 925(d)(3) does not preclude it from temporarily suspending the importation of firearms while it conducts an accelerated reassessment of the importability of such firearms. In addition, the Government maintains that it did not act arbitrarily or capriciously because the suspension is rationally related to fulfilling its mandate of precluding the importation of unauthorized firearms.

The Government further contends that even if GSI has a vested property interest in the permits, the temporary suspension does not violate GSI's constitutional rights. According to the Government, the temporary import suspension does not violate GSI's due process rights because the strong public interest in immediate action outweighs the limited impact on GSI's alleged property interest. Moreover, the Government contends that GSI cannot establish a valid taking claim because: (1) this [**7] court lacks jurisdiction over GSI's equitable claim to enjoin the alleged taking; and (2) the Government's temporary deprivation of the rifles does not constitute a compensable taking.

GSI contends that the district court properly concluded that section 925(d)(3) prevents the Government from suspending the [*861] importation of the AUG-SA rifle because the Bureau previously classified this rifle as a sporting firearm, and the Government has failed to present any evidence to demonstrate that this classification is erroneous. Beyond the Gun Control Act, GSI contends that the Act's implementing regulations also preclude the suspension.

Even if the Government has the authority to suspend the importation of the AUG-SA rifles, GSI alternatively contends that the Government arbitrarily and capriciously imposed the suspension by making an uninformed decision without any supporting evidence. Finally, GSI contends that the Bureau's imposition of the suspension violates its fifth amendment procedural due process rights and constitutes an unconstitutional taking.

ISSUES

The sole issue which the Government raises on appeal is whether the district court improperly enjoined the Government from temporarily [**8] suspending the importation of GSI's AUG-SA rifles purchased under permits which the Bureau approved prior to the Government's announcement of the import suspension.

DISCUSSION

We begin our analysis by emphasizing the deferential standard of review that we must apply when examining an agency's action. We may set aside the Bureau's temporary import suspension of AUG-SA rifles only if we find that such action: (1) exceeds the Bureau's statutory authority, (2) violates a constitutional right, or (3) constitutes an "arbitrary" or "capricious action," or "an abuse of discretion" or an action "otherwise not in accordance with law." Administrative Procedure Act, 5 U.S.C.A. @ 706(2)(A), (B), and (C) (West 1977). Under this deferential standard, we cannot substitute our judgment for the Bureau's judgment, but rather, we must presume the import suspension's validity. *Manasota-88, Inc. v. Thomas*, 799 F.2d 687, 691 (11th Cir. 1986). With this standard in mind, we address GSI's multipronged attack of the temporary import suspension.

I. Lawfulness of the Temporary Suspension

The district court enjoined the Government's actions because it concluded that the Gun Control Act and its implementing [**9] regulations prohibit the Bureau from temporarily suspending the importation of the AUG-SA rifles. GSI contends that the district court properly interpreted the Gun Control Act and its regulations. In contrast, the Government contends that its temporary import suspension does not exceed the Gun Control Act or its implementing regulations and that the evidence illustrates the reasonableness of such action.

A. The Authority for the Temporary Suspension

The Gun Control Act gives the Secretary of the Treasury the power to enforce its provisions. n1 The Act generally forbids the Secretary from authorizing the importation of firearms into the United States. 18 U.S.C.A. @ 922(1) (West 1976). The Act, however, creates four narrow categories of firearms which the Secretary must authorize for importation. 18 U.S.C.A. @ 925(d) (West 1976 and Supp. 1989). Under the only exception relevant to this controversy, the Secretary of the Treasury must authorize the importation of firearms

of a type that does not fall within the definition of a firearm as defined in section 5845(a) of the Internal Revenue Code of 1954 and is generally recognized as particularly suitable for or readily adaptable [**10] to sporting purposes, excluding surplus military firearms, except in any case where the Secretary has not authorized the importation of the firearm pursuant to this paragraph, it shall be unlawful to import any frame, receiver, or barrel of such firearm which would be prohibited if assembled.

18 U.S.C.A. @ 925(d) (3). (West 1976 and Supp. 1989) (emphasis added).

-Footnotes-

n1 The Secretary of Treasury has delegated this authority to the Bureau. See 27 C.F.R. @ 178.12 (1988) (no importation of firearms without authorization from the Bureau).

-End Footnotes-

[*862] We must first determine whether the Act or its regulations authorize or prohibit the suspension. Contrary to the district court's conclusion, we believe that no provision precludes the suspension but rather, the Act impliedly authorizes such action.

GSI correctly notes that neither the Act nor its regulations explicitly authorizes the suspension. Despite this absence of express authority, we conclude that the Bureau must necessarily retain the power to correct the erroneous approval of firearms import applications. As discussed above, the Act strictly limits the importation of firearms to those which satisfy one of the four exceptions. 18 U.S.C.A. [**11] @ 922(1) (West 1977). To accomplish this task, the Bureau inherently must possess the corollary power to temporarily suspend the importation of firearms under permits which the Bureau may have erroneously granted. Otherwise, gun companies could legally inundate the country with rifles which Congress intended to forbid from entering our borders. We decline to interpret the Act in a way which produces such a nonsensical result.

Beyond this common sense rationale, we find support for this implied authority in the legislative history. Several portions of the legislative history emphasize Congress's intent to ban the importation of firearms, and the Secretary's discretion in complying with this mandate. The Senate report to the Gun Control Act of 1968 provides that "the existing Federal controls over interstate and foreign commerce in firearms are not sufficient to enable the states to effectively cope with firearms traffic within their own borders. . . ." Sen.R. 1097, 90th Cong., 2d. Sess. 80, reprinted in 1968 U.S.Code Cong. & Admin.News 2112, 2167. In addition, the Senate report explains that Congress intended section 925(d) (3) to "curb the flow of surplus military weapons [**12] and other firearms being brought into the United States which are not particularly suitable for target shooting or hunting" to prevent such weapons being used for criminal means. S.Rep. No. 1097, 90th Cong., 2d Sess. 80, reprinted in 1968 U.S.Code Cong. & Admin.News 2112, 2167. Furthermore, the sponsor of the legislation, Senator Dodd, stated:

Title IV prohibits importation of arms which the Secretary determines are not suitable for research, sport, or as museum pieces. . . . The entire intent of the importation section is to get those kinds of weapons that are used by criminals and that have no sporting purpose.

114 Cong.Rec. S 5556 column 3, S 5582 column 1, S 5585, column 2 (May 14, 1968). These remarks illustrate Congress's intent absolutely to bar the importation of firearms outside of the narrow statutory exceptions. Given this purpose, we believe that Congress intended the Secretary to retain the necessary authority to comply with this mandate, including the power to temporarily suspend imports under potentially erroneous permits.

As further support for our conclusion, we note that the Supreme Court and other courts have recognized an implied authority in other [**13] agencies to reconsider and rectify errors even though the applicable statute and regulations do not expressly provide for such reconsideration. For example, in concluding that the Interstate Commerce Commission ("ICC") could order a refund to correct a prior error, the Supreme Court stated that " agency, like a court, can undo what is wrongfully done by virtue of its order." United Gas Improvement Co. v. Callery Properties, 382 U.S. 223, 229, 86 S. Ct. 360, , 15 L. Ed. 2d 284, 289 (1965); see also American Trucking Assoc. v. Frisco Trans. Co., 358 U.S. 133,

145, 79 S. Ct. 170, 3 L. Ed. 2d 172, 180-81 (1958) ("the presence of authority in administrative offices and tribunals to correct [inadvertent ministerial] errors has long been recognized -- probably so well that little discussion has ensued in the reported cases."). Other courts have similarly recognized this implied authority. See *Iowa Power and Light Co. v. United States*, 712 F.2d 1292, 1294-97 (8th Cir. 1983) (ICC could retroactively impose higher tariff to correct legal error), cert. denied, 466 U.S. 949, 80 L. Ed. 2d 536, 104 S. Ct. 2150 (1984); *Bookman v. United States*, 197 Ct. Cl. 108, 453 F.2d 1263, 1265 (1972) (allowing agency to [**14] reconsider decisions in [**863] absence of statutory or regulatory authorization after noting general rule that "every tribunal, judicial or administrative, has some power to correct its own errors or otherwise appropriate to modify its judgment, decree, or order.") (quoting 2 K. Davis, *Administrative Law Treatise*, @ 18.09 (1958)). Finally, some courts have specifically relied on this implied authority to allow an agency to revoke a license. *Kudla v. Modde*, 537 F. Supp. 87, 89 (E.D.Mich. 1982), "(the power of the state to require a license implies the power to revoke a license which has been improperly issued.)", aff'd without opinion, 711 F.2d 1057 (6th Cir. 1983); *Century Arms, Inc. v. Kennedy*, 323 F. Supp. 1002, 1016-17 (D.Vt. 1971), ("We are aware of no licenses which once granted, can never be taken away.") aff'd, 449 F.2d 1306 (2d Cir. 1971), cert. denied, 405 U.S. 1065, 92 S. Ct. 1494, 31 L. Ed. 2d 794 (1972).

The district court and GSI, however, refuse to imply such authority because they interpret section 925(d)(3) as expressly prohibiting the suspension. We do not interpret section 925(a)(3) so broadly.

Section 925(d)(3) requires the Secretary to authorize the importation of a firearm [**15] which is generally recognized as particularly suitable for sporting purposes. We agree with the district court that this section unambiguously requires the Secretary to authorize the importation of sporting firearms. But we decline to adopt the district court's broader interpretation of this section as precluding a temporary suspension until the Bureau proves that the rifles are not sporting firearms. First, we believe that such an interpretation "places the cart before the horse"; the Bureau must decide whether a firearm is generally suitable for a sporting purpose before the Act requires the Secretary to authorize such a rifle's importation.

Second, the Bureau and the Secretary of Treasury do not interpret this section as prohibiting a temporary ban. Because we do not believe the language of section 925(a)(3) compels a different interpretation, we should defer to their interpretation. See *Callaway v. Block*, 763 F.2d 1283, 1287 (11th Cir. 1985) ("construction of a statute by those charged with its execution should be followed unless there are compelling indications that it is wrong").

Third, the legislative history supports our interpretation. The Senate Report notes that the [**16] Act gives the Secretary of the Treasury unusually broad discretion in applying section 925(d)(3):

The difficulty of defining weapons characteristics to meet this target [of eliminating the importation of weapons used in crime], without discriminating against sporting quality firearms, was a major reason why the Secretary of the Treasury has been given fairly broad discretion in defining and administering the import prohibition. . . .

S.Rep. No. 1501, 90th Cong., 2d Sess. 38 (1968). In fact, such broad discretion was a major concern of the opponents of the bill:

The proposed restrictions of Title IV would give the Secretary of the Treasury unusually broad discretion to decide whether a particular type of firearm is generally recognized as particularly suitable for, or readily adaptable to, sporting purposes. . . .

S.Rep. No. 1097, 90th Cong., 2d Sess. 255 (April 29, 1968), reprinted in 1968 U.S.Code Cong. & Admin.News at 2306 ("individual views of Messrs. Dirksen, Hruska, Thurmond and Burdick on Title IV"). Because the Bureau has significant discretion in administering the Gun Control Act, we do not believe that Congress intended section 925(d)(3) to prevent the [**17] Bureau from temporarily suspending imports which may be unlawful under the Act.

The district court and GSI cite the 1986 amendment to the Gun Control Act as support for their interpretation of section 925(d)(3). We, however, agree with the Bureau that the 1986 amendment does not compel us to adopt the district court's interpretation. The 1986 amendment substituted the word "shall" for "may" in section 925(d), and therefore, mandated the Secretary to authorize the importation of firearms falling within one of the four excepted categories. Firearm Owners Protection [**864] Act, P.L. 99-308, 100 Stat. 459 (1986) (codified as amended at 18 U.S.C.A. @ 925(d) (West 1988); H.Rep. No. 495, 99th Cong., 2d Sess. at 14 (1986), reprinted in 1986 U.S.Code Cong. & Admin.News 1327, 1340 (the 1986 amendment "opens up the importation of firearms by mandating the Secretary to authorize importation of a firearm if there is a sporting purpose and eliminat[es] the requirement that the importer has the burden of satisfying the Secretary of the sporting purpose. . . ."). As discussed above, while we acknowledge this mandatory language, we do not believe that such language prohibits the Bureau from temporarily [**18] suspending the importation of certain firearms while reassessing whether such firearms have a sporting purpose. As the senate report notes, "it is anticipated that in the vast majority of cases, [the substitution of 'shall' for 'may' in the authorization section] will not result in any change in current practices." S. Rep. No. 98-583, 98th Cong., 1st Sess. 27 (1984). Thus, we conclude that section 925(d)(3) does not expressly preclude the temporary suspension.

Turning to the implementing regulations, GSI contends that the regulations also prohibit the Government's actions. We disagree.

The Secretary promulgated regulations which prescribe procedures for importing firearms. Under the regulations, gun companies must apply for a permit to import firearms. 27 C.F.R. @ 178.112 (1988). If the Bureau approves the permit, the licensed importer may import the quantity of firearms specified in the application for the period of time stated in the application. 27 C.F.R. @ 178.112 (1988).

According to GSI, the following regulation unambiguously prohibits the temporary import suspension:

If the Director [of the Bureau] approves the application, such approved application shall serve as the permit [**19] to import the firearm, firearm barrel, or ammunition described therein, and importation of such firearms, firearm barrels, or ammunition may continue to be made by the licensed

importer under the approved application (permit) during the period specified thereon. [Emphasis added.]

27 C.F.R. @ 178.112. This regulation does not unambiguously proscribe the Bureau from temporarily suspending firearms imports. Rather than expressly precluding such action, the regulation merely explains the consequences of the Bureau's proper approval of a firearm import application.

Even if the regulation does not unambiguously preclude the suspension, GSI argues that the regulation's failure to explicitly authorize the Bureau to suspend a valid permit demonstrates that the Bureau does not have the authority to temporarily suspend GSI's permits. According to GSI, where the Bureau has retained authority to suspend or revoke such permits, it has implemented explicit regulations which recognize such authority. See 27 C.F.R. @ 47.44 (1988) (explicitly granting the Bureau the right to deny, revoke, suspend or revise permits found to be inconsistent with or violating the Arms Export Control Act [**20] of 1976); 27 C.F.R. @@ 178.71-178.78 (1988) (regulations establishing a procedure for suspending or revoking a license in accordance with 18 U.S.C. @ 923). The Secretary's creation of express procedures for revoking or suspending permits under a different statute does not compellingly indicate that the Bureau did not intend to establish such a right to temporarily suspend permits under the Act. Similarly, the Secretary's imposition of procedures for revoking a license does not convince us that its failure to expressly authorize the Bureau to suspend a permit indicates its intent to preclude such action.

More importantly, the Secretary urges this court not to interpret this regulation as precluding the temporary suspension. We must defer to the Bureau's interpretation of the Gun Control Act and its regulations absent plain error in the Bureau's interpretation. See *Udall v. Tallman*, 380 U.S. 1, 16, 13 L. Ed. 2d 616, 85 S. Ct. 792 (1965) (court should follow agency's interpretation unless "there are compelling indications that it is wrong"); *Veterans Administration Medical Center v. FLRA*, [*865] 675 F.2d 260 (11th Cir. 1982); *Bowles v. Seminole Rock and Sand Co.*, 325 U.S. 410, 414, 89 L. Ed. 1700, 65 S. Ct. 1215 (1945) [**21] (administrative interpretation is the ultimate criterion for interpreting an administrative regulation and such interpretation "becomes of controlling weight unless it is plainly erroneous or inconsistent with the regulation"). Because we do not find the Secretary's interpretation plainly erroneous, but rather we find it more valid than GSI's interpretation, we reject GSI's contention that the Bureau's regulations preclude the temporary suspension.

B. Reasonableness of the Temporary Suspension

Having established that the Secretary has the authority to temporarily suspend the importation of semi-automatic assault rifles, we must determine the reasonableness of such action. In making this determination, we will defer to the Bureau's suspension unless we find it arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. @ 706 (2) (A) (1977).

1. Accordance with Law

By arguing that the imposition of the temporary suspension without conducting a hearing violates the Gun Control Act's and the Administrative Procedure

Act's ("APA") procedural rules, GSI essentially argues that the temporary suspension is "otherwise not in accordance with law." The [**22] Government responds to this attack by arguing that the procedural provisions on which GSI relies do not apply to the temporary suspension. We find the Government's argument persuasive.

First, GSI argues that the imposition of the suspension without a hearing violates section 926(b) of the Act. Section 926(b) requires the Secretary to give notice and an opportunity to be heard prior to promulgating regulations. See 18 U.S.C.A. @ 926(b) (West Supp. 1989). This section only applies when the Secretary engages in rulemaking.

The Bureau has not engaged in rulemaking, but has merely suspended certain firearms from importation while it individually reassesses several permit determinations. These activities which involve applying the law to the facts of an individual case, do not approach the function of rulemaking. See *York v. Secretary of Treasury*, 774 F.2d 417, 420 (10th Cir. 1985) ("classification" of firearm as machine gun is "not a rulemaking of any stripe."). Such a determination is more analogous to making a licensing decision which the APA classifies as an "order" rather than a "rule." See 5 U.S.C. @@ 551(6), (7) & (9) (defining "licensing" as "agency process respecting [**23] the grant, renewal, denial, revocation, suspension, amendment, withdrawal, limitation, amendment . . . of a license."). Thus, because these actions do not constitute rulemaking, the Bureau did not violate section 926(b).

Second, we reject GSI's argument that the Government violated the APA by imposing the suspension without a hearing. Under the APA, an agency must provide notice and an opportunity to respond before revoking a license. 5 U.S.C.A. @ 558 (1977). As discussed above, the Bureau has not revoked GSI's license or its permits; import suspension does not constitute rulemaking; therefore, the suspension does not violate the APA's procedural requirements.

2. Arbitrary, Capricious or Abuse of Discretion

Even if the Bureau's suspension does not specifically conflict with the Act or any other laws, GSI argues that the district court properly enjoined the Government's actions because the Bureau arbitrarily and capriciously imposed the suspension. GSI relies on two alternative grounds for reaching this conclusion: (1) the AUG-SA rifle has not physically changed and (2) the Bureau lacks any evidence to support its "drastic" actions. Neither prong of this argument has any [**24] merit.

Initially, we reject GSI's argument that the Bureau acted arbitrarily and capriciously by imposing the suspension because the [*866] AUG-SA rifle has not physically changed. This argument places too much emphasis on the rifle's structure for determining whether a firearm falls within the sporting purpose exception. While the Bureau must consider the rifle's physical structure, the Act requires the Bureau to equally consider the rifle's use. The term "generally recognized" in section 925(d)(3) suggests a community standard which may change over time even though the firearm remains the same. Thus, a changing pattern of use may significantly affect whether a firearm is generally recognized as particularly suitable for or readily adaptable to a sporting purpose.

In addition, the Bureau has interpreted section 925(d)(3) as requiring an inquiry of the firearms' actual use in addition to its physical

characteristics. See *Gilbert Equip. Co. v. Higgins*, 709 F. Supp. 1071, slip op. at 10-11 (S.D. Ala. 1989) (upholding Bureau's denial of permit despite its granting permits for similar firearms because Bureau changed its view of scope of sporting purposes). Because we find this [**25] interpretation reasonable, we defer to it. See *Callaway*, 763 F.2d at 1287 (requiring adherence to agency's construction of statute absent compelling indication of error). Thus, the temporary suspension is not arbitrary and capricious simply because the rifle has not changed.

We similarly find no merit in GSI's contention that the Bureau imposed the suspension in such a manner and so totally without evidence that we should not defer to the Government's action. See *SEC v. Sloan*, 436 U.S. 103, 117-18, 56 L. Ed. 2d 148, 160-61, 98 S. Ct. 1702 (1978) ("one factor to be considered in giving weight to an administrative ruling is the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking in power to control."). According to GSI, the following circumstances demonstrate that the Bureau made a hurried and uninformed decision: (1) the Bureau did not evaluate or deliberate the situation; (2) the Bureau did not have any data showing that imported semi-automatic rifles or the AUG-SA rifle contribute to crime; (3) the Bureau did not consult its experts who routinely identify sporting [**26] firearms; and (4) the Bureau made its decision without considering its legal obligations under the Act and its implementing regulations.

Contrary to this assertion, we believe that the Bureau adequately considered sufficient evidence before imposing the temporary suspension. In Director Higgins's declaration, he explains: (1) law enforcement agencies and officials reported a dramatic proliferation in the use of assault-type rifles in criminal activity; (2) the Bureau's tracings branch showed a 57-percent increase in traces of assault-type rifles recovered from crime scenes; (3) several highly publicized murders in which assault rifles were used indicate their increased use in criminal activity; and (4) the Bureau's statistics revealed the smuggling of substantial numbers of firearms out of this country for use in foreign crime. This evidence sufficiently supported the Bureau's reassessment of certain permits; therefore, the district court clearly erred in finding that the Government did not present any evidence indicating that the AUG-SA rifles may not have a generally recognized sporting purpose.

Because the Bureau issued permits to allow the importation of 640,000 rifles and had [**27] 136,000 applications pending for additional rifles, the Bureau could reasonably conclude that it needed to impose a temporary suspension to avoid a saturation of potentially illegal assault-type rifles. We emphasize that we are not reviewing the Bureau's revocation of the permits, but only its ninety-day suspension. Thus, the Government did not act arbitrarily and capriciously by imposing the temporary suspension while it conducts an accelerated review of its grant of several permits; rather, the Government acted reasonably to comply with its duty of prohibiting the importation of firearms under the Gun Control Act.

II. Constitutional Claims

Beyond the above claims, GSI attacks the suspension by arguing that it violates its [867] due process rights and constitutes a taking of property without the payment of just compensation. In response, the Government argues

that its temporary import suspension does not infringe upon any of GSI's constitutional rights. We agree.

A. Procedural Due Process Claim

According to GSI, the Government's failure to give it notice of the suspension and an opportunity to respond prior to imposing the suspension deprived GSI of its due process rights. n2 GSI [**28] reaches this conclusion by arguing that the Government may not deprive an individual of property without giving such individual an opportunity to be heard. Although GSI correctly argues the general rule, GSI fails to recognize that the Constitution does not always require such predeprivation procedural protection. *Hodel v. Virginia Surface Mining and Reclamation Assoc.*, 452 U.S. 264, 300, 101 S. Ct. 2352, 69 L. Ed. 2d 1, 31 (1981) ("summary administrative action may be justified in emergency situations."). See *Barry v. Barchi*, 443 U.S. 55, 99 S. Ct. 2642, 61 L. Ed. 2d 365 (1979) (pending prompt judicial or administrative hearing to determine issue, state's board could properly temporarily suspend horse trainer's license prior to hearing); *Ewing v. Mytinger and Casselberry, Inc.*, 339 U.S. 594, 70 S. Ct. 870, 94 L. Ed. 1088 (1950) (allowing seizure of misbranded articles by enforcement agency prior to hearing).

-Footnotes-

n2 The parties dispute whether the right to import firearms under a permit constitutes a property interest. Because GSI has more than the mere "right to import," we assume a property interest for the purpose of deciding this expedited case.

-End Footnotes-

Rather than setting [**29] categories of mandatory procedural protections in all cases, the Supreme Court decides the nature and timing of the requisite process in an individual case by accommodating the relevant competing interests. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 434, 71 L. Ed. 2d 265, 102 S. Ct. 1148 (1982) (quoting *Goss v. Lopez*, 419 U.S. 565, 579, 42 L. Ed. 2d 725, 95 S. Ct. 729 (1975)).

The Supreme Court's balancing test essentially requires us to weigh three factors: (1) the nature of the private interest; (2) the risk of an erroneous deprivation of such interest; and (3) the government's interest in taking its action, including the burdens that any additional procedural requirement would entail. *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 47 L. Ed. 2d 18, 33 (1976). Balancing these considerations, we conclude that the Bureau's summary action did not violate GSI's due process rights.

The Bureau imposed the temporary suspension to protect the public by ensuring that nearly three-quarters of a million rifles do not improperly enter the country. The protection of the public's health and safety is a paramount government interest which justifies summary administrative action:

Protection of the health and safety of the public is a [**30] paramount governmental interest which justifies summary administrative action. Indeed, deprivation of property to protect the public health and safety is 'one of the oldest examples' of permissible summary action.

Hodel, 452 U.S. at 300 (quoting Ewing, 339 U.S. at 599) (safety concerns justified summary seizure of vitamin product). The public interest in avoiding the importation of possible illegal assault rifles which could contribute significantly to this country's violent crime epidemic is clearly substantial, especially given the large number of rifles approved for importation under the current outstanding permits. The Government could not protect the public interest without imposing the temporary suspension.

On the other side of the balancing equation, we consider the nature of the private interest, including the deprivation's length and finality. See Logan, 455 U.S. at 434, 71 L. Ed. 2d at 277. GSI has not suffered a permanent loss because the Government has not revoked GSI's license or its permits. The Government has merely deprived GSI of the ability to import the AUG-SA rifle for ninety days. [*868] The Government has further reassured the court that it will not revoke GSI's permits without giving GSI the right to participate in a hearing. [**31]

In addition to being a non-final, temporary deprivation, the ninety-day suspension does not affect a significant portion of GSI's imports. The rifles which GSI seeks to import during this ninety-day period are only a small percent of the number of firearms it plans to import under its permits this year, and the importation of the Steyr rifles constituted only 20-percent of GSI's import inventory in 1988.

Considering the final factor, we do not find that the Government's summary action presents a significant risk of an erroneous deprivation of GSI's right to import the rifles. First, GSI only loses its right to import the rifles for ninety days. Second, as discussed above, the Bureau considered ample evidence before imposing the temporary suspension, and therefore, it minimized the risk that its actions would erroneously deprive GSI of its right to import the AUG-SA rifles.

Balancing GSI's temporary non-final loss of its right to import one type of rifle against the Government's interest in preventing the unlawful importation of firearms, we conclude that the Government did not err by suspending the importation [*32] of the AUG-SA rifle prior to giving GSI an opportunity to respond. The strong public interest in the immediate action outweighs the temporary and limited impact on GSI's alleged property interest. We find support for this decision in other cases which have subordinated more substantial property interests to the Government interest in protecting the public. See Mackey v. Montrym, 443 U.S. 1, 99 S. Ct. 2612, 61 L. Ed. 2d 321 (1979) (although license to operate motor vehicle is substantial property interest, the substantial nature of such interest is diminished measurably by maximum duration of suspension being ninety days and availability of immediate post-suspension hearing). Furthermore, the availability of a hearing at the end of this temporary suspension provides adequate procedural protection. See Hodel, 452 U.S. at 303, 69 L. Ed. 2d at 33 (summary administrative action justified where adequate post-deprivation hearings providing opportunity for judicial review exist). Thus, the summary imposition of the import suspension does not violate GSI's due process rights.

B. Taking Claim

GSI finally contends that the temporary suspension constitutes a taking of property without just compensation. [**33] The Government argues that GSI cannot pursue this claim in this court but must assert this claim in a damages suit in the Claims Court. In the alternative, the Government contends that the temporary suspension does not constitute a taking. We conclude that GSI must bring this claim in the Claims Court.

GSI concedes that it cannot maintain an action for injunctive relief if it may subsequently bring an action for damages against the Government under the Tucker Act. GSI contends, however, that it lacks a post-deprivation damages remedy under the Tucker Act because neither the Constitution or any statute authorizes the Government's actions. See *Regional Rail Reorganization Cases*, 419 U.S. 102, 127 n. 16, 95 S. Ct. 335, 350 n. 16, 42 L. Ed. 2d 320, n. 16 (1974) (injunctive relief available where owner proves that government officials lack lawful authority to take property). This contention has no merit. As the above discussion demonstrates, the Government has the authority to temporarily suspend the importation of GSI's firearms under the Gun Control Act. Moreover, Congress has not expressed an intention to preclude Tucker Act jurisdiction over a claim for compensation under the [**34] Gun Control Act; therefore, GSI can seek damages under the Tucker Act. *Ruckelshaus v. Monsanto Company*, 467 U.S. 986, 1017, 104 S. Ct. 2862, 81 L. Ed. 2d 815, 841 (1984) (Tucker Act remedy available unless "Congress has in the [statute] withdrawn the Tucker Act grant of jurisdiction to the Court of Claims. . . ."). Because GSI can bring a claim under the Tucker Act, it cannot seek an injunction to prevent a taking in this court. *Ruckelshaus*, 467 U.S. at [**869] 1019, 104 S. Ct. at 2862, 81 L. Ed. 2d at 843 (suit for equitable relief to enjoin alleged taking not ripe where the taking claim is remedial under the Tucker Act).

Even if we had jurisdiction to consider this claim, we note that the temporary suspension does not constitute a taking. In deciding whether a taking exists, we consider: "the character of the governmental action, its economic impact, and its interference with reasonable investment backed expectations." *Ruckelshaus*, 467 U.S. at 1004 (quoting *Pruneyard Shopping Center v. Robins*, 447 U.S. 74, 83, 100 S. Ct. 2035, 64 L. Ed. 2d 741, 753 (1980)). First, the Government has acted in a purely regulatory capacity and does not profit from its actions. [**35] Second, the Government has neither permanently nor totally deprived GSI of any property because the Government has only temporarily suspended the importation of such rifles. See *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 43 S. Ct. 158, 67 L. Ed. 322 (1922) (regulation of property is a taking only when regulation goes too far). Finally, even though GSI may have had a reasonable investment-backed expectation, GSI does not demonstrate that the suspension will unreasonably impair the value of the rifles. See *Pruneyard Shopping Center*, 447 U.S. at 83, 64 L. Ed. 2d at 753 (no taking where regulation will not unreasonably impair value of regulated property). Thus, no compensable taking has occurred. We therefore reject GSI's constitutional attacks on the temporary suspension.

CONCLUSION

Because we conclude that the suspension does not exceed the Bureau's statutory authority, does not constitute an arbitrary or capricious action, and does not violate GSI's constitutional rights, we reverse the district court's decision and vacate its injunction enjoining the Government from temporarily suspending the importation of the AUG-SA rifles.

REVERSED and REMANDED.

DISSENTBY: HOFFMAN

DISSENT: WALTER E. HOFFMAN, [**36] Senior District Judge, dissenting:

With regret I feel compelled to dissent, only because I am obliged to yield to the Congress even though I may personally feel to the contrary.

Section 925(d)(3) of the Gun Control Act, 18 U.S.C. @ 925, prior to the amendment of 1986, provided that "the Secretary may authorize a firearm or ammunition to be imported or brought into the United States or any possession thereof if the person importing or bringing in the firearm or ammunition establishes to the satisfaction of the Secretary that the firearm or ammunition . . . (3) is of a type that . . . is generally recognized as particularly suitable for or readily adaptable to sporting purposes. . . ." The permits approved for the guns in controversy were dated October 4, 1988 and February 21, 1989. The life of each import permit is six months; one having expired on April 4, 1989; the other due to expire the latter part of August, 1989.

On May 19, 1986, the Congress enacted P.L. 99-308, the Firearms Owners' Protection Act of 1986. This Act amended @ 925(d)(3) of the Gun Control Act by substituting the word "shall" for "may," and removing from importers the burden of proving that firearms are suitable [**37] for sporting purposes. Indeed, if the Secretary has any question as to whether the firearm may be imported into the United States, 18 U.S.C. @ 925(d) further provides:

The Secretary shall permit the conditional importation or bringing in of a firearm or ammunition for examination and testing in connection with the making of a determination as to whether the importation or bringing in of such firearm or ammunition will be allowed under this subsection:

Thus, before approving a permit Congress has said that the Secretary may conditionally import a firearm to conduct the appropriate testing, etc. More importantly, however, Congress has made it mandatory for the Secretary to authorize firearms to be imported when the permits are approved. In this case, all parties are in [*870] agreement that the permits were regularly and properly approved prior to the announcement of the ban on March 13, 1989. The issue in my mind is whether the Secretary, as the head of an agency, may take steps by way of a temporary suspension of permits, already approved, which action, if successful, will render nugatory the express intention of the Congress to authorize the importation. While I hold no brief for some [**38] legislation enacted by the Congress, and am fully aware of the special interest pressure which obviously existed when the 1986 amendment was enacted, I have always felt that it was my duty to adhere to the will of Congress wherever the Congress clearly had the jurisdiction and power to act, as it did in this situation.

The majority expresses the view that, despite the 1986 amendment, a temporary suspension for the purpose of reassessing whether the firearms have a sporting purpose is not prohibited. The legislative history does not, in my opinion, justify the foregoing conclusion even though the majority cites a Senate Report, S.Rep. No. 88-583, 98th Cong., 1st Sess. 27 (1984), stating that in the vast majority of cases the use of the mandatory word "shall" will not result in a

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change of practice. That statement of the majority is correct until we meet, as we now do, a conflict with the circumvention by an agency of what Congress has heretofore provided. A Senate Judiciary Committee reported, 98th Cong., 2d Sess., at 27 (1984), that

the Committee amendment requires the Secretary to authorize the importation of firearms in the listed categories.

Speaking to the same subject, [**39] the House Judiciary Committee, House Rec. No. 495, 99th Cong., 2d Sess., at 14 (1986), reprinted in 1986 U.S. Code Cong. & Admin. News 1327, 1340, recognized the "problem" and said that the liberalization of the importation of firearms:

Opens up the importation of firearms by mandating the Secretary to authorize importation of a firearm if there is a sporting purpose and eliminating the requirement that the importer has the burden of satisfying the Secretary of the sporting purpose. . . .

When the later permit expires in the latter part of August, the Secretary would have essentially accomplished what he contemplated doing when he issued the ban on March 13, 1989. True, there may have been a taking -- an issue not now decided -- but the firearms need no longer be received for importation. I do not disagree with the majority in their expression of the strong public interest in immediate action, but this action is not limited to the firearms purchased under two permits regularly issued and approved, but not yet delivered to the owner because of the temporary suspension, said to be 90 days but vague as to its commencement date and with no assurance that anything will be done at any definite [**40] time.

Believing that the statutory authority was exceeded in this case, I would affirm the district court.



DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, DC 20226

E:CE:FT:EMO
3311

MAY 12 1997

Mr. Jonathan Mossberg
UZI America, Inc.
7 Grasso Avenue
North Haven, Connecticut 06473

Dear Mr. Mossberg:

This refers to your letter of April 4, 1997, with which you submitted a semiautomatic rifle for evaluation as to its importability into the United States.

Examination of the submitted sample, serial number 97100171, indicates that it is a Galil Sporter model semiautomatic rifle in caliber 7.62mm NATO (.308 Winchester) manufactured by I.M.I. in Israel. The rifle has been originally designed and manufactured to permit only semiautomatic fire. The receiver was originally manufactured with no provision for installing an automatic sear or automatic sear pin. Additionally, the right bolt guide rail has never been cut out to allow clearance for the upper arm of the automatic sear. The bolt carrier has no provision for tripping an automatic sear.

The rifle is fitted with a fixed, one-piece shoulder stock having an elongated thumbhole style design. The rifle has a pistol grip that protrudes conspicuously beneath the action of the weapon. The rifle has no folding stock, bayonet mount, flash suppressor, threaded barrel designed to accommodate a flash suppressor, and no grenade launcher. The rifle as submitted is more in the configuration of a traditional sporting rifle. The firearm was submitted with a detachable, double column magazine having a maximum capacity of less than 10 cartridges.

Based on the above examination, the Galil Sporter model rifle as submitted is not a semiautomatic assault weapon as that term is defined in 18 U.S.C., Chapter 44, Section 921(a)(30)(A) and (B). The rifle is suitable for importation under the provisions of § 925(d)(3) of the cited chapter.

*Military
Characteristics*

-2-

Mr. Jonathan Mossberg

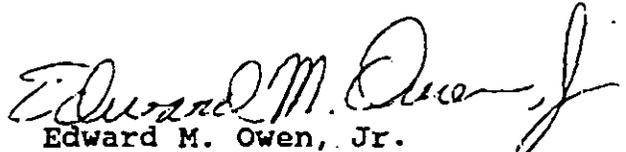
Please be advised that this determination is based on the sample as submitted. If the design, dimensions, configuration, material used or method of construction is changed, this classification is subject to review.

It was noted in our examination that the sample is not marked with the name of the importer as required by 27 CFR, Section 178.92(a)(1). Any firearms you import must be marked as required by the cited section.

The sample is being returned under separate cover.

We trust that the foregoing has been responsive to your inquiry. If we can be of any further assistance, please contact us.

Sincerely yours,



Edward M. Owen, Jr.
Chief, Firearms Technology Branch

Calls

Friday, October 24, 1997 8:39:00 AM	
He wants to give you an update on assault weapons; Jose thinks you need to talk to Chuck after Karen briefs him this morning, but they are hoping to set up a Hill mtg. for today	
Jose Cerda	Planned
DPC	
10/24/97 8:39 AM	
65568	
Friday, October 24, 1997 8:59:00 AM	
Called re: tobacco; he did not want to interrupt you so he called Jerry	
Barry Toiv	Planned
Press Office	
10/24/97 8:59 AM	
62580	
Friday, October 24, 1997 9:36:00 AM	
RE: HMO reforms from Commission- this undercuts their work on medical records- he wants to talk to someone at DPC to do some damage control	
Nick Gess	Planned
Justice Department	
10/24/97 9:36 AM	
514-8352	

Neal -

Drafted redrafted declar.
Wanting going to get us anyplace...

best call.

Karen Pott playing ringmaster!

Don't idea -
OK on legal side.

100,00 permit apps

3000, 00

900,000 permit apps.

- Liability - risk - pretty big.
- eih we know were going to get beat,

Drop bill by end of session?

Archival Dept - Wednesday

P. Fitzgibbon

Archivist Division? Kshel -

a.c. necessary if so, could draft? letter - come back in 30 days.

Tobacco - Professor & consultant

Bandet, Inc.

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All prices subject to change. All items subject to shipping charges.

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send us your FAX number if you want to hear from us on our weekly specials!

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Olympic M1-Spec Pre Ban Upper Conversion Units
16" BBC .223 ready to install

\$339⁹⁵

Pre Ban Upper in Pistol Caliber

Change AR15 to 9mm, 40 S&W or 45 ACP, 16" BBC, Flash Hider, Bayo Lug & 1-25 rd mag

\$419⁹⁵

Winchester

- Model 70 Classic Featherweight All-Terrain
12201 .270 22" STS/SYN w/Double Boss \$424⁹⁵
- 12193 30/06 22" STS/SYN \$454⁹⁵
- 12191 .270 22" STS/SYN \$454⁹⁵

Model 70 Classic

11945 375 H&H 24" STS/WD sights \$499⁹⁵

Model 9422

- 15016 Walnut .22LR 20" Checkered \$277⁹⁵
- 15118 Trapper 22LR 16" Checkered \$277⁹⁵

Model 94 Lever Action

- 14915 Legacy 357 mag 24" Checkered \$279⁹⁵
- 14916 Legacy 45 Colt 24" Checkered \$279⁹⁵
- 14917 Legacy 44 mag 24" Checkered \$279⁹⁵

Sig P-239

New
9mm
compact



\$399⁹⁵

L1A1 Sporter .308 EXCELLENT



20 rd mag
\$349⁹⁵

Note: Chamber adapter available which converts L1A1 to 7.62x39 - no gunsmithing - can be switched back and forth **\$24⁹⁵**

SA-85 Hungarian AK-47

\$289⁹⁵



No AK quality matches this gun. Purchase before all AK-47s are banned.

Romanian AK-47

WUM-1 7.62 x 39



Brand New

Beautiful blond laminated Stocks
Chrome lined bbl

\$209⁹⁵

Glock 21 with night sights

2-10 rd mags 45 ACP

\$459⁹⁵

Century MAK 90

First Time Available GREAT BARGAIN



\$199⁹⁵

3 or more **\$194⁹⁵**

Bulgarian AK-47

7.62x39

BRAND NEW

Purchase this gun before it is banned forever



Synthetic stock
muzzlebrake
milled receiver
steyer chrome lined bbl

SLR-95
\$269⁹⁵

Russian Sporterized AK-47

BLOWOUT



7.62x39

ONLY A FEW LEFT

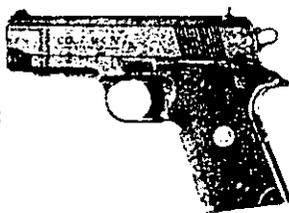
The original AK

\$219⁹⁵

Colt Officer's in 45 Blue

3.5" BBL
w/4 factory mags

\$499⁹⁵



Banned From Import
Very Few Left in USA

Chinese

MAK 90 AK-47

\$239⁹⁵

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TO: 202 456 5557

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PAGE: 00002

Crime - assault weapons

JOHN D. DINGELL
16TH DISTRICT, MICHIGAN

RANKING MEMBER
COMMITTEE ON COMMERCE
CO-CHAIR
HOUSE GREAT LAKES
TASK FORCE
MEMBER
MIGRATORY BIRD
CONSERVATION COMMISSION

WASHINGTON OFFICE
ROOM 3228
CAYLEIGH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-7718
(202) 225-4071

DISTRICT OFFICE
1438 SCHAEFER ROAD
DEARBORN, MI 48126-0771
(313) 248-1071
33 EAST FRONT STREET
SUITE 102
MONROE, MI 48156-0221
(313) 225-1782

Congress of the United States
House of Representatives
Washington, DC 20515-2216

October 24, 1997

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

Several news organizations have reported that you intend to issue a directive suspending the importation of several dozen models of assault weapons which are believed to have been modified for the purpose of meeting the requirements of the Violent Crime Control and Law Enforcement Act of 1994 (1994 Crime Bill) and the 1968 Gun Control Act. It is also thought that you intend to reconvene a working group to again review the "sporting purposes" test under current law.

As you may recall, I voted reluctantly in favor of the 1994 Crime Bill. This followed assurances between us that modifications could be made to alleviate some of the most objectionable concerns expressed by myself and other Democrats, including Congressman Jack Brooks, then the Chairman of the Judiciary Committee. Despite the improvements ultimately agreed to, I remained opposed to the assault weapons provisions because I knew then that they would have very little practical impact in reducing crime.

Our agreement was quickly threatened. Immediately after you signed the Crime Bill, the Bureau of Alcohol, Tobacco and Firearms (ATF) implemented a freeze on the import of magazines which clearly were eligible to enter the country under the new law. It took almost two years of fighting with ATF before it decided to honor our agreement by lifting this freeze, which clearly could not have withstood a challenge in Federal Court.

As you consider whether to issue a new directive, I wish to remind you of the report which was ordered under Sec. 110104 of the 1994 Crime Bill. Under this provision, the Attorney General was required to study the effect of the ban and its impact on violent and drug trafficking crime. The Justice Department awarded a grant to the Urban Institute to meet this requirement. The final report, issued on March 13, 1997, found that, "At best, the assault weapons ban can have only a limited effect on total gun murders, because the banned weapons and magazines were never involved in more than a modest fraction of all gun murders." The report continued, "We were unable to detect any reduction to date in two types of gun murders that are thought to be closely associated with assault weapons."

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TO:202 456 5557

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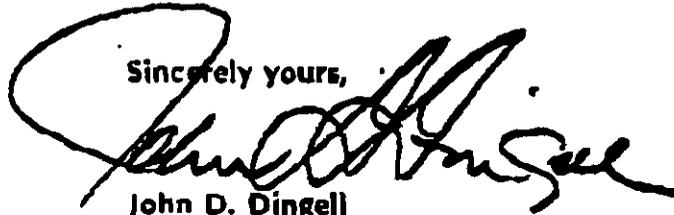
ID.

The President
October 24, 1997
Page 2

I respectfully submit that, given the results of the Urban Institute's study, and its recommendation for future research, any additional review should be conducted before ATF is again directed to implement action outside of the law and the clear intent of Congress. I appreciate your consideration of my views, and hope that you will act in a manner that respects the rights of all law abiding citizens.

With every good wish,

Sincerely yours,



John D. Dingell
Member of Congress

cc: Hon. Robert Rubin

Hughes, Mary Jo

From: White, Larry G. (HQPPA)
Sent: Tuesday, October 14, 1997 2:13PM
To: Hughes, Mary Jo
Subject: Search of F& E Imports Branch files

Branch personnel conducted a search of importer files for calendar years 1995 and 1996 to identify Forms 6A filed to reflect the importation of a select group of semiautomatic rifles identified by the Firearms Technology Branch. Below are results of that search:

1995

<u>DATE</u>	<u>MODEL</u>	<u>COUNTRY</u>	<u>QUANTITY</u>	<u>TOTAL</u>
4/20/95	SA-93	BULGARIA	1	
11/21/95	"	"	<u>1,000</u>	1,001
1/23/96	SAR4800	BRAZIL	50	
2/25/96	"	"	25	
7/19/86	"	"	25	
7/30/96	"	"	25	
9/19/96	"	"	<u>25</u>	<u>150</u>

1995 TOTAL:

1,151

1996

<u>DATE</u>	<u>MODEL</u>	<u>COUNTRY</u>	<u>QUANTITY</u>	<u>TOTAL</u>
VARIOUS	MISR	EGYPT	2,201	
"	L1A1	BRAZIL	9,492	
7/25/96	SAR8	GREECE	<u>1</u>	11,694
VARIOUS	SLR95	BULGARIA	16,592	
"	SLR96	"	<u>1,001</u>	17,593
5/28/96	ARM	EGYPT	<u>1,100</u>	1,100
VARIOUS	SAS5M	HUNGARY	<u>4,650</u>	<u>4,650</u>

1996 TOTAL:

35,037

1995 AND 1996 COMBINED TOTAL:

36,188

Crime - assault weapons

10-28

Assault Weapons Mtg

50 permits

600,000 permits

1.1 m

applies

3 -

last wk - ~~50,000~~

125

Crime-assault weapons

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF

BROAD DECLARATION

DECLARATION OF JOHN W. MAGAW, DIRECTOR
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

I, John W. Magaw, do hereby depose and say:

1. I am the Director, Bureau of Alcohol, Tobacco and Firearms ("ATF"), Department of the Treasury. This declaration is based upon personal knowledge and information furnished by my subordinates.

2. ATF was established as a Bureau by Department of Treasury Order No. 120-01 (June 1972), formerly Treasury Dep't Order No. 221, 37 Fed. Reg. 11,696 (1972). Pursuant to this order, the Director, ATF, was given authority to administer and enforce the provisions of law relating to alcohol, tobacco, firearms and explosives, including the provisions of the Gun Control Act of 1968 ("GCA"), as amended, 18 U.S.C. Chapter 44.

3. The GCA, 18 U.S.C. § 922(1), prohibits the importation of firearms into the United States except as provided in 18 U.S.C. § 925(d). Section 925(d) provides four exceptions to the importation prohibition. Generally, this section provides that ATF will approve the importation where the firearm:

a. is being imported for scientific or research purposes, or is for use in connection with competition or training (section 925(d)(1));

- 2 -

b. is an unserviceable firearm (section 925(d)(2));

c. is of a type which is generally recognized as particularly suitable for or readily adaptable to sporting purposes (section 925(d)(3)); or,

d. was previously taken out of the United States or a possession by the person who is bringing in the firearm (section 925(d)(4)).

4. The regulations implementing these provisions of law are found at 27 C.F.R. Part 178. Section 178.112 provides that no firearm may be imported without the authorization of the Director. The regulations call for the filing of an application which, if approved, serves as a permit to import the firearms listed on the application for the period specified.

5. As firearms have evolved and new firearms developed, ATF has, from time to time, reevaluated its interpretation of the sporting purposes test for imports. After enactment of the GCA in 1968, the Secretary of the Treasury established a Firearms Evaluation Panel to provide guidelines for implementation of the sporting purposes test. The panel focused its attention on handguns and recommended the adoption of factoring criteria to evaluate the various types of handguns. However, the panel did not propose criteria for evaluating the importability of rifles and shotguns. Other than surplus military firearms, which Congress addressed separately, longguns being imported prior

- 3 -

to 1968 were generally conventional rifles and shotguns specifically intended for sporting purposes. Thus, there was no cause to develop criteria for evaluating the sporting purposes of rifles and shotguns.

6. ATF's first meaningful analysis of the sporting purposes test for longguns was in 1984. At that time, ATF was faced with a new breed of imported shotgun. ATF determined that the Striker-12 shotgun was initially designed for riot control and, according to the importer, was suitable for police/combat style competitions. It was determined that this type of competition did not constitute sporting purposes under the statute and that the shotgun was not suitable for traditional sporting purposes such as hunting and trap and skeet shooting. Accordingly, importation of the shotgun was denied. In 1986, ATF examined the USAS-12 shotgun and found, due to its weight, size, bulk, magazine capacity and other factors, that it was not particularly suitable for sporting purposes and its importation was denied.

7. In early 1989, ATF noted the proliferation of a new type of firearm, "semiautomatic assault-type rifles," which had military, rather than sporting, characteristics. Their increased use in crime led to a reevaluation of the importability of these types of rifles. Thus, ATF suspended the importation of several makes of semiautomatic assault-

- 4 -

type rifles, pending a study as to whether these weapons were, as required under section 925(d)(3), "particularly suitable for or readily adaptable to sporting purposes." This suspended action on pending applications and the importation of firearms pursuant to previously approved permits.

8. The 1989 decision to suspend the firearms' importation was based on the growing concern that these types of weapons were increasingly involved in crime, and upon the fact that legitimate questions were presented as to whether these firearms met the sporting purposes test of the statute. In addition, there was a dramatic increase in the numbers of semiautomatic assault-type rifles that importers were seeking to import into the United States. This temporary suspension during the study period was challenged and subsequently upheld in Gun South, Inc. v. Brady, 877 F.2d 858 (11th Cir. 1989).

9. Ultimately, under section 925(d), ATF found that semiautomatic assault type rifles were designed and intended to be suitable for combat rather than sporting applications. ATF thus banned the importation of semiautomatic assault-type rifles which had a variety of physical features and characteristics designed for military applications. Consequently, their importation was denied. These features distinguish the weapons from traditional sporting rifles.

- 5 -

The features and characteristics are as follows:

- a. Military configuration (ability to accept a detachable magazine; folding/telescopic stocks; pistol grips; ability to accept a bayonet; flash suppressor; bipods; grenade launcher; and night sights);
- b. Whether the weapon is a semiautomatic version of a machinegun; and
- c. Whether the rifle is chambered to accept a centerfire cartridge case having a length of 2.25 inches or less.

10. Thereafter, on September 13, 1994, as part of the Violent Crime Control and Law Enforcement Act of 1994 ("1994 Crime Control Act"), Congress amended the GCA to make it unlawful, for a period of ten years, for a person or entity to manufacture, transfer or possess a "semiautomatic assault weapon." The prohibited weapons include semiautomatic rifles listed by name and model, copies or duplicates of such firearms, and semiautomatic rifles that have the ability to accept a detachable magazine and have at least two of the listed assault weapon features (folding or telescopic stock; pistol grip that protrudes conspicuously beneath the action of the weapon; bayonet mount; a flash suppressor or threaded barrel designed to accommodate a flash suppressor; or a grenade launcher). 18 U.S.C. §§ 922(v) (1) and 921(a) (30).

11. Since the enactment of these bans, modifications have been made to banned rifles. These modifications

removed the military features that were the focus of the 1989 import ban. The subject rifles are the same functionally and operationally as the banned firearms. Admittedly, there are other widely recognized traditional sport rifles that function in the same manner. These sporterized versions of semiautomatic assault-type rifles have been approved for importation under the sporting purposes test as currently applied, which generally treats rifles as sporting weapons.

12. A primary example of this situation is the modified Galil-type semiautomatic rifle known as the Galil Sporter. This firearm is derived from the Galil semiautomatic assault-type rifle which was banned from importation in 1989 and banned domestically by Congress in 1994. Exhibit No. 1 depicts a pre-ban Galil and the Galil Sporter. In July 1990, ATF examined a Galil Sporter which had no folding stock, separate pistol grip, night sight, bayonet mount, flash suppressor, bipod mounts, threaded barrel muzzle or grenade launcher. The separate pistol grip, a military characteristic of the pre-ban Galil, was modified with a redesigned shoulder stock which incorporated a thumb-hole opening for use in gripping and firing the weapon. All Galil-type semiautomatic rifles, irrespective of external configuration, use the same receiver, locking mechanism, fire control components, gas system and barrel.

- 7 -

More recently, ATF examined another Galil Sporter. This rifle is in essentially the same configuration as the Galil Sporter semiautomatic rifle examined by ATF in 1990 and depicted in Exhibit No. 1. The only difference in the most recently examined sample is that the thumb-hole opening through the side of the stock to allow proper gripping and firing of the weapon is larger than on the sample examined in 1990 which ATF determined was importable. Thus, the Galil Sporter was determined to be importable under the sporting purposes test established in 1989.

13. ATF currently has applications to import over 1,000,000 sporterized versions of semiautomatic assault-type rifles pending. Between November 1996 and October 1997, ATF approved permits for the importation of over 600,000 such firearms.¹ An import permit is valid for 12 months after the date of approval. Pursuant to ATF regulations, an importer is required to submit ATF Forms 6A showing the quantity of firearms actually imported within 15 days of the release of the weapons from United States Customs Service custody. [However, it should be noted that not all importers comply with this requirement and that the ATF Forms 6A figures may not accurately reflect the total number of firearms actually imported.] ATF's records indicate that

¹ [Importers generally do not import all firearms authorized on the permit.]

- 8 -

over 159,000 such rifles were imported during Calendar Year 1993 [the year before the enactment of the 1994 Crime Control Act banning the manufacture, transfer and possession of semiautomatic assault weapons]; over 14,000 such rifles were imported during Calendar Year 1994; over 12,000 such rifles were imported during Calendar Year 1995; over 30,000 such rifles were imported during Calendar Year 1996; and, to date, over 19,500 such rifles have been imported during Calendar Year 1997.

14. The modification of semiautomatic assault-type rifles to meet the current sporting purposes test and the filing of applications to import large numbers of these weapons requires a further evaluation of these modified rifles. This is a continuation of the ongoing process to determine whether firearms are generally recognized as particularly suitable for sporting purposes.

15. At the request of Federal, State and local law enforcement officials, ATF's National Tracing Center performs traces of firearms for law enforcement purposes. Because police officers submitting trace requests do not always distinguish sporterized versions of semiautomatic assault-type rifles from the banned rifles, ATF's trace statistics cannot always segregate trace data on the sporterized rifles from the banned rifles. However, ATF's trace statistics specifically indicate that for Calendar

- 9 -

Year 1994, 935 firearms whose model designations indicate they are sporterized versions of semiautomatic assault-type rifles were traced; for Calendar Year 1995, 910 such rifles were traced; for Calendar Year 1996, 1,382 such rifles were traced; and 1,365 such rifles were traced between January 1, 1997 and October 24, 1997. Thus, for the period January 1, 1994 - October 24, 1997, there was a 145 percent increase in traces of these types of weapons. [However, for Calendar Years 1994-October 24, 1997, the total number of all types of firearms (i.e., rifles, shotguns, handguns, and other types of firearms) submitted to ATF for tracing increased considerably. The figures for all types of firearms increased from 83,122 in 1994 to 164,010 as of October 24, 1997, a 197 percent increase for this time period. The total number of rifles submitted for tracing in Calendar Year 1994 was 9,199 and increased to 20,047 for January 1, 1997 - October 24, 1997, a 217 percent increase during the period in question. Thus, the 145 percent increase in traces of sporterized semiautomatic assault-type rifles during this period is lower than the 197 percent increase in other types of firearms.] [These percentages are based on comparing all of 1994 to the first 10 months of 1997, and will have to be adjusted to take this into account.]

16. Immediate action is necessary to suspend action both on pending applications and the importation of

- 10 -

sporterized versions of semiautomatic assault-type rifles pursuant to previously approved permits because of market forces typically at work prior to action which may impact the importability or distribution of such firearms. Once word is out that a change may be made, there is a rush to beat the deadline. A prime example of this phenomenon is ATF's experience with the 1986 machinegun ban, 18 U.S.C. § 922(o). After Congress passed section 922(o) in 1986, the bill remained on President Reagan's desk for 30 days, becoming effective on May 19, 1986. Prior to the effective date of that ban manufacturers seeking to register machineguns prior to the cutoff date flooded the Bureau with applications. Small manufacturers who had registered only a handful of machineguns in prior years suddenly reported the manufacture of thousands of machineguns. This trend was noted by a number of courts. See Sendra Corp. v. Magaw, 111 F.3d 162, 163 (D.C. Cir. 1997); E.J. Vollmer Co. v. Higgins, 23 F.3d 448, 450 (D.C. Cir. 1994); Police Automatic Weapons Services, Inc. v. Benson, 837 F. Supp. 1070, 1072 (D. Ore. 1993). In this regard, between the date Congress passed the ban and its effective date, ATF approved 46,081 applications for the manufacture of machineguns. By contrast, for the year previous to Congressional passage of the machinegun ban, 19,220 machineguns were registered. Of those, only 503 machineguns were registered during the same 30 day period

- 11 -

(April 19, 1995 - May 18, 1995) the prior year. This is also illustrated by the fact that just within the three-day period from October 21, 1997 through October 23, 1997, ATF has received applications to import over 1,000,000 sporterized versions of semiautomatic assault-type rifles. Thus, suspension of approved permits and pending applications is necessary to maintain the status quo while the study is being conducted.

17. On DATE, ATF issued a letter to importers who had applications to import sporterized versions of semiautomatic assault-type rifles pending. ATF's letter advised the importers that there would be a delay in processing their applications, pending an assessment of whether their particular firearm met the statutory criteria for importation. The letter also advised that ATF would take no action on any new applications to import sporterized versions of semiautomatic assault-type rifles until completion of the study. A copy of that letter is attached as Exhibit 2.

18. On DATE, the Commissioner of the United States Customs Service was formally advised that ATF was suspending previously issued permits for the importation of sporterized versions of semiautomatic assault-type rifles and that Customs should prevent the introduction of these firearms into domestic commerce. The Commissioner was further

- 12 -

advised that the suspension would remain in effect until a determination could be made of the firearms' importability. A copy of that letter is attached as Exhibit C.

19. DESCRIPTION OF METHODOLOGY OF ATF'S STUDY

20. DESCRIPTION OF PARTICULAR FIREARMS AT ISSUE

21. The letter to importers advised that the suspension of importation of the sporterized versions of semiautomatic assault-type rifles was not a total suspension, since the firearms could still be sold to certain governmental entities, including law enforcement agencies. Thus, the plaintiff is not totally precluded from selling the subject firearms in the United States at this time.

22. Granting plaintiff's preliminary injunction will effectively render this litigation moot, since once the sporterized versions of semiautomatic assault-style rifles enter commerce, they cannot be recovered. It is my opinion that delaying the importation of these rifles for a brief period, not to exceed 90 days, is reasonable and would not cause the plaintiff irreparable harm. Although the number of weapons involved in this case appear to be insignificant, the overall issue involves the importation of over 1,000,000 firearms. Thus, the court's decision in this matter should not be influenced by the number of weapons at issue in the instant matter. In my judgment, enjoining ATF from

- 13 -

suspending importation of sporterized versions of semiautomatic assault-style rifles will undermine ATF's efforts to reevaluate the importations of these firearms under the GCA.

I hereby declare under penalty of perjury that the foregoing is true and correct. Executed this ____ day of October 1997.

John W. Magaw

p:\lieberma\importdec.nol

Crime - assault weapons

DIRECTIVE ON THE IMPORTATION OF ASSAULT-TYPE WEAPONS (10/22/97)

- **Two-part directive to be signed.** This week the President will sign a directive ordering the Treasury Department to: (1) temporarily suspend any pending and future applications to import modified assault weapons, and (2) reexamine -- and, if necessary, modify -- the criteria used to keep non-sporting weapons out of the country.
- **Taking action before assault-type weapons flood our streets.** Over the past few years, firearms manufacturers have adapted -- or "sporterized" -- certain assault weapons to circumvent the ban on their importation. There are about 30 models of these firearms -- including the new Uzi American and Galil Sporter, which have already been mentioned in the press. To date, only limited numbers of these weapons -- about 10,000 in 1995 and 25,000 in 1996 (and no Uzis) -- have actually been imported. By acting now, the Administration can avert the type of crisis faced by the Bush Administration in 1989. At that time, permits for more than a million assault rifles had been approved, and an increasing number of assault rifles were being recovered at crime scenes.
- **Directive to be broader than Senator Feinstein's request.** While Senator Feinstein has essentially asked the Administration to revoke the existing permit to import several thousand Uzis and Galils, the long-term impact of the President's directive could be much broader. By conducting a thorough review and amending the sporting purposes test as appropriate -- the directive covers many more weapons and is likely to have a broader long-term impact. Instead of just focusing on a single permit, the President's directive is intended to permanently ban the next generation of assault-type weapons.
- **Unprecedented record on firearms imports.** This Administration has done more than any other in using every tool and legal authority available to keep non-sporting, military surplus and other firearms out of the country. Under the President's leadership, literally, millions of firearms -- of all sorts -- have been blocked from importation. For instance:
 - In 1993, the President issued a directive to close the loophole that allowed certain assault pistols to be imported (despite the Bush Administration's 1989 ban on the importation of assault rifles).
 - In 1994, the President fought for and signed the Assault Weapons Ban into law as part of comprehensive crime legislation. When

efforts to kill the ban were succeeding (August '94 vote on crime bill rule), the President fought with the nation's law enforcement officers to make sure the Assault Weapons Ban was not dropped from the final bill. As a result, 19 specific assault weapons, duplicates of those 19 firearms and certain other semiautomatic weapons possessing various military style features were banned from importation.

- In 1994, the President (when granting MFN status to China) used his authority under the Arms Export Control Act to ban the importation of Chinese munitions. By taking this action, he stopped the potential importation of millions of assault-type rifles (SKS) and high-capacity magazines.

(The Administration negotiated a voluntary restraint agreement with the Russians to limit the number of firearms, clips and ammunition coming into the country as a result of increased trade with Russia).
NB: need to confirm date/details of this agreement.

- And, both in 1996 and 1997, the Administration worked to defeat congressional amendments to force the importation of military surplus firearms. These military weapons, which were provided to foreign governments for free or at low costs -- and by the millions, included concealable handguns (.45 caliber semiautomatic pistols) and rifles that could be easily converted into fully automatic weapons (M1 carbines).

Crime - assault weapons

Mtj w/ ggs/leg officers re gun directive

↑ in # of imports

↑ in crimes committed w/ these weapons - 59%

volume issue similar to 89

|| and look like new thing meant to get around ban

but no nexus to crime stats

That may be there splintered versions or versions previously banned

~ 3-400 traces - tiny fraction of #s in 89

CP: What is the ~~rise~~ %age ↑?

no high profile crimes (89 = Stockton)

but no data on whether being used for sporting purposes or not.

bases of other

assault weapons - why couldn't there be splintered too??

Feinstein - all this is about is misapplication of sporting purposes test

↑

Are there serious questions about whether they applied ^{mis} ~~own~~ ^{own} criteria
debatable magazine
prohibiting pistol grip

Walker: Have an opp ct opinion

Established ev that ass weapons are bad

↳ copycat guns

↳ a latter used in crime same way. Then crimes were?

94 guns - maintain evidence

Now - these are functionally identical.

Q - Canve act p. who have engaged in detrimental reliance

Crime - assault weapons

--- **DRAFT** ---
(10/17/97...6pm)

MEMORANDUM FOR THE SECRETARY OF THE TREASURY

Subject: Importation of Uzi and Galil Firearms

The historic Violent Crime Control and Law Enforcement Act of 1994 banned 19 specific assault weapons, duplicates of those 19 firearms and certain other semiautomatic weapons possessing various military style features. The Administration and Congress worked to ban these deadly firearms because -- as the weapon of choice for gangs and drug dealers -- they were being recovered at numerous crime scenes and resulting in criminals being better armed than some of the nation's law enforcement officers. Last year, in part as a result of the ban on assault weapons, fewer police officers were slain in the line of duty than in any year since 1960, and fewer law enforcement officers were killed by assault weapons.

In addition to the prohibitions contained in the 1994 ban on assault weapons, the 1968 Gun Control Act further restricts the importation of firearms unless they are determined to be particularly suitable for or readily adaptable for sporting purposes. To enforce this law, the Treasury Department has developed a factoring system to determine whether handguns meet this sporting purposes test and are thus importable. The Department also determined that semiautomatic assault type rifles do not meet the sporting purposes test and are not importable.

I am now informed that 2 of the 19 assault weapons that were specifically banned from importation in 1989, the Galil and the Uzi, have been redesigned in order to circumvent the ban. The Galil and Uzi, which are manufactured by Israel Military Industries, were banned because -- in their military configurations -- they were found to have no legitimate sporting purpose. It is now appropriate to determine whether the redesigned weapons would have legitimate sporting purposes in this country and are suitable for continued importation under the provisions of the Gun Control Act of 1968.

My Administration has aggressively enforced all applicable laws to keep non-sporting firearms and other munitions posing a threat to public safety from entering the country. Therefore, I direct you to:

- 1) Take the necessary steps to reexamine and determine whether the sporting purposes test should be modified with respect to the importation of the Galil, Uzi and any other firearms that have been similarly adapted or re-engineered since the 1989 ban on the importation of semiautomatic assault rifles or the 1994 ban on

semiautomatic assault weapons;

- 2) Effective immediately, suspend action on pending and future applications to import these weapons until this review is complete.

Nothing herein shall be construed to require actions contrary to applicable provisions of law.



Jose Cerda III

10/23/97 02:42:31 PM

Record Type: Record

To: Elena Kagan/OPD/EOP
cc: Bruce N. Reed/OPD/EOP, Leanne A. Shimabukuro/OPD/EOP
Subject: Assaults Directive

EK:

I was thinking... If all else fails (or to reduce litigation risks) can't we add a hybrid and third component to the directive that requires Treasury to monitor the continued levels of importation and crime gun tracings of the sporterized weapons currently permitted to enter the country, and -- if Treasury finds that there are substantial increases in the number of these firearms being imported (i.e., from thousands to tens of thousand or more), or if there is an increase in the number of these firearms being recovered at crime scenes (i.e., percentage/# traced increases within the next 30 days) -- temporarily suspend existing permits, too.

Such a provision, I would think, would allow some imports to continue; not immediately result in a TRO; cover the criticism that existing permits for hundred of thousand of weapons are wide open; give us more time to establish a factual predicate to act on all permits, if necessary; and allow us -- hopefully with a stronger case -- to immediately suspend imports if their numbers balloon or their presence at crime scenes increases. This, of course, would not protect us from criticism if there were just one high-profile shooting with one of these weapons (which ATF claims has not happened to date) -- and may only be postponing the inevitable (increases in imports, legal challenges to overall action, etc.)

Just a thought...Also, Rahm mentioned to me that we should plan to sit down with the Senators and Administration lawyers -- before we finalize our decision -- to make sure their bought into our decision -- whatever it ends up being. I'll come up with a list of the usual gun suspects for meetings.

Jose'

Crime - assault weapons

are changes that can be made and then
toward making those changes," Rubin said.

Clinton Aims to Limit Influx of Foreign-Made Assault Weapons (Washn) By Elizabeth Shogren, Jeff Brazil and Steve Berry (c) 1997, Los Angeles Times

WASHINGTON President Clinton plans to sign a directive to limit the influx of thousands of foreign-made assault weapons while the federal government rethinks its criteria for allowing such firearms into the United States, a senior White House official said Tuesday.

Although the directive has not been finalized, the Clinton administration is, at the minimum, committed to suspending temporarily the issuance of new permits to foreign gun makers, who have exploited loopholes in federal firearms laws by making slight modifications to their guns.

These dealers are "trying to be cute on the assault weapons ban," presidential assistant Rahm Emanuel said. "This strengthens the assault weapons ban on the books."

Emanuel said he expects the president to sign the directive "within the week."

The planned action comes in response to an aggressive drive by Sen. Dianne Feinstein, D-Calif., to crack down on the importation of modified assault weapons from 15 countries. Late last month, she and 29 other senators wrote Clinton urging him to use his executive authority to prevent such weapons from entering the country.

Under Clinton's proposed directive, the Bureau of Alcohol Tobacco and Firearms will study the use of about 30 so-called modified assault rifles that are manufactured abroad. Depending on the outcome, the administration may issue tighter rules for keeping non-sporting weapons out of the country. Imports of firearms that do not meet those new specifications will be banned.

But Feinstein said Tuesday that while the study is under way, she also wants Clinton to put an immediate halt to the importation of all assault weapons, even those with valid federal permits.

"It's virtually worthless," Feinstein said of the proposed directive, if it does not include pending imports. That's the whole purpose to stop these weapons from coming into the country."

Feinstein's push came after a series in the Los Angeles Times revealed that deep flaws in the nation's assault weapons laws had allowed manufacturers to produce so-called copycats, which are slightly different but just as deadly as the banned models.

Among other things, Feinstein compiled a list of nearly three dozen weapons from 15 countries that she believes fall into the category of modified assault weapons. Approximately 35,000 of these guns, primarily modified AK-47s, reached America over the last two years, according to the Clinton administration.

Feinstein contends that these weapons not only skirt the 1994 assault weapons restrictions but violate a 1968 law banning the importation of firearms that have no legitimate sporting purposes.

Feinstein and the other senators had specifically asked the president to prevent entry from Israel of a couple thousand modified semiautomatic Uzi and Galil firearms, which had already been approved by the Bureau of Alcohol, Tobacco and Firearms.

Emanuel said Tuesday that under the language of the directive, shipments that have already been given permits, including that permit for Uzis, will not be revoked.

"You can't go back on permits you've already issued," Emanuel said.

Another White House official who specializes in gun-control policy, Jose Cerda, added: "We are taking the law and bending it as far as we can to capture a whole new class of guns."

However, former President Bush invoked the same 1968

authorize the board to have a role in the agency's law enforcement activities. Previously, the administration had objected to Archer's proposal to shift the burden of proof from taxpayers to the IRS in disputes that go to federal tax court. Currently, an IRS ruling against a taxpayer stands unless the taxpayer can prove otherwise. The bill would shift the burden of proof to the IRS, so long as the taxpayer cooperates and provides the information requested. Critics warn the proposed change could make the IRS even more aggressive, with increased demands for information to prove its case. Critics worried that it would make it easier for tax cheaters to get off. Rubin said he hoped the provision would be modified as the bill moves through Congress, but that it was not enough to force the administration to withhold its endorsement. "We support the bill in its current form, but we also believe there are changes that can be made and should be made, and we will work hard making those changes," Rubin said.

Clinton Aims to Limit Influx of Foreign-Made Assault Weapons (Washn) By Elizabeth Shogren, Jeff Brazil and Steve Berry (c) 1997, Los Angeles Times
WASHINGTON President Clinton plans to sign a directive to limit the influx of thousands of foreign-made assault weapons while the federal government rethinks its criteria for allowing such firearms into the United States, a senior White House official said Tuesday. Although the directive has not been finalized, the Clinton administration is, at the minimum, committed to suspending temporarily the issuance of new permits to foreign gun makers, who have exploited loopholes in federal firearms laws by making slight

sporting-purposes law in suspending importation of 43 semiautomatic assault rifles in 1989. Gun dealers whose permits had been revoked, challenged the action in court, but lost.

When questioned about that late Tuesday, one White House official said "our assumption ... was that we were doing as much as we could." The official, who asked not to be quoted by name, said "I'm going to revisit (the directive's scope) before we put this in final form."

If the directive were expanded to include an immediate ban on imports, the administration would face a certain fight with gun advocates.

"The president and the folks at the White House need to re-examine the Constitution and the Second Amendment," said Bill Powers, spokesperson for the National Rifle Association. "There is nothing in the Second Amendment about sport. The government should not be in business of determining what a sport is."

Clinton to Announce Plan to Curb Global Warming (Bonn) By James Gerstenzang (c) 1997, Los Angeles Times

BONN, Germany President Clinton, concluding an often-fierce debate within his administration, opted Tuesday for an international plan to combat global warming that falls short of stringent proposals advocated by European powers. It gained the grudging support of American environmentalists but is likely to draw fierce opposition from U.S. industry.

Barring last-minute changes, Clinton will announce in Washington Wednesday a comprehensive program that would bring about reductions in the emissions of greenhouse gases by major industrialized nations. Many scientists believe such gases are driving up global temperatures.

These nations among them China
counter global warming
economic growth
Bill Clinton



Jose Cerda III

10/21/97 11:38:38 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: Quickie Talking Points on Still to be signed Assaults Directive

Rahm, et. al.:

I've attached a DRAFT of some positive talking points for any Q's we may get tomorrow on the NBC or the LA Times stories on assaults. I understand from the LA Times reporter that Senator Feinstein is quoted as saying that our action is "worthless"...or something like that. I tried very hard to put our action into a broader context -- our long-term record on imports, China, curios and relics, etc. -- but don't know if I succeeded.

These talking points try and address Senator Feinstein's minimizing of our directive in the LA Times piece -- but they're stretching a bit. Also, I will visit w/Counsel and Treasury one more time about trying to cover the existing Uzi and other permits. I did speak to ATF Counsel tonight, and they insist we can't act on the current permits. While the Bush Administration did this in 1989, was sued...and won, all of our lawyers say that this was an entirely different situaion. More than a million assault rifles had been approved for import, and many were being recovered at crime scenes. With respect to the Uzis, not a one has even come in. In any event, we better do this soon. The increased media coverage is sure to result in new applications for imports.

Rahm, Elena, Bruce -- let me know if you think these talking points work.

Jose'



ASSAULTS.P

Message Sent To:

Michelle Crisci/WHO/EOP
Bruce N. Reed/OPD/EOP
Elena Kagan/OPD/EOP
Barry J. Toiv/WHO/EOP
Leanne A. Shimabukuro/OPD/EOP



Crime - assault weapons

United States Senate

WASHINGTON, DC 20510-0504

(202) 224-3841

October 17, 1997

Mr. Rahm Emanuel
White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear Rahm:

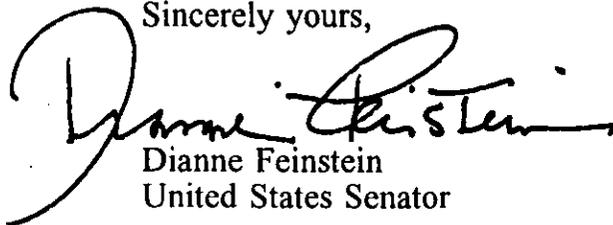
I am sending you a copy of the letter I sent to Secretary Rubin today regarding using executive authority to temporarily suspend the importation of semiautomatic assault weapons. I believe that the administration can and should review these weapons based on the intent of Congress established in the 1968 Gun Control Act.

I ask that you take a personal look at the material I am sending you which includes a September 26 report from the Congressional Research Service. I believe you will find this report persuasive and evidence that action is possible and appropriate.

Please let me know your thoughts.

With warmest personal regards.

Sincerely yours,



Dianne Feinstein
United States Senator

DF:msm



United States Senate

WASHINGTON, DC 20510-0504

October 17, 1997

The Honorable Robert Rubin
Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Mr. Secretary:

As you know, thirty Members of the Senate have sent a letter to President Clinton, a copy of which is attached, asking that he utilize his executive authority to temporarily suspend the importation of semiautomatic assault weapons pending a review of the suitability of those weapons under the 1968 Gun Control Act. The Act specifically grants broad discretion to the Secretary of the Treasury to decide whether a type of firearm is generally recognized as particularly suitable for or readily adaptable to sporting purposes.

Information from the Bureau of Alcohol, Tobacco and Firearms indicates that tens of thousands of semiautomatic assault weapons from more than a dozen foreign nations have either been imported in the last two years, or are pending importation. These weapons are not suitable for nor readily adaptable to sporting purposes as required by the 1968 Gun Control Act and therefore should not be granted permits for importation to this country.

Additionally, hundreds of thousands of foreign-made high capacity ammunition feeding devices, able to hold more than 10 bullets, are continuing to come into the country under a grandfather clause in the 1994 Assault Weapons legislation which bans the manufacture, sale, transfer and possession of these clips. Over two and a half years have passed since enactment of this law, more than enough time for any inventory already purchased and awaiting shipment at the time of passage to have been sent.

I am attaching what I believe to be a definitive report by the Congressional Research Service dated September 26 that states that the President of the United States and Secretary of the Treasury have clear authority to suspend the importation of firearms, ammunition or accessories.

Military-style semiautomatic assault weapons present a substantial threat to law enforcement officers and the public. A police officer was killed in Alabama just last Friday by an assailant with an AK-47 and a 100-round magazine. Two other law enforcement officers were killed last month in North Carolina during a midday traffic

Honorable Robert Rubin
October 16, 1997
Page Two

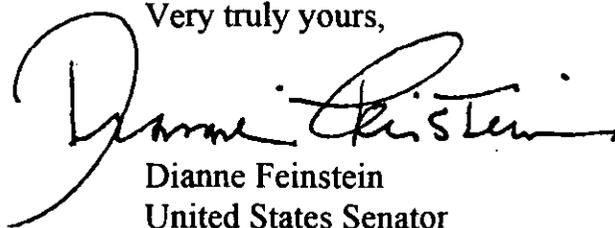
stop by two teenagers with an AK-47. A police officer in Washington State was killed in August by an assailant with an SKS semiautomatic assault rifle. Also that month, suspected gang members sprayed dozens of bullets from an AK-47 at a crowd of 20 people standing outside a home in Santa Ana, California, killing one person and injuring 4 others. Incidents of police killings, drive-by shootings and grievance killings with semiautomatic assault weapons are too numerous to list and well known to all. These weapons are not designed for sport and, as such, present a threat to the security and well being of the American people.

The executive order issued by the Secretary of the Treasury in 1989 and approved by President George Bush clearly sets a precedent for suspending importation of assault weapons. Two weapons recently approved for importation are of the same types suspended by the Treasury Department in 1989, the Uzi-type and Galil-type semiautomatic assault rifle. These weapons are manufactured by the State-owned munitions company, Israel Military Industries, Ltd. I have written a letter to Prime Minister Binyamin Netanyahu urging that the Israeli government discontinue the exportation of these weapons to the United States. That request is being considered at the highest levels.

This Administration has taken a strong position against assault weapons. I believe that unless the Administration is prepared to extend this same stance against assault weapons being imported to the United States, it makes a mockery of all that we have tried to do to make our streets safer, prevent police from being assassinated and to remove from the reach of criminals, military weapons of significant destructive potential.

I urge your serious consideration of and immediate action on this issue.

Very truly yours,



Dianne Feinstein
United States Senator

Attachments:

Congressional Research Service Report 9/26/97
Senators letter to President Clinton
Senator Feinstein letter to Prime Minister Netanyahu



Congressional Research Service • The Library of Congress • Washington, D.C. 20540-7000

September 26, 1997

TO : Honorable Dianne Feinstein
Attention: Wilkie Green
Susan Kennedy

FROM : American Law Division

SUBJECT : (1) Standards Used to Determine Whether a Firearm Is "Particularly Suitable for or Readily Adaptable to Sporting Purposes" in Order to Permit the Issuance of an Import License
(2) Authority of the President or Other Executive Officer to Ban Importation of Particular Firearms, Ammunition and/or Related Accessories Without Reference to Their Country of Origin

This is in response to your request for information as to (1) what standards have been, are or might be used to determine whether a particular firearm, type of ammunition, or firearm accessory (e.g. an ammunition clip) is "particularly suitable for or readily adaptable to sporting purposes" in order to permit the issuance of an import license under 18 U.S.C. 925(d)(3); and (2) what authority the President enjoys to ban the importation of such firearms, ammunition, or accessories without reference to the country in which they were manufactured, have been assembled or from which they are to be shipped.

Summary

The first "suitability" standard used by the Bureau of Alcohol, Tobacco and Firearms (ATF) was based upon a presumption that only handguns were likely to be found unsuitable and that those least likely to survive scrutiny were those that most closely resembled "Saturday Night Specials." Under this standard, quality and price weighed heavily, and simple amusement was stripped from the concept of "sporting purpose" (if it ever resided there) with the determination that "plinking" or target practice on randomly selected bottles and cans was a pastime and not a "sport."

Next, ATF abandoned the "only-handguns" presumption with respect to two varieties of shotgun whose features rendered them particularly suitable for nonsporting purposes, e.g., military or law enforcement purposes, but were "generally recognized" as not suitable for purposes of hunting or competitive shooting.

Finally, ATF moved to a process under which it determined the class of a firearm for which an import license was being sought, e.g., semiautomatic assault rifle, according to the type of firearm involved; its principle purpose or use; which of its features made it particularly suitable for its principle use and which made particularly unsuitable for sporting purposes; and whether, among those particularly conversant with hunting and competitive shooting, the firearm was generally recognized as suitable or adaptable for use in their sport.

The President and the Secretary of the Treasury enjoy extensive authority to impose an import ban upon a particular type of firearm, ammunition or accessory. The Gun Control Act of 1968 as enacted vested virtually unbridled discretion in the Secretary. The amendments to the Act which support the contention that the Secretary is compelled to permit importation when faced with the applications qualifying for exceptions under section 925(d) have thus far been interpreted generously.

The President has either explicit or apparent authority to impose a import ban covering various firearms, ammunition or accessories under a number of other statutes. The International Emergency Economic Powers Act, 50 U.S.C. 1701 et seq., gives him general authority to regulate foreign commercial transactions when he considers it necessary to deal with an "unusual and extraordinary threat, which has its source in whole or in part outside the United States, to the national security, foreign policy, or economy of the United States."

He has already invoked this authority to revive provisions of the Export Administration Act of 1979 and the Arms Export Control Act, E.O. 12924, 59 *Fed.Reg.* 43437 (Aug. 10, 1994), 50 U.S.C. 1701 note. The reach of the Arms Export Control Act is particular pertinent since it declares that "in furtherance of world peace and the security and foreign policy of the United States the President is authorized to control imports . . . of defense articles and services," 22 U.S.C. 2778(a)(1). The Export Administration Act empowers to President to regulate military exports including the authority to restrict the transfer of goods within the United States, 50 U.S.C.App. 2404(a). ATF's reference in *Gun South, Inc.* to the smuggling of foreign semiautomatic assault rifles out of this country suggests the kind of predicate that might bolster a claim that the Export Administration Act under appropriate circumstances authorizes an import ban on various types of firearms, ammunition or accessories.

These statutory powers supplement and carry into execution broad powers the Constitution vests in the President to conduct foreign affairs, act as commander-in-chief, and to see to the faithful execution of the law, U.S.Const. Art.II §§2, 3. Judicial descriptions of these powers and of plenary authority to control the flow goods and persons across our borders document the breadth of discretion they convey.

Evolution of the Search for a Standard

The 1968 Gun Control Act prohibits importing firearms or ammunition except as authorized by the Act, 18 U.S.C. 922(l). The Act authorizes the

Secretary of the Treasury to license imports, *inter alia*, if the firearm or ammunition in question "is of a type that does not fall within the definition of a firearm as defined in section 5845(a) of the Internal Revenue Code of 1954 and is *generally recognized as particularly suitable for or readily adaptable to sporting purposes*, excluding surplus military firearms, except in any case where the Secretary has not authorized the importation of the firearm pursuant to this paragraph, it shall be unlawful to import any frame, receiver, or barrel of such firearm which would be prohibited if assembled," 18 U.S.C. 925(d)(3)(emphasis added).¹

Shortly after passage of the 1968 Act, the Secretary of Treasury appointed a Firearms Evaluation Panel "to provide guidelines for implementation of the 'sporting purposes' test of section 925(d)(3)," *Bureau of Alcohol, Tobacco and Firearms, Report and Recommendation of the ATF Working Group on the Importability of Certain Semiautomatic Rifles (Report) 3* (1989). At the time, the most often cited example of firearm abuse involved "Saturday Night Specials," inexpensive and usually poor quality handguns, and the Panel's considerations apparently dealt almost exclusively the development of guidelines to determine whether a particular handgun should be considered a Saturday Night Special and consequently be subject to an import bar, *Report* at 3. The Panel "did not propose criteria for evaluating rifles and shotguns under section 925(d)(3)," *Report* at 3.² And for many years thereafter, the question of what type of firearm other than a handgun might fail the "sporting purposes" test never arose, *Report* at 4. As the statute then required, applicants for licenses were simply asked to indicate how a particular firearm qualified under the "sporting purposes" test, see e.g., §3(b)(4)(interim regulations), 33 *Fed.Reg.* 15733 (Oct. 24, 1968). But it does seem to have been agreed early on that "plinking" -- shooting a bottles and cans randomly -- should be considered more of a pastime than a sport -- and that otherwise virtually every firearm might thought suitable for "sporting purposes," *Report, Attachment 3* at 2.

Apparently, the first instance of a failure to meet the "sporting purposes" test occurred with a 1984 attempt to import South African shotguns designed for riot control. "When the import was asked to provide evidence of sporting purposes for the weapon, ATF was provided information that the weapon was

¹ The full text of section 925(d) and of 26 U.S.C. 5845 cited above are appended.

² See also Hurst, "Debate Rages on Imported Guns: Just What Is a Sporting Weapon?" *Los Angeles Times* 27-8 (Feb. 26, 1989). The Bureau of Alcohol, Tobacco and Firearms (ATF) did use the panel recommendations to develop criteria and an evaluation sheet (ATF Form 4590) to determine whether import licenses should be issued for a particular type of handgun that favored larger, heavier, higher caliber, multi-featured handguns (i.e., handguns that were more likely to be well made, more expensive, and less easily concealed; not Saturday night specials), see ATF Form 4590 in *Report and Recommendation of the ATF Working Group on the Importability of Certain Semiautomatic Rifles* at Attachment 2.

suitable for police/combat style competitions," *Report* at 4. The license was denied.

Two years later a second shotgun application was denied when the Bureau concluded that due "the weight, size, bulk, designed magazine capacity, configuration, and other factors" the shotgun (a "USAS-12") was not generally recognized as "particularly suitable for or readily adaptable to a sporting purpose," *Gilbert Equipment Co., Inc. v. Higgins*, 709 F.Supp. 1071, 1074 (S.D.Ala. 1989). At least then, the ATF was of the view that "the 'generally recognized' component requires both that the firearm itself or the 'type' of firearm to which the subject firearm is being compared, has attained general recognition as being particularly suitable for or readily adaptable to sporting purposes, and that a particular use of a firearm has attained general recognition as having a 'sporting purpose,' or that an event has attained general recognition as being a 'sport' before those uses and/or events can be 'sporting purposes' or 'sports' under §925(d)(3)," *Gilbert Equipment Co., Inc. v. Higgins*, 709 F.Supp. at 1075. "The bureau determined that the USAS-12 weighed 12.4 pounds unloaded, and this weight makes the gun extremely awkward to carry for extended periods, as used in hunting, and cumbersome to lift repeatedly to fire at multiple small moving targets as used in skeet and trap shooting. The bureau also determined that the USAS-12 contains detachable magazines which permit more rapid reloading. A large magazine capacity and rapid reloading are military features, according to the bureau. The bureau also opined that the overall appearance of the weapon was radically different from traditional sporting shotguns, and strikingly similar to shotguns designed specifically for or modified for combat/law enforcement/anti-personnel use. Further, the bureau determined that the activities that the USAS-12 was designed for, various police combat competitions, have not attained "general recognition" as shotgun sports," *Gilbert Equipment Co., Inc. v. Higgins*, 709 F.Supp. at 1075.

During the same year, Congress amended section 925(d)(3) and removed the provision that compelled import permit applicants to demonstrate that the firearm they sought to import was generally recognized as suitable or adaptable for sporting purposes. Congress also added a provision for conditional import approval and rephrased the statute so that where it had once declared that the Secretary "may" issue import licenses, it now states that the Secretary "shall" issue such licenses, *compare*, 18 U.S.C. 925(d)(3)(1982 ed.), *with*, 18 U.S.C. 925(d)(3)(1988 ed.).

Soon thereafter, President Bush was asked about the prospect of increasing gun control measures during a series of question-and-answer sessions with the press. There were references to the killing of school children with a Chinese AK-47 and the President indicated he felt there were sufficient laws on the books to cover importation and criminal use firearms, *25 Weekly Compilation of Presidential Documents*, 209-10, 222 (Feb. 16, 21, 1989). The President later noted that he had asked William Bennett, the newly named "Drug Czar," to look into the extent to which the availability of automatic and semi-automatic weapons contributed to drug-related violence and whether adjustments in the understanding of "suitable for sporting purposes" could be made consistent with

the interests of law abiding firearm owners, 25 *Weekly Compilation of Presidential Documents*, 294, 370 (Mar. 7, 17, 1989).

Within days, Mr. Bennett and ATF announced a temporary suspension of import licenses for an array of "assault type weapons," in order to allow ATF "to reassess its approval of several applications to import the suspended rifles. Under an accelerated review, the Bureau [reviewed] each permit to determine if it erroneously concluded that the rifles are 'generally suitable for a sporting purpose,'" *Gun South, Inc. v. Brady*, 877 F.2d 858, 859 (11th Cir. 1989). The ban applied to licenses for AK47 type, Galil type, Uzi carbine, Beretta AK70 type, M16/22 type and Galil/22 type rifles, among others, *Report, Attachment 1*.

A licensed dealer with an import license held under suspension challenged ATF's authority to suspend existing licenses. The Court of Appeals found the temporary suspension within the implicit authority of ATF under section 925(d)(3) and reasonable in light of the fact that "(1) law enforcement agencies and officials reported a dramatic proliferation in the use of assault-type rifles in criminal activity; (2) the Bureau's tracings branch showed a 57-percent increase in races of assault-type rifles recovered from crime scenes; (3) several highly publicized murders in which assault rifles were used indicate their increased use in criminal activity; and (4) the Bureau's statistics revealed the smuggling of substantial numbers of firearms out of this country for use in foreign crime," *Gun South, Inc. v. Brady*, 877 F.2d at 866.

The Court quoted from the section's original legislative history in support of the proposition that Congress intended to prohibit the importation of firearms subject to narrow exceptions and looked to Secretary of the Treasury to effectuate their intent, *Gun South, Inc. v. Brady*, 877 F.2d at 862-63:

Several portions of the legislative history emphasize Congress's intent to ban the importation of firearms, and the Secretary's discretion in complying with this mandate. The Senate report to the Gun Control Act of 1968 provides that "[t]he existing Federal controls over interstate and foreign commerce in firearms are not sufficient to enable the states to effectively cope with firearms traffic within our borders." S.Rep.No. 1097, 90th Cong., 2d Sess. 80. In addition, the Senate report explains that Congress intended section 925(d)(3) to "curb the flow of surplus military weapons and other firearms being brought into the United States which are not particularly suitable for target shooting or hunting" to prevent such weapons being used for criminal means. S.Rep.No. 1097 at 80. Furthermore, the sponsor of the legislation, Senator Dodd, stated, Title IV prohibits importation of arms which the Secretary determines are not suitable for research, sport, or as museum pieces The entire intent of the importation section is to get those kinds of weapons that are used by criminals and that have no sporting purpose. 114 *Cong.Rec.* S5556, S5582, S5585 (daily ed. May 14, 1968).

To accomplish its purpose, the Court felt Congress had given the Secretary fairly broad discretion to do its bidding, *Gun South, Inc. v. Brady*, 877 F.2d at 863:

The Senate Report notes that the Act gives the Secretary of the Treasury unusually broad discretion in applying section 925(d)(3): "The difficulty of defining weapons characteristics to meet this target [of eliminating the importation of weapons used in crime], without discriminating against sporting quality firearms, was a major reason why the Secretary of the Treasury has been given fairly broad discretion in defining and administering the import prohibition. . . ." S.Rep.No. 1501, 90th Cong., 2d Sess. 38 (1968). In fact, such broad discretion was a major concern of the opponents of the bill: "The proposed restrictions of Title IV would give the Secretary of the Treasury unusually broad discretion to decide whether a particular type of firearm is generally recognized as particularly suitable for, or readily adoptable to, sporting purposes. . . ." S.Rep.No. 1097, 90th Cong., 2d Sess. 255 (1968)(Individual Views of Sens. Dirksen, Hruska, Thurmond and Burdick on Title IV).

The Court did acknowledge, however -- and the dissent emphasized -- that Congress, by its amendment, had "mandated the Secretary to authorize the importation of firearms falling within one of the four excepted categories," *Gun South, Inc. v. Brady*, 877 F.2d at 863.

The review, conducted during the temporary suspension of the licenses under attack in *Gun South, Inc.*, began by identifying the type of firearm under consideration, i. e., "assault-type rifles . . . which generally met the following criteria: a. military appearance[,] b. large magazine capacity[, and] c. semiautomatic version of a machinegun," *Report* at 1. It felt compelled to do so because of its reading of the legislative history of section 925(d)(3): "[S]ection 925(d)(3) expressly provides that the Secretary shall authorize the importation of a firearm that is of a type that is generally recognized as particularly suitable for sporting purposes. . . . [I]n its explanation of section 925(d)(3), the Senate Report on the Gun Control Act stated: This subsection gives the Secretary authority to permit the importation of ammunition and certain types of firearms. . . . S.Rep.No. 1501, 90th Cong., 2d Sess. 38 (1968)," *Report* at 5-6.

They concluded that the weapons under review represented a "distinctive type of rifle distinguished by certain general characteristics which are common to the modern military assault rifle" and that "the modern military assault rifle contains a variety of physical features and characteristics designed for military applications which distinguishes it from traditional sporting rifles."³

³ "These features and characteristics are as follows: 1. Military Configuration. a. Ability to accept a [large capacity] detachable magazine. . . . b. Folding/telescoping stocks. . . . c. Pistol grips [that protrude conspicuously beneath the action of the weapon]. . . . d. Ability to accept a bayonet. . . . e. Flash suppressor. . . . f. Bipods [as an integral part of the firearm, either attached or as an easily accommodated feature]. . . . g. Grenade launcher. . . . h.

Whether these types of rifles were suitable or could be adapted for sporting purposes depends in part on the meaning of "sporting purposes." The report again cited legislative history.

Section 925(d)(3) had originally been enacted as part of Omnibus Crime Control and Safe Streets Act where its purpose had been described as an attempt to "curb the flow of surplus military weapons and other firearms being brought into the United States which are not particularly suitable for target shooting or hunting. The provisions concerning the importation of firearms would not interfere with the bringing in of currently produced firearms, such as rifles, shotguns, pistols, or revolvers of recognized quality which are used for hunting and for recreational purpose, or personal protection," S.Rep.No. 1097, 90th Cong., 2d Sess. 80 (1968). The AFT report points to other segments of the legislative history the firearms used for "sporting purposes" are distinguished from those used for military purposes including references in Senate committee report on the Gun Control Act that noted an intent to permit importation of "quality made, sporting firearms, including . . . rifles such as those manufactured and imported by Browning and other such manufacturers and importers of firearms," S.Rep. No. 1501, 90th Cong., 2d Sess. 38 (1968). This at a time when "the rifles being imported by Browning . . . were semiautomatic and manually operated traditional sporting rifles of high quality," *Report* at 2. More telling is the colloquy where one of the Senate sponsors of the legislation confirms a colleague's assessment "that despite the fact that a military weapon may be used in a sporting event, it [does] not, by that action become a sporting rifle," 114 *Cong.Rec.* 27461-462 (1968)(remarks of Senators Hansen and Dodd).

This history -- coupled with the language and structure of the Gun Control Act and interpretation of earlier evaluation (rejecting random target practice on bottles and cans as a "sport") -- led to the AFT report's conclusion that "sporting purpose" should be narrowly limited to "the traditional sports of hunting and organized marksmanship competition", *Report* at 10.

The ATF report decided whether the firearms subject to the temporary import suspension were suitable or adaptable for these traditional sporting purposes by using their own observations and by consulting with those associated with traditional sporting uses. So in addition to determining whether a rifle in question was marked by features more in keeping with military than sporting purposes or how it was described by technical writers, in advertising and by importers, ATF solicited the views of state game commissioners, hunting guides, hunting and shooting sports journalists, and the organizers of shooting competitions as to whether they considered the rifles in question suitable or readily adaptable for sporting purposes, *Report*, Attachment 10.

The ATF report recommended that the temporary import ban be made permanent for most of the rifles under consideration; for a few, like the Valmet

Night sights 2. [S]emiautomatic version of a machinegun, [and] 3. [T]he rifle is chambered to accept a centerfire cartridge case having a length of 2.25 inches or less [in combination with other military features]," *Report* at 6-9.

Hunter and Galil/22 type, it recommended the ban be lifted, *Report* at 15, Attachments 7, 8. The impact of its recommendation was muted in 1994 when the Violent Crime Control and Law Enforcement Act outlawed until September 13, 2004 semiautomatic assault weapons manufactured after September 13, 1994 and large capacity ammunition feeding devices, 18 U.S.C. 922(v), (w).

The ATF report identifies the most recent process used to develop the standards by which to assess suitability or adaptability for sporting purposes. It does not suggest that this is the only process that it might be employ in the future. In this context, it might be worth noting that the current process does not explicitly require consideration of the extent of criminal use or the suitability for criminal purposes of a particular type of firearm, notwithstanding the importance of those considerations in the history of section 925(d)(3) and its subsequent interpretation.

Executive Authority

The Executive Branch has considerable authority under existing law to impose an import ban on various firearm, ammunition or accessories. First, the Gun Control Act makes it unlawful to import any firearms or ammunition without the approval of the Secretary of the Treasury: "Except as provided in section 925(d) of this chapter, it shall be unlawful for any person knowingly to import or bring into the United States or any possession thereof any firearm or ammunition. . . ." 18 U.S.C. 922(l). The provisions of section 925(d) were amended in 1986, so where it had been previously said that the Secretary "may" authorize imports under various conditions, it now provides that the Secretary "shall" authorize them under those circumstances.

Gun South, Inc. concluded that Congress intended in the Gun Control Act to ban firearm importation subject to the exceptions found in section 925(d) and meant to afford the Secretary of the Treasury, through ATF, with fairly broad discretion to flesh out those exceptions, *Gun South, Inc. v. Brady*, 877 F.2d at 861-65.

This authority unquestionably includes the power to proscribe importation of firearms, ammunition or accessories that may not be lawfully be possessed. It seems beyond contention for example, that the Secretary may bar the importation of those semiautomatic assault weapons and large capacity ammunition feeding devices whose possession Congress made unlawful under the 1994 Violent Crime Control and Law Enforcement Act, 18 U.S.C. 922(v), (w).⁴

The Secretary also appears to enjoy broad authority to define the standards for determining suitability or adaptability to sporting purposes and to promulgate the regulations governing the application of those standards. As a

⁴ See e.g., 27 C.F.R. 178.119 (application requirements for those seeking to import ammunition feeding devices).

general principle of administrative law, the courts will give great deference to the construction of a statute by the agency responsible for its administration. They will in fact accept the agency's reading where it is at all creditable, *Auer v. Robbins*, 117 S.Ct. 905, 909 (1997).

The history of Treasury Department interpretation of its prerogatives under the statute reveals a general inclination to allow firearms to be imported unless it becomes apparent that a particular type of firearm no longer fits comfortably beneath the cloak of a sporting purpose. Thus, it concluded that cheap, poorly made handguns seemed more likely to be devoted to robbing convenience stores than to being used for hunting or marksmanship contests. And it similarly deduced that shotguns designed for South African riot control during the days of apartheid could not reasonably be called sporting. Finally, it announced that semiautomatic assault rifles whose characteristics made them particular well suited for military purposes but especially ill suited for hunting or competitive shooting did not qualify for the sporting purposes exception.

There is nothing in any of these decisions to suggest that these examples exhaust the universe of all possible nonconforming types of firearms or of standards by which to assess them. In fact, ATF's analysis described in *Gilbert Equipment* and its report on semiautomatic assault rifles seem to verify that the list of firearms now under an import ban is not necessarily complete and that any number of other types of firearms, ammunition or accessories under the proper circumstances might be found unsuitable for sporting purposes and thus ineligible for importation under a standard developed by using the process described in the ATF report or under some other standard. ATF enjoys considerable discretion to formulate future standards for the sporting purposes exception under the Gun Control Act as long as they appear to have some reasonable foundation.

But there seem to be other authorities upon which the Executive might call upon to regulate or outlaw the importation of various types of firearms, ammunition or accessories.

The International Emergency Economic Powers Act (IEEPA) empowers the President to partially or completely bar various international commercial transactions when he considers it necessary to deal with an "unusual and extraordinary threat, which has its source in whole or in part outside the United States, to the national security, foreign policy, or economy of the United States," 50 U.S.C. 1701, 1702.

The President has used this authority to revive portions the Export Administration Act and Arms Export Control Act. The Arms Export Control Act, 22 U.S.C. 2778, expressly authorized the President to regulate trade in firearms and other defense articles and services "in furtherance of world peace and the security and foreign policy of the United States." The regulations implementing this authority for purposes of importing firearms, ammunition and accessories, 27 C.F.R. pt.47 (esp. §47.2), adopt the regulations that implement the authority under section 925(d), 27 C.F.R. pt. 178, but this

distinct authority appears sufficient to support a different treatment if the President thought it appropriate.

Somewhat more tangentially, the Export Administration Act of 1979, as its name suggests, addressed exports primarily with an eye, in part, to the use of export controls "to restrict the export of goods and technology which would make a significant contribution to the military potential of any other country or combination of countries which would prove detrimental to the national security of the United States" or "where necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations," 50 U.S.C.App. 2402(2)(A),(B). To this end, the President may under some circumstances "curtail the transfer of goods or technology within this country," 50 U.S.C.App. 2404(a)(1).

These statutory authorities carry into execution powers the Constitution grants the President. The power of the President as commander in chief of the armed forces; his power over foreign relations, and his responsibility to see that the laws are faithfully executed have been called upon in the past to fill in gaps in statutory authority. With statutory adornment, they are exceptionally broad. "When the President acts pursuant to an express or implied authorization from Congress, he exercises not only his powers but also those delegated by Congress. In such a case the executive action 'would be supported by the strongest presumptions and the widest latitude of judicial interpretation, and the burden of persuasion would rest heavily upon any who might attack it,'" *Dames & Moore v. Regan*, 453 U.S. 654, 668 (1981), quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637 (Jackson, J. concurring).

In the case of imports, "[s]ince the founding of our Republic, Congress has granted the Executive plenary authority . . . to prevent the introduction of contraband into this country," *United States v. Montoya de Hernandez*, 473 U.S. 531, 537 (1985). When, as will often occur, the regulation of imports coincides with the overall conduct of nation's relation with other nations, then we are "dealing not alone with an authority vested in the President by an exertion of legislative power, but with such an authority plus the very delicate, plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations -- a power which does not require as a basis for its exercise an act of Congress. . . ." *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 319-20 (1936).

It does not seem unlikely that any number of circumstances might exist that would justify a President to exercise the powers of his office in the form of an import ban on a particular type of firearm, or a particular kind of ammunition or accessory. In fact, the trade sanctions imposed against Iran, Iraq, Libya, and Cuba already do this and more, see 50 U.S.C. 1701 note; 31 C.F.R. pt. 515, 535, 550, 560, 575.


Charles Doyle
Senior Specialist
7-6006

18 U.S.C. 925(d)

(d) The Secretary shall authorize a firearm or ammunition to be imported or brought into the United States or any possession thereof if the firearm or ammunition--

(1) is being imported or brought in for scientific or research purposes, or is for use in connection with competition or training pursuant to chapter 401 of title 10;

(2) is an unserviceable firearm, other than a machinegun as defined in section 5845(b) of the Internal Revenue Code of 1954 (not readily restorable to firing condition), imported or brought in as a curio or museum piece;

(3) is of a type that does not fall within the definition of a firearm as defined in section 5845(a) of the Internal Revenue Code of 1954 and is generally recognized as particularly suitable for or readily adaptable to sporting purposes, excluding surplus military firearms, except in any case where the Secretary has not authorized the importation of the firearm pursuant to this paragraph, it shall be unlawful to import any frame, receiver, or barrel of such firearm which would be prohibited if assembled; or

(4) was previously taken out of the United States or a possession by the person who is bringing in the firearm or ammunition.

The Secretary shall permit the conditional importation or bringing in of a firearm or ammunition for examination and testing in connection with the making of a determination as to whether the importation or bringing in of such firearm or ammunition will be allowed under this subsection.

26 U.S.C. 5845

For the purpose of this chapter--

(a) Firearm.--The term "firearm" means (1) a shotgun having a barrel or barrels of less than 18 inches in length; (2) a weapon made from a shotgun if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length; (3) a rifle having a barrel or barrels of less than 16 inches in length; (4) a weapon made from a rifle if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length; (5) any other weapon, as defined in subsection (e); (6) a machinegun; (7) any silencer (as defined in section 921 of title 18, United States Code); and (8) a destructive device. The term "firearm" shall not include an antique firearm or any device (other than a machinegun or destructive device) which, although designed as a weapon, the Secretary finds by reason of the date of its manufacture, value, design, and other characteristics is primarily a collector's item and is not likely to be used as a weapon.

(b) Machinegun.--The term "machinegun" means any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any

combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person.

(c) Rifle.--The term "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger, and shall include any such weapon which may be readily restored to fire a fixed cartridge.

(d) Shotgun.--The term "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull of the trigger, and shall include any such weapon which may be readily restored to fire a fixed shotgun shell.

(e) Any other weapon.--The term "any other weapon" means any weapon or device capable of being concealed on the person from which a shot can be discharged through the energy of an explosive, a pistol or revolver having a barrel with a smooth bore designed or redesigned to fire a fixed shotgun shell, weapons with combination shotgun and rifle barrels 12 inches or more, less than 18 inches in length, from which only a single discharge can be made from either barrel without manual reloading, and shall include any such weapon which may be readily restored to fire. Such term shall not include a pistol or a revolver having a rifled bore, or rifled bores, or weapons designed, made, or intended to be fired from the shoulder and not capable of firing fixed ammunition.

(f) Destructive device.--The term "destructive device" means (1) any explosive, incendiary, or poison gas (A) bomb, (B) grenade, (C) rocket having a propellant charge of more than four ounces, (D) missile having an explosive or incendiary charge of more than one-quarter ounce, (E) mine, or (F) similar device; (2) any type of weapon by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, the barrel or barrels of which have a bore of more than one-half inch in diameter, except a shotgun or shotgun shell which the Secretary finds is generally recognized as particularly suitable for sporting purposes; and (3) any combination of parts either designed or intended for use in converting any device into a destructive device as defined in subparagraphs (1) and (2) and from which a destructive device may be readily assembled. The term "destructive device" shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684(2), 4685, or 4686 of title 10 of the United States Code; or any other device which the Secretary finds is not likely to be used as a weapon, or is an antique or is a rifle which the owner intends to use solely for sporting purposes.

(g) Antique firearm.--The term "antique firearm" means any firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1898) and also

any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

(h) Unserviceable firearm.--The term "unserviceable firearm" means a firearm which is incapable of discharging a shot by means of an explosive and incapable of being readily restored to a firing condition.

(i) Make.--The term "make", and the various derivatives of such word, shall include manufacturing (other than by one qualified to engage in such business under this chapter), putting together, altering, any combination of these, or otherwise producing a firearm.

(j) Transfer.--The term "transfer" and the various derivatives of such word, shall include selling, assigning, pledging, leasing, loaning, giving away, or otherwise disposing of.

(k) Dealer.--The term "dealer" means any person, not a manufacturer or importer, engaged in the business of selling, renting, leasing, or loaning firearms and shall include pawnbrokers who accept firearms as collateral for loans.

(l) Importer.--The term "importer" means any person who is engaged in the business of importing or bringing firearms into the United States.

(m) Manufacturer.--The term "manufacturer" means any person who is engaged in the business of manufacturing firearms.

DIANNE FEINSTEIN
CALIFORNIA



Crime - assault weapons

6-5581

United States Senate

WASHINGTON, DC 20510-0504

September 17, 1997

The Honorable William J. Clinton
President of the United States
1600 Pennsylvania Avenue
Washington, DC 20500

Dear Mr. President:

We the Members of the U.S. Senate urge you to use your executive authority to declare a temporary suspension of the importation of semi-automatic assault weapons that are now coming into this country.

We have learned that the state-owned Israel Military Industries, Ltd., has been granted permission to export to the United States for commercial sale tens of thousands of military-style assault weapons. They have taken the Uzi and Galil used by the military and made physical modifications to them, which do not affect their rapid-fire use. These weapons violate the 1968 Gun Control Act, in that they are not "suitable for, or readily adaptable to sporting purposes" [18 USC 925(d)3]. The Bureau of Alcohol, Tobacco and Firearms approved the importation permit because they did not believe that the modified weapons were in technical violation of the 1994 assault weapons law. However, that law applied generally to the transfer of these weapons, and was enacted independently of, and did not override, the 1968 Gun Control Act, which is addressed specifically to imports. The ATF has been requested to provide a list of all importation permits granted over the past two years, and that they indicate whether the weapons are manufactured by a private or government-owned company. According to ATF, this information will not be available for one month.

As Members of the Senate, we wish to state clearly that the intent of the Federal assault weapons legislation was to keep weapons such as these off the streets of America. The weapons planned for export to the United States by a government-owned Israeli gun manufacturer are functionally no different than the military-style weapons Congress intentionally banned and those weapons prohibited from import by the Presidential Directive of 1989: they are capable of firing bullets as fast as the operator can pull the trigger, the pistol grip is designed to allow the weapon to be fired from the hip as opposed to target shooting, with slight alterations they are able to be made fully-automatic, and they are capable of accepting magazines that hold 30, 50 or even 100 bullets. In short, these weapons have the same capacity as those that many Americans are trying to keep off our streets and out of the hands of criminals.

President William J. Clinton
September 17, 1997
Page Two

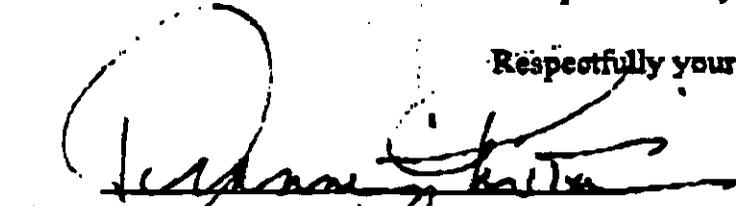
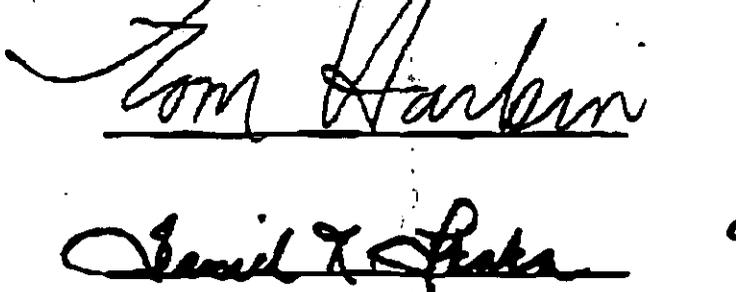
These weapons are not designed for hunting. Rather, they have become the weapon of choice for grievance killers, gangs, and those who use them against police. They are designed to kill large numbers in close combat, and as such have no place on the streets of a civilized society.

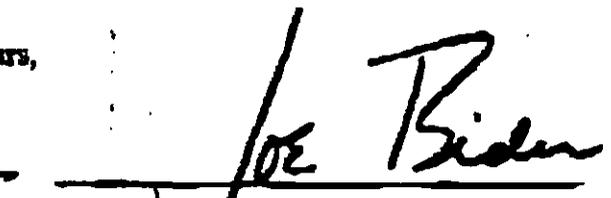
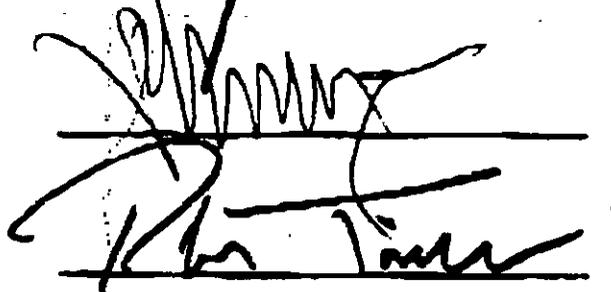
Mr. President, the 1994 Crime Bill included legislation that banned 19 specific types of semi-automatic assault weapons, including the Uzi and Galil. The Department of Justice reported that, from January, 1992 through May, 1995, 20 police officers were murdered with assault weapons. After implementation of the Crime Bill, since May of 1995, there has been only one killing of a police officer with an assault weapon, and the number of banned weapons traced to crimes has dropped precipitously.

Practically every other day there is another news report of incidents involving assault weapons used in bank robberies, drive-by shootings and revenge killings. A police officer in Tacoma, Washington was killed by an assault weapon just last month. We all saw on the CBS program *48 Hours* last week, the chilling footage of two bank robbers in Los Angeles who, dressed in full body armor and carrying assault weapons with thousands of rounds of ammunition, fearlessly took on more than 100 Los Angeles police officers. Outgunned officers were forced to borrow weapons from a nearby gun store to protect themselves.

Mr. President, we do not need more assault weapons on the streets of America. We urge you to use your executive authority as President to prevent this transfer of arms to American streets on behalf of public safety.

Respectfully yours,


Tom Harbo

Daniel J. Flaherty


Joe Biden

Robert Turner

President William J. Clinton
September 16, 1997
Page Three

Don Rubin

Paul Willston

Quidell Ford

Richard Reed

J. H. [unclear]

Dale Duggers

Bob [unclear]

Jim [unclear]

Frank [unclear]

Jim [unclear]

Jim [unclear]

Carl [unclear]

Christopher [unclear]

John H. [unclear]

Frank R. [unclear]

L. [unclear]

Mark [unclear]

John [unclear]

Herb [unclear]

Bob [unclear]



United States Senate
WASHINGTON, DC 20510-0504

Crime - ammo clips ; Crime - assault weapons
and
WR - child support

JOSE / ~~EX~~ / CR

September 17, 1997

Honorable William J. Clinton
President of the United States
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

Dear Mr. President:

Thank you for meeting with me on Monday to discuss the issues of assault weapons, the continued circulation of high-capacity ammunition clips, and the ability of the Bureau of Alcohol, Tobacco and Firearms to enforce our nation's Federal firearms laws. In addition, I appreciate your willingness to try to look into the issue of California and other states facing the possible loss of billions of dollars in Federal funds due to a delay in development of a child support enforcement system as required under the 1988 Family Support Act and Welfare Reform.

As a follow up to our meeting, let me reiterate what it is I am hoping we can each do to further our common goals.

Legislative on high-capacity ammunition magazines (HCMs) or imported HCMs.

I intend to introduce legislation that replaces the grandfather clause on high-capacity ammunition magazines in the 1994 Crime Bill with a prohibition on the commercial sale of HCMs manufactured prior to the ban. If passed by Congress, this will have the added effect of prohibiting the importation of high capacity clips as well. I am asking that you and your Administration support this effort and commit to use the power of your office to help bring this issue to the American people, in addition to helping me weigh in with key legislators for passage of this amendment. The legislation was drafted by Wilke Green of my staff, and he is prepared to brief your staff on the details of the legislation and the strategy for introduction.

Administrative Action on Imported HCMs

As we move forward on legislation addressing the issue of pre-ban large-capacity clips, I believe there is action you can take to suspend the importation of pre-ban clips. I urge you to issue a directive to the BATF to determine the manufacture date of imported clips prior to approval of any applications for import permits. If BATF is unable to determine with certainty the date of manufacture, the import permit should be denied.

interesting

?

President William J. Clinton
September 17, 1997
Page Two

Understanding that this directive will likely be challenged in court, I will help build the case in the Senate that the continued importation of these large-capacity clips violates both the spirit of the law and the intent of Congress, and will encourage my counterparts in the House of Representatives to do the same as I work toward passage of legislation to address this issue permanently.

Bureau of Alcohol, Tobacco and Firearms - Enforcement and Staffing

It is clear to me that however committed the BATF is to carry out our nation's gun laws, their enforcement ability has been hampered by inadequate staffing, statutory limits on their inspection authority, and internal policies that discourage inspections not relative to an on-going criminal investigation.

I am asking you to consider, in your FY 1999 Budget to Congress, an increase in funding for the BATF for the purpose of adding additional field inspectors. I am also requesting that you issue a directive to the BATF to change current internal policies prohibiting field inspectors from attending gun shows without their attendance being relative to a criminal investigation. Further, in your order, direct the BATF to proactively send field inspectors to gun shows for the purpose of enforcing Federal firearms laws and to serve as a deterrent to those who would violate the law. I pledge to work in the Senate to build support for your efforts to address both of these issues.

yes

Importation of Israeli Galils and Uzis

As we discussed, I sent a letter to Prime Minister Binyamin Netanyahu urging him to intervene in the planned export to the United States tens of thousands of modified Uzis and Galils by a government-owned munitions manufacturer, Israel Military Industries, Ltd. I am asking that you issue a directive to the Department of Treasury to suspend pending permits of these weapons until such time as a clarification can be made as to the suitability of these weapons for sporting purposes. This order would be modeled after a similar directive issued by the Treasury Department and supported by President Bush in 1989. In that order, President Bush suspended the pending import permits of 24 types of assault weapons in order to determine whether or not the weapons were suitable for sporting purposes under 18USC 925(d)3. I believe you have an opportunity to take the same action in this case.

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Further, I am requesting that you use diplomatic channels to persuade Israel, in the interest of public safety, not to export these weapons to the United States.

President William J. Clinton
September 17, 1997
Page Three

Child Support Enforcement System Automation

Finally, as we discussed, I am heartened by your willingness to do what you can to prevent California and other states from losing billions of dollars in federal funds, which include all of the states' Temporary Assistance for Needy Families (TANF) funds and the Child Support Enforcement System funds because these states will not meet the October 1, 1997 deadline as required under welfare reform.

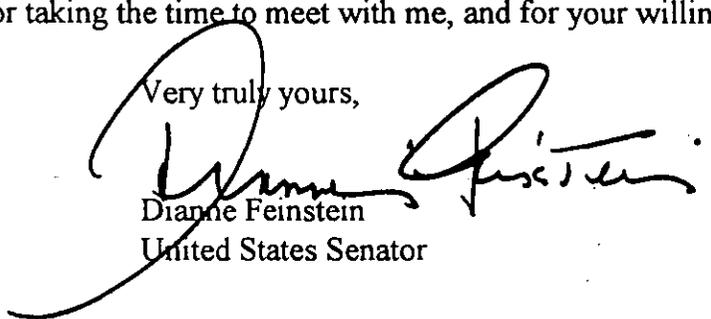
Without your intervention, California could lose \$3.7 billion in TANF funds and \$300 million in child support system funding. I am asking you to impose a temporary 6 month moratorium on the penalties for failure to meet the October 1st deadline in order to give California and other States the ability to implement their TANF programs and to improve their child support systems. California's state and local officials are making every effort to comply with the law as expeditiously as possible.

Mr. President, I know these issues are as important to you as they are to me. I understand the difficulty in addressing some of these firearms issues in a Republican Congress, but I am willing to do everything in my power to try, and I hope you will do the same.

I stand ready to assist you in every way, and I look forward to working with you, the Vice President, and others in your Administration to get the job done. The public stands behind you on this issue; of that I have no doubt. The rest is up to us.

If you would like to discuss this further, or if there are any questions you have, please do not hesitate to call me or have your staff contact Wilke Green of my staff at (202) 224-1227. Thank you again for taking the time to meet with me, and for your willingness to help.

Very truly yours,



Dianne Feinstein
United States Senator

cc: Vice President Al Gore
Thomas F. "Mack" McLarty, Counselor to the President
Erskine Bowles, White House Chief of Staff
Bruce Reed, Assistant to the President for Policy Development
Kay Casstevens, Office of the Vice President
Tracey Thornton, Special Assistant to the President for Legislative Affairs

Crime -
Assault weapons

Pre Ban Galil

Features:

1. Pistol Grip that extends conspicuously beneath the action of the weapon
2. Folding stock
3. Bayonet Mount
4. Flash Suppressor



9-15-97

Reed

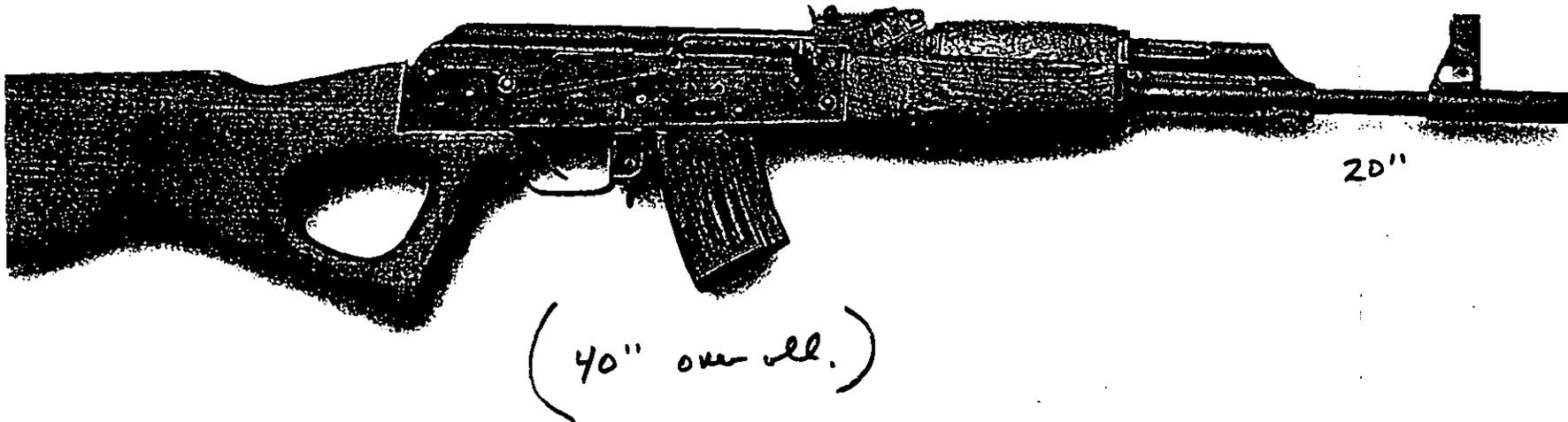
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Pre ban Galil

Post ban rifle based on the Galil design

Feature:

1. Pistol grip that extends conspicuously beneath action of weapon



NOTE: This weapon, a MAC-90, is very similar to the Galil recently approved for import. It is not that weapon exactly.

THE WHITE HOUSE

WASHINGTON

September 13, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: RAHM EMANUEL
BRUCE REED

RE: MEETING WITH SENATOR FEINSTEIN ON FIREARMS ISSUES

Senator Feinstein wants to discuss 3 firearms issues with you that were recently featured in an LA Times series criticizing the California and federal laws banning assault weapons. These include: (1) the importation of large capacity ammunition feeding devices; (2) "copycat" or "sporterized" assault weapons; and (3) enforcing federal firearms laws at gun shows. This memorandum summarizes these issues and provides some suggested talking points for your meeting.

I. LARGE CAPACITY AMMUNITION FEEDING DEVICES

The assault weapons ban generally prohibited the possession of ammunition clips with a capacity of more than 10 rounds, but specifically grandfathered clips manufactured on or before September 13, 1994. Initially, The Bureau of Alcohol, Tobacco and Firearms (ATF), with guidance from the Domestic Policy Council (DPC), interpreted this prohibition to include the continued importation of all large capacity clips -- no matter when they were manufactured. This interpretation was based on the fact that clips not in the country before the effective date could not have been lawfully possessed at that time and, thus, were banned from importation.

Several importers, however, brought suit challenging this narrow interpretation of the law, and the Department of Justice advised that the ATF/DPC position was not likely to hold up in court and should be reversed. As a result, in July of 1996, ATF reinterpreted the clip provision acknowledging that pre-ban clips could be imported, but requiring importers to present reasonable evidence that clips to be imported were manufactured on or before the ban's enactment. Thus, as of March 1, 1997, approximately 160,000 large capacity clips had entered the country under 21 approved permits; another 20 permits had been denied for lack of evidence; and a total of 83 approved permits seeking to import more than 2 million large clips remained outstanding. (NB: There are no definitive numbers about how many domestically produced clips have been grandfathered, but it is estimated that there are many millions of existing -- and reusable -- clips that will last a lifetime.)

Senator Feinstein opposed the language in the assault weapons ban grandfathering large clips and supports repealing it. This language, however, was inserted during the crime bill conference by Representative John Dingell, and Administration officials and Members of Congress involved in the negotiations have been reluctant to seek its repeal.

The Senator has also suggested that the Administration can, by executive order, further restrict the number of large clips imported or increase the number of ATF agents investigating the production of clips overseas. We are not optimistic about either of these options. First, as previously mentioned, the Department of Justice has already overturned the ATF/ DPC initial policy to ban the importation of all large clips. And second, ATF agents have no overseas jurisdiction to conduct investigations and can only do so by convention or through mutual assistance treaties with other countries.

II. "COPYCAT" OR "SPORTERIZED" ASSAULT WEAPONS

The assault weapons ban prohibits 19 specific firearms, duplicates of those 19 and other semiautomatic weapons that meet various criteria (i.e., those that accept a detachable magazine and possess characteristics such as folding stocks, bayonet lugs and flash suppressors). Since passage of the assault weapons ban, some gun manufacturers have adapted or "sporterized" their assault weapons to meet the law's criteria. As a result, there are guns on the market today with either similar names or certain similar features as assault weapons, but that otherwise comply with the terms of the ban. In fact, despite their appearance, some of these firearms -- such as the Israeli Military Industries Galil -- have been re-engineered and are considerably more difficult to convert to fully automatic than their previous versions. Nonetheless, a lucrative market still exists for "assault-type" weapons, and some manufactures -- either through brand names or appearances -- continue to target this segment of the market.

Senator Feinstein believes that we can do more to crack down on these new "copycat" versions of assault weapons. We do not think this is possible without additional authority from Congress. This was a limitation of the assault weapons ban that the Administration and Congress accepted when they decided to endorse the Feinstein/DeConcini approach over Representative Schumer's. The Schumer ban granted the Treasury Department the authority to add or delete firearms from the prohibited list.

III. ENFORCING FEDERAL FIREARMS LAWS AT GUN SHOWS

Gun shows and flea markets are the last bastion of unregulated and undocumented firearms transfers. Most participants are private gun owners who do not sell firearms for a living and are generally there to buy and sell from each others' private collections. As such, these secondary sales are generally exempt from most state and federal firearms laws, including the 1968 Gun Control Act that gives the Treasury Department the authority to license and regulate federal firearms dealers. However, anecdotal evidence repeatedly has shown that violations of state and federal firearms laws often do take place at these shows. Senator Feinstein believes that ATF should amend its internal policies and police these shows more aggressively.

As of March 16, 1994, ATF's policy on gun shows provides that agents must get authorization from their local Special Agent in Charge (SAC) and have an intended subject or target before they can attend a gun show. Prior to this date -- and in response to congressional hearings on ATF's policies -- ATF had an even more restrictive policy that required approval from the Washington headquarters before an agent could attend a gun show. This is no longer

the case, and ATF agents do attend gun shows in the course of investigations and to follow-up on tips from legitimate gun dealers. Additionally, ATF inspectors do attend and sponsor booths at all of the major gun shows -- those attended by manufacturers and gun dealers, not just private collectors -- and disseminate information on federal gun laws.

IV. SUGGESTED TALKING POINTS

- Senator, I share your concerns with respect to the assault weapons ban and am willing to use the full authority of the executive branch to make sure that we do our best to enforce the ban's provisions.
- In fact, on 3 separate occasions I have taken executive action to crack down on assault weapons and gun dealers. In August of 1993, I banned the importation of assault pistols and toughened requirements for federal gun dealers. And in May of 1994, for foreign policy reasons, I banned the importation of firearms from China -- including millions of assault-type weapons and large capacity clips.
- Equally important, we have tried to interpret the provisions of the ban on large capacity clips as strictly as possible, but litigation forced us to change our position.
- So, unfortunately, I think we will need to pass new legislation that expands Treasury's authority if we want to include more guns and more clips -- and you know that will not be easy. But I am pleased to ask Rahm Emanuel, Bruce Reed and our attorneys to take one more look at the law and your suggestions, and to see if there is anything more we can do short of legislation.
- With respect to gun shows, I think you have hit on an important issue. We have had much success through the Brady Bill, assault weapons ban and reforms to the federal firearms licensing system, and gun shows should not be allowed to undermine these efforts.
- Still, it seems that we have little authority in this area, and that Congress has a history of restricting ATF's ability to aggressively enforce our gun laws. But I agree with you that there must be more we can do. Again, I would like to ask Rahm and Bruce to do some research on this and see what administrative options are available to us -- to see what more we might be able to do in terms of federal enforcement at these shows.

*Crime - Assault weapons***DRAFT**

September 13, 1997

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