



The Bureau and the Bureau

A Review of the Bureau of Alcohol, Tobacco, Firearms and Explosives
and a Proposal to Merge It with the Federal Bureau of Investigation

Chelsea Parsons and Arkadi Gerney, with special advisor Mark D. Jones
and fiscal impact analysis by Elaine Kamarck

Spring 2015

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Chapter 1

Introduction and executive summary

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Introduction and executive summary

The Bureau of Alcohol, Tobacco, Firearms and Explosives, or ATF, is an accident of history. The origins of the modern ATF date back to the Civil War era, when Congress created the Office of Internal Revenue within the Department of the Treasury to collect taxes on spirits and tobacco products. In the decades that followed, ATF slowly acquired jurisdiction over additional areas in a sporadic, piecemeal fashion. Over the years, it has been the accidental repository for federal oversight and enforcement of various industries—alcohol and tobacco in the early 1900s, firearms in the 1930s, and explosives in the 1970s—as the need for such oversight has arisen. ATF slowly evolved from a pure tax collection agency with jurisdiction over one industry into a hybrid regulatory and law enforcement agency charged with the oversight of three of the nation’s most politically fraught consumer products: alcohol, tobacco, and firearms. But over the past 50 years—in the wake of the assassination of a president, his brother, and a civil rights icon and as a crime wave drove gun violence to unprecedented levels—firearms enforcement has become ATF’s primary mission.

Perhaps in part because of the sporadic way in which ATF’s jurisdiction has evolved, the agency has struggled to define a coherent and manageable mission and to implement effective protocols and policies to adequately fulfill that mission, particularly with respect to firearms regulation and enforcement. Asserting itself within the larger framework of federal law enforcement agencies has also posed a challenge for ATF. Periodically, efforts have been made to rebrand the agency or reimagine ATF’s role—including a significant restructuring of the agency as part of the Homeland

Security Act of 2002, which moved ATF from the Department of the Treasury to the Department of Justice, or DOJ—but none of these efforts succeeded in addressing all of the challenges facing the agency. These prior attempts to restructure ATF and refine its mission have been undertaken in an atmosphere of intense political scrutiny. After all, ATF is the lead federal agency tackling one of the nation’s most vexing and charged policy concerns: gun violence. And for the past two decades, that already challenging assignment has become even more difficult, as a series of controversies—the siege at Waco, the funding of its new headquarters, its operations at gun shows, and the Fast and Furious gun trafficking operation—have put ATF squarely in the crosshairs of congressional scrutiny and created opportunities for those in the gun lobby determined to debilitate the agency.

An unfortunate legacy of ATF’s evolution is that it suffers from an identity crisis. On the one hand, ATF at times envisions itself as the federal violent-crime police, addressing gun violence through the rubric of broader federal efforts to combat violent gang and drug-related crimes. But ATF was not originally designed to be a police agency and often lacks the internal management and oversight structure required for consistently effective federal law enforcement operations. On the other hand, ATF serves a crucial regulatory function as the sole federal agency responsible for overseeing the lawful commerce in firearms and explosives. Yet the agency has often channeled scarce resources away from the regulatory side of the house and has marginalized the regulatory personnel within the agency. This lack of a clear focus on either enforcement or regulation has prevented ATF from fulfilling any part of its mission quite well enough.

Highlighting the challenges that ATF faces is not just another idle exercise in criticizing the inefficient bureaucracy of the federal government. The problem of gun violence in the United States is urgent: Every day in America, assailants using guns murder 33 people.¹ It is imperative that the federal government takes action to enforce the laws designed to stem the tide of this violence and that it does more to ensure that guns do not end up in the hands of criminals and other dangerous individuals. ATF is the agency charged with that responsibility, and it is well past time for the administration and Congress to take a serious look at ATF and other federal law enforcement agencies to come up with a comprehensive plan to create a strong federal framework to combat gun violence and the illegal trafficking of firearms. While there have been remarkable reductions in violent crime across the country—driven in part by federal law enforcement’s partnerships with local police—illegal gun access continues to contribute to murder rates in the United States that far outpace those in comparable countries.²

The problem of gun crime in the United States and the daily toll of gun deaths on our communities warrant something new—a large-scale rethinking of how the federal government should address gun violence and illegal firearms trafficking and what ATF’s role should be in that effort.

As reformers in Congress and the administration consider options for how to make ATF function better, it is important to recognize that the agency is composed of dedicated, hardworking agents and civilian staff who do many things very well. In some respects, ATF has been a remarkably successful agency in recent decades. ATF agents as a group are exceptionally productive by traditional measures, especially when compared with agents at other federal law enforcement agencies. In 2013, ATF agents were remarkably productive in the development of cases for prosecution—outperforming Federal Bureau of Investigation, or FBI, agents 3-to-1—averaging 3.4 cases per agent referred to the U.S. Attorneys’ Office for prosecution for every 1 case per FBI agent.³ ATF agents, more so than most others in federal law enforcement, also have a strong reputation across the country for being assets and effective partners to local law enforcement agencies. ATF agents consistently offer real value and support to local police departments in their efforts to combat local gun crime. Furthermore, ATF has played a role in the overall decline in crime in recent years—the violent crime rate declined 19 percent between 2003 and 2012, and the murder rate declined 17 percent during that period—by taking thousands of violent criminals and gun and drug traffickers off the streets.⁴ Between 2005 and 2012, ATF referred more than 13,000 cases involving more than 27,000 defendants suspected of firearms trafficking to the U.S. Attorneys’ Office for prosecution.⁵

Despite these areas of success, ATF has faced some serious challenges in its efforts to be the federal agency charged with enforcing the nation’s gun laws, combating gun crime, and regulating the firearms industry. This report seeks to offer recommendations for how to improve federal enforcement and regulation of guns that recognize and build on the formidable assets that ATF already has—but it does so while recognizing that the status quo is not enough. Although ATF has had many successes, its capabilities are inadequate in relation to the scope of the gun crime challenge in the United States. Therefore, this report does not focus on a series of piecemeal recommendations to improve ATF’s current operations. Prior evaluations,⁶ including ones written by authors of this report,⁷ make such recommendations; some of them have been acted upon,⁸ and others would certainly offer substantial benefits to the functionality and success of the agency. But this report finds that something bigger needs to happen to address the challenges that ATF faces.

What is that something? It begins with a recognition that the United States already has the world's premiere national law enforcement agency: the FBI. This report concludes that ATF, both its personnel and its mission responsibilities, should be merged into the FBI. The FBI—bolstered by the agents, expertise, and resources of a subsumed ATF—should take over primary jurisdiction of federal firearms enforcement.

In addition to its focus on protecting the nation against terrorism, the FBI has jurisdiction over the enforcement of federal criminal laws and currently operates hundreds of initiatives and operations directed at various types of criminal activity, including violent crime. The FBI is a politically strong and well-respected agency and is therefore able to operate above the fray of politics with adequate funding and resources. The FBI director typically serves a 10-year term across presidencies and through numerous election cycles, which serves to shield the agency's work from the vicissitudes of elections, partisan politics, and interest group lobbying. And, as is relevant here, the FBI is already deeply involved in federal efforts to combat and prevent gun violence.

This report examines ATF's existing mission responsibilities and its track record of delivering results. It recommends that Congress and the Obama administration take action to merge ATF and the FBI and make ATF a subordinate division of that agency. This report finds that such action would help address the following three primary challenges that have plagued ATF for years: inadequate management, insufficient resources and burdensome restrictions, and lack of coordination.

Inadequate management

The haphazard way in which ATF has evolved over the years has contributed to fractured leadership at every level. At the highest level, the agency has been passed along from the Department of the Treasury, where it was housed in its current form for 30 years, to DOJ via the Homeland Security Act in 2002. In the more than a decade that ATF has been part of DOJ, it has not been adequately incorporated into the larger family of federal law enforcement agencies, and there has been insufficient oversight of its activities, particularly in the context of developing large-scale operations to address issues of national importance, such as gun trafficking to Mexico.

At the executive level within ATF, the agency has suffered from congressional efforts to keep it without a confirmed director. Prior to August 2013, ATF had been without a full-time, permanent leader for seven years. During that time, ATF was led by a series of acting directors, many of whom worked part time and remotely, while the Senate refused to seriously consider any nominee for director and simultaneously criticized the agency for its lack of leadership. Without a permanent, full-time director, ATF was stuck in limbo, unable to engage in long-term strategic planning and vulnerable to continuous attacks on its competency and effectiveness. While ATF had the benefit of a full-time, confirmed director for 20 months, with former Director B. Todd Jones' resignation at the end of March 2015, the agency is once again without permanent leadership and likely faces another lengthy period without a confirmed director as the politics of that nomination play out in the same manner as each previous nomination for the position.

There are also extensive management challenges present in other levels of the agency. The leadership vacuum is also apparent on the ground in the field divisions. Over the past 20 years, the agency has developed a culture of limited oversight and lack of accountability that has resulted in a structure of largely autonomous local field divisions that have too little connection to the executive leadership at the agency's headquarters or to each other. This decentralized structure at times has left room for innovation by the agency's many talented special agents and, in many offices, has resulted in strong investigative work. But too often, successful strategies in one field division are not transferred to other divisions—and worse, this autonomy has led to a culture of complacency in some field divisions, which has resulted in significant misjudgments and mistakes. Director Jones took important steps to address many of these management challenges, but these problems and the culture that underlies them have developed for decades. It may be beyond the capability of even an exceptionally qualified director to fix some of them.

These weaknesses in leadership throughout ATF have had a significant deleterious effect on morale within the agency. In 2004, ATF ranked 8th out of more than 200 agencies and departments in an annual survey of federal employees about the best offices to work for in the federal government.⁹ But by 2014, ATF had dropped to 148th out of 315 agencies and departments overall and ranked 279th out of 314 agencies for “effective leadership” of “senior leaders.”¹⁰ Director Jones himself noted the poor morale among the rank and file when he took over as acting director, describing ATF at that time as an “agency in distress” and saying that “[p]oor morale undermined the efforts of the overwhelming majority of ATF.”¹¹

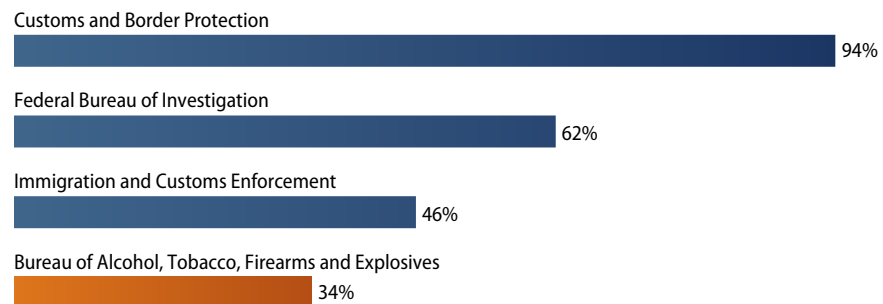
Insufficient resources and burdensome restrictions

ATF's primary responsibility is enforcing the nation's gun laws—a responsibility that puts the agency at the center of a political issue that has often been described as the “third rail” of American politics.¹² Particularly in the past two decades, the gun lobby, led by the National Rifle Association, or NRA, has sought to enforce an iron grip over Washington, using both its significant financial resources and its ability to mobilize its members to coerce and cajole Congress into doing its bidding. The NRA has focused its power on three related priorities: enacting laws that loosen or eliminate restrictions on gun owners, crippling ATF with budget restrictions so that it cannot effectively regulate the gun industry and enforce federal firearms laws, and limiting the resources available to ATF to enforce these weak laws under tight policy restrictions.

Too often, the gun lobby has succeeded in these efforts. ATF has watched as its budget has slowly stagnated over the past 10 years, even as the budgets of other federal law enforcement agencies have steadily increased. For example, between 2005 and 2014, the FBI's budget increased 62 percent, Immigration and Customs Enforcement's budget increased 46 percent, and Customs and Border Protection's budget increased 94 percent.¹³ In contrast, the budget for ATF increased from around \$878 million in 2005 to only \$1.18 billion in 2014, a modest increase of around 34 percent that, when adjusted for inflation, amounts to only a 10 percent increase.¹⁴

FIGURE 1
Federal law enforcement agency budgets

Percent increase in agency budgets, 2005–2014*



* Percent increase is in nominal terms.

Source: Center for American Progress analysis of budget information from the U.S. Department of Homeland Security, the Federal Bureau of Investigation, the Drug Enforcement Administration, and the Bureau of Alcohol, Tobacco, Firearms and Explosives.

This budget environment means that ATF is significantly underresourced, both compared with other law enforcement agencies and with its own staffing levels of a few years ago. In 2014, ATF employed 2,490 special agents—only 173 more agents than the agency employed in 2001.¹⁵ The number of ATF agents currently in the field nationwide investigating gun crime and illegal firearm trafficking is less than the individual police forces of Dallas, Texas;¹⁶ Washington, D.C.;¹⁷ and many other major metropolitan police departments,¹⁸ making it nearly impossible for these agents to adequately address gun crime across the country. The regulatory side of the house is in even more dire shape. In 2014, ATF employed only 780 investigators to regulate the nation’s firearms manufacturers, importers, and dealers, as well as the explosives industry.¹⁹ That is 18.8 percent fewer investigators than the agency employed in 2001, yet the size of the industry they are charged with regulating grew substantially during the same period.²⁰

In addition to these budget shortfalls, ATF is also hamstrung by a series of riders to annual appropriations legislation that have hobbled the agency and limited its ability to fulfill even the most basic parts of its mission. These riders, which number more than a dozen, have been tacked onto appropriations legislation at the behest of the gun lobby and impose severe restrictions on ATF’s activities, including limitations on ATF’s ability to manage its data in a modern and efficient manner, measures that interfere with the disclosure and use of data critical to law enforcement and public health research, and prohibitions on activities to regulate and oversee firearms dealers.²¹ Merging ATF into the FBI would have the immediate effect of voiding these dangerous and unnecessary budget restrictions—and, more broadly, the merger would help insulate the mission of enforcing federal gun laws from political interference while helping provide a new infusion of resources.

Lack of coordination

Gun crime presents an exceedingly complicated challenge. There are an estimated 300 million guns in private hands in the United States,²² and gun ownership is a strong tradition in our country’s history that is protected by the Second Amendment to the U.S. Constitution.²³ While America experiences violent crime rates similar to other comparable nations, it has extraordinarily high rates of murder and gun crimes. Effectively combating this gun crime and preventing future gun violence is further complicated by the facts that gun laws vary widely across states and gun violence is often intertwined with other criminal activity, such as gang violence

and illegal drug trafficking. In order to be effective, therefore, ATF must be able to coordinate with local law enforcement agencies to identify the individuals responsible for gun violence in a community, apprehend such individuals, and obtain information from them regarding from where the illegal guns are coming.

By and large, ATF is quite effective at this type of coordination. However, a significant portion of gun-related crime has an interstate element. For example, in 2009, 30 percent of guns that were recovered from crimes and could be traced had originally been purchased in another state.²⁴ For this reason, there must also be a strong federal law enforcement agency to take the lead on investigating this type of multijurisdictional criminal problem. In recent years, ATF has made an effort to position itself as this agency, asserting that it is the primary federal law enforcement agency addressing violent crime, including gun crime, in communities around the country.

Efforts to paint ATF as the federal violent-crime police put it in tension with the mission of the FBI, which is in part “to uphold and enforce the criminal laws of the United States.”²⁵ This conflict is more than just semantic. There exists considerable overlap between the work and resources of ATF and the FBI in the areas of guns, explosives, and violent crime. For example, the FBI has a well-established anti-gang initiative that targets violent street gangs across the country. But ATF has also targeted violent gangs for investigation because of their use of guns in crimes and often works with local law enforcement to bring gang-related cases to federal court. The FBI operates the National Instant Criminal Background Check System used for gun sales by federally licensed dealers, but ATF operates the regulatory system that issues those licenses and the database for tracing crime guns. Both agencies have extensive training programs for explosives forensics and investigations, and both agencies operate numerous forensic laboratories that process evidence from violent crime scenes. Both agencies have specially trained response teams to handle emergencies such as hostage-taking, serious explosive-related incidents, and large-scale special events such as the Super Bowl.

Despite the significant overlap in the mission, resources, and expertise of these two agencies with respect to firearms enforcement, explosives, and violent crime, ATF and the FBI have been unable to consistently and effectively collaborate to define a singular plan for combating gun violence and illegal gun trafficking in the United States—or such a plan around explosives investigations. Many attempts to improve coordination have been made by the leaders of both agencies, and all have failed to truly solve the problem. Indeed, the relationship between the two agencies has often been characterized more by competition over cases and turf battles than by collaboration and cooperation. Finding a way to foster such collaboration would

have two significant benefits. First, combining the assets of these two agencies would reduce overlap and waste and would provide some cost savings at a time when all government agencies are struggling to maintain budgets. And merging the expertise of these two agencies would result in more effective and successful enforcement of federal firearms and explosives laws and a better approach to combat violent crime.

Recommendations

The proposal to merge ATF into the FBI is not a reactionary proposal aimed at “fixing” ATF based on its most recent political or organizational challenges. Rather, this proposal is offered in an attempt to define a fresh vision of how the federal government could best address the issue of gun violence in this country. If we were to start from scratch, how would we structure federal law enforcement to most effectively enforce criminal gun laws and regulate the gun industry? We would almost certainly create one central law enforcement agency charged with that mission and would ensure that this agency had adequate resources and the political support necessary to succeed. We would take steps to minimize agency overlap and jurisdictional confusion and would position that one federal agency to enhance the work of local law enforcement to combat violent crime and ensure that guns do not end up in the hands of dangerous people. And we would structure that agency to provide strong leadership, management, oversight, and accountability to ensure that its enforcement activities were successful. Merging ATF into the FBI is a way of creating this kind of agency. This merger would also enhance ATF’s other mission areas, particularly explosives, arson, and emergency response.

The recommendations made in this report are the result of an 18-month investigation into ATF: what is working, what is lacking, and what the agency would need to be truly successful. The information contained herein comes from an extensive review of publicly available information about ATF and the FBI, as well as interviews with more than 50 current and former employees of both agencies and those who supported or supervised ATF and the FBI at the Justice and Treasury departments. The authors also spoke with congressional staff charged with overseeing ATF, local law enforcement officials, researchers who have studied gun crime, and other persons whose knowledge and experience might offer insight. In many cases that involve current and former agents and employees of ATF, the FBI, and the Justice Department, information is presented here anonymously to protect the confidentiality of sources—particularly those who continue to work for the federal government and were thus not authorized to speak to the authors.

In the pages that follow, we provide a detailed examination of ATF and other aspects of federal firearms enforcement that includes:

- A brief history of ATF to place its current challenges in context
- A description of the key mission activities that the agency currently undertakes
- A discussion of the three key challenges facing the agency—leadership, resources and restrictions, and coordination—in the context of those mission activities

We then offer one core recommendation for changing the way the federal government approaches firearms enforcement and regulation to better protect public safety and reduce gun violence: merging ATF into the FBI.

We do not make the core recommendation of this report lightly and recognize that operationalizing this type of agency restructuring would be challenging and time consuming. History has shown that large-scale reorganizations of wide swaths of the federal government often look much better on paper than in practice.²⁶ Certainly, there would be resistance and apprehension by members of each agency, both of which would be wary of the challenges presented by such a reorganization. And there is a risk that a poorly executed merger would create more problems than it would solve. But the problem of gun violence in the United States warrants this kind of large-scale rethinking of how federal law enforcement can better address this issue. In the view of the authors, the potential benefits outweigh the potential risks. The gun violence challenge is simply too important to be satisfied with the status quo, and it warrants big thinking and creative solutions. In this report, we strive to offer one such solution.

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Chapter 2

History of ATF

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History of ATF

Before we can examine the current operations of the Bureau of Alcohol, Tobacco, Firearms and Explosives and offer a path toward a better approach to federal firearms enforcement, we need to understand how the agency charged with enforcing firearms laws came upon the obstacles it has encountered. The challenges in management, resources, and coordination that ATF confronts today are better understood through the lens of the peculiar nature of the evolution of ATF’s jurisdiction and the changing political climate in the United States over the past century with regard to guns and gun violence. Understanding how we got here is crucial to the development of a comprehensive solution for effective federal enforcement of firearms laws.

The early years

The modern-day ATF has its roots in the civil agency created in the 1860s to collect taxes on alcohol and spirits—the Treasury Department Office of Internal Revenue, which gained its first law enforcement authority in 1863, when Congress authorized it to hire “three detectives to aid in the prevention, detection and punishment of tax evaders.”¹ The need for enforcement of federal laws regulating the alcohol industry gained new urgency following the enactment of the 18th Amendment in 1919. The Prohibition ban on manufacturing, selling, and transporting alcohol gave rise to a new class of organized criminals focused on violating it.² The Prohibition era also saw a significant rise in violence: By 1926, there were

more than 12,000 murders per year in the United States—twice the 2013 murder rate³—and many of these homicides were tied to organized crime.⁴ The most famous ATF special agent, Eliot Ness, became known for his work to take down one of the most notorious criminal figures of this period, Al Capone.⁵ Meanwhile, the Federal Bureau of Investigation, which was created in 1908, was undergoing its own transformation into a professionalized law enforcement agency poised to address the rising crime problems facing the nation with another legend of American law enforcement at its helm: J. Edgar Hoover.⁶

Despite the repeal of Prohibition in 1933, the threat of violence by the organized criminal networks that flourished during that period persisted, and these groups were increasingly well armed. An iconic image of the era showed a gangster firing a “Tommy gun,” the fully automatic Thompson submachine gun. In 1934, Congress enacted the National Firearms Act, which required the registration of certain types of firearms, including machine guns and short-barreled shotguns, and imposed a tax on the commerce in firearms.⁷ Although state and local laws regulating firearms were common at the time, the 1934 Firearms Act was the first major federal law that regulated commerce in guns, and Congress gave ATF the authority to implement and enforce this law.⁸

Rise in violent crime and concern about guns

Concern over gun violence was renewed in the 1960s and 1970s, as violent crime rates shot up across the country.⁹ The pressure on Congress to do something about gun violence also rose following the assassinations of President John F. Kennedy, Sen. Robert Kennedy (D-NY), and the Rev. Dr. Martin Luther King Jr. In 1968, Congress responded by passing the Gun Control Act, which for the first time established federal guidelines on who was eligible to purchase and possess firearms.¹⁰ The law prohibited certain presumptively dangerous individuals from gun possession—such as convicted felons, fugitives, and the mentally ill—and imposed a license requirement on individuals seeking to sell guns as firearms dealers.¹¹ In his remarks at the signing ceremony, President Lyndon B. Johnson hailed the legislation, saying, “Today we begin to disarm the criminal and the careless and the insane. All of our people who are deeply concerned in this country about law and order should hail this day.”¹² The passage of this law created the obligation to ensure its enforcement, and this duty was assigned to ATF.¹³ In 1970, in response to a wave of political violence and bombings, Congress passed the Explosives Control Act, which similarly created a federal oversight structure for the possession and sale of explosives and vested the authority for enforcing the law in ATF.¹⁴

The restrictions on gun possession by dangerous individuals gave law enforcement an important new tool to arrest, prosecute, and imprison felons and other prohibited people caught illegally carrying a gun, but there was no process in place to stop felons from actually buying guns. Those looking to purchase a firearm were required to fill out a form indicating that they were not prohibited from owning a gun, but this process operated largely on the honor system for 25 years in the absence of a mechanism for sellers to verify that a prospective purchaser was legally entitled to possess a gun. The need for such a system was brought into sharp relief following the attempted assassination of President Ronald Reagan and the shooting of three others on March 30, 1981. The shooter, John Hinckley Jr., had a history of mental illness but was able to purchase a gun from a pawnshop without a background check.¹⁵

In 1993, Congress passed the Brady Handgun Violence Prevention Act, which was named for the late James Brady, President Reagan's press secretary who was grievously wounded during the 1981 assassination attempt. The law required federally licensed gun dealers to conduct background checks before completing gun sales and created the National Instant Criminal Background Check System, or NICS, to facilitate such checks.¹⁶ This time, rather than empowering ATF with the authority to implement this law, the responsibility for creating and operating NICS was vested in the attorney general. NICS was created and launched by the FBI in November 1998,¹⁷ and from this point forward, both ATF and the FBI have had central roles in regulating the lawful commerce of firearms.

ATF gains notoriety and political foes

In the years following the passage of the Gun Control Act in 1968 and the implementation of the licensing system for gun dealers, ATF gained a new adversary: the National Rifle Association. The NRA was originally founded in the aftermath of the Civil War to improve marksmanship and existed for a century as a recreational sportsmen's organization. However, priorities within some factions inside the organization shifted following the passage of the Gun Control Act and subsequent increased federal activity to regulate commerce in firearms. Tension within the organization came to a head at the NRA's annual meeting in Cincinnati, Ohio, in 1977, and an internal coup resulted in its leadership being taken over by a group of hardliners focused on protecting Second Amendment rights and fighting any efforts to enact laws regulating guns.¹⁸ Following this shift in priorities, the NRA began to amass political power on a national level and to keep an eye on the federal agency charged with the oversight of guns: ATF.

The newly reimagined NRA first set its sights on the Gun Control Act and lobbied for years to roll back some of its provisions.¹⁹ It finally succeeded in May 1986, and the Firearm Owners' Protection Act, or FOPA, was signed into law. This law, among other things, provided a more lenient definition of what qualified as being “engaged in the business” of selling guns for the purpose of determining who must obtain a federal firearms license, prohibited ATF from inspecting gun dealers more than once per year, permitted licensed dealers to sell guns outside their business premises at gun shows, and prohibited the federal government from creating a registry of gun sales.²⁰ However, FOPA was not a total victory for the NRA, as an amendment was added that prohibited the sale of machine guns to civilians other than those already in circulation at the time the law was enacted.²¹

Two flawed operations in the early 1990s gave the NRA more fuel in its campaign to restrict ATF. The first occurred in August 1992 in Ruby Ridge, Idaho, when agents from the U.S. Marshals Service and the FBI made numerous missteps in their attempt to execute an ATF arrest warrant for Randy Weaver that resulted in a 10-day siege and the death of Weaver's wife and teenage son, as well as a deputy U.S. Marshal.²² The second occurred six months later in Waco, Texas, when ATF agents attempted to execute a search warrant on David Koresh at his Branch Davidian compound. The biggest gunfight with federal officers in U.S. history ensued: Four ATF agents were killed, 16 were wounded, and five Branch Davidians died during the initial gunfight. A 51-day siege followed that ended when federal agents fired tear gas into the compound, which provoked Koresh and his followers to set fire to it, killing 76 people inside.²³

The NRA publicly criticized ATF for both of these incidents. In a fundraising letter following the siege at Waco, NRA President Wayne LaPierre called federal agents “jack-booted thugs” and described them as “wearing Nazi bucket helmets and black storm trooper uniforms” and wanting to “attack law abiding citizens.”²⁴ LaPierre and the NRA later apologized for the remarks,²⁵ but these incidents and the NRA's use of them to attack the government regulation of firearms marked a turning point in the history of ATF. The agency was under a microscope, and any missteps were sure to be scrutinized at a national level. But instead of destroying ATF, the incident at Waco and these subsequent, heated attacks on ATF had the effect of strengthening the administration's support for the agency.

Transition from Treasury to Justice and rebranding

Following the events of September 11, 2001, terrorism was deemed the most exigent threat to national security, and many federal law enforcement agencies, particularly the FBI, shifted their priorities away from traditional criminal enforcement to a focus on terrorism. In 2002, Congress passed the Homeland Security Act, which constituted the most sweeping realignment of federal resources since World War II. The act created the Department of Homeland Security, or DHS, and combined all or part of 22 different federal departments and agencies under its jurisdiction.²⁶

As part of the Homeland Security Act, Congress also transferred the law enforcement and regulatory functions of ATF from the Department of the Treasury to the Department of Justice. The legislation empowered the attorney general to appoint a director of the new agency and endowed the agency with the responsibility of investigating “criminal and regulatory violations of the Federal firearms, explosives, arson, alcohol, and tobacco smuggling laws,” as well as “any other function related to the investigation of violent crime or domestic terrorism” delegated to ATF by the attorney general.²⁷ This legislation also changed the name of the agency to the Bureau of Alcohol, Tobacco, Firearms and Explosives. The tax collection functions of the agency remained at the Treasury Department in the newly created Tax and Trade Bureau.²⁸

Although this move was touted by ATF as “integrating and enhancing the federal government’s law enforcement operations,”²⁹ the transition from the Treasury Department to DOJ proved to be a less-than-seamless one. Trouble began before the Homeland Security Act had even passed Congress. During the discussion and debate over the creation of DHS and the role of other law enforcement agencies in the new federal framework to address terrorism and violent crime, the idea of moving ATF out of the Treasury Department began to take shape. Some within the FBI were not pleased. In November 2002, a report purportedly written by management-level individuals at the FBI and leaked to members of Congress strongly criticized ATF and its agents, arguing that ATF should not become a DOJ agency.³⁰ The report asserted that “due to the ATF’s lack of strategic vision and sole jurisdiction mission, they have ‘crept’ into areas beyond their mandate.”³¹ The report also attacked ATF agents, asserting that they lacked training and experience and had shown a “disregard for safety.”³² The report concluded that the FBI should remain as the primary federal criminal investigative agency and that giving ATF any of that power would be “unwarranted and counterproductive.”³³ Although FBI officials disclaimed the report and asserted that it did not reflect the official policy or position of the agency or its director,³⁴ the damage was already done, and many at ATF had their hackles up following its release.

Following the enactment of the Homeland Security Act and ATF's transfer to DOJ, officials at ATF went to work trying to assimilate into their new parent department. However, because the inclusion of ATF in the Homeland Security restructure was largely an afterthought and attention at DOJ in the aftermath of 9/11 was focused on national security and terrorism, relatively little thought was given to the successful integration of ATF into the larger framework of federal law enforcement. ATF was given a discrete role to play in the federal strategy for responding to terrorism under the new National Response Framework that standardized and coordinated emergency response protocol: ATF was designated as the lead agency to manage Emergency Support Function #13, or ESF 13, which is intended to coordinate public safety and security capabilities and resources during a national disaster or act of terrorism.³⁵ This quickly became DOJ's main interest in ATF. A former high-ranking ATF supervisory special agent with firsthand knowledge stated that, "During interagency meetings at DOJ, no one wanted to hear about ATF unless it had to do with ESF 13 or was something related to national security."³⁶

The combination of this single-minded focus on national security—traditionally not an area in which ATF was involved—and DOJ's failure to fully consider how moving ATF under DOJ could improve federal efforts to enforce gun laws and prevent gun crime led to ATF being marginalized and largely ignored by its parent department and left on its own to figure out how to fulfill its mission.

Continued NRA efforts to undermine ATF

The NRA continued its campaign to undermine ATF following its move to DOJ. It achieved a significant victory beginning in 2004, as amendments that imposed numerous restrictions on ATF were added to the budget appropriations bills for fiscal years 2004, 2005, and 2006. These amendments—known collectively as the Tiahrt Amendments, named after their original sponsor, Rep. Todd Tiahrt (R-KS)—imposed strict restrictions on ATF's use of crime-gun trace data, prohibited ATF from requiring gun dealers to conduct an annual inventory reconciliation, and mandated the destruction of NICS data within 24 hours for approved sales.³⁷ These amendments, along with a host of other restrictions imposed on ATF through the vehicle of riders to appropriations legislation over the past 20 years, have significantly hampered ATF's ability to adequately regulate the firearms industry and enforce federal gun laws.³⁸

The gun lobby also engaged in other efforts to cripple ATF. In 2006, the NRA successfully lobbied for an amendment to the USA PATRIOT Act reauthorization legislation that transformed the ATF director position from one that was a simple appointment by the attorney general to one that required confirmation by the Senate.³⁹ While the sponsor of this provision, Rep. Jim Sensenbrenner (R-WI), argued that this change was designed to “give ATF more stature and credibility” and “was an attempt to strengthen the agency after some high-profile failures,”⁴⁰ the effect instead was to further politicize an already politically fraught agency and give the firearms industry unprecedented veto power over any nominee.

The gun lobby wasted no time exercising this veto. The first attempt to obtain Senate approval for an ATF director nominee came following ATF Director Carl Truscott’s resignation from the position in August 2006.⁴¹ President George W. Bush nominated Michael Sullivan, the U.S. attorney for the District of Massachusetts, to replace Truscott and named Sullivan as acting director pending Senate action on his nomination.⁴² Sullivan’s nomination was approved by the Senate Judiciary Committee in November 2007 before being held up by three senators—Sens. Larry Craig (R-ID), Mike Crapo (R-ID), and David Vitter (R-LA)—who were concerned about ATF’s enforcement of laws and regulations regarding record keeping by federally licensed gun dealers.⁴³ The senators did not express any concerns about Sullivan’s ability to effectively lead the agency but rather questioned the regulatory function of ATF itself.⁴⁴ Groups such as the NRA⁴⁵ and Gun Owners of America,⁴⁶ a still more extreme advocacy group, strongly opposed Sullivan’s nomination, and their efforts succeeded in stalling his nomination permanently. Sullivan resigned as acting director of ATF effective January 20, 2009, the day President Barack Obama was inaugurated for his first term.⁴⁷ Sullivan’s nomination never received a vote by the full Senate.

FIGURE 2
ATF directors, 1982–present

Name	Years as director	Director status
Stephen Higgins	1982–1993	Permanent
John W. Magaw	1993–1999	Permanent
Bradley A. Buckles	1999–2004	Permanent
Carl J. Truscott	2004–2006	Permanent
Michael J. Sullivan	August 2006–January 2009	Acting
Ronnie A. Carter	January 2009–April 2009	Acting
Kenneth E. Melson	April 2009–August 2011	Acting
B. Todd Jones	August 2011–March 2015	Acting until August 2013, permanent as of August 2013
Thomas Brandon	April 2015–present	Acting

Note: Edgar A. Domenech also served as acting director of ATF during two brief periods: from January to April 2004 and again in August 2006. Sources: WorldStatesmen.org, "United States Government: Bureau of Alcohol, Tobacco, Firearms and Explosives," available at http://www.worldstatesmen.org/USA_govt.html#atf (last accessed March 2014); Bureau of Alcohol, Tobacco, Firearms and Explosives, "ATF Announces B. Todd Jones to Depart," Press release, March 20, 2015, available at <http://www.atf.gov/content/atf-announces-b-todd-jones-depart>.

Upon taking office, President Obama appointed Kenneth Melson as acting director of ATF⁴⁸ and waited nearly two years before nominating Andrew Traver, a senior ATF agent, to be the permanent ATF director.⁴⁹ The NRA immediately jumped in to oppose Traver's nomination,⁵⁰ and the Senate failed to take any action on the nomination.⁵¹ Following inauguration for his second term, President Obama made his second nomination for ATF director, B. Todd Jones, the U.S. attorney for the District of Minnesota, who had been serving as the part-time acting director of ATF since Melson's resignation in August 2011.⁵² As with previous nominees, Jones faced skepticism and criticism in the Senate.⁵³ Despite vigorous attempts by Sen. Chuck Grassley (R-IA) to block the nomination,⁵⁴ in the wake of the shooting at Sandy Hook Elementary School in Newtown, Connecticut, Senate leadership persisted in moving Jones' nomination and put it up for a vote on July 31, 2013. Unlike previous nominees, the NRA ultimately chose to stay neutral on Jones, which removed a significant perceived detriment to voting in favor of the nomination.⁵⁵ Jones was ultimately confirmed by a vote of 53 to 42.⁵⁶

During the 2,549 days that ATF operated without a confirmed director, the agency trudged along under the temporary and often part-time leadership of a series of acting directors. ATF had five acting directors during this period, none of whom served for longer than three years.⁵⁷ This lack of permanent, long-term leadership had a deleterious effect on the agency. First, the lack of a permanent director meant that the agency could not effectively engage in any strategic long-term planning. According to former ATF Assistant Director Michael Bouchard, a permanent director is necessary for long-term planning and to foster a culture of

accountability: “You need somebody there who has ownership and is going to be there for the long haul and can start projecting a couple years out, versus people who are just brought in for a temporary fix.”⁵⁸ Another former assistant director, Malcolm Brady, articulated the problem with acting leadership, saying, “An acting director is never really the director. You want someone who has the authority to lead, and the ability to work with both Congress and the NRA.”⁵⁹

Director Jones resigned from ATF at the end of March 2015, 20 months after his confirmation. Deputy Director Thomas Brandon has been named acting director in the interim.⁶⁰ It remains to be seen whether the Obama administration will nominate a new permanent ATF director to lead the agency for the remaining months of the second term; however, if history provides any guidance, it is unlikely that the Senate will confirm any nominee the president chooses.

Previous efforts to restructure ATF

We are certainly not the first to suggest a major restructuring of ATF and a merger of ATF into another agency. As far back as the late 1970s, leaders in Washington, D.C., were having conversations about what to do with ATF. Former President Jimmy Carter considered moving ATF into the Customs Service, under the reasoning that both were, at that time, under the authority of the Treasury Department and had a combination of regulatory and enforcement duties.⁶¹ During his campaign, President Reagan promised to abolish ATF,⁶² and early in his first term, he explored options to fulfill this promise by severing the regulatory and enforcement functions of the agency and moving the former to the Internal Revenue Service and the latter to the Secret Service.⁶³ This proposal was floated for a number of years during President Reagan’s first term; during this time, ATF suffered severe budget cuts and widespread agent resignations—more than 1,000 ATF employees left the agency in a single year—as everyone began to view ATF as an agency in decline.⁶⁴ The proposal was ultimately abandoned after the NRA—which had originally lobbied vigorously in favor of eliminating ATF—lobbied against moving the law enforcement function to a stronger agency such as the Secret Service in favor of leaving ATF in its existing, weakened state.⁶⁵

During the first term of the Clinton administration, Vice President Al Gore led another examination of consolidation of ATF into a federal law enforcement agency.⁶⁶ Gore’s National Performance Review in 1993 recommended that the DEA and ATF be merged into the FBI, reasoning that such a move would end “fragmentation and jurisdictional overlap” between the agencies and “will result in a more unified, comprehensive and coordinated attack on criminal enterprises.”⁶⁷

In 1993, Rep. John Conyers Jr. (D-MI) introduced a bill that would have transferred the firearms regulation function of ATF to the FBI.⁶⁸ In 1994, the Clinton White House also considered decreasing the size of ATF by one-quarter—eliminating more than 500 employees—and sending block grants to the states to enforce federal firearms laws.⁶⁹ However, in the wake of the incident at Waco, the administration changed course from this plan and threw its support behind the agency at a time when it was particularly politically vulnerable.⁷⁰

A failed operation and renewed national scrutiny

The national spotlight focused once again on ATF in 2011, following revelations about the ill-conceived Operation Fast and Furious through which hundreds of firearms were allowed to cross the border into Mexico by operatives of drug cartels, all under the watchful eye of ATF. This operation and the numerous failures inherent in its conception and execution are discussed in detail later in this report. Fast and Furious heralded a new era of national scrutiny of ATF. The DOJ inspector general conducted an exhaustive review of the operation and issued a 500-page report that covered the mistakes made by ATF at all levels in excruciating detail.⁷¹ The House Committee on Oversight and Government Reform also conducted a multiyear investigation into Fast and Furious, and both the majority and minority members on that committee have issued reports about the failed operation.⁷²

In the wake of Fast and Furious, there has been increased attention on ATF, as well as on DOJ's oversight of the agency. Rep. Darrell Issa (R-CA), former chairman of the Oversight Committee and a primary driver of the Fast and Furious investigation, has been a particularly vocal critic of the current approach to federal firearms enforcement and has suggested that ATF be merged into the FBI.⁷³ Rep. Issa has also recognized the role of other agencies in the failures that are often blamed on ATF:

The ATF is not a single organization that runs its show. The ATF is always teamed in these other organizations and so ... you've got a host of other people and then they point at ATF at the end. And that's why I say that reorganization is inevitable. That reorganization might create a more stable and larger ATF. I just say that we can't have what we have now, which is no one accountable in these large, joint events.⁷⁴

Most recently, in September 2014, Rep. Sensenbrenner again raised the question of whether ATF should be eliminated by introducing the ATF Elimination Act, a bill that would dismantle ATF and transfer its firearms and explosives enforcement and regulatory mission to the FBI and the enforcement of violations related to alcohol and tobacco to the Drug Enforcement Administration, or DEA. Rep. Sensenbrenner reintroduced this bill in March 2015.⁷⁵

In light of the increased attention on ATF, this moment in history provides a unique opportunity to take a close look at the agency's stated mission, its current activities aimed at fulfilling that mission, and the areas in which the agency is facing significant challenges. We can learn a few lessons from reviewing the history of ATF.

First, the agency exists in its current form as the result of a series of responses to crises and emerging problems rather than a thoughtful and comprehensive review of what the agency should be, how it should be structured, and what its mission and jurisdiction should encompass. Second, it has been difficult for ATF to make any large-scale changes and get a fresh start because of the persistent efforts of the NRA and others in the gun lobby to undermine and cripple the agency and its work. Third, it is crucial that there be a strong, effective federal law enforcement agency responsible for enforcing gun laws, regulating the firearms industry, and working to prevent violent gun crime.

It is with these lessons in mind that we turn to an examination of ATF's current mission and activities.

Current mission and activities

The primary mission of ATF is to police the illegal market for guns and target the violent offenders who use guns in crimes.⁷⁶ Director Jones highlighted the primacy of guns in ATF's work shortly after his confirmation: "[O]ver the years, we have assumed additional jurisdictional reaches, arson, explosives. But at the core of what we do is really to regulate the legal commerce in firearms and to work to enforce the Gun Control Act when those firearms migrate into the black market or the illegal market. And that's a tall task."⁷⁷ Despite the numerous challenges and restrictions the agency has faced over the years, the dedicated agents and investigators at ATF have been remarkably productive and successful.

The agency engages in four basic activities to fulfill this part of its mission, with varying levels of success:

- ATF monitors the illegal interstate trafficking in guns and develops criminal investigations that target interstate gun trafficking.
- ATF investigates—or ought to effectively investigate—special venues that enable the diversion of guns into the illegal market: gun shows and the Internet.
- ATF focuses criminal investigative resources on identifying, investigating, and apprehending the most dangerous end users of firearms in partnership with local law enforcement.
- ATF regulates the firearms industry and conducts oversight to ensure compliance with the law by federal firearms licensees.

In addition to its firearms-related work, ATF also has some secondary responsibilities through which it has developed special capabilities. These secondary mission areas include:

- Regulating the explosives industry and sharing jurisdiction with the FBI to investigate explosives incidents
- Investigating major arson incidents and operating four National Response Teams, which are emergency response units placed around the country and poised to quickly respond to large-scale arson or explosives incidents
- Addressing, to a limited extent, the trafficking of contraband alcohol and tobacco products

In each of these activity areas, talented ATF special agents and investigators are engaged in innovative and effective police and regulatory work to address these complex problems. But despite the best efforts of some in the field, ATF is struggling to successfully fulfill its core functions for the three basic reasons described above:

- Inadequate oversight and accountability throughout the agency
- Limited resources and operating restrictions
- Lack of effective coordination with other law enforcement agencies, particularly the FBI

In the next sections of this report, we discuss these challenges in the context of ATF's core mission and activities.

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Chapter 3

Interstate gun trafficking

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Interstate gun trafficking

As former Director Bradley Buckles noted in his foreword to the Bureau of Alcohol, Tobacco, Firearms and Explosives' 2000 report on firearms trafficking, nearly every gun used in a crime was first a legal gun sold through legitimate channels.¹ Following this first legal purchase, however, a significant number of guns are diverted from the legal market into secondary, illegal gun markets and end up in the hands of criminals. Criminals use a number of methods to illegally obtain guns for use and resale in this secondary market, including buying guns from corrupt dealers, engaging straw purchasers to buy guns on their behalf, stealing guns, and purchasing guns from unlicensed private sellers who are not required to conduct background checks.² Additionally, the inconsistent patchwork of gun laws across states creates numerous opportunities for gun traffickers to buy guns in states with weak gun laws and illegally transport them to states with stronger laws, where it is more difficult for criminals to acquire guns.

ATF is on the frontlines of policing illegal gun trafficking, yet it is expected to meet this considerable challenge with fewer agents than many midsized municipal police departments. ATF also attempts this work in the context of porous and inconsistent laws, as well as often insufficient political backing to get the necessary support from federal prosecutors. Despite these obstacles, ATF has been remarkably successful at addressing gun trafficking in the United States. However, the agency could do much more to address this substantial public safety issue if its unique capabilities and experience were merged with the resources, management, and muscle of the Federal Bureau of Investigation.

ATF efforts to combat gun trafficking

ATF has long focused enforcement efforts on firearms trafficking. In 2000, ATF published a substantial report on its efforts to combat the illegal trafficking of firearms. Looking at data from all of the agency's criminal investigations that involved gun trafficking between July 1996 and December 1998, the report provided a rare, in-depth look into firearms trafficking in the United States and ATF's efforts to combat it. The report, titled "Following the Gun: Enforcing Federal Laws Against Firearms Traffickers," revealed that during this period, the targets of ATF's trafficking investigations diverted more than 84,000 guns into the illegal stream of commerce, and 45 percent of these investigations involved convicted felons either trafficking guns or receiving trafficked guns.³ Nearly half of these cases involved straw purchases, and more than one-quarter of them involved guns that had been stolen from private residences, gun dealers, or common carriers. Corrupt gun dealers participating in illegal trafficking were involved in less than 10 percent of these investigations but were associated with nearly half of the total number of trafficked guns identified during this period.⁴ Notably, ATF has not had the resources or inclination to revisit and update this report in the intervening 15 years.

More recent studies of gun trafficking conducted by outside groups indicate that interstate trafficking in firearms continues to be a significant problem. An analysis of ATF crime gun tracing data conducted by Mayors Against Illegal Guns in 2010 found that 30 percent of crime guns traced in 2009 crossed state lines before being used in a crime.⁵ That year, 10 states supplied nearly half of all the crime guns that crossed state lines.⁶

This analysis also found a strong connection between the strength of a state's gun laws and the rate at which guns were illegally trafficked out of that state. Looking at 10 categories of strong gun laws, states that had not enacted these laws were associated with an average crime gun export rate that was more than twice the rate of states that had enacted these laws.⁷

The uneven patchwork of state gun laws creates distinct trafficking corridors along which guns move from states with weak gun laws to states with stronger gun laws. The most notorious of these corridors is the "iron pipeline" on I-95 along the East Coast through which guns travel from states such as Virginia to New York and New Jersey, where they are used by violent street gangs.⁸ Similar corridors are found around the country, such as between Nevada and California⁹ and along various routes between Mexico and Houston, Texas; El Paso, Texas; or Tucson, Arizona.¹⁰

An analysis of crime guns recovered in New York City in 2011 revealed that 90 percent of those guns came from out of state.¹¹ Crime gun trace data from 2013 show that 78 percent of the crime guns recovered that year in New Jersey for which a source state could be determined originated in another state.¹² The same data show that this was the case for 47 percent of crime guns recovered in Illinois¹³ and 58 percent of crime guns recovered in Massachusetts that year.¹⁴ A May 2014 report by the Chicago Mayor's Office and Chicago Police Department found that 60 percent of guns used in crimes in the city were first purchased outside Illinois.¹⁵

Because of the scope of this problem and the real risk to public safety posed by interstate trafficking in firearms, ATF has prioritized combating firearms trafficking as one of the agency's six strategic goals, outlined in its strategic plan for fiscal year 2010 through fiscal year 2016.¹⁶ ATF seeks to achieve this goal through "investigat[ing] and arrest[ing] individuals who illegally supply firearms to prohibited individuals;" "deter[ing] the diversion of firearms from lawful commerce into the illegal market with enforcement strategies and technology;" and "regulat[ing] and partner[ing] with the firearms industry to promote compliance, to prevent diversion, and to detect those criminals that bring violence to our communities."¹⁷ Between FY 2005 and FY 2012, ATF recommended more than 13,000 trafficking cases for prosecution, which involved more than 27,000 defendants and more than 406,000 firearms.¹⁸ The individual field divisions have steadily worked to identify and apprehend those individuals who divert guns out of the legitimate stream of commerce and into criminal hands, and they have been successful in pursuing discrete local trafficking cases. For example:

- In 2014, ATF agents in the Seattle, Washington, area worked with the Seattle Police Department, the FBI, and other law enforcement agencies to apprehend four members of a firearms trafficking conspiracy who sold 49 firearms to an undercover officer during a three-month period. Many of these guns had fully or partially obliterated serial numbers. The leader of this conspiracy was sentenced to nine years in prison.¹⁹
- In 2010, ATF agents in Atlanta, Georgia, dismantled a bicoastal gun trafficking operation during which a convicted felon recruited two others to purchase at least 65 guns from 12 dealers. These guns were subsequently illegally shipped to California and recovered in numerous crimes there. The ringleader of this trafficking network was sentenced to eight years in prison, and the straw purchasers who made the sales were each sentenced to at least one year in prison.²⁰

- Also in 2010, an individual was convicted for soliciting another individual to illegally buy numerous guns on his behalf in Mississippi and traffic them to Chicago, where four of them were recovered in violent, gang-related crimes, including the murder of a Chicago police officer. The defendant was sentenced to 10 years in prison for his role in this interstate trafficking scheme.²¹
- In 2012, ATF agents in Greenbelt, Maryland, helped secure the conviction of an individual who, over a five-month period, illegally bought eight guns on behalf of another individual. One of these guns was used in March 2012 to shoot a Washington, D.C., police officer. The individual who completed these straw purchases was sentenced to one year in prison, and the person who solicited him to do so was sentenced to 18 months in prison.²²

These are but a few examples of the hundreds of similar trafficking investigations conducted by ATF agents in field divisions across the country.

The trafficking of guns across the United States' southwestern border into Mexico is also a significant concern. Firearms trafficking by violent drug cartels along the U.S.-Mexico border increased dramatically over the past decade. Factors such as the strict regulation of firearms in Mexico, easy access to firearms in secondary markets in the United States, and straw purchases of guns from gun dealers have led to increasing numbers of guns and ammunition being smuggled by drug cartels across the border from the United States into Mexico. Between 2008 and 2013, more than half of the guns recovered in crimes in Mexico and submitted to ATF for tracing originated in the United States.²³ In 2005, ATF launched Project Gunrunner as a pilot project in Laredo, Texas, to investigate suspected firearms traffickers along the southwestern border, coordinate with other U.S. and Mexican law enforcement agencies in firearms and violent-crime cases, provide outreach to gun dealers in border areas regarding straw purchasing and firearms trafficking, and trace all guns to further efforts to identify trafficking networks.²⁴ This was expanded into a national program the following year and became part of larger federal efforts to combat drug trafficking and violent crime along the border, which were collectively referred to as the Southwest Border Initiative.²⁵ Between FY 2005 and FY 2012, ATF efforts to combat gun trafficking along the border resulted in the conviction of more than 1,800 defendants and the seizure of more than 10,000 guns and 2.1 million rounds of ammunition from violent criminals, gang members, and drug cartels.²⁶

There are, however, significant weaknesses in ATF's current efforts to address firearms trafficking. To the extent that agents have taken on trafficking cases, they have largely focused on reactive cases, meaning that they often pursue these cases after a major gun crime has been committed. These cases are often initiated after a high-profile, fatal shooting, which drives an interest in determining how the shooter obtained the gun. For example, both the 2012 Christmas Eve shooting ambush and murder of two firefighters in Greece, New York,²⁷ and the 2011 shooting of a police officer in Indianapolis, Indiana,²⁸ led to investigations of the source of the guns used in the attacks, which resulted in charges being filed against the individuals who acted as straw purchasers to provide these guns to the ultimate perpetrators.

But ATF has made more limited efforts to engage in proactive investigations that seek to ferret out trafficking networks and interdict illegally trafficked guns before they are used in crimes. In the rare instances when leadership at ATF headquarters has directed a field division to conduct large-scale proactive firearms trafficking investigations, it too often fails to implement the requisite oversight structure and management controls required to properly manage such operations. One such operation the agency undertook in recent years—called Operation Fast and Furious—ended with tragic results.

Fast and Furious: A botched operation and the inadequate plan to combat cartel gun trafficking that preceded it

In 2006, newly elected Mexican President Felipe Calderón stepped up efforts to combat drug trafficking by powerful cartels by targeting and taking down some cartel bosses. This resulted in a massive increase in violence on both sides of the U.S.-Mexico border as the cartels competed with each other for control of new territory and drug markets.²⁹ Between December 2006 and November 2012, this violence resulted in more than 60,000 deaths in Mexico,³⁰ most of them caused by gunshot wounds. This cartel violence is characterized by extreme brutality, mass murders, and kidnapping and assassination of local elected officials.³¹

The increase in gun violence was significantly aided by guns trafficked across the border from the United States. More than half of the guns recovered in crimes in Mexico in connection with cartel violence originated in the United States,³² and these trafficked guns primarily came from four source states: Texas, Arizona, California, and New Mexico.³³ Because gun laws in Mexico are extremely strict—

private individuals face many hurdles in obtaining permission to possess guns, and assault weapons are banned entirely for nonmilitary use—cartels looked north for guns. By comparison, the United States provided a nearly unlimited supply and a variety of guns. The cartels were easily able to acquire them due to weak laws that allow criminals to buy guns with no questions asked from private sellers and the ease with which straw purchasers could buy guns on behalf of the cartels from unwitting gun dealers. Over the past decade, the Mexican cartels have engaged in brazen and large-scale gun trafficking operations in the United States.

The issue of gun trafficking to Mexico rose to national importance, and in 2007, the U.S. and Mexican governments entered into an international cooperation agreement designed to address drug trafficking north into the United States and firearms trafficking south into Mexico. This agreement, called the Merida Initiative, emphasized shared responsibility, and each government promised to address the problems originating within its borders: Mexico agreed to address crime and corruption, and the United States agreed to address drug demand and firearms trafficking.³⁴ Between FY 2008 and FY 2012, Congress appropriated more than \$1.9 billion to governments in Mexico and Central America under the Merida Initiative³⁵ and its corollary further south, the Central America Regional Security Initiative, or CARSI.³⁶

As part of the Merida Initiative, the Obama administration took numerous steps to secure the southwestern border and address drug and firearms trafficking between the United States and Mexico.³⁷ One part of these efforts was to relocate 100 ATF personnel to the four field divisions along the southwestern border to supplement the work of Project Gunrunner, an ATF initiative that began as a pilot project in 2005 and grew into a national initiative in 2006 to address firearms trafficking along the border.³⁸ Project Gunrunner had four components: expanding the eTrace system in Mexico and encouraging tracing of all crime guns to provide data on their origins, enhancing coordination with law enforcement in Mexico, deploying additional ATF resources along the border, and increasing the use of “real time” intelligence and enhancing information sharing among law enforcement.³⁹ The relocation of 100 ATF agents to the southwestern border was intended to infuse those field divisions with increased talent to help make Project Gunrunner a success. However, this intention was undermined by some of the group supervisors and special agents in charge of the field divisions across the country, who perceived the initiative as a way to unload their worst-performing agents by sending them to the border.⁴⁰

Senior ATF management-level officials with direct knowledge report that ATF executive management did nothing to discourage the practice of sending poor-performing agents to participate in this initiative and that the special agents in charge faced no questions or repercussions for doing so.⁴¹

A significant part of ATF's work to combat firearms trafficking along the border through Project Gunrunner involved identifying individuals engaging in straw purchases from federally licensed dealers on behalf of the cartels and prosecuting those defendants, primarily because it was more challenging to identify other members of the trafficking conspiracy and build cases against them.⁴² A Department of Justice Office of the Inspector General, or OIG, review of Project Gunrunner conducted in 2010 found that 68 percent of the cases referred for prosecution from this program were single-defendant cases.⁴³

ATF agents working at the southwestern border experienced significant problems obtaining convictions with these single-defendant straw purchase cases. The case of an Arizona gun dealer provides a typical example. In 2009, ATF agents identified a gun store in Arizona—called X-Caliber Guns—that was the source of more than 500 assault rifles smuggled to drug cartels in Mexico.⁴⁴ ATF referred the case to the U.S. Attorney's Office for prosecution in federal court under the theory that the dealer, George Iknadosian, was complicit in a conspiracy to engage in international firearms trafficking. However, the U.S. Attorney's Office declined to prosecute, reasoning that such cases could only be successful in federal court if it could prove that the dealer had sold guns directly to prohibited purchasers.⁴⁵

This challenge of federal prosecutors refusing to accept straw purchase and gun trafficking cases for prosecution is an endemic problem that ATF faces in many parts of the country and is a function of weak federal laws that make such cases hard to prove, weak sentencing guidelines that provide only short prison sentences, a lack of political will within DOJ to prosecute such cases, and a lack of clout for ATF to get them prosecuted.⁴⁶ In the X-Caliber case, state prosecutors took the case instead of DOJ and charged Iknadosian with fraud, conspiracy, and money laundering under state law; however, in March 2009, in the middle of the trial, the judge dismissed the charges, finding that there was insufficient evidence to prove that Iknadosian had violated state law or had sold guns to prohibited purchasers.⁴⁷

The breakdown of the X-Caliber case was a significant blow to ATF's efforts to combat gun trafficking across the border. In response to the difficulties in obtaining successful prosecutions in straw purchasing cases and to heed a recommendation made in the OIG's report on Project Gunrunner,⁴⁸ ATF issued an agency-wide memorandum in September 2010 that outlined a new strategy to combat gun trafficking to Mexico. It centered on "multi-defendant conspiratorial cases that focus on persons who organize, direct, and finance cartel-related firearms and explosives trafficking operations."⁴⁹ Noting the difficulties involved in prosecuting straw purchasers, this memorandum advised agents to continue investigations of straw purchasers but with an eye toward using them to gather evidence against the larger conspiracy.⁵⁰ This directive, as well as the insufficient prosecutorial efforts that preceded it and the inadequate management at ATF and DOJ that followed, led directly to the defective Fast and Furious operation.

ATF agents in the Phoenix, Arizona, field division continued to investigate gun trafficking along the border, and in November 2009, agents received a tip from a local gun dealer regarding suspicious firearms purchases by four individuals.⁵¹ Following this lead, ATF agents commenced an investigation and identified numerous individuals working in concert to purchase hundreds of guns from area gun dealers.⁵² ATF agents located two "stash houses" where the guns were being stored and identified the individual believed to be the ringleader.⁵³ In November 2009, Mexican soldiers seized a truck approximately 200 miles outside Phoenix and found 42 guns; 19 of these had been purchased by individuals previously identified by ATF as part of this investigation or by other individuals who could now be connected to the conspiracy.⁵⁴ Both ATF agents and attorneys in the U.S. Attorney's Office decided not to take action against the purchasers at this point because they were attempting to build a case against the larger players in the conspiracy.⁵⁵ This was the genesis of Operation Fast and Furious.

ATF agents in the Phoenix field division continued to monitor large-scale firearms purchases by this network throughout 2010 and engaged in other investigative techniques, such as wiretaps and surveillance, to learn more about the larger criminal network, with an eye toward building a strong federal case against the leaders of this gun trafficking conspiracy. During this period, ATF agents, in consultation with the U.S. Attorney's Office, did not take any enforcement efforts against the individuals purchasing the guns, nor did they attempt to interview any of these individuals to turn them into informants against the ringleaders. The theory behind the operation was that they could build a stronger case by continuing to

allow the illegal purchases to be made and observing the network as it operated in order to gather evidence.⁵⁶ Agents involved in the operation later told DOJ investigators that they had determined that pursuing individual straw purchasers was not an effective approach to stopping gun trafficking,⁵⁷ and the issue warranted a “nontraditional” approach by ATF.⁵⁸

In early 2010, a number of experienced ATF agents from other field divisions were added to the team running Fast and Furious; they were “uniformly critical” of the approach used and the decision not to interdict the guns.⁵⁹ In March 2010, the Phoenix field division provided ATF’s deputy director with a detailed briefing about the operation.⁶⁰ Becoming concerned about the number of guns involved, this deputy director requested that the Phoenix field division develop an “exit strategy” for the operation.⁶¹ In June 2010, a new supervisor took over the investigation, and agents began interdicting and seizing some guns purchased by the suspects in June and July 2010.⁶²

On December 14, 2010, U.S. Customs and Border Protection Agent Brian Terry was shot and killed in Rio Rico, Arizona, in a confrontation with cartel members.⁶³ Two guns recovered at the scene had been purchased in January 2010 by a target of the Fast and Furious investigation.⁶⁴ One day after Terry’s death, ATF agents made their first arrest in the case, apprehending the individual who purchased those guns and charging him with making false statements on the form completed when purchasing a gun.⁶⁵ In January 2011, 20 Fast and Furious subjects and other individuals charged with gun trafficking to Mexico were indicted in federal court.⁶⁶

Between October 2009 and December 2010, Fast and Furious subjects purchased 1,961 firearms, for a total of \$1,475,948.⁶⁷ More than 500 of these guns have been recovered in connection with crimes on both sides of the border.⁶⁸ In his testimony before Congress regarding this operation, Attorney General Eric Holder acknowledged that “we will continue to feel the effects of this flawed operation for years to come. Guns lost during this operation will continue to show up at crime scenes on both sides of the border.”⁶⁹ Notably, however, the guns being bought under the lens of Fast and Furious were consistent with other large-scale trafficking operations not being monitored by ATF. The cartels were running massive, brazen, and complex trafficking operations, each of them delivering hundreds or thousands of guns to Mexico and collectively leading to thousands of murders. What was different about this operation, however, was that it was happening under the eyes of ATF agents.

There have been extensive investigations of Fast and Furious by the DOJ OIG, as well as the House Oversight and Government Reform Committee and the Senate Judiciary Committee. One of the primary conclusions of all of these inquiries is that the problems inherent in this deeply flawed operation were, in part, the result of “systemic” problems of leadership, management, and oversight within ATF and among those who manage ATF within DOJ. After an exhaustive investigation, the OIG concluded that the failures at ATF observed in this operation “were systemic and not due to the acts of only a few individuals.”⁷⁰ The OIG noted that ATF failed to meet the standards of other law enforcement agencies in the implementation of similar operations and that even in light of recent efforts by ATF to rectify these problems and institute new management systems, “more rigorous oversight of ATF is necessary.”⁷¹ ATF Director Jones, whose nomination to the position of acting director came eight months after the scandal broke, has also identified “catastrophic failure of leadership” as a primary cause of the failures of this operation.⁷²

But just as problematic as the failure to oversee the operation adequately was the failure of DOJ and ATF executive leadership to develop a comprehensive and proactive strategy to address the problem of large-scale drug cartel gun trafficking in the first place. Gun trafficking to Mexico was an issue of critical importance to the Bush and Obama administrations and the Mexican government, yet DOJ punted the issue to ATF. Aside from providing very basic guidance and resources, ATF leadership in Washington provided little specific instruction on how to execute the mission, assigning the task of developing a strategy to midlevel management in the field divisions along the border. Agents in the field were given little guidance beyond being told to build bigger cases against the larger trafficking conspiracy, and once the operation was underway, there was no attempt at oversight to assess its effectiveness or the potential risk to public safety it posed.

The problem of gun trafficking into Mexico is one that has been studied at length, and there are a number of comprehensive reports that have recommended approaches to addressing this problem.⁷³ ATF attempted a few stop-gap measures—such as sending more agents to the border region, increasing outreach to gun dealers in the region, and working with the Mexican government to increase tracing of crime guns recovered in Mexico⁷⁴—but the agency failed to develop a large-scale, comprehensive strategy to address all aspects of gun trafficking into Mexico, to stop sales to traffickers, and to effectively work with the U.S. Attorney’s Office to prosecute the perpetrators. This inadequate leadership both undermined efforts to police the trafficking in the first place and enabled the development of ill-advised enforcement approaches such as the Fast and Furious operation.

What if the FBI had been in charge?

This story likely would have been very different had DOJ tasked the FBI with developing a strategy to address gun trafficking into Mexico. Numerous individuals interviewed for this report opined that the Fast and Furious debacle would not have occurred had the FBI been in charge.⁷⁵ Through the FBI's experience over many years of investigations that involved sophisticated, large-scale criminal actors, it has developed stringent protocols for this type of work that include strong guidance from headquarters and rigorous accountability for actions taken in the field.

A former senior-level attorney with DOJ with knowledge of the internal structure and dynamics of both agencies opined that it was “inconceivable” that the Fast and Furious debacle would have occurred had the FBI been the lead agency charged with addressing gun trafficking at the border.⁷⁶ This source explained that had the FBI implemented this type of operation, it would have expended significant resources to monitor the firearms involved around the clock to ensure that they were never out of the agency's control. Additionally, the FBI would have developed a plan for how to intervene midstream and adjust or terminate the operation at the first sign of problems. This source explained that, as the strategy to combat gun trafficking to Mexico was rolled out, leadership in the FBI field offices would have been in constant contact with headquarters to ensure that it was proceeding as envisioned and achieving the intended results. FBI special agents in charge of each field office already have monthly face-to-face meetings with leadership at headquarters—often via video conferencing—to ensure ongoing oversight of operations, and in such large-scale initiatives, leadership at FBI headquarters undoubtedly would have used this regular channel of communication, among others, to keep a close watch over the operation's progress.⁷⁷

Former FBI Director Louis Freeh has commented on ATF's shortfalls generally in the area of risk management, expressing that he was surprised during a review of ATF's operations in the 1990s about the lack of control by headquarters over the agency's operations: “You have to have central control, not just emails giving you status reports.”⁷⁸ The former DOJ attorney explained that the ATF agents involved in Fast and Furious “wanted to do the right thing but apparently didn't know how” and that the agency itself was simply “too historically decentralized and lacking in strong leadership” to be able to effectively manage an operation of this scale.⁷⁹

Additionally, the FBI has more capacity for this type of operation, while the stagnating budget at ATF means that the agency lacks sufficient personnel to properly handle large-scale operations. The number of ATF agents has remained largely unchanged over the past decade, and staffing levels in some field divisions are at historic lows.⁸⁰ This means that the agency is short staffed, not only to handle its daily activities but also to effectively meet the challenge of new and emerging gun violence problems. For example, when gun trafficking into Mexico began to rise and became a priority for both the American and Mexican governments, ATF faced pressure to deploy additional resources to the border region. Because of resource limitations, however, the agency could only do this by pulling already scarce resources out of every other field division to relocate them to the border. This is certainly not an ideal way to address a new problem in law enforcement; enforcement efforts in the field divisions should not have to be sacrificed in order to adequately staff initiatives that address an emerging and urgent problem. Additionally, ATF is facing a looming loss of talent and expertise over the next few years: Nearly 40 percent of the current agents will be up for retirement in 2017.⁸¹ Merging ATF into the FBI would help offset these personnel deficiencies and infuse a new group of agents into efforts to combat firearms trafficking.

The problem of illegal gun trafficking in the United States is a complicated one, and ATF faces significant challenges in developing operations to identify and apprehend traffickers. Certainly, gun trafficking across the southern border by Mexican drug cartels is an unusual example of firearms trafficking in this country in terms of the scale and complexity of the illegal activity; most domestic gun trafficking occurs on a much smaller scale through less well-organized networks. But the lessons learned from *Fast and Furious* are certainly applicable to more typical gun trafficking operations. The biggest problem brought to light by this operation is not that ATF lacked the accountability to prevent flawed law enforcement operations—although that is certainly a significant problem—but rather that there is very little guidance, leadership, and accountability at the agency to develop successful operations in the first place. In spite of this leadership vacuum, agents in the field have continued to work to address this issue, often with great success, as demonstrated by the case examples highlighted above.

To his credit, Director Jones took steps during his tenure to address many of the failures of *Fast and Furious*, including creating a new management and oversight structure for the agency as part of his Frontline initiative that includes an attempt to standardize the work of the field divisions and impose accountability at every level of the agency. For example, sources report that Jones reinstated a case management protocol similar to what ATF once had but abandoned in the

mid-1990s, involving monthly reporting to headquarters by the field divisions and subsequent headquarters reviews of cases. But as we will discover in other sections of this report, the flaws in ATF leadership, resources, and coordination brought to light by Fast and Furious are apparent throughout ATF's operations and gravely undermine the agency's ability to create and successfully implement a national strategy to combat gun crime.

Crime gun tracing analysis: Missed opportunities to catch traffickers

ATF trafficking investigations—both those involving international drug cartels and those involving more typical domestic trafficking—are informed in large part by data on crime guns that are collected at the National Tracing Center, or NTC, in Martinsburg, West Virginia. The NTC is operated by ATF and is the locus of all data that relate to guns used in crimes. When a gun is recovered at a crime scene or seized from a suspect, local law enforcement can submit information about that gun to the NTC and request that it be traced. ATF personnel at the NTC then use that information to recreate the sales history of the gun, from manufacture through first retail sale. Once the gun dealer who first sold the gun has been identified, ATF agents have the authority to check the dealer's records to identify the individual who purchased the gun.⁸³ This information is then provided to the law enforcement agency that recovered the gun and becomes a crucial lead in determining who may have been involved in the crime.

The importance of tracing crime guns cannot be overstated. In many cases, the presence of a gun at a crime scene is the only piece of evidence that can lead investigators to the individuals involved in the crime. Benjamin Hayes, former branch chief of the NTC, explained the value of tracing crime guns:

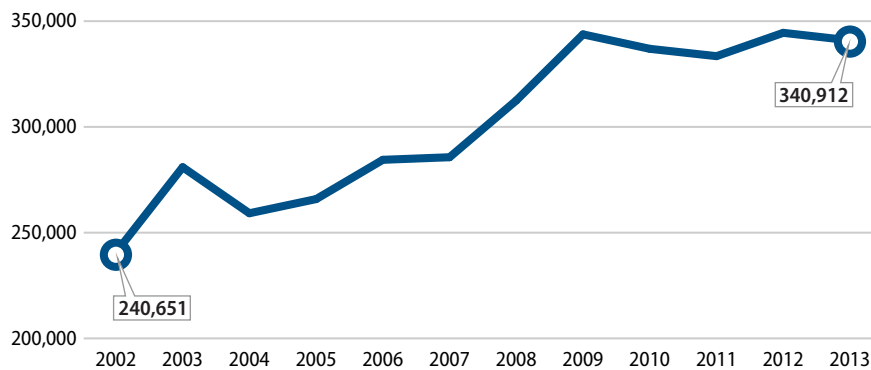
A single firearms trace can tell you who bought the gun, where it was purchased, what identification and address was used by the purchaser, and if the purchaser bought other handguns at the same time. One trace also has the potential to identify and link suspects involved in criminal violations, develop potential witnesses, determine the sources of firearms used in crimes, prove ownership, and produce new investigative leads.⁸⁴

In addition to this substantial benefit to individual cases, aggregated crime gun tracing data can help law enforcement officers identify individuals who are potentially involved in straw purchasing and illegal firearms trafficking. For example, it is unusual for one individual to be the first purchaser of multiple guns recovered in

a crime. While there can be legitimate reasons for this circumstance—when a gun collector’s collection is stolen, for example—it is often a clue that the individual is a straw purchaser, a gun trafficker, or is selling significant numbers of guns without background checks in a gray area of federal law. Furthermore, considered in the aggregate, crime gun trace data provide information about the types of guns most frequently recovered in crimes in a given region, the most frequent source states for guns used in crimes, and the average time lapse between the first retail purchase of a gun and its use in a crime, a measure known as “time-to-crime.” Generally, the shorter the time-to-crime, the more likely the recovered gun was illegally trafficked. ATF considers a time-to-crime of less than two years to be a strong indicator that a firearm was illegally trafficked.⁸⁵ All of these data help local law enforcement agencies understand the channels through which criminals acquire guns, which in turn helps inform the strategies employed to combat these illegal activities.⁸⁶

ATF has made significant efforts in recent years to encourage local law enforcement agencies to trace all crime guns recovered in their jurisdictions and has created an electronic trace request submission system, known as eTrace, to facilitate crime gun tracing. ATF describes eTrace as “a paperless firearms trace request submission system and an interactive firearms trace analysis tool that provides an electronic exchange of crime gun incident-based data in a secure web-based environment.”⁸⁷ This system allows any participating law enforcement agency, free of charge, to request a crime gun trace, receive trace results, and search trace-related data all from an online portal, as well as generate detailed statistical reports specific to their jurisdictions.⁸⁸ To date, more than 5,000 law enforcement agencies, including agencies in 41 foreign countries, use eTrace, and the number of trace requests submitted to the NTC has grown from 240,651 in 2002 to 340,912 in 2013.⁸⁹ The steady increase in the use of eTrace and the tracing of crime guns recovered by local law enforcement has provided a significant benefit to law enforcement efforts to respond to gun crimes.

FIGURE 3
ATF trace requests, 2002–2013



Source: Bureau of Alcohol, Tobacco, Firearms and Explosives, *Fact Sheet: National Tracing Center (NTC)* (U.S. Department of Justice, 2014), available at <http://www.atf.gov/sites/default/files/assets/Press-Room/FactSheets/2014/ntc-5-27-14.pdf>.

In addition to the leadership shortfalls at ATF regarding the ability to conduct large-scale, proactive firearms trafficking investigations that were highlighted by *Fast and Furious*, ATF has fallen short in other respects that affect the agency’s ability to effectively pursue such cases. For example, the agency has largely failed to take full advantage of the enormous potential of using trace data to identify patterns and trends in the movement of crime guns around the country and to develop innovative investigations into trafficking networks based on these data. A few enterprising agents have taken on this challenge. For example, in 2005, an ATF agent in the Washington, D.C., field division reviewed reports of overnight activity by the Metropolitan Police Department and found that a gun recovered during an arrest had been purchased from a gun dealer in Ohio as part of a multiple sale. Rather than simply focusing on the individual arrested with the gun, the agent pursued the lead further and tracked down the other guns the individual had purchased as part of this bulk sale. Digging deeper, the agent used information available in eTrace to discover additional gun purchases by the same individual and several additional straw purchasers who were connected to the original gun recovered. This investigation ultimately led to the arrest and conviction of Rasi Robinson, a convicted felon and gun trafficker who had operated a straw purchasing and illegal firearms trafficking ring for more than a year, trafficking at least 16 guns in three states. The apprehension of Robinson on the gun trafficking charges also led to his conviction in a cold case murder in Ohio.⁹⁰

This is precisely the type of proactive firearms trafficking investigation that federal law enforcement should be routinely engaged in, yet leadership at ATF has not prioritized such work or provided incentives for agents to conduct these kinds of investigations more consistently. Additionally, ATF managers in the field divisions often fail to successfully engage local law enforcement in efforts to combat firearms trafficking. While more police agencies are now using eTrace and tracing more crime guns, ATF has not succeeded in communicating to its local partners in many jurisdictions that investigating the sources of these guns provides great value to larger efforts to identify potentially active shooters—and to prevent gun violence in the first place.

In addition, ATF's work to promptly and effectively trace crime guns is impeded by the numerous challenges ATF faces in operating the NTC. First, ATF's stagnating budget has significantly hampered operations at the NTC. ATF has successfully encouraged more law enforcement agencies to trace crime guns, but the agency has not kept pace with the uptick in trace requests by increasing staffing at the NTC. As a result, response times for nonurgent trace requests have increased dramatically. According to a previously unpublished document provided to the authors of this report, in 2006, the NTC completed 72 percent of traces in less than 10 days; by contrast, in 2010, only 48 percent of traces were completed within that time frame.⁹¹ The number of trace requests increased by 18.5 percent during that period.⁹² The scope of ATF's tracing workload will only continue to grow because in January 2014, President Barack Obama ordered that all federal law enforcement agencies trace all crime guns recovered across the nation,⁹³ which could add up to an additional 100,000 trace requests annually.⁹⁴

ATF's decreasing ability to respond to trace requests is also, in part, due to the new budget cuts imposed by the sequester in 2013, which prevented ATF from hiring more people. In fact, due to the forced budget cut of \$82 million, ATF had to lay off 98 contract workers who had been hired to perform crime gun traces at the NTC.⁹⁵ David Chipman, a former senior-level special agent with ATF, said that these cuts will further slow the process of tracing crime guns, which will have a deleterious impact on crime gun investigations because "[g]etting information on purchasers to law enforcement as quickly as possible is a critical need."⁹⁶

Additionally, Congress has imposed significant limitations on how ATF can manage and access information that pertains to lawful commerce of firearms through riders attached to appropriations legislation. Since 1979, Congress has prohibited ATF from modernizing its data and records management system. While federal firearms licensees are required to keep records of every firearm sale and provide

this information to ATF upon request, ATF is not permitted to digitize this process or to consolidate records already in its possession to streamline the tracing process when a gun is recovered at a crime scene. This means that for every trace, ATF agents must make numerous phone calls or visits to every manufacturer, importer, wholesaler, and retailer involved in the commercial distribution chain and request that they look through their own paper records to provide information about the history of the gun. For the gun dealer at the end of this chain, this often means having an agent page through handwritten paper records to find information about the particular firearm in question,⁹⁷ a process that James Cavanaugh, a former ATF senior special agent, described as akin to a “horse and buggy.”⁹⁸ The process becomes even more onerous for cases in which a crime gun was first sold by a licensed dealer who has since gone out of business—a situation that accounts for more than one-third of trace requests.⁹⁹ In those cases, ATF employees at the NTC must sort through millions of paper records of out-of-business dealers stored at the NTC facility in West Virginia to identify the first retail purchaser of the gun.¹⁰⁰ Even in the face of these primitive technological conditions for tracing, ATF is generally able to complete an urgent trace request within 24 hours.¹⁰¹

Congress has also imposed restrictions on how ATF can use and share information obtained during crime gun traces. In 2004, a set of appropriations riders collectively known as the Tiahrt Amendments after their sponsor, former Rep. Todd Tiahrt (R-KS), were tacked onto the DOJ appropriations bill at the behest of the NRA.¹⁰² These riders, among other things, drastically limited the ability of ATF and other law enforcement agencies to use and disseminate trace data.¹⁰³ After campaigns by hundreds of mayors and police chiefs, some of the most harmful restrictions on law enforcement’s access to and use of trace data have been amended, but the dissemination of trace data is still strictly circumscribed by these appropriations riders.¹⁰⁴ ATF has begun working with local police agencies in Virginia and other states to develop a system for allowing such agencies to opt in to the program and directly share in-state trace data with each other to facilitate gun trafficking investigations, an approach that effectively neutralizes some of the worst elements of the Tiahrt Amendments by taking ATF out of the information sharing process.¹⁰⁵ ATF has also created a program called iTrafficking that seeks to enhance the use of trace data in some regions through state fusion centers.¹⁰⁶

This is an enormous step forward in facilitating the use of trace data to identify gun trafficking patterns and the movement of crime guns around the country, but it is just the first step. In moving forward with eTrace improvements and other innovative tracing programs, ATF should also work to institutionalize a process through which cross-jurisdictional data sharing is subject to deeper analysis and,

IN 2006,
72 percent
of traces were completed
in less than 10 days.

IN 2010,
48 percent
of traces were completed
in less than 10 days.

where appropriate, enhanced federal investigation into firearms trafficking conspiracies operating in the United States. This enhanced data sharing and analysis should include comprehensive trace data publications for both the public and state and local law enforcement to allow for the design of improved gun crime prevention policies and more effective use of resources to combat gun trafficking. But again, any efforts to broaden these efforts to other jurisdictions or to increase ATF's role in analyzing trace data to identify large trafficking networks will be hampered by ATF's severely limited budget.

Intelligence operations: Preventing and responding to shootings

Additionally, while ATF has developed the tracing program and devoted some available resources to increase capacity at the NTC, the agency has fallen behind in other aspects of law enforcement intelligence gathering that are integral to developing proactive trafficking investigations. Intelligence operations at ATF headquarters are led by the Office of Strategic Intelligence and Information, or OSII, which is a separate directorate at headquarters responsible for “the collection, analysis and dissemination of information within ATF.”¹⁰⁷ Each field division also has a Field Intelligence Group, or FIG, with special agents and analysts who “collect, evaluate, and disseminate tactical and strategic intelligence” to the other agents in the division.¹⁰⁸ On paper, this is an appropriate structure for intelligence operations at a federal law enforcement agency and mirrors the structure at the FBI.¹⁰⁹ In practice, however, ATF has struggled to take the next step of implementing a successful intelligence program according to the norms of the law enforcement and intelligence communities.

A foundation of intelligence-based criminal investigative work is what law enforcement officials call the “intelligence cycle.” According to the FBI, the intelligence cycle is “the process of developing unrefined data into polished intelligence for the use of policymakers.”¹¹⁰ The Office of the Director of National Intelligence¹¹¹ and the Central Intelligence Agency¹¹² use similar definitions. The intelligence cycle has six steps: identifying information needs, planning for and directing the collection of this information, collecting the raw information sought, processing the information into a format suitable for analysis, analyzing the information and converting it into intelligence products and reports, and disseminating the intelligence and related products to “consumers,” primarily policymakers and law enforcement.¹¹³ The consumers of these intelligence products are then able to use this information to make informed decisions regarding operations, strategy, and policy.¹¹⁴

The FBI has prioritized the role of intelligence in its operations, characterizing intelligence as a “core tool” and “an integral part of the FBI’s investigative mission” that is “embedded in the day-to-day work” of the agency.¹¹⁵ The FBI created a new career branch for intelligence professionals in 2007, which elevated the status of intelligence work and provided an incentive for agents to choose to specialize in this area.¹¹⁶ The FBI is also on the cutting edge of developing a new approach to intelligence in the context of counterterrorism that emphasizes aggressive, proactive investigations rather than reactive ones.¹¹⁷

While the FBI has become a world leader in intelligence gathering and strategic use of intelligence to combat terrorism and violent crime in the years since September 11, ATF has struggled to develop a comprehensive, headquarters-driven intelligence program. Although the agency has the right structure in place—an intelligence directorate at headquarters supported by intelligence teams in the field divisions—executives at ATF have not successfully utilized that structure to maximize results. A primary problem with intelligence operations at ATF is the disconnect between the intelligence operations at headquarters and the intelligence agents and analysts in the field. The intelligence agents in each field division report to the special agent in charge of that division rather than to the intelligence directorate at headquarters. This means that the work of the intelligence agents in the field is not directed by national intelligence priorities but rather is led by the particular needs and interests of each individual field division. As a result, ATF has been less successful in developing a comprehensive intelligence cycle directed by intelligence experts at headquarters. A former senior-level OSII agent at ATF explained the problem as follows:

*We never got the intelligence cycle right because we could never hold the SACs’ [special agents in charge] feet to the fire. Each field intelligence group belonged to a SAC, and no one in [headquarters] could take away their autonomy. We couldn’t impose collection requirements, only suggest them. No one’s evaluation was impacted by ignoring the headquarters intel program.*¹¹⁸

There have been efforts within ATF over the years to strengthen its intelligence operations, with limited results. For example, in November 1999, the deputy director of ATF convened an internal Intelligence Study Group to “conduct a thorough review of the Bureau’s intelligence capabilities and needs, define the organizational role, scope, and business process, and make specific recommendations that will allow ATF to realize its goals.”¹¹⁹ The group issued a comprehensive report in February 2000, which is not publicly available but was provided to

the authors of this report, that offers 22 recommendations for how to improve intelligence operations at the agency. In this report, the study group noted that ATF's intelligence process "has been examined no less than three times in the past 20 years" and that each of the previous studies "identified information flow problems and duplication of efforts as a result of the Bureau's structure."¹²⁰ The 2000 study likewise found such problems within ATF and recommended, among other things, that the intelligence function of ATF remain under the auspices of the Field Operations Directorate rather than being moved into its own separate directorate.¹²¹ The report's authors forecast numerous problems with the creation of an independent intelligence directorate, including insulating the intelligence function from the operations in the field and diminishing the role of intelligence in supporting the work in the field.¹²² In the end, many of the recommendations of the Intelligence Study Group were disregarded, including this one.

Intelligence-driven criminal investigations are clearly a strength of the FBI, and merging ATF's intelligence operations into this existing structure would have significant benefits for efforts to use intelligence to combat sophisticated criminal gun trafficking conspiracies. The FBI could include gun-related inquiries in its intelligence cycle and begin to collect more comprehensive data and make better use of existing ATF data to identify large firearms trafficking networks and understand how they operate. ATF intelligence specialists can also add value to the FBI's intelligence cadre with their specialized knowledge regarding criminal firearms trafficking operations. The result of a merger would be a single, more powerful law enforcement agency with significant experience and resources to conduct complex, intelligence-based investigations into national and international firearms trafficking networks.

Another challenge to ATF's efforts to use data to develop proactive, large-scale trafficking investigations is the fragmentation of guns-related data into separate databases controlled by different agencies. For example, ATF keeps and controls the data involving crime gun traces, guns reported lost or stolen by gun dealers, and reports of multiple sales of guns by single purchasers. ATF also operates the National Integrated Ballistic Information Network, or NIBIN, which collects data on shell casings found at crime scenes that can serve as the "fingerprint" for the gun that fired them.¹²³ The FBI, however, collects and catalogues data regarding guns reported lost or stolen by individuals, as well as regarding individuals who were denied permission to purchase a firearm by the National Instant Criminal Background Check System as part of its National Crime Information Center, or NCIC, which is an "electronic clearinghouse of crime data" collected

from law enforcement sources across the country.¹²⁴ NICS and NCIC are two of the many databases housed in the FBI’s Criminal Justice Information Services, home to an array of databases touted by the FBI as “a lifeline to law enforcement and a cornerstone of protecting the nation.”¹²⁵

Currently, ATF and FBI intelligence analysts are fragmented in different agencies charged with overlapping missions and, in some cases, working in similar offices with access to the same data. For example, ATF’s Denial Enforcement and NICS Intelligence Branch, or DENI—formerly the Brady Operations Branch—has access to extensive NICS denial data, among other things. The FBI’s NICS section also has access to these critical data, the analysis of which could identify those denied people who are the worst of the worst and who merit immediate investigation and prosecution for illegally attempting to purchase a firearm. While both offices could in theory conduct such data analysis, the FBI has a long history of publishing detailed and comprehensive data analysis of NICS operations,¹²⁶ while ATF does not. Creating one team of intelligence analysts who could have access to all of these data, as well as other crime data available in myriad other FBI databases, would have substantial benefits for proactive firearms trafficking investigations.

FIGURE 4
Firearm-related databases maintained by the FBI and ATF

	FBI	ATF
Lost and stolen guns	The FBI maintains records of guns reported lost or stolen by private individuals.	ATF maintains records of guns reported lost or stolen by licensed gun dealers.
Gun sales	The FBI maintains records of individuals who were denied permission to buy a gun from a licensed dealer because they failed to pass a background check.	When an individual buys more than one handgun in a five-day period from a licensed dealer, this information is provided to ATF.
Crime guns	The FBI maintains a record of all guns recovered in connection with a crime.	ATF receives requests for crime gun traces from law enforcement agencies and maintains crime gun trace data.
Other crime data	The FBI operates the National Crime Information Center, which houses numerous databases of crime-related information, such as known violent criminals, gangs, and wanted individuals.	ATF collects data on shell casings found at crime scenes around the country that can serve as the “fingerprint” for the gun that fired them.

Sources: Federal Bureau of Investigation, “National Crime Information Center: NCIC Files,” available at http://www.fbi.gov/about-us/cjis/ncic/ncic_files (last accessed October 2014); Bureau of Alcohol, Tobacco, Firearms and Explosives, “Firearms: Firearms Enforcement,” available at http://www.atf.gov/content/Firearms/firearms-enforcement?qt-firearms_enforcement_tabs=2#qt-firearms_enforcement_tabs (last accessed October 2014).

Weak laws enable traffickers and hamper the work of federal agents

Finally, it should be noted that another significant impediment to ATF's efforts to target firearms traffickers are the weak federal laws that fail to clearly identify what conduct is criminal and establish strong penalties for those who violate the law. While it is illegal to engage in a straw purchase, under current law this conduct is charged as a paperwork violation—making a false statement on the form completed by the prospective purchaser—and is generally punishable by little more than probation or a short prison sentence. Likewise, there is no direct federal charge for engaging in other conduct to traffic firearms across state lines and into criminal hands. ATF agents working on trafficking cases therefore often encounter resistance from the U.S. Attorney's Office, where such cases are brought for prosecution because they involve a difficult burden of proof and, when successful, yield relatively low sentences. Partly for this reason, federal prosecutors decline to prosecute a significant number of cases referred by ATF: In 2012, the U.S. Attorney's Office declined to prosecute 32 percent of weapons cases referred by ATF.¹²⁷ In fact, this was a key problem in Operation Fast and Furious—one that led ATF to attempt a flawed operation designed to catch the trafficking ringleaders rather than just apprehend the individual straw purchasers.

While merging ATF into the FBI would not solve the problem of weak federal laws that address straw purchasing, consolidating firearms enforcement efforts into one agency that makes all referrals to the U.S. Attorney's Office would likely increase accountability with DOJ regarding acceptance of such cases for prosecution. Congress should act to strengthen these laws to ensure that gun traffickers face appropriate punishment.¹²⁸

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Chapter 4

Special venues for illegal sales: Gun shows and the Internet

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Special venues for illegal sales: Gun shows and the Internet

The relatively porous nature of federal laws and regulations regarding commerce in firearms creates numerous opportunities for individuals to flout the law and engage in illegal sales. While federally licensed firearms dealers are required to conduct a background check before completing every gun sale, private firearms sellers in most states are not required to perform such checks and may sell guns in limited quantities with no questions asked.¹ This loophole in the federal law means that individuals prohibited from gun possession—such as felons, domestic abusers, and fugitives—can easily circumvent that restriction by purchasing a firearm from a private seller. There are two venues in particular that facilitate such no-background-check sales to prohibited purchasers: gun shows and the Internet.

Although private sellers are not required to conduct background checks in most states, federal law prohibits certain groups of people from acquiring and possessing guns through any means. It is a violation of federal law for individuals to sell guns to those who they know or have reason to suspect are prohibited from gun possession,² as well as for individuals to sell guns “as a regular course of trade or business with the principal objective of livelihood and profit” without first obtaining a federal firearms license from the Bureau of Alcohol, Tobacco, Firearms and Explosives.³ For these reasons, despite the gaps in federal law that enable no-background-check gun sales via the Internet, gun shows, or any other private transaction between unlicensed individuals, there are ample opportunities for ATF to police these venues and catch people breaking these existing federal laws. However, ATF has only attempted sporadic enforcement efforts at gun shows and on the Internet, and it does not seem to have a concerted strategy to address gun trafficking via these venues.

Outside groups and policymakers have identified gun shows and the Internet as special venues ripe for illegal gun sales, and some in ATF have pursued individual cases associated with these venues. But ATF has for the most part failed to develop an adequate and comprehensive strategy for addressing illegal gun sales at gun shows and online, leaving these venues open to exploitation by gun traffickers and others engaged in illegal sales. Overlooking these venues, however, deprives ATF of the opportunity to gain valuable intelligence about the movement of crime guns in the country and to identify individuals who are flagrantly and persistently violating federal firearms laws by selling guns without a license.

Gun shows: Abandoning the field

Illegal gun sales at gun shows have been a law enforcement concern for many years. The Department of Justice estimates that between 2,000 and 5,200 gun shows are held in the United States annually at which licensed firearms dealers and private sellers congregate to sell guns, ammunition, and accessories to gun enthusiasts.⁴ In a 1999 report, ATF reviewed 314 criminal investigations involving more than 54,000 guns with a connection to a gun show and found that these cases “paint a disturbing picture of gun shows as a venue for criminal activity and a source of firearms used in crimes.”⁵ ATF found that 46 percent of these investigations involved felons illegally buying or selling guns at gun shows—and in more than one-third of the investigations, these firearms were used in a subsequent crime.⁶ In a 2000 report, ATF looked at every federal gun trafficking prosecution over a two-and-a-half-year period and found a substantial connection between illegally trafficked guns and gun shows: 30 percent of trafficking cases that involved licensed dealers had a connection to a gun show, and roughly 26,000 guns associated with these cases were trafficked through gun shows during this period.⁷ Private investigations of gun shows have also found rampant illegal gun sales at these venues. A 2009 investigation by the City of New York of seven gun shows in three states found that 63 percent of private sellers made illegal sales to individuals, even when the buyers said during the course of their transactions that they “probably could not pass a background check.”⁸

Some agents and supervisors in the field at ATF have recognized the obvious risk of illegal gun sales through this venue and have developed innovative local law enforcement operations to target them. In 2012, for example, ATF agents in Oklahoma City, Oklahoma, worked with local police to conduct a 13-month investigation after receiving a tip that gang members were going to gun shows to buy firearms from private sellers without background checks. Oklahoma City

police officers conducted surveillance of one gun show and observed a gang member and convicted felon—who as such was prohibited from gun ownership under federal law—purchase a number of firearms from private sellers without background checks or any paperwork. Officers arrested the individual, and he was ultimately convicted in federal court for illegally possessing a firearm as a convicted felon and sentenced to 46 months in prison.⁹ Oklahoma City Police Chief Bill Citty aptly described this case as a means to “proactively keep firearms out of the hands of criminals who use gun show venues to purchase firearms.”¹⁰ In another case, in 2011, ATF agents in Washington state conducted a lengthy undercover investigation into four individuals who were buying large quantities of guns and then reselling them at gun shows as private sellers—in clear violation of the federal law requiring that individuals engaged in the business of selling firearms obtain a license from ATF.¹¹ These individuals sold hundreds of guns in this manner, including one that was later used to murder a police officer.¹² As the U.S. attorney for the Western District of Washington explained, criminal enterprises such as this “allow guns to get in the wrong hands and block our ability to trace guns used in violent crimes.”¹³

Despite these isolated successes, the research showing a nexus between gun shows and illegal firearms trafficking, and the fact that ATF has long had written policies in place regarding how to conduct gun show and flea market investigations, ATF has not developed a nationwide gun show enforcement strategy. The DOJ Office of the Inspector General conducted a review of ATF’s gun show operations in 2007 following complaints about gun show enforcement activities in Richmond, Virginia, and found that the agency “does not have a formal gun show enforcement program” but rather conducts investigations at individual gun shows only when there is intelligence to suggest that illegal activity is occurring at such shows.¹⁴ A review of ATF’s gun show enforcement activities from fiscal years 2004 to 2006 revealed that the agency conducted 202 operations at gun shows, but the vast majority involved investigations of specific individuals whose criminal activity happened to take place at gun shows.¹⁵ Only 23 percent of these gun show operations targeted general criminal activity at gun shows, and these were undertaken by only 6 of ATF’s 23 field divisions.¹⁶ And as discussed below, gun show enforcement operations have been much less frequent in recent years.

The lack of executive leadership on gun show enforcement contributed to another high-profile incident in which ATF’s operations were publicly questioned. In 2006, participants in eight gun shows held in Richmond, Virginia, over a two-year period complained that ATF agents and local law enforcement had engaged in overly aggressive conduct and harassment at those shows, such as interrogation,

detention, temporary seizure of guns, home visits to confirm residency, and racial and gender profiling of women and minorities as suspected straw purchasers.¹⁷ The House Judiciary Committee's Subcommittee on Crime, Terrorism, Homeland Security, and Investigations held two hearings to explore these allegations, and the DOJ OIG conducted an extensive investigation of ATF's gun show operations.¹⁸ The OIG found that, notwithstanding the complaints regarding the Richmond gun shows, ATF enforcement operations at those gun shows were conducted properly and complied with agency policies and procedures and that the unusually aggressive tactics used in Richmond were an isolated incident. Additionally, the OIG found that local law enforcement agencies and most gun show promoters were, in fact, concerned about illegal gun sales at gun shows and were supportive of ATF's enforcement efforts at those shows.¹⁹

Despite being mostly vindicated following the outcry about enforcement operations at the Richmond gun shows and being chastised by the OIG for failing to have comprehensive, agency-wide protocol for gun show enforcement operations prior to Richmond, ATF has since largely abandoned gun show investigations and failed to implement such protocol.²⁰ Rather than learning from the Richmond investigation that gun shows are an appropriate place for enforcement operations but that such operations should be guided by specialized protocols, the lesson ATF seemed to learn was that gun show operations could be politically charged. It therefore pulled out of this type of enforcement almost entirely. A current ATF special agent in charge of a field division stated that, "ATF gave up on gun show enforcement completely after the Richmond debacle. Now the regulatory side of the house takes the lead on our gun show efforts." The agent explained that "any special agent associated with that operation learned how politically fraught gun shows were and went forward with the idea of never trying anything like that again."²¹ David Chipman, a former senior-level special agent at ATF, described the dynamic post-Richmond as follows: "It was never formalized, but any time one of your peers is dragged before Congress, and there's an inspector general report, you get the feeling that it would just hurt your career. The lesson is there's no big reward if it goes well compared to the downside risk."²²

While ATF does have a presence at gun shows—industry operations investigators often set up tables to provide information and guidance to federally licensed gun dealers—the agency's role at gun shows is primarily that of an information booth rather than any type of civil or criminal enforcement mechanism to ensure that applicable laws and regulations are being followed. But as the recent investigations in Oklahoma City and Washington state show, gun shows continue to provide a

convenient venue for bad actors to engage in illegal sales. ATF should commence a headquarters-level analysis of gun shows in the United States, identify particular geographies where these events seem to pose a heightened risk of illegal conduct, and develop a comprehensive strategy to target this conduct. For example, ATF and other DOJ officials have determined that gun shows are one primary venue in which Mexican drug cartels purchase the firearms that they then traffic across the border.²³ With the increased resources and manpower that would come from merging ATF into the Federal Bureau of Investigation, ATF could develop a comprehensive enforcement strategy for gun shows along the U.S.-Mexico border designed to identify gun shows frequently used by cartels, apprehend individuals making illegal sales and/or purchases, and interdict guns before they can be trafficked across the border and used in crimes. This is just one way that ATF could leverage its unique expertise and offer real value to law enforcement operations to apprehend gun criminals, but it has to date lacked the political will to do so.

Internet: Finally some progress in recent years

The Internet presents another special venue for illegal gun sales to flourish. Over the past few decades, many types of traditionally brick-and-mortar crime have migrated to the Internet—from white-collar crimes such as fraud and identity theft, to child pornography, to drug dealing. The scope of Internet-facilitated crime in the United States is enormous. Estimates of the cost of Internet crime range from \$100 billion to \$400 billion annually, and National Security Agency Director General Keith Alexander has stated that the Internet-facilitated theft of intellectual property “represent[s] the greatest transfer of wealth in human history.”²⁴ In 2013 alone, the federal Internet Crime Complaint Center—a collaboration between the FBI and the National White Collar Crime Center to compile and investigate complaints of Internet fraud—received 262,813 complaints regarding Internet fraud.²⁵ The scope of other types of Internet-facilitated crime is just as staggering. For example, the proliferation of sexual predators who exploit children online has grown dramatically in recent years. Between 1996 and 2012, the FBI opened approximately 5,600 Internet child pornography investigations.²⁶

Illegal transactions involving firearms are no exception to this trend of crime moving to the Internet. The online market for guns has grown exponentially in recent years and has provided a venue for prohibited purchasers to illegally buy guns from private sellers without a background check and with no questions asked. It has also allowed private sellers to illegally sell large quantities of guns

without obtaining a federal firearms license. In 2000, DOJ estimated that there were roughly 4,000 websites offering guns for sale, a number that is certainly much higher now.²⁷ And while estimating the scope of the entire online marketplace for guns is difficult, assessing the prevalence of illegal guns sales online is nearly impossible, as no records are kept of such transactions.

Despite the difficulties inherent in trying to quantify the scope of illegal gun sales online, numerous recent investigations have begun to reveal the considerable scale of the problem. A 2011 investigation by the New York City Mayor's Office of 10 websites offering 25,000 guns for sale found that 62 percent of online private sellers were willing to illegally sell firearms to individuals who indicated that they were unlikely to pass a background check.²⁸ Another investigation by Mayors Against Illegal Guns in 2013 found that 1 in 30 would-be buyers on one gun sales website—Armslist.com—had a criminal record that barred them from owning guns. It also estimated that more than 25,000 guns may be sold to criminals each year through this one website alone.²⁹ *The New York Times* conducted an investigation of Armslist.com in 2013 and found that “Armslist and similar sites function as unregulated bazaars, where the essential anonymity of the Internet allows unlicensed sellers to advertise scores of weapons and people legally barred from gun ownership to buy them.”³⁰ The *Times* investigation found that 90 percent of the for-sale ads posted on Armslist—which number more than 20,000 ads every week—were placed by private individuals who are not required to conduct background checks.³¹ A similar review of ads on Armslist conducted by Third Way in August 2013 found that more than 15,000 for-sale ads in 10 states were placed by private sellers, and nearly 2,000 ads from prospective buyers in these states specifically sought to purchase guns from private sellers.³² The *Times* investigation also uncovered a number of convicted felons illegally buying and selling guns on the website.³³ In addition to sales by and between prohibited felons, the *Times* found that numerous individuals were using the website to sell large quantities of guns and thereby were essentially functioning as unlicensed gun dealers in violation of federal law.³⁴ Another investigation by Third Way and Americans for Responsible Solutions in September 2013 looked at firearms listings on Armslist on a single day in August and found that private sales were far more prevalent in states that do not require background checks for such sales than in states that do require such checks.³⁵ This report found that the average number of for-sale listings by private sellers in states that do not require background checks for private sales was twice the average of such listings in states that do have such a requirement.³⁶

FIGURE 5
Online illegal gun sales

Recent investigations into the prevalence of illegal sales of guns online

Investigations	Scope of investigation	Findings
“Point, Click, Fire: An Investigation of Illegal Online Gun Sales” (City of New York, 2011)	Conducted a year-long investigation of 10 websites that sell guns.	In a survey of 10 websites that offered 25,000 guns for sale, 62 percent of sellers were willing to sell firearms to prohibited purchasers.
“Felon Seeks Firearm, No Strings Attached” (Mayors Against Illegal Guns, 2013)	Conducted an investigation from February to May 2013 of 13,000 ads posted on Armslist.com.	More than 25,000 firearms are sold to criminals each year through Armslist.com alone.
“Seeking Gun or Selling One, Web Is a Land of Few Rules” (The New York Times, 2013)	Conducted a three-month investigation of more than 170,000 ads on Armslist.com.	Ninety percent of for-sale ads on Armslist.com were placed by private sellers, who are not required to conduct background checks.
“What a Difference a Law Makes: Online Gun Sales in States With and Without Background Checks” (Third Way and Americans for Responsible Solutions, 2013)	Looked at firearms listings in every state on Armslist.com on a single day in August 2013.	The average number of for-sale listings by private sellers was twice as high in the states that did not require background checks.

Sources: City of New York, “Point, Click, Fire: An Investigation of Illegal Online Gun Sales” (2011), available at http://libclouds3.amazonaws.com/9/30/d/1350/nyc_pointclickfire.pdf; Mayors Against Illegal Guns, “Felon Seeks Firearm, No Strings Attached: How Dangerous People Evade Background Checks and Buy Illegal Guns Online” (2013), p. 4, available at http://libclouds3.amazonaws.com/9/4f/5/2001/FELON_SEEKES_FIREARM_REPORT.pdf; Michael Luo, Mike McIntire, and Griff Palmer, “Seeking Gun or Selling One, Web Is a Land of Few Rules,” The New York Times, April 17, 2013, available at <http://www.nytimes.com/2013/04/17/us/seeking-gun-or-selling-one-web-is-a-land-of-few-rules.html?pagewanted=all&r=0>; Third Way and Americans for Responsible Solutions, “What a Difference a Law Makes: Online Gun Sales in States With and Without Background Checks” (2013), available at http://content.thirdway.org/publications/744/Third_Way_Report_-_What_a_Difference_a_Law_Makes_-_Online_Gun_Sales_in_States_With_and_Without_Background_Checks.pdf.

With respect to the Internet, innovative enforcement operations at ATF have been even more rare than operations at gun shows. Some individuals at ATF recognized the dangers posed by online sales of guns years ago and offered innovative ideas for how the agency could respond. Stephen Barborini, former ATF supervisory special agent, described online sales by private sellers as “a weapons bazaar for criminals. There’s no background check: Anybody that has a murder conviction can simply log on, email someone, meet ‘em in a parking lot, and buy a freaking AK-47.”³⁷

A handful of enterprising agents, including Barborini, have pushed the boundaries of ATF’s ability to police the Internet. For example, in 2002, confidential sources informed ATF of a suspect in Argentina who was selling machine guns, silencers, and conversion kits over the Internet and illegally importing them into the United States. ATF agents made contact with the suspect and obtained postal records, electronic financial records, and information from Internet service providers to build a case against the suspect, who had sent and received more than 6,500 email

messages about gun sales in a 30-day period and was responsible for sending hundreds of illegal weapons to the United States. In 2003, ATF coordinated a nationwide operation to arrest dozens of individuals who had purchased these illegal firearms and seized 24 machine guns, 16 silencers, six pipe bombs, and numerous other contraband items. The Argentinean government arrested the suspect for violations of that country's firearms laws.³⁸

In another case, in 2006, an ATF senior special agent developed an Internet-based investigation into the activities of an individual who was illegally importing and trafficking Glock full-auto switches—a device used to convert a standard Glock pistol into a fully automatic machine gun—firearm silencers, and other illegal machine guns into the United States. The agent used a wide range of investigative techniques in this case, including a court-ordered wiretap on the subject's Internet activity. The agent built a case sufficient to arrest the individual and bring an end to the trafficking scheme.³⁹ In a third Internet case from 2006 to 2007, a senior special agent identified an individual in Germany who was using the Internet to illegally import machine guns into the United States. The agent made contact with the subject in an undercover capacity and purchased numerous machine guns and parts kits, including a Soviet Stechkin machine pistol, several AK-47, M14, and MP5 receivers, a Colt M203 40mm grenade launcher, and a Glock conversion switch. The agent eventually traveled to Germany and, working in concert with German law enforcement, arranged to purchase 500 MP5 and 200 M14 receivers. The agent and German authorities ultimately shut down this illegal machine gun trafficking operation, recovered 1,500 firearms, and identified numerous U.S. customers who had received illegal firearms from the German subject.⁴⁰

But again, despite the success of these isolated investigations, ATF has lagged far behind in its efforts to address Internet-facilitated gun crimes. The senior special agent who led the two Internet investigations described above opined that ATF leadership in headquarters was inexperienced in conducting complex firearms trafficking investigations. He related that in his experience with these cases, those in leadership positions were so inexperienced with investigations of this nature and scale that they were unduly risk averse, which resulted in many opportunities being lost. For example, in the case involving the German individual illegally importing machine guns into the United States, the agent reported that leadership at headquarters waited so long to make decisions on recovering machine guns that had been sold to U.S. customers that they lost more than 100 Steyr AUG machine guns with false importer marks, which remain unrecovered today.⁴¹

This lack of focus on Internet-facilitated gun crimes is not due to a lack of knowledge by ATF executives about the potential scope of the problem. As early as 2007, ATF agents were seeking increased resources and support from headquarters to address gun crimes online. A previously unpublished internal memo from May 2007 provided to the authors of this report proposed to create an Internet Cyber Crime Program within ATF as part of the agency's FY 2009 budget request.⁴² This proposal noted that ATF "is the only major Federal law enforcement agency without a dedicated and fully staffed cyber crime capability." It proposed establishing an Internet Cyber Crime Program that would be "modeled after the computer crime units at Immigration and Customs Enforcement (ICE), FBI and other Federal law enforcement agencies."⁴³ The proposal stated that "Internet trafficking of tobacco, firearms and explosives has become a significant threat and will continue to grow if left unchecked" but that "[r]esource constraints have limited ATF's ability to fully exploit Internet and cyber-based crimes."⁴⁴ This draft proposal called for an additional \$9 million and 26 new positions; however, it was not included in the FY 2009 budget request.⁴⁵

Although ATF began to train agents more than a decade ago on best practices for handling computer hard drives seized during enforcement operations—including how to use a suspect's social media accounts and other Internet activities as part of an investigation—the agency only started to provide significant resources to a dedicated Cyber Crime Unit in 2012.⁴⁶ Initially, ATF sources described the unit as being directed to "troll gun auction websites" and send referrals to special agents in the field offices where analysts have discovered possible criminal activity. More recently, however, the unit has taken a more active role in training agents and providing resources to field offices to support investigations.⁴⁷

In late 2013, sources inside ATF reported that Director B. Todd Jones had begun to make additional improvements to ATF's Internet-related enforcement activities, including by dedicating more resources to training supervisors in many field divisions on how to conduct Internet investigations and by investing more resources in the digital investigations unit to support these cases. In addition, where several years ago it was unusual for a field office to have a "clean computer"—a computer adequate to collect digital evidence for use in a trial—now, almost every field office has at least one such computer.⁴⁸

While the level of emphasis on Internet-related operations within ATF has increased markedly in the past two years, the years of ATF leadership's inattention to the Internet has continued to leave it lagging behind other federal agencies. First, the

Cyber Crime Unit is an intelligence unit at headquarters, rather than an investigative unit in the field. Analysts refer possible case leads to the field divisions, but according to a former senior-level agent, the culture of ATF is such that this type of referral from headquarters is routinely ignored in favor of investigations initiated by the special agents in the field divisions to address local concerns.⁴⁹ There is no expectation from ATF leadership that such referrals will receive any type of priority or even that they will be acted upon at all by the field divisions. Furthermore, ATF has not placed any specially trained agents in field divisions to develop local Internet-facilitated cases or to assist the agents with any Internet-related aspects of more traditional physical-world investigations. Second, with just 10 analysts in the ATF Cyber Crime Unit, it cannot even begin to adequately police the millions of gun sales that occur online, much less the online sale of explosives and precursor chemicals.

Additionally, ATF has yet to take other steps toward addressing Internet-facilitated commerce in firearms, such as creating an educational campaign to inform consumers about the federal laws that pertain to such transactions—for example, the law that prohibits shipping guns across state lines directly to another individual and requires such shipments to be made through federally licensed gun dealers.⁵⁰ While most online gun commerce sites state that users must comply with all relevant federal laws, they make no efforts to advise users of what these laws are. ATF has created such educational materials on other topics—such as best practices for private transfers of guns by private sellers⁵¹ and information about Gun Free School Zones⁵²—but has failed to promulgate information and guidance to individuals seeking to buy and sell guns online or to websites that facilitate such transactions.

ATF's lag in directing resources to address Internet-facilitated gun crime stands in stark contrast to the approach the FBI has taken to address Internet crime. In 2002, a decade before ATF initiated its cyber unit, the FBI created its Cyber Division, a new unit designed to investigate all crime with a “cyber nexus.”⁵³ The Cyber Division was created to address both traditional criminal activity that has moved to the Internet and new crimes arising with the proliferation of the Internet and computer networking.⁵⁴ An unpublished internal memorandum sent to all FBI field divisions in June 2002 and provided to the authors of this report explained the basic premises behind the decision to create a Cyber Division, which included the recognition that “[w]hile the Internet provides remarkable benefits to society at large, its expanded use also entails potential perils to national security and public safety.” It also acknowledged that “[t]he threat to national security and public safety posed by the inter-connectivity and vulnerabilities created by widespread use of the

Internet will require that the FBI develop unique investigative expertise and experience.”⁵⁵ There are so-called cyber agents in each FBI field office across the country—many of them with advanced degrees in computer science and information technology—who work alongside special agents to investigate computer-facilitated crimes. These cyber agents use many of the same investigative techniques traditionally used in the physical world, such as undercover operations, cooperating witnesses, and authorized surveillance techniques.⁵⁶ The FBI Cyber Division currently employs more than 1,000 specially trained agents, analysts, and digital forensic examiners nationwide to investigate Internet-facilitated crimes.⁵⁷

The FBI Cyber Division has a number of initiatives that fall under its umbrella, each of which is highly effective. For example, the Innocent Images National Initiative has been successful in identifying more than 900 children depicted in Internet child pornography images—a crucial step in apprehending the perpetrators of heinous crimes against children.⁵⁸ The Computer Intrusion Program is an initiative of the Cyber Division that seeks to “identify, assess and neutralize computer intrusion threats emanating from terrorist organizations, state sponsored threat actors, and criminal groups targeting the national information infrastructure.”⁵⁹ This program has also been largely effective: In 2011, the Computer Intrusion Program achieved nearly \$5 million in cost avoidance through its efforts, far surpassing its target for that year of \$625,000.⁶⁰ The FBI Cyber Division has also been effective at large-scale, multijurisdictional enforcement operations focused on Internet-facilitated crime. For example, over a three-day period in July 2013, the FBI led a group of federal, state, and local law enforcement agencies to conduct actions in 76 cities, rescuing 105 child victims of sex trafficking and arresting 152 pimps and traffickers.⁶¹ An assistant director of the FBI’s Criminal Investigative Division explained the importance of understanding the perpetrator’s use of the Internet to promote sex trafficking, saying that this operation was between 30 percent and 40 percent more effective than similar, previous operations at identifying the victims and perpetrators in part because of better understanding of the online component.⁶² In another case in October 2013, the FBI took down the black-market website Silk Road and arrested its alleged operator. Silk Road was an underground website that operated in anonymity on the Darknet—anonymous portions of the Internet not easily discoverable or accessible by major search engines⁶³—to facilitate the sale of illegal drugs, guns, pornography, forged documents, and illegal services such as hit men and computer hackers. Following an extensive two-year investigation that combined traditional law enforcement techniques such as undercover work and highly sophisticated computer forensics, the FBI located six of Silk Road’s secret computer servers hidden around the world, shut down the website, and seized its assets of roughly \$4 million.⁶⁴

To be sure, there are differences between the type of criminal networks investigated by the FBI's Cyber Division and the illegal firearms sales occurring online. While the FBI tends to investigate large-scale coordinated criminal networks, illegal online gun sales are typically the work of unaffiliated, individual bad actors. But the FBI's approach to Internet crime is applicable to illegal online gun sales. Federal law enforcement should approach this criminal conduct in the same way it has approached Internet-facilitated human trafficking or international hacking conspiracies: by developing long-term, sophisticated investigations designed to identify and understand the scale and scope of criminal networks, followed by an aggressive enforcement action to apprehend the perpetrators. This type of large-scale, coordinated takedown of a number of unrelated gun criminals would have a significant deterrent effect and would result in the apprehension of a number of dangerous individuals who pose a distinct threat to public safety. This is precisely the kind of Internet investigation the FBI has perfected, and efforts to address illegal online gun sales would significantly benefit from this type of approach.

While there are reports that Director Jones invested more resources in Internet investigations at ATF during his tenure, there is still much that could be gained by merging ATF's Internet-facilitated enforcement activities into the FBI's decade-long head start. ATF's work to combat Internet-related gun crime would be bolstered by the increased resources available for such operations at the FBI and by the FBI's extensive expertise and experience in complex, multijurisdictional Internet criminal cases.

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Chapter 5

Targeting violent gun offenders: 'A small dog going after a big bone'

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Targeting violent gun offenders: 'A small dog going after a big bone'

In the years following its move from the Department of the Treasury to the Department of Justice in 2003, the Bureau of Alcohol, Tobacco, Firearms and Explosives has prioritized enforcement actions aimed at the end users of guns—people who use guns in crimes.

As ATF struggled to find its place within DOJ, the agency looked to identify an area where it could distinguish itself from the other federal law enforcement agencies that have more clearly defined missions. With the Federal Bureau of Investigation increasingly focused on terrorism and counterintelligence after 9/11, and agencies such as the Drug Enforcement Administration and Customs and Border Protection often concentrating their efforts on more narrow areas of jurisdiction, ATF has tried to carve out a niche within federal law enforcement that was relatively unoccupied: fighting violent crime, particularly gun crime, in communities across the country.

In some regards, this focus on violent crime has been a great strength for ATF. The agency has worked in partnership with state and local law enforcement to identify and apprehend the worst-of-the-worst violent criminals who threaten public safety in neighborhoods around the United States. While the FBI has a mixed reputation for cooperation with local police agencies, ATF has often been an effective partner with local law enforcement in efforts to target violent criminals.

In fact, ATF's focus on the end users of guns became so prominent that the agency considered rebranding itself several years ago as the "Violent Crime Bureau."¹ But while ATF has devoted considerable resources in recent years to becoming the primary federal agency that addresses violent crime, there remains one significant obstacle to achieving this goal: the FBI.

ATF shares jurisdiction over criminal matters with the FBI, but the FBI's criminal jurisdiction far exceeds ATF's in many respects. Although the FBI has focused on counterterrorism efforts since 9/11, the bureau continues to engage in numerous violent crime operations across the country, many of which overlap with ATF's work in this area. For example, both agencies participate in national task forces and initiatives focused on violent crime, such as violent gang task forces and the Project Safe Neighborhoods initiative, which is discussed in detail below. FBI Director James Comey has made numerous statements since assuming the helm in 2013 that he intends to redirect some of the agency's work back toward traditional violent-crime enforcement.²

This overlap in jurisdiction and ATF's efforts to lead the violent-crime space have created tension between the two agencies. In June 2013, FBI headquarters sent a survey to all of its 56 field offices to request information about instances of other executive departments and agencies, such as ATF, the DEA, and the Department of Homeland Security, encroaching on the FBI's jurisdiction over cases that involve issues such as gang crime, Hobbs Act violations,³ and robbery.⁴ According to an unpublished memorandum obtained by the authors of this report that was sent in July 2014 from the chief of the FBI's Violent Criminal Threat Section to all FBI assistant special agents in charge, the FBI has become increasingly concerned about "mission creep by other federal law enforcement in the traditional FBI lanes," particularly ATF.⁵ This memorandum also disseminated the results of the 2013 survey, which, in particular, voiced concern about ATF's violent-crime enforcement activities:

The jurisdiction encroachment by the ATF continues as a disturbing concern. The FBI has attempted to address intrusion over the past few years, as the ATF has worked to enlarge its violent crime assignments. Though the FBI has jurisdiction, the ATF has continually imposed itself upon multiple FBI subprogram areas including Hobbs Act cases, robberies, gangs, and drug related cases.⁶

When reporters from *The Wall Street Journal* asked an FBI spokesperson to comment on the memorandum, he stated that it did not reflect the view of the agency's executive leadership and that Director Comey and other high-level FBI

officials reportedly called their counterparts at ATF to explain that they had not authorized the survey.⁷ Regardless, both the fact that the survey was conducted and its results demonstrate a deep concern about ATF's role in violent-crime investigations at the rank-and-file level within the FBI's field offices. Ironically, the FBI's concern over "mission creep" has not prevented the agency from encroaching on ATF's turf. In the immediate aftermath of the mass shooting at the Navy Yard in Washington, D.C., in September 2013, the FBI traced the gun used, a function that is supposed to lie exclusively with ATF.⁸

While ATF's recent drive to position and redefine itself as the federal violent-crime police makes sense from the perspective of a historically vulnerable agency trying to stake out some more open territory, it is in many ways a misguided vision for an agency with a narrow mandate and severely limited resources. One former special agent who spent more than 20 years at ATF described the agency in this respect as "a small dog going after a big bone."⁹ Although its work supplementing and strengthening local police agency efforts to apprehend violent criminals has often produced good results for crime reduction in communities, this focus has at times come at the expense of operations targeting other types of gun crime that ATF is uniquely positioned to address—particularly multijurisdictional firearms trafficking cases. ATF seems eager to take on the broader challenge of fighting all types of violent crime, even as it struggles to succeed in its narrower core mission of fighting gun trafficking.

There is a core tension at ATF: Is it the federal violent crime police, partnering with local law enforcement to fight violent crime whether or not there is a particular nexus to gun trafficking? Or is it a federal agency with a narrow mandate to tackle interstate gun trafficking—a particularly challenging law enforcement mission that no other federal, state, or local law enforcement agency has prioritized? The current answer is that ATF is attempting to be both. At times, these identities seem to be in conflict with each other, and ATF appears to lack the resources, management culture, and capability to do both on its own.

ATF as the violent crime police: A succession of national initiatives

To justify its focus on violent crime, ATF highlights the nexus between violent gangs and their use of firearms in their criminal activity.¹⁰ As a small agency with a relatively small number of special agents, the primary way in which ATF has sought to address violent crime is through partnerships with local police agencies to identify individuals in the community who are responsible for violent criminal

activity—particularly gun violence—and develop small-scale local operations to investigate, arrest, and prosecute those individuals in federal court. These cases are often referred to as “adoptive” cases and rely on the federal criminal statute that imposes heightened criminal penalties on certain individuals: those who use or possess a firearm during the commission of a crime of violence or drug trafficking or those who are apprehended with a firearm after three previous felony convictions.¹¹ Adoptive cases also have included Section 922(g)(1) prosecutions that charge felons with being in possession of a firearm in violation of federal law. These cases are sometimes unpopular with federal prosecutors since they are often considered low-level “street” cases that clog up federal dockets.

Because adoptive cases typically have higher federal penalties than comparable state offenses, state and local authorities are frequently amenable to working with the federal government on these investigations. ATF agents in every field division work extensively with local police officers, often in the context of ATF-led firearms trafficking task forces, to identify possible suspects for federal prosecution, conduct effective investigations that build the strongest cases, and facilitate the referral of cases to the U.S. Attorney’s Office for prosecution. Through such partnerships, ATF agents often provide real value to local law enforcement, both in terms of added investigative resources and additional training and expertise. However, at times, ATF agents may seem like auxiliary local police officers pulled into mundane street enforcement missions—but costing taxpayers much more than local police officers.¹²

ATF’s violent-crime work has often come under the auspices of broad national initiatives led by DOJ in partnership with other federal law enforcement agencies such as the FBI, the U.S. Attorney’s Office, and the DEA. Many of these initiatives—some of which are described below—have been successful, and the work of ATF agents in the field has played a key role in those successes. However, ATF has often fallen short in identifying the most successful operations that have come out of those nationwide initiatives, analyzing the operations to glean why they were successful, and translating these strategies to the ongoing violent-crime enforcement work in field divisions across the country. Instead, ATF tends to launch a new national or regional initiative every few years, and although each program has unique elements, each successive initiative is, to a certain degree, a rebranding of those that preceded it—and they often fail to learn from previous mistakes and incorporate practical solutions.

The Youth Crime Gun Interdiction Initiative

One such national program was the Youth Crime Gun Interdiction Initiative, or YCGII, which was directed by the Treasury Department, ATF's parent department at the time. Beginning in 1996, YCGII was a collaboration between federal, state, and local law enforcement agencies designed to identify and reduce the illegal supply of guns to young people.¹³ A primary component of YCGII was crime gun tracing. Participating cities committed to comprehensive tracing of all crime guns recovered in their jurisdiction,¹⁴ with the goal of identifying trends and patterns in illegal firearm possession by young people in order to help inform and direct criminal investigations and regulatory inspections of both the end users of crime guns and the firearms traffickers.¹⁵ YCGII ran until 2000 and grew from the original pilot of 17 cities to 55 participating cities.¹⁶ The initiative proved to be a valuable tool in collecting information on how crime guns move through U.S. cities. In 2000, 88,570 crime guns were traced as part of YCGII through which ATF was able to learn critical information about illegal gun trafficking, including:

- The majority of these guns were acquired from a source other than a licensed dealer. Only 12 percent were recovered from individuals who had purchased them from a dealer.
- 88 percent of these guns had changed hands at least once before being recovered as part of a crime.
- Many of these guns—31 percent—had a short time-to-crime ratio, which is an indication of trafficking.¹⁷

The initiative led to a marked increase in gun trace requests during the late 1990s and the consequent publication of numerous national and city-specific trace reports that provided invaluable tools for state and local law enforcement agencies in determining enhanced source data. These data included sources of crime guns broken down by county, reports on the specific types of guns moving the fastest from retail to crime recovery, and breakdowns of specific crime gun recoveries by different age groups of offenders. Informed by these reports and more customized unpublished analysis, “[l]ocal law enforcement managers [could] decide what aspects of the firearms market deserve priority focus, including by age group, by source area, or by type of crime, or any combination of these.”¹⁸

The YCGII program ended in 2000, and ATF has not released a similar gun trace data report since the last YCGII report was released in 2002. Despite the benefits from the increased tracing of crime guns in participating YCGII cities, a former senior manager in ATF's tracing center explained, the focus on evangelizing the benefits of tracing and encouraging local police to trace every crime gun was not sustained at this level after the program ended.¹⁹

Project Exile

Project Exile was another federal violent-crime initiative that was initiated by the U.S. Attorney's Office for the Eastern District of Virginia in 1997 in Richmond, Virginia. During Project Exile, ATF teamed up with the U.S. Attorney's Office and the Richmond Police Department to ensure the strongest possible prosecution of criminals who used guns. The program—created by current FBI Director Comey when he served as deputy assistant U.S. attorney—was designed so that every felon apprehended with a gun was charged in federal court and faced both a lengthy mandatory prison sentence of at least five years and “exile” from the community by serving time in a federal prison out of state.²⁰ The program included a large-scale media campaign to inform the public that committing a crime with a firearm in Richmond would result in harsh punishment.²¹ ATF agents worked closely with local police agencies on the ground to identify gun criminals and conduct investigations.²²

Project Exile appeared to have a significant impact on gun crime in Richmond: During the first 10 months of 1998, the total number of homicides committed in Richmond was down 36 percent, and the number of firearm homicides was down 41 percent, compared with the same period in 1997,²³ though some people argued that this decrease was not due to the program and would have occurred in its absence.²⁴ Project Exile's approach has been replicated in other cities, such as Isolating the Criminal Element, or Project ICE, in Montgomery and Birmingham, Alabama, and Operation SNUG in Rochester, New York.²⁵

Project Safe Neighborhoods

In 2001, DOJ created a new nationwide program to address violent crime in local communities in which ATF was a key federal partner: Project Safe Neighborhoods, or PSN. PSN grew in part out of Project Exile and was based on Exile's essential elements.²⁶ PSN was designed to “reduce gun and gang crime in America by networking existing local programs that target gun and gun crime and providing these

programs with additional tools necessary to be successful.”²⁷ PSN task forces were created in all 94 U.S. attorney districts to bring together federal, state, and local law enforcement agencies and prosecutors, as well as other community stakeholders, to respond to gun crimes in the district. PSN task forces engaged in a number of different activities to further this goal based on the needs of the communities, including directed police patrols, re-entry programs, neighborhood development, school-based violence prevention programs, and the targeting of chronic violent offenders.²⁸ Similar to Project Exile in Richmond, one key component of PSN was increasing federal prosecution of gun offenders, while also engaging in other community-based activities designed to decrease gun violence.²⁹

Where the earlier programs—YCGII and Project Exile—had a narrower focus of activity targeting violent criminals who used guns, PSN became something of a sprawling grant program broad enough to include any enforcement activity that targeted violent crime. With PSN as a vehicle, the U.S. Attorney’s Office, ATF, and other federal law enforcement agencies engaged in a wide range of community partnerships and enforcement initiatives. Various research institutions have evaluated the program, and while the impact on crime reduction is difficult to quantify, each academic study of PSN has found some decline in violent crime following implementation of the program.³⁰ DOJ has maintained the PSN program—though it has evolved into a competitive grant-funding program operated by DOJ’s Bureau of Justice Assistance—and ATF remains a primary player in its task forces. DOJ has committed approximately \$2 billion to PSN since 2001.³¹

Violent Crime Impact Team initiative

This approach to partnerships with local law enforcement to identify gun cases ripe for federal prosecution was rolled out in another ATF initiative in 2004: the Violent Crime Impact Team initiative, or VCIT.³² The VCIT initiative’s goal was to “identify, target, disrupt, arrest, and prosecute the worst-of-the-worst criminals responsible for violent crime in targeted hot-spots through the use of innovative technologies, analytical investigative resources, and an integrated federal, state, and local law enforcement strategy.”³³ Initially launched in 15 cities, the initiative not only deepened the partnerships created by PSN but went further by “emphasiz[ing] proactive and aggressive use of state-of-the-art technology in identifying the worst offenders and the areas in which they operate.”³⁴ Following the six-month pilot period, ATF hailed the VCIT initiative as a resounding success, reporting that during this period, 13 of the 15 VCIT cities reported a decrease in gun homicides.³⁵ Between the inception of the initiative in 2004 and

early 2012, it obtained convictions against more than 4,950 defendants, with nearly 84 percent being sentenced to prison for an average of 19.7 years.³⁶ The VCIT initiative continues to operate in 31 cities.³⁷

There are a few lessons that can be gleaned from ATF's work in this succession of violent-crime initiatives. The early initiatives such as YCGII and Exile were a good fit for ATF because of their focus on gun crimes, improving crime gun tracing, and targeting the worst-of-the-worst violent gun criminals for federal prosecution. But as the programs have evolved from targeted initiatives focused on gun crime to broader criminal justice programs that encompass a wider set of criminal activity, the work of ATF agents in the field has strayed from the narrow mission of helping local law enforcement address violent gun crime to agents working on any criminal enforcement activity prioritized by the local partner agency. ATF's latest violent-crime program, Frontline, appears to be an attempt to refocus ATF's enforcement efforts and to impose greater accountability on leadership in the field divisions in order to ensure that ATF agents and resources are being used judiciously on the most violent offenders in the community.

Frontline

ATF's most recent attempt to take the lead on violent-crime enforcement is Frontline, a new agency-wide initiative that is both a program for criminal enforcement operations and a new management and oversight structure for the agency. Published agency materials describe Frontline as a "business model" that is "part of a continuing effort to improve efficiency in meeting [ATF's] mission" and is intended to be "the platform from which ATF serves as a critical component in DOJ's efforts in investigating and preventing violent crime."³⁸ With respect to enforcement, Frontline adopts an "intelligence-led" approach through which field divisions are directed to conduct "domain assessments" to understand the "violent crime environment" of a geographic region.³⁹ ATF agents in the field work with local law enforcement partners to gather data to inform these domain assessments, and leadership in the field and at headquarters use the assessments to determine where to direct ATF enforcement resources.⁴⁰ Another element of Frontline is the Violent Crime Reduction Partnership, or VCRP, which is the initiative through which ATF works with local law enforcement partners to engage in enforcement operations that target violent gun criminals. Through the VCRP, ATF "coordinates and integrates regionally based law enforcement missions, strategies, tactics, and intelligence to effectively prioritize and maximize impact on violent crime."⁴¹

Part of the Frontline model is to conduct “surges” in areas that have a high rate or sharp escalation of violent crime and send additional law enforcement resources to investigate and apprehend large numbers of violent criminals.⁴² For example, in early 2012, ATF conducted one such surge in Oakland, California, called Operation Gideon III. ATF deployed experienced undercover agents from around the country to assist local ATF agents and police officers in a four-month operation designed to “dismantle criminal organizations and robbery crews operating in Oakland.”⁴³ This operation resulted in 60 individuals being charged in federal court on federal firearms and drug charges, as well as the seizure of 92 firearms and large quantities of heroin, methamphetamine, marijuana, and crack cocaine.⁴⁴ In July 2014, ATF similarly deployed an additional seven special agents to Chicago, Illinois, to assist that city’s efforts to reduce gun violence.⁴⁵

FIGURE 6
ATF violent-crime initiatives

Years active	Program	Participating agencies	Overview of program
1996–2000	Youth Crime Gun Interdiction Initiative	Federal, state, and local law enforcement agencies in participating cities	YCGII was a partnership between participating agencies that sought to reduce the illegal supply of guns to young people. A primary component was to conduct comprehensive tracing of all crime guns recovered in participating cities.
1997–	Project Exile	ATF, the U.S. Attorney’s Office for the Eastern District of Virginia, and the Richmond Police Department	Through this initiative, every felon caught with a gun was charged in federal court with a mandatory minimum sentence of five years, which they had to serve at a federal out-of-state prison. The program also included a large-scale media campaign.
2001–	Project Safe Neighborhoods	Federal, state, and local law enforcement agencies; prosecutors; and community stakeholders	PSN task forces were created in all 94 U.S. attorney districts to respond to gun crimes. Task forces use community-based programs and increased federal prosecution of gun crimes to target chronic violent offenders and reduce gun violence in targeted communities. PSN has evolved into a competitive grant program.
2004–	Violent Crime Impact Team	ATF-led coalitions of federal, state, and local law enforcement	The VCIT initiative was designed to identify, disrupt, and prosecute the worst-of-the-worst criminals responsible for violent crime in targeted hot spots through the use of innovative technologies; analytical investigative resources; and an integrated federal, state, and local law enforcement strategy. The initiative was launched in 15 cities in 2004 and has grown to operate in 31 cities in 2014.
2012–	Frontline	ATF	Frontline is a new approach to criminal enforcement operations and oversight of ATF. It emphasizes data collection in conjunction with local law enforcement so that ATF resources can be strategically directed to target violent crime in local communities. It also includes law enforcement surges in areas that have high violent-crime rates.

Sources: Department of the Treasury, “Treasury Announces 17-City Youth Crime Gun Tracing Results,” Press release, July 19, 1997, available at <http://www.atf.gov/files/publications/download/ycgii/1997/ycgii-report-1997-press-release.pdf>; Gary Fields, “Going After Crimes – and Guns: Richmond, Va., Cleans Up Its Streets By Severely Punishing Any Firearms Offense,” *The Wall Street Journal*, August 5, 2008, available at <http://online.wsj.com/news/articles/SB121789872887012221>; Edmund F. McGarrell and others, “Project Safe Neighborhoods - A National Program to Reduce Gun Crime: Final Project Report” (Washington: U.S. Department of Justice, 2009), pp. iii–iv, available at <https://www.ncjrs.gov/pdffiles1/nij/grants/226686.pdf>; Office of Community Oriented Policing Services, *Violent Crime Impact Teams (VCIT) Initiative: Focus on Partnerships* (U.S. Department of Justice, 2006), available at <http://www.cops.usdoj.gov/pdf/innovations/e02061010.pdf>; Bureau of Alcohol, Tobacco, Firearms and Explosives, *Fact Sheet: Combating Gang Violence* (U.S. Department of Justice, 2013), available at <https://www.atf.gov/publications/factsheets/factsheet-combating-gang-violence.html>.

Even beyond the agency-wide, large-scale initiatives such as PSN, VCIT, or Frontline, most ATF agents in the field are encouraged to develop relationships with their counterparts in local law enforcement to work together to bring the worst violent criminal offenders in the community to federal court for prosecution. There are many examples of successful ATF-led operations conducted in partnership with local law enforcement that resulted in the apprehension of dangerous criminals, including:

- In 2011, ATF agents partnered with local law enforcement in Savannah, Georgia, on an undercover investigation named Operation Pulaski, in which undercover ATF agents infiltrated multiple criminal organizations and purchased 189 firearms and large quantities of heroin and cocaine. This operation, which spanned more than a year, resulted in 45 defendants being charged with federal firearm and drug offenses.⁴⁶
- In 2012, ATF agents in Anaheim, California, partnered with the Anaheim Police Department to conduct a one-year investigation—dubbed Operation Halo—into a notorious criminal street gang. This operation culminated in the deployment of more than 100 law enforcement officers on a single morning to apprehend 49 defendants. During the course of this operation, agents recovered 40 firearms—including sawed-off shotguns, assault weapons, and semiautomatic handguns—and large quantities of narcotics from gang members.⁴⁷
- In 2011, ATF agents in Omaha, Nebraska, partnered with the Omaha Police Department on a seven-month investigation into criminal gun and drug trafficking networks. The operation resulted in the arrest of 55 violent criminals for crimes such as illegal gun possession and drug trafficking. In addition, ATF agents and Omaha police officers seized more than 70 firearms and illegal drugs with a street value of more than \$50,000 during this operation.⁴⁸

These examples are but a fraction of the highly effective work ATF agents are doing in the field with local law enforcement to take down violent criminal enterprises. These and other similar operations demonstrate that ATF agents, many of whom have extensive training and experience in the field, are often quite effective at investigating violent crime and criminal networks and offer a significant benefit to local law enforcement efforts to prevent gun crime and apprehend violent criminals. ATF agents certainly offer a great deal of value to local police departments in doing this work, but the question remains as to whether this is the best use of federal resources by an agency with a severely limited budget and a primary focus on gun crime.

ATF in partnership with local law enforcement: A model for federal agencies

Over the past two decades, these partnerships with local law enforcement—whether under the rubric of Exile, PSN, the VCIT initiative, Frontline, or other such programs—have been an area where ATF has consistently done its most effective work. ATF has earned a good reputation among federal, state, and local law enforcement agencies for its ability to partner with other departments on this type of operation. In a 2009 survey of local law enforcement agencies, nearly all of the respondents said that their work with ATF on gun trafficking investigations was “effective” or “very effective.”⁴⁹ In a February 2013 interview with *The Washington Post*, Chuck Wexler, executive director of the Police Executive Research Forum—a policing policy group—defended ATF from criticism and praised the agency’s work with local law enforcement: “The ATF are always great team players. They’re very good at what they do. You would be hard-pressed to find any police chief in America that doesn’t think the ATF doesn’t have a huge impact in their community in fighting gun crime.”⁵⁰

This stands in contrast to the FBI’s reputation among local law enforcement. Whether due to perceived or actual arrogance on the part of FBI agents, many local police agencies have had tense working relationships with the FBI. One of the most notorious examples is the well-documented tension between the New York City Police Department and the FBI regarding counterterrorism investigations in the years following the 9/11 terror attacks,⁵¹ but there are numerous other examples from around the country of poor working relationships between FBI agents and local police officers. Shortly after 9/11, a number of police agencies—including those in Baltimore, Maryland; Reno, Nevada; and Portland, Maine—complained that the FBI was refusing to share information crucial to the protection of public safety in their communities.⁵² Portland Police Chief Michael J. Chitwood expressed the frustration felt by many in local law enforcement in the post-9/11 period in an interview with *The New York Times* in November 2001: “I understand what the F.B.I. is about—it’s all about culture and elitism. Sept. 11 should have changed all that. But it didn’t.”⁵³ Similar tensions arose between the FBI and the Boston Police Department during the investigation into the Boston Marathon bombing on April 15, 2013. Boston Police Commissioner Edward Davis testified at a congressional hearing that the FBI had not shared information with the Boston Police Department that it was investigating one of the bombers for suspected ties to terrorism in 2011 and told the House Committee on Homeland Security that, “We would have liked to have known.”⁵⁴

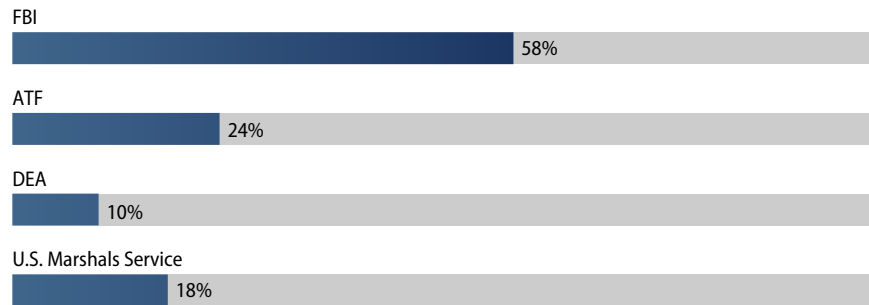
The FBI also has a poor reputation for partnership with other federal law enforcement agencies, especially when compared with ATF. A 2011 Government Accountability Office report explored the jurisdictional overlap between four DOJ component agencies—the FBI, ATF, the DEA, and the U.S. Marshals Service—and surveyed agents from each agency to assess the degree to which there were conflicts among agencies.⁵⁵ The GAO found that one-third of agents surveyed reported experiencing disagreements over the past five years with another DOJ component agency, and 78 percent of those said that it negatively affected an investigation.⁵⁶ While some conflict exists between all of these agencies, agents surveyed reported having more disagreements with FBI agents than any other component agency: 58 percent of respondents reported “always” or “often” having disagreements with the FBI.⁵⁷ In contrast, agents reported significantly fewer conflicts with ATF: 48 percent reported “rarely” or “never” having conflicts with ATF, and another 28 percent reported only “sometimes” experiencing such conflicts.⁵⁸ Twenty-eight percent of non-FBI agents characterized their working relationship with the FBI as “poor” or “very poor,” and an additional 35 percent described the relationship as merely “adequate.”⁵⁹

FIGURE 7

Conflicts among DOJ agencies

Frequency of disagreements between federal agents

Percent of surveyed agents who reported disagreements with the agency "always" or "often"



Source: Government Accountability Office, "Law Enforcement Coordination: DOJ Could Improve Its Process for Identifying Disagreements among Agents," GAO-11-314, Report to Congressional Requesters, April 2011, available at <http://www.gao.gov/assets/320/317573.pdf>.

Merging ATF into the FBI could have considerable benefits for improving the working relationship among federal law enforcement agencies and between federal and local law enforcement. A merger would end the turf battles that have characterized ATF and the FBI’s overlapping jurisdictions for violent crime and explosives and could relieve the FBI of the need to track ATF’s “mission creep.”⁶⁰ And as nearly all of the individuals interviewed for this report stated that ATF’s biggest strength is its

ability to partner effectively with local law enforcement, which is deeply embedded in the agency’s culture, a merger would bring this experience of effective partnership into the FBI, where there is room for improvement.

The next ATF challenge: Fake storefront operations and drug stash house robberies

While ATF has had many successful partnerships with local law enforcement to target the end users of illegal guns, there are substantial weaknesses in ATF’s efforts to become the federal violent-crime police. Executive leadership at ATF has provided insufficient strategic guidance to and oversight of agents in the field working on some types of enforcement operations. The agency has identified targeting violent crime as a priority, yet has at times failed to adequately direct the field divisions on how they should go about fulfilling that mission. As one former senior ATF agent put it, ATF headquarters supports the activities in the field divisions, rather than setting the policy and directing the work of agents in the field.⁶¹ Another former special agent described this dynamic as headquarters telling the field divisions to “make dinner” without providing any specific guidance as to what type of dish should be prepared.⁶² The result is that the field divisions essentially operate as independent entities run by a special agent in charge with little guidance from headquarters as to what the agency’s priorities are and how to go about meeting them, and the executive leadership has little knowledge or oversight of the activities of the agents in the field. Many of the current and former members of ATF interviewed for this report described the field divisions as “23 kingdoms” and unvaryingly described the role of the special agent in charge as an independent leader of his or her field division with limited accountability to the executive leadership.⁶³ This is the opposite structure of most police agencies, including the FBI, in which the executive leadership identifies priorities for the agency; works with agency experts to develop innovative and effective initiatives designed to address those priorities; and deploys the initiatives to the agents in the field with guidance, support, and strong oversight to ensure success.

There are many enterprising ATF agents in the field who are attempting to be on the frontline of violent-crime enforcement by working with local police agencies to identify and apprehend violent gun criminals. But in the absence of strong leadership in Washington and a clear vision for ATF’s role in addressing violent crime, too often, ATF agents in the field have resorted to questionable tactics that raise serious concerns. Two types of undercover operations that were initiated years ago but have only recently come under scrutiny are fake storefronts and so-called home invasion drug stash house robberies.

Fake storefronts: Operation Fearless

In early 2012, ATF agents in Milwaukee, Wisconsin, set up a fake storefront called Fearless Distributing that purported to sell clothing, athletic shoes, jewelry, and drug paraphernalia. Undercover agents then spread the word that the store was, in fact, looking to buy guns and drugs. During the course of the 10-month operation, undercover agents bought 145 guns and a variety of drugs from roughly 30 individuals, who at the conclusion of the operation were charged with various gun and drug offenses.⁶⁴

Despite successfully getting a large number of guns off the street, Operation Fearless was marred by numerous operational failures. In September 2012, three guns, including a fully automatic M4 rifle, were stolen out of an ATF agent's vehicle, which was parked about a half mile away from the storefront. The following day, one of the stolen guns was sold back to undercover agents at the storefront, but the remaining two stolen guns, including the M4 assault rifle, were not recovered.⁶⁵ About a month later, the storefront itself was burglarized, and around \$35,000 in merchandise was stolen, though fortunately, no additional guns were taken.⁶⁶ Shortly after this incident, the Fearless Distributing storefront was abandoned, and the landlord of the space has complained that ATF owes him nearly \$15,000 for damage to the store and unpaid utility bills.⁶⁷

Operation Fearless continued to pose problems for ATF even after the storefront was shuttered. While the 16 defendants charged in federal court as a result of Operation Fearless have pleaded guilty,⁶⁸ the cases sent to state court to be prosecuted by the Milwaukee County district attorney—eight in total—have been dropped by the prosecutor's office.⁶⁹ Charges were dismissed against three individuals after prosecutors determined that ATF had arrested the wrong subjects.⁷⁰ One individual identified by ATF as someone who sold drugs to undercover officers at Fearless Distributing was, in fact, in federal custody at the time of the alleged sale.⁷¹ The prosecutor dismissed the charges against the remaining defendants in state court for various reasons, most recently because she determined that the ATF case agent responsible for the operation could not be called as a witness.⁷² And the machine gun stolen from the undercover agent's vehicle has never been recovered.⁷³

An investigation of this operation by the *Milwaukee Journal Sentinel* led to an inquiry by Rep. Darrell Issa (R-CA), former chairman of the House Committee on Oversight and Government Reform, which in turn led to an internal ATF review that revealed numerous problems inherent in the operation, highlighting a number of weaknesses in the agency's current management structure. First, the

FBI was initially involved in Operation Fearless but withdrew from the operation after two months “due to concerns about the operation’s proposed uses of intelligence, operational security and staffing.”⁷⁴ Additionally, prior to the initiation of Operation Fearless, ATF did not have a strong agency-wide protocol regarding undercover storefront operations, which meant that agents were left on their own to design and implement these operations. Furthermore, while Operation Fearless was part of ATF’s Monitored Case Program—a program created after Fast and Furious to increase oversight of field operations by headquarters—the myriad problems and pitfalls experienced by this operation were not communicated to or noticed by headquarters while the initiative was ongoing.⁷⁵

The DOJ Office of the Inspector General has undertaken a review of Operation Fearless as part of its continuing oversight of ATF following its investigation of Fast and Furious.⁷⁶ ATF is considering personnel action against some of the agents responsible for Operation Fearless and has reassigned the agent in charge of the operation to ATF headquarters.⁷⁷ Additionally, the scrutiny of Operation Fearless has led to allegations of improprieties in other storefront operations. An investigation into these operations by the *Milwaukee Journal Sentinel* revealed the following questionable practices by ATF agents during fake storefront operations in other cities:

- At a sham tattoo parlor in Portland, Oregon, ATF agents were involved in persuading a mentally disabled man to get a tattoo on his neck of the store’s logo; they arrested him a few months later.
- ATF agents used mentally disabled men to help promote the fake businesses in at least four cities before arresting them for their roles in illegal activities that occurred at those locations.
- ATF agents opened fake storefronts in a number of cities in safe zones near churches and schools and permitted juveniles to congregate in the storefronts.
- At a storefront in Wichita, Kansas, ATF agents instructed a felon on how to saw off the barrel of a shotgun and suggested that he bring it back to the storefront after doing so.
- ATF agents employed a felon to manage a fake pawnshop they set up in Pensacola, Florida.⁷⁸

An ATF spokesperson described the agency’s use of this type of operation as a means of apprehending large numbers of violent criminals in a given geographic region: “Long-term undercover investigations are one of many tools used by ATF in locations that have high levels of violence occurring in the demographics and a mechanism is needed to rid the area of a large volume of individuals (as) opposed to

a handful of individuals.⁷⁹ At a hearing on ATF's use of storefront investigations held by the House Judiciary Committee Subcommittee on Crime, Terrorism, Homeland Security, and Investigations on February 27, 2014, Deputy ATF Director Thomas E. Brandon described these operations as "a valuable investigative technique in which undercover law enforcement officers operate a business that is calculated to identify and proactively intervene with criminals and criminal activity in high crime areas or hotspots."⁸⁰ Brandon testified that ATF had conducted 37 storefront operations between 2009 and 2013 that resulted in the arrest of nearly 300 individuals and the confiscation of more than 1,300 guns from criminals.⁸¹ While acknowledging and apologizing for the failures apparent in Operation Fearless and some other storefront operations, Brandon reiterated that with proper oversight and management, this type of undercover operation is a "viable investigative technique" to which he is "receptive."⁸² However, despite this professed support for storefront operations and reassurances that ATF has enhanced the oversight structure for these operations, including by issuing a new procedural manual for storefronts, Brandon reported that ATF was not currently operating any storefronts at the time of the hearing.⁸³

'Home invasion' drug stash house robberies

Another way that ATF agents in a number of field divisions have attempted to prevent violent gun crime is to identify individuals likely to commit these crimes and, through undercover operations, provide the opportunity for them to agree to commit armed robbery of fake drug-stash houses. Known as "home invasion investigations" within ATF, a typical operation goes as follows: ATF agents identify individuals they suspect have been stealing from local drug dealers.⁸⁴ An undercover agent then poses as a dissatisfied low-level associate of a big drug-dealing organization and offers the target the opportunity to steal a large quantity of drugs from a stash house. When the target arrives at the supposed stash house intending to commit the robbery, he or she is arrested and charged with numerous federal crimes.⁸⁵

ATF agents assert that these operations are a crucial means of preventing violent crime. Describing a drug stash house operation resulting in arrests, ATF Special Operations Chief Charlie Smith explained:

Now because of the fact that we did create this, my home, the home next door to me ... isn't going to get their door kicked in looking for drugs that may have existed or maybe didn't exist because they had the wrong address. So when are we going to start sitting back and realizing, hey, if these guys have an opportunity and we can knock that off before it gets to that, it's better for us.⁸⁶

As of June 2013, ATF has used this type of operation to apprehend more than 1,000 defendants; 80 percent of them had a criminal record that included at least two felony convictions, but 13 percent of them had never been convicted of a violent crime.⁸⁷ And while ATF's actions generally have been upheld by federal courts and defendants' arguments that they were entrapped by ATF agents generally have been rejected, a number of judges have expressed serious concerns. In a dissenting opinion in a case in which an entrapment defense was rejected, Judge Richard Posner of the 7th Circuit Court of Appeals expressed skepticism about these operations, describing them as "a disreputable tactic" that "create[s] an increased risk of entrapment."⁸⁸ Another jurist, Judge Ruben Castillo of the U.S. District Court in the Northern District of Illinois, criticized these operations, finding that the defendants had "made a strong showing of potential bias" in these operations and noting that since 2011, ATF has apprehended at least 26 individuals, all of whom were either black or Latino, in drug stash house operations.⁸⁹

In addition to this legal criticism, drug stash house operations have been criticized for being particularly dangerous: A *USA Today* investigation found that 13 people have been shot during these operations—all by police officers or ATF agents—mostly in response to shooting at officers or attempting to hit them with their cars.⁹⁰

Strengthening violent crime enforcement through a merger with the FBI

The problems identified with fake storefront and home invasion operations are illustrative of the larger management and leadership shortcomings that have plagued ATF for many years. Similar to the botched Fast and Furious gun trafficking operation in Arizona, the storefront and drug stash house operations show a degree of design creativity. Using informants and data to build bigger cases and catch higher-level cartel operatives in Fast and Furious was not in itself a reckless idea. In fact, the DOJ OIG review of the Operation Gun Runner operations that preceded Fast and Furious recommended going in exactly this direction.⁹¹ But the operation, as ultimately designed and executed, was inherently flawed. Likewise, the notion of partnering with local law enforcement to set up fake businesses as a means to integrate undercover ATF agents into the networks and commerce of the drug gangs that are among the chief perpetrators of gun violence all makes sense. But what all these operations lack is a strong management culture to evaluate and control risks and to allow for midstream course corrections when problems arise. In addition, these operations seem to be moving away from the focus on ferreting out criminals who use guns and toward more open-ended violent-crime enforcement activities—which, again, may not be the best use of scarce ATF resources and firearm-specific expertise.

Agents in the field are often given conflicting messages by leadership in the field: Be cautious and do not do anything that might get the agency in trouble, but, at the same time, be proactive and apprehend violent gun criminals before they have a chance to harm the community. With limited oversight from high-level management and no uniform guidance on how to reconcile these directives or how to conduct such operations, the problems surfacing in the storefront and stash-house robbery cases are as much an indictment of ATF leadership as of the individual agents involved. Just as with *Fast and Furious* and the Richmond gun show operations, agents in the field made poor choices in the absence of strong guidance from headquarters regarding these types of operations. Furthermore, there was no backstop in place to identify those poor decisions and address them before action was taken and preventable mistakes were made. Additionally, when these operations come under attack, the agency tends to retreat entirely, while at the same time defending their law enforcement value.

Even with the agency-wide initiatives ATF has implemented to target violent gun crime in communities across the country, agency leadership has often failed to provide adequate guidance to ensure the program's success. For example, DOJ OIG evaluated the VCIT program in 2006 and found that, while the VCIT approach and strategy may be an effective tool for reducing gun violence, ATF executive leadership failed to provide sufficient guidance and oversight to the field divisions in order to ensure that the program was implemented as designed, and it was therefore unclear whether and to what extent the program has been a success.⁹² The VCIT coordinators reported that, "ATF Headquarters officials left it to the Field Division managers to develop their local VCIT strategies."⁹³ As a result, each VCIT implemented the program in a different way, and none implemented all of the core principles and strategies that the initiative was intended to promote.⁹⁴ OIG found that "[b]ecause of the lack of operational guidance from ATF Headquarters, local VCIT activities were often a continuation of ATF enforcement activities that had been under way prior to VCIT implementation."⁹⁵

To his credit, former ATF Director B. Todd Jones attempted to address many of these leadership and oversight shortfalls through the new Frontline program and a new case management process that debuted with Frontline. The management component of the Frontline program imposes more rigorous oversight of operations in the field: Once the leadership in a field division has established its investigative priorities under Frontline, each agent and investigator must obtain

approval from leadership in the field before opening an investigation. This ensures that all operations are in line with the enforcement priorities established using the Frontline assessment.⁹⁶ Frontline also imposes a standardized performance review process through which first-level supervisors continuously monitor investigations throughout their course “to ensure resources are being applied effectively and efficiently.”⁹⁷ Additionally, at the conclusion of each investigation, agents and investigators develop “impact statements” about the investigation that include an assessment of whether the goals of the operation were met, and all staff engage in periodic performance reviews with peer supervisors and field division leadership, who conduct division-wide analysis of operations and provide feedback to the field.⁹⁸ Jones also implemented the Monitored Case Program, which is an additional layer of oversight for the most sensitive investigations.⁹⁹ ATF has always had some form of case monitoring—the strength and effectiveness of which has varied over time—but it seems that executives at ATF are using Frontline to instigate a critical shift in agency culture and management to ensure appropriate oversight and consistency of operations.

Early reports from midlevel leadership within the agency were that, during his tenure, Jones attempted to use the Frontline model to hold managers and supervisors accountable for the work that comes out of each field division.¹⁰⁰ This is directly responsive to much of the criticism that has been leveled at ATF in the wake of Fast and Furious and, if implemented successfully, would mark a significant improvement in the agency’s long-standing culture that has failed to impose any accountability on senior executives, midlevel managers, and first-line supervisory agents for leadership and management failures.

At its core, however, Frontline needs to ensure executive oversight at the very highest levels of ATF and DOJ. In its investigation of the Fast and Furious operation, OIG found that executives and others at ATF and DOJ headquarters did not have knowledge of the details of the operation until it was well underway and hundreds of guns had been allowed to walk.¹⁰¹ During the February 2014 hearing on storefront operations, Deputy Director Brandon testified that he was not made aware of problems with other storefront operations aside from Operation Fearless until they were reported in the media in December 2013.¹⁰² A clear goal of Frontline and the new case monitoring program is to ensure that ATF headquarters is able to detect defective operations before they become operational disasters. But the challenges with the management culture at ATF may be hard for one new initiative alone to fix.

This is where merging ATF into the FBI would have a significant impact. The FBI already has a much more robust oversight structure in place that ensures a strong level of management and accountability over work in the field. According to a former DOJ executive with knowledge of both agencies, the FBI provides a stronger oversight and accountability structure over the work of field agents in two key ways. First, FBI leadership at headquarters holds leadership in the field offices more accountable for meeting the programmatic goals set for each office. This takes the form of frequent meetings and video conferences between the FBI special agents in charge and executive leadership, during which the SACs must demonstrate that resources are being used properly and that progress is being made toward achieving goals.¹⁰³ While ATF is now attempting to implement such safeguards to ensure executive oversight and consistent implementation of nationally developed strategies, the agency's long-standing culture and infrastructure is historically flawed in these respects, and, at least in the case of Operation Fearless and many of the drug stash house robbery operations, continues to demonstrate critical weaknesses.

Second, the FBI has a better-developed structure in place to supervise the conduct of investigations. As a result, mistakes are more likely to be caught in either the design phase of an operation or early in its execution. According to the former DOJ executive, there is a culture of accountability that permeates the FBI at every level that is distinct from the current culture at ATF of relatively independent field divisions that operate with looser guidance from headquarters. And while Jones attempted to implement new protocol for heightened supervision of the agents in the field by managers in the field, changing this ingrained culture at the agency is a more foreboding challenge.

Finally, merging ATF into the FBI would also have the benefit of bringing ATF's culture of strong partnership and cooperation with local law enforcement to the FBI, which has a more checkered reputation in that respect. While ATF certainly has weaknesses in its management and oversight structure, it has demonstrated a real competency in working with local law enforcement to identify and apprehend the most violent criminals in communities. Combining ATF's competency for partnership with the FBI's strong management and oversight structure would result in a strong, effective federal law enforcement agency poised to lead a strong federal response to violent crime and the criminal use of guns.

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Chapter 6

ATF and gun industry regulation

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ATF and gun industry regulation

In its policing of firearms in the United States, the Bureau of Alcohol, Tobacco, Firearms and Explosives acts as both a criminal enforcement agency and a civil regulatory agency. As part of its regulatory mission, ATF oversees the import, manufacture, and retail sale of firearms. It also licenses the entities engaged in firearms commerce. Once ATF issues a license, it inspects the licensees to ensure that they are compliant with laws and regulations and to detect any diversion of firearms. The agency describes its regulatory activities—referred to internally as “Industry Operations”—as part of its work to address violent crime, explaining that its “regulatory function is a key component in the effort to stem the flow of firearms to prohibited persons and criminal organizations.”¹ Despite the important role that firearms industry regulation plays in ATF’s overall mission, the regulatory component of the agency has been marginalized for decades, and long-standing tension exists between ATF agents and the regulatory personnel, known as industry operations investigators, or IOIs.

Over the past two decades, as funding for ATF has lagged behind that of other law enforcement agencies, the agency’s regulatory side has frequently been the target of budget cuts. These budget cuts have affected both the agency’s operations and its staff: The number of ATF special agents rose by 7.5 percent from 2001 to 2014, while the number of its civilian investigators decreased by almost 19 percent over the same period.² The regulatory side of ATF is also the most politically vulnerable branch of the agency, serving as a frequent target of the National

Rifle Association and other organizations in the gun lobby. The same challenges in leadership, resources, and coordination that were identified in this report’s discussion of ATF’s firearms enforcement work are also present in its regulatory efforts. The result is a regulatory agency that struggles to fulfill its legally mandated duties and is hamstrung in its ability to engage in innovative operations to identify corrupt gun dealers and firearms traffickers in the effort to combat gun crime. Indeed, as discussed below, the growing gun industry and the shrinking pool of IOIs has meant that the agency has been unable to meet its inspection goals by such a margin that it recently abandoned its goal of inspecting every licensed dealer in the United States on a cyclical five-year basis. ATF’s decentralized management structure and delegation of industry operations oversight to leadership in each field division has resulted in special agents in charge, or SACs, in some field divisions severely curtailing the activities and effectiveness of the agency’s regulatory side. And IOIs’ concerns about their safety during gun dealer inspections, as well as their requests for badges to invoke their authority with gun dealers during these inspections, have repeatedly fallen on deaf ears.

For evidence of the unfortunate position of the regulatory staff within the agency, one need look no further than the name many agents derisively give them: “booger-eaters.”³

Regulation of the firearms industry: ATF’s unique role

The sophomoric teasing that some in ATF apply to the IOIs highlights a key challenge in the agency’s current culture: the institutional failure to recognize that it is this role as regulator of the firearms industry that makes ATF unique among federal law enforcement agencies. Virtually every federal, state, and local law enforcement agency has the identification and apprehension of violent criminals as part of its mission. ATF certainly is not unique in this regard. One area where ATF can bring real value to efforts to combat gun crime is the agency’s access to gun dealers via regulatory oversight, which provides a unique opportunity to gather intelligence about firearms trafficking. ATF is the only federal agency that has this relationship with the firearms industry, and much more could be done to elevate the work of IOIs and create a more productive connection to the criminal enforcement work of the agency. This would enable the development of stronger intelligence to support gun trafficking investigations.

There are roughly 780 IOIs employed by ATF performing a number of regulatory activities related to the commerce in firearms and explosives.⁴ IOIs review all applications for federal firearms licenses submitted by prospective firearms importers, manufacturers, and retailers. They also conduct periodic inspections of current license holders—known as federal firearms licensees, or FFLs—to ensure they are complying with all federal laws and regulations that pertain to the commerce in firearms. IOIs play a similar role in the explosives industry.⁵

Compliance inspections of gun dealers are of particular importance. ATF materials describe two primary goals for FFL compliance inspections: ascertain the FFL's compliance with applicable laws and regulations and work with the FFL on best practices and voluntary measures to secure its inventory and detect any illegal diversion of firearms.⁶ ATF investigators find failures in both of these areas with alarming frequency. In 2013, for example, IOIs conducted compliance inspections of more than 10,500 firearms manufacturers, importers, and dealers, which accounted for roughly 14 percent of all FFLs engaged in business that year.⁷ Of those FFLs actually inspected, less than 50 percent were found to be in full compliance with federal laws and regulations. Some common violations cited during these compliance inspections were missing firearms; failure to verify identification; failure to conduct background checks; failure to stop a sale after purchasers indicated they were prohibited from gun possession; failure to properly keep records of all acquisitions and dispositions; and failure to file reports of individuals who purchase multiple handguns, which are used to identify potential straw purchasers or illegal traffickers.⁸ Investigators discover tens of thousands of guns missing from the FFLs' inventories during compliance inspections every year. Between 2004 and 2011, IOIs discovered nearly 175,000 guns unaccounted for during dealer compliance inspections.⁹ Guns that go missing from the inventories of gun dealers pose two serious risks: They often end up being used in crimes, and when they are used in crimes, they become difficult to trace because there is no record of who purchased the gun from the dealer.¹⁰ Guns missing from gun dealer inventories are not an idle concern—there can be serious consequences when dealers fail to adequately monitor their stock. For example, Bull's Eye Shooter Supply in Tacoma, Washington, lost 238 guns over a three-year period, one of which was used in 2002 by John Allen Muhammad—the “Beltway sniper”—during his multiweek shooting spree in the Washington, D.C., area.¹¹ Bull's Eye had been on ATF's radar since at least 1994 for regulatory violations; however, its federal firearms license was not revoked until after the sniper shootings in 2003.¹²

ATF's ability to use the regulatory inspection process to look for indications of the illegal diversion of firearms presents the greatest opportunity for the regulatory side of ATF to enhance the agency's criminal enforcement operations. While the overwhelming majority of gun dealers are law-abiding business owners, the few who are corrupt play a significant role in the diversion of guns into illegal channels. In its 2000 study of illegal firearms trafficking cases, ATF found that gun dealers were involved in less than 10 percent of firearms trafficking investigations, but when they were implicated in trafficking cases, a large number of guns were involved—nearly half of the total number of trafficked guns documented during that two-year period.¹³ Through various techniques, such as inspections of mandatory paperwork and full reconciliation of physical inventory with acquisition and disposition records, investigators are able to identify suspicious dealers who may be responsible for, are knowingly facilitating, or are unknowingly a source of the diversion of guns to criminals.

Despite the unique role ATF plays in the regulation of the firearms industry—and the opportunity this role affords to proactively identify bad-actor gun dealers responsible for the diversion of guns into illegal secondary markets—the agency has struggled to rise to the challenge of using the regulatory function as a complement to its law enforcement mission. Looking for signs of diversion and identifying high-risk dealers have been relegated to the status of a “discretionary initiative”—initiatives that investigators can focus on only after they have addressed headquarters-mandated priorities.¹⁴ As discussed below, however, because of the extremely limited resources provided to ATF's regulatory function, investigators struggle even to complete the work that headquarters has classified as mandatory. This makes it very difficult for ATF investigators to address discretionary initiatives, such as focusing on high risk FFLs.¹⁵

Independent kingdoms where agents wear the crowns

The rift between the special agents and the IOIs intensified in October 1998, when Industry Operations was dismantled as an independent directorate and merged into Field Operations.¹⁶ This change meant that the director of industry operations in each of the 23 field divisions now reported to the SAC in that field division rather than operating in an independent chain of command.¹⁷ This move subjugated the role of regulation to enforcement and gave individual SACs almost complete control over the regulatory work in each field division. This has

led to vastly different relationships between agents and investigators in field divisions across the country, depending on each individual SAC's perspective on the agency's regulatory function. In field divisions run by SACs who recognize the importance of the regulatory work, the relationship between agents and investigators is positive and productive.

In the early 2000s, for example, an area supervisor—a first-line regulatory supervisor in the field—was designated as a “Firearms Trafficking Coordinator” for a field office in the Northeast.¹⁸ In this position, the investigator routinely visited gun dealers who had numerous crime guns traced to their stores, asking the dealers to voluntarily relate any information about suspicious gun buyers. Through this work, this investigator gained the trust of many of the FFLs in the area, who rarely refused his information requests and often came to him with concerns about suspicious sales. The investigator estimates that he generated information for at least 200 criminal cases through his work, either through tips passed on by cooperative gun dealers or information gleaned from FFLs' sales records.¹⁹

In one case, an FFL contacted the investigator about an individual who had been purchasing a large number of handguns in Pennsylvania. Following up on the tip, the investigator connected the individual to a number of handguns, including one that had been recovered in connection with a crime. He referred this information to a special agent, who developed the individual into an informant. He provided the names of three other individuals who had recently stolen a number of guns from a private residence. These men subsequently informed ATF about an individual named Hugo Selenski, whom they alleged had committed a number of murders and buried bodies on his property. With this information, the Pennsylvania State Police obtained a search warrant for Selenski's property and discovered the bodies of several individuals. Selenski currently faces numerous charges, including murder, in Pennsylvania courts.²⁰

However, while some field divisions have had strong SACs who valued the regulatory mission and integrated it tightly into the criminal enforcement mission, the decentralized management approach at ATF has allowed other field divisions to devalue, undermine, and impede it.²¹ In some field divisions, the relationship between the agents and investigators is strained, the work of the IOIs is severely limited, and opportunities for productive collaboration are missed. For example, according to a former top-level ATF executive with extensive knowledge regarding this issue, in the mid-2000s, a SAC of a southeastern field division instructed ATF

IOIs to cease conducting compliance inspections of gun dealers located outside a 15-mile radius of the office in order to cut down on expenses. This SAC also instructed investigators not to make any formal written referrals to special agents regarding gun dealers' suspected illegal activities; rather, they were to express any concerns via informal verbal channels only. According to this former executive, the SAC's dismissive approach to the regulatory side of ATF's mission resulted in bad morale among investigators in the field division and a poor working relationship with the special agents.²² Additionally, these limitations on investigators' work meant that problematic gun dealers were not inspected and that key intelligence regarding possible criminal activities was not passed on to special agents. Another former senior official in a different field division recalled a similar restriction on formal referrals from investigators. In this office, the intelligence section did not want to accept written referrals of information gathered during compliance inspections, reportedly because of the amount of work required to review them.²³ Again, this meant that intelligence regarding possible illegal gun sales and trafficking patterns were not given to special agents for follow-up investigation and possible criminal enforcement action.

Since the 1998 restructuring of ATF that moved Industry Operations under the control of the SACs, executive leadership at ATF has often appeared to downplay the tension between the enforcement and regulatory sides, permitting them to drift further apart. Except in the few field divisions headed by a SAC who prioritizes maintaining a strong relationship between agents and investigators, agents in many field divisions typically look down on investigators and devalue their role in the agency's mission.

A 2004 investigation by the U.S. Department of Justice Office of the Inspector General found significant shortfalls in the ATF FFL inspection program, many of which stemmed from lax leadership and oversight by headquarters and too much autonomy for individual field divisions.²⁴ The OIG found that "ATF's inspection program is not fully effective for ensuring that FFLs comply with federal firearms laws because inspections are infrequent and of inconsistent quality, and follow-up inspections and adverse actions have been sporadic."²⁵ The OIG also found that there were "wide variations in the ATF inspection program's productivity and implementation among the ATF Field Divisions" and that "the lack of standardized inspection procedures resulted in inconsistent inspections of FFLs and significant variation in the implementation of the inspection programs by Field Divisions."²⁶ The OIG made a number of recommendations, the foremost of which was for ATF to develop a "standard, streamlined inspection process" for use across field divisions.²⁷ It concluded:

To ensure that all FFLs are treated consistently, and that the FFL inspection program is as efficient as possible, the ATF needs to implement a policy to ensure that inspections are conducted in a uniform manner, that inspections procedures are limited to the minimum steps needed to accomplish a valid review, and that violations are processed in a uniform and appropriate manner. A consistent and timely inspection process is essential for identifying and addressing scofflaw dealers and reducing the availability of illegal firearms to criminals.²⁸

After the release of the OIG report in 2004, ATF took a number of steps to address the identified problems, including the creation of a new headquarters position—deputy assistant director of industry operations—to oversee and manage the regulatory activities in the field divisions.²⁹ Under the leadership of this office, ATF headquarters issued an operating plan for Industry Operations that created national standards in order to identify which licensees should be inspected, how these licensees should be inspected, and how violations should be addressed.³⁰ This operating plan provided specific guidance as to which licensees were to be inspected based on specific risk factors.³¹ The purpose of the operating plan was to set the agency’s priorities at a national level; the field divisions were directed to address these mandatory priorities before taking on discretionary activities.³² According to a former senior-level executive familiar with Industry Operations, the operating plan helped headquarters maintain some control over the field activities and imposed accountability on the regulatory activities taking place in the field divisions.³³

The OIG again reviewed ATF’s FFL inspection program in 2013. It recognized the progress that ATF had made since the 2004 report in identifying high-risk dealers and targeting them for compliance inspections. In particular, the OIG identified the annual operating plan as a mechanism to identify mandatory agency priorities and help guide the work of the field divisions.³⁴ However, the OIG found that ATF was still falling far short in its regulatory mission in a number of areas, including failing to meet its compliance inspection goal and failing to track high-risk FFL inspections.³⁵

The Frontline initiative implemented by Director Jones to impose an intelligence-driven approach on criminal enforcement also encompasses ATF’s regulatory work,³⁶ and the domain assessments that each field division conducts should also include a consideration of the role that local FFLs play in gun crime.³⁷ In January 2014, for example, the Charlotte ATF field division conducted a domain assessment and determined that the business activity of local FFLs raised significant concerns, as North Carolina has long been a source state for illegally trafficked guns used in crimes in other states. The Industry Operations leadership in the field

division identified specific FFLs that they suspected were involved in trafficking and scheduled an inspection surge in which investigators would conduct full compliance inspections to proactively look for trafficking evidence during a several-week period.³⁸ This is a perfect example of the potential that exists within ATF to use the agency's regulatory function to assist with criminal enforcement efforts to identify and apprehend traffickers.

Reports from within ATF regarding the ability of the Frontline model to provide guidance to and oversight of the agency's regulatory work were mixed. Some investigators said that Frontline has essentially meant a reversion to the pre-2004 system—where inspection priorities are set by SACs rather than by Industry Operations executives at headquarters³⁹—while others relayed that Frontline presents little change to investigators' work in the field.⁴⁰

Badges and guns: Tension between agents and investigators

Investigators have attempted to raise their status within the agency since the 1998 restructure, particularly by highlighting the risks they face when conducting FFL inspections in the field. According to previously unpublished documents obtained by the authors of this report, as early as the 1990s, IOIs were raising concerns with ATF leadership about their safety in the field. In an unreleased 1993 memorandum from the area supervisors of the New York and Parsippany, New Jersey, area offices to the chief of field operations for the North Atlantic region, the area supervisors described the changing nature of the investigator's role and their concerns regarding IOI safety. Chief among the concerns was the fact that investigators are often tasked with conducting FFL inspections in high-crime areas and, when gun dealers do not have a formal business location, in private residences. The memorandum includes examples of situations where investigators felt their safety was threatened.⁴¹ The National Treasury Employees Union, or NTEU, conducted a survey of investigators in the early 1990s and found that 78 percent of them felt they had been placed in an unsafe situation during the performance of their duties at least once in the previous five years, and nearly 20 percent felt they had been placed in such situations more than 11 times.⁴² The NTEU made numerous recommendations to ATF to better ensure investigator safety, including allowing IOIs to carry firearms during inspections.⁴³ This request was rejected, but regulatory staff at ATF continued to raise the issue of investigator safety.

In 2009, an executive-level Industry Operations member sent a memorandum and supporting material to then-Acting Director Kenneth Melson that detailed the history of the investigator safety issue and reiterated the need for investigators to be permitted to carry firearms. This executive requested that Acting Director Melson conduct a new survey of investigators to again assess their safety in the field, going as far as to prepare the survey instrument and draft a memorandum that Melson could send to the regulatory staff.⁴⁴ According to multiple sources, however, this survey was never conducted.⁴⁵

There has also been a long-running struggle within ATF for investigators to be issued badges or shields similar to those given to special agents. Investigators were issued badges in the 1950s and again in the 1990s when ATF was part of the U.S. Department of the Treasury. IOIs often argue that being able to display a badge during inspections is necessary to ensure that gun store owners and employees recognize their authority and comply with inspection demands. Following the move to DOJ in 2003, ATF revoked the badges for investigators, citing a DOJ memorandum from 1979 to assert that they simply did not need them as civilians.⁴⁶ After several years of lobbying headquarters, shields were issued to investigators in lieu of a gold badge during Acting Director Michael Sullivan's tenure. But in June 2014, headquarters once again revoked the shields for IOIs.⁴⁷

Also contributing to the tension between special agents and investigators are the fundamental differences in the two positions from a legal and human resources perspective. Investigators are civil servants, not law enforcement agents. As such, they do not share some of the key job functions of special agents, such as conducting criminal investigations, and do not have the authority to make arrests or carry firearms.⁴⁸ Investigators also have a different, and in some ways more limited, career trajectory than agents. Agents have the potential to rise to the agency's highest levels and there are numerous opportunities for agents to be promoted to supervisory positions either in the field divisions or at headquarters. In contrast, IOIs' options for advancement are more limited within ATF: There are fewer supervisory positions available, and competition for each one is substantial.⁴⁹

The result of this tension between the enforcement and regulatory sides of ATF is that in most field divisions there are very few regular channels of communication between agents and investigators, even though the investigators' access to gun dealers and their respective sales records provides a unique opportunity to identify possible gun trafficking activities. For example investigators reviewing

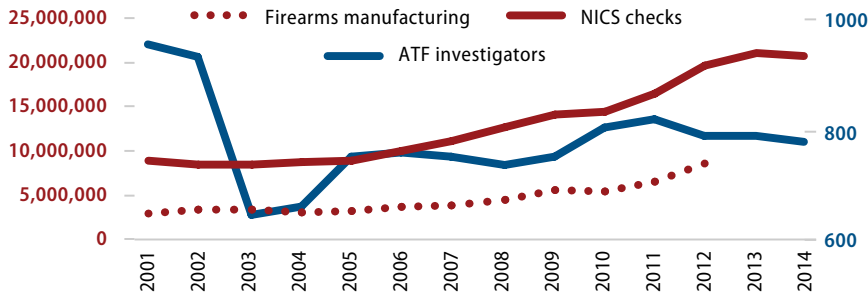
the background check forms required for every gun transaction at a licensed dealer—known as 4473s—may observe that an individual is buying an unusually high number of guns or that one dealer is selling a large number of guns often used in crimes.⁵⁰ This information could be reported to special agents and intelligence agents in the local field division, who could then gather additional information and develop this lead into valuable intelligence data. For the most part, however, ATF IOIs are largely unable to capitalize on their proximity to ATF agents, who, in turn, too often fail to make use of investigators' frequent interactions with licensed dealers in order to develop sources of intelligence regarding suspected gun trafficking activities. Investigators may continue to make referrals to the enforcement side, but those referrals often take a back seat to the agents' own preferred enforcement operations. According to a former ATF executive with direct knowledge of the situation, there was a proposal in the mid-2000s to create an inspection referral tracking system that would have formalized the process of referring cases to special agents, created a system to grade referrals to indicate their priority levels, and hold the enforcement side more accountable for them. According to this former executive, this proposal "never left headquarters."⁵¹

A growing industry and a shrinking regulatory team

The budget limitations ATF faces have a significant impact on the agency's ability to adequately perform its regulatory function. In 2014, ATF reported employing 780 investigators to regulate the nation's firearms manufacturers, importers, and dealers, as well as to regulate the explosives industry.⁵² However, this number is somewhat inflated, as it includes supervisors who do not conduct inspections themselves and IOIs who have been assigned to headquarters. Sources within ATF confirm that, as of May 2014, there were 624 IOIs nationwide available for inspections.⁵³ Yet even the larger number is almost 18 percent fewer IOIs than the agency employed in 2001, despite the fact that the size of the industry has grown exponentially.⁵⁴

FIGURE 8
A growing industry and a shrinking regulatory team

Comparison of the number of ATF investigators to growth of the firearms industry, 2001–2014



Sources: Bureau of Alcohol, Tobacco, Firearms and Explosives, *Fact Sheet: ATF Staffing and Budget* (U.S. Department of Justice, 2015), available at <https://www.atf.gov/publications/factsheets/factsheet-staffing-and-budget.html>; Bureau of Alcohol, Tobacco, Firearms and Explosives, *Firearms Commerce in the United States* (U.S. Department of Justice, 2014), available at http://www.atf.gov/sites/default/files/assets/statistics/CommerceReport/firearms_commerce_annual_statistical_report_2014.pdf; Bureau of Alcohol, Tobacco, Firearms and Explosives, *Annual Firearms Manufacturing and Export Report, Year 2013* (U.S. Department of Justice, 2015), available at http://www.atf.gov/sites/default/files/assets/statistics/AFMER/afmer_2013_final_web_report.pdf; Federal Bureau of Investigation, *NICS Firearm Background Checks: Month/Year* (U.S. Department of Justice, 2015), available at http://www.fbi.gov/about-us/cjis/nics/reports/nics_firearm_checks_-_month_year.pdf.

Although there is limited data on the number of gun sales in the United States, there are other measures of the gun industry that provide information on its size and scope. For example, between 2004 and 2011, the number of FFLs increased by 16 percent.⁵⁵ Additionally, the number of firearms manufactured in the United States increased by 182 percent from 2001 to 2012, from roughly 3 million to 8.5 million firearms a year.⁵⁶ In a 2012 interview, an ATF spokesperson pointed to this manufacturing increase as an indication of the rise in the number of guns sold: “There’s a reason [for this increase]. Because they’re selling. They aren’t just sitting on the shelf if they’re being manufactured.”⁵⁷ A rough proxy for the volume of gun sales in the United States is the number of background checks conducted using the National Instant Criminal Background Check System. Background check data likewise suggest a dramatic expansion of U.S. firearms commerce. In 2001, 8.9 million firearms background checks were conducted.⁵⁸ In 2014, that number had grown to nearly 21 million—an increase of 135 percent.

In short, in the past decade, ATF had a smaller number of regulators available to oversee an industry that more than doubled in size. These budget and staffing shortfalls, coupled with the gun industry’s substantial growth, means that ATF is hard pressed to perform even its most basic function of inspecting federally licensed gun and explosives dealers to ensure compliance with applicable

laws and regulations. Following the 2004 OIG review that found that ATF was failing to meet its goal of inspecting every gun dealer every three years, ATF established a new goal of inspecting gun dealers in “source” states—those states that have the highest number of crime guns traced to in-state dealers—every three years, as well as retail dealers in nonsource states once every five years.⁵⁹ Meeting this goal would require a significant investment in hiring regulatory staff. According to a previously unreleased internal ATF document provided to the authors of this report, to achieve both of these inspection goals, ATF would have needed to hire an additional 250 inspectors over the 2009 staffing level; this would have amounted to a 40 percent increase in the 2009 staffing level.⁶⁰ It was apparent—even at the time the document was drafted—that ATF was not going to be able to adequately staff up in order to meet its three and five year inspection goals: “Given the operating objectives described and current budgetary constraints, it is readily apparent that staffing shortages will prevent Industry Operations from reaching these goals in the foreseeable future.”⁶¹

Indeed, ATF has not met these inspection goals. The OIG conducted a review of ATF’s FFL inspection program and found that, between fiscal year 2007 and FY 2012, ATF failed to meet its cyclical inspection goals. It also found that more than 58 percent of FFLs had not been inspected for five years.⁶² The OIG concluded that this shortfall was in part due to insufficient staffing. Using 2010 numbers, the OIG determined that ATF would need 1,140,139 investigator hours to inspect every FFL once every five years but had only 940,500 inspector hours available in 2010.⁶³ In 2013, ATF inspected 14 percent of the nation’s 75,000 active firearms licensees,⁶⁴ an inspection rate far below even the five-year inspection goal.⁶⁵

While the firearms industry that ATF is charged with regulating has grown steadily, ATF’s force of investigators has gotten smaller, rendering the three- and five-year inspection goals into little more than an agency talking point. In fact, sources within ATF report that in summer 2013, the agency backed away from imposing compliance inspection goals based on the time elapsed since the last inspection and instead moved toward compliance inspections based on specific indications that a particular FFL is engaging in substandard business practices sufficient to necessitate an inspection.⁶⁶ In effect, ATF has been forced to give up the goal of inspecting every licensed firearms dealer on anything resembling a regular or cyclical basis.

This lack of regular inspections creates a substantial opportunity for guns to go missing from dealer inventories and be diverted into criminal hands, fated to go unnoticed until they show up at a crime scene. Former Assistant U.S. Attorney Gerald Matheny, who prosecuted firearms cases in Texas from 2001 until 2008, opined that more frequent inspections would have a deterrent effect on illegal activity by rogue dealers. “If you increase the [frequency of] inspections,” he said, “it might affect or limit some of the illegal activity that’s occurring. If a guy gets hit every year for an inspection, they have less of a chance to do something illegal. But I don’t think ATF has the resources for it.”⁶⁷

Blindfolded and hands tied

The investigators’ work is also hampered by numerous legal restrictions imposed on the agency. The gun lobby’s laser focus on ATF has been directed primarily at the regulatory side of the agency and efforts to ensure that licensed gun dealers remain in compliance with applicable laws and regulations. While the gun lobby often supports efforts to enforce existing federal criminal laws against prohibited purchasers and criminals who use guns to commit acts of violence, it strenuously objects to nearly every aspect of ATF’s regulatory activities. The NRA and others have worked tirelessly to lobby Congress to impose numerous obstacles to ATF’s ability to effectively fulfill its regulatory mission. Fifteen restrictions have been added to funding bills that principally limit ATF in its regulatory function.⁶⁸ The most significant of these restrictions was enacted in 2004 and blocked a new regulation that would have required FFLs to conduct a once-a-year physical inventory audit. Such an audit, conducted by the gun dealers themselves, would have helped fill the gap in the infrequent compliance inspections ATF is able to conduct with its limited resources. These restrictions significantly limit the agency’s ability to function effectively. Vivian Michalic, ATF’s chief financial officer, succinctly explained their impact on the agency’s work, saying, “Could we do it faster, less expensively if we didn’t have some of our riders? The answer is yes.”⁶⁹ The gun lobby also seeks other opportunities to create roadblocks to ATF’s regulatory work, such as delaying the nomination of Michael Sullivan to the position of ATF director in 2007 because of concerns over the regulatory activities that took place during his tenure.

FIGURE 9
Blindfolded and with hands tied

Budget riders that undermine the federal government’s ability to combat gun crime

Type of rider	Description	Agencies affected	Year first included
Data restriction	Ban on consolidating or centralizing firearms sales records maintained by federally licensed gun dealers	ATF	1979
Data restriction	Ban on putting records obtained from federally licensed gun dealers when they go out of business into an electronic, searchable database	ATF	1996
Data restriction	Requirement that records of approved national instant background checks be destroyed within 24 hours	ATF, FBI	2004
Agency functions	Ban on transferring the functions, missions, or activities of ATF to another agency or department	DOJ, ATF	1994
Data restriction	Ban on disclosing trace data to the public, except for annual statistical reports	ATF	2007
Data restriction	Prohibition on trace data being subject to subpoena for any state license revocation, civil lawsuit, or other administrative proceeding, unless filed by ATF	ATF	2004
Data restriction	Prohibition on the admission of trace data in evidence	ATF	2005
Gun dealer oversight	Ban on requiring federally licensed gun dealers to maintain a physical inventory	ATF	2004
Gun dealer oversight	Ban on denying an application or renewal for a federally licensed gun dealer due to a lack of business activity	ATF	2004
Firearms regulations	Ban on amending or changing the definition of “curio or relic” or removing a curio or relic from the current ATF list	ATF	1996
Firearms regulations	Ban on denying an application for a permit to import curio or relic firearms	ATF	2005
Firearms regulations	Ban on denying an application to import any model of shotgun because it lacks a sporting purpose	ATF	2012
Firearms regulations	Ban on requiring an export license for exporting certain firearms parts or accessories to Canada	ATF	2005
Research restriction	Ban on the Centers for Disease Control and Prevention, or CDC, participating in the advocacy or promotion of gun control	CDC	1996
Research restriction	Ban on the National Institutes of Health, or NIH, participating in the advocacy or promotion of gun control	NIH	2011

Sources: Consolidated and Further Continuing Appropriations Act of 2012, Public Law 112-55, 112th Cong., 1st sess. (November 18, 2011), available at <http://www.gpo.gov/fdsys/pkg/PLAW-112publ55/pdf/PLAW-112publ55.pdf>; Consolidated Appropriations Act of 2012, Public Law 112-74, 112th Cong., 1st sess. (December 23, 2011), available at <http://www.gpo.gov/fdsys/pkg/PLAW-112publ74/html/PLAW-112publ74.htm>. These were both continued for FY 2013 in Public Law 112-175. See Continuing Appropriations Resolution of 2013, Public Law 112-175, 112th Cong., 2d sess. (September 28, 2012), available at <http://www.gpo.gov/fdsys/pkg/PLAW-112publ175/pdf/PLAW-112publ175.pdf>.

The FBI as a regulatory agency

The authority to regulate the nation’s gun dealers is vested exclusively in ATF, and the FBI currently does not perform any similar regulatory function. While the proposal to merge ATF into the FBI makes intuitive sense in the context of ATF’s law enforcement activities, the question of what to do with Industry Operations is more complicated. As discussed previously, the regulatory side of ATF’s operations has been weakened and marginalized both by politically motivated attacks from outside the agency and subjugation by the enforcement arm within it. In rethinking how to improve ATF’s regulatory operations within the context of merging ATF into the FBI, two options emerge: Sever the regulatory and enforcement functions entirely and make the former a civil agency again, or keep the functions united and move both under the umbrella of the FBI. After consideration, the authors of this report recommend the latter.

The tension between ATF agents and investigators coupled with the FBI's lack of experience as a regulatory agency could lead one to the conclusion that the regulatory function should be severed from the enforcement side and placed within a civil or regulatory agency. One logical place to relocate the regulatory mission of ATF is the Alcohol and Tobacco Tax and Trade Bureau, or TTB, of the Department of Treasury, which is where ATF's tax collection activities were transferred when the rest of ATF moved to DOJ in 2003.⁷⁰ As the parent department of ATF until 10 years ago, the Treasury Department has extensive experience overseeing the work of regulating the firearms and explosives industries and could easily absorb this function back into its jurisdiction with a relatively short learning curve. Another option would be to create an independent firearms regulatory agency within DOJ or the Department of Homeland Security.

The idea of separating the regulatory and enforcement functions of ATF has some initial appeal, as it would eliminate the tensions between agents and IOIs and allow the Industry Operations side of the agency to operate independently and without interference from the SACs. However, doing so would likely have an overall negative effect on both the enforcement of firearms laws and the regulation of the industry. As discussed above, ATF investigators play a crucial role in identifying possible gun trafficking channels and developing relationships with gun dealers that often point to investigative leads. Although agents and investigators have a historically tense relationship, they should be encouraged to work together more closely in order to enhance the overall mission of ATF rather than be further separated by being housed at different agencies that will have little reason or opportunity to productively communicate with each other.

The FBI does not have any direct experience as a regulatory agency. However, it already plays a significant role in U.S. firearms commerce as the agency that operates NICS. The FBI was vested with the authority to conduct background checks in 1993 with the enactment of the Brady Handgun Violence Prevention Act and launched NICS in November 1998.⁷¹ In FY 2014, the FBI employed more than 500 individuals to operate NICS and conduct background checks, the majority of whom are civilians.⁷² Through this role, the FBI already has significant contact with gun dealers and other subsections of the firearms industry and is well-positioned to take on an additional regulatory role.

The FBI also has a strong leadership and management structure that is experienced in overseeing a wide variety of disparate units and operations of the agency. Indeed, in the years following the September 11 terror attacks, the FBI has substantially increased its nonagent workforce to include more civilian positions, including intelligence analysts, linguists, scientists, engineers, and information

technology specialists.⁷³ Moving the regulatory apparatus of ATF into the FBI would require little more than creating a new line on the organizational chart and identifying the appropriate executive assistant director to oversee the work. An additional benefit of such a merger is the fact that it would provide the FBI with direct oversight of and contact with the explosives industry. Such interaction with explosives manufacturers and dealers would greatly enhance the FBI's counterterrorism efforts and provide an improved avenue for communication between the regulated industry members and the FBI regarding potential leads, such as suspicious sales transactions and explosives thefts.

Furthermore, it is crucial to protect the regulatory work of ATF from the constant political attacks of the gun lobby and the members of Congress under its sway. Severing the regulatory function of ATF from its law enforcement operations would leave the regulatory side more vulnerable to political attacks and ongoing efforts to undermine its work through limiting legislation and appropriations riders. In contrast, moving the regulatory function to the FBI would have the effect of insulating it from some of the efforts of the gun lobby. The FBI is a strong federal agency that enjoys considerable respect in Congress and relative autonomy to perform its work. Housing ATF's regulatory side at the FBI would raise the status of that function and help protect it against future gun lobby incursions.

However, one key lesson learned from our review of Industry Operations is that the enforcement side of ATF should not exclusively supervise the regulatory side of the agency's work, as has been the case since the 1998 reorganization of the regulatory reporting structure. While the regulatory and enforcement sides should be required to work more closely together, they should maintain separate chains of command up through the level of the executive assistant director in order to ensure that the needs of the regulators are not subjugated to the needs and opinions of the special agents. Upon moving all of ATF's functions to the FBI, the firearms enforcement function should be moved into a new branch—the Firearms Enforcement Branch—and the regulatory function should be housed in a new division in the Science and Technology Branch, where the NICS section is currently housed. Those working in firearms enforcement and firearms regulation would then each report in distinct chains of command. This would help prevent a repeat of the breakdown in relations between the regulation and enforcement branches that occurred after ATF's internal reorganization in 1998.

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Chapter 7

Explosives, arson, and emergency response

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Explosives, arson, and emergency response

While firearms enforcement and oversight has been the Bureau of Alcohol, Tobacco, Firearms and Explosives' top mission for decades, the agency has other key responsibilities as well. The most substantial of these other roles is ATF's explosives operation. ATF describes itself as "the Federal agency primarily responsible for administering and enforcing the criminal and regulatory provisions of the Federal laws pertaining to destructive devices (bombs), explosives, and arson."¹ From the political bombings of the 1970s, to the Unabomber and Oklahoma City cases of the 1990s, to the terror-related bombing investigations of the past decade, ATF has been on the frontlines of a complicated and evolving explosives threat.

But ATF's role as lead agency in explosives investigations—particularly in high-profile cases—has not gone unchallenged. ATF has engaged in years of inter-agency conflict with the Federal Bureau of Investigation over explosives cases. Each agency has jurisdiction over explosives incidents, and both ATF and the FBI have sophisticated explosives training programs and investigative capabilities. This overlap in jurisdiction and expertise has resulted in a 40-year rivalry between the agencies, during which agents in the field have fought over investigative control at crime scenes and agency executives in Washington have repeatedly tried to outmaneuver each other to assert dominance over this field. Despite years of evolving Department of Justice protocol; interagency memoranda of understanding; and Office of the Inspector General and Government Accountability Office, or GAO, investigations, this tension over explosives jurisdictions remains high.

As tense as the ATF-FBI relationship has been on explosives jurisdiction, however, both agencies bring real competencies to the challenge of deterring and investigating bombings. The answer to this long-standing conflict is not to pick a winner but rather to unify ATF's and the FBI's unique capabilities into a coordinated, complementary, comprehensive, and single federal law enforcement explosives operation.

Tug of war over explosives cases

ATF has a substantial explosives operation that involves both criminal investigative work and regulation of the explosives industry. ATF employs special agent bomb technicians, certified explosives specialists, and explosives enforcement officers, who respond to the scenes of explosives incidents and conduct postblast investigations. ATF also has sophisticated explosive forensic research capabilities to examine destructive devices and to trace evidence from explosions. The ATF Explosives Technology Branch has exclusive legal authority to determine if a suspected improvised explosive device, or IED, meets the criteria set forth in the federal law. ATF also trains and uses explosives and accelerant detection canines to assist with investigations.²

In addition to investigating explosives incidents, ATF regulates the commercial explosives industry. In this role, ATF issues licenses to explosives dealers; provides education to licensees to help ensure compliance with applicable regulations; grants permits to entities seeking to transport explosives; and conducts a mandatory inspection every three years of each licensed explosives dealer in the United States, which number roughly 10,000.³ ATF has also created a state-of-the-art explosives incident database that provides a vital service to federal, state, and local law enforcement agencies around the country. This Bomb Arson Tracking System, or BATS, is “the national database [repository] for explosives and arson incident information” and is designed to “collect data and to provide bomb technicians and arson investigators with analytical products to assist in the investigation of crimes related to the criminal misuse of explosives and acts of arson.”⁴

DOJ first recognized the tension and overlap between ATF and the FBI in 1973 and attempted to sort it out with a memorandum of understanding, or MOU, that articulated the explosives jurisdiction of each agency.⁵ However, the problem persisted for decades. Between 1999 and 2001, senior leadership at both agencies attempted to address the conflict by forming a working group of special agents in charge who developed a joint protocol for determining jurisdiction and conducting investigations.⁶ Despite these attempts, the interagency conflict over explosives investigations continued.

Another effort was made to address the issue in 2004, with a memorandum that outlined the respective jurisdiction and authority of each agency.⁷ In the 2004 memorandum, the attorney general directed that the FBI was to have primary jurisdiction over explosives incidents involving terrorism and in cases where the FBI “traditionally has exercised jurisdiction,” such as bank robberies, civil rights violations, and organized crime. Meanwhile, the attorney general directed that ATF have primary jurisdiction over all other explosives incidents.⁸ The attorney general also ordered the two agencies to consolidate the two separate databases they maintained regarding arson and explosives incidents into ATF’s BATS database to promote information sharing, with ATF assuming stewardship of the database. The agencies were also directed to consolidate their explosives training programs, with ATF being granted the lead role.⁹ ATF viewed the universal adoption of BATS as a significant victory in the rhetorical war with the FBI, which for years had resisted the attorney general’s directive that ATF maintain such a repository.¹⁰

However, these efforts failed to adequately clarify the jurisdictional confusion, and the two agencies did not take sufficient concrete steps to implement the directives.¹¹ Tensions between ATF and FBI agents at explosives crime scenes continued to erupt. For example, in April 2005, ATF agents were first on the scene of a firebombing near Seattle, Washington, and collected evidence, which included a banner on which the Earth Liberation Front claimed responsibility, and sent it to the ATF lab in California. Upon arriving at the scene, FBI agents asserted that the FBI should be the lead agency because the banner suggested that the bombing was motivated by domestic terrorism. After a conflict at the scene, the FBI ultimately took control over the investigation and retrieved the banner so that an FBI laboratory could process it.¹² This dispute did not go unnoticed by local law enforcement: Sheriff’s deputies reported notable friction between ATF and FBI agents at the scene, saying that, “It was clear that there was something going on. There was tension between the groups of ATF agents and FBI agents.”¹³

ATF and the FBI entered into a new MOU in 2008 in another attempt to resolve this conflict. This MOU reiterated the directives of the 2004 attorney general’s memorandum but added further clarification, such as providing that when the motive of an explosives incident was not readily apparent, both agencies would investigate jointly until it could be determined whether the incident was accidental, criminal, or an act of terrorism.¹⁴

In 2009, the DOJ OIG conducted an inquiry into the duplicative explosives work being conducted by the two agencies and found that despite many previous attempts to resolve the jurisdictional conflict, the agencies were still “not adequately coordinating their explosives-related operations and have developed

similar technical abilities to respond to explosives incidents.”¹⁵ The OIG found that there was substantial conflict between ATF and the FBI regarding which agency was to lead any given investigation and that this conflict caused confusion for first responders and local law enforcement.¹⁶ The OIG also found that these conflicts had contributed to a deterioration of the relationship between the two agencies—which, in turn, led to agents from each agency pulling away from the program of the other.¹⁷ ATF and the FBI issued a joint statement in response to the OIG report in October 2009, agreeing with the report’s conclusions and asserting that the agencies were working with DOJ to “formulate measures to resolve the identified issues to improve coordination and response to explosive incidents.”¹⁸

In August 2010, DOJ issued a new protocol for assigning jurisdiction in explosives investigations, once again trying to provide clear guidance to ATF and the FBI regarding which agency was to assume lead agency jurisdiction.¹⁹ In the memorandum that accompanied the protocol, Acting Deputy Attorney General Gary G. Grindler acknowledged the “superb investigative and enforcement capabilities found at both agencies and their shared commitment to protecting the American public” but acknowledged the historical conflict between the agencies regarding jurisdiction over explosives incidents, as described in the OIG report, and urged that the situation “must be remedied.”²⁰ The new protocol again directed that the FBI would be the lead agency for explosives investigations “where there is a credible nexus to terrorism,” both domestic and international.²¹ The protocol then lists factors and circumstances that “create a presumptive nexus to international or domestic terrorism.”²² GAO reviewed this 2010 protocol as part of a larger effort to identify opportunities to reduce overlap and redundancies in government programs and concluded that while “the actions Justice is proposing should address most of these issues ... additional monitoring by Congress and agency personnel could help ensure that plans to address these long-standing challenges are fully implemented and successful since Justice did not follow through on past efforts to achieve these same objectives.”²³

The result of this historical rift between the agencies regarding explosives investigations has been a general lack of mutual trust and confidence among the agents in the field from each agency, which often leads to confusion and arguments at crime scenes. Following the 2009 OIG report and the issuance of the 2010 protocol, the agencies seem to have made progress in settling this dispute. Sources within ATF report that the agencies have finally developed and approved a joint curriculum and training plan for consolidated explosives training of federal agents, as well as of state and local law enforcement—a directive that was first issued by the attorney general in the 2008 memorandum and reiterated in the 2010 protocol.

But if history has proven anything in this context, it is that issuing carefully crafted memoranda negotiated and signed by the executives at each agency is not in itself a solution to the on-the-ground jurisdictional conflict that occurs at the scenes of explosives incidents. This problem—which dates back more than 40 years—requires much more in the way of leadership than another memorandum and set of protocols. The real solution to this problem is to eliminate the conflict over explosives investigations by combining all of DOJ’s explosives expertise into one law enforcement agency charged with investigating all explosives incidents, regardless of the suspected perpetrators or their likely motives. Both ATF and the FBI have significant assets in the explosives investigations arena, and merging them together and offering these highly skilled agents and technicians the opportunity to work together without the specter of yet another turf war would be a substantial improvement over the current fragmented approach to these cases.

The duplication of efforts in the area of explosives between ATF and the FBI goes beyond investigations. For example, in addition to operating similar explosives investigations programs, ATF and the FBI also operate separate explosives training and forensics facilities. ATF runs the National Center for Explosives Training and Research, or NCETR, at the Redstone Arsenal in Huntsville, Alabama—an 83,000-square-foot facility.²⁴ At NCETR, ATF provides advanced training programs to individuals from federal, state, and local law enforcement agencies, as well as participants from the U.S. military, the U.S. Department of State, and foreign governments. Training is provided in areas such as “post-blast investigations, IED and explosives recognition, safe explosives handling and disposal methods, and clandestine/homemade explosives laboratories.”²⁵ Remarkably, the FBI operates the Hazardous Devices School, or HDS, also at the Redstone Arsenal, which it describes as “the nation’s only facility to train and certify public safety bomb technicians to render safe hazardous devices.”²⁶ Through the HDS, the FBI provides the basic training curriculum for bomb technicians for state and local first responders—which, as the agency describes it, “provides the necessary foundation for an effective response to federal crimes involving hazardous devices, terrorist bombing campaigns, or use of a [weapon of mass destruction].”²⁷ The FBI also operates the Terrorist Explosive Device Analytical Center, or TEDAC, which is an “interagency organization to receive, fully analyze, and exploit all terrorist improvised explosive devices.”²⁸ ATF has a leadership position at TEDAC, which is currently located in Quantico, Virginia, but will soon be moved to the Redstone Arsenal.²⁹

In summary, two federal agencies run two—soon to be three—separate critical explosives research and training facilities, despite the fact that the facilities and functions are closely related and co-located on the same base. The cost of operating these competing schools and programs is substantial. When GAO examined this issue in 2011, it found that the cost of operating ATF’s explosives training facility at Redstone was \$11 million in fiscal year 2010, and the cost of operating the FBI’s HDS, also at Redstone, was \$7.5 million that same fiscal year.³⁰ ATF requested \$18.4 million³¹ for FY 2015 to fund its work at NCETR, and in its FY 2015 budget request, the FBI sought \$15 million to fund operations and maintenance of the new TEDAC facility at Redstone.³²

FIGURE 10
Federal explosives operations and investigations

Comparison of explosives-related functions, facilities, and capacities at ATF and the FBI

	ATF	FBI
Explosives investigations	Has primary jurisdiction to investigate explosives incidents that are not related to terrorism.	Has primary jurisdiction to investigate explosives incidents that are related to domestic or international terrorism.
Emergency response teams	National Response Team: A specially trained emergency response unit composed of certified fire inspectors, certified explosives specialists, and fire protection engineers that is poised to respond to the scenes of significant arson or explosives incidents.	Critical Incident Response Group: Provides expertise in crisis management, tactical operations, crisis negotiations, hostage rescue, hazardous device mitigation, critical incident intelligence, and surveillance and aviation. Evidence Response Team Unit: An incident response unit trained to respond to and collect evidence at a wide variety of significant crime scenes, including bombings.
Research and lab facilities	NCETR: Conducts research on explosives and improvised explosive devices and develops explosives technical information and intelligence.	TEDAC: Conducts research and analysis on terrorist IEDs to gather and share intelligence about these devices—helping disarm and disrupt IEDs, link them to their makers, and prevent future attacks.
Training facilities and functions	NCETR: Provides training for federal, state, and local law enforcement—as well as the U.S. military, the U.S. State Department, and foreign governments—on postblast investigations, IEDs, explosives recognition, safe handling and disposal methods, and clandestine explosives laboratories.	HDS: Provides training and certifies bomb technicians for state and local law enforcement agencies.
Explosives incident databases	BATS: A national database for explosives and arson incidents.	U.S. Bomb Data Center: Was merged with BATS in 2004.

Sources: Bureau of Alcohol, Tobacco, Firearms and Explosives, *Fact Sheet: Bomb Arson Tracking System (BATS)* (U.S. Department of Justice, 2014), available at <http://www.atf.gov/publications/factsheets/factsheet-0213-bats.html>; Federal Bureau of Investigation, “Laboratory Services: Terrorist Explosive Device Analytical Center (TEDAC),” available at <http://www.fbi.gov/about-us/lab/terrorist-explosive-device-analytical-center-tedac/tedac> (last accessed November 2014); Federal Bureau of Investigation, “Critical Incident Response Group: Counter-IED Operations,” available at http://www.fbi.gov/about-us/cirg/hazardous-devices/hazardous-devices-operations#cirg_hds (last accessed November 2014); Office of the Inspector General, *Explosives Investigation Coordination Between the Federal Bureau of Investigation and the Bureau of Alcohol, Tobacco, Firearms and Explosives* (U.S. Department of Justice, 2009), available at <http://www.justice.gov/oig/reports/plus/a1001.pdf>.

Boston Marathon bombing: A model for ATF and FBI collaboration

While ATF and the FBI have a complicated history when it comes to collaborating on explosives investigations, there is great potential for these agencies to work together on innovative approaches to solving violent crimes. The investigation following the bombing at the Boston Marathon in 2013 provides an example of how combining ATF and the FBI would have a significant impact in such cases.

On April 15, 2013, hours into the Boston Marathon, two bombs exploded near the crowded finish line, killing three and injuring hundreds.³³ In the immediate aftermath of this explosion, the FBI assumed the lead role in the investigation, as the theory from the outset was that this was an act of terrorism.³⁴ The investigation immediately took two tracks to identify the perpetrators: examining the remnants of the explosive devices for any clues as to who may have built them and interviewing witnesses and reviewing surveillance video of the area for links to possible suspects.³⁵ The FBI led a group of more than 1,000 agents from 30 law enforcement agencies in this investigation.³⁶

FBI agents at the scene searched a 15-block area and recovered fragments of pressure cookers, small metal shards, nails, and ball bearings, relatively crude materials that provided a starting point to assess the possible identity of the bombers.³⁷ At the same time, FBI agents conducted interviews with witnesses and reviewed surveillance video footage from businesses near the scene of the explosions. The FBI also asked that any individuals who had taken photos or video near the finish line provide their recordings to agents so that these images could be reviewed for possible clues as to the identity of the perpetrators.³⁸

Two days after the attack, the FBI released photos of the two individuals they believed had been responsible for the bombing.³⁹ Six hours later, the two suspects shot and killed a police officer from the Massachusetts Institute of Technology, or MIT. They then stole his cruiser, robbed a nearby 7-Eleven convenience store, and carjacked another vehicle, briefly kidnapping the driver.⁴⁰ The police gave chase, and the suspects, who had been identified as brothers Tamerlan and Dzhokhar Tsarnaev, sped through Boston throwing explosives from the car.⁴¹ The chase ultimately ended in a gunfight with police, during which Tamerlan was killed.⁴² Dzhokhar evaded police and escaped but was apprehended the next evening following an exhaustive search during which hundreds of officers went door to door looking for him.⁴³ Dzhokhar has been convicted in federal court of numerous crimes, one of which is “using a weapon of mass destruction.”⁴⁴

While the FBI was the lead agency in this investigation, ATF agents contributed significantly to the effort. ATF sent more than 100 agents to Boston to assist with the investigation, as well as explosives detection canine teams. ATF agents were part of the team that ultimately apprehended Dzhokhar, who was treated by an ATF medic at the scene.⁴⁵ ATF agents helped locate and collect evidence at the scene of the explosions and were involved in analyzing the devices.⁴⁶ According to a senior law enforcement official in Boston, ATF explosives experts rebuilt the pressure cooker bombs as part of the investigation.⁴⁷ Chuck Wexler, executive director of the Police Executive Research Forum, explained ATF's role:

*The ATF brings an institutional knowledge of previous bomb incidents around the country and around the world. In Boston, they tried to reconstruct the device, looking at the component parts and feeding that information into their bomb data center to see what may be similar to other devices used around the world.*⁴⁸

Jim Cavanaugh, a former senior ATF agent, described ATF's role in the following way: "In an investigation like this, the ATF is the Marines to the FBI's Army. The Army is a million soldiers in charge of the battle and the Marines are 300,000, but the Marines are critical to the fight because of their special skills and the way they operate."⁴⁹

ATF also played a role in another aspect of this investigation—tracing the firearm used by the suspects to kill MIT officer Sean Collier, a Ruger 9mm with a defaced serial number that was recovered at the scene of the shootout with police that resulted in Tamerlan's death.⁵⁰ Technicians with the Massachusetts State Police worked to raise the serial number so that ATF agents at the National Tracing Center could attempt to trace the gun to determine where it was first purchased and possibly learn how the Tsarnaevs acquired it.⁵¹ ATF was able to trace the gun back to the retailer where it was first purchased—Cabela's, a hunting and fishing store in Scarborough, Maine—and from there was able to determine that the gun was transferred to an individual with a lengthy criminal history and ties to a local drug gang.⁵² This information has helped law enforcement understand the full scope of the Tsarnaevs' criminal activity; authorities now theorize that ties to the drug trade may have funded Tamerlan Tsarnaev's travel to Chechnya and the purchase of bomb components.⁵³

By all accounts, the FBI and ATF worked together and cooperated effectively in this investigation, and their collective efforts—along with those of the Boston Police Department and other participating law enforcement agencies—resulted in the identification and apprehension of the suspects within days of the incident.

A senior law enforcement official involved in the investigation described the often “visceral tension” between different law enforcement agencies; however, in the immediate aftermath of the bombing, there was no time for “foolishness,” and all the agencies worked well together.⁵⁴ But it could have easily gone differently. For example, following the Oklahoma City bombing, there was a great deal of confusion regarding whether ATF or the FBI was the lead agency in charge of the crime scene investigation, which resulted in widespread confusion, failure to properly secure the crime scene, and destruction of evidence.⁵⁵ Efficient coordination between the two agencies as they respond to such incidents should not be left to chance with the particular agents who end up on the scene.

The Boston Marathon bombing case provides a recent example of how a merger would benefit future investigations of similar incidents. Each agency offers unique skills and resources that were relevant to various elements of this investigation. The FBI is a leader in intelligence and has substantial resources to deploy hundreds of agents to a crisis location very quickly. In this case, the FBI was poised to review the surveillance video and witness photos from the marathon finish line and quickly identify images of the individuals thought to be suspects. ATF explosives agents are highly skilled at bomb forensics and have unique expertise in evidence collection and analysis at this type of crime scene. As soon as more information was gleaned from ATF about forensics of the explosive devices, FBI intelligence analysts and agents put their skills to use combing the Internet and other intelligence sources about what groups were known to use such devices. All of these efforts, taken together, led to the identification of the perpetrators.

The firearm recovered from the scene of the shootout was also a key piece of evidence in this case. ATF’s specific expertise is in tracing crime guns, particularly those with defaced serial numbers. In a case like this, if ATF firearm and toolmark examiners were able to raise at least part of the number, agents at the NTC would learn from the manufacturer or importer the number of guns possibly fitting that description and the name of each dealer who had received such a gun. The task then would be to deploy agents to visit each of those dealers, who may number in the hundreds, to ascertain whether they had sold the specific gun in question. This task would benefit substantially from interagency cooperation: ATF has the relationship with gun dealers and the experience tracing guns, while the FBI has the resources to deploy large numbers of agents to help track down these dealers. In this case, the agencies were able to quickly work together to trace this crime gun to the first retail purchaser, a key piece of evidence in the investigation.

Through the cooperative work of the FBI, ATF, and others in local law enforcement, the Boston bombers were quickly identified and apprehended. And the latest DOJ protocol that rations out jurisdiction over explosives incidents seems to be the most comprehensive attempt yet to finally settle this issue. But considering that this conflict between ATF and the FBI has been building and festering for at least four decades, it seems unlikely that one new memorandum or a good outcome in one high-profile case will be sufficient to finally solve this problem. Rather, Congress and the Obama administration should build upon this recent progress and take action toward a more comprehensive and lasting solution that ensures all future incidents are similarly handled and the unique skills and assets of the FBI and ATF are put to the best possible collaborative use. Merging ATF into the FBI would be a significant step toward ensuring that the country's top explosives experts handle any future incidents in ways similar to the Boston Marathon bombing to achieve a positive result.

Additional areas of agency overlap and jurisdictional confusion: Arson and emergency response

There are a number of other areas in which ATF has been historically active but that are also occupied by the FBI. ATF operates the National Response Team, or NRT, which is a specially trained emergency response unit that includes full-time members in four cities and part-time members from many of ATF's divisions. The four teams are made up of highly trained and experienced ATF personnel, including certified fire investigators, certified explosives specialists, and fire protection engineers. The NRT has more than 36 specially designed response trucks prepositioned around the country and is poised to respond within 24 hours to the scenes of significant arson or explosives incidents anywhere in the United States. The purpose of the NRT is to provide supplemental expertise and leadership in instances that are beyond the capabilities of the local first responders and law enforcement agencies.⁵⁶ The NRT works with local first responders and investigators to reconstruct the scene, identify the origin of the blast or fire, and determine the source, as well as help gather evidence to support a criminal prosecution.⁵⁷

As of December 2014, the NRT had been activated 763 times since it was created in 1978.⁵⁸ In 2013, the NRT was activated to respond to the fire and explosion that occurred at the West Fertilizer Company plant in West, Texas;⁵⁹ a church fire in Little Rock, Arkansas;⁶⁰ and a commercial building fire that burned for nine hours in Baltimore, Maryland.⁶¹ An offshoot of the NRT is the International

Response Team, or IRT, which is a group of NRT personnel available to respond to high-profile bombing or arson incidents anywhere in the world at the request of foreign governments. The IRT has responded to incidents in many diverse locations, such as Albania, the Dominican Republic, and Colombia.⁶²

The FBI provides a similar function through its Critical Incident Response Group, which provides expertise in “crisis management, tactical operations, crisis negotiations, hostage rescue, hazardous devices mitigation, critical incident intelligence, and surveillance and aviation.”⁶³ The FBI also operates the Evidence Response Team Unit, which is similar to ATF’s NRT but is staffed by generalists trained to respond to and collect evidence at a wide variety of crime scenes, not just fires and explosions.⁶⁴

ATF also has jurisdiction to investigate violent crimes involving arson and arson for profit, or arson that is deemed to have a financial motive.⁶⁵ ATF’s certified fire investigators are highly trained and specialized agents who investigate fire scenes, help determine the origin and cause of a fire, and provide expert testimony at criminal trials.⁶⁶ In addition, ATF operates the Fire Research Laboratory, or FRL, which ATF touts as “the world’s largest research laboratory that is dedicated to fire scene investigations.”⁶⁷ The FRL is the only facility of its kind in the world and can be used to reconstruct fire scenes, conduct in-depth examinations of fire behavior, and give arson investigators nationwide the ability to test their theories of how any given fire started and continued. ATF agents are on the faculty of the National Fire Academy in Emmitsburg, Maryland; they serve on the curriculum development committee for that institution as well. The FBI currently does not have in-house arson investigation expertise and usually relies on either ATF or local fire marshals when it needs specialized arson knowledge during an investigation.

One final area where ATF does some criminal enforcement work relates to alcohol and tobacco; in recent years, however, ATF has done relatively little work in this area, devoting less than 2 percent of its 2013 budget to alcohol and tobacco program activities.⁶⁸ Between 2003 and 2013, the number of ATF’s alcohol- and tobacco-related investigations fell 85 percent.⁶⁹ To the extent that ATF does engage in these investigations, it is generally due to the presence of other violent criminal activity. According to a previously unpublished memorandum provided to the authors of this report, as of July 2012, subject to a few exceptions, all tobacco investigations “need a nexus to violent crime.”⁷⁰

Merging all of these assets into one federal agency would ensure the most efficient use of federal resources for these specialized investigations.

Chapter 8

Recommendations and conclusion

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Recommendations and conclusion

“This is a time of necessary change for ATF. Change is not optional but required for survivability as an agency.”¹

This is the opening line of former ATF Director B. Todd Jones’ foreword to a previously unpublished draft of an internal memorandum describing the Frontline initiative that was provided to the authors of this report. We agree.

The special agents and investigators who work at the Bureau of Alcohol, Tobacco, Firearms and Explosives are a remarkably dedicated and talented group of individuals, and many of them devote the bulk of their careers to the agency. Many are true believers in the agency’s core mission to combat gun crime. Despite this significant talent pool, however, there are internal and external challenges that impede their ability to be successful in these efforts. Decades of inadequate management structures and lax oversight are deeply woven into the fabric of ATF. Over the past quarter century, inadequate strategic guidance on investigative and enforcement work has hampered agents in the field. Executives at ATF headquarters have lacked sufficient channels to identify potentially problematic operations led by the field divisions and intervene before they turn into crises—or, for that matter, to take successful, innovative strategies from one field division and deploy them across the agency. The stagnant budget environment over the past decade, as well as persistent attempts to undermine the agency by the National Rifle Association and its allies in Congress, have rendered ATF politically and fiscally weak and have significantly compromised the agency’s

ability to effectively perform the regulatory part of its mission. Jurisdictional overlap with other federal law enforcement agencies over violent crime and explosives has created confusion and turf battles, weakening the federal government's ability to effectively address violent and gun-related crime, while creating confusion around explosives investigations. The 2013 confirmation of Jones as the first ATF director in seven years was a significant step forward, yet his resignation in March 2015 could result in two steps backward for the agency if the administration is unable to secure a confirmed successor and the agency once again becomes embroiled in a contentious Senate confirmation process. And while there was some evidence in 2013 that morale was improving at ATF following a dramatic decline in the mid-1990s—as measured by the Partnership for Public Service's annual ranking of the best federal agencies to work for—ATF's ranking fell again in 2014 from its 2013 level.² In this report, we provide one core recommendation to address the challenges the agency faces and to improve federal enforcement of gun laws and regulation of the gun industry: merge ATF into the FBI and create one strong federal law enforcement agency charged with combating gun crime.

We are not the first to suggest a major restructuring of ATF by way of merging it into another agency. As discussed in Chapter 2, the question of what to do with ATF has been on the agenda of presidents and policymakers off and on for the past 40 years. Over the course of those decades, both Democrats and Republicans found the idea of merging ATF into another agency appealing. During his first presidential campaign in 1980, President Ronald Reagan promised to abolish ATF.³ President Reagan considered options throughout his first term in office for disbanding the agency—resulting in a period of widespread resignations by ATF agents as ATF became viewed as an agency in decline—until the NRA changed course and lobbied against the change.⁴ The idea of eliminating or reorganizing ATF arose again in the early 1990s, when then-Vice President Al Gore recommended as part of the National Performance Review that the law enforcement functions of ATF and the Drug Enforcement Administration be merged into the FBI under the theory that this would promote more coordinated efforts to address crime. The reasoning given was that “too many cooks spoil the broth,” as “[a]gencies squabble over turf, fail to cooperate, or delay matters while attempting to agree on common policies.”⁵ In 1993, Rep. John Conyers Jr. (D-MI) introduced a bill that, had it passed, would have transferred ATF's firearms regulation function to the FBI.⁶ And in 1994, the Clinton administration considered making a significant change to ATF, proposing to drastically reduce the size of the agency and to provide states with block grants to enforce federal firearms laws.⁷

The Obama administration has also quietly considered the question of how to improve federal enforcement of firearms laws—and whether to reorganize ATF—a number of times. During his first year in office, President Barack Obama asked Attorney General Eric Holder to conduct an analysis of how current gun laws were being used, what the Department of Justice, or DOJ, was doing regarding firearms enforcement, and what additional steps could be taken without enacting any new laws.⁸ In 2011, DOJ sent a memo to White House Chief of Staff Bill Daley that outlined a number of programmatic ideas to address violent crime, again without needing congressional action.⁹ The Obama administration also considered how best to approach gun crime and deal with ATF that year. In the aftermath of the Fast and Furious scandal, DOJ considered eliminating ATF and reassigning the responsibility of enforcing firearms and explosives laws to other agencies such as the FBI and DEA.¹⁰ Indeed, the Obama administration’s review—which, apart from speculation by a partisan news outlet,¹¹ has not previously been discussed in detail—included commissioning a white paper by the White House Office of Management and Budget to assess the fiscal impact of getting rid of ATF as a stand-alone agency.¹²

The concept of restructuring or eliminating ATF has not just been discussed in the White House; it has also attracted the interest of some Republicans on Capitol Hill. Most recently, in September 2014, Rep. Jim Sensenbrenner (R-WI) introduced a bill to eliminate ATF by transferring its firearms and explosives enforcement and regulatory mission to the FBI while moving its alcohol and tobacco enforcement mission to the DEA.¹³ Rep. Sensenbrenner described ATF as “a largely duplicative, scandal ridden agency that lacks a clear mission” and has been “plagued by backlogs, funding gaps, hiring challenges and a lack of leadership.”¹⁴ Rep. Sensenbrenner described the bill as one intended to “streamline agency activity at DOJ—increasing effectiveness while decreasing cost.”¹⁵ Cost savings were a clear motivating factor behind this bill: The legislation required the current directors of ATF, the FBI, and the DEA to develop a plan to wind down ATF’s affairs, offering only the guidance that they “shall, to the maximum extent practicable, without compromising core functions, eliminate and reduce duplicative, unnecessary functions or waste.”¹⁶

The question of what to do with ATF has been raised many times. And while the question itself is not evidence that the agency is struggling, it is perhaps an indication that a comprehensive solution derived from careful analysis and investigation is warranted. Perhaps the recurring instinct to overhaul ATF—and the consistent failure to follow through on it—suggests some inherent flaw in the idea itself, or

at least the ability to carry it out: If merging ATF with another law enforcement agency is such a good idea, why hasn't it happened yet? In the pages that follow, the authors of this report consider some of the potential downsides of merging ATF into the FBI, as well as the inherent challenges involved in such a merger. However—after assessing the serious risks and challenges—on balance, we believe that merging ATF into the FBI remains the most sensible path toward improving the federal government's capacity to combat violent crime and firearms trafficking.

Arguments against a merger

The potential for the 'worst of both worlds'

One factor to caution against in a merger is the possibility that it could result in combining and exacerbating the weakest elements of each agency. While the authors' vision of a merger seeks to capture the best of both worlds in a single agency, it is possible that the opposite could occur: The resulting agency could be composed of the weakest parts of both ATF and the FBI. Instead of bringing ATF's subject matter expertise and culture of cooperation with local law enforcement to the FBI and integrating it into the FBI's stronger management structure, a merger could instead bring together ATF's lack of accountability and the FBI's reputation for arrogance in its work with local law enforcement. The historic tension between ATF and FBI agents could also hamper the effectiveness of a merger. The years of jurisdictional conflict over explosives investigations—as well as the FBI's continued concern over jurisdictional encroachment by ATF agents—could become stumbling blocks when the agents are expected to work together as part of the same agency.¹⁷

Additionally, merging ATF into the FBI could result in diminishing a dedicated federal focus on gun crime and gun trafficking. Although ATF has veered away from a narrow focus on gun crime in recent years, instead seeking to brand itself as the federal violent crime police, the core of the agency's mission remains the enforcement of gun laws and the regulation of the gun industry. The FBI has a much broader jurisdiction, as well as multiple law enforcement priorities. While our proposed merger assumes that ATF agents would seek to preserve and enhance their core firearms enforcement mission as a dedicated branch of the FBI, there is a risk that a merger might muddy this mission, resulting in less federal focus on both guns and gun crime.

Each of these concerns, however, can be addressed in the operationalization of the merger. As discussed in more detail below, this report’s proposal includes establishing a dedicated guns enforcement branch within the FBI that would be staffed by agents from both agencies and maintain a focus on combating gun trafficking and the use of guns in violent crimes. Additionally, it is within the capabilities of both agencies’ executive leadership to operationalize this merger in a way that optimizes each agency’s strengths and personnel, heading off any substantial conflicts between agents or agency cultures.

The creation of a bureaucratic Frankenstein?

Another challenge would be the merger itself. In the private sector, corporate mergers are generally viewed as a risky prospect and fewer than half are considered successful by all of the stakeholders involved, including shareholders, employees, and customers.¹⁸ With private-sector mergers, the primary risk involved is overpaying for the company being acquired, but there are also other factors that affect both the degree of risk involved and the potential for success. These include “the fit of the core businesses, size of the deal, type of deal, talent retention plan, and integration capability.”¹⁹ Many of these factors are also in play with government mergers. Research on government mergers has identified five key focus areas in implementing a successful public-sector merger: choosing the right agencies to merge; facilitating effective communication between the agencies to be merged and within each agency; completing the merger as quickly as possible; establishing a new culture for the merged organization; adjusting and adapting the merger plan as the merger is instituted.²⁰

Being mindful of each of these factors is a significant challenge in effectuating the type of merger this report recommends. While this report’s proposed merger of ATF into the FBI is much more modest than the sweeping reorganization of federal agencies that the Homeland Security Act implemented in 2002—which involved 22 different federal departments and agencies—a key lesson learned from that effort is that any reorganization of federal agencies has operational, logistical, and financial challenges.²¹

Additionally, the proposed merger would undoubtedly face pockets of resistance within both agencies. Many ATF leaders and staff members would likely be concerned about their reception at the FBI and potentially being relegated to a support function. Meanwhile, sources in the FBI and DOJ suggest that FBI leadership might accept ATF’s enforcement mission and resources but may balk

at the idea of assuming a regulatory function.²² Some congressional allies of the gun lobby may also resist such a merger, preferring a politically and financially weak ATF as opposed to a strong, fully functional law enforcement agency capable of better policing the industry.²³ Additionally, as ATF was established by statute as an independent bureau within DOJ,²⁴ this reorganization would require congressional action in the form of legislation to effectuate the merger with the FBI. Congress would also need to address the current restrictions and limitations that budget riders have imposed on ATF's activities over the years. By eliminating these restrictions, Congress would give the newly augmented FBI full autonomy to make its own decisions regarding the enforcement of gun laws and regulation of the gun industry.

However, the difficulties posed by successfully merging ATF into the FBI are certainly no more daunting than the challenges ATF currently faces in attempting to combat violent gun crime, identify and apprehend illegal firearms trafficking networks, and regulate the gun industry. Not least among these challenges are severe budget limitations and a political environment that renders the agency perpetually vulnerable to attack. As discussed throughout this report, the myriad of problems that undermine ATF's ability to fulfill its mission successfully run deep and require a complex and comprehensive solution. Any thoughtful plan to address ATF's problems and to improve federal enforcement of firearms laws and regulation of the gun industry is going to be difficult to implement, but that fact alone is not reason enough to turn away from a proposed solution.

Alternatives to a merger

There are steps that can be taken short of a merger to address some of the challenges ATF faces. Some may argue that efforts should be focused on supporting ATF and making piecemeal improvements to the agency, thus strengthening the federal government's ability to enforce gun laws and regulate the gun industry through the existing framework rather than eliminating the agency entirely. Congress, the Obama administration, and ATF could take a number of steps, including:

- Substantially increasing ATF's budget so that it can hire more agents and investigators to investigate gun crimes and regulate the industry.
- Eliminating the harmful budget riders that restrict ATF's ability to successfully perform its mission.

- Increasing ATF headquarters oversight and accountability for field operations, a recommendation that has been made in every recent review of the agency and that Jones attempted to address through the Frontline initiative.
- Strengthening the role of intelligence and proactive trafficking investigations in ATF's work by enabling the Office of Strategic Intelligence and Information to establish mandatory guidelines and agency-wide priorities for the intelligence work conducted in the field divisions.
- Developing agency-wide protocol for investigating illegal gun sales facilitated by the Internet and conducted at gun shows and including these investigations among the field divisions' key priorities.
- Using the framework of the Frontline initiative to refocus the field divisions' criminal investigative priorities on gun crime—on both the end users of guns and individuals involved in gun trafficking—rather than the approach of supporting local efforts to combat all types of violent crime regardless of a gun nexus.
- Using executive authority to shore up some of the weaknesses in federal firearms enforcement, such as requiring additional categories of licensed dealers to report multiple long gun sales; updating the definition of what constitutes being “engaged in the business” of selling guns to determine who must obtain a federal firearms license; and penalizing states that do not submit records to the National Instant Criminal Background Check System regarding individuals prohibited from gun ownership due to mental illness.²⁵
- Better integrating the regulatory aspect of ATF's work into proactive law enforcement activities by prioritizing the identification of indicators of illegal trafficking and straw purchasing in gun dealer compliance inspections and improving the referral process so that special agents in the field divisions give investigative priority to referrals of suspicious gun dealers.
- Instituting heightened management and oversight of the special agents in charge of each field division to ensure that enforcement operations in the field align with headquarters priorities and protocols.
- Re-establishing Industry Operations as an independent directorate rather than a division of Field Operations so that special agents in charge of each field division do not dictate industry operations investigators' regulatory activities.

- Taking steps to improve the relationship between the enforcement and regulatory sides of ATF in order to reduce long-standing tensions.
- Eliminating the practice of simply transferring individuals to a new field division or to headquarters as a way of addressing problems that arise out of enforcement operations and instead creating a strong review and disciplinary process to address these issues.²⁶

Congress, the Obama administration, and ATF leadership can and should continue to pursue individual measures such as those mentioned above in order to improve the agency. However, a key finding from this report is that the challenges facing the agency run deep and that a full-scale rethinking of how the federal government approaches the issue of gun violence and gun crime is long overdue. Restructuring the agency in the manner proposed by this report would address the problems inherent in today's ATF, necessitate a review of these specific issues as part of the larger process, and create the potential to re-energize federal law enforcement efforts to combat gun crime.

Additionally, it is important to note that even a substantial restructuring of ATF will be insufficient to fully compensate for weak federal laws. Congress must enact legislation to prohibit all dangerous people from buying and possessing guns, require a background check for every gun sale, and strengthen criminal penalties around straw purchasing and illegal gun trafficking. Through these actions, it can ensure that criminals and other dangerous people do not continue to have easy access to guns. Stronger, clearer laws would make ATF's enforcement mission easier.²⁷ Congress should also pass legislation that imposes strong criminal penalties for the firearms traffickers and straw purchasers responsible for flooding our most vulnerable communities with illegal guns.

The new structure

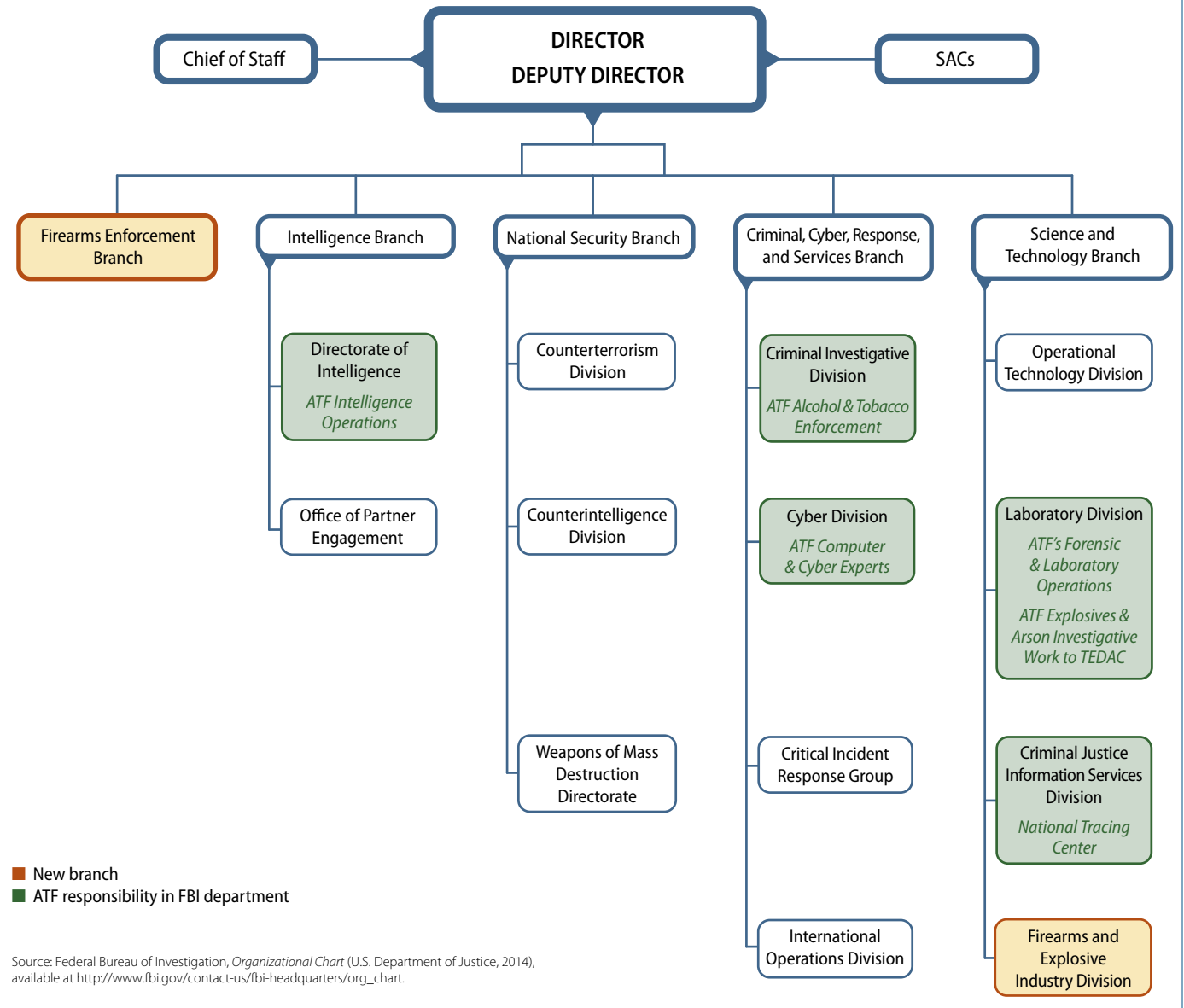
How would the merger of ATF into the FBI work in practice? There are a number of ways to integrate ATF's mission and personnel into the FBI; what follows is one possible outline of how it could be accomplished. Certainly, there are other structural options—and significant remaining questions—for how to merge ATF's agents and mission into the FBI, but the one laid out below may offer a starting point for discussion.

The FBI is currently organized into six branches, each headed by an executive assistant director who reports directly to the deputy director of the agency. One of these branches is the Criminal, Cyber, Response and Services Branch, which is where the bulk of the agency's criminal investigative work is housed. One option for the merger would be to create a new branch to house firearms enforcement operations: the Firearms Enforcement Branch. Creating a new branch would help ensure that the gun enforcement mission of ATF remains a primary focus of federal law enforcement. A second option is to create a new firearms investigative division within the Criminal, Cyber, Response and Services Branch as the site of gun enforcement operations.

As discussed in Chapter 6, while the regulatory function of ATF should remain vested in the same agency as the law enforcement function, ATF's regulatory and enforcement arms should report through separate chains of command. Currently, ATF's regulatory function is overseen by field operations and managed by the special agents in charge of each field division. As discussed, this has created a dynamic in which the regulatory part of the mission has been made subordinate to the law enforcement activities in many field divisions and has suffered as a result. Following a merger, a new division could be created in the FBI's Science and Technology Branch to house the regulatory mission of ATF: the Firearms and Explosives Industry Division. This would ensure that the regulatory activities receive all of the benefits of being part of the FBI—in particular, insulation from political attacks waged by the gun lobby and its congressional allies—but would operate independently from the law enforcement activities.

FIGURE 11
Merging ATF into the FBI

New organizational structure following a merger



ATF's National Tracing Center could be placed under the jurisdiction of the FBI's Criminal Justice Information Services Division of the Science and Technology Branch, which is where the NICS is located. All of ATF's forensic and laboratory operations could be merged into the FBI's Laboratory Division; its explosives and arson investigative work could move into the FBI's Explosives Unit, which is part of the Terrorist Explosive Device Analytical Center; and its limited resources for alcohol and tobacco investigations could move into the FBI's Criminal Investigative Division. ATF's intelligence experts could be placed in the FBI's Directorate of Intelligence, and computer and cyber experts could be placed in its Cyber Division; some of these specialized personnel could also be placed in the newly created Firearms Enforcement Branch to ensure adequate intelligence resources for gun-related investigations. Personnel in noninvestigative functions—such as human resources, government and public affairs, and management—could be transferred to similar roles at the FBI. With respect to the staff working in ATF's 25 field divisions, agents, investigators, and support personnel could move into one of the FBI's 56 field offices across the country.²⁸ Following a merger, the FBI would likely decide to maintain at least some of the existing ATF field division office locations to accommodate new staff and to maintain consistency in the law enforcement operations currently run out of those offices.

Budget implications

While the primary reason for merging ATF into the FBI is to improve federal enforcement of firearms laws and regulation of the gun industry, it would also have the benefit of achieving some cost savings. The U.S. Government Accountability Office has identified two categories of spending in which government agencies may be able to achieve cost savings through consolidation with other agencies: physical infrastructure, which includes buildings and facilities, and management functions, which includes information technology, human resources, and financial management systems.²⁹ Because our recommendation is to maintain the existing enforcement and investigatory staff through a merger, these are the types of administrative savings we could expect to see. In order to get a sense of the range of cost savings that might be achieved, the Center for American Progress commissioned an analysis of the possible budget scenarios should ATF merge into the FBI. Elaine Kamarck, who led the Clinton administration's National Performance Review, conducted this budget impact analysis, which can be found as an appendix to this report. The analysis uses only publicly available budget documents from both agencies, which limited the extent to which we were able to conduct a detailed analysis.

The analysis projects annualized savings that total \$58.7 million once the integration process is complete. The 10-year savings from the start of the merger process are projected at \$411 million.³⁰ These estimates assume no layoffs or job elimination outside of attrition and also assume that cost saving would be achieved almost entirely through consolidation of administrative functions.³¹ The full cost savings derived from the merger would likely not be achieved for a number of years, as research into both private- and public-sector mergers cautions that full implementation of such reorganizations can take as long as five to seven years.³²

Any conversation about the cost savings related to a merger is inevitably intertwined with the policy questions that have been discussed in other chapters of this report. If the federal government is going to maintain and even expand law enforcement initiatives to combat gun trafficking and other violent gun crimes, the money currently budgeted to ATF for these activities should be moved to the FBI to ensure these operations are maintained. This means that the cost savings achieved by a merger are largely limited to administrative savings that, in the context of the entire DOJ budget, are relatively small. In the authors' view, these savings are a side benefit of the proposed merger, not the primary justification for it.

Conclusion

In this report, we offer a myriad of reasons to eliminate ATF as a stand-alone agency and merge its mission and personnel with the FBI. While each of these reasons is important, there is a key overriding fact that drives our recommendation and provides the primary justification for recommending bold action to address the weaknesses at ATF: Every day, 33 people in this country are murdered with guns. The gun-murder rate in the United States is a staggering 20 times higher than the average of other developed countries.³³ There is obviously a significant gun violence problem in this country, and it demands a solution.

The persistent prevalence of gun violence in this country and the scourge of illegal firearms trafficking that brings guns into communities already vulnerable to violence demands a substantial rethinking of federal gun law enforcement and efforts to prevent gun crime. ATF, as it currently exists, suffers from substantial weaknesses that compromise its ability to effectively combat gun crime and regulate the firearms industry, and a new director or piecemeal changes cannot fully solve these problems. It is time to consider a major reboot of how these issues are addressed at the federal level and for an overhaul of the federal law enforcement agencies responsible for doing so. The core recommendation presented in this report is intended to provide one option for achieving this goal.

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Chapter 9

Appendix: Estimated cost savings resulting from the merger of ATF into the FBI

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Estimated cost savings resulting from the merger of ATF into the FBI

By Elaine Kamarck

Overview and summary

The Bureau of Alcohol, Tobacco, Firearms and Explosives, or ATF, and the Federal Bureau of Investigation, or FBI, share many overlapping law enforcement and investigatory functions. As two independent agencies within the Department of Justice, or DOJ, they possess some duplicative service functions, cost structures, and even mission-oriented activities. This memorandum analyzes the budgets of the two organizations and estimates the overall opportunity for budget savings that would result from merging ATF into the FBI.

The goal of the merger proposed in this report is to enhance federal efforts to combat violent crime and gun crime, as well as enforcement of laws and regulation of the gun industry, by moving all of these functions into a single, strong, politically resilient agency—the FBI. ATF and the FBI currently have a number of areas of jurisdictional overlap with respect to the investigation of violent and gun-related crimes and explosives incidents. Additionally, ATF has a number of unique functions related to regulation of the gun and explosives industries. This proposed merger seeks, at a minimum, to maintain, if not expand, the current law enforcement and regulatory operations undertaken by each agency and does not assume a reduction in the nonadministrative workforce of ATF. Therefore, a guiding assumption in this analysis is that any projected savings would be limited to administrative costs.

I reviewed the budget materials for DOJ, the FBI, and ATF, as well as ATF's reports, annual budget submissions, Inspector General reports, and reports from the Congressional Research Service and others. Using the best information available, I attempted to compare the like units of the respective budgets. Thus, these estimates are based on publicly available budget documents.

In summary, using the figures in the agencies' budget requests for fiscal year 2015, I estimate \$11 million in annual savings related to personnel costs and \$47.7 million in savings related to nonpersonnel costs. Once fully ramped up, this means an annual savings of \$58.7 million, with no expected degradation in performance objectives. These annualized budget reductions would take many years to fully realize through the merger integration process; once established, however, they will ensure long-term savings.

2015 ATF and FBI budget comparison snapshot

The ATF budget has remained stagnant since 2003, in constant dollars, and full-time equivalents, or FTEs, are still below their 2003 peak of 5,111 FTEs. As is clear from Table 1, the FBI budget and FTE totals are significantly larger than those of ATF. The FBI has approximately seven times the FTEs and seven times the budget of ATF.

TABLE 1
Comparison of budgets and FTEs for ATF and the FBI

	2012	2013	2014	2015 request
Budget appropriations (in thousands of dollars)				
ATF	\$1,152	\$1,071	\$1,179	\$1,201
FBI	\$8,118	\$7,536	\$8,342	\$8,347
FBI—salaries and expenses	\$8,037	\$7,461	\$8,245	\$8,278
FBI—construction	\$81	\$75	\$97	\$69
FTEs, or personnel				
ATF	5,101	4,937	5,101	5,101
FBI	34,109	34,354	34,956	34,970

Sources: Federal Bureau of Investigation, FY 2015 Authorization and Budget Requests to Congress (U.S. Department of Justice, 2014); Bureau of Alcohol, Tobacco, Firearms and Explosives, Congressional Budget Submission: Fiscal Year 2015 (U.S. Department of Justice, 2014).

Thinking about the budget implications

Cost savings are one of the most common reasons for justifying the merger of two organizations, but they can be among the hardest to achieve. Especially in cases where the merger is based on mission and strategic purposes, cost-savings efforts can be limited, as the integration focuses on mission-critical objectives. A 2014 analysis by the management consultant firm Bain & Company surveyed 352 experienced global merger executives and studied the public financials of more than 22,000 companies that participated in mergers.¹ From the analysis, Bain identified a series of best practices, and it should come as no surprise that one of the most critical determinants of achieving cost savings is setting cost-savings goals at the outset. The merger process is by nature a disruptive event in an organization, and companies can make the most of that disruption by changing practices for the better. One effective approach is to look for the best cost practices of both organizations and to integrate the leading practices from the merger, rather than simply relying on all the practices of the larger player.

In the congressional budget justifications from the FBI and ATF, we know that the organizations have different cost structures: For instance, the FBI has lower personnel benefit costs per FTE, while ATF is able to achieve a lower office space rental cost per FTE. A successful cost-savings integration would learn from both organizations. In the following cost-savings analysis, however, I have conservatively estimated only the benefits that ATF can acquire from FBI practices, but there are likely additional cost savings to be found.

Personnel savings

Both the FBI and ATF are mission-driven organizations, and their personnel staffing is reflective of that devotion to mission. A high proportion of each organization is the staff members who carry out the organizations' missions, and not much overhead is left in administrative services. The personnel detail can be found in Exhibit I of the respective congressional budget justifications for the agencies.²

- 79.8 percent of ATF employees occupy roles that are core to the mission of the organization, or nonadministrative. These roles include experts in fingerprint identification, intelligence analysts, and investigators and inspectors who cover criminal offenses and the firearm industry.
- Similarly, 58.1 percent of FBI employees occupy the above investigatory fields or serve as subject-matter experts for the hard sciences, the social sciences, or business.

The folding of ATF into the FBI is based on the strategic premise of increasing the effectiveness of the law enforcement and investigative capabilities of the two organizations—that they can do more together than they can separately. It is not the intent of the merger to reduce the effectiveness of either organization, and therefore, I conservatively estimate no reduction of employment in ATF’s mission-critical roles. Instead, the personnel savings will come from reducing support staff and other savings in overhead and administration.

If 79.8 percent of ATF employees are in mission-critical roles, that means that 20.2 percent of ATF personnel fall into what would be considered supporting roles: 14.5 percent serve in payroll, accounting, human resources, clerical, and other traditional “back-office” roles; 2.7 percent serve as attorneys or paralegals; 1.4 percent advise on business and academic practices; 1.1 percent serve as information technology, or IT, professionals; and 0.5 percent serve in facilities and fleet. According to ATF’s FY 2015 budget request, the agency’s total annual personnel budget is \$544,939,000. If 20.2 percent of ATF personnel represents a proportionate part of ATF’s personnel budget, that suggests that \$110 million is the total annual administrative personnel cost. Prior federal merger studies have used 20 percent as the expected annual savings for reductions in administrative costs,³ but at only 20.2 percent of total staff, ATF has already achieved a streamlined administrative organization and may have less opportunity for savings than average for government agencies. Rather than the 20 percent average estimate of administrative costs, I conservatively estimate 10 percent of the total administrative staff budget, suggesting an \$11 million annual savings from reduction of support staff through attrition over time.

Nonpersonnel savings

As divisions of DOJ, both ATF and the FBI publish their nonpersonnel costs in Exhibit K of their respective budget requests. Each nonpersonnel line is uniform to the federal accounting codes, allowing for a direct comparison of operating costs on a per-FTE basis. That comparison reveals several nonpersonnel costs where significant savings could be realized if ATF operations are merged with the FBI and realize the costs at the current per-FTE rate of the FBI. Perhaps even further savings will be realized from the economy of scale of the combined organizations.⁴ The comparison of nonpersonnel costs is below in Table 3, “Comparison of ATF and FBI nonpersonnel budgets,” and Table 4, “Estimated nonpersonnel cost savings from achieving select FBI economies of scale and per-FTE rates.”

TABLE 2

Comparison of ATF and FBI nonpersonnel budgets, from Exhibit K in the respective congressional budget justifications

Grouped by function (nonpersonnel)	Budget code	ATF 2015 request				FBI 2015 request			
		FTE	Cost (in thousands of dollars)	Cost per FTE	Percent of total	FTE	Cost (in thousands of dollars)	Cost per FTE	Percent of total
Nonpersonnel total	-		\$669,065	\$124.29	100.0%		\$4,740,600	\$142.63	100.0%
Personnel support	-	5,383	\$242,922	\$45.13	36.3%	33,237	\$1,452,946	\$43.71	30.6%
Personnel benefits	12.0		\$242,907	\$45.12	36.3%		\$1,436,514	\$43.22	30.3%
Benefits for former personnel	13.0		\$15	\$0.00	0.0%		\$-	\$-	0.0%
Medical care	25.6		\$-	\$-	0.0%		\$-	\$-	0.0%
Subsistence and support of people	25.8		\$-	\$-	0.0%		\$16,432	\$0.49	0.3%
Facilities and equipment	-		\$228,382	\$42.43	34.1%		\$1,524,685	\$45.87	32.2%
Rental payments to the General Services Administration	23.1		\$97,022	\$18.02	14.5%		\$704,157	\$21.19	14.9%
Rental payments to others	23.2		\$695	\$0.13	0.1%		\$68,263	\$2.05	1.4%
Communications, utilities, and miscellaneous	23.3		\$33,025	\$6.14	4.9%		\$143,770	\$4.33	3.0%
Operations and maintenance of facilities	25.4		\$120	\$0.02	0.0%		\$35,860	\$1.08	0.8%
Operations and maintenance of equipment	25.7		\$49,705	\$9.23	7.4%		\$110,430	\$3.32	2.3%
Supplies and materials	26.0		\$26,485	\$4.92	4.0%		\$150,303	\$4.52	3.2%
Equipment	31.0		\$17,580	\$3.27	2.6%		\$307,151	\$9.24	6.5%
Land and structures	32.0		\$2,150	\$0.40	0.3%		\$3,601	\$0.11	0.1%
Printing and reproduction	24.0		\$1,600	\$0.30	0.2%		\$1,150	\$0.03	0.0%
Insurance	-		\$530	\$0.10	0.1%		\$2,750	\$0.08	0.1%
Insurance claims and indemnities	42.0		\$530	\$0.10	0.1%		\$2,750	\$0.08	0.1%
Travel and transport	-		\$27,540	\$5.12	4.1%		\$209,948	\$6.32	4.4%
Travel and transportation of people	21.0		\$22,100	\$4.11	3.3%		\$134,256	\$4.04	2.8%
Transportation of things	22.0		\$5,440	\$1.01	0.8%		\$75,692	\$2.28	1.6%
Professional services	-		\$169,691	\$31.52	25.4%		\$1,550,271	\$46.64	32.7%
Advisory and assistance services	25.1		\$16,500	\$3.07	2.5%		\$514,719	\$15.49	10.9%
Other services from nonfederal sources	25.2		\$136,053	\$25.27	20.3%		\$963,496	\$28.99	20.3%
Other goods and services from federal sources	25.3		\$17,138	\$3.18	2.6%		\$28,484	\$0.86	0.6%
Research and development contracts	25.5		\$-	\$-	0.0%		\$43,572	\$1.31	0.9%
Other	-		\$-	\$-	0.0%		\$-	\$-	0.0%
Miscellaneous other services	25.1		\$-	\$-	0.0%		\$-	\$-	0.0%

Sources: Federal Bureau of Investigation, FY 2015 Authorization and Budget Requests to Congress (U.S. Department of Justice, 2014); Bureau of Alcohol, Tobacco, Firearms and Explosives, Congressional Budget Submission: Fiscal Year 2015 (U.S. Department of Justice, 2014).

TABLE 3

Estimated nonpersonnel cost savings from achieving select FBI economies of scale and per-FTE rates and reducing nonpersonnel support for reduced administrative staff, based on respective congressional budget justifications

Estimated nonpersonnel cost savings from FBI economies of scale and per-FTE rates	ATF base	ATF rate per FTE	FBI rate per FTE	ATF vs. FBI	Percent change	Updated base	Savings	Estimate with assumptions
Personnel support								
Personnel benefits	\$242,907	\$45.125	\$43.220	\$1.905	-4.2%	\$232,655	\$10,252	\$10,252
IT systems and equipment								
Operations and maintenance of equipment	\$49,705	\$9.234	\$3.323	\$5.911	-64.0%	\$17,885	\$31,820	\$12,024
Facilities								
Communications, utilities, and miscellaneous	\$33,025	\$6.135	\$4.326	\$1.809	-29.5%	\$23,285	\$9,740	\$9,740
Supplies and materials	\$26,485	\$4.920	\$4.522	\$0.398	-8.1%	\$24,343	\$2,142	\$2,142
Subtotal							\$53,954	\$34,158
Nonpersonnel cost reductions resulting from 10 percent fewer administrative staff members								
	ATF base	ATF rate per FTE	Administration FTEs		10 percent FTE cut		Savings	Estimate with assumptions
Total nonpersonnel costs	\$669,065	\$124.292	1,087		109		\$13,515	\$13,515
Subtotal							\$13,515	\$13,515
Total savings							\$67,469	\$47,673

Sources: Author's calculations of Federal Bureau of Investigation, FY 2015 Authorization and Budget Requests to Congress (U.S. Department of Justice, 2014); Bureau of Alcohol, Tobacco, Firearms and Explosives, Congressional Budget Submission: Fiscal Year 2015 (U.S. Department of Justice, 2014).

- Personnel benefits:** Despite having slightly higher average wages per FTE—\$106,000, on average, for the FBI, compared with \$101,000 for ATF—the FBI is able to deliver personnel benefits at a lower cost than ATF. At seven times the number of employees, the FBI has greater economies of scale with insurance and health care providers and is able to negotiate vendor contracts that deliver benefits at a cost of \$43,220 per employee, compared with \$45,125 for ATF. The \$1,905 annual savings in benefits per employee would correspond to an annual savings of \$10.25 million in reduced benefit costs for ATF.
- IT systems and equipment:** One of the greatest opportunities for nonpersonnel cost savings may lie in IT systems and equipment. In the FBI's 2015 budget justification, the Criminal Justice Information Services Division requested \$464 million for six critical information systems:⁵ the Integrated Automated Fingerprint Identification System and the Next Generation Identification system; the National Crime Information Center; the National Instant Criminal

Background Check System; Uniform Crime Reporting; the National Data Exchange; and Law Enforcement Online. Similarly, ATF operates its own suite of databases:⁶ the National Integrated Ballistic Information Network; the Federal Firearms Licensing eZ Check database; the Bomb Arson Tracking System; and the U.S. Bomb Data Center. ATF is currently expending more than \$9,000 per FTE, while the FBI is achieving operations at more than \$3,300 per FTE. While IT systems may be hard to compare on an FTE basis, we do know that some of the databases of the organizations share overlapping responsibilities. Reducing ATF to \$7,000 per FTE, while still higher, is closer to the operating rate of the FBI for operations and maintenance of equipment and would mean an annual savings of \$12 million. This type of systems improvement is already underway in the federal government: In February 2015, the Federal Data Center Consolidation Initiative reported that since 2010, 40 percent of federal data centers have been consolidated, achieving savings of nearly \$3.3 billion.⁷ The program has made substantial improvements in the data use of Naval Operations, reducing hardware costs and energy operating costs, and it serves as an example of successfully reducing costs by merging front-end resources.

- **Reduction in facility costs:** The FBI also does a better job of keeping communications, utility, and office supply costs lower per employee, at around \$9,000 per year, compared with \$11,000 for ATF. Achieving the FBI rates in facility service costs would lead to \$11.9 million in annual savings.
- **Reduction in support required for the 10 percent cut in administrative staff:** A 10 percent reduction in the administrative support personnel would not only directly save on wage funds, but it would also decrease ATF's nonpersonnel expenses. Less money will be required to pay health benefits, to pay rents and buy office furniture, to pay telephone bills, and to buy airplane tickets and office supplies, among other things. The 10 percent reduction of the administrative staff is approximately 109 employees. The pro-rated share of nonpersonnel expenses for those 109 employees is \$13.5 million per year.

In sum, these nonpersonnel savings amount to \$47.7 million in savings per year, and that is based solely on achieving the rates that the FBI already has in practice and reducing the office expenses related to the 109-person reduction in administrative staff. Adding ATF employees to the FBI would increase the organization's size by nearly 10 percent and could lead to even further economies of scale for nonpersonnel than what the FBI budgets today. Combined with the administrative personnel savings identified above, we can conservatively project annual savings of \$58.7 million through this merger.

Merger timeline

Savings estimates will also depend on how quickly the move is accomplished and on what happens to the size of the crime-fighting staff and budget over time. For instance, if for reasons of training and coordination it takes more time than was expected to fully accomplish the merger, then the total amount of projected annual savings would not be achieved for a number of years. Research by the General Accounting Office about public- and private-sector mergers has found that full implementation and operationalization of a merger can take between five and seven years.⁸

Realizing the cost savings from merging two organizations requires an integration plan at the outset and a skilled project manager who can adapt that plan to changing conditions. Summarizing his experience with numerous successful corporate mergers at a Harvard Business School roundtable, Rohm and Haas former President and CEO Raj Gupta pointed to the fluid nature of a merger integration plan: “You’ll find that you won’t always get the information you need to make a timely decision ... That’s why it’s essential to have the right people in the right places within your organization—people you can trust to use a solid combination of data evaluation and intuition to make the best and fastest decisions for your organization.”⁹

All mergers experience hiccups, but effective mergers start with an integration plan. Common plans in business start with workforce integration; focus on computer systems; and, finally, financial systems. The creation of the U.S. Department of Homeland Security showed that complex mergers of government agencies can take as long as five to seven years.¹⁰

The cost-savings analysis identified a reduced administrative workforce, reduced personnel benefit costs, reduced IT and systems spending, and reduced costs of facilities. Reductions in workforce and benefits can start taking place almost immediately through natural attrition and retirement and can quickly ramp up in the merger. IT systems, once understood, can launch a predictable integration process. Facilities are often tied to multiyear leases and may be the slowest to realize savings. For the purposes of our estimate, I have modeled each path on a conservative seven-year completion. Table 5 shows the effect of that ramp-up. Savings start out slowly, with only \$8.4 million in the first year of integration, and ramp up to \$25.1 million in year three. It is not until year seven that the full savings potential of \$58.7 million is realized. However, even the conservative ramp-up and its continuation show the decade-long value of the integration: nearly half a billion dollars in savings, at \$411 million.

TABLE 4
Timeline of merger savings

Description	Annual savings to be realized (in thousands of dollars)	Annual savings						
		Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
Administrative overhead	\$11,000	\$1,571	\$3,143	\$4,714	\$6,286	\$7,857	\$9,429	\$11,000
Personnel benefits	\$10,250	\$1,464	\$2,929	\$4,393	\$5,857	\$7,321	\$8,786	\$10,250
IT and equipment	\$12,000	\$1,714	\$3,429	\$5,143	\$6,857	\$8,571	\$10,286	\$12,000
Facility costs and maintenance	\$11,900	\$1,700	\$3,400	\$5,100	\$6,800	\$8,500	\$10,200	\$11,900
Reduced nonpersonnel costs for administration	\$13,500	\$1,929	\$3,857	\$5,786	\$7,714	\$9,643	\$11,571	\$13,500
Total	\$58,650	\$8,379	\$16,757	\$25,136	\$33,514	\$41,893	\$50,271	\$58,650
Seven-year total								\$234,600

Source: Author's calculations.

Merger costs

The cost of merging two organizations start with the system costs, and they extend all the way through printing new coffee cups with the merged logos. Systems are critical, but so too are the expenditures that make the employees feel like they are part of the organization. Successful mergers integrate systems; retain the best talent from both organizations; create a new, stronger organizational culture; and keep the project on time.

- **Changing systems:** Significant funds will need to be expended in order to realize a merger of ATF and the FBI. From changing IT systems to a unified platform to physically moving offices and breaking office leases, these hard costs will be the bulk of merger expenses.
- **Retaining talent:** Mergers bring uncertainty and may encourage some of the best ATF employees to look for the exit. Retaining these employees will require the FBI to show its commitment, including monetary payment and gestures of good will.
- **Merging cultures:** Different traditions and expectations exist within the two organizations. Successfully merging the cultures will require extensive training, rebranding, and team-building efforts.

- **Saving time:** Hiccups and delays will extend the time that the organizations are paying for two systems, two leases, and two sets of outside attorneys, among other things. High-quality, expensive project managers should be paid to keep the project on track and to reduce these delay-based costs.

The largest merger in recent history of the federal government was the merger of more than 10 government agencies into the Department of Homeland Security, and it may well serve as an example of the path of ATF and the FBI. The most contentious part of the merger revolved around the merger of immigration and customs enforcement at U.S. borders into a new organization known as Immigration and Customs Enforcement, or ICE.¹¹ The two agencies had a long history of organizational differences and culture. However, the creation of the Department of Homeland Security does not yield much information about budget savings, since it coincided with significant increases in spending on homeland security.

While the components and hiccups of mergers are well known, the dollar costs are often hard to pin down. The best recent federal example is the merger that took place from 2005 to 2011 of two historic military hospitals, the Walter Reed Army Medical Center in downtown Washington, D.C, and the National Naval Medical Center located five miles away in Bethesda, Maryland.¹² Both hospitals share a common mission: to treat incoming wounded patients from Iraq and Afghanistan and to care for veterans and families in the region. This effort was launched as part of the mandated Base Realignment and Closure, or BRAC, reorganization, and as such, had cost savings at its core.¹³ Creating a joint facility was designed to save on expensive overhead, leverage the talent of medical staff, and prove more cost effective.

In a report in 2005, the Defense Base Closure and Realignment Commission estimated that the merger would cost \$988 million.¹⁴ The Government Accountability Office also evaluated the proposal, and although it had some concerns, there was agreement that the project would eventually be cost effective.¹⁵ But by the time the merger was completed in 2011, the total cost was nearly \$3 billion, with additional annual running costs rather than savings.¹⁶ Cultural, talent management, and system integration problems plagued the project, as the merger opted to retain as much of the pre-merger design as possible, rather than use the merger as a disruptive opportunity for positive change.¹⁷

The Department of Defense estimated savings associated with the merger and related changes of \$145 million annually.¹⁸ While initial merger costs were projected at nearly \$1 billion with a six-year payback period,¹⁹ the revised cost of \$3 billion implies something like a 10-year payback period, if further costs can be contained. The integration is a good example of a merger gone wrong in the federal government; as such, it can be used as a high-end estimate of the costs associated with merging ATF and the FBI.

Because of this example, I have continuously erred on the conservative side of estimating cost savings throughout this memorandum. Estimating administrative savings below average—estimating that the economies of scale of the FBI provide some reduction but do not even achieve today’s FBI rates—I have estimated a full seven-year timeline to achieving the savings run rate. Costs of a merger are therefore baked into the conservative savings estimates.

The experiences of these other mergers, as well as the broader literature on private- and public-sector mergers, counsels toward being conservative when estimating both the costs of effectuating a merger and the potential savings that may be achieved once the merger is complete.

Conclusion

The promise of merger cost savings faces reality on the first day of integration, when employees struggle to find chairs, email systems are configured, and new hiccups are found in the best-designed plans. Mergers are difficult. And they can be costly. But this analysis concludes that moderate net cost savings are likely to be achieved by merging ATF into the FBI. I have made conservative estimates on savings and timeline, but even then there is no guarantee that the joint agency would fulfill the financial opportunity.

The strategic basis for this merger is based on the performance objectives and the shared missions and operations of the two agencies; the cost savings are a secondary benefit, not the primary impetus for the merger. We can be reasonably optimistic that the financial case is positive. The cost savings will materialize, even as the agency delivers stronger mission performance. Because the purpose of this merger is to enhance performance, the most difficult questions will likely revolve around the operational and cultural differences that will need to be resolved in the event of a merger. These are not primarily budget questions; they are operational questions.

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