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*****MEDIA ADVISORY*****

ARIZONA SHOOTER'S GUN PURCHASES SHOULD HAVE BEEN BLOCKED: THE FIRST WAS ILLEGAL, THE SECOND VIOLATED THE LAW'S INTENT

How federal regulations, and the failure of government agencies to share information, undermine gun laws and allow dangerous individuals to buy firearms

Firearms Policy Experts Available for Interview

A review of federal law and regulations suggests that Arizona shooter Jared Loughner should have been blocked from buying the shotgun he obtained less than a year after his rejection from enlistment in the Army, and that his subsequent purchase of the Glock pistol he used to unleash a violent rampage in Tucson, Arizona violated the law's clear intent.

Jared Loughner had a history of drug abuse that led military recruiters to reject him in December 2008. In 2007, he was arrested for possessing drug paraphernalia, and marijuana was found in his car. News reports indicate he also used mushrooms and Salvia divinorum, a hallucinogenic herb. In 2008, when he applied for enlistment in the U.S. Army, he said "yes" in response to question 17i on Department of Defense Form 2807-1, "Have you ever used illegal drugs or abused prescription drugs." According to U.S. Army sources, he was eventually rejected from enlistment after admitting to recruiters that "he smoked marijuana to such an extent" that they decided they were "not going to accept a habitual drug abuser into the Army." According to other military officials, he also failed a drug test.

Any of these facts should have prohibited Loughner from buying a gun for at least one year. But less than a year later after the military turned him away, he was able to buy a shotgun after passing a background check conducted by the Federal Bureau of Investigation's National Instant Background Check System (NICS). A year after that, in November of 2010, he bought another gun—a Glock that he used to kill 6 people and injure 13 others, including Rep. Gabrielle Giffords (D-AZ).

Why Loughner's first gun purchase was illegal under federal law, ATF regulations and FBI practices

- Under federal law, 18 U.S.C. § 922(g)(3), any person who is an "unlawful user of or addicted to any controlled substance" is prohibited from possessing or purchasing a gun.

- Under the federal Brady Law, licensed gun dealers like the one from whom Loughner bought both his guns must submit a potential purchaser's name to the NICS system for an instant background check. If NICS finds the buyer is prohibited by federal or state law from acquiring guns, the sale cannot proceed.
- Loughner's admission of drug use should have prevented him from buying guns under the statute, as interpreted by a Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) regulation. That rule, 27 C.F.R. § 478.11, clarifies the ban on drug users, explaining that "[a]n inference of current use may be drawn from evidence of a recent use or possession of a controlled substance or a pattern of use or possession that reasonably covers the present time," including failing a drug test within the past year.
- FBI policy set out in the *National Instant Criminal Background Check System (NICS) State Support Team Quick Reference Guide 2010* further clarifies that a failed drug test, single drug-related arrest, or admission of drug use within the past year are also evidence of "current use" and temporarily disqualify a person from possessing a gun. Loughner's failed drug test and his statement to the Army should therefore have triggered a denial by the NICS system when he bought his shotgun less than a year later.
- Loughner's admission of drug use to the Army should have been included in the NICS database. The NICS Improvement Amendments Act of 2007, Public Law No: 110-180, specifically mandated information-sharing among federal agencies in the wake of the Virginia Tech shootings. The law requires all federal agencies—including the military—to provide "any record of any person" who is prohibited from purchasing firearms to the FBI on at least a quarterly basis. When the military rejected Loughner for his habitual drug use, it should have sent that information to the NICS system. But there appears to be no protocol explaining how the military should inform the FBI when they reject an applicant for excessive drug use. As a result, Loughner's records were never provided to NICS.

On January 11, 2011, Mayors Against Illegal Guns called on President Obama to sign an executive order establishing a protocol to ensure that all federal agencies promptly inform the FBI when they discover that an individual is a drug abuser. In announcing this initiative, coalition co-chair Mayor Michael R. Bloomberg remarked that "for public safety and national security reasons, it is absolutely critical that the federal government do a better job of sharing information, so that law enforcement can connect the dots and act before it's too late."

Yesterday, Senator Charles Schumer echoed this effort, announcing that he has written a letter to Attorney General Eric Holder asking that the Pentagon be instructed to inform law enforcement agencies when a potential enlistee is rejected because of drug abuse.

If this aspect of the law had been clearly understood and enforced, Loughner would likely have failed his first background check.

Why Loughner's second purchase violated the intent of federal law

On November 30, 2010, less than two years after the military turned him away for excessive drug use, Loughner passed a background check and bought the Glock 19 he used in the Tucson shootings. While Loughner's first gun purchase was clearly prohibited under current law, regulations and government policy, his second was allowed under current enforcement practices. That purchase nevertheless violated the law's plain intent.

Federal law prohibits any person who is an "unlawful user of or addicted to any controlled substance" from purchasing a gun. Current ATF regulations, however, say that a person will not be treated as a drug abuser if there is no arrest or other evidence of drug abuse in the year preceding the check. The FBI applies the law similarly, ignoring failed drug tests that are more than a year old. Those interpretations allow dangerous individuals who have a long record of drug abuse, such as Loughner, to buy guns. Mayors Against Illegal Guns has called on ATF to extend this prohibition on drug abusers to any person who has been arrested for a drug-related crime, failed a drug test, or has other indicia of drug use within the past five years.

News reports suggest that even Loughner may have understood he was prohibited from buying guns. The New York Times has reported that in September of 2010, Loughner filled out paperwork to have his 2007 drug paraphernalia charge expunged from his record. Presiding Judge Jose Castillo told the New York Times that it "crossed [his] mind" that Loughner was worried that the charge would prevent him from buying a weapon.

Available for Interviews

- **Edgar Domenech**, former Acting Director and Deputy Director of ATF who led ATF's VA Tech investigation and is now New York City Sheriff.
- **John Feinblatt**, Chief Advisor to NYC Mayor Michael Bloomberg for Policy and Strategic Planning
- **Arkadi Gerney**, Special Advisor to Mayor Bloomberg on firearms policy and staff for Mayors Against Illegal Guns

About Mayors Against Illegal Guns

Since its inception in April 2006, Mayors Against Illegal Guns has grown from 15 mayors to over 550. Mayors Against Illegal Guns has united the nation's mayors around these common goals: protecting their communities by holding gun offenders and irresponsible gun dealers accountable, demanding access to trace data that is critical to law enforcement efforts to combat illegal gun trafficking, and working with legislators to fix gaps, weaknesses and loopholes in the law that make it far too easy for criminals and other prohibited purchasers to get guns.

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