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SEP 26 2014

I hereby notify the Court that I am **S.C. SUPREME COURT**  
a Pro Se Response to the petition filed by My  
attorney for Writ of Certiorari.

- The first issue I would like the Court to Consider is Lack of Subject Matter Jurisdiction by the sentencing Court. The reasons are as follows:
  - Before I was taken to trial, I was in regular contact with my attorney and I asked him, around October 2009, if I had been indicted yet. He told me that he would check for me since he worked in close proximity to the clerk of Court's office. I called him again and he informed me, as of October 2009, I had not been indicted for trial.
  - Then, incredibly, just before I am taken to trial in November of '09, I receive indictments dated for July 2009. When I asked my lawyer, "I thought you said I wasn't indicted," He told me that "Well, sometimes they do things that surprise even me." So I began to look into the Grand Jury of Pickens County.
  - On July 14, 2009 only 15 Grand Jurors were present. No time was recorded for the jury to deliberate. Furthermore, My question is in Reference

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to the dates on the face of the indictment. On June 6<sup>th</sup>, 2008, Captain Patterson presented his evidence to the Grand Jury (being in charge of the investigation) yet the jury did not convene and true bill the indictments until July 14 2009? That would not even be the same group of jurors he presented his evidence to.

- A legally constituted Grand Jury must consist of 18 members. An indictment, or notice document issued by a Grand Jury which is established or constituted illegally is deemed a nullity. An indictment which is deemed a nullity would be insufficient as a matter of law to give the required notice to a defendant.

- In the present case, I am concerned not with the sufficiency of a particular indictment, but the legality and sufficiency of the process of the state Grand Jury which issued the indictment.

S.C. CONST. ART 1 § 11, and S.C. CONST. ART V § 22

S.C. Code Ann. 17-19-10 (2003).

EVANS V. State 611 S.E.2d 510.

Secondly, I was denied my due process on two fronts, the second of which was in not receiving my preliminary hearing.

On June 6<sup>th</sup>, 2008, I arrived in the custody of the Pickens LEC. Upon entry of the facility, I requested my right to a fair and speedy trial as well as a preliminary hearing. Instead of receiving my demands, I was told "You don't get those rights 'round these parts" and placed in a 5ft x 7ft detoxification cell. I spent 1 year there. I constantly pressed the officers for my preliminary hearing and finally, I was given the paperwork to fill out, but per the orders of Captain Patterson I was not allowed even a flex pen to write with.

This denial of my procedural due process had a dire effect on my legal process. Rule 2 SCR CRIMP

At that time, June 2008, there was no connection to myself and any such murder weapon. On May 22, 2009, Pickens County officers thought to obtain a statement from Donald Thompson, a retired highway patrolman that he sold me the firearm.

Had I been given my preliminary hearing, I believe that the charges against me would have been thrown out. I would also like to point out that this crime was

~~committed on June 15, 2008~~

Committed on June 15<sup>th</sup>, 2006 and received national media coverage on 'America's Most Wanted.' My question to the Court is why did the authorities not question the owner of a murder weapon until nearly 3 years after the fact? Furthermore, why would a retired officer sell me a Glock and then see that the media had accused me of murder and not offer a statement then, knowing he was the buyer on record for the pistol?

I would like to point out a discrepancy in Mr.

Thompson's testimony as well about the firearm.

(Transcript Vol 1 of 2 pg 389-390 lines <sup>p. 389</sup> 24-25 / <sup>p. 390</sup> 1-10) Okay, he was a highway patrolman for 14½ years and had an avid interest in firearms. Very avid.

Mr. Thompson states that he spent \$18,000 on guns between 2004-2005. He has 66 firearms in total.

This guy knows his guns + everything about them, huh?

Now, on the cross examination by my trial attorney, Mr. Thompson suddenly doesn't seem to know much. (Transcript Vol 1 of 2 lines 15-22 Pg. 396.)

I would bet the owner of 66 firearms knew exactly what age to purchase a gun was and had eagerly been awaiting the legal age to start his collection.

On July 21, 2006 ATF Recovered the firearm, and they say no fingerprinting was done on it. In a high profile case? Then 3 years later, a retired cop gives a statement a few months before I go to trial that he sold me the murder weapon.

• Also, in respect to the firearm itself, the serial numbers on the weapon are similar but do not match. (Transcript Vol 1 of 2 pg 425 lines 1-3 / pg 424 lines 23-25)

Now in reference to Mr. Thompson, the actual buyer of the murder weapon agrees that the slide in the lower receiver matches the serial number of the weapon he purchased, but not the other parts specifically.

(Transcript Vol 1 of 2 pg 396 lines 1-5) Also, the barrel had been changed.

I believe this is important because it was established that the firearm utilized in the crime was fired once into the chest of Mr. Bruin, then twice at Mrs. Bruin, all three slugs being recovered. Then some months later, another projectile was found by Mrs. Bruin during a clean up. This bullet, a fired projectile did not come from the same weapon, or at least the same barrel. How did it get there?

(Transcript Vol 1 of 2 pg 55 lines 16-25. Who fired it and why was it not brought to the attention of the

July? Just what went on with this mis-matched, piece meal murder Weapon with no prints and a cop who waited 3 years to notify anyone he was the owner of a murder Weapon? (TRANSCRIPT Vol 1 of 2 Pg 484 line 18-21)

- All of these things had a dire effect in my trial and would not have been present at the time I should have received my preliminary hearing.
- Ineffective assistance of Council
- Not only did my trial Council not raise the issue of the "magic bullet" when only 3 shots were fired, per the surveillance video, to the jury. He also, during closing arguments, when charging the jury about burden of proof, agrees with the prosecution that ~~my~~ my guilt is probable. (transcript Vol 1 of 2 pg 488 lines 1-8 / lines 19-23)
- My second complaint in this regard is that my trial Council merely passed over a key discrepancy in the prosecution's case against me:
  - During the surveillance video, which clearly shows the perpetrator holding the DD4473 form at a certain angle, in precise areas of the packet of papers, yet my fingerprints are not on the document in any of those specific areas. The A6 thumb print is unidentified

and my prints are on the second page the third and the inside of the last Page. The man in the video picks the packet up and never Rifles through it.

My position is: How was that me if none of my prints are on the outer Portions of the document?

(Transcript Vol 1 of 2 pg 484 lines 1-9)

Finally, I would like to point out, during my trial Council's testimony at the PCR hearing, that he did not Consider my mental health state as a part of his defense strategy. A Case that Was on America's Most Wanted, and at one time, I was charged with 5 Murders, which dwindled to 1 by the time I reached Pickens LEC. Still, a case that spanned 3 states and 5 Murders and he didn't Consider that there could be a Mental health issue?

(Supreme Court transcript Vol 2 of 2 pg 568-571)

A Verdict of not guilty by Reason of insanity could conceivably been a possibility had I been properly evaluated prior to trial.

~~Ⓢ~~

- - Prejudice -

- In the Courtroom, during trial, I was restrained in belly chains, shackles, handcuffs, leg irons, and a bulky shock belt. Needless to say, I could barely move. This prejudiced me from the presumption of innocence provided under the Constitution. Nevermind the dangerous image it painted in the minds of the jury.

Transcript Vol 1 of 2 pgs 14 line 1-5

pgs 23 line 5-7

pgs 153 line 16-25

pgs 154 line 1-6

- Where is the presumption of innocence if I am treated like a convicted killer for the jury to view?
- The trial court was ineffective in giving an incorrect Malice charge that was burden shifting.
- At the conclusion of the trial the court gave the following charge on Malice and an inference:  
Malice may be inferred from conduct showing a total disregard for human life. Inferred Malice may also arise when the deed is done with a deadly weapon. A deadly weapon is any article or instrument or substance which is likely to cause death or great bodily harm. →

(Transcript Vol 1 of 2 pg. 499 line 22 / Pg 500, line 2)

- Later the trial Court charged the jury the following:

Now, if facts are proved beyond a reasonable doubt sufficient to raise an inference of malice to your satisfaction this inference would simply be an evidentiary fact to be considered by you, the jury, along with other evidence in the case and you may give it the weight you decide it should receive.

(Transcript Vol 1 of 2 pg 501 lines 1-12)

- The SC Supreme Court has made it clear when instructing the jury on an inference they must be told that they are free to accept or reject the inference.

State v. Peterson 287 SC 244, 335 SE2d 800 (1985)

State v. Wilds 355 SC 269, 584 SE2d 138 (2003)

- Without advising the jury that they are free to reject an inference, the jury charge can be seen as burden shifting in violation of due process of law. Sandstrom v. Montana 442 US 510, 99 S. Ct. 2450 (1979)
- The jury was told how they could convict defendant by relying on an inference, but they were not told they could reject the inference if they wanted to find me not guilty.

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*Office of Clerk of Court*  
PICKENS COUNTY  
**Harold P. "Pat" Welborn, Jr.**  
P.O. BOX 215  
PICKENS, SC 29671

CIVIL RECORDS (864) 898-5862  
CRIMINAL RECORDS (864) 898-5864  
FAMILY COURT (864) 898-5598

May 23, 2012

Roger E. Shephard  
386 Redemption Way  
McCormick, S.C. 29899

RE: Letter Dated:

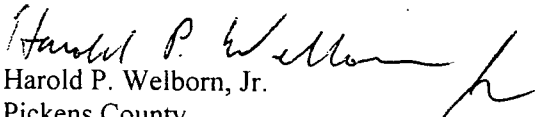
Dear Mr. Shepard,

I am in receipt of your letter/ motion dated:

We had 15 Grand Jurors present on July 14, 2009. There was a total of 59 cases presented on this day. There is no record of time kept pertaining each case. I will place your letter in the courts file.

If I or my staff can be of further assistance, please contact us at the address above.

Sincerely,

  
Harold P. Welborn, Jr.  
Pickens County  
Clerk of Court

GUN PURCHASE TERMS

1. Pay in full on day of purchase.
2. Complete a federal form 4473 and wait until NICS gives answer to a background check. (This may take 4 business days (business days do not include weekends or holidays)).
3. If you are denied. We will refund the purchase price of the firearm less \$25.00 processing fee.

Unidentified -  
Looks to be a  
Newly Conclusive  
Print

At



Stapled Crosswise on front



Exactly where the suspect  
in the video was touching

BB

# Firearms Transaction Record Part I - Over-the-Counter

**WARNING:** You may not receive a firearm if prohibited by Federal or State Law. The information you provide will be used to determine whether you are prohibited under law from receiving a firearm. Certain violations of the Gun Control Act are punishable by up to 10 years imprisonment and/or up to a \$250,000 fine.

Transferor's Transaction Serial Number

Prepare in original only. All entries must be in ink. Read the Important Notices, Instructions and Definitions on this form. "Please Print."

### Section A - Must Be Completed Personally By Transferee (Buyer)

1. Transferee's Full Name

Last Name

First Name

Middle Name (If no middle name state "NMN")

2. Current Residence Address (Cannot be a post office box.)

Number and Street Address

City

County

State

Zip Code

3. Place of Birth

U.S. City/State

Foreign Country

4. Height

Ft. \_\_\_\_\_

In. \_\_\_\_\_

5. Weight

6. Gender

Male

Female

7. Birth Date

Month

Day

Year

8. Social Security Number (Optional, but will help prevent misidentification.)

9. Unique Personal Identification Number (UPIN) if applicable (See Instruction to Transferor 6.)

10. Race (Ethnicity) (Check one or more boxes.)

American Indian or Alaska Native

Black or African American

Native Hawaiian or Other Pacific Islander

Hispanic or Latino

Asian

White

11. Answer questions 11.a. through 12 by writing "yes" or "no" in the boxes to the right of the questions.

a. Are you the actual buyer of the firearm(s) listed on this form? Warning: You are not the actual buyer if you are acquiring the firearm(s) on behalf of another person. If you are not the actual buyer, the dealer cannot transfer the firearm(s) to you. (See Important Notice 1 for actual buyer definition and examples.)

b. Are you under indictment or information in any court for a felony, or any other crime, for which the judge could imprison you for more than one year? (An information is a formal accusation of a crime by a prosecutor. See Definition 3.)

c. Have you ever been convicted in any court of a felony, or any other crime, for which the judge could have imprisoned you for more than one year, even if you received a shorter sentence including probation? (See Important Notice 4, Exception 1.)

d. Are you a fugitive from justice?

e. Are you an unlawful user of, or addicted to, marijuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance? Shepherd, Roger (Sc01520970) 68206-14-06

f. Have you ever been adjudicated mentally defective (which includes having been adjudicated incompetent to manage your own affairs) or have you ever been committed to a mental institution?

g. Have you been discharged from the Armed Forces under dishonorable conditions?

h. Are you subject to a court order restraining you from harassing, stalking, or threatening your child or an intimate partner or child of such partner? (See Important Notice 5.)

i. Have you ever been convicted in any court of a misdemeanor crime of domestic violence? (See Important Notice 4, Exception 1 and Definition 4.)

j. Have you ever renounced your United States citizenship?

k. Are you an alien illegally in the United States?

l. Are you a nonimmigrant alien? (See Definition 6.) If you answered "no" to this question, you are not required to respond to question 12.

12. If you answered "yes" to question 11.l., do you fall within any of the exceptions set forth in Important Notice 4, Exception 2? (e.g., valid State hunting license.) (If "yes," the licensee must complete question 20c.)

13. What is your State of residence (if any)? \_\_\_\_\_ (See Definition 5. If you are not a citizen of the United States, you only have a State of residence if you have resided in a State for at least 90 continuous days immediately prior to the date of this sale.)

14. What is your country of citizenship? (List/check more than one, if applicable.)

United States of America

Other (Specify) \_\_\_\_\_

15. If you are not a citizen of the United States, what is your U.S.-issued alien number or admission number?

#1 Shepherd, Roger (Sc01520970) 68206-14-06

I certify that the answers to Section A are true and correct. I am aware that ATF Form 4473 contains Important Notices, Instructions, and Definitions. I understand that answering "yes" to question 11.a. if I am not the actual buyer of the firearm is a crime punishable as a felony. I understand that a person who answers "yes" to any of the questions 11.b. through 11.k. is prohibited from purchasing or receiving a firearm. I understand that a person who answers "yes" to question 11.l. is prohibited from purchasing or receiving a firearm, unless the person also answers "yes" to question 12. I also understand that making any false oral or written statement, or exhibiting any false or misrepresented identification with respect to this transaction, is a crime punishable as a felony. I further understand that the repetitive purchase of firearms for the purpose of resale for livelihood and profit without a Federal firearms license is a violation of law. (See Important Notice 6.)

16. Transferee's/Buyer's Signature	17. Certification Date
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**Section B - Must Be Completed By Transferor (Seller)**

18. Type of firearm(s) to be transferred:  <input type="checkbox"/> Handgun <input type="checkbox"/> Long Gun <input type="checkbox"/> Both	19. Location of sale if at a gun show or other qualifying event. (See Instruction to Transferor 15.)  _____ (City, State)
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20a. Identification (e.g., driver's license or other valid government-issued photo identification.) (See Instruction to Transferor 1.)				
Type of Identification	Number on Identification	Expiration Date of Identification (if any)		
		Month	Day	Year

20b. Aliens only: Type and dates of additional required identification (e.g., utility bills or lease agreements.) (See Instruction to Transferor 2.)	
Type of Identification	Date(s)

20c. Nonimmigrant aliens only: Type of documentation showing an exception to the nonimmigrant alien prohibition (e.g., hunting license/permit; waiver.) (See Instruction to Transferor 3.)

**Question 21, 22, or 23 Must Be Completed Prior To The Transfer Of The Firearm(s) (See Instructions to Transferor 5-8.)**

21a. The transferee's identifying information in Section A was transmitted to NICS or the appropriate State agency on: _____ (Date)	21b. The NICS or State transaction number (if provided) was:
---	--

21c. The response initially provided by NICS or the appropriate State agency was:  <input type="checkbox"/> Proceed <input type="checkbox"/> Delayed <input type="checkbox"/> Denied      [The firearm(s) may be transferred on _____ (MDI date provided by NICS) if State law permits (optional)] <input type="checkbox"/> Cancelled	21d. If initial NICS or State response was "Delayed," the following response was received from NICS or the appropriate State agency:  <input type="checkbox"/> Proceed _____ (date) <input type="checkbox"/> Denied _____ (date) <input type="checkbox"/> Cancelled _____ (date) <input type="checkbox"/> No resolution was provided within 3 business days.
---	---

21e. (Complete if applicable.) After the firearm was transferred, the following response was received from NICS or the appropriate State agency on: \_\_\_\_\_ (date).       Proceed       Denied       Cancelled

21f. The name and Brady identification number of the NICS examiner (optional) _____ / _____ (name) (number)	22. <input type="checkbox"/> No NICS check was required because the transfer involved only NFA firearm(s). (See Instruction to Transferor 8.)
---	---

23. <input type="checkbox"/> No NICS check was required because the buyer has a valid permit from the State where the transfer is to take place which qualifies as an exemption to NICS (See Instruction to Transferor 8.)			
State Permit Type	Date of Issuance (if any)	Expiration Date (if any)	Permit Number (if any)
N/A			

**Section C**

If the transfer of the firearm(s) takes place on a different day from the date that the transferee (buyer) signed Section A, the transferee must complete Section C immediately prior to the transfer of the firearm(s). (See Instruction to Transferee 3 & Instruction to Transferor 9.)

I certify that the answers I provided to the questions in Section A of this form are still true and correct.

24. Transferee's/Buyer's Signature	25. Recertification Date
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**Section D (See Instructions to Transferor 10-11.)**

26. Manufacturer and/or Importer	27. Model	28. Serial Number	29. Type (pistol, revolver, rifle, shotgun, etc.)	30. Caliber or Gauge

**Complete ATF Form 3310.4 For Multiple Purchases Of Handguns (See Instruction to Transferor 13.)**

31. Trade/corporate name and address of transferor (seller) (Hand stamp may be used.)

604 W. Main St.  
Easley, SC 29640  
(864) 850-0000

32. Federal Firearms License Number (Complete 15 digit FFL Number.) (Hand stamp may be used.)

1-57-077-02-86-01263

On the basis of (1) the statements in Section A (and Section C if the transfer does not occur on the day Section A was completed); (2) my verification of the identification noted in question 20a (and my reverification at the time of transfer if the transfer does not occur on the day Section A was completed); and (3) the information in the current State Laws and Published Ordinances, it is my belief that it is not unlawful for me to sell, deliver, transport, or otherwise dispose of the firearm(s) listed on this form to the person identified in Section A.

**The Person Transferring The Firearm(s) Must Complete Questions 33-36. For Denied/Cancelled Transactions, The Person Who Completed Section B Must Complete Questions 33-35.**

33. Transferor's/Seller's Name (Please print.)	34. Transferor's/Seller's Signature	35. Transferor's/Seller's Title	36. Date Transfer is Completed
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**Important Notices**

- Actual Buyer:** For purposes of this form, you are the actual buyer if you are purchasing the firearm for yourself or otherwise acquiring the firearm for yourself (for example, redeeming the firearm from pawn/retrieving it from consignment, firearm raffle winner). You are also the actual buyer if you are legitimately acquiring the firearm as a gift for a third party. **ACTUAL BUYER EXAMPLES:** Mr. Smith asks Mr. Jones to purchase a firearm for Mr. Smith. Mr. Smith gives Mr. Jones the money for the firearm. Mr. Jones is NOT the actual buyer of the firearm and must answer "no" to question 11.a. The licensee may not transfer the firearm to Mr. Jones. However, if Mr. Brown goes to buy a firearm with his own money to give to Mr. Black as a present, Mr. Brown is the actual buyer of the firearm and should answer "yes" to question 11.a. Please note, if you are picking up a repaired firearm for another person, you should answer "n/a" to question 11.a.
- Purpose of the Form:** The information and certification on this form are designed so that a person licensed under 18 U.S.C. § 923 may determine if he or she lawfully may sell or deliver a firearm to the person identified in Section A, and to alert the buyer of certain restrictions on the receipt and possession of firearms. This form only should be used for sales or transfers where the seller is licensed under 18 U.S.C. § 923. The seller of a firearm must determine the lawfulness of the transaction and keep proper records of the transaction. Consequently, the seller must be familiar with the provisions of 18 U.S.C. §§ 921-931 and the regulations in 27 CFR Part 478. In determining the lawfulness of the sale or delivery of a long gun to a resident of another State, the seller is presumed to know applicable State laws and published ordinances in both the seller's State and the buyer's State.

- Background Checks:** The Brady law, 18 U.S.C. § 922(t), requires that prior to transferring any firearm to an unlicensed person, a licensed importer, manufacturer or dealer must first contact the National Instant Criminal Background Check System (NICS). NICS will advise the licensee whether the system finds any information that the purchaser is prohibited by law from possessing or receiving a firearm. For purposes of this form, contacts to NICS include contacts to State agencies designated to conduct NICS checks for the Federal Government. **WARNING:** Any seller who transfers a firearm to any person they know or have reasonable cause to believe is prohibited from receiving or possessing a firearm violates the law even if the seller has complied with the background check requirements of the Brady law.
- Prohibited Persons:** Generally, 18 U.S.C. § 922 prohibits the shipment, transportation, receipt, or possession in or affecting interstate commerce of a firearm by one who: has been convicted of a misdemeanor crime of domestic violence; has been convicted of a felony, or any other crime, punishable by imprisonment for a term exceeding one year (this does not include State misdemeanors punishable by imprisonment of two years or less); is a fugitive from justice; is an unlawful user of, or addicted to, marijuana or any depressant, stimulant, or narcotic drug, or any other controlled substance; has been adjudicated mentally defective or has been committed to a mental institution; has been discharged from the Armed Forces under dishonorable conditions; has renounced his or her U.S. citizenship; is an alien illegally in the United States or a nonimmigrant alien; or is subject to certain restraining orders. Furthermore, section 922 prohibits the shipment, transportation, or receipt in or affecting interstate commerce of a firearm by one who is under indictment or information for a felony, or any other crime, punishable by imprisonment for a term exceeding one year.

**EXCEPTION 1:** A person who has been convicted of a felony, or any other crime, for which the judge could have imprisoned the person for more than one year, or who has been convicted of a misdemeanor crime of domestic violence, is not prohibited from purchasing, receiving, or possessing a firearm if: (1) under the law of the jurisdiction where the conviction occurred, the person has been pardoned, the conviction has been expunged or set aside, or the person has had civil rights (*the right to vote, sit on a jury, and hold public office*) restored AND (2) the person is not prohibited by the law of the jurisdiction where the conviction occurred from receiving or possessing firearms. Persons subject to this exception should answer "no" to 11.c. or 11.i., as applicable. A person who has been convicted of a misdemeanor crime of domestic violence also is not prohibited unless: (1) the person was represented by a lawyer or gave up the right to a lawyer; and (2) if the person was entitled to a jury, was tried by a jury or gave up the right to a jury trial. Persons subject to this exception should answer "no" to 11.i.

**EXCEPTION 2:** A nonimmigrant alien is not prohibited from purchasing, receiving, or possessing a firearm if the alien: (1) is in possession of a hunting license or permit lawfully issued in the United States; or (2) has received a waiver from the prohibition from the Attorney General of the United States. (*See 18 U.S.C. § 922(y)(2) for additional exceptions.*) Persons subject to one of these exceptions should answer "yes" to questions 11.i. and 12 and provide the documentation requested by question 20c.

- 5. Restraining Orders:** Under 18 U.S.C. § 922, firearms may not be sold to or received by persons subject to a court order that: (A) was issued after a hearing which the person received actual notice of and had an opportunity to participate in; (B) restrains such person from harassing, stalking or threatening an intimate partner or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and (C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury. An "intimate partner" of a person is: the spouse or former spouse of the person, the parent of a child of the person, or an individual who cohabitates or has cohabited with the person.
- 6. Engaged in the Business:** Under 18 U.S.C. §§ 922 and 923, it is unlawful for a person to engage in the business of dealing in firearms without a license. A person is engaged in the business of dealing in firearms if he or she devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms. A license is not required of a person who only makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his or her personal collection of firearms.
- 7. Exportation of Firearms:** The State or Commerce Departments may require you to obtain a license prior to export.

#### Instructions To Transferee/Buyer

- The buyer must personally complete Section A of this form and certify (*sign*) that the answers are true and correct. However, if the buyer is unable to read and/or write, the answers (*other than the signature*) may be written by another person, excluding the seller. Two persons (*other than the seller*) must then sign as witnesses to the buyer's answers and signature.
- When the buyer of a firearm is a corporation, company, association, partnership or other such business entity, an officer authorized to act on behalf of the business must complete Section A of the form with his or her personal information, sign Section A, and attach a written statement, executed under penalties of perjury, stating: (A) the firearm is being acquired for the use of and will be the property of that business entity, and (B) the name and address of that business entity.
- If the transfer of the firearm takes place on a different day from the date that the buyer signed Section A, the seller must again check the photo identification of the buyer at the time of the transfer, and the buyer must complete the recertification in Section C at the time of transfer.

- If the buyer is a member of the Armed Forces on active duty acquiring a firearm in the State where his or her permanent duty station is located, but does not reside at his or her permanent duty station, the buyer must list both his or her permanent duty station address and his or her residence address in response to question 2.
- If you are a U.S. citizen with two states of residence, you should list your current residence address in response to question 2 (*e.g., if you are buying a firearm while staying at your weekend home in State X, you should list your address in State X in response to question 2*).

#### Instructions To Transferor/Seller

- 1. Know Your Customer:** Before a licensee may sell or deliver a firearm to a nonlicensee, the licensee must establish the identity, place of residence, and age of the buyer. The buyer must provide a valid government-issued photo identification to the seller that contains the buyer's name, residence address, and date of birth. The licensee must record the type, identification number, and expiration date (*if any*) of the identification in question 20a. A driver's license or an identification card issued by a State in place of a license is acceptable. Social security cards are not acceptable because no address, date of birth, or photograph is shown on the cards. A combination of government-issued documents may be provided. For example, if a U.S. citizen has two states of residence and is trying to buy a handgun in State X, he may provide a driver's license (*showing his name, date of birth, and photograph*) issued by State Y and another government-issued document (*such as a tax document*) from State X showing his residence address. If the buyer is a member of the Armed Forces on active duty acquiring a firearm in the State where his or her permanent duty station is located, but he or she has a driver's license from another State, you should list the buyer's military identification card and official orders showing where his or her permanent duty station is located in response to question 20a.
- 2. Sale of Firearms to Legal Aliens (Part 1):** A buyer who is not a citizen of the United States must provide additional documentation (*beyond a valid government-issued photo identification that contains the buyer's name, residence address, and date of birth*) to establish that he or she has resided in a State continuously for at least 90 days immediately prior to the date of the sale. *See Definition 5.* Examples of appropriate documents to establish State residency are utility bills from each of the last 3 months immediately prior to the sale or a lease agreement which demonstrates 90 days of residency immediately prior to the sale. A licensee may attach a copy of the documentation to ATF Form 4473, rather than record the type of documentation in question 20b.
- 3. Sale of Firearms to Legal Aliens (Part 2):** Even if a nonimmigrant alien can establish that he or she has a U.S.-issued alien number or admission number and has resided in a State for at least 90 continuous days immediately prior to the date of sale, he or she is prohibited from receiving a firearm unless he or she falls within an exception to the nonimmigrant alien prohibition. (*See Important Notice 4, Exception 2.*) If a nonimmigrant alien claims to fall within one of these exceptions by answering "yes" to question 12, he or she must provide the licensee with documentation of the exception (*e.g., hunting license/permit; waiver*). If the documentation is a hunting license/permit, the licensee must make sure it has not expired. An expired hunting license/permit does not qualify for the exception. A licensee may attach a copy of the documentation to ATF Form 4473, rather than record the type of documentation in question 20c.
- If the buyer's name in question 1 is illegible, the seller must print the buyer's name above the name written by the buyer.
- NICS Check:** After the buyer has completed Section A of the form and the licensee has completed questions 18-20, and before transferring the firearm, the licensee must contact NICS (*see Instruction 8 below for NICS check exceptions*.) However, the licensee should NOT contact NICS and should stop the transaction if: the buyer answers "no" to question 11.a.; the buyer answers "yes" to any question in 11.b.-11.i., unless the buyer only has answered "yes" to question 11.i. and also answers "yes" to question 12; or the buyer is unable to provide the documentation required by question 20a, b, or c.

- At the time that NICS is contacted, the licensee must record in question 21a-c: the date of contact, the NICS (or State) transaction number, and the initial response provided by NICS or the State. The licensee may record the Missing Disposition Information (MDI) date in 21c which NICS provides for delayed transactions (*States do not provide this number*). If the licensee receives a "delayed" response, before transferring the firearm, the licensee must record in question 21d any response later provided by NICS or the State or that no resolution was provided within 3 business days. If the licensee receives a response from NICS or the State after the firearm has been transferred, he or she must record this information in question 21e. Note: States acting as points of contact for NICS checks may use terms other than "proceed," "delayed," "cancelled," or "denied." In such cases, the licensee should check the box that corresponds to the State's response. Some States may not provide a transaction number for denials. However, if a firearm is transferred within the three business day period, a transaction number is required.
6. **Unique Personal Identification Number (UPIN):** For purchasers approved to have information maintained about them in the FBI NICS Voluntary Appeal File (VAF), NICS will provide them with a Unique Personal Identification Number (UPIN), which the buyer should record in question 9. The licensee may be asked to provide the UPIN to NICS or the State.
  7. **NICS Responses:** If NICS provides a "proceed" response, the transaction may proceed. If NICS provides a "cancelled" response, the seller is prohibited from transferring the firearm to the buyer. If NICS provides a "denied" response, the seller is prohibited from transferring the firearm to the buyer. If NICS provides a "delayed" response, the seller is prohibited from transferring the firearm unless 3 business days have elapsed and, before the transfer, NICS or the State has not advised the seller that the buyer's receipt or possession of the firearm would be in violation of law. See 27 CFR § 478.102(a) for an example of how to calculate 3 business days. If NICS provides a "delayed" response, NICS also will provide a Missing Disposition Information (MDI) date which calculates the 3 business days and reflects when the firearm(s) can be transferred under Federal law. States may not provide an MDI date. *Please note State law may impose a waiting period on transferring firearms.*
  8. **EXCEPTIONS TO NICS CHECK:** A NICS check is not required if the transfer qualifies for any of the exceptions in 27 CFR § 478.102(d). Generally these include: (a) transfers where the buyer has presented the licensee with a permit or license that allows the buyer to possess, acquire, or carry a firearm, and the permit has been recognized by ATF as a valid alternative to the NICS check requirement; (b) transfers of National Firearms Act weapons approved by ATF; or (c) transfers certified by ATF as exempt because compliance with the NICS check requirements is impracticable. See 27 CFR § 478.102(d) for a detailed explanation. If the transfer qualifies for one of these exceptions, the licensee must obtain the documentation required by 27 CFR § 478.131. A firearm must not be transferred to any buyer who fails to provide such documentation.
  9. If the transfer takes place on a different day from the date that the buyer signed Section A, the licensee must again check the photo identification of the buyer at the time of transfer, and the buyer must complete the recertification in Section C at the time of transfer.
  10. For "denied" and "cancelled" NICS transactions, the person who completed Section B must complete Section D, questions 33-35.
  11. Immediately prior to transferring the firearm, the seller must complete all of the questions in Section D.
  12. Additional firearms purchases by the same buyer may not be added to the form after the seller has signed and dated it. A buyer who wishes to purchase additional firearms after the seller has signed and dated the form must complete a new ATF Form 4473. The seller must conduct a new NICS check.
  13. In addition to completing this form, the seller must report any multiple sale or other disposition of pistols or revolvers on ATF Form 3310.4. (See 27 CFR § 478.126(a)).
  14. If more than three firearms are involved in a transaction, the information required by Section D, questions 26-30, must be provided for the additional firearms on a separate sheet of paper, which must be attached to the ATF Form 4473 covering the transaction.
  15. If the transfer occurs at a gun show or other qualifying event sponsored by any national, State, or local organization as authorized by 27 CFR § 478.100, the seller must record the location of the sale in question 19.
  16. After the seller has completed the firearms transaction, he or she must make the completed, original ATF Form 4473 (*which includes the Important Notices, Instructions, and Definitions*), and any supporting documents, part of his or her permanent records. Such Forms 4473 must be retained for at least 20 years. Filing may be chronological (*by date*), alphabetical (*by name*), or numerical (*by transaction serial number*), as long as all of the seller's completed Forms 4473 are filed in the same manner. **FORMS 4473 FOR DENIED/CANCELLED TRANSFERS MUST BE RETAINED:** If the transfer of a firearm is denied/cancelled by NICS, or if for any other reason the transfer does not go through after a NICS check is initiated, the licensee must retain the ATF Form 4473 in his or her records for at least 5 years. Forms 4473 with respect to which a sale, delivery or transfer did not take place shall be separately retained in alphabetical (*by name*) or chronological (*by date of transferee's certification*) order.
  17. You may include any other information on this form that is relevant to the transaction.
  18. If you or the buyer discover an ATF Form 4473 is incomplete or improperly completed after the firearm has been transferred, and you or the buyer wish to make a record of your discovery, photocopy the inaccurate form. Make any necessary additions or revisions to the photocopy. You only should make changes to Sections B and D. The buyer only should make changes to Sections A and C. Whoever made the changes should initial and date the changes. The corrected photocopy should be attached to the original Form 4473 and retained as part of your permanent records.
- #### Definitions
1. **Over-the-counter Transaction:** The sale or other disposition of a firearm by a seller to a buyer, at the seller's licensed premises. This includes the sale or other disposition of a rifle or shotgun to a nonresident buyer on such premises.
  2. **State Laws and Published Ordinances:** The publication (ATF P 5300.5) of State firearms laws and local ordinances ATF distributes to licensees.
  3. **Under indictment or information or convicted in any court:** An indictment, information, or conviction in any Federal, State, or local court.
  4. **Misdemeanor Crime of Domestic Violence:** A Federal, State, or local offense that is a misdemeanor under Federal or State law and has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with, or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim. The term includes all misdemeanors that have as an element the use or attempted use of physical force or the threatened use of a deadly weapon (*e.g., assault and battery*), if the offense is committed by one of the defined parties.
  5. **State of Residence:** The State in which an individual resides. An individual resides in a State if he or she is present in a State with the intention of making a home in that State. If an individual is a member of the Armed Forces on active duty, his or her State of residence also is the State in which his or her permanent duty station is located. An alien who is legally in the United States is a resident of a State only if the alien is residing in the State and has resided in the State continuously for at least 90 days immediately prior to the date of sale or delivery of a firearm.
  6. **Nonimmigrant Alien:** An alien in the United States in a nonimmigrant classification. The definition includes, in large part, persons traveling temporarily in the United States for business or pleasure, persons studying in the United States who maintain a residence abroad, and certain foreign workers. The definition does NOT include permanent resident aliens.
- #### Privacy Act Information
- Solicitation of this information is authorized under 18 U.S.C. § 923(g). Disclosure of the individual's social security number is voluntary. The number may be used to verify the individual's identity.

*Handwritten initials/signature*

Paperwork Reduction Act Notice

The information required on this form is in accordance with the Paperwork Reduction Act of 1995. The purpose of the information is to determine the eligibility of the transferee to receive firearms under Federal law. The information is subject to inspection by ATF officers and is required by 18 U.S.C. §§ 922 and 923.

The estimated average burden associated with this collection is 25 minutes per respondent or recordkeeper, depending on individual circumstances. Comments about the accuracy of this burden estimate and suggestions for reducing it should be directed to Reports Management Officer, Document Services Branch, Bureau of Alcohol, Tobacco, Firearms and Explosives, Washington, DC 20226.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

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Shepherd, Roger (SC 0152 0970) 028-06-16-09

ATF Form 4473 (5300.9) Part I  
Revised July 2005

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LEGAL MAIL ONLY