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FolderID:

Folder Title:

Brady - Ohio

Stack:

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Row:

98

Section:

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4

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November 13, 1997

TO: Rahm Emanuel
Jose Cerda

FROM: Nick Gess

SUBJECT: Brady Update for 11/15/97 Radio Address

Rahm & Jose -- Here are the update items which you can include in the 11/15/97, radio address relating to Brady:

- On June 27, 1997, I called on law enforcement to continue doing Brady background checks despite the Supreme Court decision which held that Congress could not require local law enforcement to do them.
- On that same day, the Attorney General and Treasury Secretary wrote to the nation's chief law enforcement officers asking them to continue to do these background checks.
- The responses has been heartening. Immediately, over 90% of law enforcement agencies, covering over 97% of the population continued doing these checks.
- Yesterday, we reached an agreement with Ohio to reinstitute the background checks, moving us up over 98% of the population.
- This leaves Arkansas as the only state in the nation where no background checks are being done. There are also 104 other small jurisdictions, none with a population over 165,000, where the checks are not being done.
- This proves what we have said all along. The Brady law is good law enforcement. It saves lives, it prevents crime.
- I am today instructing the Attorney General and the Secretary of the Treasury to contact every one of these jurisdictions and encourage these each chief law enforcement officer to reconsider his or her decision and to find ways to continue the checks.

MEMORANDUM OF UNDERSTANDING

The United States of America through the Attorney General, the State of Ohio through the Attorney General of Ohio, and the County of Franklin, Ohio through the Sheriff of Franklin County, hereby declare and agree as follows:

FINDINGS AND DECLARATIONS CONCERNING THE EFFECTIVENESS OF BRADY ACT BACKGROUND CHECKS IN PREVENTING CRIME

1. Providing for the public safety is one of the most essential functions of government. Numerous laws of the United States, and the State of Ohio and its counties and subdivisions, authorize law enforcement officers to take necessary and appropriate measures to protect the public from criminal wrongdoing.

2. Under federal law, the Attorney General serves as the nation's chief law enforcement officer, and she possesses broad law enforcement powers and responsibilities pursuant thereto. Accordingly, she possesses the authority to formulate policy and act affirmatively to prevent crime and enforce the law.

3. The law further authorizes the Attorney General to enter into cooperative arrangements with state and local law enforcement officials to advance the interest of public safety. Pursuant to Executive Order Number 11396, 33 Fed. Reg. 2689 (February 7, 1968), for example, the Attorney General is designated as the Federal official responsible for "facilitating and coordinating":

(1) the criminal law enforcement activities and crime prevention programs of all Federal departments and agencies, and (2) the activities of such departments and agencies relating to the development and implementation of Federal programs which are designed, in whole or substantial part, to assist State and local law enforcement agencies and crime prevention activities. The Attorney General may promulgate such rules and regulations and take such actions as [she] shall deem necessary or appropriate to carry out [her] functions under this Order.

4. Ohio law similarly provides broad authority to local law enforcement officials to prevent crime and enforce the law. The State Attorney General is the chief law officer for Ohio, and possesses law enforcement powers and responsibilities in that role, including oversight of the Ohio Bureau of Criminal Identification and Investigation (BCI&I). Ohio law further empowers the State Attorney General and BCI&I to cooperate with federal and local law enforcement agencies in the investigation of criminal activity. However, the Ohio Attorney General indicates that, pursuant to Ohio law, the authority of BCI&I to conduct background checks is limited and specified by statute.

5. Sheriffs also share in broad authority under Ohio law to protect the public from crime through prevention, detection and investigation.

6. Law enforcement agencies must closely ally to protect public safety because crime heeds no borders. Criminal conduct occurs in every jurisdiction, and an offense that occurs in one jurisdiction may directly or indirectly affect neighboring jurisdictions, states or even the country as a whole. Moreover, coordinated law enforcement programs have proven to be one of the most effective means of fighting crime. Congress expressly recognized these facts when declaring that "cooperation among [F]ederal, State and local law enforcement agencies is critical to an effective national response to the problems of violent crime and drug trafficking in the United States." P.L. 101-647, 104 Stat. 4823, § 612.

7. Cooperation among law enforcement agencies is particularly essential to combating violent crime and gun violence through enforcement of Federal and state laws governing firearm possession. In this regard, both Ohio and Federal law make acquisition or possession of firearms by certain categories of persons, such as convicted felons, a serious felony offense.

8. Congress expressly recognized that, prior to 1994, enforcement of such laws generally had been ineffective, "criminals have relatively easy access to guns," and "many repeat offender criminals buy guns directly from firearms dealers." H.R. Rep. No. 322, 103rd Cong., 1st Sess. 1993, 1993 U.S.C.C.A.N. 1984 (Nov. 10, 1993). Congress thus enacted the Brady Act, 18 U.S.C. § 922(s & t), to enhance enforcement of Federal and state laws governing firearms possession, block prohibited persons such as convicted felons from obtaining firearms from firearms dealers, and thereby prevent numerous crimes and related violence.

9. The Brady Act, under its interim provisions effective through November 30, 1998, accomplishes this mission by enabling law enforcement officials to conduct background checks on prospective handgun buyers that are designed (a) to prevent prohibited individuals from obtaining handguns in violation of Federal or state law, and (b) to prevent unscrupulous firearms dealers from assisting prohibited purchasers seeking to obtain handguns.

10. The Brady Act has proven effective in keeping guns out of the hands of criminals and others who should not have them. According to Department of Justice surveys, since the Brady Act became effective on February 28, 1994, the background checks of the kind provided for in the Act have prevented over 250,000 persons nationwide, including convicted felons, fugitives from justice, individuals subject to domestic violence restraining orders and others in prohibited categories, from illegally obtaining firearms.

11. In Ohio, the Brady Act likewise has contributed substantially to preventing

firearms from being sold to criminals and other prohibited persons. As of January 1, 1997, background checks had blocked nearly 1,000 felons, fugitives and others from illegally obtaining firearms from Ohio firearms dealers.

12. In Printz v. United States, ___ U.S. ___, 117 S.Ct. 2365 (1997), the United States Supreme Court declared unconstitutional the provisions of the Brady Act that (a) required state or local law enforcement agencies to perform a background check on every prospective handgun purchaser to determine whether the transfer of a handgun to such purchaser violates Federal or state law, and (b) required state or local law enforcement agencies to accept notice or a copy of a Brady Act purchase form from a firearms dealer seeking to sell a handgun to a prospective purchaser. Id. at 2383-84; see 18 U.S.C. § 922(s)(2). However, the Court did not call into question the authority of state and local law enforcement agencies to carry out the Brady Act's purposes by voluntarily continuing to conduct such background checks. Printz, 117 S.Ct. at 2384, 2385 (O'Connor, J., concurring).

13. Although no longer mandatory, background checks on handgun purchasers have become accepted as one element of an effective crime prevention strategy. According to a survey conducted by the Federal Bureau of Alcohol, Tobacco and Firearms, over ninety percent of chief law enforcement officers in states affected by the Supreme Court's Printz decision have voluntarily continued to perform background checks on prospective handgun purchasers in the interest of public safety.

14. Without the Federal mandate to conduct checks, the Ohio Attorney General has declared that she is prohibited from requiring a background check for certain prospective handgun purchasers because the requisite authority is lacking. Accordingly, shortly after the Printz decision, in the interest of preventing crime, the Ohio Attorney General established a system for conducting background checks on those prospective handgun purchasers who consent in writing to such a check. Further, Ohio law authorizes sheriffs to conduct background checks on prospective handgun purchasers to prevent crime and enforce Ohio law.

15. The parties hereto agree and stipulate that the interests of public safety, crime prevention and law enforcement are best served if a background check is performed on every prospective handgun purchaser in Ohio. The parties hereby agree to and shall, pursuant to the above-cited and other relevant authorities, cooperate and share resources pursuant to the terms set forth below to effectuate this vital task.

PROCEDURE FOR IMPLEMENTING UNIVERSAL BACKGROUND CHECKS IN OHIO

16. For the reasons stated above, the Attorney General of the United States, the Attorney General of Ohio and the Franklin County (Ohio) Sheriff, pursuant to their lawful authority, agree to and shall effectuate the following arrangements to implement

a background check on every prospective handgun purchaser in Ohio.

17. Subject to the terms stated herein, the Ohio Attorney General, through its unit BCI&I, voluntarily agrees to fulfill any and all operative responsibilities and obligations pursuant to the designation of the Ohio Attorney General as the "chief law enforcement officer" for Ohio, as defined in the Brady Act.

18. In the interest of advancing public safety and fulfilling the purposes of the Brady Act, which is designed, inter alia, to assist state and local law enforcement agencies and crime prevention activities, the Department of Justice authorizes the Franklin County (Ohio) Sheriff to access the Federal NCIC and III databases for purposes of conducting background checks on prospective handgun purchasers. Under no circumstances is the Franklin County (Ohio) Sheriff authorized to access the National Firearms Act Registry pursuant to this Memorandum of Understanding.

19. Until the National Instant Criminal Background Check System, as defined by the Brady Act, becomes operational on or before November 30, 1998, BCI&I shall, using all reasonable efforts and all reasonably available means, including, without limitation, searches of BCI&I criminal history records, conduct a background check on each prospective handgun purchaser in Ohio who consents in writing to such a background check to determine whether the proposed firearms transaction may proceed lawfully under Federal or state law. Should BCI&I determine that transfer of a firearm to a prospective handgun purchaser would violate Federal or state law, BCI&I shall immediately notify the firearms dealer involved that the proposed firearms transaction is prohibited. BCI&I shall retain all documentation pertaining to a prohibited firearms transaction indefinitely.

20. With respect to any prospective handgun purchaser who refuses to consent in writing to a background check, BCI&I shall immediately forward the prospective purchaser's completed Brady Act form to the Franklin County (Ohio) Sheriff by facsimile or otherwise as quickly as possible.

21. Upon receipt of any such form, the Franklin County (Ohio) Sheriff shall immediately perform a background check on the prospective handgun purchaser using all reasonable efforts and all reasonably available means, including, without limitation, the Federal NCIC and III and Ohio LEADS databases; provided, however, that for purposes of the background checks conducted pursuant to this Memorandum of Understanding, the Franklin County (Ohio) Sheriff shall not seek access to criminal history records maintained solely in BCI&I databases.

22. In the event that a background check conducted by the Franklin County (Ohio) Sheriff reveals no information that a prospective handgun purchaser may be disqualified by Federal or state law from purchasing or possessing a firearm, said Sheriff shall immediately destroy any documents received from BCI&I concerning the

proposed transaction.

23. If the Franklin County (Ohio) Sheriff obtains information indicating that a prospective handgun purchaser may be disqualified by Federal or state law from purchasing or possessing a firearm, said Sheriff shall and will immediately notify BCI&I of this information by marking the documents received concerning the purchaser or proposed transaction with a notation in a form prescribed by BCI&I and by transmitting via facsimile or otherwise as quickly as possible such documentation to BCI&I. Said Sheriff then shall immediately confirm that BCI&I has received this notification.

24. Upon notification from said Sheriff pursuant to Paragraph 23 hereinabove, BCI&I shall and will, using all reasonable efforts and all reasonably available means, including, without limitation, searches of BCI&I criminal history records, immediately conduct such further and additional investigation as necessary to determine whether the proposed firearms transaction may proceed lawfully under Federal or state law.

25. Following such additional investigation, should BCI&I determine that transfer of a firearm to a prospective handgun purchaser would violate Federal or state law, BCI&I shall immediately notify the firearms dealer involved that the proposed firearms transaction is prohibited. BCI&I shall then immediately notify the Franklin County (Ohio) Sheriff that it should forward to BCI&I any documentation pertaining to this prohibited firearms transaction. BCI&I shall retain all documentation pertaining to a prohibited firearms transaction indefinitely.

26. Further, with respect to each proposed transaction for which BCI&I determines that transfer of a firearm to a prospective handgun purchaser would violate Federal law, BCI&I shall, as quickly as possible, make a reasonable effort to notify the Bureau of Alcohol, Tobacco and Firearms of the name, address, other identifying information, location of the attempted purchase, and any other information in its possession relevant to the possible Federal offense.

27. It is expressly agreed and understood that BCI&I and the Franklin County (Ohio) Sheriff may cease adherence to the terms of this Memorandum of Understanding at any time. The parties hereto shall and will take all necessary and appropriate measures to effectuate the purposes of this Memorandum of Understanding.

28. The parties hereto represent that they agree and assent to the terms set forth above, and that they possess the lawful authority to make such representations and enter into and implement the terms of this Memorandum of Understanding. This Memorandum of Understanding becomes effective immediately upon execution by the parties hereto, which may be completed in counterparts.

FOR THE UNITED STATES:

Janet Reno
Attorney General
United States of America
Dated:

FOR THE STATE OF OHIO

Betty D. Montgomery
Attorney General
State of Ohio
Dated:

FOR THE COUNTY OF FRANKLIN, OHIO

James Karnes
Sheriff
County of Franklin, Ohio
Dated: