

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

| | | |
|--------------------------------|---|-----------------------|
| JAMES CAMP, |) | |
| |) | |
| Plaintiff, |) | CIVIL ACTION FILE NO. |
| |) | |
| v. |) | 1:06-CV-1586-CAP |
| |) | |
| BETTY B. CASON in her official |) | |
| capacity as Probate Judge for |) | |
| Carroll County, Georgia and |) | |
| BILL HITCHENS in his official |) | |
| capacity as the Commissioner |) | |
| of the Georgia Department of |) | |
| Public Safety, |) | |
| |) | |
| Defendants. |) | |

PLAINTIFF'S MEMORANDUM OF LAW IN
OPPOSITION TO DEFENDANT BILL HITCHENS'
PRE ANSWER MOTION TO DISMISS

Plaintiff, James Camp, files this Memorandum of Law in opposition to Defendant Bill Hitchens' Pre Answer Motion to Dismiss. Hitchens filed his Motion [15] on July 17, 2006, claiming that the action is moot. Hitchens bases his claim of mootness on certain voluntary modifications to the Georgia Firearms License ("GFL") application form. As will be shown below, this action is not moot because Hitchens continues to violate the Privacy Act of 1974, the relief requested by Plaintiff has not been fully addressed, and a justiciable issue still exists between the parties.

Background

Plaintiff applied to Defendant Betty B. Cason ("Cason"), the Probate Judge of Carroll County, Georgia, for a renewal GFL [6, ¶3]. Cason used the application form created by Hitchens. The application form required Plaintiff to provide his Social Security Account Number ("SSN") and information about his employment. The form failed to state whether the disclosure of the SSN was mandatory or optional (although Defendants treated it as mandatory), failed to cite to a statute or other authority pursuant to which the SSN was solicited, and failed to disclose what uses would be made of the SSN [7, Exh. A].

Plaintiff declined to provide his SSN, and, as a result, Cason refused to process Plaintiff's application [6, ¶5]. On June 19, 2006, Plaintiff's counsel wrote each Defendant a letter, advising them that their actions violated state and federal law, that Plaintiff had authorized commencement of this action, and requesting that Defendants voluntarily process Plaintiff's GFL application without requiring the disclosure of Plaintiff's SSN or employment information. The letter further advised that Plaintiff was operating under a very tight time frame (related to the impending expiration of his then-current GFL), and that a response must be received by June 26, 2006 [1,

Exh. A].¹ Neither Defendant responded within the time requested by Plaintiff's counsel. Cason responded to the letter on June 27, 2006, defending the required disclosures but representing that she would abide by whatever changes to the application form were implemented by Hitchens [1, Exh. B].

Hitchens' counsel responded on June 30, 2006.² Hitchens' counsel advised that he was investigating Plaintiff's claims and would keep Plaintiff's counsel informed as to any decisions made. The letter did not address the urgency of Plaintiff's particular situation, it did not respond to Plaintiff's request that his application be processed without requiring the SSN and employment information, and did it not request additional time before Plaintiff commenced this action [15, Att. 1].

Hitchens' counsel, Lee O'Brien, called Plaintiff's counsel on July 3, 2006. During that conversation, Hitchen's counsel advised that he was investigating the matter, but that he would

¹ The letters, dated June 19, 2006, were faxed to Defendants, so Defendants had a full week to respond before the due date of June 26, 2006.

² Hitchens' counsel's letter is dated June 30. The letter was sent via regular mail only (neither faxed nor emailed), and it was not received by Plaintiff's counsel until July 5, 2006, the date the Complaint was filed. July 1 and 2 were weekend days, and July 4 was, of course, a federal holiday.

not be able to specify a date by which his investigation would be complete. Plaintiff's counsel advised that, under the circumstances, Plaintiff would not have any choice but to move forward with this litigation. The Complaint was filed two days later, on July 5, 2006 [1]. In his Complaint, Plaintiff seeks to remedy past and future violations of the Privacy Act of 1974 and Georgia's GFL application statute.

Concurrent with the complaint, Plaintiff filed a Motion for a Temporary Restraining Order or Preliminary Injunction [2]. A hearing on the motion was held July 11, 2006, and the court granted the motion over both Defendants' objections, ordering Defendants to process Plaintiff's renewal GFL application and temporary renewal GFL application without requiring disclosure of his SSN. [13].

On July 17, 2006, Hitchens filed a GFL application form with this court different from the one currently in use in that it had two small-font, typed parentheticals as modifications. Hitchens did not, however, file any affidavits or other evidence to support his Motion. ***The revised form still requests employment information and SSN, but characterizes the requests as "optional."*** The form does not contain a different number (it remains as DPS 445), and it does not show a new revision date

(it remains at 02/05) [14, Exh. A]. Contemporaneously, Hitchens filed the instant Motion to Dismiss, claiming that the revisions he typed onto the GFL application form render this case moot [15].

The proposed GFL application form still violates the Privacy Act.

ARGUMENT AND CITATION OF AUTHORITY

As will be discussed in more detail below, this case is not moot. A case or controversy still exists between the parties. The violations of which Plaintiff complains have not been remedied, and issues remain for the court to decide.

I. Hitchens Still Is Violating the Privacy Act

The crux of Hitchens' Motion is that this case was mooted the moment Hitchens filed a modified GFL application form. As an initial matter, the filing of a form, without more, cannot be evidence in support of a motion. If Hitchens claims that the case is moot because of changed circumstances, he must at least file an affidavit or other competent evidence that the circumstances have changed and that the earlier circumstances will not resume. For the sake of discussing the mootness doctrine, however, Plaintiff shall treat Hitchens' filing as an expression of his future intentions.

Even assuming arguendo that Hitchens has changed the official GFL application form and has distributed it to the Georgia probate judges for immediate use, the revised form still violates § 7(b) of the Privacy Act:

Any federal, state, or local government agency which requests an individual to disclose his Social Security Account Number shall inform that individual whether that disclosure is mandatory or voluntary, by which statutory or other authority such number is solicited, and what uses will be made of it.

At best, Hitchens' revised form addresses only the first requirement of Section 7(b), by stating that the disclosure of the SSN is optional. Because the form Hitchens proposes to utilize does not meet the remaining two requirements of Section 7(b), the request that an applicant disclose his SSN, even voluntarily, is still an unlawful request. The form does not purport to inform the applicant by what statutory or other authority the SSN is requested. That is because there is none. "The forms must also indicate under what authority - whether statutory or otherwise - such disclosure is sought." Schwier v. Cox, 412 F. Supp. 2d 1266, 1276 (N.D. Ga. 2005).

The revised form also fails to warn applicants of **all** the uses contemplated for the applicants' SSN. "[A]ll uses contemplated for the SSNs must be disclosed." Id. The revised

form says the SSN "will help prevent misidentification," but it does not indicate how it will be used (to accomplish that) and whether preventing misidentification is the only use contemplated for it. To comply with the Privacy Act, Defendant must warn potential applicants of all uses to be made of the SSN - e.g., what other state and federal agencies will have access to it, &c. "In redrafting, defendant may consider a more detailed instruction, such as that if the SSN is provided, it will remain confidential and subject to disclosure as provided for [by the applicable statute]." Id. In Schwier, the Georgia Secretary of State included a statement on the voter registration form indicating **one** use to which the SSN would be put (i.e., to verify identification). The court found, however, that the Secretary of State used the SSN for other purposes which had not been disclosed. Id. at 1275, n.9.

By way of example, it may be helpful to examine the form used by the United States Bureau of Alcohol, Tobacco, Firearms, and Explosives' ("BATFE") Form 4473, a form required by federal regulations to be completed whenever a firearm is purchased at a gun store. That form has a blank for the SSN, followed by a parenthetical stating "(Optional, but will help prevent

misidentification.") [emphasis in original form]. Importantly, however, the form also contains the following notice:

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.

[emphasis in original form]. A copy of Form 4473 is attached as Exhibit A. The form as modified by Hitchens contains a curiously similar parenthetical in the blank for the SSN, but it contains no Privacy Act warning. Because the modified application form does not provide the required warning, setting forth the statutory authority by which the SSN is requested and disclosing all uses that will be made of it in the future, the proposed modification utterly fails to keep the application form from violating Section 7(b) of the Privacy Act.

II. Plaintiff Should be Granted Additional Relief

As Hitchens notes, "A case is moot when events subsequent to the commencement of a lawsuit create a situation in which the court can no longer give the plaintiff meaningful relief." Jews for Jesus v. Hillsborough County Aviation Auth., 162 F.3d 627, 629 (11th Cir. 2004). In this case, even if the revised form did comply with the Privacy Act (which it clearly does not), there

still is relief for the court to grant Plaintiff. In the Complaint, Plaintiff requested the following relief:

1. That the court take jurisdiction of the matter
2. A trial by jury
3. A declaration that the GFL application form in use (at the time) by Defendants violates the Privacy Act
4. An injunction prohibiting Defendants from requiring disclosure of the SSN to obtain a GFL or renewal GFL.
5. An injunction requiring Defendants to set forth the mandatory warning in § 7(b) of the Privacy Act, if Defendants seek the SSN on an optional basis
6. An injunction requiring Defendants to expunge Plaintiff's SSN from their systems and records
7. A declaration that Defendants violated Plaintiff's rights under the Federal Privacy Act, the 14th Amendment to the United States Constitution, and Article I, Section I, ¶ VIII of the Georgia Constitution
8. An order requiring Defendants to process Plaintiff's GFL application without requiring his SSN
9. A declaration that employment information is not pertinent nor relevant to eligibility for a GFL

10. An order prohibiting Defendants from requiring employment information as a precondition of obtaining a GFL
11. An order requiring Defendants to expunge Plaintiff's employment information from their records and systems
12. Attorneys fees and costs

Hitchens makes no claim in his Brief that items 5, 6, 11, and 12 are moot. Item 5 is enforcement of § 7(b) of the Privacy Act, as discussed above. Items 6 and 11 relate to expunging improper information from Defendants' records of Plaintiff i.e., a remedy for past violations. Hitchens cannot reasonably claim that a proposed change in the application form going forward will remedy past wrongs. Hitchens has not proposed to expunge SSNs and employment information from existing records.

Item 12 is Plaintiff's request for attorney's fees and costs. This action is a civil rights case under 42 U.S.C. § 1983. If he is the prevailing party, Plaintiff is entitled to attorneys fees and costs under 42 U.S.C. § 1988. "[T]he prevailing party should ordinarily recover an attorneys' fee... The discretion to deny attorneys' fees to a prevailing plaintiff under § 1988 is 'exceedingly narrow'." Doss v. Long, 624 F.Supp. 1078, 1080 (N.D. Ga. 1985). "If the plaintiff has succeeded on 'any significant issue in litigation which achieve[d] some of

the benefit the parties sought in bringing suit,' the plaintiff has crossed the threshold to a fee award of some kind." Texas State Teachers Association v. Garland Independent School District, 489 U.S. 782, 791, 109 S. Ct. 1486, 1493 (1989). Furthermore, "a party may be considered to be 'prevailing' if the litigation successfully terminates by ... mootng of the case where the plaintiff has vindicated his right. This is true even where the remedial action moots the lawsuit before trial and the plaintiff voluntarily dismisses the suit. [citation omitted]" Martin v. Heckler, 773 F.2d 1145 (11th Cir. 1985), *abrogated on other grounds*, 489 U.S. 782.

Here, Plaintiff already received, over the objection of both Defendants, an injunction requiring Defendants to allow Plaintiff to apply for a GFL without providing his SSN. Moreover, if Hitchens has modified the official form, he has done so because of Plaintiff's efforts. Thus, Plaintiff has received, at this very early stage of the case, some of the benefit he sought in bringing the suit. For purposes of § 1988, Plaintiff already is a prevailing party and consequently entitled to attorneys' fees and costs upon motion.

Plaintiff is not raising the issue of attorneys' fees to make a request for fees at this time, but simply to show that

there is additional relief to be granted by the court. It is, therefore, premature to declare the entire case moot.

III. Hitchens' Alleged Voluntary Cessation Does Not Moot the Case

"[T]he mere voluntary cessation of a challenged practice does not render a case moot." Jews for Jesus, Inc. v. Hillsborough County Aviation Authority, 162 F.3d 627, 629 (11th Cir. 1998), citing County of Los Angeles v. Davis, 440 U.S. 625, 631, 99 S.Ct. 1379, 1383, 59 L.Ed.2d 642 (1979). In this case, it is not even clear that Hitchens has voluntarily ceased the challenged practice. He has not promulgated a regulation prohibiting requiring SSNs for GFLs. He does not have the three-year history of compliance that was in the record in Jews for Jesus. Rather, Hitchens filed documents that imply his intention to cease *some* of the challenged practice. He filed his Pre Answer Motion to Dismiss the same day.

In his motion, Hitchens contends that his filing with this court of a proposed change in the document renders this case moot. "The test for mootness, however, is a stringent one . . ." National Advertising Company v. City of Fort Lauderdale, 934 F.2d 283, 286 (11th Cir. 1991) (involving a government defendant). "[I]t is well settled that a defendant's voluntary

cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice.” Id. (citing City of Mesquite v. Aladdin’s Castle, Inc., 455 U.S. 283, 289, 102 S. Ct. 1070, 1074-75 (1982) (also involving a government defendant)). In Fort Lauderdale, the Eleventh Circuit reversed the District Court’s holding that an amendment to Fort Lauderdale’s code, prompted by litigation, mooted the litigation over the code.

“For a defendant’s voluntary cessation to moot any legal questions presented and deprive the court of jurisdiction, it must be absolutely clear that the alleged wrongful behavior could not reasonably be expected to recur. In other words, voluntary cessation of offensive conduct will only moot litigation if it is clear that the defendant has not changed course ***simply to deprive the court of jurisdiction.***” National Advertising Company v. City of Miami, 402 F.3d 1329, 1333 (11th Cir. 2005) (emphasis added) (citations and punctuation omitted). In the instant case, it is clear that the wrongful behavior has not stopped, as the currently proposed GFL application form still violates Section 7(b). Moreover, neither Defendant has made even a representation to this Court that the wrongful behavior will cease.

In discussing the Fort Lauderdale case in its Miami opinion, the Court of Appeal was particularly suspicious of the fact that the City of Ft. Lauderdale changed its ordinance and then moved to dismiss the next day. See City of Miami, 402 F.3d at 1334. The court was concerned that the defendant's actions were taken for the purpose of depriving the court of jurisdiction. Here, Hitchens waited all of 58 minutes (based on the court's electronic time stamps) between filing his revised application form and moving to dismiss. In addition, the documents filed by Hitchens [14, Exh. B and C] indicate that Hitchens' litigation attorneys are directing the revisions. Hitchen's actions demonstrate a change of course simply to deprive this court of jurisdiction.

The two cases relied upon by Hitchens involved evidence of "substantial deliberation," Jews for Jesus, Inc. v. Hillsborough County Aviation Authority, 162 F.3d 627, 629 (11th Cir. 1998), and a change in policy that was "well reasoned and [with] behavior" that "provides ample evidence of . . . intent" to comply with the law in all occasions in the future. Troiano v. Supervisor of Elections, 382 F.3d 1276, 1285 (11th Cir. 2004) (cited in Defendant's Brief). In Troiano, as in Jews for Jesus, the court noted the Defendant "has consistently followed this

policy . . .” and Defendant’s “pattern of behavior proved her commitment to providing the audio components.” Id. (for two years). This finding was based on “all of the available evidence (and it is considerable) . . .” Id. at 1286. “We see no reason to believe that [Defendant] implemented this policy in anticipation of litigation . . .” 382 F.3d at 1286 (emphasis added).

This Court has had occasion to consider the Jews for Jesus case in the context of mootness. In Turner v. Habersham County, Georgia, 290 F. Supp. 2d 1362 (N.D. Ga. 2003), the defendant took voluntary action in an attempt to ameliorate the civil rights violation to plaintiff. This Court distinguished the facts of that case from Jews for Jesus by noting that in Jews for Jesus “the defendant’s change of policy gave plaintiffs exactly what they were seeking,” thus mooting the case. Id. at 1368 (emphasis added). In Turner (as in the instant case), the defendant took **some** action, but the action taken did not give the plaintiff the relief he was seeking. Accordingly, the case was not moot. Id.

IV. Plaintiff Afforded Defendant a Reasonable Opportunity

Hitchens implies that Plaintiff filed the Complaint prematurely. Even though he did so, Plaintiff had no obligation

to give Hitchens any opportunity at all to make voluntary changes. Plaintiff gave both Defendants prior notice of the litigation, advised the Defendants of the urgency of the situation, and gave Defendants as much time as Plaintiff thought he could afford for Defendants to agree to process Plaintiff's GFL application without requiring an SSN and employment information. Then, when Hitchens' advised that he was working on the matter, Plaintiff gave Hitchens an additional nine days. With no indication that Hitchens was any closer to complying with the law, and a statutory deadline looming, Plaintiff had no choice but to file his Complaint. Even then, it required a court order for Plaintiff's application to be processed.

Conclusion

Plaintiff has shown that Hitchens has not presented competent evidence indicating that circumstances have changed. The actual form in use today by probate courts throughout the state is the very same form being used prior to this litigation. Even treating Hitchens' filings [14] as competent evidence and drawing conclusions from them in a light favorable to Hitchens, the proposed modification to the GFL application form still violates the Privacy Act and thus the case is not moot. Even if the modified application form met the Privacy Act's

requirements, however, Defendant does not address all the relief that Plaintiff has requested and to which Plaintiff is entitled. For the foregoing reasons, this case is not moot, and a justiciable controversy still exists between the parties. Hitchens' Motion must therefore be denied.

SHAPIRO FUSSELL

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ATTORNEYS FOR PLAINTIFF

0000.004/ 008

Local Rule 7.1D Certification

The undersigned counsel certifies that the foregoing Memorandum of Law was prepared using Courier New 12 point, a font and point selection approved in LR 5.1B.

 /s/John R. Monroe
John R. Monroe

CERTIFICATE OF SERVICE

I hereby certify that on July 27, 2006, I electronically filed the foregoing PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT HITCHENS' PRE ANSWER MOTION TO DISMISS with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to the following attorneys of record:

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_____/s/ John R. Monroe_____

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Exhibit A

ATF Form 4473

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

Transferor's Transaction Serial Number

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.

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

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

| | | | | |
|---|---------------------------------|--|---|--|
| 1. Transferee's Full Name (Last, First, Middle) | | 2. Residence Address (No., Street, City, County, State, ZIP Code; cannot be a post office box) | | |
| 3. Place of Birth (City, State or foreign country) | 4. Height _____ Weight _____ | 5. <input type="checkbox"/> Male <input type="checkbox"/> Female | 6. Birth Date Month _____ Day _____ Year _____ | 7. Social Security Number (Optional, but will help prevent misidentification.) |
| 8. Race (Ethnicity) (Check one or more boxes) | | | | |
| <input type="checkbox"/> American Indian or Alaska Native | | <input type="checkbox"/> Black or African American | | <input type="checkbox"/> Native Hawaiian or Other Pacific Islander |
| <input type="checkbox"/> Hispanic or Latino | | <input type="checkbox"/> Asian | | <input type="checkbox"/> White |

- 9** What is your State of residence (if any)? _____ (See Definition 5. If you are not a citizen of the United States, you have a State of residence only if you have resided in a State for at least 90 days prior to the date of this sale.)
- 10** What is your country of citizenship? (List more than one, if applicable.) _____
- 11** If you are not a citizen of the United States, what is your INS-issued alien number or admission number? _____

Certification Of Transferee

12. Answer questions 12a through 12l 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 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 6, 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? | |
| 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 7.) | |
| i. Have you been convicted in any court of a misdemeanor crime of domestic violence? (See Important Notice 6, 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.) | |

13 If you are a nonimmigrant alien, do you fall within any of the exceptions set forth in Important Notice 6, Exception 2?
Yes No Not applicable (If "yes," the licensee must complete question 18c.)

I certify that the above answers are true and correct. I understand that answering "yes" to question 12a when 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 12b through 12k is prohibited from purchasing or receiving a firearm. I understand that a person who answers "yes" to question 12l is prohibited from purchasing or receiving a firearm, unless the person also answers "yes" to question 13. 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 8.)

| | |
|----------------------------|----------|
| 14. Transferee's Signature | 15. Date |
|----------------------------|----------|

Section B - Must Be Completed By Transferor (Seller)

16. Type of firearm(s) to be transferred: Handgun Long Gun Both **17** Location of sale if at a gun show. (See Instruction to Transferor 13.) _____ (city, state)

18 a. Type of Identification (e.g., driver's license or other valid government- issued photo identification.) _____
 Number on Identification: _____
 Expiration Date of Identification (if any) _____ (See instruction to Transferor 1.)

18 b. Aliens only: Types and dates of additional required identification (e.g., utility bills or lease agreements. See Instruction to Transferor 2.) _____

18 c. 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 19, 20, or 21 Must Be Completed Prior to The Transfer Of The Firearm(s) (See Instructions to Transferor 5-7.)

19a. The transferee's identifying information in Section A of this form was transmitted to NICS or the appropriate state agency on _____ (Date). 19b. The NICS or state transaction number (if provided) was: _____

19c. The reponse initially provided by NICS or the appropriate state agency was:
 Proceed Denied Delayed 19d. If initial NICS or state response was "Delayed," the following response was received from NICS or the appropriate state agency on _____ (Date)
 Proceed Denied No resolution was provided within 3 business days.

19 e. The name and Brady identification number of the NICS examiner (if provided) _____ / _____ (optional)
 (name) (number) 20. No NICS check was required because the transfer involved only NFA firearm(s). (See Instruction to Transferor 7.)

21. No NICS check was required because the buyer has a valid permit which qualifies as an exemption to NICS (See Instruction to Transferor 7.)
 State Permit Type: _____ Date of Issuance: _____
 Expiration Date (if any): _____ Permit Number: _____

Section C

If the transfer of the firearm(s) takes place on a different day from the date that the transferee 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 8.)

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

22. Transferee's Signature _____ 23. Date _____

Section D

| 24. Manufacturer and/or Importer | 25. Model | 26. Serial Number | 27. Type (pistol, revolver, rifle, shotgun, etc.) | 28. Caliber or Gauge |
|----------------------------------|-----------|-------------------|---|----------------------|
| | | | | |
| | | | | |
| | | | | |

Complete ATF F 3310.4 For Multiple Purchases Of Handguns (See Instruction to Transferor 11.)

29. Trade/corporate name and address of transferor (Hand stamp may be used.) _____ 30. Federal Firearms License Number (Hand stamp may be used.) _____

On the basis of (1) the statements in Section A; (2) my verification of identity noted in question 18a and my verification again at the time of transfer (if the transfer does not occur on the same day the verification was noted in question 18a); 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 Actually Transferring The Firearm(s) Must Complete Questions 31-34.

31. Transferor's Name (Please print.) _____ 32. Transferor's Signature _____ 33. Transferor's Title _____ 34. Date Transfer is completed _____

IMPORTANT NOTICES

- 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). You are also the actual buyer if you are acquiring the firearm as a legitimate 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 12a. 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 12a.
- Under 18 U.S.C. § 922, firearms may not be sold to or received by certain persons. 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 Brady law, 18 U.S.C. § 922(i), requires that before 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 contains any information that the prospective purchaser is prohibited by law from possessing or receiving a firearm. For purposes of this form, contacts to NICS include contacts to State agencies that have been designated to conduct NICS checks on behalf of the Federal Government.
- WARNING:** Any seller who knowingly transfers a firearm to any person 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.
- The seller of a firearm is responsible for determining the lawfulness of the transaction and for keeping proper records of the transaction. Consequently, the seller should be familiar with the provisions of 18 U.S.C. §§ 921-930 and the regulations appearing in 27 CFR Part 178. In determining the lawfulness of the sale or delivery of a rifle or shotgun 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.
- The transferee of a firearm should be familiar with 18 U.S.C. § 922. Generally, § 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 where the conviction occurred, the person has been pardoned, the conviction has been expunged or set aside, or the person has had his or her rights (the right to vote, sit on a jury, and hold public office) restored; AND (2) the person is not prohibited by the law where the transaction occurred from receiving or possessing firearms. Persons subject to this exception should answer "no" to 12c or 12i, as applicable. A person who has been convicted of a misdemeanor crime of domestic violence also is not covered by this exception 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, and gave up the right to a jury trial. Persons subject to this exception should answer "yes" to 12i.

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; (2) is an official representative of a foreign government who is accredited to the United States Government or their Government's mission to an international organization having its headquarters in the United States; or (3) 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 12i and 13 and provide the documentation requested by question 18c.

- 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) the statute 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. For purposes of this prohibition, an "intimate partner" of a person is: the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, or an individual who cohabitates or has cohabited with the person.

- Under 18 U.S.C. §§ 922 and 923, it is unlawful for a person to engage in the business of selling in firearms without a license. A person is engaged in the business of selling 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.
- Persons acquiring firearms for exportation should be aware that the State or Commerce Departments may require a license be obtained prior to exportation.

INSTRUCTIONS TO TRANSFEREE

- 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 prior to the transfer, and the buyer must complete the certification 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 18a.

INSTRUCTIONS TO TRANSFEROR

- 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 18a. 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. 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 18a.
- 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 for at least 90 days 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 prior to the sale or a lease agreement which demonstrates 90 days of residency prior to the sale. (A licensee may attach a copy of the documentation to the ATF F-4473, rather than record the type of documentation in question 18b.)
- SALE OF FIREARMS TO LEGAL ALIENS (PART 2):** Even if a nonimmigrant alien can establish State residency, 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 6, Exception 2. If a nonimmigrant alien claims to fall within one of these exceptions by answering "yes" to question 13, he or she must

provide the licensee with documentation of the exception (e.g., hunting license/permit; waiver). The licensee must record the type of documentation in question 18c and attach a copy of the document to the ATF F 4473. 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.

4. If the buyer's name is illegible, the seller must print the buyer's name above the name written by the buyer.
5. **NICS CHECK:** After the buyer has completed Section A of the form and the licensee has completed questions 16-18, and prior to transferring a firearm to a nonlicensee, the licensee must contact NICS in accordance with the instructions received from ATF (see *Instruction 7 below for NICS check exceptions.*) However, the licensee should NOT contact NICS and should stop the transaction if: the buyer answers "no" to question 12a; the buyer answers "yes" to any question in 12b-12l, unless the buyer only has answered "yes" to question 12c and also answers "yes" to question 13; or the buyer is unable to provide the documentation required by question 18a, b, or c.

At the time that NICS is contacted, the licensee should record in question 19c the date of contact, the NICS (or state) transaction number, and the response provided by NICS or the state. If the licensee receives a "delayed" response prior to transferring the firearm, the licensee must record in question 19a any response subsequently provided by NICS (or that no response was provided within 3 business days). (If the licensee receives a response from NICS after the firearm has been transferred, he/she may use this information on the ATF F 4473.) If the licensee receives a "delayed" response, he or she may record the name and Brady ID number of any NICS examiner who makes a follow up call in question 19e. **Note:** States acting as points of contact for NICS checks may use terms other than "proceed," "denied," 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, in any case where a firearm is transferred within the three business day period, a transaction number is required.

6. **NICS RESPONSES:** If NICS provides a "proceed" response, the transaction may proceed. 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, prior to the transfer, NICS has not advised the seller that the buyer's receipt or possession of the firearm would be in violation of law. See 27 CFR § 178.102(a) for an example of how to calculate 3 business days.
7. **EXCEPTIONS TO NICS CHECK:** A NICS check is not required if the transfer qualifies for any of the alternatives in 27 CFR § 178.102(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 section 178.102(d) for a detailed explanation. If the transfer qualifies for one of these exceptions, the licensee must obtain the supporting documentation required by 27 CFR § 178.131. A firearm must not be transferred to any buyer who fails to provide such documentation.
8. 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 prior to the transfer, and the buyer must complete the certification in Section C at the time of transfer.
9. Immediately prior to transferring the firearm, the seller must complete Section D. The seller must print his or her name in question 31 and provide his or her signature in question 32.
10. Additional firearms purchased 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 F 4473. The seller must conduct a new NICS check on this transaction.
11. In addition to completing this form, the seller must report any multiple sale or other disposition of pistols or revolvers on ATF F 3310.4. See 27 CFR § 178.126a.
12. If more than three firearms are involved in a transaction, the information required by Section D, questions 24-28, must be provided for these firearms on a separate sheet of paper, which must be attached to the ATF F 4473 covering the transaction.
13. If the transfer occurs at a gun show authorized by 27 CFR § 178.100, the seller must record the location of the sale in question 17.
14. After the seller has completed the firearms transaction, he or she must make the completed, original ATF F 4473 (which includes the *Important Notices, Instructions, and Definitions*), and any supporting documents, part of his or her permanent records. 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 TRANSFERS MUST BE RETAINED:** If the transfer of a firearm is denied by NICS and for any other reason the transfer does not go through after a NICS check is initiated, the licensee must retain the ATF F 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.

15. You may include any other information on the form that is relevant to the transaction.

DEFINITIONS

1. **Over-the-counter Transaction:** The sale or other disposition of a firearm by a seller to a buyer, occurring on 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, local, or foreign 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 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 for at least 90 days prior to the date of sale or delivery of a firearm. These examples illustrate this definition:
 - Example 1.** A maintains a home in State X. A travels to State Y on a hunting trip. A does not become a resident of State Y by reason of such trip.
 - Example 2.** A is a U.S. citizen and maintains a home in State X and a home in State Y. A resides in State X on weekdays, and in State Y on weekends. During the time A actually resides in State X, A is a resident of State X. During the time A actually resides in State Y, A is a resident of State Y.
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.

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 20 minutes per respondent or recordkeeper, depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to Reports Management Officer, Document Services Branch, Bureau of Alcohol, Tobacco and Firearms, 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.