



States under Article I of the United States Constitution; violate the Second Amendment rights of the Plaintiff and all similarly situated individuals; violate the Ninth and Tenth Amendments and the United States Constitution's principles of federalism and dual sovereignty; by arbitrarily "disapproving" an already approved Form 1, Defendants' actions violate Plaintiff's Fifth Amendment right to due process and is an unjust taking; and violate the Equal Protection clause of the Fourteenth Amendment.

2. Plaintiff seeks declaratory and injunctive relief against the unconstitutional provisions contained in 18 U.S.C. § 922(o), 26 U.S.C. § 5801 *et seq.* and 27 C.F.R. § 479.105(a); declaring the ban on machine guns unconstitutional under the Second, Ninth and Tenth Amendments and in violation of Article I of the United States Constitution and declaratory and injunctive relief prohibiting Defendants from unjustly taking property without Due Process.

3. In the alternative, Plaintiff seeks declaratory and injunctive relief finding that 18 U.S.C. § 922(o) does not prohibit an unincorporated trust from manufacturing or possessing a machinegun manufactured after May 19, 1986 and/or that the Defendants lack the authority and are thus prohibited from revoking or denying the validity of Plaintiff's approved tax stamp # RM34755.

### **PARTIES**

4. Plaintiff Jay Aubrey Isaac Hollis ("Hollis") is an adult male citizen of the State of Texas and is the Trustee of the Jay Aubrey Isaac Hollis Revocable Living Trust which is created and existing under the laws of the State of Texas.

5. Defendant Eric H. Holder, Jr. is sued in his official capacity as the Attorney General of the United States of America. As Attorney General, Defendant Holder is responsible

for administering and executing the laws, customs, practices and policies of the United States, and is currently enforcing the laws, customs, practices and policies complained of in this action.

6. Defendant B. Todd Jones is sued in his official capacity as the Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives (“BATFE”). As Director of BATFE, Defendant Jones is responsible for administering and executing the laws, customs, practices and policies of the United States, and is currently enforcing the laws, customs, practices and policies complained of in this action.

### **JURISDICTION AND VENUE**

7. The Court has subject-matter jurisdiction pursuant to 28 U.S.C. §§1331, 1343, 1346, because this action arises under the Constitution and laws of the United States and further has jurisdiction to render declaratory relief under 28 U.S.C. §§ 2201 and 2202.

8. Venue is proper in this district pursuant 28 U.S.C. § 1931(e)(1)(C) because no real property is involved, the Plaintiff resides in Texas and the defendants are agencies of the United States or officers thereof acting in their official capacity and 28 U.S.C. § 1931(e)(1)(B) as a substantial part of the events and omissions giving rise to the claim occurred in this judicial district.

### **FACTUAL ALLEGATIONS**

9. The Second Amendment states, “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S. Const. amend. II. The right preserved by the Second Amendment requires that it be subject to the highest standard of review, and it plainly commands its own standard: *shall not be infringed*.

10. The Second Amendment guarantees “the right of law-abiding, responsible citizens to use arms in defense of hearth and home.” *District of Columbia v. Heller*, 554 U.S. 570, 635, 128 S.Ct. 2783, 2821, 171 L.Ed.2d. 637, 683 (2008). In addition, *Heller* also held that the Second Amendment guarantees not only an individual right to bear arms unconnected with militia service but that it “extends, prima facie, to all instruments that constitute bearable arms.” *Id.* at 582, 2792.

11. The scope of the Second Amendment protection does not end with *Heller*, as *Heller* is merely the floor and not the ceiling. In *McDonald v. City of Chicago, Ill.*, 561 U.S. 742 (2010), the Second Amendment was incorporated against the States by the Fourteenth Amendment to the United States Constitution.

12. Prior to *Heller* and *McDonald*, the seminal case regarding the Second Amendment was decided in 1939. In *U.S. v. Miller*, 307 U.S. 174 (1939), Jack Miller was indicted for transporting, in interstate commerce, a shotgun with a barrel length less than eighteen inches in length, in violation of the National Firearms Act. The District Court dismissed the indictment on Second Amendment grounds, but the Supreme Court of the United States reversed and remanded for further proceedings. In its opinion, the Supreme Court stated

[i]n the absence of any evidence tending to show that possession or use of a ‘shotgun having a barrel of less than eighteen inches in length’ at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument. Certainly it is not within judicial notice that this weapon is any part of the ordinary military equipment or that its use could contribute to the common defense.

*Miller*, 307 U.S. at 178 (citing *Aymette v. State of Tennessee*, 2 Humph., Tenn 154, 158).

13. As judicial notice can readily be taken that machineguns are in fact “part of the ordinary military equipment” and their use “contribute to the common defense” due to all

branches of the military, the National Guard, federal agencies (including the United States Department of Agriculture)<sup>1</sup>, and even local police forces utilizing machineguns commonly, it is clear the machineguns come under Second Amendment protection as expounded in *Miller*.

14. Machineguns are regulated under the National Firearms Act (“NFA”), codified at 26 U.S.C. § 5801 *et seq.* The NFA imposes a \$200 tax on the manufacture and transfer of machineguns, suppressors, short barreled rifles, short barreled shotguns and destructive devices. It additionally imposes a \$5 tax on “any other weapons” which are defined to include pen guns, cane guns and other firearms that do not resemble actual firearms.

15. It is no secret that even though the NFA imposed a tax on certain firearms, the goal of the NFA was not one of raising revenue. BATFE acknowledges that the NFA’s “underlying purpose was to curtail, if not prohibit, transactions in NFA firearms.”<sup>2</sup> Since Congress lacks authority to ban NFA weapons outright, it instead imposed a large tax (in 1934 dollars) on their manufacture and transfer which few individuals could pay.

16. Under the NFA, a person must submit a written application to make and register the firearm, pay any tax associated with that making, identify the firearm to be made, identify the person making and obtain approval from the Secretary on the written application. Upon approval of the application, the BATFE will register the firearm in the National Firearms Registration and Transfer record and affix a stamp to the application to evidence the payment of the tax. *See* 26 U.S.C. § 5822. The statute also states that “[a]pplications shall be denied if the

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<sup>1</sup> “The U.S. Department of Agriculture, Office of Inspector General, located in Washington, DC, pursuant to the authority of FAR Part 13, has a requirement for the commercial (sic) acquisition of submachine guns, .40 Cal. S&W, ambidextrous safety, semi-automatic or 2 shot burts (sic) trigger group, Tritium night sights for front and rear, rails for attachment of flashlight (front under fore grip) and scope (top rear), stock-collapsilbe (sic) or folding, magazine - 30 rd. capacity, sling, light weight, and oversized trigger guard for gloved operation.” <https://www.fbo.gov/index?s=opportunity&mode=form&id=9fc3a01217d03b0354e1e18b69aa7bad&tab=core&eviw=0> (last accessed October 30, 2014)

<sup>2</sup> See <https://www.atf.gov/content/firearms/firearms-industry/national-firearms-act> (last accessed October 30, 2014).

making or possession of the firearm would place the person making the firearm in violation of law.” *Id.*

17. Prior to 1986, registered machineguns were involved in so few crimes that the then Director of the Bureau of Alcohol, Tobacco, and Firearms Stephen E. Higgins stated during congressional hearings that “machineguns which are involved in crimes are so minimal so as not to be considered a law enforcement problem.”<sup>3</sup> Despite any evidence of machineguns having any effect on interstate commerce, Congress banned an entire class of firearms that were rarely, if ever, used in crime, merely because it sounded good to ban them.

18. 18 U.S.C. § 922(o) generally bans the transfer or possession of a machinegun manufactured after May 19, 1986. The statute provides:

(1) Except as provided in paragraph (2), it shall be unlawful for any person to transfer or possess a machinegun.

(2) This subsection does not apply with respect to—

(A) a transfer to or by, or possession by or under the authority of, the United States or any department or agency thereof or a State, or a department, agency, or political subdivision thereof; or

(B) any lawful transfer or lawful possession of a machinegun that was lawfully possessed before the date this subsection takes effect.

18 U.S.C.A. § 922(o). This provision was enacted in 1986 as §102(9) of the Firearm Owners’ Protection Act, which amended the Gun Control Act of 1968.

19. The legislative history of this amendment is for the most part nonexistent, except for the mention on the floor by its sponsor, Representative Hughes, when he stated “I do not know why anyone would object to the banning of machine guns.” 132 Cong. Rec. H1750 (1986)

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<sup>3</sup> *Armor Piercing Ammunition and the Criminal Misuse and Availability of Machineguns and Silencers: Hearings on H.R. 641 and Related Bills Before the Subcomm. On Crime of the House Co. on the Judiciary, 98<sup>th</sup> Cong. 208 (1986).*

(statement of Rep. Hughes). While the House vote on the amendment failed, the amendment still made it in to the final bill.<sup>4</sup>

20. 18 U.S.C. § 922(o) is a criminal statute that has nothing to do with commerce and its terms do not include any jurisdictional element which would allow a determination to be made as to whether the mere possession of a machinegun effects interstate commerce. In fact, not only were there not any Congressional findings of an effect on interstate commerce, all evidence, including the statements of the then ATF Director shows that indeed, machineguns have *no effect* on interstate commerce.

21. Likewise, while the ban criminalizes the possession and transferring of a post-1986 machinegun, one can in fact *possess* a machinegun without *transferring* it so that the transfer would not precede the possession (for example, an individual could make a machinegun).

22. The prohibition on machineguns does not apply to all machineguns. Any machinegun lawfully owned before May 19, 1986 may still be transferred or possessed. Accordingly, there are thousands, if not hundreds of thousands of machineguns lawfully possessed by private individuals, and, but for 922(o), there would likely be hundreds of thousands more lawfully possessed by private individuals. In fact, one of the most popular sporting rifles in existence today, the AR-15 rifle, is merely a semi-automatic version of the M16 machinegun, and is nearly identical to the fully automatic version except for some of the internal parts and additional milling.

23. The BATFE has essentially rewritten § 922(o) to make it less onerous on the government. As written, § 922(o) permits only governmental entities and those not included in

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<sup>4</sup> See Floor Vote on Hughes Amendment: <https://www.youtube.com/watch?v=a6Mx2UcSEvQ> (last accessed October 30, 2014).

the definition of “person” from possessing a machinegun manufactured after May 19, 1986. Coincidentally, governmental entities do not manufacture machineguns but rather purchases them from civilian companies, which are included in the definition of “person.” If the statute is applied as written, no machinegun could be manufactured by a civilian company even for government or law enforcement because the company as well as anyone in the company would be prohibited from possessing or transferring that machinegun. The same applies to licensed firearms dealers, who the BATFE permits to possess post May 19,1986 machineguns if they have a letter from a law enforcement agency requesting a demonstration or a “sample,” despite no exception being present in the law to permit licensed firearms dealers to possess machineguns even for law enforcement purposes.

24. The term “person” is defined in the Gun Control Act (“GCA”) to mean “any individual, corporation, company, association, firm, partnership, society, or joint stock company.” *See* 18 U.S.C. § 921. The term person does not include an unincorporated trust.

25. The BATFE, in an opinion letter dated March 17, 2014 to Dakota Silencer in Sioux Falls, South Dakota, referenced the “person” definition and stated: “[u]nlike individuals, corporations, partnerships, and associations; unincorporated trusts do not fall within the definition of “person” in the GCA.” *See* Exhibit A, P.2. Since by the BATFE’s own admission, the term “person” in the GCA does not include an unincorporated trust, such a trust is not subject to the prohibition in § 922(o).

26. The “making” of a machinegun can be done without subjecting the firearm to interstate commerce. A machinegun made in the State of Texas and that has not traveled in interstate commerce cannot be regulated by the Federal Government under the interstate commerce clause.

27. Since *Heller* declared the Second Amendment an individual right, and that the right extends to all “bearable arms,” including those regulated by the NFA, the NFA’s tax is unconstitutional, just as a poll tax, a tax to exercise one’s religion, or even a tax assessed on printed materials before one could exercise his or her First Amendment rights would be unconstitutional as well.

28. Congress cannot ban the possession of machineguns without specific findings regarding the effects of machineguns on interstate commerce. As there is no substantial effect on interstate commerce when an individual (or a trust) makes a machinegun, the complete ban of this class of weapons is unconstitutional. The ban additionally violates the Second Amendment rights of law abiding citizens.

29. During the congressional hearings on the NFA in 1934, Attorney General Homer S. Cummings explained that Congress could not simply ban machine guns because Congress had “no inherent police power to [make law concerning] local crime.” *National Firearms Act of 1934: Hearings Before the House Committee on Ways and Means*, 73rd Cong., 2d Sess. 8 (1934). The only way for Congress to regulate machineguns was through Congress’ power to tax. *Id.* at 6.

30. Additionally, a machinegun is not inherently dangerous and generally no more dangerous than a semi-automatic firearm, nor is it an unusual weapon as machineguns are in common usage in a wide variety of applications to include law enforcement and civilian ownership.

31. The NFA has existed and has been a direct tax on a constitutional right for approximately eighty years. Law abiding citizens, like the Plaintiff, whom desire to manufacture and own these types of arms are not the types of individuals that use these arms in crimes. In

fact, lawfully registered machineguns have rarely been used in crime. Upon information and belief, there are only two known lawfully registered machineguns which have ever been used in a crime, one of which was used by a law enforcement officer.

32. But even if Congress has the power to regulate a machinegun under the commerce clause, Congress has ceased regulating post May 19, 1986 machineguns but has instead banned their transfer or possession. Banning a class of firearms is not “regulating” under the meaning of the commerce clause, especially in light of the protected Second Amendment rights associated with keeping and bearing arms.

33. The May 19, 1986 ban on machineguns serves no purpose other than to frustrate Plaintiff’s (and other law abiding citizens) exercising of his Second Amendment rights.

34. Further, § 922(o) repeals portions of the NFA because the BATFE will generally not accept payment of that tax.

35. In *USA v. Rock Island Armory, Inc.*, 773 F.Supp. 117, 119 (C.D.Ill.1991), the United States District Court for the Central District of Illinois held that “As applied to machineguns made and possessed after May 19, 1986, the registration and other requirements of the National Firearms Act, Chapter 53 of the Internal Revenue Code, no longer serve any revenue purpose, and are impliedly repealed or are unconstitutional.”

36. The District Court went on to say that “no federal jurisdiction exists to ban mere possession of machineguns, and the NFA provisions at issue are not supported by the tax power to the extent they enforce a prohibition rather than taxation.” Yet that is exactly what has happened; an entire class of arms has been banned, down to the simple intrastate possession.

37. On or about May 14, 2014, Plaintiff, as Trustee of the Jay Aubrey Isaac Hollis Revocable Living Trust, submitted an application on ATF Form 5320.1 (this form is referred to in the industry as a “Form 1”) to make a machinegun. Along with the Form 1, Plaintiff

submitted a cover letter and the Dakota Silencer opinion. See Exhibit “B.” Plaintiff also submitted the required \$200 making tax. This application was submitted in paper form.

38. On September 8, 2014, the application was approved by the BATFE to make a machinegun, the stamp was affixed to the Form 1, and the Form 1 was returned to the Plaintiff authorizing him to make a machinegun. A true and correct copy of the approved application is attached hereto, made a part hereof, and marked as Exhibit “C”.

39. On or about September 9, 2014, rumors began to spread that the BATFE was approving Form 1 machinegun applications submitted by trusts. Although no statutory or regulatory authority exists allowing or authorizing the BATFE to disapprove or revoke an already issued stamp, on or about September 10, 2014, the BATFE contacted the Plaintiff and told him that the approved Form 1 application to make a machinegun was mistakenly approved and was now disapproved.

40. Plaintiff then received a “disapproved” Form 1 application that had been whited-out and marked disapproved. See Exhibit “D.”

41. A few days later, Special Agent Aaron R. Wheeler, BATFE, Dallas Division, contacted Plaintiff to arrange a time to meet so he could deliver a letter.

42. The letter, from William J. Boyle, III, Chief of the National Firearms Act Branch, advised Plaintiff that the “[B]ATF[E] may not approve any private person’s application to make and register a machinegun after May 19, 1986” and “if you have already made this machinegun, please abandon it to the ATF Special Agent who is delivering this letter to you.” See Exhibit “E.”

43. The letter went on to state:

The fact that an unincorporated trust is not included in the definition of “person” under the GCA does not mean that an individual may avoid liability under section 922(o) by placing a machinegun “in trust.” Where a trust is not an entity

recognized as a “person” under the applicable law, it cannot make or hold property and is disregarded. Consequently, in terms of an unincorporated trust, ATF must disregard such a non-entity under the GCA and consider the individual acting on behalf of the trust to be the proposed maker/possessor of the machinegun.

*Id.*

44. The plain language of the statute though does not include a trust in the definition of “person,” and therefore, there is no prohibition on trusts from making or possessing machineguns under 922(o). The BATFE’s explanation does not comport with the statutory law defining the term “person” under the GCA, its decision to disregard the plain language of that statute is ultra vires, and it is rationale that where a trust is not included in the definition of “person” in the law, the trust form must be disregarded and cannot hold property has no basis in the law. Simply put, the BATFE has no authority to rewrite 922(o) to fit its wishes and its actions in doing so are ultra vires.

45. Likewise, the BATFE’s claim that it “must disregard such a non-entity under the GCA and consider the individual acting on behalf of the trust to be the proposed maker/possessor of the machinegun” is equally troubling in that this new interpretation upends what has been common practice in the past. For instance, when a trust manufactures an NFA firearm on a Form 1 (as is commonly done to make short barreled rifles), it is required to engrave on that item certain information including the trust name, not the name of the trustee who physically makes the firearm.

46. 27 C.F.R. §479.102(a)(2)(iv) states, in part, that “[y]ou, as a manufacturer, importer, or maker of a firearm, must legibly identify the firearm as follows ... In the case of a domestically made firearm, the city and State ... where you as the manufacturer maintain your place of business, or where you, as the maker, made the firearm...” If the BATFE takes the position that now a trust is a “disregarded entity” and now considers the “person acting on behalf

of the trust to be the proposed maker,” then any person that engraved the trust name on the made firearm will be in violation of BATFEs new policy.

47. The Plaintiff complied with the unconstitutional mandates by the BATFE regarding making an application to manufacture a machinegun, paid the unconstitutional tax associated with that application to exercise his right to keep and bear arms, and has had his Second Amendment rights violated and his property interest in a lawfully applied for and approved machinegun destroyed when the BATFE decided to unilaterally, arbitrarily and capriciously revoke his approval.

48. Also, as the Form 1 was approved by the BATFE, Plaintiff, as Trustee of the Jay Aubrey Isaac Hollis Revocable Living Trust can make and possess a machinegun under the plain language of 18 U.S.C. § 922(o), which states in part “... possession by or under the authority of, the United States or any department or agency thereof...” as the BATFE is clearly an agency of the United States and the BATFE approved Plaintiff’s Form 1 to make a machinegun.

49. Upon information and belief, the BATFE has transferred post-May 19, 1986 machineguns on Form 4s and/or Form 5s for various individuals and has allowed other individuals to manufacture machineguns on Form 1s after May 19, 1986.

**COUNT I**  
**VIOLATION OF THE SECOND AMENDMENT RIGHT**  
**TO KEEP AND BEAR ARMS**

50. Plaintiff incorporates each and every paragraph as if copied in full hereafter.

51. The machinegun ban in § 922(o) and associated regulations violate Plaintiff’s Second Amendment rights.

52. The NFA and its associated regulations violate Plaintiff's Second Amendment rights as it mandates the paying of a tax to exercise a constitutionally protected right akin to a poll tax.

53. Plaintiff desires to own machineguns for all lawful purposes and for use in defense of hearth and home.

54. Plaintiff was initially approved to manufacture a machinegun by the authority of the BATFE. Plaintiff's Second Amendment rights are violated by the threat of legal action by the BATFE subsequently disapproving an already approved Form 1 application and placing him in legal jeopardy under unconstitutional statutes and regulations.

55. Additionally, Plaintiff's Second Amendment rights are violated by the BATFE disapproving his Form 1 to make a machinegun under his trust.

56. Plaintiff is entitled to declaratory and injunctive relief barring defendants from attempting to unilaterally revoke an already issued stamp on his Form 1 and further, that 18 U.S.C. § 922(o) and 26 U.S.C. § 5801 *et seq.* are unconstitutional or unconstitutional as applied against Plaintiff.

**COUNT II**  
**VIOLATION OF ARTICLE I OF THE UNITED STATES CONSTITUTION**

57. Plaintiff incorporates each and every paragraph as if copied in full hereafter.

58. Congress has the authority "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes..." U.S. Const. art. I, § 8, cl. 3.

59. The Commerce Clause does not supersede the Second Amendment, and Congress is without power to inject itself into matters generally reserved to the States under the Ninth and Tenth Amendments.

60. The machineguns made from an application on a Form 1 do not necessarily have to transfer in interstate commerce and can be made wholly within the state of residence.

61. As machineguns do not pose a substantial effect on interstate commerce, Congress cannot rely on the Commerce Clause to ban machineguns, and therefore 18 U.S.C. § 922(o) and its accompanying regulations are unconstitutional.

62. Plaintiff is entitled to declaratory and injunctive relief barring defendants from attempting to unilaterally revoke an already issued stamp on his Form 1 and further, that 18 U.S.C. § 922(o) is unconstitutional or unconstitutional as applied against Plaintiff.

**COUNT III**  
**VIOLATION OF THE FIFTH AMENDMENT OF**  
**THE UNITED STATES CONSTITUTION**

63. Plaintiff incorporates each and every paragraph as if copied in full hereafter.

64. The Fifth Amendment states, in part, “No person shall be ... be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.” U.S. Const. amend. V.

65. By attempting to unilaterally revoke an already issued tax stamp and approval to make a machinegun, Defendants have attempted to deprive Plaintiff, individually and as Trustee of the Jay Aubrey Isaac Hollis Revocable Living Trust of his property interest in that approved stamp and machinegun that could have been made pursuant to the BATFE’s authorization.

**COUNT IV**  
**VIOLATION OF THE FOURTEENTH AMENDMENT – EQUAL PROTECTION**

66. Plaintiff incorporates each and every paragraph as if copied in full hereafter.

67. Upon information and belief, BATFE has approved the manufacture and transfer of post-1986 machineguns to various individuals.

68. Permitting others to possess and/or manufacture post-1986 machineguns, but not Plaintiff, violates Plaintiff's equal protection rights and the Fourteenth Amendment's Equal Protection clause.

**Wherefore**, Plaintiff respectfully prays that judgment be entered in his favor and against Defendants as follows:

1. A declaration that 18 U.S.C. § 922(o) and 26 U.S.C. § 5801 *et seq.* are unconstitutional;
2. A declaration that 18 U.S.C. § 922(o) and 26 U.S.C. § 5801 *et seq.* cannot be applied against Plaintiff individually or as Trustee of the Jay Aubrey Isaac Hollis Revocable Living Trust;
3. A declaration that 18 U.S.C. § 922(o) and 26 U.S.C. § 5801 *et seq.* cannot be applied against any current or future trustees or current or future beneficiaries of the Jay Aubrey Isaac Hollis Revocable Living Trust;
4. A declaration that 18 U.S.C. § 922(o) and 26 U.S.C. § 5801 *et seq.* violate the Second Amendment to the United States Constitution;
5. A declaration that the Defendants' actions in attempting to unilaterally revoke an issued tax stamp are void and without authority;
6. An order permanently enjoining Defendants, their officers, agents, employees, servants and all other persons acting in concert or participation with them who receive actual notice of the injunction, from enforcing 18 U.S.C. § 922(o) and 26 U.S.C. § 5801 *et seq.* and their accompanying regulations, against Plaintiff individually and as Trustee of the Jay Aubrey Isaac Hollis Revocable Living Trust or any current or future trustees and beneficiaries of said Jay Aubrey Isaac Hollis Revocable Living Trust;

7. In the alternative, a declaration that 18 U.S.C. § 922(o) does not prohibit unincorporated trusts from manufacturing or possessing machineguns and an accompanying order requiring the Defendants to approve Plaintiff's Form 1 applications and/or an order prohibiting the Defendants from denying the validity of or revoking or disapproving Plaintiff's approved and issued tax stamp # RM34755.

8. Costs of suit;

9. Attorneys' Fees and Costs pursuant to 28 U.S.C. § 2412; and

10. Any other further relief as the Court deems just and appropriate.

This, the 30th day of October, 2014.

Respectfully submitted,

*/s Stephen D. Stamboulieh*

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MS Bar No. 102784

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Bureau of Alcohol, Tobacco,  
Firearms and Explosives

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Washington, DC 20226

[www.atf.gov](http://www.atf.gov)

March 17, 2014

903010:HLK  
13-0574  
18 U.S.C. 922  
5812  
27 CFR 478.102  
5300

Mr. Brandon L. Maddox  
BMaddox Enterprises LLC  
Dakota Silencer  
6809 South Minnesota Avenue, Suite 203  
Sioux Falls, South Dakota 57108-2569

Dear Mr. Maddox:

This is in response to your letter dated June 21, 2013 to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), in which you request clarification on conducting a National Instant Criminal Background Check System (NICS) check on a transfer of a National Firearms Act (NFA) firearm registered to a trust on an ATF Form 4. Specifically, you ask if a NICS check must be conducted on the person picking up the firearm on behalf of the trust.

In your letter, you state that you received conflicting information from various ATF offices. You also state that information printed in the November 2008 ATF Newsletter and information posted on [www.atf.gov](http://www.atf.gov) conflicts with information printed in the ATF National Firearms Act Handbook.

Federal firearms law at 18 U.S.C. § 922(t)(1) requires Federal firearms licensees (FFLs) to run a NICS check "before the completion of the transfer," and verify the identity of the transferee. There is an exception under section 922(t)(3)(B) and 27 CFR 478.102(d)(2), if the Attorney General "has approved the transfer under section 5812 of the Internal Revenue Code of 1986." Subject to limited exceptions, the Gun Control Act (GCA) at section 922(b)(3) also makes it unlawful for an FFL to sell or deliver a firearm "to any person who the licensee knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the licensee's place of business is located." The term "person" is defined by the GCA at 18 U.S.C. § 921(a)(1), to include "any individual, corporation, company, association, firm, partnership, society, or joint stock company."

-2-

Mr. Brandon L. Maddox  
BMaddox Enterprises LLC

ATF has interpreted the GCA exception in sections 922(t)(3)(B) and 478.102(d)(2) to mean that firearms transfers are exempt from a NICS check when they have been approved under the NFA *to the person receiving the firearm*. Unlike individuals, corporations, partnerships, and associations; unincorporated trusts do not fall within the definition of "person" in the GCA.

Because unincorporated trusts are not "persons" under the GCA, a Federal firearms licensee (FFL) cannot transfer firearms to them without complying with the GCA. Thus, when an FFL transfers an NFA firearm to a trustee or other person acting on behalf of a trust, the transfer is made *to this person as an individual (i.e., not as a trust)*. As the trustee or other person acting on behalf of the trust is not the approved transferee under the NFA, 18 U.S.C. 5812, the trustee or other person acting on behalf of a trust must undergo a NICS check. The individual must also be a resident of the same State as the FFL when receiving the firearm.

When purchasing an NFA firearm, the person acting on behalf of the trust will complete the ATF Form 4473, items 1 through 10b with his or her personal information. Item 11a "Are you the actual transferee/buyer of the firearm(s) listed on this form?" should be answered "YES". The transferor will conduct the NICS check and complete Items 21a through 21c and Item 21d, if applicable. Item 22 will be left blank, as the transaction is not exempt from the NICS check.

We trust the foregoing has been responsive to your request. If you should have further questions, please contact the Firearms Industry Programs Branch at 202-648-7190 or [fipb@atf.gov](mailto:fipb@atf.gov).

Sincerely yours,

Helen L. Koppe  
Chief, Firearms Industry Programs Branch

Enclosure: Dakota Silencer clarification request

cc: Director, Industry Operations, St. Paul, Kansas City, Denver Field Divisions  
Area Supervisor, St. Paul, Omaha II, Denver VI, and Helena Area Offices

To assigned NFA Examiner:

Pursuant to the attached ATF letter clarifying that Trust's are not "persons" and the clear wording of 18 U.S.C. § 922(o) which states:

(o)

(1) Except as provided in paragraph (2), it shall be unlawful for any *person* to transfer or possess a machinegun.

(2) This subsection does not apply with respect to—

(A) a transfer to or by, or possession by or under the authority of, the United States or any department or agency thereof or a State, or a department, agency, or political subdivision thereof; or

(B) any lawful transfer or lawful possession of a machinegun that was lawfully possessed before the date this subsection takes effect.

(Emphasis to the word person added.)

Please approve this trusts application to build a machine gun in accordance with the law as written.

Jay Aubrey Isaac Hollis Revocable Living Trust

Jay Aubrey Isaac Hollis grantor

Handwritten signature of Jay Aubrey Isaac Hollis in black ink, written over the printed name.



**U.S. Department of Justice**

**Bureau of Alcohol, Tobacco,  
Firearms and Explosives**

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Washington, DC 20226

[www.atf.gov](http://www.atf.gov)

March 17, 2014

903010:HLK  
13-0574  
18 U.S.C. 922  
5812  
27 CFR 478.102  
5300

Mr. Brandon L. Maddox  
BMaddox Enterprises LLC  
Dakota Silencer  
6809 South Minnesota Avenue, Suite 203  
Sioux Falls, South Dakota 57108-2569

Dear Mr. Maddox:

This is in response to your letter dated June 21, 2013 to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), in which you request clarification on conducting a National Instant Criminal Background Check System (NICS) check on a transfer of a National Firearms Act (NFA) firearm registered to a trust on an ATF Form 4. Specifically, you ask if a NICS check must be conducted on the person picking up the firearm on behalf of the trust.

In your letter, you state that you received conflicting information from various ATF offices. You also state that information printed in the November 2008 ATF Newsletter and information posted on [www.atf.gov](http://www.atf.gov) conflicts with information printed in the ATF National Firearms Act Handbook.

Federal firearms law at 18 U.S.C. § 922(t)(1) requires Federal firearms licensees (FFLs) to run a NICS check "before the completion of the transfer," and verify the identity of the transferee. There is an exception under section 922(t)(3)(B) and 27 CFR 478.102(d)(2), if the Attorney General "has approved the transfer under section 5812 of the Internal Revenue Code of 1986." Subject to limited exceptions, the Gun Control Act (GCA) at section 922(b)(3) also makes it unlawful for an FFL to sell or deliver a firearm "to any person who the licensee knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the licensee's place of business is located." The term "person" is defined by the GCA at 18 U.S.C. § 921(a)(1), to include "any individual, corporation, company, association, firm, partnership, society, or joint stock company."

-2-

Mr. Brandon L. Maddox  
BMaddox Enterprises LLC

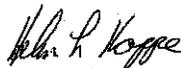
ATF has interpreted the GCA exception in sections 922(t)(3)(B) and 478.102(d)(2) to mean that firearms transfers are exempt from a NICS check when they have been approved under the NFA *to the person receiving the firearm*. Unlike individuals, corporations, partnerships, and associations; unincorporated trusts do not fall within the definition of "person" in the GCA.

Because unincorporated trusts are not "persons" under the GCA, a Federal firearms licensee (FFL) cannot transfer firearms to them without complying with the GCA. Thus, when an FFL transfers an NFA firearm to a trustee or other person acting on behalf of a trust, the transfer is made *to this person as an individual (i.e., not as a trust)*. As the trustee or other person acting on behalf of the trust is not the approved transferee under the NFA, 18 U.S.C. 5812, the trustee or other person acting on behalf of a trust must undergo a NICS check. The individual must also be a resident of the same State as the FFL when receiving the firearm.

When purchasing an NFA firearm, the person acting on behalf of the trust will complete the ATF Form 4473, items 1 through 10b with his or her personal information. Item 11a "Are you the actual transferee/buyer of the firearm(s) listed on this form?" should be answered "YES". The transferor will conduct the NICS check and complete Items 21a through 21c and Item 21d, if applicable. Item 22 will be left blank, as the transaction is not exempt from the NICS check.

We trust the foregoing has been responsive to your request. If you should have further questions, please contact the Firearms Industry Programs Branch at 202-648-7190 or [fipb@atf.gov](mailto:fipb@atf.gov).

Sincerely yours,



Helen L. Koppe  
Chief, Firearms Industry Programs Branch

Enclosure: Dakota Silencer clarification request

cc: Director, Industry Operations, St. Paul, Kansas City, Denver Field Divisions  
Area Supervisor, St. Paul, Omaha II, Denver VI, and Helena Area Offices

U.S. Department of Justice  
Bureau of Alcohol, Tobacco, Firearms and Explosives

Application to Make and Register a Firearm

(Submit in duplicate. See Instructions attached.)

To: National Firearms Act Branch, Bureau of Alcohol, Tobacco, Firearms and Explosives, 244 Needy Road, Suite 1250, Martinsburg,

The undersigned hereby makes application, as required by Sections 5821 and 5822 of the National Firearms Act, Title 26 U.S.C., Chapter 53, to make and register the firearm described below.

2. Application is made by:

Individual  Corporation or Other Business Entity  Government Entity

3a. Trade Name (If any)

3b. Applicant's Name and Mailing Address (Type or print below and between the dots)

Jay Aubrey Isaac Hollis Revocable Living Trust  
5344 County Road 3229  
Lone Oak, Texas 75453

3c. If P.O. Box is Shown Above, Street Address Must Be Given Here

3d. County  
Hunt

3e. Telephone Area Code and Number  
903-268-0106

4. Description of Firearm (complete items a through i)

a. Name and Location of Original Manufacturer of Firearm (Receiver) (If prototype, furnish plans and specifications) (See Instruction 2i)

b. Type of Firearm to be made (See instruction 1c)

c. Caliber, Gauge or Size (Specify)

d. Model

ST15

Length (Inches)

e. Of Barrel: 8

f. Overall: 28.5

SPIKE'S TACTICAL, APOPKA, FL.

Machinegun

.300

g. Serial Number (See instruction 2i.)

RM-34755

h. Additional Description (Include all numbers and other identifying data which will appear on the firearm)

i. State Why You Intend To Make Firearm (Use additional sheet if necessary)

To enhance collection and all lawful purposes.

j. Is this firearm being reactivated?  Yes  No (See Definition 1k)

5. Applicant's Federal Firearms License (If any) (Give complete 15-digit Number)

6. Special (Occupational) Tax Status (If applicable)

a. Employer Identification Number

b. Class

Important: All individual applicants (including Federally Licensed Collectors) must complete the reverse side of this form and submit, in duplicate, FBI Form FD-258, Fingerprint Card.

Under Penalties of Perjury, I Declare that I have examined this application, including accompanying documents, and to the best of my knowledge and belief it is true, accurate and complete and the making and possession of the firearm described above would not constitute a violation of Chapter 44, Title 18, U.S.C., Chapter 53, Title 26, U.S.C., or any provisions of State or local law.

7. Signature of Applicant

*Jay Aubrey Isaac Hollis grantor*

8. Name and Title of Authorized Official of Firm or Corporation (if applicable)

Jay Aubrey Isaac Hollis grantor

9. Date

20140514

The space below is for the use of the Bureau of Alcohol, Tobacco, Firearms and Explosives

By authority of the Director, Bureau of Alcohol, Tobacco, Firearms and Explosives, this application has been examined and the applicant's making and registration of the firearm described above is:

Approved (With the following conditions, if any)

Disapproved (For the following reasons)

Authorized ATF Official

*Paul A. Dur*

Date

SEP 08 2014



U.S. Department of Justice  
Bureau of Alcohol, Tobacco, Firearms and Explosives

**Application to Make and Register a Firearm**

(Submit in duplicate. See Instructions attached.)

To: National Firearms Act Branch, Bureau of Alcohol, Tobacco, Firearms and Explosives, 244 Needy Road, Suite 1250, Martinsburg, WV 25405

The undersigned hereby makes application, as required by Sections 5821 and 5822 of the National Firearms Act, Title 26 U.S.C., Chapter 53, to make and register the firearm described below.

2. Application is made by: <input type="checkbox"/> Individual <input checked="" type="checkbox"/> Corporation or Other Business Entity <input type="checkbox"/> Government Entity		3a. Trade Name (If any)	1. Type of Application (check one) <input checked="" type="checkbox"/> a. Tax Paid. Submit with your application a check or money order for \$200 made payable to the Department of the Justice. Upon approval of the application, this office will acquire, affix, and cancel the required "National Firearms Act" stamp for you. <input type="checkbox"/> b. Tax Exempt because firearm is being made on behalf of the United States, or any department, independent establishment, or agency thereof. <input type="checkbox"/> c. Tax Exempt because firearm is being made by or on behalf of any State or possession of the United States, or any political subdivision thereof, or any official police organization of such a government entity engaged in criminal investigations.		
3b. Applicant's Name and Mailing Address (Type or print below and between the dots)  Jay Aubrey Isaac Hollis Revocable Living Trust 5344 County Road 3229 Lone Oak, Texas 75453					
3c. If P.O. Box is Shown Above, Street Address Must Be Given Here					
3d. County Hunt	3e. Telephonic Area Code and Number 903-268-0106				
4. Description of Firearm (complete items a through i)					
a. Name and Location of Original Manufacturer of Firearm (Receiver) (If prototype, furnish plans and specifications) (See Instruction 2i)	b. Type of Firearm to be made (See instruction 1c)	c. Caliber, Gauge or Size (Specify)	d. Model		
SPIKE'S TACTICAL, APOPKA, FL.	Machinegun	.300	ST15		
			Length (Inches)	e. Of Barrel:	
			8	f. Overall:	
				28.5	
			g. Serial Number (See instruction 2i.)		
			RM-34755		
h. Additional Description (Include all numbers and other identifying data which will appear on the firearm)		i. State Why You Intend To Make Firearm (Use additional sheet if necessary)			
		To enhance collection and all lawful purposes.			
j. Is this firearm being reactivated? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (See Definition 1k)					
5. Applicant's Federal Firearms License (If any) (Give complete 15-digit Number)		6. Special (Occupational) Tax Status (If applicable)			
		a. Employer Identification Number	b. Class		

Important: All individual applicants (including Federally Licensed Collectors) must complete the reverse side of this form and submit, in duplicate, FBI Form FD-258, Fingerprint Card.

Under Penalties of Perjury, I Declare that I have examined this application, including accompanying documents, and to the best of my knowledge and belief it is true, accurate and complete and the making and possession of the firearm described above would not constitute a violation of Chapter 44, Title 18, U.S.C., Chapter 53, Title 26, U.S.C., or any provisions of State or local law.

7. Signature of Applicant <i>Jay Aubrey Isaac Hollis grantor</i>	8. Name and Title of Authorized Official of Firm or Corporation (if applicable) Jay Aubrey Isaac Hollis grantor	9. Date 20140514
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The space below is for the use of the Bureau of Alcohol, Tobacco, Firearms and Explosives

By authority of the Director, Bureau of Alcohol, Tobacco, Firearms and Explosives, this application has been examined and the applicant's making and registration of the firearm described above is:

Approved (With the following conditions, if any)

Disapproved (For the following reasons):  
Cannot make a machinegun.  
RESTRICTED REGISTRATION - POSSESSION LIMITED TO CONTINUED COMPLIANCE WITH PROVISIONS OF PUBLIC LAW 99-308

Authorized ATF Official <i>Paul Dur</i>	Date SEP 08 2014
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**DISAPPROVED**

**Additional Requirements**

Important: Give full details on separate sheet for all "Yes" answers in items 10 and 11

10. Are You:	Yes	No	11. Have You:	Yes	No
a. Charged by information or under indictment in any court for a crime for which the judge could imprison you for more than one year. An information is a formal accusation of a crime made by a prosecuting attorney.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	a. Been convicted in any court of a crime for which the judge could have imprisoned you for more than one year, even if the judge actually gave you a shorter sentence?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. A fugitive from justice?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	b. Been discharged from the armed forces under <b>dishonorable</b> conditions?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c. An alien who is <b>illegally</b> in the United States?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	c. Been adjudicated mentally defective or been committed to a mental institution?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d. Under 21 years of age?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	d. Renounced your United States citizenship?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e. An unlawful user of or addicted to, marijuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	e. Been convicted in any court of a misdemeanor crime of domestic violence? (see instruction 1m)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f. Subject to a court order restraining you from harassing, stalking or threatening an intimate partner or child of such partner? (see Instruction 7c)	<input type="checkbox"/>	<input checked="" type="checkbox"/>			

12. Photograph

**Affix  
Recent Photograph Here**  
(Approximately 2" x 2")  
(See instruction 2d)

13. **Law Enforcement Certification (See instruction 2f)**

I certify that I am the chief law enforcement officer of the organization named below having jurisdiction in the area of residence of \_\_\_\_\_  
(Name of maker)

I have no information indicating that the maker will use the firearm or device described on this application for other than lawful purposes. I have no information that **Possession of the Firearm described in Item 4 on the Front of this Form would place the maker in Violation of State or Local Law.**

\_\_\_\_\_  
(Signature) (Printed name) (Title and agency name)

\_\_\_\_\_  
(Street address, city, State and zip code)

\_\_\_\_\_  
(Telephone Number) (Date)

By (if delegated authority to sign for the chief law enforcement official):

\_\_\_\_\_  
(Signature) (Printed name) (Title and agency name)

\_\_\_\_\_  
(Street address, city, State and zip code)

\_\_\_\_\_  
(Telephone Number) (Date)

**Important Information for Currently Registered Firearms**

If this registration document evidences the current registration of the firearm described on it, please note the following information.

**Estate Procedures:** For procedures regarding the transfer of firearms in an estate resulting from the death of the registrant identified in item 3, the executor should contact the NFA Branch, Bureau of ATF, 244 Needy Road, Martinsburg, WV 25405.

**Interstate Movement:** If the firearm identified in item 4 is a machinegun, short-barreled rifle, short-barreled shotgun, or destructive device, the registrant may be required by 18 U.S.C. § 922(a)(4) to obtain permission from ATF prior to any transportation in interstate or foreign commerce.

**Change of Description or Address:** The registrant shall notify the NFA Branch, Bureau of Alcohol, Tobacco, Firearms and Explosives, 244 Needy Road, Martinsburg, WV 25405, in writing, of any change to the description of the firearms in item 4, or any change to the address of the registrant.

**Restrictions on Possession:** Any restriction (see approval block on face of form) on the possession of the firearm identified in item 4 continues with the further transfer of the firearm.

**Persons Prohibited from Possessing Firearms:** If the registrant becomes prohibited by 18 U.S.C. § 922 from possessing a firearm, the registrant shall notify the NFA Branch, Bureau of Alcohol, Tobacco, Firearms and Explosives, 244 Needy Road, Martinsburg, WV 25405, in writing, immediately upon becoming prohibited for guidance on the disposal of the firearm.

**Proof of Registration:** This approved application is the registrant's proof of registration and it shall be made available to any ATF officer upon request.



**U.S. Department of Justice**

Bureau of Alcohol, Tobacco,  
Firearms and Explosives

*National Firearms Act Branch*

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*Marinsburg, West Virginia*

[www.atf.gov](http://www.atf.gov)

901040:

Jay Aubrey Isaac Hollis  
5344 County Road 3229  
Lone Oak, Texas 75453

Dear Jay Aubrey Isaac Hollis:

This responds to your recent submission of an ATF Form 1, Application to Make a National Firearms Act (NFA) firearm. Specifically, you submitted the ATF Form 1 to make and register a machinegun on behalf of the Jay Aubrey Isaac Hollis Revocable Living Trust. Although this application was previously approved, this is to inform you that the approval was in error. This Branch has already provided you a corrected "disapproved" application that remedies this error.

Pursuant to 26 U.S.C. §§ 5812 and 5822, an application to make a firearm shall be disapproved if the making would place the possessor in violation of the law. The GCA, 18 U.S.C. § 922(o) prohibits the possession of machineguns except in limited circumstances. Specifically, pursuant to the statute and implementing regulations, 27 C.F.R. § 479.105(a), ATF may not approve any private person's application to make and register a machinegun after May 19, 1986.

The sole exception to this exists under section 479.105(e) and allows ATF to approve such application "provided it is established by specific information" that the making of the weapon is at the request and on behalf of a Federal, State or local government entity. Please be aware that no such information has been provided, and therefore, pursuant to the disapproved application, the firearm is not registered to you or the Jay Aubrey Isaac Hollis Revocable Living Trust in the National Firearms Registry and Transfer Record. Your continued possession of such a firearm without a valid registration therefore violates the NFA. (26 U.S.C. § 5861(d)). Therefore, if you have already made this machinegun, please abandon it to the ATF Special Agent who is delivering this letter to you. Upon abandonment, we will arrange for the refund of the \$200 making tax. Please be aware that an unregistered machinegun is subject to the seizure and forfeiture provisions of the law.

Also please note that the GCA defines the term "person" to "include any individual, corporation, company, association, firm, partnership, society, or joint stock company." See 18 U.S.C. § 921(a)(1). The fact that an unincorporated trust is not included in the definition of "person" under the GCA does not mean that an individual may avoid liability under section 922(o) by

Jay Aubrey Isaac Hollis

placing a machinegun “in trust.” Where a trust is not an entity recognized as a “person” under the applicable law, it cannot make or hold property and is disregarded. Consequently, in terms of an unincorporated trust, ATF must disregard such a non-entity under the GCA and consider the individual acting on behalf of the trust to be the proposed maker/possessor of the machinegun.

Please contact me at (304) 616-4546 if you have any questions.

Handwritten signature of William J. Boyle, III in black ink.

William J. Boyle, III  
Chief, National Firearms Act Branch