

November 19, 2009

The President
The White House
Washington, D.C. 20500

RE: Request for immediate ban on the importation of military-style firearm used in Fort Hood shooting

Dear Mr. President:

The undersigned national and state-based gun violence prevention organizations write to urge you to act immediately to halt the importation of FN Herstal Five-seveN handguns and any ammunition used in the weapon that may have the potential to pierce body armor. This gun, originally designed for elite military special forces, is the handgun used with tremendous destructive force to kill 13 and wound 34 more in the tragic shooting at Fort Hood, Texas, on November 5th.

While we urge you to join us in pushing for other much-needed policy changes to help reduce America's epidemic of gun violence that were also relevant to the Fort Hood shooting, such as gaps in the federal background check system that allow suspected terrorists to legally buy guns and the ready availability of high-capacity magazines (including the 20-round magazines used by the Fort Hood shooter), preventing the importation of any more Five-seveN handguns is an important step that can be accomplished immediately through administrative action by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)—without the need for any action by Congress.

Under longstanding federal law, ATF has the clear authority to prohibit the importation of any firearm or ammunition unless it is “generally recognized as particularly suitable for or readily adaptable to sporting purposes.”¹ This provision of the 1968 Gun Control Act has historically been used to exclude from import many non-sporting firearms, including so-called “Saturday Night Special” handguns, “Street Sweeper” shotguns, and many foreign-made assault weapons. The FN Five-seveN handgun is clearly the type of firearm to which Congress intended the import restrictions to apply.^{2 3}

¹ 18 USC 925 (d)(3).

² ATF describes the types of firearms eligible for importation as “four narrow categories,” *Department of the Treasury Study on the Sporting Suitability of Modified Semiautomatic Assault Rifles*, April 1998.

³ According to ATF, “The legislative history shows that the determination of a weapon's suitability for sporting purposes is the direct responsibility of the Secretary of the Treasury [now the Attorney General]. The Secretary was given this discretion largely because Congress recognized that section 925(d)(3) was a difficult provision to implement. Immediately after discussing the large role cheap imported .22 caliber revolvers were playing in crime, the Senate Report stated: [t]he difficulty of defining weapons characteristics to meet this target without discriminating against sporting quality firearms, was a major reason why the Secretary of the Treasury has been given fairly broad discretion in defining and administering the import prohibition.” *Department of the*

FN Herstal originally created the novel 5.7X28mm cartridge used in the Five-seveN as the ammunition for a submachine gun, the P-90, which was designed at the invitation of NATO and in response to military needs for a weapon to be used by troops that would be effective against the body armor that had become a standard accoutrement on the battlefield. In the mid-1990s, FN created a pistol that used the same high-velocity, armor-piercing round and the Five-seveN was born.

However, even the manufacturer recognized that the gun was inappropriate for the civilian market. In 1996, a spokesman for the company described the pistol as designed for anti-terrorist and hostage rescue operations and "too potent" for normal police duties.⁴ In 1999, the National Rifle Association's *American Rifleman* magazine stated, "Law enforcement and military markets are the target groups of FN's new FiveseveN pistol," adding, "Don't expect to see this cartridge sold over the counter in the United States. In this incarnation, it is strictly a law enforcement or military round."⁵ In 2000, *American Handgunner* magazine assured the public, "For reasons that will become obvious, neither the gun nor the ammunition will ever be sold to civilians or even to individual officers."⁶ Yet, as is too often the case, gun industry profits trumped public safety concerns and today the Five-seveN is freely available in American gun stores. In fact, the gun is one of the most popular with traffickers supplying Mexican Drug Trafficking Organizations (DTOs) who have nicknamed the gun the "*mata policia*" or "cop killer."⁷

FN currently markets a variety of types of 5.7X28mm ammunition rounds for use in the Five-seveN, some of which clearly have the ability to pierce law enforcement body armor. Ostensibly, the armor-piercing ammunition is not available on the civilian market as the result of a voluntary agreement between FN and ATF.⁸ However, a quick search of the Internet identifies several sources for supposedly banned ammunition.

The ready availability of the Five-seveN handgun presents a clear and present danger to public safety as evidenced by the horrific shooting at Fort Hood. When the Five-SeveN's availability is combined with the easy accessibility of complementary armor-piercing ammunition it becomes not only a direct threat to law enforcement, but a potential national security threat as well.

Treasury Study on the Sporting Suitability of Modified Semiautomatic Assault Rifles, at page 6.

⁴ "SAS gets handgun that can shoot through walls," *Sunday Times*, July 7, 1996.

⁵ Dan Shea, "Military Small Arms Update: FN's FiveseveN System," *American Rifleman*, November/December 1999, p.51.

⁶ Charles E. Petty, "FN Five-seveN," *American Handgunner*, January/February 2000, p. 54.

⁷ See e.g., *Indicted: Types of Firearms and Methods of Gun Trafficking from the United States to Mexico as Revealed in U.S. Court Documents*, Violence Policy Center, April 2009.

⁸ See 2005 ATF statement on 5.7x28mm ammunition at <http://www.atf.gov/firearms/firearmstech/fabriquen.htm>

We strongly urge your Administration to act today to prohibit the importation of the FN Five-sevenN handgun as well as any 5.7X28mm ammunition that has armor-piercing capabilities (whether or not that ammunition meets the standard of the weak federal armor-piercing ammunition ban). None of these products meet the “sporting purposes” test that is the prerequisite for importation. We urge you to act before these military-bred weapons are used in another tragic incident. Thank you for your attention to this urgent matter.

Sincerely,



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President & CEO
Brady Campaign to Prevent Gun Violence



Josh Horowitz
Executive Director
Coalition to Stop Gun Violence



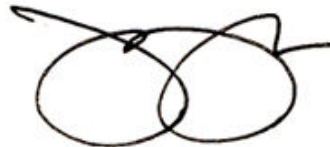
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