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In the  
Supreme Court of the United States

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MERRICK B. GARLAND,  
ATTORNEY GENERAL, ET AL.,  
*Petitioners,*

v.

JENNIFER VANDERSTOK, ET AL.,  
*Respondents.*

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ON WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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BRIEF OF  
THE LOCAL GOVERNMENT LEGAL CENTER,  
THE NATIONAL ASSOCIATION OF COUNTIES,  
THE NATIONAL LEAGUE OF CITIES, AND  
THE INTERNATIONAL MUNICIPAL LAWYERS  
ASSOCIATION AS *AMICI CURIAE*  
IN SUPPORT OF PETITIONERS

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## INTEREST OF AMICI CURIAE<sup>1</sup>

The Local Government Legal Center (“LGLC”) is a coalition of national local government organizations formed in 2023 to educate local governments regarding the Supreme Court and its impact on local governments and local officials and to advocate for local government positions at the Supreme Court in appropriate cases. The National Association of Counties, the National League of Cities, and the International Municipal Lawyers Association are the founding members of the LGLC, and the Government Finance Officers Association is an associate member of the LGLC.

The National Association of Counties (“NACo”) is the only national organization that represents county governments in the United States. Founded in 1935, NACo provides essential services to the nation’s 3,069 counties through advocacy, education, and research.

The National League of Cities (“NLC”), founded in 1924, is the oldest and largest organization representing U.S. municipal governments. NLC works to strengthen local leadership, influence federal policy, and drive innovative solutions. In partnership with 49 state municipal leagues, NLC advocates for over 19,000 cities, towns, and villages, where more than 218 million Americans live.

The International Municipal Lawyers Association (“IMLA”) has been an advocate and resource for local government attorneys since 1935. Owned solely by its more than 2,500 members, IMLA serves as an

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<sup>1</sup> This brief was prepared by counsel for amici curiae and not by counsel for any party. No outside contributions were made to this brief’s preparation or submission.

international clearinghouse for legal information and cooperation on municipal legal matters. IMLA's mission is to advance the responsible development of municipal law through education and advocacy by providing the collective viewpoint of local governments around the country on legal issues before the Supreme Court of the United States, the United States Courts of Appeals, and state supreme and appellate courts.

In this brief, LGLC, NACo, NLC, and IMLA offer their perspective on why the ruling sought by Petitioners would benefit public safety and local law enforcement.

### **SUMMARY OF THE ARGUMENT**

Unregulated “ghost guns” create a harmful loophole in our nation’s gun laws that undermines public safety and congressional intent, to the detriment of local governments and their residents. Ghost guns are do-it-yourself firearms: purchasers buy and assemble individual firearm parts to create a fully functioning weapon. By simply requiring at-home assembly, ghost gun sellers skirt federal safety requirements: background checks, serial numbers, and record-keeping. Ghost guns’ unregulated status makes them attractive to criminals, minors, and other individuals who are ineligible to buy firearms.

Congress enacted the Gun Control Act of 1968 (“GCA” or “the Act”) to aid police investigations and keep guns out of unsafe hands—particularly amid splintered state gun laws. To achieve these goals, the Act focuses on firearm transactions: licensed firearm sellers are required to conduct background checks on purchasers, serialize firearms, and keep records of each transaction. The Bureau of Alcohol, Tobacco,

Firearms and Explosives (“ATF”) received rulemaking authority from the Attorney General to carry out these safety measures.

Ghost guns create a loophole in this federal gun law scheme by providing an anonymous path to gun ownership. This loophole defeats the Act’s efficacy and raises the same public safety concerns that led Congress to enact the GCA in 1968. To close this loophole and advance Congress’s intent, the ATF enacted Final Rule 2021R-05F (“the Rule”). The Rule does not ban firearm kits or impose unprecedented obligations. Rather, the Rule subjects ghost gun sellers to the same federal safety requirements that traditional firearm sellers face. Thus, the Rule is a proper exercise of the ATF’s rulemaking authority. Upholding the Rule will protect local communities.

### ARGUMENT

The Fifth Circuit erred in ruling that the ATF exceeded its rulemaking authority in enacting the Rule. The Rule is a proper use of rulemaking authority for three reasons.

*First*, the federal gun law scheme effectively regulates firearm transactions through background checks, serial numbers, and record-keeping requirements. Congress included these requirements in the GCA to aid law enforcement investigations and safeguard public safety. These measures—carried out through the ATF’s rulemaking authority—have effectively advanced the Act’s purpose.

*Second*, ghost guns create a loophole in the federal gun law scheme that undermines public safety and congressional intent. Despite posing the same dangers as traditional firearms, ghost guns are



unregulated. Their sellers are not required to conduct a background check on each purchaser, serialize each gun, or keep records of each transaction. Ghost guns provide anonymous gun ownership to criminals, minors, and other individuals who are ineligible to buy firearms. This loophole defeats the federal gun law scheme's efficacy and frustrates the Act's purpose.

*Third*, the Rule closes the ghost gun loophole by requiring background checks, serial numbers, and record-keeping for ghost gun sales. Congress enacted the GCA to address public safety concerns akin to those posed by ghost guns, and the Rule applies the GCA's safety requirements to ghost gun sellers. Thus, the Rule is a proper exercise of ATF's regulatory authority and consistent with the GCA's congressional intent. The Rule also supports local law enforcement, as the Act intends.

**I. The federal gun law scheme protects the public through background checks, serial numbers, and record-keeping.**

Federal gun laws regulate firearms to protect public safety. Congress enacted the GCA to “enable the States to effectively cope with the firearms traffic within their own borders through the exercise of their police power.” S. Rep. No. 90-1097, at 2 (1968). The GCA aims [1] to “keep firearms out of the hands of those not legally entitled to possess them because of age, criminal background, or incompetency and [2] to assist law enforcement authorities in the States *and their subdivisions* in combating the increasing prevalence of crime in the United States.” *Id.* (emphasis added).

To achieve these “twin goals,” the Act imposes certain safety measures on firearm sales. *Abramski v. United States*, 573 U.S. 169, 180 (2014). These safety measures require licensed firearm sellers to conduct background checks on purchasers, serialize firearms, and keep records of each firearm transaction. 18 U.S.C. §§ 922(t), 923(g), 923(i). Firearm sellers lie at the heart of Congress’s gun law scheme. *Huddleston v. United States*, 415 U.S. 814, 824–25 (1974); S. Rep. No. 90-1097, at 49. And the safety measures required of sellers have proven effective.

**A. Background checks are an effective safeguard for ensuring lawful gun ownership.**

Background checks keep guns out of unsafe hands. Section 922(t) of the GCA requires licensed firearm sellers to conduct a background check on each firearm recipient. Sellers conduct background checks through the FBI’s National Instant Criminal Background Check System (“NICS”). 18 U.S.C. § 922(t). Under this system, an FBI NICS examiner consults an electronic database of criminal and personal records to determine whether the recipient is eligible to own a firearm.<sup>2</sup>

Three interlinked databases containing state and federal records form the NICS.<sup>3</sup> All fifty states use the NICS: “In 2021, [the NICS] processed 40 million

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<sup>2</sup> William J. Krouse, Cong. Rsch. Serv., R45970, *Gun Control National Instant Criminal Background Check System (NICS) Operations and Related Legislation 1* (2019).

<sup>3</sup> Glenn Thrush & Serge F. Kovaleski, *Loopholes and Missing Data: The Gaps in the Gun Background Check System*, N.Y. Times (June 19, 2022), <https://www.nytimes.com/2022/06/19/us/gun-background-checks.html>.

transactions, 88 percent of them within a few minutes, and blocked hundreds of purchases per day attempted by people with criminal records, mental health problems, drug dependency or other factors that prevented them from buying a gun under state or federal law.”<sup>4</sup> Between 2019 and 2023, the NICS ran 28,369,750 to 39,695,315 background checks annually.<sup>5</sup> The FBI and other law enforcement agencies received about 16.7 million applications for firearm transfers and permits in 2019 and 25 million applications in 2020.<sup>6</sup>

Furthermore, pursuant to the Bipartisan Safer Communities Act, the FBI’s NICS Section must contact state and local officials to conduct enhanced background checks on firearm purchasers under the age of twenty-one (“U21 purchase”).<sup>7</sup> Enhanced background checks not only run names through the NICS database, but also check with “state juvenile justice, mental health, and local law enforcement agencies” for potentially disqualifying information.<sup>8</sup>

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<sup>4</sup> *Id.*

<sup>5</sup> FBI, NICS Firearm Background Checks: Month/Year (2024), NICS\_Firearm\_Checks\_-\_Day\_Month\_Year.pdf.

<sup>6</sup> Connor Brooks, Background Checks for Firearm Transfers, 2019-2020, Bureau of Just. Stats. (Nov. 7, 2023), <https://bjs.ojp.gov/library/publications/background-checks-firearm-transfers-2019-2020>.

<sup>7</sup> Press Release, U.S. Department of Justice Office of Public Affairs, Justice Department Marks More Than 500 Illegal Firearm Purchases Stopped by New Enhanced Background Checks (Jan. 5, 2024) [hereinafter *Illegal Firearm Purchases Stopped*], <https://www.justice.gov/opa/pr/justice-department-marks-more-500-illegal-firearm-purchases-stopped-new-enhanced-background>.

<sup>8</sup> *A Closer Look: NICS Enhanced Background Checks for Under-21 Buyers Showing Results*, FBI (Mar. 25, 2024),

From October 2022 to December 2023, the FBI conducted enhanced background checks on more than 200,000 transactions, preventing 1,900 firearms from falling into the hands of dangerous and prohibited persons.<sup>9</sup> Some notable examples include:

- The NICS Section blocked a U21 purchase after local police alerted it to the purchaser's felony rape conviction.

- Per a state firearm prohibition, the NICS Section stopped a U21 purchase because of the purchaser's pending court-ordered firearm restriction connected to his attempted murder charge.

- Based on a federal firearm prohibition for mental health adjudications, the NICS Section denied a U21 purchase after a juvenile court showed that the purchaser was mentally ill with a history of involuntary commitment to mental health treatment.

- The NICS Section blocked a U21 purchase for a purchaser who was in jail on multiple pending charges—including domestic violence, robbery, and assault with a dangerous weapon—based on the federal firearm prohibition for persons under active felony indictment.

- The NICS Section stopped a U21 purchase based on the federal firearm prohibition relating to mental-health adjudications for a purchaser who had a history of emergency detention at a local in-patient psychiatric center for making suicidal threats.<sup>10</sup>

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<sup>9</sup> Illegal Firearm Purchases Stopped, *supra* note 7.

<sup>10</sup> *Id.*

These statistics and examples showcase how federally-required background checks keep the public safe.

**B. Serial numbers are a well-accepted, simple method of tracking and identifying firearms.**

Serial numbers aid law enforcement by connecting firearms to crime. The GCA aims to “provide support to Federal, State, and local law enforcement officials in their fight against crime and violence.” Gun Control Act of 1968, Pub. L. No. 90-618, § 101, 82 Stat. 1213, 1213 (1968). To advance this goal, § 923(i) of the GCA requires licensed firearm sellers to serialize their firearms. These serial numbers help authorities trace guns that are lost, stolen, or used in crimes.<sup>11</sup>

Law enforcement traces guns through the ATF’s National Tracing Center (“NTC”), the only U.S. gun tracing facility.<sup>12</sup> The NTC processed over 623,000 requests in 2022.<sup>13</sup> Law enforcement increasingly relies on gun traces in investigations: from 2017 to 2021, the annual number of crime gun trace requests increased by 36 percent—from 337,903 to 460,024, as illustrated below.<sup>14</sup>

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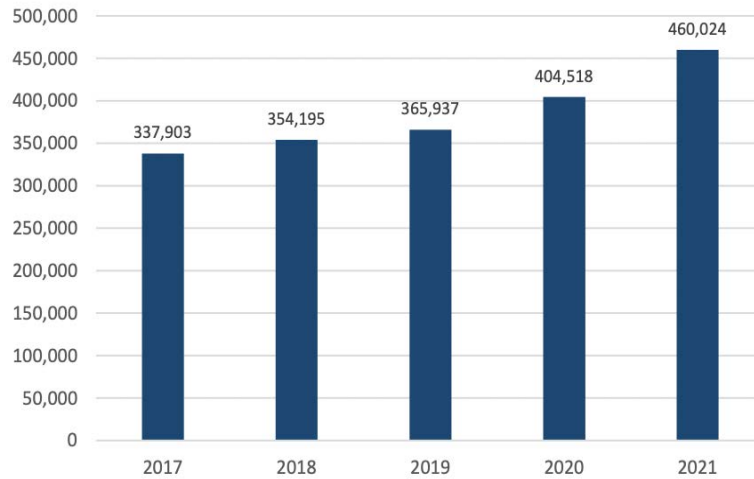
<sup>11</sup> ATF, *National Tracing Center (NTC) Fact Sheet* (2023).

<sup>12</sup> National Tracing Center, ATF, <https://www.atf.gov/firearms/national-tracing-center> (last reviewed Feb. 26, 2024).

<sup>13</sup> *Id.*

<sup>14</sup> ATF, *Crime Guns Recovered and Traced Within the United States and Its Territories, Volume II, part III, at 1* (2024) [hereinafter *Crime Guns Recovered and Traced*], <https://www.atf.gov/file/175291/download>.

## Total Number of Crime Gun Trace Requests, 2017-21



The NTC primarily uses the ATF’s “eTrace” system to trace the purchase and use history of firearms used in violent crimes.<sup>15</sup> Law enforcement can use eTrace to compare firearm data across jurisdictions to identify firearms origins and potential suspects. This comparison can include statistical reports, firearms trace history, targeted trace data for specific state or local jurisdictions, and real-time updates.<sup>16</sup> *Id.* Between 2017 and 2021, there were 1,922,577 requested crime gun traces.<sup>17</sup> Of these requested traces, the ATF determined the gun’s purchaser in 1,482,861 cases, or about seventy-seven percent of the time.<sup>18</sup>

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<sup>15</sup> Fact Sheet - eTrace: Internet-Based Firearms Tracing and Analysis, National Tracing Center, ATF (Apr. 2023), <https://www.atf.gov/resource-center/docs/undefined/etrace-fact-sheet-may-2023/download>.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Crime Guns Recovered and Traced, *supra* note 14, at 2.

The eTrace system helps law enforcement monitor suspicious firearm sales and find missing firearms before they reach bad actors' hands. For example, a man from Kansas stole forty-one firearms from a store in Missouri and brought them to Mexico for use by drug cartels. Police submitted information about the stolen guns to the NTC's eTrace system. Domestic and Mexican police were able to locate the man quickly thanks to the eTrace system's leads.<sup>19</sup>

Courts have long noted the benefits of firearm serial numbers. *See, e.g., United States v. Watts*, 7 F.3d 122, 127 (8th Cir. 1993) (characterizing law enforcement's firearm trace as a "quick, effective method" of investigation); *United States v. Mobley*, 956 F.2d 450, 454 (3d Cir. 1992) ("It is no secret that a chain of custody for a firearm greatly assists in the difficult process of solving crimes. When a firearm is stolen, determining this chain is difficult and when serial numbers are obliterated, it is virtually impossible."). *United States v. Mines*, 883 F.2d 801, 804 (9th Cir. 1989) (noting the importance of firearm serial numbers in police investigations); *State v. Douglas*, 507 P.2d 987, 978–88 (Ariz. Ct. App. 1973) (law enforcement officer used the serial number on the defendant's gun to connect him to the burglary).

Additionally, the use of serial numbers in the United States dates back to the 1700s. During the American Revolution, soldiers often tried to keep army-issued firearms for themselves.<sup>20</sup> To address

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<sup>19</sup> Press Release, Kansas Man Indicted for Stealing 41 Firearms, Office of Pub. Affs., U.S. Dep't of Just. (Apr. 26, 2024) <https://www.justice.gov/opa/pr/kansas-man-indicted-stealing-41-firearms>.

<sup>20</sup> Dru Stevenson, A Founding-era Analog for Modern Serial Number Requirements, Duke Ctr. for Firearms

this issue, George Washington ordered all Continental Army firearms to be stamped with a mark identifying them as public property.<sup>21</sup> Even before the federal government required serial numbers, many American gun manufacturers made the independent decision to serialize as a way of record-keeping.<sup>22</sup> Today, antique gun collectors use serial numbers to learn the origin and history of various firearms.<sup>23</sup> The time-tested technique of serialization has proven to be a simple and effective means of firearm record-keeping, crime prevention, and law enforcement.

**C. Record-keeping memorializes the key details of each gun transaction to help law enforcement identify and solve crimes.**

Accurate record-keeping helps law enforcement identify and solve crimes by connecting sellers, serial numbers, and purchasers to each firearm transaction. One ATF rule, 27 C.F.R. § 478.124, requires licensed firearm sellers to obtain and retain a Form 4473 copy for each firearm transaction. Sellers retain these

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Law (February 10, 2023), <https://firearmslaw.duke.edu/2023/02/a-founding-era-analog-for-modern-serial-number-requirements> (citing E. Wayne Carp, *To Starve the Army at Pleasure: Continental Army Administration and American Political Culture, 1775-1783*, 66-67 (1984)).

<sup>21</sup> *Id.*

<sup>22</sup> See S.P. Fjestad, *Serialization*, in *The Blue Book of Gun Values* 2358, 2358 (1985) (explaining how to identify antique guns by their manufacturer-issued serial numbers); Are Firearms That Were Made Prior to the Gun Control Act of 1968 Required to be Marked with a Serial Number by a Licensee?, ATF, <https://www.atf.gov/rules-and-regulations/qa/are-firearms-were-made-prior-gun-control-act-1968-required-be-marked-serial> (last reviewed July 22, 2022).

<sup>23</sup> *Id.*



forms—which provide key details about the firearm’s serial number, its purchaser, and its seller—and provide them to ATF for tracing.<sup>24</sup> The NTC also uses 4473 Forms and other records to trace firearms and provide leads for local, state, federal, and foreign law enforcement agencies.<sup>25</sup>

The GCA includes heightened record-keeping requirements for mail-order firearm purchases. Congress heightened these requirements in response to “the concern of law enforcement officials throughout the country over the vast proliferation of mail-order firearms in interstate commerce,” which enabled “circumvention and contravention of State and local laws governing the acquisition of firearms.”<sup>26</sup> Mail-order firearms’ “ready availability, minimal cost and anonymity of purchase” chartered their “ever-increasing abuse” by “juveniles, minors, and adult criminals.”<sup>27</sup>

Thus, § 922(c) of the GCA puts stringent limits on remote, mail-order firearm sales to “ensure effective verification of a potential purchaser’s eligibility.” *Abramski*, 573 U.S. at 182. On top of passing the standard eligibility requirements, mail-order firearm purchasers must submit a sworn statement verifying that the purchase does not violate any laws. 18 U.S.C. § 922(c). The licensed seller must forward a copy of the sworn statement, a description of the firearm, and the corresponding ATF form to the chief law

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<sup>24</sup> Crime Guns Recovered and Traced, *supra* note 14, at 36.

<sup>25</sup> Fact Sheet - National Tracing Center, ATF (Apr. 2023), <https://www.atf.gov/resource-center/docs/undefined/ntc-fact-sheet-may-2023/download>.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

enforcement officer of the purchaser's residence.<sup>28</sup> After forwarding these materials, the seller must wait at least seven days before shipping the firearm.<sup>29</sup>

This Court emphasized the dangers of remote gun sales in *Abramski*. There, the Court analogized straw purchases—where a purchaser buys a firearm on behalf of someone else without disclosing that person's identity—to remote gun sales. *Id.* It warned that interpreting the GCA to allow for straw purchases would frustrate congressional intent: a purchaser could “easily bypass the [federal gun law] scheme, purchasing a gun without ever leaving his home by dispatching to a gun store a hired deliveryman.” *Id.* The Court ruled that the Act did not permit straw purchases, noting that there was “no reason why anyone (and certainly anyone with less-than-pure motives) would put himself through the procedures laid out in § 922(c).” *Id.*

## **II. Ghost guns create a loophole in the federal gun law scheme that undermines public safety and congressional intent.**

The term “ghost gun” refers to a “homemade or self-assembled functional firearm with no recognized serial number.”<sup>30</sup> The prevalence of ghost guns has soared in recent years.<sup>31</sup> Underscoring how quickly

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Bryan A. Garner, *New Legalese*, A.B.A. J., Apr./May 2024, at 21.

<sup>31</sup> In 2023, 359 ghost guns were recovered in New York City alone, while 25% of the illegal handguns seized in Rochester, New York were ghost guns, and 27% of the illegal guns seized in Rhode Island were ghost guns. In Omaha, Nebraska, in 2019, police recovered two ghost guns, but by 2023 they recovered 65. In Philadelphia, Pennsylvania, 575 ghost guns were recovered in 2022, and incidents involving ghost guns rose 311% from

the scourge of ghost guns has arisen, the term only entered the legal lexicon in 2019.<sup>32</sup> Without the Rule at issue, ghost gun sellers are not required to conduct a background check on each purchaser, serialize each gun, or record each ghost gun transaction, even though ghost guns endanger public safety in the same ways that traditional firearms do. Thus, unregulated ghost guns would defeat the Act’s efficacy.

Ghost guns are physically and legally difficult to detect: they are made of polymer materials that may “pass through metal detectors at security checkpoints undetected,” and as noted they do not have serial numbers.<sup>33</sup> Unlike the art of traditional gunsmithing, assembling a ghost gun is “ridiculously easy”<sup>34</sup> and “idiot-proof”—a selling point commercial ghost gun sellers advertise.<sup>35</sup>

The Fifth Circuit below relied on the American tradition of at-home gun-making to justify excluding ghost guns from the GCA’s scope. *See VanDerStok v. Garland*, 86 F.4th 179, 185 (5th Cir. 2023). But the jury-rigged muskets made at home during the

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2019. *Ghost Gun Recoveries and Shootings*, Everytown Pol’y & Rsch., <https://everytownresearch.org/report/ghost-guns-recoveries-and-shootings/> (last visited June 2, 2024).

<sup>32</sup> Garner, *supra* note 30.

<sup>33</sup> Cong. Rsch. Serv., IF11810, *Privately Made Firearms: A Growing Source of Unmarked, Untraceable “Ghost Guns”?* (2021).

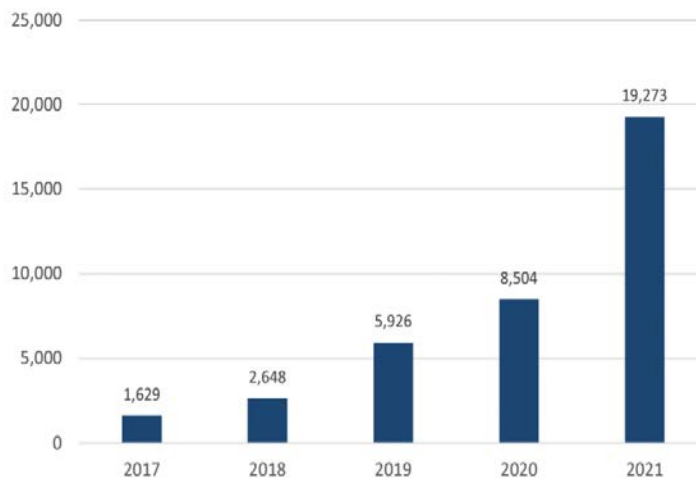
<sup>34</sup> Gun Build Kits, 80 Percent Arms, <https://www.80percentarms.com/complete-build-kits/> (last visited June 18, 2024) (“It is ridiculously easy for a non-machinist to [build a firearm using one of our kits].”).

<sup>35</sup> Travis Pike, *Polymer 80 GLOCK Build Project: Make Your Own 9mm Ghost Gun*, *The Truth About Guns* (Apr. 12, 2020), <https://www.thetruthaboutguns.com/polymer-80-glock-build-project-make-your-own-9mm-ghost-gun>.

eighteenth century are hardly comparable to ghost guns—commercially sold “do-it-yourself” gun kits that only require an hour of assembly time to create a fully functioning firearm.<sup>36</sup>

The number of suspected ghost guns that law enforcement recovered and submitted to eTrace increased by 1,083 percent from 2017 to 2021, as illustrated below.<sup>37</sup>

Suspected Ghost Guns Recovered and Traced, 2017-2021



These ghost guns included pistols, rifles, and machine guns.<sup>38</sup> Furthermore, over 80 percent of

<sup>36</sup> Fact Sheet: *The Biden Administration Cracks Down on Ghost Guns, Ensures That ATF Has the Leadership it Needs to Enforce Our Gun Laws*, The White House (Apr. 11, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/11/fact-sheet-the-biden-administration-cracks-down-on-ghost-guns-ensures-that-atf-has-the-leadership-it-needs-to-enforce-our-gun-laws/>.

<sup>37</sup> Crime Guns Recovered and Traced, *supra* note 14, at 5.

<sup>38</sup> *Id.* at 21.

trafficked ghost guns were acquired through commercial kits, primarily made by Polymer80, Inc.<sup>39</sup>

Ghost guns' anonymity complicates police investigations at the local level. With no serial number or record of their exchange, ghost guns do not leave a paper trail. This thwarts investigators' ability to determine their origins, track their movements, or link them to criminal activities. And in turn, investigators are less equipped to generate leads and solve crimes.<sup>40</sup> As Des Moines, Iowa Police Department Sergeant Paul Parizek observed: "If we recover a gun that's been used in crime and we don't have that ballistic evidence, and it's one of these guns that's been 3D-printed or a Polymer 80, and it doesn't have a serial number . . . [i]t's essentially invisible to us and our partners at the ATF."<sup>41</sup> Consider also the problem of firearm theft. From automobiles alone, somewhere in America a firearm is stolen once every nine minutes.<sup>42</sup> Unlike a traditional stolen firearm,

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<sup>39</sup> ATF, *Type and Volume of Firearms Trafficked*, Part V, at 5 (2024), <https://www.atf.gov/file/190641/download>; *Crime Guns Recovered and Traced*, *supra* note 14, at 22.

<sup>40</sup> This is especially true in light of law enforcement's increasing reliance on firearm records and eTrace. *Crime Guns Recovered and Traced*, *supra* note 14, at 5.

<sup>41</sup> Connor O'Neal, *'Ghost Guns' Add to the High Number of Des Moines Police Firearm Recoveries*, *We are Iowa*, <https://www.weareiowa.com/article/news/crime/des-moines-police-ghost-gun-3d-firearms-shooting/524-5b238e2b-abf4-4131-a6aa-8618efdc9711> (last updated Apr. 12, 2024, 10:09 PM).

<sup>42</sup> Jay Szkola et al., *Gun Thefts from Cars: The Largest Source of Stolen Guns*, Everytown Rsch. & Pol'y (May 9, 2024), [https://everytownresearch.org/report/gun-thefts-from-cars-the-largest-source-of-stolen-guns-2/?source=emne\\_20240618-NCSecSto&refcode=emne\\_20240618-NCSecSto&utm\\_source=emne\\_20240618-](https://everytownresearch.org/report/gun-thefts-from-cars-the-largest-source-of-stolen-guns-2/?source=emne_20240618-NCSecSto&refcode=emne_20240618-NCSecSto&utm_source=emne_20240618-)

which has a serial number that can be traced, a stolen ghost gun is untraceable.

As a result of ghost gun anonymity, police have to resort to alternative—and often less efficient—means to connect ghost guns to bad-faith actors. For example, undercover ATF agents busted a ghost gun trafficking operation in Colorado.<sup>43</sup> The traffickers sold drugs and fully automatic firearms to Sinaloa cartel members. They made these firearms without serial numbers, making them untraceable. ATF began investigating their ghost gun trafficking operation when one trafficker told an informant about his criminal activities. The traffickers sold forty-five ghost guns to undercover ATF agents over the span of two years before they were arrested.

Similarly, an undercover FBI agent cracked a ghost gun operation run by two brothers—who were only 21 and 20 years old—after they tried to sell firearms to ISIS members overseas.<sup>44</sup> The brothers sold semi-automatic rifles they assembled through ghost gun kits that they bought online. The undercover agent “hired” them to manufacture at

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NCSecSto&utm\_medium=e&utm\_campaign=20240618-NCSecStotarget=.

<sup>43</sup> Press Release, U.S. Att’y’s Office, Dist. of Co., Denver Gang Member Sentenced to Over 15 Years in Federal Prison For Making and Selling Dozens of High Powered Guns, Including Machine Guns And Silencers (Nov. 22, 2019), <https://www.justice.gov/usao-co/pr/denver-gang-member-sentenced-over-15-years-federal-prison-making-and-selling-dozens-high>.

<sup>44</sup> Press Release, Office of Pub. Affs., Indiana Residents Indicted on Terrorism and Firearm Charges (July 11, 2019), <https://www.justice.gov/opa/pr/indiana-residents-indicted-terrorism-and-firearms-charges>

least fifty-five fully automatic ghost guns for ISIS members overseas. The brothers bought the necessary parts online, assembled the rifles, and sold them to the undercover agent, after which they were arrested.

Although those two ghost gun anecdotes share happy endings, they are the rare exception—not the rule. Far more typical are the following examples from local communities across America:

- The Midland-Odessa, Texas shooting spree caused seven deaths and dozens of injuries. The shooter’s mental health history blocked him from purchasing a gun from a licensed dealer, and he bought the AR-15 assault rifle for the shootings from an unlicensed seller without undergoing a background check.<sup>45</sup>

- The Dayton, Ohio shooter—who killed nine people and wounded over a dozen others—used an AR-15 ghost gun.<sup>46</sup>

- A 23-year-old in Santa Monica, California, who was ineligible to buy a gun from a licensed dealer, assembled an assault rifle from parts purchased online and used the weapon to shoot himself and three others.<sup>47</sup>

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<sup>45</sup> Brandon Formby, *Reports: Odessa Shooter Bought Gun via Private Sale Without Background Check*, Tex. Tribune (Sept. 3, 2019), <https://www.texastribune.org/2019/09/03/odessa-texas-shooter-bought-gun-private-sale-without-background-check/>.

<sup>46</sup> Bill Chappell, *The Pistol that Looks Like a Rifle*, NPR (Aug. 8, 2019 4:39 PM), <https://www.npr.org/2019/08/08/748665339/the-pistol-that-looks-like-a-rifle-the-dayton-shooters-gun>.

<sup>47</sup> Carter Evans, *Santa Monica Shooter Built His Own Weapon* (June 14, 2013), <https://www.cbsnews.com/news/santa-monica-shooter-built-his-own-weapon/>.

- The identity of California’s infamous “Stockton Serial Killer” was a mystery for several years because he used a ghost gun to murder his victims.<sup>48</sup>

- A ghost gun was used to kill a 17-year-old “standout basketball player” in Minneapolis, Minnesota. But with no serial number, investigators have yet to connect the gun to an owner; the tragedy remains unsolved.<sup>49</sup>

- A Baltimore, Maryland man was armed with a ghost gun while committing a string of armed robberies. A background check would have revealed that the man was a felon and blocked him from purchasing any guns.<sup>50</sup>

- In Los Angeles, California, a semi-automatic ghost gun was used to shoot and kill Officer Andrew Moye Jr. during a traffic stop. The shooter was a felon who was ineligible to buy a firearm from a licensed dealer.<sup>51</sup>

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<sup>48</sup> Keegan Hamilton, *The Stockton Serial Killer Suspect was Using an Untraceable Ghost Gun*, Vice (Oct. 20, 2022), <https://www.vice.com/en/article/jgpag7/stockton-serial-killer-ghost-gun>.

<sup>49</sup> Nathan O’Neal, *Minnesota Law Bans Possession of Ghost Guns. Critics Want to Dismantle It*. (June 2, 2024), <https://www.fox9.com/news/minnesota-law-ghost-guns>.

<sup>50</sup> Press Release, U.S. Atty’s Office, Dist. of Md., *Baltimore Man Sentenced to 21 Years in Federal Prison for Five Bank Robberies, Five Armed Robberies of Liquor Stores, and Related Firearms Charges* (Nov. 12, 2020), <https://www.justice.gov/usao-md/pr/baltimore-man-sentenced-21-years-federal-prison-five-bank-robberies-five-armed-robberies>.

<sup>51</sup> Richard Winton & Mark Puente, *Rifle Used in Deadly Riverside Shooting Was Untraceable ‘Ghost Gun,’ Sources Say*, L.A. Times (Aug. 14, 2019),



Ghost guns also result in disproportionate harm to minors, again in far-flung local communities:

- An 18-year-old Springfield, Virginia drug dealer with mental health issues bought a ghost gun online and used it to kill two classmates.<sup>52</sup>

- In Darby, Pennsylvania, a fifteen-year-old with a ghost gun killed one teen and wounded another.<sup>53</sup>

- A 16-year-old used a ghost gun to shoot and seriously injure students during a dispute in Des Moines, Iowa. Roughly one-third of the ghost guns recovered in Des Moines in the last two years involved minors.<sup>54</sup>

- In Milwaukee, Wisconsin, a fifteen-year-old shot and killed two other fifteen-year-olds with a ghost gun.<sup>55</sup>

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<https://www.latimes.com/california/story/2019-08-14/rifle-used-in-deadly-riverside-shooting-was-untraceable-ghost-gun-sources-say>.

<sup>52</sup> Tom Jackman & Emily Davies, *Teens Buying Ghost Guns Online, with Deadly Consequences*, Wash. Post (July 12, 2023), <https://www.washingtonpost.com/dc-md-va/2023/07/12/teens-ghost-guns-deadly-shootings/>.

<sup>53</sup> *15-Year-Old Boy Charged with Murder in Darby Store Shooting that Killed Another 15-Year-Old*, Fox 29 Phila., <https://www.fox29.com/news/15-year-old-boy-charged-with-murder-in-darby-store-shooting-that-killed-another-15-year-old> (last updated Feb. 7, 2024).

<sup>54</sup> *Des Moines Police Arrest Teen for Attempted Murder Using 3D Printed Gun*, KCCI Des Moines, <https://www.kcci.com/article/des-moines-police-arrest-teen-3d-printed-handguns-shooting-attempted-murder/60457427> (last updated Apr. 10, 2024, 5:13 PM).

<sup>55</sup> Elliot Hughes, *Milwaukee Teen with Ghost Gun Killed Two 15-Year-Olds During Robbery, Complaint Says*, Milwaukee J. Sentinel (May 24, 2024),

- A teen in Torrance, California used a ghost gun to shoot his classmates inside the boys' bathroom of his high school.<sup>56</sup>
- A 16-year-old in Santa Clarita, California killed two students and injured three others with a ghost gun purchased online.<sup>57</sup>
- A New Rochelle, New York sixteen-year-old who killed a classmate with a ghost gun also operated a “ghost gun factory” out of his bedroom.<sup>58</sup>
- A Baltimore, Maryland fourteen-year-old armed with a ghost gun was arrested for armed robbery and carjacking.<sup>59</sup>

While ghost guns present a new and growing threat to public safety, the deadly potential of mail order guns is perhaps most exemplified through the assassination of President John F. Kennedy. Lee Harvey Oswald assassinated President Kennedy

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<https://www.jsonline.com/story/news/crime/2024/05/24/milwaukee-teen-with-ghost-gun-killed-two-15-year-olds-complaint-says/73838443007/>.

<sup>56</sup> Dan Morse, *Magruder High Schooler Sentenced to 18 Years but Could be Out Much Sooner*, Wash. Post (Dec. 22, 2022), <https://www.washingtonpost.com/dc-md-va/2022/12/22/magruder-high-shooting-teen-sentenced/>.

<sup>57</sup> Dakin Andone, *The Gunman in the Saugus High School Shooting Used a ‘Ghost Gun,’ Sheriff Says*, CNN, <https://www.cnn.com/2019/11/21/us/saugus-shooting-ghost-gun> (last updated Nov. 21, 2019 3:52 PM).

<sup>58</sup> *Police Uncover Ghost Gun ‘Factory’ in New Rochelle Home*, CNN (Sept. 9, 2023), <https://www.cbsnews.com/newyork/video/police-uncover-ghost-gun-factory-in-new-rochelle-home/>.

<sup>59</sup> *Ghost Gun Seized, 3 Teens Arrested in Crime Spree*, WBAL Baltimore Videos (May 26, 2023), <https://www.yahoo.com/news/ghost-gun-seized-3-teens-211413542.html>.

using a gun he had purchased through the mail.<sup>60</sup> The same day, Oswald shot and killed Dallas police officer J.D. Tippit using a different gun that he had purchased through the mail under a pseudonym.<sup>61</sup>

Ghost guns create a loophole in the federal gun law scheme that frustrates the congressional intent behind the GCA. Ghost guns are being used in the commission of violent crime from coast to coast, in cities, suburbs, and rural communities, particularly by minors. Allowing ghost guns to continue to flood our communities would make way for more preventable killings and injuries like those described above, harming public safety.

### **III. The Rule closes the ghost gun loophole.**

The Rule at issue clarifies the GCA’s definition of “firearm” to include commercial ghost guns and in turn closes the ghost gun loophole. The GCA defines “firearm” as “any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive” or “the frame or receiver of any such weapon.” 18 U.S.C. § 921(a)(3). The Rule clarifies this definition in light of modern firearm technologies, providing that:

(1) The term “firearm” includes “a weapon parts kit that is designed to or may readily be completed,

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<sup>60</sup> Andrew C. McKeivitt, *Oswald’s Arsenal: What a Cheap Rifle and Pistol Can Tell Us About the Golden Age of the American Gun Owner*, Slate (Nov. 22, 2023, 11:00 AM), <https://slate.com/news-and-politics/2023/11/oswald-weapons-rifle-pistol-kennedy-assassination.html>.

<sup>61</sup> *Id.*

assembled, restored, or otherwise converted to expel a projectile by the action of an explosive.”

(2) The term “frame or receiver” includes partially complete frames or receivers, as well as frame or receiver kits.

(3) The term “readily” means “a process that is fairly or reasonably efficient, quick, and easy, but not necessarily the most efficient, speedy, or easy process.” The following factors are relevant to this inquiry: the time it takes to finish the process; the process’s difficulty; the knowledge and skills required; the tools required; the need for and availability of additional parts; the process’s cost; the scope of the process’s completion; the process’s feasibility.

(4) The term “privately made firearm” is added and defined as “a firearm, including a frame or receiver, assembled by a person other than a licensed manufacturer, and not containing a serial number or other identifying marking placed by a licensed manufacturer at the time the firearm was produced.” The term does not include registered firearms or firearms made before 1968.<sup>62</sup>

The Rule simply imposes the same reasonable safety measures on ghost guns that are required of traditional firearms under the GCA. Thus, the Rule comports with the GCA’s intent and is a proper exercise of the ATF’s regulatory authority. Moreover, the Rule supports state and local law enforcement.

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<sup>62</sup> Final Rule 2021R-05F (to be codified at 27 C.F.R. pts. 447, 478, and 479).

**A. The Rule addresses the same public safety concerns that the GCA addresses.**

Leaving ghost guns unregulated would undermine public safety and congressional intent. Over fifty years ago, Congress heeded the nationwide concerns about the “juveniles, felons, and fugitives who [could], *with total anonymity* and impunity, obtain guns by mail or by crossing into neighboring States with lax or no gun laws at all, regardless of the law of their own State.” 114 Cong. Rec. 13647 (1968) (emphasis added).

To remedy this problem, Congress focused its federal gun law scheme on firearm sales. *Abramski*, 573 U.S. at 179. The GCA requires licensed firearm sellers to conduct background checks of purchasers, serialize firearms, and keep records of their firearm transactions. Congress intended these complementary measures to provide the public with a baseline level of protection.

Unregulated ghost guns create the same public safety concerns that the GCA was enacted to remedy. First, ghost guns may be purchased without a background check, meaning that juveniles, felons, and other ineligible persons can own one. Second, ghost guns do not have serial numbers, which makes them untraceable and complicates police investigations. Third, ghost gun sellers are not required to keep records of their transactions, thereby enabling the kind of anonymous gun ownership that the GCA set out to stop.

These combined qualities make ghost guns the kind of threat to public safety that drove Congress to enact the GCA in 1968. Congress recognized that a *federal* gun law scheme was necessary because

fragmented state and local gun laws could not effectively protect public safety and curb violence in our transient Nation—just like varying state ghost gun laws today. *See* 114 Cong. Rec. 13647 (1968)

The Rule clarifies that ghost guns are firearms, bringing them into the federal gun law scheme. Final Rule 2021R-05F (to be codified at 27 C.F.R. pts. 447, 478, and 479). Background checks, serial numbers, and record-keeping will be required for commercial ghost gun sales.<sup>63</sup> These requirements are the same measures that Congress included in the GCA for licensed firearm sellers. Thus, the Rule is a common-sense application of the GCA to the modern age.

**B. The Rule is a proper exercise of the ATF’s regulatory authority because it comports with the GCA’s intent.**

The Rule is necessary to carry out the GCA’s provisions because it preserves the Act’s efficacy given the conditions of modern life. The Office of the Attorney General delegated its authority to enact “such rules and regulations as are necessary to carry out” the GCA’s provisions to the ATF. 18 U.S.C. § 926. Administrative rules and regulations are “neither required nor supposed to regulate the present and the future within the inflexible limits of yesterday.” *Am. Trucking Ass’ns v. Atchison, Topeka & Santa Fe Ry. Co.*, 387 U.S. 397, 417 (1967). Rather, these regulations are flexible and adaptable to the changing conditions of modern life. *Id.* Such adjustments are necessary to prevent rapidly changing technologies

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<sup>63</sup> Summary of Final Rule 2021R-05F, ATF, <https://www.atf.gov/rules-and-regulations/definition-frame-or-receiver/summary> (last reviewed Apr. 11, 2022).

like ghost guns from frustrating congressional purpose.

This Court consistently avoids interpreting statutes in ways that evade congressional intent or “enable offenders to elude [their] provisions in the most easy manner.” *The Emily*, 9 Wheat. 381, 389-90 (1824). As Justice Scalia noted, this interpretive principle is the “presumption against ineffectiveness.” A. Scalia & B. Garner, *Reading Law: The Interpretations of Legal Texts* 63 (2012). When interpreting an Act’s text, this Court employs common sense and fairness, referencing the Act’s context, history, and purpose. *See Am. Trucking*, 387 U.S. at 417. This “substance-over-form” approach focuses on the “practical realities, rather than the legal niceties, of firearms transactions.” *Abramski*, 573 U.S. at 184, 183.

For example, in *Abramski*, the Court ruled that § 922 of the GCA prohibited straw firearm purchases. 573 U.S. at 187. There, the defendant was convicted for misstating that he was the “actual buyer” on an ATF Form 4473 he filled out while purchasing a gun for his uncle. *Id.* at 175. The Court upheld his conviction, reasoning that the uncle should have been listed as the “actual buyer” because he was the gun’s intended owner. *Id.* at 177, 179. The Court explained that Congress included the statute’s identification requirements to keep guns in safe hands and assist law enforcement investigations—goals that hinge on screening and documenting the gun’s true owner, not its conduit. *Id.* at 181. To hold otherwise, the Court reasoned, would frustrate Congress’s intent by enabling practical realities the GCA was enacted to prevent. *Id.*

In *Huddleston v. United States*, 415 U.S. 814, 823, 828 (1974), the Court ruled that pawn shop firearm redemptions qualified as an “acquisition” under § 922 of the GCA. There, the defendant was convicted for falsely claiming that he was not a felon while redeeming three guns he had previously pawned. *Id.* at 816–17. The Court upheld his conviction, reasoning that “every evil Congress hope[d] to cure would continue unabated” if redemptions were excepted from the statute. *Id.* at 829.

Here, the anonymous nature of ghost guns resembles the pre-1968 gun access that led Congress to create a comprehensive federal gun law scheme. Analogous to the practical realities of straw arrangements addressed in *Abramski* or pawnshop redemptions addressed in *Huddleston*, the practical realities of unregulated ghost guns frustrate the purpose of the GCA. This is because ghost guns make gun ownership accessible to those who would otherwise be ineligible and complicate police investigations.

Like the uncle in *Abramski* who obtained a gun without any inquiry into his eligibility, ghost guns provide an anonymous path to gun ownership: no background check, registration, or evaluation is required to own one. Similar to the illusory paper trail connecting the gun to the uncle in *Abramski*, ghost guns are untraceable because they are unserialized and not subject to the GCA’s reporting requirements. Thus, consistent with the commonsense interpretation of the statutes in *Abramski* and *Huddleston*, the GCA should be interpreted to allow for ghost gun regulations because excepting them would exacerbate the very evils that Congress intended the Act to cure.



**C. The Rule also supports local law enforcement, a major goal of the GCA.**

Amici cannot stress enough that leaving ghost guns unregulated at the federal level would also impede state and local efforts to regulate ghost guns through their police powers. The inability of local governments to effectively regulate firearms that travel through interstate commerce led Congress to create its federal gun law scheme in 1968. The GCA seeks to “strengthen Federal Controls over interstate and foreign commerce in firearms and *to assist the States effectively to regulate* firearms traffic within their borders.” *Oefinger v. Zimmerman*, 601 F. Supp. 405, 409 (W.D. Pa. 1984) (citing H. Rep. No. 90-1577) (emphasis added).

Because ghost guns are generally sold online and untraceable, states and localities cannot effectively regulate them without the support of federal law. A state may regulate ghost guns within its borders to ensure the health, safety, and welfare of its citizens. But only the federal government can regulate ghost guns in interstate commerce. And absent these federal laws and regulations, state and local efforts may be futile.<sup>64</sup> For instance, a Maryland citizen can anonymously purchase a ghost gun online from a seller in Michigan to evade Maryland’s ghost gun laws. This dilemma is the same today for ghost guns as it was for traditional firearms before 1968. Excluding ghost guns from the GCA would frustrate

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<sup>64</sup> *Ghost Guns*, Brady, <https://www.bradyunited.org/resources/issues/what-are-ghost-guns> (last visited June 18, 2024) (“Unless a state took decisive action, all state laws such as waiting periods, age restrictions, licensing, and protective orders, were circumvented by the unmitigated availability of these parts and kits.”).

the Act’s purposes to tame the flow of firearms in interstate commerce and empower state laws.

Ghost guns can currently be purchased without regard to waiting period laws and Extreme Risk Laws (aka “Red Flag” laws). Thirteen states have enacted laws requiring mandatory waiting periods before an individual can buy a gun.<sup>65</sup> Waiting period laws reduce gun homicides<sup>66</sup> and suicides.<sup>67</sup> Similarly, twenty-one states have enacted “Red Flag” Laws that allow family members and law enforcement to petition a court to temporarily restrict access to guns by an individual in crisis.<sup>68</sup> Like waiting period laws, Red Flag Laws serve to deescalate emergencies and reduce gun deaths.

Both waiting period and Red Flag Laws operate at the state and local level—but are only effective with the support of federal law. Consider the following: State X passes a law requiring a one-week waiting period for gun purchases. A Citizen of State X goes online and purchases a ghost gun from a seller in State Y. Not only have none of State X’s ghost gun laws applied to the sale, the gun purchased in State Y

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<sup>65</sup> *Which States Require a Waiting Period Before Gun Purchases?*, Everytown Rsch. & Pol’y, <https://everytownresearch.org/rankings/law/waiting-periods/> (last updated Jan. 4, 2024).

<sup>66</sup> Michael Luca et al., *Handgun Waiting Periods Reduce Gun Deaths 2* (2017) (explaining that waiting period laws reduce gun homicides by roughly seventeen percent).

<sup>67</sup> RAND, *Effects of Waiting Periods on Suicides*, Gun Pol’y in Am., <https://www.rand.org/research/gun-policy/analysis/waiting-periods/suicide.html> (last updated Jan. 10, 2023).

<sup>68</sup> Extreme Risk Laws, Everytown Pol’y & Rsch., <https://www.everytown.org/solutions/extreme-risk-laws/> (last visited June 2, 2024).

is now unknown to and untraceable by State X.<sup>69</sup> Because the ghost gun market is inherently interstate, state and local laws need the support of federal regulations. *See Oefinger*, 601 F. Supp. at 409 (citing H. Rep. No. 90-1577) (articulating the purpose of the GCA).

In sum, the Rule is necessary to carry out the GCA's provisions because it closes the ghost gun loophole, preserving the Act's efficacy. It does so by treating ghost guns as what they are—firearms. Congress enacted the GCA in 1968 to address lawlessness and violence in America amid widespread, anonymous gun proliferation and splintered state laws. The GCA regulates firearms in interstate commerce by focusing on licensed firearm sellers while empowering state and local laws. Sellers must conduct background checks on purchasers, serialize their firearms, and keep records of each firearm transaction.

These safety measures have proven effective in furthering the GCA's "twin goals" of keeping firearms out of the hands of minors or criminals and assisting law enforcement authorities in the States "and their subdivisions" in combating crime.

Ghost guns pose the same problems that Congress sought to address in 1968. They enable anonymous gun ownership and the use of interstate commerce to

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<sup>69</sup> While some serialized guns can be purchased online, state waiting period and red flag laws still apply. *See Process of Purchasing a Gun Online*, U.S. Arms Co., <https://www.usarmsco.com/process-of-buying-a-gun-online/> (last visited June 27, 2024) (explaining that state firearm laws still apply to serialized guns purchased online and that the background check and waiting period process is "identical to the process . . . [of] buying [a] gun in person").

circumvent state and local laws. The Rule remedies these problems—consistently with the Act’s plain language and congressional intent—by applying the Act’s safety measures to *all* guns. Thus, the Rule is a valid exercise of the ATF’s authority; to hold otherwise would undermine congressional intent and harm public safety throughout the Nation.

### CONCLUSION

The judgment below should be reversed.

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