

No. 23-852

IN THE
Supreme Court of the United States

MERRICK B. GARLAND, Attorney General, et al.,
Petitioners,

v.

JENNIFER VANDERSTOK, et al.,
Respondents.

**On Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit**

**BRIEF OF FRANK BLACKWELL AND
BRYAN MUEHLBERGER AS *AMICI CURIAE*
IN SUPPORT OF PETITIONERS**

LEE R. CRAIN
Counsel of Record
ERICA SOLLAZZO PAYNE
LIESEL N. SCHAPIRA
ZACHARY R. EDELMAN
JULIA T. ROSS
LIAM A. FINE
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, NY 10166
(212) 351-2454
lcrain@gibsondunn.com

SCOTT EDELMAN
GIBSON, DUNN & CRUTCHER LLP
2029 Century Park East
Los Angeles, CA 90067

KATHERINE M. MARQUART
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071

Counsel for Amici Curiae

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INTEREST OF *AMICI CURIAE*¹

Amici Curiae Frank Blackwell and Bryan Muehlberger are parents of children who were shot and killed with a ghost gun in the 2019 Saugus High School shooting in Santa Clarita, California. Frank is the father of Dominic Blackwell. Bryan is the father of Gracie Anne Muehlberger. Dominic and Gracie were barely three months into their high-school careers when their lives were tragically cut short at ages 14 and 15.

Dominic and Gracie were killed on November 14, 2019. On that day, a 16-year-old Saugus High School student opened fire on his classmates in the school's main quad. Because the shooter was a minor, he could not legally acquire a firearm. But he managed to obtain a ghost gun anyway, either directly or from his father, who was *also* prohibited from possessing or owning firearms. With that ghost gun, the shooter shot five students, injuring three and killing Gracie and Dominic.

In 2020, less than a year after their children's deaths, Frank and Bryan turned to the judicial system in hopes of preventing a repeat of the Saugus High School shooting. Frank and Bryan joined the State of California and the Giffords Law Center to Prevent Gun Violence as co-plaintiffs in a lawsuit against the Bureau of Alcohol, Tobacco, Firearms & Explosives ("ATF"). In their original complaint, filed in the U.S. District Court for the Northern District of California,

¹ *Amici* state that this brief was not authored in whole or in part by counsel for any party, and that no person or entity other than *Amici* or their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

the plaintiffs asserted that ATF’s decision not to regulate “80 percent” (or “partially complete”) frames and receivers was both contrary to law and arbitrary and capricious in violation of the Administrative Procedure Act. They alleged that because “80 percent receivers are *‘designed to or may be readily converted’* into fully fireable weapons, they *are* firearms under the [Gun Control Act],” and that ATF had “failed to consider important aspects of the problem it should regulate, such as the consequences of both allowing prohibited possessors to access untraceable ghost guns and expanding the sale of untraceable weapons.” Complaint ¶¶ 16-17, *California v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 20-cv-6761 (N.D. Cal. Sept. 29, 2020), ECF No. 1 (emphasis in original). The plaintiffs requested an injunction requiring ATF to classify partially complete frames and receivers as “firearms” under the Gun Control Act. *See id.* at 56.

While Frank and Bryan’s lawsuit was pending, ATF promulgated the regulation Respondents—a cohort comprised of ghost gun manufacturers and gun rights advocates—now challenge in this case: Definition of “Frame or Receiver” and Identification of Firearms, 87 Fed. Reg. 24652 (Apr. 26, 2022) (the “Final Rule”). Frank and Bryan attended President Biden’s announcement of the Final Rule in the Rose Garden.² A survivor of the Saugus High School shooting and

² *Remarks by President Biden Announcing Actions to Fight Gun Crime and His Nominee for ATF Director, Steve Dettelbach*, WHITE HOUSE (Apr. 11, 2022), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/04/11/press-briefing-by-press-secretary-jen-psaki-april-11-2022>.

one of Dominic’s best friends also spoke at the Rose Garden ceremony.³

The Final Rule is a critical step toward closing the loophole that allowed prohibited purchasers—like minors—to acquire guns quickly and easily. The Final Rule requires that ghost gun manufacturers include a serial number on ghost gun kits and certain partially complete frames and receivers so that the many ghost guns appearing at crime scenes can be traced. And it helps ensure that only individuals capable of passing a background check—to verify their fitness to possess a gun—can acquire one. The Final Rule, in other words, would have prevented either the Saugus High School shooter or his father from purchasing the ghost gun used to kill Gracie and Dominic.⁴

³ Jessica De Nova, *Saugus School Shooting Survivor Speaks at White House, Praises Biden for Crackdown on Ghost Guns*, ABC7 (Apr. 11, 2022), <https://abc7.com/saugus-school-shooting-joe-biden-ghost-guns/11738782>.

⁴ Frank, Bryan, and their co-plaintiffs continued their case against ATF to pursue relief related to one specific aspect of the Final Rule. See First Amended Complaint, *California v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 20-cv-6761 (N.D. Cal. Oct. 20, 2022), ECF No. 122. Although Frank and Bryan were dismissed from the case at the motion-to-dismiss stage for lack of standing to seek prospective relief, *California v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 2023 WL 1873087, at *20 (N.D. Cal. Feb. 9, 2023), the suit continued and was ultimately successful, *California v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 2024 WL 779604, at *28 (N.D. Cal. Feb. 26, 2024). ATF has appealed from the partial grant of summary judgment in plaintiffs’ favor, and the Ninth Circuit has stayed the appeal pending the outcome of this case. See *California v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, No. 24-2701 (9th Cir. May 13, 2024), ECF No. 10.

Having fought through their grief with the goal of preventing further loss of young life, Frank and Bryan now face the prospect of returning to the deregulated environment that led to the deaths of their children. Frank and Bryan know all too well that if this Court affirms the decision below, many more minors—and others who are prohibited from owning firearms—are likely to get their hands on untraceable do-it-yourself (“DIY”) weapons.

In short, *Amici* each have strong interests in this case. Frank and Bryan never want another family to experience their devastating loss of their children. And for that reason, they implore the Court to reverse.

INTRODUCTION AND SUMMARY OF ARGUMENT

Respondents ask this Court to nullify an administrative rule enforcing the type of reasonable gun-safety measures that Congress has repeatedly—and in bipartisan fashion—endorsed and expanded over the last 50 years. In the Gun Control Act of 1968, Congress provided that certain classes of people—including violent domestic abusers and felons, among others—cannot purchase or possess firearms. Congress also provided that firearms must be serialized and cannot be purchased without a background check. These reasonable, common-sense measures have protected millions of Americans over the last five decades. If Respondents prevail here, those protections will be toothless. Manufacturers will flood the market with cheap, easy-to-produce, unserialized weapons that anyone can purchase and build with ease. Many will die.

Amici personally know what happens in a world where ghost gun manufacturers can circumvent Congress' reasonable gun-safety measures. Domestic abusers can easily procure ghost guns with just a credit card and a mailing address—even though centuries of history and tradition confirm that Congress can disarm those individuals. See *United States v. Rahimi*, No. 22-915, slip op. at 5 (U.S. June 21, 2024) (“Since the founding, our Nation’s firearm laws have included provisions preventing individuals who threaten physical harm to others from misusing firearms.”). Felons can procure firearms. Even minors can easily buy a DIY weapon and create a fully functional gun in minutes. None of these people need a background check to buy these products. And all of the resulting guns lack serial numbers, making them untraceable “ghosts” that impede law enforcement and obstruct justice. Tragedies result.

On November 14, 2019, *Amici* Frank Blackwell and Bryan Muehlberger experienced such a tragedy firsthand. That day, a teenage high-school student shot and killed Frank’s son, 14-year-old Dominic, and Bryan’s daughter, 15-year-old Gracie. The shooter used a ghost gun he either built himself or acquired from his father, who was legally barred from owning a firearm. After their children’s deaths, Frank and Bryan were shocked to discover how easily the shooter was able to obtain the ghost gun. Bryan was even able to purchase a ghost gun kit online in his deceased, minor daughter’s name. It did not matter that the name on Bryan’s credit card was different from the name of the purchaser (deceased Gracie Muehlberger). The seller never verified Bryan’s age or background before selling him this weapon. All that mattered was that someone was willing to pay for it.

Too many American parents are mourning children who have fallen victim to our nation’s gun violence epidemic. Since 2020, in fact, “*firearm-related injury has been the leading cause of death for U.S. children and adolescents (ages 1–19), surpassing motor vehicle crashes, cancer, and drug overdose and poisoning.*”⁵ This troubling statistic recently led the U.S. Surgeon General to declare for the first time that gun violence has become “an urgent public health crisis in America,” because it directly results in countless unnecessary deaths of children and adolescents, and has “reverberating mental health impacts” and other second-order effects that affect society at large.⁶ Parents and communities across the nation have joined Frank and Bryan in mourning children whose lives were cut short due to untraceable, easily assembled ghost guns, available to anyone with an internet connection and a credit card.

The Final Rule was designed to prevent senseless deaths like Dominic’s and Gracie’s. It is a critical step toward closing the loophole that enabled the proliferation of ghost guns—products that found their way into the hands of Dominic and Gracie’s killer. But the Fifth Circuit held below that the Final Rule provisions related to ghost gun kits and partially complete frames and receivers exceeded ATF’s statutory authority. *VanDerStok v. Garland*, 86 F.4th 179, 187-88 (5th Cir. 2023). If this Court affirms, it will effectively once more deregulate these deadly, DIY products. Minors and other prohibited persons will again be able

⁵ U.S. SURGEON GENERAL, ADVISORY OPINION—FIREARM VIOLENCE: A PUBLIC HEALTH CRISIS IN AMERICA 3 (June 25, 2024) (emphasis added).

⁶ *Id.* at 32.

to acquire ghost gun kits and nearly finished ghost gun parts, as manufacturers take advantage of the same regulatory scheme that led to the deaths of *Amici*'s children.

Dominic and Gracie's killings were once unfathomable to Frank and Bryan. Now, they understand the catastrophic frequency of school shootings and the ease with which ghost guns can be obtained when left unregulated. Frank and Bryan relive their pain every time another young life is lost at the hands of a ghost gun. No other parent, sibling, classmate, or friend should have to suffer due to ghost gun violence. This Court should reject Respondents' efforts to cast aside the reasonable gun-safety measures that ATF enforced in the Final Rule. It should decline to undermine the Gun Control Act of 1968. And it should spare other parents from the devastating and preventable loss of a child at the barrel of a ghost gun. This Court should reverse.

ARGUMENT

I. Before The Final Rule, Ghost Guns—And Ghost-Gun Related Crime—Exploded Nationwide.

Enacted after the assassinations of President John F. Kennedy, Senator Robert F. Kennedy, and Dr. Martin Luther King, Jr., the Gun Control Act has served as the foundation of federal firearms law for more than 50 years. The Gun Control Act reflects “twin goals”: first, “to keep guns out of the hands of criminals and others who should not have them”; and second, to “assist law enforcement authorities in investigating serious crimes.” *Abramski v. United States*, 573 U.S. 169, 180 (2014). The Gun Control Act also reflects Congress's determination that “only

through adequate Federal control . . . over all persons engaging in the businesses of importing, manufacturing, or dealing in [firearms], can th[e] grave problem [of firearms moving in interstate commerce] be properly dealt with.” Pub. L. No. 90-351, Title IV, § 901(a)(3), 82 Stat. 197, 225 (1968). Subsequent amendments to the Gun Control Act have further strengthened the law to effectuate these goals. *See* Brady Handgun Violence Prevention Act, Pub. L. No. 103-159 (1993).

Under the Gun Control Act, sellers and manufacturers of “firearms” must obtain a federal firearms license and conduct a background check before selling a firearm to a purchaser. 18 U.S.C. §§ 922(t), 923(a). Firearms must also be serialized. *Id.* § 923(i). These basic, common-sense rules ensure that firearms do not fall into the hands of minors, convicted felons, or those suffering from mental illness, among others. *Id.* § 922(g), (x). And they allow law enforcement to trace weapons used in crimes.

Starting around 2009, however, companies began selling products known colloquially as “80 percent” frames and receivers in a bid to avoid the Gun Control Act’s requirements.⁷ These “80 percent” receivers and frames are pieces of metal forged for the sole and express purpose of allowing buyers to create a fireable weapon quickly and easily. Companies also began to sell these products in “kits” that also contain pre-designed cutting and milling templates that eliminate

⁷ *See* Annie Karni, ‘Ghost Guns’: What They Are and Why They Are an Issue Now, N.Y. TIMES (Nov. 14, 2021), <https://www.nytimes.com/2021/04/09/us/politics/ghost-guns-explainer.html>.

the need for other measurement tools and make drilling the remaining holes simple.⁸



Fig. 1: AR-15 80% Assembly Kit⁹

Armed with a partially complete frame or receiver and the other items in a kit (or else common household

⁸ See *80% AR-15 Easy Jig Gen 1*, 80% ARMS, <https://www.80percentarms.com/products/80-ar-15-easy-jig-gen-1> (last visited June 2, 2024).

⁹ *Complete 16 .223/5.56/300BLK AR-15 80% Build Kit*, 80 PERCENT ARMS, <https://www.80percentarms.com/products/complete-16-223-5-56-300blk-ar-15-80-build-kit> (last visited June 25, 2024).

tools), a buyer can create a fully functional gun “in under 15 minutes.”¹⁰ As one ATF special agent noted in 2019, “[i]f you can put Ikea furniture together, you can [turn an 80 percent receiver into a functional ghost gun].”¹¹ ATF Director Steven Dettelbach acknowledged this reality in a recent *Face the Nation* interview: “I made . . . one of these guns and my wife will tell you *I can’t screw in a light bulb*. . . . But I made one of those handguns out of the kit.”¹²

Before the Final Rule, the ghost gun industry could legally sell these products without serializing them and without performing a background check. No regulations specified that ghost gun products qualified as “firearms” under the Gun Control Act, despite the identical appearance and function of a completed ghost gun and a ready-made firearm.

¹⁰ Karni, *supra* note 7.

¹¹ Alain Stephens, *What Makes a Gun a Ghost Gun?*, THE TRACE (Dec. 5, 2019), <https://www.thetrace.org/2019/12/what-makes-a-gun-a-ghost-gun>.

¹² *Transcript: Bureau of Alcohol, Tobacco, Firearms & Explosives Director Steven Dettelbach on Face the Nation*, CBS NEWS (March 3, 2024), <https://www.cbsnews.com/news/steven-dettelbach-bureau-of-alcohol-tobacco-and-firearms-director-face-the-nation-transcript-03-03-2024> (emphasis added).

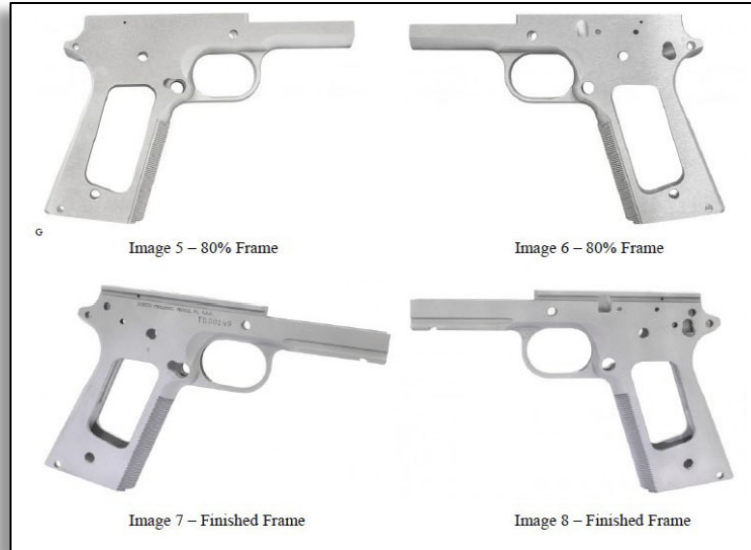


Fig. 2: 80 Percent Frame vs. Finished Frame¹³

Ghost gun manufacturers, sellers, and dealers argued that 80 percent receivers and frames are not “firearms” because they required some additional steps, including basic machining that could be performed at home, before users could fire their new DIY guns. Ghost gun manufacturers, sellers, and dealers thus intentionally skirted the Gun Control Act’s serialization and background-check requirements, which apply only to “firearms.” *See* 18 U.S.C. § 923(a), (i); *id.* § 922(t).

Pre-Final Rule advertisements specifically highlighted that 80 percent receivers and frames could be purchased without a background check. Indeed, those features made these products desirable. One company, for example, touted that its partially complete receiver was “not considered a firearm,” which “means

¹³ First Amended Complaint, *supra* note 4, ECF 122 at 5.

no background checks, no FFL required, and no need to get off your couch.”¹⁴ Another advertised that its ghost gun kit was “specifically designed to straddle the line between an ATF firearm classification and a DIY project” and that buyers could build their firearms with “[n]o fuss, no muss, no registration, no records.”¹⁵

With ghost guns unregulated, readily available, and heavily advertised, their presence in the market—and at crime scenes—increased exponentially in the years following the first ghost gun sales. “[T]he number of suspected PMFs [privately manufactured firearms] recovered by law enforcement agencies and submitted to ATF for tracing increased by 1,083 percent from 2017 (1,629) to 2021 (19,273).”¹⁶ California law enforcement officials’ recoveries of ghost guns began rapidly increasing in 2015, and by 2021, ghost guns made up 20 percent of all guns recovered during criminal investigations.¹⁷ Similarly, “[i]n 2021, law enforcement in New York State recovered 637 ghost

¹⁴ *What Is a Stripped Lower Receiver*, 80 PERCENT ARMS (Dec. 26, 2019), <https://www.80percentarms.com/blog/what-is-a-stripped-lower-receiver>.

¹⁵ Affidavit of Kenneth Morales, Ex. 5, *New York v. Arm or Ally, LLC*, No. 22-cv-6124 (S.D.N.Y. Jan. 12, 2023), ECF 82-5 (archived version of blogpost *I Can Build My Own Gun With This!?!?*, GLOCKSTORE (Aug. 9, 2016)).

¹⁶ 2 ATF, NATIONAL FIREARMS COMMERCE AND TRAFFICKING ASSESSMENT (NFCTA): CRIME GUNS RECOVERED AND TRACED WITHIN THE UNITED STATES AND ITS TERRITORIES 5 (2023), <https://www.atf.gov/firearms/docs/report/nfcta-volume-ii-part-iii-crime-guns-recovered-and-traced-us>.

¹⁷ See Hannah S. Laqueur et al., *Trends and Sources of Crime Guns in California: 2010–2021*, 100 J. URBAN HEALTH 879, 883 (2023).

guns compared to 271 recovered in 2020, 100 in 2019, and 44 in 2018.”¹⁸ Overall, ghost guns were linked to criminal cases in at least 38 states between late 2018 and May 2020.¹⁹ And these statistics likely understate the scale of the problem because they include only those instances in which ghost guns were actually recovered by law enforcement.

The increased prevalence of ghost guns has correlated with a marked increase of gun violence against children. Recall that ghost guns sales began in earnest around 2009. Before that, “[t]he gun-death rate for children . . . was flat for more than a decade starting in 2000.”²⁰ But in 2014—just a few years after ghost guns entered the market—“the rate began to creep up.”²¹ “[B]y 2020 guns became *the leading killer*” of children.²² Between 2013 and 2016 alone, the rate of firearm deaths in children and adolescents jumped by 28 percent.²³ And over the past decade,

¹⁸ ROCKEFELLER INST. GOV’T, PRIVATELY MADE FIREARMS AND GHOST GUNS 3 (2022), <https://rockinst.org/wp-content/uploads/2022/10/Ghost-Guns-Preventing-Proliferation-2022.pdf>.

¹⁹ See Bill Whitaker, *Ghost Guns: The Build-It-Yourself Firearms that Skirt Most Federal Gun Laws and Are Virtually Untraceable*, CBS NEWS 60 MINUTES (May 10, 2020), <https://www.cbsnews.com/news/ghost-guns-untraceable-weapons-criminal-cases-60-minutes-2020-05-10/>.

²⁰ Robert Gebeloff et al., *Childhood’s Greatest Danger: The Data on Kids and Gun Violence*, N.Y. TIMES MAG. (Dec. 14, 2022), <https://www.nytimes.com/interactive/2022/12/14/magazine/gun-violence-children-data-statistics.html>.

²¹ *Id.*

²² *Id.* (emphasis added).

²³ Rebecca M. Cunningham et al., *The Major Causes of Death in Children & Adolescents in the United States*, 379 N. ENG. J. MED. 2470, 2471 (2018).

there has been a 53-percent increase in the firearm suicide rate among people between the ages of 10 and 24.²⁴

The prevalence of ghost guns poses particular risks for minors. Ghost gun products are readily available to underage shooters—people who are otherwise unable to purchase firearms under the Gun Control Act. That is a particularly disturbing result because minors with access to guns are especially likely to target other children: “The most common age of a [school] shooter is 17, followed by 16, 18, and 15.”²⁵

In sum, the proliferation of ghost guns in the late 2010s created a tinder box for violence against children. Ghost gun manufacturers were selling ghost gun parts and kits at record numbers. The ghost gun industry specifically targeted advertisements at individuals who wanted to avoid background checks and serializing their weapons. The result: People who were otherwise forbidden from purchasing guns—including violent domestic abusers, felons, and minors—were compiling arsenals of fully functional weapons that could not be traced by law enforcement. And all the while, the prevalence of gun violence against America’s children was increasing. It was only a matter of time before tragedy struck.

²⁴ See *Report: The Rise of Firearm Suicide Among Young Americans*, EVERYTOWN FOR GUN SAFETY (June 2, 2022), <https://everytownresearch.org/report/the-rise-of-firearm-suicide-among-young-americans>.

²⁵ Amy Rock, *K-12 School Shooting Statistics: 52 Years of Data*, CAMPUS SAFETY MAG. (Oct. 5, 2023), <https://www.campussafetymagazine.com/safety/k-12-school-shooting-statistics-everyone-should-know>.

II. Gracie Muehlberger And Dominic Blackwell Were Murdered With A Ghost Gun At Saugus High School Under The Pre-Final Rule Regime.

Amici have experienced firsthand the deadly and tragic results of exponential ghost gun proliferation. On what should have been a regular Thursday, a Saugus High School student—armed with a .45-caliber semi-automatic ghost gun—opened fire on classmates gathered in the school’s quad. The shooter was 16 years old. His mother had driven him to school that day, which happened to be his 16th birthday.²⁶ He shot Bryan’s daughter, Gracie, in the back at point-blank range. The bullet penetrated Gracie’s backpack, entered her back, and punctured her left lung before exiting through her left breast. She dropped to the ground, unable to breathe due to the collapse of her left lung. Blood filled her chest cavity, and Gracie began to drown in her own blood. Gracie suffered in pain for the next minute or two before ultimately succumbing to her injury. Frank’s son, Dominic, was shot and fatally wounded in the same attack. He died at the hospital later that morning. Three other students were injured in the rampage. And the shooter used his last bullet on himself. It took only sixteen seconds for the shooter to take three lives and injure three

²⁶ See Elisha Fieldstadt & Dennis Romero, *Suspected Gunman in Southern California High School Shooting Dies*, NBC NEWS (Nov. 15, 2019), <https://www.nbcnews.com/news/us-news/motive-behind-saugus-high-school-high-school-shooting-remains-mystery-n1083461>; Nathan Solis, *‘Ghost Gun’ Used in Deadly LA-Area High School Shooting, Police Say*, COURTHOUSE NEWS SERV. (Nov. 21, 2019), <https://www.courthousenews.com/ghost-gun-used-in-deadly-la-area-high-school-shooting-police-say>.

other students with his homemade handgun.²⁷ The police never identified a motive for his actions. He did not leave behind a manifesto or a note, and he did not know Gracie or Dominic personally. His rampage at Saugus High School made him the youngest mass shooter that year.²⁸

Given the shooter's age, he should have been unable to obtain a firearm legally. Federal law prohibits the sale of handguns to anyone under 21, *see* 18 U.S.C. § 922(b)(1), (c)(1), and, with limited exceptions, prohibits the possession of handguns by any person under 18, *see id.* § 922(x)(2), (5).

But even though the shooter was a minor, he was able to arm himself with a ghost gun. He either built the gun himself or took it from a cache of unregistered and unserialized weapons that had belonged to his father—who was *also* prohibited from legally purchasing or possessing a firearm due to a psychiatric evaluation.²⁹ Following that evaluation, law enforcement

²⁷ *See* Marisa Gerber et al., *A 16-Second Spasm of Violence Leaves Two Dead at Saugus High School*, L.A. TIMES (Nov. 15, 2019), <https://www.latimes.com/california/story/2019-11-15/saugus-high-school-santa-clarita-shooting>.

²⁸ U.S. SECRET SERVICE NAT'L THREAT ASSESSMENT CTR., MASS ATTACKS IN PUBLIC SPACES – 2019, at 13 (2020), <https://www.secretservice.gov/sites/default/files/reports/2020-09/MAPS2019.pdf>.

²⁹ *See* Dakin Andone, *The Gunman in the Saugus High School Shooting Used a 'Ghost Gun,' Sheriff Says*, CNN (Nov. 21, 2019), <https://www.cnn.com/2019/11/21/us/saugus-shooting-ghost-gun>; Eric Leonard, *Detectives Seized Guns at Home of Suspected Santa Clarita School Shooter in the Past*, NBC4 L.A. (Nov. 14,

had seized over a dozen firearms from the shooter's family home.³⁰ But this prohibition did not stop the shooter's father from acquiring weapons through the ghost gun market. When law enforcement searched the shooter's home after the Saugus High School shooting, they found a collection of untraceable ghost guns, in addition to that which was recovered at the school.³¹

Ghost guns were readily available to the teenage shooter and his father precisely because they could be purchased without a background check. As the Los Angeles County Sheriff explained, in 2019, 80 percent receivers and frames could be "shipped right to your door" in a process that was "not much harder than ordering a pizza."³² Dominic and Gracie's killer had access to an untraceable handgun, notwithstanding the numerous federal laws that should have kept that deadly weapon out of his hands.

After Dominic and Gracie's deaths, the continued ease with which teenagers could obtain ghost guns exacerbated Frank and Bryan's trauma. As a gun owner himself, Bryan had previously purchased firearms through retailers who conducted background checks

2019), <https://www.nbclosangeles.com/news/national-international/saugus-high-school-shooter-gun-own-parents-home/2176327>.

³⁰ See Richard Winton, *Santa Clarita Shooting: Weapon Used in Saugus High Attack a 'Ghost Gun,' Sheriff Says*, L.A. TIMES, (Nov. 21, 2019), <https://www.latimes.com/california/story/2019-11-21/santa-clarita-shooting-45-caliber-gun-saugus-high-attack-a-ghost-gun-sheriff-says>.

³¹ *Id.*

³² Whitaker, *supra* note 19.

and confirmed that he carried the required licenses before selling him a weapon. He was shocked to learn that the gun used to kill his daughter could be purchased online, without submitting to a background check or displaying a license.

In Spring 2020, Bryan decided to see for himself how easy it would be for a teenager to purchase a ghost gun. He took to the internet, where he was easily able to locate a ghost gun retailer. Bryan then attempted to make a test purchase, buying a ghost gun under his deceased daughter's name. Even though the name he provided as the purchaser—Gracie's—did not match the name on his credit card, Bryan was able to purchase a ghost gun kit for \$650 in minutes. The online retailer did not even verify the purchaser's identity, much less run a background check, as part of the sale process. Even if Gracie had still been alive, she would have been underage and prohibited from purchasing a firearm under the Gun Control Act. But days after Bryan made his purchase, a ghost gun kit addressed to Gracie arrived at the Muehlbergers' home with everything needed to build a homemade gun in minutes.

III. Frank And Bryan's Tragic Losses Were Two Among Many Caused By Ready Access To Ghost Guns.

Frank and Bryan's tragedy is, unfortunately, not rare. Before the Final Rule, legions of other parents joined Frank and Bryan's nightmare, as teens across the country used ghost guns to take the lives of their

peers.³³ Examples from the months leading up to the promulgation of the Final Rule are plentiful:

- **Arizona.** On November 29, 2021, at Cesar Chaves High School in Phoenix, Arizona, a 15-year-old student armed with a ghost gun shot and critically injured a classmate in a school bathroom after a disagreement about the shooter's attempt to purchase the gun from his victim.³⁴
- **Virginia.** On April 25, 2021, in Fairfax County, Virginia, an 18-year-old high school student killed two other students with a ghost gun following an altercation at his home, just a month before graduation.³⁵ The Fairfax County police recovered a second ghost gun from the shooter in a search following the incident.³⁶
- **Maryland.** On August 18, 2021, in Germantown, Maryland, a 14-year-old boy used a ghost gun to

³³ See Ivan Pereira, *Ghost Guns Showing Up in School Shootings, Experts Fear Trend Will Get Worse*, ABC NEWS (Mar. 17, 2022), <https://abcnews.go.com/US/ghost-guns-showing-school-shootings-experts-featrend/story?id=83346844>.

³⁴ See Steven Hernandez et al., *Sale of 'Ghost Gun' with Fake Money Led to Cesar Chavez High School Student Shooting*, AZCENTRAL (Nov. 30, 2021), <https://www.azcentral.com/story/news/local/phoenix/2021/11/30/cesar-chavez-high-school-increases-safety-measures-after-student-shot/8809221002>.

³⁵ See Justin Jouvenal, *Fatal Shooting of Fairfax County Teens Began with a Challenge to Fight, Prosecutor Says*, WASH. POST (Apr. 28, 2021), https://www.washingtonpost.com/local/public-safety/burkard-bond-hearing-fairfax/2021/04/28/076f0f4a-a840-11eb-8d25-7b30e74923ea_story.html.

³⁶ *Id.*

open fire at a community center basketball court, killing one man and injuring three teenagers.³⁷

- **Georgia.** On November 27, 2021, near Atlanta, Georgia, a 13-year-old boy, who had been purchasing ghost-gun kits online, building the guns, and reselling them on the street, accidentally shot and killed his 14-year-old sister when they were robbed while attempting to sell a ghost gun.³⁸
- **Illinois.** On January 4, 2022, at Auburn High School in Rockford, Illinois, a 16-year-old and a 17-year-old injured two other teens with a ghost gun in the school parking lot.³⁹
- **Maryland.** On January 21, 2022, at Magruder High School in Rockville, Maryland, a 17-year-old student shot and wounded a classmate using a ghost gun he bought online and assembled with a

³⁷ See Dan Morse & Michael Rosenwald, *14-Year-Old Boy Charged with Murder After Shooting on a Maryland Basketball Court*, ABC NEWS (Aug. 20, 2021), <https://wjla.com/news/local/14-year-old-shilen-wylie-fatal-quadruple-shooting-german-town-recreation-center-ghost-gun>.

³⁸ Alexis Stevens, *13-Year-Old Accused of Killing Sister Was Making Guns at Home, Douglas County Sheriff Says*, ATLANTA J. CONST. (Dec. 2, 2021), <https://www.ajc.com/news/breaking-13-year-old-accused-of-killing-sister-was-making-own-guns-at-home-sheriff-says/LSXFTOQVBBA4JEGPCUQI5RNKYY>.

³⁹ See Chris Green, *Rockford Police Chief Says Juvenile Crime Is 'Out of Control'*, ROCKFORD REGISTER STAR (Jan. 5, 2022), <https://www.rrstar.com/story/news/2022/01/05/states-attorney-rockford-leaders-appeal-fighting-juvenile-crime/9106919002>.

friend.⁴⁰ As of March 2022, officials in Montgomery County, Maryland reported that ghost guns had been confiscated from five high schools in the district during that school year alone.⁴¹

- ***New Mexico.*** On February 25, 2022, outside West Mesa High School in West Mesa, New Mexico, a 14-year-old student used a ghost gun to kill a classmate after the boys got into a fight over the weapon.⁴²
- ***Kansas.*** On March 4, 2022, at Olathe East High School in Olathe, Kansas, a student used a ghost gun to wound an administrator and a school resource officer.⁴³ Although this student was 18 years old, he was otherwise prohibited from purchasing a firearm due to a prior felony conviction.⁴⁴
- ***New York.*** On April 9, 2022, outside the South Bronx Educational Campus in the Bronx, New York, a 17-year-old shot and killed a 16-year-old

⁴⁰ See Associated Press, *Magruder High School Shooter Bought Ghost Gun Online, Friend Helped Build It*, FOX5 NEWS (Jan. 25, 2022), <https://www.fox5dc.com/news/magruder-hs-shooter-bought-ghost-gun-online-friend-helped-build-it>.

⁴¹ See Pereira, *supra* note 33.

⁴² See Brittany Costello, *Plea Deal Reached in Fatal Shooting Outside West Mesa HS*, KOB4 NEWS (Sept. 18, 2023), <https://www.kob.com/new-mexico/plea-deal-reached-in-fatal-shooting-outside-west-mesa-high-school-marco-trejo>.

⁴³ See Rebecca Gannon, *District Attorney Says Olathe East High School Shooting Suspect Reportedly Used ‘Ghost Gun’*, KMBC 9 NEWS (Mar. 7, 2022), <https://www.kmbc.com/article/da-olathe-east-shooting-ghost-gun/39359122>.

⁴⁴ See *id.*

girl and wounded two other students with a ghost gun.⁴⁵

This list is nowhere near an exhaustive catalogue. If Respondents prevail, and the relevant provisions of the Final Rule are vacated, the number of similar ghost gun-related tragedies—and the number of young lives lost—will undoubtedly increase.

CONCLUSION

Affirming the Fifth Circuit’s decision would undo Frank and Bryan’s years of work and return our country to a regulatory regime under which too many children were killed. If this Court holds that ATF lacks any authority to regulate ghost gun kits or partially complete frames and receivers, Frank and Bryan’s efforts to prevent a repeat of their children’s deaths will be for naught. An increasingly internet-literate generation of children will be able to buy DIY ghost guns online. And a concrete step taken to slow the epidemic of childhood firearm deaths will be replaced with a regime in which children can order these deadly weapons to their doorsteps—the regime under which Gracie and Dominic were killed.

Frank and Bryan urge this Court to preserve a basic, common-sense regulation that is well within ATF’s authority and that protects other children against Dominic and Gracie’s fate. The Court should reverse.

⁴⁵ See Aaron Katersky et al., *17-Year-Old Arrested in Connection with Bronx High School Shooting That Left Teen Dead*, ABC NEWS (Apr. 9, 2022), <https://abcnews.go.com/US/17-year-arrested-connection-bronx-high-school-shooting/story?id=83981645>.

Respectfully submitted,

LEE R. CRAIN

Counsel of Record

ERICA SOLLAZZO PAYNE

LIESEL N. SCHAPIRA

ZACHARY R. EDELMAN

JULIA T. ROSS

LIAM A. FINE

GIBSON, DUNN & CRUTCHER LLP

200 Park Avenue

New York, NY 10166

(212) 351-2454

lcrain@gibsondunn.com

SCOTT EDELMAN

GIBSON, DUNN & CRUTCHER LLP

2029 Century Park East

Los Angeles, CA 90067

KATHERINE M. MARQUART

GIBSON, DUNN & CRUTCHER LLP

333 South Grand Avenue

Los Angeles, CA 90071

Counsel for Amici Curiae

July 2, 2024