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By electronic submission to www.regulations.gov

U.S. Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives
Office of Regulatory Affairs, Enforcement Programs and Services
Attn: Andrew Lange
99 New York Ave. NE, Mail Stop 6N-518
Washington, DC 20226

Re: Comment Letter on the Notice of Proposed Rulemaking: Definition of “Frame of Receiver” and Identification of Firearms (Docket No. ATF 2021R-05)

Ladies and Gentlemen,

Everytown for Gun Safety Support Fund welcomes the opportunity to comment on the notice of proposed rulemaking issued by the Department of Justice (**DOJ**) through the Bureau of Alcohol, Tobacco, Firearms and Explosives (**ATF**), entitled *Definition of “Frame or Receiver” and Identification of Firearms*, published in the Federal Register on May 21, 2021 (the “**Proposed Rule**”).¹

We applaud ATF for taking this critical action. For the reasons stated below, we believe that the Proposed Rule is imperative to stop the dangerous proliferation of ghost guns, updates an outdated definition of firearm to appropriately capture the intent of federal gun laws, is a necessary correction to ATF’s previous determinations with respect to nearly-complete frames and receivers, and is vital for the protection of public safety. We strongly recommend that ATF finalize the Proposed Rule without delay.

I. Introduction

Every day, more than 100 people in the United States are killed with guns and twice that many are wounded. Everytown for Gun Safety Support Fund is the education, research, and litigation arm of Everytown for Gun Safety, the largest gun violence prevention organization in the country.² We seek to improve our understanding of the causes of gun violence and help to reduce it.

¹ 86 Fed. Reg 27720 (May 21, 2021).

² Everytown for Gun Safety has nearly six million supporters and more than 350,000 donors including moms, mayors, survivors and everyday Americans who are fighting for public safety measures that can help save lives. At the core of Everytown are Mayors Against Illegal Guns, Moms Demand Action for Gun Sense in America, Students Demand Action and the Everytown Survivor Network. Everytown for Gun Safety Support Fund seeks to improve our understanding of the causes of gun violence and the means to reduce it – by conducting groundbreaking original research, developing evidence-based policies, and communicating this knowledge to the American public.



Ghost guns are the fastest growing gun safety problem facing our country. A ghost gun is generally a do-it-yourself firearm made from a nearly-complete, and untraceable, frame or receiver. A frame or receiver is the core building block of a firearm and as such is treated as a firearm under federal law. Nearly-complete frames and receivers are designed and sold for the sole purpose of being quickly and easily converted into operable firearms with widely available tools and little-to-no expertise. Nearly-complete frames and receivers are “firearms” under federal law, but ATF has failed to properly enforce that law, based on an outdated and flawed rationale. Under ATF’s current regulatory framework, many nearly-complete frames and receivers are not marked with serial numbers and are being sold with no background check and no questions asked.

It is no surprise that ghost guns are emerging as a weapon of choice for violent criminals, gun traffickers, dangerous extremists, and other people legally prohibited from buying firearms. Law enforcement agencies have been recovering ghost guns from crime scenes at alarming rates, and ghost guns have been used in many heinous crimes, including mass shootings and attacks by far-right extremists. As ATF illustrates in the preamble to the Proposed Rule, from 2016 to 2020, nearly 24,000 ghost guns were reported to ATF as having been recovered by law enforcement from potential crime scenes.³

Everytown applauds ATF for taking action to stop the rising threat that ghost guns pose to the American public. The Proposed Rule is urgently necessary to protect public safety, and would do so by taking the following actions:

- updating the regulatory definitions of “firearm” and “frame or receiver” to clearly cover ghost gun kits and nearly-complete frames and receivers;
- confirming that nearly-complete frames and receivers are subject to serialization requirements, as “frames or receivers” under the amended definition; and
- confirming that federal firearms licensing requirements apply to individuals engaged in the business of manufacturing or dealing in ghost gun kits or nearly-complete frames or receivers regulated under the amended definitions of “firearm” and “frame and receiver.”

The Proposed Rule is vital for the protection of public safety and ATF can and should dismiss any false claims that the Proposed Rule runs contrary to the Second Amendment, that it would prohibit hobbyists from building firearms for personal use, or that the Proposed Rule is arbitrary and capricious. The Proposed Rule would simply enforce long-standing statutes by confirming that sales of nearly-complete frames and receivers are governed by the same laws and regulations that apply to all other firearms. Given the Proposed Rule’s overwhelming net benefits, it should be finalized without delay.

The remainder of this comment letter is structured as follows: **Part II** explains that nearly-complete frames and receivers are covered as “firearms” under the Gun Control Act and

³ 86 Fed. Reg 27720, 27722.



that the Proposed Rule is a necessary correction to ATF’s flawed regulatory posture. **Part III** demonstrates that the Proposed Rule is necessary because ATF’s current regulatory definition of “frame or receiver” is outdated and nonfunctional. **Part IV** explains why ATF can and should dismiss false claims that the Proposed Rule runs contrary to the Second Amendment. **Part V** explains why ATF can and should dismiss false claims that the Proposed Rule would prohibit hobbyists from building firearms for their personal use. **Part VI** asserts that ATF has sound legal authority to promulgate the Proposed Rule and explains why ATF can and should dismiss meritless arguments that the Proposed Rule is arbitrary and capricious. **Part VII** discusses our comments and clarifications with respect to ATF’s prior determination letters that are inconsistent with the Proposed Rule.

II. Nearly-Complete Frames and Receivers Are Clearly Covered as “Firearms” Under Federal Law. The Proposed Rule Is a Necessary Correction to ATF’s Previous Regulatory Posture and Should Be Finalized in Order to Protect Public Safety

Nearly-complete frames and receivers, the core building blocks of ghost guns, clearly are “firearms” as the term is defined in the United States Code and should therefore be regulated as firearms by ATF.⁴ In the last few years, however, ATF has neglected to enforce the law that covers these weapons as firearms, based on a flawed and overly-technical rationale. Indeed, even in the Proposed Rule, ATF continues to erroneously state that ghost guns “when made for personal use, are not required by the [Gun Control Act] to have a serial number placed on the frame receiver.”⁵ ATF’s under-regulation of ghost guns has had dangerous consequences. Companies have exploited ATF’s failure, flooding the market with dangerous firearms that have, in effect, just barely escaped regulation. Criminals have taken advantage of these widely available kits and nearly-complete frames and receivers and have used ghost guns in heinous crimes. By launching the process to promulgate the Proposed Rule, ATF has taken a critical and necessary step toward reversing this chain of events and protecting public safety. ATF should finalize the Proposed Rule without delay.

A. Nearly-complete firearm frames and receivers are covered under the statutory definition of firearm because they are designed to fire and may be readily converted to fire

More than 50 years ago, amid rising rates of violent crime and following several high-profile assassinations — including the killing of President John F. Kennedy with a rifle ordered through the mail — Congress passed the Gun Control Act of 1968 (the “**Gun Control Act**”), a landmark piece of legislation that asserted federal control over the manufacture, distribution, purchase, and sale of firearms. One of the principal aims of the Gun Control Act was to regulate the entire commercial market for firearms. To achieve this aim, the Gun Control

⁴ As subsection II.A demonstrates, nearly-complete frames and receivers are regulated under the Gun Control Act. Therefore, while the Proposed Rule is an important demonstration that ATF has cured its flawed interpretation of federal law, rulemaking is not legally required in order for ATF to enforce the provisions of the Gun Control Act as written.

⁵ 86 Fed. Reg 27720, 27722.



Act mandated, among other things, that firearms dealers be federally licensed and that every firearm sold in the United States be stamped with a serial number by the manufacturer so that law enforcement could trace the origin of the firearm if it was ever used in a crime.

The Gun Control Act's definition of "firearm" has had far-reaching impacts. This single definition is the foundation upon which most of the Gun Control Act's other provisions (and later amendments) are built. For example, only sellers of weapons that qualify as "firearms" are subject to dealer licensing requirements and only "firearms" are subject to serialization requirements under the statute. Therefore, only weapons that qualify as "firearms" can be traced by law enforcement when used in a crime. And only "firearms" are implicated by the purchaser background check requirements of the 1994 Brady Handgun Violence Prevention Act (the "Brady Act"), which amended the Gun Control Act. Congress defined "firearm" broadly, covering more than just complete, operable firearms — extending the definition of firearm to cover the frame or receiver of a firearm. By covering the frame or receiver as a firearm under the definition, firearms can't merely be disassembled to evade regulation. And as the critical component of a firearm, the core part that no firearm can function without, the frame or receiver is the component regulated as a firearm as opposed to other secondary components. Therefore, firearms, frames, and receivers need not be presently operable to be considered "firearms" under the statute, rather they need only be "designed to fire" or "readily converted" to fire. This definition is still the controlling definition under law, and it provides:

The term "firearm" means (A) any weapon (including a starter gun) which will or is designed to or may be readily converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.

The statutory definition of firearm therefore describes four categories of items, each of which constitutes a "firearm" for purposes of federal law. Subparagraph (A) provides three independent criteria for an item to qualify as a firearm, i.e., as a thing that can "expel a projectile by the action of an explosive." It describes (1) "any weapon ... which will ... expel a projectile by the action of an explosive — defining an operable weapon— (2) "any weapon ... which ... is designed to ... expel a projectile by the action of an explosive" — covering items intended to fire projectiles, but which may not function in their present condition — and (3) "any weapon ... which ... may readily be converted to expel a projectile by the action of an explosive" — clarifying that items that do not presently fire but can be "readily converted" to function are also considered firearms. As a federal appeals court has explained, "Congress did not consider operability as an essential statutory element" of the definition of "firearm."⁶

Subparagraph (B) extends the definition of "firearm" to cover the frame or receiver "of any such weapon." "[T]he term 'firearm' includes mere parts of a gun that alone are incapable of firing, such as the frame " Subparagraph (B) refers back to the tripartite definition in

⁶ *U.S. v. Brown*, 117 F.3d 353, 356 (7th Cir. 1997).



subparagraph (A): that is to say, a “frame or receiver” is a “firearm” if it is a component of a “weapon” that “[1] will or [2] is designed to or [3] may readily be converted to expel a projectile by the action of an explosive.” By placing “such” in front of a term that is used earlier in a statute's text — here, “weapon” — the term's meaning from the first instance is carried forward to the latter usage in subparagraph (B).⁷ Thus, all three portions of subparagraph (A)'s disjunctive are carried forward to subparagraph (B); “weapon” has the exact same meaning in subparagraphs (A) and (B). Indeed, the Department of Justice recently took this position in litigation.⁸ A federal judge agreed, holding that “a plain reading of 921(a)(3) indicates that if the receiver of a weapon can be readily converted to expel a projectile, then that receiver can be considered a 'firearm' under the statute.”⁹

By regulating a weapon that is “designed to” fire or “may readily be converted” to fire, federal law reaches beyond a weapon that will fire in its current state, including to inoperable firearms. Federal courts agree unanimously on this point.¹⁰ Though it cannot fire in its current state, an inoperable firearm “continues to be 'designed' to fire a projectile.”¹¹ An inoperable firearm would qualify as a firearm under the statute if it can be converted to fire reasonably quickly and easily. The fact that a weapon is designed to fire or can be readily converted to fire is sufficient to qualify it legally as a firearm affirms its status as a legal firearm.

In sum, “Congress meant the term 'firearm' to include the entire subset of weapons that can fire, or be made to fire, a projectile out of a barrel with the aid of a propellant” The definition of “firearm” requires treating a frame or receiver as a regulated firearm if that frame or receiver has the capacity to be part of any weapon that: (1) “will” fire; (2) “is designed to” fire; or (3) “may readily be converted to” fire. There is simply no statutory basis to “read in” a requirement that receivers or frames be “complete” in order to be a frame or receiver. In fact, ATF has never required the receiver or frame be complete in order to meet the statutory definition.

A nearly-complete frame or receiver falls within the statutory definition of “firearm” because it is “designed” to operate in a weapon. Nearly-complete frames and receivers are unquestionably designed to be part of a functional firearm — indeed, it is how these products are marketed and used. Congress defined “firearm” in such a way that every weapon has a frame or

⁷ See *United States v. Krstic*, 558 F.3d 1010, 1013 (9th Cir. 2009) (“‘Such’ can refer exclusively to preceding nouns and adjectives. It can also refer to surrounding verbs, adverbial phrases, or other clauses. Context is typically determinative.”); *International Brotherhood of Electrical Workers v. Illinois Bell Tel. Co.*, 496 F.2d 1,3 (7th Cir. 1974) (concluding that statute’s prohibition on employer’s financing “any such action” in a proviso referred back to language in a preceding clause states the right of a union member “to institute an action in any court”).

⁸ Brief of the United States, *U.S. v. Wick*, 2017 WL 774210 at 29 (9th Cir. Feb. 22, 2017) (“Further, nothing in § 921(a)(3)(B) limits receivers to only whole receivers as Wick suggests. The only limitation on the form of the receivers in subsection B is that they come from “any such weapon” that is either designed to shoot or can readily be converted to do so. That is, a receiver, even one in two or three pieces, that can readily be converted into a functioning gun with the addition of some other parts and weld or two is a firearm.”).

⁹ *United States v. Wick*, No. CR 15-30-M-DLC, 2016 WL 10637098, at *1 (D. Mont. July 1, 2016), *aff’d*, 697 F. App’x 507 (9th Cir. 2017).

¹⁰ See *United States v. Rivera*, 415 F.3d 284, 286 (2d Cir. 2005) (citing cases).

¹¹ *Id.*



receiver. No firearm can function without a frame or receiver — they are the essential building blocks of every firearm. Nearly-complete frames or receivers are marketed as having one purpose — to become part of a finished firearm. Sellers of nearly-complete frames and receivers clearly and unambiguously state in their marketing and advertising of these products that they are intended and designed to be used to build firearms. Many online sellers include instructional videos on how to convert them into operable firearms.¹²

A nearly-complete frame or receiver also falls within the statutory definition of “firearm” because it “may readily be converted” to fire: specifically, a non-professional gunsmith can, with widely available basic tools, in less than an hour’s time, turn that frame or receiver into a functioning firearm once assembled with a few additional parts. Typically, all that is required to convert a nearly-complete rifle receiver into a firearm is milling the fire-control cavity and drilling the small fire-control component pivot-pin holes, and for a nearly-complete pistol frame, cutting the slide rails and barrel seat and drilling pin holes.

Online sellers of nearly-complete frames and receivers advertise how easy it is to take these simple steps — and convert these parts into an operable firearm. To aid in the quick and easy conversion of nearly-complete frames and receivers, online sellers often package the frame or receiver in a kit that includes instructions, a jig designed to guide the conversion, and the exact tools or drill bits necessary. Sellers have sold all the other parts needed to assemble a fully functional firearm, either packaged with the frame or receiver or sold independently. One online seller of an AK-47 build kit marketed the kit as “one of the simplest processes to date.”¹³ The seller also provided a how-to video on the sale page. Another seller boasted that, with their all-in-one AR-15 build kit, “building time doesn’t take too long. Within an hour or two, you should be breaking it in at the range.”¹⁴

The plain meaning of “firearm” as defined under federal law requires that a nearly-complete frame or receiver be regulated as a firearm if it is intended to be used in an assembled, operable weapon or if it can be turned into an operable frame or receiver without expending a substantial amount of time and effort. It is indisputable that the vast majority of nearly-complete frames and receivers currently on the market that are fueling the proliferation of ghost guns fit this description.

B. ATF has recently neglected to enforce the law that covers nearly-complete frames and receivers

As discussed in subsection II.A, nearly-complete frames and receivers fall within the statutory definition of “firearm” as they are clearly meant to be assembled into a firearm and the process to do so is quick, easy, and requires little-to-no expertise. Federal law provides for significant regulation of frames and receivers. People with felony convictions, fugitives, and domestic violence offenders are prohibited from buying and possessing frames and receivers just

¹² See, e.g. <https://www.polymer80.com/how-to-manuals>.

¹³ “AKM AK47 80% Complete Build Kit,” [On File], accessed March 6, 2020.

¹⁴ Gary Vela, “Why Is Purchasing an AR-15 Kit Is Great for Beginners?,” [On File], May 10, 2019.



as they are prohibited from buying and possessing fully built firearms. Anyone who is engaged in the business of manufacturing or selling frames or receivers must be licensed by ATF. A licensed manufacturer and licensed importer must mark the frame or receiver with a serial number. A licensed dealer selling a frame or receiver must conduct a background check on the buyer.

ATF once took an approach to the classification of nearly-complete frames and receivers as firearms that was more closely aligned with the statute. In a 1976 legal memorandum, ATF's Assistant Chief Counsel explained that "unfinished frames" or "castings" qualify as firearms if they "may be 'readily converted'" and therefore "the manufacturers of these firearms must comply with the licensing, identification, and recordkeeping requirements of the [Gun Control] Act." In the earliest classification letter issued by ATF evaluating whether a nearly-complete frame or receiver was legally a firearm, ATF reasoned that a "machined frame" was a firearm because it had "reached a stage of manufacture such that it may readily be converted to functional condition."

Through the 1980s and 1990s, ATF continued to use the "may readily be converted" test — a test grounded in the text of the Gun Control Act — to make determinations about whether nearly-complete frames or receivers qualified as firearms. In ATF's classification letters, this test involved testing whether the item could practically be turned into the frame or receiver of a functional firearm with relative speed and ease. ATF advised in one 1980 letter that "[c]ertainly, if an unfinished receiver could be converted to functional condition within a few hours using common hand tools, or simple grinding, cutting, drilling, or welding operations, it would likely qualify as a firearm." Dating back to at least the 1980s, ATF has issued numerous determination letters correctly weighing the ease and speed with which a receiver could be turned into a functioning firearm to determine whether the frame or receiver met the definition of firearm.

However, beginning in the early 2000s, ATF began issuing classification letters taking the position that many nearly-complete frames and receivers are not "frames or receivers" regulated by federal law. Under this framework, which continued uncorrected before the promulgation of the Proposed Rule, ATF does not consider a frame or receiver to qualify as a firearm if it has not yet undergone the drilling of the trigger cavity. Therefore, although a nearly-complete frame or receiver can be made into a functioning semi-automatic firearm in under an hour by a layperson with the right tools and instructions, ATF determined that those frames or receivers are outside the reach of federal law.¹⁵ This technical approach to interpreting the definition of firearm is unmoored from the statutory language and without basis.

¹⁵ The classification letters contained virtually no reasoning that would reconcile ATF's conclusions — that nearly-complete frames and receivers are not firearms — with the language of the Gun Control Act or with earlier classification letters that determined nearly-complete frames and receivers to be firearms. It appeared that the informality of the classification process set the conditions for ATF to issue decisions that unthinkingly allowed the gun-kit industry to emerge and bring about the proliferation of ghost guns. Everytown is encouraged that ATF is proposing a regulation to guide the issuance of classification letters. We hope that ATF will also, as a matter of course, make all of its classification letters public through its website upon issuance. These letters have historically been provided only to the industry members requesting classification decisions. But that status quo is untenable given that these letters have proven to have broad public impact.



Instead of weighing the ease and speed with which a receiver could be turned into a functioning firearm, ATF's framework for determining whether a receiver constitutes a firearm is based on a purely technical distinction — indicating in classification letters, for example, that “an AR-15 type receiver which has absolutely no machining performed in the area of the trigger/hammer recess might not be classified as a firearm.”¹⁶ ATF has advised that “such a receiver could have all other machining operations performed, including pivot pin and takedown pin hole(s) and clearance for the takedown pin lug, but must be completely solid and un-machined in the trigger/hammer recess area [in order to escape qualifying as a firearm].” With this, ATF effectively announced that as long as the trigger group area of an AR-15 receiver is solid, the receiver would not be considered a firearm, no matter how easily and quickly that receiver can be turned into a firearm. ATF did not provide any justification for this regulatory shift, nor did ATF indicate how it squared this approach with the statutory definition of firearm.

C. The firearms market has exploited ATF's regulatory failure, leading to the proliferation of unserialized and untraceable firearms

The natural result of ATF's flawed and overly-technical interpretation has been a profound expansion of the availability of nearly-complete frames and receivers and a flourishing unregulated firearms market. Companies are purposefully manufacturing nearly-complete frames and receivers that are machined just far enough short of completion to try to avoid regulation — and those dangerous weapons are widely available for purchase online, at gun shows, and at stores. The expansion of the online market has been especially dramatic — a recent analysis by Everytown uncovered 80 online sellers of nearly-complete frames and receivers, 68 percent of whom only began offering nearly-complete frames and receivers for sale between January 2015 and May 2020.¹⁷

In addition to the booming market for nearly-complete frames and receivers, ATF's under-regulation of frames and receivers has led to thriving submarkets for the tools and parts needed to easily, quickly, and cheaply convert nearly-complete frames and receivers into fully operable firearms. Manufacturers and sellers of nearly-complete frames and receivers have designed and patented power-tool guides, known as jigs, that make it easy for an unskilled user to complete the drilling and filing of a frame or the machining of a receiver. In a patent application for a lower receiver jig, one ghost gun kit seller describes how nearly-complete receivers are designed to be converted into operable firearms:

A market exists for incompletely/partially manufactured firearm lower receivers. A firearm lower receiver is unregulated until a minimum level of manufacturing is completed. This level is typically known as “80%”. Firearm lower receivers completed to

¹⁶ Letter from Sterling Nixon, Chief, Firearms Technology Branch, ATF to Justin Halford (Apr. 24, 2006) (underlining in original).

¹⁷ Everytown was able to determine the approximate start year for all 80 sellers. Of the 80 sellers for which Everytown was able to determine the approximate year in which the seller began marketing 80% frames and/or receivers, 54 of them started between January 2015 and May 2020.



this level are typically referred to as “80%” lower receivers. These firearms must then be completed by the end user to be operable.¹⁸

The application details how the jig is designed to aid end-users in this conversion. Specifically, the patent application describes how the jig provides three precisely placed drill guide holes “so that an unskilled user can properly place the pivot/pin holes for completion of the assembly of a functioning lower receiver.” One website offering nearly complete receivers and frames announces that their jig “makes it ridiculously easy for a non-machinist to finish their 80% lower [receiver] in under 1 hour with no drill press required.”¹⁹ Another seller offers a jig for a variety of rifle receiver types that can be used to complete a nearly-complete receiver “in under 15 minutes with excellent results.”²⁰

Some sellers make it even easier to build an untraceable firearm by selling all-in-one ghost gun build kits. These kits often contain a nearly-complete frame or receiver, packaged together with all of the parts needed to assemble a fully functional firearm, including a jig and instructions for exact machining, the tools or drill bits necessary, and all of the remaining firearm components. These sellers have become one-stop shops for any person to get the building blocks, tools, and information to construct a fully operational, untraceable gun, without a background check.

Sellers of ghost gun kits and nearly-complete frames and receivers clearly advertise that their products are meant to be built into operable guns, and often explicitly market the products as a regulation-free way to buy a firearm.²¹ The advertisements for nearly-complete frames and receivers often feature pictures of completed firearms (not the unfinished product) that conspicuously show that there is no serial number. Lacking a serial number is a selling point for these products, with some products explicitly celebrating the lack of a serial number.²² In addition, the sellers openly promote that these products are not currently being regulated by ATF, often with copies of the formal letters sent from ATF saying certain products are not regulated by ATF, alongside the pictures, parts, and instructional guides.²³

D. Violent criminals and gun traffickers have benefitted from this growing market of widely available, unserialized, and untraceable firearms

As discussed above, ATF’s previous failure to regulate nearly-complete frames and receivers, despite its existing statutory authority to do so, has allowed a dangerous market in ghost guns to expand and take hold — giving a green light to the sale of nearly-complete, unserialized frames and receivers and kits over the internet and at gun shows and gun stores, all without background checks. There is no doubt that sellers are marketing nearly-complete frames

¹⁸ Wayne R. Partington, 80 Percent Arms, Inc. (2020). *Jig for manufacturing of firearm lower receiver* (10718578). USPTO. <https://bit.ly/3xTIVvK>.

¹⁹ “Best 80% Receivers, Jigs, Parts & More,” [On File], accessed February 29, 2020.

²⁰ “The Router Jig Pro Multiplatform – AR-15/AR-9/AR-45/.308/AR-10,” [On File], accessed February 29, 2020.

²¹ See, e.g. <https://bit.ly/3sDpOVP>.

²² “Rifle Classic Kit 80%”, [On File].

²³ See, e.g. <https://bit.ly/3CVRQjX>.



and receivers as firearms and no suggestion that these products have any purpose other than becoming part of an operable weapon. The untraceable and no-background-check nature of these firearms isn't incidental — it's their primary selling point. And yet, ATF has not required sellers of nearly-complete frames and receivers to follow the same rules as those dealing in fully assembled firearms. This lack of regulation has created an unmistakable risk to public safety as these products can easily be purchased and used by criminals and other people prohibited from buying guns legally.

Ghost guns are predictably emerging as a weapon of choice for violent criminals, gun traffickers, dangerous extremists, and other people legally prohibited from buying firearms. As noted in the preamble to the Proposed Rule, from 2016 to 2020, nearly 24,000 of these guns were reported to ATF as having been recovered by law enforcement from potential crime scenes, including 325 homicides and attempted homicides.²⁴ In 2020 alone, the Los Angeles Police Department recovered more than 700 guns built from nearly-complete Polymer80 frames alone, many of which were used in serious or violent crimes such as homicide, attempted homicide, kidnapping, and carjacking.²⁵ Law enforcement leaders continue to raise alarms over the danger that unregulated and untraceable ghost guns pose to public safety. “Ghost guns are quickly becoming the weapon of choice for criminals and fueling the gun violence epidemic. These DIY gun kits should be subject to the same background checks and qualifications as fully functioning firearms to prevent criminals who are not legally able to purchase or possess guns from getting their hands on these deadly, untraceable weapons,” said Pennsylvania Attorney General Josh Shapiro.²⁶ A groundbreaking new report from the Police Foundation warns that “in cities across the country [law enforcement agencies] are growing increasingly concerned about the threat that ghost guns pose to the safety of their communities.”²⁷

Ghost guns are frequently used by criminal organizations, including gun and drug traffickers, to facilitate their crimes. Law enforcement agencies recently surveyed by the Police Foundation noted connections between ghost guns and crime, “with ghost guns being recovered in connection with gang activity and domestic violence cases.”²⁸ The untraceability of ghost guns under ATF's current regulatory framework is one of their selling points and makes them attractive to criminals and gun traffickers trying to avoid being held responsible when their guns are recovered by law enforcement. Everytown recently analyzed 10 years of federal prosecutions involving ghost guns, revealing 2,513 ghost guns connected to criminal activity, including more than 1,300 ghost guns used or sold by criminal enterprises to facilitate crimes including gun trafficking, robbery, drug trafficking, terrorism, and murder. In one case, an associate of the Vineland Boys street gang was charged with manufacturing AR-15s from nearly-complete lower

²⁴ 86 Fed. Reg 27720, 27722.

²⁵ Brief for Prosecutors Against Gun Violence as Amicus Curiae, 7, City of Syracuse, NY v. Bureau of Alcohol Tobacco, Firearms and Explosives. S.D.N.Y. 16 Dec 2020. <https://bit.ly/3AUFmaC>.

²⁶ “AG Shapiro, PA Largest Gun Show Promoter Reach Agreement To Ban Sale of Ghost Gun Kits,” Office of the Attorney General of Pennsylvania, press release, March 15, 2021, <https://bit.ly/3hhukpl>.

²⁷ National Police Foundation. (2021). *The Proliferation of Ghost Guns: Regulation Gaps and Challenges for Law Enforcement*, 24, available at <https://bit.ly/3z1xK5i>.

²⁸ *Id.* at 17.



receivers, and selling the completed guns to gang members to use in crimes. One gang member used a AR-15 that was built from parts purchased from an online seller in an attempted murder of a rival gang member.

Ghost guns have been used in many heinous crimes, often by individuals who were not legally allowed to buy firearms. In California, a 16-year old student brought a completed ghost gun to school and shot and killed two of his classmates and wounded three others.²⁹ In 2017, a man prohibited from having guns attempted to purchase a gun but was blocked from doing so when he failed a background check. He then built two AR-15 style ghost guns, which he used in a mass shooting on a college campus — killing five people and wounding 18 others.³⁰ In 2018, a man prohibited from having guns built a ghost gun from parts he bought online and used it to shoot four people at the software company where he worked.³¹

The proliferation of ghost guns amongst individuals not legally allowed to own firearms was also found in the Police Foundation survey. Specifically, “in New York, Philadelphia, and San Jose Police Departments, ghost guns are primarily being recovered from individuals who are prohibited from possessing firearms.”³² However, the untraceability of ghost guns can also impair law enforcement’s ability to trace the gun or crime back to a specific person and prevent law enforcement from identifying these trends in the first place. “When asked about any particularly notorious crimes ghost guns have been recovered from, an officer from Prince George County’s Police Department stated that “[u]nfortunately we’ve recovered so many it’s hard to even say which ghost guns were used in what, and what makes it harder is that when you start to trace those guns you can’t trace them back to a person or a gun shop, so that kind of significantly hampers our investigations.”³³

Everytown’s recent analysis of federal prosecutions also revealed a troubling link to far-right extremism. The anti-government and anti-regulation marketing used by many online sellers of nearly-complete frames and receivers and all-in-one build kits likely contributes to the popularity of ghost guns among white supremacists and far-right extremists. According to a recently leaked report from the Joint Counterterrorism Assessment Team — a coalition of federal law enforcement and intelligence agencies — domestic terrorists and racially motivated extremists are increasingly arming themselves with ghost guns.³⁴ The report warns that ghost guns are a top public safety concern for law enforcement. In a recent case from May 2021, authorities in Pennsylvania found almost \$1 million of methamphetamine, six fully assembled

²⁹ Dakin Andone, “The gunman in the Saugus High School shooting used a ‘ghost gun,’ sheriff says,” CNN, Nov 21, 2019, <https://cnn.it/3xTvHz6>.

³⁰ Andrew Blankstein, Corky Siemaszko, “California mass shooter made his own rifles,” NBC News, <https://nbcnews.to/33gKYgr>.

³¹ Chris Aadland, “WTS Paradigm gunman exploited loopholes to buy parts for guns used in shooting, DA says,” Wisconsin State Journal, Jan 8, 2019, <https://bit.ly/3unhA42>.

³² National Police Foundation. (2021). *The Proliferation of Ghost Guns: Regulation Gaps and Challenges for Law Enforcement*, 17, available at <https://bit.ly/3z1xK5i>.

³³ *Id.* at 18.

³⁴ Alain Stephens, “The Feds Are Increasingly Worried About Extremists Acquiring Ghost Guns, Leaked Report Shows,” The Trace, Aug 6, 2021, <https://bit.ly/3k3DCF4>.



ghost guns, three nearly-complete receivers, and Nazi paraphernalia during a raid on the home of two felons.³⁵ In May and June 2020, members of the far-right extremist “boogaloo” movement used a ghost gun to carry out premeditated attacks at the federal courthouse in Oakland and Santa Cruz, CA, killing two law enforcement officers.³⁶ In January 2020, authorities arrested three members of a white-supremacist terror group who planned to travel to Virginia, where they hoped to use a gun rights rally to ignite a civil war.³⁷ One member of the group had made an AR-15 ghost gun using parts and a jig widely available online.³⁸

In 2019, under the Trump Administration, The Department of Homeland Security (DHS), the Federal Bureau of Investigation (FBI), The National Counterterrorism Center (NCTC), and the House Committee on Homeland Security issued a report concluding that “ghost guns not only pose a challenge on the front end, enabling prohibited buyers to purchase deadly weapons with just a few clicks online, but also on the back end, hamstringing law enforcement’s ability to investigate crimes committed with untraceable weapons” and that “wide availability of ghost guns and the emergences of functional 3D printed guns are a homeland security threat. Terrorists and other bad actors may seek to exploit the availability of these weapons for dangerous ends.”³⁹ Specifically, the report cited a 2019 Joint Intelligence Bulletin issued by DHS, FBI and NCTC concluding that “these rapidly evolving technologies pose an ongoing, metastasizing challenge to law enforcement in understanding, tracking, and tracing ghost guns.” Mike Sena, director of the Northern California Regional Intelligence Center, a joint law enforcement intelligence hub, says that, for federal authorities and local law enforcement, the ability for criminals to bypass background checks with ghost guns makes preemptively stopping a large-scale attack difficult.⁴⁰ “If you’re a member of a terrorist organization or a violent extremist group or you’re just somebody that wants to commit a mass casualty attack, the problem is that, prior to that event, we have no indicators that that person has a weapon,” Sena said. “When we run that person for firearms, nothing will show up.”⁴¹

E. The Proposed Rule would put a stop to this chain of events and would, at last, confirm the regulation of nearly-complete frames and receivers as intended by federal law

We applaud ATF for taking action to stop the proliferation of ghost guns. The Proposed Rule would confirm the regulation of the vast majority of nearly-complete frames and receivers as “frames or receivers” and ghost gun parts kits as “firearms” under federal law and would, at

³⁵ Ben Kessler, “Ghost guns, Nazi paraphernalia, nearly \$1 million of meth seized in Pennsylvania raid,” NBC News, May 2, 2021, <https://nbcnews.to/3eQxOMP>.

³⁶ Dan Noyes and Amanda del Castillo, “Federal ocer shooting suspects Steven Carrillo, Robert Justus 'came to Oakland to kill cops,' FBI says,” ABC 7 News, June 17, 2020, <https://abc7ne.ws/3uqDfZ5>.

³⁷ Pete Williams and Erik Ortiz, “Days before Virginia Gun Rally, FBI Arrests 3 Alleged White Supremacists,” NBC News, January 16, 2020, <https://nbcnews.to/3ctOOpY>.

³⁸ Motion for Detention Pending Trial, *US. v. Lemley*, et al., 20-MJ-00192, 20-MJ-00193, 20-MJ-00194, at *17-18 (D. Md. Jan. 21, 2020).

³⁹ HR Rep No 116-88 at 2 (May 28, 2019).

⁴⁰ Alain Stephens, “The Feds Are Increasingly Worried About Extremists Acquiring Ghost Guns, Leaked Report Shows,” The Trace, Aug 6, 2021, <https://bit.ly/3k3DCF4>.

⁴¹ *Id.*



last, put an end to this dangerous chain of events. Specifically, the Proposed Rule would add a sentence to the end of the definition of “firearm” in 27 CFR 478.11 providing that “[t]he term shall include a weapon parts kit that is designed to or may readily be assembled, completed, converted, or restored to expel a projectile by the action of an explosive.” This revised definition would confirm that a weapon parts kit that includes a nearly-complete frame or receiver and the necessary parts such that it may readily be completed, assembled, converted, or restored to fire is a “firearm” under federal law.

Further, the Proposed Rule would revise ATF’s definition of “frame or receiver” in 27 CFR 478.11 to include, “in the case of a frame or receiver that is partially complete, disassembled, or inoperable, a frame or receiver that has reached a stage in manufacture where it may readily be completed, assembled, converted, or restored to a functional state.” To aid in this determination, the Proposed Rule adds the term “readily” to 27 CFR 478.11 and defines it as “a process that is fairly or reasonably efficient, quick, and easy, but not necessarily the most efficient, speedy, or easy process.” It would further list factors relevant in making this determination to include:

- (a) Time (i.e. how long it takes to finish the process);
- (b) Ease (i.e. how difficult it is to do so);
- (c) Expertise (i.e. what knowledge and skills are required);
- (d) Equipment (i.e. what tools are required);
- (e) Availability (i.e. whether additional parts are required);
- (f) Expense (i.e. how much it costs);
- (g) Scope (i.e. extent to which the subject of the process must be changed to finish it); and
- (h) Feasibility (i.e. whether the process would damage or destroy the subject of the process, or cause it to malfunction).

Under this formulation, the vast majority of nearly-complete frames and receivers currently offered for sale would clearly be viewed by ATF and regulated as “frames or receivers.” As discussed in subsection II.A, the most common types of nearly-complete frames and receivers (those with all milling complete except for fire-control cavity and all drilling completed except for the fire-control component pivot-pin holes), are unambiguously designed and sold for the sole purpose of being readily converted into an operable firearm. They can be quickly and easily completed with inexpensive and widely available tools with little to no expertise. The vast majority of ghost gun kits offered for sale, which most frequently include nearly-complete frames and receivers as well as some or all of the parts or tools necessary to assemble the kit into a functional firearm, would be confirmed as regulated as “firearms” under ATF’s revised definitions. As discussed in subsection II.A, these kits are indisputably designed to be readily converted to fire.

As “frames and receivers” confirmed to be regulated under federal law, nearly-complete frames and receivers would be subjected to serialization before sale, enabling law enforcement to trace them if they are ever used in crime. Manufacturers and dealers of weapon parts kits or



nearly-complete frames or receivers would be confirmed to be subject to licensing and recordkeeping requirements under the Proposed Rule. And licensed dealers who sell these products would clearly know they are required to complete a background check on the purchaser before transfer. Finally, criminals, minors, and other people legally prohibited from having guns would be barred from purchasing or possessing kits or nearly-complete frames or receivers.

Given the rising threat to public safety posed by ghost guns, and the urgency of the actions set forth in the Proposed Rule, ATF should finalize the Proposed Rule without delay.

III. The Proposed Rule Is Necessary Because the Current Regulatory Definition of “Frame or Receiver” Is Outdated and Non-functional

The first and last time ATF defined “frame or receiver” through formal rulemaking was in 1968. That definition still stands today and reads as follows:

Firearm frame or receiver. That part of a firearm which provides housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward position to receive the barrel.

As ATF notes in the preamble to the Proposed Rule, this definition has limited utility for making determinations about whether a frame or receiver is a “firearm” or not. This definition is also inadequate for describing frames or receivers in circulation today. When the definition was proposed in 1968, the primary concern in defining frame or receiver was to clarify exactly which firearm component should be marked with the serial number.

Not only is the existing definition outdated, but indeed it could be dangerous. In the years since this definition was published, split- and multi-piece receivers, such as the receiver for the AR-15 rifle or the upper slide assembly and lower grip module for the Glock semiautomatic pistol, have become popular. In weapons with split- or multi-piece frames and receivers, the part that functions as a frame or receiver is broken into two or more component parts. Recently some courts have treated the regulatory definition of “frame or receiver” as exhaustive. This has led to absurd and dangerous findings like in 2019, when a federal judge found that an AR-15 lower receiver, even one that is fully complete and ready to be assembled into a functioning firearm, is not a firearm because it “does not contain a bolt or breechblock and is not threaded to receive the barrel.”⁴² As ATF explains in the preamble to the Proposed Rule, “these courts’ interpretations, if broadly followed, could mean that as many as 90 percent of all firearms now in the United States would not have any frame or receiver subject to regulation.”⁴³

The Proposed Rule would establish a functional and enforceable definition of “frame or receiver.” The Proposed Rule would amend the existing definition to more broadly describe the frame or receiver and more accurately reflect the firearm models in circulation today, including those with split- and multi-piece frame or receiver configurations. ATF’s broad approach to

⁴² Everytown has all determination letters included in the compiled administrative record filed in *Cal. Rifle & Pistol Assoc. Inc. v. Bureau of Alcohol, Tobacco, Firearms, and Explosives, et al.*, No. 14-CV-01211 (E.D. Cal. Jan. 9, 2015).

⁴³ 86 Fed. Reg. 27720, 27722.



defining “frame or receiver” in the Proposed Rule would also enable ATF to adapt over time and be more nimble in its enforcement when new technologies are developed or different frame or receiver configurations become available. This is the exact approach Congress intended when it drafted the definition of firearm as Congress was clear that every operable weapon has a frame a receiver and leaving it to the regulator to develop definitions to keep up with technology.

IV. ATF Should Dismiss False Claims That the Proposed Rule Runs Contrary to the Second Amendment

Opponents of the Proposed Rule may argue that any regulation of the sale of nearly-complete, unserialized frames and receivers would impinge on Second Amendment rights. But, plainly, the Proposed Rule would not violate the Second Amendment. There is no Second Amendment right to an unserialized gun. A federal appellate court made this clear in *United States v. Marzzarella* where it upheld the federal law that prohibits possession of firearms with obliterated serial numbers.⁴⁴ In so doing, it expressly rejected the argument that “the Second Amendment must protect firearms without serial numbers.”⁴⁵ Moreover, to the extent that opponents of the Proposed Rule seek the ability to procure firearms without submitting to a federal background check, there is likewise no such right to purchase without a background check under the Second Amendment. Several courts have rejected challenges to background check requirements, and no court has held to the contrary.⁴⁶

In any event, even if the regulation of nearly-complete frames and receivers somehow implicated a Second Amendment right, there would be no viable Second Amendment claim because where “adequate alternatives remain for law-abiding citizens to acquire a firearm for self-defense,” any burden of the right is “not a substantial” one,⁴⁷ and the law is constitutional so long as the regulation is “reasonably adapted to a substantial government interest.”⁴⁸ There can be no doubt that “adequate alternatives” exist here: a law-abiding citizen can purchase a serialized firearm — or a serialized firearm kit — after submitting to a background check. Nor can there be any doubt that the Proposed Rule promotes the government’s substantial interest in public safety, given the established harms of ghost guns discussed in subsection II.D. In a recent decision, a federal district court rejected a Second Amendment challenge to Nevada’s ghost gun prohibition, finding that the law was “a reasonable fit for achieving the government’s objectives

⁴⁴ 614 F.3d 85 (3d Cir. 2010) 930-101.

⁴⁵ *Id.* at 93.

⁴⁶ *See, e.g., Rocky Mountain Gun Owners v. Hickenlooper*, 371 P.3d 768, 776-77 (Colo. App. 2016) (rejecting state constitutional challenge to Colorado law requiring background checks for firearm sales and transfers based on findings that the law “does not infringe on individuals’ rights to keep and bear arms for a lawful purpose” and “does not implicate a fundamental right”); *see also Libertarian Pty. of Erie Cty. v. Cuomo*, 970 F.3d 106, 127–28 (2d Cir. 2020) (rejecting challenge to a New York law that requires a license, including a background check, to possess any handgun within the State).

⁴⁷ *United States v. Decastro*, 682 F.3d 160, 168 (2d Cir. 2012).

⁴⁸ *United States v. Masciandaro*, 638 F.3d 458, 471 (4th Cir. 2011). Federal courts of appeals have upheld several laws against Second Amendment attack in part because adequate alternatives to the regulated weapons, components, or ammunition exist. *See, e.g., Jackson v. City & Cty. of S.F.*, 746 F.3d 953, 968 (9th Cir. 2014) (upholding prohibition on sale of hollowpoint bullets in San Francisco); *Decastro*, 682 F.3d at 168 (upholding federal law that “prohibits the transportation into one’s state of residence of firearms acquired outside the state”).



of decreasing the threat that unserialized firearms pose to public safety.”⁴⁹ In reaching this conclusion, the court noted that “unserialized firearms are a present and increasing threat to public safety” and that “it is a matter of common sense that tracing of firearms aid[s] in solving crimes which enhances public safety.”⁵⁰

V. ATF Should Dismiss False Claims That the Proposed Rule Will Prohibit Hobbyists From Building Firearms for Personal Use

As discussed in subsection II.C, nearly-complete frames and receivers and ghost gun kits are intentionally unserialized and are marketed and sold to require as little technical expertise, time, and effort as possible to assemble, unlike home-built firearms made by true amateur gunsmiths and hobbyists. The Proposed Rule would not restrict a hobbyist from building their own firearm from truly raw materials. Nor would the Proposed Rule restrict law-abiding individuals that are not prohibited from purchasing or possessing firearms from purchasing nearly-complete, serialized frames and receivers and serialized gun kits from a dealer, after passing a background check.

Furthermore, ATF should dismiss false claims that the Proposed Rule would make criminals out of law-abiding gun owners. This argument is not based on fact or an accurate reading of the Proposed Rule. The Proposed Rule would not reach or restrict private individuals legally allowed to possess a firearm who previously purchased nearly-complete frames or receivers or ghost gun kits. Under the Proposed Rule, these individuals will be no more exposed to criminal liability than they are currently.

VI. ATF’s Legal Authority to Promulgate the Proposed Rule Is Sound and ATF Can and Should Dismiss Meritless Claims That the Proposed Rule Is Arbitrary and Capricious

A. ATF’s promulgation of the Proposed Rule is a permissible use of ATF’s authority to enforce the Gun Control Act

ATF’s legal authority to promulgate the Proposed Rule flows directly from the Gun Control Act, which commands ATF to enforce the Gun Control Act by promulgating necessary regulations.⁵¹ Further, ATF has been informally regulating in this space for decades, issuing numerous determination letters to businesses deciding whether a particular frame or receiver is a

⁴⁹ *Palmer v. Sisolak*, No. 21-268, slip op. at 9 (D. Nev. July 26, 2021).

⁵⁰ *Id.* at 7, 9; *cf. Marzarella*, 614 F.3d at 94 (“Because the presence of a serial number does not impair the use or functioning of a weapon in any way, the burden on [an individual’s] ability to defend himself is arguably de minimis. . . . [A] person is just as capable of defending himself with a marked firearm as with an unmarked firearm.”); *id.* at 98-99 (observing that “[f]irearms without serial numbers are of particular value to those engaged in illicit activity because the absence of serial numbers helps shield recovered firearms and their possessors from identification” and concluding that federal prohibition satisfies intermediate scrutiny); *Pena v. Lindley*, 898 F.3d 969, 982, 985-96 (9th Cir. 2018) (rejecting Second Amendment challenge to California law imposing a microstamping requirement on new firearms; holding that “preserving the ability of law enforcement to conduct serial number tracing — effectuated by limiting the ability of untraceable firearms — constitutes a substantial or important interest”).

⁵¹ The Attorney General has delegated the responsibility for administering and enforcing the Gun Control Act to the Director of ATF, subject to the direction of the Attorney General and the Deputy Attorney General. *See* 28 CFR 0.130(a)(1)-(2).



firearm under the law. As discussed in Section II, the Proposed Rule’s amendments to the regulatory definitions of “firearm” and “frame or receiver” are consistent with the purpose and the plain language of the Gun Control Act. ATF’s authority to enforce the Gun Control Act irrefutably includes the authority to promulgate these regulatory definitions. As discussed in subsection II.A, the intent of Congress, as indicated by the plain language and the statutory scheme of the Gun Control Act, is to regulate — as a firearm — the frame or receiver of a firearm.⁵² The Gun Control Act does not define the term “frame or receiver,” but it has been defined in ATF regulations for several decades to implement the statute. However, the definition as written no longer enables ATF to enforce the statute as intended and must be revised.

ATF’s authority to enforce the Gun Control Act includes the authority to ensure that “firearms” and “frames and receivers” are subject to the provisions of the Gun Control Act that keep firearms out of the hands of criminals. Specifically, ATF has a statutory duty to ensure that all firearm “frames and receivers” are serialized, that persons engaged in the business of manufacturing or dealing “firearms” are licensed and subject to record-keeping requirements, and that law enforcement can trace firearms used in crimes. As stated in the preamble to the Proposed Rule, “the [Gun Control Act] insists that the dealer keep certain records, to enable federal authorities both to enforce the law’s verification measure and to trace firearms used in crimes.”⁵³ The proliferation of unserialized and untraceable ghost guns significantly impairs ATF’s ability to enforce these provisions of the Gun Control Act, and the Proposed Rule’s amendments to the regulatory definitions of “firearm” and “frame or receiver” are critically necessary and permissible uses of ATF’s authority to ensure that these provisions are enforced as Congress intended.

B. The Proposed Rule is neither arbitrary or capricious as it supported by substantial evidence

The Proposed Rule is supported by substantial evidence demonstrating its necessity. There is significant evidence demonstrating the growing proliferation of ghost guns. Law enforcement agencies are recovering ghost guns from criminals at alarming rates. As ATF illustrated in the preamble to the Proposed Rule, 23,906 suspected ghost guns were reported by ATF as having been recovered by law enforcement from potential crime scenes from January 1, 2016 to December 31, 2020.⁵⁴ Law enforcement leaders and local officials from cities all across the country have been raising alarms over the effects that ghost guns are having on the safety of their communities. According to a 2019 report, thirty percent of guns recovered in California are unserialized.⁵⁵ One official cited an even higher recovery rate at the local level, stating that forty-one percent of ATF’s cases in Los Angeles involved ghost guns.⁵⁶ And the evidence shows that the proliferation of ghost guns is only escalating. Philadelphia began tracking ghost gun

⁵² 86 Fed. Reg 27720, 27722, citing 111 Cong. Rec. 5527 March 22, 1965.

⁵³ 86 Fed. Reg 27720, 27723.

⁵⁴ *Id.*

⁵⁵ Alain Stephens, “Ghost Guns Are Everywhere In California,” *The Trace*, May 17, 2019, <https://bit.ly/3m8bvqW>.

⁵⁶ Brandi Hitt, “Ghost Guns’ Investigation” *Law Enforcement Seeing Unserialized Firearms on Daily Basis in SoCal*,” *ABC7 Los Angeles*, January 30, 2020, <https://abc7.com/5893043/>.



collections in the fall of 2018 and recovered 13 ghost guns the remainder of that year. In 2019, however, the number of recovered ghost guns in Philadelphia increased to 95,⁵⁷ And in 2020, 250 privately made firearms were recovered by Philadelphia police.⁵⁸ By the start of August of this year, Philadelphia police had already recovered 333 ghost guns, which accounted for more than 9% of all firearms recovered.⁵⁹ In a recent hearing on ghost guns in the U.S. Senate Judiciary Committee Subcommittee on the Constitution, Pennsylvania Attorney General, Joshua Shapiro, testified that since 2018, Pennsylvania has seen a 437% increase in ghost gun recoveries.⁶⁰

There is substantial evidence that the proliferation of ghost guns is a threat to public safety, as detailed in subsection II.D. The ready acquisition of nearly-complete frames and receivers and ghost guns kits has led to heinous crimes, including mass shootings and planned attacks by extremists. DHS, FBI, and NCTC have repeatedly warned that ghost guns pose an “urgent and evolving threat to the homeland.” The Proposed Rule is vitally necessary to stop the proliferation of ghost guns and to protect public safety. Any claim that the Proposed Rule is not supported by facts or substantial evidence is baseless and should be dismissed.

C. The Proposed Rule is neither arbitrary or capricious as it addresses a compelling public need and the demonstrated benefits are far greater than the costs associated

The Proposed Rule is consistent with the requirement of Executive Order 12866 that federal regulations be promulgated only when “required by law,” “necessary to interpret law” or “made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people.” As discussed in subsection VI.A, ATF has a clear mandate from Congress to interpret the Gun Control Act and has sound legal authority to promulgate the regulatory definitions of “firearm” and “frame and receiver.” Further, as discussed in subsection II.D the Proposed Rule is made critically necessary by the compelling public need to stop the proliferation of unserialized, no-background check, untraceable ghost guns. Finally, the sellers of nearly-complete frames and receivers have demonstrably failed to protect the safety of the public and continue to neglect to manage the inherent risks its products pose to public safety.

The Proposed Rule is also consistent with the cost-benefit requirement of Executive Order 12866, as the demonstrated benefits of the Proposed Rule are far greater than the costs associated. The Proposed Rule would not create any new regulatory scheme for ghost guns, but rather would simply confirm the application of the same laws and regulations to nearly-complete

⁵⁷ Mensah M. Dean, “Ghost Guns Proliferate as Philadelphia Grapples With Gun Violence,” *Phila. Inquirer*, Mar 13, 2020, <https://bit.ly/3k8PQMH>.

⁵⁸ Kenny Cooper, “Philadelphia police say they’ve seized more ghost guns in 6 months than in all of last year,” *WHYY*, June 9, 2021, <https://bit.ly/3gfGzkS>.

⁵⁹ Michael D’Onofrio, “Homicides, shooting victim rates trending downwards but mayor warns of a ‘long process’ to reduce violence,” *Phila. Tribune*, Aug 4, 2021, <https://bit.ly/2XE378o>.

⁶⁰ Stop Gun Violence - Ghost Guns: U.S. Senate Committee on the Judiciary, Subcommittee on the Constitution, 117th Cong. (2021) (Testimony of Joshua Shapiro). <https://bit.ly/3AQv3UF>.



frames and receivers that already apply to all other firearms. These laws and regulations have demonstrated benefits to public safety that unquestionably outweigh the costs associated.

Through its amendments to the regulatory definitions of “firearm” and “frame or receiver,” the Proposed Rule would confirm the requirement that the vast majority of nearly-complete frames and receivers be marked with serial numbers, and that individuals engaged in the business of manufacturing or dealing in ghost gun kits or nearly-complete frames and receivers that qualify as “firearms” be federally licensed and subject to recordkeeping requirements. The minimal administrative costs associated with these requirements are far outweighed by their benefits. The costs connected with licensing are not insurmountable — gun manufacturers and dealers have been abiding by federal firearms licensing requirements for decades — and are far outweighed by the public safety benefits that come with licensing and regulation. Serial numbers, when paired with dealer records, enable law enforcement to trace firearms used in crimes. First and foremost, crime gun trace data helps law enforcement solve crimes and hold criminals accountable. In doing so, communities are made safer and crime victims are more likely to see justice. Gun tracing data also helps with identifying the sources of crime guns, and can help authorities identify unscrupulous or irresponsible dealers that are fueling crime or facilitating gun trafficking. The costs associated with serialization are minimal, especially given that serialization is required for all other firearms sold. The technology is widely available and the Proposed Rule even further reduces the costs associated by enabling more market participants to serialize firearms. The benefits these requirements will have on our communities and for public safety far outweigh the administrative costs.

As a result of the Proposed Rule’s dealer-licensing requirement, any ghost gun kits or nearly-complete frames and receivers that qualify as “firearms” would be confirmed to be subject to the Brady Act’s background check requirements if they are purchased from licensed dealers. By confirming these sales are subject to background checks, lives will be saved. The Proposed Rule will make it much harder for criminals to get armed and will stem the easy flow of guns to people prohibited from having guns. Since 1994, over 4 million sales to violent criminals and other prohibited people have been blocked by background checks.⁶¹ As discussed in subsection II.D, ghost guns have become a weapon of choice for criminals, and the fact that nearly-complete frames and receivers and ghost gun kits can currently be purchased without a background check is one of their primary selling points. By simply confirming that sales of ghost gun kits and their core building blocks are governed by the same laws and regulations that apply to all other firearms, as is set forth in the Proposed Rule, Americans will be safer and lives will be saved.

The Proposed Rule has net benefits greater than other regulatory alternatives. Specifically, the Proposed Rule’s net benefits are greater than an alternative approach where only

⁶¹ Connor Brooks, “Background Checks for Firearm Transfers, 2016-2017,” (US Bureau of Justice Statistics, February 2021), <https://bit.ly/3fkRmbW>. Data for 2018 through 2020 were obtained by Everytown from the FBI directly. Though the majority of the transactions and denials reported by FBI and BJS are associated with a firearm sale or transfer, a small number may be for concealed carry permits and other reasons not related to a sale or transfer.



all-in-one ghost gun kits are regulated as firearms under federal law and nearly-complete frames and receivers are not. In the past year, ATF has taken regulatory action against a leading manufacturer of all-in-one ghost gun kits, raiding Polymer80's corporate premises in December 2020. We agree that all-in-one ghost gun kits are particularly dangerous, as they can provide criminals and prohibited persons a one stop shop to get armed with no background check and no questions asked. However, a regulatory framework that covers only all-in-one kits, and not the core components — nearly-complete frames and receivers — would make it particularly easy for sellers to evade regulation by breaking the all-in-one kits into smaller component kits that serve the same function but are not regulated. Such an approach would provide very little benefit to public safety. In contrast, the Proposed Rule takes the regulatory approach that is most consistent with the intent of Congress to regulate the core component of the firearm and therefore reduce the potential for evasion. By covering both ghost gun kits and nearly-complete frames and receivers, the Proposed Rule would cover any product or kit that includes a frame or receiver that can be readily converted to fire. This holistic approach would effectively end the proliferation of untraceable ghost guns and would save lives.

VII. ATF Should Clarify That Prior Determination Letters Inconsistent With the Proposed Rule Are No Longer in Effect

The Proposed Rule provides helpful clarification regarding the continuing effect of some of ATF's classification decisions but is silent about others. The Proposed Rule grandfathers "existing ATF classifications of firearms that specify a single component as the frame or receiver."⁶² The presumed effect would appear to be that ATF's prior determinations that the lower receiver of a particular AR-15 model is the receiver and therefore qualifies as a firearm while the upper receiver is not a firearm. The rule helpfully provides a "nonexclusive list" of these determinations regarding which part is the frame or receiver in existing firearm models with split/multi-piece frames and receivers.⁶³

This clarity around the continuing effect of these types of ATF classification decisions is lacking with regard to other types of decisions. The Proposed Rule does not explicitly state that this rulemaking will nullify ATF's prior classification decisions finding that certain nearly-complete frames and receivers are not firearms. However, this conclusion follows logically from amending the definition of "frame or receiver" to include "a frame or receiver that is partially complete, disassembled, or inoperable" if that item "has reached a stage of manufacture where it may readily be completed, assembled, converted, or restored to a functional state."⁶⁴

ATF should state in no uncertain terms that its prior classifications of nearly-complete frames and receivers are no longer valid. Some sellers of popular frame and receiver kits display

⁶² 86 Fed. Reg 27720, 27728.

⁶³ *Id.* at 27729.

⁶⁴ 86 Fed. Reg 27720, 27746.



these classification letters on their website to promote their products. ATF must ensure that these sellers will not continue to exploit these outdated letters as legal cover for selling firearms illegally.

VIII. Conclusion

ATF's failure to properly regulate ghost guns has had dangerous consequences. Inaction is not an option. Every day that passes without ATF action, more unregulated sellers are coming online, more traffickers and other dangerous individuals are buying ghost gun building blocks with no questions asked, more ghost guns are being used in crimes, more lives are lost, and the threat that ghost guns pose to the American public grows ever more severe. In the interest of public safety, we urge ATF to finalize the Proposed Rule without delay.

Everytown for Gun Safety Support Fund thanks the Department of Justice and the Bureau of Alcohol, Tobacco, Firearms, and Explosives for their consideration of our comments. If you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

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