

IN THE  
*Supreme Court of the United States*

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

*Applicants,*

v.

JENNIFER VANDERSTOK, ET AL.,

*Respondents.*

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**BRIEF OF *AMICI CURIAE* GUN VIOLENCE PREVENTION GROUPS  
IN SUPPORT OF APPLICANTS**

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## TABLE OF CONTENTS

|                                                                                                                                                                        | Page |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| INTEREST OF AMICI CURIAE.....                                                                                                                                          | 1    |
| INTRODUCTION .....                                                                                                                                                     | 1    |
| ARGUMENT.....                                                                                                                                                          | 5    |
| I. THE DISTRICT COURT’S RULING IS INCOMPATIBLE WITH<br>THE TEXT AND PURPOSE OF THE GUN CONTROL ACT .....                                                               | 5    |
| A. The District Court’s Ruling Misconstrues the Act’s Text .....                                                                                                       | 5    |
| B. The District Court’s Ruling Subverts the Act’s Purpose .....                                                                                                        | 7    |
| II. GHOST GUNS PRESENT A NOVEL PUBLIC-SAFETY<br>THREAT UNACCOUNTED FOR BY THE RULINGS BELOW .....                                                                      | 15   |
| A. Absent Coverage Under the Act, Ghost Guns Are Easy to<br>Obtain and Assemble, Near-Impossible to Trace, and<br>Responsible for an Explosion of Crime and Death..... | 16   |
| B. Although Ghost Guns Are a Recent Threat, Near-Complete<br>Firearms Have Long Been Recognized as “Firearms”<br>Under the Act .....                                   | 21   |
| CONCLUSION.....                                                                                                                                                        | 25   |

## TABLE OF AUTHORITIES

|                                                                                                             | Page(s)   |
|-------------------------------------------------------------------------------------------------------------|-----------|
| <b>Cases</b>                                                                                                |           |
| <i>Abramski v. United States</i> ,<br>573 U.S. 169 (2014) .....                                             | 2, 10, 13 |
| <i>Barrett v. United States</i> ,<br>423 U.S. 212 (1976) .....                                              | 9, 10     |
| <i>Biden v. Missouri</i> ,<br>142 S. Ct. 647 (2022) .....                                                   | 22        |
| <i>District of Columbia v. Heller</i> ,<br>554 U.S. 570 (2008) .....                                        | 10        |
| <i>Huddleston v. United States</i> ,<br>415 U.S. 814 (1974) .....                                           | 8, 10     |
| <i>Local Union No. 38, Sheet Metal Workers’ Int’l Ass’n v. Pelella</i> ,<br>350 F.3d 73 (2d Cir. 2003)..... | 6         |
| <i>Nat’l Shooting Sports Found., Inc. v. Jones</i> ,<br>716 F.3d 200 (D.C. Cir. 2013) .....                 | 13, 14    |
| <i>New York State Rifle &amp; Pistol Assoc., Inc. v. Bruen</i> ,<br>142 S. Ct. 2111 (2022) .....            | 10        |
| <i>Nicholas v. Saul Stone &amp; Co. LLC</i> ,<br>224 F.3d 179 (3d Cir. 2000).....                           | 6         |
| <i>Quarles v. United States</i> ,<br>139 S. Ct. 1872 (2019) .....                                           | 11        |
| <i>Shawano Gun &amp; Loan, LLC v. Hughes</i> ,<br>650 F.3d 1070 (7th Cir. 2011) .....                       | 12        |
| <i>Slack Technologies, LLC v. Pirani</i> ,<br>143 S. Ct. 1433 (2023) .....                                  | 6         |
| <i>Standard Oil Co. of Calif. v. United States</i> ,<br>231 Ct. Cl. 112 (1982).....                         | 6         |
| <i>United States v. Carney</i> ,<br>387 F.3d 436 (6th Cir. 2004) .....                                      | 12        |

## TABLE OF AUTHORITIES

(continued)

Page(s)

|                                                                                                  |        |
|--------------------------------------------------------------------------------------------------|--------|
| <i>United States v. Dotson</i> ,<br>No. 1:11-cr-56, 2012 WL 76139 (S.D. Ind. Jan. 10, 2012)..... | 6      |
| <i>United States v. Harris</i> ,<br>720 F.3d 499 (4th Cir. 2013) .....                           | 13     |
| <i>United States v. Marzzarella</i> ,<br>614 F.3d 85 (3d Cir. 2010).....                         | 13, 14 |
| <i>United States v. Mobley</i> ,<br>956 F.2d 450 (3d Cir. 1992).....                             | 14     |

### Statutes

|                                                                  |               |
|------------------------------------------------------------------|---------------|
| Gun Control Act of 1968, Pub. L. No. 90-618, 82 Stat. 1213 ..... | <i>passim</i> |
|------------------------------------------------------------------|---------------|

### Other Authorities

|                                                                                                                                                                                                                                                          |           |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| 27 C.F.R.                                                                                                                                                                                                                                                |           |
| § 478.92 .....                                                                                                                                                                                                                                           | 13        |
| § 478.99 .....                                                                                                                                                                                                                                           | 9         |
| § 478.101 .....                                                                                                                                                                                                                                          | 9         |
| § 478.102(a).....                                                                                                                                                                                                                                        | 10        |
| § 478.121(b).....                                                                                                                                                                                                                                        | 14        |
| <i>3 Arrested in Federal “Ghost Gun” Operation Bust in Georgia</i> , FOX 5<br>Atlanta (July 26, 2022), <a href="https://tinyurl.com/4mkwct8c">https://tinyurl.com/4mkwct8c</a> .....                                                                     | 18        |
| 87 Fed. Reg.                                                                                                                                                                                                                                             |           |
| 24,646.....                                                                                                                                                                                                                                              | 18        |
| 24,652.....                                                                                                                                                                                                                                              | 22        |
| 24,656.....                                                                                                                                                                                                                                              | 4         |
| 24,659.....                                                                                                                                                                                                                                              | 18        |
| 24,718.....                                                                                                                                                                                                                                              | 16        |
| Annie Karni, <i>Ghost Guns: What They Are, and Why They Are an Issue</i><br>Now, N.Y. Times (Nov. 14, 2021) <a href="https://nyti.ms/3QzQcOn">nyti.ms/3QzQcOn</a> .....                                                                                  | 21        |
| ATF, <i>Crime Guns Recovered and Traced Within the United States and</i><br><i>Its Territories</i> (Jan. 11, 2023), <a href="https://tinyurl.com/3atfm65b">https://tinyurl.com/3atfm65b</a> .....                                                        | 5, 23, 24 |
| Austin Turner, <i>San Jose Police: Willow Glen High School Student</i><br><i>Arrested with Loaded “Ghost Gun,” No Ongoing Threat</i> , The<br>Mercury News (May 17, 2023), <a href="https://bayareane.ws/3OcClKL">https://bayareane.ws/3OcClKL</a> ..... | 20        |

## TABLE OF AUTHORITIES

(continued)

|                                                                                                                                                                                                                               | Page(s) |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
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| Charles Duncan, <i>Ft. Bragg Soldier Had Plot to “Remove” Minorities,<br/>Pleads Guilty In Ghost Gun Case, Feds Say</i> , Spectrum News<br>(Apr. 27, 2023), <a href="https://bit.ly/3Od1d5k">https://bit.ly/3Od1d5k</a> ..... | 20      |
| Chris Jennewein, <i>Deputies Arrest Felon Allegedly Carrying Loaded<br/>“Ghost Gun” in Vista</i> , Times of San Diego (Nov. 22, 2022),<br><a href="https://tinyurl.com/4w4wvbje">https://tinyurl.com/4w4wvbje</a> .....       | 19      |
| Commerce Department. Dep’t of Commerce, FAQs for the Commerce<br>Categories I–III, 9 (2020), <a href="https://tinyurl.com/3m4svmw4">https://tinyurl.com/3m4svmw4</a> .....                                                    | 15      |
| Compl., <i>People v. Blackhawk Mfg. Grp., et al.</i> ,<br>CGC-21-594577 (Cal. Super. Ct. Aug. 18, 2021) .....                                                                                                                 | 17      |
| Connecticut Man Sentenced to Prison for Trafficking At Least 32 “Ghost<br>Guns,” U.S. Attorney’s Office (July 27, 2023), <a href="https://bit.ly/3Kl1GRB">https://bit.ly/3Kl1GRB</a> .....                                    | 20      |
| Decl. of J. McFarlan, <i>City of Syracuse, et al. v. Bur. of Alcohol, Tobacco,<br/>Firearms &amp; Explosives</i> ,<br>20-CV-6885, Dkt. 64-34 (S.D.N.Y. Dec. 9, 2020) .....                                                    | 17      |
| Dept. of Justice, Sauk Rapids Man Pleads Guilty to Manufacturing,<br>Selling Ghost Guns (Sept. 29, 2022), <a href="https://bit.ly/3Eemiam">https://bit.ly/3Eemiam</a> .....                                                   | 19      |
| Eduardo Medina, <i>Man Arrested in Brazen Sidewalk Killing in St.<br/>Louis That Was Captured on Video</i> , N.Y. Times (Feb. 27, 2023),<br><a href="https://tinyurl.com/muetsva7">https://tinyurl.com/muetsva7</a> .....     | 20      |
| Everytown, <i>Ghost Gun Recoveries and Shootings</i> (last visited<br>July 31, 2023), <a href="https://tinyurl.com/ymhdynky">https://tinyurl.com/ymhdynky</a> .....                                                           | 21      |
| <i>Fact Sheet: Update on Justice Department’s Ongoing Efforts to Tackle<br/>Gun Violence</i> , Dep’t of Justice (June 14, 2023),<br><a href="https://tinyurl.com/mt2wx2ce">https://tinyurl.com/mt2wx2ce</a> .....             | 4, 22   |
| <i>Four Gun Traffickers Charged with Selling Over 50 Firearms in<br/>Brooklyn</i> , Dep’t of Justice (Jan. 11, 2023),<br><a href="https://tinyurl.com/mweu2mnw">https://tinyurl.com/mweu2mnw</a> .....                        | 19      |
| <i>Ghost Gun and Narcotics Trafficking Ring Shut Down in NYC</i> , Drug<br>Enforcement Admin. (Mar. 15, 2023), <a href="https://tinyurl.com/2un8pt3b">https://tinyurl.com/2un8pt3b</a> .....                                  | 20      |

## TABLE OF AUTHORITIES

(continued)

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| <i>Gunman Ambushed LAPD Officers During Unrelated Traffic Stop in South Los Angeles, Bodycam Shows</i> , ABC Eyewitness News (July 28, 2023), <a href="https://tinyurl.com/5apsc7wn">https://tinyurl.com/5apsc7wn</a> .....         | 3       |
| H. Rep. No. 90-1577 (1968) .....                                                                                                                                                                                                    | 7       |
| 116-88 (2019) .....                                                                                                                                                                                                                 | 14      |
| <i>The History of Legally Buying Firearms Without an FFL</i> , 80% Arms Blog (Dec. 3, 2019), <a href="https://bit.ly/3HClkFU">https://bit.ly/3HClkFU</a> .....                                                                      | 12      |
| <i>How-To Manuals</i> , Polymer80 (last visited July 29, 2023), <a href="https://bit.ly/3qUwobt">https://bit.ly/3qUwobt</a> .....                                                                                                   | 17      |
| John Lauritsen, <i>Police: Teen Used Ghost Gun to Shoot, Kill 17-Year-Old Syoka Siko</i> , CBS News Minnesota (Dec. 1, 2022), <a href="https://cbsn.ws/3rJPW4F">https://cbsn.ws/3rJPW4F</a> .....                                   | 19      |
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| <i>Juvenile Charged as Adult for Shoplifting and Possession of “Ghost Gun,”</i> Fox 5 Washington DC (July 28, 2023), <a href="https://bit.ly/3Qc1J6a">https://bit.ly/3Qc1J6a</a> .....                                              | 3       |
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| Nic Garcia, <i>New Details Released in Deadly Shooting of Selma Police Officer</i> , ABC 30 (Feb. 4, 2023), <a href="https://tinyurl.com/38ffrnz8">https://tinyurl.com/38ffrnz8</a> .....                                           | 20      |
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## TABLE OF AUTHORITIES

(continued)

|                                                                                                                                                                                                                              | Page(s) |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| Prelim. Inj. Mem., <i>City of New York v. Arm or Ally LLC, et al.</i> ,<br>22-CV-5525, Dkt. 9 (S.D.N.Y. June 29, 2022) .....                                                                                                 | 17      |
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| <i>S.C.I.N.T. Removes 3 Rifles from Local Streets, Including a “Ghost<br/>Gun,”</i> The World (June 14, 2023), <a href="https://bit.ly/43IkFwh">https://bit.ly/43IkFwh</a> .....                                             | 20      |
| S. Rep. No.<br>89-1866 (1966) .....                                                                                                                                                                                          | 11      |
| 90-1501 (1968) .....                                                                                                                                                                                                         | 7       |
| <i>Seattle Man Charged Federally For Possessing A Ghost Gun and Drugs<br/>in Stolen Vehicle</i> , Dep’t of Justice (Aug. 24, 2022),<br><a href="https://tinyurl.com/5cuxm7cm">https://tinyurl.com/5cuxm7cm</a> .....         | 19      |
| Supreme Court Rule<br>37.4.....                                                                                                                                                                                              | 1       |
| 37.6.....                                                                                                                                                                                                                    | 1       |
| <i>Untraceable: The Rising Specter of Ghost Guns</i> , Everytown for Gun<br>Safety (May 14, 2020), <a href="https://bit.ly/3OcBb1W">https://bit.ly/3OcBb1W</a> .....                                                         | 18, 21  |
| <i>Webster’s Third New International Dictionary</i> (1965) .....                                                                                                                                                             | 23      |

## INTEREST OF AMICI CURIAE

Everytown for Gun Safety Action Fund (“Everytown”), Brady Center to Prevent Gun Violence (“Brady”), and March For Our Lives (“MFOL”) (“Gun Violence Prevention Groups”) submit this brief as *amici curiae* in support of the Government’s stay application. *Amici* are nonprofit organizations dedicated to reducing gun violence through education, research, and advocacy. Everytown is the nation’s largest nonprofit committed to reducing gun violence. Brady is the nation’s longest-standing, uniting gun owners and non-gun-owners alike. MFOL has mobilized hundreds of thousands of young people nationwide in support of reforms to prevent gun violence. *Amici* have studied ghost guns—including the ease with which they can be obtained and assembled, their detrimental effects on public safety, and their acute threat to teenagers—and advocated for measures to stop the proliferation of unserialized firearms. *Amici* regularly submit amicus briefs regarding gun violence, have litigated cases involving ghost guns, and filed amicus briefs in the proceedings below and in multiple parallel litigations.<sup>1</sup>

## INTRODUCTION

To advance public safety, the Gun Control Act of 1968 (the “Act”), Pub. L. No. 90-618, 82 Stat. 1213, as amended, subjects “firearms” to several interlocking requirements: background checks to prevent sales to unauthorized persons, such as

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<sup>1</sup> Pursuant to Rule 37.6, *amici* represent that this brief was authored by counsel for *amici* and not by counsel for any party. No outside contributions were made to the preparation or submission of this brief. Pursuant to Rule 37.4, this brief is being electronically transmitted to the parties at the time of filing.

those who have committed certain crimes; licensing for manufacturers, importers, and dealers to ensure that firearms are built and sold responsibly; and serialization to allow law enforcement to trace firearms back to their first retail sale. 18 U.S.C. §§ 921–34. Congress adopted these requirements to “prevent guns from falling into the wrong hands” and to “assist law enforcement ... in investigating serious crimes.” *Abramski v. United States*, 573 U.S. 169, 172–80 (2014).

The recent and rapid proliferation of “ghost guns” has undermined the Act and its law-and-order objectives. A ghost gun is a fully operational, unserialized, and untraceable weapon that can be assembled in an hour or less from components or “kits” freely available online with no background check and no questions asked. Absent coverage as “firearms” under the Act, ghost guns allow criminals and other individuals prohibited from acquiring a firearm to do exactly that: obtain, use, and traffic firearms, all while remaining undetectable to law enforcement. For a law-abiding citizen, complying with the Act is an uncontroversial part of being a responsible gun-owner. In contrast, for a would-be criminal, the Act is an existential problem and ghost guns—if unregulated—provide a fool-proof workaround.

The Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) acted well within its authority in promulgating the rule vacated on a nationwide basis by the district court. *See Definition of “Frame or Receiver” and Identification of Firearms*, 87 Fed. Reg. 24,652 (Apr. 26, 2022) (the “Rule”). The Rule confirms that ghost gun “kits” (providing all parts needed to quickly assemble an unserialized gun at home) and the core building blocks of ghost guns—unserialized, nearly complete frames (the

key component of pistols) and receivers (the key component of long guns)—are “firearms” under the Act. The Act defines “firearm” to include not only complete firearms, but also any “weapon” “designed to” be or that “may readily be converted” into an operable firearm, as well as “the frame or receiver of any such weapon.” 18 U.S.C. § 921(a)(3). That definition plainly encompasses ghost gun kits and near-complete frames and receivers. Such items are designed to be and readily can be converted into operable weapons or the frames and receivers of such weapons in an hour or less. Indeed, that is their *only* purpose. Neither the district court nor the Fifth Circuit identified any other conceivable use for these products.

The Government’s application should be granted. The district court’s universal vacatur of the Rule and the Fifth Circuit’s refusal to stay the vacatur of the Rule’s central provisions pending appeal reflect a misreading of the Act and a failure to confront the urgent public-safety emergency posed by ghost guns. Indeed, just since the time of the Government’s filing of its stay application, a Washington, D.C.-area minor was arrested for possessing a loaded ghost gun manufactured by one of the respondents and another individual in Los Angeles opened fire on a police officer with a ghost gun during a routine traffic stop.<sup>2</sup>

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<sup>2</sup> *Juvenile Charged as Adult for Shoplifting and Possession of “Ghost Gun,”* Fox 5 Washington DC (July 28, 2023), <https://bit.ly/3Qc1J6a>; *Gunman Ambushed LAPD Officers During Unrelated Traffic Stop in South Los Angeles, Bodycam Shows*, ABC Eyewitness News (July 28, 2023), <https://tinyurl.com/5apsc7wn>.

*Amici* are thoroughly familiar with both the Act and the scourge of ghost guns. This brief underscores two of the many reasons why the invalidation and universal vacatur of the Rule is unfounded and a grave threat to public safety.

*First*, the district court’s ruling flouts the text of the Act, as well as its public-safety purpose. The district court rejected the notion that the Act could reach kits, frames, and receivers that are “incomplete” or “nonfunctional,” App. 33a, but that is precisely what the language adopted by Congress permits: regulation of items that are “designed to” be or “may readily be converted” into operable weapons. 18 U.S.C. § 921(a)(3). By definition, such items are “incomplete” and “nonfunctional.” Yet, under the district court’s ruling, ghost gun kits and near-complete frames and receivers—all obviously (and only) designed to be and readily convertible into functional firearms—can be sold by anyone and to anyone, free from the serialization that greatly assists law enforcement in doing its job to protect the public from violent criminals. Such a result is contrary to the Gun Control Act’s text and purpose.

*Second*, the Fifth Circuit’s refusal to stay the vacatur of the central provisions of the Rule pending appeal reflects a failure to confront the nature of the ghost-gun emergency and the history of regulation under the Act. The Fifth Circuit asserted that vacatur “maintains, pending appeal, the *status quo* that existed from 54 years from 1968 to 2022.” App. 3a. That is wrong in multiple respects. Ghost guns did not exist in 1968: they are a recent, quickly escalating threat to public safety. In 2016,

law enforcement recovered 1,758 ghost guns<sup>3</sup>; by 2022, that number jumped to 25,785<sup>4</sup>; and these figures likely “significantly underrepresent[]” the number of ghost guns recovered in connection with crimes.<sup>5</sup> Absent coverage as “firearms” under the Act, ghost guns are appealing, readily available deadly weapons to criminals and others prohibited from owning firearms. The Fifth Circuit also was wrong to suggest that the Government has never regulated items that are not-quite-yet firearms. In fact, such regulation by federal authorities is nearly as old as the Act itself.

The Government’s application should be granted.

## **ARGUMENT**

### **I. The District Court’s Ruling is Incompatible with the Text and Purpose of the Gun Control Act**

#### **A. The District Court’s Ruling Misconstrues the Act’s Text**

The Gun Control Act defines “firearm” as follows:

(A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device.

18 U.S.C. § 921(a)(3) (emphases added).

Taken together, and as reflected by the Rule, subparagraphs (A) and (B) of this section classify as “firearms” not only operable weapons, but also ghost gun kits and

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<sup>3</sup> 87 Fed. Reg. at 24,656.

<sup>4</sup> Press Release, *Fact Sheet: Update on Justice Department’s Ongoing Efforts to Tackle Gun Violence*, Dep’t of Justice (June 14, 2023), <https://tinyurl.com/mt2wx2ce>.

<sup>5</sup> ATF, *Crime Guns Recovered and Traced Within the United States and Its Territories* at 5 (Jan. 11, 2023), <https://tinyurl.com/3atfm65b>

near-complete frames and receivers that are “designed to” be or that may “readily be converted” into either operable firearms or the frames and receivers of such firearms. “[F]irearm” is defined to include the “frame or receiver of any such weapon,” with “such weapon” in (B) referring back to “weapon” in (A). And (A), in turn, includes “any weapon” that is “designed to or may readily be converted to expel a projectile by the action of an explosive.” Thus, when (B) refers to “the frame or receiver of any such weapon,” it incorporates the description of “weapon” in (A), which covers both items already configured to fire *and* items that are “designed to or may readily be converted” into operable firearms. *Local Union No. 38, Sheet Metal Workers’ Int’l Ass’n v. Pelella*, 350 F.3d 73, 81 (2d Cir. 2003) (“any such action” “refers back to” the phrase providing a right to “institute an action”) (citation omitted).<sup>6</sup> As this Court recently noted, the “word ‘such’ usually refers to something that has already been ‘described.’” *Slack Tech., LLC v. Pirani*, 143 S. Ct. 1433, 1439–40 (2023). Because (A) includes not-yet-complete weapons, it follows that the “frame or receiver of any *such* weapon” in (B) includes near-complete frames or receivers as well, so long as they are “designed to” be or may “readily be converted” into the frame or receiver of an operable firearm. 18 U.S.C. § 921(a)(3) (emphasis added).

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<sup>6</sup> See also, e.g., *Standard Oil Co. of Calif. v. United States*, 231 Ct. Cl. 112, 122 (1982) (“‘Such’ refers back to the first clause of the sentence...”); *Nicholas v. Saul Stone & Co. LLC*, 224 F.3d 179, 185 (3d Cir. 2000) (“The phrase ‘such action’ ... refers back to the immediately preceding sentence...”); *United States v. Dotson*, No. 1:11-cr-56, 2012 WL 76139, at \*3 n.6 (S.D. Ind. Jan. 10, 2012) (agreeing “any such weapon” in 18 U.S.C. § 921(a)(3)(B) “refers back [to] section (A)”).

The district court neglected this critical textual link between subparagraphs (A) and (B). According to the district court, “that which *may become* or *may be converted* to a functional receiver is not itself a receiver” and because “Congress could have included” “designed to” or “may readily be converted” in subparagraph (B), but chose not to, it foreclosed the application of this language to subparagraph (B). App. 32a. To begin, the district court wrongly read into the statute a word—“functional”—that is not there. More fundamentally, Congress’s reference to “any such weapon” in subparagraph (B) precludes the district court’s siloed reading of subparagraphs (A) and (B). Although it is subparagraph (A) that refers to “weapons” that are “designed to” be or that “may readily be converted” into an operable firearm, subparagraph (B) then immediately refers back to “any *such* weapon” (emphasis added), thereby incorporating the description in subparagraph (A). Congress regularly employs this kind of economical drafting. *See supra* p. 6 & n.6. And yet the district court insisted, contrary to the Act’s express cross-reference, that subparagraphs (A) and (B) be read in isolation. That is not a defensible reading of the statutory text.

## **B. The District Court’s Ruling Subverts the Act’s Purpose**

Just as the Act’s text supports the Rule, so does its purpose. The Act has two principal ends and two principal means, all of which are served by the Rule and undermined by the district court’s ruling.

The Act’s core ends are: (1) promoting public safety by keeping guns out of the hands of persons who have committed felonies, are mentally ill, or otherwise could not safely wield a firearm, and (2) assisting law enforcement in fighting crime. S.

Rep. No. 90-1501, at 22 (1968) (“Senate Report”) (“The principal purposes of this act are to make it possible to keep firearms out of the hands of those not legally entitled to possess them ... and to assist law enforcement ... in combating ... crime.”); H. Rep. No. 90-1577, at 4412 (1968) (explaining the “need” to combat “the growing use of firearms in violent crime”). These are not, as the district court unfairly charged, “[v]ague ... assertions about Congress’s purpose.” App. 35a. Because unregulated ghost gun kits and near-complete frames and receivers allow dangerous individuals to obtain deadly and untraceable firearms, failing to regulate these items as “firearms” significantly and directly undermines the Act’s ends.

The Act’s core means are: (1) regulating who may buy or sell firearms; and (2) imposing rules for how firearms and firearm transactions are tracked. The Rule’s coverage of ghost gun kits and near-complete frames and receivers as “firearms” is faithful to these means, as it ensures that such objects are subject to the Act’s limits on purchase, sale, and distribution. In contrast, failing to regulate these items as what they are—firearms—would undermine the Act and other firearm safety regulations that cross-reference the Act’s definition of “firearm.” In the remainder of this section, *Amici* highlight several key aspects of firearms regulation that would not apply to ghost gun kits and near-complete frames and receivers under the district court’s erroneous ruling.

***Federal firearms licensees.*** The Act designates federal firearms licensees (“FFLs”)—those who manufacture, sell, or import firearms—as the “principal agent of [law] enforcement” in “restricting ... access to firearms.” *Huddleston v. United*

*States*, 415 U.S. 814, 824 (1974). If ghost gun kits and near-complete frames and receivers are not treated as firearms under the Act, the effect would be to sideline FFLs with respect to the sale and acquisition of a rapidly growing source of firearms being used to further criminal activity across the country.

Pursuant to the Act, FFLs—and only FFLs—may “engage in the business of importing, manufacturing, or dealing in firearms.” 18 U.S.C. § 922(a)(1)(A); see *id.* § 923(a). In exchange for this license, FFLs must serve as the Act’s frontline mechanism for implementation of the Act:

- FFLs may not “sell or deliver” firearms to individuals who are underage, reside out-of-state (with limited exceptions), or have a criminal history. 18 U.S.C. §§ 922(b), 922(d); see 27 C.F.R. § 478.99.
- FFLs must keep inventory and transaction records and must report suspicious purchases. 18 U.S.C. § 923(g)(1)(A) (requiring FFLs to keep “such records of importation, production, shipment, receipt, sale, or other disposition of firearms at his place of business”); 27 C.F.R. §§ 478.101 (record-keeping), 478.121–134 (same); 18 U.S.C. § 923(g)(3) (FFLs must report when an individual buys multiple handguns within a short timeframe).
- FFLs must make their records accessible to law enforcement officials, who can access these records to investigate and combat firearm-related crimes. See *infra* pp. 13–14.

FFLs that fail to meet these or other duties may lose their license, 18 U.S.C. §§ 923(d), 923(e), and become susceptible to civil and criminal liability, *id.* §§ 922, 924.

The Act and its implementing regulations thus enshrine FFLs as scrutinizing gatekeepers at the point of sale, subject to harsh penalties for noncompliance. In monitoring the point of sale, the Act keeps firearms out of dangerous hands in the first place, rather than forcing law enforcement to restrict possession after the

firearms enter circulation. That makes sense: public safety is better served by preventing a criminal from purchasing a gun than it is by recovering a gun after a crime has already occurred. *See, e.g., Barrett v. United States*, 423 U.S. 212, 220 (1976) (recognizing that Act’s “prophylactic provisions”). But these point-of-sale FFL duties attach only to “firearms.” If ghost gun kits and near-complete frames and receivers are not treated as “firearms” under the Act, FFLs would be removed from their post as the “principal agent of [law] enforcement” for this rapidly expanding source of deadly, untraceable guns. *Huddleston*, 415 U.S. at 824.

**Background checks.** Under the Act, every individual who buys a firearm from an FFL must undergo a background check. 18 U.S.C. § 922(t)(1); 27 C.F.R. § 478.102(a). Allowing unfettered access to deadly weapons would be the polar opposite of what Congress envisioned. The “very structure” and “history” of the Act show that “Congress ... sought broadly to keep firearms away from the persons Congress classified as potentially irresponsible and dangerous.” *Barrett*, 423 U.S. at 218, 220. That approach comports with a “longstanding” tradition of “prohibitions on the possession of firearms” that protect public safety, such as limiting possession by “felons and the mentally ill.” *District of Columbia v. Heller*, 554 U.S. 570, 626–27 (2008); *see New York State Rifle & Pistol Assoc., Inc. v. Bruen*, 142 S. Ct. 2111, 2122 (2022) (reaffirming the Constitution protects “the right of ... *law-abiding* citizen[s]” to carry arms for self-defense) (emphasis added). The Act carries forward that tradition by “establish[ing] a detailed scheme to enable the dealer to verify ... whether a potential buyer may lawfully own a gun.” *Abramski*, 573 U.S. at 172.

So important is the identity of the purchaser that it is a crime for an FFL to sell a firearm without running a background check on the transferee, 18 U.S.C. § 922(t); for a buyer to “make any false or fictitious ... statement” concerning their identity, *id.* § 922(a)(6); or for FFLs to make “false” statements regarding a buyer’s identity, *id.* §§ 922(m), 924(a)(3). The Rule fulfills Congress’s judgment of who may buy or possess a firearm and its scheme to prevent circumvention of that judgment.

The district court hardly disputed that its “interpretation create[d] loopholes” that would allow felons and other prohibited individuals from obtaining “a firearm with relative ease and efficiency.” App. 40a. But according to the district court, this was an unforeseen drafting problem that was “up to Congress” to fix. *Id.* However, as the Government correctly notes, courts should “not lightly conclude that Congress enacted a self-defeating statute.” *Quarles v. United States*, 139 S. Ct. 1872, 1879 (2019). Plus, Congress *did* foresee the problem of would-be criminals attempting to evade background checks and designed the Act accordingly—with language defining “firearms” to cover more than just operable firearms, but also near-complete firearms. *See supra* pp. 5–8; *infra* pp. 11–12. It is thus the district court’s ruling—not Congress—that introduced a “loophole.”

Notably, at the time of the Act’s passage, Congress deemed the ability to “anonymously acquire firearms” a “matter of serious national concern”:

The ready availability, that is, the ease with which any person can anonymously acquire firearms (including criminals, juveniles, without the knowledge or consent of their parents or guardians, narcotic addicts, mental defectives, armed groups who would supplant duly constituted public authorities, and others whose possession of firearms is similarly

contrary to the public interest) is a matter of serious national concern.

Senate Report at 22. So concerned was Congress with anonymous purchases, that it rejected earlier proposed legislation that failed to “prohibit the mail-order sale” of firearms known for “their susceptibility to crimes.” S. Rep. No. 89-1866, at 34, 100 (1966). Absent regulation as firearms, ghost gun kits and near-complete frames and receivers would be the modern incarnation of mail-order guns: they allow anonymous persons to buy a gun remotely and have that gun shipped across state lines to facilitate crime, no record-keeping or background check needed. Indeed, prior to the Rule, ghost gun purveyors proudly marketed anonymity and the avoidance of background checks.<sup>7</sup>

***Straw purchases.*** Failing to classify ghost gun kits and near-complete frames and receivers as firearms would also seriously dilute the Act’s ban on “straw purchases,” *i.e.*, gun purchases made by someone who can pass a background check on behalf of someone else—often a prohibited buyer. Purchasers of ghost gun kits or near-complete frames and receivers would not even need to cloak their identities with straw purchases if these items were not recognized as firearms.

Through several mutually reinforcing requirements, the Act forbids straw

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<sup>7</sup> See, e.g., *Are Felons Restricted from Owning a Firearm that Was Built from an 80% Receiver?*, Polymer80 Blog (Oct. 21, 2020), *formerly at* <https://bit.ly/3DDzXGo> (“Convicted felons are not restricted from purchasing and owning 80% frames...”); *The History of Legally Buying Firearms Without an FFL*, 80% Arms Blog (Dec. 3, 2019), <https://bit.ly/3HClkFU> (no background check or serialization required); *JSD 80% Lower Receivers, Jigs, and Gun Parts Kits*, JSD Supply (last visited July 30, 2023), <https://bit.ly/3rKrgqj> (same); *Ghost Gunner*, Ghost Guns (last visited July 30, 2023), <https://bit.ly/3pUjDvj> (same); *Lower Receiver*, SS-Arms (last visited July 30, 2023), <https://bit.ly/3GAVvVo> (same); *About*, R&B Tactical Tooling (last visited July 30, 2023), <https://bit.ly/3oNKMZU> (same).

purchases. Gun buyers must fill out “Form 4473,” attesting to their identity, ATF Form 4473 (5300.9), <https://bit.ly/3CAv5Rl>, and it is a federal crime to misrepresent—on Form 4473 or anywhere else—“any fact material to the lawfulness of the sale,” 18 U.S.C. § 922(a)(6). Further, an FFL that fails to stop straw purchases at the point of sale can lose its license and face both civil and criminal liability. *See, e.g., Shawano Gun & Loan, LLC v. Hughes*, 650 F.3d 1070, 1077–79 (7th Cir. 2011); *United States v. Carney*, 387 F.3d 436, 446 (6th Cir. 2004).

As this Court has recognized, protections against straw purchases are essential because, “[p]utting true numbskulls to one side, anyone purchasing a gun for criminal purposes would avoid leaving a paper trail by the simple expedient of hiring a straw.” *Abramski*, 573 U.S. at 183. Yet if ghost gun kits and near-complete frames and receivers are deemed beyond the Act’s coverage, then none of the tools that ATF employs to combat straw purchases would be available for the ghost-gun market. Indeed, criminal buyers would not even need to bother with a straw purchase when they could—and surely would—simply procure directly the materials needed to quickly and easily assemble an unserialized gun.

***Serialization, record-keeping, and public safety.*** Absent regulating ghost gun kits and near-complete frames and receivers as firearms, ghost guns contravene the Act’s serialization and record-keeping provisions, making it more difficult for law enforcement to fight crime. *See, e.g., United States v. Marzzarella*, 614 F.3d 85, 98 (3d Cir. 2010) (“[W]e think it plain that [serialization] serves a law enforcement interest.”); *United States v. Harris*, 720 F.3d 499, 502 (4th Cir. 2013). By their very

nature, ghost guns are fully operational, unmarked, and *untraceable* firearms, which impede law enforcement’s ability to prevent, detect, and prosecute violent crime by tracing illegal weapons to their source.

The Act mandates that every firearm bears a unique serial number and makes it a crime to tamper with a serial number or even “receive” a firearm with a tampered-with serial number. 27 C.F.R. § 478.92; 18 U.S.C. §§ 921(i), 922(k). Serialization is key because it allows ATF “to link a suspect to a firearm.” *Nat’l Shooting Sports Found., Inc. v. Jones*, 716 F.3d 200, 204 (D.C. Cir. 2013).

The Act also assists law enforcement by requiring FFLs to keep records that track all firearm sales and inventory. 18 U.S.C. § 923(g)(1)(A); 27 C.F.R. §§ 478.121–134. Law enforcement may “examine the inventory and records of [FFLs] ... without ... reasonable cause or warrant,” in connection with any “reasonable inquiry” during a “criminal investigation.” 18 U.S.C. § 923(g)(1)(B); *see* 27 C.F.R. § 478.121(b). “FFL records” allow ATF to “trace a firearm” and identify its “path through the distribution chain.” *Nat’l Shooting Sports*, 716 F.3d at 204 (cleaned up).

Without serialization and record-keeping, these law-enforcement tools do not work. It is “no secret that a chain of custody for a firearm greatly assists in the difficult process of solving crimes” and reconstructing custody chains without “serial numbers” is “virtually impossible.” *United States v. Mobley*, 956 F.2d 450, 454 (3d Cir. 1992). The inherent difficulty of tracing an unserialized firearm is one reason why “[f]irearms without serial numbers are of particular value to those engaged in illicit activity.” *Marzzarella*, 614 F.3d at 98. As a House Committee report warned,

“[g]host guns” pose a “homeland security challenge” because they “hamstring[] law enforcement’s ability to investigate crimes.” H. Rep. No. 116-88, at 2 (2019).

The district court acknowledged these regulatory powers: that the Act “requires ... dealers of firearms to have a federal firearms license,” that dealers “must ... conduct background checks,” and that dealers “must keep records of firearm transfers.” App. 9a. But under the district court’s ruling, ghost gun kits and their key component parts—which can be converted into operable deadly firearms in an hour or less—are exempt from this regulation altogether, at least in domestic commerce.<sup>8</sup>

In short, under the district court’s ruling, dealers need not have a license to distribute ghost guns; would-be criminals need not face a background check before purchase; and that purchase need not leave a trace in the dealer’s records. No evenhanded reading of the Act requires that grim result.

\* \* \* \* \*

Because the Rule implements the Act’s text, furthers its purpose, and prevents its subversion, the Government is likely to succeed on the merits of its appeal.

## **II. Ghost Guns Present a Novel Public-Safety Threat Unaccounted For By the Rulings Below**

Without support or elaboration, the Fifth Circuit stated that nationwide vacatur of the Rule’s core provisions will simply reinstate the “status quo” that lasted for the “54 years” between the enactment of the Act in 1968 and the effective date of

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<sup>8</sup> Exports of near-complete frames and receivers are regulated by the Commerce Department. Dep’t of Commerce, FAQs for the Commerce Categories I–III, 9 (2020), <https://tinyurl.com/3m4svmw4>.

the Rule in 2022. App. 3a. This statement is wrong, for multiple reasons, and—like the district court’s ruling—impermissibly fails to account for the major threat to public safety presented by ghost guns. The Fifth Circuit’s claim of preserving the status quo fails to recognize that the proliferation of ghost guns is a recent phenomenon—one posing a recent, exponentially increasing threat to communities nationwide. The United States has not—as the Fifth Circuit’s ruling suggests—endured this threat for over a half-century. The Fifth Circuit also appears to have assumed that the Rule marks the first time that the Government has regulated not-yet complete firearms, but that too is wrong. The Government has regulated such items, consistent with the Act’s text and purpose, for over 40 years. It was thus ghost guns and the district court’s ruling that upended the status quo—not the Rule.

**A. Absent Coverage Under the Act, Ghost Guns Are Easy to Obtain and Assemble, Near-Impossible to Trace, and Responsible for an Explosion of Crime and Death**

A single ghost gun presents a lethal threat. But this case is not about one ghost gun or one ghost-gun kit. It is about tens of thousands of ghost guns wreaking havoc on communities across the United States through perpetrators who are barred from possessing firearms. A ghost gun is dangerous; tens of thousands are an emergency. The Fifth Circuit’s refusal to stay the vacatur of the core portions of the Rule failed to address this irreparable harm caused by the district court’s order.

Absent regulation of ghost gun kits and near-complete frames and receivers as “firearms,” ghost guns are easy to obtain. Numerous websites offer all-in-one ghost-gun-building kits—one was marketed as a “buy build shoot kit”—that allow

customers to buy a kit using a debit or credit card, sans background check, and have the kit shipped right to the customer. *See, e.g.,* Glenn Thrush, “*Ghost Guns*”: *Firearm Kits Bought Online Fuel Epidemic of Violence*, N.Y. Times (June 22, 2023), <https://tinyurl.com/pebsbctr>. To prove “how easily a minor could buy a gun kit online,” one father used his teenage daughter’s name for an online kit order, checked a box that she was over 21, and then—as advertised—received a “box in the mail.” *Id.* That father’s daughter had, by the time of his order, been killed at age 15 by a ghost gun. *Id.*; *see also, e.g.,* 87 Fed. Reg. at 24,718 (“ATF found 71 companies selling such kits.”).

Upon delivery, ghost guns are simple to assemble. As the head of the ATF’s Los Angeles field office observed:

If you can go to one of these big-box stores and put that type of furniture together, if you’re putting together your kids Christmas toys, you can make a homemade gun. It’s that easy.

Jonathan Edwards, *A 13-Year-Old Boy Made and Trafficked “Ghost Guns,” Authorities Say, and Then Killed His Sister with One*, Wash. Post. (Dec. 3, 2021), <https://wapo.st/3Ggarb9>. Indeed, manufacturers and distributors of ghost gun-building kits have touted how quickly assembly can take place and have published how-to guides to walk novices through the gun-building process. *See, e.g., GST-9: 80% Pistol Build Kit*, 80% Arms (last visited July 29, 2023), <https://bit.ly/3x6n0T7> (“Our goal was for you to be able to go from opening the mail, to a ... pistol in under 15 minutes.”); *How-To Manuals*, Polymer80 (last visited July 29, 2023) (emphasis

added), <https://bit.ly/3qUwobt>. True to this advertising, amateurs and experts alike have assembled kits into fully functional firearms in around an hour or less.<sup>9</sup>

Once assembled, ghost guns are unserialized and thus unsusceptible to law enforcement tracing. *See supra* pp. 13–14. As the Rule observes, “tracing is an integral tool for Federal, State, local, and international law enforcement agencies to utilize in their criminal investigations, and the proliferation of untraceable firearms severely undermines this process.” 87 Fed. Reg. at 24,659.

Taken together, these factors—ease of purchase, simplicity of assembly, and lack of serialization—combine to form an untraceable weapon that is “especially attractive to dangerous and prohibited persons.” Press Release, Dep’t of Justice (June 14, 2023). It should therefore not come as a surprise that ghost guns are regularly implicated in criminal activity. *Amici’s* analysis of federal prosecutions between 2010 and 2020 found that “[i]n nearly half of the prosecutions reviewed, the defendants were prohibited from possessing any firearm and would not have passed a background check.” *Untraceable: The Rising Specter of Ghost Guns*, Everytown for

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<sup>9</sup> *See, e.g.*, Compl. at ¶¶ 74, 115, *People v. Blackhawk Mfg. Grp., et al.*, CGC-21-594577 (Cal. Super. Ct. Aug. 18, 2021) (officer assembled kit in “less than *25 minutes*” with hardware store tools (emphasis added)); *id.* at ¶ 73 (ATF agent built kit “in less than *nineteen minutes*” (emphasis added)); Prelim. Inj. Mem., *City of New York v. Arm or Ally LLC, et al.*, 22-CV-5525, Dkt. 9, at 11 (S.D.N.Y. June 29, 2022) (ghost gun assembled “in approximately an *hour and a half*”) (emphasis added); Decl. of J. McFarlan, *City of Syracuse, et al. v. Bur. of Alcohol, Tobacco, Firearms & Explosives*, 20-CV-6885, Dkt. 64-34, at ¶¶ 8, 10, 11 (S.D.N.Y. Dec. 9, 2020) (“*City of Syracuse*”) (individual who had “never attempted to build a firearm using an unfinished frame or receiver” watched “videos on *YouTube* for thirty minutes” then built a “complete pistol from [a kit] in *86 minutes*”) (emphasis added).

Gun Safety (May 14, 2020), <https://bit.ly/3OcBb1W>. Between 2016 and 2021, 692 ghost guns were recovered in connection with a homicide or attempted homicide. 87 Fed. Reg. at 24,646.

Unsurprisingly, then, hardly a week goes by without a new troubling report linking ghost guns with crime. Indeed, for the last year, every month has brought with it significant reports of the threats to public safety posed by ghost guns:

- In July 2022, three unlicensed individuals were arrested for running a firearm distribution operation that involved “unmarked, unregistered” ghost guns. 3 *Arrested in Federal “Ghost Gun” Operation Bust in Georgia*, FOX 5 Atlanta (July 26, 2022), <https://tinyurl.com/4mkwct8c>.
- In August 2022, prosecutors charged an individual with possession of a “[f]ully automatic” “ghost gun.” That individual was “prohibited from possessing firearms due to three felony convictions.” Press Release, *Seattle Man Charged Federally For Possessing A Ghost Gun and Drugs in Stolen Vehicle*, Dep’t of Justice (Aug. 24, 2022), <https://www.justice.gov/usao-wdwa/pr/seattle-man-charged-federally-possessing-ghost-gun-and-drugs-stolen-vehicle>.
- In September 2022, a 21-year-old admitted to selling ghost guns out of his home. Dept. of Justice, *Sauk Rapids Man Pleads Guilty to Manufacturing, Selling Ghost Guns* (Sept. 29, 2022), <https://bit.ly/3Eemiam>. A separate individual was found running a “ghost gun factory” out of his home. *Police Uncover Ghost Gun “Factory” In New Rochelle Home*, CBS News New York (Sept. 29, 2022), <https://cbsn.ws/44GRQSi>.
- In October 2022, an individual was arrested on suspicion of murdering six individuals with a ghost gun, possessed despite a prior felony. Keegan Hamilton, *The Stockton Serial Killer Suspect Was Using an Untraceable Ghost Gun*, VICE (Oct. 20, 2022), <https://bit.ly/3O7aOKp>.
- In November 2022, law enforcement officials stopped and arrested a “felon ... who they say was carrying a loaded ‘ghost gun’ in his car,” along with a taser, ammunition, and drug paraphernalia. Chris Jennewein, *Deputies Arrest Felon Allegedly Carrying Loaded “Ghost Gun” in Vista*, Times of San Diego (Nov. 22, 2022), <https://tinyurl.com/4w4wvbje>.
- In December 2022, two teenagers were arrested for using ghost guns to kill a 17-year-old boy, which police suspected were ordered online and then

“assembled ... at home through a simple milling process.” John Lauritsen, *Police: Teen Used Ghost Gun to Shoot, Kill 17-Year-Old Syoka Siko*, CBS News Minnesota (Dec. 1, 2022), <https://cbsn.ws/3rJPW4F>.

- In January 2023, four gun traffickers were charged with selling “over 50” firearms—including ghost guns “made from ... kits”—and trafficking fentanyl. Press Release, *Four Gun Traffickers Charged with Selling Over 50 Firearms in Brooklyn*, Dep’t of Justice (Jan. 11, 2023), <https://tinyurl.com/mweu2mnw>.
- In February 2023, a man killed an unhoused man on the street by shooting him with a ghost gun at point-blank range. Eduardo Medina, *Man Arrested in Brazen Sidewalk Killing in St. Louis That Was Captured on Video*, N.Y. Times (Feb. 27, 2023), <https://tinyurl.com/muetsva7>. That same month, a police officer approached a “suspicious man” and was shot dead by that man with a ghost gun. Nic Garcia, *New Details Released in Deadly Shooting of Selma Police Officer*, ABC 30 (Feb. 4, 2023), <https://tinyurl.com/38ffrnz8>.
- In March 2023, law enforcement seized ghost guns, high-capacity magazines, and nearly 600 grams of cocaine in a large-scale bust of a trafficking ring. Press Release, *Ghost Gun and Narcotics Trafficking Ring Shut Down in NYC*, Drug Enforcement Admin. (Mar. 15, 2023), <https://tinyurl.com/2un8pt3b>. That same month, a 17-year-old high school student committed suicide by shooting himself in the head with a ghost gun. Rob Low, *East High Shooting Suspect Killed Himself with Ghost Gun, Failed Prior Diversion Program*, Denver-KDVR (Mar. 23, 2023), <https://tinyurl.com/yc7sx2wp>.
- In April 2023, an individual “found with white supremacist literature” pled guilty to possessing a loaded “ghost gun.” The individual’s electronic devices revealed individual’s “goal to physically remove as many ... black and brown people” from his community “by whatever means.” Charles Duncan, *Ft. Bragg Soldier Had Plot to “Remove” Minorities, Pleads Guilty In Ghost Gun Case, Feds Say*, Spectrum News (Apr. 27, 2023), <https://bit.ly/3Od1d5k>.
- In May 2023, school officials arrested a student for bringing a loaded ghost gun to the high school campus. Austin Turner, *San Jose Police: Willow Glen High School Student Arrested with Loaded “Ghost Gun,” No Ongoing Threat*, The Mercury News (May 17, 2023), <https://bayareane.ws/3OcClKL>.
- In June 2023, law enforcement officials received reports of a convicted felon buying and selling firearms and subsequently recovered a ghost gun from this individual. *S.C.I.N.T. Removes 3 Rifles from Local Streets, Including a “Ghost Gun,”* The World (June 14, 2023), <https://bit.ly/43IkFwh>.

- In July 2023—the same day the Government filed its application with this Court—an individual was sentenced for trafficking “at least 32” ghost guns. Press Release, *Connecticut Man Sentenced to Prison for Trafficking At Least 32 “Ghost Guns,”* U.S. Attorney’s Office (July 27, 2023), <https://bit.ly/3Kl1GRB>. The next day, prosecutors charged a different individual with kidnapping, robbing, and raping a woman at gunpoint with a ghost gun. Press Release, *Four Men Federally Indicted for Hobbs Act Conspiracy, Firearms Charges, and a Kidnapping,* Dep’t of Justice (July 28, 2023), <https://tinyurl.com/yepzsju5>.

See also, e.g., Everytown, *Ghost Gun Recoveries and Shootings* (last visited July 31, 2023), <https://tinyurl.com/ymhdynky> (documenting ghost-gun shootings).

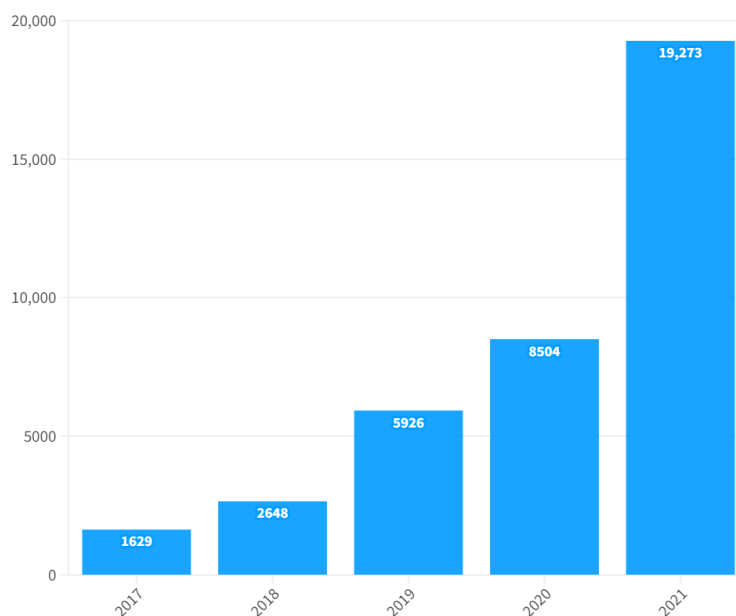
The Fifth Circuit addressed none of this—the ease of purchase, the simplicity of assembly, the impossibility of tracing, and the indisputable connection to violent crime. Taking the Rule off the books as the district court did creates enormous and irreparable harm, allowing deadly ghost guns to enter circulation en masse.

**B. Although Ghost Guns Are a Recent Threat, Near-Complete Firearms Have Long Been Recognized as “Firearms” Under the Act**

The Fifth Circuit asserted that refusing to stay vacatur of the core portions of the Rule will restore “the *status quo* that existed for 54 years from 1968 to 2022.” App. 3a. That assertion is deeply mistaken. Ghost guns are a distinctly recent problem—one that is growing exponentially. And it is simply untrue that ATF has never before regulated incomplete firearms.

Ghost guns are a problem of today, not 1968 or most of the rest of the past half-century. The ghost-gun market did not even begin to “take off until around 2009” and it was not until 2013 that the “problem of ghost guns” gained national attention—tellingly, after a ghost gun “was linked to a shooting at Santa Monica College ... which killed six people, including the gunman.” Annie Karni, *Ghost Guns: What They Are,*

*and Why They Are an Issue Now*, N.Y. Times (Nov. 14, 2021) [nyti.ms/3QzQcOn](https://nyti.ms/3QzQcOn). And only in “2016” did “[s]ales of ghost guns start[] to rise substantially.” *Id.* The numbers speak for themselves. Washington, D.C. saw a 360 percent increase in ghost gun recoveries from 2018 to 2019.<sup>10</sup> New Haven, Connecticut reported a “nearly ninefold” increase in recoveries from 2021 to 2022.<sup>11</sup> And data collected by ATF shows an “exponential rise” in ghost gun recoveries overall:



Source: Bureau of Alcohol, Tobacco, Firearms and Explosives

Grace Hauck, *What Is a Ghost Gun? A Soaring Number Are Being Used in Crimes, Report Finds*, USA Today (Feb. 3, 2023), <https://bit.ly/3YbZT7k>. In 2022, the number of ghost gun recoveries jumped to 25,785. Press Release, *Fact Sheet: Update on*

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<sup>10</sup> *Untraceable: The Rising Specter of Ghost Guns*, Everytown for Gun Safety (May 14, 2020), <https://bit.ly/3OcBb1W>.

<sup>11</sup> Ben Lambert, New Haven Police See “Ghost Guns” On the Rise in City, *New Haven Register* (Aug. 17, 2022), <https://bit.ly/3THs9e5>.

*Justice Department’s Ongoing Efforts to Tackle Gun Violence*, Dep’t of Justice (June 14, 2023), <https://tinyurl.com/mt2wx2ce>.

This context makes clear that the Fifth Circuit’s ruling does not preserve a 54-year status quo. *Cf.* App. 3a. To the contrary, it is ghost guns that disrupted the status quo. ATF reacted to that disruptive “technological advance[]” in firearms by adopting a Rule designed to restore equilibrium to firearm regulation. 87 Fed. Reg. 24,652–62. *Cf. Biden v. Missouri*, 142 S. Ct. 647, 654 (2022) (granting HHS’s application to stay the vacatur of its vaccine mandate because “unprecedented circumstances provide no grounds for limiting the exercise of authorities the agency has long been recognized to have”).

The Fifth Circuit also appears to have assumed that the “status quo” for the last 54 years has been zero federal regulation of near-complete firearms. That assumption is wrong. For decades, ATF correctly understood that not-yet complete firearms can be “firearms” under the Act. The Rule simply tailors that understanding to modern technology. Just eight years after the Act’s passage, ATF issued a framework for gauging whether an “unfinished” frame or receiver is a “firearm.” Record, *City of Syracuse*, Dkt. 60 (S.D.N.Y. Dec. 8, 2020), at ATF0265 (<https://bit.ly/3BTAgxX>). That framework provided that if “unfinished frames” or “castings” “may readily be converted” into firearms, “they are firearms.” *Id.* at ATF0266 (emphasis added). It further noted that near-complete frames and receivers must be reviewed “case-by-case” to gauge if they are “readily convertible”:

[W]e view the current Bureau procedure in classifying “firearms” on a case-by-case basis as consistent with the letter and spirit of the [ ] Act. It is obvious that what constitutes “readily convertible” depends upon the nature of each firearm. That there may be cases where it is difficult to determine the side on which a particular “firearm” falls is not a sufficient reason to establish a rigid criterion for ... “readily convertible.”

*Id.* at ATF0267.

For years, ATF adhered to that framework in classification letters that turned on whether items could “readily be converted” into an operable firearm. *Id.* at ATF0001, ATF0014, AATF0020, ATF0023, ATF0050, AATF0051, AATF0053, ATF0065. Consistent with “readily” meaning “without much difficulty” or “with fairly quick efficiency,”<sup>12</sup> several of these letters referenced the ease and speed with which near-complete frames and receivers could be assembled into operable firearms. *Id.* at ATF0020 (receiver was a firearm because it required “75 minutes” of assembly); *id.* at ATF0024 (frame was a firearm because it required “20 minutes” of assembly); *see also* Government Application at 25 n.3 (collecting examples dating back to 1978). Thus, for nearly as long as the Act has been the Act, ATF has properly considered whether not-yet complete firearms qualify as “firearms” under the Act.

The Government explained this history to the district court. In response, the district court, although downplaying the import of this “historical practice,” did not deny that ATF has “previously determined that a particular component was ... a ‘firearm’ for purposes of the [Act] based on the item’s stage of manufacture.” App. 34a–35a. But instead of reaching the sensible conclusion that such longstanding

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<sup>12</sup> *Webster’s Third New International Dictionary* 1889 (1965) (defining “readily”).

regulation of not-yet-complete firearms strongly supports the Rule, the district court instead claimed that ATF has been exceeding its authority for “several decades.” App. 35a. This is incorrect, as explained above. *See supra* pp. 5–15. But, at a minimum, it shows that the status quo since 1968 has been the *regulation* of not-yet-complete firearms—not their complete exemption from regulation, as the district court’s ruling requires. In sum, it is the rapid proliferation of ghost guns (in just the last few years) and the district court’s ruling that dramatically altered the status quo—not the Rule—and the Fifth Circuit had no basis to conclude to the contrary.

### CONCLUSION

The Government’s application for a stay should be granted.

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