

No. 23-852

IN THE
Supreme Court of the United States

MERRICK B. GARLAND, ATTORNEY GENERAL, *et al.*,
Petitioners,

v.

JENNIFER VANDERSTOK, *et al.*,
Respondents.

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

**BRIEF OF AMICUS CURIAE
GUN VIOLENCE PROTECTION GROUPS
IN SUPPORT OF PETITIONERS**

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INTEREST OF *AMICI CURIAE*¹

Everytown for Gun Safety Support Fund (“Everytown”), Brady Center to Prevent Gun Violence (“Brady”), March For Our Lives Foundation (“MFOL”), and Giffords Law Center to Prevent Gun Violence (“Giffords”) (“Gun Violence Prevention Groups”) submit this brief as *amici curiae* in support of the Government’s petition for a writ of certiorari. *Amici* are nonprofit organizations dedicated to reducing gun violence through education, research, and advocacy. Everytown is the education, research, and litigation arm of the nation’s largest nonprofit committed to reducing gun violence. Brady is the nation’s longest-standing non-profit committed to reducing gun violence, uniting gun owners and non-gun owners alike. MFOL has mobilized hundreds of thousands of young people in support of reforms to prevent gun violence. For the last 30 years, Giffords has fought to save lives from gun violence by shifting culture, changing policies, and challenging injustice.

Amici have extensively studied ghost guns and have advocated for measures to stop their proliferation. *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.

¹ Pursuant to Rule 37.2, *amici* represent that they provided notice to counsel of record for all parties seven days prior to the due date for this brief and the parties do not oppose this filing. 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.

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: background checks, to prevent sales to unauthorized persons, such as those who are dangerous or have committed certain crimes; federal 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 authorities 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 at home in an hour or less from components or “kits” that have been freely available online for anyone to purchase without a background check. Left unregulated, ghost guns allow criminals, teenagers, 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. For a would-be criminal, ghost guns—if unregulated—allow for foolproof subversion of the law.

The Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) acted well within its authority in promulgating the rule found unlawful by the Fifth Circuit. *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” and the core building blocks of ghost guns—unserialized, near-complete frames and receivers—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 the ghost-gun kits and near-complete frames and receivers covered by the Rule. 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.

Based on *amici*’s familiarity with both the Act and the scourge of ghost guns, this brief underscores two of the many reasons why the Fifth Circuit’s invalidation of the Rule is unfounded and a grave threat to public safety, and why certiorari should be granted.

First, the Fifth Circuit’s ruling flouts the Act’s text, historical application, and public-safety purpose. The Fifth Circuit rejected the notion that the Act reaches kits, frames, and receivers that are “partially complete” or “nonfunctional,” Pet. App. 16a–17a, but that is precisely what the statutory language permits: regulation of items that are “designed to” be or “may readily be converted” into operable weapons. 18 U.S.C. § 921(a)(3). The Fifth Circuit also erred in suggesting that the federal government has never regulated items that are not-quite-yet firearms. In fact, such regulation is nearly as old as the Act itself. Under the Fifth Circuit’s ruling, ghost-gun kits and near-complete frames and receivers can be sold to anyone, free from background checks and the serialization that allows law enforcement to protect the public. Such a result is contrary to the Act.

Second, the Fifth Circuit’s decision reflects a failure to confront the reality of the ghost-gun emergency, which is precisely the type of public-safety risk the Act was intended to combat. Absent coverage as “firearms” under the Act, ghost guns are deadly weapons readily available to criminals, teenagers, and others prohibited by law from owning firearms. As such, they are wreaking havoc on communities throughout the country, including facilitating violence perpetrated by and against children and violence against law enforcement. Early evidence indicates that the Rule is working. And the Fifth Circuit failed to acknowledge that the Rule does not infringe upon lawful gun ownership: it does not prohibit homemade guns, but simply requires that businesses that manufacture or sell the covered frames, receivers, and kits comply with the Act’s background check and serialization requirements.

The petition for a writ of certiorari should be granted.

ARGUMENT

I. The Fifth Circuit’s Ruling Conflicts with the Gun Control Act

A. The Fifth Circuit’s Ruling Misconstrues the Act’s Text

The 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).

Amici agree with the Government that the term “firearm” encompasses ghost-gun kits and nearly finished frames and receivers. The Government’s interpretation is reinforced by reading together subparagraphs (A) and (B) of 18 U.S.C. § 921(a)(3).

“Firearm” is defined to include the “frame or receiver of any such weapon,” and “such weapon” in (B) refers back to (A), which includes “any weapon” that “is designed to or may readily be converted to expel a projectile by the action of an explosive.” By referring to “the frame or receiver of any *such* weapon” (emphasis added), (B) 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. See *Slack Techs., LLC v. Pirani*, 598 U.S. 759, 761, 764–68 (2023) (“[S]uch’ usually refers to something that has already been ‘described’ . . .”).² In other words, because (A) encompasses not-yet-complete “weapon[s],” it follows that the reference to “frame or receiver of any *such* weapon” in (B) includes not-yet-complete frames or receivers, so long as they are

² See also, e.g., *Loc. 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”); *Standard Oil Co. of Cal. v. United States*, 685 F.2d 1337, 1343 (Cl. Ct. 1982) (“‘Such’ refers back to the first clause of the sentence . . .”); *Nicholas v. Saul Stone & Co.*, 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) (“any such weapon” in 18 U.S.C. § 921(a)(3)(B) “refers back [to] section (A)”).

“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).

The Fifth Circuit’s main opinion neglected this critical textual link between (A) and (B), instead reasoning that Congress’s omission of the “designed to or may readily be converted” language in (B) signals that “Congress explicitly declined to use such language in regard to frames or receivers.” Pet. App. 17a. But, as another court has explained, this analysis is “problematic” “because silence may signal permission rather than proscription,” and thus “the fact that Congress spoke in one place but remained silent in another rarely if ever suffices for the direct answer to the question of what Congress intended.” *California v. ATF*, No. 20-cv-06761, 2024 WL 779604, at *18 n.11 (N.D. Cal. Feb. 26, 2024) (cleaned up).³

In any event, Congress’s reference to “any such weapon” in (B) precludes the Fifth Circuit’s siloed reading of (A) and (B). Subparagraph (A) refers to “weapons” that are “designed to” be or that “may readily be converted” into an operable firearm, and (B) immediately refers back to “any *such* weapon” (emphasis added), thus incorporating the description from (A). Judge Oldham’s concurring opinion acknowledged as much, observing that “[w]ith its placement immediately following (A), we can easily understand (B)’s ‘any such weapon’ language to incorporate the definition of ‘weapon’ in (A).” Pet. App. 57a. Thus, “Subsection (B) defines ‘firearm’ to include ‘the frame or receiver of any such weapon (including a starter gun) which will or is designed to or may readily be

³ *Amicus* Giffords is a plaintiff in *California v. ATF*.

converted to expel a projectile by the action of an explosive.” *Id.*

The Southern District of New York also recognized this point, noting that “it is hard to imagine that Congress intended to omit the aspect of subsection (A) that covers weapons that are ‘designed to or may readily be converted to’ fire projectiles when it inserted a broad reference to ‘any such weapon’ in subsection (B),” and “such a reading would appear to contradict the plain language of the statute, which clearly defined ‘firearms’ more broadly than a fully operational weapon.” *New York v. Arm or Ally, LLC*, No. 22-CV-6124, 2024 WL 756474, at *7 (S.D.N.Y. Feb. 23, 2024) (cleaned up).

B. Incomplete Firearms Have Long Been Recognized as “Firearms” Under the Act

The Fifth Circuit asserted that the Rule breaks with “almost fifty years of uniform regulation,” Pet. App. 16a, but the contrary is true. For decades, ATF correctly understood that not-yet-complete firearms can be “firearms” under the Act.

In 1976, just eight years after the Act’s passage, ATF issued a framework for determining whether an “unfinished” frame or receiver is a “firearm.” Administrative Record Part 3 at ATF0265, *City of Syracuse, et al. v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 1:20-CV-06885, (S.D.N.Y. Dec. 8, 2020) (ECF No. 60-3), <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.

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, ATF0020, ATF0023, ATF0050–51, ATF0053, ATF0065. Consistent with “readily” meaning “without much difficulty” or “with fairly quick efficiency,”⁴ 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 (“‘unfinished receiver’ was a firearm because 75 minutes of drilling and filing were required ‘to make the receiver functional’”); *id.* at ATF0025 (unfinished frame was a firearm because “it could be converted to function as a firearm frame in approximately 20 minutes”). Thus, for nearly as long as the Act has existed, ATF has recognized that not-yet complete firearms may be “firearms” under the Act.

The Government laid out this history below. Yet, instead of concluding that such long-standing regulation of not-yet-complete firearms strongly supports the Rule, the Fifth Circuit instead believed that “ATF may have acted outside of its clear statutory limits in the past.” Pet. App. 18a. This is incorrect. *See supra* pp. 4–7. And, in any event, the Rule’s response to the deadly threat posed by ghost guns aligns with ATF’s historical practice.

C. The Fifth Circuit’s Ruling Subverts the Act

“In construing a statute,” courts should “never adopt an interpretation that will defeat its own purpose, if it will admit of any other reasonable

⁴ *Readily*, Webster’s Third New International Dictionary 1889 (1965).

construction.” *The Emily*, 22 U.S. (9 Wheat.) 381, 388 (1824) (declining an interpretation that would render “the law in a great measure nugatory, and enable offenders to elude its provisions in the most easy manner”); *see, e.g., Am. Broad. Cos. v. Aereo, Inc.*, 573 U.S. 431, 446 (2014). The Fifth Circuit’s ruling runs afoul of this principle. *See CA v. ATF*, 2024 WL 779604, at *18 n.11 (explaining that the Fifth Circuit’s interpretation presumes “that the legislature intended absurd results” and that “[h]ere, it makes no sense that something less than a fully functional receiver could never be a receiver regardless of the circumstances”).

The Act’s core ends are (1) promoting public safety by keeping guns out of the hands of persons who have committed felonies, who suffer from severe mental illness, or who pose a threat to society when they have access to firearms; and (2) assisting law enforcement in fighting crime. *See* S. Rep. No. 90-1501, at 22 (1968) (“Senate Report”); H.R. Rep. No. 90-1577, at 4412 (1968). Because unregulated ghost-gun kits and near-complete frames and receivers allow dangerous individuals to obtain deadly and untraceable firearms, the Rule advances the Act’s ends, whereas the Fifth Circuit’s ruling undermines it.

The Act’s core means are: (1) regulating who may buy or sell firearms, and (2) imposing rules on how firearms and firearm transactions are tracked. *See infra* pp. 9–16. The Rule advances these means, while the Fifth Circuit’s ruling allows their circumvention. This is plainly demonstrated by key provisions of the Act.

Mail-Order Firearms and Background Checks. Under the Act, a federal firearms licensee (“FFL”) is prohibited from shipping firearms interstate to individuals, 18 U.S.C. § 922(a)(2)–(3), and

every individual who buys a firearm from an FFL must undergo a background check, *id.* § 922(t)(1). Allowing unfettered access to ghost guns is contrary to this entire regime.

The “structure” and “history” of the Act demonstrate that “Congress . . . sought broadly to keep firearms away from the persons Congress classified as potentially irresponsible and dangerous.” *Barrett v. United States*, 423 U.S. 212, 218, 220 (1976). The Act’s 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 also New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 2–3 (2022) (recognizing that under *Heller* the Constitution protects “the right of *law-abiding, responsible* 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 under the Act 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 Fifth Circuit hardly disputed that its interpretation left “substantial loopholes” that would allow bad actors to “completely circumvent” the Act but

maintained that it is for Congress to fill those loopholes. Pet. App. 28a, 29a. However, as the Government correctly notes, courts should “not lightly conclude that Congress enacted a self-defeating statute.” Pet. 21 (quoting *Pugin v. Garland*, 143 S. Ct. 1833, 1841 (2023)). Moreover, Congress *did* foresee the problem of would-be criminals attempting to evade restrictions on mail-order firearms and 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. 4–7. It is thus the Fifth Circuit’s ruling—not Congress’s wording—that creates a “loophole.”

Notably, at the time of the Act’s passage, Congress deemed the ability to “anonymously acquire firearms” a “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. To this end, Congress 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). Indeed, halting traffic in mail-order firearms was a central goal of the Act: a Senate Judiciary Committee investigation found that “hundreds of

thousands, if not millions” of mail-order firearms were “imported . . . as scrap” as a “device used to circumvent tariff regulations.” S. Rep. No. 88-1340, at 4–5 (1964). As the Committee noted, “[t]he problem which this flood of weapons creates becomes great not because of the high figures of importation alone, but because of the fact that many of these guns have been diverted into the hands of juveniles, felons, and persons of undesirable and questionable character.” *Id.* Further, “[t]he nature of the mail-order firearms business is such that it affords circumvention of the laws of many States and municipalities,” but “remains within the letter of Federal Law.” *Id.* at 9. Therefore, “[t]he need for Federal remedial legislation is apparent.” *Id.* at 27.

Absent regulation as firearms, ghost-gun kits and near-complete frames and receivers are 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, with no recordkeeping or background check needed. Prior to the Rule, ghost-gun purveyors proudly marketed their ability to avoid background checks.⁵ *Amici*’s analysis of federal prosecutions involving ghost guns 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

⁵ See, e.g., *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, <https://bit.ly/3rKrgqj> (last visited Mar. 7, 2024) (same); *Lower Receiver*, SS-Arms, <https://bit.ly/3GAVvVo> (last visited Mar. 7, 2024) (same); *About, R&B Tactical Tooling*, <https://web.archive.org/web/20210924050725/https://www.rbtacticaltooling.com/about/> (last visited Mar. 7, 2024) (same).

have passed a background check.” *Untraceable: The Rising Specter of Ghost Guns*, Everytown for Gun Safety (May 14, 2020), <https://everytownresearch.org/report/the-rising-specter-of-ghost-guns/>.

Federal firearms licensees. The Act designates 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). Under the Act, *only* FFLs may “engage in the business of importing, manufacturing, or dealing in firearms.” 18 U.S.C. § 922(a)(1)(A); *see also id.* § 923(a). And, among other things:

- 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).
- FFLs must keep inventory and transaction records and must report suspicious purchases. 18 U.S.C. § 923(g)(1)(A) (requiring “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. 15–17.

FFLs that fail to meet these duties may lose their licenses, 18 U.S.C. § 923(d), 923(e), and face 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. Through this approach, 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*, 423 U.S. at 220 (recognizing the Act’s “prophylactic provisions”). But these point-of-sale FFL duties attach only to “firearms,” meaning if the Fifth Circuit’s ruling were upheld, 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.

Straw purchases. The Rule also advances 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. Absent the Rule, those seeking to obtain ghost-gun kits or near-complete frames and receivers would not even need to cloak their identities through straw purchases.

The Act aims to block straw purchases through several interlocking mechanisms. Gun buyers must complete “Form 4473,” attesting to their identity, ATF Form 4473 (5300.9), <https://bit.ly/3CAv5Rl>, and it is a crime to misrepresent—on Form 4473 or elsewhere—“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 civil and criminal liability. *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. By confirming that ghost-gun kits and near-complete frames and receivers as “firearms,” the Rule ensures that the tools that ATF employs to combat straw purchases are available for this segment of the market.

Serialization and record-keeping. By design, ghost guns are untraceable firearms that impede law enforcement’s ability to prevent, detect, and prosecute violent crime by tracing illegal weapons to their source. The Rule ensures that ghost-gun kits and near-complete frames and receivers do not evade the Act’s serialization and recordkeeping provisions and make it more difficult for law enforcement to fight crime. *See, e.g., United States v. Harris*, 720 F.3d 499, 502–03 (4th Cir. 2013) (“requiring serial numbers on firearms serves the important governmental interests of enabling the tracking of inventory and record-keeping by licensees; tracing specific firearms used in crimes; identifying firearms that have been lost or stolen; and assisting in the prosecution of firearm offenses” (citing ATF Ruling 2009-5)).

The Act mandates that every firearm sold by an FFL bear 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 firearm sales and inventory. 18 U.S.C. § 923(g)(1)(A); 27 C.F.R. §§ 478.121–134. Law enforcement officers are permitted to “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).

Without serialization and recordkeeping, these law-enforcement tools cannot 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). Tracing an unserialized firearm is inherently difficult, and an obvious reason why “[f]irearms without serial numbers are of particular value to those engaged in illicit activity.” *United States v. Marzzarella*, 614 F.3d 85, 98 (3d Cir. 2010). Thus, “[g]host guns” pose a “homeland security challenge” because they “hamstring[] law enforcement’s ability to investigate crimes.” H.R. Rep. No. 116-88, at 2 (2019).

The Fifth Circuit 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 “record the firearm transfer . . . and serialize the firearm.” Pet. 4a. But under the Fifth

Circuit’s ruling, ghost-gun kits and their key component parts are exempt from this regulation altogether. No reasonable reading of the Act could require that bizarre result.

II. The Rule Addresses the Deadly Public-Safety Threat Ghost Guns Present While Preserving the Interests of Lawful Gun Owners

A. Ghost Guns Are Responsible for a Proliferation of Violence

Tens of thousands of ghost guns have been wreaking havoc on communities across the United States through perpetrators who are legally barred from possessing firearms. Absent regulation of ghost-gun kits and near-complete frames and receivers as “firearms,” dangerous individuals can and will buy, build, and use ghost guns without detection. The Fifth Circuit ignored this reality.

Prior to the Rule, numerous websites offered all-in-one ghost-gun-building kits—marketed, for example, as “buy build shoot kits”—that allow for purchase with a debit or credit card, no background check, and shipping directly 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>. As a result, these weapons are highly associated with criminal violence, and in particular violence perpetrated by and against teenagers and law enforcement. 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.”).

Within just this last year, ghost guns were involved in numerous cases of violence perpetrated by and against teenagers, including:

- On March 23, 2023 in Denver, Colorado, a 17-year-old boy died by suicide using a ghost gun after shooting school administrators. Rob Low, *East High shooting suspect killed himself with ghost gun, failed prior diversion program*, Colorado Fox 31 (Mar. 23, 2023), <https://kdvr.com/news/local/east-high-shooting-suspect-killed-himself-with-ghost-gun-failed-prior-diversion-program/>.
- On March 30, 2023 in Winston-Salem, North Carolina, an 18-year-old shot himself in the hand with a ghost gun at a community college. Wes Young, *Police: Gun used at Forsyth Tech on Thursday was a “ghost gun” that had no serial number*, Western-Salem Journal (Mar. 31, 2023), https://journalnow.com/news/local/crime-and-courts/ghost-gun-in-forsyth-tech-shooting-winston-salem/article_3e408aca-cfdb-11ed-8967-1b6472b3e6c9.html.
- On May 6, 2023 in Hammond, Louisiana, an 18-year-old used a ghost gun to shoot and kill a man who was innocently celebrating his 63rd birthday. Monica Brich, *Teen arrested in connection with murder of Logan County man in Louisiana*, Arkansas Democrat Gazette (May 9, 2023), <https://www.arkansasonline.com/>

news/2023/may/09/teen-arrested-in-connection-with-murder-of-logan/.

- On May 21, 2023 in Newark, New Jersey, a 13-year-old was left in critical condition after being shot with a ghost gun. Chris Keating & Rob Taub, *Police: Arrest made in weekend shooting of Newark teen*, news12 New Jersey (May 25, 2023), <https://newjersey.news12.com/police-arrest-made-in-weekend-shooting-of-newark-teen>.
- On July 8, 2023 in Suffolk County, New York, a 15-year-old unintentionally shot himself in the hand with a ghost gun. Pam Robinson, *Teen Arrested After Shooting Himself in Hand*, Huntington Now (July 9, 2023), <https://huntingtonnow.com/teen-arrested-after-shooting-himself-in-hand/>.
- On August 6, 2023 in Gurnee, Illinois, a 16-year-old unintentionally shot a 15-year-old with a ghost gun, leaving him critically injured. Chicago Digital Team, *15-year-old boy critically injured in accidental Gurnee shooting involving 'ghost fun': police*, ABC7 Chicago (Aug. 7, 2023), <https://abc7chicago.com/gurnee-il-accidental-shooting-ghost-gun-near-me/13613713/>.
- On September 11, 2023 in Baltimore, Maryland, a teen was shot in the hand with a ghost gun. Alex Glaze, *'Ghost gun' believed to have been used by 14-year-olds in Lansdowne shooting*, CBS News (Sept. 12, 2023), <https://www.cbsnews.com/baltimore/news/>

ghost-gun-believed-to-have-been-used-by-14-year-olds-in-lansdowne-shooting/.

- On September 17, 2023 in Ansonia, Connecticut, a teen shot his relative in the arm with a ghost gun while trying to intervene in a fight between her and her partner. Staff Report, *Teen arrested on weapon, assault charges in CT shooting of women*, Hartford Courant (Oct. 23, 2023), <https://www.courant.com/2023/10/23/teen-arrested-on-weapon-assault-charges-in-ct-shooting/>.
- On February 14, 2024 in Seattle, Washington, a 12- and 13-year-old were arrested after using Polymer80 ghost guns in a carjacking and attempted carjacking. Jeremy Harris, *Boys arrested after Seattle carjacking, pursuit were armed with 'ghost guns,'* KOMO News (Feb. 19, 2024), <https://komonews.com/news/local/kids-arrested-in-seattle-carjacking-and-pursuit-were-armed-with-so-called-ghost-guns-charged-high-speed-chase-greenwood-south-lake-union-bitter-lake-gun-recovered-family-justice-center-king-county-crime>.
- Also in February, 2024, a 15-year-old in Darby, Pennsylvania shot and killed another 15-year-old and wounded another teen with a ghost gun bought online. Digital Staff, *15-year-old used ghost gun in deadly shooting of teen at Delco corner store: police*, 6ABC Action News (Feb. 7, 2024), <https://6abc.com/first-degree-murder-delaware-county-samir-austin-deadly-shooting/14397393/>.

Ghost guns are also frequently used to harm law enforcement officers. For example, just last month in Los Angeles, after being arrested for a restraining order violation, a man wounded an officer with a ghost gun. *LAPD Officer Shot in Hand With Ghost Gun, Suspect in Custody*, Patch (Feb. 19, 2024), <https://patch.com/california/los-angeles/lapd-officer-shot-hand-ghost-gun-suspect-custody>. Three similar incidents took place in California in January 2023 alone:

- On January 12, 2023 in Palo Alto, California, a police officer was shot and wounded by a fully automatic ghost gun following a traffic stop that led to a foot chase. Press Release, City of East Palo Alto Police Dep't, Officer Shot During Arrest, Suspect Arrested with Fully Automatic Ghost Gun (Jan. 12, 2023), <https://www.cityofepa.org/police/page/press-release-officer-shot-during-arrest-suspect-arrested-fully-automatic-ghost-gun>.
- On January 17, 2023 in Bakersfield, California, a man with a ghost AR-15 and a ghost handgun shot at police, grazing the cheek of a nearby resident. Jason Kotowski, *BPD officer shielded women from gunfire during southwest Bakersfield standoff: reports*, KGET (Jan. 31, 2023), <https://www.kget.com/news/crime-watch/bpd-officer-shielded-woman-from-gunfire-during-southwest-bakersfield-standoff-reports/>.
- On January 27, 2023 in Selma, California, a man approached by a police officer opened fire with a ghost assault rifle, killing the officer. Nic Garcia, *New details released in deadly*

shooting of Selma police officer, ABC 30 Action News (Feb. 4, 2023), <https://abc30.com/selma-police-officer-gonzalo-carrasco-jr-killed-in-line-of-duty-fresno/12765989/>.

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

The Fifth Circuit accounted for none of this—the ease of purchase, the simplicity of assembly, the impossibility of tracing, and the indisputable connection to violent crime. This reality is precisely what the Act was designed to prevent.

B. The Recent Decline in Ghost Gun Recoveries Signals that the Rule Is Curbing Ghost-Gun-Related Violence

Prior to the promulgation of the Rule, ghost gun recoveries increased dramatically each year. For example, reported recoveries of ghost guns increased each year in California from 2013 to 2021, with law enforcement recovering 12,388 ghost guns in California in 2021 alone.⁶ New Haven, Connecticut reported a “nearly ninefold” increase in recoveries from 2021 to 2022.⁷ In North Carolina, ghost gun seizures

⁶ Cal. Dep’t of Just. Off. of Gun Violence Prevention, *Data Report: The Impact of Gun Violence in California* 20 (Aug. 2023), <https://oag.ca.gov/system/files/media/OGVP-Data-Report-2022.pdf>.

⁷ Ben Lambert, *New Haven Police See “Ghost Guns” On the Rise in City*, New Haven Register (Aug. 17, 2022), <https://bit.ly/3THs9e5>.

increased by more than 700% in 2021,⁸ then again increased more than two-fold from 400 to 900 in 2022.⁹ Likewise, ghost guns comprised 17% of all “crime guns” recovered in Massachusetts in 2022 (316 total), a 75% increase over 2021.¹⁰ Sadly, these statewide surges reflect a national trend: in 2016, law enforcement recovered 1,758 ghost guns¹¹; by 2022, that number jumped to 25,785;¹² and these figures likely “significantly underrepresent[]” the number of crime-related ghost guns recovered.¹³

Early evidence suggests that the Rule may have curbed this trend. After the Rule went into effect on August 24, 2022, ghost gun recoveries declined in certain large metropolitan areas. For example, in New York City, ghost gun recoveries declined from 463 in

⁸ Cindy Bae, *Recovery of ‘ghost guns’ used in crimes on the rise*, 11 Eyewitness ABC News (Aug. 25, 2022), <https://abc11.com/ghost-guns-private-firearms-new-york-city-eric-adams/12165627/>.

⁹ Justin Berger, *Law enforcement trained on how to identify ghost guns*, ABC 13 News (Apr. 6, 2023), <https://wlos.com/news/local/law-enforcement-trained-on-how-to-identify-ghost-guns>.

¹⁰ Christian M. Wade, *State reports 75% rise in ‘ghost gun’ seizures*, The Daily News (July 10, 2023), https://www.newburyportnews.com/news/regional_news/state-reports-75-rise-in-ghost-gun-seizures/article_827d9d1a-1c37-11ee-abae-bff3ff000922.html.

¹¹ 87 Fed. Reg. at 24,656.

¹² Press Release, Dep’t of Just., Fact Sheet: Update on Justice Department’s Ongoing Efforts to Tackle Gun Violence (June 14, 2023), <https://tinyurl.com/mt2wx2ce>.

¹³ ATF, *Part III: Crime Guns Recovered and Traced Within the United States and Its Territories* 5 (Jan. 11, 2023), <https://tinyurl.com/3atfm65b>.

2022¹⁴ to 359 in 2023.¹⁵ Likewise in 2023, 1,232 ghost guns were recovered by the Los Angeles Police Department, a 28% decrease compared to 2022.¹⁶ This signals that the Rule is working by keeping deadly, untraceable firearms out of the hands of dangerous individuals. The Fifth Circuit’s ruling, if permitted to stand, would reverse this progress, contrary to Congress’s intent that “firearms” be regulated as such.

C. The Rule Does Not Interfere with Lawful Gun Owners

The Fifth Circuit ignored another critical point: the Rule does not preclude lawful gun owners from building firearms. *Cf.* Pet. App. 8a (noting that “[t]he tradition of at-home gun-making predates this nation’s founding, extends through the revolution, and reaches modern times”). It simply requires serialization, background checks, and recordkeeping of “firearms”—whether purchased complete in operational form, or in kit form.

Background checks and serialization are consistent with the Second Amendment because they do not prevent those legally permitted to possess guns

¹⁴ Christine Chung, *Ghost Gun Investigation Leads to Raid in Upper East Side Luxury Building*, N.Y. Times (Mar. 9, 2023), <https://www.nytimes.com/2023/03/09/nyregion/christopher-fox-ghost-gun-arrest.html>.

¹⁵ Press Release, Queens County Dist. Att’y, Brothers Charged After Seizure of Homemade Explosives, Ghost Guns in Their Astoria Apartment (Jan. 29, 2024), <https://queensda.org/brothers-charged-after-seizure-of-homemade-explosives-ghost-guns-in-their-astoria-apartment-photo/>.

¹⁶ Press Release, City of Los Angeles, LAPD Releases End of Year Crime Statistics for the City of Los Angeles 2023, at 2–3 (Jan. 24, 2024), <https://mayor.lacity.gov/news/lapd-releases-end-year-crime-statistics-city-los-angeles-2023>.

from acquiring or building them and have no effect on the functionality of a firearm. *Marzzarella*, 614 F.3d at 95 (“Because a firearm with a serial number is equally effective as a firearm without one, there would appear to be no compelling reason why a law-abiding citizen would prefer an unmarked firearm. These weapons would then have value primarily for persons seeking to use them for illicit purposes.”).

Because a firearm will only be traced if it is recovered in connection with a crime, untraceable firearms are attractive for criminal activity—and thus contrary to federal laws reducing gun violence, incompatible with public safety demands, and fully amenable to regulation consistent with the Second Amendment. The “Second Amendment protects a personal right to keep and bear arms for lawful,” not illicit “purposes.” *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010).

CONCLUSION

The petition for a writ of certiorari should be granted.

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