

No. 23-852

IN THE
Supreme Court of the United States

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

v.

JENNIFER VANDERSTOK, ET AL.,
Respondents.

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

BRIEF OF *AMICUS CURIAE*
GLOBAL ACTION ON GUN VIOLENCE
IN SUPPORT OF PETITIONERS

Jonathan E. Lowy
Yaacov (Jake) Meiseles
GLOBAL ACTION ON GUN
VIOLENCE
805 15th Street NW, #601
Washington, DC 20005

Timothy C. Hester
Counsel of Record

Ryan K. Quillian
Adam W. Mitchell
Madeline E. Sanderford
Bradford W. McGann
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001
(202) 662-6000
thester@cov.com

Counsel for Amicus Curiae

TABLE OF CONTENTS

	Page
INTEREST OF <i>AMICUS CURIAE</i>	1
SUMMARY OF ARGUMENT	2
ARGUMENT.....	3
I. The Proliferation of Ghost Guns Originating from the United States Harms the United States Directly and Indirectly.....	5
A. The Proliferation of Ghost Guns Increases Gun Violence in the United States.	6
B. Ghost Guns Are a Key Source of Firearms for International Criminal and Terrorist Organizations.....	10
C. The Harms Caused by Ghost Guns Overseas Inflict Human and Economic Costs on the United States.	17
II. The Proliferation of U.S. Ghost Guns Harms the United States’ Global Standing.....	25
CONCLUSION	32

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Abramski v. United States</i> , 573 U.S. 169 (2014).....	7, 8
<i>Biden v. Texas</i> , 597 U.S. 785 (2022).....	4
<i>Bolivarian Republic Venez. v. Helmerich & Payne Int'l Drilling Co.</i> , 581 U.S. 170 (2017).....	4
<i>Bostock v. Clayton Cnty.</i> , 590 U.S. 644 (2020) (Alito, J., dissenting).....	5
<i>Fed. Republic Ger. v. Philipp</i> , 592 U.S. 169 (2021).....	4
<i>Hernandez v. Mesa</i> , 589 U.S. 93 (2020).....	4
<i>Kiobel v. Royal Dutch Petroleum Co.</i> , 569 U.S. 108 (2013).....	4
<i>Kirtsaeng v. John Wiley & Sons, Inc.</i> , 568 U.S. 519 (2013).....	4
<i>Snyder v. United States</i> , No. 23-108, 2024 WL 3165518 (U.S. June 26, 2024).....	5

Statutes

- Gun Control Act of 1968,
18 U.S.C. § 921 *et seq.*..... 1, 2, 3, 32

Other Authorities

- 15-Year-Old Used Ghost Gun in Deadly Shooting of Teen at Delco Corner Store: Police*, 6 ABC ACTION NEWS (Feb. 7, 2024)..... 8
- Am. Immigr. Council, *The Cost of Immigration Enforcement and Border Security* (2021) 20
- Aman Deep & Charles Samuel Johnston, *Travel Advisories – Destabilizing Diplomacy in Disguise*, 9 J. POL’Y RSCH. TOURISM (2017)..... 28
- Andréa Barretto/Diálogo, “Brazil and US Dismantle Ghost Gun Manufacturing Group,” DIALOGO AMERICAS (May 4, 2022)..... 16
- Annie Karni & Chris Cameron, ‘Ghost Guns’: *What They Are and Why There’s a Fight Over Them*, N.Y. TIMES (Aug. 8, 2023) 9
- Antigua and Barbuda: His Excellency Gaston Alphonso Browne, Prime Minister*, U.N. Gen. Assembly (Sept. 22, 2023) 27

ATF, <i>National Firearms Commerce and Trafficking Assessment (NFCTA): Firearms Trafficking Investigations - Volume Three, Part III</i> (2024).....	9
ATF, <i>National Firearms Commerce and Trafficking Assessment (NFCTA): Firearms Trafficking Investigations - Volume Three, Part V</i> (2024)	10
<i>Basic Data on Safety Measures in the United States of America (USA)</i> , Japan Ministry Foreign Affs. (last updated Apr. 3, 2023)	30
Bridget Johnson, <i>Al-Qaeda Urges Acquisition of Ghost Guns in Review of Boulder Mass Shooting</i> , Homeland Sec. Today (July 6, 2021).....	24
CBSA <i>Seizure of Ghost Gun Leads to Prison Time</i> , Can. Border Servs. Agency (May 3, 2024).....	17
Chuck Goudie et al., <i>Al Qaeda Launches 1st Public Campaign in 4 Years to Encourage Lone Wolf Terrorist Attacks</i> , ABC 7 EYEWITNESS NEWS (July 29, 2021).....	24
Claire Klobucista and Mariel Ferragamo, <i>Fentanyl and the U.S. Opioid Epidemic</i> , Council on Foreign Rels. (Dec. 22, 2023, 10:45 AM ET).....	18, 19

Clare Ribando Seelke and Liana W. Rosen, <i>Illicit Fentanyl and Mexico’s Role</i> , Congressional Rsch. Serv. (Mar. 22, 2024)	18
Congressional Rsch. Serv., R47556, <i>U.S. Border Patrol Encounters at the Southwest Border: Fact Sheet</i> (2023)	23
<i>Country Profiles</i> , U.N. Office on Drugs & Crime, U.N. Office on Drugs & Crime (last visited June 14, 2024)	7
“ <i>Damming the Iron River: Solutions to Stop the U.S. Gun Industry from Fueling Mexico’s Violence</i> ,” Eve- rytown Rsch. & Pol’y (May 21, 2024)	18
DEA, <i>National Drug Threat Assessment 2024</i> (2024)	19
<i>Declaration by CARICOM Heads of Government – War on Guns</i> , CARICOM (Apr. 18, 2023)	28
Definition of “Frame or Receiver” and Identification of Firearms, 87 Fed. Reg. 24,652 (Apr. 26, 2022).....	8, 10, 13
<i>Deputy Attorney General Lisa O. Mon- aco Delivers Remarks at the South- bound Firearms Trafficking Coordination Meeting</i> , U.S. Dep’t Justice (June 14, 2023)	12

Diego R. Toubes & Noelia Araújo-Vila, <i>The Treatment of Language in Travel Advisories as a Covert Tool of Political Sanction</i> , 40 TOURISM MGMT. PERSPS. 2 (2021)	29, 31
U.N. Office of Drugs & Crime, <i>Haiti's Criminal Markets: Mapping Trends in Firearms and Drug Trafficking</i> (2023).....	22
<i>Firearms Trace Data: Mexico - 2016- 2021, Data Source: Firearms Tracing System, January 1, 2016 – December 31, 2021 (as of March 10, 2022)</i> , ATF (last reviewed Sept. 15, 2022)	11
<i>Foreign Travel Advice: USA, Gov't U.K.</i> (last visited June 14, 2024).....	31
<i>Ghost Guns Recoveries and Shootings</i> , Everytown Rsch. & Pol'y (July 31, 2023)	9
<i>Ghost Gun Trafficker Sentenced for Co- caine and Firearms Convictions</i> , U.S. Immigr. & Customs Enf't (Dec. 6, 2023)	16
Gregory Fayard, <i>The Geopolitics of Out- bound Travel: Theorizing Outgoing Tourism as State Strategy</i> , ENV'T & PLAN. C: POL. & SPACE 8 (2023)	29

Hollie Silverman, <i>2 Countries Issue Travel Warnings About the United States After a Weekend of Mass Shootings</i> , CNN (Aug. 6, 2019, 5:12 AM ET)	31
<i>HSI Announces Crackdown on Fire- arms, Ammunition Smuggling to Haiti, the Caribbean</i> , U.S. Immigr. & Customs Enft (Aug. 19, 2022)	21
<i>IACHR Condemns Mass Shooting in United States and Calls on the State to Adopt Measure to Prevent Future Tragedies</i> , Org. Am. States (Nov. 16, 2017)	28
<i>In Wake of Mass Shooting, UN Rights Chief Urges US to Consider Robust Gun Control</i> , U.N. NEWS (June 14, 2016)	28
“Inside Alberta’s Battle Against the Rise of ‘Ghost Guns,’” YAHOO NEWS (Mar. 14, 2023)	17
<i>Jamaica: His Excellency Andrew Holness, Prime Minister</i> , U.N. Gen. Assembly (Sept. 22, 2022).....	26
John Gramlich, <i>Migrant Encounters at the U.S.-Mexico Border Hit a Record High at the End of 2023</i> , Pew Rsch. Ctr. (Feb. 15, 2024)	20, 21

Joint Counterterrorism Assessment Team, <i>First Responders Toolbox: First Responder Awareness of Pri- vately Made Firearms May Prevent Illicit Activities</i> (2021).....	24
Kate Linthicum, “ <i>There Is Only One Gun Store in All of Mexico. So Why Is Gun Violence Soaring?</i> ”, L.A. TIMES (May 24, 2018, 3:00 AM)	15
Luke Barr, <i>Migrant Encounters Along Southwest Border Reach All-Time High of 302,000</i> , ABC NEWS (Jan. 2, 2024, 3:54 PM)	20
<i>Mexico: Her Excellency Alicia Bárcena Ibarra, Minister of Foreign Affairs, U.N. Gen. Assembly</i> (Sept. 23, 2023)	26
Michelle Rippy, <i>The Ghost Guns Haunt- ing National Crime Statistics</i> , Fed’n of Am. Scientists (June 6, 2023)	9
Motoko Rich, et al., <i>Shinzo Abe Is Assassinated With a Handmade Gun, Shocking a Nation</i> , N.Y. TIMES (July 8, 2022).....	25
Nurith Aizenman, <i>How the U.S. Gun Violence Death Rate Compares with the Rest of the World</i> , NPR (Oct. 31, 2023, 2:08 PM ET)	7

Oswald Brown, *Prime Minister Davis Brings Focus on Illegal Migration and Gun Trafficking to Meeting with U.S. Vice President Kamala Harris*, BAH. CHRON. (Jan. 18, 2023).....27

Patrick Smith, *New York Brothers Face 130 Charges Over Huge Weapons Stash and Celebrity ‘Hit List,’ NBC NEWS* (Jan. 30, 2024, 7:20 AM ET).....24

Phil Helsel, *Former Ohio Guardsman Sentenced to 6 Years for ‘Ghost Guns,’ Antisemitic Threats*, NBC NEWS (Feb. 28, 2023, 8:42 PM ET).....24

Press Release, Queens Cnty. Dist. Att’y, District Attorney Katz Launches State’s First Prosecution of International Ghost Gun Trafficking Operation (Apr. 2, 2023) 15

Press Release, U.S. Dep’t Justice, *Brothers Sentenced to More Than 35 Years Combined for Manufacturing and Distributing Machineguns Intended for ISIS* (Dec. 13, 2023)23

Press Release, U.S. Dep’t Justice, *FACT SHEET: Update on Justice Department’s Ongoing Efforts to Tackle Gun Violence* (June 14, 2023) 10

Press Release, U.S. Dep’t Justice,
*Indiana Residents Indicted on
Terrorism and Firearms Charges*
(July 11, 2019)..... 24

Press Release, U.S. Dep’t State, Re-
marks of Antony J. Blinken, U.S.
Secretary of State, *Rising to the
Challenge on Haiti: Multinational
Security Support Mission Ministerial
Meeting* (Feb. 22, 2024)..... 22

Press Release, U.S. Dep’t Justice, *Rhode
Island Man Sentenced to 68 Months
in Prison for Trafficking Over One
Hundred “Ghost Guns: to the Domin-
ican Republic* (Dec. 21, 2023) 14

*Prime Minister Andrew Holness Has
Productive Meeting with Vice Presi-
dent of the United States Kamala
Harris, Office of the Prime Minister
of Jamaica* (Mar. 31, 2022) 26

*Prime Minister Davis’s National State-
ment on Crime, Off. of the Prime
Minister, Commonwealth Bah.* (Jan.
14, 2024) 27

R. Sharpley, J. Sharpley & J. Adams,
*Travel Advise or Trade Embargo?
The Impacts and Implications of Of-
ficial Travel Advice*, 17 TOURISM
MGMT., 1996 29

Richard A. Posner, <i>The Problems of Jurisprudence</i> (1990)	5
Ricardo Pacheco, <i>Federal Spending on Immigration: Examining Key Programs and Impacts</i> , Congressional Progressive Caucus Ctr. (Sept. 6, 2023)	21
S. Pike, <i>Destination Marketing Organizations</i> (2004)	31
Sarah Morland, “US Must Stem ‘Iron River’ of Guns Flowing to Latin America, Activists Say,” REUTERS (Apr. 18, 2023, 10:30 PM ET)	11
Scott Mistler-Ferguson, “Made-in-Mexico ‘Ghost Guns’ Find Way to Cartels,” INSIGHT CRIME (Apr. 29, 2022)	12, 13
Small Arms Surv., <i>Weapons Compass: The Caribbean Firearms Study</i> (Apr. 2023)	14
Stefano Pozzebon, <i>American Guns Are a Key Driver in the Migration Crises. When will the U.S. Address It?</i> , CNN (Jun. 7, 2021, 1:05 PM ET)	21
Tom Jackman & Emily Davies, <i>Teens Buying ‘Ghost Guns’ Online, with Deadly Consequences</i> , WASH. POST (July 12, 2023, 6:00 AM ET)	8

U.N. Office on Drugs & Crime, *Haiti’s Criminal Markets: Mapping Trends in Firearms and Drug Trafficking* (2023)..... 22

U.S. GAO, *Firearms Trafficking, More Information Is Needed to Inform U.S. Efforts in Central America* (2022)..... 23

U.S. GAO, *Firearms Tracking, U.S. Efforts to Combat Firearms Trafficking to Mexico Have Improved, but Some Collaboration Challenges Remain* (2016) 12, 13

U.S. GAO, *Firearms Trafficking, U.S. Efforts to Disrupt Gun Smuggling into Mexico Would Benefit from Additional Data and Analysis* (2021)..... 11

U.S. Surgeon General, U.S. Pub. Health Serv., *Firearm Violence: A Public Health Crisis in America* (2024) 6, 7

United States of America, Gov’t Austl. (last updated Apr. 2, 2024) 30

United States, Fr. Dipl. (last updated Apr. 9, 2024) 30

United States of America, N.Z. Foreign Affs. & Trade (last updated June 7, 2023) 31

<i>United States Travel Advice</i> , Gov't Can., (last updated June 5, 2024)	30
<i>USA/United States: Travel and Safety Advice</i> , Ger. Foreign Off. (last up- dated June 10, 2024).....	30
Zi-Ann Lum, <i>They Will Be Refused Care': Inside an American Ally's De- cision to Warn Citizens About the US</i> , POLITICO (Dec. 24, 2023, 7:00 AM ET)	29

INTEREST OF *AMICUS CURIAE* *

Amicus curiae Global Action on Gun Violence (GAGV) is a non-profit organization dedicated to reducing gun violence throughout the world through litigation, human-rights advocacy, and messaging, with a focus on stopping cross-border gun trafficking. GAGV has presented reports and testimony to the Organization of American States, the Inter-American Commission for Human Rights, organs of the United Nations, and numerous international conferences, including speaking to the U.N. Office on Drugs and Crime in Vienna about the problem of ghost guns.

GAGV works with countries and people around the world to reduce the global harm from gun violence. GAGV has a demonstrated history of action, bringing impact litigation and human-rights proceedings, educating decisionmakers and the public, and advocating for policy reform. Reducing gun violence and saving lives is critical to GAGV's mission, the American people, and the international community.

GAGV has a deep interest in the outcome of this case, in which the applicability of the Gun Control Act of 1968 to certain firearms has been challenged. GAGV believes that the interpretation advanced by Respondents is inconsistent with the statute's text, structure, and history, and if adopted by this Court, would undermine efforts to reduce the global epidemic of gun violence. GAGV's submission is informed by the

* Pursuant to Rule 37.6, no counsel for any party authored this brief in whole or in part. No party or counsel for a party, or any other person, other than *amicus curiae*, made a monetary contribution intended to fund the preparation or submission of this brief.

decades of experience of its employees combating gun trafficking and violence.

SUMMARY OF ARGUMENT

The proliferation of firearms from the United States, facilitated by the nation's loose gun policy, increases violence throughout the country, the region, and the world. Such violence is thus not only a domestic issue but also an international one, with far-reaching implications for U.S. foreign relations and the country's international standing.

Ghost guns—firearms assembled from disaggregated component kits, often without serial numbers—are an emerging contributor to violence and crime both outside and inside the United States. Internationally, ghost guns facilitate firearms trafficking and increase the capacity of transnational criminal organizations, including drug cartels and terrorist groups, to carry out violence. Domestically, ghost guns fuel gun violence and provide a workaround for criminals and those legally prohibited from purchasing firearms to covertly obtain firearms and firearm parts. These untraceable weapons also frustrate law enforcement's criminal investigations by preventing the identification and tracing of weapons used (or suspected of being used) in a crime.

If the Court interprets the Gun Control Act of 1968 to exclude ghost guns from regulation, these international and domestic harms—and their human costs—would be amplified.

I. The proliferation of ghost guns has direct and indirect negative effects on the United States. Our country's unprecedented levels of gun violence are due

in part to the expanding access to—and use of—ghost guns, which are driven by the fact that ghost guns are untraceable and unregulated. Internationally, ghost guns are emerging as a key source of firearms for transnational criminal organizations. The harms caused by ghost guns overseas inflict human and economic costs on the United States, including by exacerbating the fentanyl crisis, increasing migration from Central and Latin American countries, and amplifying the threat of terrorism.

II. The proliferation and non-regulation of ghost guns also harm the United States' global standing. Foreign countries—in response to the international and domestic harms caused by U.S. ghost guns and U.S.-manufactured guns generally—are increasingly raising U.S. gun policy and the practices of the U.S. gun industry as a major issue of international concern. The crisis of domestic gun violence—fueled by ghost guns—is also frequently cited by foreign nations in warnings to their citizens of the risks of traveling to or living in the United States. These advisories harm the United States' standing in the world and its relationships with other countries.

These practical consequences demonstrate the danger inherent in failing to regulate U.S. ghost guns. For these and the other reasons discussed below, as well as for the reasons identified by Petitioners, *amicus* respectfully submits that the judgment of the U.S. Court of Appeals for the Fifth Circuit should be reversed.

ARGUMENT

Excluding ghost guns from the scope of the Gun Control Act of 1968 would create harmful practical

consequences both domestically and internationally. For example, the domestic prevalence and non-regulation of ghost guns help fuel the gun epidemic in this country—an epidemic declared to be a public health crisis by the U.S. Surgeon General in June 2024. Similarly, the free flow of ghost guns to foreign countries exacerbates the pervasive challenge of firearms trafficking, emboldening transnational criminal organizations and in turn causing harm in the United States by facilitating the fentanyl crisis, driving displacement and migration, and increasing the risk of terrorism. The domestic and international abundance of ghost guns also damages the United States’ global standing through other nations’ formal statements and warnings to their citizens of gun violence in the United States.¹

Considering the practical consequences of potential interpretations is a vital tool of statutory construction. *See, e.g., Kirtsaeng v. John Wiley & Sons, Inc.*, 568 U.S. 519, 545 (2013) (“Thus, we believe that the practical problems that petitioner and his *amici* have described are too serious, too extensive,

¹ When, as here, a statute’s interpretation likely implicates foreign relations, the Court has warned against “erroneously adopt[ing] an interpretation of U.S. law that carries foreign policy consequences not clearly intended by the political branches.” *Hernandez v. Mesa*, 589 U.S. 93, 110 (2020) (quoting *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108, 116 (2013)); *see also, e.g., Biden v. Texas*, 597 U.S. 785, 805 (2022) (“[T]he Court has taken care to avoid ‘the danger of unwarranted judicial interference in the conduct of foreign policy’” (quoting *Kiobel*, 569 U.S. at 115–116)). This Court has likewise called on the judiciary “to avoid, where possible,” adopting an interpretation of a statute that would “produc[e] friction in our relations with [other] nations.” *Fed. Republic Ger. v. Philipp*, 592 U.S. 169, 184 (2021) (quoting *Bolivarian Republic Venez. v. Helmerich & Payne Int’l Drilling Co.*, 581 U.S. 170, 183 (2017)).

and too likely to come about for us to dismiss them as insignificant”); *Snyder v. United States*, No. 23-108, 2024 WL 3165518, at *8 (U.S. June 26, 2024) (“[R]eading § 666 to create a federal prohibition on gratuities would suddenly subject 19 million state and local officials to a new and different regulatory regime for gratuities.”).

“[C]onsidering the consequences of alternative” interpretations is such a crucial jurisprudential step that former Seventh Circuit Judge Richard A. Posner has described it as “[t]he essence of interpretive decision making.” Richard A. Posner, *The Problems of Jurisprudence* 460 (1990). Justice Alito has likewise said that it is “irresponsible” for the Court to “refus[e] to consider the consequences of its reasoning.” *Bostock v. Clayton Cnty.*, 590 U.S. 644, 725 (2020) (Alito, J., dissenting).

In light of the practical consequences identified below, and for the reasons identified by Petitioners, *amicus* respectfully submits that the decision of the Court of Appeals should be reversed.

I. The Proliferation of Ghost Guns Originating from the United States Harms the United States Directly and Indirectly.

The increased proliferation of untraceable and unregulated ghost guns in the United States threatens to exacerbate the record levels of domestic gun violence facing this country. Equally concerning is the international impact of these ghost guns, particularly across the border in Mexico, in the Caribbean, and throughout Central and Latin America. While U.S.-manufactured firearms sold commercially continue to dominate the criminal gun

trafficking market, ghost guns are rapidly emerging as a growing concern for international authorities and their efforts to crack down on violence caused by transnational criminal organizations, such as drug cartels in Mexico. The destabilizing effects of this violence—including the trafficking of deadly drugs such as fentanyl, migration, and displacement of people due to crime and gun violence, and the arming of terrorist organizations and lone extremists—in turn rebound to the United States, imposing economic and human costs on the country.

A. The Proliferation of Ghost Guns Increases Gun Violence in the United States.

The inability to trace ghost guns, along with their lack of regulation, have contributed to unprecedented levels of gun violence in the United States. This country has a well-documented, ongoing epidemic of gun violence. In June 2024, the U.S. Surgeon General declared firearm violence in the United States to be a public health crisis.² The Surgeon General found that, in 2015, 83.7% of all firearm-related deaths across the United States and 28 other high-income nations occurred in the United States, despite the United States accounting for only 31% of the 29 countries' combined population.³ And in 2021, researchers from the University of Washington found that the United States had the “28th-highest rate of deaths from gun

² U.S. Surgeon General, U.S. Pub. Health Serv., *Firearm Violence: A Public Health Crisis in America* (2024), <https://perma.cc/3YMN-2ZE9>.

³ *Id.* at 8.

violence in the world: 4.31 deaths per 100,000 people.”⁴ This figure was approximately “340 times higher than in the United Kingdom, which had 0.013 deaths per 100,000,” and 32% higher than Afghanistan, which had 3.25 deaths per 100,000 people during the same year.⁵

Ghost guns worsen this violence by enabling people who are prohibited by Congress from purchasing firearms to obtain them.⁶ As Petitioners note, “[g]host guns provide a ready means for felons, minors, and others who are prohibited from buying firearms to circumvent the law—thwarting Congress’s ‘comprehensive scheme’ intended to . . . ‘keep guns out of the hands of criminals and others who should not have them.’” Pet. for Certiorari at 29 (quoting *Abramski v. United States*, 573 U.S. 169, 180 (2014)). Because anyone “can go to 7-Eleven and get a debit card, put money on it and buy a [ghost] gun,” people with mental health issues and even teenagers can purchase a firearm that they otherwise could not

⁴ Nurith Aizenman, *How the U.S. Gun Violence Death Rate Compares with the Rest of the World*, NPR (Oct. 31, 2023, 2:08 PM ET), <https://perma.cc/L5D4-BKMJ>; see also *Country Profiles*, U.N. Office on Drugs & Crime, <https://dataunodc.un.org/content/country-list> (last visited June 14, 2024) (showing, under Firearms Trafficking, over 250,000 pistols seized in the United States during 2020).

⁵ Aizenman, *supra* note 4.

⁶ As the U.S. Surgeon General’s June 25, 2024 advisory makes clear: “When discussing the contributing factors to the firearm violence crisis in the U.S., the lethality, *availability* of, and access to firearms should be acknowledged.” U.S. Surgeon General, *supra* note 2, at 20 (emphasis added).

legally obtain.⁷ For example, in February 2024, 15-year-old Samir Austin bought a ghost gun online, brought it to a convenience store, and shot two teenagers, killing one and injuring the other.⁸

Ghost guns' lack of records and serial numbers also frustrates Congress's goal of "assist[ing] law enforcement authorities" in their criminal investigations. *Abramski*, 573 U.S. at 180. Normally, when a firearm is found at a crime scene, its serial number allows law enforcement "to determine where, by whom, or when [the firearm] w[as] manufactured, and to whom [it] w[as] sold or otherwise transferred." Definition of "Frame or Receiver" and Identification of Firearms, 87 Fed. Reg. 24,652, 24,652 (Apr. 26, 2022). This process of "tracing" the firearm is an "integral tool" for law enforcement, allowing leads to be formed and crimes to be solved. *Id.* at 24,659. "Ghost guns," however "have no such identifier," Jackman & Davies, *supra* note 7, which "severely undermine[s]" law enforcement's investigative efforts, 87 Fed. Reg. at 24,659.

Because they are often not traceable, "ghost guns . . . have an outsized effect on day-to-day gun violence"

⁷ Tom Jackman & Emily Davies, *Teens Buying 'Ghost Guns' Online, with Deadly Consequences*, WASH. POST (July 12, 2023, 6:00 AM ET), <https://perma.cc/9GK8-X3DQ>; *see also id.* ("Teenagers have discovered the ease with which they can acquire the parts for a ghost gun, and they have been buying, building and shooting the homemade guns with alarming frequency.").

⁸ *See 15-Year-Old Used Ghost Gun in Deadly Shooting of Teen at Delco Corner Store: Police*, 6 ABC ACTION NEWS (Feb. 7, 2024), <https://perma.cc/K7K4-VYNJ>.

in the United States.⁹ According to a compiled database of shootings committed with ghost guns, “[u]ntraceable DIY ghost guns” have “become a weapon of choice for violent criminals.”¹⁰ Between March 2023 and July 2023 alone, law enforcement agencies across the nation recovered 13,828 suspected ghost guns. Pet. for Certiorari at 30 (citing Pet. App. 194a). Ghost guns have thus “emerged as a cataclysmic issue in the [gun] violence epidemic” in the United States.¹¹

According to an April 2024 report by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), the unlicensed production of privately made firearms, such as ghost guns, is now one of the top-ten ways criminals in the United States acquire firearms.¹² Between 2017 and 2021, ATF was able to identify the methods used by criminals to acquire components for privately made firearms in 155 of 316 investigations involving the trafficking of such firearms. In those 155 investigations, ATF concluded that commercial kits—kits that contained “most or all the parts necessary to assemble a functioning firearm”—and commercial

⁹ Annie Karni & Chris Cameron, ‘Ghost Guns’: What They Are and Why There’s a Fight Over Them, N.Y. TIMES (Aug. 8, 2023), <https://www.nytimes.com/article/what-are-ghost-guns.html>.

¹⁰ *Ghost Guns Recoveries and Shootings*, Everytown Rsch. & Pol’y (July 31, 2023), <https://perma.cc/WVZ9-KECC> (cataloguing 182 examples of shootings involving ghost guns since 2013).

¹¹ Michelle Rippy, *The Ghost Guns Haunting National Crime Statistics*, Fed’n of Am. Scientists (June 6, 2023), <https://perma.cc/K6Y5-CQCM>.

¹² ATF, *National Firearms Commerce and Trafficking Assessment (NFCTA): Firearms Trafficking Investigations - Volume Three, Part III*, at 6–7 (2024), <https://perma.cc/NTF6-B33Z>.

firearm parts were the source of the PMF components in 81.9% of these investigations.¹³ And in 2022, the U.S. Department of Justice recovered 25,785 ghost guns in domestic seizures and 2,453 through international operations.¹⁴

B. Ghost Guns Are a Key Source of Firearms for International Criminal and Terrorist Organizations.

The increase in violence caused by ghost guns is not confined to our borders; it is international in scope.¹⁵

Mexico. Mexico has strict gun control laws. It does not have a single manufacturer of guns for civilian use. The country has only one gun retailer, which is located on a military base.¹⁶ To purchase firearms legally, customers must have no criminal record and must undergo a strict vetting process.¹⁷

Nonetheless, from 2015 to 2022, firearm homicides accounted for more than 160,000 deaths in

¹³ ATF, *National Firearms Commerce and Trafficking Assessment (NFCTA): Firearms Trafficking Investigations - Volume Three, Part V*, at 5 (2024), <https://perma.cc/7PX4-E432>.

¹⁴ Press Release, U.S. Dep't Justice, *FACT SHEET: Update on Justice Department's Ongoing Efforts to Tackle Gun Violence* (June 14, 2023), <https://perma.cc/43L8-JSQQ>.

¹⁵ See 87 Fed. Reg. at 24,658 (“The problem of untraceable firearms being acquired and used by violent criminals and terrorists is international in scope.”).

¹⁶ See Kate Linthicum, “*There Is Only One Gun Store in All of Mexico. So Why Is Gun Violence Soaring?*”, L.A. TIMES (May 24, 2018, 3:00 AM), <https://perma.cc/MFG6-88H3>.

¹⁷ *Id.*

Mexico, largely attributed to transnational drug cartels that operate in the country.¹⁸ Because of Mexico's strict gun control laws, access to illegally trafficked U.S. firearms is crucial to the cartels' criminal operations. Between 2016 and 2021, 68% of firearms recovered at crime scenes in Mexico and submitted to the ATF were traced to U.S. manufacturers.¹⁹ Due to the difficulty of recovering and tracing firearms from crime scenes, this data likely captures only a small fraction of the firearms manufactured or sold in the United States that contribute to violence in Mexico—and does not include untraceable ghost guns.²⁰

The torrent of U.S.-manufactured firearms flowing into Mexico has been described as an “iron river,” drowning the two countries and the region in gun violence.²¹ While U.S.-manufactured firearms sold commercially are the preferred source of guns for international criminal organizations because of their

¹⁸ “*Damming the Iron River: Solutions to Stop the U.S. Gun Industry from Fueling Mexico’s Violence*,” Everytown Rsch. & Pol’y (May 21, 2024), <https://perma.cc/3K9K-Y63A>.

¹⁹ *Firearms Trace Data: Mexico - 2016-2021, Data Source: Firearms Tracing System, January 1, 2016 – December 31, 2021 (as of March 10, 2022)*, ATF (last reviewed Sept. 15, 2022), <https://perma.cc/Y9MU-VHLF>.

²⁰ U.S. GAO, *Firearms Trafficking, U.S. Efforts to Disrupt Gun Smuggling into Mexico Would Benefit from Additional Data and Analysis* 15 (2021), <https://perma.cc/4P7V-U8T9>.

²¹ Sarah Morland, “*US Must Stem ‘Iron River’ of Guns Flowing to Latin America, Activists Say*,” REUTERS (Apr. 18, 2023, 10:30 PM ET), <https://www.reuters.com/world/americas/us-must-stem-iron-river-guns-flowing-latin-america-activists-say-2023-04-18/>.

ubiquity, ease of acquisition, and reliability,²² ghost guns represent an emerging pathway for criminals to acquire firearms. In 2016, the U.S. Government Accountability Office (GAO) reported that both ATF and Mexican authorities described “the use of weapons parts transported to Mexico to be later assembled into finished firearms” as a “new complicating factor in their efforts to fight firearms trafficking.”²³ And in June 2023, U.S. Deputy Attorney General Lisa O. Monaco highlighted that “[t]he rise of privately made firearms, or ‘ghost guns’” has only made the problem of trafficking of firearms from the United States to Mexico “more acute.”²⁴

While there is scant reliable data on the scale of ghost gun and firearm parts trafficked from the United States to Mexico, seizures in both countries demonstrate their growing popularity amongst drug cartels. For example:

- In 2014, state police in Jalisco, Mexico, seized “hundreds of unfinished receivers and pieces of sophisticated equipment

²² Scott Mistler-Ferguson, “*Made-in-Mexico ‘Ghost Guns’ Find Way to Cartels*,” INsIGHT CRIME (Apr. 29, 2022), <https://perma.cc/Y3XC-BWC7>.

²³ U.S. GAO, *Firearms Tracking, U.S. Efforts to Combat Firearms Trafficking to Mexico Have Improved, but Some Collaboration Challenges Remain* 16 (2016), <https://perma.cc/AR25-3TL3>.

²⁴ *Deputy Attorney General Lisa O. Monaco Delivers Remarks at the Southbound Firearms Trafficking Coordination Meeting*, U.S. Dep’t Justice (June 14, 2023), <https://perma.cc/2H8E-43QB>.

being used to complete high caliber rifles” in the city of Guadalajara.²⁵

- Also in 2014, police in Baja California, Mexico, seized 25 rifles that were in the process of being assembled with firearm parts from the United States.²⁶
- In April 2022, Andrew Scott Pierson of Oklahoma was sentenced to 12 years in prison for his role in trafficking arms to two cartels—Cartel Jalisco Nueva Generación (CJNG) and Cartel del Noreste.²⁷ As part of the scheme, Pierson ordered firearms and firearm parts on the internet and had them delivered to Laredo, Texas, after which he arranged to have them transported to his auto repair shop in the Mexican border city of Nuevo Laredo. When authorities raided Pierson’s shop in 2018, “they discovered a slew of parts and machinery used to manufacture and complete” ghost guns, “including metal bending presses for assault rifle receivers and partly milled AR-15 and AK receivers.”²⁸

The Caribbean. In 2023, the Caribbean Community, an intergovernmental political and economic union of 15 Caribbean states, in conjunction

²⁵ U.S. GAO, *supra* note 23, at 20. The term “receiver” (sometimes called a “frame or receiver”) refers to “the primary structural components of a firearm to which fire control components are attached.” 87 Fed. Reg. at 24,654.

²⁶ U.S. GAO, *supra* note 23, at 20.

²⁷ Mistler-Ferguson, *supra* note 22.

²⁸ *Id.*

with the Switzerland-based Small Arms Survey, released a report on crime and security in the region.²⁹ The report found that the emergence of ghost guns in the United States has “potentially significant implications” for the Caribbean “given the role of US-sourced crime guns in the region.”³⁰

Recent arrests of ghost gun traffickers in the United States demonstrate the scope of this problem.

- In December 2023, a Rhode Island man, Robert Alcantara, was sentenced to 68 months in prison for trafficking firearms.³¹ According to a statement by the U.S. Attorney for the Southern District of New York, Alcantara operated a “ghost gun factory” from his home in Rhode Island, from which he purchased ghost gun kits, assembled the kits into working firearms, and exported and sold these firearms to individuals in the Dominican Republic. When he was arrested in his vehicle in November 2021, Alcantara had in his possession kits to build “approximately 45 ghost guns” and an additional 50 assembled ghost guns in his home.³² In his statement, the U.S. Attorney called “[t]he proliferation

²⁹ Small Arms Surv., *Weapons Compass: The Caribbean Firearms Study* 92 (Apr. 2023), <https://perma.cc/J3YC-C6W8>.

³⁰ *Id.*

³¹ Press Release, U.S. Dep’t Justice, *Rhode Island Man Sentenced to 68 Months in Prison for Trafficking Over One Hundred “Ghost Guns: to the Dominican Republic* (Dec. 21, 2023), <https://perma.cc/E5VA-L7UT>.

³² *Id.*

of unlawful ghost guns” a “threat to public safety” and noted that Alcantara alone had trafficked “over 100 untraceable ghost guns to the Dominican Republic.”³³

- In April 2023, the Queens County District Attorney indicted two men for a conspiracy to “obtain, manufacture, possess, transport and sell firearm components and completed ghost guns in . . . Trinidad.”³⁴ The investigation revealed that the defendants “ordered enough components to build up to 45 ghost guns” and possessed “14 additional complete ghost gun kits.”³⁵ In her statement, the District Attorney emphasized the importance of continued efforts targeting ghost gun makers, describing ghost gun trafficking as “a burgeoning cottage industry” and “a deeply troubling trend that threatens to make an already pervasive gun violence problem much worse.”³⁶
- In March 2020, U.S. Customs and Border Protection (CBP) agents intercepted a parcel of cocaine that a U.S. Virgin Islands resident, Somalie Bruce, had mailed from a

³³ *Id.*

³⁴ Press Release, Queens Cnty. Dist. Att’y, District Attorney Katz Launches State’s First Prosecution of International Ghost Gun Trafficking Operation (Apr. 2, 2023), <https://perma.cc/869Y-Z6X2>.

³⁵ *Id.*

³⁶ *Id.*

post office in St. Croix.³⁷ The ensuing investigation revealed that between May 2019 and August 2020, Bruce and his girlfriend had placed \$95,000 in orders from various firearms companies to purchase over 200 firearm related parts. In December 2023, Bruce was sentenced to 120 months in prison for possession with intent to distribute cocaine and conspiracy to traffic firearms. In a statement, the U.S. Department of Homeland Security (DHS) emphasized that “[t]he assembly of these ghost gun parts into fully functioning, high powered rifles and pistols poses a threat to the public safety of Virgin Islanders.”³⁸

Latin America. Trafficking in ghost guns and ghost gun parts has also extended deep into Latin America. In the spring of 2022, U.S. and Brazilian authorities arrested three people in Brazil and served warrants on three others in the United States for their role in operating an international ghost gun trafficking ring.³⁹ As part of the operation, Florida-based gang members bought ammunition, weapon parts, and raw materials for export to Brazil. Hidden innocuously among electronics, medicines, and clothes, these goods arrived in Brazil via ship or plane, where they were manufactured and assembled into

³⁷ *Ghost Gun Trafficker Sentenced for Cocaine and Firearms Convictions*, U.S. Immigr. & Customs Enf’t (Dec. 6, 2023), <https://perma.cc/FN3F-9JL4>.

³⁸ *Id.*

³⁹ Andréa Barretto/Diálogo, “Brazil and US Dismantle Ghost Gun Manufacturing Group,” DIALOGO AMERICAS (May 4, 2022), <https://perma.cc/Z2D7-JQC5>.

guns for purchase by narcotics traffickers, militia members, and hitmen. During the two-year investigation, authorities in the United States and Brazil seized “thousands of weapons, parts, accessories, and ammunition of various calibers,” highlighting the scale, scope, and sophistication of the criminal operation.⁴⁰

Canada. Trafficking in ghost guns and ghost gun parts has also extended to our northern neighbor. In the province of Alberta, which borders Montana to the south, “police services have been grappling with a . . . surge” in “ghost guns,” including many “smuggled from the U.S.”⁴¹ For example, in one part of southern Montana, police reported significant amounts of “Polymer80s—mostly assembled gun kits from the United States that people can finish with unregulated parts.”⁴² And in March 2024, a Canadian court sentenced a U.S. citizen, Jerry Armas, for attempting to smuggle a ghost gun into Canada.⁴³

C. The Harms Caused by Ghost Guns Overseas Inflict Human and Economic Costs on the United States.

The harms caused by the international flow of U.S.-manufactured firearms—including ghost guns—

⁴⁰ *Id.*

⁴¹ “Inside Alberta’s Battle Against the Rise of ‘Ghost Guns,’” YAHOO NEWS (Mar. 14, 2023), <https://perma.cc/PN9W-JSF4>.

⁴² *Id.*

⁴³ *CBSA Seizure of Ghost Gun Leads to Prison Time*, Can. Border Servs. Agency (May 3, 2024), <https://perma.cc/S9QT-PR6Y>.

do not stay abroad. The increase in crime and ensuing unrest caused by the proliferation of these firearms—particularly in Mexico, the Caribbean, and Central and Latin America—rebounds to the United States in the form of increased drug trafficking, migration, and terrorist activity. Each of these crises imposes human and economic costs on the United States and U.S. taxpayers, including the cost of attempting to address these issues overseas and grappling with their domestic impacts.

The Fentanyl Crisis. The U.S. Drug Enforcement Agency (DEA) has described the fentanyl epidemic as “the single deadliest drug threat our nation has ever encountered.”⁴⁴ The growing prevalence of fentanyl—and the rising death toll due to its abuse—is directly linked to drug trafficking by Mexican cartels that could not operate on such a scale were they not armed with U.S.-manufactured firearms.

Fentanyl is a highly addictive and powerful synthetic opioid that was first synthesized in 1959 for use as a medical painkiller.⁴⁵ According to some studies, most fentanyl destined for the United States is produced abroad and trafficked across the U.S. border by drug cartels in Mexico, particularly the Sinaloa Cartel and the CJNG.⁴⁶ Using chemical

⁴⁴ Claire Klobucista and Mariel Ferragamo, *Fentanyl and the U.S. Opioid Epidemic*, Council on Foreign Rels. (Dec. 22, 2023, 10:45 AM ET), <https://perma.cc/J7L3-9W8A>.

⁴⁵ Clare Ribando Seelke and Liana W. Rosen, *Illicit Fentanyl and Mexico’s Role*, Congressional Rsch. Serv. (Mar. 22, 2024), <https://crsreports.congress.gov/product/pdf/IF/IF10400>.

⁴⁶ *Id.*

ingredients imported from China, these criminal organizations lace counterfeit medication and illicit drugs (such as cocaine) with fentanyl and import them into the United States, where they are distributed by local affiliates. “Together,” the DEA has noted, “the Sinaloa and Jalisco cartels have caused the worst drug crisis in U.S. history.”⁴⁷

Armed via the “iron river” of firearms flowing from the United States to Mexico, cartels and criminal organizations have created a counterflow of fentanyl and other illegal drugs into the United States. The human cost of this international fentanyl trade on the United States has been devastating. Overdoses stemming from the abuse of synthetic opioids—primarily fentanyl—are the leading cause of death in the country for people ages 18 to 45.⁴⁸ According to the Centers for Disease Control and Prevention, in 2022, 68% of all drug poisoning deaths in the United States—nearly 77,000 lives—were caused by synthetic opioids, primarily fentanyl.⁴⁹

This increase in the availability of fentanyl in the United States has had a massive economic impact as well. In 2020, the fentanyl-fueled opioid crisis cost the United States nearly \$1.5 trillion, or 7% of GDP that year.⁵⁰ And between 2008 and 2021, the United States provided Mexico with an estimated \$3.5 billion for security and counternarcotics aid through the Merida

⁴⁷ DEA, *National Drug Threat Assessment 2024*, at 2 (2024), <https://www.dea.gov/sites/default/files/2024-05/5.23.2024%20NDTA-updated.pdf>.

⁴⁸ Klobucista and Ferragamo, *supra* note 44.

⁴⁹ DEA, *supra* note 47.

⁵⁰ Klobucista and Ferragamo, *supra* note 44.

initiative, a bilateral security cooperative program between Mexico and the United States.⁵¹

Unprecedented Migration. Armed gangs and transnational criminal organizations fueling the fentanyl crisis also contribute to unprecedented migration to the United States, driven in part by violence carried out using U.S.-sourced firearms. December 2023 saw the highest number of monthly migrant encounters along the United States' southwest border ever recorded.⁵² And that was not an isolated occurrence; it was part of a broader trend. Following a lull during the initial phase of the COVID-19 pandemic, migrant crossings into the United States have “soared” since 2020.⁵³

Federal government spending on immigration enforcement has surged along with this increase in migrant crossings. Between the establishment of the DHS in 2003 and 2021, the annual budgets for CBP and Immigration and Customs Enforcement (ICE) each nearly tripled.⁵⁴ Indeed, since 2003, Congress has appropriated more than \$442 billion to DHS for immigration enforcement, “more . . . than it has

⁵¹ *Id.*

⁵² See, e.g., Luke Barr, *Migrant Encounters Along Southwest Border Reach All-Time High of 302,000*, ABC NEWS (Jan. 2, 2024, 3:54 PM), <https://perma.cc/FM32-DM3J>; John Gramlich, *Migrant Encounters at the U.S.-Mexico Border Hit a Record High at the End of 2023*, Pew Rsch. Ctr. (Feb. 15, 2024), <https://perma.cc/2N3Z-LZ8B>.

⁵³ See Gramlich, *supra* note 52.

⁵⁴ See Am. Immigr. Council, *The Cost of Immigration Enforcement and Border Security* 3 (2021), <https://perma.cc/XSF7-APPA>.

allocated for all other federal criminal law enforcement agencies combined.”⁵⁵

Many factors have caused an increase in migration to the United States, but data on border arrivals show that violent crime throughout many parts of Central America—enabled by the “iron river” of guns flowing out of the United States—is a key contributing factor. Increasingly, migrants encountered at the U.S. border are families traveling together.⁵⁶ When asked why they had fled their homes, “three quarters of families with kids arriving at the border sa[id] violence . . . was a key reason for leaving.”⁵⁷

It’s not just the Mexican border. In Haiti, U.S.-manufactured guns have enabled violent crime, exacerbated political instability, and driven displacement and migration, including to the United States. In 2022, the ICE field office in Miami announced that it had “seen a substantial increase in the number of weapons . . . being illegally trafficked” to Haiti,⁵⁸ and data on illegal firearms seized in Haiti

⁵⁵ Ricardo Pacheco, *Federal Spending on Immigration: Examining Key Programs and Impacts*, Congressional Progressive Caucus Ctr. (Sept. 6, 2023), <https://perma.cc/6DVM-QM7J>.

⁵⁶ See e.g., Gramlich, *supra* note 52 (“In December 2023, the Border Patrol had nearly 102,000 encounters with family members, up from around 61,000 a year earlier.”).

⁵⁷ Stefano Pozzebon, *American Guns Are a Key Driver in the Migration Crises. When will the U.S. Address It?*, CNN (June 7, 2021, 1:05 PM ET), <https://perma.cc/9JWL-S7WK>.

⁵⁸ *HSI Announces Crackdown on Firearms, Ammunition Smuggling to Haiti, the Caribbean*, U.S. Immigr. & Customs Enf’t (Aug. 19, 2022), <https://perma.cc/B2WA-2K7V>.

that year indicated that the largest share were pistols, rifles, and homemade weapons.⁵⁹ At the same time, between 2019 and 2022, the number of homicides in Haiti nearly doubled and the number of kidnappings increased by a factor of greater than 16.⁶⁰ There was a similar increase in the number of Haitian migrants detained by the United States during the same period—7,175 in 2022, compared to just 932 in 2019 (an increase of 670%).⁶¹ As a result, the United States has spent hundreds of millions of dollars in efforts to help stabilize Haiti.⁶²

Haiti and Mexico are not alone. In a study of firearms trafficking from the United States to Belize, El Salvador, Guatemala, and Honduras, the GAO found that about 40% of firearms recovered in those countries and traced by ATF from 2015 to 2019 were manufactured in the United States. “In each of the four countries, violent criminals, including those associated with [transnational criminal organizations] such as Mara Salvatrucha (MS-13) and Barrio 18 (18th Street), use firearms to commit violent crimes such as murder, extortion, and assault,” contributing to “northward migration” to the United

⁵⁹ U.N. Office on Drugs & Crime, *Haiti’s Criminal Markets: Mapping Trends in Firearms and Drug Trafficking 22–23* (2023), <https://perma.cc/D2C2-SYGD>.

⁶⁰ *Id.* at 3.

⁶¹ *Id.*

⁶² Press Release, U.S. Dep’t State, Remarks of Antony J. Blinken, U.S. Secretary of State, *Rising to the Challenge on Haiti: Multinational Security Support Mission Ministerial Meeting* (Feb. 22, 2024), <https://www.state.gov/rising-to-the-challenge-on-haiti-multinational-security-support-mission-ministerial-meeting/>.

States.⁶³ Indeed, over that same period, the share of migrants encountered by CBP from Mexico was steadily displaced by migrants from El Salvador, Guatemala, and Honduras,⁶⁴ while American taxpayers spent approximately \$38 million to support weapons reduction, criminal justice, and border security in those three countries plus Belize (on top of the existing costs for border enforcement).⁶⁵

Terrorism. In addition to firearms trafficking from the United States to drug cartels and gangs, ghost guns are uniquely suited for trafficking to international terrorist organizations. The May 2019 arrest of two brothers in Indiana—Moyad and Mahde Dannon—by the FBI for attempting to provide firearms to ISIS exemplifies this threat.⁶⁶ The brothers initially focused on selling stolen weapons but quickly transitioned to privately manufactured ghost guns built from parts without serial numbers that they purchased online.⁶⁷

⁶³ U.S. GAO, *Firearms Trafficking, More Information Is Needed to Inform U.S. Efforts in Central America* 3, 13, 35–36 (2022), <https://perma.cc/ZX3Z-WYQK>.

⁶⁴ Congressional Rsch. Serv., R47556, *U.S. Border Patrol Encounters at the Southwest Border: Fact Sheet 3–4* (2023), <https://crsreports.congress.gov/product/pdf/R/R47556>.

⁶⁵ U.S. GAO, *supra* note 63, at 22.

⁶⁶ Press Release, U.S. Dep’t Justice, *Brothers Sentenced to More Than 35 Years Combined for Manufacturing and Distributing Machineguns Intended for ISIS* (Dec. 13, 2023), <https://perma.cc/2H6G-5N7Z>.

⁶⁷ Press Release, U.S. Dep’t Justice, *Indiana Residents Indicted on Terrorism and Firearms Charges* (July 11, 2019), <https://perma.cc/S6S5-AZ67>.

Ghost guns in the hands of terrorists do not only threaten U.S. interests abroad. Foreign terrorist organizations, including Al-Qaeda, have touted the lack of traceability of ghost guns as reasons for their followers to use such weapons in lone wolf attacks in their home countries.⁶⁸ Indeed, U.S. authorities are increasingly concerned about the threat of domestic extremists using ghost guns to further extremist ideologies through violence.⁶⁹ A 2021 report of the Joint Counterterrorism Assessment Team—a working group affiliated with the National Counterterrorism Center—observed that “[c]riminals and violent extremists continue to seek ways to acquire firearms through the production of privately made firearms.”⁷⁰ This threat is not theoretical: In July 2022, a lone gunman used a homemade gun to

⁶⁸ Chuck Goudie et al., *Al Qaeda Launches 1st Public Campaign in 4 Years to Encourage Lone Wolf Terrorist Attacks*, ABC 7 EYEWITNESS NEWS (July 29, 2021), <https://perma.cc/5GKX-2CVA>; Bridget Johnson, *Al-Qaeda Urges Acquisition of Ghost Guns in Review of Boulder Mass Shooting*, Homeland Sec. Today (July 6, 2021), <https://perma.cc/XV5U-F86U>.

⁶⁹ See e.g., Phil Helsel, *Former Ohio Guardsman Sentenced to 6 Years for ‘Ghost Guns,’ Antisemitic Threats*, NBC NEWS (Feb. 28, 2023, 8:42 PM ET), <https://perma.cc/N66K-BS24>; Patrick Smith, *New York Brothers Face 130 Charges Over Huge Weapons Stash and Celebrity ‘Hit List,’* NBC NEWS (Jan. 30, 2024, 7:20 AM ET), <https://perma.cc/NTN9-6Q6D>.

⁷⁰ Joint Counterterrorism Assessment Team, *First Responders Toolbox: First Responder Awareness of Privately Made Firearms May Prevent Illicit Activities* 1–3 (2021) <https://perma.cc/7BQN-9KJK>.

assassinate the former Prime Minister of Japan, Shinzo Abe.⁷¹

II. The Proliferation of U.S. Ghost Guns Harms the United States' Global Standing.

The high level of gun violence in the United States, fueled by the prevalence of ghost guns, has been cited by several countries, including our closest allies, in their requests for stronger action from the United States to reduce firearms trafficking. Such violence is also frequently cited by countries—again, including allies—in advisories warning their citizens of the dangers of traveling to or living in the United States. These advisories damage the United States' global image as well as the domestic economy.

As discussed above, *supra*, Part I.A, the inability to trace and the lack of regulation of ghost guns in the United States have led contributed to unprecedented levels of domestic gun violence. Leaders of nations allied with the United States, along with officials from prominent international groups in which the United States plays a key role, have expressed concerns about U.S. gun policy and requested stronger action to prevent this violence—as well as firearms trafficking. These nations and groups include:

Mexico. In a speech to the U.N. General Assembly, Mexican Secretary of Foreign Affairs Alicia Bárcena Ibarra called on the United States to take steps to combat illicit trafficking in firearms, pointing

⁷¹ Motoko Rich, et al., *Shinzo Abe Is Assassinated With a Handmade Gun, Shocking a Nation*, N.Y. TIMES (July 8, 2022) <https://www.nytimes.com/2022/07/08/world/asia/shinzo-abe-assassin-handmade-gun.html>.

out that 200,000 firearms are illegally trafficked into Mexico from the United States annually.⁷²

Jamaica. In a meeting with Vice President Kamala Harris on March 20, 2022, Jamaican Prime Minister Andrew Holness advocated for increased U.S. assistance to curb the influx of illegal firearms into Jamaica.⁷³ In a speech to the U.N. General Assembly, Prime Minister Holness urged countries that manufacture publicly available firearms to enforce stricter controls to prevent these arms from reaching the streets of developing nations such as Jamaica.⁷⁴

The Bahamas. Prime Minister Phillip Davis of the Bahamas focused on the issue of gun trafficking during a meeting with Vice President Kamala Harris on January 17, 2023, and emphasized the importance of reducing the flow of illicit weapons into the Bahamas from the United States.⁷⁵ In his first public national statement of 2024, Prime Minister Davis continued to press the U.S. government to do more to

⁷² *Mexico: Her Excellency Alicia Bárcena Ibarra, Minister of Foreign Affairs*, U.N. Gen. Assembly (Sept. 23, 2023), <https://perma.cc/2D7N-JZAA>.

⁷³ *Prime Minister Andrew Holness Has Productive Meeting with Vice President of the United States Kamala Harris*, Office of the Prime Minister of Jamaica (Mar. 31, 2022), <https://perma.cc/84XT-R2M9>.

⁷⁴ *Jamaica: His Excellency Andrew Holness, Prime Minister*, U.N. Gen. Assembly (Sept. 22, 2022), <https://perma.cc/C8C3-JJNS>.

⁷⁵ *Oswald Brown, Prime Minister Davis Brings Focus on Illegal Migration and Gun Trafficking to Meeting with U.S. Vice President Kamala Harris*, Bah. Chron. (Jan. 18, 2023), <https://perma.cc/7BB2-UTTQ>.

control the flow of firearms from the United States to gangs in the Bahamas.⁷⁶ The Prime Minister explained: “[W]e don’t make guns here in The Bahamas. These firearms are coming from abroad, primarily from the United States.”⁷⁷ The Prime Minister specifically highlighted “Bahamians with dual citizenship who have been buying guns in the US and trafficking them here.”⁷⁸

Antigua and Barbuda. Prime Minister Gaston Alphonso Browne of Antigua and Barbuda identified the United States as a major source of the Caribbean country’s illegal firearms during a speech to the U.N. General Assembly.⁷⁹ The Prime Minister reported “that the use of illegal guns accounts for a homicide rate of 15.1 per 100,000 people in the Caribbean region, spotlighting that most of those weapons are smuggled or trafficked from the United States.”⁸⁰

The Caribbean Community (CARICOM). In 2023, CARICOM leaders launched a “War on Guns” and specifically called on the United States to “urgently adopt and take action to stop the illegal

⁷⁶ *Prime Minister Davis’s National Statement on Crime*, Off. of the Prime Minister, Commonwealth Bah. (Jan. 14, 2024), <https://perma.cc/GCT8-JSJC>.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Antigua and Barbuda: His Excellency Gaston Alphonso Browne, Prime Minister*, U.N. Gen. Assembly (Sept. 22, 2023), <https://perma.cc/XR54-5BWL>.

⁸⁰ *Id.*

exportation of firearms and ammunition into the Caribbean.”⁸¹

Inter-American Commission on Human Rights. The Inter-American Commission on Human Rights has called on the United States to formulate more effective gun policies to address rising levels of gun violence.⁸²

U.N. Human Rights Council. During a session of the Human Rights Council, U.N. High Commissioner for Human Rights Zeid Ra’ad Al Hussein called on the United States to reassess its gun control policies.⁸³

Widespread gun violence in the United States, fueled by the prevalence of ghost guns, also causes foreign nations to issue travel advisories to their citizens warning them of this threat of violence. Although nations “have the right to warn citizens about locations where they could potentially be in danger,” Aman Deep & Charles Samuel Johnston, *Travel Advisories – Destabilising Diplomacy in Disguise*, 9 J. POL’Y RSCH. TOURISM 82, 86 (2017), countries often use travel advisories as foreign policy devices. Indeed, it is well-documented that a travel advisory “can act as a tool of covert diplomatic sanction by restricting the mobility of citizens to

⁸¹ *Declaration by CARICOM Heads of Government – War on Guns*, CARICOM (Apr. 18, 2023), <https://perma.cc/KK3P-FMCC>.

⁸² *IACHR Condemns Mass Shooting in United States and Calls on the State to Adopt Measure to Prevent Future Tragedies*, Org. Am. States (Nov. 16, 2017), <https://perma.cc/C9Z7-72C5>.

⁸³ *In Wake of Mass Shooting, UN Rights Chief Urges US to Consider Robust Gun Control*, U.N. NEWS (June 14, 2016), <https://perma.cc/8WHL-AXAP>.

certain countries.” Diego R. Toubes & Noelia Araújo-Vila, *The Treatment of Language in Travel Advisories as a Covert Tool of Political Sanction*, 40 TOURISM MGMT. PERSPS. 2 (2021).⁸⁴ For example, when Canada issued an updated advisory warning of travel to the United States in December of 2023, representatives of the two countries—including the Canadian embassy in Washington and the U.S. Department of State—communicated extensively regarding the wording of the notice and whether it was “misleading.”⁸⁵

Several countries, including some of the United States’ strongest allies, have cited the high incidence of gun violence in advisories warning their citizens of the risks of traveling to or living in the United States. Representative examples include:

Australia: “Violent crime is more common in the US than in Australia. Gun crime is also prevalent. If you live in the US, learn and practice active shooter drills.”⁸⁶

⁸⁴ See also Gregory Fayard, *The Geopolitics of Outbound Travel: Theorizing Outgoing Tourism as State Strategy*, ENV’T & PLAN. C: POL. & SPACE 8 (2023) (“[T]ourism advisories publicized by diplomatic ministries carry with them tactical overtures . . . to sully the reputation of rival powers or substantiate other political aims.” (citing R. Sharpley, J. Sharpley & J. Adams, *Travel Advise or Trade Embargo? The Impacts and Implications of Official Travel Advice*, 17 TOURISM MGMT., 1996, at 1–7)).

⁸⁵ See Zi-Ann Lum, “They Will Be Refused Care’: Inside an American Ally’s Decision to Warn Citizens About the US, POLITICO (Dec. 24, 2023, 7:00 AM ET), <https://perma.cc/MVG9-EG2Z>.

⁸⁶ *United States of America*, Gov’t Austl., <https://perma.cc/AS6Z-988T> (last updated Apr. 2, 2024).

Canada: “The rate of firearm possession in the US is high. . . . Incidences of mass shootings occur, resulting most often in casualties.”⁸⁷

France: “As in the entire territory, the risk of violence linked to guns and crime exists in certain localized areas.”⁸⁸

Germany: “In the USA, it is easy to get hold of weapons, so that firearms are used more frequently and, in isolated cases, even shootings are occurring. The number of weapons and ammunition purchases has increased considerably recently.”⁸⁹

Japan: “[T]he crime rate in the United States is much higher than in Japan, even when considering the population difference between Japan and the United States. It is also important to note that firearms are often used in such violent crimes in the United States (about half of them use firearms).”⁹⁰

New Zealand: “There is a higher incidence of violent crime and firearm possession than in New Zealand.”⁹¹

⁸⁷ *United States Travel Advice*, Gov’t Can., <https://perma.cc/E989-84NB> (last updated June 5, 2024).

⁸⁸ *United States*, Fr. Dipl., <https://perma.cc/KDQ7-9Q5M> (last updated Apr. 9, 2024).

⁸⁹ *USA/United States: Travel and Safety Advice*, Ger. Foreign Off., <https://perma.cc/693T-326D> (last updated June 10, 2024).

⁹⁰ *Basic Data on Safety Measures in the United States of America (USA)*, Japan Ministry Foreign Affs., <https://perma.cc/44F4-NK94> (last updated Apr. 3, 2023).

⁹¹ *United States of America*, N.Z. Foreign Affs. & Trade, <https://perma.cc/PZR7-TRHZ> (last updated June 7, 2023).

United Kingdom: “Mass shooting incidents can happen The US Department of Homeland Security has advice on what to do in an active shooter incident.”⁹²

Uruguay: “[T]ake precaution amid the growing indiscriminatory violence,” the “indiscriminate possession of firearms by the population,” and the “impossibility of authorities to prevent these situations.”⁹³

These advisories damage the United States’ foreign standing, which can cause economic damage, such as from diminished tourism. Travel advisories can dramatically impact not only the bilateral relations of the issuing nation and the subject state but also the subject state’s economy. Travel advisories “profoundly affect [citizens’] perception of a country, to the extent that such an impression may remain long after the actual reason for a threat has vanished.” Toubes & Araújo-Vila, *supra* at 27 (citing S. Pike, *Destination Marketing Organizations* (2004)). These impressions discourage citizens’ travel, reducing the number of tourists who visit the subject state and harming the subject state’s economy.

These foreign policy statements, and others like them, are only a few of the ripple effects caused by U.S. gun policy and the domestic gun-violence

⁹² *Foreign Travel Advice: USA, Gov’t U.K.*, <https://perma.cc/678M-DZH7> (last visited June 14, 2024).

⁹³ Hollie Silverman, *2 Countries Issue Travel Warnings About the United States After a Weekend of Mass Shootings*, CNN (Aug. 6, 2019, 5:12 AM ET), <https://perma.cc/EYN9-Q4BJ>; see also *id.* (noting that Venezuela warns of the “recent proliferation of violent acts” and the “inexcusable indiscriminate possession of fire arms by the population” in the United States).

epidemic fueled by ghost guns. The United States should not risk alienating our closest allies because of the harms inflicted by U.S. guns on their nations and citizens both inside and outside the United States.

* * *

Interpreting the Gun Control Act of 1968 to exclude ghost guns from domestic regulation would create harmful consequences both internationally and domestically. Such consequences include an increase in international firearms trafficking, exacerbating the fentanyl crisis, driving displacement and migration, and heightening the risk of terrorism, all of which harm the United States and damage the United States' global standing. The Court, consistent with the statutory arguments made by Petitioners and the practical consequences identified by *amicus*, should reverse the Fifth Circuit's judgment.

CONCLUSION

For the foregoing reasons, *amicus* respectfully submits that the judgment of the Court of Appeals for the Fifth Circuit should be reversed.

Respectfully Submitted,

Timothy C. Hester
Counsel of Record

Ryan K. Quillian
Adam W. Mitchell
Madeline E. Sanderford
Bradford W. McGann
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001
(202) 662-6000
thester@cov.com

Counsel for Amicus Curiae

Jonathan E. Lowy
Yaacov (Jake) Meiseles
GLOBAL ACTION ON GUN
VIOLENCE
805 15th Street NW, #601
Washington, DC 20005

July 2, 2024