

No. 23-852

IN THE
Supreme Court of the United States

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

v.

JENNIFER VANDERSTOK, ET AL.

*ON WRIT OF CERTIORARI
TO THE UNITED STATES COURTS OF APPEALS
FOR THE FIFTH CIRCUIT*

**BRIEF OF MAJOR CITIES CHIEFS
ASSOCIATION; POLICE EXECUTIVE
RESEARCH FORUM; AND CURRENT AND
FORMER NATIONAL SECURITY OFFICIALS,
LAW ENFORCEMENT OFFICERS, AND
PROSECUTORS AS *AMICI CURIAE* IN
SUPPORT OF PETITIONERS**

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INTEREST OF AMICI CURIAE¹

Amici are the Major Cities Chiefs Association, the Police Executive Research Forum, and numerous current and former national security officials, law enforcement officers, and prosecutors.

The Major Cities Chiefs Association (MCCA) is a professional organization of police executives representing the largest cities in the United States and Canada. The mission of MCCA is to provide a forum for police executives from large population centers to address the challenges and issues of policing, to influence national and international policy that affects police services, to enhance the development of current and future police leaders, and to encourage and sponsor research that advances this mission.

The Police Executive Research Forum (PERF) is a police research and policy organization which helps to improve the delivery of police services through the exercise of strong national leadership; public debate of political and criminal justice issues; and research and policy development. Since its founding in 1976, PERF has identified best practices on fundamental issues such as reducing police use of force; developing community policing and problem-oriented policing; using technologies to deliver police services to the

¹ Pursuant to Supreme Court Rule 37.6, counsel for *amici* certify that no counsel for a party authored this brief in whole or in part and that no person or entity, other than *amici* and their counsel, made a monetary contribution intended to fund this brief's preparation or submission.

community; and evaluating crime reduction strategies.

Amici also include former federal national security officials and current and former state and federal law enforcement officials and prosecutors who have significant experience protecting our communities from gun violence by international terrorists, drug cartels, domestic violent extremists, and other malign actors. *Amici* represent a broad cross section of the national security and law enforcement community, including former career and politically appointed federal officials across Republican and Democratic administrations, from the National Security Council staff, Office of the Director of National Intelligence, Central Intelligence Agency, Department of Homeland Security, Department of Justice, Federal Bureau of Investigation, Department of Defense, and Department of State, as well as current and former state law enforcement officers and prosecutors. A complete list of *amici* is included in the Appendix.

As experienced counterterrorism officials, prosecutors, law enforcement officers, and professional organizations representing police, *amici* understand that unfettered access to firearms poses a grave national security and public safety threat to the nation. Regulations requiring pre-sale background checks, serial numbers, and record-keeping are crucial to preventing malign actors from readily obtaining the lethal firearms they use to commit acts of terror and other violent crimes. Dangerous weapons easily and inexpensively assembled from kits—known as “ghost guns” because they have no serial numbers—have proliferated throughout the

country, where malign actors actively seek to acquire them. Ghost guns severely hamper law enforcement’s effort to combat violent crime, terrorism, domestic extremism, and firearms trafficking, to the detriment of both public safety and national security. *Amici* have a strong interest in the regulation of ghost guns to prevent them from falling into the hands of those who aim to harm the United States and its citizens.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Final Rule of the Bureau of Alcohol, Tobacco, and Firearms (“ATF”) at issue in this case, adopted on April 26, 2022, clarified that commercial manufacturers and dealers of certain weapons parts kits and weapons components that can be readily converted into usable firearms (“ghost guns”) are subject to the requirements applied to manufacturers and dealers of fully assembled firearms.² These requirements include requiring commercial manufacturers and dealers of the covered kits and components to obtain a federal firearms license, conduct pre-sale background checks for purchasers, inscribe a serial number on the frame or receiver at

² Definition of “Frame or Receiver” and Identification of Firearms, 87 Fed. Reg. 24652, 24654 (Apr. 26, 2022) (codified at 27 C.F.R. pts. 447, 478, 479) [hereinafter “Final Rule”]. *See also* 18 U.S.C. § 923(i); 27 C.F.R. § 478.92(a)(1) (2024) (requiring licensed firearms manufacturers to mark firearms once the entire manufacturing process has ended for the weapon); 27 C.F.R. § 478.92(a)(2) (2024) (requiring firearms dealers to mark ghost guns with a unique serial number when they are received or otherwise acquired).

the appropriate time prescribed by law, and retain certain records.³ More than 80,000 federal firearms licensees already comply with these requirements in millions of transactions every year.⁴

The requirements of the Final Rule apply to those now required to become federal firearms licensees. They do not apply to unlicensed individuals who manufacture or assemble firearms for lawful personal use.⁵ Thus, the Rule does not limit or prevent law-abiding citizens from exercising their Second Amendment right to possess firearms for self-defense; it affects only the commercial production and sale of ghost guns. As this Court held in *District of Columbia v. Heller*, “conditions and qualifications on the commercial sale of arms” are “presumptively lawful regulatory measures.” 554 U.S. 570, 626-27 & n.26 (2008).

The Final Rule’s requirements that commercial manufacturers and dealers of ghost guns obtain licenses, mark ghost guns with serial numbers, conduct background checks, and keep transfer records

³ By virtue of the change in the definition of “firearm” mandated by the Final Rule, importers of ghost guns will also be subject to the same rules as importers of fully assembled firearms. *See* 27 C.F.R. § 478.92(a)(1) (2024).

⁴ App. to Pet. for Writ of Cert. 203a, *Garland v. VanDerStok*, No. 23-852 (Feb. 7, 2024) (Decl. of Matthew P. Varisco, Asst. Dir., ATF ¶ 35); *see also Fact Sheet—Facts and Figures for Fiscal Year 2022*, ATF (Jan. 2023), <https://www.atf.gov/resource-center/fact-sheet/fact-sheet-facts-and-figures-fiscal-year-2022>.

⁵ *See* Final Rule, 87 Fed. Reg. at 24676.

are critical to reducing the incidence of gun violence by keeping guns out of the hands of those who should not have them and allowing the “tracing” of firearms used in crimes. Since 1994, about 291.7 million background checks have been conducted and nearly 4.4 million people who are legally prohibited from owning a gun, by either federal or state law, have been prevented from purchasing a gun or denied a purchasing permit.⁶ In each of 2019 and 2020, the most recent years for which data is available, approximately 50 percent of denials involved people convicted, charged, or arrested for felony offenses.⁷

Between 2017 and 2021, ATF was able to determine the initial purchaser in nearly 1.5 million firearms trace requests submitted by its local, state,

⁶ Connor Brooks, *Background Checks for Firearm Transfers, 2019-2020*, U.S. Dep’t of Just.: Bureau of Just. Stat., 1 (Nov. 2023), <https://bjs.ojp.gov/document/bcft1920.pdf>. Both federal and state agencies perform background checks and have different criteria for denial. The federal restrictions on gun ownership are found at 18 U.S.C. § 922. Many states have additional restrictions and/or extend the requirement to conduct background checks at the point of sale to more than just federally licensed firearms dealers. *See, e.g., Universal Background Checks*, Giffords Law Center, <https://giffords.org/lawcenter/gun-laws/policy-areas/background-checks/universal-background-checks/> (last visited June 13, 2024).

⁷ Brooks, *supra* note 6, at 6-7.

federal, and international law enforcement partners.⁸ Identifying the initial purchaser of a gun used to commit a crime often enables law enforcement to solve that crime. Moreover, when purchaser data is aggregated and mapped, it allows tracking of firearms across jurisdictions and the identification and apprehension of illegal firearms traffickers.⁹

Congress has recognized the importance of these requirements. On June 25, 2022, just a few months following promulgation of the Final Rule, Congress passed the Bipartisan Safer Communities Act (BSCA). The BSCA, among other provisions, expanded background check requirements, Pub. L. No. 117-159, Div. A, Tit. 2, §§ 12001-05, 136 Stat. 1313, 1322-33 (2022), and allocated an additional \$100 million to the Federal Bureau of Investigation to meet the increasing resource needs of the National Instant Criminal Background Check System. *Id.*, Div.

⁸ *National Firearms Commerce and Tracking Assessment (NFCTA): Crime Guns – Volume II Report, Part III: Crime Guns Recovered and Traced Within the United States and its Territories*, ATF, 2 (Mar. 27, 2024), <https://www.atf.gov/firearms/docs/report/nfcta-volume-ii-part-iii-crime-guns-recovered-and-traced-us/download> [hereinafter “*NFCTA Part III*”].

⁹ See, e.g., *National Tracing Center*, ATF, <https://www.atf.gov/firearms/national-tracing-center> (last reviewed Feb. 26, 2024).

B., Tit. I, 136 Stat. at 1338.¹⁰ The BSCA also created a new federal crime of trafficking in firearms, *id.* Div. A, Tit. II, § 12004(a)(1), 136 Stat. at 1327 (codified at 18 U.S.C. § 933), the enforcement of which depends on effective firearms tracing.¹¹

Notwithstanding the clear benefits of background checks, serialization, and recordkeeping, Respondents here challenge ATF's Final Rule as an unauthorized exercise of regulatory power. *See VanDerStok v. Garland*, 86 F.4th 179 (5th Cir. 2023), *cert. granted*, 144 S. Ct. 1390 (April 22, 2024). Treating the sale of ghost guns just like the sale of any other commercially available firearm, however, is critically important to the national security of the United States. Terrorists, drug cartels, domestic violent extremists, and other malign actors actively seek to exploit the law enforcement blind spot created by the failure to regulate ghost guns. Particularly as ghost guns proliferate exponentially throughout the United States, the Final Rule enhances the ability of law enforcement to apprehend criminals, trace firearms, discern the patterns of firearms trafficking, and reduce the incidence of gun violence. *Amici urge*

¹⁰ *See also* Nick Wilson, Chandler Hall, & Allison Jordan, *The Bipartisan Safer Communities Act, 1 Year Later*, Ctr. for Am. Progress (Aug. 10, 2023), <https://www.americanprogress.org/article/the-bipartisan-safer-communities-act-1-year-later/>.

¹¹ *See also* Devlin Barrett, *Feds Have Charged More than 250 People Under New Gun Trafficking Law*, Wash. Post. (Dec. 4, 2023), <https://www.washingtonpost.com/national-security/2023/12/04/gun-law-arrests-seizures/>.

the Court to consider these national security and public safety interests and, for the reasons stated here and in the submissions of the United States, reverse the Court of Appeal’s decision below.

ARGUMENT

I. **The Proliferation of Ghost Guns is a National Security and Public Safety Threat.**

As the Federation of American Scientists has noted, “[n]on-serialized and inexpensive, ghost guns have emerged as a cataclysmic issue in the violence epidemic in our nation.”¹² In California, for example, the proliferation of ghost guns “has reached epidemic proportions,” comprising 25 to 50 percent of guns recovered at crime scenes, usually in the hands of those who are legally prohibited from having guns.¹³

Data collected by *amicus* the Major Cities Chiefs Association—a professional organization of police executives representing 70 cities in the United

¹² Michelle Rippy, *The Ghost Guns Haunting National Crime Statistics*, Fed’n of Am. Scientists (Jun. 6, 2023), <https://fas.org/publication/the-ghost-guns-haunting-national-crime-statistics/>.

¹³ Glenn Thrush, ‘Ghost Guns’: Firearm Kits Bought Online Fuel Epidemic of Violence, N.Y. Times (June 22, 2023), <https://www.nytimes.com/2021/11/14/us/ghost-guns-homemade-firearms.html>.

States¹⁴—establishes that this epidemic spans the nation. Overall, from January 2019 to May 2021, Major Cities Chiefs Association member agencies saw:

- a 408-percent increase in criminal incidents involving a ghost gun,
- a 240-percent increase in the use of ghost guns in criminal incidents by prohibited persons,
- a 285-percent increase in the use of ghost guns in criminal incidents by those under the age of 21,
- a 273-percent increase in the use of ghost guns in criminal incidents by gang-related individuals, and
- a 255-percent increase in the use of ghost guns in criminal incidents by those who had a prior conviction for a gun crime.¹⁵

The number of ghost guns flooding the nation's cities and towns is staggering. Police in Buffalo, New York, seized "1,300[percent] more ghost guns in 2021

¹⁴ See *About*, Major Cities Chiefs Ass'n, <https://majorcitieschiefs.com/about/> (last visited June 10, 2024).

¹⁵ *The State of Gun Violence in America's Major Cities*, Major Cities Chiefs Ass'n, 5 (Aug. 2022), <https://majorcitieschiefs.com/wp-content/uploads/2022/08/MCCA-The-State-of-Gun-Violence-in-Americas-Major-Cities.pdf>.

than 2020.”¹⁶ In 2020, the Los Angeles, California, Police Department confiscated over 700 ghost guns built from kits sold by respondent Polymer80. “The company’s guns were the most common ghost guns recovered by the Los Angeles Police Department between 2020 and 2023,” according to the city attorney’s office.¹⁷ In San Diego, California, there was a 401-percent increase in ghost guns recovered from 2019 to 2021.¹⁸ States ranging from New York, Maryland, and the District of Columbia to Iowa, North Carolina, and Rhode Island have all reported increasing numbers of ghost guns being used in criminal activity.¹⁹ In communities as diverse as

¹⁶ *Buffalo Police: Ghost Guns Are a Huge Problem for Us*, WKBW 7 Buffalo (Jan. 6, 2022), <https://www.wkbw.com/news/local-news/buffalo-police-ghost-guns-are-a-huge-problem-for-us>.

¹⁷ Christian Martinez, *LAPD Found 700 ‘Ghost Guns’—Now it Is Getting \$5 Million*, L.A. Times (May 31, 2023), <https://www.latimes.com/california/story/2023-05-31/ghost-gun-manufacturer-polymer80-settles-lawsuit-with-los-angeles-for-5-million>.

¹⁸ Keristen Holmes, *San Diego Law Enforcement, ATF Working to Combat Ghost Guns in the Region*, CBS 8 (Oct. 13, 2023), <https://www.cbs8.com/article/news/local/san-diego-law-enforcement-atf-working-combat-ghost-guns/509-777bbfe8-d780-42b0-936e-373c334d452a>.

¹⁹ Daniel Finkelstein, *Rochester Police See Increasing Trend in ‘Ghost Gun’ Recoveries*, WAHM 13 (Mar. 9, 2024), <https://13wham.com/news/local/rochester-police-face->

(cont’d)

Baltimore, Maryland; San Rafael, California; and Syracuse, New York, Polymer-80 is the most common type of firearm recovered at crime scenes.²⁰

Procuring a ghost gun kit is trivially simple. An internet search immediately turns up sites such as theghostgunshop.com, realghostguns.com, and

increasing-ghost-gun-recoveries-amid-legal-challenges; Brian E. Frosh, Susan C. Lee, & Lesley J. Lopez, *The Rise of Ghost Guns in Maryland*, Wash. Post. (Dec. 17, 2021), <https://www.washingtonpost.com/opinions/2021/12/17/rise-ghost-guns-maryland/>; Peter Hermann, *D.C. Mayor, Police Chief Want to Keep Untraceable ‘Ghost Guns’ Out of District*, Wash. Post. (Feb. 28, 2020), https://www.washingtonpost.com/local/public-safety/dc-mayor-police-chief-want-to-keep-untraceable-ghost-guns-out-of-district/2020/02/28/5bc8f1d6-5a5e-11ea-9000-f3cffee23036_story.html; Connor O’Neal, *‘Ghost Guns’ Add to High Number of Des Moines Police Firearm Recoveries, We Are Iowa* (Apr. 12, 2024), <https://www.weareiowa.com/article/news/crime/des-moines-police-ghost-gun-3d-firearms-shooting/524-5b238e2b-abf4-4131-a6aa-8618efdc9711>; Sarah Krueger, *No Background Check, No Serial Number: Triangle Area Law Enforcement Sees Spike in Ghost Guns*, WRAL News (July 6, 2023), <https://www.wral.com/story/no-background-check-no-serial-number-triangle-area-law-enforcement-sees-spike-in-ghost-guns/20943220/>; Eli Sherman & Tim White, *Police See Rising Threat from Ghost Guns in RI*, WPRI.com (Sept. 12, 2022), <https://www.wpri.com/target-12/police-see-rising-threat-from-ghost-guns-in-ri/>.

²⁰ *Who Is Manufacturing Crime Guns? City-level Data on Crime Gun Recoveries by Manufacturer*, Everytown Rsch. & Pol’y (Jan. 19, 2023), <https://everytownresearch.org/report/city-level-data-crime-gun-recoveries/>.

buyghostgun.com within the top ten results.²¹ Each of these sites advertises that gun kits can be purchased and delivered to your door.²² These sites market their products as “[d]esigned . . . [to] enable enthusiasts to build functional firearms without requiring extensive knowledge or specialized tools.”²³ They proudly feature their commitment to “privacy and security” and to “ensuring that each purchase is handled with care and discretion.”²⁴ They “prioritize anonymous

²¹ Google search conducted June 20, 2024, using the phrase “buy ghost gun kits.”

²² Under ATF regulations, as amended by the Final Rule, dealers of ghost guns are required to register as federal firearms licensees and ship ghost guns only to another licensee or to an in-state non-licensed purchaser if certain requirements are met; otherwise, they must conduct the transaction in person so that required forms and the background check process can be completed before transfer of the firearm. *See* 27 C.F.R. § 478.96; *see also Internet Firearm Sales: ATF Enforcement Efforts and Outcomes of GAO Covert Testing*, Gov’t Accountability Off., 8 (Nov. 2017), <https://www.gao.gov/assets/gao-18-24.pdf> (graphic describing the requirements of “Using the Internet to Facilitate the Firearms Purchasing Process”). The described ghost gun dealers appear to be in violation of the Final Rule.

²³ *Buy Ghost Gun*, Buy Ghost Guns, <https://buyghostgun.com/> (last visited June 25, 2024); *see also Real Ghost Guns*, Real Ghost Guns, <https://realghostguns.com/about-us/> (last visited June 25, 2024) (advertising kits as “easy-to-use” and that “assembling your very own firearm has never been easier”); *Buy Ghost Guns Online*, The Ghost Gun Shop, <https://theghostgunshop.com/> (last visited June 25, 2024) (“W]ith the help of these kits, aficionados may assemble working rifles on their own without needing specialist tools or a lot of training.”).

²⁴ Buy Ghost Gun, *supra* note 23.

payment options.”²⁵ And they tout that “ghost gun kits also offer buyers an anonymous way to obtain a gun without [] a background check.”²⁶

Indeed, avoiding mandated background checks that help ensure that firearms do not end up in the hands of those who should not have them appears to be the point. Loran Kelly, the owner of Polymer80, is reported to have opined at the time the Final Rule went into effect that “putting a serial number on his products wouldn’t hurt his company. But using those numbers to require background checks is a ‘critical threat’ to his business, which he said relies on a growing market of individuals who ‘value their Fourth Amendment rights’ to privacy.”²⁷

Law enforcement officials throughout the country have underscored the need for federal regulation of ghost guns and have applauded ATF’s Final Rule. After the Final Rule was published, Cook County Sheriff Thomas Dart said, “Ghost guns are a serious threat to our ability to solve violent crimes. They are

²⁵ Buy Ghost Gun, *supra* note 23; *see also Shipping Policy*, The Ghost Gun Shop, <https://theghostgunshop.com/shipping/> (last visited June 25, 2024) (noting that “[a]ll firearms must be shipped to a Federal Firearms License (FFL) holder in your state of residence,” except that “those who pay with cryptocurrency . . . are able to choose their delivery location”).

²⁶ Real Ghost Guns, *supra* note 23.

²⁷ Anjeanette Damon, *Why Outlawing Ghost Guns Didn’t Stop America’s Largest Maker of Ghost Gun Parts*, ProPublica (Aug. 24, 2022), <https://www.propublica.org/article/nevada-ghost-guns-polymer80-firearms-laws>.

being made and carried by those who want to evade background checks and justice . . . There is no good use for deadly weapons that help violent criminals elude police.”²⁸ *Amicus* the Major Cities Chiefs Association said the Final Rule is “a first step in trying to regulate ghost guns[,] to keep them out of the hands of criminals[,] while trying to protect the rights of hobbyist firearm makers who follow the law.”²⁹ The United States Conference of Mayors, the official non-partisan organization of cities with populations of 30,000 or more,³⁰ praised the issuance of the Final Rule as “help[ing] mayors . . . to prevent and reduce” the “growing and unchecked problem of ghost guns.”³¹

²⁸ *Sheriff Dart, State Lawmakers Applaud Federal Rule on Ghost Guns*, Cook County Sheriff’s Office (Apr. 11, 2022), <https://www.cookcountysheriffil.gov/sheriff-dart-state-lawmakers-applaud-federal-rule-on-ghost-guns/>.

²⁹ *The State of Gun Violence in America’s Major Cities*, *supra* note 15, at 6.

³⁰ *About the Conference*, U.S. Conf. of Mayors, <https://www.usmayors.org/the-conference/about/> (last visited June 16, 2024).

³¹ Sara Durr, *ICYMI: Nation’s Mayors Applaud Biden Administration’s Actions to Combat Gun Violence*, U.S. Conf. of Mayors (Apr. 12, 2022), <https://www.usmayors.org/2022/04/12/icymi-nations-mayors-applaud-biden-administrations-actions-to-combat-gun-violence/>.

II. Malign Actors Seek to Procure Ghost Guns Illegally, Which Jeopardizes Our National Security.

Terrorists, drug cartels, domestic violent extremists, and other malign actors are drawn to ghost guns for the very reasons that the government wants to regulate them: they are untraceable and they are readily available to those who would not otherwise pass background checks.

Foreign terrorist organizations, like ISIS and al-Qaeda, have long touted the ease of acquiring firearms in the United States and have encouraged the use of firearms to commit acts of terrorism on U.S. soil.³² It is no surprise that they actively seek to acquire ghost guns. In 2023, two brothers from Fishers, Indiana, were sentenced in federal court following guilty pleas for “produc[ing] large caches of privately made firearms” from parts bought online and “attempt[ing] to place them in the hands of ISIS members overseas to be used against U.S. service

³² See, e.g., *New Al Qaeda Video: American Muslims Should Buy Guns, Start Shooting People*, ABC News (May 27, 2011), <https://abcnews.go.com/Blotter/al-qaeda-video-buy-automatic-weapons-start-shooting/story?id=13704264>; Nick Miroff, *ISIS Fighter with American Accent Urges Supporters to Take Advantage of U.S. Gun Laws*, Wash. Post (Dec. 27, 2017), https://www.washingtonpost.com/world/national-security/isis-fighter-with-american-accent-urges-supporters-to-take-advantage-of-us-gun-laws/2017/12/27/5ffc664a-eb2d-11e7-b698-91d4e35920a3_story.html.

members and allies.”³³ Following the 2021 shooting in a Boulder, Colorado, supermarket, Al-Qaeda in the Arabian Peninsula published a review of the attack “assess[ing] what was done well by the attacker and what could have been done to inflict more harm.”³⁴ Included amongst the advice provided to would-be jihadists was the encouragement to “look for ways to obtain stealth weapons by purchasing ready-made weapon parts and then assembling and installing them manually by yourself . . . [T]his method has two advantages: The first advantage: The control over it is less and the ways to obtain it are easier. The second advantage: The weapon will be without a serial number.”³⁵

³³ *Brothers Sentenced to More Than 35 Years Combined for Manufacturing and Distributing Machineguns Intended for ISIS*, U.S. Dep’t of Just. (Dec. 13, 2023) (quoting Federal Bureau of Investigation Deputy Director Paul Abbate), <https://www.justice.gov/opa/pr/brothers-sentenced-more-35-years-combined-manufacturing-and-distributing-machineguns>; see Indictment, *United States v. Dannon*, No. 19-cr-00229 (S.D. Ind. July 2, 2019), ECF No. 28; Government’s Sentencing Mem., *United States v. Dannon*, No. 19-cr-00229 (S.D. Ind. Oct. 13, 2021), ECF No. 104.

³⁴ Bridget Johnson, *Al-Qaeda Urges Acquisition of Ghost Guns in Review of Boulder Mass Shooting*, Homeland Sec. Today (July 6, 2021), <https://www.hstoday.us/subject-matter-areas/counterterrorism/al-qaeda-urges-acquisition-of-ghost-guns-in-review-of-boulder-mass-shooting/>.

³⁵ *Id.*; see also John Ward, *Terror Chiefs Urged Jihadists in UK and US to Carry out Mass Killings with ‘Ghost Guns,’* Daily Star (Oct. 23, 2021), <https://www.dailystar.co.uk/news/latest-news/terror-chiefs-urged-jihadists-uk-25285589>.

Similarly, the trafficking of ghost guns over the border to violent drug cartels in Mexico has been documented. Earlier this year, 47 defendants associated with the Sinaloa Cartel were charged in 14 separate indictments for firearms offenses and narcotics trafficking; dozens of guns, including ghost guns intended to be traded for drugs or exported to Mexican narcotraffickers, were seized as part of the investigation.³⁶ In 2023, a Laredo, Texas, man pleaded guilty to, in part, “producing and illegally exporting fully automatic firearms to Mexico for the use of drug cartels.”³⁷ That same year, an Oklahoma man was prosecuted for assembling ghost gun parts into functioning weapons for two different Mexican drug cartels, “inexcusabl[y] contribut[ing] to the violence carried out by these groups.”³⁸ According to

³⁶ *Forty-Seven Defendants Charged in HSI-Led Drug Trafficking Investigation Linked to Sinaloa Cartel*, Homeland Sec. Investigations (June 5, 2024), <https://www.dhs.gov/hsi/news/2024/06/05/47-defendants-charged-hsi-led-drug-trafficking-investigation-sinaloa-cartel>.

³⁷ *Selling Ghost Guns to Mexican Cartel Sends Felon to Prison*, U.S. Att’y’s Off., S. Dist. of Tex. (Nov. 14, 2023), <https://www.justice.gov/usao-sdtx/pr/selling-ghost-guns-mexican-cartel-sends-felon-prison-0>.

³⁸ *Oklahoma Man Sentenced to 12 Years in Prison*, U.S. Att’y’s Off., E. Dist. of Ark. (Apr. 20, 2022) (quoting United States Attorney Jim Ross), <https://www.justice.gov/usao-edar/pr/oklahoma-man-sentenced-12-years-prison>; *see also* Stephen Stock, Michael Botsford, Jose Sanchez & Laura Geller, *‘He Was Very Slick’: Oklahoma Man Made Hundreds of Ghost Guns for Mexican Cartel*, CBS News (Sept. 20, 2023), <https://www.wltx.com/article/news/nation-world/ghost-guns-for-mexican-cartel/101-a259d5fd-5c81-4a6a-9720-09c56e38152e>.

Assistant United States Attorney Anne Gardner, “The amount of firearms for which he assisted the cartels in using, fixing, making and trafficking were responsible for hundreds of deaths.”³⁹

Nor is the use of ghost guns by transnational criminals limited to drug cartels. The Department of Homeland Security’s Homeland Security Investigations directorate (HSI)—charged with investigating those who “illegally finance, procure, broker, transport, and disseminate weapons internationally”—has specifically noted the problem of ghost guns: “Today, we see criminals increasingly using ghost guns . . . to facilitate violent crimes. . . . These criminals use the internet . . . to buy and sell guns they can traffic out of the United States. As the threat continues to evolve, so does HSI, as we maintain our role as a global leader in weapons trafficking investigations.”⁴⁰

Domestic violent extremists are also drawn to ghost guns.⁴¹ As Jon Lewis, a research fellow at the

³⁹ Stock et al., *supra* note 38.

⁴⁰ *Weapons Trafficking*, Homeland Sec. Investigations (Apr. 22, 2024), <https://www.dhs.gov/hsi/investigate/weapons-trafficking>.

⁴¹ See, e.g., Lila Hassan, *Inside the Right-Wing Movement to Boost Untraceable ‘Ghost Guns’*, Huffington Post (Dec. 23, 2021), <https://www.huffpost.com/entry/right-wing-untraceable-ghost->
(*cont’d*)

Program on Extremism at George Washington University described, “the propagation of ghost guns” makes it easier for extremists to “have the tools they need to engage in mass violence. . . . Ghost guns fit into a perfect niche of undetectable, untraceable and keeps the government away from you.”⁴² “Domestic terrorists and racially motivated extremists are increasingly arming themselves with homemade, untraceable ‘ghost guns,’ a threat that is now a top public safety concern for law enforcement, according to a leaked U.S. government report.”⁴³

Ghost guns have been instrumental in both attempted acts of terrorism and vigilante violence by lone wolf actors and in more organized efforts by extremist networks acting as unauthorized paramilitaries seeking to usurp civilian authority and foment violence. Anderson Lee Aldrich, who pled

guns-operation_n_61c0d909e4b0bcd21942a1c8 (documenting white supremacist and accelerationist content that is used to encourage the purchase of ghost guns); Eric Woods, *Right-Wing Extremists’ New Weapon*, Lawfare (Mar. 15, 2020), <https://www.lawfaremedia.org/article/right-wing-extremists-new-weapon>.

⁴² Hassan, *supra* note 41.

⁴³ Alain Stephens, *The Feds Are Increasingly Worried About Extremists Acquiring Ghost Guns, Leaked Report Shows*, The Trace (Aug. 11, 2021) [hereinafter Stephens, *The Feds*], <https://www.thetrace.org/2021/08/ghost-gun-government-report-3d-print-extremism-terrorism/>; see also *First Responder Awareness of Privately Made Firearms May Prevent Illicit Activities*, Joint Counterterrorism Assessment Team (June 22, 2021), <https://www.documentcloud.org/documents/21037764-privately-made-firearms>.

guilty in June 2024 to 50 federal hate crimes charges in connection with his shooting spree at an LGBTQ+ club in Colorado Springs, Colorado, where he killed five people and injured 19 others, used a semi-automatic rifle and a handgun, both unserialized ghost guns.⁴⁴ Also in 2024, federal prosecutors indicted two brothers in Astoria, New York, on 130 weapons-related counts after a stockpile of homemade ghost guns and explosives was found in their apartment. Found with the weapons were a “hit list with the words ‘cops,’ ‘judges,’ politicians,’ ‘celebrities’ and ‘banker scum’” and notebooks containing “symbols, iconography, consistent with numerous conspiracy theories [and] anti-government, anti-authority, extremist ideology.”⁴⁵

⁴⁴ See Colleen Slevin, *Shooter Who Killed 5 at Colorado LGBTQ+ Club Pleads Guilty to 50 Federal Hate Crimes*, Associated Press (June 18, 2024), <https://wjactv.com/news/nation-world/shooter-who-killed-5-at-colorado-springs-lgbtq-club-set-to-plead-guilty-to-federal-hate-crimes-anderson-lee-aldrich-nonbinary-they-them-pronouns-transgender-club-q-sanctuary-gay-community-gun-charges-weapons-evidence-attack-mass-shooting-investigators>; Kevin Vaughan, *Club Q Suspect Carried ‘Ghost Guns’ with No Serial Numbers, Sources Say*, 9 News (Nov. 22, 2022), <https://www.9news.com/article/news/local/club-q-shooting/club-q-shooting-suspect-ghost-guns/73-7c1a9d2b-8e91-46a1-82f7-d5e917c58664>.

⁴⁵ Danielle Wallace & Bryan Llenas, *2 Men Indicted for NYC Stockpile of Ghost Guns, Homemade Explosives near Power* (cont’d)

In 2021, federal prosecutors indicted four individuals on charges related to the unlawful manufacture, transport and sale of illegal firearms; the indictment charged specifically that one of the men received payment from the others to construct assault-style rifles and other weapons.⁴⁶ The men were associated with, and communicated through, the “Iron March” forum, “an online message board platform used for communications and posts by neo-Nazi and White Supremacist Extremist (WSE) groups and those advocating WSE ideologies.”⁴⁷ The men filmed video of their training exercises, which showed them “firing short barrel rifles and . . . assault-style rifles. The end of the video shows the four participants outfitted in AtomWaffen masks giving the ‘Heil

Plant, Fox News (Jan. 29, 2024), <https://www.foxnews.com/us/2-men-indicted-nyc-ghost-guns-explosives-stockpile-near-power-plant-high-level-sophistication>; see also *Brothers Charged After Seizure of Homemade Explosives, Ghost Guns in Their Astoria Apartment*, Melinda Katz, Queens Dist. Att’y (Jan. 29, 2024), <https://queensda.org/brothers-charged-after-seizure-of-homemade-explosives-ghost-guns-in-their-astoria-apartment-photo/>.

⁴⁶ Third Superseding Indictment ¶¶ 11-18, *United States v. Collins*, 20-cr-167 (E.D.N.C. Aug. 18, 2021), ECF No. 149.

⁴⁷ *Id.* ¶ 1.

Hitler’ sign, beneath the image of a black sun,” a Nazi symbol.⁴⁸

Similar threats abound. Steven Carrillo, the Air Force sergeant and alleged adherent of the “Boogaloo” movement⁴⁹ accused of murdering a federal security officer and a local sheriff’s deputy in 2020, used a homemade AR-15-style rifle to carry out his attacks.⁵⁰

⁴⁸ *Id.* ¶ 15; see also *Group with Ties to Racially Motivated Violent Extremists Including Two Former Marines Facing Additional Charge of Targeting Energy Facilities*, U.S. Att’y’s Off., E. Dist. of N. Carolina (Aug. 20, 2021), <https://www.justice.gov/usao-ednc/pr/group-ties-racially-motivated-violent-extremists-including-two-former-marines-facing-Atomwaffen-Division/National-Socialist-Order/National-Socialist-Resistance-Front>, Counter Extremism Project, <https://www.counterextremism.com/supremacy/atomwaffen-division-national-socialist-order> (last visited Jun. 23, 2024).

⁴⁹ The Boogaloo movement is “an anti-government, anti-law enforcement extremist militia movement that believes the state places too many limitations on individual liberty, and that a second civil war is necessary to push back against these intrusions.” *Boogaloo Movement*, Inst. for Strategic Dialogue, <https://www.isdglobal.org/explainers/boogaloo-movement/> (last visited June 15, 2024).

⁵⁰ Stephen Stock & Jeremy Carroll, *Ghost Guns Sought by Violent Extremists, Tied to Thousands of Potential Crimes, Feds Warn*, NBC Bay Area (Aug. 7, 2021), <https://www.nbcbayarea.com/investigations/ghost-guns-sought-by-violent-extremists-tied-to-thousands-of-potential-crimes-feds-warn/2624959/>; see also *Indictment, United States v. Carrillo*, No. 20-00265 (N.D. Cal. June 25, 2020), ECF No. 12; Lois Beckett, *100 Days of Warning: Inside the Boogaloo Killings of US Security Personnel*, *The Guardian* (Jan. 15, 2021), <https://www.theguardian.com/world/2021/jan/15/boogaloo-killing-facebook-dave-patrick-underwood-police>.

In 2019, members of The Base, an accelerationist white supremacist group,⁵¹ were arrested as they prepared for a race war and planned to violently attack a gun rights rally in Richmond, Virginia.⁵² One of the defendants had ordered an upper receiver firearms component that he used to construct an assault rifle.⁵³ “[I]t looks like I accidentally made a machine gun,” he said upon testing the weapon.⁵⁴ Also

⁵¹ The Base is a “white supremacist organization” that “promot[es] terrorism, lone-wolf attacks, and a white ethno-state.” Government’s Mem. in Aid of Sentencing at 2, 4, 6, *United States v. Lemley*, No. 20-00033 (D. Md. Sept. 30, 2021), ECF No. 169; *see also* *The Base*, Counter Extremism Project, <https://www.counterextremism.com/supremacy/base> (last visited June 23, 2024). “The Base” translates to al-Qaeda in Arabic. *Id.*

⁵² Indictment, *United States v. Lemley*, No. 20-00033 (D. Md. Jan. 27, 2020), ECF No. 40; *see also* Alain Stephens, *They Planned to Start a Race War. DIY Gun Kits Allowed Them to Build an Arsenal*, The Trace (Jan. 23, 2020) [hereinafter Stephens, *Race War*], <https://www.thetrace.org/2020/01/white-supremacists-the-base-fbi-virginia-diy-ghost-gun/>; Neil MacFarquhar & Adam Goldman, *A New Face of White Supremacy: Plots Expose Danger of the ‘Base’*, N.Y. Times (Jan. 22, 2020), <https://www.nytimes.com/2020/01/22/us/white-supremacy-the-base.html>.

⁵³ Aff. In Supp. of Criminal Compls. & Arrest Warrants ¶¶ 14-15, *United States v. Lemley*, No. 20-mj-192 (D. Md. Jan. 14, 2020), ECF No. 1-1, <https://storage.courtlistener.com/recap/gov.uscourts.mdd.474939/gov.uscourts.mdd.474939.7.1.pdf>.

⁵⁴ *Id.* ¶ 18.

arrested in 2019 was Patriot Front member⁵⁵ and convicted felon Joffre Cross, after police discovered multiple firearms, including two homemade AR-15-style rifles, none of which had serial numbers, in his home.⁵⁶ In October 2019, Seattle Police used Washington State’s red flag law to seize a cache of assault rifles, handguns, and ghost gun parts from Kaleb Cole,⁵⁷ the self-proclaimed leader of the

⁵⁵ The Patriot Front is a white nationalist movement that “propagate[s] an extremist, incendiary platform targeting African Americans, immigrants, Jews and other minorities.” *Patriot Front/Vanguard America*, Counter Extremism Project, <https://www.counterextremism.com/supremacy/patriot-front-vanguard-america> (last visited Jun. 23, 2024).

⁵⁶ *Convicted Felon Sent to Prison Again for Having Illegal Guns*, U.S. Att’y’s Off., S. Dist. of Tex. (Sept. 2, 2020), <https://www.justice.gov/usao-sdtx/pr/convicted-felon-sent-prison-again-having-illegal-guns> (noting that the judge increased Cross’s sentence due to “the number of firearms Cross had built himself”); see also Plea Agreement at 7-8, *United States v. Cross*, No. 20-cr-00055 (S.D. Tex. Feb. 26, 2020), ECF No. 15; Brett Barrouquere, *Patriot Front Member Joffre Cross Pleads Guilty to Federal Gun Charge*, Southern Poverty Law Center (Feb. 26, 2020), <https://www.splcenter.org/hatewatch/2020/02/26/patriot-front-member-joffre-cross-pleads-guilty-federal-gun-charge>.

⁵⁷ Aiden Pink, *Neo-Nazi Group Leader Had Parts for Untraceable ‘Ghost Guns’: FBI*, *The Forward* (Nov. 8, 2019), <https://forward.com/fast-forward/434549/neo-nazi-atomwaffen-ghost-guns-blaze-bernstein/>; see also *Leader of Neo-Nazi Group Sentenced for Plot to Target Journalists and Advocates*, U.S. Dep’t of Just. (Jan. 11, 2022), <https://www.justice.gov/opa/pr/leader-neo-nazi-group-sentenced-plot-target-journalists-and-advocates>.

Atomwaffen Division, a terroristic neo-Nazi group.⁵⁸ Among the items seized were parts to manufacture AR-15 ghost guns.⁵⁹ In August 2018, Jakub Zak, a 19-year-old college student living near Chicago and believed to be a member of the Patriot Front, was sentenced to probation after police found him in

⁵⁸ See Government’s Opp’n to Def.’s Mot. to Reopen Detention Hr’g at 2-3, *United States v. Shea*, No. 2:20-cr-00032 (W.D. Wash. May 22, 2020), ECF No. 65 (Atomwaffen Division (AWD) is “a neo-Nazi group that advocates violence against Jews and other minorities. AWD members have been responsible for multiple murders, and have advocated violent acts aimed at overthrowing the government. . . . [In 2018], AWD hosted a ‘Death Valley Hate Camp’ in Las Vegas, Nevada, where members trained in hand-to-hand combat and firearms, and created neo-Nazi propaganda videos and pictures of themselves posing with weapons. Cole coordinated the camp. . . ”).

⁵⁹ Chris Ingalls, *AR-15 ‘Ghost Gun’ Parts Seized from Neo-Nazi Leader in Snohomish County*, NBC King 5 (Nov. 7, 2019), <https://www.king5.com/article/news/investigations/ar-15-ghost-gun-parts-seized-from-neo-nazi-leader-in-snohomish-county/281-dc4bb686-2621-4dc3-9ef6-d66c7c44e156>. Journalist Chris Ingalls is one of the journalists that Cole was subsequently convicted of threatening. See Chris Ingalls, *‘There Won’t Be Any Answers’: KING 5 Journalist Targeted by Neo-Nazi Group Reflects After Sentencing*, NBC King 5 (Jan. 11, 2022), <https://www.king5.com/article/opinion/neo-nazi-atomwaffen-kaleb-cole-sentencing-reporter-notebook/281-94f539ba-a67e-4df9-988b-79b07782513f>; see also *United States v. Cole*, No. 22-30015, 2023 WL 2914291 (9th Cir. Apr. 12, 2023), *cert. denied*, 144 S. Ct. 514 (2023) (Mem.).

possession of a batch of ghost guns in various stages of completion.⁶⁰

Without the Final Rule, the untraceability of ghost guns—and the lure of not having to undergo a background check—makes these firearms the ideal weapons for those who would threaten the United States or plot mass violence or domestic terror attacks. They would be widely available, relatively inexpensive, easy to assemble, and could be anonymously acquired and used, all while avoiding detection by law enforcement. It is no wonder that they rapidly “emerg[ed] as a weapon of choice for violent criminals, dangerous extremists, and other people legally prohibited from buying firearms.”⁶¹ Requiring serialization and pre-purchase background checks, as the Final Rule does, dramatically reduces the attractiveness of these weapons to those who would use them to do harm.

⁶⁰ Stephens, *Race War*, *supra* note 52; *see also* Carol Schaeffer & Fritz Zimmermann, *They Are Racist; Some of Them Have Guns. Inside the White Supremacist Group Hiding in Plain Sight*, ProPublica (Nov. 8, 2019), <https://www.propublica.org/article/they-are-racist-some-of-them-have-guns-inside-the-white-supremacist-group-hiding-in-plain-sight>.

⁶¹ *Ghost Guns Arm Far-Right Extremists*, Everytown, <https://www.everytown.org/documents/2021/05/ghost-guns-arm-far-right-extremists.pdf> (last visited June 26, 2024).

III. Serializing Ghost Guns Allows Firearms Tracing, Which Increases our National Security.

The requirements imposed by the Final Rule on commercial manufacturers and dealers of ghost gun kits and frames and receivers are critical to national security. The Final Rule's requirement that ghost guns be marked with serial numbers enables them to be traced just like other regulated firearms. These numbers, along with other required markings on a firearm, generally allow it to be uniquely identified. Thus, when a law enforcement agency recovers a firearm, it can submit the serial number and other identifying details to ATF to "trace" the gun to the federal firearms licensee who made the first retail sale of the firearm, leading to the identity of the first retail purchaser of the firearm.

Firearms tracing provides two significant benefits. First, "tracing is an important investigative tool in individual cases, providing law enforcement agents with critical information that may lead to," *inter alia*, "the apprehension of suspects, the recovery of other guns used in the commission of crimes, and the identification of potential witnesses."⁶² More important, perhaps, is that analysis of firearms tracing data "in the aggregate provides valuable intelligence about local, regional, [] national," and international patterns "relating to the movement and

⁶² Tracing of Firearms in Connection with Criminal Investigations: Memorandum for the Heads of Executive Departments and Agencies, 78 Fed. Reg. 4301 (Jan. 16, 2013).

sources of guns used in the commission of crimes, which is useful for the effective deployment of law enforcement resources, [] development of enforcement strategies,” and strengthening law enforcement collaboration across borders.⁶³

Firearms tracing is a particularly valuable tool in detecting and investigating firearms trafficking. As an illustration of how effective this sort of tracing can be, the International Association of Chiefs of Police, reviewing an ATF program, described how “mapping their recovered and traced firearms” allowed the ATF to learn that “a majority of the firearms recovered in Brooklyn and the Bronx were not from Virginia or Florida, the top out-of-state sources, but from the Eastern Pennsylvania counties around Scranton.”⁶⁴ This information enabled ATF to work with local and county officials to redeploy resources to combat firearms trafficking in that area.⁶⁵

⁶³ *Id.*; see also *Justice Department Announces Publication of Third Volume of National Firearms Commerce and Trafficking Assessment*, U.S. Dep’t of Just. (Apr. 4, 2024), <https://www.justice.gov/opa/pr/justice-department-announces-publication-third-volume-national-firearms-commerce-and> (noting that “the cross-jurisdictional nature of this issue—guns purchased in one state and trafficked to another where they’re used in crime—is what led the Attorney General to launch five firearms trafficking strike forces in July 2021”).

⁶⁴ *Crime Gun Information Sharing: The ATF i-Trafficking Project*, Int’l Ass’n of Chiefs of Police, 13, https://www.theiacp.org/sites/default/files/all/c/Crime_Gun_Info_Sharing.pdf (last visited June 16, 2024).

⁶⁵ *Id.*

Of particular importance to firearms trafficking investigations is a data point known as “time-to-crime (TTC),” *i.e.*, “the length of time between the date of a firearm’s last known purchase . . . to the date of its recovery by law enforcement as a crime gun.”⁶⁶ “A short TTC can be an indicator of illegal firearms trafficking. . . . Investigating crime guns with a short TTC allows law enforcement to seek out sources of recently transferred crime guns and disrupt the flow of illegal firearms through identified trafficking channels.”⁶⁷ Tracing can also help determine whether the person who purchased the weapon is the same person found in possession of the weapon, which helps law enforcement determine whether “straw purchasers” are intervening in gun transactions to funnel guns to those who are prohibited from purchasing them.⁶⁸

Ghost guns pose significant challenges for firearms tracing. Ghost guns without serial numbers recovered at crime scenes or during police investigations cannot be traced to their distributors or to their first or last known purchasers, and no TTC data can be discerned.

⁶⁶ *NFCTA Part III*, *supra* note 8, at 23.

⁶⁷ *Id.*

⁶⁸ See *Don’t Lie for the Other Guy*, ATF, <https://www.atf.gov/firearms/dont-lie-other-guy> (last reviewed Apr. 29, 2024).

Of the 37,980 suspected privately made firearms⁶⁹ that were submitted to the ATF for tracing from 2017 to 2021,⁷⁰ less than one percent could be traced to an individual purchaser.⁷¹ As these weapons become more prevalent in the U.S. firearms marketplace, they create a significant blind spot in law enforcement’s capability to identify patterns that could lead to the disruption of illegal firearms trafficking. As Michael Sena, director of the Northern California Regional Intelligence Center, a joint law enforcement intelligence hub, described, “[w]hether you are international terrorists, domestic terrorists, or violent extremists[,] . . . [t]heir go-to is to try to get a hold [sic] of a private[ly manufactured firearm] because of the belief that [law enforcement] will never be able to figure out where this weapon came from.”⁷²

Finally, reducing the effectiveness of firearms tracing will jeopardize relationships with

⁶⁹ A “privately made firearm” is defined, as amended by the Final Rule, as “[a] firearm, including a frame or receiver, completed, assembled, or otherwise produced by a person other than a licensed manufacturer, and without a serial number placed by a licensed manufacturer at the time the firearm was produced.” 27 C.F.R. § 478.11. These can include weapons made from kits, from components, from 3-D printed parts, or any combination thereof.

⁷⁰ *NFCTA Part III*, *supra* note 8, at 5.

⁷¹ *FACT SHEET: Privately Made Firearms (PMFs), aka “Ghost Guns,” “Buy-Build-Shoot” Kits, and the “Frame or Receiver” Final Rule*, U.S. Dep’t of Just., Off. of Pub. Affs., <https://www.justice.gov/opa/press-release/file/1493431/dl> (last visited June 26, 2024).

⁷² Stephens, *The Feds*, *supra* note 43.

international partners. Ghost guns assembled from U.S.-made kits are not a U.S.-only problem. As noted above, these weapons, once assembled, are being trafficked abroad for the benefit of ISIS, al-Qaeda, drug cartels, and other transnational criminals. Indeed, they have spread throughout Latin America: “[H]ome-assembled . . . guns pop up in the favelas in Rio [and] in the hands of criminal organizations in Colombia.”⁷³

Our allies rely on the United States’ robust tracing capabilities. ATF has strong relationships with foreign governments that use ATF’s tracing data to conduct their own investigations into violent crimes and illegal firearms trafficking. Law enforcement agencies across 125 countries submitted international trace requests to ATF between 2017 and 2021, and “ATF continuously works to improve the tracing of crime guns recovered in other countries by completing formal tracing agreements with new international law enforcement partners and training them on the

⁷³ See Anastasia Austin, *Can New US Regulations Stem Firearms Flowing to Latin America?*, InSight Crime (Aug. 24, 2022), <https://insightcrime.org/news/new-us-rule-stop-illegal-weapons-flowing-to-latin-america/>; see also *Firearms Trace Data: The Caribbean – 2022*, ATF, <https://www.atf.gov/resource-center/firearms-trace-data-caribbean-2022> (last reviewed Sept. 27, 2023); *Firearms Trace Data: Central America – 2022*, ATF, <https://www.atf.gov/resource-center/firearms-trace-data-central-america-2022> (last reviewed Sept. 27, 2023).

appropriate use of the eTrace system.”⁷⁴ Canada⁷⁵ and Mexico⁷⁶ both seek to increase their use of U.S. firearms tracing data to try to prevent the flow of weapons across the border;⁷⁷ in both countries, most

⁷⁴ *National Firearms Commerce and Tracking Assessment (NFCTA): Crime Guns – Volume II Report, Part IV: Crime Guns Recovered Outside the United States and Traced by Law Enforcement*, ATF, 1 (Mar. 27, 2024), <https://www.atf.gov/firearms/docs/report/nfcta-volume-ii-part-iv-crime-guns-recovered-outside-us-and-traced-le/download> [hereinafter “*NFCTA Part IV*”].

⁷⁵ *Id.* (“In Canada, ATF works directly with Federal, provincial, tribal, and municipal [law enforcement agencies]. Training for Canadian law enforcement partners also focuses on trace data analysis to identify suspicious patterns and indicators that could lead to the identification and apprehension of firearms traffickers by both U.S. and Canadian law enforcement officials.”); see also *Firearms Trace Data: Canada – 2017-2022*, ATF, <https://www.atf.gov/resource-center/firearms-trace-data-canada-2017-2022> (last reviewed Sept. 27, 2023).

⁷⁶ *NFCTA Part IV*, *supra* note 74, at 1 (“Spanish language eTrace is available and currently used by law enforcement agencies in Mexico and other Central and South American countries.”); see also *Firearms Trace Data: Mexico – 2017-2022*, ATF, <https://www.atf.gov/resource-center/firearms-trace-data-mexico-2017-2022> (last reviewed Sept. 27, 2023).

⁷⁷ See, e.g., Andrew Russell & Tracy Tong, *How More Gun Tracing Can Help Canada Clamp Down on Cross-border Gun Trafficking*, Global News (Sept. 23, 2022), <https://globalnews.ca/news/8847965/canada-us-cross-border-gun-trafficking-firearms-tracing/>; *Mexico Announces Plan with U.S. to Boost Firearms Tracing*, Reuters (July 26, 2023), <https://www.reuters.com/world/americas/mexico-announces-plan-with-us-boost-firearm-tracing-2023-07-26/>.

guns used in crimes are imported from the United States.⁷⁸

Underscoring the critical importance of international cooperation in disrupting firearms trafficking, the United States also collaborates with the International Criminal Police Organization (INTERPOL), which operates its own firearms tracing system for its 196 member countries.⁷⁹ The proliferation of unserialized ghost guns thus has the potential to transform the blind spots of U.S. law enforcement into blind spots for law enforcement around the globe, disrupting these mutually cooperative relationships in ways that harm national security.

As the Department of Justice has recognized, responsible “[l]icensed firearms dealers are often our first line of defense against gun crime and a source of

⁷⁸ See Russell & Tong, *supra* note 77 (“Toronto police have said [that] around 85 per cent of its crime guns are sourced from the U.S.”); Champe Barton, Alain Stephens, & Steve Fisher, *Guns Recovered by Mexico’s Military Come Mostly from U.S. Makers*, *The Trace* (Oct. 20, 2022), <https://www.thetrace.org/2022/10/how-many-american-guns-mexican-cartels/>.

⁷⁹ *Illicit Arms Records and Tracing Management System (iARMS)*, INTERPOL, <https://www.interpol.int/en/Crimes/Firearms-trafficking/Illicit-Arms-Records-and-tracing-Management-System-iARMS> (last visited June 26, 2024); *INTERPOL Washington: Services for Law Enforcement Agencies*, U.S. Dep’t of Just. (Oct. 21, 2022), <https://www.justice.gov/interpol-washington/services-law-enforcement-agencies>.

critical enforcement information.”⁸⁰ Requiring, as the Final Rule does, that commercial manufacturers and dealers of kits and components that can be readily assembled into operable firearms meet the same background check, serialization, and recordkeeping requirements as dealers of pre-assembled firearms can only buttress this “first line of defense.”

CONCLUSION

The Final Rule’s regulation of ghost guns closes a critical gap in the treatment of these dangerous weapons as compared to other commercially available firearms in a way that is essential to protecting both national security and public safety. *Amici* respectfully urge the Court to reverse the decision below.

Respectfully submitted,

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⁸⁰ *Justice Department: Violent Crime Reduction Efforts*, U.S. Dep’t of Just. (Feb. 9, 2022), <https://www.justice.gov/d9/pages/attachments/2022/02/09/blank.pdf>.

APPENDIX: LIST OF AMICI CURIAE

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