No. 23A____

IN THE SUPREME COURT OF THE UNITED STATES

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

v.

DEFENSE DISTRIBUTED, ET AL.

APPLICATION TO VACATE THE INJUNCTION PENDING APPEAL
ENTERED BY THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

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PARTIES TO THE PROCEEDING

Applicants (defendants-appellants below) are the U.S. Department of Justice; the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); Merrick B. Garland, in his official capacity as Attorney General of the United States; and Steven Dettelbach, in his official capacity as Director of ATF.

Respondents (intervenor plaintiffs-appellees below) are Blackhawk Manufacturing Group, Inc. (doing business as 80 Percent Arms) and Defense Distributed.

Additional intervenor plaintiffs-appellees below that are not respondents to this application are Second Amendment Foundation, Inc.; Not An L.L.C. (doing business as JSD Supply); and Polymer80, Inc. Plaintiffs-appellees below that are not respondents to this application are Jennifer VanDerStok; Michael G. Andren; Tactical Machining, L.L.C.; and Firearms Policy Coalition, Inc.

RELATED PROCEEDINGS

United States District Court (S.D. Tex.):

VanDerStok v. Garland, No. 22-cv-691 (Sept. 14, 2023) (granting injunction pending appeal)

United States Court of Appeals (5th Cir.):

VanDerStok v. Garland, No. 22-11071 (notice of appeal filed Nov. 1, 2022)

VanDerStok v. Garland, No. 22-11086 (notice of appeal filed Nov. 4, 2022)

VanDerStok v. Garland, No. 23-10463 (notice of appeal filed May 1, 2023)

VanDerStok v. Garland, No. 23-10718 (Oct. 2, 2023) (denying motion to vacate injunction pending appeal)

Supreme Court of the United States:

Garland v. VanDerStok, No. 23A82 (Aug. 8, 2023) (granting stay pending appeal)

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Pursuant to Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, the Solicitor General, on behalf of applicants Merrick B. Garland, et al., respectfully applies to vacate the injunction pending appeal entered on September 14, 2023, by the United States District Court for the Northern District of Texas (App., infra, 7a-48a).

Two months ago, this Court granted emergency relief in this case by staying the district court's vacatur of a rule issued by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) to address the explosion of untraceable firearms commonly called "ghost guns." App., infra, 49a; see Definition of "Frame or Receiver" and Identification of Firearms, 87 Fed. Reg. 24,652 (Apr. 26, 2022) (Rule). The Rule does not prohibit the purchase, sale,

or possession of any firearm by anyone legally entitled to own a gun. Instead, it simply clarifies that under the federal firearms laws, commercial manufacturers and sellers of certain products that can readily be converted into functional firearms or their key components must obtain licenses, mark their products with serial numbers, maintain transaction records, and conduct background checks. Those requirements play a vital role in keeping guns away from criminals and allowing law enforcement to trace guns used in serious crimes.

This Court's prior stay reflects an authoritative determination that the government should be allowed to implement the Rule during appellate proceedings. The Court granted that relief despite the manufacturer plaintiffs' assertion that they would be irreparably harmed by a stay because it would require them to comply with the Rule. And the Court stayed the vacatur in full despite being squarely presented with the alternative of granting a stay only as to nonparties, a result that would have prevented the government from enforcing the Rule against plaintiffs while the appeal ran its course.

Notwithstanding their representations in this Court that a stay would require them to comply with the Rule, two of the manufacturer plaintiffs -- respondents here -- responded to this Court's grant of a stay by immediately returning to the district court and asking it to enjoin the government from enforcing the Rule against them pending appeal. A month later, the district

court granted that extraordinary relief. The court did not purport to rely on any change in the facts or the law. Instead, it considered the same arguments this Court had just considered on a materially identical record, yet reached diametrically opposing conclusions. The district court insisted that the government is unlikely to succeed in reversing the court's vacatur, that barring the government from enforcing the Rule would impose no irreparable harm, and that the balance of the equities favors respondents. The Fifth Circuit then relied on substantially similar reasoning to deny the government's motion to vacate the injunction, dismissing the argument that the injunction violates principles of vertical stare decisis.

This Court should vacate the district court's unprecedented injunction for the same reasons it stayed the district court's vacatur of the Rule. The Court has already concluded that the government has a sufficient likelihood of success to warrant relief. It has already rejected respondents' arguments based on the purported harms they would suffer if they were required to comply with the Rule. And although the district court's injunction is narrower than the prior vacatur, it imposes essentially the same harms on the government and public: Because respondents are commercial distributors selling their products over the Internet, the injunction ensures that ghost guns remain freely available online. Indeed, respondent Blackhawk Manufacturing is already capitalizing on the injunction, touting its status as "the last court protected

80% frame and jig manufacturer in the country" and offering "10% OFF of your order."[1] Other manufacturer plaintiffs have now sought their own injunctions. Absent relief from this Court, therefore, untraceable ghost guns will remain widely available to anyone with a computer and a credit card -- no background check required.

Finally, quite apart from the merits of the arguments that supported this Court's prior grant of a stay, the Court's intervention is warranted for an additional and more fundamental reason: The district court and the Fifth Circuit have effectively countermanded this Court's authoritative determination about the status quo that should prevail during appellate proceedings in this case. In so doing, the lower courts openly relied on arguments that this Court had necessarily rejected to grant relief that this Court had withheld. The Court should not tolerate that affront to basic principles of vertical stare decisis.

STATEMENT

Because this Court is already familiar with the Rule and the prior proceedings, we briefly summarize the relevant background before turning to the events since this Court's grant of a stay.

A. The Rule

ATF adopted the Rule in 2022 to update its regulations implementing the federal firearms statutes, including its interpretation of the definition of a regulated "firearm." See 23A82 Appl.

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[1] Blackhawk Manufacturing, d/b/a 80 Percent Arms, ATF Rule Update, https://perma.cc/TXD4-BPTK (last visited Oct. 5, 2023).

6-11 (discussing the statutory and regulatory framework). Congress has broadly defined "firearm" to include "any weapon" that "will or is designed to or may readily be converted to expel a projectile by the action of an explosive." 18 U.S.C. 921(a)(3)(A). Congress also included "the frame or receiver of any such weapon," 18 U.S.C. 921(a)(3)(B), ensuring that the key structural component of a firearm is subject to serial-number, background-check, and recordkeeping requirements, even if it is sold alone.

The provisions of the Rule at issue here clarify ATF's interpretation of that definition to address firearms commonly called "ghost guns." Ghost guns can be made from kits and parts that are available online to anyone with a credit card and that allow anyone with basic tools and rudimentary skills to assemble a fully functional firearm in as little as twenty minutes. 23A82 Appl. 8-10. Some manufacturers of those products assert that they are not "firearms" regulated by federal law, and thus can be sold without serial numbers, transfer records, or background checks. Those features of ghost guns make them uniquely attractive to criminals and others who are legally prohibited from buying firearms or intend to use them to commit crime.

The Rule, which took effect on August 24, 2022, 87 Fed. Reg. at 24,652, responded to the exponential increase in the availability of ghost guns -- and a corresponding explosion in their use in crimes -- by clarifying that a weapon parts kit that allows a purchaser to readily assemble an operational weapon is a "firearm"

and that a "frame or receiver" includes "a partially complete, disassembled, or nonfunctional frame or receiver" that may be readily converted into a functional one. Id. at 24,735, 24,739. Under the statute as interpreted in the Rule, commercial manufacturers and sellers of covered products must obtain licenses; mark their products with serial numbers; conduct background checks to ensure that those products are not sold to children, felons, or other prohibited persons; and keep records to allow law enforcement to trace firearms used in crimes.

B. This Court's Stay Of The District Court's Vacatur

1. Respondents Blackhawk Manufacturing and Defense Distributed are two manufacturers and distributors of products regulated by the Rule. They -- along with other manufacturers and distributors, individual firearm owners, and advocacy organizations -- filed this suit in the United States District Court for the Northern District of Texas challenging the Rule's treatment of weapon parts kits and partially complete frames and receivers.

In late 2022 and early 2023, the district court entered preliminary injunctions prohibiting the government from enforcing the two challenged provisions of the Rule against some plaintiffs, including respondents, as well as respondents' customers. D. Ct. Doc. 188, at 10-11 (Mar. 2, 2023); D. Ct. Doc. 118, at 11-12 (Nov. 3, 2022). The government appealed those preliminary injunctions.

On June 30, 2023, before the Fifth Circuit resolved the appeals, the district court granted respondents' and the other plain-

tiffs' motions for summary judgment. App., infra, 52a-89a. The court held that ATF "acted in excess of its statutory jurisdiction" in adopting the challenged portions of the Rule and vacated the Rule in its entirety nationwide. Id. at 75a; id. at 85a-89a. On July 5, the court entered a final judgment memorializing the vacatur. Id. at 50a-51a.

On July 24, the Fifth Circuit granted in part and denied in part the government's motion for a stay pending appeal. C.A. Doc. 45-1 (July 24, 2023). The court declined to stay the vacatur of the two challenged portions of the Rule, but stayed the vacatur of the unchallenged portions of the Rule. Id. at 3. The court also expedited the underlying appeal, id. at 4, and held oral argument on September 7, see C.A. Doc. 168 (Sept. 7, 2023).

2. In the meantime, on July 27, the government filed an application for a stay pending appeal with this Court. The government argued that this Court would likely grant certiorari and reverse a Fifth Circuit decision affirming the district court's vacatur because the Rule reflects the natural reading of the statutory definition of "firearm." 23A82 Appl. 15-27. The government also argued that the district court erred in granting universal vacatur. Id. at 27-34. On the equities, the government explained that "[t]he district court's vacatur of the challenged provisions of the Rule imposes grave and irreparable harm to the government and the public by enabling the irreversible flow of large numbers of untraceable ghost guns into our Nation's communities." Id. at

34. "On the other side of the ledger, a stay would impose only a minimal burden on respondents' lawful activities" because "[t]hey would be entirely free to continue making, selling, and buying the exact same products so long as they complied with the routine regulatory requirements that tens of thousands of licensees abide by on [a] daily basis." Ibid.; see id. at 34-39.

Although the government asked this Court to stay the district court's vacatur in full, it also identified an alternative if the Court concluded that the government was likely to succeed only in its challenge to the universal scope of the district court's remedy or that the equities warranted narrower relief: At a minimum, the government urged the Court to "stay the district court's vacatur as applied to individuals and entities that are not parties to this case." 23A82 Appl. 34; see id. at 40.

Respondents (and the other plaintiffs) opposed the government's application, emphasizing the purported harms that a stay would impose on them. Defense Distributed asserted that a stay would "inflict[] * * * severe economic harm on Defense Distributed as to threaten its existence." 23A82 Def. Distributed Opp. 15-16. Blackhawk claimed that enforcement of the Rule would "put Respondents, along with millions of Americans, at risk of irreparable harm by Applicants' efforts to exercise -- by threat of criminal penalties -- a regulatory power outside the scope of Applicants' delegated authority." 23A82 Blackhawk Opp. 27. Other manufacturer plaintiffs argued that they would "face[] 'irrepara-

ble harm, either by shutting down [their] operations forever or paying the unrecoverable costs of compliance,'" if the Court granted a stay. 23A82 VanDerStok Opp. 38 (citation omitted).

The explicit premise of those arguments was that if this Court granted the government's application to stay the vacatur in full, respondents would be required to comply with the Rule during the pendency of the appeal. Blackhawk, for example, argued that "a stay will put Respondents * * * at risk of irreparable harm * * * [from] Applicants' enforcement of [the Rule]." 23A82 Blackhawk Opp. 2; see, e.g., 23A82 Def. Distributed Opp. 15 ("If the Rule is allowed to go into effect vis-à-vis Defense Distributed, irreparable harms will undoubtedly result."). Accordingly, although plaintiffs principally argued that the Court should deny the application outright, they argued in the alternative that any stay should be "limit[ed]" to nonparties. 23A82 VanDerStok Opp. 5; see id. at 39-40; 23A82 Def. Distributed Opp. 7 ("If nothing else, the parties that established [Administrative Procedure Act (APA), 5 U.S.C. 701 et seq.] violations below are entitled to relief for the duration of the appeal.").

On August 8, the Court granted the government's stay application in full. The Court's order provided:

> The application for stay presented to Justice Alito and by him referred to the Court is granted. The June 30, 2023 order and July 5, 2023 judgment of the [district court], insofar as they vacate the [Rule], are stayed pending the disposition of the appeal * * * and disposition of a petition for a writ of certiorari, if such a writ is timely sought.

App., infra, 49a.

C. The District Court's New Injunction

1. On August 9 -- the day after this Court's order -- Defense Distributed moved in the district court for an injunction pending appeal. Blackhawk followed with its own motion five days later. Respondents did not argue that circumstances had changed since this Court's order. To the contrary, respondents argued that they would face irreparable harm in the absence of injunctive relief for the same "reasons [they] first introduced at the preliminary injunction stage" and had continued to invoke in opposing a stay in this Court. D. Ct. Doc. 249, at 5 (Aug. 9, 2023); see D. Ct. Doc. 251, at 1 n.1 (Aug. 14, 2023) ("incorporat[ing] by reference [Blackhawk's] earlier memorandum of law in support of its motion for [a] preliminary injunction"). Defense Distributed, for example, relied on the same declaration it had invoked in opposing the government's stay application. Compare 23A82 Def. Distributed Opp. 15-16, with D. Ct. Doc. 249, at 5.

2. On September 14, the district court granted an injunction. App., infra, 7a-48a. The court first concluded that notwithstanding its entry of a final judgment and the pendency of an appeal, it had "ancillary enforcement jurisdiction" to grant an injunction pending appeal. Id. at 41a; see id. at 12a-41a.

The district court next held that respondents are likely to succeed on the merits. App., infra, 42a-43a. The court began with the premise that its summary-judgment order and final judgment

remain "the law of the case." Id. at 30a. The court stated that it was not bound by this Court's stay because that stay "cover[ed] only th[e] [district court's] grant of vacatur" and not its "judgment on the merits that the challenged provisions of the Final Rule are unlawful." Ibid. Notwithstanding this Court's stay, therefore, the district court maintained that respondents had demonstrated not just a likelihood of success on appeal, but "an actual success on the merits of their claims." Id. at 43a.

The district court also found that an injunction was necessary to "prevent irreparable harm" during the "appeals process." App., infra, 45a; see id. at 43a-46a. Relying on the same evidence that respondents had invoked in opposing a stay, the court found that "any resumed enforcement efforts against [respondents] would result in significant harm to their businesses" and that an injunction was necessary to "preserve the status quo." Id. at 44a-45a.

Finally, the district court found that the balance of the equities and the public interest supported an injunction. App., infra, 46a-47a. The court reiterated its view that, despite this Court's stay, "[t]he controlling law of this case is that the Government Defendants' promulgation of the two challenged provisions of the Final Rule transgress the boundaries of lawful authority prescribed by Congress." Id. at 46a (citations omitted). And because "there can be 'no public interest in the perpetuation of unlawful agency action,'" the district court believed that there "is no injury that the Government Defendants and the public at-

large could possibly suffer." Id. at 46a-47a (citation and emphases omitted).

The district court's injunction prohibits the government from "implementing and enforcing" the challenged provisions of the Rule against respondents "pending the disposition of the appeal" in the Fifth Circuit "and disposition of a petition for a writ of certiorari, if such a writ is timely sought." App., infra, 48a. The court also extended the injunction to prohibit enforcement against respondents' customers, "except for those individuals prohibited from possessing firearms" under 18 U.S.C. 922(g). Ibid.

3. On October 2, the Fifth Circuit granted in part and denied in part the government's motion to vacate the injunction. App., infra, 1a-6a. The court held that "the district court's injunction sweeps too broadly insofar as it affords relief to non-party customers" and therefore vacated the injunction pending appeal "as to non-party customers." Id. at 3a; see id. at 6a. The Fifth Circuit explained that the government had made clear that the statutory provisions interpreted in the Rule primarily apply to commercial manufacturers and sellers, not to individuals who are lawfully entitled to possess firearms. Id. at 3a.[2]

[2] As the government explained in its briefing in the Fifth Circuit, the government intends to enforce the Rule against both parties to this case and nonparties. See C.A. Doc. 197, at 2-3 (Sept. 26, 2023). But it is not a violation of the Gun Control Act of 1968 or the Rule for persons not otherwise prohibited from possessing firearms to possess weapon parts kits or partial frames or receivers, and this case only implicates the requirements for their commercial sale. See id. at 3. Non-prohibited persons therefore may lawfully purchase and use weapon parts kits and

The Fifth Circuit declined, however, to vacate the injunction to the extent it bars enforcement of the Rule against respondents. App., infra, 2a-6a. The court gave three reasons for that disposition.

First, the Fifth Circuit stated that this Court "could have simply stayed the district court's vacatur order and judgment without qualification" but instead chose to stay those orders only "'insofar as they vacate the Final Rule.'" App., infra, 4a (brackets omitted).

Second, the Fifth Circuit agreed with the district court that injunctive relief was appropriate under the traditional standard for preliminary relief. App., infra, 4a-5a. The Fifth Circuit summarily endorsed the district court's conclusions that respondents "would be irreparably harmed" if they were required to comply with the Rule; that respondents "are likely to succeed on the merits because the Final Rule is contrary to law"; and that "both the balance of equities and the public interest weigh in favor of allowing orderly judicial review of the Final Rule before anyone shuts down their businesses or sends them to jail." Id. at 4a.

Third, the Fifth Circuit rejected the government's argument that the district court had "flouted [this] Court's August 8 order" staying the district court's vacatur. App., infra, 5a. The Fifth

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partially complete frames or receivers for personal use so long as the manufacturer, importer, or dealer from which they purchased such items complies with the commercial sale requirements in the Act. See 18 U.S.C. 922(a)(2)-(3).

Circuit stated that "[t]here is a meaningful distinction between vacatur (which is a universal remedy) and an injunction that applies only to two named plaintiffs." Ibid. The Fifth Circuit acknowledged that the parties' briefing in this Court had specifically raised the possibility of limiting "the district court's universal vacatur" to "the parties" and that this Court "did not follow that alternative path." Ibid. But the Fifth Circuit declined to assign any significance to the Court's choice because it expressed doubt that "there is such a thing as an 'as-applied vacatur' remedy under the APA." Ibid.

ARGUMENT

This is the rare application where this Court has already applied the relevant legal standard in the very same case and determined the government should obtain emergency relief. As before, the government seeks relief from a district court order blocking implementation of the Rule pending appeal. This request should thus be governed by the same traditional standard, which asks whether the government has established (1) "a reasonable probability that this Court would eventually grant review," (2) "a fair prospect that the Court would reverse," and (3) "that the [government] would likely suffer irreparable harm" and "the equities" otherwise support relief. Merrill v. Milligan, 142 S. Ct.

879, 880 (2022) (Kavanaugh, J., concurring); see Hollingsworth v. Perry, 558 U.S. 183, 190 (2010) (per curiam); 23A82 Appl. 15.[3]

This Court's answer should be the same as it was two months ago. The Court has already determined that the government has established the requisite likelihood that the Court will grant review and reverse; that the government would be irreparably harmed by an order blocking enforcement of the Rule; and that any harm respondents may suffer from being required to comply with the Rule does not justify denying relief. And although the district court's party-specific injunction applies less broadly than its universal vacatur, the balance of the equities is materially unchanged because respondents are commercial sellers of firearms that widely distribute their products online. The injunction thus means that anyone seeking to buy a gun without a background check -- including felons, minors, and other prohibited persons -- can readily procure and complete an untraceable firearm from respondents' websites (or

[3] As the Fifth Circuit noted, the government has sought to vacate rather than stay the district court's injunction. App., infra, 2a & n.*. That difference in form reflects the unusual posture of this case: Ordinarily, applications like this involve a request to stay a district court's vacatur or preliminary or permanent injunction during the pendency of an appeal and any proceedings in this Court. See, e.g., 23A82 Appl. 1, 40-41. Here, however, the district court itself granted an injunction only "pending the disposition of the appeal" and "a petition for a writ of certiorari." App., infra, 48a. Granting a stay pending appeal and certiorari would therefore foreclose all possible applications of that injunction, so the government has styled its application as seeking vacatur rather than a stay. But the practical effect is the same, and the Fifth Circuit thus correctly recognized that the inquiry should be guided by the traditional stay standard. Id. at 2a n.*.

the websites of the other plaintiff-manufacturers that have already sought follow-on injunctions).

More fundamentally, this Court should grant this application to vindicate basic principles of vertical stare decisis and the Court's role in our judicial system. The Court's power to grant stays and other relief in aid of its jurisdiction preserves its ability to authoritatively fix the rights of the parties while a case works its way to the Court. When the Court considered the government's prior stay application, it was presented with three options for the status quo pending appeal and certiorari: (1) the Rule could remain vacated as to everyone; (2) it could be allowed to take effect only as to nonparties but not as to respondents and other plaintiffs; or (3) it could be allowed to take effect as to everyone, parties and nonparties alike. After extensive briefing, this Court chose the third option. Yet the district court and the Fifth Circuit have now overridden this Court's determination and unilaterally imposed the second option while the appeal proceeds. And the lower courts countermanded this Court's stay without even purporting to identify any change in the facts or the law -- instead, they openly accepted the very arguments this Court had necessarily rejected. The Court should not tolerate such circumvention of its orders.

I. THIS COURT SHOULD GRANT THIS APPLICATION FOR THE SAME REASONS IT GRANTED THE GOVERNMENT'S PRIOR APPLICATION

When this Court granted a stay pending appeal, it necessarily found the requisite likelihood that it would eventually grant review and reverse and that the equities favored relief. Those conclusions apply equally here.

First, the Court's grant of a stay reflected a determination that there is "a reasonable probability" that this Court "would eventually grant review" and "a fair prospect that the Court would reverse." Merrill, 142 S. Ct. at 880 (Kavanaugh, J., concurring). Those findings are "necessary for issuance of a stay." Barnes v. E-Systems, Inc. Grp. Hosp. Med. & Surgical Ins. Plan, 501 U.S. 1301, 1304 (1991) (Scalia, J., in chambers) (emphasis added). And by definition, those findings continue to apply here: The district court granted an injunction pending appellate review of the very same judgment that was before this Court in the government's last application.

Second, the Court must have credited the government's contention that it "would likely suffer irreparable harm absent the stay" and that "the equities" favored relief. Merrill, 142 S. Ct. at 880 (Kavanaugh, J., concurring). Both sides of the equitable ledger remain materially unchanged.

The government's prior application explained that preventing ATF from enforcing the Rule would have harmed the government and the public by "effectively giv[ing] respondents -- and other ghost-

gun manufacturers and sellers -- the green light to resume distribution of ghost guns without background checks, records, or serial numbers," thereby posing "an acute threat to public safety." 23A82 Appl. 36. In other words, the harm to the government and public was the ready availability of ghost guns online. The district court's new injunction imposes the same harm: Respondents are manufacturers that sell ghost guns over the Internet without background checks or serial numbers. Indeed, Defense Distributed's website is "ghostgunner.net." And Blackhawk is already using the new injunction for marketing purposes. See Blackhawk Manufacturing, d/b/a 80 Percent Arms, ATF Rule Update, https://perma.cc/TXD4-BPTK (last visited Oct. 5, 2023).

The district court's injunction thus means that anyone seeking to buy a ghost gun online can easily do so. And although other manufacturer plaintiffs did not previously seek their own injunctions -- perhaps because they recognized that this Court's stay plainly foreclosed such relief -- they have now done so as well. See D. Ct. Doc. 263 (Sept. 20, 2023) (Not An L.L.C.); D. Ct. Doc. 262 (Sept. 15, 2023) (Tactical Machining). If the district court adheres to its approach and grants those injunctions, it will further multiply the number of available sellers.

On the other side of the ledger, this Court's grant of a stay necessarily reflected its conclusion that any harm the Rule might impose on respondents and other manufacturers did not justify denying or narrowing the relief the government sought. In par-

ticular, the Court considered and rejected Defense Distributed's argument that a stay would inflict "severe economic harm" and "threaten its existence." 23A82 Def. Distributed Opp. 15. The Court likewise rejected Blackhawk's assertion that it would suffer "irreparable harm" if it were required "by threat of criminal penalties" to comply with the firearms statutes as interpreted in the Rule. 23A82 Blackhawk Opp. 27.

In granting an injunction pending appeal, the district court did not purport to identify any new or changed circumstance relevant to the equities. To the contrary, at each relevant stage of this litigation -- when seeking a preliminary injunction, when opposing a stay pending appeal, and when seeking an injunction pending appeal -- respondents have made the same arguments based on the same record. Relying on a declaration it filed in the district court, for example, Defense Distributed has consistently asserted that allowing ATF to enforce the Rule while this litigation proceeds would cause irreparable harm by "inflict[ing] such severe economic harm on Defense Distributed as to threaten its existence." D. Ct. Doc. 164, at 6 (Jan. 12, 2023) (Mem. of Law in Support of Mot. for Prelim. Inj.); see 23A82 Def. Distributed Opp. 15 (same); D. Ct. Doc. 249, at 5 (Mot. for Inj. Pending Appeal) (similar). Blackhawk's motion for an injunction pending appeal likewise relied on the same arguments it has made throughout this litigation, including in opposing a stay in this Court. See D. Ct. Doc. 251, at 1 n.1 (Mot. for Inj. Pending Appeal) ("incor-

porat[ing] by reference [Blackhawk's] earlier memorandum of law in support of its motion for [a] preliminary injunction").

In short, this Court previously determined that the government's interest in preventing the distribution of untraceable ghost guns to anyone with a computer and a credit card outweighed any harm respondents and other manufacturers might suffer from being required to comply with federal laws requiring licenses, serial numbers, background checks, and recordkeeping for commercial firearms sales -- routine requirements that tens of thousands of firearms dealers follow in selling millions of firearms each year. 23A82 Appl. 37-38. That determination applies equally here.

II. THE LOWER COURTS HAD NO AUTHORITY TO COUNTERMAND THIS COURT'S ORDER FIXING THE PARTIES' RIGHTS PENDING APPEAL

Vacatur of the district court's injunction is also warranted for a more fundamental reason: Once this Court has considered and decided an application for emergency relief and made an authoritative determination about the status quo that should govern pending appeal, lower courts have no power to revisit the matter (at least absent a significant change in circumstances). Yet the district court and the Fifth Circuit openly flouted that principle here. Immediately after this Court issued its stay, those courts considered the same arguments based on the same record and effectively countermanded this Court's order based on their own view of the merits and the equities.

Respondents and the lower courts have not cited -- and we have not found -- any prior example of a district court entering an injunction pending appeal in a case in this posture. To the contrary, "basic principles of vertical stare decisis" dictate that a lower court "lacks the 'power or authority' to reach the opposite conclusion" from a higher court "on the same issues, in the same emergency posture, and in the same case." Alabama Ass'n of Realtors v. United States Dep't of Health & Human Services, 557 F. Supp. 3d 1, 8, 10 (D.D.C. 2021) (quoting Briggs v. Pennsylvania R.R., 334 U.S. 304, 306 (1948)); cf. Volkswagenwerk A. G. v. Falzon, 461 U.S. 1303 (1983) (O'Connor, J., in chambers).

The lower courts' approach would subvert this Court's authority and needlessly multiply emergency litigation. It would mean that any time this Court stays a district court's vacatur or broad injunction, the lower court would be free to adhere to its contrary view of the merits and the equities and grant a narrower injunction pending appeal. Successful applicants for stays would then be required to return to this Court to seek emergency relief a second time -- just as the government has been forced to do here.

There is no justification for such a regime. This Court is quite capable of granting partial stays or otherwise tailoring emergency relief when it concludes that the merits and the equities warrant it.[4] And especially where, as here, the Court is squarely

[4] See, e.g., United States Army Corps of Eng'rs v. Northern Plains Res. Council, 141 S. Ct. 190, 190 (2020) (staying vacatur and injunction with "except[ion]"); Andino v. Middleton, 141

presented with that option but declines to adopt it, the lower courts have no basis to override this Court's authoritative determination about the proper relationship between the parties during the pendency of appellate proceedings.

III. THE LOWER COURTS FAILED TO JUSTIFY THE DISTRICT COURT'S EXTRAORDINARY AND UNPRECEDENTED INJUNCTION

The lower courts attempted to justify the district court's injunction by parsing the language of this Court's stay order, by engaging in their own reexamination of the merits and the equities, and by emphasizing the difference between a universal vacatur and a party-specific injunction. None of those arguments justifies the extraordinary and unprecedented relief granted below.

A. This Court stayed the district court's summary-judgment order and final judgment "insofar as they vacate" the Rule. App., infra, 49a. The lower courts highlighted that language, suggesting that it was significant that the Court did not "stay[] the district court's vacatur order and judgment without qualification." Id. at 4a; see id. at 30a. But vacatur was the only remedy the district court granted, and a stay of the vacatur was the only relief the government sought in its application. See 23A82 Appl. 40 ("The

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S. Ct. 9, 10 (2020) (staying preliminary injunction with "except[ion]"); North Carolina v. Covington, 583 U.S. 1109, 1109 (2018) (granting in part and denying in part application for stay); Trump v. International Refugee Assistance Project, 582 U.S. 571, 582 (2017) (per curiam) ("grant[ing] the Government's stay applications in part and narrow[ing] the scope of the injunctions"); Wheaton College v. Burwell, 134 S. Ct. 2806, 2807 (2014) (per curiam) (granting injunction pending appeal with "conditions" and limitations).

application for a stay of the district court's judgment vacating the rule should be granted.").

The lower courts erred in treating this Court's routine "insofar as" language as an implicit invitation to grant further relief. This Court has previously used that formulation when staying the vacatur of agency action without suggesting that the phrase limits a stay's effect. See Louisiana v. American Rivers, 142 S. Ct. 1347, 1347 (2022) ("The district court's October 21, 2021 order, insofar as it vacates the current certification rule, 40 C.F.R. Part 121, is stayed."). And adhering to the same formulation made sense here because both orders at issue also disposed of various matters unrelated to the merits. The district court's summary judgment order granted motions to intervene and denied a plaintiff's motion for an injunction. App., infra, 88a-89a. And the final judgment "denied as moot" various outstanding claims. Id. at 51a (capitalization and emphasis omitted). By staying those orders "insofar as they vacate" the Rule, id. at 49a, this Court granted full relief to the government while making clear that those uncontested portions of the orders were undisturbed.

B. The lower courts likewise seriously erred in engaging in their own reexamination of the merits and the equities while disregarding the contrary determinations necessarily reflected in this Court's grant of a stay. The Fifth Circuit summarily endorsed the district court's conclusions that "the Final Rule is contrary to law," that "the balance of the equities and the public interest

weigh in favor of" preventing the Rule's enforcement against respondents pending appeal, and that the countervailing harms to the government and the public do not justify allowing the Rule to take effect. App., infra, 4a; see id. at 4a-5a, 42a-47a. Those are the very same arguments this Court had just considered and rejected in granting a stay. Remarkably, however, neither lower court even acknowledged this Court's stay order in assessing likelihood of success or the equities.

C. Finally, the Fifth Circuit sought to justify the injunction by asserting that this Court's stay order addressed only "a universal vacatur" and thus did not foreclose the possibility of party-specific injunctive relief. App., infra, 5a. That is wrong. As the Fifth Circuit acknowledged (ibid.), both the government and the plaintiffs squarely presented this Court with the alternative of narrowing relief to the parties by staying the vacatur only "to the extent it applies to nonparties." 23A82 Appl. 40; see pp. 8-9, supra. This Court's grant of a full stay thus reflected a determination that the government should be permitted to implement the Rule as to parties and nonparties alike.

In resisting that straightforward conclusion, the Fifth Circuit suggested that this Court could not have narrowed the vacatur in the way the parties suggested because the Fifth Circuit doubted that "there is such a thing as an 'as-applied vacatur' remedy under the APA." App., infra, 5a. But even if the Fifth Circuit were correct that a district court cannot grant as-applied vacatur in

the first instance, but see 23A82 Appl. 28-32, there can be no doubt that this Court has the authority to stay a universal vacatur in some but not all of its applications. The decision to grant a stay involves an inherently "equitable judgment," and "[t]his Court may, in its discretion, tailor a stay." Trump v. International Refugee Assistance Project, 582 U.S. 571, 582 (2017) (per curiam); see n.4, supra. Indeed, the Court has previously granted a partial stay in a markedly similar context, staying a district court's vacatur of a nationwide permit "except as it applie[d]" to a particular project. United States Army Corps of Eng'rs v. Northern Plains Res. Council, 141 S. Ct. 190 (2020). The Court could have adopted the same approach here, but instead stayed the vacatur in full. The Court should not allow the lower courts to countermand that authoritative determination about the proper scope of relief pending appeal.

CONCLUSION

This Court should vacate the injunction pending appeal entered by the district court.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General

OCTOBER 2023

APPENDIX

United States Court of Appeals for the Fifth Circuit

No. 23-10718

Jennifer VanDerStok; Michael G. Andren; Tactical Machining, L.L.C., *a limited liability company*; Firearms Policy Coalition, Incorporated, *a nonprofit corporation*,

Plaintiffs—Appellees,

Blackhawk Manufacturing Group, Incorporated, *doing business as* 80 Percent Arms; Defense Distributed; Second Amendment Foundation, Incorporated; Not An L.L.C., *doing business as* JSD Supply; Polymer80, Incorporated,

Intervenor Plaintiffs—Appellees,

versus

Merrick Garland, *U.S. Attorney General*; United States Department of Justice; Steven Dettelbach, *in his official capacity as Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives*; Bureau of Alcohol, Tobacco, Firearms, and Explosives,

Defendants—Appellants.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:22-CV-691

No. 23-10718

Before WILLETT, ENGELHARDT, and OLDHAM, *Circuit Judges*.

UNPUBLISHED ORDER

PER CURIAM:

The Government's motion to vacate the district court's injunction is GRANTED IN PART.

The Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") promulgated a Final Rule that, among other things, changed the longstanding federal definition of a firearm "frame or receiver." A group of plaintiffs brought a lawsuit challenging two provisions in the Final Rule. The district court held that those provisions exceeded ATF's statutory authority and vacated the entire Final Rule. The Supreme Court stayed the district court's rulings "insofar as they vacate the final rule." Two of the plaintiffs—manufacturers of "frames or receivers" regulated by the Final Rule—then asked the district court for injunctive relief pending appeal. The district court enjoined the Government from enforcing the challenged portions of the Final Rule against the two plaintiffs and their customers. The Government has now asked us to vacate the district court's injunction.[*]

[*] Such a request formally differs from an application for a stay, which would require consideration of the four factors from *Nken v. Holder*, 556 U.S. 418 (2009). Vacatur would eliminate the district court's injunction entirely, whereas a stay would "operate[] upon the judicial proceeding itself" and place a hold on the injunction. *Id.* at 428. Nevertheless, we still look to *Nken*, not because a motion to vacate and an application to stay are "one and the same, but because similar concerns arise whenever a court order may allow or disallow anticipated action before the legality of that action has been conclusively determined." *Id.* at 434. We note that the federal courts rarely consider emergency motions to vacate an injunction issued by a lower court. And in those rare occasions, the opinions do not provide guidance on their rule of decision. *See United States v. New York, Delaware*, 328 U.S. 824 (1946); *Lucy v. Adams*, 350 U.S. 1, 2 (1955) (per curiam); *see also FG Hemisphere Assocs. LLC v. Republique Du Congo*, 212 F. App'x 358, 359 (5th Cir. 2007) (per curiam).

We agree with the Government that the district court's injunction sweeps too broadly. Injunctions that afford relief to non-parties are potentially problematic. *See, e.g.*, *United States v. Texas*, 143 S. Ct. 1964, 1980 (2023) (Gorsuch, J., concurring in the judgment); *cf.* Aditya Bamzai, *The Path of Administrative Law Remedies*, 98 NOTRE DAME L. REV. 2037, 2060–61 (2023). And it appears the district court's injunction sweeps too broadly insofar as it affords relief to non-party customers. That is particularly true because the Government has been adamant—in both writing and at oral argument on this motion—that it will not enforce the Final Rule against customers who purchase regulated "frames or receivers" and who are otherwise lawfully entitled to purchase firearms. Of course, if circumstances change, the district court is free to narrowly tailor injunctive relief to meet the changed circumstances. But as things stand today, the Government is correct that the injunction cannot extend to non-party customers.

But we disagree with the Government that the district court's injunction as to two plaintiff-party manufacturers "directly conflicts with the Supreme Court's determination that the [G]overnment should be permitted to enforce the Rule as to everyone while this appeal proceeds." Gov't Vacatur Mot. 8. We have three reasons. First, the Supreme Court limited its stay to the global relief afforded by the district court's vacatur order. Here is what the Court said in its August 8 stay order:

> Application for stay presented to Justice Alito and by him referred to the Court granted. The June 30, 2023 order and July 5, 2023 judgment of the United States District Court for the Northern District of Texas, case No. 4:22-cv-691, *insofar as* they vacate the final rule of the Bureau of Alcohol, Tobacco, Firearms and Explosives, 87 Fed. Reg. 24652 (April 26, 2022), is stayed pending the disposition of the appeal in the United States Court of Appeals for the Fifth Circuit and disposition of a petition for a writ of certiorari, if such a writ is timely sought.

> Should certiorari be denied, this stay shall terminate automatically. In the event certiorari is granted, the stay shall terminate upon the sending down of the judgment of this Court.

--- S. Ct. ---, No. 23A82, 2023 WL 5023383 (U.S. 2023) (Mem.) (emphasis added). The Supreme Court could have simply stayed the district court's vacatur order and judgment without qualification. Instead, the Court stayed them "insofar as they vacate the [F]inal [R]ule."

Second, we cannot say that the district court abused its discretion in granting traditional, limited injunctive relief to two parties. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) ("A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest."). The party-plaintiff manufacturers would be irreparably harmed by being forced to shut down their companies or by being arrested pending judicial review of the Final Rule. *VanDerStok v. BlackHawk Mfg. Grp. Inc.*, No. 4:22-CV-00691-O, 2023 WL 5978332, at *18 (N.D. Tex. Sept. 14, 2023). The party-plaintiff manufacturers are likely to succeed on the merits because the Final Rule is contrary to law. And both the balance of equities and the public interest weigh in favor of allowing orderly judicial review of the Final Rule before anyone shuts down their businesses or sends them to jail. *See Nken v. Holder*, 556 U.S. 418, 427 (2009) ("The authority to hold an order in abeyance pending review allows an appellate court to act responsibly.").

We are sensitive to the fact that the Government is irreparably harmed whenever its rules are enjoined. *See Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers); *cf. Nken*, 556 U.S. at 435–36 (noting Government's irreparable injury can sometimes merge with public interest).

Still, the federal definitions of "frame or receiver" have endured for decades before ATF changed them in the Final Rule. ATF's desire to change the *status quo ante* does not outweigh the few additional weeks or months needed to complete judicial review of ATF's work. Thus, under *Winter* or *Nken* or any other standard, *see supra* n.*, we cannot say the Government has shown that it is entitled to emergency vacatur of the district court's injunction as to the two party-plaintiff manufacturers.

Third, we are unpersuaded by the Government's insistence that the district court flouted the Supreme Court's August 8 order. There is a meaningful distinction between vacatur (which is a universal remedy) and an injunction that applies only to two named plaintiffs (which is a traditional equitable remedy). *See, e.g.*, John C. Harrison, *Section 706 of the Administrative Procedure Act Does Not Call for Universal Injunctions or Other Universal Remedies*, 37 YALE J. REG. BULL. 37 (2020). The August 8 order considered only the first—a universal vacatur. The Government points out that its briefing to the Supreme Court also raised, in the alternative, that the district court's universal vacatur should be limited to the parties to this case; and that the Court did not follow that alternative path. It is unclear that there is such a thing as an "as-applied vacatur" remedy under the APA. *See, e.g.*, John C. Harrison, *Vacatur of Rules Under the Administrative Procedure Act*, 40 YALE J. REG. BULL. 119, 120 (2023) ("An injunction can be limited to the defendant's actions concerning the plaintiff, and its preclusive effect can be limited to the relations between the parties. Vacatur, by contrast, eliminates a rule's binding force altogether."). So it is unclear that we should read much into the Government's purported alternative. And in any event, we think it best to read the order the Supreme Court issued rather than one it did not.

* * *

At the end of the day, we think four things are paramount. First, inferior federal courts must exhibit unflinching obedience to the Supreme Court's orders. Second, the Court has directed us to be skeptical (if not altogether unwilling) to order universal relief that extends to non-parties. Third, insofar as possible, we should have orderly judicial review in which the *status quo* is maintained, and the legal rules sorted, without asking courts to make monumental decisions in short-fuse emergency dockets. Fourth and finally, courts should be able to review ATF's 98-page rule, and the decades of precedent it attempts to change, without the Government putting people in jail or shutting down businesses. For these reasons, the Government's motion is GRANTED IN PART, the district court's preliminary injunction is VACATED as to non-parties, and the Government's motion is otherwise DENIED.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

JENNIFER VANDERSTOK, et al.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	**Civil Action No. 4:22-cv-00691-O**
	§	
BLACKHAWK MANUFACTURING GROUP INC., et al.,	§	
	§	
Intervenor Plaintiffs,	§	
	§	
v.	§	
	§	
MERRICK GARLAND, et al.	§	
	§	
Defendants.	§	

OPINION & ORDER ON DEFENSE DISTRIBUTED AND BLACKHAWK MANUFACTURING GROUP INC. d/b/a 80 PERCENT ARMS' EMERGENCY MOTIONS FOR INJUNCTIVE RELIEF PENDING APPEAL

Before the Court are Defense Distributed and BlackHawk Manufacturing Group Inc. d/b/a 80 Percent Arms' ("Intervenor-Plaintiffs") Emergency Motions for Injunction Pending Appeal (ECF Nos. 249, 251), filed August 9, 2023 and August 14, 2023; the Attorney General of the United States, the United States Department of Justice, the Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives, and the Bureau of Alcohol, Tobacco, Firearms and Explosives' (the "Government Defendants") Objection and Response in Opposition (ECF No. 254), filed August 17, 2023; and Intervenor-Plaintiffs' Replies (ECF Nos. 256, 257), filed August 21, 2023. Having considered the parties' briefing and applicable law, the Court **GRANTS** Intervenor-Plaintiffs' emergency motions for injunctive relief pending appeal to enforce unstayed portions of the Court's Order Granting Summary Judgment (ECF No. 227) and Final Judgment (ECF No. 231) against the Government Defendants.

I. BACKGROUND

The United States Congress established the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") to regulate "firearms" in interstate commerce under the Gun Control Act of 1986 ("GCA"). *See* 26 U.S.C. § 599A(a); 28 C.F.R. § 0.130(a); 18 U.S.C. § 921(a)(3). In April 2022, the ATF promulgated a Final Rule that purports to regulate partially manufactured firearm parts and weapon parts kits, which took effect on August 24, 2022. *See* Definition of "Frame or Receiver" and Identification of Firearms, 87 Fed. Reg. 24,652 (Apr. 26, 2022) (codified at 27 C.F.R. pts. 447, 478, 479). The Final Rule departed from nearly a half century of ATF precedent, during which the agency declined to interpret the GCA's term "firearms" as encompassing partially manufactured frames and receivers.[1] ATF subsequently issued an "Open Letter to All Federal Firearms Licensees," declaring that certain products are considered "frames" (and thus qualify as "firearms") under the GCA pursuant to the Final Rule's redefinition of that term.[2] Those products include partially complete Polymer80, Lone Wolf, and similar striker-fired semi-automatic pistol frames, including those sold within parts kits.[3]

Jennifer VanDerStok, Michael Andren, Tactical Machining, LLC, and the Firearms Policy Coalition, Inc. (the "Original Plaintiffs") filed this suit on August 11, 2022, to challenge the Final Rule's validity, claiming that the regulation exceeds the lawful scope of statutory authority that Congress vested in the ATF.[4] The Original Plaintiffs subsequently moved for a preliminary injunction that sought to broadly enjoin the Government Defendants from enforcing the Final

[1] *See* First Op. 2–3, ECF No. 56 (discussing ATF's Title and Definition Changes, 43 Fed. Reg. 13,531, 13,537 (Mar. 31, 1978) and others)
[2] U.S. Dep't of Justice, Bureau of Alcohol, Tobacco, Firearms & Explosives, Open Letter to All Federal Firearms Licensees (Dec. 27, 2022) ("ATF Open Letter (Dec. 27, 2022)"), https://www.atf.gov/rules-andregulations/docs/open-letter/all-ffls-dec2022-open-letter-impact-final-rule-2021-05f/download.
[3] *Id.*
[4] Compl. 1, ECF No. 1.

Rule.[5] On September 2, 2022, the Court issued its First Opinion in which it held that the Original Plaintiffs were substantially likely to succeed on the merits of their claim that provisions of the ATF's Final Rule—namely, 27 C.F.R. §§ 478.11, 478.12(c)—exceed the scope of the ATF's lawful jurisdictional grant under the GCA.[6] Having made this preliminary finding, the Court enjoined the Government Defendants, along with their officers, agents, servants, and employees, from implementing or enforcing the Final Rule against Tactical Machining, LLC ("Tactical")—the only Original Plaintiff to establish irreparable harm.[7] The Court denied injunctive relief to the remaining Original Plaintiffs in its First Opinion.[8] The Court issued its Second Opinion (ECF No. 89) on the proper scope of the preliminary injunction on October 1, 2022, which expanded the injunction to include the additional Original Plaintiffs and—for the purpose of providing Tactical complete relief—Tactical's customers.[9] The Court declined any invitation to issue a "nationwide" injunction.[10]

In the ensuing months, the Court further extended this injunctive relief to Intervenor-Plaintiffs on the same grounds and with the same scope as that of the Original Plaintiffs.[11] BlackHawk Manufacturing Group Inc. d/b/a 80 Percent Arms ("BlackHawk") is a manufacturer and retailer that sells products newly subject to the Final Rule, with most of its revenue earned through sales of those products.[12] Defense Distributed is a private defense contractor that primarily manufactures and deals products now subject to the Final Rule.[13] By March 2023, the Government

[5] Pls.' Mot. for Prelim. Inj., ECF No. 15.
[6] First Opinion 15, 22–23, ECF No. 56.
[7] *Id.*
[8] *Id.*
[9] Second Op. 20–22, ECF No. 89.
[10] *Id.* at 19.
[11] *See* Mem. Ops., ECF Nos. 118, 188.
[12] Lifschitz Decl. 6–8, ECF No. 62-5 ¶¶ 8, 11, 13.
[13] *See generally* Defense Distributed Compl., ECF No. 143.

Defendants and their officers, agents, servants, and employees were enjoined from implementing and enforcing against Intervenor-Plaintiffs and their customers the provisions in 27 C.F.R. §§ 478.11 and 478.12 that the Court preliminarily held to be unlawful.[14] The Government Defendants appealed these individualized, Plaintiff-specific preliminary injunctions, but did not seek stays pending appeal.

On June 30, 2023, the Court ruled in favor of the Original Plaintiffs and Intervenor-Plaintiffs on the merits and granted their motions for summary judgment.[15] The Court held on the merits that both challenged provisions of the Final Rule were invalid and that the ATF "acted in excess of its statutory jurisdiction by promulgating [the Final Rule]."[16] In Section IV(B)(4) of the Memorandum Opinion and Order Granting Summary Judgment (ECF No. 227), the Court vacated the entire Final Rule pursuant to section 706 of the Administrative Procedure Act ("APA").[17] The Court predicated its APA vacatur on the "default rule" of the Fifth and D.C. Circuits with respect to the appropriate statutory remedy for unlawful agency action.[18] On July 5, 2023, the Court entered its Final Judgment (ECF No. 231), which categorically memorialized each of the Court's June 30, 2023 determinations: (1) grant of summary judgment to Plaintiffs and (2) APA vacatur of the Final Rule.[19]

The Government Defendants appealed the Memorandum Opinion and Order Granting

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[14] *See* Mem. Ops., ECF Nos. 118, 188 (injunctive relief did not extend to customers prohibited from possessing firearms under 18 U.S.C. § 922(g)).
[15] Summ. J. Mem. Op. & Order 37–38, ECF No. 227.
[16] *Id.* at 35.
[17] *Id.* at 35–37 (setting forth the Court's "Remedy"); *see* 5 U.S.C. § 706(2)(C) (directing the reviewing court to "hold unlawful and set aside agency action" found to be "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right").
[18] *Id.* at 35–37 (citing *Data Mktg. P'ship, LP v. U.S. Dep't of Lab.*, 45 F.4th 846, 859–60 (5th Cir. 2022) (permitting APA vacatur under 5 U.S.C. § 706(2) as the "default rule"); *Franciscan All., Inc. v. Becerra*, 47 F.4th 368, 374–75, 375 n.29 (5th Cir. 2022) ("Vacatur is the only statutorily prescribed remedy for a successful APA challenge to a regulation."); *United Steel v. Mine Safety & Health Admin.*, 925 F.3d 1279, 1287 (D.C. Cir. 2019) ("The ordinary practice is to vacate unlawful agency action.")).
[19] Final J. 1, ECF No. 231.

Summary Judgment (ECF No. 227) and Final Judgment (ECF No. 231) to the United States Court of Appeals for the Fifth Circuit.[20] At the same time, the Government Defendants moved for this Court to issue an emergency stay pending appeal.[21] On July 18, 2023, the Court denied the Government Defendants' motion for stay of the Memorandum Opinion and Order (ECF No. 227) and the Final Judgment (ECF No. 231) pending appeal.[22] On July 24, 2023, the United States Court of Appeals for the Fifth Circuit granted the Government Defendants' request for a stay of this Court's APA vacatur remedy insofar as it applied to provisions of the Final Rule that were neither challenged by Plaintiffs nor held unlawful by this Court. *See VanDerStok v. Garland*, No. 23-10718, 2023 WL 4945360, at *1 (5th Cir. July 24, 2023) (per curiam). The Fifth Circuit otherwise declined to stay the APA vacatur of provisions of the Final Rule that this Court held unlawful on the merits. *See id.* The Fifth Circuit expedited the Government Defendants' appeal. *See id.*[23]

On July 5, 2023, the Government Defendants filed an application with the Supreme Court of the United States for a stay of this Court's Final Judgment (ECF No. 231).[24] In its application briefing, the Government Defendants sought a full stay of the Final Judgment, but secondarily argued that, "[a]t a minimum, the [Supreme] Court should stay the district court's judgment *to the extent it apples to nonparties*."[25] More specifically, the Government Defendants requested that, "*to the extent* the [Supreme] Court concludes that the June 30 [summary judgment] order might *continue to have independent effect*," the Supreme Court's order should "stay *both* the June 30

[20] Defs.' Notice of Interlocutory Appeal, ECF No. 234.
[21] Defs.' Emergency Mot. for Stay Pending Appeal, ECF No. 236.
[22] Order, ECF No. 238.
[23] *See* C.A. Doc. No. 63 (July 25, 2023). Following the Supreme Court's stay, the Fifth Circuit heard oral arguments on September 7, 2023.
[24] *See* Government's Application for a Stay of the Judgment Entered by the United States District Court for the Northern District of Texas, *Garland, Att'y Gen., et al. v. Vanderstok, Jennifer, et al.*, No. 23A82 (July 2023).
[25] Defense Distributed's Reply Ex., ECF No. 257-3, at 20 (emphasis added).

[summary judgment] order and the July 5 final judgment" of this Court.[26] On August 8, 2023, the Supreme Court accepted the Government Defendants' secondary invitation and granted its application for a stay. *See Garland v. VanDerStok*, No. 23A82, 2023 WL 5023383, at *1 (U.S. Aug. 8, 2023) (mem.). The Supreme Court's Stay Order provides, in relevant part, that:

> [t]he June 30, 2023 [summary judgment] order and July 5, 2023 [final] judgment of the United States District Court for the Northern District of Texas, case No. 4:22-cv-691, *insofar as they vacate* the final rule of the [ATF], 87 Fed. Reg. 24652 (April 26, 2022), is stayed pending the disposition of the appeal in the United States Court of Appeals for the Fifth Circuit and disposition of a petition for a writ of certiorari, if such a writ is timely sought.

Id. (emphasis added).

Following the U.S. Supreme Court's Stay Order, Intervenor-Plaintiffs each filed Opposed Emergency Motions for Injunction Pending Appeal on August 9, 2023 and August 14, 2023, respectively.[27] Following the completion of expedited briefing,[28] Intervenor-Plaintiffs' motions are now ripe for the Court's review.[29]

II. JURISDICTION

The core issue in dispute between the parties is whether the Court, following the Supreme Court's Stay Order, has jurisdiction to afford individualized, post-judgment equitable relief to Intervenor-Plaintiffs enjoining the Government Defendants from enforcing the challenged provisions of the Final Rule against each Intervenor-Plaintiff, pending final disposition of the appellate process. Upon review of the parties' briefing and applicable law, the Court answers in the affirmative and holds that it retains Article III jurisdiction to enforce—through party-specific relief against the Government Defendants—the concrete aspects of its Summary Judgment Order

[26] *Id.* at 20–21, 21 n.4 (emphasis added).
[27] *See* Defense Distributed's Mot., ECF No. 249; BlackHawk's Mot., ECF No. 251.
[28] *See* Orders, ECF Nos. 250, 253.
[29] *See generally* Defense Distributed's Mot., ECF No. 249; BlackHawk's Mot., ECF No. 251; Defs.' Resp., ECF No. 254; BlackHawk's Reply, ECF No. 256; Defense Distributed's Reply, ECF No. 257.

(ECF No. 227) and Final Judgment (ECF No. 231) that the Supreme Court declined to stay.

A. Legal Standard

The judicial power "extend[s] to all Cases, in Law and Equity," that arise under the Constitution and Laws of the United States. U.S. CONST. art. III § 2. When the demands of a particular case require a federal court to ascertain the scope of its Article III jurisdiction, it is instructed to look to "history and tradition" as a "meaningful guide." *United States v. Texas*, 143 S. Ct. 1964, 1970 (2023) (cleaned up); *cf. Coleman v. Miller*, 307 U.S. 433, 460 (1939) (Frankfurter, J.) ("[T]he framers of [Article III] gave merely the outlines of what were to them the familiar operations of the English judicial system and its manifestations on this side of the ocean before the Union.").

The judicial power of Article III encompasses the inherent authority of federal courts to grant equitable remedies in the execution of their judgments. *See Bodley v. Taylor*, 9 U.S. (5 Cranch) 191, 222–23 (1809) (Marshall, C.J.); *see also Peacock v. Thomas*, 516 U.S. 349, 356 (1996). The question of whether a federal court can properly exercise this inherent authority over a given matter, therefore, is constrained by historical and traditional equity practice. *Grupo Mexicano de Desarrollo S.A. v. All. Bond Fund, Inc.*, 527 U.S. 308, 318–19 (1999); *see also Bivens v. Six Unknown Named Agents*, 403 U.S. 388, 404–05 (1971) (Harlan, J., concurring in the judgment) (explaining that the reach of a federal court's inherent equitable powers is "determined according to the distinctive historical traditions of equity"). Congressional authorizations of equitable remedies must be construed and exercised in a manner compatible with the same pre-established body of rules and principles. *Guaranty Trust Co. v. York*, 326 U.S. 99, 105–06 (1945); *Boyle v. Zacharie*, 31 U.S. 648, 658 (1832) (Story, J.). A federal district court's equitable remedial power is further subject to the external constraints found elsewhere in the Constitution, as well as

in federal common law and congressional enactment. *See Peacock*, 516 U.S. at 354–59, 354 n.5; *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946); *Hecht Co. v. Bowles*, 321 U.S. 321, 329–30 (1944).

B. Analysis

Intervenor-Plaintiffs seek post-judgment injunctive relief pending the outcome of appeal of the Court's Summary Judgment Order (ECF No. 227) and Final Judgment (ECF No. 231). The requested relief would afford individualized, party-specific protection to Intervenor-Plaintiffs that enjoins the Government Defendants from implementing and enforcing against each Intervenor-Plaintiff and their respective customers the provisions of the Final Rule that this Court, preliminarily and on the merits, held are unlawful.[30]

In its Summary and Final Judgments,[31] the Court issued the default legal remedy prescribed by federal statute for unlawful agency action: vacatur of the entire Final Rule. *See* 5 U.S.C. § 706(2)(C) (authorizing courts to "hold unlawful and set aside agency action"); *Data Mktg. P'ship, LP v. U.S. Dep't of Lab.*, 45 F.4th 846, 859–60 (5th Cir. 2022) (discussing vacatur as the default remedy for unlawful agency action); *Franciscan All., Inc. v. Becerra*, 47 F.4th 368, 374–75, 375 n.29 (5th Cir. 2022) ("Vacatur is the only statutorily prescribed remedy for a successful APA challenge to a regulation."); *United Steel v. Mine Safety & Health Admin.*, 925 F.3d 1279, 1287 (D.C. Cir. 2019) ("The ordinary practice is to vacate unlawful agency action."). Following the Supreme Court's Stay Order, however, Intervenor-Plaintiffs no longer enjoy the protection previously afforded to them by the default remedy at law that Congress provided in the APA. *See Vanderstok*, 2023 WL 5023383, at *1 (staying the Summary Judgment Order and Final Judgment

[30] *See* Defense Distributed's Mot., ECF No. 249 (citing 27 C.F.R. §§ 478.11, 478.12); BlackHawk's Mot., ECF No. 251 (same).
[31] Summ. J. Mem. Op. & Order 35–38, ECF No. 227; Final J. 1, ECF No. 231.

"insofar as they vacate the final rule"). Moreover, Intervenor-Plaintiffs will remain deprived of the standard statutory relief until "disposition of the appeal in the United States Court of Appeals for the Fifth Circuit and disposition of a petition for a writ of certiorari." *Id.*

On account of Intervenor-Plaintiffs' prolonged lack of shelter from the Final Rule under the default statutory relief, they now seek the refuge of this Court's equitable remedial authority in the interim. Intervenor-Plaintiffs pray for the Court to exercise its equitable jurisdiction—to the extent that Intervenor-Plaintiffs each receive individual interlocutory protection against the Government Defendants' enforcement of the Final Rule—and at least until such time that the pending appeal and potential certiorari, as well as the Supreme Court's Stay Order, have been exhausted upon final conclusion.

The Court finds that the injunctive relief prayed for by Intervenor-Plaintiffs accords with (1) the historical and traditional maxims of equitable remedial jurisdiction prescribed by the Framers in Article III; and (2) the additional jurisdictional constraints imposed by the Constitution and contemporary judicial doctrine.

1. The History and Tradition of Equity Support Jurisdiction

Article III vests in this Court the equitable power to enforce its federal judgments. *Zacharie*, 31 U.S. at 658 (Story, J.) ("The chancery jurisdiction [is] given by the constitution and laws of the United States."); *cf.* THE FEDERALIST NO. 80, at 415 (Alexander Hamilton) (George W. Carey & James McClellan eds., 2001) ("[I]t would be impossible for the federal judicatories to do justice without an equitable as well as a legal jurisdiction"). The Court is further vested with general congressional grants of equity jurisdiction that are applicable in the pending motion.[32]

[32] *See* 5 U.S.C. § 705 (providing that "to the extent necessary to prevent irreparable injury," the Court "to which a case may be taken on appeal from . . . may issue all necessary and appropriate process to . . . preserve status or rights pending conclusion of the review proceedings"); Fed. R. Civ. P. 62(d) (providing that the Court "may suspend, modify, restore, or grant an injunction" pending appeal of a final judgment);

"We are dealing here with the requirements of equity practice with a background of several hundred years of history." *Hecht*, 321 U.S. at 329. The equity jurisdiction vested in district courts is an authority to administer "the principles of the system of judicial remedies which had been devised and was being administered by the English Court of Chancery at the time of the separation of the two countries." *Atlas Life Ins. Co. v. W.I. Southern, Inc.*, 306 U.S. 563, 568 (1939). Its contours are outlined by "the jurisdiction in equity exercised by the High Court of Chancery in England at the time of the adoption of the Constitution." *Grupo Mexicano*, 527 U.S. at 318 (citing A. DOBIE, HANDBOOK OF FEDERAL JURISDICTION AND PROCEDURE 660 (1928)); *see Hayburn's Case*, 2 U.S. (Dall.) 409, 410–11 (1792) (Jay, C.J.). Beyond the equity jurisdiction conferred by Article III, courts must also construe general statutory grants of equitable remedial authority to harmonize with "the body of law which had been transplanted to this country from the English Court of Chancery" at the Founding. *Guaranty Trust Co.*, 326 U.S. at 105. It is "settled doctrine" that broad congressional authorizations of "remedies in equity are to be administered . . . according to the practice of courts of equity in the parent country." *Id.* (quoting *Zacharie*, 31 U.S. at 658 (Story, J.)).[33] The Court finds that the rules, principles, and practices of equity familiar to the Founding generation counsel in favor of the Court's jurisdiction to enjoin the Government Defendants from enforcing challenged provisions of the Final Rule against Intervenor-Plaintiffs—at least until the outcome of those judgments are finalized on appeal and certiorari.

Fed. R. App. P. 8(a)(1) (providing that the Court may issue "an order suspending, modifying, restoring, or granting an injunction while an appeal is pending."); *see also* 28 U.S.C. § 1651 (providing that the Court "may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.")

[33] To be sure, the "substantive principles of Courts of Chancery remain unaffected" by the fusion of law and equity in our Federal Rules of Civil Procedure. *Stainback v. Mo Hock Ke Lok Po*, 336 U.S. 368, 382 n. 26 (1949).

Since King James I decreed the supremacy of English Chancery in 1616,[34] the reigning predominance of equity over law has remained a cornerstone of our Anglo-American legal tradition. *See* JOHN H. LANGBEIN ET AL., HISTORY OF THE COMMON LAW: THE DEVELOPMENT OF ANGLO-AMERICAN LEGAL INSTITUTIONS 335 (2009). Equity supremacy was originally intertwined with royal prerogative and divinely ordained absolutism.[35] Yet in spite of its philosophical underpinnings, the prevailing jurisdiction, principles, and practices of equity occupied such an "integral part in the machinery of the law," that the Court of Chancery and its wide body of jurisprudence nonetheless survived and maintained preeminent status after nearly two hundred years of war and revolution in England and the United States—which had been marked by bloody hostilities, violent overthrows, and abolitionist attempts against the English Crown—and by extension, the institution of equity itself. LORD NOTTINGHAM'S "MANUAL OF CHANCERY PRACTICE" AND "PROLEGOMENA OF CHANCERY AND EQUITY" 7–8 (D. E. C. Yale ed. 1965); *see generally* LANGBEIN ET AL., at 329–35, 345–55. Equity triumphed in the midst of these existential threats on account of the three "Great Chancellors,"[36] who carefully doctrinalized and enshrined centuries of deeply ingrained Chancery practices into a system of clearly established rules, jurisdictional contours, and binding precedents to govern the administration of equitable remedies. *See* 1 WILLIAM S. HOLDSWORTH, A HISTORY OF ENGLISH LAW 465 (1922–1966) (16 vols.); 1 LORD

[34] *The King's Order and Decree in Chancery*, Cary 115, 21 Eng. Rep. 61 (1616) (decreeing the supremacy of "relief in equity . . . notwithstanding any proceedings at common law . . . as shall stand with the true merits and justice of [] cases")

[35] *See The King's Order and Decree in Chancery*, Cary 115, 21 Eng. Rep. 61 (1616) (decreeing that "God, who hath placed [the monarch] over" the people, had vested within the king's "princely care and office only to judge over all Judges, and to discern and determine such differences as at any time may or shall arise between our several Courts, touching their Jurisdictions, and the same to settle and decide as we in our princely wisdom shall find to stand most with our honor . . . .").

[36] LANGBEIN ET AL., at 348–55. Lord Nottingham (1673–1682), Lord Hardwicke (1737–1756), and Lord Eldon (1801–1806, 1807–1827) are widely accredited with the systemization of modern equity. *See* S. F. C. MILSOM, HISTORICAL FOUNDATIONS OF THE COMMON LAW 95 (2d ed. 1981).

NOTTINGHAM'S CHANCERY CASES xxxvii–lxxiii (D. E. C. Yale ed. 1957) (2 vols. 1957, 1961). It was this abundant and systematized body of equity jurisprudence that was peculiarly familiar to the jurists of our Founding generation. *See, e.g.*, 3 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 432–33 (Oxford 1765–1769) (describing relief in equity as a "connected system, governed by established rules, and bound down by precedents"); THE FEDERALIST NO. 83, at 438 n.* (Alexander Hamilton) (George W. Carey & James McClellan eds., 2001) (describing Article III relief in equity as mirroring "the principles by which that relief is governed [in England, which] are now reduced to a regular system").[37]

The equitable remedial jurisdiction exercised by the Court of Chancery was necessarily forged out of (and therefore mirrored) the remedial gaps left behind by the austerity and incompleteness of relief available at law. *See* FRANZ METZGER, "The Last Phase of the Medieval Chancery," *in* LAW-MAKING AND LAW-MAKERS IN BRITISH HISTORY 84 (Alan Harding ed. 1980). Equity jurisdiction was supplemental in nature—it neither competed with, nor contradicted, nor denied the validity of the law—but rather aided, followed, and fulfilled the law. *See* CASES CONCERNING EQUITY AND THE COURTS OF EQUITY 1550–1660, vol. I, p. xli (William Hamilton Bryson, ed. 2001); *Cowper v. Earl Cowper* (1734) 24 Eng. Rep. 930, 941–42; 2 P. Wms. 720, 752–54 (Jekyll, MR). The "primary use of a court of equity [was] to give relief in *extraordinary cases*" where ordinary law remedies could not, which held steady as a routine phenomenon in the Anglo-American system by and through the Founding Era. THE FEDERALIST No. 83, at 438 & n.* (Alexander Hamilton) (George W. Carey & James McClellan eds., 2001); *see id.* NO. 80, at 415 (Alexander Hamilton) ("There is hardly a subject of litigation between individuals which may not

[37] Of course, the long legacy of equity's triumph over law endures in our fused-civil procedure system today. *See generally* Stephen N. Subrin, *How Equity Conquered Common Law: The Federal Rules of Civil Procedure in Historical Perspective*, 135 U. PENN. L. REV. 909 (1987).

involve those ingredients . . . which would render the matter an object of equitable rather than legal jurisdiction"); *see also* CASES CONCERNING EQUITY, at li ("The term 'extraordinary' is used [in equity] in the sense of going beyond the basic rather than in the sense of unusual; equity is both extraordinary and quite usual and frequent").

Through the development of equity's complementary function toward law, the scope of its jurisdiction became defined by a series of maxims well known to early American jurists—principally, (i) that equity acts *in personam*, *see* JOSEPH STORY, COMMENTARIES ON EQUITY PLEADINGS § 72, at 74 (Boston, 2d ed. 1840); (ii) that equity "follows the law," 1 JOSEPH STORY, COMMENTARIES ON EQUITY JURISPRUDENCE § 19, at 22 (Boston 1836); and (iii) that equity "suffers not a right to be without a remedy," RICHARD FRANCIS, MAXIMS OF EQUITY, no. 6, at 24 (London 1728). These primary maxims were crystalized in the rich tradition of injunctive relief practice in English Chancery and furthermore in the courts of equity of the Early Republic. The Court finds that the equitable maxims and their historic illustrations are in harmony with the injunctions presently sought by Intervenor-Plaintiffs in their motions before the Court.

i. The Prayed Injunctions Act in Personam

Like the rest of its remedial toolbox, English Chancery's decree of injunction operated *in personam* (*i.e.*, on the person that is a party), rather than *in rem* (*i.e.*, on the underlying subject matter in dispute). *See* CASES CONCERNING EQUITY, at xlv, li; LORD NOTTINGHAM'S "MANUAL OF CHANCERY PRACTICE" AND "PROLEGOMENA OF CHANCERY AND EQUITY" 17 (D. E. C. Yale ed. 1965); ROBERT HENLEY EDEN, A TREATISE ON THE LAW OF INJUNCTIONS 141 (London 1821). This maxim served to demarcate the boundaries of equitable jurisdiction relative to that of law and to prevent conflict between the two. *See, e.g.*, *Massie v. Watts*, 10 U.S. 148, 156–59 (1810) (Marshall, C.J.) (adjudicating the issue of the court's equitable jurisdiction to issue the prayed relief based on

whether it operated *in personam*). Whereas relief *in rem* was cabined to courts of law, equity jurisdiction began at matters *in personam* and any relief touching upon the conduct of a person was the sole prerogative of Chancery. *See* L. B. CURZON, ENGLISH LEGAL HISTORY 106 (2d ed. 1979); CASES CONCERNING EQUITY, at li. Injunctions were crafted as orders directed upon a living person to either undertake or refrain from undertaking a specific act—subject to enforcement via contempt of court or imprisonment to ensure compliance. *See* LANGBEIN ET AL., at 286; *Penn v. Lord Baltimore*, 1 Ves. Sen. 444, 447–48, 27 Eng. Rep. 1132, 1134–35, 1139 (1750) (Ld. Hardwicke, Ch.) (decreeing that, on the basis of Chancery's *in personam* jurisdiction over any party to a proceeding that is present within England, the parties are compelled to specifically perform their agreed-upon contract terms governing the resolution of boundary disputes; but declining to exercise any equitable authority on the original right of the boundaries).

The *in personam–in rem* jurisdictional dichotomy is well documented in the landmark case that gave rise to equity's supremacy over the law. In *Glanvile's Case*, Richard Glanvile won a judgment on a sales contract that the buyer entered under Glanvile's fraudulent misrepresentations. 72 Eng. Rep. 939 (K.B. 1615). In a law court, Glanvile entered judgment for an exorbitant bond debt. *See id.*; CASES CONCERNING EQUITY, at xlvi. But in Chancery, Lord Ellesmere decreed an injunction that operated against Glanvile himself, rather than the underlying property or judgment at law. *See* LANGBEIN ET AL., at 333–34. The injunction restrained Glanvile from attempting to enforce the law court judgment and compelled him to pay back the buyer-debtor, repossess the merchandise, and acknowledge satisfaction of the judgment. *See Glanvile's Case*, 72 Eng. Rep. 939. When Glanvile refused to comply, Chancery exercised its contempt power over Glanvile and imprisoned him for breach of a decree. *Id.* From the King's Bench, Lord Coke ruled that a judgment at law prevails over Chancery decree and granted the common law writ of *habeas corpus*

for Glanvile's release from prison. *Id.* Lord Coke's maneuver "struck at the heart of the Court of Chancery's *in personam* power," *i.e.*, the remedial power over a party's own person that is backed by the force of contempt. LANGBEIN ET AL., at 330. It also leveled a direct challenge to the finality and binding effect of an equity order when a conflicting legal order had been entered. The 1616 decree of King James settled equity's supreme status on both fronts and enshrined the rule of jurisdiction that endures to this day: where the results of an equity order acting *in personam* and the results of a legal order acting *in rem* "are in disagreement, the equity rule and decree will prevail." CASES CONCERNING EQUITY, at xlvii; *see The King's Order and Decree in Chancery*, Cary 115, 21 Eng. Rep. 61 (1616).

Decisions of the Chancery Court of New York under James Kent are instructive as to how traditional equity maxims applied to injunction practice in the Early Republic. *See, e.g.*, *Manning v. Manning*, 1 Johns. Ch. 527, 530 (N.Y. Ch. 1815) (Kent, Ch.) ("It is the duty of this Court to apply the principles of [English Chancery] to individual cases, . . . and, by this means, endeavor to transplant and incorporate all that is applicable in that system into the body of our own judicial annals, by a series of decisions.").[38] In officer suits, Chancellor Kent exercised equitable remedial jurisdiction to directly enjoin government officials from acting in excess of statutory authority and infringing upon the legal rights of private persons. *E.g.*, *Belknap v. Belknap*, 2 Johns. Ch. 463 (N.Y. Ch. 1817) (Kent, Ch.); *Gardner v. Vill. of Newburgh*, 2 Johns. Ch. 162 (N.Y. Ch. 1816) (Kent, Ch.); *see also Bonaparte v. Camden & A.R. Co.*, 3 F. Cas. 821, 827, 831–34 (C.C.D.N.J. 1830) (collecting cases).

In *Belknap v. Belknap*, for example, private plaintiffs sought an injunction to restrain government inspectors, who were authorized by statute to drain certain swamps and bog meadows

[38] *See also generally* Charles Evans Hughes, *James Kent: A Master Builder of Legal Institutions*, 9 A.B.A. J. 353 (1923).

for the benefit of some properties, from proceeding to cut down the outlet to a pond that supplied the source of water to plaintiffs' mills. 2 Johns. Ch. 463, 463–67, 468–70 (N.Y. Ch. 1817) (Kent, Ch.). Chancellor Kent determined that the officers gave "too extended a construction to their powers under the act" and that "this power should be kept within the words of the act" through an injunction. *Id.* at 470, 472. On the question of jurisdiction to provide such relief, Kent concluded that if the court is "right in the construction of the act, then the jurisdiction of the Court, and the duty of exercising it, are equally manifest." *Id.* at 472–74. In *Gardner v. Village of Newburgh*, a private plaintiff prayed a similar injunction to restrain government trustees, who were authorized by statute to supply a village with water, from proceeding to divert a stream away from the plaintiff's farm that his brickyard and distillery depended on. 2 Johns. Ch. 162, 162–64 (N.Y. Ch. 1816) (Kent, Ch.). The Chancery Court found that the impending diversion exceeded the limits of the officers' authority under statute for failing to provide adequate compensation to the plaintiff pursuant to his rights vested under law. *Id.* at 164, 166–67. Chancellor Kent held that the statute "ought not to be enforced . . . until such provision should be made," *id.* at 164, asserting the Court's jurisdiction to enjoin the officers from proceeding to divert the water course until the plaintiff's legal rights were indemnified. *Id.* at 164–65, 167–69.

Applying on-point precedent from English Chancery, Chancellor Kent concluded that the equitable remedial jurisdiction in the cases before him was "well settled, and in constant exercise." *Belknap*, 2 Johns. Ch. at 473–74 (citing *Hughes v. Trs. of Morden Coll.*, 1 Ves. Sen. 188, 27 Eng. Rep. 973 (1748) (Ld. Hardwicke, Ch.); *Shand v. Henderson*, 2 Dow. P.C. 519 (1814) (Ld. Eldon, Ch.)); *see Gardner*, 2 Johns. Ch. at 168 (citing *Agar v. Regent's Canal Co.*, G Coop. 77, 14 R. R. 217 (1815) (Ld. Eldon, Ch.)). Moreover, in each of these cases where the controversy between parties "turn[ed] upon the construction of [an] act," Chancellor Kent tailored the injunctive decrees

to directly "confine [the officers] and their operations . . . within the strict precise limits prescribed by the statute," but not extend jurisdiction *in rem* over the underlying statute itself. *Belknap*, 2 Johns. Ch. at 471–74; *see Gardner*, 2 Johns. Ch. at 162. Each injunction acted strictly *in personam* on the officers themselves, dictating *only* their specific actions *in relation* to the law at issue between the parties. The impact *in rem* of each injunction on the underlying law was merely incidental. Thus, by operating exclusively within the territory of *in personam*, Chancellor Kent's injunctions could not be dissolved or superseded by an order or judgment at law with conflicting effects. *See Belknap*, 2 Johns. Ch. at 474 (Kent, Ch.) ("These cases remove all doubt on the point of jurisdiction, and the observation of Lord *Hardwicke* alludes to its preeminent utility."); CASES CONCERNING EQUITY, at xlvii; LANGBEIN ET AL., at 334–36 (citing *The King's Order and Decree in Chancery*, Cary 115, 21 Eng. Rep. 61 (1616)).

In the instant motions before the Court, Intervenor-Plaintiffs each seek injunctions that act *in personam* on the Government Defendants. The Court is asked to enjoin the Government Defendants from enforcing against Intervenor-Plaintiffs the two challenged provisions of the Final Rule—along the same lines as the relief issued by the Court during the preliminary injunction stage of the litigation.[39] Such relief would entail that the Government Defendants and their officers, agents, servants, and employees are enjoined from implementing and enforcing against Intervenor-Plaintiffs and their customers the provisions in 27 C.F.R. §§ 478.11 and 478.12(c) that the Court has determined are unlawful.[40] The Government Defendants contend that, following the Supreme Court's stay of the APA vacatur of the Final Rule, the prayed injunctions would carve out exemptions from the stayed vacatur and re-vacate the Final Rule for each Intervenor-Plaintiff.[41]

[39] Defense Distributed's Mot., ECF No. 249; BlackHawk's Mot., ECF No. 251.
[40] *See, e.g.*, Mem. Ops., ECF Nos. 118, 188.
[41] Defs.' Resp., ECF No. 254.

The Government Defendants further assert that the prayed injunctive relief before the Court—as it relates to the APA vacatur relief issued at Final Judgment and the stay relief issued after Final Judgment—are "distinctions without a difference," and thus the Court is without jurisdiction to grant the motions.[42] However, the Government Defendants misunderstand the nature of equitable relief and are wrong on all counts.

In the Summary and Final Judgments, the Court vacated the Final Rule, which is the default remedy prescribed by section 706 of the APA for successful challenges to an agency regulation. *See Franciscan All., Inc. v. Becerra*, 47 F.4th 368, 374–75, 375 n.29 (5th Cir. 2022). As courts uniformly recognize, vacatur "does not order the defendant to do anything; it only removes the source of the defendant's authority." *All. for Hippocratic Med. v. U.S. Food & Drug Admin.*, No. 23-10362, 2023 WL 5266026, at *30 (5th Cir. Aug. 16, 2023) (citing *Nken v. Holder*, 556 U.S. 418, 428–29 (2009)); *see also* BLACK'S LAW DICTIONARY (11th ed. 2019) (defining Vacatur in legal parlance as the "act of annulling or setting aside"). In the agency context, "vacatur effectively rescinds the unlawful agency [rule]" upon a successful APA challenge. *Id.* (citations omitted). And where the final rule is vacated, that relief "neither compels nor restrains [any] further agency decision-making" on the part of the government. *Texas v. United States*, 40 F.4th 205, 220 (5th Cir. 2022). Applied here, the APA vacatur merely operated on the Final Rule *itself*—specifically the two provisions deemed unlawful—which was entirely annulled, and thus no longer in existence, until the Supreme Court placed its stay on that vacatur. In that sense, it can fairly be said that the vacatur relief prescribed under section 706 of the APA—and ordered by the Court in the Summary and Final Judgments—operated *in rem* on the underlying provisions of the Final Rule in controversy between the parties.

[42] *Id.*

The Supreme Court's stay on the Court's APA vacatur operates as an additional action *in rem* on the underlying provisions of the Final Rule. *See All. for Hippocratic Med.*, 2023 WL 5266026, at *30 (expounding that "a stay is the temporary form of vacatur"). It temporarily supplanted the vacatur *in rem* with a restoration *in rem* on the existence of the Final Rule *itself*. *See id.* But as the foundational history and tradition of equity practice demonstrate, this is wholly different than the prayed relief before the Court. Whereas APA vacatur "unwinds the challenged agency [rule]," an injunction "blocks enforcement" of it. *Driftless Area Land Conservancy v. Valcq*, 16 F.4th 508, 522 (7th Cir. 2021). Similar to the historical officer injunctions granted in English and Early Republic chancery courts, the preventive injunctions sought by Intervenor-Plaintiffs here operate to directly restrain the Government Defendants from taking actions (*i.e.*, enforcing provisions of the Final Rule) that are in excess of the ATF's statutory authority under the GCA. The injunctions confine the Government Defendants' investigative and enforcement actions regarding the Intervenor-Plaintiffs within the precise limits prescribed by the GCA.

In this sense, the prayed injunctions act purely *in personam* over the Government Defendants *themselves*. The relief would dictate *only* the Government Defendants' specific actions *in relation* to the Final Rule in controversy between the parties, without issuing any commands or alterations on the Final Rule *itself*. And the prayed injunctions' binding effect *in personam* over the Government Defendants' enforcement decisions is backed by the traditional force of contempt, which is wholly lacking in both the Court's original APA vacatur and the Supreme Court's stay that each act *in rem* over the Final Rule. *See All. for Hippocratic Med.*, 2023 WL 5266026, at *31. Furthermore, to the extent that the secondary impact of the prayed injunctions may incidentally conflict with the *in-rem* operation of the unvacated Final Rule, the force and effect of the *in personam* decree sought by Intervenor-Plaintiffs predominates. *See Belknap*, 2 Johns. Ch. at 474

(Kent, Ch.); CASES CONCERNING EQUITY, at xlvii; LANGBEIN ET AL., at 334–36 (citing *The King's Order and Decree in Chancery*, Cary 115, 21 Eng. Rep. 61 (1616)). Accordingly, the prayed injunctive relief satisfies the first maxim of equity jurisdiction.

ii. The Prayed Injunctions Follow the Law

An outflow of the *in personam* equity maxim is a companion contour that the exercise of equitable remedial jurisdiction "follows the law" and "seeks out and guides itself by the analogies of the law." 1 STORY, COMMENTARIES ON EQUITY JURISPRUDENCE §§ 19, 64 at 22, 71–72. This maxim neatly complements that of equity's *in personam* posture. That is, if equity power cannot be exercised *in rem*, it cannot modify judgments at law or declare new rights at law either. *See* CASES CONCERNING EQUITY, at xlv, li (citing *Ward v. Fulwood*, No. 118–[201] (Ch. 1598)). In this regard, the Chancellors of England drew upon the wisdom of the ancients. *See* 1 LORD NOTTINGHAM'S CHANCERY CASES, at lii, n. 2. Building upon a principle of Aristotle's original formulation of equity, the English Chancellors recognized that "laws properly enacted, should themselves define the issue of all cases as far as possible, and leave as little as possible to the discretion of the judges." ARISTOTLE, RHETORIC 1353a-b (J. H. Freese trans., Harvard 1926). By the 18th century, Chancery fleshed out this antique maxim into a more clearly defined framework: "[Equitable remedial] discretion, in some cases, follows the law implicitly, in others, assists it, and advances the remedy. In others again, it relieves against the abuse, or allays the rigour [sic] of it, but in no case does it contradict or overturn the grounds or principles thereof." *Cowper v. Earl Cowper* (1734) 24 Eng. Rep. 930, 942 (Jekyll, MR); *see also Dudley v. Dudley*, Prec. Ch. 241, 244, 24 Eng. Rep. 118, 119 (Ch. 1705) ("Equity therefore does not destroy the law, nor create it, but assist it.").

Specifically, where a rule of statutory law is directly on point and governs the entire case

or particular point at issue, a "Court of Equity is as much bound by it, as a Court of Law, and can as little justify departure from it." 1 STORY, COMMENTARIES ON EQUITY JURISPRUDENCE § 64 at 72 (citing *Kemp v. Pryor* (1802) 32 Eng. Rep. 96, 101; 7 Ves. Jr. 237, 249–51 (Ld. Eldon, Ch.)). To that end, it became a "familiar principle of equity jurisdiction to protect by injunction statutory rights and privileges which [were] threatened to be destroyed or rendered valueless to the party by unauthorized interference of others." *Tyack v. Bromley*, 4 Edw. Ch. 258, 271–72 (N.Y. Ch. 1843), *modified sub nom. Tyack v. Brumley*, 1 Barb. Ch. 519 (N.Y. Ch. 1846). If upon following the applicable law, it was conclusive that a party seeking injunctive relief was in "actual possession" of a "clear and undisputed" statutory right, the "settled" doctrine of chancery courts was that an "injunction is the proper remedy to secure to [that] party the enjoyment" of their right against invasion by others. *Croton Tpk. Co. v. Ryder*, 1 Johns. Ch. 611, 611, 615–16 (N.Y. Ch. 1815) (Kent, Ch.) (granting injunctive relief to secure a company's statutory right to a tollway and explaining that the "equity jurisdiction in such a case is extremely benign and salutary," without which "all our statute privileges . . . would be rendered of little value"); *see Newburgh & C. Tpk. Rd. Co. v. Miller*, 5 Johns. Ch. 101, 111–14 (N.Y. Ch. 1821) (Kent, Ch.) (granting a perpetual injunction to secure a company's statutorily vested right to a operate a bridge); 2 JOSEPH STORY, COMMENTARIES ON EQUITY JURISPRUDENCE § 927, at 206 (Boston, 2d ed. 1839).

A favorable judgment at law on a statutory right asserted by the plaintiff was sufficient to establish the possession of a legally vested right entitled to the protection of an injunctive decree. *Tyack*, 4 Edw. Ch. at 271 (explaining that "it is discreet to await the decision of a court of law upon the legal right set up" for a court of chancery to enforce it in equity); 2 STORY, COMMENTARIES ON EQUITY JURISPRUDENCE § 927, at 207 ("And when the right is fully established a perpetual injunction will be decreed.") (citations omitted)); *see Livingston v. Livingston*, 6 Johns.

Ch. 497, 497, 499–501 (N.Y. Ch. 1822) (Kent, Ch.) (holding, after a right was decided in favor of the plaintiff in one action and while another was still pending, that it was "just and necessary" to grant injunctive relief to prevent "further disturbance" of the plaintiff's asserted legal right "until the right is settled" at law).

The question of whether the prayed injunctions follow the law depends on whether Intervenor-Plaintiffs are legally vested with the statutory right of having the Final Rule set aside. *See* 5 U.S.C. § 706(2)(C) (providing a right of action for regulated entities to have courts "hold unlawful and set aside agency [rules]" that are determined to be "in excess of statutory jurisdiction, authority, or limitations"). And whether Intervenor-Plaintiffs are legally vested with the statutory right to have the Final Rule set aside falls upon the "law of the case" with respect to that right. Herein lies the dispute between the parties.

The law-of-the-case doctrine posits that "when a court decides upon a rule of law, that decision should continue to govern the same issue in subsequent stages in the same case." *Med. Ctr. Pharmacy v. Holder*, 634 F.3d 830, 834 (5th Cir. 2011) (cleaned up). In the present litigation, the Court held on the merits that both challenged provisions of the Final Rule were unlawful and that the Government Defendants "acted in excess of its statutory jurisdiction by promulgating [the Final Rule]." Later on in the Court's Opinion and Order Granting Summary Judgment (ECF No. 227), the Court vacated the Final Rule pursuant to the default statutory remedy that Intervenor-Plaintiffs were entitled to. The Court entered a Final Judgment (ECF No. 231) categorically memorializing the grant of summary judgment to Intervenor-Plaintiffs (*i.e.*, statutory right) and the vacatur of the Final Rule (*i.e.*, statutory remedy). By this point at least, or upon Summary Judgment, Intervenor-Plaintiffs had been vested with the statutory right to have the unlawful provisions of the Final Rule set aside under the APA. The Government Defendants contend that

that Intervenor-Plaintiffs were divested of that right by the Supreme Court's Stay Order, which now controls as the "law of the case" on that issue. *See VanDerStok*, 2023 WL 5023383, at *1 (mem.). The Stay Order provides, in relevant part, that this Court's Summary and Final Judgments are "staying pending the disposition of the appeal . . . *insofar as they vacate* the final rule of the [ATF]." *Id.* (emphasis added). The controlling "law of the case" that is dispositive of Intervenor-Plaintiffs' statutory right turns upon an interpretation of the Stay Order.

In any case involving the interpretation of an order, the Court examines the text to give each word its ordinary meaning and each phrase its intended effect. *United States v. Kaluza*, 780 F.3d 647, 659 (5th Cir. 2015); *Cargill v. Garland*, 57 F.4th 447, 458 (5th Cir. 2023). Here, the plain language of the Stay Order indicates that the Supreme Court did not order a full stay of the Court's Summary and Final Judgments. Rather, the inclusion of the phrase "insofar as" is an express limitation of the scope of the Stay Order. The meaning of "insofar as" in legal parlance is "[t]o the degree or extent that." BLACK'S LAW DICTIONARY (10th ed. 2014); *see Pub. Serv. Co. of Ind. v. EPA*, 682 F.2d 626, 635 n.15 (7th Cir. 1982) (noting "the primary definition of 'insofar as' is to such extent or degree") (cleaned up)). It is clear to the Court that this phrase narrows the operative scope of the Stay Order "to the extent that" it merely stays the portion of the Court's Summary and Final Judgments that issued an APA vacatur remedy on the Final Rule.

So too, if the Supreme Court intended to order a full stay, it certainly could have used the familiar phrase of "full stay" that it has in prior stay orders. *See, e.g., Morrison v. Olson*, 484 U.S. 1058 (1988) (granting "application for full stay"). The Supreme Court could have also crafted a verbatim stay order that simply omitted of any limiting or conditional language, as it did in a separate case just months before. *See Danco Lab'ys, LLC v. All. for Hippocratic Med.*, 143 S. Ct.

1075, 1075 (2023) (mem.).[43] Instead, the Supreme Court followed prior stay orders that incorporated "insofar as" and like phrases that narrow the scope and frame the specific target of the stay. *See, e.g.*, *Berbling v. Littleton*, 409 U.S. 1053, 1053–54 (1972) ("The application for stay of judgment . . . is granted *insofar as it applies to applicants O'Shea and Spomer* pending the timely filing of a petition for a writ of certiorari.") (emphasis added)); *see also Rsrv. Nat. Ins. Co. v. Crowell*, 507 U.S. 1015 (1993) ("The application for stay . . . is granted and it is ordered that execution *upon the punitive damages portion* of the judgment . . . is stayed pending the timely filing and disposition by this Court of a petition for a writ of certiorari") (emphasis added)).

Furthermore, in its application briefing, the Government Defendants requested that, "*to the extent* the [Supreme] Court concludes that the June 30 [summary judgment] order might *continue to have independent effect*," the Supreme Court's order should "stay *both* the June 30 [summary judgment] order and the July 5 final judgment" of this Court.[44] The Supreme Court accepted that invitation and combined it with language confining the stay to cover only this Court's grant of vacatur—the statutorily prescribed remedy for unlawful agency actions under the APA—and not the Court's judgment on the merits that the challenged provisions of the Final Rule are unlawful. Accordingly, the Court finds that the law of the case—with respect to the issue of Intervenor-Plaintiffs' legal rights—remains decided by the Court's own Summary and Final Judgments. Having decided in their favor, each Intervenor-Plaintiff remains legally vested with the statutory *right* to have the Final Rule set aside under the APA, even while the statutory *remedy* for that right is presently stayed pending appeal.

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[43] "The April 7, 2023 order of the United States District Court for the Northern District of Texas, case No. 2:22–cv–223, is stayed pending disposition of the appeal in the United States Court of Appeals for the Fifth Circuit and disposition of a petition for a writ of certiorari, if such a writ is timely sought. Should certiorari be denied, this stay shall terminate automatically. In the event certiorari is granted, the stay shall terminate upon the sending down of the judgment of this Court." *Id.*

[44] Defense Distributed's Reply Ex., ECF No. 257-3, at 20–21, 21 n.4 (emphasis added).

Intervenor-Plaintiffs pray for the Court to preserve their statutory right against the Final Rule through injunctive relief. In accordance with historical and traditional equity practice, the Court's prior judgment of law in favor of Intervenor-Plaintiffs' asserted statutory right establishes their possession of a legally vested right within the reach of equity jurisdiction. *Tyack*, 4 Edw. Ch. at 271; 2 STORY, COMMENTARIES ON EQUITY JURISPRUDENCE § 927, at 207 (citations omitted); *see Livingston*, 6 Johns. Ch. at 497, 499–501 (Kent, Ch.). Based on the law-following maxim of equity, therefore, the Court may enforce Intervenor-Plaintiffs' APA-vested right against the Final Rule with an injunctive decree.

iii. The Prayed Injunctions Relieve Rights Without Remedy

Lastly, and inversely proportional to "equity follow[ing] the law," is the maxim that "equity suffers not a right to be without a remedy." FRANCIS, MAXIMS OF EQUITY, no. 6, at 24; *see* 1 STORY, COMMENTARIES ON EQUITY JURISPRUDENCE § 56, at 75 ("[I]t cannot be generally affirmed, that, where there is no remedy at law in the given case, there is none in Equity.") (citing *Kemp v. Pryor* (1802) 32 Eng. Rep. 96, 101; 7 Ves. Jr. 237, 249–250, (Ld. Eldon, Ch.))).[45] This maxim reflects the original teleology of equity in Western law, *see id.* §§ 2–3, at 2–5 (discussing the ancient and natural law underpinnings of equity), which was "to give remedy in cases where none was before administered" under the ordinary law. 3 BLACKSTONE, COMMENTARIES, at 50. Though historically utilized to expand equitable intervention in the law, the maxim nonetheless functions as another cabining mechanism on the scope of equity jurisdiction. *See* 1 STORY, COMMENTARIES ON EQUITY JURISPRUDENCE § 33, at 32. In addition to the *in personam*- and law-following constraints, equitable remedial jurisdiction is further confined to "cases of rights recognised [sic] and protected

[45] "The maxim that 'equity follows the law' is also reflected in the notion that injunctions were not to be granted unless the legal remedy was inadequate—*equity begins when law ends*." Henry E. Smith, *Equity as Meta-Law*, 130 YALE L. J. 1050, 1116 (2021) (emphasis added).

by municipal jurisprudence, where a plain, adequate, and complete remedy cannot be had in the . . . Law." *Id.* (citations omitted). The adequate remedy rule of traditional injunction practice posited, as it does today, that equity lacks jurisdiction in cases where remedies prescribed by law are at least as adequate as those available in chancery—measured against the deficiencies of the party seeking relief for a vested right. *See Lewis v. Lord Lechmere* (1722) 88 Eng. Rep. 828, 829; 10 Mod. 503, 506, (K.B.) ("The Lord Chancellor was of opinion, that the remedy the [plaintiff] had at law upon the articles was not adequate to that of a bill in equity for a specific performance."); *see also, e.g.*, *Bonaparte*, 3 F. Cas. at 834 ("[T]his is deemed an irreparable injury, for which the law can give no adequate remedy, or none equal to that which is given in equity, and is an acknowledged ground for [equity's] interference.").

The historical case law highlights several common threads that, each taken on their own, were sufficient to render legal relief inadequate *per se* and call upon preventive injunctive relief to secure plaintiffs' legal rights. The first, and most straightforward scenario, is where there is *no* statutory remedy available to enforce a party's legal right vested by that statute. In *Bodley v. Taylor*, for example, the Marshall Court was presented with the argument that because the legal right at issue was "given by a statute " and the "[statute] affords no remedy against a person who has defeated this right," that a "court of chancery, which can afford it, ought to consider itself as sitting in the character of a court of law, and ought to decide those questions as a court of law would decide them." 9 U.S. (5 Cranch) 191, 222 (1809). Chief Justice Marshall retorted that the "jurisdiction exercised by a court of chancery is *not* granted by statute; it is assumed by itself." *Id.* (emphasis added). In that case, the Marshall Court held that a federal court in such scenarios "will afford a remedy which a court of law cannot afford, but since that remedy is not given by statute, it will be applied by this court as the principles of equity require its application." *Id.* at 223

(Marshall, C.J.). A second scenario is where the "loss of trade, destruction of the means of subsistence, or permanent ruin to property, may or will ensure from the wrongful act." 2 JOSEPH STORY, COMMENTARIES ON EQUITY JURISPRUDENCE § 926, at 204–205. "[I]n every such case," Justice Story observed, "Courts of Equity will interfere by injunction, in furtherance of justice and the violated rights of the party. *Id.* at 205 (citations omitted). It is of no significance that "an action for damages would lie at law," either, "for the latter can in no just sense be deemed an adequate relief in such a case." *Id.* (citations omitted). Thus, where either of these scenarios are present, traditional injunction practice dictates that equity subsume jurisdiction over the cause and secure the legal rights of plaintiffs.

The no-right-without-remedy maxim also played a prolific role in actions to enjoin the *ultra vires* conduct of public officers during the 18th and 19th centuries. *E.g.*, *Hughes v. Trs. of Morden Coll.*, 1 Ves. Sen. 188, 27 Eng. Rep. 973 (1748) (Ld. Hardwicke, Ch.); *Osborn v. Bank of the United States*, 22 U.S. (9 Wheat.) 738, 845 (1824) (Marshall, C.J.); *see also Carroll v. Safford*, 44 U.S. (3 How.) 441, 463 (1845) ("[R]elief may be given in a court of equity . . . to prevent an injurious act by a public officer, for which the law might give no adequate redress."); *Bonaparte*, 3 F. Cas. at 827 (collecting cases).

In *Hughes v. Trustees of Merton College*, English Chancery asserted its equity mandate over a bill to enjoin turnpike commissioners, acting under color of statute, from proceeding to take possession of, dig through, and destroy garden grounds that the plaintiff was legally entitled to. 1 Ves. Sen. 188, 27 Eng. Rep. 973 (1748) (Ld. Hardwicke, Ch.). The commissioners' authorizing statute had specifically excluded gardens from their lawful mandate. *Id.* Despite the availability of a remedy at law, Lord Hardwicke held that the plaintiff was entitled to a preventive injunction to restrain the commissioners from acting outside of the statute's provisions, at the expense of the

plaintiff's garden grounds, any further. *Id.* Lord Hardwicke's reasoning was grounded in the recognition that the plaintiff was a gardener by trade, and that the impending "destruction of what a man was using as his *trade or livelihood*" could never receive adequate remedy at law. *Jerome v. Ross*, 7 Johns. Ch. 315, 335 (N.Y. Ch. 1823) (Kent, Ch.) (citing *Hughes*, 1 Ves. Sen. 188, 27 Eng. Rep. 973). Thus, Lord Hardwicke found it squarely within the jurisdictional prerogative of equity to protect the pleading tradesman from permanent economic loss at the hands of government officers. *Id.* The precedent set by Lord Hardwicke in *Hughes*—that equity has jurisdiction to protect plaintiffs' trades and livelihoods entangled in their legal rights, by preventive injunctive relief, from impending destruction at the hands of officer actions that are *ultra vires*—was directly followed and extended in subsequent cases under the Court of Chancery of Lord Eldon. *See Agar v. Regent's Canal Co.*, G Coop. 77, 14 R. R. 217 (1815) (Ld. Eldon, Ch.) (granting an injunction to restrain defendants, empowered by act of parliament to cut a canal, from departing from the statutorily prescribed boundaries of the canal and destroying a tradesman's brickyard and garden).

By the 19th century, the equity jurisdiction head enshrined in *Hughes* had become "well settled" and of "preeminent utility" to traditional injunction doctrine. *Belknap*, 2 Johns. Ch. at 473–74 (Kent, Ch.). Its preeminence was demonstrated in *Osborn v. Bank of the United States*, where the Marshall Court affirmed an injunction that restrained the state auditor from acting outside of his lawful authority to impose an annual levy of $100,000 on the national bank, threatening both to destroy its franchise and expel it from the State of Ohio. 22 U.S. (9 Wheat.) 738, 838–40 (1824). The Supreme Court rejected the state auditor's challenge to the equitable jurisdiction of federal courts to provide or affirm injunctive relief, notwithstanding the availability of remedies at law. *See id.* at 841–45. The Supreme Court found that "the probability that remedy [at law] would be adequate, is stronger in the cases put in the books, than in this, where the sum is so greatly beyond

the capacity of an ordinary agent to pay." *Id.* at 845. Based upon this finding of impending destruction to the bank's statutory franchise and business operations, Chief Justice Marshall, writing for the Supreme Court, held that "it is the province of a Court of equity, in such cases, to arrest the injury, and prevent the wrong," and that the Court's injunctive decree "is more beneficial and complete, than the law can give." *Id.*

In the instant motions, the prayed injunctions embody both scenarios from classical injunction practice that implicate equitable remedial jurisdiction as a *per se* matter. First, Intervenor-Plaintiffs possess a legally vested *right* that is bereft of any legal *remedy*. Even assuming their businesses survive the appeals process, Intervenor-Plaintiffs will never be able to recoup monetary damages at law due to the Government Defendants' sovereign immunity. In traditional and modern injunction practice, this bar on recovery at law is already more than enough to justify equitable remedial intervention, as such harms cannot be undone through monetary remedies. *Dennis Melancon,* 703 F.3d at 279 (citation omitted); *Wages & White Lion*, 16 F.4th at 1142. Furthermore, the only statutory *remedy* available to vindicate Intervenor-Plaintiffs' statutory *right* is the vacatur prescribed by § 706(2) of the APA. But because this exclusive remedy is subject to stay pending appeal and Intervenor-Plaintiffs lack any other remedy at law, the grounds for equity jurisdiction over the prayed injunctive relief is without doubt at this stage in the litigation. *See Bodley*, 9 U.S. (5 Cranch) at 222–23 (1809) (Marshall, C.J.); *Louisiana v. Biden*, 55 F.4th at 1033–34. Otherwise, Intervenor-Plaintiffs "may be unable to . . . pursue [their] legal rights."[46]

Second, compliance with the unlawful interpretation of the GCA carries the potential for serious economic costs and existential threats to the trades and livelihoods of Intervenor-Plaintiffs. *Jerome*, 7 Johns. Ch. at 335 (Kent, Ch.) (citing *Hughes*, 1 Ves. Sen. 188, 27 Eng. Rep. 973); *Texas*

[46] BlackHawk's Mot. 8, ECF No. 251.

v. EPA, 829 F.3d 405, 433 (5th Cir. 2016). Without intervening equitable relief in the interim, Intervenor-Plaintiffs will suffer substantial economic costs should the Government Defendants enforce the Final Rule. Indeed, any resumed enforcement efforts against Intervenor-Plaintiffs would result in significant harm to their businesses. Defense Distributed has already shown that it "will go out of business and cease to exist."[47] This harm is even more salient today than when the Court first took up this issue. The longer the business sustains economic costs, the more likely that the Final Rule "will destroy Defense Distributed, soon, unless the government is enjoined from enforcing" the Final Rule in the interim.[48] Similarly, BlackHawk "will be unable to continue its core business operations" and "may cease to exist."[49] BlackHawk previously demonstrated that complying with the Final Rule's requirements would entail an overhaul of its entire online, direct-to-consumer business model, along with requiring it to incur costs through administrative compliance and other FFL-related fees.[50] While the vacatur of the Final Rule is on appeal, preventing the incurrence of such prohibitive costs will avoid irreversible damage to Intervenor-Plaintiffs' businesses.

But even if the Court's original APA vacatur remedy is ultimately affirmed on appeal, any incurred economic losses will be for naught. Harms that flow from "complying with a regulation later held invalid almost always produce[] the irreparable harm of nonrecoverable compliance costs." *Texas v. EPA*, 829 F.3d at 433 (cleaned up). This is especially true when such harms "threaten the existence of the [Intervenor-Plaintiffs'] business[es]" and could lead to catastrophic economic losses—including closing the business—absent interim protection from an injunction pending appeal. *Atwood Turnkey*, 875 F.2d at 1179. Where a plaintiff occupied the status of

[47] Defense Distributed's Mot. 5, ECF No. 249.
[48] *Id.*
[49] BlackHawk's Mot. 8, ECF No. 251.
[50] Second Mem. Op. 7, ECF No. 118.

tradesman, traditional equity practice posited that the impending "destruction of what [that plaintiff] was using as his *trade or livelihood*" can never receive adequate remedy at law. *Jerome*, 7 Johns. Ch. at 335 (Kent, Ch.) (citing *Hughes*, 1 Ves. Sen. 188, 27 Eng. Rep. 973). Under the historical no-right-without-remedy maxim of equity, therefore, there can be no uncertainty as to the Court's equitable remedial prerogative over Intervenor-Plaintiffs' prayed injunctions. *See Osborn*, 22 U.S. (9 Wheat.) at 845 (Marshall, C.J.); *Carroll*, 44 U.S. (3 How.) at 463 (1845). Further than that, an injunctive decree awarded to Intervenor-Plaintiffs would affirm the maxim's core tenet that "equity suffers not a right to be without a remedy." FRANCIS, MAXIMS OF EQUITY, no. 6, at 24; *see* 1 STORY, COMMENTARIES ON EQUITY JURISPRUDENCE § 56, at 75.

Accordingly, the Court finds that the history and tradition of equity practice familiar to our Founding generation, along with its accompanying jurisdictional maxims, are in perfect parity with the injunctions presently sought by Intervenor-Plaintiffs in their motions before the Court. The Court proceeds by testing this holding against applicable constitutional and doctrinal restraints.

2. Jurisdiction Lies Within Constitutional and Doctrinal Boundaries

Drawing from the classical roots of equity jurisprudence, contemporary judicial doctrine recognizes that "it is axiomatic that federal courts possess inherent power to enforce their judgments." *Thomas v. Hughes*, 27 F.4th 363, 368 (5th Cir. 2022) (cleaned up). "That a federal court of equity has jurisdiction of a bill ancillary to an original case or proceeding in the same court, whether at law or in equity, to secure or preserve the fruits and advantages of a judgment or decree rendered therein, is well settled." *Loc. Loan Co. v. Hunt*, 292 U.S. 234, 239 (1934). A court's ancillary enforcement jurisdiction over its orders and judgments is a "creature of necessity," *see Peacock*, 516 U.S. at 359, without which "the judicial power would be incomplete and entirely inadequate to the purposes for which it was conferred by the Constitution." *Riggs v.*

Johnson County, 73 U.S. (6 Wall.) 166, 187 (1868); *Bank of U.S. v. Halstead*, 23 U.S. (10 Wheat.) 51, 53 (1825). This ancillary enforcement jurisdiction includes the power to "enter injunctions as a means to enforce prior judgments." *Test Masters Educ. Servs., Inc. v. Singh*, 428 F.3d 559, 577–78 (5th Cir. 2005) (citing *Santopadre v. Pelican Homestead & Sav. Ass'n*, 937 F.2d 268 (5th Cir.1991)). When a federal district court had subject-matter jurisdiction over the principal action containing the order or final judgment that a party seeks to enforce in a post-judgment proceeding, there is no doubt as to the jurisdiction of that same court to enjoin actions threatening to contravene that prior order or judgment in which the court itself had originally entered. *See Hunt*, 292 U.S. at 239; *Boim v. Am. Muslims for Palestine*, 9 F.4th 545, 551–52 (7th Cir. 2021). This is true of the instant injunction proceedings and is not disputed by either of the parties.

But a district court's ancillary equitable enforcement power is cabined by the additional constraints found within Article III and contemporary judicial doctrine. As "inferior Courts" ordained and established by Congress, the judicial power of a district court is limited by and subservient to the judicial power exercised by higher inferior courts, the judicial power exercised by the Supreme Court of the United States, and Congressional enactments defining or limiting the scope of the district court's judicial power. U.S. CONST. art. III §§ 1, 2; *see Martin v. Hunter's Lessee*, 14 U.S. 304, 314–15 (1816); *Lauf v. E.G. Shinner & Co.*, 303 U.S. 323, 330 (1938). To that end, a district court retains ancillary enforcement jurisdiction pending direct appeal only insofar as its prior order or judgment is not stayed or superseded by a superior federal court. *Nicol v. Gulf Fleet Supply Vessels, Inc.*, 743 F.2d 298, 299 n.2 (5th Cir. 1984); *Farmhand, Inc. v. Anel Eng'g Indus., Inc.*, 693 F.2d 1140, 1145–46 (5th Cir. 1982); *Deering Milliken, Inc. v. F.T.C.*, 647 F.2d 1124, 1128–29 (D.C. Cir. 1978). Moreover, its jurisdiction over an injunction pending appeal is "limited to maintaining the status quo" and cannot extend so far as to "divest the court of appeals

[of] jurisdiction" while the appealed issues are before it. *Coastal Corp. v. Texas E. Corp.*, 869 F.2d 817, 820 (5th Cir. 1989) (citing FED. R. CIV. P. 62(c)); *see also EEOC v. Locs. 14 & 15, Int'l Union of Operating Engineers*, 438 F. Supp. 876, 880 (S.D.N.Y. 1977). The parties *are* in dispute over whether the Court would upset these boundaries by exercising jurisdiction over the prayed relief. The Court finds that the exercise of equitable remedial jurisdiction over the prayed relief is safely within the boundaries prescribed by the Constitution of the United States and federal judicial doctrine.

For starters, the Government Defendants' assertion that the Supreme Court's Stay Order functions as a bar to jurisdiction falls short. Guided by the history and tradition of equity and the plain meaning of the Supreme Court's Stay Order, the Court's prior analysis of how the equitable maxims comport with the prayed relief are dispositive of the matter. Very simply, the Stay Order merely acts *in rem* over the Final Rule, while the prayed injunctions act *in personam* on the Government Defendants and their conduct *in relation* to the Final Rule. Thus, if the Court were to issue the injunctive decrees sought by Intervenor-Plaintiffs, the Final Rule would remain on the books and carry the force and effect of law—unless and until the Supreme Court's stay is lifted and the Court's original APA vacatur remedy is reinstated. Moreover, the breadth of the Stay Order is limited to the statutory *remedy* decreed by the Court at Final Judgment, while the statutory *rights* decreed by the Court at Final Judgment remain the applicable law of the case. Under that law of the case, Intervenor-Plaintiffs are vested with a statutory *right* against the Final Rule that is enforceable in equity. And to the degree that the material results of the prayed injunctions, if granted, might intersect with the material results of the stay insofar as it concerns enforcement of the challenged provisions of the Final Rule against Intervenor-Plaintiffs, our system rests on the bedrock principle that "the equity rule and decree will prevail." CASES CONCERNING EQUITY, at

xlvii; *see The King's Order and Decree in Chancery*, Cary 115, 21 Eng. Rep. 61 (1616). In sum, the Stay Order does not bar the Court's equitable remedial jurisdiction to issue relief in equity to Intervenor-Plaintiffs.

Lastly, the injunctive decree sought by Intervenor-Plaintiffs would merely preserve the status quo pending appeal and potential certiorari. According to the Fifth Circuit, the *status quo ante* this litigation is the "world before the [Final] Rule became effective." *VanDerStok v. Garland*, No. 23-10718, 2023 WL 4945360, at *1 (5th Cir. July 24, 2023) (per curiam). With vacatur stayed, the full scope of the *status quo ante* is currently unattainable, as it would require some form of rescission operating *in rem* on the Final Rule itself. However, within the *status quo* world before the Final Rule became effective is the next closest analog at a lower level of generality, which is the world before the Final Rule became *enforceable* against Intervenor-Plaintiffs. And indeed, the Government Defendants themselves conceded this in their stay application briefing before the Supreme Court of the United States.[51] The Court agrees with the Government Defendants and finds that the injunctive relief sought by Intervenor-Plaintiffs would merely preserve the *status quo ante* this litigation with respect to the legal relationship between the parties before the Court in the present motion.

Accordingly, the Court finds that the exercise of equity jurisdiction over the prayed injunctions falls within constitutional and judicial constraints. The historical and traditional grounds for the Court's equity jurisdiction neatly trace the separate boundaries erected by the Constitution of the United States and federal judicial doctrine. Overall, the Court holds that it is properly vested with equitable remedial jurisdiction under Article III to afford injunctive relief to

[51] Defense Distributed's Reply Ex., ECF No. 257-1, at 41 ("To begin with, the [Final] Rule has been the "status quo" since August 2022 for everyone except some respondents and their customers who secured preliminary relief."); *Id.* No. 257-3, at 19 ("First, the Rule has been the "status quo" for nearly a year for everyone except some respondents who secured preliminary relief (and their customers).").

Intervenor-Plaintiffs, pending appeal, that would secure their legally vested rights under the APA against the Government Defendants' enforcement of the Final Rule. The Court proceeds to the merits of Intervenor-Plaintiffs' emergency motions for injunctive relief to determine if such shall warrant.

III. LEGAL STANDARD

Having established ancillary enforcement jurisdiction, the decision to extend interlocutory relief now rests with the sound discretion of this Court. *See Miss. Power & Light Co. v. United Gas Pipe Line Co.*, 760 F.2d 618, 621 (5th Cir. 1985) (laying out the criteria for preliminary injunctive relief); *see also Hecht*, 321 U.S. at 329 ("An appeal to the equity jurisdiction conferred on federal district courts is an appeal to the sound discretion which guides the determinations of courts of equity." (cleaned up)). The factors governing the Court's discretion on whether to grant an injunction pending appeal are virtually identical to those governing whether to grant a preliminary injunction. *See, e.g.*, *Chamber of Com. v. Hugler*, No. 3:16-CV-1476-M, 2017 WL 1062444, at *2 (N.D. Tex. Mar. 20, 2017); *Cardoni v. Prosperity Bank*, No. CIV.A. H-14-1946, 2015 WL 410589, at *1 (S.D. Tex. Jan. 29, 2015).

To establish entitlement to injunctive relief pending disposition of appeal, Intervenor-Plaintiffs must demonstrate: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable harm; (3) that the balance of hardships weighs in their favor; and (4) that the issuance of injunctive relief will not disserve the public interest. *Daniels Health Servs., L.L.C. v. Vascular Health Scis., L.L.C.*, 710 F.3d 579, 582 (5th Cir. 2013). The final two elements merge when the opposing party is the government. *Nken v. Holder*, 556 U.S. 418, 435 (2009). As movants, Intervenor-Plaintiffs seeking relief bear the burden of proving all four elements. *Nichols v. Alcatel USA, Inc.*, 532 F.3d 364, 372 (5th Cir. 2008); *Miss. Power & Light Co.*, 760 F.2d at 621.

Upon determination that a party is entitled to injunctive relief, a court must make a separate determination regarding the appropriate scope of the prospective relief, which is "dictated by the extent of the violation established." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). As an extraordinary remedy, an injunction "should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiff." *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 765 (1994) (cleaned up). Thus, an injunction must "redress the plaintiff's particular injury," and no more. *Gill v. Whitford*, 138 S. Ct. 1916, 1934 (2018) (citation omitted).

IV. ANALYSIS

A. Substantial Likelihood of Success on the Merits

At the outset, Intervenor-Plaintiffs must demonstrate that they are substantially likely to succeed on the merits of their APA claims. *Daniels Health Servs.*, 710 F.3d at 582. Intervenor-Plaintiffs contend that the Final Rule exceeds the scope of lawful authority that Congress conferred upon the ATF. The Court agrees.

Very simply, the Court has already decided on the merits that there exists no genuine dispute of material fact that the challenged provisions of the Final Rule—specifically, 27 C.F.R. §§ 478.11, 478.12(c)—exceed the scope of the ATF's statutory jurisdiction under the GCA, *see* 18 U.S.C. § 921(a)(3), and that Intervenor-Plaintiffs are entitled to judgment as a matter of law on their APA claims. *See* 5 U.S.C. § 706(2)(c) (codifying the statutory cause of action and relief for agency actions "in excess of statutory jurisdiction, authority, or limitations").[52] In their motions before the Court, Intervenor-Plaintiffs seek injunctive relief from the Government Defendants' enforcement of the Final Rule on identical grounds.[53] As discussed earlier in this

[52] *See* Summ. J. Mem. Op. & Order 35, ECF No. 227 (holding on the merits that both challenged provisions of the Final Rule were invalid and that the ATF "acted in excess of its statutory jurisdiction by promulgating [the Final Rule].").
[53] *See* Defense Distributed's Mot., ECF No. 249; BlackHawk's Mot., ECF No. 251.

Opinion, the Court finds that its previous judgments on the merits of these APA claims have not been stayed by the Supreme Court and continue to embody the "law of the case." *Med. Ctr. Pharmacy v. Holder*, 634 F.3d 830, 834 (5th Cir. 2011) ("[W]hen a court decides upon a rule of law, that decision should continue to govern the same issue in subsequent stages in the same case.") (cleaned up)).

Based on the foregoing, Intervenor-Plaintiffs have demonstrated, *a fortiori*, an *actual* success on the merits of their claims.

B. Substantial Threat of Irreparable Harm Absent Injunctive Relief

Intervenor-Plaintiffs are also obliged to show a substantial threat of irreparable harm. Irreparable harm exists where "there is no adequate remedy at law." *Louisiana v. Biden*, 55 F.4th 1017, 1033-34 (5th Cir. 2022) (cleaned up). The Fifth Circuit considers harm irreparable "if it cannot be undone through monetary remedies." *Dennis Melancon, Inc. v. City of New Orleans*, 703 F.3d 262, 279 (5th Cir. 2012) (quoting *Interox Am. v. PPG Indus., Inc.*, 736 F.2d 194, 202 (5th Cir.1984)). A showing of economic loss is usually insufficient to establish irreparable harm because damages may be recoverable at the conclusion of litigation. *Janvey v. Alguire*, 647 F.3d 585, 600 (5th Cir. 2011). However, "an exception exists where the potential economic loss is so great as to threaten the existence of the movant's business." *Atwood Turnkey Drilling, Inc. v. Petroleo Brasileiro, S.A.*, 875 F.2d 1174, 1179 (5th Cir. 1989). Or where costs are nonrecoverable because the government-defendant enjoys sovereign immunity from monetary damages, as is the case here, irreparable harm is generally satisfied. *See Wages & White Lion Invs., L.L.C. v. FDA*, 16 F.4th 1130, 1142 (5th Cir. 2021). Irreparable harm must be concrete, non-speculative, and more than merely *de minimis*. *Daniels Health Servs.*, 710 F.3d at 585; *Dennis Melancon, Inc.*, 703 F.3d at 279. Finally, a movant's "delay in seeking relief is a consideration when analyzing the threat of

imminent and irreparable harm." *Anyadike v. Vernon Coll.*, No. 7:15-cv-00157, 2015 WL 12964684, at *3 (N.D. Tex. Nov. 20, 2015).

Compliance with an impermissible or illegal interpretation of the law carries the potential for economic costs. *Texas v. EPA*, 829 F.3d 405, 433 (5th Cir. 2016). Without an injunction pending appeal, Intervenor-Plaintiffs will suffer substantial economic costs should the Government Defendants enforce the Final Rule. Indeed, any resumed enforcement efforts against Intervenor-Plaintiffs would result in significant harm to their businesses. Defense Distributed has already shown that it "will go out of business and cease to exist."[54] This harm is even more salient today than when the Court first took up this issue. The longer the business sustains economic costs, the more likely that the Final Rule "will destroy Defense Distributed, soon, unless the government is enjoined from enforcing" the Final Rule in the interim.[55] Similarly, BlackHawk "will be unable to continue its core business operations" and "may cease to exist."[56] BlackHawk previously demonstrated that complying with the Final Rule's requirements would entail an overhaul of its entire online, direct-to-consumer business model, along with requiring it to incur costs through administrative compliance and other FFL-related fees.[57] While the vacatur of the Final Rule is on appeal, preventing the incurrence of such prohibitive costs will avoid irreparable damage to Intervenor-Plaintiffs' businesses.

If this Court's vacatur is ultimately affirmed on appeal, any incurred economic losses will be for naught. Harms that flow from "complying with a regulation later held invalid almost always produce[] the irreparable harm of nonrecoverable compliance costs." *Texas v. EPA*, 829 F.3d at 433 (cleaned up). This is especially true when such harms "threaten the existence of the

[54] Defense Distributed's Mot. 5, ECF No. 249.
[55] *Id.*
[56] BlackHawk's Mot. 8, ECF No. 251.
[57] Second Mem. Op. 7, ECF No. 118.

[Intervenor-Plaintiffs'] business[es]" and could lead to catastrophic economic losses—including closing the business—absent interim protection from an injunction pending appeal. *Atwood Turnkey*, 875 F.2d at 1179. And even if the businesses somehow survive beyond the appeals process, Intervenor-Plaintiffs would never be able to recoup monetary damages due to the Government Defendants' sovereign immunity. This bar on recovery is enough to show irreparable harm because such harms cannot be undone through monetary remedies. *Dennis Melancon,* 703 F.3d at 279 (citation omitted); *Wages & White Lion*, 16 F.4th at 1142. In fact, only one remedy at law is available to the Intervenor-Plaintiffs: vacatur under § 706(2) of the APA. Because this exclusive remedy is the subject of the appeal and the parties lack any other remedy at law, the need for injunctive relief pending appeal is even more critical at this stage to preserve the status quo. *Louisiana v. Biden*, 55 F.4th at 1033–34 (explaining that irreparable harm exists where "there is no adequate remedy at law"). Otherwise, Intervenor-Plaintiffs "may be unable to . . . pursue [their] legal rights."[58]

Further underscoring the need for an injunction pending appeal is the timing of the requested relief. Intervenor-Plaintiffs filed their emergency motions immediately after the Supreme Court issued its stay order.[59] This timing demonstrates the urgency of the need for an injunction. *Anyadike*, 2015 WL 12964684, at *3. Because Intervenor-Plaintiffs are no longer protected by this Court's Final Judgment during the appeals process, an individualized injunction pending appeal is the only way to preserve the status quo and prevent irreparable harm in the interim until the appeals process concludes.

[58] BlackHawk's Mot. 8, ECF No. 251.
[59] The Supreme Court issued its Order staying the Final Judmgent on August 8, 2023. *Vanderstok*, 2023 WL 5023383, at *1. Defense Distributed filed its emergency motion *the very next day* on August 9, 2023. Defense Distributed's Mot., ECF No. 249. BlackHawk filed its emergency motion *less than a week* later on August 14, 2023. BlackHawk's Mot., ECF No. 251.

For these reasons, the Court finds that Intervenor-Plaintiffs have carried their burden to show that irreparable harms exist at this stage.

C. The Balance of Equities and Public Interest Favor Issuing Injunctive Relief

The final two elements necessary to support a grant of injunctive relief—the balance of equities (the difference in harm to the respective parties) and the public interest—merge together when the government is a party. *Nken*, 556 U.S. at 435. In this assessment, the Court weighs "the competing claims of injury" and considers "the effect on each party of the granting or withholding of the requested relief," paying close attention to the public consequences of granting an injunction. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (citations omitted).

The Court has established on multiple occasions—and again in this Opinion—that Intervenor-Plaintiffs each face a substantial threat of irreparable harm absent relief from enforcement of the Final Rule. But at the other end of the scale, there can be "*no* public interest in the perpetuation of unlawful agency action." *Louisiana v. Biden*, 55 F.4th 1017, 1035 (5th Cir. 2022) (emphasis added). As it relates to enforcement of the Final Rule against Intervenor-Plaintiffs, "neither [the Government Defendants] nor the public has *any* interest in enforcing a regulation that violates federal law." *All. for Hippocratic Med. v. FDA*, No. 23-10362, 2023 WL 5266026, at *28 (5th Cir. Aug. 16, 2023) (emphasis added). In this respect, the government-public-interest equities evaporate entirely upon adverse judgment on the merits. *See Sierra Club v. U.S. Army Corps of Eng'rs*, 990 F. Supp. 2d 9, 43 (D.D.C. 2013) (Jackson, J.) (expounding that public interest arguments are "derivative of . . . merits arguments and depend in large part on the vitality of the latter"). The controlling law of this case is that the Government Defendants' promulgation of the two challenged provisions of the Final Rule, *see* 27 C.F.R. §§ 478.11, 478.12(c), transgress the boundaries of lawful authority prescribed by Congress, *see* 18 U.S.C. § 921(a)(3), and are in

violation of the federal APA. *See* 5 U.S.C. § 706(2)(c). It follows, of course, that there is *no* injury that the Government Defendants and the public at-large could possibly suffer from.

Having no equities to balance against those of Intervenor-Plaintiffs, the Court finds that the public's interest is entirely undisturbed by a grant of the prayed-for relief.

* * * *

Having considered the arguments, evidence, and applicable law, the Court holds that it has ancillary jurisdiction to enforce, in equity, the portions of its Summary Judgment Order (ECF No. 227) and Final Judgment (ECF No. 231) that remain in effect following the Stay Order of the Supreme Court of the United States. *See VanDerStok*, 2023 WL 5023383, at *1 (mem.). The Court also holds that the relevant factors weigh in favor of granting injunctive relief to Intervenor-Plaintiffs. The proper scope of relief is that which mirrors the relief previously granted to Intervenor-Plaintiffs at the preliminary injunction stage—plus an extended effective period that mirrors the expiration timetable of the stay ordered by the Supreme Court of the United States on August 8, 2023.

V. CONCLUSION

The Court is properly vested with the jurisdiction to dispense—and each Intervenor-Plaintiff has demonstrated their individual entitlement to—injunctive relief against the Government Defendants' enforcement of provisions of the Final Rule that this Court has repeatedly held to be void.

For the foregoing reasons, the Court **GRANTS** the Emergency Motions for Injunction Pending Appeal. Accordingly, the Court **ORDERS** that the Government Defendants—the Attorney General of the United States; the United States Department of Justice; the Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives; and the Bureau of Alcohol, Tobacco,

Firearms and Explosives—and each of their respective officers, agents, servants, and employees—are **ENJOINED** from implementing and enforcing against Intervenor-Plaintiffs Defense Distributed and BlackHawk Manufacturing Group Inc. d/b/a 80 Percent Arms the provisions in 27 C.F.R. §§ 478.11 and 478.12 that the Court has preliminarily and on the merits determined are unlawful. Reflecting the scope of relief previously afforded to each Intervenor-Plaintiff, this injunctive relief shall extend to each of Defense Distributed's and BlackHawk Manufacturing Group Inc. d/b/a 80 Percent Arms' respective customers (except for those individuals prohibited from possessing firearms under 18 U.S.C. § 922 (g)). Reflecting the scope of the stay on the final-judgment remedy decreed in this case, so ordered by the Supreme Court of the United States on August 8, 2023, this injunctive relief shall take effect immediately and shall remain in effect pending the disposition of the appeal in the United States Court of Appeals for the Fifth Circuit and disposition of a petition for a writ of certiorari, if such a writ is timely sought, absent other order on this issue. Should certiorari be denied, this injunctive relief shall terminate automatically. In the event certiorari is granted, this injunctive relief shall terminate upon the sending down of the judgment of the Supreme Court of the United States.

The Court waives the security requirements of Federal Rules of Civil Procedure 62(d) and 65(c). *See Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 628 (5th Cir. 1996).[60]

SO ORDERED this **14th day** of **September, 2023**.

Reed O'Connor
UNITED STATES DISTRICT JUDGE

[60] Because neither party raises the security requirement in Rule 65(c), no security is ordered. *See* FED. R. CIV. P. 65(c).

(ORDER LIST: 600 U.S.)

TUESDAY, AUGUST 8, 2023

ORDER IN PENDING CASE

23A82 GARLAND, ATT'Y GEN., ET AL. V. VANDERSTOK, JENNIFER, ET AL.

The application for stay presented to Justice Alito and by him referred to the Court is granted. The June 30, 2023 order and July 5, 2023 judgment of the United States District Court for the Northern District of Texas, case No. 4:22-cv-691, insofar as they vacate the final rule of the Bureau of Alcohol, Tobacco, Firearms and Explosives, 87 Fed. Reg. 24652 (April 26, 2022), are stayed pending the disposition of the appeal in the United States Court of Appeals for the Fifth Circuit and disposition of a petition for a writ of certiorari, if such a writ is timely sought. Should certiorari be denied, this stay shall terminate automatically. In the event certiorari is granted, the stay shall terminate upon the sending down of the judgment of this Court.

Justice Thomas, Justice Alito, Justice Gorsuch, and Justice Kavanaugh would deny the application for stay.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

JENNIFER VANDERSTOK, et al.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	
	§	
BLACKHAWK MANUFACTURING GROUP INC., et al.,	§	
	§	
	§	**Civil Action No. 4:22-cv-00691-O**
Intervenor Plaintiffs,	§	
	§	
v.	§	
	§	
MERRICK GARLAND, et al.,	§	
	§	
Defendants.	§	

FINAL JUDGMENT

This Judgment is issued pursuant to Fed. R. Civ. P. 58(a).

This action came on for consideration by the Court, and the issues having been duly considered and a decision duly rendered,

It is **ORDERED**, **ADJUDGED**, and **DECREED** that:

1. Plaintiffs' and Intervenor-Plaintiffs' motions for summary judgment on grounds that the Final Rule was issued in excess of ATF's statutory jurisdiction (Counts I and III) are **GRANTED** and Defendants' cross-motion for summary judgment as to those claims are **DENIED**.
2. On these grounds, the Final Rule, Definition of "Frame or Receiver" and Identification of Firearms, 87 Fed. Reg. 24,652 (Apr. 26, 2022) (codified at 27 C.F.R. pts. 447, 478, and 479 (2022)), is hereby **VACATED**.

3. The parties' remaining claims are **DENIED** as moot.[1]

4. All other relief not expressly granted herein is denied.

SO ORDERED this **5th day** of **July, 2023**.

Reed O'Connor
UNITED STATES DISTRICT JUDGE

[1] Orig. Pls.' Am. Compl., ECF No. 93 (claiming Final Rule: Exceeds Statutory Authority (Count I), Violates APA's Notice and Comment Requirement (Count II), Violates APA's Ban on Arbitrary and Capricious Conduct (Count III), Violates Nondelegation Principles (Count IV), Violates Take Care Clause (Count V), Violates Due Process (Count VI), Violates the First Amendment (Count VII)).

S*ee also* BlackHawk's Compl., ECF No. 99 (claiming Final Rule: Exceeds Statutory Authority (Count I), Violates Separation of Powers (Count II), is Unconstitutionally Vague (Count III), is Arbitrary and Capricious (Count IV), Violates the APA's Procedural Requirements (Count V), Violates the Nondelegation Doctrine (VI), is Contrary to Constitutional Right, Power, Privilege, or Immunity (VII), Violates the Commerce Clause (VIII), Unlawfully Chills First Amendment Speech (IX), Constitutes an Unconstitutional Taking Without Just Compensation (Count X)).

See also Defense Distributed, et al.'s Compl., ECF No. 143 (claiming Final Rule: Exceeds Statutory Authority (Count I), Violates the APA's Procedural Requirements (Counts II and IV), Violates Delegation Principles (Count III), Violates the Second Amendment (Count V), Violates Due Process (Count VI)).

See also Polymer80's Compl., ECF No. 229 (claiming Final Rule: Violates Separation of Powers (Count I), Exceeds Statutory Authority (Count III), Violates Nondelegation Doctrine (Count V), Violates APA's Procedural Requirements (Counts VII and XII), is Arbitrary and Capricious (Count IX), Violates First Amendment (Count XV), Violates Second Amendment (Count XIV), is Unconstitutionally Vague (Count XIII), Exceeds Limits of Commerce Clause (Count XVI), Violates the Takings Clause (Count XVII)).

As discussed in the Court's Memorandum Opinion, Polymer80, Inc. may move for summary judgment on any remaining claims not mooted by the Court's opinion. Mem. Opinion at 16, ECF No. 227. Polymer80 **SHALL** file a notice on the docket **no later than July 12, 2023**, informing the Court whether its remaining claims are moot and, if so, proposing an order of Final Judgment as to those claims.

See also JSD Supply's Compl., ECF No. 230 (claiming Final Rule: Exceeds Statutory Authority (Count I), Violates Separation of Powers (Count II), is Unconstitutionally Vague (Count III), is Arbitrary and Capricious (Count IV), Violates APA's Procedural Requirements (Count V), Violates the Nondelegation Doctrine (Count VI), is Contrary to Constitutional Right, Power or Privilege (Count VII), Violates the Commerce Clause (Count VIII), Violates First Amendment (Count IX), Violates the Takings Clause (Count X)).

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

JENNIFER VANDERSTOK, et al.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	
	§	
BLACKHAWK MANUFACTURING GROUP INC., et al.,	§	**Civil Action No. 4:22-cv-00691-O**
	§	
Intervenor-Plaintiffs,	§	
	§	
v.	§	
	§	
MERRICK GARLAND, et al.,	§	
	§	
Defendants.	§	

MEMORANDUM OPINION & ORDER ON PARTIES' CROSS-MOTIONS FOR SUMMARY JUDGMENT & MOTIONS TO INTERVENE

Before the Court are Plaintiffs Jennifer VanDerStok, Michael G. Andren, Tactical Machining, LLC, and Firearms Policy Coalition, Inc.'s ("Original Plaintiffs") Motion for Summary Judgment (ECF No. 140), Brief (ECF No. 141), and Appendix in support (ECF No. 142), filed December 23, 2022; Intervenor-Plaintiff BlackHawk Manufacturing Group Inc. d/b/a 80 Percent Arms' Motion for Summary Judgment (ECF No. 144), Brief (ECF No. 145), and Appendix in support (ECF No. 146), filed December 23, 2022; Intervenor-Plaintiffs Defense Distributed and The Second Amendment Foundation, Inc.'s Motion for Summary Judgment (ECF No. 165) and Brief in support (ECF No. 166), filed January 12, 2023; Defendants' Combined Opposition to Original Plaintiffs' and Intervenor-Plaintiffs' Motions for Summary Judgment and Cross-Motion for Summary Judgement (ECF No. 180), Brief (ECF No. 181), and Appendix in Support (ECF No. 182), filed February 13, 2023; Original Plaintiffs' Reply Brief in Support of Their Motion for Summary Judgment and Response to Defendants' Cross-Motion for Summary

Judgment (ECF No. 191), filed March 6, 2023; Intervenor-Plaintiff BlackHawk Manufacturing Group Inc.'s Reply Brief and Opposition to Defendants' Cross-Motion for Summary Judgment (ECF No. 192), filed March 6, 2023; Intervenor-Plaintiffs Defense Distributed and The Second Amendment Foundation, Inc.'s Summary Judgment Response/Reply Brief (ECF No. 193), filed March 6, 2023; and Defendants' Reply Brief (ECF No. 204) and Appendix (ECF No. 205) in support of their Motion for Summary Judgment, filed April 19, 2023. Also before the Court is the Amici Curiae Brief of Gun Owners for Safety and Individual Co-Amici in Support of Defendants' Opposition to Original Plaintiffs' and Intervenor-Plaintiffs' Motions for Summary Judgment and in Support of Defendants' Cross-Motion for Summary Judgment (ECF No. 187), filed February 23, 2023. Also before the Court are Defendants' Supplemental Brief Regarding Rule 65(a)(2) Consolidation and Plaintiffs' Count I (ECF No. 132), filed December 5, 2022; Original Plaintiffs' Brief (ECF No. 133), filed December 5, 2022; and Intervenor-Plaintiff BlackHawk Manufacturing Group Inc.'s Brief (ECF No. 134), filed December 5, 2022.

On January 18, 2023, the Court deferred ruling on putative intervenors' motions to intervene until summary judgment briefing concluded. *See* Order, ECF No. 172. Now ripe for review are Not An LLC d/b/a JSD Supply's Motion to Intervene (ECF No. 149) and Brief in support (ECF No. 150), filed January 5, 2023; Defendants' Opposition (ECF No. 207), filed April 27, 2023; Original Plaintiffs' Opposition (ECF No. 212), filed May 10, 2023; and JSD Supply's Reply (ECF No. 213), filed May 11, 2023. Also before the Court are Polymer80's Motion to Intervene (ECF No. 157), Brief (ECF No. 158), and Appendix (ECF No. 159) in support; filed January 9, 2023; Defendants' Opposition (ECF No. 206), filed April 27, 2023; Original Plaintiffs' Opposition (ECF No. 212), filed May 10, 2023; and Polymer80's Reply (ECF No. 214), filed May 11, 2023.

Also pending are Original Plaintiffs' unopposed Motion for Leave to Provide Supplemental Authority to Their Motion for Summary Judgment and Response to Defendants' Cross-Motion for Summary Judgment (ECF No. 197), filed March 24, 2023, which the Court **GRANTS** for good cause shown; and JSD Supply's proposed Motion for Injunction (ECF No. 151) and Brief in support (ECF No. 152), filed January 5, 2023, and Defendants' Notice Regarding the Same (ECF No. 156), filed January 9, 2023, which the Court **DENIES** as prematurely filed.

Having considered the briefing and applicable law, the Court **GRANTS** JSD Supply's and Polymer80's motions to intervene on permissive grounds. For the reasons that follow, the Court **GRANTS** Plaintiffs' and Intervenors' motions for summary judgment, **DENIES** Defendants' cross-motion for summary judgment, and **VACATES** the Final Rule.

I. INTRODUCTION

This case presents the question of whether the federal government may lawfully regulate partially manufactured firearm components, related firearm products, and other tools and materials in keeping with the Gun Control Act of 1968. Because the Court concludes that the government cannot regulate those items without violating federal law, the Court holds that the government's recently enacted Final Rule, Definition of "Frame or Receiver" and Identification of Firearms, 87 Fed. Reg. 24,652 (codified at 27 C.F.R. pts. 447, 478, and 479), is unlawful agency action taken in excess of the ATF's statutory jurisdiction. On this basis, the Court vacates the Final Rule.

II. STATUTORY & REGULATORY BACKGROUND

In 1934, Congress enacted the National Firearms Act ("NFA") to authorize federal taxation and regulation of certain firearms such as machineguns, short-barreled shotguns, and short-barreled rifles. National Firearms Act of 1934, ch. 757, Pub. L. 73-474, 48 Stat. 1236, 1236. A few years later, Congress enacted the Federal Firearms Act ("FFA"), which more broadly defined

"firearm" and thereby authorized federal regulation of "any weapon . . . designed to expel a projectile or projectiles by the action of an explosive. . . or any part of such weapon." Federal Firearms Act of 1938, ch. 850, Pub. L. No. 75-785, 52 Stat. 1250, 1250 (1938) (repealed 1968).

Thirty years later, Congress enacted the Gun Control Act of 1968 ("GCA"), which superseded the FFA's regulation of firearms in interstate commerce. The GCA requires manufacturers and dealers of firearms to have a federal firearms license.[1] 18 U.S.C. §§ 921, *et seq*. Dealers must also conduct background checks before transferring firearms to someone without a license, and they must keep records of firearm transfers. *Id.* §§ 922(t), 923(g)(1)(A).

The GCA also redefines "firearm" more narrowly than the earlier statute it superseded, defining the term as: "(A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device." *Id.* § 921(a)(3). But "[s]uch term does not include an antique firearm." *Id.* Notably, the GCA departs from the FFA's prior definition of "firearm" by restricting federal authority over "any part" of a firearm to only the "frame or receiver" of such firearm.

Congress delegated authority to administer and enforce the GCA to the Attorney General by authorizing him to "prescribe only such rules and regulations as are necessary to carry out the provisions of this chapter." *Id.* § 926(a). The Attorney General, in turn, delegated that authority to the Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"). 28 C.F.R. § 0.130(a). Those who violate the federal firearms laws are subject to potential fines and imprisonment. 18 U.S.C. § 924(a).

[1] A manufacturer or dealer authorized to transfer firearms under the Gun Control Act is known as a Federal Firearms Licensee ("FFL").

In 1978, ATF promulgated a rule interpreting the phrase "frame or receiver," which the GCA does not define. The rule defined the "frame or receiver" of a firearm as "[t]hat part of a firearm which provides housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive the barrel." Title and Definition Changes, 43 Fed. Reg. 13,531, 13,537 (Mar. 31, 1978). That definition remained in place until last year.

In April 2022, ATF published the Final Rule changing, among other things, the 1978 definition of "frame or receiver." *See* Definition of "Frame or Receiver" and Identification of Firearms, 87 Fed. Reg. 24,652 (Apr. 26, 2022) (codified at 27 C.F.R. pts. 447, 478, and 479 (2022)).[2] ATF split the phrase into two parts, assigning the term "frame" to handguns and the term "receiver" to any firearm other than a handgun, such as rifles and shotguns. *See* 27 C.F.R. § 478.12(a)(1), (a)(2). ATF then defined the terms "frame" and "receiver" along the same lines as the 1978 rule, though with updated, more precise technical terminology.[3]

But ATF did not stop there. Rather than merely updating the terminology, ATF decided to regulate *partial* frames and receivers. Under the new Final Rule, "[t]he terms 'frame' and 'receiver' shall include a partially complete, disassembled, or nonfunctional frame or receiver,

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[2] The Final Rule took effect on August 24, 2022, in the midst of the parties' initial briefing. *See* 27 C.F.R. pts. 447, 478, and 479 (2022).

[3] Here are the two definitions, in full:

> (1) The term "frame" means the part of a handgun, or variants thereof, that provides housing or a structure for the component (i.e., sear or equivalent) designed to hold back the hammer, striker, bolt, or similar primary energized component prior to initiation of the firing sequence, even if pins or other attachments are required to connect such component (i.e., sear or equivalent) to the housing or structure.
>
> (2) The term "receiver" means the part of a rifle, shotgun, or projectile weapon other than a handgun, or variants thereof, that provides housing or a structure for the primary component designed to block or seal the breech prior to initiation of the firing sequence (i.e., bolt, breechblock, or equivalent), even if pins or other attachments are required to connect such component to the housing or structure.

27 C.F.R. § 478.12(a).

including a frame or receiver parts kit, that is designed to or may readily be completed, assembled, restored, or otherwise converted to function as a frame or receiver." *Id.* § 478.12(c). But "[t]he terms shall not include a forging, casting, printing, extrusion, unmachined body, or similar article that has not yet reached a stage of manufacture where it is clearly identifiable as an unfinished component part of a weapon (e.g., unformed block of metal, liquid polymer, or other raw material)." *Id.*

Further, the Final Rule permits the ATF Director to consider extrinsic factors when determining if an object is a frame or receiver. Specifically, "[w]hen issuing a classification, the Director may consider any associated templates, jigs, molds, equipment, tools, instructions, guides, or marketing materials that are sold, distributed, or possessed with [or otherwise made available to the purchaser or recipient of] the item or kit." *Id.* The Final Rule also amends ATF's definition of "firearm" to include weapon parts kits that are "designed to or may readily be completed, assembled, restored, or otherwise converted to expel a projectile by the action of an explosive." *Id.* § 478.11 (definition of "firearm").

III. PARTIES & PROCEDURAL BACKGROUND

Individual Plaintiffs Jennifer VanDerStok and Michael Andren are Texas residents who own firearm components that they intend to manufacture into firearms for personal, lawful use.[4] They claim that the Final Rule prohibits them from directly purchasing products online that they want to use to manufacture their own firearms.[5] Now, to purchase these products in compliance with the Final Rule, Individual Plaintiffs would have to route their purchases of the regulated products through an FFL and incur associated transfer fees ($30 in Individual Plaintiffs' case), plus additional time and expense.

[4] VanDerStok Decl. 1, ECF No. 16-2; Andren Decl. 1, ECF No. 16-3.
[5] VanDerStok Decl. 2, ECF No. 16-2; Andren Decl. 2, ECF No. 16-3.

Tactical Machining, LLC manufactures and sells items that are subject to regulation under the Final Rule.[6] Over 90% of Tactical Machining's business consists of selling items that individuals can use to manufacture frames and receivers and to build functioning firearms.[7]

The Firearms Policy Coalition, Inc. ("FPC") is a non-profit organization dedicated to promoting the constitutional rights of American citizens through public education and legislative and legal advocacy.[8] In support of its educational and advocacy efforts, FPC owns and uses several firearm parts and products that are subject to the Final Rule.[9] FPC has hundreds of thousands of members, donors, and supporters nationwide, many of whom are plaintiffs in this lawsuit.[10] Individuals and organizations become FPC members by making a donation via the non-profit corporation's website.[11] FPC seeks to bring this lawsuit on behalf of itself and its members.[12]

Shortly before the Final Rule took effect in August 2022, Original Plaintiffs sued the U.S. Attorney General, the Department of Justice, the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"), and the ATF Director over the legality of the Final Rule.[13] Days later, the Original Plaintiffs sought preliminary injunctive relief, which the Court granted on grounds that they were likely to succeed on their claim that ATF exceeded its statutory authority in issuing the Final Rule.[14]

BlackHawk Manufacturing Group, Inc. is a manufacturer and retailer that sells products newly subject to ATF's Final Rule, with most of its revenue earned through sales of those

[6] Peters Decl. 1, ECF No. 16-1.
[7] *Id.* at 2.
[8] *See generally* Combs Decl., ECF No. 62-4.
[9] *Id.* ¶¶ 9–10.
[10] *Id.* ¶¶ 6–7. Individual Plaintiffs, Tactical Machining, LLC, BlackHawk Manufacturing Group, Inc. d/b/a 80 Percent Arms, and Defense Distributed are members of FPC. *Id.*
[11] *Id.* ¶ 8.
[12] Orig. Pls.' Reply 5, ECF No. 191.
[13] *See generally* Compl., ECF No. 1.
[14] Orig. Pls.' Mot. for Prelim. Inj., ECF No. 15; Mem. Opinion, ECF No. 56.

products.[15] Defense Distributed is a private defense contractor that primarily manufactures and deals products now subject to the Final Rule.[16] Defense Distributed is also a member of its co-intervenor, the Second Amendment Foundation ("SAF"), a non-profit organization that promotes and defends constitutional rights through educational and legal efforts.[17] Like FPC, SAF brings this suit on behalf of itself and its members.[18] The Court subsequently allowed these parties to intervene in the suit and granted BlackHawk and Defense Distributed their preliminary injunctions on the same grounds as the Original Plaintiffs.[19]

In the weeks after BlackHawk, Defense Distributed, and SAF were permitted to join the lawsuit, and after summary judgment briefing had begun, movants Not An LLC d/b/a JSD Supply and Polymer80, Inc. filed their pending motions to intervene.[20] JSD Supply is a manufacturer and distributor that earns most of its revenue through sales of products now subject to the Final Rule.[21] Likewise, Polymer80, Inc. is a designer, manufacturer, and distributor of firearms and non-firearm products.[22] Through letters issued by ATF since the Final Rule's enactment, Polymer80 learned that some of its products are considered subject to the Final Rule and, if not afforded relief, that its "corporate existence" is at stake.[23]

Plaintiffs and Intervenor-Plaintiffs claim the Final Rule violates several of the Administrative Procedure Act's ("APA") substantive and procedural requirements and various

[15] Lifschitz Decl. 6–8, ECF No. 62-5 ¶¶ 8, 11, 13.
[16] *See generally* Defense Distributed Compl., ECF No. 143.
[17] *Id.* ¶¶ 11–12.
[18] *Id.*
[19] Mem. Opinions, ECF Nos. 118, 188.
[20] JSD Supply Mot. to Intervene, ECF No. 149; Polymer80 Mot. to Intervene, ECF No. 157.
[21] JSD Supply Br. 4–5, ECF No. 150.
[22] Polymer80 Br. 1–3, ECF No. 158.
[23] *See generally id.*; *id.* at 4.

constitutional guarantees.[24] Though some raise unique claims, all contend that the Final Rule was issued in excess of the agency's statutory authority and the Court preliminarily agreed.[25] Earlier in the proceedings, the Court considered consolidating its hearing on the parties' motions for preliminary injunction with a trial on the merits under Federal Rule of Civil Procedure 65(a)(2).[26] After review of the parties' responsive briefing, however, the Court did not consolidate and now considers Plaintiffs' and Intervenor-Plaintiffs' claims at the summary judgment stage.

Thus, based on the Court's prior decisions in this case, Defendants are preliminarily enjoined from enforcing the Final Rule against Individual Plaintiffs VanDerStok and Andren; and, with limited exception, Tactical Machining, BlackHawk, and Defense Distributed and the companies' customers. Now ripe for the Court's review are the parties' cross-motions for summary judgment on all statutory and constitutional claims, as well as JSD Supply's and Polymer80's motions to intervene. In part A below, the Court will resolve the motions to intervene before turning to the parties' cross-motions for summary judgment in part B.

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[24] Orig. Pls.' Am. Compl., ECF No. 93 (claiming Final Rule: Exceeds Statutory Authority (Count I), Violates APA's Notice and Comment Requirement (Count II), Violates APA's Ban on Arbitrary and Capricious Conduct (Count III), Violates Nondelegation Principles (Count IV), Violates Take Care Clause (Count V), Violates Due Process (Count VI), Violates the First Amendment (Count VII)); *see also* BlackHawk's Compl., ECF No. 99 (claiming Final Rule: Exceeds Statutory Authority (Count I), Violates Separation of Powers (Count II), is Unconstitutionally Vague (Count III), is Arbitrary and Capricious (Count IV), Violates the APA's Procedural Requirements (Count V), Violates the Nondelegation Doctrine (VI), is Contrary to Constitutional Right, Power, Privilege, or Immunity (VII), Violates the Commerce Clause (VIII), Unlawfully Chills First Amendment Speech (IX), Constitutes an Unconstitutional Taking Without Just Compensation (Count X)); *see also* Defense Distributed, et al.'s Compl., ECF No. 143 (claiming Final Rule: Exceeds Statutory Authority (Count I), Violates the APA's Procedural Requirements (Counts II and IV), Violates Delegation Principles (Count III), Violates the Second Amendment (Count V), Violates Due Process (Count VI)); *see also* JSD Supply's Mem. 10, ECF No. 150 (expressing intent to adopt Plaintiffs' claims and legal theories in full); *see also* Polymer80's Mem. 6–7, ECF No. 158 (expressing intent to adopt the current plaintiffs' pending claims in full but to assert several additional claims).

[25] Mem. Opinion, ECF No. 56.

[26] *See* Orders, ECF Nos. 33, 107.

IV. DISCUSSION

A.

1. Legal Standard[27]

Federal Rule of Civil Procedure 24(b) vests a district court with considerable discretion to permit permissive intervention in a lawsuit, provided (1) the movant's intervention is timely, (2) the movant "has a claim or defense that shares with the main action a common question of law or fact," and (3) intervention will not "unduly delay or prejudice the adjudication of the original parties' rights." FED. R. CIV. P. 24(b)(1)(B), (b)(3); *United States v. City of New Orleans*, 540 F. App'x 380, 380–81 (5th Cir. 2013). With respect to the first element of "timeliness," courts are to consider four distinct factors:

> (1) the length of time between the would-be intervenor's learning of his interest and his petition to intervene;
> (2) the extent of prejudice to existing parties from allowing late intervention;
> (3) the extent of prejudice to the would-be intervenor if the petition is denied; and
> (4) any unusual circumstances [weighing in favor of or against intervention].

In re Lease Oil Antitrust Litig., 570 F.3d 244, 247–48 (5th Cir. 2009) (quoting *Stallworth v. Monsanto Co.*, 558 F.2d 257 (5th Cir. 1977)). Like permissive intervention itself, any determination of timeliness is committed to the court's discretion. *Id.* at 248.

Finally, in addition to the three permissive elements above, courts *may* also consider factors such as "whether the intervenors' interests are adequately represented by other parties" and whether the intervenors "will significantly contribute to full development of the underlying factual issues in the suit." *New Orleans Pub. Serv., Inc. v. United Gas Pipe Line Co.* ("*NOPSI*"), 732 F.2d

[27] Original Plaintiffs and Defendants (the "opponents" for purposes of the following intervention analysis only) contest the propriety of allowing additional intervenors to join the lawsuit by either intervention as of right or permissive intervention. Because the Court concludes that permissive intervention under Rule 24(b) is appropriate in this case, it does not reach the merits of intervention as of right under Rule 24(a)(2). FED. R. CIV. P. 24.

452, 472 (5th Cir. 1984) (citations omitted).

2. Analysis

The Court begins with timeliness, which requires consideration of four factors. *In re Lease Oil Antitrust Litig.*, 570 F.3d at 247. With respect to the first factor, opponents of intervention argue that JSD Supply and Polymer80's interventions are untimely because they "waited five months after the commencement of this action to seek intervention"[28] and that they were presumably aware of the other "multiple competing lawsuits challenging the Final Rule filed before [it] took effect on August 24, 2022."[29] In other words, they waited too long. But these arguments fail because the relevant inquiry for timeliness is how soon the movant intervened in the instant lawsuit after learning its interest was at risk, which may or may not occur when the complaint is filed. *Id.* at 248. Moreover, a movant's decision to forego intervention in another case is irrelevant to the issue of timeliness in the instant case. *See id*. ("The first timeliness factor is '[t]he length of time during which the would-be intervenor actually knew or reasonably should have known of his interest in *the case* before he petitioned for leave to intervene.") (emphasis added). Thus, "[t]he timeliness clock runs either from the time the applicant knew or reasonably should have known of his interest [in the instant litigation] *or* from the time he became aware that his interest would no longer be protected by the existing parties to the lawsuit." *Edwards v. City of Houston*, 78 F.3d 983, 1000 (5th Cir. 1996) (emphasis added) (citation omitted). Either way, there "are no absolute measures of timeliness," *id.*, and any assessment of this factor is wholly committed to the court's discretion. *In re Lease Oil Antitrust Litig.*, 570 F.3d at 248.

[28] Defs.' Opp. to JSD Supply 3, ECF No. 207; Defs.' Opp. to Polymer80 5, ECF No. 206.
[29] Orig. Pls.' Opp. 6–7, ECF No. 212.

Here, the Original Plaintiffs commenced this suit and moved for injunctive relief in early August 2022, shortly before the Final Rule took effect.[30] Among those was Firearms Policy Coalition, a nonprofit organization that sought to protect the interests of its entire member base —of which JSD Supply is a part.[31] On October 1, 2022, the Court concluded that FPC had not demonstrated its associational right to seek injunctive relief on its members' behalf.[32] At that point, JSD Supply recognized its interests would no longer be protected via its membership in FPC and, within three months, it moved to intervene.[33] Days later, on January 9, 2023, Polymer80 similarly moved to intervene.[34] Polymer80 says it sought to intervene only 13 days after ATF issued letters identifying Polymer80's products as violative of the Final Rule.[35] And while the Court will not consider evidence "outside the administrative record" in deciding the *merits* of an APA claim, the Court is not aware of any rule that prohibits it from considering extrinsic evidence for purposes of *timeliness of intervention*.[36] Under these circumstances, the Court is of the view that neither movant waited too long between the time it learned of its interests in the suit and its motion to intervene.

Next, the Court considers "the extent of prejudice to existing parties from allowing late intervention." *In re Lease Oil Antitrust Litig.*, 570 F.3d at 247. The opponents claim permitting intervention will prejudice the existing parties by delaying ultimate resolution of the case.[37] But here the proper inquiry is the extent to which the existing parties were prejudiced by the

[30] ECF Nos. 1, 15.
[31] Vinroe Decl. ¶ 3, ECF No. 213-1.
[32] Mem. Opinion 15, ECF No. 89.
[33] JSD Supply's Mot., ECF No. 151.
[34] Polymer80's Mot., ECF No. 157.
[35] *Id.* at 2–6.
[36] Orig. Pls.' Opp. 7, ECF No. 212.
[37] Defs.' Opp. to JSD Supply 3, 7, ECF No. 207; Defs.' Opp. to Polymer80 5–6, 9–10, ECF No. 206 (noting Polymer80 asserts ten causes of action separate from those of the existing plaintiffs); Original Pls.' Opp. 8, ECF No. 212.

intervenors' delay in seeking to intervene, not how the existing parties may be inconvenienced after the intervenors have successfully joined. *Sierra Club v. Espy*, 18 F.3d 1202, 1206 (5th Cir. 1994); *Adam Joseph Res. v. CNA Metals Ltd.*, 919 F.3d 856, 865 (5th Cir. 2019). Delay of proceedings, on its own, is not equivalent to prejudice. And the opponents to intervention have offered no explanation about *how* a purported delay of proceedings would be prejudicial. Instead, the opponents have claimed prejudice due to the resulting inconvenience associated with the intervenors' subsequent participation in the lawsuit. That is not enough. "Any potential prejudice caused by the intervention *itself* is irrelevant, because it would have occurred regardless of whether the intervention was timely." *In re Lease Oil Antitrust Litig.*, 570 F.3d at 248 (emphasis added) (citation omitted). Moreover, as permitted by Rule 54, the Court finds no just reason it should delay entry of summary judgment on the existing parties' pending claims, which the intervenors have expressly agreed to adopt.[38] FED. R. CIV. P. 54(b). Thus, any prejudice that delayed proceedings might cause the parties (though doubtful) is cured by this Court's resolution and entry of judgment now as to those shared claims.

Third, the Court considers the "extent of prejudice to the would-be intervenor if the petition is denied." *In re Lease Oil Antitrust Litig.*, 570 F.3d at 247–48. Denying intervention would prejudice the would-be intervenors by delaying a favorable judgment, without which their declining revenues would be prolonged, potentially forcing their dissolution.[39] Polymer80

[38] JSD Supply's Mem. 10, ECF No. 150 (expressing intent to adopt Plaintiffs' claims and legal theories in full); Polymer80's Mem. 6–7, ECF No. 158 (expressing intent to adopt Plaintiffs' summary judgment briefing in full and to assert additional distinct claims). To the extent Polymer80 wishes to seek summary judgment on its alternate claims, it may do so. That Defendants may be required to litigate the additional claims is irrelevant, because they would be required to do so whether Polymer80 brought those claims in this case or a separate case.

[39] Kelley Decl. ¶¶ 13–14, Polymer80 App. 6, ECF No. 159 (noting the "profound economic harm" that Polymer80 has experienced following the Final Rule's effective date); Vinroe Supp. Decl. ¶ 3, ECF No. 213-1 (noting JSD Supply's revenues have dropped by more than 73% since the Final Rule's effective date).

concedes it would not be prejudiced if denied intervention in this case, provided its separate lawsuit and preliminary injunction in that case is not dismissed.[40] This conditional concession undoubtedly minimizes its claims of prejudice in the instant suit. But because the "most important consideration" in determining intervention is the prejudice to the parties *opposing* intervention—and the Court finds that none exists—this concession is of little weight in the Court's decision. *Rotstain v. Mendez*, 986 F.3d 931, 938 (5th Cir. 2021).

Fourth, the Court finds no "unusual circumstances" that weigh heavily for or against intervention. *In re Lease Oil Antitrust Litig.*, 570 F.3d at 248. Defendants contend that permitting Polymer80's intervention in this case while the company's independent and duplicative suit is pending would violate the rule against claim-splitting.[41] That rule permits—but does not require—a court to dismiss a second complaint that "alleg[es] the same cause of action as a prior, pending, related action." *Friends of the Earth, Inc. v. Crown Cent. Petroleum Corp.*, 95 F.3d 358, 362 (5th Cir. 1996) (authorizing courts to dismiss a second complaint whether it is duplicative of a previously filed and still active suit). The claim-splitting rule is permissive, however, and does not require the Court to take any action at all. *Id.* In any event, if the rule were applied here, the appropriate course would be to dismiss Polymer80's independent suit, which it filed *after* attempting its initial intervention here.

Nor are the other permissible timeliness factors—"whether the intervenors' interests are adequately represented by other parties" and whether the intervenors "will significantly contribute to full development of the underlying factual issues in the suit"—particularly compelling. *NOPSI*, 732 F.2d at 472. Defendants argue intervention will not "significantly contribute to the full

[40] Polymer80's Reply 6, ECF No. 214. After it sought intervention and learned resolution of that motion would be deferred for several months, Polymer80 filed an independent lawsuit before this Court. *See Polymer80, Inc. v. Garland*, Civil Action No. 4:23-cv-00029-O (N.D. Tex. Jan. 9, 2023).
[41] Defs.' Opp. to Polymer80 3–4, 9, ECF No. 206.

development of the underlying factual issues" because the existing parties have already "fully developed and briefed their claims," and intervenors therefore cannot meaningfully contribute.[42] Elsewhere, however, Defendants point out that Polymer80 raises ten distinct causes of action, all of which presumably require further development.[43] In response, Polymer80 says its status as "the industry leader in the design, manufacture, and distribution of the products that ATF" seeks to regulate will significantly contribute to the factual development of the underlying issues in dispute but offers no more than that bare assertion.[44] For its part, JSD Supply offers no rebuttal to Defendants. Thus, on the briefing before it, the Court finds that this factor is, at best, neutral for purposes of intervention or weighs slightly against intervention. But given that the other factors favor intervenors, the Court does not find this sufficient to bar intervention.

Finally, the opponents also argue that JSD Supply and Polymer80 have other means of asserting their interests.[45] Indeed, Polymer80 has a separate suit currently pending before this Court.[46] But whether an intervenor has other adequate means of protecting its interests is not a dispositive or necessary factor for the Court's decision to grant permissive intervention. Though the Court could require the parties to initiate or maintain their own lawsuits, the purpose of Rule 24 and the principle of judicial efficiency counsel against that course of action. *See United States v. Tex. E. Transmission Corp.*, 923 F.2d 410, 412 (5th Cir. 1991) (noting Rule 24's goals of achieving "judicial economies of scale by resolving related issues in a single lawsuit" while preventing the single lawsuit "from becoming fruitlessly complex or unending") (cleaned up). Allowing intervention preserves judicial resources by preventing multiple parallel proceedings

[42] Defs.' Opp. to Polymer80 9, ECF No. 206; Defs.' Opp. to JSD Supply 7, ECF No. 207.
[43] Defs.' Opp. to Polymer80 6 n.3, ECF No. 206.
[44] Polymer80's Reply 8, ECF No. 214.
[45] Defs.' Opp. to JSD Supply 6–7, ECF No. 207; Defs.' Opp. to Polymer80 9–10, ECF No. 206; Original Pls.' Opp. 5–6, ECF No. 212.
[46] *Polymer80, Inc. v. Garland*, Civil Action No. 4:23-cv-00029-O (N.D. Tex. Jan. 9, 2023).

from running concurrently in multiple courts or before multiple jurists when this Court is already well-acquainted with the parties' respective claims. Nor is there a need to divide lawsuits where, as here, the would-be intervenors largely agree to adopt the claims and briefing schedule already before the Court, which reduces the complexity of the case.

* * * *

In sum, the Court holds that all requisite elements for permissive intervention—timeliness, shared causes of action, and prejudice—weigh in favor of allowing the intervenors to join the lawsuit. For these reasons, the Court **GRANTS** JSD Supply's and Polymer80's motions to intervene on permissive grounds. Because JSD Supply and Polymer80 have agreed to adopt the current Plaintiffs' summary judgment briefing with respect to their shared claims, and because those express intentions inform the Court's discretionary decision to permit intervention here, the intervenors are barred from separately moving for summary judgment or filing supplemental briefing on any of the existing claims. However, Polymer80 may move for summary judgment on its unique claims to the extent those claims are not mooted by the Court's decision today.

B.

1. Legal Standards

Disputes arising under the APA are commonly resolved on summary judgment, where district courts sit as an appellate tribunal to decide legal questions on the basis of the administrative record. *See Amin v. Mayorkas*, 24 F.4th 383, 391 (5th Cir. 2022). Summary judgment is proper where the Court finds that there are no genuine disputes of material fact and the movant is entitled to judgment as a matter of law. FED. R. CIV. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986). Upon review of agency action, district courts apply the APA, which requires the reviewing court to "hold unlawful and set aside agency action" that the court finds to be "(A)

arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; [and] (D) without observance of procedure required by law." 5 U.S.C. § 706(2).

Among other procedural requirements, the APA requires agencies to provide "legislative" rules (i.e., substantive regulations) for public notice and comment, *id.* § 553(b), and to ensure that the final version of such a rule is a "logical outgrowth" of the agency's initial regulatory proposal. *Huawei Techs. USA, Inc. v. FCC*, 2 F.4th 421, 447 (5th Cir. 2021). The APA's arbitrary and capricious standard requires that agency action be both "reasonable and reasonably explained," *FCC v. Prometheus Radio Project*, 141 S. Ct. 1150, 1158 (2021), meaning agencies must not "rel[y] on factors which Congress has not intended it to consider" or "entirely fail[] to consider an important aspect of the problem" when issuing regulations. *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

Once a court determines the contested agency action falls short of the APA's substantive or procedural requirements, the reviewing court "shall" set aside the unlawful agency action. 5 U.S.C. § 706(2); *Data Mktg. P'ship, LP v. United States Dep't of Labor*, 45 F.4th 846, 859 (5th Cir. 2022).

2. Article III Standing

As a preliminary defense, Defendants argue that some of the plaintiffs, the Individual Plaintiffs and the non-profit organizations, are not entitled to entry of summary judgment because they lack standing to challenge the Final Rule. Because "standing is not dispensed in gross," the general rule is that each plaintiff must demonstrate a personal stake in the outcome of the case or controversy at bar. *Town of Chester v. Laroe Ests., Inc.*, 137 S. Ct. 1645, 1650 (2017). This means

each plaintiff to a case "must demonstrate standing for each claim he seeks to press and for each form of relief that is sought." *Id.* (cleaned up). When there are multiple plaintiffs or intervenors to a lawsuit that request the same form of relief, however, only "*one* plaintiff must have standing to seek each form of relief requested." *Id.* at 1651 (emphasis added).

Here, among other requested forms of relief, all plaintiffs and intervenors—including those litigants whose standing is not in question—ask this Court to declare unlawful and set aside the Final Rule.[47] Accordingly, the Court could address the legality of the Final Rule regardless of whether the Individual Plaintiffs and the non-profit organizations have standing. Nevertheless, because these parties will not be entitled to unique forms of relief (e.g., party-specific injunctive relief or attorneys' fees) without independently demonstrating standing, the Court addresses the individuals' and the organizations' standing before turning the merits of their claims.[48]

To establish Article III standing, a plaintiff must show it has suffered (1) an injury-in-fact (2) that is fairly traceable to the defendants' conduct, and (3) is likely to be redressed by a favorable judicial decision. *Id.* at 1650. As the parties invoking federal jurisdiction, plaintiffs bear the burden of proving each element of standing. *Lujan v. Defs. Of Wildlife*, 504 U.S. 555, 561 (1992).

i. Individual Plaintiffs

First, Defendants argue that Individual Plaintiffs VanDerStok and Andren cannot demonstrate standing because "the only purported injury they plausibly invoke—a $30 transfer fee that certain FFLs purportedly would charge them to facilitate a firearm purchase—is not fairly

[47] Orig. Pls.' Am. Compl. 57, ECF No. 93 (seeking vacatur, injunctive relief, attorneys' fees and costs, etc.); BlackHawk's Compl. 33, ECF No. 99 (same); Defense Distributed, et al.'s Compl. 27, ECF No. 143 (same); JSD Supply's Proposed Compl. 29–30, ECF No. 149-2 (same); Polymer80's Proposed Compl. 43–44, App. 101–02, ECF No. 159 (same).

[48] To be entitled to attorneys' fees, a plaintiff must independently establish standing and prevail on the merits of an underlying claim. *See, e.g.*, *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 107 (1998) ("An interest in attorney's fees is insufficient to create an Article III case or controversy *where none exists on the merits of the underlying claim*.") (cleaned up) (emphasis added).

traceable to the Rule."[49] Defendants contend that an FFL's independent decision to charge Individual Plaintiffs a transfer fee to facilitate purchase of newly regulated products bears no causal relationship to the Final Rule, and is therefore not fairly traceable to Defendants' conduct.[50] But Defendants are wrong on this point.

While the Supreme Court has declined to endorse theories of standing "that rest on *speculation* about the decisions of independent actors," where a plaintiff can make a showing of *de facto* causality, standing's traceability element is satisfied. *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2566 (2019) (emphasis added). Here, Individual Plaintiffs' theory of standing is not speculative. Instead, it relies "on the predictable effect of Government action on the decisions of third parties." *Id.* Individual Plaintiffs have confirmed that the FFLs they would use to facilitate their purchases will in fact charge a transfer fee.[51] And it is highly predictable that FFLs would charge for this service, particularly when faced with the prospect of an influx of customers who need to make purchases of certain products through an FFL as a result of a recent government mandate. Absent the requirements of the Final Rule, the Individual Plaintiffs would not purchase the regulated products through an FFL and would therefore not incur an associated transfer fee. This is sufficient to show *de facto* causality. Thus, the Court is satisfied that Individual Plaintiffs' purported injury is fairly traceable to Defendants' actions.

Even if the FFLs' independent decision to charge a transfer fee broke the chain of causation, Individual Plaintiffs have an alternative basis for standing that Defendants largely ignore. In a footnote, Defendants dismiss Individual Plaintiffs' other alleged injury—the threat of criminal prosecution should they violate the Rule—as simply "not credible."[52] They say the risk

[49] Defs.' Reply 2, ECF No. 204; Defs.' Cross-Mot. 11–12, ECF No. 181.
[50] Defs.' Reply 2–3, ECF No. 204.
[51] VanDerStok Decl. ¶¶ 2–6, ECF No. 62-1; Andren Decl. ¶¶ 2–6, ECF No. 62-2.
[52] Defs.' Reply 2 n.3, ECF No. 204.

of criminal prosecution is not a cognizable injury because the costs Individual Plaintiffs would have to incur to avoid criminal liability "are merely *de minimis*."[53]

Here, however, Defendants conflate the injury analysis required for Article III standing with the irreparable harm analysis required for a preliminary injunction.[54] It is true that, for purposes of injunctive relief, a plaintiff must allege an irreparable injury that is more than merely *de minimis*. *See Dennis Melancon, Inc. v. City of New Orleans*, 703 F.3d 262, 279 (5th Cir. 2012). But Defendants offer no authority for the proposition that a plaintiff's alleged injury must pass a certain threshold to be cognizable for purposes of Article III. Nor is the Court aware of any such requirement.

It is well established that a credible threat of government action, on its own, provides a plaintiff with a sufficient basis for bringing suit. *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128–29 (2007). This remains true even if a plaintiff takes steps to protect themselves from prosecution. As the Supreme Court has made clear, a "plaintiff's own action (or inaction) in failing to violate the law eliminates the imminent threat of prosecution, but nonetheless does not eliminate Article III jurisdiction." *Id.* Thus, even if Individual Plaintiffs in this case ameliorated the threat of government enforcement by making their purchases through an FFL and paying the associated fee (action), or by simply refraining from purchasing the regulated products they want to buy

[53] *Id.* (""Plaintiffs do not face a 'Hobson's choice' whether to comply with a regulation or risk criminal prosecution when the costs of compliance are merely *de minimis*.").

[54] Plaintiffs respond that "[t]he Agencies provide no argument as to . . . how Individual Plaintiffs could suffer irreparable harm [as the Court previously held] and yet not have standing." Pls.' Reply 3, ECF No. 191. But irreparable harm for purposes of injunctive relief and Article III injury-in-fact are not equivalents. And Plaintiffs offer no authority indicating that a showing of irreparable harm for purposes of injunctive relief automatically satisfies Article III's injury-in-fact requirement. Moreover, many courts address these issues separately, confirming that the analysis is distinct. *See, e.g.*, *Memphis A. Philip Randolph Inst. v. Hargett*, 978 F.3d 378 (6th Cir. 2020) (analyzing Article III standing and irreparable harm for purposes of injunctive relief separately); *East Bay Sanctuary v. Trump*, 932 F.3d 742, 762 (9th Cir. 2018) (same); *Geer's Ranch Café v. Guzman*, 540 F. Supp. 3d 638 (N.D. Tex. 2021) (same) (O'Connor, J.).

(inaction), they do not lose their right to challenge the Final Rule.[55] Defendants offer no argument regarding the traceability or redressability of this alternative injury. Nor could they. Thus, the Court holds that Individual Plaintiffs' threat of civil or criminal penalties is a cognizable injury under Article III and that, on this basis also, they have demonstrated standing to pursue their claims.

ii. Non-profit Organizations

Second, Defendants claim the organizations—Firearms Policy Coalition and the Second Amendment Foundation—have failed to demonstrate associational (or organizational) standing. The associational standing doctrine permits a traditional membership organization "to invoke the court's [injunctive or declaratory] remedial powers on behalf of its members." *Warth v. Seldin*, 422 U.S. 490, 515 (1975). To do so, the organization must satisfy a three-prong test showing that "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, No. 20-1199, --- S.Ct. ---, 2023 WL 4239254, at *8 (U.S. June 29, 2023) (quoting *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977)).

Defendants do not meaningfully contend that FPC and SAF cannot satisfy the three-prong *Hunt* test.[56] Instead, they challenge the non-profits' statuses as "traditional membership

[55] For the same reasons, Defendants' argument that FPC cannot establish Article III standing *in its own right* fails. *See* Defs.' Reply 3 n.4. As FPC avers, it owns and uses products now subject to the Final Rule and, though a corporate entity, will suffer the same financial injury as Individual Plaintiffs if required to comply and the same threat of prosecution for non-compliance. Orig. Pls.' Br. 50, ECF No. 141; Combs Decl. ¶¶ 9–11, ECF No 62-4.

[56] Defs.' Br. 13, ECF No. 181; Defs.' Reply 3–4, ECF No. 204. Defendants simply point to the Court's earlier conclusion that, at the preliminary injunction stage, FPC did not carry its burden to demonstrate associational standing. Defs.' Br. 13, ECF No. 181 (citing Mem. Opinion 12–15, ECF No. 89).

organizations" arguing that, because they cannot satisfy this threshold requirement, they cannot establish associational standing. Defendants contend that, under Fifth Circuit precedent, an organization can only prove itself a "traditional membership organization" if it provides evidence that its members both fund and control the organization's activities. By contrast, FPC and SAF contend that they are traditional membership organizations because they have members nationwide who, by donating to their organizations, have "joined voluntarily to support [the non-profits'] mission[s]."[57] *Students for Fair Admissions, Inc. v. University of Texas at Austin*, 37 F.4th 1078, 1084 (5th Cir. 2022). Under the Supreme Court's recent decision in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, that is all the evidence that is required. 2023 WL 4239254, at *9. "Where, as here, an organization has identified members and represents them in good faith, [the Supreme Court's decisions] do not require further scrutiny into how the organization operates." *Id.* at 9.

As Defendants concede, the Court has already recognized that SAF satisfies the *Hunt* test.[58] Based on its summary judgment briefing, so does FPC. First, several of FPC's members—Individual Plaintiffs, Tactical Machining, and BlackHawk, who are all parties to this suit—have standing to sue in their own right. Second, FPC's organizational purpose to advocate for their members' individual liberties, separation of powers, and limited government are clearly germane to this suit challenging Defendants' asserted authority to regulate the manufacture of personal firearms.[59] Third, because FPC seeks equitable remedies of declaratory relief and vacatur of the Final Rule, there is no need for FPC's individual members to participate in the lawsuit.

[57] Orig. Pls.' Reply 8, ECF No. 191; Combs Decl. ¶ 8, ECF No. 62-4 (describing the voluntary and mission-driven membership base of FPC); Defense Distributed, et al.'s Reply 2, ECF No. 193; Gottlieb Decl. ¶ 2, ECF No. 166-2 (describing SAF's national membership base).
[58] Order 5, ECF No. 137.
[59] *See generally* Combs Decl., ECF No. 62-4; Orig. Pls.' Br. 49, ECF No. 144.

* * * *

In sum, the Court holds that Individual Plaintiffs and FPC—in its own right—have standing to pursue their claims for relief. Furthermore, FPC and SAF have demonstrated associational standing and may pursue relief on their members' behalf. Because Defendants do not contest the standing of Tactical Machining, BlackHawk, or Defense Distributed, these parties are similarly entitled to pursue their respective claims for relief.

3. Statutory Claims

The Original Plaintiffs and Intervenors (collectively "Plaintiffs" going forward) attack the Final Rule on a host of statutory and constitutional grounds. However, there exists an ordinary rule "that a federal court should not decide federal constitutional questions where a dispositive nonconstitutional ground is available." *Hagans v. Lavine*, 415 U.S. 528, 547 (1974); *see also New York City Transit Auth. v. Beazer*, 440 U.S. 568, 582 (1979) ("If there is one doctrine more deeply rooted than any other in the process of constitutional adjudication, it is that we ought not to pass on questions of constitutionality . . . unless such adjudication is unavoidable. Before deciding the constitutional question, it was incumbent on [the lower] courts to consider whether the statutory grounds might be dispositive.") (cleaned up). Thus, "if a case raises both statutory and constitutional questions, the inquiry should focus initially on the statutory question[s]. . . . If the lower court finds that statutory ground dispositive, resolution of the constitutional issue will be obviated." *Jordan v. City of Greenwood, Miss.*, 711 F.2d 667, 669 (5th Cir. 1983). Because the Court concludes that the ATF has clearly and without question acted in excess of its statutory authority, and that this claim is dispositive, the Court declines to address the constitutional questions presented.

The Court begins with Plaintiffs' shared claim that, in attempting to regulate products that are not yet a "frame or receiver," and therefore not a "firearm" for purposes of the Gun Control Act, the ATF has acted in excess of its statutory jurisdiction. 5 U.S.C. § 706(2)(C). As they argued at the preliminary injunction stage, Plaintiffs maintain that the Final Rule exceeds ATF's statutory authority in two primary ways. First, they argue that the Final Rule expands ATF's authority over parts that may be "readily converted" into frames or receivers, when Congress limited ATF's authority to "frames or receivers" as such. Second, they argue that the Final Rule unlawfully treats component parts of a weapon in the aggregate (i.e., a weapon parts kit) as the equivalent of a firearm.[60] The Court agrees with Plaintiffs.

Basic principles of statutory interpretation decide this case. "In statutory interpretation disputes, a court's proper starting point lies in a careful examination of the ordinary meaning and structure of the law itself." *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2364 (2019). "Statutory language 'cannot be construed in a vacuum. It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.'" *Sturgeon v. Frost*, 577 U.S. 424, 438 (2016) (quoting *Roberts v. Sea-Land Services, Inc.*, 556 U.S. 93, 101 (2012)). If the disputed statutory language is unambiguous, as it is here, "the sole function of the courts is to enforce [the law] according to its terms." *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989) (cleaned up). The Court

[60] Orig. Pls.' Supp. Br. Regarding Count I, ECF No. 133; *see also* Defense Distributed, et al.'s Br. in Support of Mot. for Summ. J., ECF No. 166 (joining and adopting Original Plaintiffs' Counts and summary judgment briefing on behalf of Defense Distributed and Second Amendment Foundation). BlackHawk offers additional arguments in support of its claim that the agency has exceeded its statutory authority, some of which are closely related to the arguments before the Court and other that are novel. *See generally* BlackHawk's Supp. Br. Regarding Count I 7–10, ECF No. 134 (e.g., arguing that the Final Rules requirement that FFLs retain records indefinitely exceeds the agency's statutory authority). But because Plaintiffs' primary arguments in support of their shared Counts I are dispositive, the Court need not consider each of the alternative grounds for reaching the same result.

begins with "the assumption that the words were meant to express their ordinary meaning." *United States v. Kaluza*, 780 F.3d 647, 659 (5th Cir. 2015) (quoting *Bouchikhi v. Holder*, 676 F.3d 173, 177 (5th Cir. 2012)). If a statute "includes an explicit definition," however, the Court "must follow that definition, even if it varies from a term's ordinary meaning." *Digit. Realty Tr., Inc. v. Somers*, 138 S. Ct. 767, 776 (2018) (cleaned up).

i. Parts that *may become* receivers are not receivers.

Congress carefully defined its terms in the Gun Control Act. The primary definition of "firearm" in the GCA contains three parts: "any weapon (including a starter gun) which [1] will or [2] is designed to or [3] may readily be converted to expel a projectile by the action of an explosive." 18 U.S.C. § 921(a)(3)(A). Under this primary definition, a firearm is first and foremost a *weapon*. Underscoring that point, Congress explicitly named starter guns in the definition because starter guns are not obviously weapons. Then, because weapon parts also are not "weapons," Congress created a secondary definition covering specific weapon parts: "the frame or receiver of any such weapon." *Id.* § 921(a)(3)(B).[61] Notably, Congress did not cover all weapon parts—only frames and receivers. And *only* the frames and receivers "of any such weapon" that Congress described in its primary definition.

Because Congress did not define "frame or receiver," the words receive their ordinary meaning. *See* 18 U.S.C § 921 (defining other terms); *Kaluza*, 780 F.3d at 659. Contrary to Defendants' assertion, in an interpretive dispute over a statutory term's meaning, the Court does not simply "leav[e] the precise definition of that term to the discretion and expertise of ATF."[62]

[61] The Gun Control Act defines "firearm" in full as: "(A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device." *Id.* § 921(a)(3).

[62] Defs.' Supp. Br. Regarding Count I 9, ECF No. 132 (citing no supporting authority for the proposition that agency's definition of an unambiguous statutory term controls).

Nor is the Court bound by the agency's definition of an unambiguous statutory term, even if the ATF has "long provided regulations defining . . . 'frame or receiver.'"[63]

Plaintiffs do not take issue with ATF's 1978 definition of "frame or receiver." This is because, as Defendants themselves acknowledge, ATF's prior regulatory definitions have been "*consistent with common and technical dictionary definitions*."[64] Statutory construction entails "follow[ing] the plain and unambiguous meaning of the statutory language, [and] interpreting undefined terms according to their ordinary and natural meaning and the overall policies and objectives of the statute. In determining the ordinary meaning of terms, dictionaries are often a principal source." *NPR Invs., L.L.C. ex rel. Roach v. United States*, 740 F.3d 998, 1007 (5th Cir. 2014) (cleaned up). Near the time of the GCA's enactment in 1968, Webster's Dictionary defined "frame" as "the basic unit of a handgun which serves as a mounting for the barrel and operating parts of the arm" and "receiver" as "the metal frame in which the action of a firearm is fitted and which the breech end of the barrel is attached." *Webster's Third International Dictionary* 902, 1894 (1971).[65] ATF's prior regulatory definition, which defined "frame or receiver" as "[t]hat part of a firearm which provides housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive the barrel," tracks that common definition.[66] Title and Definition Changes, 43 Fed. Reg. at 13,537.

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[63] Defs.' Supp. Br. Regarding Count I 6–7, ECF No. 132. Even if the phrase "frame or receiver" was ambiguous, the Court would not defer to ATF's interpretation under *Chevron* because Defendants have not invoked the doctrine in this case, because the statute in question imposes criminal penalties, and because the Final Rule is a reversal of the ATF's prior interpretive position. *Cargill v. Garland,* 57 F.4th 447, 464–68 (5th Cir. 2023); Defs.' Opp. to Pls.' Mot. for Prelim. Inj. 17–18, ECF No. 41.

[64] Defs.' Supp. Br. Regarding Count I 9, ECF No. 132 (emphasis added).

[65] *See also John Olson*, *Olson's Encyclopedia of Small Arms* 72 (1985) (defining a receiver as "the part of a gun that takes the charge from the magazine and holds it until it is seated in the breech. Specifically, the metal part of a gun that houses the breech action and firing mechanism").

[66] ATF's 1968 definition of "frame or receiver" was identical. *Commerce in Firearms and Ammunition*, 33 Fed. Reg. 18,555, 18,558 (Dec. 14, 1968).

But the Final Rule's amended definition of "frame or receiver" does not accord with the ordinary meaning of those terms and is therefore in conflict with the plain statutory language. Departing from the common understanding of "frame or receiver," Defendants now assert ATF's authority to regulate "partially complete, disassembled, or nonfunctional frame[s] or receiver[s]" that are "designed to or may readily be completed, assembled, restored, or otherwise be converted to function as a frame or receiver." 27 C.F.R. § 478.12(c). The parts must be "clearly identifiable as an unfinished component part of a weapon." *Id.* In deciding whether something is a partially complete frame or receiver, ATF may consider other materials such as molds, instructions, and marketing materials "that are sold, distributed, or possessed with the item." *Id.*

As this Court has previously discussed, the definition of "firearm" in the Gun Control Act does not cover all firearm parts. It covers specifically "the frame or receiver of any such weapon" that Congress defined as a firearm. 18 U.S.C. § 921(a)(3)(B). And that which *may become* or *may be converted to* a functional receiver is not itself a receiver. Congress could have included firearm parts that "may readily be converted" to frames or receivers, as it did with "weapons" that "may readily be converted" to fire a projectile. *Id.* § 921(a)(3)(A), (a)(4)(B). But it omitted that language when talking about frames and receivers. "[W]hen Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Collins v. Yellen*, 141 S. Ct. 1761, 1782 (2021) (citation and internal quotation marks omitted). Likewise, when Congress uses a phrase in one part of a definition and excludes that phrase from another part of the very same definition, courts should give effect to Congress's deliberate exclusion.

Congress excluded other adjectives that ATF adds to its definition. Specifically, the Final Rule covers "disassembled" and "nonfunctional" frames and receivers. 27 C.F.R. § 478.12(c).

Congress's definition does not. Again, compare the language in Congress's primary definition of "firearm" to its secondary definition covering frames and receivers. The primary definition of "firearm" includes any "weapon" that "is designed to" fire a projectile. 18 U.S.C. § 921(a)(3)(A). That language covers disassembled, nonfunctional, and antique firearms because they are "designed" to fire projectiles even if they are practically unable to do so. But Congress wanted to exclude antiques, so it explicitly said the "term does not include an antique firearm," once again demonstrating awareness of the scope of the language it chose. *Id.* § 921(a)(3). In contrast, Congress did not choose to cover firearm parts that are "designed" to be frames or receivers—that is, incomplete, nonfunctional frames or receivers. "That omission is telling," particularly when Congress used the more expansive terminology in the same definition. *Collins*, 141 S. Ct. at 1782. In sum, ATF's new definition of "frame or receiver" in 27 C.F.R. § 478.12(c) is facially unlawful given its conflict with the ordinary meaning of those terms as read within their immediate statutory context. *Sturgeon*, 577 U.S. at 438 (cleaned up).

The Court's earlier acknowledgement that ATF does indeed have discretion to decide "whether a particular component is a frame or receiver" based upon that component's "degree of completeness" does not alter this analysis.[67] Relying on the Court's acknowledgement, Defendants claim that is all the Final Rule purports to do: "provide[] more specific guidance about the criteria ATF uses in making th[e] determination" whether a component is a frame or receiver.[68] But that is not all the regulation does. Rather, the Final Rule sets outs the criteria ATF will use to determine whether a component "may readily be . . . *converted to function*" as a frame or receiver. 27 C.F.R. § 478.12(c) (emphasis added). As the Court previously explained, the issue in this case is whether ATF may properly regulate a component as a "frame or receiver" even after ATF determines that

[67] Mem. Opinion 10, ECF No. 56.
[68] Defs.' Supp. Br. Regarding Count I 10, ECF No. 132.

the component in question is *not* a frame or receiver.[69] It may not. Logic dictates that a part cannot be both *not yet* a receiver and receiver at the same time. Defendants' reliance on that logical contradiction is fatal to their argument.

Predictably, Defendants disagree with the Court's interpretation of how the regulation operates and argue that "the Final Rule's amended definition treats a component as a frame or receiver only when ATF has determined that the component *is* a frame or receiver."[70] Again, a plain reading of the Final Rule's text belies this objection.[71] A part that has yet to be completed or converted to function as frame or receiver is *not* a frame or receiver. ATF's declaration that a component is a "frame or receiver" does not make it so if, at the time of evaluation, the component does not yet accord with the ordinary public meaning of those terms.

Thus, the Court's prior acknowledgment that "[a]n incomplete receiver may still be a receiver *within the meaning of the statute*, depending on the degree of completeness" is not a contradiction.[72] To be a receiver "within the meaning of the statute" requires that the particular component possess all the attributes of a receiver as commonly understood (i.e., the component must "provide[] housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive the barrel") at the point of evaluation, not "readily" in the near term.

Nevertheless, Defendants continue to press their case with reference to historical agency action. Defendants offer several classification letters in which ATF previously determined that a particular component was (or was not) a "firearm" for purposes of the GCA based on the item's

[69] *Id.*
[70] *Id.*
[71] Nor do Defendants invoke *Auer* deference here.
[72] Mem. Opinion 10, ECF No. 56 (emphasis added).

stage of manufacture.[73] They contend that this historical practice proves that ATF does, in fact, hold statutory authority to regulate firearm components that may "readily" become a frame or receiver.[74] But historical practice does not dictate the interpretation of unambiguous statutory terms. The ordinary public meaning of those terms does. If these administrative records show, as Defendants contend, that ATF has previously regulated components that are not *yet* frames or receivers but could *readily be converted into* such items, then the historical practice does nothing more than confirm that the agency has, perhaps in multiple specific instances over several decades, exceeded the lawful bounds of its statutory jurisdiction.[75] That the agency may have historically acted *ultra vires* does not convince the Court it should be permitted to continue the practice.

Finally, Defendants argue that the Final Rule's redefinition of the "frame or receiver" is appropriate because it better achieves the goals Congress intended to accomplish in enacting the federal firearms laws.[76] They warn that "[u]nder any other approach, persons could easily circumvent the requirements of the GCA and NFA by producing or purchasing almost-complete [purported] frames or receivers that could easily be altered to produce a functional frame or receiver."[77] But "the best evidence of Congress's intent is the statutory text." *NFIB v. Sebelius*, 567 U.S. 519, 544 (2012). And the text of 18 U.S.C. § 921(a)(3), read in context, indicates that when Congress sought to regulate *parts* of weapons, it did so meticulously. Vague countervailing assertions about Congress's purpose in enacting the federal firearms laws do not override this analysis.

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[73] *See* Defs.' Supp. Br. Regarding Count I 7–10, ECF No. 132.
[74] *See id.*
[75] *Id.* at 8 ("Under the previous definition, then, ATF regularly applied the definition of 'frame or receiver' to some unfinished or incomplete frames or receivers if they had reached a sufficiently advanced stage of the manufacturing process that they *could be readily converted to a functional state*.").
[76] *Id.* at 11.
[77] *Id.*

ii. A weapon parts kit is not a firearm.

The Gun Control Act defines a "firearm" as "(A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm." 18 U.S.C. § 921(a)(3). The Final Rule amends that definition, adding that the term "firearm" "shall include a weapon parts kit that is designed to or may readily be completed, assembled, restored, or otherwise converted to expel a projectile by the action of an explosive." 27 C.F.R. § 478.11 (definition of "firearm"). But that language conflicts with the statute's definition of "firearm."

As this Court previously concluded, ATF has no general authority to regulate weapon parts.[78] When Congress enacted the GCA, it replaced the FFA that authorized regulation of "any part or parts of" a firearm. Federal Firearms Act of 1938, Ch. 850, Pub. L. No. 75-785, 52 Stat. 1250, 1250 (1938) (repealed 1968). In proposing the new regulation, Defendants even acknowledged as much.[79] Instead, under the GCA, the only firearm parts that fall under ATF's purview are "the frame or receiver of any such weapon" that Congress defined as a firearm. 18 U.S.C. § 921(a)(3)(B). But the Final Rule goes further by regulating weapon parts kits (that is, "aggregations of weapon parts")[80] that are "designed to or may readily be completed, assembled, restored, or otherwise converted to expel a projectile by the action of an explosive." 27 C.F.R. § 478.11.

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[78] Mem. Opinion, ECF No. 56.
[79] *Definition of "Frame or Receiver" and Identification of Firearms* ("Proposed Rule"), 86 Fed. Reg. 27,720, 27,720 (May 21, 2021) ("Congress recognized that regulation of all firearm parts was impractical. Senator Dodd explained that '[t]he present definition of this term includes "any part or parts" of a firearm. It has been impractical to treat each small part of a firearm as if it were a weapon. The revised definition substitutes the words "frame or receiver" for the words "any part or parts."'").
[80] Defs.' Resp. to Mot. for Prelim. Inj. 13, ECF No. 41.

The GCA covers "any *weapon*" that is "designed to" or "may readily be converted to" fire a projectile. 18 U.S.C. § 921(a)(3)(A) (emphasis added). And Defendants contend that weapon parts kits satisfy this definition because they are clearly "'designed to' fire a projectile" and are sold to customers "for the sole purpose of assembling the kits into functional weapons capable of firing a projectile."[81] They say "[a] weapon parts kit is nothing more than a disassembled, currently nonfunctional weapon incapable of firing a projectile in its present form, but that is designed and intended to be assembled or completed to do so."[82] But Congress's definition does not cover weapon *parts*, or aggregations of weapon parts, regardless of whether the parts may be readily assembled into something that may fire a projectile. To read § 921(a)(3)(A) as authorizing ATF to regulate any aggregation of weapon parts that may readily be converted into a weapon would render § 921(a)(3)(B)'s carveout for "frame[s] or receiver[s]" superfluous. Accepting Defendants' interpretation would be to read the statute as authorizing regulation of (A) weapon parts generally, and (B) two specific weapon parts. *SEC v. Hallam*, 42 F.4th 316, 337 (5th Cir. 2022) (noting courts should be "hesitant to adopt an interpretation of a congressional enactment which renders superfluous another portion of that same law") (citation omitted). This despite Congress's purposeful change in the law between the FFA and the GCA, which limited agency authority to regulation of only frames and receivers. "When Congress acts to amend a statute, [courts] presume it intends its amendment to have real and substantial effect." *Id.* (quoting *Intel Corp. Inv. Pol'y Comm. v. Sulyma*, 140 S. Ct. 768, 779 (2020)).

The statutory context repeatedly confirms that Congress intentionally chose not to regulate "weapon" parts generally. As further evidence, look to § 921(a)(4)(C), which does allow for the regulation of "parts," but only parts of "destructive devices"—one of the four statutory sub-

[81] Defs.' Supp. Br. Regarding Count I 13, ECF No. 132.
[82] *Id.* at 14.

definitions of "firearm." *Id.* § 921(a)(3)(D). The term "destructive device" is defined as "any explosive, incendiary, or poison gas," such as a bomb, grenade, mine, or similar device. *Id.* § 921(a)(4)(A). The definition of "destructive device" also includes "any type of weapon" that "may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter." *Id.* § 921(a)(4)(B). For example, suppose a manufacturer tried to sell a parts kit to make a homemade grenade. ATF could regulate that parts kit because it can regulate "any combination of parts either designed or intended for use in converting any device into" a grenade, from which a grenade "may be readily assembled." *Id*. § 921(a)(4)(C). Likewise for bombs, rockets, missiles, and other destructive devices. But commonly sold firearms such as 9mm pistols or .223 rifles do not fall under the specialized definition of "destructive devices," so weapon parts kits for those firearms cannot be properly regulated as components of "destructive devices." *Id*. § 921(a)(4).

In sum, the Gun Control Act's precise wording demands precise application. Congress *could have* described a firearm as "any combination of parts" that would produce a weapon that could fire a projectile. It used that language elsewhere in the definition. *Id.* § 921(a)(4)(C). Congress could have described a firearm as any part "designed" to be part of a weapon. It used that language, too. *Id.* § 921(a)(3)(A), (a)(4)(C). Congress could have described a firearm as a set of parts that "may be readily assembled" into a weapon, as it did for "destructive device." *Id.* § 921(a)(4)(C). Congress could have written all those things, and the very definition of "firearm" demonstrates that Congress knew the words that would accomplish those ends.[83] But Congress did

[83] Congress's definition of "machinegun" elsewhere in the U.S. Code is a great example of a definition that would fit the kind of rule ATF has in mind:

> The term "machinegun" means any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by

not regulate firearm parts as such, let alone aggregations of parts that are "designed to or may readily be completed, assembled, restored, or otherwise converted to expel a projectile by the action of an explosive." 27 C.F.R. § 478.11. Accordingly, the Final Rule's attempt to regulate weapon parts kits lacks statutory support.

As the Court has previously discussed, Defendants' arguments that the Final Rule's regulation of weapon parts kits is consistent with existing judicial interpretations of the Gun Control Act are unavailing.[84] Defendants' cited cases demonstrate that courts understand the constraints of the Gun Control Act's definitions. The only Fifth Circuit case Defendants cite held that a disassembled shotgun was still a "firearm" under the Gun Control Act's definition. *See United States v. Ryles*, 988 F.2d 13, 16 (5th Cir. 1993). There, the government argued the shotgun "was only 'disassembled' in that the barrel was removed from the stock and that it could have been assembled in thirty seconds or less." *Id.* But the Fifth Circuit only agreed after surveying other cases in which courts held that inoperable weapons were still firearms "so long as those weapons 'at the time of the offense did not appear clearly inoperable.'" *Id.* No weapon parts kit would pass that test, and Defendants do not claim they would.[85]

> a single function of the trigger. The term shall also include the frame or receiver of any such weapon, *any part* designed and intended solely and exclusively, or *combination of parts* designed and intended, for use in converting a weapon into a machinegun, *and any combination of parts from which a machinegun can be assembled* if such parts are in the possession or under the control of a person.

26 U.S.C. § 5845(b) (emphases added); *see also Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 448 n.3 (2006) ("Our more natural reading is confirmed by the use of the word 'contract' elsewhere in the United States Code . . . .").

[84] *See* Defs.' Supp. Br. Regarding Count I 13; Defs.' Resp. to Mot. for Prelim. Inj. 20–21, ECF No. 41.

[85] The best case in support of Defendants is *United States v. Wick*, 697 F. App'x 507 (9th Cir. 2017), in which the Ninth Circuit upheld a conviction for unlicensed firearm dealing based on evidence that the defendant had sold a "complete Uzi parts kits that could 'readily be converted to expel a projectile by the action of an explosive,' thus meeting the statute's definition of a firearm." *Id.* at 508 (quoting 18 U.S.C. § 921(a)(3)(A)). But *Wick* is outside this circuit, nonprecedential, and contains no analysis of the statutory text.

In sum, there is a legal distinction between a weapon parts kit, which may be an aggregation of partially manufactured parts not subject to the agency's regulatory authority, and a "weapon" which "may readily be completed [or] assembled . . . to expel a projectile." 18 U.S.C. § 921(a)(3)(A). Defendants contend that drawing such a distinction will produce the absurd result whereby a person lawfully prohibited from possessing a firearm can obtain the necessary components and, given advances in technology, self-manufacture a firearm with relative ease and efficiency.[86] Even if it is true that such an interpretation creates loopholes that as a policy matter should be avoided, it not the role of the judiciary to correct them. That is up to Congress. And until Congress enacts a different statute, the Court is bound to enforce the law as written.

* * * *

Because the Final Rule purports to regulate both firearm components that are not yet a "frame or receiver" and aggregations of weapon parts not otherwise subject to its statutory authority, the Court holds that the ATF has acted in excess of its statutory jurisdiction by promulgating it.

4. Remedy

The proper remedy for a finding that an agency has exceeded its statutory jurisdiction is vacatur of the unlawful agency action. While Defendants claim the APA does not allow for such

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Defendants' remaining cases are even less applicable. *See United States v. Stewart*, 451 F.3d 1071, 1073 n.2 (9th Cir. 2006) (affirming the district court's denial of an evidentiary hearing on whether probable cause supported a search warrant based on the defendant's possession of weapon parts kits that could "readily be converted" into firearms), *overruled on other grounds by Dist. of Columbia v. Heller*, 554 U.S. 570, 594–95 (2008); *United States v. Annis*, 446 F.3d 852, 857 (8th Cir. 2006) (affirming a sentence enhancement for possession of a firearm because the defendant had a disassembled rifle but "could easily 'make the rifle operational in just a few seconds by putting the bolt in'"); *United States v. Theodoropoulos*, 866 F.2d 587, 595 n.3 (3d Cir. 1989) (affirming a conviction for possession of an unregistered, disassembled machine pistol), *overruled by United States v. Price*, 76 F.3d 526 (3d Cir. 1996).

[86] *See* Defs.' Supp. Br. Regarding Count I 14, ECF No. 132; Defs.' Resp. to Mot. for Prelim. Inj. 1–3, ECF No. 41.

a remedy, the Fifth Circuit says otherwise. *Data Mktg. P'ship, LP v. United States Dep't of Labor*, 45 F.4th 846, 859 (5th Cir. 2022) (permitting vacatur under 5 U.S.C. § 706(2)).[87] While in some cases the court may remand a rule or decision to the agency to cure procedural defects, the Fifth Circuit considers vacatur the "default rule" for agency action otherwise found to be unlawful. *Id.* at 859–60; *accord Franciscan All., Inc. v. Becerra*, 47 F.4th 368, 374–75, 375 n.29 (5th Cir. 2022) (concluding that "[v]acatur is the *only* statutorily prescribed remedy for a successful APA challenge to a regulation") (emphasis added). The D.C. Circuit agrees. *United Steel v. Mine Safety & Health Admin.*, 925 F.3d 1279, 1287 (D.C. Cir. 2019) ("The ordinary practice is to vacate unlawful agency action . . . . In rare cases, however, we do not vacate the action but instead remand for the agency to correct its errors."). Whether remand-without-vacatur is the appropriate remedy "turns on two factors: (1) the seriousness of the deficiencies of the action, that is, how likely it is the agency will be able to justify its decision on remand; and (2) the disruptive consequences of vacatur." *Id.* (cleaned up).

Vacatur is appropriate given the Court's conclusion that the ATF has exceeded its statutory authority. An illegitimate agency action is void *ab initio* and therefore cannot be remanded as there is nothing for the agency to justify. Defendants tacitly acknowledge this, noting that "if vacatur is authorized under the APA, it is not warranted here in the event that Plaintiffs succeed on the merits of any *procedural claim*, because the agency can likely correct any such error on remand."[88]

[87] Defendants argue that any Fifth Circuit precedent recognizing the permissibility of vacatur is not binding, because those decisions did not squarely address the issue of whether the APA authorizes such a remedy. Defs.' Reply 52–53. As such, Defendants contend this Court may not be bound by a legal "assumption" of a Fifth Circuit panel. *Ochoa-Salgado v. Garland*, 5 F.4th 615, 619 (5th Cir. 2021). But even if this Court is not bound by the Circuit's view that the APA permits vacatur, Defendants have not offered a compelling justification why this Court should depart from the mass of persuasive authority—developed over decades—that has assumed that vacatur is permissible. *See* Mila Sohoni, *The Power to Vacate a Rule*, 88 Geo. Wash. L. Rev. 1121, 1178 n.270 (2020) (collecting cases from all Circuits).

[88] Defs.' Reply 53, ECF No. 204 (emphasis added).

Moreover, vacating the unlawful assertion of the agency's authority would be minimally disruptive because vacatur simply "establish[es] the status quo" that existed for decades prior to the agency's issuance of the Final Rule last year. *Texas v. United States*, 40 F.4th 205, 220 (5th Cir. 2022).

Defendants argue that any vacatur should only be applied to the parties before the Court while citing no binding authority in support.[89] But such a remedy is more akin to an injunction that would prohibit the agencies from enforcing their unlawful Final Rule against only certain individuals. And indeed, "[t]here are meaningful differences between an injunction, which is a 'drastic and extraordinary remedy,' and vacatur, which is 'a less drastic remedy.'" *Id.* at 219 (quoting *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010)) (assuming the availability of vacatur under the APA)). "[A] vacatur does nothing but re-establish the status quo absent the unlawful agency action. Apart from the . . . statutory basis on which the court invalidated an agency action, vacatur neither compels nor restrains further agency decision-making." *Id.* at 220. Thus, the Court applies the default remedy and **VACATES** the Final Rule on grounds that the agency acted beyond the scope of its legitimate statutory authority in promulgating it.

Finally, because vacatur provides Plaintiffs full relief, the Court will not address the parties' remaining statutory claims, all of which raise procedural defects that might properly result in remand of the Final Rule that the Court has already deemed vacated.

V. CONCLUSION

In sum, the Court **GRANTS** Original Plaintiffs' unopposed Motion for Leave to Provide Supplemental Authority, and the Court **DENIES** JSD Supply's proposed Motion for Injunction as prematurely filed. The Court **GRANTS** Intervenor-Plaintiffs JSD Supply's and Polymer80's Motions to Intervene. Further, for the reasons discussed, the Court **GRANTS** Plaintiffs' and

[89] Defs.' Reply 54–55, ECF No. 204.

Intervenor-Plaintiffs' Motions for Summary Judgment, **DENIES** Defendants' Cross-Motion, and **VACATES** the Final Rule. Separate final judgment shall issue as to the appropriate parties and claims. As discussed, Polymer80 may move for summary judgment on its unique claims to the extent those remaining claims are not mooted by this decision.

SO ORDERED this **30th day** of **June, 2023**.

Reed O'Connor
UNITED STATES DISTRICT JUDGE

No. 23-10718

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Jennifer VanDerStok; Michael G. Andren; Tactical Machining, L.L.C., a limited liability company; Firearms Policy Coalition, Incorporated, a nonprofit corporation,
Plaintiffs-Appellees,

Blackhawk Manufacturing Group, Incorporated, doing business as 80 Percent Arms; Defense Distributed; Second Amendment Foundation, Incorporated; Not An L.L.C., doing business as JSD Supply; Polymer80, Incorporated,
Intervenor Plaintiffs-Appellees,

v.

Merrick Garland, U.S. Attorney General; United States Department of Justice; Steven Dettelbach, in his official capacity as Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives; Bureau of Alcohol, Tobacco, Firearms, and Explosives,
Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of Texas

DECLARATION IN SUPPORT OF EMERGENCY MOTION PURSUANT TO CIRCUIT RULE 27.3 TO VACATE INJUNCTION PENDING APPEAL

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DECLARATION OF MATTHEW P. VARISCO

I, Matthew P. Varisco, hereby declare, under penalty of perjury pursuant to 28 U.S.C. § 1746, as follows:

Introduction

1. I am the Assistant Director for the Office of Enforcement Programs and Services (Regulatory Operations) within the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), United States Department of Justice (DOJ). I have been in this position for 11 months, and have also served as an ATF Special Agent for over 23 years, including as the Special Agent in Charge of the Philadelphia Field Division, which encompasses the Commonwealth of Pennsylvania. Before that, I was an ATF Industry Operations Investigator for over 2 years. I hold a Master of Science degree in Criminal Justice from Iona University, New Rochelle, New York, and a Master of Science degree in Strategic Studies from the U.S. Army War College, Carlisle, Pennsylvania. I have testified in numerous grand jury proceedings as well as criminal trials and hearings in U.S. District Court.
2. In my current senior executive position, I direct policy, conduct planning, and oversee rulemakings for Bureau-wide programmatic offices, including ATF's National Tracing Center Division, Firearms Ammunition Technology Division, Regulatory Affairs Division, and National Firearms Act Division. These divisions support every aspect of ATF's mission to protect the public and reduce violent crime throughout the United States. I supervise around 833 personnel and currently manage an approximately $57 million budget.
3. I am authorized to provide this Declaration on ATF's behalf and am providing it in support of the Defendants' Emergency Motion to Vacate Injunction Pending Appeal

in this civil case. This declaration is based on my personal knowledge and belief, my training and experience, as well as information conveyed to me by ATF personnel in the course of my official duties. This declaration does not set forth all of the knowledge and information I have on the topics discussed herein and it does not state all of the harms to ATF and the public from the judgment in this case.

4. I am familiar with the definition of "firearm" and the enforcement provisions in the Gun Control Act of 1968, as amended ("GCA"), and the National Firearms Act of 1934, as amended ("NFA"). I am also familiar with ATF's Final Rule, *"Definition of 'Frame or Receiver' and Identification of Firearms"* ("Rule"), 87 FR 24652 (Apr. 26, 2022), which implemented several of these GCA and NFA provisions.

5. Congress and the Attorney General delegated the responsibility for administering and enforcing the GCA and NFA to the Director of ATF, subject to the direction of the Attorney General and the Deputy Attorney General. *See* 28 U.S.C. 599A(b)(1)-(2); 28 C.F.R. 0.130(a)(1)-(2).

6. ATF's top priority is public safety. ATF recognizes the role that firearms play in violent crimes and, as part of its efforts to administer and enforce the GCA and NFA, ATF pursues an integrated regulatory and enforcement strategy. ATF uses the GCA and NFA to target, investigate, and recommend prosecution of offenders to reduce the level of violent crime and to enhance public safety. ATF also takes steps to increase State and local awareness of available federal prosecution under these statutes through, among other things, devoting its limited resources to developing and presenting relevant training and conducting outreach.

7. Among the critical public safety issues ATF has identified and attempted to address in the Rule is the impact of: (1) the commercial production and sale or distribution of

"privately made firearms" ("PMFs") without statutorily required licensing, traceable serial numbers and other identifying markings, or background checks; and (2) the easy purchase and possession of such firearms by criminals.

The Rule

8. This rule updated the regulatory definitions of "frame or receiver," "firearm," and associated marking and recordkeeping regulations. This update helped prevent firearms, particularly, easy-to-complete firearm parts kits, from falling into the hands of felons and other prohibited persons[1] who, without the Rule, were able to purchase them without a background check or transaction records. The Rule also curbs the proliferation of unserialized privately made firearms, typically assembled from those kits, by ensuring that those weapons, or the frames or receivers of those weapons, are subject to the same requirements as commercially produced firearms whenever they are accepted into inventory by licensees. This, in turn, helps law enforcement solve crime by providing law enforcement officers with the ability to trace those weapons to a potential suspect if they are later found at a crime scene.

9. ATF issued the Rule to increase public safety with the goal of ensuring proper marking, recordkeeping, and traceability of all firearms manufactured, imported, or otherwise acquired, and sold or otherwise disposed of by licensees.

10. Nothing in the Rule prevents unlicensed law-abiding citizens and hobbyists from making their own firearms without identifying markings for their own personal use.

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[1] Among other GCA prohibitions, 18 U.S.C. § 922(g) makes it unlawful for persons who fall into one or more of the following categories of "prohibited persons" to ship, transport, receive, or possess firearms: felons, fugitives from justice, drug abusers, persons adjudicated as a mental defective or committed to a mental institution, illegal aliens, certain nonimmigrant aliens, persons dishonorably discharged from the military, persons who have renounced their U.S. citizenship, persons subject to a qualifying domestic violence restraining order, and persons who have been convicted of a misdemeanor crime of domestic violence. Additionally, under 18 U.S.C. § 922(b)(1), juveniles under the age of 21 are prohibited from purchasing firearms other than a rifle or shotgun from a licensee, and if under 18, any firearms.

The Rule only requires persons who are engaged in the business of manufacturing, importing, or dealing in firearms, or making firearms subject to the NFA, to place serial numbers and other marks of identification on privately made firearms. (87 FR 24665, 24706, 24715, 24723)

Discussion

11. I am aware that, on September 14, 2023, the district court in *VanDerStok v. Garland*, 4:22-cv-00691-O (N.D. Tex.), enjoined the government from implementing and enforcing two provisions of the Rule, *Definition of "Frame or Receiver" and Identification of Firearms*, 87 Fed. Reg. 24,652 (Apr. 26, 2022).

12. Enjoining the provisions in question would irreparably harm the public, the regulated community, and ATF. Such an injunction damages public safety by allowing felons and other prohibited purchasers (including underage persons) and possessors to easily buy and assemble unserialized firearms, and by permitting the widespread proliferation of unserialized firearms, thereby impairing law enforcement's ability to trace firearms recovered at crime scenes.

13. The two provisions in question are aimed at ensuring that all firearms have a frame or receiver subject to the statutory serialization, licensing, background check, recordkeeping, and other requirements. The effective implementation of those requirements is critically important to public safety, primarily for two separate reasons.

14. First, these requirements prevent felons and other prohibited persons throughout the country from acquiring firearms by ensuring that licensees sell firearms only after the purchaser undergoes a background check (or falls within an exception) and completes an ATF Form 4473, Firearms Transaction Record.

15. Second, as detailed extensively in the Rule and the administrative record, unserialized firearms, which have been increasingly recovered at crime scenes, are nearly impossible to trace and therefore pose a significant challenge to law enforcement. (87 FR 24655 – 24660; AR 818-819; 825-827; 855-859; 871-901;71,465-71,657). The number of suspected unserialized firearms recovered by law enforcement agencies and submitted to ATF for tracing increased by 1,083% from 2017 (1,629) to 2021 (19,273). (National Firearms Commerce and Trafficking Assessment Vol. II: Part III, Page 5). The threat of unserialized firearms continues. Between August 24, 2022, and September 17, 2023, a total of approximately 30,833 suspected privately made firearms were recovered at crime scenes and submitted for tracing. (ATF PMF Trace Data, queried September 25, 2023). Furthermore, these numbers are likely far lower than the actual number of unserialized privately made firearms recovered from crime scenes because some law enforcement departments incorrectly trace them as commercially manufactured firearms, or may not see a need to use their resources to attempt to trace firearms with no serial numbers or other markings. (87 FR 24656 n.18).

16. More specifically, from March 1, 2023, to July 31, 2023, a total of 13,828 suspected privately made firearms were recovered by law enforcement and reported to ATF's National Tracing Center.

17. Enjoining these provisions would thus irreparably harm public safety by allowing the continued proliferation of unserialized firearms—generally acquired by individuals who have not undergone a background check and sold with no record of the transaction.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 26th day of September, 2023.

MATTHEW VARISCO

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Matthew P. Varisco
Assistant Director, Enforcement Programs and Services (Regulatory Operations)
Bureau of Alcohol, Tobacco, Firearms and Explosives
United States Department of Justice