

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF FLORIDA**

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KILOTON TACTICAL, et al., )  
)  
*Plaintiffs,* )  
)  
v. )  
)  
BUREAU OF ALCOHOL, )  
TOBACCO, FIREARMS AND )  
EXPLOSIVES, )  
)  
*Defendants.* )  

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No. 3:23-cv-23985-MCR-ZCB

**AMICUS CURIAE BRIEF OF BRADY CENTER TO PREVENT GUN  
VIOLENCE, EVERYTOWN, MARCH FOR OUR LIVES, AND GIFFORDS  
LAW CENTER IN SUPPORT OF DEFENDANTS' OPPOSITION TO  
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

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## DISCLOSURE STATEMENT

*Amici curiae* submit that Brady Center to Prevent Gun Violence (“Brady”), Everytown for Gun Safety Action Fund (“Everytown”), March For Our Lives Foundation (“MFOL”), and Giffords Law Center to Prevent Gun Violence (“Giffords Law Center”) are nonprofit corporations with no parent corporations. No publicly held company owns 10% or more of the stock of Brady, Everytown, MFOL, or Giffords Law Center.

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## INTEREST OF THE AMICI CURIAE

*Amici curiae* Brady, Everytown, Giffords Law Center, and MFOL submit this brief in support of Defendants’ opposition to Plaintiffs’ motion for a preliminary injunction.

Brady Center to Prevent Gun Violence (“Brady”) is the nation’s oldest nonpartisan, nonprofit organization dedicated to reducing gun violence through education, research, and legal advocacy. Brady has a substantial interest in ensuring that the Constitution is construed to protect Americans’ fundamental right to live. Brady has filed *amicus* briefs in many cases involving the regulation of firearms, including in this Court.

Everytown for Gun Safety Action Fund is the largest gun violence prevention organization in the country. Everytown regularly advocates on behalf of common-sense gun regulations that save lives, and has submitted numerous *amicus* briefs in cases involving challenges to federal firearms laws and regulations. *See, e.g., Amicus Br., Morehouse Enterprises, LLC v. ATF*, Nos. 22-2812, 22-2854 (8th Cir. Dec. 5, 2022) (*amicus* brief in support of ATF rulemaking).

Giffords Law Center to Prevent Gun Violence (“Giffords Law Center”) is a non-profit policy organization serving lawmakers, advocates, legal professionals, gun violence survivors, and others who seek to reduce gun violence and improve the safety of their communities. Through partnerships with gun violence researchers,



public health experts, and community organizations, Giffords Law Center researches, drafts, and defends the laws, policies, and programs proven to effectively reduce gun violence. Together with its partner organization Giffords, Giffords Law Center also advocates for the interests of gun owners and law enforcement officials who understand that Second Amendment rights have always been consistent with gun safety legislation and community violence prevention strategies.

March For Our Lives Foundation (“MFOL”) is a youth-led non-profit organization seeking to promote civic engagement, education, and direct action in support of sensible gun regulations that protect communities and save lives. MFOL arose in the wake of the mass shooting at Marjory Stoneman Douglas High School in Parkland, Florida, and it has established itself as one of the foremost authorities at the intersection of youth-led activism and advocacy to prevent gun violence.

## INTRODUCTION

For over 50 years, federal law has “regulated sales by licensed firearms dealers, principally to prevent guns from falling into the wrong hands.” *Abramski v. U.S.*, 573 U.S. 169, 172 (2014). These laws serve the vital purpose of “insur[ing] domestic Tranquility” and “[p]romot[ing] the general welfare,” as enshrined in the U.S. Constitution. U.S. CONST. pmb1. While firearms have lawful uses, they also cause enormous individual and societal harm. This year alone, there have been over

600 mass shootings in the United States.<sup>1</sup> And firearms have tragically become *the* leading cause of death for children and teens nationally.<sup>2</sup> Without the Gun Control Act of 1968 (“GCA”)—the enforcement of which the Attorney General has vested in the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”)—these facts would be grimmer still.<sup>3</sup>

The avowed purpose of the GCA, as Plaintiffs in this case observe, “is to prevent the use of firearms in . . . crimes, by prohibiting certain categories of individuals from possessing firearms or ammunition and establishing record keeping requirements.” Complaint ¶ 46. To meet these vital public welfare goals, the GCA “establishes a detailed scheme to enable the [licensed firearms] dealer to verify, at the point of sale, whether a potential buyer may lawfully own a gun.” *Abramski*, 573 U.S. at 172. It does so by requiring federal firearms licensees (“FFLs”) “to check

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<sup>1</sup> *Gun Violence Archive 2023*, <https://www.gunviolencearchive.org/> (last visited Dec. 3, 2023) (reporting 625 mass shootings in the United States as of December 1, 2023).

<sup>2</sup>*Issues: Children and Teens*, EVERYTOWN RESEARCH & POLICY (<https://everytownresearch.org/issue/child-and-teens> (last updated Feb. 28, 2023)); *Gun Violence Archive 2023*, <https://www.gunviolencearchive.org/> (last visited Dec. 3, 2023); Annette Choi, *Children and teens are more likely to die by guns than anything else*, CNN (Mar. 29, 2023, 8:41 AM), <https://www.cnn.com/2023/03/29/health/us-children-gun-deaths-dg/index.html>.

<sup>3</sup> Connor Brooks, *Background Checks for Firearm Transfers, 2016-2017*, U.S. BUREAU OF JUST. STATISTICS (Feb. 2021); <https://bjs.ojp.gov/content/pub/pdf/bcft1617.pdf> (Between 1994 to 2017, over 3.5 million applications for gun sales were legally blocked due to failed background checks).

and make use of certain identifying information received from the buyer” and, before completing any sale, to submit the prospective buyer’s identifying information to the National Instant Criminal Background Check System (“NICS”) “to determine whether the potential purchaser is for any reason disqualified from owning a firearm.” *Id.* at 172–73 (citing 18 U.S.C.A. § 922 (West)). In tandem, FFLs are to memorialize these critical requirements and their firearm transactions in certain records and forms. 18 U.S.C. § 923(g); 27 C.F.R. § 478.124.

These conduct and record-keeping requirements are no mere bureaucratic red tape. Congress looks to FFLs as the first line of defense for reducing gun violence; these regulatory measures secure that line by helping to ensure that guns reach only proper hands. They are also crucial to helping solve crimes. Law enforcement will often trace guns used in crimes back to their first retail sale in order to develop investigative leads; FFLs who fail to accurately record their firearm transactions eliminate this essential tool. The GCA’s conduct and record-keeping requirements are thus linchpins in “keep[ing] guns out of the hands of criminals and others who should not have them, and . . . assist[ing] law enforcement authorities in investigating serious crimes.” *Abramski*, 573 U.S. at 180.

In June 2021, President Biden announced a “Comprehensive Strategy to Prevent and Respond to Gun Crime and Ensure Public Safety.”<sup>4</sup> Among other things,

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<sup>4</sup> *Fact Sheet: Biden-Harris Administration Announces Comprehensive Strategy to*

the policy sought to remedy historically less than stringent regulation of misconduct by FFLs in the licensing process. In January 2022, the DOJ issued an order (“Order”) memorializing this strategy to provide “fair and consistent guidelines for administrative remedies for violations[.]” ECF #1-3, Ex. 3 to Compl. at 1. The Order singles out five types of misconduct for “assumed” license revocation when done willfully and absent extraordinary circumstances: 1) transferring a firearm to a prohibited person, 2) failing to run a required background check, 3) falsifying records such as a firearms transaction form, 4) failing to respond to an ATF tracing request, and 5) refusing to permit ATF to conduct an inspection in violation of the law. *Id.* But, as explained further below, FFLs continue to be afforded a plethora of due process protections, none of which the Order lessens.

ATF cited Plaintiff Kilon Tactical, LLC (“Kilon”) for four categories of these violations, comprising the following 24 separate offenses: **five** occasions where Kilon willfully failed to run a proper background check on a firearm purchase; **five** occasions where Kilon willfully failed to fill out a Report of Multiple Sale or other Disposition of Pistols or Revolvers; **13** occasions where Kilon transferred pistols (and in one case a “receiver”) to purchasers without

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*Prevent and Respond to Gun Crime and Ensure Public Safety*, THE WHITE HOUSE (June 23, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/23/fact-sheet-biden-harris-administration-announces-comprehensive-strategy-to-prevent-and-respond-to-gun-crime-and-ensure-public-safety/>.

following Florida's three-day waiting period, as required by Florida Statute § 790.0655; and **one** occasion where Kilton willfully made a false entry in its records by incorrectly recording the background check approval number received from the Florida Department of Law Enforcement in relation to two separate sales. Mem. ISO Mot. Prelim. Inj. [ECF# 15-1] at 8.

At Kilton's revocation hearing, it had a meaningful opportunity to dispute these violations, and, indeed, the hearing ended favorably for Kilton. This is fully consistent with the revocation process: FFLs enjoy unusually robust due process protections regarding their licensing and any attempts to revoke their licenses. Affected parties receive notice of revocation before a license is revoked and can contest revocation pursuant to 27 C.F.R. § 478.74. They can also appeal an adverse decision to a federal district court.

Under the Constitution, the President of the United States "shall take Care that the Laws be faithfully executed...." U.S. CONST. art. III, § 3. Without commensurate sanctions these laws are not only toothless; they undermine the public good. "Government implies the power of making laws. It is essential to the idea of a law, that it be attended with a sanction; or, in other words, a penalty or punishment for disobedience." THE FEDERALIST No. 15 (Hamilton). The President "took care" to execute the law when he issued the Order. ATF "takes care" when it enforces the Order.

No party in this case condones the five categories of violations at issue. This, then, is a case of the duly authorized branch of our Federal Government enforcing the law to redress undeniably egregious misbehavior that is dangerous to our nation and its “law-abiding, responsible citizens.” *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111, 2156 (2022).

## ARGUMENT

### I. ATF’s Compliance Inspection Program Is Integral to Public Safety

The Attorney General has delegated authority to enforce the GCA to ATF. *See* 28 C.F.R. § 0.130(a). The GCA has two principal goals: to promote public safety by keeping guns out of the hands of persons prohibited from owning them and to assist law enforcement in fighting crime. S. Rep. No. 90-1501, at 22 (1968) (“Senate Report”) (“The principal purposes of this act are to make it possible to keep firearms out of the hands of those not legally entitled to possess them . . . and to assist law enforcement . . . in combating . . . crime.”). The GCA furthers these goals by regulating who may buy or sell firearms, and how firearm transactions are documented and tracked.

The GCA designates FFLs—those who manufacture, sell, or import firearms—the “principal agent of [law] enforcement” in “restricting . . . access to firearms.” *Huddleston v. United States*, 415 U.S. 814, 824 (1974). Under the GCA, FFLs—and only FFLs—may “engage in the business of importing,

manufacturing, or dealing in firearms.” 18 U.S.C. § 922(a)(1)(A); *see id.* § 923(a).

In exchange, FFLs serve as the GCA’s frontline mechanism for implementation:

- FFLs may not “sell or deliver” firearms to individuals who, *inter alia*, are underage, reside out of state (with limited exceptions), or have a criminal history. 18 U.S.C. §§ 922(b), 922(d); *see* 27 C.F.R. § 478.99.
- FFLs must keep inventory and transaction records and report suspicious purchasing patterns. 27 C.F.R. §§ 478.101 (record-keeping), 478.121–134 (same); 18 U.S.C. § 923(g)(3) (FFLs must report when an individual buys multiple guns within a short timeframe).
- FFLs must make their records accessible to law enforcement officials, who may access them to monitor, investigate, and combat firearm-related crimes. *See id.*

FFLs who fail to meet these or other duties may lose their license, per 18 U.S.C. §§ 922(t)(5); 923(e); 924(p); 27 C.F.R. § 478.73, and become subject to civil and criminal liability, per 18 U.S.C. §§ 922, 924. These sanctions are commensurate with the seriousness of the infractions, because failure to properly conduct background checks, falsifying records, or selling across state lines allows dangerous and prohibited persons to obtain firearms, makes it difficult if not impossible to trace firearms recovered in crimes, and undermines public safety.

The GCA’s focus on the point of sale cannot be overestimated. In essence, the GCA and its implementing regulations anoint FFLs as gatekeepers—“principal agents” in the Supreme Court’s parlance—who facilitate the law-abiding use of

firearms, and the Act reinforces the importance of their front-line role by specifying sanctions for noncompliance. *Huddleston v. U.S.*, 415 U.S. 814, 824 (1974).

**A. The Importance of Background Checks to Public Safety.**

Background checks are foundational to keeping firearms out of the hands of dangerous individuals who should not have them. To that end, the GCA requires FFLs to request background checks on firearms purchasers. 18 U.S.C. § 922(t)(1); 27 C.F.R. § 478.102(a). If this provision is not taken seriously, firearms could be acquired by prohibited persons, including criminals, domestic abusers, minors, persons determined to suffer from severe mental illness, and respondents to risk protection orders who have been found by a court to pose a significant danger of causing injury to themselves or others if having a firearm. *See* 18 U.S.C. § 922(d); Fla Stat. § 790.401.

Allowing prohibited persons unfettered access to dangerous weapons is the opposite of what Congress envisioned. In proscribing who may purchase a firearm under the GCA, “Congress . . . sought broadly to keep firearms away from the persons Congress classified as potentially irresponsible and dangerous.” *Barrett v. U.S.*, 423 U.S. 212, 218 (1976). This adheres to a “longstanding” historical tradition of “prohibitions on the possession of firearms,” such as limiting possession by “felons and the mentally ill.” *Dist. of Columbia v. Heller*, 554 U.S. 570, 626–27 (2008); *see Bruen*, 142 S. Ct. at 2122, 2122 (“[T]he Second and Fourteenth



Amendments protect the right of an ordinary, *law-abiding* citizen . . . .” (emphasis added)). The GCA honors this tradition by “establish[ing] a detailed scheme to enable the dealer to verify, at the point of sale, whether a potential buyer may lawfully own a gun.” *Abramski*, 573 U.S. at 172.

So important is the identity of the purchaser that it is a crime for an FFL to sell a firearm without running a background check on the transferee, 18 U.S.C. § 922(t); a crime for a buyer to “make any false or fictitious oral or written statement” concerning their identity, *id.* § 922(a)(6); and a crime for FFLs to make false statements in records regarding licensing or a buyer’s identity, *id.* §§ 922(m), 924(a)(3).

#### **B. The Importance of Record-Keeping to Public Safety.**

To further aid law enforcement, the GCA also requires FFLs to engage in record-keeping central to tracking firearm transactions and inventory. *See* 18 U.S.C. § 922(g)(1)(A); 27 C.F.R. §§ 478.121–134. These provisions go far in helping law enforcement fight crime. *See, e.g., U.S. v. Marzzarella*, 614 F.3d 85, 98 (3d Cir. 2010); *U.S. v. Harris*, 720 F.3d 499, 502 (4th Cir. 2013) (same).

FFL records enable law enforcement to trace a firearm and identify its last bona fide purchaser, as well as its path through the distribution chain. ATF Form 4473, for instance, includes a firearm purchaser’s address. Notably, over 60% of crime guns are purchased by individuals living within a ten-mile radius of the FFL

where the firearm was acquired.<sup>5</sup> Without accurate records, which include important personal information about purchasers, law enforcement mechanisms are crippled. *U.S. v. Mobley*, 956 F.2d 450, 454 (3d Cir. 1992) (it is “no secret that a chain of custody for a firearm greatly assists in the difficult process of solving crimes.”); *cf. Willingham Sports, Inc. v. ATF*, 348 F. Supp. 2d 1299, 1309 n.14 (S.D. Ala. 2004) ([T]he “gravity of the policy objectives of the [GCA], from both a law enforcement standpoint and a safety standpoint, strongly militates in favor of allowing the ATF to insist on total compliance as a condition of retaining” one’s gun license).

Consequently, courts routinely recognize that “[i]mproper recordkeeping is a serious violation.” *Fin & Feather Sport Shop, Inc. v. U.S. Treasury Dep’t.*, 481 F. Supp. 800, 806 (D. Neb. 1979) (quoting *Huddleston.*, 415 U.S. at 824). By failing to properly maintain required records, FFLs can “seriously undermine[] the effectiveness and purpose of the Act and ultimately endanger[] society.” *Fin & Feather*, 482 F. Supp at 806 (same).

## **II. ATF’s Enhanced Regulatory Enforcement Policy Aligns with the GCA and Applies Only to the Most Serious and Willful Betrayals of Law**

The President’s enhanced regulatory enforcement directive at issue in this case takes aim at select willful violations of law by FFLs that directly imperil public

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<sup>5</sup>*Part III: Crime Guns Recovered and Traced Within the United States and Its Territories*, ATF: BUREAU OF ALCOHOL, TOBACCO, FIREARMS & EXPLOSIVES (Jan. 11, 2023), at 36, <https://www.atf.gov/firearms/docs/report/nfcta-volume-ii-part-iii-crime-guns-recovered-and-traced-us/download>.

safety.<sup>6</sup> ATF’s consequent guidance, revised pursuant to the President’s directive, assists ATF personnel when conducting compliance inspections. *See* ATF Order 5370.1E (“Order”) (Compl. Ex. 3).

These infractions take center stage precisely because they so evidently undermine public safety and ATF’s ability to trace firearms recovered in crime.

To call this suite of violations “good-faith, clerical, and ultimately harmless errors in FFL recordkeeping” (Compl. ¶ 43) is to not read them. Four of the five infractions are not even squarely about record-keeping but about conduct. Furnishing a gun to a “prohibited person” (18 U.S.C. § 922(t)(1)); deciding not to complete a background check (18 U.S.C. § 922(t)(5)); disregarding a tracing request (18 U.S.C. § 923(g)(7)); denying an ATF inspector’s entry (18 U.S.C. § 923(g)(1)(B))—these are actions: not paperwork mistakes, and not clerical errors. When the Order finally turns to record-keeping, it hones in on a profoundly serious form of record-related abuse—falsifying records required by a federal agency—that no law-abiding, responsible citizen would condone.

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<sup>6</sup> *See Fact Sheet: Biden-Harris Administration Announces Comprehensive Strategy to Prevent and Respond to Gun Crime and Ensure Public Safety*, THE WHITE HOUSE (June 23, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/23/fact-sheet-biden-harris-administration-announces-comprehensive-strategy-to-prevent-and-respond-to-gun-crime-and-ensure-public-safety/>.

Plaintiffs contend that the Order radically departs from previous 2019 agency guidance, which had vested discretion in ATF officers when determining whether FFLs were observing licensing rules, asserting that the current Order “almost entirely prohibits the exercise of any discretion on the part of ATF personnel.” Compl. ¶ 62. Not so. The Order continues to recognize that “every inspection is unique and requires individual analysis” and, as before, provides a rubric for determining whether violations of the GCA are “willful.” Exhibit 3 to Compl. at 2 (outlining five questions “the field should consider . . . when recommending administrative action”). Even Plaintiffs acknowledge that the 2022 Order added three new variables for assessing “willfulness”: “(i) ‘publications and information provided to the FFL which explain the FFL’s legal responsibilities,’ (ii) a history of past compliance by the FFL with the same regulation, and (iii) by ‘demonstrate[ing] [sic] that the FFL has substantial experience as an FFL.’” Compl. ¶ 114 (quoting Order at Ex. 3 at 7.e.4.d-f.). Having more considerations to weigh is not the absence of discretion: it is nearer to the opposite. Contrary to Plaintiffs’ claim, ATF field officers, not a “computer system,” Compl. ¶ 76, continue to do the assessing of whether an FFL is abiding by the GCA’s background check and record-keeping requirements.<sup>7</sup>

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<sup>7</sup> Even if the so-called “computer system” recommends revocation, the Director of Industry Operations (DIO) must still find evidence of willfulness during the revocation hearing, if requested, to effectively revoke a license. Additionally, the

### III. The Data Demonstrate the Zero Tolerance Policy’s Modest Yet Important Nature

Claims that the Order dramatically transforms ATF revocation practice are belied by the facts. Since establishment of the enhanced regulatory enforcement directive, revocations of licenses remain extraordinarily rare. From October 1, 2010 through February 1, 2022, ATF reported 111,077 inspections.<sup>8</sup> While 23,124 of those inspections revealed revocable violations, only 589 were subject to revocation proceedings.<sup>9</sup> Of those, all were afforded due process rights to challenge the revocation. And it is essential to recall that these proceedings were not for innocent mistakes or accidents, but for alleged *willful* defiance of law.

To provide some context: In fiscal year (FY) 2022, ATF issued a revocation order to only 1.3% of all FFLs inspected that year.<sup>10</sup> In FY 2022, ATF conducted 6,979 compliance inspections, but only recommended revocations in 90 of these

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policy allows “extraordinary circumstances” to mitigate any revocation recommendation.

<sup>8</sup> *Audit of the Bureau of Alcohol, Tobacco, Firearms and Explosives’ Risk-Based Inspection Selection Processes and Administrative Actions Issued to Federal Firearms Licensees*, U.S. DEP’T OF JUST. OFFICE OF INSPECTOR GEN. (Apr. 2023), at ii, [https://oig.justice.gov/sites/default/files/reports/23-062\\_0.pdf](https://oig.justice.gov/sites/default/files/reports/23-062_0.pdf).

<sup>9</sup> *Id.*

<sup>10</sup> Gun Store Transparency Project, BRADY CAMPAIGN TO PREVENT GUN VIOLENCE, <https://gunstoretransparency.org/?zip%5Bdistance%5D%5Bfrom%5D=10> (last visited Sept, 12, 2023).

inspections.<sup>11</sup> Indeed, ATF revoked 39% fewer licenses in 2022 than it did almost twenty years ago in 2004 (90 in 2022 vs. 125 in 2004). *See id.*

#### **IV. Special Due Process Protections Favoring Firearm Licensees Apply Throughout the Revocation Process**

Generally, and with certain exceptions, the Order lays out three possible scenarios (other than taking no action) for violations found during inspection of an FFL: (i) a warning letter, (ii) a warning conference, and (iii) revocation pursuant to 18 U.S.C. § 923(e).

In the exceedingly rare instance when ATF does pursue license revocation, a robust set of due process protections instantly attaches. *See* 27 C.F.R. 478.73–74. First comes notice: ATF sends the FFL a notice of revocation that specifies the violations forming the bases for the pursued revocation and notifies the licensee of its right to request a hearing prior to suspension or revocation. *Id.*; *see also* 18 U.S.C. § 923(f)(2). The FFL may then request a hearing with the DIO. At that hearing, the FFL is provided full opportunity to challenge the asserted violations by submitting facts and arguments for review and cross-examining witnesses, and the FFL can be represented by an attorney. The FFL may also bring employees and documentation

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<sup>11</sup> *See Fact Sheet – Facts and Figures for Fiscal Year 2022*, ATF: BUREAU OF ALCOHOL, TOBACCO, FIREARMS & EXPLOSIVES (Jan. 2023), <https://www.atf.gov/resource-center/fact-sheet/fact-sheet-facts-and-figures-fiscal-year-2022>.

to address the violations cited. *See* 18 U.S.C. §§ 923(e) and (f)(3); 27 C.F.R. §§ 478.73 and 478.74.

Then, the government must prove not just any violation of federal firearms law but a willful violation. Not negligence, not clerical error, not accident, not innocent mishap: a *willful* violation. To do so, the government must establish that a licensee “knew of his legal obligation and purposefully disregarded or was plainly indifferent” to it. *Lewin v. Blumenthal*, 590 F.2d 268, 269 (8th Cir. 1979) (referencing the record-keeping requirements of Section 923(g)); *see also On Target Sporting Goods, Inc. v. Att’y Gen. of U.S.*, 472 F.3d 572, 575 (8th Cir. 2007) (“For the government to prove a willful violation of the federal firearms statutes, it need[s to] establish that a licensee knew of its legal obligation and purposefully disregarded or was plainly indifferent to the record-keeping requirements.” (internal quotations omitted)).

If, after all this process, the DIO ultimately determines that the cited violations were willful and revocation is justified, or if the FFL does not request a hearing, still more process ensues. ATF next sends a final notice of revocation to the licensee featuring a summary of the findings and legal conclusions that warrant revocation. *See Revocation of Firearms Licenses*, ATF: BUREAU OF ALCOHOL, TOBACCO, FIREARMS & EXPLOSIVES, <https://www.atf.gov/firearms/revocation-firearms-licenses> (last visited Sept. 8, 2023). The FFL may then appeal an adverse decision

by filing a petition for judicial review, in which review is *de novo*. 18 U.S.C. § 923(f)(3). The FFL may even introduce new evidence in support of its revocation appeal. *Id.* Notably, as an FFL challenges the revocation at an administrative hearing, the license remains in effect and the FFL can continue operating pending the outcome of the hearing. 27 C.F.R. § 478.78.

These generous protections, rippling throughout the revocation process, amply protect the interests of FFLs in those rare instances when revocation is even in play.

### CONCLUSION

Congress’s animating concern in enacting the GCA was “the practical realities . . . of firearm transactions.” *Abramski*, 573 U.S. at 183. The practical realities are that practical measures—background checks, inspections, gun tracing procedures, and common-sense record-keeping—keep guns out of the wrong hands and help save lives. Willful defiance of these mechanisms should enjoy no tolerance.



For these reasons, and those set forth in the government's submission, Plaintiffs' challenge to the policy should fail.

December 6, 2023

Respectfully submitted,

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**LOCAL RULE 7.1 CERTIFICATE**

I hereby certify that I have conferred with counsel for all parties and that all parties consent to the filing of this brief.

I further certify that the foregoing motion and supporting memorandum contain 3,848 words, excluding the items listed in Local Rule 7.1(F).

/s/ David Y. Chung  
David Y. Chung

**CERTIFICATE OF SERVICE**

I hereby certify that have this 6th day of December, 2023, I served a copy of the foregoing document with the Clerk of the United States District Court for the Northern District of Florida electronically through the Court's CM/ECF system which will serve a true and correct copy on all registered counsel.

/s/ David Y. Chung  
David Y. Chung