

No. 23-852

IN THE
Supreme Court of the United States

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

Petitioners,

v.

JENNIFER VANDERSTOK, *et al.*,

Respondents.

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

**BRIEF OF GUN OWNERS FOR SAFETY
AS *AMICUS CURIAE* IN SUPPORT OF
PETITIONERS**

ROBERT M. RADICK
Counsel of Record
ANNA G. ADAMS
MORVILLO ABRAMOWITZ GRAND
IASON & ANELLO P.C.
565 Fifth Avenue
New York, New York 10017
(212) 865-9600
rradick@maglaw.com

Counsel for Amicus Curiae

330137



COUNSEL PRESS

(800) 274-3321 • (800) 359-6859

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INTEREST OF THE *AMICUS CURIAE*¹

Amicus curiae Gun Owners for Safety (“Amicus”) is a coalition of gun owners from varied backgrounds and political affiliations who believe lives can be saved through commonsense gun laws that do not infringe upon the rights of law-abiding gun owners. With chapters across the country, Gun Owners for Safety works to prevent gun violence while supporting and protecting Second Amendment rights. Gun Owners for Safety is comprised of experienced gun owners of all trades and hobbies, including law enforcement officers, veterans, hunters, sport shooters, firearm collectors, and individuals who build guns at home. The members of Gun Owners for Safety act as, among other things, volunteer ambassadors who have educated the public and lawmakers through activities such as hosting seminars and testifying before State Legislatures. Affiliated with Giffords, the gun safety organization co-founded and led by former Congresswoman Gabrielle Giffords, a gun owner herself, the members of Gun Owners for Safety fully respect the Second Amendment and, consistent with that, are devoted to encouraging safe and responsible gun ownership practices.

Gun Owners for Safety promotes a shift in culture to inform Americans about ways to improve safe gun ownership, including through commonsense gun laws. The members of Gun Owners for Safety hail from all different walks of life, different regions of the country, and different

1. No counsel for a party authored this brief in whole or in part. No one other than Amicus, its members, and/or its counsel financed the preparation or submission of this brief.

personal beliefs, but they are united in their dedication to promoting safe and responsible gun ownership practices consistent with their Second Amendment rights.

The purpose of this amicus brief is to provide this Court with important information relating to the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) Final Rule 2021R-05F, including its impact and relevance to legitimate gun owners. Amicus provides this information from the perspective of individuals and an organization whose members fully support the protection of Second Amendment rights. The organization is equally concerned with enacting commonsense gun laws that promote the safe and legal use of firearms, aid law enforcement in fighting crime, and reduce gun violence.

SUMMARY OF ARGUMENT

Despite efforts to characterize this dispute as turning on issues such as the proper roles of the respective branches of government, the dictionary definitions of words both technical and commonplace, or the need to prevent the creation of supposedly unforeseeable legal liability, one undeniable fact lies at the heart of this matter: ghost guns pose an imminent and real-world threat to the lives and safety of all of us, and their appropriate regulation is a matter of national urgency.

Prior to the promulgation of ATF Final Rule 2021R-05F, Definition of “Frame or Receiver” and Identification of Firearms (the “Rule”), ghost gun manufacturers asserted that their products were beyond the scope of existing laws and regulations and were available for purchase without background checks. Unsurprisingly, these unserialized

weapons are particularly attractive to individuals who cannot otherwise obtain guns legally, and are frequently associated with crime. Ghost guns have been used in school shootings, workplace shootings, and attacks on law enforcement officers, David Pucino, *Ghost Guns: How Untraceable Firearms Threaten Public Safety*, Giffords Law Center, at 6 (May 2020), <https://files.giffords.org/wp-content/uploads/2020/08/Giffords-Law-Center-Ghost-Guns-Report.pdf>, as well as crimes such as robbery, drug trafficking, terrorism, and murder, *Untraceable: The Rising Specter of Ghost Guns*, Everytown for Gun Safety (May 14, 2020), <https://everytownresearch.org/report/the-rising-specter-of-ghost-guns/>.

Thousands of Americans, including law-abiding gun owners, have been victimized by ghost guns. Both easily obtainable—no matter one’s age, mental health, or criminal record—and untraceable by law enforcement, ghost guns are increasingly to blame for the most violent and tragic crimes plaguing this country. Indeed, the victims of crimes perpetrated with ghost guns include civilian gun owners engaged in appropriate self-defense, *see, e.g.*, Shaila Dewan and Robert Gebeloff, *How Gun Violence Spread Across One American City*, N.Y. Times (May 20, 2024), <https://www.nytimes.com/2024/05/20/us/gun-violence-shootings-columbus-ohio.html> (gun owner protecting himself and his family in Columbus, Ohio murdered by individual using ghost-gun version of AR-15), and law enforcement officers acting to protect public safety and carry out their official duties, *see, e.g.*, Andrew Blankstein and Eric Leonard, *Ex-Con Who Killed California Cop Used Homemade ‘Ghost Gun’*, NBC News (Aug. 15, 2019), <https://www.nbcnews.com/news/crime-courts/ex-con-who-killed-california-cop->

used-homemade-ghost-gun-n1042811 (three California Highway Patrol officers shot, one fatally, by an individual using a ghost gun).

In light of the obvious dangers these products pose, the Fifth Circuit’s decision to strike down the Rule by which the ATF appropriately sought to regulate ghost guns and the kits used to make them represents a matter of significant urgency, including for those who firmly support the Second Amendment and the legal ownership of firearms for self-defense, hunting, and other legitimate purposes. Accordingly, Amicus seeks to provide real-world context regarding the Rule’s limited scope, its clear lawfulness, and the factual flaws underlying the Fifth Circuit’s logic. In particular, with this brief, Amicus seeks to shed light on the Fifth Circuit’s failure to recognize (1) the effective equivalence between gun parts kits with *finished* frames or receivers, which have long been regulated, and kits with *nearly finished* frames or receivers that can be readily converted into a functioning firearm, which the Rule seeks to regulate; (2) the ease and speed with which these parts and kits become operable weapons, thereby bringing them firmly within the term “firearm” under the Gun Control Act of 1968 (the “Gun Control Act” or the “Act”); (3) the Rule’s consistency with the purpose and language of the Act, which in turn undercuts the Fifth Circuit’s perceived concerns about creating additional burdens on gun owners and generating supposedly unforeseeable and unexpected legal liability; and (4) the significant distinction between assembling guns from kits and crafting guns from scratch,² the false

2. In this submission, guns that are assembled by hand from raw materials will be referred to as “scratch builds.”

equivalence of which the Fifth Circuit appears to rely upon in finding that the Rule would unduly burden those who lawfully engage in at-home gun making.

The Fifth Circuit’s decision to strike down the Rule rests upon the notion that the Rule “flouts clear statutory text and exceeds the legislatively-imposed limits on agency authority in the name of public policy.” *VanDerStok v. Garland*, 86 F.4th 179, 182 (5th Cir. 2023). However, for reasons outlined briefly above and discussed in greater detail below, the Fifth Circuit’s decision is based, in numerous respects, on fundamentally faulty premises. Given these errors, along with the additional arguments advanced by petitioners and other amici curiae supporting them, the Court should reverse the Fifth Circuit’s decision, reinstate the Rule, and permit law-abiding citizens to achieve a greater measure of safety from unserialized ghost guns and the frequently dangerous individuals who acquire and use them.

ARGUMENT

I. The Rule Is Not an Unauthorized Expansion of Firearm Regulation Because It Regulates Parts and Kits that Are Effectively Equivalent to Previously Regulated Parts and Kits

In order to understand one of the most significant errors underlying the Fifth Circuit’s decision in this matter—namely, the circuit’s failure to acknowledge that the gun kits regulated under the Rule are effectively indistinguishable from gun kits that have long been regulated pursuant to the Act—it is first necessary to revert briefly to the district court’s decision in this matter.

In vacating the Rule, the United States District Court for the Northern District of Texas focused on technical distinctions between two effectively equivalent products: weapon parts kits with *finished* frames or receivers, and weapon parts kits with *nearly finished* frames or receivers that can be readily assembled into functioning firearms. *See, e.g., VanDerStok v. Garland*, 680 F. Supp. 3d 741, 770 (N.D. Tex. 2023). Based on supposed distinctions between these two types of gun kits—the former of which have long been regulated as firearms, and the latter of which can be readily converted into ghost guns and which are the subject of this litigation—the district court found that the kits with nearly finished frames or receivers are not “firearms” and thus are not appropriately subject to regulation under the Rule. *See id.*

In Amicus’s brief to the Fifth Circuit, we discussed in detail the flaws in this distinction, and the fact that, as we stated, “[t]he district court’s interpretation eschewed common sense and ordinary meaning in favor of unrealistic technical distinctions” between earlier gun kits and those more recent kits that are used to make ghost guns. However, whether intentionally or through inadvertent omission, the Fifth Circuit’s opinion ignored this issue entirely. In particular, the Fifth Circuit’s decision failed to acknowledge or make any reference whatsoever to the fact that gun kits had long been regulated under the Act, and that such long-regulated kits were barely distinguishable from the kits that are used to make ghost guns. Given this omission, we now revisit the issue and demonstrate that the long-standing regulation of gun kits that are fundamentally equivalent to the kits now used to make ghost guns demonstrates the appropriateness of the Rule, the plain extent to which the Rule falls within

the scope of the Act, and that the Rule is well within the ATF's rulemaking authority.

A. Guns Assembled From Kits Have Long Been Regulated by the Act

Before the Rule went into effect, “kit builds” were already long subject to regulation because they contained a component that fell within the scope of the Gun Control Act's definition of “firearm.” As a brief overview, the term “kit build” refers to the process of building guns from manufactured or partially manufactured components, as opposed to raw materials. “No [e]xperience [is] [n]ecessary” to perform a kit build, and “easy step-by-step instructions” are often provided. *80 Lower Jig, 80% LOWERS*, <https://www.80-lower.com/80-lower-jig/> (last visited June 30, 2024).

The key component of earlier kit builds, and indeed of firearms generally, is the frame or receiver. This “basic unit” of the firearm is generally called the “frame” in the case of a handgun and the “receiver” in the case of a long gun. *Glossary*, Sporting Arms and Ammunition Manufacturers' Institute, Inc., <https://saami.org/saami-glossary/?search=reciever> (last visited June 30, 2024). The 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.” 18 U.S.C. § 921(a)(3). Under the Act, then, a “frame” or “receiver” is the only component of a gun (in addition to the gun itself) that independently qualifies as a “firearm.” The Act does not define “frame”

or “receiver”—leaving to the executive branch the question of when “an unregulated piece of metal, plastic, or other material becomes a ‘frame or receiver’ that is a regulated item under Federal law.” Brief for Petitioner at 35, *Garland v. VanDerStok*, No. 23-852 (U.S. June 25, 2024) (quoting Definition of “Frame or Receiver” and Identification of Firearms, 87 Fed. Reg. 24,652, 24,685 (Apr. 26, 2022)). In 1968, ATF promulgated regulations defining “frame” and “receiver,” and supplementing the definition of “firearm.”³ The Rule at issue in this litigation supplemented those definitions.⁴

3. As relevant here, the 1968 regulation defined a “firearm” as: “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; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; or any destructive device; but the term shall not include an antique firearm. . . .” 33 Fed. Reg. 18,555, 18,558 (Dec. 14, 1968). And it defined a “frame or receiver” as: “That 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.” *Id.*

4. The Rule added the following language to the 1968 regulatory definition of a “firearm”:

The term 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. The term shall not include a weapon, including a weapon parts kit, in which the frame or receiver of such weapon is destroyed as described in the definition of “frame or receiver.”

87 Fed. Reg. at 24,735. Further, the Rule updated the definition for “frame or receiver”—terms that Congress left entirely for the executive branch to define. In relevant part, the Rule provides that a “frame or receiver”:

Thus, it is undisputed that even before the Rule came into effect, the purchase of a kit that contained a fully machined frame or receiver was subject to the same requirements as the purchase of a fully operational firearm. *See* 18 U.S.C. § 921(a)(3) (defining “firearm” to include a frame or receiver). The same was true of standalone fully machined frames or receivers. *See id.* These frames and receivers (sold alone or in kits) had to be serialized by the manufacturer, could be purchased only through Federal Firearms Licensees (“FFLs”), and were subject to other commonsense requirements. *See id.*

The serialization of frames and receivers have long furthered the purpose of the Act. Serial numbers enable ATF and its law enforcement partners to trace firearms from the manufacturer or importer through the distribution chain to the first retail purchaser. *See generally ATF Firearms Tracing Guide, ATF*

shall include a partially complete, disassembled, or nonfunctional frame or receiver, 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, *i.e.*, to house or provide a structure for the primary energized component of a handgun, breech blocking or sealing component of a projectile weapon other than a handgun, or internal sound reduction component of a firearm muffler or firearm silencer, as the case may be.

Id. at 24,739. The Rule also added and defined a new term: “privately made firearm” (“PMF”). A PMF is “[a] firearm, including a frame or receiver, completed, assembled, or otherwise produced by a person other than a licensed manufacturer, and without a serial number placed by a licensed manufacturer at the time the firearm was produced.” *Id.* at 24,735.

Publication 3312.13, Bureau of Alcohol, Tobacco, Firearms and Explosives (November 2011), <https://www.atf.gov/firearms/docs/guide/atf-firearms-tracing-guide-atf-p-331213>. Tracing, as the Rule at issue here recognizes, is an “integral tool for Federal, State, local, and international law enforcement agencies to utilize in their criminal investigations” and has allowed law enforcement to ultimately bring justice and closure for countless families affected by gun violence. 87 Fed. Reg. at 24,659. Furthermore, the purchaser of a fully machined frame or receiver (with or without a kit) has long had to complete a Form 4473 (ATF Firearms Transaction Record) and undergo a background check. *See id.*

In short, requiring the serialization of gun parts (specifically frames and receivers), whether or not in kits, does not “expand” the scope of the Act. Instead, serialization is central to the Act, consistent with the Act’s purpose, and consistent as well with the historical regulation of gun parts kits. The Rule simply foreclosed an argument—one advanced and exploited by gun traffickers and unlawful possessors—by bringing within its scope gun parts kits that are not meaningfully different than gun parts kits already regulated by ATF.

B. Ghost Gun Kits Are Designed to Evade the Act’s Serialization and Background Check Requirements While Being Virtually the Same as Kits with Finished Parts

Having failed even to recognize the prior regulation of gun parts kits, the Fifth Circuit necessarily failed to (a) compare gun parts kits with finished frames or receivers to kits with nearly finished frames or receivers

that are readily converted into ghost guns, (b) recognize the virtual sameness of both kits, and (c) acknowledge that this virtual sameness is not an accident, but rather is entirely by design.

A partially manufactured frame or receiver, known as a “receiver blank,” “unfinished receiver,” or “80%” frame or receiver,⁵ typically requires only a minimal amount of additional machining by the customer in order to be fully functional. *Ghost Guns*, Giffords, *supra*, at 5. These products are often packaged in “80% kits,” and with only minimal drilling and milling, can be completed with everyday home tools to create a functional frame or receiver. *Id.* at 2. The sole function of these products is to assemble a weapon designed and capable of expelling a projectile at high velocity. *See Untraceable*, Everytown, *supra*.

When constructed, these ghost guns are functionally indistinguishable from traditionally manufactured firearms. Yet until the Rule, ghost gun companies claimed that their kits were able to avoid the full panoply of federal firearms regulations like background checks, serialization, and transfer restrictions. *Ghost Guns*, Giffords, *supra*, at 5. The practical effect, therefore, of selling a frame or receiver in a partially finished form was to circumvent federal and state gun regulations that apply to the industry that manufactures and sells these

5. The terms “partially complete receiver” and “80% receiver,” suggesting a receiver that is approximately 80% complete, are marketing terms used by manufacturers and vendors offering such products, and not a statutory term under the Act. ATF refers to these unfinished, unserialized pieces as “receiver blanks.”

products, and to the buyers who purchase them. *Id.* In short, ghost gun kits allowed any individual, regardless of their ability to pass a background check, to build an unserialized and untraceable firearm with widely available tools and minimal work.

The ability of ghost guns to evade federal firearms regulation is the defining feature, not an unintended consequence, of this commercial product. Over the past decade, the market for such ghost gun kits has exploded, allowing untrained amateurs to assemble their own firearms quickly and easily from unregulated parts. But rather than comply with the Act's regulations that facilitate critical law enforcement tools, the ghost gun industry (of which various respondents here are representative) has claimed that gaps in those regulations allowed it to make an end-run around the Act. *Id.* In fact, respondents have never seriously denied the reality that their kits are intended to be made into firearms, nor did they (or could they) offer any compelling alternative interest in selling or purchasing these kits. Nonetheless, the Fifth Circuit failed to consider these issues, and in particular failed to recognize that ghost gun kits are effectively equivalent to fully machined gun kits that are indisputably covered by the Act. As a result, the Fifth Circuit has incorrectly found the Rule to represent an unauthorized extension of the Act, and would leave ghost gun kits entirely unregulated.

II. Because Ghost Gun Kits Are Designed to and May “Readily Be Converted” into Operable Firearms, They Constitute “Firearms” Under the Gun Control Act

In deciding that ghost gun kits cannot “readily be converted” into firearms, the Fifth Circuit ignored that these kits are designed for *anyone and everyone* who wishes to possess a functional firearm, regardless of their ability to pass a background check. They are not specifically designed for hobbyists or gunsmiths: no skill or specialized knowledge is required to make the simple modifications necessary to convert a nearly finished frame into a firearm.

Indeed, kits containing an unfinished receiver offer no advantage to law-abiding gun purchasers over kits containing a finished receiver. Responsible gun owners have no reason to evade the modest requirements to purchase a firearm. But for gun traffickers and those legally prohibited from possessing firearms—including those bent on violence—the lack of a background check and the lack of a serial number make ghost guns the weapon of choice.

In nonetheless reaching its determination that ghost gun kits are outside the scope of 18 U.S.C. § 921(a)(3), the Fifth Circuit centered its analysis on a superficial comparison between ghost gun kits and the disassembled shotgun that, in *United States v. Ryles*, 988 F.2d 13 (5th Cir. 1993), the circuit had held to be a firearm, *id.* at 16. In particular, the *Ryles* court focused on the fact that the shotgun in *Ryles* merely had the “barrel . . . removed from

the stock” and could therefore be re-assembled in “thirty seconds or less.” *Id.*

The Fifth Circuit compared a ghost gun kit to the shotgun in *Ryles* and concluded that the assembly of a ghost gun kit “takes much longer than thirty seconds, and the process involves many additional steps.” *VanDerStok*, 86 F.4th at 194. The Fifth Circuit stated further that “[t]he phrase ‘may readily be converted’ cannot be read to include any objects that could, if manufacture is completed, become functional at some ill-defined point in the future.” *Id.* at 192–93.

But the future functionality of a ghost gun kit is *well*-defined, and real-world facts demonstrate that a ghost gun kit can hardly be compared to or labeled as an unidentified “object” that “could . . . become functional at some ill-defined point.” To the contrary, ghost gun kit manufacturers make the assembly process foolproof, often providing not merely the necessary parts to quickly manufacture a firearm, but also the tools and step-by-step instructions that make the frame fully functional with an insignificant amount of time and effort. *See Ghost Guns*, Giffords, *supra*, at 2. And the quick-and-easy nature of the products is widely marketed and understood. The Fifth Circuit erred in failing to acknowledge what is apparent to manufacturers, consumers, and the public at large—that these products would not exist but for their ready conversion to operable firearms.

Take it from industry representatives and gun sellers themselves. Consider, for example, the experience of an NBC News reporter who purchased a Glock-style semi-automatic pistol kit at a gun show and captured his

interaction with a hidden camera. NBC News, *How Easy Is It To Build A 'Ghost Gun'? We Bought One To Find Out*, YouTube (Mar. 17, 2022), <https://www.youtube.com/watch?v=c1g-C7c-57U>. The video recording shows the reporter asking the seller of the kit if he will “just need, essentially, the drill” to complete the assembly. *Id.* at 1:47. The seller tells him that “it comes with the drill bits” and that “you just drill in three holes on each side,” and “cut these tabs off.” *Id.* at 1:49. “There’s tons and tons of videos online,” the seller assures him. *Id.* at 1:55. The reporter asks, “How long does it usually take you?” and the seller responds, “The first time is probably going to be like an hour and a half, two hours . . . My fastest time is like 24 minutes.” *Id.* at 1:58.

Consider as well a video posted online in which two individuals discuss, among other things, the amount of time it takes to build an unserialized handgun from a kit that is manufactured, sold, and distributed by Polymer80, a respondent in this matter that was an intervenor-plaintiff below. *30 Minutes to build a ghost gun?!?! ... and other thoughts on Private Gun Making*, YouTube (Apr. 27, 2022), <https://www.youtube.com/watch?v=JILCdMJXpgQ>. In the video, the two individuals describe how they and others have assembled ghost guns in 25 to 30 minutes, *id.* at 26:50, and one of the individuals describes timing himself and being able to assemble and test fire a kit gun in 28 minutes, *id.* at 30:22–32:30. The text accompanying the video also promotes the speed with which a handgun can be made from a ghost gun kit, stating:

The typical attack is that guns can be built with these kits in “less than 30 minutes!” . . . as if that was a terrible thing. The fact is that, YES, if you

have all the parts, tools and knowledge needed when you start the clock, you CAN complete a gun (and test fire it, if you're at the right venue) in less than half an hour. That's something we should be celebrating, not hiding from.

Id.

As noted previously, *see supra* at 13, for responsible gun owners, there is no reason to prefer an untraceable gun made from an unfinished frame over a traceable gun made from a finished frame. But there are two primary reasons why a criminal gun buyer might prefer a ghost gun: the lack of a serial number on the ghost gun, and the ability to avoid a background check. *Ghost Guns*, Giffords, *supra*, at 5.

III. Ghost Guns Are Used Extensively in Crime, and by Limiting the Opportunities for Criminal Misuse, the Rule Furthers the Purpose of the Gun Control Act Without Upsetting Existing Expectations of Criminal Liability

The ATF promulgated the Rule to curb the violent crime enabled by untraceable firearms, consistent with the text of the Gun Control Act and its purpose. In striking down the Rule, however, the Fifth Circuit focuses not on what the Act is intended to achieve, but rather what it is *not* intended to achieve. In particular, the Fifth Circuit emphasizes that (a) “it is not the purpose of [the Act] to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting,

trapshooting, target shooting, personal protection, or any other lawful activity,” *VanDerStok*, 86 F.4th at 194 (quoting Gun Control Act of 1968, Pub. L. No. 90-618 § 101, 82 Stat. 1213, 1213–14); and (b) the Act “is not intended to discourage or eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes,” 86 F.4th at 185 (quoting 82 Stat. at 1213). Further, the Fifth Circuit’s decision to strike down the Rule rests at least in part on its notion that the Rule would create “unforeseen criminal liability,” *id.* at 196 n.26, and therefore represents an impermissible effort by ATF to “label conduct lawful one day and felonious the next,” *id.* at 197.

In each of the foregoing respects, the Fifth Circuit’s logic is inconsistent with real-world considerations that affect gun owners and non-gun owners alike. As *Amicus* discusses below, the Rule does not deviate from the Act’s crime-fighting purpose, impose undue restrictions on law-abiding citizens, or discourage private ownership of firearms by such citizens. To the contrary, the Rule simply clarifies that the modest requirements with which law-abiding gun owners have long been willing to obey also apply to kits with partially finished frames and receivers, and does not result in either new burdens or unforeseen criminal liability.

A. The Rule Furthers the Act’s Purpose of Curbing Crime

“Congress’s ‘principal purpose’ in enacting” the Gun Control Act was “to curb crime by keeping ‘firearms out of the hands of those not legally entitled to possess them.’” *Abramski v. United States*, 573 U.S. 169, 181 (2014)

(quoting *Huddleston v. United States*, 415 U.S. 814, 824 (1974)). Ghost guns have undermined and frustrated that purpose.

One review of a limited sample of federal prosecutions from 2010 to April 2020 revealed that over 2,500 ghost guns were connected to criminal activity. *Untraceable*, Everytown, *supra*. In nearly half of these prosecutions, the defendants had been prohibited from possessing a firearm and would not have passed a background check. *Id.* Other studies have similarly confirmed that the increasing popularity of ghost gun kits has led to a corresponding increase in the use of ghost guns in crimes. *See, e.g., What Are Ghost Guns*, Brady United, <https://www.bradyunited.org/fact-sheets/what-are-ghost-guns> (last visited June 30, 2024); *Untraceable*, Everytown, *supra* (recording testimony from one ATF agent that “almost half our cases we’re coming across are these ‘ghost guns’”).

Tragically, ghost guns have been used in multiple mass shootings. In one case, a shooter had already failed a background check but was nonetheless able to build a .223 caliber semi-automatic rifle from a ghost gun kit to kill five people on a college campus in Southern California. *See* Carter Evans, *Santa Monica Shooter Built His Own Weapon*, CBS News (June 14, 2023), <https://www.cbsnews.com/news/santa-monica-shooter-built-his-own-weapon/>; *Ghost Guns*, Giffords, *supra*, at 4. In another, a sixteen-year-old California high school student killed two students and injured three others with an unserialized gun assembled from a kit. Dakin Andone, *The Gunman in the Saugus High School Shooting Used a ‘Ghost Gun,’ Sheriff Says*, CNN (Nov. 21, 2019), <https://www.cnn.com/2019/11/21/us/saugus-shooting-ghost-gun/index.html>.

This is no accident. A gun that can be obtained without a background check is more attractive to a prohibited person with a criminal history; and a gun that is not traceable if it is recovered in connection with a crime is more attractive to someone planning to commit a crime.

Ghost gun companies make no secret of their disdain for firearm regulations, and even promote the fact that their products are designed for individuals whose goal is to subvert those regulations. For example, Cody Wilson, the CEO of respondent Defense Distributed, has said that his goal is to “break gun control.” *Designer of 3-D-printed Gun Challenges Feds to Constitutional Duel*, Fox News (May 7, 2015), <https://www.foxnews.com/politics/designer-of-3-d-printed-gun-challenges-feds-to-constitutional-duel>. While being interviewed about the Rule shortly after it was finalized, Wilson opined that the Rule would stop fellow respondent Polymer80 from selling its unserialized kits and would perhaps lead to them selling “legitimate firearms”: “I think very clearly under these rules that Polymer80 can’t continue with their unserialized kits. There has been some indication in the last year that they intend to continue [by] making serialized and legitimate firearms, and maybe even serialized kits—if that makes sense.” *The Reload, Podcast: Ghost Gunner’s Cody Wilson Responds to Biden’s ‘Ghost Gun’ Kit Ban* (Apr. 17, 2022) at 35:35–36:22, <https://thereload.com/podcast-ghost-gunners-cody-wilson-responds-to-bidens-ghost-gun-kit-ban-member-early-access/>. Wilson laughed at the notion that there would be a substantial market for serialized kits: “I suppose there’s some segment of the market which might be drawn to serialized kits but I guarantee you it’s much smaller. . . . You’re buying a Glock with extra steps.” *Id.*

For his part, the co-founder of respondent Polymer80 testified during a hearing of the Nevada State Assembly on a ghost gun bill that he would not comply with it: “[W]e, as Americans, just will not comply with [the bill] no matter what you do.” Anjeanette Damon, *Why Outlawing Ghost Guns Didn’t Stop America’s Largest Maker of Ghost Gun Parts*, ProPublica (Aug. 24, 2022), <https://www.propublica.org/article/nevada-ghost-guns-polymer80-firearms-laws>.

Ghost guns feed a demand from buyers who cannot or will not comply with federal law. In a recent prosecution in the United States District Court for the Western District of Pennsylvania, a defendant gun trafficker bought and assembled ghost guns in bulk before selling them as part of what he called “hit kits,” each of which consisted of a “9-millimeter Polymer80 handgun with no serial number, a threaded barrel to attach a silencer, a silencer, subsonic ammunition, and latex gloves.” Press Release, Dep’t of Just., *Martinsburg Man Sentenced to 10 Years in Prison for Unlawful Possession, Manufacturing, and Trafficking of Ghost Guns Sold as Part of “Hit Kits”* (May 15, 2024), <https://www.justice.gov/usao-wdpa/pr/martinsburg-man-sentenced-10-years-prison-unlawful-possession-manufacturing-and>.

The Rule is an appropriate and necessary response to the intentional proliferation of dangerous weapons designed to evade law enforcement. Indeed, under these circumstances, *not* regulating partially completed firearms would be directly contrary to the crime-fighting purpose of the Act. *See Abramski*, 573 U.S. at 181. The Rule itself makes this clear. *See* 87 Fed. Reg. at 24,656 (noting that ATF had recovered privately made firearms from 692 homicides or attempted homicides from 2016 to 2021).

B. The Rule Does Not Unduly or Unnecessarily Burden Law-Abiding Gun Owners, or Create Unexpected Criminal Liability

The Rule frustrates the ability of bad actors to obtain untraceable guns without imposing any substantial burden on a lawful and responsible gun owner who is able to obtain firearms legally, notwithstanding the Fifth Circuit’s assertion to the contrary. *See VanDerStok*, 86 F.4th at 194 (“ATF’s Final Rule . . . places substantial limits on the well-known and previously unregulated right to ‘the private ownership or use of firearms by law-abiding citizens for lawful purposes.’” (quoting 82 Stat. at 1213)).

The Rule does not prevent any law-abiding American from purchasing a kit with a partially machined frame or receiver. It merely defines such kits as firearms so that they will be subject to the same modest conditions that apply to all commercially sold firearms, including background check and serialization requirements.

Despite the Fifth Circuit’s suggestion to the contrary, background checks do not represent “substantial limits” on “the private ownership or use of firearms by law-abiding citizens for lawful purposes.” *VanDerStok*, 86 F.4th at 185 (quoting 82 Stat. at 1213). To law-abiding gun owners, background checks are not burdens, they are routine: lawful gun owners willingly submit to a background check millions of times each year. *See NICS Firearm Background Checks: Month/Year November 30, 1998 – May 31, 2024*, Federal Bureau of Investigation, https://www.fbi.gov/file-repository/nics_firearm_checks_-_month_year.pdf (last visited June 30, 2024) (29,854,176 firearm background checks initiated through the National Instant Criminal Background Check System in 2023 alone). Background

checks make us all safer because they prevent sales to the very persons whom the Rule appropriately seeks to regulate—“traffickers and prohibited persons.” 87 Fed. Reg. at 24,669–70.

The Fifth Circuit’s next puzzling concern—that the Rule results in “unforeseen criminal liability,” *VanDerStok*, 86 F.4th at 196 n.26—disregards that the Rule focuses almost exclusively on ensuring that *gun sellers* follow the laws applicable to *gun sales*. The only implication for *gun owners* is that individuals who were already prohibited from possessing guns are now also prohibited from possessing nearly finished frames and receivers. But anyone who faces criminal liability for possessing a gun kit under the Rule is necessarily prohibited from possessing a gun, and so, even before the Rule’s promulgation, would have been in criminal violation of the Gun Control Act the moment the firearm was completed. As a result, any liability is not “unforeseen,” and lenity is not in order.

IV. By Incorrectly Conflating Kit Builds with Scratch Builds and Gunsmithing, the Fifth Circuit Vastly Overstates the Impact of the Rule

As an organization of gun owners who support the Second Amendment, including certain gun owners who enjoy building firearms, it is crucial for us to emphasize that the Rule does not impose any new or burdensome regulations on at-home gun making, and is narrowly tailored to avoid infringing on the rights of law-abiding citizens to build their own firearms. It also does not affect gunsmiths who build firearms from scratch.

Scratch builders are those who typically craft historically accurate firearms using careful, painstaking techniques. These scratch builds are fundamentally different from kit builds. The scratch build community does not use partially manufactured frames or receivers. Crafting a firearm from scratch, such as a musket modeled after those used in the late 18th and early 19th centuries, requires highly specialized knowledge and skill. *See Making Guns*, Springfield Armory, National Park Service, <https://www.nps.gov/□spar/learn/historyculture/making-guns.htm> (last visited June 30, 2024); *see also* Colonial Williamsburg, *#TradesTuesdays: Live with the Gunsmith*, YouTube (Dec. 7, 2020), https://www.youtube.com/watch?v=9osRnfu_Nxs.

Given these fundamental differences, scratch builds are unaffected by the Rule. The Rule solely (and minimally) affects kit builds—those involving a “partially complete, disassembled, or nonfunctional frame or receiver, including a frame or receiver parts kit.” 87 Fed. Reg. at 24,739.

However, throughout this case, respondents have falsely conflated scratch builds and partially assembled kit builds. Respondents’ misleading arguments frame the Rule as far-reaching (which it is not) and make their objections to the Rule seem reasonable (which they are not). In particular, in their briefing at both levels below, respondents relied heavily on the faulty premise that the Rule sweeps away entirely the rights of law-abiding gun owners to complete at-home builds of firearms.

Like respondents, the Fifth Circuit also fails to acknowledge the distinctions between scratch builds

and kit builds. For example, the Fifth Circuit jumps from a discussion of the “historic tradition of at-home gun making” to the conclusion that “ATF’s Final Rule . . . add[s] significant requirements for those engaged in private gun-making activities,” *VanDerStok*, 86 F.4th at 185, without any acknowledgement of or reference to the night-and-day difference between a scratch build and the assembly of a gun from a kit. An accurate assessment of the Rule would recognize that it simply extends existing federal restrictions to cover partially finished and easy-to-assemble firearms, and does not affect scratch builds at all.

As a result of this flaw in its analysis, the Fifth Circuit exaggerates the Rule’s impact on at-home gun-making in two ways. First, when identifying supposed “additional burdens” that, according to the Fifth Circuit, the Rule imposes on kit builds—including, for example, that the parts contained in a kit could fall into the Rule’s new definitions, “such that [an] individual cannot sell, transport to another state, or, in some instances, possess the parts at all,” *id.* at 194 (footnotes omitted)—the circuit court fails to recognize that none of those “burdens” actually impact a law-abiding gun owner’s *private gun-making activities*. Indeed, neither selling nor transporting kits containing nearly finished frames or receivers across state lines can seriously be considered “private gun-making”; both are commercial activities wholly separate from private gun making, and both are properly subject to conditions and qualifications that are presumptively lawful under *District of Columbia v. Heller*. 554 U.S. 570, 626–27 & n.26 (2008).

Second, the Rule’s revised definition of “frame or receiver” plainly and *entirely* excludes scratch build firearms. In particular, the Rule explicitly states that its 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*)." 87 Fed. Reg. at 24,739 (emphasis added); *see also id.* at 24,653 ("[T]he final rule makes clear that articles that have not yet reached a stage of manufacture where they are clearly identifiable as an unfinished component of a frame or receiver (*e.g., unformed blocks of metal, liquid polymers, or other raw materials*) are not frames or receivers."). There is thus no legitimate basis for the Fifth Circuit's notion that the Rule imposes restrictions of any kind on scratch builds.

CONCLUSION

For the foregoing reasons, Amicus submits that the Rule is consistent with the statutory language and purpose of the Gun Control Act, and represents a reasonable, commonsense, and above all, legally permissible means of addressing the dangers posed by the proliferation of ghost guns and the kits from which they are made. The decision of the Fifth Circuit should therefore be reversed in its entirety, and the challenged portions of the Rule should be reinstated.

Respectfully submitted,

ROBERT M. RADICK
Counsel of Record
ANNA G. ADAMS
MORVILLO ABRAMOWITZ GRAND
IASON & ANELLO P.C.
565 Fifth Avenue
New York, New York 10017
(212) 865-9600
rradick@maglaw.com

Counsel for Amicus Curiae

July 2, 2024

SUPREME COURT OF THE UNITED STATES

No. 23-852

-----X
MERRICK B. GARLAND, ATTORNEY GENERAL, ET AL.,

Petitioners,

v.

JENNIFER VANDERSTOK, ET AL.,

Respondents.
-----X

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that the document contains 6,408 words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

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

Executed on this 2nd day of July 2024.



Sofia Lignos

Sworn to and subscribed before me this 2nd day of July 2024.



MARIANA BRAYLOVSKIY
Notary Public State of New York
No. 01BR6004935
Qualified in Richmond County
Commission Expires March 30, 2026

AFFIDAVIT OF SERVICE

SUPREME COURT OF THE UNITED STATES
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STATE OF NEW YORK)

COUNTY OF NEW YORK)

I, Sofia Lignos, being duly sworn according to law and being over the age of 18, upon my oath depose and say that:

I am retained by Counsel of Record for *Amicus Curiae*.

That on the 2nd day of July 2024, I served the within Brief of Gun Owners for Safety as *Amicus Curiae* in Support of Petitioners in the above-captioned matter upon:

Charles R. Flores
Flores Law PLLC
*Attorneys for Defense Distributed;
Polymer 80, Inc.; Second Amendment
Foundation, Inc.*
917 Franklin Street
Suite 600
Houston, Texas 77002
(713) 364-6640
cf@chadflores.law

Elizabeth B. Prelogar
Solicitor General of the United States
*Attorneys for Merrick B. Garland,
Attorney General, et al.*
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530
(202) 514-2217
supremectbriefs@usdoj.gov

David H. Thompson
Cooper & Kirk, PLLC
*Attorneys for Jennifer VanDerStok,
Michael G. Andren, Tactical
Machining, L.L.C., and Firearms
Policy Coalition, Inc.*
1523 New Hampshire Avenue, NW
Washington, DC 20036
(202) 220-9600
dthompson@cooperkirk.com

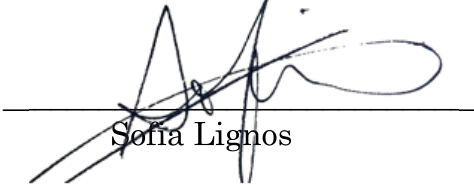
by sending three copies of same, addressed to each individual respectively, and enclosed in a properly addressed wrapper, through Federal Express, postage prepaid. An electronic version was also served by email to each individual.

That on the same date as above, forty copies of the within Brief of Gun Owners for Safety as *Amicus Curiae* in Support of Petitioners were sent through Federal Express, postage prepaid. In addition, the brief has been submitted through the Court's electronic filing system.

All parties required to be served have been served.

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

Executed on this 2nd day of July 2024.


Sofia Lignos

Sworn to and subscribed before me this 2nd day of July 2024.



MARIANA BRAYLOVSKIY
Notary Public State of New York
No. 01BR6004935
Qualified in Richmond County
Commission Expires March 30, 2026

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