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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 STATE OF CALIFORNIA,
16 *et al.*

17 Plaintiffs,

18 v.

19 BUREAU OF ALCOHOL, TOBACCO,
FIREARMS, and EXPLOSIVES (“ATF”),
20 *et al.*,

21 Defendants.

) Case No. 3:20-cv-06761-EMC

) **FEDERAL DEFENDANTS’ REPLY IN**
) **SUPPORT OF MOTION TO DISMISS**
) **PLAINTIFFS’ FIRST AMENDED COMPLAINT**
) **FOR DECLARATORY AND INJUNCTIVE**
) **RELIEF**

) Noting Date: January 26, 2023

) Time: 4:30 p.m.

) Place: Courtroom 5, 17th Floor

I. INTRODUCTION

1 Plaintiffs are a state (California), an organization (Giffords Law Center, or “GLC”), and two
2 individuals (Bryan Muehlberger and Frank Blackwell) who support gun safety regulation, including
3 regulation of products that individual purchasers can use to construct privately made firearms,
4 sometimes colloquially known as “ghost guns.” Plaintiffs primarily challenge a rule promulgated last
5 year by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”). Final Rule, Definition of
6 “Frame or Receiver” and Identification of Firearms, 87 Fed. Reg. 24,652 (Apr. 26, 2022) (“Rule”).
7 Plaintiffs agree with and support the Rule’s central provisions, which make clear that a product that may
8 readily be completed into an operable firearm (including a firearm frame or receiver) is a firearm subject
9 to federal regulation. In essence, Plaintiffs’ complaint is that the Rule does not go quite far enough, in
10 that there are some incomplete frames and receivers that the Rule incorrectly fails to classify as firearms.
11

12 Plaintiffs’ Opposition to Defendants’ Motion to Dismiss, ECF No. 129 (“Opp.”), confirms that
13 Plaintiffs lack standing to challenge the Rule. Plaintiffs do not contend that ATF has directly harmed
14 them. Rather, they claim indirect harm resulting from proliferation of ghost guns and crimes committed
15 with ghost guns. Yet Plaintiffs’ Opposition reinforces that their standing theories depend on harm caused
16 by ghost guns in general, not harm caused by the specific products that are the subject of this narrow legal
17 dispute (*i.e.*, the products that Plaintiffs contend ATF incorrectly fails to classify as firearms). Plaintiffs
18 fail to articulate any plausible connection between their factual allegations of harm and their legal theories
19 of standing.

20 Plaintiffs also challenge guidance documents and classifications ATF issued before the Rule went
21 into effect, which have now been superseded by the Rule. Plaintiffs’ Opposition confirms that these claims
22 are unripe. Plaintiffs do not dispute that such guidance and classifications are not currently in effect. They
23 merely assert ATF may readopt them if another court were to vacate the Rule. Such a challenge to
24 hypothetical future agency actions is just the kind of abstract claim that the ripeness doctrine precludes.

II. ARGUMENT

A. Plaintiffs’ Standing Arguments Rest on Theories of Harm That Do Not Match the Text of the Challenged Rule.

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28 Plaintiffs’ theory of harm does not match the rule they are challenging, a flaw that pervades all of

1 their arguments for standing. Plaintiffs claim to be harmed by ghost guns, writ large, as a result of the
2 federal government’s alleged failure to regulate ghost guns more extensively, *i.e.*, in the precise way
3 Plaintiffs prefer. For example, Plaintiffs cite statistics and anecdotes about ghost guns recovered by law
4 enforcement or used in crimes, all from before the Rule went into effect in August 2022. Opp. 6-7; *see*
5 *also* First Am. Compl. for Declaratory & Injunctive Relief ¶¶ 50-58, 111-15, 122-24, ECF No. 122 (“Am.
6 Compl.”) (allegations about violence and crimes involving ghost guns). Plaintiffs contend their injuries
7 are caused by “[t]he proliferation of ghost guns,” Opp. 18 (California), “[t]he ghost gun problem,” Opp.
8 21 (GLC), and “ghost gun violence,” Opp. 23 (individuals) (citation omitted).

9 But Plaintiffs do not and cannot establish that alleged harm caused by ghost guns is general is
10 traceable to the challenged Rule because the Rule regulates many products that are used to construct
11 privately made firearms. Specifically, the Rule clarifies that the definition of firearms subject to regulation
12 under the Gun Control Act (GCA) “include[s] a weapon parts kit that is designed to or may readily be
13 completed, assembled, restored, or otherwise converted to expel a projectile by the action of an explosive.”
14 *See* 87 Fed. Reg. at 24,735 (27 C.F.R. § 478.11). The Rule also defines the “frame or receiver” of a
15 firearm (which is itself a firearm under the GCA) to “include a partially complete, disassembled, or
16 nonfunctional frame or receiver, including a frame or receiver parts kit, that is designed to or may readily
17 be completed, assembled, restored, or otherwise converted to function as a frame or receiver.” *Id.* at
18 24,739 (27 C.F.R. § 478.12(c)). Therefore, the Rule provides that any part or kit that may readily be
19 converted either into a functional weapon or a functional frame or receiver is a “firearm” subject to full
20 regulation under the GCA (including provisions requiring background checks and serialization and
21 prohibiting certain groups from possessing firearms). Whatever harms Plaintiffs claim resulted from
22 purported nonregulation of ghost guns before the Rule went into effect cannot establish injury caused by
23 the Rule.

24 Plaintiffs nonetheless try to establish standing by arguing that the Rule provides that so-called “80
25 percent frames and receivers”¹ are not firearms if not sold with supporting materials such as templates,
26 jigs, molds, equipment, tools, or instructions. *See, e.g.*, Opp. 1 (“under the Final Rule, ATF still permits

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28 ¹ “80 percent” is a marketing term used by companies in the firearms industry to refer to a wide variety of
incomplete frames and receivers. “However, that term is neither found in Federal law nor accepted by
ATF.” 87 Fed. Reg. at 24,663 n.47.

1 the sale of 80 percent receivers and frames as standalone products”); Opp. 11 (“the Final Rule provides .
2 . . . that 80 percent frames and receivers sold *without* a template, jig, parts kit, or other materials are not
3 firearms”); Opp. 12 (“As long as 80 percent components are sold separately from jigs and toolkits, the
4 parts are not subject to the serialization, background check, and recordkeeping requirements of the
5 GCA.”). As an initial matter, the Amended Complaint contains no factual allegations about harm
6 specifically caused by ghost guns constructed from 80 percent frames and receivers sold as standalone
7 products.

8 More importantly, Plaintiffs mischaracterize the Rule. The Rule does not create a blanket rule that
9 standalone 80 percent frames and receivers are not firearms. To the contrary, incomplete frames and
10 receivers, including so-called 80 percent frames and receivers that are sold without supporting materials
11 such as jigs, are firearms under the Rule if they “may readily be completed, assembled, restored, or
12 otherwise converted to function as a frame or receiver.” 87 Fed. Reg. at 24,739 (27 C.F.R. § 478.12(c)).
13 In fact, ATF recently issued an open letter to all federal firearms licensees clarifying that certain
14 incomplete frames marketed as “80 percent” frames are firearms even when sold as standalone products.
15 *See* ATF, Open Letter to All Federal Firearms Licensees, Impact of Final Rule 2021-05F on Partially
16 Complete Polymer80, Lone Wolf, and Similar Semiautomatic Pistol Frames (Dec. 27, 2022) (Ex. 1). ATF
17 concluded:

18 Applying the regulatory text of Final Rule 2021-05F, partially complete Polymer80, Lone Wolf,
19 and similar striker-fired semiautomatic pistol frames, including, but not limited to, those sold
20 within parts kits, have reached a stage of manufacture where they “*may readily be completed,*
21 *assembled, restored, or otherwise converted*” to a functional frame. This definition of “readily”
22 applies to each and every classification of a partially complete frame or receiver under this Rule,
23 whether sold alone or as part of a kit. Therefore, *even without* any associated templates, jigs, molds,
24 equipment, tools, instructions, guides, or marketing materials, these partially complete pistol
25 frames are “**frames**” and also “**firearms**” as defined in the GCA and its implementing regulations,
26 18 U.S.C. § 921(a)(3)(B) and 27 CFR 478.12(a)(1), (c).

27 *Id.* at 1.

28 The Open Letter described these products (which are marketed as “80 percent” frames) and
explained that they could be completed quickly and easily, even without supporting materials, therefore
meeting the Rule’s definition of “readily.” *See id.* at 6 (explaining that a Polymer80 “80 percent” Glock-
type frame can be completed “by a person with novice skill, using common tools, such as a Dremel-type

1 rotary tool, within minutes—an amount of time and a set of circumstances that are far less than required
2 to fall within the meaning of the term ‘readily’ in the Final Rule”). Notably, Plaintiffs’ Amended
3 Complaint makes clear that Plaintiffs believe that “80 percent” pistol frames sold by Polymer80—some
4 of the very products that the Open Letter determined are “firearms” under the Rule—are a significant
5 source of the ghost gun problem. *See* Am. Compl. ¶ 77 (alleging that “Polymer80 contributes significantly
6 to ghost gun violence nationwide,” and specifically referring to “DIY handguns” constructed from
7 Polymer80’s products); *see also id.* ¶¶ 79, 95. But because the Rule makes clear that such frames are
8 firearms, Plaintiffs cannot plausibly argue that any harm caused by such ghost guns is traceable to the
9 Rule.

10 The only text in the Rule with which Plaintiffs express actual disagreement is a single illustrative
11 example applicable to a narrow class of products. Plaintiffs disagree with ATF’s conclusion that “[a]
12 billet or blank of an AR-15 variant receiver” without supporting materials (such as jigs) or indexing or
13 machining in “critical interior areas” is “not a receiver.” 87 Fed. Reg. at 24,739 (27 C.F.R. § 478.12(c),
14 Example 4). Plaintiffs mischaracterize this example as providing that *no* standalone 80 percent frames or
15 receivers are firearms, *see* Opp. 11 & n.5 (citing Example 4 as sole support for the proposition that under
16 the Rule, “80 percent frames and receivers sold *without* a template, jig, parts kit, or other materials are
17 not firearms”), but they ignore that this example is limited only to “AR-15 variant” receivers without
18 indexing or machining in critical interior areas. *Id.* at 11. By its terms, Example 4 does not apply to any
19 products other than incomplete AR-15 variant receivers, and it does not even apply to AR-15 variant
20 receivers with any machining or indexing in critical interior areas, nor does it apply to any incomplete
21 frames or receivers sold with supporting materials such as templates or jigs.

22 In sum, Plaintiffs agree with the Rule’s definition of firearms as including products that can readily
23 be completed into an operable weapon or an operable frame or receiver. They merely have a limited and
24 technical disagreement with ATF about the application of that standard to a narrow class of products.
25 Even to the extent that harm caused by ghost guns could establish injury (and Plaintiffs’ standing
26 arguments have other flaws, described further below, *see infra* Part II.B), only harm caused by the narrow
27 class of products that are the subject of Plaintiffs’ legal disagreement with ATF could possibly be relevant
28 to standing. But there are no factual allegations in the Amended Complaint about any harm caused by

1 that narrow class of products.

2 **B. None of the Plaintiffs Has Standing to Challenge the Rule.**

3 Plaintiffs' primary claims in this case are a challenge to ATF's Rule. *See* Am. Compl. ¶¶ 143,
4 148-52. Plaintiffs claim that the Rule has injured California by forcing California to expend funds to
5 prevent ghost gun violence, has exacerbated ghost gun violence in a way that has forced GLC to divert
6 resources to combatting ghost gun violence, and has subjected the individual Plaintiffs to substantial risk
7 of ghost gun violence (and attendant emotional harm). But Plaintiffs fail to set forth factual allegations
8 that plausibly support the legal requirements for any of these theories of standing. At bottom, Plaintiffs'
9 standing arguments suffer from the common flaw that they allege harm caused by ghost guns in general,
10 not the narrow class of products that they contend the Rule wrongly failed to classify as firearms.

11 **1. California Lacks Standing.**

12 California claims to have standing because it has enacted legislation and expended funds to combat
13 ghost gun violence. *Opp.* 15-18. This theory of standing is precluded by *Pennsylvania v. New Jersey*,
14 426 U.S. 660 (1976), which holds that state expenditures to remedy harms purportedly caused by other
15 sovereigns' laws are "self-inflicted" and do not constitute injury-in-fact. *Id.* at 664. Plaintiffs argue that
16 *Pennsylvania* does not apply here, *Opp.* 17, but the case Plaintiffs cite, *California v. Azar*, 911 F.3d 558
17 (9th Cir. 2018), expressly explains that *Pennsylvania* applies where the state's choice to expend funds is
18 "tethered to the legislative decisions of other sovereigns." *Id.* at 574. Here, California's theory of standing
19 is that its ghost gun legislation "was necessary in large part because ATF has failed in its duty to properly
20 regulate 80 percent frames and receivers." *Opp.* 16. Therefore, California asserts that its decision to
21 spend money combatting ghost guns was "tethered" to the "decisions" of "[an]other sovereign[.]"
22 *California*, 911 F.3d at 574, the United States. That is precisely the situation in which *Pennsylvania*
23 precludes standing.

24 Even in cases where allegations of state expenditures could be relevant to standing, another case
25 cited by Plaintiffs acknowledges that such expenditures must be "reasonably incur[red] costs to mitigate
26 or avoid' a 'substantial risk' of harm." *California v. Ross*, 358 F. Supp. 3d 965, 1004 (N.D. Cal.) (quoting
27 *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 414 n.5 (2013)), *vacated and remanded*, 139 S. Ct. 2778
28 (2019). As explained above, California alleges that ghost guns as a whole have proliferated in California

1 and have been involved in crimes in California. *See* Opp. 16 (“residents, including law enforcement
 2 officers, have repeatedly been victimized in recent years in devastating incidents involving ghost guns”);
 3 Am. Compl. ¶¶ 113-15 (citing statistics about seizures of “ghost guns” in California). But the Amended
 4 Complaint contains no specific allegations of any harm caused by ghost guns constructed from products
 5 that the Rule does not regulate as firearms. Therefore, California fails to allege that the purported harm
 6 these state laws were intended to mitigate was caused by the Rule, as opposed to ghost guns regulated as
 7 firearms by the Rule that proliferated before the Rule went into effect.

8 California’s erroneous conflation of all ghost guns with the narrow class of products in dispute
 9 also undermines California’s argument that its “‘theory of standing’ rests not on ‘mere speculation’ but
 10 on ‘the predictable effect of Government action on the decisions of third parties.’” Opp. 19 (quoting *Dep’t*
 11 *of Com. v. New York*, 139 S. Ct. 2551, 2566 (2009)). Plaintiffs’ purported “overwhelming evidence
 12 supporting this chain of causation,” *Id.*, consists of evidence of harm caused by “ghost guns” in general.
 13 *See* Am. Compl. ¶¶ 111-25. But Plaintiffs point to no specific factual allegations of harm caused by a
 14 ghost gun constructed from a product that the Rule does not classify as a firearm.²

15 2. Giffords Law Center (GLC) Lacks Standing.

16 GLC argues for organizational standing to challenge the Rule based on the theory that the Rule
 17 has caused GLC to divert its resources. As GLC acknowledges, this theory requires showing: “(1)
 18 frustration of its organizational mission; and (2) diversion of its resources to combat the particular
 19 [conduct] in question.” Opp. 20 (quoting *Smith v. Pac. Props. & Dev. Corp.*, 358 F.3d 1097, 1105 (9th
 20 Cir. 2004)). But GLC fails to satisfy either requirement.

21 For the first requirement, GLC asserts that its interests have been frustrated by “the ghost gun
 22 problem,” or “a gun violence epidemic exacerbated by ghost guns.” Opp. 20-21. This argument fails for
 23 the same reason that California’s argument fails: alleged harm caused by “ghost guns” in general does not
 24 equate to harm caused by the narrow class of products in dispute, and GLC (like California) makes no

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 26 ² For similar reasons, California does not plausibly allege standing based on “its ‘quasi-sovereign
 27 interest in the health and well-being . . . of its residents in general.’” Opp. 15 n.7 (quoting *Alfred L.*
 28 *Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 607 (1982)). Such a theory must be based
 on “alleged injury to a sufficiently substantial segment of [a state’s] population.” *Snapp*, 458 U.S. at
 607. California does not allege that absent the relief it seeks, a substantial segment of California’s
 population will be injured by the ghost guns constructed from the narrow class of products that are the
 subject of Plaintiffs’ legal dispute with ATF.

1 factual allegations of harm caused by ghost guns constructed from products that are not firearms under
 2 the Rule. GLC therefore fails to “show that it would have suffered some other injury if it had not diverted
 3 resources to counteracting the problem.” *La Asociacion de Trabajadores de Lake Forest v. City of Lake*
 4 *Forest*, 624 F.3d 1083, 1088 (9th Cir. 2010).

5 GLC also fails to allege that the Rule has caused it to divert resources. GLC points solely to
 6 paragraphs 135-137 of the Amended Complaint as containing such allegations. Opp. 21-22. But those
 7 allegations are nearly identical to allegations in Plaintiffs’ original Complaint, filed in 2020, long before
 8 the Rule was promulgated or went into effect; both the original Complaint and Amended Complaint allege
 9 that GLC has expended resources on legislative, policy, and educational initiatives concerning “ghost
 10 guns.” *Compare* Compl. for Declaratory & Injunctive Relief ¶¶ 113-15, ECF No. 1, *with* Am. Compl.
 11 ¶¶ 135-37.³ Because GLC was expending its resources in the same way before the Rule went into effect
 12 as after, GLC does not plausibly allege that the Rule has caused the organization to “change [its] behavior”
 13 to spend more resources on combatting ghost gun violence. *Nat’l Council of La Raza v. Cegavske*, 800
 14 F.3d 1032, 1040 (9th Cir. 2015).

15 **3. Mr. Muehlberger and Mr. Blackwell (“Individual Plaintiffs”) Lack Standing.**

16 The individual Plaintiffs suffered the most heartbreaking loss imaginable when they lost children
 17 to gun violence. Defendants deplore such gun violence and are working earnestly to take actions to reduce
 18 such violence. However, the individual Plaintiffs have not alleged an ongoing Article III injury-in-fact
 19 traceable to the Rule necessary to sustain a claim for prospective relief.

20 Individual Plaintiffs first argue that their emotional harm constitutes injury-in-fact. Opp. 23-24.
 21 But they fail to allege that their emotional harm is traceable to the Rule. Rather, Individual Plaintiffs
 22 allege their emotional harm results from “fear of ghost gun violence.” Am. Compl. ¶¶ 127, 132. But as
 23 explained above, Plaintiffs make no factual allegations about proliferation or violence involving ghost
 24 guns constructed from products that the Rule does not classify as firearms.

25 For the same reason, individual Plaintiffs fail to plausibly allege an injury caused by the Rule from

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 27 ³ The only new allegation in the Amended Complaint concerning GLC’s standing is that GLC made two
 28 legal filings in 2021. *See* Am. Compl. ¶ 136. But legal filings in 2021 could not have been caused by the
 Rule, which went into effect in 2022. In any event, the Ninth Circuit has indicated that an expenditure on
 “litigation . . . is generally insufficient” to constitute diversion of resources for organizational standing
 purposes. *Smith*, 358 F.3d at 1105.

1 “increased risk of suffering from future ghost gun violence.” Opp. 24. Again, Plaintiffs’ allegations
2 concerning the risk of violence in Southern California concern ghost guns in general, not ghost guns
3 constructed from products that the Rule does not classify as firearms. *See, e.g.,* Am. Compl. ¶ 127 (“[i]n
4 2021, the Los Angeles Police Department announced that ghost guns ‘accounted for 33 percent of all guns
5 recovered by the department’”) (citation omitted). To allege injury based on future harm, such harm must
6 be “certainly impending,” or at least there is a “substantial risk” that such harm will occur. *Clapper*, 568
7 U.S. at 410, 414 n.5. But individual Plaintiffs fail to allege a substantial risk that not only will they be
8 injured by a ghost gun, but that it will be a ghost gun constructed from a product that the Rule does not
9 classify as a firearm. For that reason, individual Plaintiffs also fail to allege plausibly that changing the
10 Rule would redress any harm by appreciably reducing the risk of ghost gun violence. Individual Plaintiffs
11 essentially concede the point when they argue that they need only allege an “increased risk of ghost gun
12 violence,” rather than “allege that they would suffer violence committed with one of the specific ghost
13 guns at issue.” Opp. 26. But any injury caused by a ghost gun constructed from a product that the Rule
14 regulates as a firearm could not logically be caused by the Rule.

15 **C. Plaintiffs’ Contingent Challenges to ATF’s Classifications and Guidance that**
16 **Preceded the Rule Are Unripe.**

17 Plaintiffs’ challenges to ATF guidance documents and classifications that were superseded by the
18 Rule are unripe because they depend on the hypothetical prediction that in the future, ATF will readopt
19 past guidance that is not currently operative. As a case cited by Plaintiffs explains, “[f]or a case to be ripe,
20 it must present issues that are ‘definite and concrete, not hypothetical or abstract.’” *Bishop Paiute Tribe*
21 *v. Inyo Cnty.*, 863 F.3d 1144, 1153 (9th Cir. 2017) (quoting *Thomas v. Anchorage Equal Rights Comm’n*,
22 220 F.3d 1134, 1139 (9th Cir. 2000)). It is hard to imagine a dispute more abstract and hypothetical than
23 a challenge to superseded guidance expressing positions an agency does not currently hold.

24 Plaintiffs argue that it is not “speculative” that another court will vacate the Rule, given that one
25 court has preliminary enjoined ATF from enforcing certain provisions of the Rule against certain litigants.
26 Opp. 29. But the precise probability of a future court ruling in another case is beside the point, and this
27 Court need not and should not venture guesses about how other Article III courts will rule. The crucial
28 point, which Plaintiffs do not dispute, is that the guidance and classifications they challenge are not in

1 effect now, making Plaintiffs’ challenge “hypothetical.” *Bishop Paiute Tribe*, 863 F.3d at 1153.

2 Furthermore, Plaintiffs’ claims rest not just on a single contingency of a future court ruling
3 vacating the Rule but on a series of contingencies. Plaintiffs’ claims could become ripe only if ATF were
4 to respond to such a court ruling by readopting the guidance and classifications that Plaintiffs challenge.
5 In arguing otherwise, Plaintiffs cite a case holding that “[t]he effect of invalidating an agency rule is to
6 reinstate the rule previously in force.” *Opp*, 29-30 (quoting *Paulsen v. Daniels*, 413 F.3d 999, 1008 (9th
7 Cir. 2005)). But that case is inapposite because Plaintiffs do not seek to challenge “the rule previously in
8 force,” *Paulsen*, 413 F.3d at 1008, meaning ATF’s regulatory definition of “firearm” that existed before
9 the Rule went into effect; rather, they seek to challenge a variety of agency guidance documents and
10 classification letters issued to specific manufacturers. Plaintiffs cite no authority for the contention that
11 such guidance and classifications would automatically be reinstated upon a hypothetical future court
12 ruling.

13 A claim is not ripe if it hinges on “contingent future events that may not occur as anticipated, or
14 indeed may not occur at all.” *Texas v. United States*, 523 U.S. 296, 300 (1998) (quoting *Thomas v. Union*
15 *Carbide Agric. Prods. Co.*, 473 U.S. 568, 580-81 (1985)). That is true even where a plaintiff argues that
16 a reasonable probability exists that the future contingencies necessary to ripen the dispute will occur. For
17 example, in *Trump v. New York*, 141 S. Ct. 530, 535 (2020), the Supreme Court held that a challenge to a
18 potential future policy was unripe, even where the President issued a memorandum to a cabinet secretary
19 that “made clear his desire” to implement the allegedly unlawful policy and directed the secretary to
20 provide him information necessary to implement that policy. Nonetheless, the Supreme Court reasoned
21 that “the policy may not prove feasible to implement in any manner whatsoever,” and there was also
22 “[u]ncertainty” about the exact contours of any future policy the President might implement. *Id.* So too,
23 here, it is uncertain what guidance or policies ATF might pursue in response to a hypothetical future court
24 ruling. Plaintiffs’ challenges to superseded guidance and classifications that they predict ATF might adopt
25 in the future present only an abstract and hypothetical dispute, not a ripe controversy.⁴

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28 ⁴ Plaintiffs argue that it is permissible under the Federal Rules of Civil Procedure to plead claims
in the alternative, *Opp*, 27-28, a point Defendants do not dispute. The jurisdictional problem with
Plaintiffs’ challenges to ATF’s superseded guidance and classifications is that they are unripe, not that
they are pleaded in the alternative.

CONCLUSION

For the foregoing reasons, Plaintiffs' claims should be dismissed for failure to establish subject matter jurisdiction under Federal Rule 12(b)(1).

DATED: January 12, 2023

Respectfully submitted,

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EXHIBIT 1



U.S. Department of Justice
Bureau of Alcohol, Tobacco,
Firearms and Explosives
Office of Enforcement Programs and Services
Washington, DC 20226
www.atf.gov

December 27, 2022

OPEN LETTER TO ALL FEDERAL FIREARMS LICENSEES

Impact of Final Rule 2021-05F on Partially Complete Polymer80, Lone Wolf, and Similar Semiautomatic Pistol Frames

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is issuing this open letter to assist the firearms industry and the public in understanding whether a “partially complete, disassembled, or nonfunctional” frame of a Polymer80, Lone Wolf, or similar semiautomatic, striker-fired pistol (sometimes generally referred to as “Glock-type” pistols) has reached a stage of manufacture such that it “may readily be completed, assembled, restored, or otherwise converted” to a functional frame, and is therefore classified as a “frame” or “firearm” in accordance with the final rule titled *Definition of ‘Frame or Receiver’ and Identification of Firearms* (Final Rule 2021R-05F), which became effective August 24, 2022. In particular, the following addresses partially complete, disassembled, or nonfunctional semiautomatic striker-fired pistol frames or parts kits manufactured, sold, or distributed by Polymer80 (known as ‘Poly80’ or ‘P80’ frames or blanks), Lone Wolf (known as ‘Freedom Wolf 80%’ frames), and others, with the characteristics described below.

Summary

Applying the regulatory text of Final Rule 2021-05F, partially complete Polymer80, Lone Wolf, and similar striker-fired semiautomatic pistol frames, including, but not limited to, those sold within parts kits, have reached a stage of manufacture where they “*may readily be completed, assembled, restored, or otherwise converted*” to a functional frame. This definition of “readily” applies to each and every classification of a partially complete frame or receiver under this Rule, whether sold alone or as part of a kit. Therefore, *even without* any associated templates, jigs, molds, equipment, tools, instructions, guides, or marketing materials, these partially complete pistol frames are “**frames**” and also “**firearms**” as defined in the GCA and its implementing regulations, 18 U.S.C. § 921(a)(3)(B) and 27 CFR 478.12(a)(1), (c).

Background

The Gun Control Act (GCA) defines the term “**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.” (Emphasis added.) 18 U.S.C. § 921(a)(3). The GCA implementing regulations define the terms “frame” and “receiver” by describing a single housing or structural component for one specific fire control component of a given weapon—for example, a single housing is specified for particular weapons such as a “handgun” and a “rifle.” 27 CFR 478.12(a).

The regulation defines the term “**frame**” in 27 CFR 478.12(a)(1), as “*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.*”

Further, 27 CFR 478.12(c) explains when a partially complete, disassembled, or nonfunctional frame or receiver, including a frame or receiver parts kit, is regulated as a “**frame**” or “**receiver**”:

The terms ‘frame’ and ‘receiver’ 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. The 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). When 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 the item or kit, or otherwise made available by the seller or distributor of the item or kit to the purchaser or recipient of the item or kit.

Section 478.11 defines “**readily**” as:

A process, action, or physical state that is fairly or reasonably efficient, quick, and easy, but not necessarily the most efficient, speediest, or easiest process, action, or physical state. With respect to the classification of firearms, factors relevant in making this determination include the following:

- (a) Time, i.e., how long it takes to finish the process;*
 - (b) Ease, i.e., how difficult it is to do so;*
 - (c) Expertise, i.e., what knowledge and skills are required;*
 - (d) Equipment, i.e., what tools are required;*
 - (e) Parts availability, i.e., whether additional parts are required, and how easily they can be obtained;*
 - (f) Expense, i.e., how much it costs;*
 - (g) Scope, i.e., the extent to which the subject of the process must be changed to finish it;*
- and*

(h) Feasibility, i.e., whether the process would damage or destroy the subject of the process or cause it to malfunction.

The above list of factors is a non-exhaustive list but represents factors that have been identified by federal courts as being relevant to a “**readily**” analysis with respect to firearms. For each and every assessment of whether any partially complete frame (in the case of a handgun) or receiver (in the case of a long gun) – whether assessed individually, or in conjunction with other items – is a “firearm” under the GCA, parties must consider the above definition, including all factors that are relevant to that assessment. This is true for all frames and receivers.

Analysis

There are many partially complete, disassembled, or nonfunctional semiautomatic pistol “frames” being marketed as so-called “partially complete” or “80%” frames. The Federal firearms statutes and regulations, however, do not employ terms such as “80%,” “80% finished,” or “80% complete.” These are merely terms used by some to market these items; they are not based upon application of the term “**readily**” in the GCA or Final Rule 2021-05F. As used in the GCA and the Final Rule, the term “readily” does not involve evaluation of a percentage of completion for an item that, when completed, will function as a frame or receiver. Rather, the analysis examines how efficiently, quickly, and easily a clearly identifiable component part of a weapon can be completed, assembled, restored, or otherwise converted to house or provide a structure for the applicable fire control component. Such analysis may include consideration of any associated templates, jigs, molds, equipment, tools, instructions, guides, or marketing materials that are, directly or indirectly, sold, distributed, possessed, or marketed with the component part or kit. As outlined in the above definition, the analysis must consider all factors that are relevant to the assessment.

On the above mentioned “partially complete” pistol frames and products manufactured by Polymer80, Lone Wolf, and similar “partially complete” frames used to assemble semiautomatic, striker-fired pistols, the critical areas of the “**frame**” are the front and rear fire control cavities. The front and rear cavities are critical because these areas provide housing for the sear. *See* 27 CFR 478.12(a)(1), (a)(4)(iii). As further explained and illustrated below, removing or indexing any material in these critical areas, or completing or indexing any of the pin holes necessary to install the sear, are therefore crucial steps in producing a functional frame.



Figure 1

In a pistol based on a Glock design, the trigger is housed in the front fire control cavity, and the sear, which is connected by the trigger bar, is located in the rear cavity.



Figure 2

For reference, in a pistol based on a Glock design, the trigger bar assembly contains the sear. The trigger bar assembly operates as a single unit.

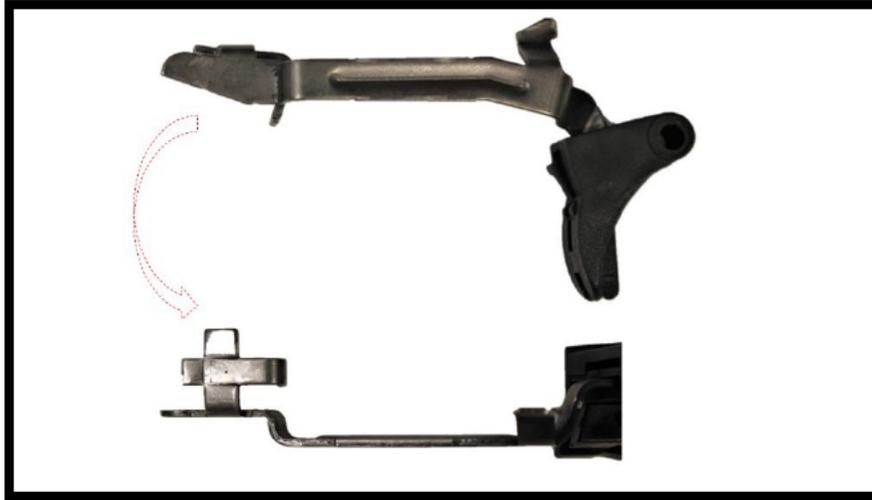


Figure 3

The trigger bar assembly (side view and top view) is a single unit. The frame cannot house or provide a structure for the sear without both the front and rear cavities.

In addition, many front and rear cavities of pistol frames using this internal design incorporate slide rails that have pin holes designed to secure the trigger mechanism and sear in precise locations. Specifically, in the Polymer80 design, the front cavity also provides housing for a front slide rail module (known as the “Locking Block Rail System” or “LBRS”), and the rear cavity provides housing for a rear slide rail module (known as the “Rear Rail Module” or “RRM”). Under the Final Rule, these slide rail components are “attachments ... required to connect” the sear to the frame. *See* 27 CFR 478.12(a)(1).

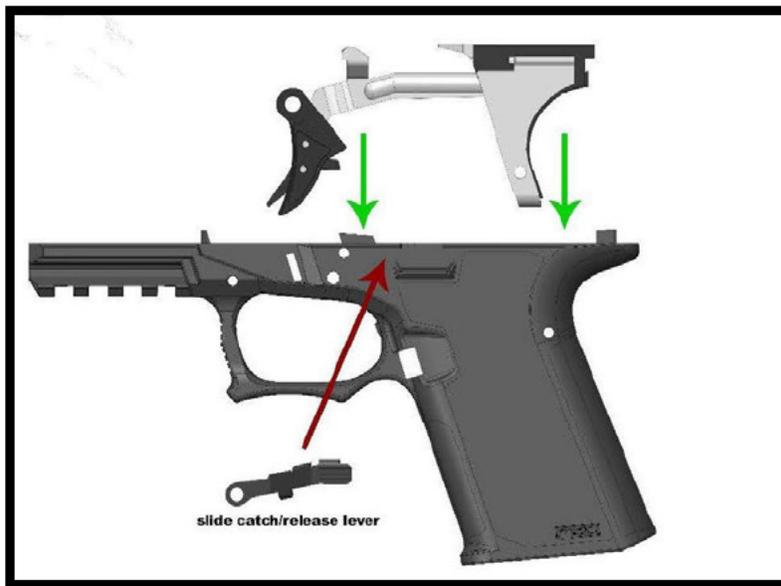


Figure 4

The above picture, taken from Polymer80 instructional materials, shows that the trigger bar assembly is attached to the “Rear Rail Module,” which is attached to the frame.

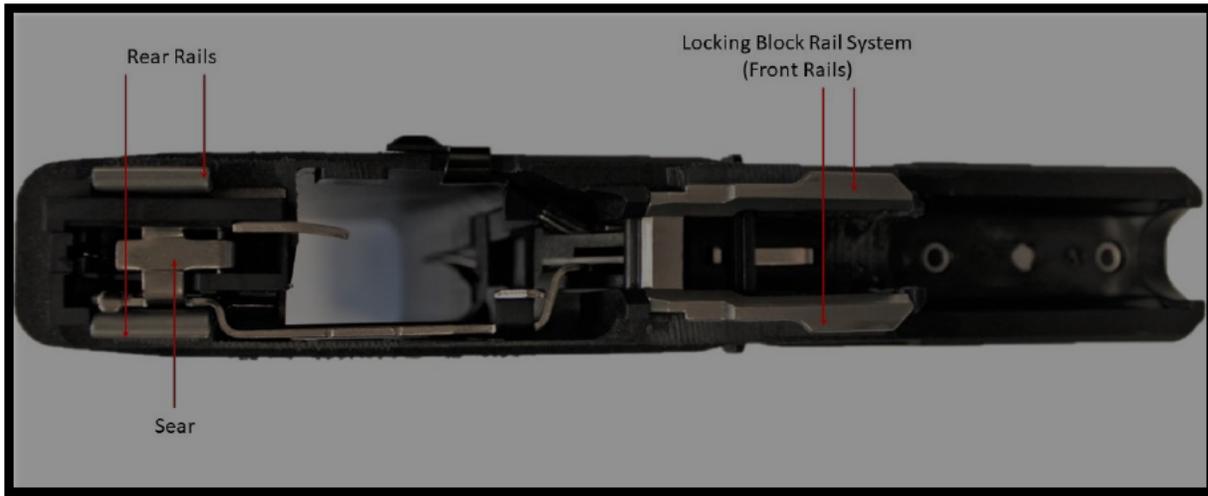


Figure 5

Top view of “Locking Block Rail System” and “Rear Rail Module” with trigger and trigger mechanism installed.

The above mentioned “partially complete” pistol frame products marketed by Polymer80, Lone Wolf, and substantially similar “partially complete” frames used to assemble semiautomatic striker-fired pistols, are also manufactured from a polymer material and incorporate temporary rails or blocking tabs that are easily removable by a person with novice skill, using common tools, such as a Dremel-type rotary tool, within minutes—an amount of time and a set of circumstances that are far less than required to fall within the meaning of the term “readily” in the Final Rule. Once this material is removed, the partially complete frames are immediately capable of accepting both the slide rail attachments and fire control components, including the sear.



Figure 6

FIREARM - Poly80 with Temporary Rails

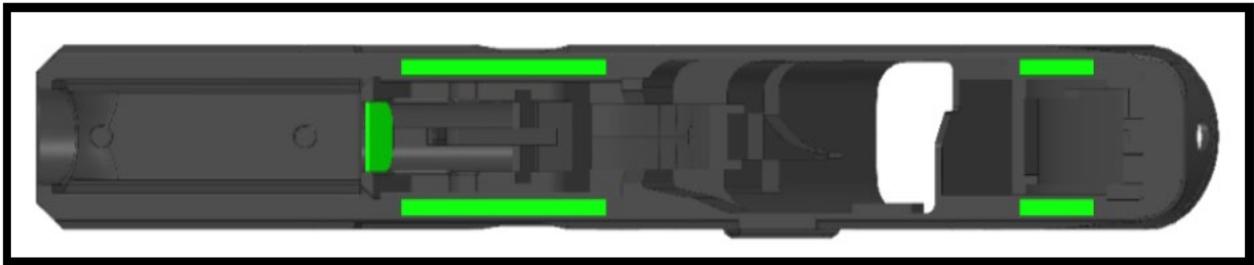


Figure 7

FIREARM - Poly80 with Temporary Rails and Barrel Blocking Tab

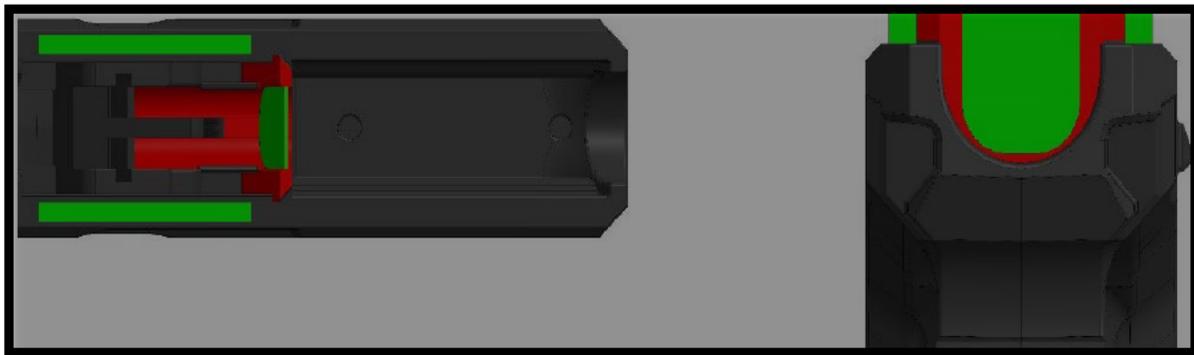


Figure 8

FIREARM - Poly80 with Temporary Rails and Barrel Blocking Tab

In addition, similar partially complete frame designs, such as those marketed by Lone Wolf, do not require removal of temporary rails but make it easy to attach the slide rails with connection points for the trigger mechanism and sear by incorporating fully formed front and rear fire control cavities into which the slide rails may be inserted. These slide rail attachments are

commercially available online and may be glued-on within minutes—an amount of time and a set of circumstances that are far less than required to fall within the meaning of the term “readily” in the Final Rule—with no fitting and no specialized knowledge or expertise. The ease of obtaining and attaching such items is also pertinent as part of the analysis.



Figure 9

FIREARM - Lone Wolf “Freedom Wolf 80%” with Cavities for Slide Rail Attachments.



Figure 10

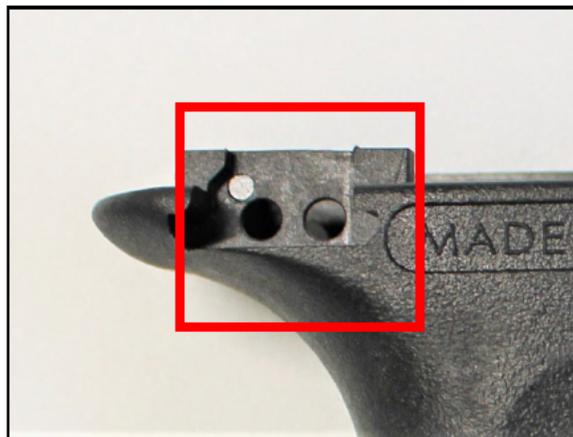


Figure 11

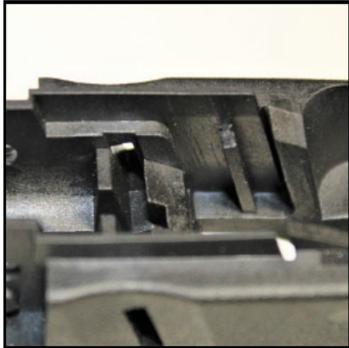
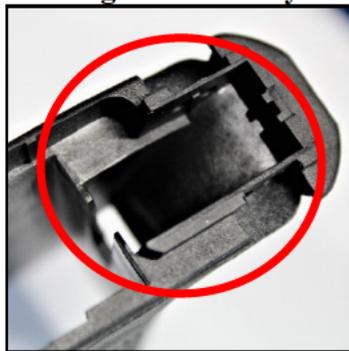
FIREARM - Fully Formed Front and Rear Cavities to Attach Slide Rail Inserts

Figure 12

Locking Block Cavity**Trigger Mechanism Cavity**

Based on the above, partially complete Polymer80, Lone Wolf, and similar pistol frames with any kind of indexing or material removed from the front or rear fire control cavities for installation of the trigger mechanism and sear, or slide rail attachments to connect the trigger mechanism and sear to the frame, have reached a stage of manufacture where they “may readily be completed, assembled, restored, or otherwise converted” to a functional frame. As examined, they are classified as a “frame” and also a “firearm,” as defined in the GCA, 18 U.S.C. § 921(a)(3)(B), and implementing regulations, 27 CFR 478.12(a)(1), (c). They are classified as firearms even if they are not sold, distributed, marketed, or possessed with any associated templates, jigs, molds, equipment, tools, instructions, or guides. While the analysis allows for the consideration of how a partially complete frame is, directly or indirectly, sold, distributed, marketed, or possessed with any associated templates, jigs, molds, equipment, tools, instructions, guides, or marketing materials, for these partially complete frames such analysis was not necessary because they are, by themselves, “frames” and “firearms” as defined in the GCA.

This information is provided to assist the firearms industry and general public in understanding whether the above mentioned “partially complete” pistol frame products manufactured by Polymer80, Lone Wolf, and substantially similar “partially complete” frames

used to assemble semiautomatic striker-fired pistols have reached the stage of manufacture where they are classified as a “**frame**” or “**firearm**.” If persons remain unclear with respect to a specific model or configuration, they can voluntarily submit a request, under penalty of perjury, with a sample to ATF in accordance with 27 CFR 478.92(c) (GCA) or 479.102(c) (NFA). ATF cannot render a formal determination without a formal request and physically examining a submitted sample.

If you have any questions, please contact the Firearms & Ammunition Technology Division at fire_tech@atf.gov or (304) 616-4300.

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