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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

STATE OF CALIFORNIA, BRYAN MUEHLBERGER, FRANK BLACKWELL, GIFFORDS LAW CENTER to PREVENT GUN VIOLENCE,

Plaintiffs,

v.

BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES, STEVEN DETTELBACH, in his official capacity, DANIEL HOFFMAN, in his official capacity, DEPARTMENT OF JUSTICE, MERRICK GARLAND, in his official capacity,

Defendants.

CIVIL CASE NO.: 3:20-CV-06761-EMC

SUPPLEMENTAL FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

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Pursuant to the Court's directive at the status conference held on August 29, 2023, Plaintiffs State of California and Giffords Law Center to Prevent Gun Violence submit this Supplemental Complaint, along with the exhibits attached thereto, against the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"); Steven Dettelbach, in his official capacity as Director of ATF; Daniel Hoffman, in his official capacity as Chief of the Firearms Technology Industry Services Branch of ATF; the United States Department of Justice ("DOJ"); and Merrick Garland, in his official capacity as Attorney General of the United States, as follows:

INTRODUCTION

1. Since 1968, the Gun Control Act ("GCA") has imposed important, common-sense gun safety restrictions on the purchase and sale of firearms in the United States.[1] These include, among other requirements, that any firearm sold or imported in the United States must have a unique serial number, and that licensed gun dealers must maintain identifying records, including the serial numbers of guns they sell and the identity of the buyer. These requirements allow law enforcement to trace guns recovered at crime scenes to their first retail purchaser. The GCA also requires licensed gun dealers to conduct criminal background checks on would-be gun purchasers, ensuring that weapons do not fall into the wrong hands. Federal law prohibits numerous categories of people from purchasing guns, including minors and individuals with disqualifying criminal convictions, people with records of domestic violence, those suffering from serious mental illness, or individuals who are addicted to drugs. These restrictions have been hallmarks of federal firearms regulation for decades. By preventing those who pose the greatest threat of violence from purchasing firearms, these laws have protected an incalculable number of Americans from harm.

2. But the protections of the GCA have been threatened by the rapid proliferation of so-called "ghost guns."[2] Ghost guns are, in effect, lethal do-it-yourself ("DIY") projects that allow anyone at home to build a fully operable firearm ***within minutes***. The resulting DIY weapons are "ghosts" because, lacking serial numbers, they are not traceable by law enforcement when they are used in a

[1] *See generally* Gun Control Act of 1968, Pub. L. No. 90-618 (1968); Brady Handgun Violence Prevention Act, Pub. L. No. 103-159 (1993).

[2] Ghost guns are also sometimes referred to as privately made firearms or "PMFs."

crime. These ghost guns are readily accessible because of ATF's erroneous determination that the critical components of these firearms are excluded from the ambit of the GCA. Because of ATF's recent rulemaking and other final agency actions, ghost guns can be purchased without a background check by people who are prohibited from possessing firearms; the firearms do not have serial numbers; and gun dealers are not required to maintain any records of their sales or the identity of their purchasers. Anyone can buy them, and no one can trace them. As a result, ghost guns have become the weapon of choice for illegal gun traffickers and those—like organized criminal gangs and mass murderers—who seek to bear arms not for lawful means, but rather to engage in criminal activity and acts of violence.

3. Defendants have allowed ghost guns to proliferate because they have determined that the core component of a ghost gun is not a "firearm" under the GCA. That core component is a product that the ghost gun industry calls "80 percent" "receivers" for long guns or "frames" for handguns. A receiver or frame is the central piece of any firearm—the part of the firearm that houses the hammer, bolt, or breechblock, as well as the firing mechanism;[3] it is so central that the GCA expressly provides that a "frame or receiver" *is* a "firearm" for purposes of the GCA's regulatory regime. 18 U.S.C. § 921(a)(3). The GCA also provides that "firearms" include not only fully functional weapons, but also receivers and frames of such weapons that are "***designed to or may readily be converted***" into functional weapons. *Id*. (emphasis added). In reality, "80 percent" or "unfinished" receivers and frames are nearly finished firearms—products that require mere minutes to go from "unfinished" to ready-to-fire. They are therefore both "designed to" *and* "may readily be converted" into functional firearms with ease. For that reason, the monikers "80 percent" or "unfinished" are arbitrary terms that

[3] 27 C.F.R. § 478.12 (defining "frame" 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" and "receiver" as "the part of a rifle, shotgun, or projectile weapon other than a handgun, or variants thereof, that provides housing or aa structure for the primary component designed to block or seal the breech prior to initiation of the firing sequence (i.e., bolt, breechblock or equivalent), even if pins or other attachments are required to connect such component to the housing or structure.").

do not accurately reflect the limited amount of work remaining to convert a frame or receiver into an operable weapon.

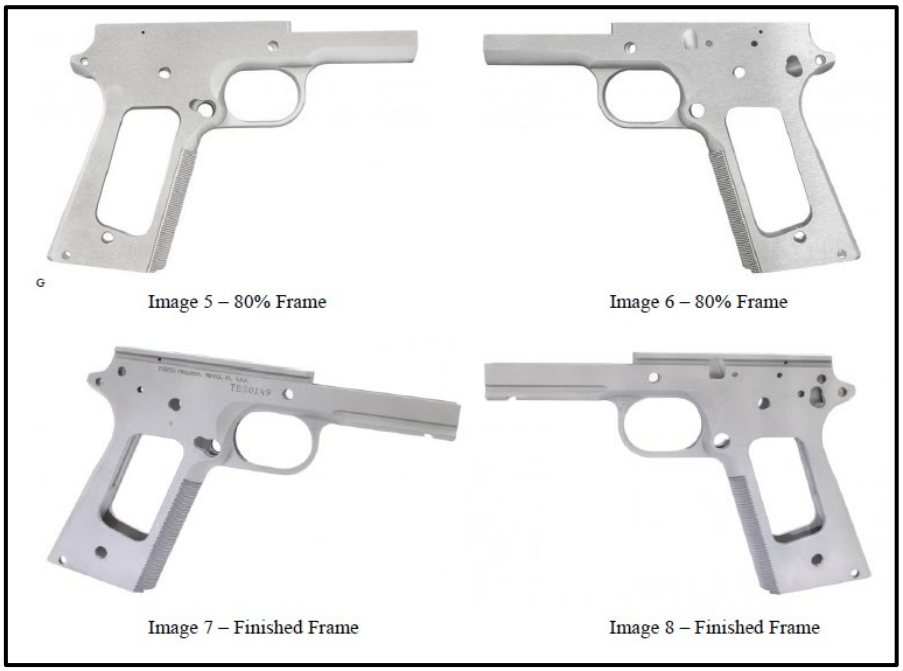


Image 1: 80 Percent Frame Compared to Finished Frame

4. 80 percent receivers and frames are pieces of metal or composite plastic created for the sole and express purpose of allowing people to create a fireable weapon quickly and easily. To the lay eye, 80 percent receivers and frames are in all material respects ***indistinguishable*** from ready-to-fire receivers and frames, as shown in Image 1 above, in which the top images are 80 percent frames while the bottom images are the substantially similar finished frames.

5. Ghost gun manufacturers have also developed tools that make it easier than ever to convert 80 percent receivers and frames into fully operable firearms in as little as ***15 minutes***.[4] These tools include jig kits (a collection of tools, measurements, and physical guides designed to quickly make unfinished or 80 percent receivers functional), milling machines (a pre-programmed "mill" that automatically turns 80 percent receivers into functioning weapons) and even free, easy to use printable

[4] *80 Percent Lower Jig*, GUN BUILDERS DEPOT, https*://www.gunbuilders.com/80-lower-jig/* (last visited Oct. 12, 2022); *see Glock 80% Compact Polymer Pistol Frame Kit*, FANDWGUNS.GUNSAMERICA.COM, http://fandwguns.gunsamerica.com/ItemDetails/762360860/Glock-80-Compact-Polymer-Pistol-Frame-Kit.htm (last visited Oct. 18, 2022).

blueprints for building ghost guns.[5] Even without these products however, anyone with internet access can easily find detailed instructions for completing their frame or receiver with common household tools. The fact that 80 percent receivers and frames are so easy to assemble into ghost guns and are sold without background checks or recordkeeping is the very reason these DIY products have dangerously proliferated. As one seller advertised, 80 percent receivers "allow gun owners to build their own firearms without having to go through a licensed dealer."[6]

6. Yet Defendants have determined that 80 percent receivers and frames are not "firearms" under the GCA, and that therefore the statutory requirements and prohibitions of the GCA do not apply to these products. Consequently, with nothing more than an internet connection and a credit card—and without needing to validate as to whether a purchaser is alive or dead, real or fake—anyone including minors and people with serious, violent criminal records can purchase an 80 percent receiver and convert it into a fireable weapon, often within mere minutes.

7. Plaintiffs originally filed this action over two years ago, in September 2020, to challenge Defendants' prior agency actions regarding ghost guns as arbitrary and capricious and in defiance of the plain meaning of the GCA. In April 2022, the administration issued new rulemaking that seemed intended to combat the proliferation of ghost guns. But ATF's new rule, which took effect in August 2022, is contrary to the text of the GCA in one critical aspect.[7] *See* Definition of "Frame or Receiver" and Identification of Firearms, 87 Fed. Reg. 24,652 (Apr. 26, 2022) (codified at 27 C.F.R. pts. 447, 478, 479) (hereinafter, the "Final Rule"). Though the Final Rule takes important steps to eliminate ghost gun-making "kits"—meaning where 80 percent receivers or frames are sold together with other essential firearm parts, such as the magazine to store ammunition, and the jigs to assemble the firearm—the Rule ***still permits*** the selling of unserialized "80 percent" receivers and frames as stand-alone items without any background checks or serialization. For example, Juggernaut Tactical sells

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[5] Keegan Hamilton, *A Simple Plastic Tool Is Undermining New Ghost Gun Rules*, VICE (Sept. 12, 2022), https://www.vice.com/en/article/epzb3a/ghost-gun-jig-tool.

[6] *Why Our 80 Lower Jig Tools?*, 5D Tactical, https://www.5dtactical.com/categories/80-lower-jig-tools/ (last visited Oct. 19, 2022).

[7] 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.

both 80 percent lower receivers *and* jigs and tool kits on their website. These items are sold completely unregulated—as long as a buyer purchases each in a separate transaction. The company even specifically instructs its customers to purchase all the items needed to create a firearm from an 80 percent receiver or frame in separate transactions, as an easy workaround to the Final Rule.[8]

8. The Final Rule's exclusion of stand-alone 80 percent receivers and frames is contrary to the plain text of the GCA and arbitrarily and capriciously ignores the widely acknowledged truth that 80 percent receivers and frames "*may readily be*" converted into operable firearms quickly and easily, using basic household tools, even when sold without supporting kits or jigs. 18 U.S.C. § 921(a)(3). The Rule also ignores that these 80 percent receivers and frames are also "*designed to*" be converted into operable firearms, as there is no consumer market for 80 percent receivers and frames other than to convert them into operable firearms.[9] *Id.*

9. Indeed, ghost gun manufacturers and sellers have quickly recognized the narrow scope of the Final Rule, declaring: "there is really very little practical effect" of "the New ATF 'Ghost Gun' Kit Ban"[10] and "this rule will not stop anyone who really wants to make a gun from building their own."[11] And the federal government has not disputed this interpretation in litigation defending the Final Rule, confirming that it is "not going to be a problem" for ghost gun manufactures to continue to "sell[] receiver blanks . . . without a [] license."[12]

10. In the meantime, there continue to be record numbers of ghost guns sold, possessed by prohibited purchasers, and used in crimes. Since this lawsuit began in September 2020, the gun market

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[8] *See infra* ¶ 97.

[9] *See, e.g., What Are the Benefits of Building Your Own AR? – Quick Assembly*, 5D TACTICAL, https://www.5dtactical.com/#tab-assembly (last visited Oct. 15, 2022) ("Our equipment provides the capability to swiftly complete an 80% lower receiver, with unparalleled precision. The Router Jig Pro can be assembled fast and ready to be used in just a few minutes. Once you're familiar with the user-friendly process, you can finish an 80 lower receiver and begin installing the lower parts kit in as little as 30 minutes!"); *see also supra* note 4 (noting that an 80 percent lower frame can be made into a fully functional firearm in as little as "15 minutes").

[10] The Reload, *The Early Impacts of the New ATF 'Ghost Gun' Kit Ban*, YOUTUBE (Sept. 2, 2022), https://www.youtube.com/watch/PU9fJjNI9Go/.

[11] *ATF Final Rule 2021R-05F (aka 80% Receiver Rule) Explained*, THEFIREARMBLOG.COM (Aug. 26. 2022), https://www.thefirearmblog.com/blog/2022/08/26/atf-2021r-05f-80-receiver-rule/.

[12] *See* Ex. 1, Transcript of Hearing on Plaintiff's Motion for Preliminary Injunction at 16:2–5, *Div. 80 v. Garland*, No. 3-22-CV-00148 (S.D. Tex. Aug. 9, 2022).

has expanded exponentially, and, on information and belief, the ghost gun market has similarly expanded. According to the FBI, while an average of 13 million guns were sold legally in the U.S. each year between 2010 and 2019, that number increased to about 20 million annual gun sales in both 2020 and 2021.[13] Although purchases of ghost guns are, by definition, not required to be recorded or disclosed, ghost gun retailers widely reported substantially increased demand. Indeed, ghost gun manufacturers have experienced backlogs and shipping delays due to increased demand since the beginning of the COVID-19 pandemic in early 2020.[14]

11. Given Defendants' failure to regulate 80 percent receivers and frames, ghost guns have flooded the country. In recent years, a record number of ghost guns were recovered in California as well as in numerous other states. In May 2020, for instance, *60 Minutes* reported that "at least 38 states and Washington D.C. have seen criminal cases involving ghost guns" and that ghost guns were used in "at least four mass shootings, violent police shootouts . . . and cases involving terrorism and white supremacists."[15] One widely publicized ghost gun mass shooting occurred at Saugus High School on November 14, 2019. On that day, a 16-year-old high school student wielding a ghost gun wounded three classmates and killed two others—15-year-old Gracie Anne Muehlberger, daughter of Plaintiff Bryan Muehlberger, and 14-year-old Dominic Blackwell, son of Plaintiff Frank Blackwell.[16] The Saugus shooting has unfortunately not been the last ghost gun school shooting. On November 29, 2021, a 15-year-old student shot and wounded a 16-year-old classmate with a ghost gun at Cesar

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[13] *One in Five American Households Purchased a Gun During the Pandemic*, UNIVERSITY OF CHICAGO: NORC (March 24, 2022), https://www.norc.org/NewsEventsPublications/PressReleases/Pages/one-in-five-american-households-purchased-a-gun-during-the-pandemic.aspx.

[14] *Letter from Jerrold Nadler, Chairman, U.S. House Judiciary Committee, to Regina Lombardo, Acting Director*, ATF (Apr. 23, 2020), https://judiciary.house.gov/uploadedfiles/2020-04-23_letter_to_the_atf_re_ghost_guns.pdf?utmcampaign=2714-519 ("[A]t least 16 companies that sell ghost gun kits have reported order backlogs and shipping delays due to overwhelming demand" during the COVID-19 pandemic.); *see also* Tess Owen, *People Are Panic-Buying Untraceable 'Ghost Guns' Online in the Coronavirus Pandemic*, VICE (Mar. 27 2020), https://www.vice.com/en_us/article/g5x9q3/people-are-panic-buying-untraceable-ghost-guns-online-in-the-coronavirus-pandemic.

[15] Bill Whitaker, *Ghost Guns: The Build-It-Yourself Firearms That Skirt Most Federal Gun Laws and Are Virtually Untraceable*, CBS NEWS (May 10, 2020), https://www.cbsnews.com/news/ghost-guns-untraceable-weapons-criminal-cases-60-minutes-2020-05-10/.

[16] *15-Year Old Gracie Anne Muehlberger, 14-Year-Old Dominic Blackwell ID'd as Saugus High School Shooting Victims*, CBS L.A. (Nov. 15, 2019), https://losangeles.cbslocal.com/2019/11/15/gracie-anne-muehlbergerdominic-blackwell-saugus-high-school-shooting-victims/.

Chavez High School in Phoenix, Arizona.[17] On January 21, 2022, a 17-year-old student in Rockville, Maryland used a ghost gun to shoot and critically wound a classmate.[18] On February 25, 2022, a 14-year-old student in New Mexico shot and killed his classmate during a fight over the ghost gun itself.[19] And on March 4, 2022, an 18-year-old student used a ghost gun to wound two teachers at a high school in Kansas.[20]

12. Defendants are keenly aware of the damage the ghost gun epidemic is inflicting—even noting in the Final Rule the "substantial increase" in ghost gun recoveries nationwide over the last several years.[21] Just weeks ago, in fact, the Department of Justice acknowledged its "serious concerns about the proliferation of untraceable firearms easily assembled from firearm parts kits and unfinished frames and receivers."[22] And President Biden "lamented the proliferation of these firearms, as they can be purchased in parts, are assembled at home with no serial number, can't be traced, and they're as deadly as any other weapon out there."[23] Thomas Chittum, ATF's former Assistant Director of Field Operations, recently admitted that it is "challenging [for ATF] to keep [ghost guns] outta the hands of people who are not allowed to possess firearms," and that the number of crimes committed with ghost guns is "increasing significantly and rapidly."[24] Current ATF Director Steven Dettelbach recently put a finer point on it, reiterating that ghost guns "hurt people like regular guns," but are "impossible to trace."[25] ATF also states on its website that when ghost guns without serial numbers "are found at []

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[17] Ivan Pereira, *'Ghost Guns' Showing Up in School Shootings, Experts Fear Trend Will Get Worse*, ABC NEWS (Mar. 17, 2022), https://abcnews.go.com/US/ghost-guns-showing-school-shootings-experts-fear-trend/story?id=83346844.

[18] *Id*.

[19] *Id*.

[20] *Id*.

[21] 87 Fed. Reg. 24,656 (explaining that from 2016 to 2021, "approximately 45,240 suspected [ghost guns]" were reported to have been recovered by law enforcement agencies; 1,758 in 2016, 2,552 in 2017, 3,960 in 2018, 7,517 in 2019, 10,109 in 2020, and 19,344 in 2021).

[22] Statement of Interest of the United States of America, *City of New York v. Arm or Ally, LLC*, No. 22-cv-5525, (S.D.N.Y. July 22, 2022), ECF No. 64 at 2.

[23] *Id.* (cleaned up).

[24] Ex. 5, Bill Whitaker, Ghost Guns: The Build-It-Yourself Firearms that Skirt Most Federal Gun Laws and Are Virtually Untraceable.

[25] Andy Sheehan, *ATF Director Says Agency Will Use All Its Tools to Stop Gun Violence*, CBS NEWS (Sept. 26, 2022), https://www.cbsnews.com/pittsburgh/news/atf-director-steven-dettelbach-stopping-gun-violence/.

crime scene[s], it is usually not possible to trace th[ose] firearm[s] or determine [their] history, which hinders crime gun investigations and jeopardizes public safety."[26] Despite these obvious and predictable consequences, ATF has failed to properly apply the plain text of the GCA to slow or stop the proliferation of the 80 percent frames and receivers fueling the ghost gun epidemic.

13. Plaintiffs therefore bring this action to require ATF to faithfully interpret and enforce the dictates of the GCA. ATF's determinations that 80 percent receivers are *not* firearms are both contrary to law and arbitrary and capricious.

14. *First*, ATF's determinations, codified in the Final Rule, classification letters, and other determinations, that 80 percent or unfinished receivers and frames—which can be converted into firearms in as little as 15 minutes—are *not* firearms contravenes the plain text of the GCA. Because 80 percent receivers are **"*designed to or may be readily converted*"** into fully fireable weapons, they ***are*** firearms under the GCA. To be sold legally, then, these products must be serialized, and their purchasers must undergo background checks.

15. *Second*, the Final Rule and ATF's other determinations that 80 percent receivers and frames are not firearms are arbitrary and capricious. ATF's Final Rule has arbitrarily determined that only 80 percent receivers and frames *sold with* jig kits, templates, or similar items qualify as firearms under the GCA, while leaving the 80 percent receivers and frames themselves entirely unregulated. The industry is already taking advantage of this arbitrariness, advising consumers how they can easily develop their own "kits" even if purchasers are now required to order more than one product in separate transactions.[27]

16. And ATF's actions purporting to implement the Final Rule, including "Open Letters" and classification letters, have arbitrarily concluded that certain 80 percent receivers and frames are not "firearms," even though they fall within the statutory definition. The Final Rule and these particular implementing classifications and determinations thus fail to consider important aspects of the problem,

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[26] *Can Functioning Firearms Made From Receiver Blanks Be Traced?*, ATF, https://www.atf.gov/firearms/qa/can-functioning-firearms-made-receiver-blanks-be-traced (last updated Feb. 6, 2020).

[27] *See* Ex. 2 (Polymer80 webpage advertising "Product Changes in Accordance with ATF Final Rule") (noting that consumers are free to purchase one "Assemble for Thyself" kit to use on multiple, unserialized receivers they buy separately). *See also AR-15 80% Lower Adjustable Universal Jig Kit*, Juggernaut Tactical, https://jtactical.com/products/9 (last visited Oct. 15, 2022) ("Note: Due to ATF final rule 2021R-05F . . . you cannot order an 80% Lower and jig-related products at the same time. If you have both in your cart, you will not be able to complete the checkout process.").

such as the deadly consequences of allowing manufacturers to sell untraceable weapons to prohibited possessors.

17. The ghost gun epidemic is real. This Court should declare that 80 percent receivers and frames are firearms that must be regulated under the GCA, and that ATF's decision to permit the unregulated sale of "80 percent" and "unfinished" receivers and frames that are *not* within kits is arbitrary and capricious.

PARTIES

18. Plaintiff State of California, represented by and through its Attorney General, is a sovereign state of the United States of America.

19. Plaintiff Bryan Muehlberger resides in Santa Clarita, California. His daughter, 15-year-old Gracie Anne Muehlberger, was tragically murdered in the November 2019 Saugus High School Shooting in Santa Clarita, California, when a 16-year-old high school student used an untraceable ghost gun and opened fire on Mr. Muehlberger's daughter and her fellow students—killing Gracie and Dominic Blackwell, and injuring three others.

20. Plaintiff Frank Blackwell resides in Santa Clarita, California. His son, 14-year-old Dominic Blackwell, was tragically murdered in the November 2019 Saugus High School Shooting in Santa Clarita, California, when a 16-year-old high school student used an untraceable ghost gun and opened fire on Mr. Blackwell's son Dominic and his fellow student Gracie Anne Muehlberger, and injured three others. Mr. Blackwell has filed this action in his personal capacity only.

21. Plaintiff Giffords Law Center is a nonprofit unincorporated association operating under section 501(c)(3) of the Internal Revenue Code. Based in San Francisco, California, Giffords Law Center also operates offices in New York and Washington, D.C. Giffords Law Center is one of the nation's leading legal and policy organizations dedicated to finding sensible solutions that will prevent further gun violence.

22. Defendant ATF is an administrative agency within the DOJ responsible for protecting communities from violence, violent criminal organizations, the illegal use and trafficking of firearms, the illegal use and storage of explosives, acts of arson and bombings, acts of terrorism, and the illegal diversion of alcohol and tobacco products. ATF is headquartered in Washington, D.C.

23. Defendant Steven Dettelbach is the Director of ATF. His official address is in Washington, D.C. He is being sued in his official capacity. In that capacity, Director Dettelbach has responsibility for oversight of the activities of ATF.

24. Defendant Daniel Hoffman is the Chief of the Firearms Technology Industry Services Branch of ATF. His official address is in Martinsburg, West Virginia. He is being sued in his official capacity. In that capacity, he is responsible for classifying firearms and ammunition under federal rules and regulations.

25. Defendant DOJ is an executive agency within the federal government of the United States.

26. Defendant Merrick Garland is the Attorney General of the United States. His official address is in Washington, D.C. He is being sued in his official capacity. In that capacity, Attorney General Garland has the authority to prescribe rules and regulations for carrying out the provisions of the Gun Control Act. 18 U.S.C. § 926(a). The Attorney General delegated the responsibility to investigate, administer, and enforce the provisions of the Gun Control Act to ATF. 28 C.F.R. § 0.130(a)(1).

JURISDICTION AND VENUE

27. Plaintiffs bring this action under the Administrative Procedure Act, 5 U.S.C. §§ 500 *et seq*. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because Plaintiffs' causes of action arise under the laws of the United States.

28. Venue is proper in this District pursuant to 28 U.S.C. § 1391(e)(1) because Plaintiff State of California, and Giffords Law Center reside in this District, and a substantial portion of the events giving rise to this case occurred in this District. Defendant ATF also maintains numerous Field Offices in this District.

STATUTORY BACKGROUND: THE GUN CONTROL ACT OF 1968

29. The GCA has been the foundation of federal firearms law for more than half a century. Its genesis began with the assassination of President John F. Kennedy, who was shot and killed with a mail-order rifle Lee Harvey Oswald purchased for $19.95 in response to a magazine advertisement. Shortly after President Kennedy's death, Senator Thomas Dodd of Connecticut introduced legislation restricting mail-order sales of shotguns and rifles. That legislation garnered bipartisan support and was

endorsed by the National Rifle Association. But the bill ultimately died in committee. The debate continued, however, gaining even greater urgency in 1968 after the assassinations of Martin Luther King Jr. and Robert F. Kennedy.

30. Following these jolting national tragedies, on October 22, 1968, President Lyndon B. Johnson signed into law the GCA, landmark legislation that asserted significant federal control over the firearms industry and those who were legally permitted to possess guns. Gun Control Act of 1968, Pub. L. No. 90-618 (1968). The GCA's major provisions include: (i) a ban on sales of guns to, *inter alia*, people convicted of felonies, people addicted to drugs, minors, and individuals with serious mental illnesses;[28] (ii) a requirement that all firearms dealers obtain a federal firearms license; (iii) a prohibition on the importation of firearms "with no sporting purpose"; and (iv) a mandate that all firearms be serialized. 18 U.S.C. §§ 921 *et seq*.

31. The GCA has been amended multiple times to expand federal regulation of firearms. In 1993, for instance, following another national tragedy—the attempted assassination of President Ronald Reagan, which left his Press Secretary James Brady permanently disabled—President William J. Clinton signed the Brady Handgun Violence Prevention Act, which required that federal background checks be conducted on ***all*** sales of guns by licensed dealers. Brady Handgun Violence Prevention Act, Pub. L. No. 103-159 (1993). Federal law was amended further in 1994 with the passage of the Violence Against Women Act, which prohibited gun possession by individuals subject to certain domestic violence restraining orders, and again in 1996 to prohibit those convicted of particular domestic abuse crimes from possessing a firearm. 18 U.S.C. §§ 922(g)(8), (g)(9).

32. The GCA regulates the possession and purchase of "firearms." Under the GCA, "firearm" is broadly defined to include not only fully functional weapons that "expel [] projectile[s] by the action of an explosive," but also items that are "designed to or may readily be converted" into fully functional weapons, and the "receiver" or "frame" of such weapons. 18 U.S.C. § 921(a)(3). A firearm frame is the part of a handgun that houses "the hammer, striker, bolt or similar component prior to

[28] Specifically, federal law restricts people from accessing firearms if they have been committed to any mental institution or adjudicated as a mental defective, *see* 18 U.S.C. § 922(d)(4), which means they have been found by a court, board, commission, or other lawful authority to be a danger to self or others, or to lack the mental capacity to contract or manage their own affairs, as a result of their mental condition or illness, *see* 27 C.F.R. § 478.11(a).

initiation of the firing sequence." *See* 27 C.F.R. § 478(a)(1). And a firearm receiver is the part of a rifle or shotgun or projectile weapon other than a handgun that houses "the primary component designed to block or seal the breech prior to initiation of the firing sequence (*i.e.*, bolt, breechblock, or equivalent)." *Id*. at § 478.12(a)(2). The parts of a handgun and rifle are depicted in Images 2 and 3 below.

33. Because receivers and frames are defined as "firearms" in the GCA, these parts must also carry serial numbers. 18 U.S.C. § 923(i). Sellers and manufacturers of receivers and frames must obtain a federal firearms license, and individuals who purchase receivers and frames from gun dealers are subject to federal background checks. 18 U.S.C. §§ 923(a), 922(t).



Image 2: Semiautomatic-Pistol[29]

[29] *Firearms Parts and Components,* UNODC (Feb. 2019), https://www.unodc.org/e4j/en/firearms/module-2/key-issues/firearms-parts-and-components.html.

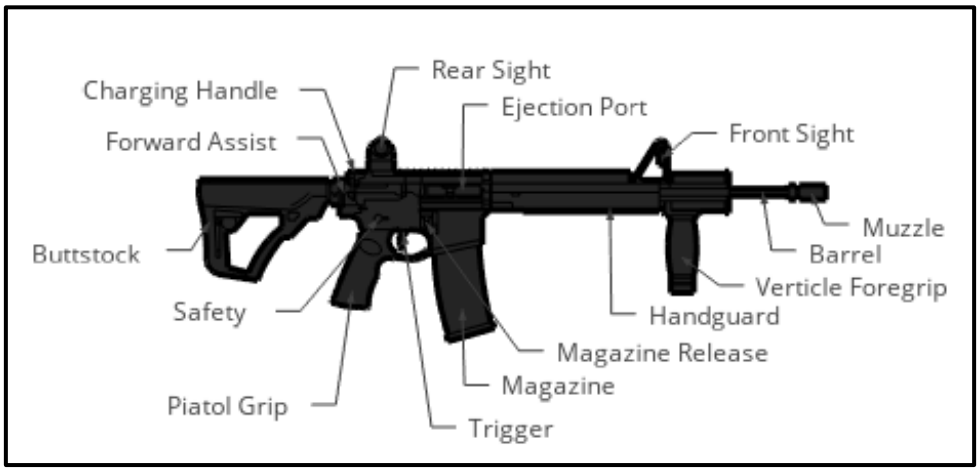


Image 3: AR-15 Rifle[30]

BACKGROUND ON ATF AND ITS ROLE IN REGULATING FIREARMS

34. ATF was established as an independent agency in 1972 to regulate firearms, among other things.[31] According to the agency's website, ATF "recognizes the role that firearms play in violent crimes" and uses federal firearm legislation like the GCA "to target, investigate and recommend prosecution of [criminal] offenders to reduce the level of violent crime and to enhance public safety."[32]

35. ATF, like any other agency, takes a wide variety of agency action, including standard notice-and-comment rulemaking and issuing guidance. It also issues "Classification Letters" with regard to specific products it regulates, like firearms and explosives. In these letters, ATF responds to questions that manufacturers, distributors, and others submit to ATF to adjudicate, such as whether the product they are proposing to sell is subject to the GCA's requirements, including background checks and serialization. According to the ATF Handbook, ATF encourages firearms manufacturers to "seek an ATF classification of its product prior to manufacture" in order to "avoid an unintended classification and violations of the law." *See* Ex. 3, *Do You Know How ATF Would Classify Your Product?*, *in* ATF NATIONAL FIREARM ACTS HANDBOOK, § 7.2.4 (Apr. 2009), https://www.atf.gov/firearms/docs/guide/atf-national-firearms-act-handbook-atf-p-53208/download. The ATF Handbook

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[30] *Simple AR-15 Diagram*, 3D WAREHOUSE, https://3dwarehouse.sketchup.com/model/1a2d3089-04fc-47a0-af95-fd3ff78ab966/Simple-AR15-Diagram (last visited Oct. 18, 2022).

[31] Prior to the establishment of ATF, Congress had delegated the enforcement of the GCA to the Alcohol and Tobacco Division of the Internal Revenue Service. When first formed, ATF was part of the United States Department of the Treasury, but following the 9/11 terrorist attacks, the Homeland Security Act of 2002 transferred ATF to the DOJ.

[32] *Firearms*, ATF, https://www.atf.gov/firearms (last visited Oct. 18, 2022).

further explains that such Classification Letters "may generally be relied upon by their recipients as the agency's official position concerning the status of the firearms under Federal firearms laws." *Id.* at § 7.2.4.1. ATF also issues broad-ranging industry guidance in the form of questions and answers ("Q&As"), which are published on ATF's official website—guidance that on information and belief market participants refer to and/or rely on in designing, marketing, and distributing the 80 percent frames and receivers used to build ghost guns.

36. As a law enforcement agency within the DOJ, ATF also investigates violent crimes. In that role, ATF relies significantly upon the GCA's requirement that firearms be adorned with unique, traceable serial numbers. GCA's serialization requirement requires firearm manufacturers or importers to affix weapons with unique serial numbers and other marks that identify the manufacturer or importer, as well as the make, model, and caliber of the firearm. Using this information, ATF's National Tracing Center can trace a firearm recovered at a crime scene from the manufacturer or importer through the distribution chain to the first retail purchaser.

37. Tracing provides critical information necessary to investigate and solve crimes. ATF processes hundreds of thousands of crime gun trace requests each year from domestic and international law enforcement agencies.[33] Because there is no comprehensive electronic federal database of gun purchases, ATF relies on the records held by each dealer to connect a recovered firearm to its first retail buyer. As depicted in Image 4 below, when firearms contain serial numbers, ATF can generally determine the original Federal Firearms Licensee who sold the weapon. From that entity, using the records it is required to keep under the GCA, ATF is able to learn the name of the person who originally purchased the weapon. Identifying that initial purchaser is critical to law enforcement's ability to investigate and solve crimes committed with the recovered firearm.

[33] *ATF By the Numbers*, ATF (June 14, 2018), https://www.atf.gov/resource-center/infographics/atf-numbers.



Image 4: How ATF Traces Firearms[34]

38. In addition to its critical role in the investigation of criminal activity, tracing also acts as a powerful deterrent—discouraging straw purchases or trafficking of firearms through secondary sales to prohibited persons.

39. But tracing is effective *only if* law enforcement officials can trace a firearm based on its serial number. And ATF and its leaders have not required manufacturers and sellers of 80 percent frames and receivers to affix serial numbers to their products, so they do not in fact feature them. As a result, firearms dealers are not required to keep records of their sales of ghost gun frames and receivers. Thus, ATF and law enforcement are completely obstructed in their attempts to trace a ghost gun to its original source, and prohibited purchasers are more likely to purchase a ghost gun because they know that there are no records that would allow the purchase to be traced back to them.

[34] *How ATF Traces Firearms*, ATF (Aug. 17, 2018), https://www.atf.gov/resource-center/infographics/how-atf-traces-firearms.

FACTUAL BACKGROUND

A. Ghost Guns Are Designed to Circumvent Federal Firearms Requirements, Resulting in an Overwhelming Threat to Public Safety.

40. Before a licensed gun dealer sells any firearm in the United States, a buyer must pass a background check to confirm that they are authorized to possess a firearm—namely, that they are not a minor, not disqualified because of a criminal conviction or domestic violence restraining order, and not otherwise prohibited from gun possession. 18 U.S.C. § 922(t).

41. Licensed manufacturers or importers must also legibly identify each firearm with a unique serial number. 27 C.F.R. § 478.92. Specifically, the GCA requires that manufacturers and importers engrave, cast, stamp, or otherwise conspicuously place on the frame or receiver of each firearm an individual serial number and other identifying information, such as the model of the firearm, its caliber or gauge, and the manufacturer's name or the name of the foreign manufacturer. 27 C.F.R. § 478.92(a)(1)(i)-(ii). This serialization process ensures that every firearm—including those firearms recovered by law enforcement agencies at crime scenes—can be traced back to its manufacturer or importer and first retail purchaser. Tracing firearms helps link a recovered firearm to crime suspects in a criminal investigation by helping law enforcement officials track the movement of a firearm through the supply chain.

42. Assault weapons, such as AR-15 rifles, were once placed under even stricter regulations under federal law, and remain subject to heightened regulation in many states. Generally, assault weapons are a class of semiautomatic firearms that share characteristics with military firearms specifically designed to kill humans quickly and efficiently. Wounds caused by assault rifles like AR-15s are more lethal than wounds caused by handguns because the bullets they fire travel at a higher velocity and impart a correspondingly higher level of energy when passing through a body. And when paired with large magazines full of ammunition, assault weapons can kill a large number of people extremely quickly. Because assault weapons are extremely dangerous and designed to kill, certain "semiautomatic assault weapons" were banned at the federal level between 1994 and 2004. While that law lapsed and there is currently no federal law prohibiting these lethal, military grade weapons,

seven states—including California—prohibit the purchase, sale and/or possession of assault weapons. California, for example, has banned over 75 assault weapon types, models, and series by name.

43. Serialization requirements apply not only to complete, fully functional firearms, but also to "[a] firearm frame or receiver that is not a component part of a complete weapon at the time it is sold." 27 C.F.R. § 478.92(a)(2). The ATF website provides sample images of frames and receivers, along with the explanation that "A Frame or Receiver constitutes a FIREARM."

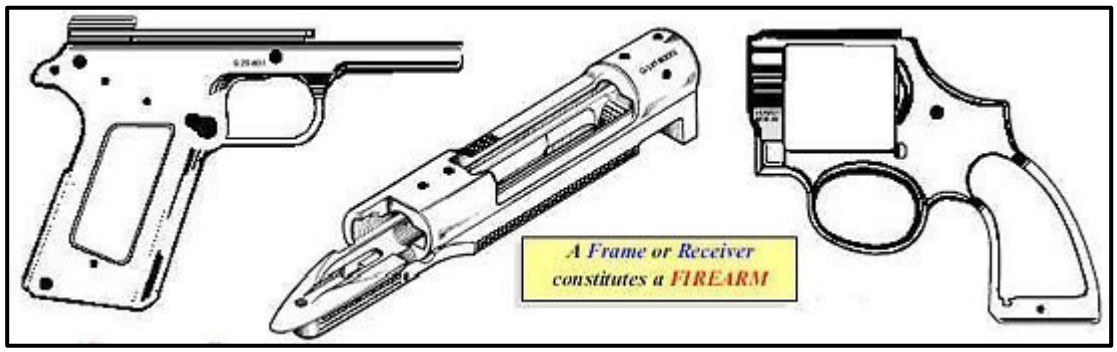


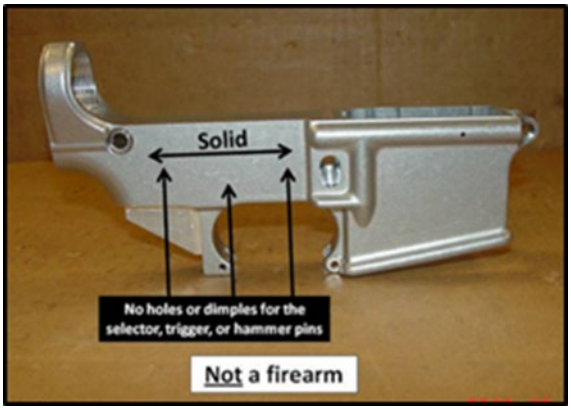
Image 5: ATF's Diagram of a Sample Frame and Receiver, Noting that Each Constitutes a Firearm[35]

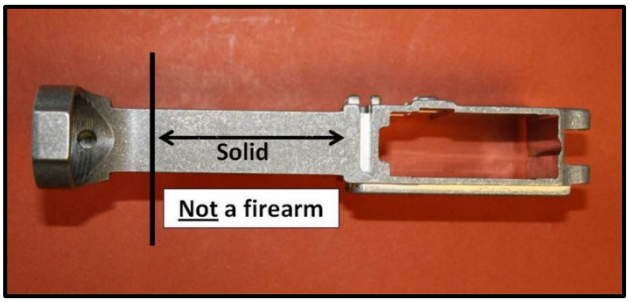
44. Ghost guns are designed specifically to circumvent these common-sense requirements in the GCA. The 80 percent components used to build ghost guns are designed as, and may readily be converted into, lethal firearms. Today, they can be purchased by anyone with an internet connection and a credit card or other form of online payment (as well as at gun shows and from brick-and-mortar gun stores)—including people convicted of felonies or domestic violence, people addicted to drugs, minors, and individuals with serious mental illnesses, despite the fact that all of them are prohibited by federal law from purchasing and possessing firearms. As a result of ATF's decisions, no background check is required to buy 80 percent receivers and frames, no records of the buyers' identities must be kept, and no 80 percent receiver or frame has to carry federal serial numbers or other markings that clearly identify the product's manufacturer, importer, make, model, or caliber. Thus, while a person cannot purchase an assembled gun at a gun store without passing a background check to ensure that he is not a prohibited person under the GCA, a prohibited person can purchase an

[35] *Firearms - Guides - Importation & Verification of Firearms, Ammunition - Gun Control Act Definitions – Firearm*, ATF, https://www.atf.gov/firearms/firearms-guides-importation-verification-firearms-ammunition-gun-control-act-definitions (last visited Oct. 18, 2022).

80 percent frame or receiver from the very same gun store without any background check or any questions asked. With an 80 percent receiver or frame in hand, that prohibited person can then purchase all ancillary products needed to complete the firearm (like jigs and templates), either in a different contemporaneous transaction or from a different seller, and quickly and easily assemble a firearm functionally indistinguishable from the firearm he would have been be barred from buying after a background check.

45. As illustrated in Images 6, 7, and 8 below, which ATF itself provides, the sole difference between an 80 percent receiver and a finished receiver is hardly noticeable: an 80 percent receiver, shown in Images 6 and 7, "has a solid, un-machined fire-control cavity area with no holes or dimples for the selector, trigger, or hammer pins." ATF has concluded that the receiver does not meet the GCA definition of a "firearm."[36]





Images 6 and 7: 80% Receiver – *Not* a Firearm

[36] *Are "80%" Or "Unfinished" Receivers Illegal*, ATF (Apr. 6, 2020), https://www.atf.gov/firearms/qa/are-%E2%80%9C80%E2%80%9D-or-%E2%80%9Cunfinished%E2%80%9D-receivers-illegal.

The second receiver, shown in Image 8, "has a partially machined fire-control cavity and ATF has concluded that it ***does*** meet the GCA definition of a firearm."[37]

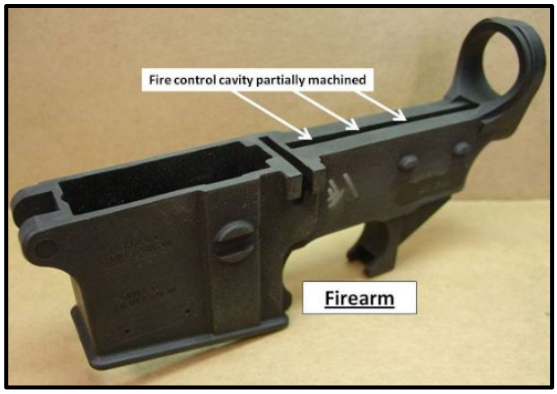


Image 8: Finished Receiver – *Is* a Firearm

46. As a result of these minor differences, 80 percent receivers can easily be turned into lethal assault weapons. Using a jig—a device that guides the drilling and milling necessary to complete the receiver—a buyer can finish an 80 percent receiver "in ***under 30 minutes***" using basic household tools, such as simple drill bit, file set, and a hand drill, to drill the remaining holes.[38] As noted, one seller even boasted that using its jig could help complete an 80 percent frame or receiver in as little ***as 15 minutes***.[39] Of course, the same is true whether the jig is purchased in the same transaction as the 80 percent receiver (which would fall within the ambit of the Final Rule) or sold in a separate transaction as the purchase of the 80 percent receiver (which falls outside the Rule's ambit).

47. Similarly, 80 percent frames, depicted in Image 9 below,[40] closely resemble finished frames, depicted in Image 10 below.[41] To complete an 80 percent frame, the buyer need only make

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[37] *Id*.

[38] *Easy Jig Gen 3 Multi-Platform – AR-15, AR-9 and .308 80% Lower Jig*, 80 PERCENT ARMS, https://www.80percentarms.com/products/easy-jig-gen-3-multi-platform-ar-15-ar-9-and-308-80-lower-jig// (last visited Oct. 11, 2022).

[39] *See supra* note 4.

[40] *Fusion Pro Line 80% 1911 Government Frame*, FUSION FIREARMS, https://fusionfirearms.com/fusion-pro-line-80-1911-government-frame-checkered-stainless (last visited Oct. 10, 2022) (stating that the operations left to be completed are "[c]utting of the slide rails," "[c]utting of the barrel seat," "[d]rilling of the hammer pin hole," and "[d]rilling of the sear pin hole").

[41] *1911 Frame, C-Class – Government Size*, FUSION FIREARMS, https://fusionfirearms.com/1911-frame-c-class-government-size (last visited Oct. 10, 2022).

simple cuts and drills into the frame,[42] which is a quick and easy process, especially when a jig kit is used. Even without a jig kit, common household tools—such as a simple drill bit, file set, and a hand drill, each of which can be inexpensively obtained from any hardware store—can be used to complete the firearm.



Image 9: 80% Frame



Image 10: Finished Frame

If the buyer wants to avoid drilling altogether, pre-programmed milling machines, called computer numerical controlled ("CNC") machines, can finish 80 percent receivers and frames at the press of a button.[43] To use a CNC machine, a buyer with no technical expertise needs only a generic computer and an 80 percent receiver or frame—which the machine's seller can ship, alone or in bulk, along with the machine itself. CNC machines, which can cost $2,500, have been used to mass produce ghost guns.[44] For example, in 2020, a resident of Washington State who had eight prior felony convictions and had been recently released from prison after serving time on a gun charge, was found with an arsenal of ghost guns, a drill press, and a CNC machine.[45] The arsenal included 17 pistols, 24 rifles,

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[42] *80 Lower Jig*, GUN BUILDERS DEPOT, https://www.gunbuilders.com/80-lower-jig/ (last visited Oct. 12, 2022) ("We offer 80% jigs that require little to no machining experience and only require basic tools—a hand drill or drill press, a small vise, and other hand tools—to successfully cut and drill your new firearm").

[43] Ex. 4, EVERYTOWN FOR GUN SAFETY, UNTRACEABLE: THE RISING SPECTER OF GHOST GUNS (May 14, 2020) at 11. *See, e.g.*, *Ghost Gunner 3 Deposit*, Ghost Gunner, https://ghostgunner.net/product/ghost-gunner-3-deposit/ (last visited Oct. 10, 2022) ("Ghost Gunner 3 is a general purpose CNC mill that gives you the ability to finish 80% receivers and frames with ease, in the comfort of your own home.").

[44] *See e.g.*, *Ghost Gunner 3 Deposit*, *supra* note 43.

[45] *See Edmonds Felon Accused of Having 'Ghost Gun' Arsenal in Home,* HERALD NET (Mar. 1, 2020), https://www.heraldnet.com/news/supervised-edmonds-felon-accused-of-having-ghost-gun-arsenal/.

ten silencers, 20 unfinished lower receivers, and 300 pounds of ammunition.[46] And just this month, the New York Police Department arrested a Manhattan resident with a prior felony conviction preventing him from possessing firearms for using a CNC machine to finish and sell dozens of ghost guns.[47] Between October 2016 and May 2022, the man bought at least 55 ghost gun parts worth more than $7,000.[48] Two of the firearms found in his apartment were not locked or safely stored and were easily accessible to the two toddlers living in the apartment.[49] To state the obvious, the dangers associated with these arsenals are not diminished by the fact that the drill press or CNC machine was purchased in a separate transaction than the 80 percent receivers and frames.

48. After the receiver or frame is finished, the buyer can easily complete the building process by using an assembly kit, which contains every part needed to make a fully functioning firearm, and is often sold by the same firms selling 80 percent receivers and frames. As one seller explained, "AR-15 kits . . . come with all the standard parts of an AR-15 . . . . [and] ***is essentially a complete [AR-15] that needs to be assembled*** . . . [so] building time doesn't take too long. ***Within an hour or two, you should be breaking it in at the range***."[50] In other words, within "an hour or two," an individual intent on harming others could use an 80 percent receiver to build a highly lethal, dangerous assault weapon capable of killing a large number of human beings quickly and efficiently.

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[46] *Id*.

[47] Jonathan Dienst, Cache of Ghost Guns Found in Ex-Con's Lower East Side Apartment: DA, NBC N.Y. (Oct. 12, 2022), https://www.nbcnewyork.com/news/local/crime-and-courts/cache-of-ghost-guns-found-in-ex-cons-lower-east-side-apartment-da/3903381/.

[48] *Id*.

[49] *Id*.

[50] *Why is Purchasing an AR-15 Kit is Great for Beginners?*, THUNDER TACTICAL (May 10, 2019), https://web.archive.org/web/20200923221047/https://thundertactical.com/ar-15-kits-great-for-beginners/ (emphases added).



Image 11: AR-15 Assembly Kit[51]

49. Regardless of the method used to assemble the ghost gun, these unserialized weapons are hugely popular, affordable, and widely available online. Currently, there are at least 80 online retailers of ghost guns—68 percent of which entered the ghost gun market after 2014—that sell all of the parts necessary to build a ghost gun. That number is likely even larger than reported, because dealers are not required to obtain an ATF license to sell their products.

50. Advertisements for ghost guns often highlight that 80 percent receivers and frames are unregistered and can be purchased without a background check. One seller, for example, touts that "ATF does NOT recognize an 80% complete lower as a firearm, and therefore an unfinished receiver is not subject to the same regulations as any other complete firearm . . . [t]his means no RED TAPE including: NO Registering . . . NO FFL Required . . . NO Transfer fees."[52] The same seller provides a basic guide to completing an 80% receiver and, as Image 12 demonstrates, makes a point of noting the ease with which anyone can turn an 80% receiver into a fully functioning firearm.[53]

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[51] Complete 16 .223/5.56/300BLK AR-15 80% Build Kit, 80 PERCENT ARMS, https://www.80percentarms.com/products/complete-16-223-5-56-300blk-ar-15-80-build-kit/ (last visited October 18, 2022).

[52] *80% Lowers*, 80 PERCENT ARMS, https://www.80percentarms.com/80-lowers/ (last visited Oct. 11, 2022).

[53] *Id.*

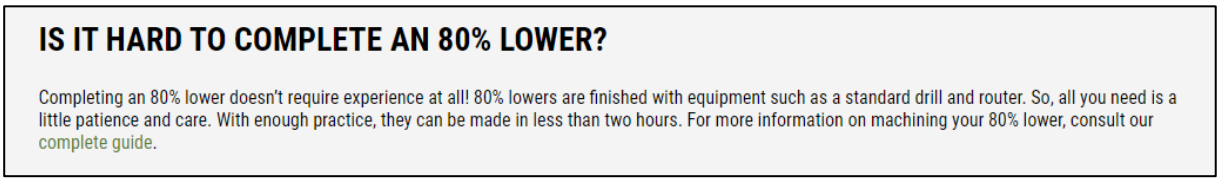


Image 12: 80 Percent Arms Advertisement[54]

51. Because 80 percent receivers and frames can be obtained by individuals who are otherwise prohibited from purchasing firearms, and cannot be traced by law enforcement, it is unsurprising that ghost guns have become a weapon of choice for criminal organizations, gangs or groups engaging in violence, and other individuals who are intent on doing harm. For example:

a. In 2013, a Southern California man, who failed a background check because of his mental instability that caused a run-in with the police, could not legally purchase a gun built an assault rifle from a ghost gun kit that he bought online. He then used the ghost gun to kill five people during a rampage in Santa Monica.[55]

b. In 2017, a Northern California man that prosecutors described as a "deranged, paranoid killer," who was prohibited from owning a gun and under prosecution for multiple crimes, was nevertheless able to kill five people and injure at least ten with two assault-style rifles he assembled from unregulated ghost gun parts he ordered online.[56]

c. In 2020, 18 individuals in Los Angeles, California with links to a drug ring that also sold ghost guns were arrested, after law enforcement officers seized 28 pounds of methamphetamine, a quarter-pound of cocaine, crack cocaine, and 16 firearms, including several ghost guns.[57]

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[54] *Id.*

[55] Robert Cavnar, *Santa Monica Shooter Built His Gun From Parts He Bought Online*, HUFFINGTON POST (June 15, 2013), https://www.huffingtonpost.com/robert-l-cavnar/santa-monica-shooter-buil_b_3447220.html (last visited Sept. 28, 2020).

[56] Ray Sanchez et al., *Gunman in Northern Rampage Was Not Supposed to Have Guns*, CNN (Nov. 15, 2017), https://www.cnn.com/2017/11/15/us/california-tehama-county-shootings/index.html; *see also* Andrew Blankstein & Corky Siemaszko, *California Mass Shooter Made His Own Rifles*, NBC NEWS (Nov. 16, 2017), https://www.nbcnews.com/news/us-news/california-mass-shooter-made-his-own-killing-machines-n821516.

[57] Richard Winton, *FBI Arrests Drug Ring that Also Sold 'Ghost Gun' AR-15s*, L.A. TIMES (Sept. 15, 2020), https://www.latimes.com/california/story/2020-09-15/fbi-arrests-drug-ring-that-also-sold-ghost-gun-ar-15s.

52. Far right extremists have been using ghost guns to target communities of color. In 2020, the FBI seized ghost guns and arrested alleged white supremacists planning to start a race war at a Richmond, Virginia gun rights rally,[58] and a man linked to the right-wing "boogaloo" movement allegedly used a ghost gun to murder two law enforcement officers in California.[59]

53. Other high-profile violent crimes allegedly committed with ghost guns include:

a. In Stockton, California, in 2014, perpetrators of a bank robbery used at least one ghost gun in the crime.[60]

b. In Walnut Creek, California, in 2015, a former Stanford student fatally shot his ex-girlfriend and then himself using guns he had assembled from parts he had ordered online.[61]

c. In Fresno, California, in 2017, investigators discovered that a criminal organization suspected of trafficking young women, firearms, and narcotics possessed a cache of ghost guns.[62]

d. In Washington, D.C., in the summer of 2018, a 25-year-old man was killed with a ghost gun during a shootout.[63]

e. In Santa Barbara, California, in 2019, a suspected cocaine dealer was found in possession of a ghost gun.[64]

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[58] Alain Stephens, *They Planned to Start a Race War. DIY Gun Kits Allowed Them to Build an Arsenal*, THE TRACE (Jan. 23, 2020), https://www.thetrace.org/2020/01/white-supremacists-the-base-fbi-virginia-diy-ghost-gun/.

[59] Cheri Mossburg, *A Man Allegedly Linked to the Boogaloo Movement Accused of Going to a BLM Protest with a Homemade Machine Gun to Kill Cops*, CNN (June 16, 2020), https://www.cnn.com/2020/06/16/us/steven-carrillo-california-officers-deaths-suspect-boogaloos/index.html.

[60] Joe Goldeen, Another Arrest, Reward in Bank of the West Heist, RECORD NET (Sept. 16, 2014), https://web.archive.org/web/20190411004805/https://www.recordnet.com/article/20140916/NEWS/140919728.

[61] Rick Hurd, *Former Stanford Student Built the Gun He Used to Kill Ex-girlfriend, Himself*, MERCURY NEWS (Aug. 4, 2015), https://www.mercurynews.com/2015/08/04/former-stanford-student-built-the-gun-he-used-to-kill-ex-girlfriend-himself/.

[62] Sontaya Rose, *Fresno Police Gang Crackdown Busts Prostitution Ring, Dozens Arrested*, ABC30 ACTION NEWS (Sept. 8, 2017), https://abc30.com/fresno-police-bulldog-gang-jerry-dyer-bust/2393264/.

[63] Peter Hermann & Tom Jackman, *District Seeks to Ban 'Ghost Gun' Kits as Seizures of Homemade Weapons Soar*, WASH. POST (Feb. 27, 2020), https://www.washingtonpost.com/local/public-safety/district-seeks-to-ban-ghost-gun-kits-as-seizures-of-homemade-weapons-soar/2020/02/27/d12be0da-5416-11ea-9e47-59804be1dcfb_story.html.

[64] Indy Staff, *Suspected Cocaine Dealer Arrested with a 'Ghost Gun*,' SANTA BARBARA INDEPENDENT (May 17, 2019), https://www.independent.com/2019/05/17/suspected-cocaine-dealer-arrested-with-a-ghost-gun/.

f. In Longmont, Colorado, in 2019, police recovered ghost guns in connection with a drug trafficking investigation.[65]

g. In Evesham, New Jersey, in 2019, a man wanted for violation of federal probation was found to be in possession of three ghost guns, as well as large quantities of cocaine and methamphetamine.[66]

h. In Washington, D.C., in December 2019, a man, who was previously convicted of illegally possessing an unregistered handgun two years prior, shot at two reserve police officers using a ghost gun.[67]

i. In San Francisco, California, in September 2020, a man who was previously convicted of a felony was arrested and found to be in possession of a ghost gun, ammunition, and significant quantities of methamphetamine and fentanyl.[68]

j. In Fultonville, New York, in 2020, a man manufactured and sold or transferred 19 fully assembled ghost guns, including short-barreled rifles and guns modified to be capable of fully automatic fire.[69]

k. In Fresno, California, in June 2021, federal agents searched the home of a man accused of dealing fentanyl and uncovered 13 firearms, including a ghost gun modified with an "auto sear" to be capable of fully automatic fire.[70]

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[65] Kelsey Hammon, *More Arrested Monday in Alleged Connection with Drug-Trafficking Operation*, TIMES-CALL (July 12, 2019), https://www.timescall.com/2019/07/10/more-arrested-monday-in-alleged-connection-with-drug-trafficking-operation/.

[66] Erin Vogt, '*Armed & Dangerous' Duo Found with Coke, Meth and Kids - Cops*, N.J. 101.5 (Aug. 6, 2019), https://nj1015.com/armed-dangerous-duo-found-with-coke-meth-and-kids-cops/.

[67] Peter Hermann, *Officers Who Were Fired on 'Could See the Muzzle Flashes,' Police Say*, WASH. POST (Dec. 13, 2019), https://www.washingtonpost.com/local/public-safety/officers-who-were-fired-on-could-see-the-muzzle-flashes-police-say/2019/12/13/72d645e2-1dcb-11ea-b4c1-fd0d91b60d9e_story.html.

[68] Press Release, U.S. Attorney's Office for the Northern District of California, *San Francisco Resident Sentenced to Six Years in Prison for Possession of Guns, Ammunition, and Drugs* (Sept. 20, 2022), https://www.justice.gov/usao-ndca/pr/san-francisco-resident-sentenced-six-years-prison-possession-guns-ammunition-and-drugs.

[69] Press Release, U.S. Attorney's Office for the Northern District of New York, *Montgomery County Man Sentenced to 30 Months for Unlawfully Selling "Ghost Guns"* (Sept. 2, 2021), https://www.justice.gov/usao-ndny/pr/montgomery-county-man-sentenced-30-months-unlawfully-selling-ghost-guns.

[70] Press Release, U.S. Attorney's Office for the Eastern District of California, *Federal Drug and Gun Charges Brought Against Fresno Man Accused of Dealing Fentanyl* (July 15, 2021), https://www.justice.gov/usao-edca/pr/federal-drug-and-gun-charges-brought-against-fresno-man-accused-dealing-fentanyl.

l. In New York City, in July 2022, a Connecticut man with a prior felony conviction was charged with trafficking firearms. The man allegedly sold a number of ghost guns from 2019 to 2022 including to members of the Bloods street gang.[71]

[71] Press Release, U.S. Attorney's Office for the Southern District of New York, *Connecticut Man Charged in Manhattan for Trafficking "Ghost" Guns* (July 21, 2022), https://www.justice.gov/usao-sdny/pr/connecticut-man-charged-manhattan-trafficking-ghost-guns.



Image 13: AR-15-Style Ghost Gun Custom-Made for the Bloods Street Gang[72]

m. In San Diego, California, in April 2021, a man equipped with a ghost gun killed one person and seriously injured four others in what appeared to be a random shooting spree.[73]

n. In McAllen, Texas, in May 2021, a 73-year-old man manufactured 11 fully automatic ghost guns intending to sell them to members of a Mexican drug cartel.[74]

o. In Salem, Oregon, in March 2022, an ATF raid exposed a massive ghost gun manufacturing operation. Federal agents recovered 63 ghost guns, including rifles, pistols, and shotguns, high-capacity magazines, and a variety of other components and manufacturing equipment, in addition to hundreds of "counterfeit blue M30 oxycontin pills" laced with fentanyl and heroin.[75]

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[72] *Id*.

[73] Clara Benitez, '*Ghost Gun' Used in Gaslamp Shooting*, FOX 5 NEWS (Apr. 24, 2021), https://fox5sandiego.com/news/local-news/ghost-gun-used-in-gaslamp-shooting/.

[74] Press Release, U.S. Attorney's Office for the Southern District of Texas, *Septuagenarian Charged with Manufacturing "Ghost Guns"* (June 15, 2021), https://www.justice.gov/usao-sdtx/pr/septuagenarian-charged-manufacturing-ghost-guns.

[75] Maxine Bernstein, *'Massive' Ghost Gun Manufacturing Operation Found in Oregon Raid, Feds Say*, OREGONIAN (Mar. 18, 2022), https://www.oregonlive.com/crime/2022/03/salem-man-accused-of-selling-homemade-ghost-guns-and-trafficking-fentanyl-in-exchange-for-guns-feds-say.html.

p. In Las Vegas, Nevada, in September 2022, two men engaged in a violent crime spree over multiple weeks, using a ghost gun to shoot four people across at least five crime scenes.[76]

54. Similarly, reports indicate that ghost guns have increasingly been purchased and/or used by individuals who are prohibited from owning firearms under the GCA, including:

a. In Temple City, California, in 2018, a man who was banned from owning a gun was found with 28 firearms—11 of which were untraceable ghost guns—and 65,000 rounds of ammunition.[77]

b. In Plattsburgh, New York, in 2018, a man with a prior felony conviction brandished, during an argument, an unserialized Glock ghost gun that he purchased partially completed and finished himself.[78]

c. In Upper Darby, Pennsylvania, in 2018, a teenage exchange student bought parts online and built a ghost gun he planned to use to commit a school shooting.[79]

d. In Syracuse, New York, in 2019, a man with a prior felony conviction used a ghost gun to shoot his six-year-old nephew in the back.[80]

e. In Evansville, Indiana, in 2019, a 17-year-old teenager bought parts online to create a handmade ghost gun.[81]

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[76] David Charns, *2 Accused of Shooting 4 Across Las Vegas in Violent Crime Spree with Ghost Gun*, 8NEWSNOW (Sept. 29, 2022), https://www.8newsnow.com/crime/2-accused-of-shooting-4-across-las-vegas-in-violent-crime-spree-with-ghost-gun/.

[77] Josh Haskell, *Temple City Father, Adult Daughter Found with Stockpile of Illegal Weapons, Ammunition*, KABC-TV L.A. (Feb. 21, 2018), https://abc7.com/temple-city-weapons-cache-father-daughter-guns-found-charged/3120273/.

[78] Bob Bennett, *Police: Convicted Felon Revealed Gun During Argument*, PRESS-REPUBLICAN (Apr. 16, 2018), https://www.pressrepublican.com/news/local_news/police-convicted-felon-revealed-gun-during-argument/article_690748e1-3549-5324-acef-42eb7cc2f82e.html/.

[79] Chad Pradelli, *Police: Exchange Student Built Gun from Parts Bought Online*, 6ABC ACTION NEWS (Apr. 2, 2018), https://6abc.com/police-exchange-student-built-gun-from-parts-bought-online/3292963/.

[80] Douglass Dowty, *DA: Syracuse Man Shot 6-Year-Old Nephew with Untraceable 'Ghost Gun'*, SYRACUSE.COM (Jan. 6, 2020), https://www.syracuse.com/crime/2020/01/da-syracuse-man-shot-6-year-old-nephew-with-untraceable-ghost-gun.html/.

[81] Philip Joens, *Indiana Teen Built 'Ghost Gun' from Online Parts*, COLUMBIA DAILY TRIBUNE (May 25, 2019), https://www.columbiatribune.com/news/20190525/indiana-teen-built-ghost-gun-from-online-parts/.

f. In New Orleans, Louisiana, in June 2021, a man with a prior felony pled guilty to being a felon in possession after he attempted to pass through airport security while carrying a Polymer80 ghost gun and two 30-round magazines.[82]

g. In Albany, New York, in August 2021, a man with a prior felony was sentenced to thirty months after being convicted of unlawfully possessing ghost guns.[83] Despite his prior felony, the man had over 38 firearms, an "auto sear," multiple silencers, two completed ghost rifles, and 15 unserialized finished receivers and frames.[84]

h. In Sacramento, California, in March 2022, a man prohibited from owning a firearm used an AR-15-style ghost gun to murder his three daughters and their court-mandated chaperone in a church.[85]

55. Ghost guns are also increasingly used by illegal gun-trafficking rings. In 2015, for example, the New York State Attorney General announced a 32-count indictment of two defendants charged with illegally trafficking at least a dozen untraceable ghost guns, including AR-15s.[86] The two defendants were convicted of illegally trafficking ghost guns, and were sentenced to nine and eleven years in prison, respectively.[87] And in June 2019, the New Jersey Attorney General announced the indictment of nine men allegedly part of a criminal network that was illegally trafficking

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[82] Press Release, U.S. Attorney's Office for the Eastern District of Louisiana, *LaPlace Man Pleads Guilty to Being Felon in Possession of Ammunition* (June 25, 2021), https://www.justice.gov/usao-edla/pr/laplace-man-pleads-guilty-being-felon-possession-ammunition/.

[83] Press Release, U.S. Attorney's Office for the Northern District of New York, *Rensselaer County Felon Sentenced to 30 Months on Firearms Convictions* (Aug. 10, 2021), https://www.justice.gov/usao-ndny/pr/rensselaer-county-felon-sentenced-30-months-firearms-convictions.

[84] *Id*.

[85] *Man Used 'Ghost Gun' to Kill 3 Daughters in Church*, ABC10 (Mar. 6, 2022), https://www.abc10.com/article/news/local/sacramento/david-mora-church-shooting-gun/103-36f31f43-9c24-4b39-b9cf-0097910ae817.

[86] Press Release, N.Y. State Attorney General's Office, *A.G. Schneiderman Announces Thirty-Two Count Indictment Of Two Defendants Charged With Illegally Trafficking Untraceable 'Ghost Guns'* (Sept. 21, 2015), https://ag.ny.gov/press-release/2015/ag-schneiderman-announces-thirty-two-count-indictment-two-defendants-charged.

[87] Press Release, N.Y. State Attorney General's Office, *A.G. Schneiderman Announces 11 Year Jail Sentence Of Defendant Convicted For Illegally Trafficking Untraceable "Ghost Guns"* (Apr. 28, 2016), https://ag.ny.gov/press-release/2016/ag-schneiderman-announces-11-year-jail-sentence-defendant-convicted-illegally.

untraceable ghost guns, including assault rifles, assembled from kits purchased online.[88] In July 2020, one of these men was sentenced to 14 years in prison for his role in the trafficking ring.[89] Similarly, in August 2021, a federal jury indicted four men for their part in a California drug and gun-trafficking ring.[90] Before their arrest, the men sold confidential informants a variety of drugs and ghost guns including an AR-15-style rifle, a shotgun, and handguns.[91] In June 2022, a joint state and federal investigation took down a Philadelphia-area ghost gun and drug trafficking ring that, while operative, was a one-stop shop for methamphetamine and fully automatic and fully untraceable ghost guns.[92] Law enforcement officials believe more arrests may be coming as they ascertain the full extent of this trafficking ring.[93]

56. The increasing production and availability of ghost guns built with 80 percent components has led to a commensurate rise in violence attributable to unregistered, untraceable ghost guns. Law enforcement agencies connected at least 2,513 ghost guns to criminal activity between 2010 and April 2020. *See* Ex. 4, EVERYTOWN FOR GUN SAFETY, UNTRACEABLE: THE RISING SPECTER OF GHOST GUNS (May 14, 2020) at 17. Of that number, more than half—1,300 ghost guns—were used or sold by criminal enterprises to facilitate crimes including gun trafficking, robbery, drug trafficking, terrorism, and murder. *Id*. Ghost guns were linked to criminal cases in at least 38 states between late 2018 and May 2020. *See* Ex. 5, Bill Whitaker, *Ghost Guns: The Build-It-Yourself Firearms that Skirt Most Federal Gun Laws and Are Virtually Untraceable*, CBS NEWS 60 MINUTES

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[88] Press Release, N.J. Attorney General's Office, Indictment in "Operation Stone Wall" Charges Nine Alleged Members of Ring that Trafficked Untraceable "Ghost Gun" Assault Rifles & Cocaine (June 5, 2019), https://www.nj.gov/oag/newsreleases19/pr20190605a.html.

[89] Julie Shaw, *Camden County Man Has Been Sentenced to 14 Years in Prison for His Role in "Ghost Guns" Trafficking Ring, Ag Says*, PHILA. INQUIRER (July 10, 2020), https://www.inquirer.com/news/new-jersey-attorney-general-operation-stone-wall-ghost-guns-christopher-stoner-sentence-20200710.html.

[90] Press Release, U.S. Attorney's Office for the Eastern District of California, *Three South Lake Tahoe Residents Charged with Drug Trafficking and Texas Man Charged with Trafficking Firearms* (Aug. 23, 2021), https://www.justice.gov/usao-edca/pr/three-south-lake-tahoe-residents-charged-drug-trafficking-and-texas-man-charged.

[91] *Id.*

[92] *'Ghost Guns' Trafficking Ring Taken Down in Bucks County*, MYCHESCO (June 12, 2022), https://www.mychesco.com/a/news/regional/ghost-guns-trafficking-ring-taken-down-in-bucks-county/.

[93] *Id.*

(May 10, 2020), https://www.cbsnews.com/news/ghost-guns-untraceable-weapons-criminal-cases-60-minutes-2020-05-10/.

57. The number of ghost guns recovered in connection with criminal activity is growing each year. In 2017, the District of Columbia recovered only three ghost guns.[94] But by 2019, law enforcement recovered 116 ghost guns in one year, before recovering another 106 ghost guns in just the first five months of 2020.[95] According to information from the District of Columbia's Department of Forensic Sciences, of the 250 ghost guns recovered in Washington D.C. between 2017 and May 29, 2020, at least 208, or 83.2%, were manufactured by a single company, Polymer80.[96]

58. According to California law enforcement agencies, during 2020 and 2021, ghost guns "accounted for 25 to 50 percent of firearms recovered at crime scenes."[97] The "vast majority" of these weapons were wielded by individuals prohibited from owning a firearm.[98] In Los Angeles, the number of ghost guns recovered increased by 144% from 2015 to 2019.[99] In San Francisco, no ghost guns were recovered in 2015, but beginning in 2016, ghost gun recoveries began to sharply rise—increasing by 1517% from 2016 to 2019.[100]

59. This is a national problem. In its 2022 Final Rule, ATF noted that there has been a "substantial increase" in ghost gun or privately made firearm ("PMF") recoveries nationwide over the last several years. 87 Fed. Reg. 24,656. From 2016 to 2021, "approximately 45,240 suspected PMFs" were reported to have been recovered by law enforcement agencies; 1,758 in 2016, 2,552 in 2017, 3,960 in 2018, 7,517 in 2019, 10,109 in 2020, and 19,344 in 2021. *Id.*

60. These statistics—as indicative of exponential growth as they are—likely grossly underreport the massive scale of the problem because they rely on instances where ghost guns are

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[94] *AG Racine Sues Gun Manufacturer Polymer80 for Illegally Advertising and Selling Untraceable Firearms to District Consumers*, OFFICE OF THE ATT'Y GENERAL OF D.C. (June 24, 2020), https://oag.dc.gov/release/ag-racine-sues-gun-manufacturer-polymer80

[95] *Id*.

[96] *Id.*

[97] Glenn Thrush, *'Ghost Guns': Firearm Kits Bought Online Fuel Epidemic of Violence*, N.Y. TIMES (Jan. 26, 2022), https://www.nytimes.com/2021/11/14/us/ghost-guns-homemade-firearms.html.

[98] *Id.*

[99] Data released to Giffords Law Center following FOIA request.

[100] *Id*.

recovered by law enforcement. Countless shootings and other acts of violence using ghost guns are never reported as ghost gun violence because no firearm was recovered, and ammunition from the scene of the crime cannot reveal that it was fired from a ghost gun, as opposed to a traditional, serialized weapon, since the ways that serialized and unserialized guns fire ammunition—and function in every other way—are indistinguishable.

61. The sale of ghost guns in the United States presents an overwhelming threat to communities and people who may become victims of violence. Unregulated, ghost guns can be purchased by people with lengthy criminal records or serious mental illnesses, and other prospective shooters intent on doing harm. These ghost guns open the floodgates for such prohibited persons to obtain and use a range of firearms—from small hand-held pistols to high-powered AR-15 military-style assault weapons—in gun crimes, targeted acts of violence, and indiscriminate public mayhem. After these terrible crimes are committed and ghost guns are recovered, the inability to trace the ghost gun back to a particular buyer and seller prevents law enforcement from fully investigating the crime, allowing reckless sellers and illegal traffickers to operate with near impunity. Victims of crimes committed with ghost guns are often left without answers, and ghost gun trafficking remains undetected. Yet, year after year, the number of ghost guns continues to grow—including a surge of sales during the COVID-19 pandemic. This threat to public safety can be stopped, if only ATF—the federal agency delegated the authority to regulate firearms—reasonably applies the GCA's plain text and regulates ghost guns in the way that it regulates all other guns.

B. ATF at First Properly Concludes that Ghost Guns Fall Under the GCA, but Then Inexplicably Reverses Its Position.

62. Beginning in the early 1980s and into the twenty-first century, ATF took the position in its Classification Letters that many unfinished receivers and frames that are identical to the 80 percent receivers and frames on the market today were "firearms" under the GCA, meaning that buyers of these unfinished frames and receivers were required to undergo background checks to determine whether they were legally entitled to own a firearm.

63. The agency's conclusion, during this period, was based on an approach that analyzed how quickly and easily an unfinished receiver or frame could be turned into a fully functional firearm—that is, whether it could "readily be converted" to function as the firearm it was specifically designed to be. Using this "temporal" approach, ATF found that 80 percent receivers that required some machining but could be finished in under 75 minutes or in a "minimal amount of time" qualified as "firearms." *See, e.g.*:

- Ex. 6, Letter from Edward M. Owen, Jr., Chief, Firearms Technology Branch, ATF, to Henry A. Roehrich, SGW Incorporated (May 3, 1983) (classifying as a firearm a partially completed receiver that could be completed with additional milling that took roughly "**75 minutes**") (emphasis added).

- Ex. 7, Letter from Curtis H.A. Bartlett, Chief, Firearms Technology Branch, ATF, to Lane Browne, Mega Machine Shop, Inc. (Dec. 27, 2002) (classifying as a firearm each of the four "AR-15 type lower receiver samples" submitted for examination despite the fact that one of the samples had a "solid interior" because it could be finished in "**approximately 75 minutes"**) (emphasis added).

- Ex. 8, Letter from Sterling Nixon, Chief, Firearms Technology Branch, ATF, to Robert Serva, Dan Wesson Firearms (Aug. 19, 2004) (classifying as a firearm a "1911-type semiautomatic pistol frame" because the frame "can be completed **in a minimal amount of time** by a competent individual having the necessary equipment") (emphasis added).

64. ATF's temporal analysis was also consistent with the GCA, which provides that "firearms" include not only fully functional weapons, but also receivers and frames of such weapons that are "***designed to or may readily be converted***" into functioning ones. 18 U.S.C. § 921(a)(3) (emphasis added). The speed and ease with which an 80 percent receiver or frame can be turned into a functioning firearm speaks directly to whether or not that item was "designed to" be a functional weapon, and whether it "may readily be converted" into a functional weapon.

65. But around 2006, ATF began changing course, without providing any justification for the switch. ATF stopped considering whether an unfinished frame or receiver is "designed to or may readily be converted" into a functioning firearm under the GCA. Instead, ATF began to mechanically analyze which machining operations still needed to be performed to determine whether a partially completed receiver or frame is a "firearm" under the GCA. Under this approach, ATF concluded that 80 percent receivers with fire-control cavity areas that are completely ***"solid and un-machined"*** do not qualify as firearms under the GCA. Ex. 9, Letter from Sterling Nixon, Chief, Firearms Technology Branch, ATF to Justin Halford (Apr. 24, 2006) (classifying an "AR-15 pattern receiver" as a "firearm" because the sample did not have a solid "trigger/hammer area"). In recent years, ATF has analyzed 80 percent frames and receivers under the "machining operations" approach, with no mention of the ease or time it would take to convert the product into a functioning firearm. *See, e.g.*:

- Ex. 10, Letter from John R. Spencer, Chief, Firearms Technology Branch, ATF, to Alan Aronstein, Hi-Standard Manufacturing Company (Sept. 28, 2012) (classifying as not "firearms" a "1911-type receiver blank" and "target-pistol type receiver blank" after analyzing which "**machining operations**" had been "partially or fully completed") (emphasis added).

- Ex. 11, Letter from Earl Griffith, Chief, Firearms Technology Branch, ATF, to Doug Hughes, Kenney Enterprises, Inc. (May 17, 2013) (classifying as "not . . . a 'firearm'" a "partially completed AR-type receiver" because certain "**machining operations**" including "[m]illing out of fire-control cavity" were not yet performed) (emphasis added).

- Ex. 12, Letter from Earl Griffith, Chief, Firearms Technology Branch, ATF, to Bradley Reece, Palmetto State Defense, LLC (May 25, 2014) (classifying as "not a 'firearm'" an "AR-10 type receiver blank" because it "is completely **solid and un-machined** in the fire-control recess area") (emphasis added).

66. ATF further memorialized the mechanical "machining operations" approach in a formal ruling (Ruling 2015-1, issued on January 2, 2015) regarding the manufacture and sale of ghost guns. *See* Ex. 13, ATF, RULING 2015-1 (Jan. 2, 2015). ATF explained that Ruling 2015-1 was issued in response to "inquiries from the public asking whether Federal Firearms Licensees (FFL), or unlicensed machine shops, may engage in the business of completing, or assisting in the completion of, the manufacture of firearm frames or receivers *for unlicensed individuals* without being licensed as a manufacturer of firearms." *Id*. at 1 (emphasis added). In other words, ATF was asked to clarify

whether sellers or gunsmiths could convert 80 percent frames or receivers into fully functioning firearms for buyers.

67. In its Ruling, ATF clarified the obligations by again focusing on the "machining operations" performed on the 80 percent receivers. Specifically, Ruling 2015-1 explains that "when a person ***performs machining or other manufacturing process*** on [an unfinished frame or receiver] to make a firearm 'frame or receiver' . . . that person has performed a manufacturing operation." *Id*. at 3 (emphasis added). Similarly, when any person "make[s] available its machinery . . . to individuals who bring in raw materials, blanks, unfinished frames or receivers . . . for the purpose of creating operable firearms," that person is also "engaged in the business" of manufacturing firearms. *Id*. at 5. In both situations, where "machining" occurs, the seller "must be licensed as a manufacturer under the Gun Control Act of 1968 (GCA); identify (mark) any such firearm; and maintain required manufacturer's records." *Id*. at 1.

68. In explaining the purported reasoning behind the Ruling, ATF stated that allowing a seller or gunsmith to perform "manufacturing processes on a frame or receiver" would result in firearms being "manufactured without any markings or serialization" which would "run[] contrary to a major purpose of the GCA [by] eliminat[ing] the ability of law enforcement to trace firearms used in a crime, or stolen or lost firearms." *Id*. at 5. But the machining test permits consumers to acquire partially complete receivers and frames without serial numbers, and use tools (in some cases, common household tools) to quickly and easily turn them into usable firearms. The result of ATF's mechanical "machining operations" test is the proliferation of unserialized, untraceable weapons, and ATF has doubled down on the "machining operations" approach in its explanation of the Final Rule.[101]

69. Through its continued use of the mechanical "machining operations" approach, ATF has issued a series of Classification Letters to Polymer80, beginning in 2015, that have gravely endangered the lives of Americans and severely inhibited law enforcement's ability to fight crime.

[101] ATF clarified in the Final Rule that "ATF has maintained and continues to maintain that a partially complete frame or receiver alone is not a frame or receiver if it still requires performance of certain ***machining operations*** (e.g., milling out the fire control cavity of an AR-15 billet or blank, or indexing for that operation) because it may not readily be completed to house or hold the applicable fire control components." 87 Fed. Reg. 24,668 (emphasis added).

1. ATF's Classification Letters Regarding Polymer80 Have Permitted and Encouraged the Proliferation of Ghost Guns.

a. ATF's Ghost Gun Classification Letters Issued to Polymer80.

70. Polymer80 is a leading ghost gun component manufacturer that markets and sells 80 percent receivers and frames and other ghost gun components to individuals online and via firearms dealers. Between 2015 and 2017, ATF issued a series of Classification Letters to Polymer80, analyzing Polymer80's products under the mechanical "machining" approach. Exs. 14, 15, 16. *First*, in early 2015, ATF issued a Classification Letter that classified Polymer80's AR-15-type receiver as "NOT a firearm receiver, or a firearm" (the "February 2015 Polymer80 Letter"). *See* Ex. 14, Letter from Michael R. Curtis, Acting Chief, Firearms Technology Industry Services Branch, ATF, to Jason Davis, Davis & Associates. ATF reasoned that because the receiver had a "**solid fire control cavity area**, and was cast in a homogenous manner" using "a single shot of molten material," it was not a firearm. *Id*. at 2 (emphasis added).

71. ATF's February 2015 Polymer80 Letter did not deny that Polymer80's proposed product was designed to and may be readily converted into a fully functional weapon. Nor did the letter consider how quickly a DIY gunsmith could convert the product into a functional firearm using standard household tools, such as a simple drill bit, file set, and a hand drill, or a CNC machine. Notably, at least one retailer of the Polymer80 receiver advertised that the specific AR-15 type firearm at issue in the February 2015 Polymer80 Letter was "a fully automated system" that required "NO expensive jig kits and parts."[102] A 2018 product review of the receiver states, "Great product for first time build . . . [e]asy to cut."[103] Another review from 2016 states, "Easy milling process, and very durable. Have had zero issues with this product."[104]

72. In November 2015, ATF issued a second Classification Letter to Polymer80 (the "November 2015 Polymer80 Letter"), this time regarding two separate 80 percent components: first, an 80 percent receiver for an AR-10 assault rifle which Polymer80 identified as a "WARRHOGG

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[102] *See Polymer80 G150 Phoenix2 80% Receiver Lower Receiver Kit AR-15 Polymer*, MIDWAY USA, https://www.midwayusa.com/product/1092916295905 (last visited Oct. 18, 2022). As of October 19, 2022, the product has been discontinued.

[103] *Id.* (Review by Six_shooter).

[104] *Id.* (Review by Brian).

BLANK" and, second, a Glock-type "CG" or "CG9" Blank handgun frame. *See* Ex. 15, Letter from Michael R. Curtis, Chief, Firearms Technology Industry Services Branch, ATF, to Jason Davis, Davis & Associates (Nov. 2, 2015). ATF concluded that both items were not firearms under the GCA because certain "machining operations" or "design features" were "not yet present or completed" on the items. *Id*. at 3-4. In particular, ATF's Classification Letter pointed out that the AR-10 receiver lacked (1) complete removal of material from the fire-control cavity area, (2) machining or indexing of selector-lever hole, (3) machining or indexing of trigger slot, (4) machining or indexing of trigger-pin hole, or (5) machining or indexing of hammer-pin hole. *Id*. at 3. ATF's letter noted that the GC9 Blank lacked a (1) machined or indexed trigger-pin hole, (2) machined or indexed locking block-pin hole, (3) front or rear frame rails, or a (4) machined or formed barrel seat. *Id*. at 4.

73. ATF's November 2015 Polymer80 Letter did not deny that Polymer80's proposed products were designed to function as and could be readily converted into fully functional weapons. Nor did the letter consider how quickly a DIY gunsmith could convert the products into functional firearms. According to a 2016 review of the AR-10 type receiver at issue in the 2015 Polymer80 Letter on an online retailer's website, "This was easy . . . *I was done in about an hour and another hour to install the* [remaining parts]. Really is that easy."[105]

74. On January 18, 2017, ATF issued a third Classification Letter to Polymer80 (the "2017 Polymer80 Letter"), regarding its Glock-type "PF940C Blank," ruling that it was "not sufficiently complete to be classified as the frame or receiver of a firearm and thus is not a 'firearm' as defined in the GCA." *See* Ex. 16, Letter from Michael R. Curtis, Chief, Firearms Technology Industry Services Branch, ATF to Jason Davis, Davis & Associates (Jan. 18, 2017), at 3. The letter explained that the item was not "sufficiently complete" because the following "machining operations or design features were not yet present or completed": (1) trigger-pin hole machined or indexed, (2) trigger mechanism housing pin machined or indexed, (3) locking block-pin hole machined or indexed, (4) devoid of front or rear frame rails, (5) barrel seat machined or formed, and (6) incapable of accepting Glock locking-block. *Id*. at 2.

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[105] *See Polymer80 Warrhogg 80% Receiver Kit LR-308 Polymer*, MIDWAY USA, https://www.midwayusa.com/product/1092916305283 (last visited Oct. 19, 2022) (Review by Bill the plumber) (emphasis added). As of October 19, 2022, the product has been discontinued.

75. ATF's 2017 Polymer80 Letter did not deny that Polymer80's proposed product was designed to function as and could be readily converted into a fully functional weapon. Nor did the letter consider how quickly a DIY gunsmith could convert the product into a functional firearm. Notably, at least one retailer of the Glock-type receiver at issue in ATF's 2017 Polymer80 Letter stated in its marketing for the 80 percent receiver that "***It's amazing to think in just 10-15 minutes you can have a fully functioning Glock that you made at home.***"[106]

76. The Classification Letters ATF issued to Polymer80 are just a few of the Classification Letters that ATF has issued to manufacturers of 80 percent receivers and frames. Indeed, a number of other manufacturers of 80 percent receivers and frames—including KE Arms,[107] 80 Percent Arms,[108] Palmetto State Defense,[109] and TPM Arms[110]—have similarly received Classification Letters that permitted those manufacturers to sell ghost guns outside the strictures of the GCA. Individually and even more so collectively, these pre-Final Rule Classification Letters resulted in exponential explosion of the size of the ghost gun market, which accelerated during the COVID-19 pandemic, when demand for ghost guns surged.[111]

77. As a result of these Classification Letters,[112] Polymer80 has become a prominent manufacturer of 80 percent receivers and frames and other ghost gun parts. It has been advertising, offering, and selling firearms on its website, www.Polymer80.com, and through a network of firearms dealers that consumers can access through the company's website. Moreover, ATF's pre-Final Rule

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[106] *See Glock 80% Compact Polymer Pistol Frame Kit*, FANDWGUNS, http://fandwguns.gunsamerica.com/ItemDetails/762360860/Glock-80-Compact-Polymer-Pistol-Frame-Kit.htm (last visited Oct. 18, 2022) (emphasis added).

[107] *See* KE ARMS, http://www.kearms.com/ (last visited Oct. 18, 2022); Ex. 11 Letter from Earl Griffith, Chief of Firearms Technology Branch, ATF, to Doug Hughes, Kenney Enterprises, Inc. (May 17, 2013), at 2.

[108] *See* 80 PERCENT ARMS, https://www.80percentarms.com/ (last visited Oct. 18, 2022); Ex. 17, Letter from Earl Griffith, Chief of Firearms Technology Branch, ATF, to Tilden Smith, 80 Percent Arms (July 15, 2013), at 2.

[109] *See* PALMETTO STATE DEFENSE, https://www.psdmfg.com/ (last visited Oct. 18, 2022); Ex. 12, Letter from Earl Griffith, Chief of Firearms Technology Branch, ATF, to Bradley Reece, Palmetto State Defense, LLC (May 25, 2014), at 2.

[110] *See* TPM ARMS, https://tpmarms.com/ (last visited Oct. 18, 2022); Ex. 18, Letter from Earl Griffith, Chief of Firearms Technology Branch, ATF to David Trease, President, TPM Arms, LLC (Nov. 22, 2013), at 3.

[111] *See supra* note 13.

[112] [Footnote withdrawn]

Classification Letters to Polymer80 became a linchpin for the industry. Indeed, individuals and businesses alike have relied on ATF's Classification Letters, such as the Polymer80 Classification Letters, when purchasing, selling, and/or designing 80 percent lower receivers and frames in the United States.[113]

b. Polymer80 Is a Major Contributor to the Ghost Gun Epidemic.

78. Polymer80 contributes significantly to ghost gun violence nationwide. On information and belief, Polymer80's products constitute an outsized percentage of the ghost guns sold nationwide. Indeed, almost 90% of the ghost guns recovered by the Los Angeles Police Department last year were Polymer80's products.[114] The New York Police Department also reported that 90% of recovered ghost guns are made with parts from Polymer90.[115] Similarly, since 2017, Polymer80's products constitute over 83% of the ghost guns recovered by law enforcement officers in the District of Columbia.[116] On information and belief, Polymer80 ghost guns have become so ubiquitous that law enforcement in some jurisdictions colloquially refer to all DIY handguns they recover as "Polys," even if a recovered gun was assembled with parts bought from a different seller.

79. On information and belief, Polymer80 customers and other ghost gun consumers can purchase large quantities of ghost guns and resell them for a profit. For example, a five-time convicted felon from Easthampton, Massachusetts pled guilty to building AR-15 rifles from parts bought online and then sold in New Hampshire, making a $300 profit on each military-style rifle.[117] Another

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[113] *See, e.g.*, Complaint at ¶ 41, *Cal. Rifle & Pistol Ass'n v. ATF*, No. 1:14-cv-01211 (E.D. Cal. July 21, 2014), where the California Rifle & Pistol Association (an organization comprised of individuals and businesses who, among other things, own, manufacture, and/or sell 80 percent receivers), stated that it has "reli[ed] . . . on the ATF's prior opinions, interpretations, and **letter rulings** regarding what constitutes a 'firearm' 'frame' or 'receiver.'" (emphasis added).

[114] Joshua Eaton, *Polymer80's Name Has Become Synonymous with 'Ghost Guns.' Now It's in the Crosshairs*, NBC NEWS (Mar. 27, 2022), https://www.nbcnews.com/news/us-news/polymer80-ghost-guns-kits-crime-rcna20864.

[115] Ali Bauman, *New York City Hall Targets Manufacturer Polymer80 in Fight against Ghost Guns*, CBS NEWS (May 11, 2022), https://www.cbsnews.com/newyork/news/polymer80-ghost-guns-new-york-city/.

[116] *See* Complaint at ¶ 1, *District of Columbia v. Polymer80, Inc.*, Case No. 2020-CA-002878-B (D.C. Super. June 24, 2020) (available at https://oag.dc.gov/sites/default/files/2020-06/Polymer80-Complaint.pdf (last visited Oct. 18, 2022)).

[117] Dan Crowley, *Easthampton Man Pleads Guilty to Illegal Possession of Firearms He Assembled, Intended to Sell*, DAILY HAMPSHIRE GAZETTE (Aug. 13, 2016) https://www.gazettenet.com/Easthampton-man-pleads-guilty-in-NH-federal-court-to-illegal-possession-of-a-firearm-as-a-convicted-felon-4061253 (last visited Sept. 16, 2020).

convicted felon, in Salem, Massachusetts, sold completed firearms for three times what he spent to purchase the parts, spending only 30 minutes to build each gun.[118]

80. Polymer80 advertises and sells a variety of weapons on its website that can be made into fully operational firearms with minimal effort—including AR-15 rifles and multiple types of handguns. And until recently, Polymer80 sold 80 percent receivers in "Buy, Build, Shoot" kits, which contained "all the necessary components" to turn the 80 percent frames into fully functional firearms.[119] The handgun kits contained 80 percent frames as well as a "complete slide assembly, complete frame parts kit, 10 round magazine and a pistol case."[120] Many "buy, build, shoot" kits sold out during the first half of 2020, as manufacturers experienced rapidly increased ghost gun sales during the COVID-19 pandemic.[121]

81. Like other ghost gun retailers, Polymer80 has permitted bulk purchases of its products and kits without restriction—including without any proof of identification, age, or eligibility to possess firearms as would be confirmed by undergoing a background check. Polymer80 has made no effort to confirm that its customers are even alive—claiming it sells firearms to a "growing market of individuals who 'value their Fourth Amendment rights' to privacy."[122] In spring 2020, in fact, Plaintiff Bryan Muehlberger was able to order a ghost gun from Polymer80 in his deceased daughter's name, only four months after Gracie Anne Muehlberger was murdered in the Saugus High School ghost gun shooting. Despite the fact that the name he provided as the purchaser—Gracie's—did not match the name on the credit card used—Mr. Muehlberger's own—in mere minutes, he purchased a ghost gun kit on Polymer80.com for $650. Even if Gracie Anne Muehlberger were still alive, she would have been

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[118] Complaint, *United States v. Echeverria, et al.*, 19-MJ-06527, 11–12 (D. Mass. Oct. 28, 2019); *see also supra* Ex. 4, EVERYTOWN FOR GUN SAFETY, UNTRACEABLE: THE RISING SPECTER OF GHOST GUNS (May 14, 2020), at 11.

[119] *P80® Buy Build Shoot™ kit PF940v2™ - 10 Round Magazine*, POLYMER 80 (Aug. 12, 2020), https://web.archive.org/web/20200811213619/https://www.polymer80.com/pistol-frames/buy-build-shoot-kits/p80-bbs-kit-pf940v2-2343 (last visited Oct. 18, 2022).

[120] *Id.*

[121] *See* Letter from Jerrold Nadler, Chairman, U.S. House Judiciary Committee, to Regina Lombardo, Acting Director, *supra* note 14.

[122] 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.

underage and prohibited from purchasing a firearm under the GCA. Polymer80's other "80 percent" and "unfinished" products are equally accessible.

82. In December 2020, ATF executed a search warrant at Polymer80's headquarters. The search warrant relied in part on the allegations described above from Plaintiffs' original Complaint concerning Plaintiff Bryan Muehlberger's purchase of a Polymer80 ghost gun kit in his daughter's name.[123] In addition to that example, the search warrant identified at least seven other instances where Polymer80 shipped its products "to individuals within the United States who are prohibited from receiving or possessing firearms."[124] The search warrant also described Polymer80's social media marketing techniques—including marketing their products specifically to individuals who might not pass a background check.[125] Specifically, the search warrant pointed to an April 17, 2020 Instagram post where an individual featured in a video posted by Polymer80 explains that with Polymer80's products, "you don't have to worry about a background check."[126] An account with the name "@ellipsis415" responded to the video, remarking that it was strange to market products to people who would not pass a background check. In response, Polymer80 expressed that any background check is an "infringement."[127]

2. ATF Provides Public Guidance Related to Ghost Guns.

83. Also in 2015, ATF decided to explain its official agency position regarding ghost guns on a subsection of the Questions and Answers section of its website, entitled "Receiver Blanks" (hereinafter, the "Ghost Gun Guidance").[128] In or around June or September of 2015, the Ghost Gun

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[123] Polymer80 Search Warrant Affidavit at ¶ 87(h), available at https://s.wsj.net/public/resources/documents/ghostraid-121420-warrant.pdf (last visited Oct. 5, 2022) (explaining that "a Buy Build Shoot Kit was shipped by POLYMER80 in May 2020 to "Gracie Muehlberger;" at an address in Santa Clarita, CA" and that Gracie "was a 15 year old girl who was killed in the shooting at Saugus High School on November 14, 2019 by a minor who was using a ghost gun.").

[124] *Id.* at ¶¶ 87(a)-(g).

[125] *Id*. at ¶¶ 89-90.

[126] *Id*. at ¶ 89.

[127] *Id*.

[128] The Ghost Gun Guidance page is still live on ATF's website. *See Receiver Blanks*, ATF, https://www.atf.gov/qa-category/receiver-blanks (last visited Oct. 14, 2022).

Guidance was posted as a subsection on ATF's Question and Answers page.[129] *See* Ex. 19, pages from Archive.org showing the first archived version of the Ghost Gun Guidance page in September 2015. The Ghost Gun Guidance page states that it contains "answers to some common questions specific to receivers known as 80% receivers or unfinished receivers" and contains eight links to questions and answers. The questions and answers do not appear to have been materially changed since their initial debut on the website, nor have they changed after the Final Rule was made effective. The same eight questions and answers remain on the site today, each containing a note of the date that the answer was "last reviewed." The eight answers have last been reviewed by ATF between February 6, 2020 and June 24, 2020. *See* Ex. 20, *Receiver Blanks,* ATF, https://www.atf.gov/qa-category/receiver-blanks (last visited Oct. 10, 2022).

84. The Ghost Gun Guidance contains legally determinative information regarding when ATF considers a receiver to have become a "firearm" for purposes of the GCA. For example, one of the listed questions asks: "Are '80%' or 'unfinished receivers' illegal?" ATF's answer states:

> Receiver blanks that do not meet the definition of a "firearm" are not subject to regulation under the Gun Control Act (GCA). ATF has long held that items such as receiver blanks, "castings" or "machined bodies" in which the fire-control cavity area is completely solid and un-machined have not reached the "stage of manufacture" which would result in the classification of a firearm according to the GCA.

See Ex. 20. The same response then includes three photos as "examples" of a finished receiver that meets the definition of a firearm and unfinished receivers that ATF has said do not. *See* Images 6-8, *supra* Section A.

85. A further question asks: "Can functioning firearms made from receiver blanks be traced?" ATF responds that "it is usually not possible to trace the firearm or determine its history" when it was made from an 80 percent receiver. ATF then acknowledges that the inability to trace these firearms "hinders crime gun investigations and jeopardizes public safety."

[129] According to a website that catalogs webpage archives, the WayBackMachine (Archive.org), the earliest known Ghost Gun Guidance page was captured in September 2015. *See* Ex. 19, Pages from Archive.org showing the first archived version of the Ghost Gun Guidance page in September 2015. The screen capture contains the date that the website section was "last reviewed" by ATF and states it was last reviewed in June 2015. (Note that this was the first time that the "automated crawlers" became aware of the site and archived it, although the page may have been published some time earlier before detected by the archiving system).

86. Similarly, another question reads: "Have firearms made from unmarked receiver blanks been recovered after being used in a crime?" In response, ATF again acknowledges that these untraceable ghost guns continue to be "recovered after shooting incidents, from gang members, and from prohibited people after they have been used to commit crimes."

87. This Ghost Gun Guidance constitutes final agency action. Until recently, the Ghost Gun Guidance had presented ATF's definitive guidance to the industry and the public regarding 80 percent receivers, and was the primary authority that the public and manufacturers could rely on to understand ATF's position on the legality of 80 percent receivers.

88. Moreover, ATF's Ghost Gun Guidance reflects actual agency policy, consistent with the Polymer80 Classification Letters, that "bind[s] private parties without undergoing the rulemaking process."[130] ATF's determination regarding 80 percent receivers, as described on its Q&A page, has directly resulted in a massive proliferation in both 80 percent receivers *and* in gun violence perpetrated with ghost guns, as described herein. Ghost gun manufacturers and dealers have cited the Ghost Gun Guidance as authority on their websites—for example, a dealer called "80% Lowers" quoted the Ghost Gun Guidance on its website, arguing that "80% lowers are not considered firearms" because ghost guns are "not capable of meeting the definition of a firearm under federal law."[131]

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[130] *See* Memorandum from Att'y Gen. Jefferson B. Sessions III to ATF (Nov. 16, 2017), at 1, https://www.justice.gov/opa/press-release/file/1012271/download (explaining that agencies may no longer "issue guidance documents" that "bind private parties without undergoing the rulemaking process").

[131] *Are 80% Lowers Legal*, 80% LOWERS (June 11, 2020), https://web.archive.org/web/20220117095107/https:/www.80-lower.com/80-lower-blog/are-80-lowers-legal/ (last visited Sept. 28, 2020) (note that the website has been saved by the WayBackMachine and is an archived version).



Image 14: 80% Lowers' Guidance on the Legality of Ghost Guns, Quoting ATF's Ghost Gun Guidance

C. ATF Issues the Final Rule but Carves Out Exceptions that Swallow the Rule.

89. In 2021, after devastating mass shootings in Boulder, Colorado and Atlanta, Georgia, and amid increasing calls for actions to address gun violence across the United States, the White House announced that it intended to "issue a proposed rule to help stop the proliferation of 'ghost guns.'"[132] That proposed rule was published on May 21, 2021.[133]

90. Eleven months later, on April 11, 2022, ATF issued its Final Rule, which was titled "Definition of 'Frame or Receiver' and Identification of Firearms." ATF stated that the goals of the Rule were to "provide a more comprehensive definition of 'frame' or 'receiver' so that these terms more accurately reflect how most modern-day firearms are produced and function," 87 Fed. Reg.

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[132] *FACT SHEET: Biden-Harris Administration Announces Initial Actions To Address The Gun Violence Public Health Epidemic*, WHITE HOUSE (Apr. 7, 2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/07/fact-sheet-biden-harris-administration-announces-initial-actions-to-address-the-gun-violence-public-health-epidemic/.

[133] *See* Definition of "Frame or Receiver" and Identification of Firearms, 86 Fed. Reg. 27,720 (May 21, 2021).

24,661, and to "reduce unserialized 'ghost guns.'"[134] Under the Final Rule, the term "frame" means "the part of a handgun, or variants thereof, that provides housing or a structure for the primary energized component designed to hold back the hammer, striker, bolt, or similar component prior to initiation of the firing sequence." 27 C.F.R. 478.12(a)(1). And a "receiver" means the "part of a rifle, shotgun, or projectile weapon other than a handgun, or variants thereof, that provides housing or a structure for the primary component designed to block or seal the breech prior to initiation of the firing sequence." *Id*. at (a)(2). Additionally, the Final Rule purports to address 80 percent component frames and receivers by stating that the definition of "frame" or "receiver" includes a partially complete frame or receiver, *including a parts kit*, "that is designed to or may readily be completed, assembled, restored, or otherwise converted to function as a frame or receiver." *See* 27 C.F.R. § 478.12(c).

91. But the Final Rule also reiterates portions of ATF's legally flawed pre-Rule interpretation of the GCA. While the Final Rule provides that un-machined 80 percent frames and receivers ***sold with*** a jig, parts kit, and template are firearms subject to the serialization and background check requirements of the GCA,[135] in the next breath, it states that 80 percent receivers and frames are ***not firearms*** under the GCA if they are sold ***without*** a template, jig, or other items and materials.[136] So long as a customer buys an 80 percent frame or receiver in a separate transaction from the jig and tool kit and the manufacturer's instructions are separately provided, a customer (or prohibited person under the GCA) can purchase the 80 percent receiver without complying with the GCA's serialization, background check, and recordkeeping requirements.

92. That result severely undermines the effectiveness of the GCA. It is also wrong as a matter of law. Even without a kit, an 80 percent receiver sold alone *can be* "readily converted" into a firearm. Indeed, that is its sole purpose. Until ATF begins classifying all 80 percent frames and

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[134] *FINAL RULE 2021R-05F-Definition of "Frame or Receiver" And Identification Of Firearms*, ATF, https://www.atf.gov/firearms/docs/guide/overview-final-rule-2021r-05f-definition-%E2%80%9Cframe-or-receiver%E2%80%9D-and-identification/download (last visited Oct. 4, 2022).

[135] *See* 27 C.F.R. § 478.12(c) Example 1 to Paragraph (c) (deeming the following a firearm: "A frame or receiver parts kit containing a partially complete or disassembled billet or blank of a frame or receiver that is sold, distributed, or possessed with a compatible jig or template is a frame or receiver.").

[136] *Id*. at Example 4 to Paragraph (c) (deeming *not* a firearm: "A billet or blank of an AR–15 variant receiver without critical interior areas having been indexed, machined, or formed that is not sold, distributed, or possessed with instructions, jigs, templates, equipment, or tools such that it may readily be completed is not a receiver").

receivers as firearms, it will continue to defy the GCA's plain language and leave mile-wide loopholes in the GCA's regulatory regime, resulting in a Final Rule that is arbitrary and capricious.

93. When ghost gun manufacturers sought to enjoin the Final Rule in court, Defendants confirmed what the text of the Rule suggests: that gun manufacturers can still sell un-machined 80 percent components so long as they do not bundle those components with jigs or tool kits in the same package. To date, ghost gun manufacturers have brought at least three lawsuits against the Final Rule. In each, ATF has taken the position that ghost gun manufacturers would suffer no harm as a result of the Final Rule because they can still sell 80 percent frames and receivers without serialization, background check, and reporting requirements—just as they could prior to the Final Rule—so long as jigs and tool kits are sold separately.

94. For example, on May 9, 2022, Division 80, a ghost gun manufacturer, brought suit in the Southern District of Texas seeking a nationwide preliminary injunction to suspend the Final Rule. *See Div. 80 v. Garland*, No. 3:22-cv-00148 (S.D. Tex. May. 9, 2022). At oral argument on the motion for preliminary injunction, ATF confirmed that it was not "going to be a problem" under the Final Rule for ghost gun manufactures to "sell[] receiver blanks . . . without a [] license." *See* Ex. 1, Transcript of Hearing on Plaintiff's Motion for Preliminary Injunction at 16:2-5, *Div. 80*, No. 3-22-CV-00148 (S.D. Tex. Aug. 9, 2022), ECF No. 68. ATF even clarified that selling both jigs and 80 percent frames and receivers, so long as they are purchased in different transactions, does not violate the Final Rule. *See id*. at 30:17-24; 31:13-16.

95. In two other cases, ATF took similar positions, acknowledging that the Final Rule does not have the sweeping effect promised. On July 5, 2022, ghost gun manufacturers, some state attorneys general, and ghost gun consumers filed suit in the District of North Dakota seeking to enjoin the Final Rule from taking effect as scheduled. *See Morehouse Enters., LLC v. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, No. 3:22-cv-00116-PDW-ARS (D.N.D. July 5, 2022). In their opposition to the plaintiffs' motion for preliminary injunction, Defendants argued that ATF was not "regulating the individual tools, jigs, templates, or instructions sold with firearm parts kits" and that, "for the most part[,] ATF does not regulate individual firearm parts." *See* Defendants' Brief in Opposition to Plaintiffs' Motion for Preliminary and/or Permanent Injunction, *Morehouse Enters.*, No. 3:22-cv-

00116-PDW-ARS (D.N.D. Aug. 23, 2022), ECF No. 43. Similarly, in *VanDerStok v. Garland*, ghost gun consumers joined by a ghost gun manufacturer and a nonprofit organization brought suit in the Northern District of Texas seeking to enjoin the Final Rule. *VanDerStok, et al. v. Garland, et al.*, No. 4:22-cv-00691-O (N.D. Tex. Aug. 11, 2022). In opposing injunctive relief, Defendants confirmed that it "remains true that 'partially complete frame or receiver alone is not a frame or receiver if it still requires performance of certain machining operations'" and that the "only relevant policy change concerns ATF's consideration of jigs, templates, instructions, equipment, or tools that are sold alongside a partially-complete frame or receiver to determine whether that clearly-identifiable component has reached the 'critical stage of manufacture.'" *See* Defendants' Brief in Opposition to Plaintiffs' Motion for Preliminary Injunction, *VanDerStok*, No. 4:22-cv-00691-O (N.D. Tex. Aug. 29, 2022), ECF No. 41 (citing 87 Fed. Reg. 24,668). In other words, ATF has determined that the one-stop-shop purchase of single-transaction *kits* are firearms that are subject to the GCA, but that unmachined 80 percent frames and receivers bought separately *are not*, no matter how easy it is to convert these parts into a fully fireable weapon.

96. As a result, the ghost gun industry now recognizes the obvious: the Final Rule contains a massive loophole. Ghost gun manufactures, like Polymer80 and 80 Percent Arms, continue to sell 80 percent frames at will, and such products remain unregulated; they are still sold without background checks, serial numbers and recordkeeping.[137]

97. Polymer80, for example, continues to sell unfinished receivers and frames. *See P80 80% Pistol Blanks*, POLYMER80, https://www.polymer80.com/pistols/pistolblanks (last visited Oct. 18, 2022), attached as Ex. 21 ("P80 80% Pistol Blanks"); *AR Receiver Blanks*, POLYMER80, https://www.polymer80.com/arreceivers (last visited Oct. 18, 2022), attached as Ex. 22 ("P80 AR Receiver Blanks"). Polymer80 has issued a press release noting that its unserialized 80 percent products are in full compliance with the Final Rule. Ex. 2, Polymer80 Product Changes in Accordance with ATF Final Rule. Moreover, while Polymer80 says that its "kits" that include receivers/frames

[137] Ex. 2, Polymer80 Product Changes in Accordance with ATF Final Rule; *see also ATF Final Ruling 2021R-05F | Complete Breakdown*, 80 PERCENT ARMS (Aug. 25, 2022), https://www.80percentarms.com/blog/atf-final-ruling-2021r05f-complete-breakdown/ ("Lowers are still shipping: you can keep placing new orders for lower receivers.").

plus jigs and other tools will be serialized, it will continue to sell "their complete line of pistols," other "parts and accessories," ***and*** "their AFT 'Assemble for Thyself' kit, which includes all the necessary components to build a complete firearm, no drilling required." *Id.* Consumers are free to purchase one "Assemble for Thyself" kit to use on multiple, unserialized receivers they buy separately.

98. Similarly, Juggernaut Tactical still stocks both 80 percent lower receivers as well as jigs and tool kits on its website and sells them free and clear of the regulations that govern firearm transactions—so long as a buyer purchases each in a separate transaction. Juggernaut Tactical's policy is reflected in a warning at the bottom of its webpage stating that a receiver and jig cannot be purchased in the same transaction:

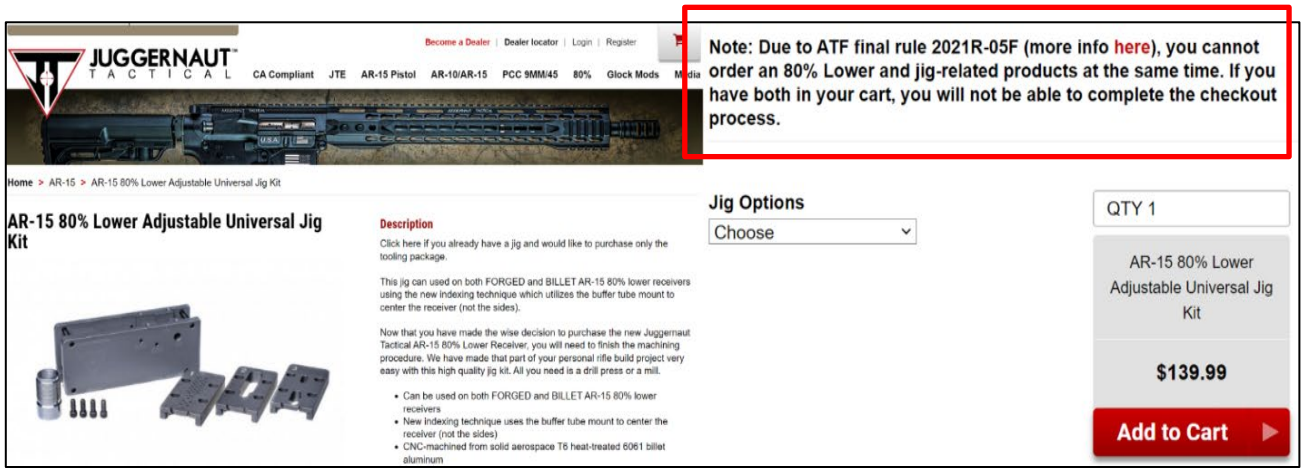


Image 15: Juggernaut Tactical's Universal Jig Kit for Sale (emphasis added)

99. Ghost gun customers and commentators also quickly recognized the narrow scope of the Final Rule. In response to a YouTube video posted by a gun-rights lawyer describing the effects of the Final Rule, commenters recognized that so long as 80 percent components are sold separately from jigs and tool kits, they can continue using ghost guns without being subjected to the serialization, background check, or recordkeeping requirements of the GCA.[138] For these commenters, the Final Rule is little more than a minor inconvenience:

[138] *What The ATF's New Rules On Unfinished Frames And Receivers Really Means To You...*, YOUTUBE (Aug. 31, 2022), https://www.youtube.com/watch?v=XCZPSmx4hzw.

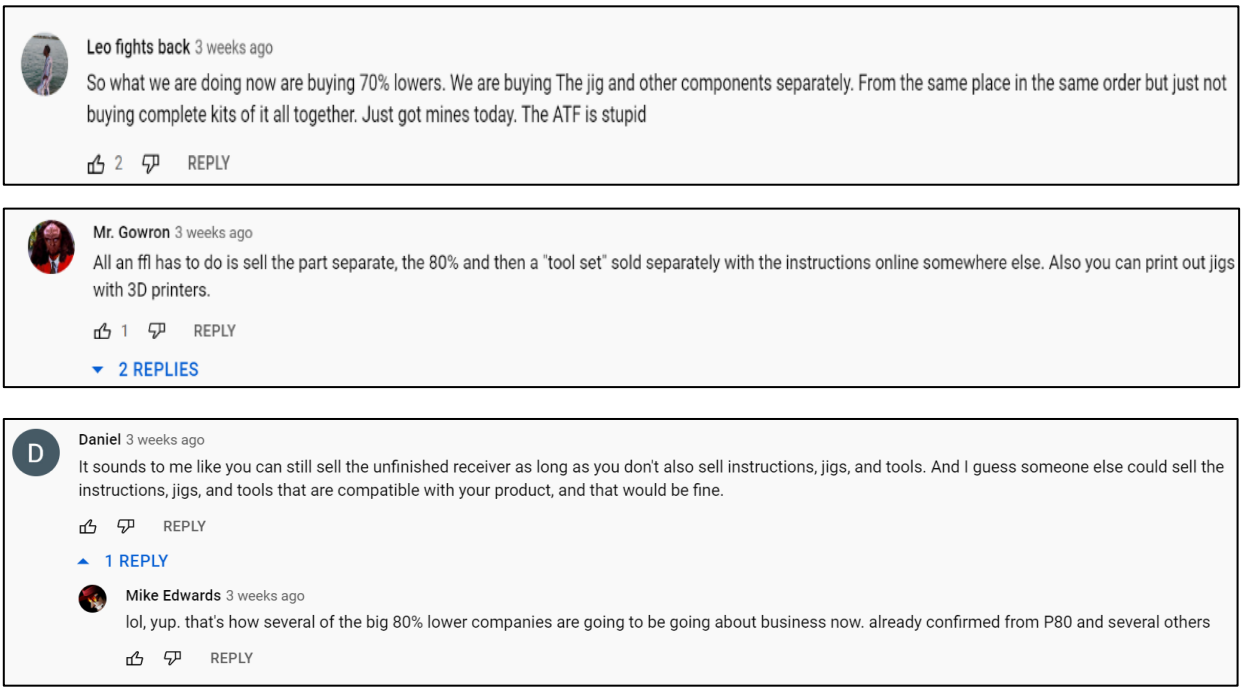
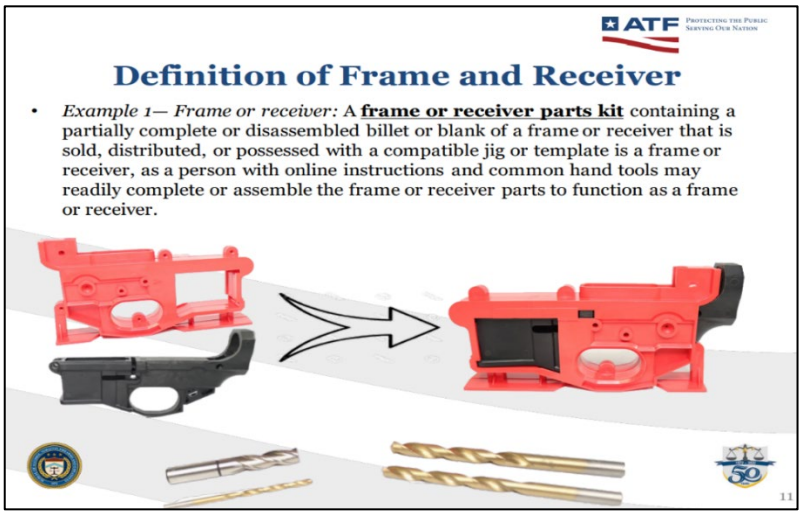


Image 16: YouTube Comments Identifying Flaws in the Final Rule

100. ATF confirmed the Final Rule's limited scope in a new section of its website dedicated to providing guidance documents and examples of firearm frames and receivers.[139] In a slide-deck detailing the effect of the Final Rule, ATF observed that un-machined 80 percent receivers not sold, distributed, or possessed with instructions, jigs, templates, equipment, or tools are *not* firearm receivers under the GCA.[140]

[139] *Definition Of "Frame Or Receiver" And Identification Of Firearms*, ATF (Oct. 17, 2022), https://www.atf.gov/rules-and-regulations/definition-frame-or-receiver.

[140] *FINAL RULE 2021R-05F-Definition Of "Frame Or Receiver" And Identification Of Firearms*, ATF, https://www.atf.gov/firearms/docs/guide/overview-final-rule-2021r-05f-definition-%E2%80%9Cframe-or-receiver%E2%80%9D-and-identification/download (last visited Oct. 4, 2022).



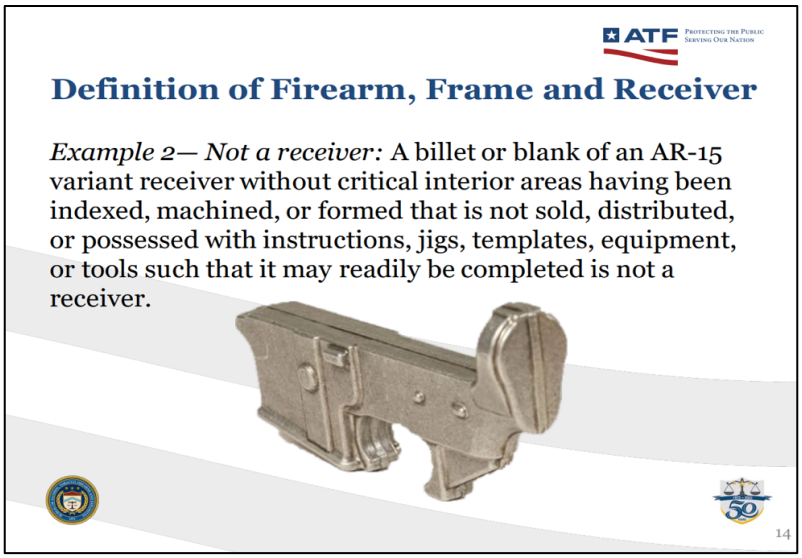


Image 17: ATF Slides Explaining that, Under the Final Rule, Un-Machined 80 Percent Frames and Receivers Are Not Firearms Unless Sold in the Same Transaction as a Jig, Template, or Tool Kit

101. Similarly, in an August, 26, 2022 YouTube video produced by ATF presenting those same slides, it confusingly stated that "not all items previously marketed as 80 percent firearms or 80 percent kits will be regulated under the final rule."[141] Again, ATF confirmed that an un-machined receiver billet or blank "not sold, distributed, or possessed with instructions, jigs, templates, equipment, or tools that make it readily [] completed, is not a receiver."[142]

[141] FINAL RULE 2021R-05F-Definition Of "Frame Or Receiver" And Identification Of Firearms, YOUTUBE, at 9:33 (Aug. 26, 2022), https://www.youtube.com/watch?v=q7XWhcx_Q3A.

[142] *Id.*

102. In a "training aid" intended to clarify the definition of a "frame" or "receiver" under the Final Rule, ATF took the same position. In response to the question "Which "80 [percent] receiver" kits are regulated under the final rule?," ATF answered that an 80 percent receiver kit did not include an "unmachined body."[143] Only when "sold, distributed, or possessed with a compatible jig or template" will such 80 percent components be considered firearms.[144]

103. On September 27, 2022, ATF issued an "Open Letter" "to all federal firearms licensees," for the purpose of "further assist[ing] the firearms industry and the public in understanding whether a 'partially complete, disassembled, or nonfunctional' receiver of an AR-15/M-16 variant weapon" is a "frame or receiver" or "firearm" under the Final Rule. Ex. 23, ATF, *Open Letter to All Federal Firearms Licensees – Impact of Final Rule 2021-05F on Partially Complete AR-15/M-16 Type Receivers*, at 1 (Sept. 27, 2022) (hereinafter "September 2022 Open Letter"). In the September 2022 Open Letter, ATF confirmed that 80 percent AR-type receivers—identical to ones sold before the Final Rule was issued—are *not* firearms if they lack "indexing or machining of any kind . . . in the area of the fire control cavity" and are "not sold, distributed, or marketed with any associated templates, jigs, molds, equipment, tools, instructions, or guides, such as within a receiver parts kit." *Id.* at 3 (emphasis in original). The 2022 Open Letter clarifies ATF's understanding and interpretation of the Final Rule—including that the pre-Rule machining analysis still stands and the only pertinent change with respect to 80 percent frames and receivers is whether or not those items are "sold, distributed, or marketed" with accessories like a jig or template.

104. Moreover, ATF's September 2022 Open Letter included the *exact same images* of un-machined 80 percent receivers used in the pre-Rule Ghost Gun Guidance to underscore that these receivers are *not* firearms.[145] Indeed, the Ghost Gun Guidance, *supra* Section B.2, which was originally posted to ATF's website in 2015, remains accessible today. *See Receiver Blanks,* ATF.gov, https://www.atf.gov/qa-category/receiver-blanks (last visited Oct. 10, 2022) (also attached as Ex. 20).

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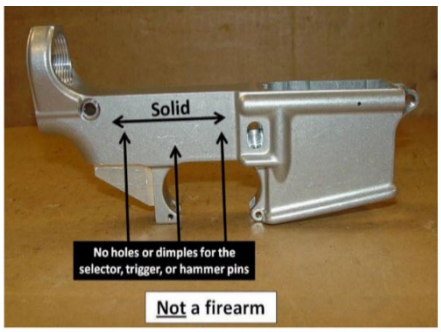
[143] ATF, *Training Aid For The Definition Of Frame Or Receiver & Identification Of Firearms: Overview Of Final Rule 2021R-05F* at 7 (2022), https://www.atf.gov/firearms/docs/guide/new-training-aid-overview-final-rule-2021r-05f-definition-frame-or-receiver-and/download.

[144] *Id*. at 4-5.

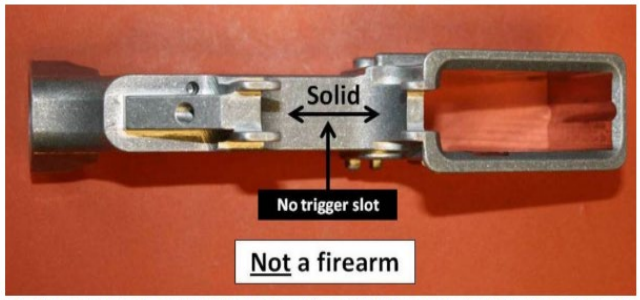
[145] *Compare* Images 6 and 7, *supra with* Image 18, *infra*.



Firearm



(if not sold, distributed, or marketed with any associated templates, jigs, molds, equipment, tools, instructions, or guides)



(if not sold, distributed, or marketed with any associated templates, jigs, molds, equipment, tools, instructions, or guides)

Image 18: Using the Same Photos from the 2015 Ghost Gun Guidance Documents, ATF Confirms in Its Open Letter that 80 Percent Receivers Sold Without Templates, Jigs, Molds, Equipment, Tools, Instructions, or Guides Are Not Considered Firearms

105. The September 2022 Open Letter clarifies ATF's view that classifications of AR-15 or M-16 unfinished receiver variants have not changed—as long as those items are sold without "associated templates, jigs, molds, equipment, tools, instructions, or guides." Ex. 23 at 3.

106. On December 27, 2022, ATF issued another Open Letter to all federal firearms licensees "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" is a firearm under the Final Rule. Ex. 25, ATF, *Open Letter to All Federal Firearms Licensees – Impact of Final Rule 2021-05F on Partially Complete Polymer80, Lone Wolf, and Similar Semiautomatic Pistol Frames*, at 1 (Dec. 27, 2022) (hereinafter "December 2022 Open Letter"). In the December 2022 Open Letter, ATF concluded that certain partially complete striker-fired or "Glock-type" pistol frames that have "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," are firearms under the GCA, even when sold "without

any associated templates, jigs, molds, equipment, tools, instructions, guides, or marketing materials." *Id.* at 1, 9. ATF's determination in the December 2022 Open Letter applies to such frames sold by two ghost gun manufacturers—Polymer80 and Lone Wolf—and to "similar" frames. *Id.* at 1. The December 2022 Open Letter on its face does ***not*** apply to multiple other categories of widely used, equally dangerous, and materially indistinguishable weapons, including partially complete hammer-fired pistol frames. On information and belief, ATF has not applied the analysis of the December 2022 Open Letter to those types of materially indistinguishable firearms.

107. Since the Final Rule took effect on August 24, 2022, ATF has issued several Classification Letters responding to requests for classification pursuant to the Final Rule. In each of these letters, which ATF issued between October 2022 and March 2023, ATF was asked to determine whether a particular product was a firearm under the GCA and Final Rule. In 23 of these letters (the "Post-Final Rule Classification Letters"), ATF concluded that a partially complete or 80 percent frame or receiver was not a firearm under the GCA and Final Rule. ATF analyzed the product at issue under the "machining operations" approach, which considers only what machining must still be performed on a submitted 80 percent receiver or frame to render a particular product capable of firing a projectile. Like ATF's pre-Final Rule Classification Letters, these letters make no mention of the ease with which a person could convert the product into a fully functional weapon or the time it would take.

108. On October 6, 2022, ATF issued a Classification Letter (FATD Case No. 313696) determining that a submitted partially complete AR receiver is not a firearm under the GCA, as implemented by the Final Rule.

109. On October 6, 2022, ATF issued a Classification Letter (FATD Case No. 315916) determining that a submitted partially complete AR-type receiver is not a firearm under the GCA, as implemented by the Final Rule.

110. On October 6, 2022, ATF issued a Classification Letter (FATD Case No. 316248) determining that a submitted partially complete AR10-type receiver is not a firearm under the GCA, as implemented by the Final Rule.

111. On October 6, 2022, ATF issued a Classification Letter (FATD Case No. 317036) determining that a submitted partially complete AR-type receiver is not a firearm under the GCA, as implemented by the Final Rule.

112. On October 6, 2022, ATF issued a Classification Letter (FATD Case No. 318400) determining that a submitted partially complete AR10-type receiver is not a firearm under the GCA, as implemented by the Final Rule.

113. On October 6, 2022, ATF issued a Classification Letter (FATD Case No. 320538) determining that a submitted partially complete AR-type receiver is not a firearm under the GCA, as implemented by the Final Rule.

114. On October 6, 2022, ATF issued a Classification Letter (FATD Case No. 320540) determining that a submitted partially complete AR-type receiver is not a firearm under the GCA, as implemented by the Final Rule.

115. On October 6, 2022, ATF issued a Classification Letter (FATD Case No. 320542) determining that a submitted partially complete AR-type receiver is not a firearm under the GCA, as implemented by the Final Rule.

116. On October 6, 2022, ATF issued a Classification Letter (FATD Case No. 321010) determining that a submitted partially complete AR-type receiver with upper assembly, buttstock, and grip is not a firearm under the GCA, as implemented by the Final Rule.

117. On October 6, 2022, ATF issued a Classification Letter (FATD Case No. 321122) determining that a submitted partially complete AR-type receiver is not a firearm under the GCA, as implemented by the Final Rule.

118. On October 6, 2022, ATF issued a Classification Letter (FATD Case No. 321194) determining that a submitted partially complete AR-type receiver is not a firearm under the GCA, as implemented by the Final Rule.

119. On October 6, 2022, ATF issued a Classification Letter (FATD Case No. 321196) determining that a submitted partially complete AR-type receiver is not a firearm under the GCA, as implemented by the Final Rule.

120. On October 6, 2022, ATF issued a Classification Letter (FATD Case No. 321402) determining that a submitted partially complete AR-type receiver is not a firearm under the GCA, as implemented by the Final Rule.

121. On October 6, 2022, ATF issued a Classification Letter (FATD Case No. 321404) determining that a submitted partially complete AR-type receiver is not a firearm under the GCA, as implemented by the Final Rule.

122. On October 6, 2022, ATF issued a Classification Letter (FATD Case No. 321406) determining that a submitted partially complete AR-type receiver is not a firearm under the GCA, as implemented by the Final Rule.

123. On October 6, 2022, ATF issued a Classification Letter (FATD Case No. 321420) determining that a submitted partially complete AR-type receiver is not a firearm under the GCA, as implemented by the Final Rule.

124. On October 21, 2022, ATF issued a Classification Letter (FATD Case No. 322526) determining that a submitted partially complete AR-type receiver is not a firearm under the GCA, as implemented by the Final Rule.

125. On October 21, 2022, ATF issued a Classification Letter (FATD Case No. 322528) determining that a submitted partially complete AR-type receiver is not a firearm under the GCA, as implemented by the Final Rule.

126. On October 21, 2022, ATF issued a Classification Letter (FATD Case No. 322530) determining that a submitted partially complete AR-type receiver is not a firearm under the GCA, as implemented by the Final Rule.

127. On October 21, 2022, ATF issued a Classification Letter (FATD Case No. 322532) determining that a submitted partially complete AR-type receiver is not a firearm under the GCA, as implemented by the Final Rule.

128. On November 8, 2022, ATF issued a Classification Letter (FATD Case No. 322692) determining that a submitted partially complete AR-type receiver is not a firearm under the GCA, as implemented by the Final Rule.

129. On December 30, 2022, ATF issued a Classification Letter (FATD Case No. 324620) determining that a submitted partially complete AR-type receiver is not a firearm under the GCA, as implemented by the Final Rule.

130. On January 9, 2023, ATF issued a Classification Letter (FATD Case No. 324648) determining that a submitted partially complete AR-type receiver is not a firearm under the GCA, as implemented by the Final Rule.

131. On March 21, 2023, ATF also issued a "Public Safety Advisory" that purported to explain ATF's "investigative priorities" regarding "possible willful efforts to violate the requirements of the Gun Control Act (GCA) as implemented by the Final Rule." Ex. 26, ATF, *Public Safety Advisory to All Federal Firearms Licensees, And Firearm Parts, Components, and Accessories Manufacturers and Distributors* (March 21, 2023) ("March 2023 Public Safety Advisory"). The March 2023 Public Safety Advisory acknowledges that "some suppliers of partially complete frames or receivers appear to be structuring their transactions or coordinating with other persons or entities to sell, distribute, or otherwise make available, in ostensibly independent or separate transactions, the compatible templates, jigs, molds, equipment, tools, instructions, or guides needed to complete the partially complete frames or receivers to the same individuals who purchase a partially completed frame or receiver from the original supplier." *Id*. The March 2023 Public Safety Advisory states: "When a supplier . . . intentionally fails to comply with the GCA's requirements, that may constitute a willful violation of the GCA." *Id*. The March 2023 Public Safety Advisory thus effectively concedes that products like those ATF has *not* deemed to be firearms are "firearms" under the GCA.

132. Upon information and belief, ATF will continue to provide ghost gun dealers with classification letters confirming that they may still make and sell 80 percent receivers and frames without abiding by the GCA's serial number, background check, and recordkeeping requirements. In an interview with VICE News, one ghost gun dealer, Tactical Machining, stated that ATF "approved in writing" the company's ability to continue to sell unserialized 80 percent receivers so long as they did not sell the receivers bundled with jigs or tool kits.[146]

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[146] Keegan Hamilton, *A Simple Plastic Tool Is Undermining New Ghost Gun Rules*, VICE (Sept. 12, 2022), https://www.vice.com/en/article/epzb3a/ghost-gun-jig-tool ("'As we've been instructed, and our understanding here in

133. Email discussions with ATF's counsel also confirm this understanding. When asked whether 80 percent receivers could continue to be sold without serialization, background check, or recordkeeping requirements, Defendants referred Plaintiffs to a portion of the Final Rule stating that: "Companies that sell or distribute only unfinished frame or receiver billets or blanks, and not any associated jigs, templates, or similar tools to the same customer are not required to be licensed or to mark those articles with identifying information."[147]

134. Defendants also directed Plaintiffs to two examples provided in the Final Rule—Example 1 and Example 4—illustrating circumstances under which the sale of a receiver blank would not be considered a frame or receiver.[148] Both examples underscore that receiver blanks and jig and tool kits sold separately are not regulated as firearms under the GCA. Example 1 states that a partially complete frame or receiver "sold, distributed, or possessed with a compatible jig or template" is a frame or receiver and thus, a firearm. 87 Fed. Reg. 24,739. Example 4 states that an un-machined receiver that is "not sold, distributed, or possessed with instructions, jigs, templates, equipment, or tools" is *not* a receiver and thus, *not a firearm*. *Id*. But ghost gun consumers can easily and quickly machine receiver blanks so long as they have access to instructions for doing so and can purchase jigs, tool kits or CNC machines. Indeed, that is the *entire point* of purchasing these products. Unless and until ATF closes the Final Rule's loophole, unfinished ghost guns will continue to quickly proliferate and cause harm in communities across the country.

Orlando, the unfinished receiver, without a jig, instructions, or template is NOT A FIREARM,' Jusick's letter from the ATF said. 'The combination of such an item (unfinished receiver) with other parts (Excluding the Jig) does not reach the standard for Readily Convertible. In other words, your manufacture and selling of unfinished receivers with a lower parts kit does not meet the firearm threshold.'").

147 *See* Ex. 24, Email from Martin M. Tomlinson to Liesel N. Schapira (Sept. 3, 2022) (citing 87 Fed. Reg. 24,700).

148 *Id*.

E. ATF's Ghost Gun Actions Have Harmed and Will Continue to Harm Plaintiffs.

135. ATF's final agency actions—including the Final Rule, the September 2022 Open Letter, the December 2022 Open Letter (to the extent it excludes categories of weapons that are firearms under the GCA), and the Post-Final Rule Classification Letters—have allowed and continue to allow ghost guns to proliferate, causing concrete injury to each of the named Plaintiffs.

136. **State of California**. Plaintiff State of California is an epicenter of the growing ghost gun epidemic. As of 2020, the state was home to at least 18 of the then-estimated 80 current online ghost gun retailers—the most of any state—and more than double the number of retailers than existed in the State just six years before.[149] As one of the states most affected by the proliferation of ghost guns, California has suffered, and will continue to suffer, concrete harm caused by ATF, including (1) significantly increased costs of policing and law enforcement; (2) interference with California's ability to enforce its laws with respect to firearms and firearm-related crime; and (3) harm to its quasi-sovereign interest in protecting the security and well-being of its residents.

137. The proliferation of ghost guns increases the difficulty and costs of policing and law enforcement in California. The California Department of Justice's Bureau of Firearms, which conducts enforcement investigations to confiscate firearms from prohibited persons, has documented an exponential increase in ghost gun seizures: from 2015 to 2021, California's annual ghost gun seizures have increased from 26 to 12,388, representing a staggering 47,546% increase.[150] This statistical evidence is consistent with the experience of California Bureau of Firearms agents in the field.[151] As a result, in recent years, Bureau of Firearms staff have devoted an increasing amount of time providing training to law enforcement personnel statewide on ghost guns. Given the insufficient

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[149] *See* Ex. 4 EVERYTOWN FOR GUN SAFETY, UNTRACEABLE: THE RISING SPECTER OF GHOST GUNS (May 14, 2020) at 12-14 (Everytown [for Gun Safety] undertook an investigation to better understand the size of the online marketplace for ghost guns and "uncovered a sample of 80 sellers offering unfinished frames and/or receivers for ghost guns." According to Everytown's analysis of business registrations from these online sellers in 2020, approximately 18 were located in California.).

[150] *See* Press Release, Attorney General of California, *Attorney General Bonta Announces Arrest Of Suspect With Illegal Ghost Guns, Machine Gun Kits, And Assault Weapons* (Oct. 7, 2022), https://oag.ca.gov/news/press-releases/attorney-general-bonta-announces-arrest-suspect-illegal-ghost-guns-machine-gun.

[151] *See State of Washington v. U.S. Dep't of State*, 2:20-cv-00111-RAJ (W.D. Wash. 2020), ECF No. 56 [Declaration of Blake Graham] ¶ 30.

federal restrictions on 80 percent receivers and frames, this training has focused particularly on the circumstances in which the ghost guns assembled from such parts are noncompliant with state law.

138. The California Department of Justice's Bureau of Investigation, which provides statewide expert investigative services combating multi-jurisdictional criminal organizations, has also noted a rise in ghost gun seizures in recent years. In a 2022 multiagency operation, state and local law enforcement officers seized 58 firearms—including 12 ghost guns and ten assault weapons—in addition to cash and a variety of drugs in Central California.[152] That operation resulted in a total of 88 felony arrests of individuals suspected of robberies, at least two homicides, and a host of other violent crimes.[153] Similarly, in an ATF operation in April 2022, seven Los Angeles-area men were arrested and indicted for narcotics and ghost gun trafficking.[154] With the methamphetamine and cocaine seized was a cache of more than 30 firearms, most of which were ghost guns and seven of which were automatic.[155] These are just two examples of the many investigations in which state and federal law enforcement officers have seized ghost guns from persons involved in criminal activity in California.

139. In addition, the transportation of untraceable firearms from other states into California makes California's local detective work solving crimes more difficult and amplifies the risk of violent attacks using these weapons. Law enforcement agencies in California have reported recovering ghost guns at dramatically increased rates—including, most notably, a 7,225% increase from 2015 to 2021 in Santa Clara County, home of San Jose.[156] In January 2020, the ATF special agent in charge of the Los Angeles Field Division stated that 41% of the Los Angeles Field Division's cases have involved

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[152] Press Release, Attorney General of California, *Attorney General Bonta Announces 90 Arrests as Part of a Multiagency Gang Takedown In Stockton* (June 2, 2022), https://oag.ca.gov/news/press-releases/attorney-general-bonta-announces-90-arrests-part-multiagency-gang-takedown.

[153] *Id*.

[154] Richard Winton, *Seven Men Charged With Gun Trafficking in Inland Empire, 'Ghost Guns' Among 30 Firearms Seized*, L.A. TIMES (Apr. 13, 2022), https://www.latimes.com/california/story/2022-04-13/gun-trafficking-charges-inland-empire-ghost-guns-seized.

[155] *Id*.

[156] Eli Wolfe, *UPDATE: San Jose Approves Ban On Ghost Guns*, SAN JOSE SPOTLIGHT (May 10, 2022), https://sanjosespotlight.com/san-jose-city-council-considers-banning-ghost-guns-homemade-firearms-weapons/.

ghost guns.[157] He further noted that "[i]t concerns me as a law enforcement official that someone with rudimentary or basic skills can mass produce untraceable firearms in the comfort of their own home."[158] California's law enforcement officers have good reason to be concerned. In June 2019, a gunman used two self-assembled AR-15-style assault rifles to ambush Officer Tara O'Sullivan and her training officer, killing O'Sullivan.[159] Two months later, a convicted felon—who would have been unable to legally purchase a firearm—used a semiautomatic ghost rifle to shoot three California Highway Patrol officers, killing Officer Andre Moye.[160]

140. California's ghost gun epidemic has only worsened since those killings. During the first half of 2021, the Los Angeles Police Department reported a nearly 300% increase in ghost gun seizures as compared to the same period in 2020.[161] When compared to the rest of the United States, the urgency of California's ghost gun problem becomes clearer still: in 2020, 65% of all ghost guns seized by ATF were seized in California.[162] As ghost guns become more widespread, California's law enforcement personnel are forced not only to devote additional time and resources to solve or deter ghost gun-related crimes, but also to confront an ever-growing threat to their personal safety.

141. ATF's refusal to regulate the sale of 80 percent receivers and frames has also required California to repeatedly take legislative action to attempt to close this deadly loophole. California has constructed a comprehensive regulatory regime to protect its citizens from the dangers posed by firearms, including regulations that ensure that firearms sales and transfers are overseen by licensed firearms dealers, prohibit classes of dangerous people from possessing firearms, and prohibit the manufacture and possession of military-style firearms and large capacity magazines. First, in 2016,

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[157] Brandi Hitt, *'Ghost Guns' Investigation: Law Enforcement Seeing Unserialized Firearms on Daily Basis in SoCal*, ABC7 (Jan. 30, 2020), https://abc7.com/ghost-guns-california-gun-laws-kits/5893043.

[158] *See* Brandi Hitt, *Orange County Lawyer Faces Federal Charges, Accused of Selling 'Ghost Guns'*, ABC7 (Feb. 20, 2020), https://abc7.com/ghost-guns-california-gun-laws-kits-melinda-romines/5950623.

[159] Sam Stanton, *Murder Charge Filed Against Adel Ramos In Death Of Sacramento Officer Tara O'Sullivan*, SACRAMENTO BEE (June 21, 2019), https://www.sacbee.com/news/local/article231840593.html.

[160] Richard Winton & Mark Puente, *Rifle Used In Deadly Riverside Shooting Was Untraceable 'Ghost Gun,' Sources Say*, L.A. TIMES (Aug. 14, 2019), https://www.latimes.com/california/story/2019-08-14/rifle-used-in-deadly-riverside-shooting-was-untraceable-ghost-gun-sources-say.

[161] Justin Ray, *'An Instrument Of Death': The Problem Of Ghost Guns In California*, L.A. TIMES (Nov. 15, 2021), https://www.latimes.com/california/newsletter/2021-11-15/ghost-guns-california-essential-california.

[162] *Id*.

California enacted legislation requiring a self-assembled firearm to be engraved or permanently affixed with a unique serial number provided by the California Department of Justice, and requiring anyone in possession of an unserialized firearm to apply to the Department to serialize the firearm.[163] Then, in 2019, California enacted legislation to regulate ghost guns and the sale of 80 percent receivers and frames. Specifically, A.B. 879 required the sale of unfinished frames and receivers used to assemble ghost guns to be conducted through licensed dealers, pursuant to a California-only background check and sale record.[164]

142. California accelerated efforts to implement A.B. 879 due in part to the role of ghost guns in the tragic deaths of law enforcement officers Tara O'Sullivan and Andre Moye. In the wake of these devastating incidents, the Legislature approved $5.9 million in 2020-21 and $8.3 million in 2021-22 for the California Department of Justice's Bureau of Firearms and California Justice Information Services to retain additional staff and enhance the Department's existing background check systems.[165] These expenditures would have allowed the Department to implement A.B. 879 beginning July 1, 2022—three years earlier than originally planned.[166]

143. Then, informed by "continued" tragic ghost gun events that "caused enormous harm and suffering," California enacted A.B. 1621 just one day before A.B. 879 was to take effect.[167] A.B. 1621—which builds on the goals of much of A.B. 879—followed a flurry of ghost gun bans enacted by California's cities and localities and takes a comprehensive approach to regulating ghost guns. The new law extends preexisting law requiring serialization of unserialized firearms and greatly expands the definition of firearm precursor parts to include "any forging, casting, printing, extrusion, machined body or similar article [1] that has reached a stage in manufacture where it may readily be completed, assembled or converted to be used as the frame or receiver of a functional firearm, or [2] that is

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[163] A.B. 857, adding CAL. PENAL CODE § 29180 (2019).

[164] A.B. 879 (Cal. 2019), amending CAL. PENAL CODE §§ 16170, 18010, 27585, and 30400, and adding §§ 16351 and 16352 (2019).

[165] S.B. 74 (Cal. 2020) (including referenced funding in item 0820-001-0001).

[166] S.B. 118 (Cal. 2020).

[167] A.B. 1621 (Cal. 2022).

marketed or sold to the public to become or be used as the frame or receiver of a functional firearm once completed, assembled or converted."[168]

144. Under A.B. 1621, the sale or transfer of a firearm precursor part is generally prohibited, and anyone who currently possesses a firearm precursor part must apply to the California Department of Justice for a serial number for the part (in addition to requesting a serial number before self-manufacturing a firearm).[169] However, completed frames and receivers, as well as parts that are considered to be a firearm under the Final Rule, are treated as firearms (i.e. they may generally only be sold or transferred by a licensed firearm dealer after a background check).[170] Thus, under A.B. 1621, firearm parts that fall outside the scope of the Final Rule may no longer be sold or purchased in California and must be serialized. A.B. 1621 will require the California Department of Justice's Bureau of Firearms and California Justice Information Services to expend additional resources to implement the law.

145. ATF's final agency actions legalizing the sale of 80 percent frames and receivers at the federal level without these safeguards not only conflict with California's policies, but also threaten to disrupt California's carefully crafted regulatory scheme: when these items can be manufactured and sold in states across the country, and untraceable firearms can be made without consequences, ghost guns and the myriad dangers that attend them flow more freely across California's borders. ATF's actions thus frustrate the compelling ends served by California's firearms regulations.

146. Ghost guns built from 80 percent receivers and frames also threaten California's interest in protecting the security and well-being of its residents from untraceable weapons. The sale of these components enables Californians with criminal intent to obtain from outside the state firearms that they would otherwise be legally barred from purchasing in California—increasing the likelihood of gun violence and gun-related crime in California. Moreover, law enforcement must expend resources proactively monitoring California's borders to attempt to prevent 80 percent receivers and frames sold legally in other states from crossing into California.

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[168] CAL. PEN. CODE § 16531(a) (2020) (emphasis added).

[169] CAL. PEN. CODE §§ 29180, 30400 (2020).

[170] CAL. PEN. CODE §§ 16519, 16520, 30400 (2020).

147. On November 14, 2019, a student at Saugus High School in Santa Clarita, California allegedly used a .45-caliber semiautomatic ghost gun to kill two students and injure three others before fatally shooting himself.[171] According to the United States Secret Service, the Saugus High School shooter was the youngest mass attacker in 2019.[172] The two victims killed during the Saugus shooting were 15-year-old Gracie Anne Muehlberger, Plaintiff Bryan Muehlberger's daughter, and 14-year-old Dominic Blackwell, Plaintiff Frank Blackwell's son.[173] Given the shooter's age, he would not have been able to legally obtain a "firearm," as defined under the GCA. In addition, the shooter's deceased father was reportedly a gun enthusiast from whom law enforcement had seized more than 40 firearms after a series of incidents that led to him becoming disqualified from possessing firearms. But despite being deemed unfit to own a firearm, authorities suspect the father turned to ghost guns—one of which landed in the hands of his underage son, the Saugus school shooter.[174] When law enforcement searched the boy's home after the Saugus shooting, they found a collection of unregistered firearms,[175] including a gun assembled from a kit.[176]

148. In April 2021, a man prohibited from possessing firearms used a ghost gun as he went on a rampage in San Diego's Gaslamp Quarter.[177] The violence began after the shooter allegedly randomly targeted and executed 28-year-old Justice Boldin, a parking valet. The shooter then confronted and shot four others "completely unprovoked," inflicting life-threatening injuries upon two

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[171] 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

[172] U.S. SECRET SERVICE NATIONAL THREAT ASSESSMENT CTR., MASS ATTACKS IN PUBLIC SPACES – 2019, at 13 (Aug. 2020), https://www.secretservice.gov/sites/default/files/reports/2020-09/MAPS2019.pdf.

[173] Elizabeth Chou, *Hundreds Attend Memorial Service For Gracie Anne Muehlberger, 15, Killed In Saugus School Shooting*, LOS ANGELES DAILY NEWS (Nov. 23, 2019), https://www.dailynews.com/2019/11/23/celebration-of-life-set-for-gracie-anne-muehlberger-killed-in-saugus-school-shooting-in-santa-clarita/.

[174] Ex. 5, Bill Whitaker, Ghost Guns: The Build-It-Yourself Firearms that Skirt Most Federal Gun Laws and Are Virtually Untraceable.

[175] Richard Winton, *Santa Clarita Shooting: Weapon Used In Saugus High Attack A 'Ghost Gun,' Sheriff Says*, L.A. TIMES (Nov. 21, 2019), https://www.latimes.com/california/story/2019-11-15/santa-clarita-shooting-teen-girls-wounded-at-saugus-high-school-recovering-suspect-in-critical-condition.

[176] Dakin Andone, *supra* note 171.

[177] Dennis Romero, Wilson Wong, & Bill Feather, '*Ghost Gun' Used in Random San Diego Shooting That Killed 1, Injured 4, Police Say*, NBC NEWS (Apr. 23, 2021), https://www.nbcnews.com/news/us-news/1-dead-4-injured-san-diego-shootings-suspect-arrested-n1265034.

men, at least one of whom would have died but for the efforts of a former combat medic who happened to be nearby.[178]

149. This past February, a man used an AR-15-style ghost gun to shoot and kill his three daughters, their court-ordered chaperone, and himself at a Sacramento church.[179] The shooter—who was subject to an involuntary mental health hold as recently as April 2021 and an ongoing domestic violence restraining order, and who was out on bail for charges including resisting arrest and battery of a police officer—was barred from possessing firearms.[180] Nevertheless, the shooter was able to acquire a ghost gun and an illegal 30-round magazine and to use them to devastating effect during what should have been an ordinary supervised visitation. His daughters were 13, ten, and nine years old.[181]

150. The more 80 percent receivers and frames legally produced and the more ghost guns that are made, the more likely it is that people prohibited from gun ownership will be able to use firearms to commit crimes in California, implicating the security and well-being of California residents.

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[178] *Id.*

[179] AP, *Investigators: Father Armed With Ghost Gun During Church Slaying of Daughters*, CBS NEWS (Mar. 6, 2022), https://www.cbsnews.com/sanfrancisco/news/investigators-father-armed-with-ghost-gun-during-church-slaying-of-daughters/.

[180] *Id.*

[181] *Id.*



Image 19: Ghost Gun Used in the Saugus High School Shooting[182]

151. **Bryan Muehlberger.** Plaintiff Bryan Muehlberger is the father of a victim of fatal ghost gun violence. Mr. Muehlberger lives in Santa Clarita, California, a city in Los Angeles County, and works in Los Angeles County. On November 14, 2019, Mr. Muehlberger received a call that his daughter, 15-year-old Gracie Anne Muehlberger, had been shot and killed in a shooting at Saugus High School. Gracie was only 14 weeks into her high school career when her life was tragically taken. The Saugus High School shooter opened fire on his classmates using a ghost gun that law enforcement officials believe he obtained from his father, who was legally prohibited from owning and possessing firearms. Gracie and a fellow student, 14-year-old Dominic Blackwell, were murdered in the attack, while three other students were injured. The attacker did not know Gracie or any of the other victims, all of whom were in the wrong place at the wrong time. Gracie was shot one time in the back—the ghost gun was fired at point blank range, penetrating Gracie's backpack, entering her back, and ultimately puncturing her left lung before exiting through her left breast. She dropped to the ground immediately, where she not only could not breathe due to the collapse of her left lung, but where she also drowned rapidly in her own blood, which filled her chest cavity completely. Gracie likely suffered in pain for a minute or two before succumbing to her life-ending injury.

152. Particularly following his daughter's death, Mr. Muehlberger lives in acute fear of ghost gun violence. Mr. Muehlberger is especially vulnerable to the threat of ghost guns because Los Angeles County, where Mr. Muehlberger lives and works, has a significant and growing rate of ghost gun possession and violence. In 2021, the Los Angeles Police Department announced that ghost guns

[182] Ex. 5, Bill Whitaker, Ghost Guns: The Build-It-Yourself Firearms that Skirt Most Federal Gun Laws and Are Virtually Untraceable.

"accounted for 33 percent of all guns recovered by the department" and that "the number of ghost guns seized by the department increased 400 percent since 2017 and more than doubled from 2020 to 2021 alone."[183]

153. Mr. Muehlberger's fear of ghost gun violence is a direct and reasonable response to the increased risk of violence he faces as a result of the proliferation of these untraceable weapons in the area he lives and works. Mr. Muehlberger works in Santa Monica, the same city where a shooter used a ghost gun to kill five people in 2013.[184] At the time of the Santa Monica shooting, Mr. Muehlberger was at his office, mere minutes from the scene of the crime. Because he drives through neighborhoods highly impacted by gun violence each day on his way to and from work, Mr. Muehlberger has become very cautious about getting into confrontations with strangers, fearing that those individuals may be carrying unregistered and dangerous ghost guns.

154. Mr. Muehlberger has two other children; both recent graduates of Saugus High School. Mr. Muehlberger's sons are no strangers to the threat of gun violence: in addition to losing their sister in the Saugus High School ghost gun shooting, Mr. Muehlberger's older son experienced a school lockdown during his junior year at Saugus, after a fellow student threatened the use of a firearm. Mr. Muehlberger constantly worries that they, too, could become victims of ghost gun violence. When his sons spend time together or are in the same place at the same time, Mr. Muehlberger worries that he could lose both of them at once, were a dangerous individual to open fire with a ghost gun. Mr. Muehlberger's fear and anxiety is especially acute when he hears helicopters and ambulances, sounds which immediately bring him back to the moment he learned that his only daughter was shot and killed by a shooter using a ghost gun. Because of the grief he continues to experience following Gracie's death, and because of his fear surrounding his sons' safety, Mr. Muehlberger undergoes regular therapy to assist him in processing his ongoing trauma.

155. Mr. Muehlberger's acute and ongoing fear of ghost gun violence is directly attributed to ATF's classifications of these weapons as not being "firearms" subject to the GCA. Were these

[183] A.B. 1621 (Cal. 2022).

[184] Stan Wilson, Josh Levs & Michael Martinez, *Santa Monica Shooting Victim Dies, Bringing Toll To 5*, CNN (June 9, 2013), https://www.cnn.com/2013/06/09/justice/california-college-gunman.

guns not generally available—particularly to prohibited purchasers or people who can access them without background checks—Mr. Muehlberger would not need to fear the ongoing risk of violence caused by ghost guns. ATF's failure to adequately regulate ghost guns has allowed the legal sale of untraceable 80 percent receivers and frames and has facilitated a rampant market for ghost guns that still plagues Southern California, where Mr. Muehlberger lives and works. ATF's statements about the Final Rule suggest that the agency will continue issuing precisely the kinds of Classification Letters that allow the legal sale of ghost gun components and cause manufacturers to continue producing these dangerous items. Together, ATF's actions allow 80 percent receivers and frames to enter the stream of commerce and become the ghost guns that threaten the lives of individuals like Mr. Muehlberger and his family. If ATF adequately regulated 80 percent receivers and frames as firearms, ghost gun components could not legally be purchased by those ineligible to possess firearms, and the risk of violence faced by individuals like Mr. Muehlberger would be significantly reduced. Dangerous people who cannot legally purchase a firearm would have more difficulty obtaining one, and would-be violent criminals could be deterred by the knowledge that their firearms could be traced.

156. **Frank Blackwell.** Plaintiff Frank Blackwell is the father of a victim of fatal ghost gun violence. Mr. Blackwell lives in Santa Clarita, California, a city in Los Angeles County, and works in Los Angeles County. On November 14, 2019, Mr. Blackwell's son, 14-year-old Dominic Blackwell, was shot and killed by the same shooter at Saugus High School who murdered Gracie Anne Muehlberger.

157. Particularly following his son's death, Mr. Blackwell fears the threat of future violence committed with ghost guns. Mr. Blackwell's fear is a direct and reasonable response to the particular vulnerability to ghost gun violence that he faces as a result of living and working in Los Angeles County—where ghost gun possession and violence have been increasing exponentially. Because Mr. Blackwell is aware of the spread of ghost guns in Los Angeles County resulting from ATF's position on 80 percent receivers and frames, and has directly experienced the grave harm caused by ghost guns, he often fears that individuals that he and his family encounter in places like restaurants and coffee shops may be in possession of ghost guns.

158. In addition to Dominic, Mr. Blackwell has three children—one of whom currently attends Saugus High School. Mr. Blackwell often worries that they, too, may become victims of ghost gun violence. Mr. Blackwell experiences ongoing trauma, grief, and suffering as a result of Dominic's death at the hands of a shooter using a ghost gun and his ongoing fear for his other children's safety. Mr. Blackwell regularly attends therapy to assist him in processing this trauma.

159. Mr. Blackwell's acute and ongoing fear of ghost gun violence is directly attributed to ATF's classifications of these weapons as not being "firearms" subject to the GCA. Were these guns not generally available—particularly to prohibited purchasers or people who can access them without background checks—Mr. Blackwell would not need to fear the ongoing risk of ghost gun violence. ATF's failure to adequately regulate ghost guns has allowed the legal sale of untraceable 80 percent receivers and frames and has facilitated a rampant market for ghost guns that now plagues Southern California, where Mr. Blackwell lives and works. ATF's statements about the Final Rule suggest that the agency will continue issuing precisely the kinds of Classification Letters that allow the legal sale of ghost gun components and cause manufacturers to continue producing these dangerous items. Together, ATF's actions allow 80 percent receivers and frames to enter the stream of commerce and become the ghost guns that threaten the lives of individuals like Mr. Blackwell and his family. If ATF regulated 80 percent receivers and frames as firearms, ghost gun components could not legally be purchased by those ineligible to possess firearms, and the risk of violence faced by Mr. Blackwell would be significantly reduced and his fears, anxiety, and stressed ameliorated. Dangerous people who cannot legally purchase a firearm would have more difficulty obtaining one, and would-be violent criminals could be deterred by the knowledge that their firearms can be traced.

160. **Giffords Law Center.** Plaintiff Giffords Law Center's core mission is to save lives from gun violence by shifting culture, changing policies, and challenging injustice. ATF's arbitrary, capricious, and unlawful stance on ghost guns directly affects Giffords Law Center's interests and mission by permitting the proliferation of untraceable firearms that can be purchased by prohibited and dangerous persons and without any background check. Giffords Law Center's ability to save lives is inhibited on a daily basis as a result of ATF's approval of the sale of ghost guns. That ghost gun sales are unregulated requires Giffords Law Center to expend a substantial portion of its budget and

substantial human capital and resources to educate the public and combat the violence ghost guns cause. Addressing ghost guns and the violence they facilitate is currently among the organization's top policy and legislative priorities: in recent years, Giffords Law Center has contributed technical assistance to or monitored and analyzed over 100 state and federal bills pertaining to ghost guns. Giffords Law Center has also launched a series of specific ghost gun initiatives, including drafting proposed legislation, publishing white papers, and helping produce videos and other educational materials for the public.

161. ATF's actions on ghost guns have required Giffords Law Center to expend more resources and staff time because ATF's regulatory approach undermines every other firearm policy that Giffords Law Center advocates for. This includes the organization's core policy platform of supporting background check and licensing laws at the federal and state level. Background check laws and other efforts to ensure firearms are legally and responsibly possessed are impeded and undermined by ATF's choice to create a loophole by which buyers can evade all otherwise applicable firearm sales regulations. This loophole has forced Giffords Law Center to redouble its violence prevention efforts and direct even more resources into addressing gun violence even in states with strong firearm laws, like the organization's home state of California. Increasingly, these expenditures have come in the form of legal action, as co-counsel or an amicus in lawsuits seeking to vindicate state firearm laws and to protect Americans. In addition to this action, Giffords Law Center has, as pro bono counsel to the San Francisco District Attorney, joined the California Attorney General and San Francisco District Attorney in a lawsuit against ghost gun retailers—*see People v. Blackhawk Manufacturing Group, Inc.*, No. CGC-21-594577 (S.F. Sup. Ct. Oct. 13, 2021)—and filed an amicus brief in a case, like this one, challenging ATF's action on ghost guns.[185] *See Syracuse v. Bureau of Alcohol, Tobacco, Firearms and Explosives*, No. 1:20-cv-06885-GHW (S.D.N.Y. Jan. 2, 2021).[186] Giffords Law Center has made this issue an urgent priority based on the fact that, in California, for example, ghost guns range from

[185] Glenn Thrush, *San Francisco Sues Three Online Retailers For Selling 'Ghost Guns,'* N.Y. TIMES (Aug. 18, 2021) https://www.nytimes.com/2021/08/18/us/sf-ghost-guns.html.

[186] *Syracuse v. ATF: Challenging the ATF's Classification of Ghost Guns*, GIFFORDS L. CTR. (Dec. 12, 2020), https://giffords.org/lawcenter/amicus-brief/syracuse-v-atf-challenging-the-atfs-classification-of-ghost-guns/.

25 to 50% of all crime guns recovered—representing one of the single most dangerous loopholes undermining the state's laws.[187] Every day, more lives are lost to ghost guns despite Giffords Law Center's increased efforts and resource expenditures.

162. In addition to its legislative and legal work, Giffords Law Center provides policy expertise and technical assistance in support of violence intervention programs in communities disproportionately impacted by gun violence and ghost gun violence. Giffords Law Center also frequently partners with community-based organizations that provide direct support services to victims of gun violence. While these intervention efforts have contributed to dramatic reductions in gun violence in cities such as Oakland, California in recent years, many of these cities are also experiencing a surge in the numbers of ghost guns recovered, meaning all of these hard-fought gains in community safety are being compromised by ATF's actions. The risk of increased ghost gun violence and ATF's failure to regulate ghost gun sales have therefore contributed to increased expenditure of human and financial capital and resources by Giffords Law Center toward work supporting violence intervention programs and violence reduction work by community-based organizations. In sum, ATF's actions have forced Giffords Law Center to adjust many of its organizational priorities and divert substantial resources to combat ghost guns and resulting violence.

163. **Statutory standing**. The interests of all named Plaintiffs—the State of California, Bryan Muehlberger, Frank Blackwell, and Giffords Law Center are within the zone of interests protected by the GCA. In enacting the GCA, Congress found that the "ease with which any person can acquire firearms . . . is a significant factor in the prevalence of lawlessness and violent crime in the United States." Omnibus Crime Control & Safe Streets Act of 1968, Pub. L. No. 90-357, § 901(a)(2), 82 Stat. 197, 225. All named Plaintiffs allege injury involving the increased likelihood of violent crime that ATF's actions have caused. Therefore, all named Plaintiffs allege harm to interests within the zone of interests that the GCA protects.

[187] Glenn Thrush, *'Ghost Guns': Firearm Kits Bought Online Fuel Epidemic Of Violence*, N.Y. TIMES (Jan. 26, 2022), https://www.nytimes.com/2021/11/14/us/ghost-guns-homemade-firearms.html.

CLAIMS FOR RELIEF

COUNT ONE: Violation of Administrative Procedure Act, 5 U.S.C. § 706(2)(A): ATF's Ghost Gun Actions Are Not in Accordance with Law.

164. Plaintiffs repeat, reallege, and incorporate the allegations in the paragraphs above as though fully set forth herein.

165. Individually and collectively, ATF's ghost gun determinations—including (i) the Final Rule, (ii) the Post-Final Rule Classification Letters, and (iii) additional explanatory materials interpreting the Final Rule, including the September 2022 Open Letter; the December 2022 Open Letter; the August 26, 2022 YouTube video and informational slide-deck, and the Ghost Gun Guidance—constitute "final agency action for which there is no other adequate remedy." 5 U.S.C. § 704.[188]

166. In the alternative, individually and collectively, ATF's ghost gun determinations implemented before the Final Rule took effect on August 24, 2022—including (i) pre-Final Rule Classification Letters, (ii) Ruling 2015-1, and (iii) the Ghost Gun Guidance—constitute "final agency action for which there is no other adequate remedy." 5 U.S.C. § 704.

167. Under the Administrative Procedure Act, this Court is empowered to "hold unlawful and set aside agency action, findings, and conclusion found to be . . . not in accordance with law." *Id.* § 706(2)(A).

168. ATF's ghost gun determinations are "not in accordance with law" because they disregard the GCA. The GCA provides that "[t]he term 'firearm' means (A) any weapon (including a starter gun) which will or ***is designed or may readily be converted*** to expel a projectile by the action of an explosive;" and includes "(B) ***the frame or receiver of any such weapon***." 18 U.S.C. § 921(a)(3) (emphases added). Namely, unfinished 80 percent receivers and frames—sold as part of an assembly kit, with associated templates, or alone—fall within the statutory definition of firearms subject to the GCA's requirements. They are "designed" to be "readily converted" into firearms, as is evident from their design and marketing, which emphasizes how "easy" it is for even a novice to use the "world's

[188] Defendants have agreed to produce to Plaintiffs any Classification Letter issued up to 30 days before summary judgment briefing begins in this case. Plaintiffs reserve the right to challenge any subsequently produced Classification Letters.

fastest jig" to complete an 80% lower "in *under 30 minutes*."[189] Yet 80 percent receivers and frames may still be purchased without serial numbers and background checks, in direct violation of the GCA, as a result of ATF's determinations.

169. ***The Final Rule.*** ATF's Final Rule contravenes the plain text of the GCA. Although it recognizes that 80 percent frames and receivers, when sold with jigs tool kits or other materials, are firearms under the GCA, ATF fails to acknowledge that an 80 percent receiver, whether sold with or without other products, is "readily convertible" to a fully functional weapon. Any buyer can easily and legally purchase, without serialization or background check safeguards, an 80 percent receiver in one transaction and a jig or tool kit in another. Or consumers can purchase machines to automate the conversion process in minutes. Even a novice can "readily convert[]" an 80 percent component into a fully functioning firearm in hours or minutes. Such receivers are therefore "firearms," and the Final Rule's failure to classify them as such conflicts with the GCA.

170. ***Post-Final Rule Classification Letters***. In at least 23 Classification Letters issued since the Final Rule took effect, ATF classified a partially complete frame or receiver that can be "readily converted" into a fully functioning weapon as not a firearm. These products are "firearms" under the plain text of the GCA. ATF's exclusion of these products from the definition of "firearm" conflicts with the GCA.

171. ***September 2022 Open Letter.*** ATF's September 2022 Open Letter reaffirms portions of the Final Rule that contravene the plain text of the GCA. In the letter, ATF concludes based on its legally flawed machining analysis that "a partially complete AR-type receiver with no indexing or machining of any kind performed in the area of the fire control cavity" is not a "frame or receiver" or "firearm." Ex. 23 at 1. Because even a novice can "readily convert[]" a partially complete AR-type receiver into a fully functioning firearm, such receivers ***are*** "firearms." ATF's exclusion of these products from the definition of "firearm" conflicts with the GCA.

172. ***December 2022 Open Letter.*** In its December 2022 Open Letter, ATF concludes that, pursuant to the Final Rule, "partially complete Polymer80, Lone Wolf, and similar striker-fired

[189] *See, e.g.*, *Easy Jig Gen 3 Multi-Platform – AR-15, AR-9 And .308 80% Lower Jig*, 80 PERCENT ARMS, https://www.80percentarms.com/products/easy-jig-gen-3-multi-platform-ar-15-ar-9-and-308-80-lower-jig/ (last visited Oct. 11, 2022).

semiautomatic pistol frames . . . have reached a stage of manufacture where they 'may readily be completed, assembled, restored, or otherwise converted' to a functional frame," and are therefore firearms, "*even without* any associated templates, jigs, molds, equipment, tools, instructions, guides, or marketing materials." Ex. 25 at 1. The December 2022 Open Letter conflicts with the GCA to the extent it fails to include or extend to other categories of similar weapons, such as partially complete hammer-fired pistol frames, that are just as readily convertible into fully functional firearms. ATF's exclusion of these materially identical products from the definition of "firearm" conflicts with the GCA.

173. ***Pre-Final Rule Classification Letters, Ruling 2015-1, Ghost Gun Guidance.*** In the alternative, and to the extent the Final Rule is vacated, altered, or amended at any point, ATF's determinations reflected in its pre-Final Rule Classification Letters to Polymer80, Ruling 2015-1, and the Ghost Gun Guidance similarly disregard the GCA.

174. Each of the products in the pre-Final Rule Classification Letters constitutes a "firearm" under the plain text of the GCA. For example, the 2017 Polymer80 Letter states that the 80 percent receiver in question was not "sufficiently complete" because of the "machining operations" that were yet to be "completed." But at least one retailer of the 80 percent receiver at issue in the 2017 Polymer80 Letter markets it with the statement "***[i]t's amazing to think in just 10–15 minutes you can have a fully functioning Glock that you made at home.***"[190] It is difficult to conceive of what might possibly be "readily" converted to expel a projectile within the meaning of the GCA if an 80 percent receiver that requires only 10–15 minutes of labor does not. Similarly, consumers have reported that the product addressed in the November 2015 Polymer80 Letter could be converted into a fireable weapon in an hour or two. As one consumer said, it "[r]eally is that easy."[191] And the product addressed in the February 2015 Polymer80 letter was expressly advertised as "incredibly simple to drill and mill, and the material is forgiving."[192] Ruling 2015-1 and the Ghost Gun Guidance are no different; each permits products that are "***designed or may readily be converted*** to expel a

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[190] *See supra* note 4.

[191] *See supra* note 105.

[192] *See* Polymer80 *80% Receiver and Jig Kit (AR-15),* 80% LOWERS, https://www.80-lower.com/products/Polymer80-lower-receiver-and-jig-kit-ar-15/ (last visited Oct. 19, 2022).

projectile" to be sold as *non*-firearms exempt from the GCA's requirements. 18 U.S.C. § 921(a)(3) (emphasis added).

175. Plaintiffs have been and will continue to be impacted and injured by ATF's ghost gun determinations because, among other reasons, the firearms assembled from 80 percent receivers and frames have been used and in the future will be used in connection with criminal activity that undermines the legitimate regulatory and law enforcement interests of Plaintiff California and that has harmed and will foreseeably cause future harm to Plaintiffs Bryan Muehlberger, Frank Blackwell, and Giffords Law Center to Prevent Gun Violence.

COUNT TWO: Violation of Administrative Procedure Act, 5 U.S.C. § 706(2)(A): ATF's Ghost Gun Actions Are Arbitrary and Capricious.

176. Plaintiffs repeat, reallege, and incorporate the allegations in the paragraphs above as though fully set forth herein.

177. Individually and collectively, ATF's ghost gun determinations—including (i) the Final Rule, (ii) the Post-Final Rule Classification Letters, and (iii) additional explanatory materials interpreting the Final Rule, including the September 2022 Open Letter; the December 2022 Open Letter; the August 26, 2022 YouTube video and informational slide-deck; and the Ghost Gun Guidance—constitute "final agency action for which there is no other adequate remedy." 5 U.S.C. § 704.

178. In the alternative, individually and collectively, ATF's ghost gun determinations implemented before the Final Rule took effect on August 24, 2022—including (i) the Pre-Final Rule Classification Letters, (ii) Ruling 2015-1, and (iii) the Ghost Gun Guidance—constitute "final agency action for which there is no other adequate remedy." 5 U.S.C. § 704.

179. Under the Administrative Procedure Act, this Court is empowered to "hold unlawful and set aside agency action, findings, and conclusion found to be . . . arbitrary, capricious, an abuse of discretion." *Id.* § 706(2)(A).

180. The Final Rule arbitrarily deems as firearms only those 80 percent receivers and frames sold in kits or alongside jigs, templates, or similar aids, leaving 80 percent receivers and frames sold separately wholly unregulated. This arbitrary line leaves open obvious and easily navigable loopholes

that run counter to the GCA's basic commands. ATF's Final Rule is, therefore, arbitrary and capricious.

181. Moreover, ATF's approval of the unregulated manufacture and sale of 80 percent receivers and frames used to build ghost guns "entirely fail[s] to consider an important aspect of the problem" that ATF was purporting to regulate. *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). ATF has acknowledged serious problems with the current regulatory landscape, *see supra* ¶ 12, yet has failed to consider the ways in which the Final Rule will not abate those problems and may even contribute to the proliferation of untraceable firearms that impose costs across the country, including to the State of California and its law enforcement officers, Plaintiffs Bryan Muehlberger, Frank Blackwell, and other victims of ghost gun violence, and organizations expending limited resources to combat rising ghost gun violence, like Plaintiff Giffords Law Center. ATF has also failed to consider that 80 percent receivers and frames may be easily and legally purchased separate from an assembly kit.

182. ATF's post-Final Rule ghost gun determinations are also arbitrary and capricious. The Post-Final Rule Classification Letters, the September 2022 Open Letter, and the December 2022 Open Letter (which leaves major categories of 80 percent frames and receivers unregulated) rely on ATF's legally flawed machining analysis and fail to consider important aspects of the ghost gun problem.

183. Alternatively, should the Final Rule be vacated, altered, or amended at any point, ATF's ghost gun actions, including its pre-Final Rule Classification Letters, Ruling 2015-1, and Ghost Gun Guidance, constitute "final agency action for which there is no other adequate remedy." 5 U.S.C. § 704.

184. Because they are contrary to the GCA and because of ATF's failure to consider "important aspect[s] of the problem," ATF's ghost actions are arbitrary and capricious.

185. Plaintiffs have been and will continue to be impacted and injured by ATF's ghost gun determinations because, among other reasons, the firearms assembled from 80 percent receivers and frames have been used and will continue to be used in connection with criminal activity that undermines the legitimate regulatory and law enforcement interests of Plaintiff State of California and

that has harmed and will foreseeably cause future harm to Plaintiffs Bryan Muehlberger, Frank Blackwell, and Giffords Law Center.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter an order and judgment:

a. Declaring that 80 percent receivers and frames are "firearms" under the GCA, even when sold without a kit, template, or other materials, because they are "designed to" *and* "may readily be converted" into functional firearms with ease, *see* 18 U.S.C. § 921(a)(3);

b. Declaring null and void, with no force and effect, the portions of ATF's Final Rule, August 26, 2022 YouTube video and informational slide-deck, and Ghost Gun Guidance providing that 80 percent receivers and frames are not "firearms" under the GCA unless sold with a kit, template, or other materials;

c. Declaring null and void, with no force and effect, the Post-Final Rule Classification Letters providing that certain standalone 80 percent receivers and frames are not "firearms" under the GCA;

d. Declaring null and void, with no force and effect, the September 2022 Open Letter providing that certain standalone 80 percent receivers are not "firearms" under the GCA;

e. Declaring arbitrary and capricious within the meaning of 5 U.S.C. § 706(2)(A) the portions of ATF's Final Rule, the Post-Final Rule Classification Letters, the September 2022 Open Letter, the August 26, 2022 YouTube video and informational slide-deck, and the Ghost Gun Guidance providing that 80 percent receivers and frames are not "firearms" under the GCA unless sold with a kit, template, or other materials;

f. Declaring arbitrary and capricious within the meaning of 5 U.S.C. § 706(2)(A) the December 2022 Open Letter insofar as it excludes categories of ghost gun products that fall within the GCA's definition of "firearm";

g. In the alternative, declaring null, void, and with no force and effect ATF's pre-Final Rule Classification Letters, Ruling 2015-1, and the Ghost Gun Guidance finding that 80 percent receivers and frames are not "firearms" under the GCA;

h. In the alternative, declaring arbitrary and capricious within the meaning of 5 U.S.C. § 706(2)(A) ATF's pre-Final Rule Classification Letters, Ruling 2015-1, and the Ghost Gun Guidance finding that 80 percent receivers and frames are not "firearms" under the GCA;

i. Preliminarily and permanently enjoining Defendants from implementing and enforcing any agency action, decision, or guidance providing that 80 percent receivers and frames are not "firearms" under the GCA;

j. Awarding Plaintiffs their reasonable costs, including attorneys' fees, in bringing this claim;

k. Granting such other and further relief as this Court deems just and proper.

Dated: September 7, 2023

/s S. Clinton Woods

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EXHIBIT 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

DIVISION 80, LLC	§	**3:22-CV-00148**
	§	
V.	§	**11:01 A.M. TO 12:20 P.M.**
	§	
MERRICK GARLAND, ET AL	§	**AUGUST 9, 2022**

HEARING ON PLAINTIFF'S
MOTION FOR PRELIMINARY INJUNCTION
BEFORE THE HONORABLE JEFFREY V. BROWN
Volume 1 of 1 Volume

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Mr. Eric Epstein
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Proceedings recorded by mechanical stenography.
Transcript produced by computer-assisted transcription.

Third on that, plaintiff's argument, it's -- it's based on the agency's cost-benefit analysis, as it concedes. And as stated in a case that the plaintiff itself cited, those analyses are reviewed deferentially in
11:17:31 view of the complex nature of economic analysis typical in the regulation process. The burden to show error is high. That's the *National Association of Home Builders* case.

And very last on that point, Your Honor, it's -- the difficulty is, I mean, the plaintiff is saying the harm
11:17:47 caused by others, in effect, is irreparable harm to him. But none of those others have filed suit, joined suit as a plaintiff, presented evidence in this case. Nothing prevented them from doing so, but they chose not to.

Here, I mean, it's -- yeah. It just seems odd and not
11:18:10 quite to the purpose that relying on third parties', customer decisions to try and show this plaintiff's irreparable harm. And so for all those reasons.

THE COURT: You say that some of these companies may choose to go out of business or that's what was found.
11:18:33 What about the argument that Mr. Liu made that, I mean, for a long, long, long time folks have been able to sell these components without having a license to do it? Why shouldn't they be able to count on being able to do that into the future?

11:18:50 MR. RIESS: In some cases they will be able to,

and in some cases they won't. I think my colleague will go into it a bit more. But, I mean, just briefly, for example, selling receiver blanks, you can continue to do that without a -- without license. That's not going to be
11:19:09 a problem.

What is going to be necessary for a license are parts that are clearly identifiable as the final part, like a receiver, and that are readily completed to be so, in some cases as short as an hour. And so for that reason, we
11:19:26 acknowledge that; but, I mean, the public-safety reason does take precedent over that.

And we think the burden is relatively minimal. It's to do background checks and keep records in case these guns are found in a crime scene.

11:19:47 THE COURT: And maybe this is something that your co-counsel is going to argue; but, you know, receiver blanks, you are still going to be able to -- you are still going to be able to sell receiver blanks without a license; but these other parts that are closer to
11:20:01 completion, you are not going to be able to sell.

Aren't you walking right into the plaintiff's vagueness and arbitrariness?

MR. RIESS: I don't think so, Your Honor. I am happy to discuss the vagueness point, if Your Honor
11:20:18 wishes, at this juncture.

MR. RIESS: Thank you, Your Honor. Four points.

So, number one, Your Honor, plaintiff just asked if solid receiver blanks sold on their own are receivers and if that's in the rule. It is, at two pages.

11:37:37 At Page 24700, I'll just briefly read into the record. "Companies that sell or distribute only unfinished frame or receiver billets or blanks and not any associated jigs, templates or similar tools to the same customer are not" emphasized "required to be licensed or to mark those

11:37:57 articles with identifying information. However, companies that sell and distribute firearm parts, kits, jigs, templates, tools to the same customer with partially complete frames or receivers showing them -- allowing them to be efficiently, quickly and easily converted into

11:38:15 functional weapons must apply identification and must record them as firearms."

THE COURT: Okay. So it sounds like -- it sounds like if they sell just this, just this blank, they are fine; but the fact that, it sounds like, it doesn't matter

11:38:29 whether it comes in the same package or not, if they also sell the jig and the other parts on their website to the same customer, they are going to violate the rule, the new rule.

MR. RIESS: That's incorrect, Your Honor.

11:38:45 THE COURT: Okay. Then I misunderstood.

MR. RIESS: No. So the point about structuring -- I'll just briefly mention. So, I mean, we mention that that's really kind of a common-sense point. I mean, for good reason a firearms dealer can't evade liability if you
11:39:01 sell half of a complete firearm to somebody on a Monday and then you sell the other half on a Tuesday. That is -- that is structuring.

But if an unlicensed seller is engaged in, for example, selling complete firearms by parceling out, you
11:39:18 know, in different sales and saying, you know, if you just buy this one today, buy this one, you know, then, yes, it might be liable because it's obviously structuring those.

But the mere fact that there is an -- you know, there is an item on the same website is not anything that the
11:39:35 rule looks to. Instead, what it -- all it is saying, really, is we want to look at the complete parts kit.

In the past, when people have submitted this, they have just submitted the receiver itself. They haven't submitted what comes with it. We want to see that from
11:39:51 now going forward. So the argument that if it's also available on the website, that's not structuring.

Number -- let me see. The second point I believe plaintiff's counsel made about the rule being self-contradictory, just briefly, it's not -- to claim
11:40:18 otherwise is based on a misunderstanding of some of the

MR. RIESS: Very briefly on that.

THE COURT: Yes. Very briefly.

MR. RIESS: As to the classification letters, Your Honor. Your Honor, most classifications were grandfathered. What the agency did was it's grandfathering earlier classification positions for complete receivers where the agency said these are receivers.

Okay. What it's not doing is it's not grandfathering partly complete receivers where the agency said these are not receivers.

The reason it's doing that is -- it explained why. In the past, when manufacturers or sellers have sent these partly complete, incomplete receivers for classification, then they may have left out key items from the whole kit as sold to the end buyer -- templates, jigs, and so on -- and the agency needs this to make a proper classification. So going forward, they need to be included. But they did grandfather earlier classification decisions for complete receivers where they told people these are receivers.

MR. LIU: And so I'm not going to disagree on his reading of the rule, but I will just point out that basically what he said was if the letter said this is a receiver, it's grandfathered. If the letter says it's not a receiver, it's not grandfathered.

And so, that goes to show that they were specifically trying to prevent companies like Division 80 from continuing its operations and casting that segment of the market into uncertainty.

12:03:06 THE COURT: Okay. I am familiar with the briefing; and I had some questions, which y'all were able to answer for me this morning. If each side has a brief summation they want to make before we wrap up, I'm happy to hear from y'all.

12:03:23 Mr. Liu.

MR. LIU: Thank you, Your Honor. I'll keep it brief. As we outlined in our motion for a preliminary injunction, this case is about attempts to get certain legislation passed through Congress. Those attempts had

12:03:45 been the subject of campaign promises and elections. And so there was pressure on the administration to deliver on those promises, but there weren't the votes in Congress to adopt that legislation.

And so, in the words of President Biden himself, I

12:03:58 directed the Attorney General to make a regulation because I was having trouble getting anything passed in the Congress.

And as the Supreme Court, as recently as the *West Virginia v. EPA* case, said that's not how our constitution

12:04:11 works. That's not how the administrative state works.

EXHIBIT 2

Buy A Black Compact Pistol Blank And Get One Free. Offer ends 10/9.

Polymer80 Product Changes in Accordance with ATF Final Rule

Written by
Stephanie Spika Hickey (/blog/author/stephanie-spika-hickey)

Published on
August 29th, 2022

Last week ATF final rule 2021R-05F, Definition of “Frame or Receiver” and Identification of Firearms, went into effect. Polymer80, Inc., the company that designs and develops innovative firearms and after-market accessories that provide ways for customers to participate in the build process while expressing their right to bear arms, is a direct target of this new rule. Polymer80 wholeheartedly disagrees with the ATF final rule, however, in an effort to maintain a legal business, will comply with the unconstitutional regulations.

In accordance with the new ATF final rule, Polymer80 will no longer offer their popular 80% kits in the same configuration in which customers have grown accustom. Instead, Polymer80 has released three new options for consumers interested in building their own legal firearm:

· **OPTION 1** is an unserialized 80% frame with rear rail, locking block rail system and pins. No jig or tools are included with this product.

· **OPTION 2** is a serialized frame that does include a jig, tooling, rear rail and locking block rail system. This option is the same as the prior 80% kit offered by Polymer80, but with a serialized frame.

· **OPTION 3** is the “Build Back Better” kit, which includes everything listed in option 2 plus a slide assembly. This kit contains everything you need to build a complete, serialized firearm.

Option 1, the unserialized 80% blank, is currently available for purchase at www.polymer80.com (http://www.polymer80.com). Please note that shipment is not available to all states.

For those interested in assembling without drilling, Polymer80 will continue to offer their AFT “Assemble for Thyself” kit, which includes all the necessary components to build a complete firearm, no drilling required.

Polymer80 will also continue to offer their line of complete pistols, including the popular PFC9 compact pistol and PFS9 full-size pistol, as well as parts and accessories.

About Polymer80: Polymer80, Inc. designs and develops innovative firearms and after-market accessories that provide ways for our customers to participate in the build process, while expressing their right to bear arms. This provides a fun learning experience and a greater sense of pride in their completed firearm, strengthening our brand loyalty. We summarize this with our motto of “Engage Your Freedom.” Find out more about us at www.polymer80.com (http://www.polymer80.com).

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www.polymer80.com

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EXHIBIT 3

U.S. Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives
Office of Enforcement Programs and Services

ATF National Firearms Act Handbook



ATF E-Publication 5320.8
Revised: April 2009

7.2.3 What is the difference between manufacturing and gunsmithing? Performing the work of a gunsmith requires a dealer's license under the GCA, not a manufacturer's license.[111] Nevertheless, a license as an importer or manufacturer also entitles the licensee to conduct business as a gunsmith. The term "dealer" under the GCA includes a gunsmith, that is, "any person engaged in the business of repairing firearms or fitting special barrels, stocks, or trigger mechanisms to firearms." However, gunsmiths occasionally perform the work of a manufacturer and do so without the required manufacturer's license. Indeed, there is no distinction between the activities of a gunsmith and a manufacturer in terms of the physical things done to a firearm. What distinguishes gunsmithing from manufacturing is the purpose for which the work is done. If a gunsmith performs work on a customer's personal gun for the customer's personal use, the function is lawfully performed pursuant to the gunsmith's license as a dealer under the GCA. However, if the gunsmith performs work on guns as a step in the process of preparing them for subsequent sale, the work is "manufacturing" requiring a manufacturer's license and, if the firearm is an NFA firearm, a special tax stamp under the NFA. Here are some examples:

(1) John Doe has a personal firearm and takes it to a gunsmith, a licensed dealer, for modification. The work performed in this instance is the legitimate work of a gunsmith and may be performed pursuant to the gunsmith's dealer's license. The gunsmith need not be licensed as a manufacturer, or hold a special tax stamp in the case of an NFA firearm, to perform the work.

(2) Company A is a licensed manufacturer, but contracts with other licensees to perform finishing work on NFA firearms it manufactures. One such contractor is a gunsmith, a licensed dealer. After receiving the finished firearms, Company A offers the firearms for sale. In this instance, the gunsmith, as well as Company A, is engaged in business as an NFA firearms manufacturer and needs a manufacturer's license and special tax stamp to do so.

7.2.4 Do you know how ATF would classify your product? There is no requirement in the law or regulations for a manufacturer to seek an ATF classification of its product prior to manufacture. Nevertheless, a firearms manufacturer is well advised to seek an ATF classification before going to the trouble and expense of producing it. Perhaps the manufacturer intends to produce a GCA firearm but not an NFA firearm. Submitting a prototype of the item to ATF's Firearms Technology Branch (FTB) for classification in advance of manufacture is a good business practice to avoid an unintended classification and violations of the law.

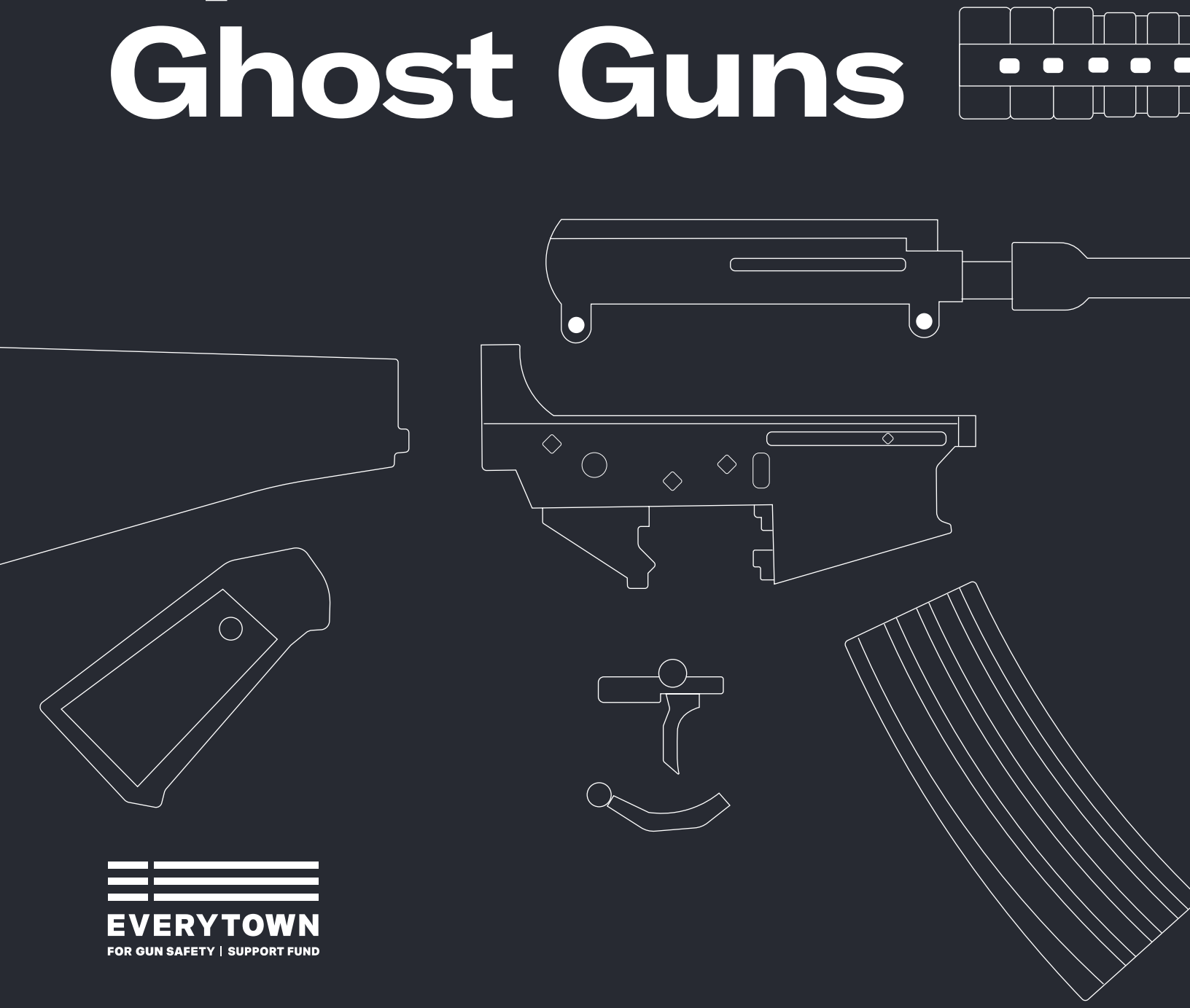
7.2.4.1 ATF classification letters. ATF letter rulings classifying firearms may generally be relied upon by their recipients as the agency's official position concerning the status of the firearms under Federal firearms laws. Nevertheless, classifications are subject to change if later determined to be erroneous or impacted by subsequent changes in the law or regulations. To make sure their classifications are current, FFLs/SOTs should stay informed by periodically checking the information published on ATF's website, particularly amendments to the law or regulations, published ATF rulings, and "open letters" to industry members.

[111] 18 U.S.C. 921(a)(11)(B)

EXHIBIT 4

Untraceable:

The Rising Specter of Ghost Guns



EVERYTOWN
FOR GUN SAFETY | SUPPORT FUND

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Appendix A. Legal Overview of State Ghost Gun Laws

Introduction

In California, a 16-year-old boy shot and killed two of his classmates and shot and wounded three others with a handgun.[1] In Washington D.C., ghost guns were used in four recent fatal shootings.[2] In Arizona, a neo-Nazi sex offender bragged on Facebook about his arsenal of firearms and homemade assault-style rifles.[3] All of these people were legally prohibited from buying guns. But due to a dangerous wrong turn by ATF these individuals were able to access a haunting new source of firepower: ghost guns.

Ghost guns are the thread connecting a horrific series of recent shootings. These do-it-yourself (DIY) firearms are made from parts available without a background check and are predictably emerging as a weapon of choice for violent criminals, gun traffickers, dangerous extremists, and, generally, people legally prohibited from buying firearms. Because it has no serial number, a ghost gun cannot be traced back to where it came from, which frustrates police investigations and robs victims and survivors of justice.

The rise of ghost guns is the fastest-growing gun safety problem facing our country. But disturbingly little is known about who sells ghost guns, who buys them, and how much they are used in crime. The scant data available is disjointed and barely scratches the surface of the issue. To remedy this problem, Everytown for Gun Safety examined available data, including a sample of 80 online ghost gun part sellers and more than 100 federal prosecutions involving ghost guns, to find out who is selling and using these deadly weapons and what can be done about it.

Our analysis showed that across the country, law enforcement officers are recovering increasing numbers of homemade, unserialized guns from people who are legally prohibited from having guns. We found that today, it's easier and cheaper than ever for anyone to make their own guns. With a DIY kit ordered online and some commonly available tools, a novice can make their own pistol, like a Glock 19, or an assault-style rifle, like an AR-15 or AK-47, in just a few hours. The number of ghost gun sellers offering gun-making kits with all parts needed at discount prices is exploding, with some ghost gun kits retailing at nearly half the price of their finished-firearm counterparts.[4]

The prevalence of ghost guns and their potential to wreak havoc on every federal and state gun law are the predictable outcomes of the failure of the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to use its power to regulate "unfinished" frames and receivers, the building blocks of ghost guns. But it doesn't have to be this way. Although ATF does not currently classify "unfinished" frames and receivers as firearms, as it once did, it could address the ghost gun problem in one fell swoop by doing so again.

In the absence of ATF action addressing this threat, stakeholders across the country are searching for a solution. Some states are passing legislation to regulate ghost guns, while others are using existing laws to rein in the ghost gun market. Members of Congress have introduced bills to address ghost guns. And law enforcement agencies are beginning to track the use of ghost guns in crimes and sound the alarm on this trend.

Inaction is not an option. Unregulated sellers will continue to offer ghost gun building kits, traffickers will continue to make and sell completed, untraceable ghost guns, and more of these guns will end up in the hands of prohibited and often dangerous individuals—causing more deaths, injuries, and trauma in our communities.

Executive Summary

In response to the proliferation of ghost guns and the unique risks they pose to public safety, Everytown prepared this report to inform the public, lawmakers, and law enforcement about the dangers of ghost guns, and call on policymakers and corporations to act to stop ghost guns from falling into dangerous hands.

First, the report surveys the rising specter of ghost guns, finding that unregulated commercial sources are expanding and ghost guns are increasingly easy and inexpensive to make. An Everytown analysis found that 68 percent of online sellers in existence today began selling ghost gun parts after 2014. Sellers provide all the necessary parts for a functional ghost gun, and claim key ghost gun parts can be made in as fast as 15 minutes, often at rates below assembled firearms sold at retail.

It perhaps is not then surprising that law enforcement agencies are recovering homemade, unserialized firearms from criminals at alarming rates. While the absence of comprehensive reporting makes analysis difficult, Everytown examined more than 100 federal prosecutions involving ghost guns, finding that ghost guns are connected to violent criminal enterprises, gun trafficking rings, and far-right extremists. This sample included more than 2,500 ghost guns, many of which were assault-style or machine guns. This first-of-its-kind analysis shows that ghost guns are not only for hobbyists, as some have claimed, but rather they have become a critical part of the criminal market for firearms.

Next, this report examines ghost guns' status under the law. Federal law, in fact, provides the framework for regulating ghost guns, but the report explains why—based on a dangerous wrong turn by ATF—the building blocks for ghost guns are currently unregulated under federal law.

Last, the report lays out recommendations for actions that should be taken by corporations and at the local, state, and federal levels of government:

① **ATF should adopt a new definition of "firearm frames and receivers" that would reassert regulation over ghost guns—like the proposed new definition formally submitted to ATF by Everytown in December 2019.[5]**

② **If ATF fails to act, Congress should enact legislation to overrule ATF's interpretation and clarify that "unfinished" frames and receivers are firearms, prohibit the manufacture, sale, transfer, purchase, and possession of a gun without a serial number, and require ATF to collect data and publicly report on the availability and recovery of ghost guns.**

③ **States should pass laws to prohibit the purchase and sale of ghost guns and the critical parts to manufacture them, mandate that firearms that are manufactured at home are serialized, and require the licensure of individuals who want to manufacture firearms.**

④ **In states with laws that already include frames and receivers in the definition of firearm, state attorneys general should issue legal opinions to clarify the law to ensure that law enforcement can treat these parts as firearms.**

⑤ **ATF and state and local law enforcement should collect data and publicly report on the availability and use of ghost guns.**

⑥ **Companies that facilitate sales (e.g., credit cards, internet service providers, shipping) of the building blocks of ghost guns should take proactive measures to prevent the spread of ghost guns.**

Ghost Gun Basics

A ghost gun is a DIY, homemade gun made from readily available, unregulated building blocks. It is produced by an individual rather than by an ATF-licensed manufacturer or importer.

A ghost gun has three key, related characteristics: It is unserialized, untraceable, and its building blocks are acquired without a background check. A firearm made by a licensed manufacturer or imported by an importer must be engraved with identifying information: a unique serial number, as well as the make and model. Under federal law as currently interpreted by ATF, ghost guns, because they require additional handiwork, are not required to have serial numbers and other identifying markings.

Because they are unserialized, ghost guns are untraceable. Typically, when police recover a firearm, they use the included serial number and other markings to initiate a trace request through ATF. ATF contacts the manufacturer to find out where it shipped the recovered gun, then the distributor to whom the gun was shipped, then the retailer who sold the gun to a consumer purchaser. By tracing a gun back to its first sale at retail, law enforcement agencies can have an initial lead in an investigation, identify straw purchasers and traffickers, and figure out how a gun arrived at a crime scene.

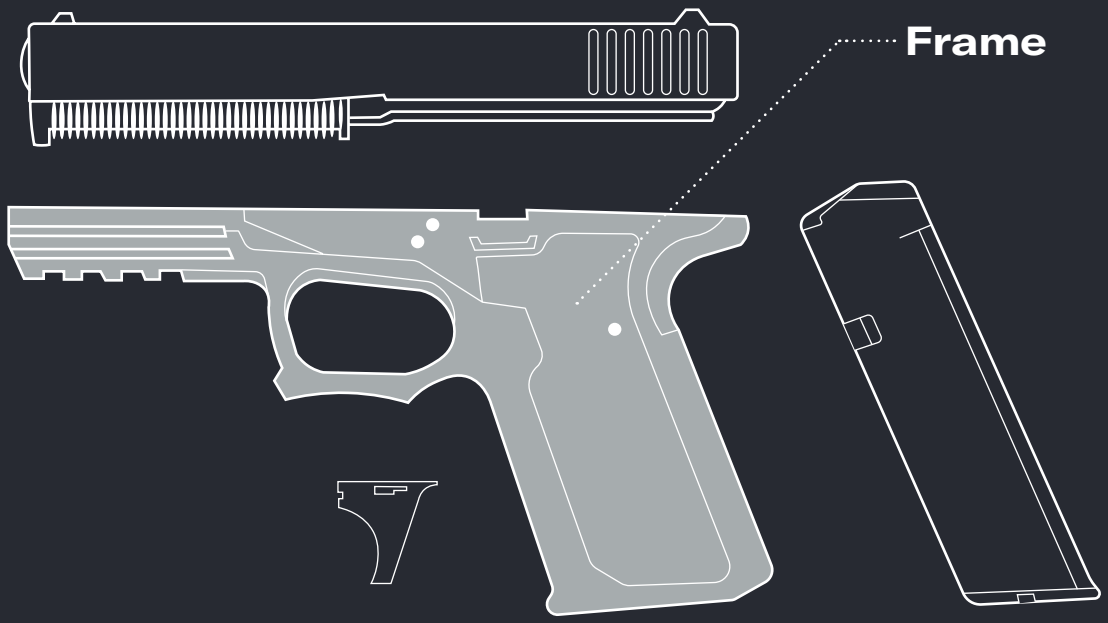
It is impossible to trace a ghost gun: It has no history, no records associated with it. As this report shows, the untraceability of ghost guns is one of their selling points and makes them attractive to criminals and gun traffickers trying to avoid being held responsible when their guns are recovered by law enforcement.

Because of ATF's current interpretation of the law, the core building blocks for a ghost gun can be acquired with no background check and no questions asked.

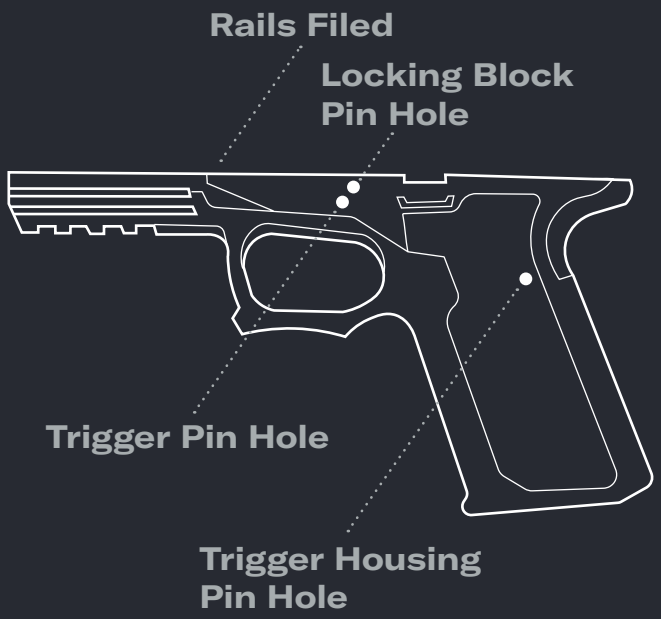
Understanding ghost guns requires knowing some basic facts about how guns are constructed. Frames and receivers are the core building blocks of firearms. In a pistol, the frame provides the basic bottom outline of the gun, housing the trigger and the magazine, while providing a foundation for the slide and barrel (i.e., the parts a bullet passes through when fired and cartridges are ejected from). In a semi-automatic rifle, the receiver houses the trigger parts and magazine and attaches to other parts.

Most ghost guns are made from "unfinished" frames and receivers. Unfinished frames and receivers are often marketed as "80%" complete, meaning a buyer needs to do only 20 percent of the work for the frame or receiver to be assembled into an operable firearm. As this report details, the difference between an unfinished frame or receiver and a finished, ready-to-use frame or receiver is a few tools and a couple of hours of work. But that small difference means everything: The unfinished frame or receiver has no serial number and can be sold without a background check, which enables people to circumvent state laws regulating assault weapons.

Parts of a Glock 17



ATF says this is a firearm

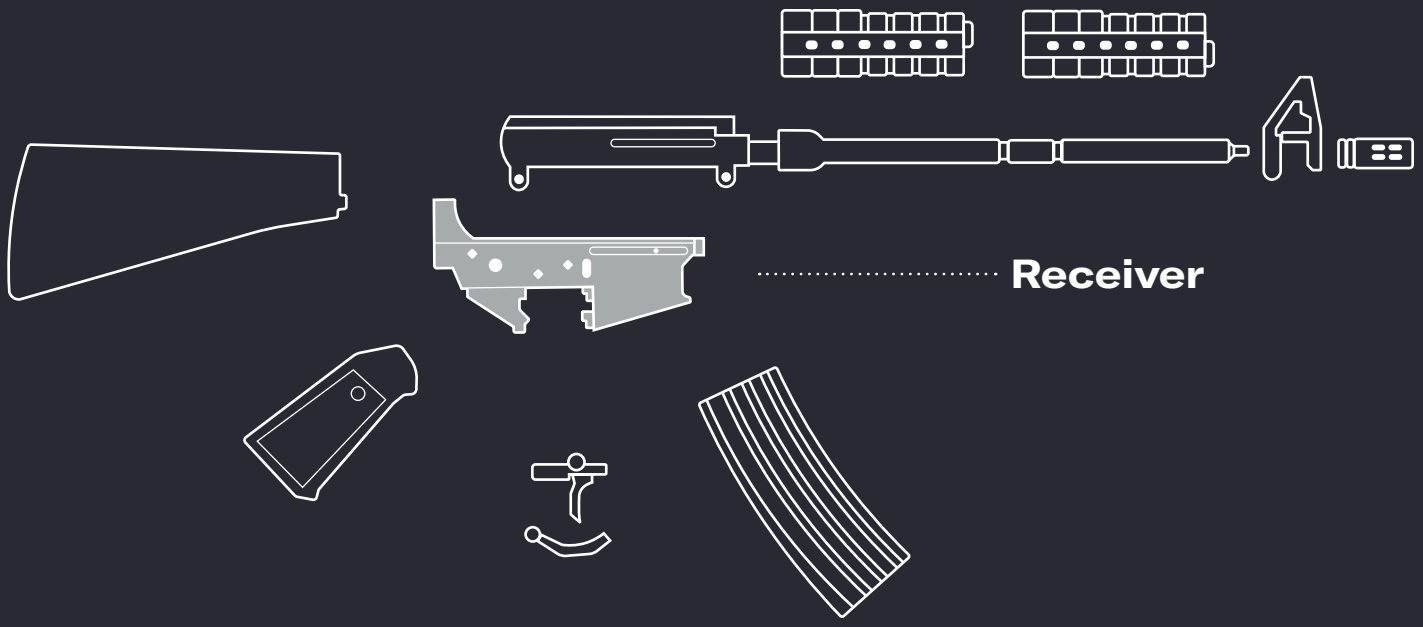


ATF says this is *not* a firearm

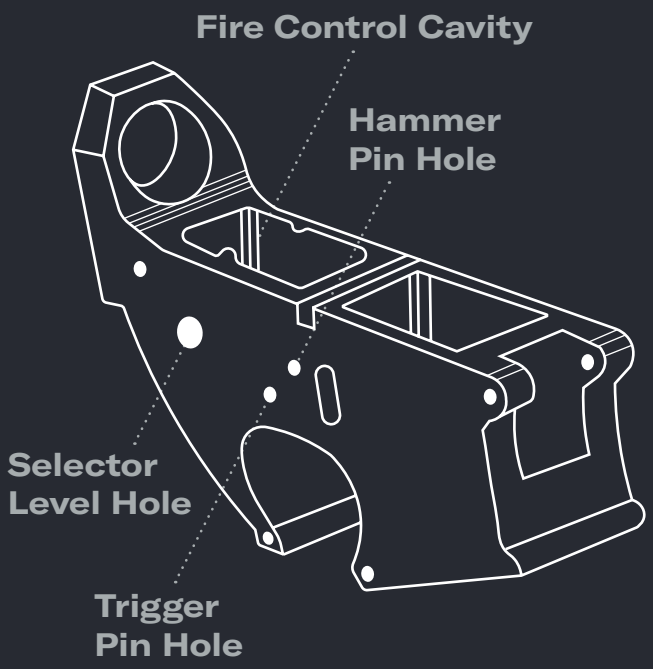


A person without gunsmithing skills can turn an unfinished frame into a functional frame with just **a few tools and less than an hour of work.**

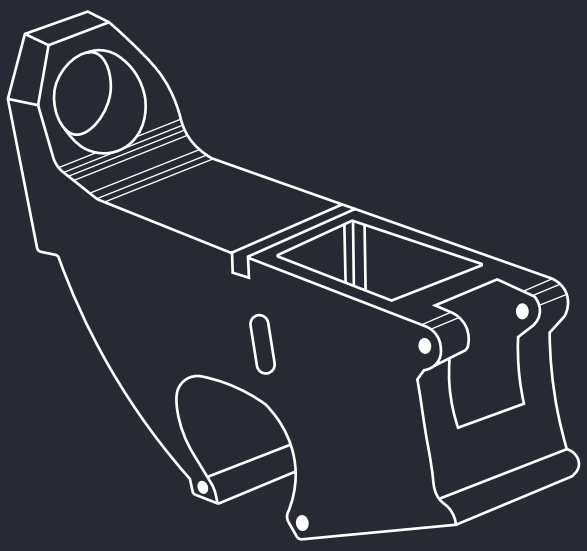
Parts of an AR-15



ATF says this is a firearm



ATF says this is *not* a firearm



The difference between an unfinished receiver and a finished, ready-to-use receiver is **a few tools and a couple of hours of work.**

Is it a Ghost Gun?

This report focuses on the usual core building blocks of ghost guns—the unfinished frame or receiver. Downloadable guns, undetectable guns, and defaced guns are sometimes referred to as ghost guns, but that is not always true.

Downloadable Guns? Yes.

Downloadable guns are one type of ghost gun and are created with computer code instructions programmed into a 3D printer. 3D-printed guns do not have serial numbers, and the code and 3D printer can be acquired without a background check.

Undetectable Guns? Maybe.

Undetectable guns are firearms that cannot be detected by metal detectors or x-ray machines. Downloadable guns, because they typically are made with polymer, are undetectable with metal detectors unless a piece of metal is inserted into them. Federal law prohibits the manufacture, sale, and possession of undetectable guns.[6]

Defaced Guns? No.

Defaced guns are sometimes referred to as ghost guns, but defaced guns are different. A defaced gun is a commercially manufactured firearm that has had its serial number obliterated. A defaced gun gives a gun trafficker a similar advantage to a ghost gun: It is difficult to trace the gun back to them. Fortunately, ATF has the Obliterated Serial Number program to recover serial numbers from defaced guns,[7] federal law bans defaced guns,[8] and 30 states have enacted bans on defaced guns.[9]

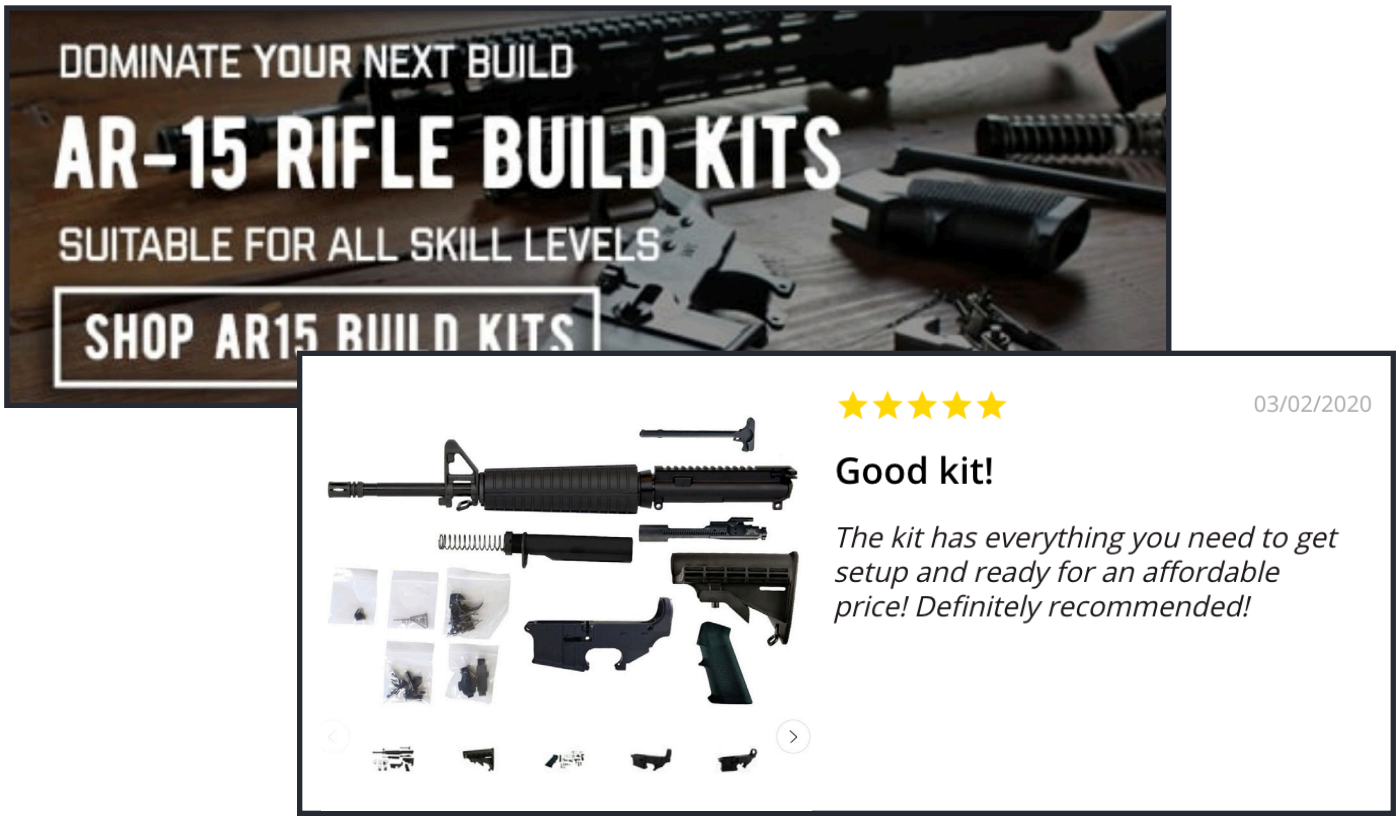
Making Ghost Guns is Easy and Cheap

Decades ago, it may have required certain technical knowledge and skill to convert an unfinished frame or receiver into a fully functional firearm component—even more so for the unlicensed gunsmith who was building a receiver out of an aluminum block. But those days are over.

Everytown's analysis of the current market shows that ghost gun kits are designed and marketed for any person to do the necessary work. Online sellers have packaged the unfinished frame or receiver with all the other parts needed to complete the firearm and include instructional videos with easy-to-follow steps. These sellers are now one-stop shops for any person to get the building blocks, tools, and information to construct a fully operational ghost gun.

Online sellers[10] of ghost gun parts advertise how easy it is to make a ghost gun. A seller of an AK-47 build kit announced that the kit was "*one of the simplest processes to date.*"[11] The seller helpfully provides a how-to video on the sale page.[12] Another seller boasts that, with their AR-15 kit, "*building time doesn't take too long. Within an hour or two, you should be breaking it in at the range.*"[13] The top five instructional videos posted on YouTube that give guidance on finishing either a frame or receiver have been viewed over 3 million times.[14]

Sellers frequently offer a jig with their ghost gun kits. A jig is a device that fits around a frame or receiver and guides the drilling and milling necessary to finish the unfinished frame or receiver so that it is ready to be assembled into a functioning firearm. The kits also often include the exact drill bits necessary to finish the frame or receiver. All you need is an internet connection, a credit card, a file, and a drill—you can get everything else delivered straight to your home.



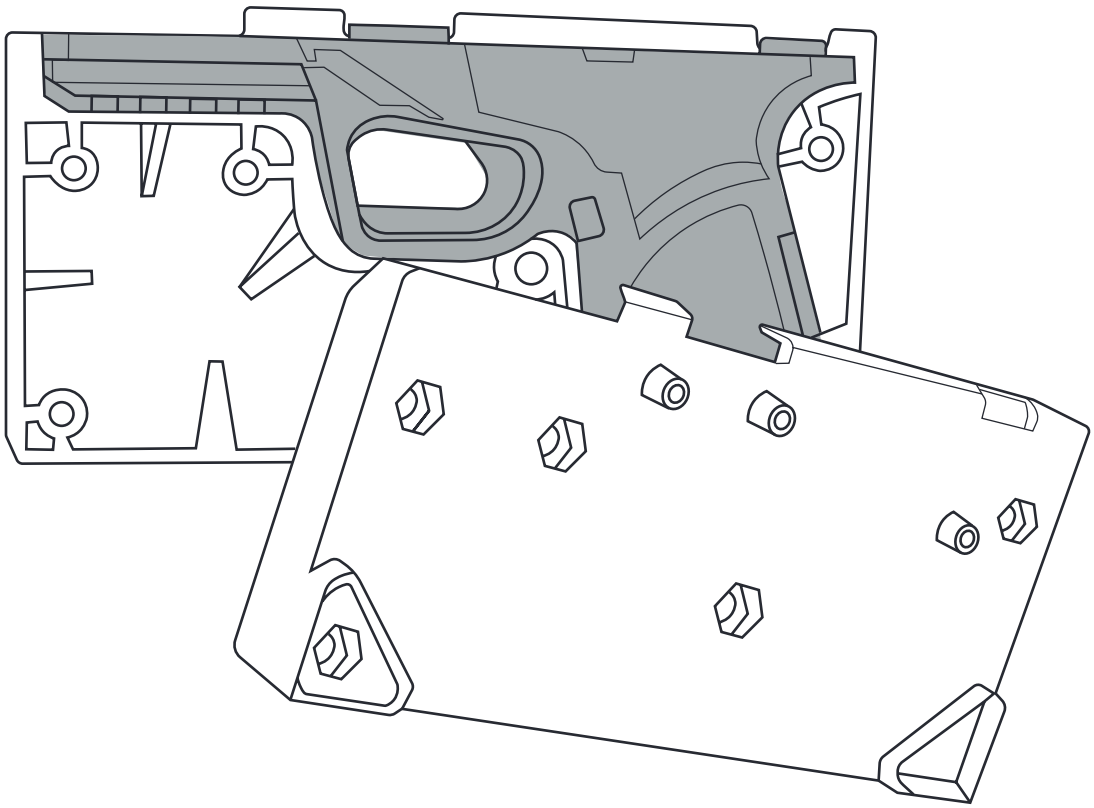
One website offering rifle- and pistol-building kits announces that their jig "*makes it ridiculously easy for a non-machinist to finish their 80% lower in under 1 hour with no drill press required.*"[15] Another seller offers a jig for a variety of rifle receiver types that can be used to complete an unfinished receiver "*in under 15 minutes with excellent results*,"[16] and another claims that "*[w]ithout the use of a press you can now build with ease and not spend a ton of money on the tooling needed.*"[17]

Computer numerical controlled (CNC) machines make finishing a frame or receiver even easier. CNC machines do the drilling and milling for the user, guided by computer code. Insert an unfinished receiver, select the appropriate design file, and a short time later you will have a precisely made, finished receiver. The creator of one of these devices specially designed to work on firearms said the purpose of his product was to help people with no technical expertise complete a ghost gun quickly.[18]

Sellers of ghost gun kits and unfinished frames and receivers offer good prices. Everytown's research found that it is possible to purchase an AR-15 build kit and a lower receiver for as little as $345.[19] And kits for making Glock-type pistol kits with a frame can go for as little as $400.[20] These prices compare favorably to the cost of buying an assembled firearm at retail.

Criminals take advantage of and profit from how easy and inexpensive it is to make ghost guns. A five-time convicted felon from Easthampton, Massachusetts, ordered all the parts he needed to make AR-15 rifles off the internet. Using a milling machine in his basement and following an instructional video, the man made ghost guns and sold them across state lines in New Hampshire, and claimed he could make a $300 profit on each.[21] Another convicted felon and alleged gang member in Salem, Massachusetts, made a profit by ordering ghost gun kits online for $400 to $500, then selling the assembled ghost guns for three times that amount.[22] This man called himself a "beast" because he was the best at making ghost gun pistols. Using tools you can get at a hardware store, he needed only 30 minutes to transform an unfinished pistol frame and parts kit into a functioning gun.[23]

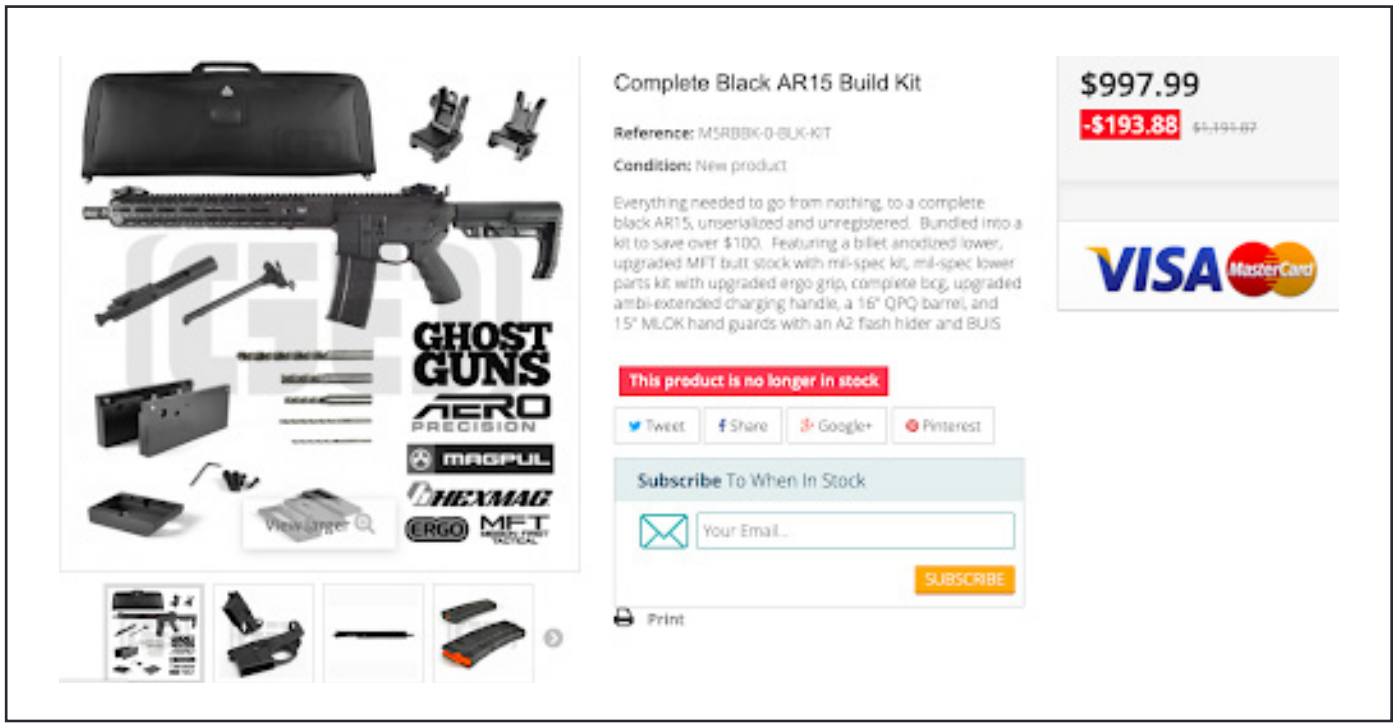
Unfinished semi-automatic handgun frame with the jig to guide the work



Now There are More Options than Ever to Get a Ghost Gun

The building blocks for ghost guns are available for purchase online, at gun shows, and at stores.[24] Major retailers like Brownells and MidwayUSA now offer unfinished frames and receivers and parts kits alongside regular firearms, accessories, and gear. The growth in the online market has been especially dramatic: Everytown's analysis uncovered 80 online sellers of unfinished frames and/or receivers.[25] These sites often offer all the parts a buyer needs to make their own firearm and there is frequently no limit on how many ghost gun building blocks a person can buy, with some sites even marketing unfinished frames and receivers in 5- and 10-packs.[26] Many of these websites include detailed guidance on how to finish machining a frame or receiver or even provide instructional videos that a novice builder can follow. A flourishing and unregulated online market in unfinished frames and receivers provides ready access to firearms to anyone who acquires a few basic tools and can follow simple instructions.

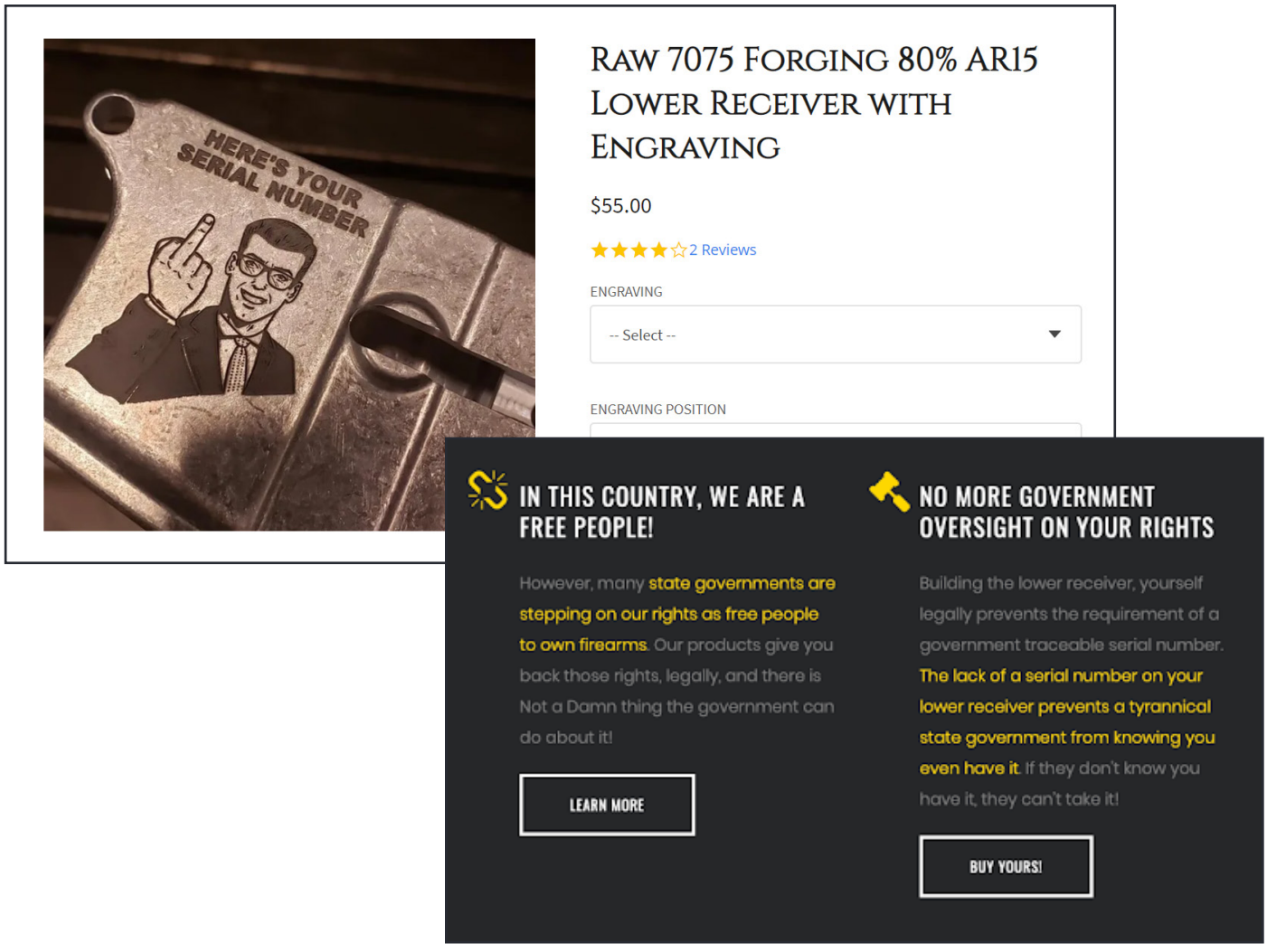
Sellers of ghost gun kits and unfinished frames and receivers clearly advertise that the products are meant to be built into operable ghost guns. The advertisements for unfinished frames and receivers feature pictures of completed firearms (not the unfinished product) that conspicuously show that there is no serial number. Lacking a serial number is a selling point for these products, with some products explicitly celebrating the lack of a serial number.[27] There is no doubt that these sellers are marketing firearms and no suggestion that the products being sold have any purpose other than becoming part of an operable weapon.



In addition, the sellers openly promote that these products are not regulated by ATF, often with copies of the formal letters sent from ATF saying the products are not regulated by ATF, alongside the pictures, parts, and instructional guides. Since these sellers are not required to get a license from ATF to sell the products, there is no reliable count of who is selling ghost gun building blocks as there is with gun dealers. Due to ATF's interpretation of the law, these businesses also operate outside any ATF regulation or oversight.

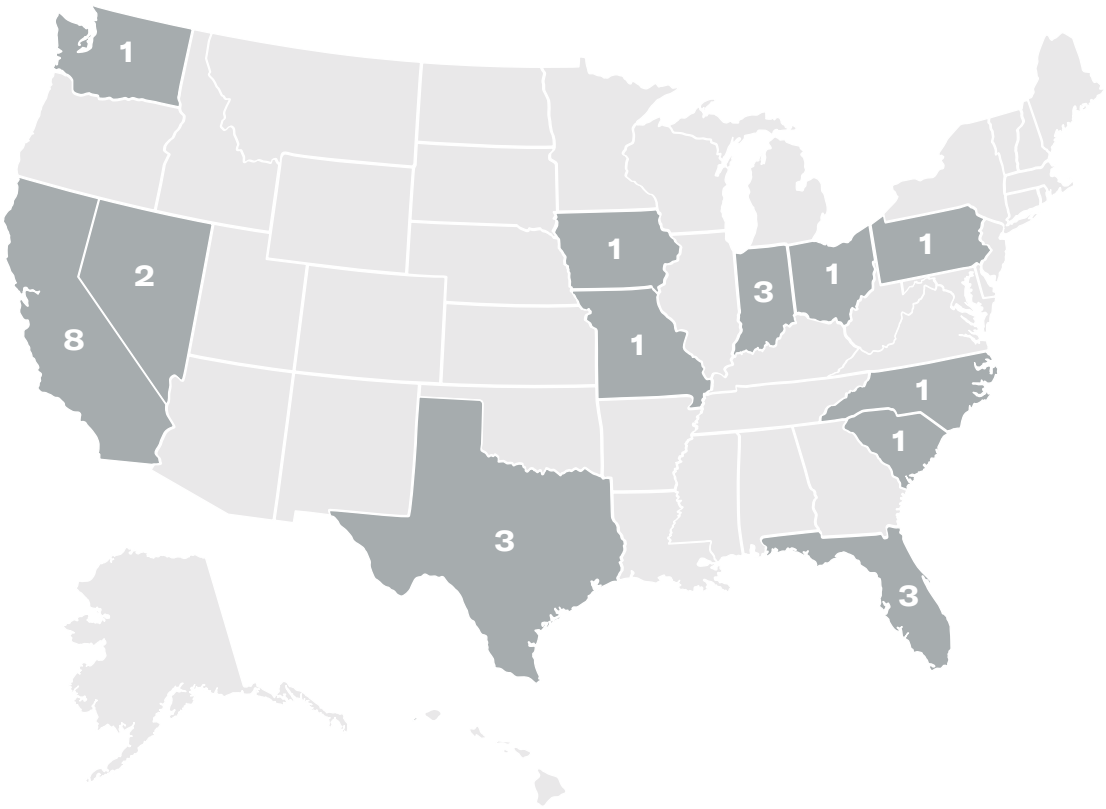
Everytown undertook an investigation to better understand the size of the online marketplace. An extensive search of the internet uncovered a sample of 80 sellers offering unfinished frames and/or receivers for ghost guns. Most offered shipment directly to the customer; major credit cards were accepted at nearly all of these sites.

Additional research uncovered that online ghost gun part sales and unfinished receivers have only recently become a widespread phenomenon. Of the 80 sellers identified, Everytown found that 68 percent began offering the building blocks for ghost guns for sale between January 2015 and May 2020—only 26 of the identified sellers were offering unfinished frames and/or receivers by the end of 2014.[28] An analysis of business registrations shows that these online retailers are based in states all across the country, with at least one seller operating in 26 states.[29]

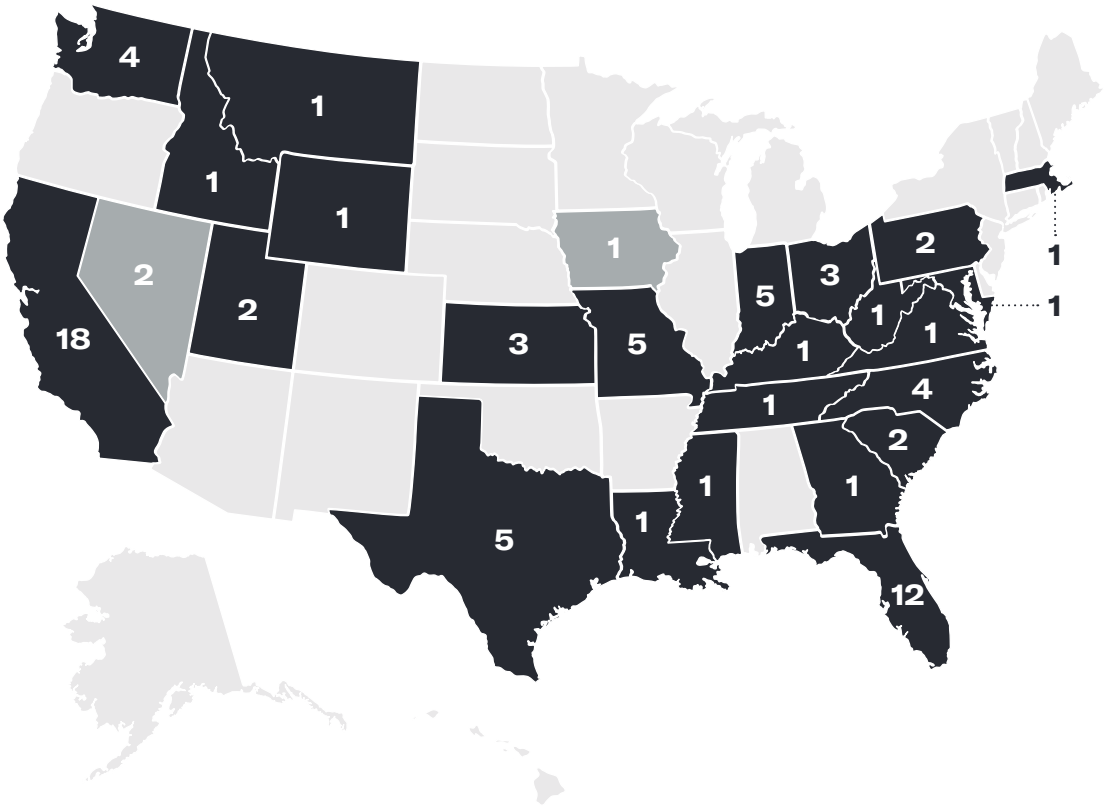


Number of Sellers Offering the Building Blocks for Ghost Guns in 2014 Compared to Now

Operating in 2014



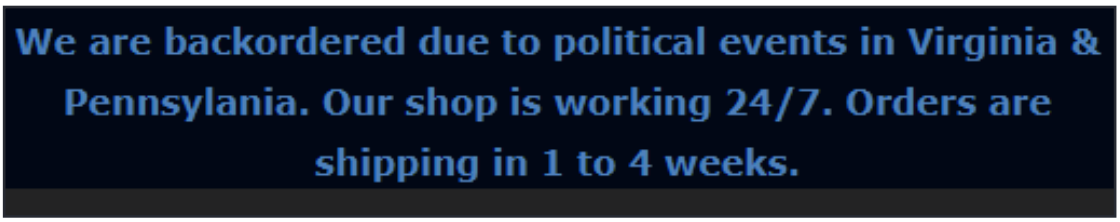
Operating Today

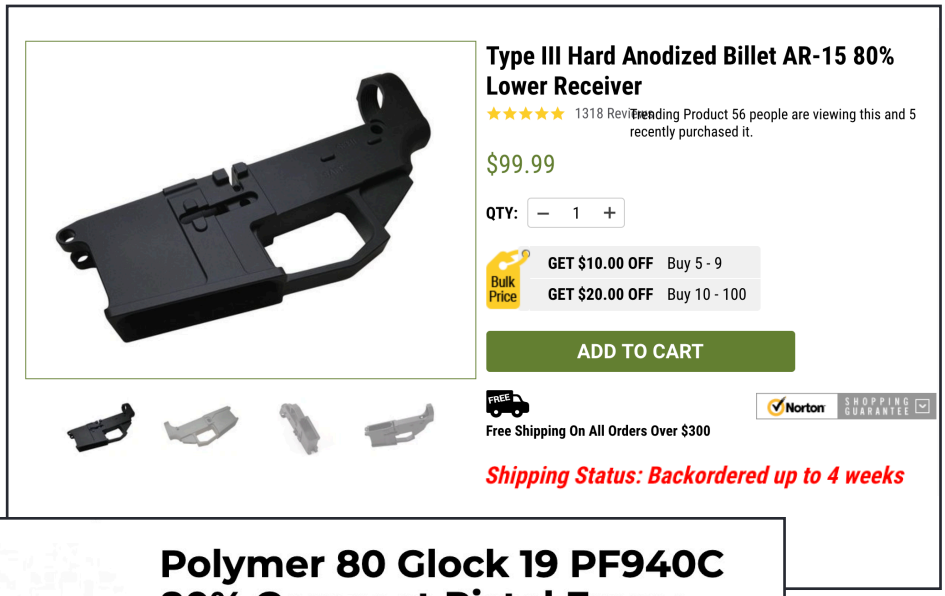


The emergence of this thriving market in ghost gun parts draws buyers who cannot legally purchase firearms. In Pennsylvania, an 18-year-old exchange student used one of these sites to get all the parts he needed to make a pistol. This was only discovered after he made a threat to "shoot up" his high school.[30] Several sellers attribute the popularity of ghost guns to perceived state action on gun safety, laying bare the appeal to those seeking to avoid gun safety laws.

Still others see these easy-to-access websites as the vehicle to turn ghost gun trafficking into a business opportunity. A professional welder applied his training to making AR-15 rifles during a period of unemployment.[31] Another man quit his job because manufacturing firearms with a drill press in his home had become so lucrative.[32] A Rhode Island ghost gun trafficker told ATF that he made homemade guns because he needed the money.[33]

Online sellers are finding their inventories stretched thin as demand increases with recent political events and the COVID-19 pandemic:







Ghost Guns are a Public Safety Threat

Police, concerned about a software developer's paranoid behavior, committed the man for mental health treatment and seized his guns. Years later, even though he was barred from buying a gun legally, the man bought a gun-building kit and made a Glock-style pistol. One day, he penned a note vowing to fight "[f]or all those who have [been] isolated, alienated, marginalized, and rejected" and regretting that he would disappoint his family. Then he walked into work with his ghost gun pistol and shot and wounded four coworkers before police confronted and shot and killed him.[34]

In communities across the country, law enforcement agencies are recovering increasing numbers of ghost guns. Thirty percent of guns recovered by ATF in California are unserialized, according to a 2019 report.[35] One official cited an even higher recovery rate at the local level: "*Forty-one percent, so almost half our cases we're coming across are these 'ghost guns,'*" said Carlos A. Canino, special agent in charge of the ATF Los Angeles Field Division. "*What's changed is technology. The technology makes it easy for someone to make one of these, even to mass produce these.*"[36]

Other communities have seen significant ghost gun recoveries, with sharp increases in the past year. Washington, DC, saw a 342 percent increase in ghost gun recoveries, with law enforcement recovering 115 ghost guns in 2019, compared to 26 in 2018.[37] In a single week in 2020, DC police recovered six ghost gun pistols and one ghost gun assault-style rifle.[38] Similarly, from Philadelphia to Syracuse to Denver, ghost gun recoveries are increasing in cities, and law enforcement is speaking out about this growing problem.[39]

State and local law enforcement is recovering ghost guns from felons, domestic abusers, criminal gangs, drug dealers, extremists, and minors.[40] In the summer of 2018, a 25-year-old man was killed with a ghost gun in Washington, DC, during a shoot-out that left 32 shell casings at the scene.[41] An assault-style ghost gun was used by a shooter to pin down two law enforcement officers during a shoot-out near Catholic University in Washington, DC.[42]

A Syracuse man used a ghost gun to shoot his 6-year-old nephew in the back after he showed up at his sister's house acting erratically and said: "Do you trust me?" before firing at the little boy.[43] In 2019, Onondaga County, New York, police recovered 23 ghost guns. Only one ghost gun had ever been recovered before 2018.[44]

Law enforcement leaders have been raising alarms over the effect ghost guns are having on public safety. Toniann Rebick, a criminalist with the San Diego Police Department, recalled being surprised when the first ghost gun that came across her desk, "*[t]hen a few weeks later, I had another one. All of a sudden these are common.*"[45] "*We work so hard in ensuring that individuals pass background checks and are responsible gun owners,*" said Eddie Garcia, the chief of the San Jose Police Department. "*And that really gets thrown out the door when you have individuals that can just make a homemade gun.*"[46] "*This is an emerging trend that is just continuing to increase,*" Bill McMullan, then-special agent in charge of the ATF's Los Angeles Field Division, said during a press conference in 2017. "*Criminals are making their own weapons because they're not able to buy them legally.*"[47] In 2018, leading law enforcement associations, including the International Association of Chiefs of Police and the Major Cities Chiefs Association, identified this public safety threat and called for action to address it.[48]

"We work so hard in ensuring that individuals pass background checks and are responsible gun owners. **And that really gets thrown out the door when you have individuals that can just make a homemade gun.**"
—Eddie Garcia, Chief of the San Jose Police Department.

These statistics and stories provide only a small window into this emerging crisis. Unfortunately, few law enforcement agencies have available data on ghost gun recoveries. Until agencies start tracking and reporting ghost gun recoveries, criminal prosecutions are the best indicator of the extent of the ghost gun problem.

Everytown reviewed 114 federal prosecutions from 2010 to April 2020 involving ghost guns, revealing 2,513 ghost guns connected to criminal activity.[49] This figure drastically under-represents the scale of ghost gun activity even within this set of prosecutions. For example, a defendant documented to have sold 23 homemade assault rifles to ATF informants and undercover officers boasted that he manufactured similar rifles "on a weekly basis" and had already trafficked 150 to customers in Mexico.[50] Another defendant sold six AR-15 style firearms to ATF agents and had "multiple boxes" of lower receivers with his drill press, vices, and other tools, indicating a much larger operation.[51]

Everytown's analysis revealed an unsurprising link between ghost guns and crime. In nearly half of the prosecutions reviewed, the defendants were prohibited from possessing any firearm and would not have passed a background check if one were required. More than 1,300 ghost guns connected to criminal activity were possessed, made, or sold by people prohibited from purchasing or possessing firearms, including felons, sex offenders, and domestic abusers. The vast majority, more than 2,200, of the ghost guns connected to criminal activity involved individuals charged with illegally manufacturing or dealing firearms. Nearly forty percent of these cases involved defendants who were prohibited from purchasing or possessing firearms.

The federal cases also show that ghost guns are frequently used by criminal organizations and drug traffickers to facilitate their crimes. More than 1,300 ghost guns were used or sold by criminal enterprises to facilitate crimes including gun trafficking, robbery, drug trafficking, terrorism, and murder.

In one case, an associate of the Vineland Boys street gang was charged with manufacturing ghost gun AR-15s by finishing lower receivers, and selling the completed ghost guns to gang members to use in crimes. One gang member used a ghost gun AR-15 that was built from parts purchased from an online seller in an attempted murder of a rival gang member.

Given the range of organized criminal groups represented in the sample, perhaps it is no surprise that high-powered assault weapons featured heavily: Nearly 75 percent of the prosecutions involved ghost gun assault-style rifles or parts for ghost gun assault-style weapons, while nearly half of the prosecutions involved ghost gun versions of firearm types strictly regulated under the National Firearms Act, like fully automatic firearms or short-barreled rifles.

While prosecutions involving ghost guns demonstrate that ghost guns are being trafficked by criminals and possessed by people prohibited from having firearms, these prosecutions undoubtedly represent only a slice of all ghost gun–related criminal activity. Because ghost guns are untraceable, law enforcement cannot trace a ghost gun used in a crime back to the dealer that sold it or the person who first bought it.

More than **2,500 ghost guns were connected to criminal activity in 114 federal cases** from 2010 to April 2020.

Disarm Hate: Ghost Guns Arm Hate-Filled Extremists

Everytown's federal case review also found troubling examples of white supremacists obtaining ghost guns:

- In Arizona, FBI agents seized more than 20 guns from a neo-Nazi sex offender, including a ghost gun assault-style rifle.[52] He was caught because he bragged about his arsenal on Facebook.[53]
- A white supremacist group made its own fully automatic AR-15s after bombing a Minnesota mosque and attempting to bomb an Illinois women's health clinic.[54]
- In January 2020, authorities arrested three members of a white supremacist terror group who planned to travel to Virginia where they hoped to use a gun rights rally in Richmond to ignite a civil war.[55] One member of the group had made an AR-15 using parts and a jig widely available online.[56] After test-firing the rifle at a shooting range and noticing that more than one bullet fired at a time, he remarked, "*Oh oops, it looks like I accidentally made a machine gun.*"[57]

Searches of popular online forums show that extremists openly discuss the benefit of ghost guns and share advice on how to make them. On 4chan, an online platform popular with white supremacists, commenters shared tips for building ghost guns amid a steady stream of racist, anti-Semitic, and homophobic slurs. "*Only use a drill for the holes. Use a mill for the rails and finish up with a dremel with a small bit,*" one 4chan user advised. "*Don't listen to what these [slur] say, a drill press is fine for your holes.*" A rabidly racist and anti-Semitic user posted a guide for building an "untraceable, unserialized AR-15," which has been circulating on 4chan for years. After an extremist in Germany used a homemade gun to attack worshipers at a synagogue, 4chan users shared a guide for making the shooter's gun. Some commenters noted how cheap and easy it is to order gun kits online and enjoy home delivery with no background check. Others extolled the benefits of ghost guns' untraceability.

ATF is Failing to Regulate Ghost Guns

As described in this report, federal authorities are admirably scrambling to contain this outbreak of ghost guns used in serious crimes through investigations and prosecutions of criminals with fully assembled ghost guns. But federal law, if interpreted properly by ATF, could cut off this scourge at the source.

Federal gun laws regulate "firearms," so the precise meaning of that term is important. Congress broadly defined "firearm" to include completed, fully operable weapons as well as their core building blocks, frames and receivers.

> "The term 'firearm' means (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."[58]

ATF determines when a product qualifies as a firearm and is responsible for deciding, on a case-by-case basis, when a frame or receiver meets the definition of "firearm." ATF makes these determinations when the sellers of "unfinished" frames and receivers want confirmation that their products will not be regulated by ATF. A business sends a sample frame or receiver to ATF, and ATF provides a determination letter explaining whether or not that frame or receiver qualifies as a firearm. The sellers often post these letters to reassure customers that the product is not regulated by ATF and does not require a background check.

In these letters, ATF has taken the position that an AR-15 lower receiver does not qualify as a firearm as long as one part of the receiver—the trigger cavity—is not milled out. ATF told businesses that these unfinished receivers could be sold without serial numbers and without background checks.[59] ATF made similar determinations about pistol frames.[60] It does not matter if the unfinished frame or receiver could be made into a functioning firearm in less than one hour. Therefore, businesses are free to sell these unfinished frames and receivers—and all the other parts of a firearm—to anyone who orders them online or buys them at a gun show or store, no matter how easy it is for the buyer to turn their purchase into a working gun. Even a convicted felon can purchase an unfinished receiver or frame online because, in ATF's view, these are essentially unregulated pieces of metal—which also means many sellers are not subject to ATF regulation and oversight.

For several reasons, ATF's current position—that unfinished frames and receivers are not firearms—is incorrect and unwise.

First, ATF's current position is incorrect because it contradicts federal law. Under the definition of "firearm" currently in federal law, a frame or receiver qualifies as a firearm if it can, or is designed to, or may readily be converted to be part of an operable weapon. Therefore, any frame or receiver should be considered a firearm if—with a little time and some drilling and assembly work—it can be made into a functional gun.

Second, ATF's current position is undercut by its past positions. From the 1980s until at least 2002, ATF classified a frame or receiver based on how much work remained for that item to be made part of a functioning firearm and how long that work would take. If it took only 75 minutes to drill out the interior of an AR-15 receiver for it to be used to construct a functioning rifle, ATF determined that the receiver was a firearm subject to federal law.[61] But in the mid-2000s—after the federal Assault Weapons Ban expired and when homemade gun supplies and tools started to become more accessible online and more affordable—ATF started suggesting that it would not characterize an AR-15 receiver as a firearm as long as one part of the receiver—the trigger cavity—was not milled out.[62] The reason ATF changed its position is unclear.

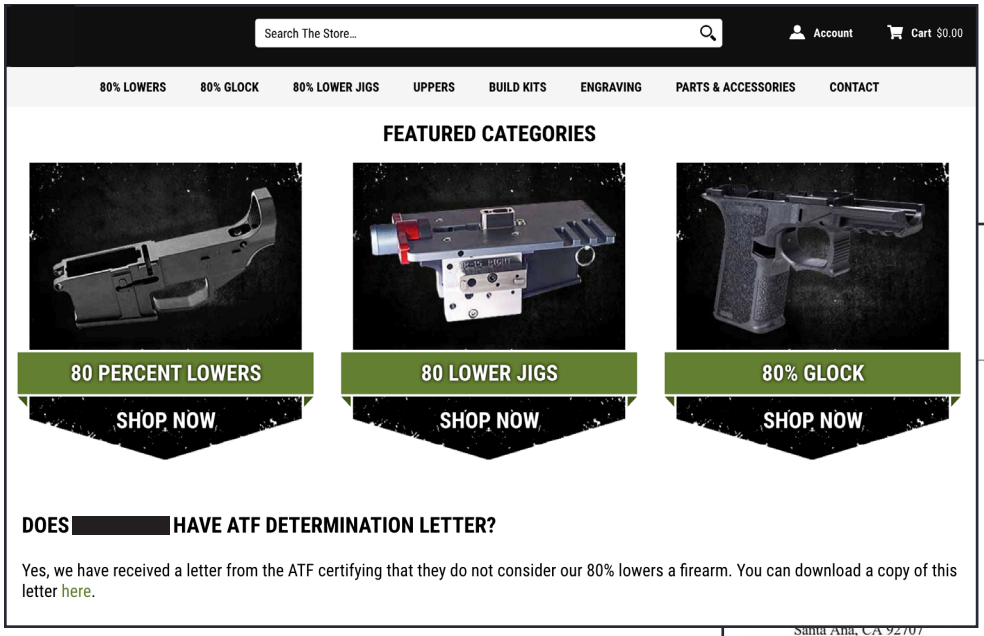
Third, ATF's position is unwise because it undermines all other federal gun laws. At their core, federal gun laws aim to "make it possible to keep firearms out of the hands of those not legally entitled to possess them."[63] Though written long before easily manufactured ghost guns became prevalent, these laws were designed to address the same problems that ghost guns now present: the uncontrolled interstate distribution of firearms, which allows dangerous individuals to readily acquire firearms without a background check.

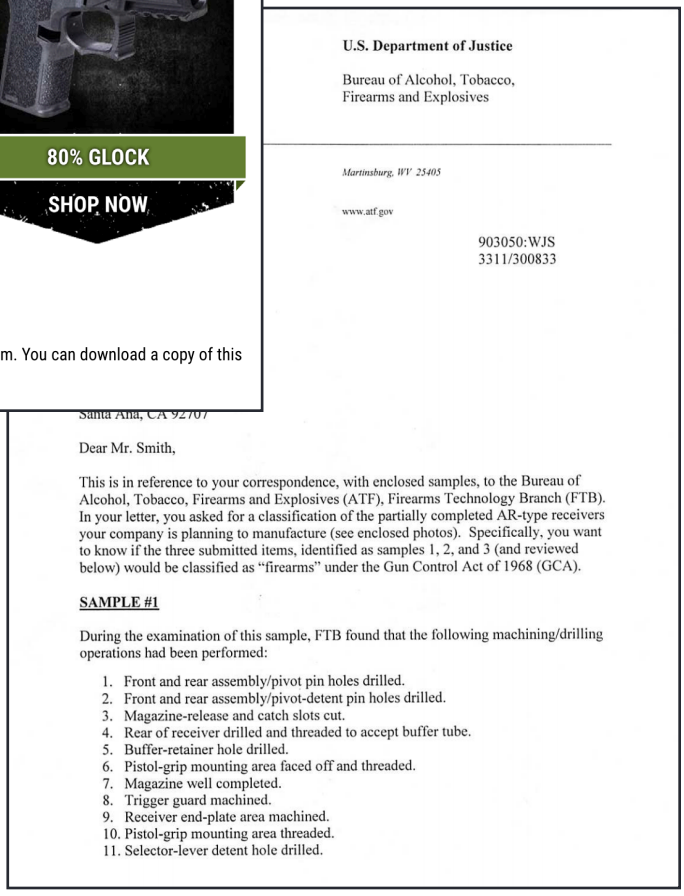
Federal gun laws seek to control the distribution of firearms by regulating firearm businesses, requiring all firearms to have serial numbers, and requiring firearm businesses to sell firearms only to buyers who can legally possess them. These laws require any person or business that manufactures or sells firearms to be licensed to ensure that the legal market for firearms works to keep guns away from people who shouldn't have them.

All federal firearms licensees must make a record of all the guns they stock or make and all the guns they sell or export (i.e., their acquisitions and dispositions).[64] Manufacturers and importers must stamp each firearm with a unique serial number and other identifying markings and keep records of this information.[65] Since 1994, an individual purchaser must pass a background check before buying a firearm from a licensed dealer.[66]

Federal gun laws cannot achieve their objectives if ATF simply allows businesses to sell DIY kits without performing background checks on purchase, without keeping any record of sales, and without placing a serial number on each frame and receiver.

The predictable result of ATF's current position is the scourge of ghost guns evidenced in local ghost gun recoveries and myriad federal prosecutions of violent criminals, gun traffickers, and extremist groups, an ironic if tragic case of the government inventing the very problem it seeks to solve.




U.S. Department of Justice

Bureau of Alcohol, Tobacco, Firearms and Explosives

Martinsburg, WV 25405

www.atf.gov

903050:WJS
3311/300833

Santa Ana, CA 92707

Dear Mr. Smith,

This is in reference to your correspondence, with enclosed samples, to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Firearms Technology Branch (FTB). In your letter, you asked for a classification of the partially completed AR-type receivers your company is planning to manufacture (see enclosed photos). Specifically, you want to know if the three submitted items, identified as samples 1, 2, and 3 (and reviewed below) would be classified as "firearms" under the Gun Control Act of 1968 (GCA).

SAMPLE #1

During the examination of this sample, FTB found that the following machining/drilling operations had been performed:

1. Front and rear assembly/pivot pin holes drilled.
2. Front and rear assembly/pivot-detent pin holes drilled.
3. Magazine-release and catch slots cut.
4. Rear of receiver drilled and threaded to accept buffer tube.
5. Buffer-retainer hole drilled.
6. Pistol-grip mounting area faced off and threaded.
7. Magazine well completed.
8. Trigger guard machined.
9. Receiver end-plate area machined.
10. Pistol-grip mounting area threaded.
11. Selector-lever detent hole drilled.

Policy Solutions and Recommendations

In February 2019, ATF received a tip about a ghost gun trafficker operating near Worcester, Massachusetts.[67] Talking to a customer who, unbeknownst to the trafficker, was an ATF informant, the trafficker said that he could make and customize any firearm the customer wanted, offering Glock-style pistols and fully automatic AR-15s for sale.[68] But the trafficker was worried after seeing media coverage about people "constantly getting busted with guns... without serial numbers."[69] The trafficker suspected that ghost guns would be regulated eventually, but for the time being, "he was getting what he could before authorities started cracking down on it."[70]

As ghost gun recoveries rise and more crimes are committed with ghost guns, law enforcement organizations have sounded the alarm and state and local governments have begun taking action. Everytown recommends that corporations and policymakers at the federal, state, and local levels take the following actions to stop ghost guns from falling into dangerous hands and to prevent gun violence.

1— ATF should adopt a new definition of "firearm frame and receiver" to regulate the core building blocks for ghost guns.

Since the market for ghost guns has exploded, ATF has done nothing, as of May 2020, through formal rulemaking procedures to expressly address ghost guns.[71] ATF is responsible for issuing regulations interpreting federal gun laws. In fact, a longstanding regulation defines the term "firearm frame or receiver" but that definition provides no clarity about the condition that a frame or receiver must be in to qualify as a firearm. The regulation was not meant to provide that clarity; ATF enacted it to specify the place where a manufacturer or importer should place a firearm's serial number and other markings.[72]

ATF could easily change its position that unfinished frames and receivers are not firearms if it amended this regulatory definition. An amended definition could make clear that a frame or receiver is a firearm if it is designed to be part a functioning firearm, or could easily be turned into one.

Former acting director of the ATF, Thomas Brandon, said he thought ATF should reclassify ghost gun kits as firearms and, prior to his retirement in April 2019, was ready to recommend that certain ghost gun kits be reclassified as firearms because of the ease of assembly.[73]

In December 2019, Everytown submitted a formal request to ATF to issue a new regulation that would reassert federal regulation of unfinished frames and receivers and clarify that the lower receiver of an AR-15 is covered by the 1968 Gun Control Act's definition of firearm. ATF should adopt a new definition of firearm frame or receiver to read like this:

Firearm frame or receiver. That part of a firearm which provides housing for the trigger group, including any such part (1) that is designed, intended, or marketed to be used in an assembled, operable firearm, or (2) that, without the expenditure of substantial time and effort, can be converted for use in an assembled, operable firearm.

ATF could commence rulemaking immediately and is under pressure to do so: in February 2020, US Senate Minority Leader Chuck Schumer of New York wrote to US Attorney General William Barr and ATF Acting Director Regina Lombardo calling on ATF to regulate unfinished frames and receivers.[74] In April 2020, Members of the House Judiciary Committee also sent a letter to the ATF seeking answers regarding the measures the ATF has undertaken to address the surge in ghost guns sales during the COVID-19 pandemic.[75]

2— Congress should enact legislation to regulate ghost guns.

Should ATF fail to act, Congress can pass legislation to overrule ATF's interpretation and address the ghost gun problem. In the 116th Congress, bills have been introduced to regulate unfinished frames and receivers as firearms, prohibit the manufacture, sale, transfer, and purchase of a gun without a serial number, and require government reporting on the availability of ghost guns. For example:

- Representative David Cicilline (D-RI) sponsored the Untraceable Firearms Act of 2019, which would regulate unfinished frames and receivers as firearms and prohibit the manufacture, sale, transfer, and purchase of a gun without a serial number.[76]
- Along similar lines, Representative Mike Quigley (D-IL) introduced the Trafficking Reduction And Criminal Enforcement (TRACE) Act, which would classify unfinished frames and receivers, and gun-building kits, as firearms.[77]
- Representative Adriano Espaillat (D-NY) introduced the Ghost Guns Are Guns Act, which would treat as a firearm any combination of parts for making into a firearm.[78]

In addition to passing the bills mentioned here, Congress should enact legislation to ensure that the definition of receiver covers the AR-15, require ATF to collect data and publicly report on the availability and recovery of ghost guns, and regulate the businesses that sell unfinished frames and receivers and gun-building kits.

3— States should enact laws to regulate ghost guns.

While a strong federal solution is critical to cutting off easy access to the parts and kits that make it so easy for criminals and other prohibited people to create unserialized and undetectable firearms, states can and should take action to empower local law enforcement to act to prevent the trafficking and criminal use of ghost guns.

In fact, several states have taken action to regulate ghost guns, and several more, including Delaware,[79] Hawaii,[80] New York,[81] Maryland,[82] and Rhode Island,[83] were actively considering ghost gun legislation before the COVID-19 pandemic led to the early adjournment or suspension of most state legislature's sessions. The District of Columbia, realizing the urgent need for action based on the rise of ghost guns used in crime, passed emergency legislation to stop the unregulated sale of the building blocks for ghost guns as the DC Council works on a permanent solution.[84]

States have taken different approaches to regulating ghost guns, but at a minimum, these laws should make it illegal to purchase or sell ghost guns and the critical parts to manufacture them. This could include provisions to ensure that unfinished frames and receivers cannot be obtained without a background check and provisions to ensure that any firearms that are manufactured are serialized. States can also consider restrictions that require the licensure of individuals who want to manufacture firearms.[85] *(See Appendix A for an overview of state ghost gun laws.)*

4— State attorneys general should issue legal opinions to clarify existing laws to ensure that law enforcement can treat ghost gun parts as firearms.

Recognizing the threat to public safety posed by ghost guns, state attorneys general have also taken strong steps to regulate ghost guns.

In several states, state law already includes frames and receivers in the definition of firearms. As with federal law, these laws can and should be interpreted to classify unfinished frames and receivers as firearms. In many places, state attorneys general have the power to issue legal opinions to clarify the law, and an opportunity exists to ensure that law enforcement can treat these parts as firearms. That is exactly what the Pennsylvania Attorney General recently did when he issued a legal opinion to clarify that 80% receivers meet the definition of receivers under current Pennsylvania law.[86] The effect of this was to serve notice to law enforcement that these unfinished receivers should be treated like firearms for the purposes of enforcing certain Pennsylvania firearms laws.[87]

Opportunities also exist to ensure that companies selling these products have taken steps to market and distribute them in compliance with state law. The New Jersey Attorney General sued a seller of AR-15 kits for advertising, offering, and selling the kits to New Jersey residents without warning that ghost guns are illegal under state law.[88] The New York Attorney General sent cease-and-desist letters to ghost gun companies who were offering ghost gun parts and kits for sale in possible violation of state firearm laws.[89]

5— ATF and state and local law enforcement should collect data and publicly report on the availability and use of ghost guns.

On February 5, 2020, FBI Director Christopher Wray appeared before the Judiciary Committee of the US House of Representatives, where he was asked whether the FBI had seen an increase in the number of ghost guns during FBI investigations.[90] Director Wray, while acknowledging the growing concern at the FBI over ghost guns, was unable at the time of the hearing to provide statistical information about ghost guns. This brief exchange highlights the simple fact that to better respond to the threat of ghost guns, we need better data and information about them and their use in gun crime. After the hearing, Representative Madeleine Dean (D-PA) sent a letter to Director Wray following up on his comments and requesting data and information on ghost gun recoveries.[91]

While ATF and other law enforcement agencies have released some limited information about the number of ghost guns and their use in gun crime, it is critical that we have strong national data and a process in place to record the number of ghost guns used in gun crimes and to know how many are recovered by ATF. To accomplish this, ATF should immediately develop an internal data collection process to record when ghost guns are involved in a criminal investigation and should release data about their use in crimes to the public as part of its reporting on crime gun recoveries. This data should be used by policymakers, researchers, and law enforcement to develop more effective and targeted policy solutions to address ghost guns.

The National Defense Authorization Act for Fiscal Year 2020, which was signed into law on December 20, 2019, included a provision similar to legislation introduced by Representative Max Rose (D-NY)[92] that directs the Department of Homeland Security to conduct an annual threat assessment of ghost guns for the next four years, with the first report due in June 2020.[93]

6— Companies should not facilitate the sale of ghost guns in light of the risk that these firearms will be obtained by prohibited people or used in crimes.

The companies selling the building blocks for ghost guns are aware that their products are being used illegally, but they have not taken any steps to prevent firearms from falling into the wrong hands. Given that these manufacturers actively court business from those seeking to evade the law, it is unlikely that they will voluntarily change their business practices to guard against criminal abuse.

But the companies that facilitate the online acquisition of ghost guns can do the right thing by putting conditions on using or withholding their services. Mastercard, Visa, Discover, and American Express need not process sales of products like these that run a substantial risk of being used illegally. The internet service providers that host these websites can decline business from ghost gun operators, as GoDaddy and Google did with the The Daily Stormer website.[94] And common carriers like FedEx need not agree to ship packages that contain the building blocks of ghost guns. Absent meaningful action from government, these private actors could do a great deal to protect our communities from ghost guns.

Conclusion

Ghost guns are a threat to public safety. ATF's failure to regulate has allowed a marketplace for ghost guns to thrive that is being exploited by violent criminals, gun traffickers, and extremist groups. ATF can and should take immediate action to update the regulations and put a stop to the unregulated sale of the building blocks for ghost guns.

Appendix A. Legal Overview of State Ghost Gun Laws

California: Requires serial numbers and regulates the building blocks for ghost guns.
California requires all manufactured or assembled firearms to bear a unique serial number or mark of identification.[95] Prior to assembling a firearm, or upon moving into the state, people must apply to the California Department of Justice to obtain a unique serial number or mark of identification for unserialized guns.[96] The Justice Department conducts a background check and ensures compliance with state law before issuing the identification number.[97] Upon receiving the identification number, the owner must affix it to the firearm.[98] California prohibits the sale or transfer of these firearms.[99]

In 2019, California expanded its law to require that by July 1, 2024, all sales of firearm precursor parts must take place through a licensed vendor and to require that the state conduct background checks on transfers of frames and receivers by July 1, 2025.[100] Online sellers of precursor parts will have to deliver their parts to a vendor before they can be transferred to a buyer.[101]

Connecticut: Requires serial numbers, regulates the building blocks for ghost guns, and regulates undetectable firearms.
Connecticut prohibits manufacturing firearms without obtaining a serial number from the Connecticut Department of Emergency Services and Public Protection, which is issued after a background check, and affixing it to the firearm.[102]

Connecticut also requires a background check before the sale and transfer of unfinished frames and lower receivers, generally prohibits the sale or transfer of unfinished frames and lower receivers without serial numbers and prohibits people prohibited by state law from having guns from possessing these parts.[103] Finally, Connecticut prohibits guns made from polymer plastic that are undetectable by metal detectors.[104]

Massachusetts: Regulates undetectable firearms.
Massachusetts prohibits the sale, transfer, or possession of any weapon that is undetectable by a walk-through metal detector or x-ray machine commonly used at airports.[105]

New Jersey: Requires a license to manufacture a firearm; regulates undetectable firearms; and prohibits distribution of downloadable gun schematics.
New Jersey prohibits manufacturing firearms without a manufacturer's license[106] and generally prohibits the purchase of frames and receivers without a serial number.[107] New Jersey also prohibits the manufacture or sale of undetectable firearms[108] and generally prohibits using a 3D printer to manufacture firearms and the distribution of instructions for the 3D printing of firearms.[109]

New York: Regulates undetectable firearms.
New York prohibits the possession, transport, and manufacture of an undetectable firearm.[110] The legislature is considering legislation regarding untraceable firearms.

Virginia: Regulates undetectable firearms.
Virginia prohibits the sale, transfer, and possession of plastic firearms, which are defined as any firearm containing less than 3.7 ounces of electromagnetically detectable metal in the barrel, cylinder, slide, frame, or receiver and which, when subject to an x-ray machine commonly used at airports, does not generate an image that accurately depicts its shape.[111]

Washington: Regulates undetectable and untraceable firearms.
Washington prohibits facilitating the manufacturing of undetectable or untraceable firearms by a person prohibited from having guns,[112] prohibits the manufacturing or possession of undetectable firearms,[113] and prohibits the manufacturing of an untraceable firearm with the intent to sell it.[114]

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2. Peter Hermann, "D.C. mayor signs law banning 'ghost gun' kits from District," *Washington Post*, March 11, 2020, https://wapo.st/3eq7s1L.
3. Meg O'Connor, "How Facebook Led the FBI to Seize Guns from an Arizona 'Neo-Nazi,'" *Phoenix New Times,* May 16, 2019, https://bit.ly/2T8LMj9.
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5. Everytown for Gun Safety, "Everytown for Gun Safety Urges ATF to Correct Regulatory Failure Allowing Untraceable 'Ghost Guns' into Communities across the Country," press release, December 12, 2019, https://every.tw/2IaYGqp.
6. 18 U.S.C. § 922(p).
7. Bureau of Alcohol, Tobacco, Firearms, and Explosives, "Fact Sheet - National Tracing Center," accessed March 3, 2020, https://bit.ly/2x7qKZL.
8. 8 U.S.C. § 922(k).
9. AK, AR, AZ, CO, CT, DE, FL, GA, HI, IL, KS, KY, LA, MA, MD, ME, MN, MO, MT, NC, NE, NJ, NV, NY, OH, OK, RI, SC, SD, and VA.
10. In the interest of not publicizing the sellers of ghost gun building blocks, this report does not include the names of sellers or their websites. Screenshots of all products and descriptions cited are on file.
11. "AKM AK47 80% Complete Build Kit," [On File], accessed March 6, 2020.
12. "AKM AK47 80% Complete Build Kit", [On File].
13. Gary Vela, "Why Is Purchasing an AR-15 Kit Is Great for Beginners?," [On File], May 10, 2019.
14. The top five videos on YouTube were identified by searching for "80 percent receiver" and "80 percent frame" and sorting instructional videos by view count.
15. "Best 80% Receivers, Jigs, Parts & More," [On File], accessed February 29, 2020.
16. "The Router Jig Pro Multiplatform - AR-15/AR-9/AR-45/.308/AR-10," [On File], accessed February 29, 2020.
17. "AKM AK47 80% Complete Build Kit", [On File].
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24. Everytown collected data on online sellers who currently offer building blocks for ghost guns for sale particularly 80% receivers and frames. These sellers were identified using search engines, forums, and websites listing the best 80% lower receivers, frames, and jigs on the market. While this list of companies was not designed to be exhaustive, Everytown's sample aimed to capture prominent sellers in the online marketplace. There is no official list of manufacturers or sellers of ghost gun parts.
25. Everytown used a combination of business records and archive.org, a website that allows you to see the history of over 418 billion web pages, to determine the approximate year sellers first started selling 80% frames and/or receivers, and marked that year as when the seller entered the ghost gun business. Sellers may have started offering ghost gun parts prior to the year we identified.
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EXHIBIT 5

Ghost Guns: The build-it-yourself firearms that skirt most federal gun laws and are virtually untraceable

Under federal law, they require no background check or serial number, making ghost guns a growing weapon of choice for criminals.

2020 May 10 CORRESPONDENT Bill Whitaker

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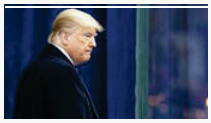
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Extracting confessions from a serial killer

As the coronavirus pandemic sweeps through the country, panic and fear have caused a run on hand sanitizer, toilet paper and guns. Retailers tell us they have never seen such a surge in firearms sales. One kind of weapon that has been selling out is a build-it-yourself firearm known as a ghost gun because it skirts most federal gun laws. There's no background check and no serial number, making ghost guns invisible to police and almost impossible to trace when used in a crime. We were surprised that it's all perfectly legal. After a year and a half of reporting, we discovered that ghost guns, once mainly popular with gun enthusiasts, have also become a weapon of choice for criminals, manufactured by gangs and used in mass shootings.

We sought out America's top gun cops, the Bureau of Alcohol, Tobacco, Firearms and Explosives, the ATF, to find out exactly what a ghost gun is. Thomas Chittum, ATF's assistant director of field operations, gave us rare access to its West Virginia weapons repository and told us the latest additions here are ghost guns.



Comparing a ghost gun and a regularly manufactured gun

Bill Whitaker: What's the difference between these two guns?

Thomas Chittum: Well, this is a firearm that was manufactured by a licensed manufacturer. The law requires them to mark them with certain markings, including a serial number. This is not marked. No background check is completed when you purchase it. It's made at home by somebody using commonly available hand tools.

Bill Whitaker: So, they both do the same thing.

Thomas Chittum: They both shoot.

As Chittum says, usually, if you bought a gun at a store, it would have a traceable serial number and you would need to pass a background check under federal law. A ghost gun can circumvent all of that, because it's put together from unfinished, untraceable parts.

Bill Whitaker: It's virtually invisible to you and government.

Thomas Chittum: It also makes it challenging to keep it outta the hands of people who are not allowed to possess firearms.



Bryan Muehlberger

Bryan Muehlberger: Up to that day, I never heard the term ghost gun. So I didn't even know what that was.

Bryan Muehlberger found out one day last November. There had been a mass shooting at his daughter's high school and 15-year-old Gracie was murdered.

Bryan Muehlberger: They bring in one of the head doctors. And just like you see on the movies, he sits across from you with that real quiet kinda solemn stare, right at you. And I just-- I just remember sayin', you know, like, "Please, no. Don't-- don't tell me the bad news, please."

This was the aftermath at Saugus High School in Santa Clarita, California. A typical Thursday

morning disrupted, the quad littered with backpacks after students dropped everything and fled for their lives. That's where Gracie was waiting for friends before class.

Bryan Muehlberger: She was about as close as I am to you right now. Shot her right through the backpack and right through her chest, And thankfully he didn't aim at the back of her head. You know, at least we got to see her face one more time.

Los Angeles County Sheriff Alex Villanueva arrived at the scene not long after the shots were fired.

Bill Whitaker: This kid shows up at school. What happened?

Alex Villanueva: He shows up at school. He has a backpack. His mom had-- had packed the lunch for him. But in the backpack was also a .45 auto that was loaded.



Los Angeles County Sheriff Alex Villanueva

Carrying that loaded ghost gun was Nathaniel Berhow, a high school junior. In addition to Gracie, he shot and killed Dominic Blackwell and wounded three other students. He saved the last round for himself.

Bill Whitaker: He's 16 years old?

Alex Villanueva: Uh-huh (AFFIRM). Just turned-- that was his birthday.

Bill Whitaker: How does a 16-year-old get his hands on a gun? He's-- he's underage.

Alex Villanueva: Underage, but his father was a gun enthusiast and was in possession of a lot of weapons. They were ultimately confiscated because he was detained for psychiatric evaluation.

Bill Whitaker: So he-- the father was not supposed to have guns.

Alex Villanueva: And all the weapons were removed legally at the time.

Sheriff Villanueva suspects that's when the father turned to ghost guns and his son got his hands on one. Six months later, the Saugus investigation is still ongoing.

Alex Villanueva: This is the actual weapon that was used in the Saugus shooting. It is a ghost gun. It was assembled. We don't know by who. But we believe it was the father of the suspect and it came into possession then of the shooter himself.

Ghost gun parts can be used to fabricate a handgun or even an AR-15. The parts are widely available across the country in stores and online. In the wake of the coronavirus pandemic, they have been flying off the shelves. They're shipped right to your door. Not much harder than ordering a pizza.



The gun kit bought by 60 Minutes

We bought a kit online for $575 that has everything you need to make a 9 millimeter handgun. It came in parts, like IKEA furniture but for firearms, and even includes the drill bits you need to put the gun together in the comfort of your own home. Why is it so easy to buy? Because federal gun law only regulates a part, called a frame or a lower receiver. But until you drill out holes and

file down a bit, in the eyes of federal law, it's just a hunk of metal or in this case plastic.

YouTube videos will show you step-by-step how to turn that piece of plastic or metal into a gun.

Alex Villanueva: So you have pretty much it's open season, anyone who is a prohibited person that wants to arm themselves now has a very easy way to do it.

But, if you're a felon or judged mentally unfit for example, federal law says you're not supposed to have any kind of firearm. Build a ghost gun? No one knows you have it.

Ironically, California has some of the strictest state gun laws in the U.S., and yet it's the epicenter of this growing problem.

Bill Whitaker: Where on your list of worries do these ghost guns fall?

Alex Villanueva: Well, along with terrorism, active shooter, this is w-- way up there on the list.

Villanueva oversees the largest sheriff's office in the country, and he says over the last year, the number of ghost guns turning up in LA county investigations has jumped by 50%.

Alex Villanueva: Domestic assault, assault with a deadly weapon, distribution of child pornography, possession a child pornography, armed with a ghost gun. Domestic violence, domestic violence, assault with a deadly weapon, drug deal.

Bill Whitaker: Wow.

It's an epidemic that has blindsided police across the country. Without a serial number or paperwork, ghost guns are very difficult for law enforcement to trace or track. Which is why Thomas Chittum and the ATF are struggling to get a handle on the problem.



Thomas Chittum, the ATF's assistant director of field operations, walks with correspondent Bill Whitaker through the ATF's West Virginia weapons repository

Bill Whitaker: How many of these guns are on the streets, you have no idea?

Thomas Chittum: Uh, no, I have no idea.

Bill Whitaker: And how many crimes are being committed by these guns, you have no idea?

Thomas Chittum: Well, not with precision. They still represent a minority of the firearms that are being used in crimes. But we do see that they're increasing significantly and rapidly.

Bill Whitaker: So you have no idea how many guns are out there, and you don't know who has them.

Thomas Chittum: Uh, right.

Here's what our reporting found, contacting local and national law enforcement over the course of a year and a half: at least 38 states and Washington D.C. have seen criminal cases involving ghost guns.

There were at least four mass shootings, violent police shootouts, high-profile busts of gangs making and selling ghost guns on the street, and cases involving terrorism and white supremacists.

But Dimitrios Karras says that's not his clientele at all.

He is a former Marine and one of the first to get into the business of selling ghost gun parts in California ten years ago.

Dimitrios Karras: Between 300,000 and 500,000 individual units have passed through my hands.

Bill Whitaker: Over what period of time?

Dimitrios Karras: Last ten years.

Bill Whitaker: It sounds like a lot to me.

Dimitrios Karras: If I was--

Bill Whitaker: That-- that's just from your store?

Dimitrios Karras: That's just-- that's just from what-- what I've been involved in. There's a lot of companies that are now in this industry and there are multiple millions of these things that have been created throughout the country at this point.

Bill Whitaker: So who is buying these kits?

Dimitrios Karras: It's guys in hardhats. It's also the people who like to work with their hands and do this sort of thing anyway.



Dimitrios Karras

Alex Villanueva: I'd say hogwash to that entire idea.

Bill Whitaker: Hogwash.

Alex Villanueva: Hogwash. Absolute hogwash. The only (LAUGH) people that are interested in that are not enthusiasts into, you know, tinkerin' around with machines.

Bill Whitaker: A hobbyist.

Alex Villanueva: No. They're not hobbyists. These are people that should never have a firearm. And that's how they found a way to get one.

Karras insists the store where he now works, which touts just how invisible their ghost gun parts are, has safeguards to prevent ghost gun parts from getting into the wrong hands.

Bill Whitaker: And what are they?

Dimitrios Karras: Um, I'm not gonna get too much into it because it would undermine our ability to use them.

Bill Whitaker: Do you ever worry that someone who's buying one of these kits might have a mental illness or, you know, be planning to use an AR-15 for something that's horrible, unimaginable?

Dimitrios Karras: Does a car salesman worry that-- someone might take a car that they've sold to them and drive it through a crowd of people?

Bill Whitaker: So you see them as the same?

Dimitrios Karras: I do.

Karras's home state, California, is phasing in a law to regulate ghost gun parts like regular firearms. Three other states and the District of Columbia have passed their own restrictions. But Villanueva says that's not enough.

Alex Villanueva: We need national laws, or federal, from Congress that covers a total ban on the creation or the selling of these ghost gun kits.

Bill Whitaker: State-by-state is not gonna do it?

Alex Villanueva: It doesn't because then you can just defeat it by going to another state.

In today's political climate, new federal gun control measures seem unlikely.

So that leaves it to the ATF to determine what is and is not a gun. Currently, ATF says a ghost gun not a gun.

But the ATF has changed its thinking on similar issues recently. After the 2017 massacre in Las Vegas, the ATF and the Department of Justice banned bump stocks, an accessory that turned semi-automatic weapons into machine guns.



Former acting director of the ATF, Thomas Brandon

Former acting director of the ATF, Thomas Brandon, helped implement that change and was ready to recommend to his bosses at the Department of Justice that they reclassify certain ghost gun kits, like the one we ordered, as firearms because of how easy they are to put together.

Bill Whitaker: You were alarmed at what you were seeing?

Thomas Brandon: Yeah. And so I said, "Well, right now we have a public safety concern."

Bill Whitaker: You thought that the ATF should reclassify these kits as firearms?

Thomas Brandon: Yes as the head of the agency at the time-- I said, "I'm gonna do everything I can for public safety with my team." If you wanted to buy a kit and make your own gun, it's just gonna hav-- have a serial number on it.

Thomas Brandon retired last spring before any action was taken. We asked the Bureau of Alcohol, Tobacco, Firearms and Explosives if there was any follow-up on Brandon's plans and were told, "ATF routinely reviews our practices, procedures, and determinations; however, it would be inappropriate to comment on internal discussions. " Thomas Chittum says the ATF is doing everything it can.

Bill Whitaker: Is this just one of those political hot potatoes that nobody wants to touch?

Thomas Chittum: Well, gun law's one of the most divisive topics in America. And ATF sometimes finds itself in the middle.

As for Saugus, it was the first high school mass shooting with a ghost gun. Bryan Muehlberger, a pistol owner himself, says if something isn't done about ghost guns, it won't be the last.

Bryan Muehlberger: I'm not against owning guns, but I also believe strongly that this is a serious problem that's occurring that no one knew about. So I just feel like something needs to be done. It's just-- it's become too easy.

Produced by Nichole Marks and David M. Levine. Associate producers, Michelle St. John, Emilio Almonte and LaCrai Mitchell. Edited by Richard Buddenhagen.

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EXHIBIT 6

- 3 MAY 1983

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cc: SAC Office
RRA Office

C:F:TE:CHB
7540

Mr. Henry A. Roehrich
SGW, Incorporated
624 Old Pacific Highway SE
Olympia, Washington 98503

Dear Mr. Roehrich:

This refers to your letter of March 25, 1983, in which you ask about the status of an unfinished AR-15 type firearm receiver which you submitted for our examination.

Examination of the sample reveals that it is identifiable as the receiver of a firearm. It is basically complete except that the interior cavity has not been milled. For test purposes, the interior of the sample was drilled out using a 5/8 inch drill and then finished with a 1/2 inch rotary file. Approximately 75 minutes time was required to make the receiver functional.

Based on our examination, we have determined that the unfinished receiver as provided, is still a firearm subject to the provisions of the Gun Control Act of 1968. Should a customer of yours require unfinished receivers of this type, without conventional serial number or other markings, we would be happy to consider your request for a variance from the marking requirements in Title 27, Code of Federal Regulations (CFR), Part 178, Section 178.92.

An alternate form of identification may be approved only if it is determined that the proposed markings are reasonable under the particular circumstances involved, and will not hinder effective administration of the law and implementing regulations. Your customer must be a licensed manufacturer of firearms who will apply all required markings to the finished receiver. Further, it will be necessary for you to apply some sort of identifying mark to the unfinished receiver to identify SGW as the original manufacturer.

We trust that the foregoing has been responsive to your inqury. If you have further questions concerning this matter, please do not hesitate to contact us.

Sincerely yours,

Edward M. Owen, Jr.
Chief, Firearms Technology Branch

CAB

S.G.W. INC.
624 OLD PACIFIC HWY. S.E.
OLYMPIA, WA. 98503
PHONE: (206) 456-3471

RIFLE BARRELS
CHAMBER REAMERS

LOWER RECEIVERS
GUNSMITHING

March 25, 1983

BATF
Federal Building
Washington, D.C. 20226

Attn: Mr. Edward M. Owen, Jr.
Chief, Firearms Technology Branch

Subject: Status of unfinished Ar-15 Type Lower Receivers.

Dear Sir:

Enclosed is a sample unfinished AR-15 type Lower Receiver Forging. You will note that the area for the trigger, Hammer, and Disconnector is basically still unmachined and solid. It would require additional machining to become functional.

A customer requests that we supply him with receiver forgings in this machined condition without prior markings (identification) with serial No. caliber and manufacturer's name. He will then finish them under his manufacturer's license and put on the required markings.

Would we be authorized to ship these unfinished forgings per sample supplied without any prior markings?

Sincerely;

Henry A. Roehrich
SGW, Inc.
General Manager

EXHIBIT 7

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
CORRESPONDENCE APPROVAL AND CLEARANCE

DEC 27 2002

903050:RDC
3311/2003-016

360
357.3846

Mr. Lane Browne
Mega Machine Shop, Incorporated
5323 Joppa S.W.
Tumwater, Washington 98512-8020

Dear Mr. Browne:

This refers to four AR-15 type lower receiver samples that were received by this office on October 3, 2002, for the purposes of examination and classification.

You indicate that each of the samples represents a separate stage in the manufacturing process. The samples are labeled "OP-1," "OP-2," "OP-3," and "OP-4."

Receiver sample "OP-1" is a solid casting having holes drilled for the takedown pins, selector, hammer, trigger, bolt catch, rear takedown pin retainer, and magazine catch. Further, the areas for the magazine catch and bolt catch have been partially machined and the rear ring threaded for the buffer tube. Machining of the interior cavity and magazine well has not been made on this sample.

Receiver sample "OP-2," in addition to the operations above, has had the magazine well and interior cavity machined, trigger slot machined, trigger guard holes drilled, and the slots for the magazine catch and bolt catch completed.

Receiver sample "OP-3," in addition to the operations above, has had the hole drilled in the receiver ring for the buffer retainer.

	INITIATOR	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER
CODE	903050	903050					
SURNAME		Bowe					
DATE	2/4/03	12/27/02					

ATF F 9310.3A (7-97) (Formerly ATF/F 1325.6A, which may still be used)

*U.S. Government Printing Office: 2002 — 491-811/53553

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
CORRESPONDENCE APPROVAL AND CLEARANCE

Mega Machine Shop, Inc.

Receiver sample "OP-4," in addition to the operations above, has had the hole for the grip screw drilled and tapped, and the markings applied. The left side of the magazine well is marked, in descending order, "DALPHON," "SHELTON, WA.," "MULTI-CALIBER," "MODEL B.F.D.," and "CDB 0806." "FIRE" and "SAFE" are marked adjacent to the safety selector hole.

We have determined that an AR-15 receiver can still function as a firearm receiver without a magazine opening or the threaded hole for the buffer tube. In addition, we previously examined an AR-15 style receiver in a similar condition to your receiver sample "OP-1" having the holes for the trigger and hammer pins, but with a solid interior. The interior cavity of the previously examined sample was finished in approximately 75 minutes time using a 5/8-inch drill and a rotary file. This receiver was determined to be a "firearm" as defined in Title 18, United States Code (U.S.C.), § 921(a)(3). Therefore, your sample "OP-1" is also a firearm as defined.

Receiver samples "OP-2," "OP-3," and "OP-4" are manufactured to the point where they will accept AR-15 type semiautomatic fire control components, the magazine catch, the bolt catch, both takedown pins, rear takedown pin retainer, and buffer tube. Therefore, each of these samples constitutes a "firearm" as defined in Title 18, U.S.C. § 921(a)(3).

We trust the foregoing has been responsive to your inquiry. If we can be of any further assistance, please contact us.

Sincerely yours,

Curtis H.A. Bartlett
Chief, Firearms Technology Branch

	INITIATOR	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER
CODE							
SURNAME							
DATE							

ATF F 9310.3A (7-97) (Formerly ATF F 1325.6A, which may still be used)

*U.S. Government Printing Office: 2002 — 491-811/53553

EXHIBIT 8

U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

AUG 19 2004

903050:RDC
3311/2004-564

www.atf.gov

Mr. Robert Serva
Dan Wesson Firearms
5169 Highway 12 South
Norwich, NY 13815

Dear Mr. Serva:

This refers to an unfinished 1911-type semiautomatic pistol frame sample, which was received by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Firearms Technology Branch (FTB), on July 25, 2004, for examination and classification.

Examination of the submitted unfinished frame revealed that the following machining operations have been made, implementing these essential features:

- Slide stop crosspin holes.
- Sear pin hole.
- Hammer pin hole.
- Thumb safety pin hole.
- Main spring housing pin hole.
- Disconnector port.
- Stock screw bushing threads.
- Frame plunger tube mounting holes.
- Feed ramp.
- Barrel link surfaces.
- Frame interior passages/slots.
- Frame safety lever cutout.

In an accompanying letter, you note that the submitted slide rails have not been cut and that there is an additional .015 inch of material left on top of the rail area. Additionally, you state that the sides are approximately .004 inch in width.

The only critical operation yet to be made is the cutting of the slide rails. Although critical, this work can be completed in a minimal amount of time by a competent individual having the necessary equipment.

Mr. Robert W. Serva

Based on our review of the submitted frame, including the features enumerated above, FTB has determined that the number and complexity of the operations made are sufficient to classify this sample as a "firearm" as defined in 18 U.S.C. § 921(a)(3).

We trust the foregoing has been responsive to your inquiry. If we can be of any further assistance, please contact us.

Sincerely yours,

for Sterling Nixon
Chief, Firearms Technology Branch

EXHIBIT 9

U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Martinsburg, WV 25401
www.atf.gov

903050:AG
3311/2006-601
APR 24 2006

Mr. Justin Halford
312 Oxford Cove
Jonesboro, Arkansas 72404

Dear Mr. Halford:

This is in reply to your correspondence, dated January 26, 2006, along with you your submitted item, to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Firearms Technology Branch (FTB). The submitted item is a partially machined AR-15 pattern receiver, which you have submitted for classification with respect to its status under the Gun Control Act (GCA) of 1968.

The FTB examination determined that the receiver would need the machining operations for the following holes or openings to enable it to be used as the receiver of a firearm:

- Machine pivot pin hole(s).
- Machine takedown pin hole(s).
- Machine trigger pin hole(s).
- Machine trigger opening in the bottom of the trigger/hammer recess.
- Machine hammer pin hole(s).

Additional minor machining or fitting operations may also be required.

For your information, previous determinations by FTB have classified as "firearms," receivers featuring less machining than your sample. Since your sample is nearly complete, requiring only minor modifications to allow it to function as the frame or receiver of a firearm, it is a *firearm* as defined in 18 USC 921 (a)(3).

As you are aware, an AR-15 type receiver which has absolutely no machining performed in the area of the trigger/hammer recess might not be classified as a firearm. Such a receiver could have **all** other machining operations performed, including the boring of pivot pin and takedown pin hole(s) and clearance for the takedown pin lug, but it must be completely solid and un-machined in the trigger/hammer recess area. Your sample has been filled with clay by FTB to illustrate this area (see photo, next page). If you are interested in having such a modified item formally classified, you must re-submit the prototype to FTB for examination.

Please note that, absent an actual submission, this response cannot constitute a classification of a receiver having a solid trigger/hammer area.



We thank you for your inquiry, and trust that the foregoing has been responsive.

Sincerely yours,

Sterling Nixon
Chief, Firearms Technology Branch

EXHIBIT 10

U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Martinsburg, West Virginia 25405
www.atf.gov

903050:WJS
3311/2012-1201

SEP 28 2012

Mr. Alan Aronstein
Hi-Standard Manufacturing Company
5151 Mitchelldale, Ste. B11
Houston, Texas 77902

Dear Mr. Aronstein:

This is in reference to your recent correspondence to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Firearms Technology Branch (FTB), with accompanying samples (see enclosed photos) for evaluation and classification per provisions of the Gun Control Act of 1968 (GCA), 18 U.S.C. § 921(a)(3).

As background to our discussion, the GCA, § 921(a)(3), defines the term "**firearm**" to include:

... (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; [and] *(B) the frame or receiver of any such weapon....*

Please note that any receiver-casting or receiver-blank that has been finished to the point at which it can be recognized as a firearm frame or receiver is a "firearm." Our Branch has held that in order not to be recognized as a "firearm," a semiautomatic-style receiver-blank or receiver-casting must not have: a) slide rails or slide rail indexing marks; b) a barrel seat; and c) more than two of any of the following four critical holes drilled—1) slide-stop pivot, 2) sear pivot, 3) disconnector, or 4) hammer pivot pin.

The FTB examination of your submitted 1911-type sample found that is has had the following machining operations partially or fully completed:

- Casting from steel, the outside profile of which is generally to shape, with recess for the hammer slot and the magazine well.
- The ramp partially formed, partially machined.
- Relief cut in front strap for the magazine floor-plate.
- Thumb-safety detent area partially machined.
- Magazine-catch opening machined.
- Trigger-assembly opening machined.

Mr. Alan Aronstein

We noted that there is no barrel seat; there are no mounting pin holes for the hammer, trigger, sear or takedown pin; and no slide guide rails have been formed or indexed.

Further, the FTB examination of your target-pistol type sample disclosed that it has had the following machining operations partially or fully completed:

- Casting from steel, the outside profile of which is generally to shape, with recess for the hammer slot machined.
- Magazine well partially machined.
- Feed ramp formed and machined.
- Relief cut in front strap for the magazine floor-plate.
- Magazine-catch area on front strap machined.
- Opening for magazine-catch roller and roller pin machined.
- Trigger recess machined.
- Trigger stop-pin hole machined.
- Barrel seat partially machined.
- Barrel take-down pin hole machined.

We noted that there is a partially machined barrel seat; however, there are no mounting pin holes for the hammer, trigger, and sear, and no slide guide rails have been formed or indexed.

In conclusion, the FTB evaluation finds that the submitted Hi-Standard, 1911-type receiver blank and Hi-Standard, target-pistol type receiver blank are not "firearms" as defined.

In order to facilitate the return of your samples, please provide us with your FedEx account or a U.S. Postal Service, UPS, or other appropriate carrier return-shipping label within 30 days of the receipt of this letter.

We thank you for your inquiry and trust the foregoing has been responsive. Should you have any additional questions, do not hesitate to contact us.

Sincerely yours,

John R. Spencer
Chief, Firearms Technology Branch

Enclosure

EXHIBIT 11

U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Martinsburg, WV 25405

www.atf.gov

903050: WJS
3311/300627

May 17, 2013

Mr. Doug Hughes
Operations Manager
Kenney Enterprises, Inc
4343 East Magnolia Street
Phoenix, AZ 85034

Dear Mr. Hughes,

This is in reference to your correspondence, with enclosed sample, to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Firearms Technology Branch (FTB). In your letter, you asked for a classification of the submitted, partially completed AR-type receiver your company is planning to manufacture. Specifically, you wish to know if this item would be classified as a "firearm" under the Gun Control Act of 1968 (GCA).

During the examination of your sample, FTB found that the following machining/drilling operations performed on the submitted sample:

1. Front and rear assembly/pivot pin holes drilled.
2. Front and rear assembly/pivot detent pin holes drilled.
3. Selector-retainer hole drilled.
4. Magazine release and catch slots cut.
5. Trigger-guard holes drilled.
6. Rear of receiver drilled and threaded to accept buffer tube.
7. Buffer-retainer hole drilled.
8. Pistol-grip mounting area faced off, drilled, and threaded.
9. Magazine well completed.

The machining operations not yet performed are as follows:

1. Milling out of fire-control cavity.
2. Drilling of selector-lever hole.

Mr. Doug Hughes

3. Cutting of trigger slot.
4. Drilling of trigger pin hole.
5. Drilling of hammer pin hole.

The FTB examination of your submitted casting and diagrams found that your submitted item will not be sufficiently complete to be classified as the frame or receiver of a firearm and thus would not be a "firearm" as defined in the GCA.

In closing, we should point out that the information found in correspondence from our Branch is intended only for use by the addressed individual or company with regard to a specific scenario described within that correspondence.

To facilitate return of your sample, please provide FTB with the appropriate FedEx account information within 60 days of receipt of this letter.

We thank you for your inquiry and trust the foregoing has been responsive to your evaluation request. Please do not hesitate to contact us if additional information is needed.

Sincerely yours,

Earl Griffith
Chief, Firearms Technology Branch

EXHIBIT 12

U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Martinsburg, WV 25405

www.atf.gov

903050:MCP
3311/302035

MAY 05 2014

Mr. Bradley Reece
Palmetto State Defense, LLC
555 East Suber Road
Greer, SC 29650

Dear Mr. Reece,

This is in reference to your correspondence to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Firearms Technology Branch (FTB), which accompanied your prototype sample of an AR-10 type receiver blank your company intends to manufacture and market. Specifically, you requested an examination and classification of the submitted sample pursuant to the amended Gun Control Act of 1968 (GCA) and asked if it would be regulated as a "firearm" under the GCA.

As background, the GCA, 18 U.S.C. § 921(a)(3), defines the term "firearm" to include *any weapon (including a starter gun) which will or is designed to or may be readily converted to expel a projectile by the action of an explosive...[and]...the frame or receiver of any such weapon....*

Note: FTB uses the following terms to describe certain items (also see citation, p.3)—

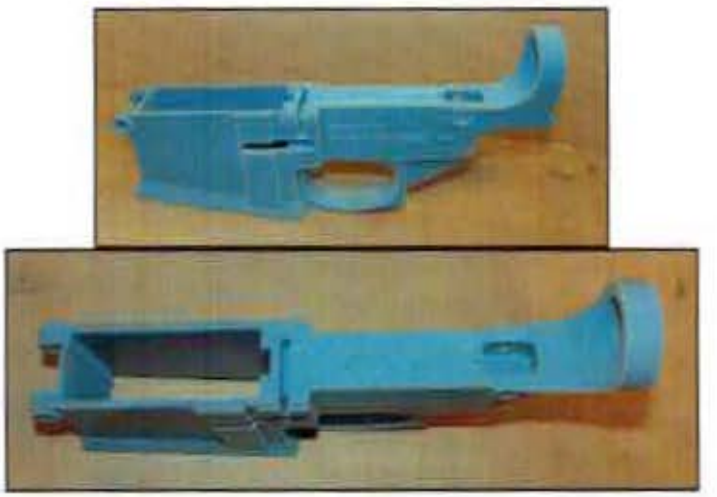
*The term "**receiver blank**" is used to describe forgings, castings, or machined bodies (defense articles[1]) such as AR-15 receiver castings, AK receiver flats, etc., in various stages of folding/machining which are not classified as firearms.*

*The term "**incomplete receiver**" is used to describe forgings, castings, or machined bodies (defense articles) which have been classified as firearms but are not completely machined for use as a functional firearm receiver.*

*The term "**receiver**" is used to describe functional firearms frames or receivers.*

As you are aware, FTB has previously determined that an AR-10 type receiver blank which has no machining of any kind performed in the area of the trigger/hammer (fire-control) recess might not be classified as a firearm. Such a receiver blank could have **all** other machining operations performed, including pivot-pin and takedown-pin hole(s) and clearance for the takedown-pin lug, but must be completely solid and un-machined in the fire-control recess area. We have determined that in order to be considered "completely solid and un-machined in the fire-control recess area," the takedown-pin lug clearance area must be no longer than 1.6 inches, measured from immediately forward of the front of the buffer-retainer hole.

Our examination of the submitted item confirmed that the receiver blank has been partially machined, including a takedown pin hole and clearance for the takedown-pin lug. Our examination confirmed that the takedown-pin lug clearance area is less than 1.6 inches, measured from immediately forward of the front of the buffer-retainer hole (see photos below). The sample is completely solid and un-machined in the fire-control recess area and, accordingly, is not a "firearm" as defined in the GCA.



Submitted prototype sample

To facilitate return of the submitted sample, please provide FTB with an appropriate FedEx or similar account number within 60 days of receipt of this letter.

We thank you for your inquiry and trust the foregoing has been responsive to your request.

Sincerely yours,

for Earl Griffith
Chief, Firearms Technology Branch

EXHIBIT 13

U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Office of the Director

Washington, DC 20226

January 2, 2015

18 U.S.C. 921(a)(3)(A) and (B): DEFINITIONS (FIREARM)
18 U.S.C. 921(a)(10): DEFINITIONS (MANUFACTURER)
18 U.S.C. 921(a)(11)(B): DEFINITIONS (DEALER)
18 U.S.C. 921(a)(21)(A): DEFINITIONS (ENGAGED IN THE BUSINESS)
18 U.S.C. 922(a)(1)(A): LICENSE REQUIRED
18 U.S.C. 923(i): IDENTIFICATION OF FIREARMS
27 CFR 478.92(a): IDENTIFICATION OF FIREARMS

Any person (including any corporation or other legal entity) engaged in the business of performing machining, molding, casting, forging, printing (additive manufacturing) or other manufacturing process to create a firearm frame or receiver, or to make a frame or receiver suitable for use as part of a "weapon ... which will or is designed to or may readily be converted to expel a projectile by the action of an explosive," i.e., a "firearm," must be licensed as a manufacturer under the Gun Control Act of 1968 (GCA); identify (mark) any such firearm; and maintain required manufacturer's records. A business (including an association or society) may not avoid the manufacturing license, marking, and recordkeeping requirements of the GCA by allowing persons to perform manufacturing processes on firearms (including frames or receivers) using machinery or equipment under its dominion and control where that business controls access to, and use of, such machinery or equipment. ATF Ruling 2010-10 is hereby clarified.

ATF Rul. 2015-1

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has received inquiries from the public asking whether Federal Firearms Licensees (FFL), or unlicensed machine shops, may engage in the business of completing, or assisting in the completion of, the manufacture of firearm frames or receivers for unlicensed individuals without being licensed as a manufacturer of firearms.

Unlicensed individuals occasionally purchase castings or machined/molded or other manufactured bodies (sometimes referred to as "blanks," or "80% receivers") that have not yet reached a stage of manufacture in which they are classified as "firearm frames or receivers" under the Gun Control Act of 1968 (GCA) and implementing regulations. Once purchased, these individuals may perform minor drilling and machining activities in or on the fire control area or other critical areas of the castings or machined/molded bodies sufficient to create a "firearm frame or receiver" under the law. Although the frame or receiver may be sufficiently complete

to be classified and regulated as a "firearm," it generally requires substantial additional machining before it can accommodate fire control components such as a trigger, hammer, or sear and be used to expel projectiles. For instance, a casting of an AR-15 type receiver can be machined using common power tools so that it reaches a stage of manufacture that it would be classified as a "firearm frame or receiver," yet incapable of being assembled into a weapon that will expel projectiles. Unlicensed individuals propose to take either a blank, or a frame or receiver (not marked with a serial number or any other marks of identification) to a licensed dealer-gunsmith or machine shop for further machining and finishing so that it can be assembled into a complete or functional firearm as designed. The FFLs or unlicensed machine shops would then use their own equipment, such as a Computer Numeric Controlled (CNC) machine or other means, to finish the blank or frame or receiver into one that can be used to assemble a weapon capable of firing projectiles.

The GCA, 18 U.S.C. § 921(a)(1), defines a "person" to include "any individual, corporation, company, association, firm, partnership, society, or joint stock company." Section 921(a)(10), defines a "manufacturer" as any person engaged in the business of manufacturing firearms or ammunition for purposes of sale or distribution. As defined by section 921(a)(21)(A), the term "engaged in the business" means, as applied to a manufacturer of firearms, "a person who devotes time, attention, and labor to manufacturing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms manufactured." Because "manufacturing" is not defined by the GCA, courts have relied on the ordinary meaning of the word, including actions to "make a product suitable for use." *See, e.g., Broughman v. Carver*, 624 F.3d 670, 675 (4th Cir. 2010). Section 921(a)(11)(B) defines a "dealer," in relevant part, as any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms." A person meeting this definition is commonly referred to as a "gunsmith."

Section 921(a)(3), defines a "firearm," in relevant part, as both a "weapon … which will or is designed to or may readily be converted to expel a projectile by the action of an explosive" (921(a)(3)(A)), and the "frame or receiver of any such weapon" (921(a)(3)(B)). Under section 923(i), licensed manufacturers must identify each firearm manufactured by a serial number in the manner prescribed by regulation. Federal regulations at 27 CFR 478.92(a)(1) add that "a licensed manufacturer … must legibly identify each firearm manufactured … [b]y engraving, casting, stamping (impressing), or otherwise conspicuously placing … an individual serial number" on the frame or receiver, and certain additional information - the model (if designated), caliber/gauge, manufacturer's name, and place of origin on the frame, receiver, or barrel. Regulations further require the serial number to be at a minimum depth and print size, and the additional information to be at a minimum depth. Additionally, the serial number must be placed in a manner not susceptible of being readily obliterated, altered, or removed, and not duplicate any serial number placed by that manufacturer on any other firearm.

In ATF Ruling 2010-10 (approved December 27, 2010), ATF advised that licensed dealer-gunsmiths (type 01) may legally perform certain firearm manufacturing activities if specified conditions were met. Specifically, that ruling held that licensed gunsmiths could conduct such manufacturing activities if the firearms were: (1) not owned, in whole or in part, by the dealer-gunsmith; (2) returned by the dealer-gunsmith to the importer or manufacturer upon completion of the manufacturing processes, and not sold or distributed to any person outside the

manufacturing process; and (3) already properly identified / marked by the importer or manufacturer in accordance with Federal law and regulations.

ATF Ruling 2010-10 is based on two distinct but related premises. First, it recognizes that there are specific activities traditionally performed by gunsmiths, *i.e.*, repairing, modifying, embellishing, refurbishing, installing parts, or specialized finishing of functional frames or receivers. Such activities *do not* include, and the Ruling does not directly address the machining or other manufacturing processes required for the frame or receiver to be created or any steps to make it suitable for use in assembling a "weapon … which will or is designed to or may readily be converted to expel a projectile by the action of an explosive." Second, the Ruling recognizes that, by transferring the firearm *only* to another FFL involved in the manufacturing process, there is no "sale or distribution of the firearm manufactured" requiring a manufacturer's license.

Machining or Other Manufacturing of Frames or Receivers

Because the GCA contains distinct definitions of "firearm," one can be a manufacturer of a "frame or receiver," and also a "weapon … which will or is designed to or may readily be converted to expel a projectile by the action of an explosive" that incorporates that frame or receiver. *See Broughman*, 624 F.3d at 676 n.4 ("That Broughman manufactures 'firearms' within the meaning of one statutory definition rather than another does not render him any less a manufacturer of 'firearms' within the meaning of the Act.") ATF Ruling 2010-10 assumes that licensed dealer-gunsmiths would perform certain activities on articles already classified as frames or receivers (*i.e.*, no machining or other processes required to allow it to be used to assemble a weapon), such as assembly and applying special coatings and treatments. Implicit is the understanding that the manufacture of the frame or receiver was completed (for example, having an existing fire-control cavity), and it was marked by a licensed manufacturer in accordance with Federal law and regulations.

However, when a person performs machining or other manufacturing process on a blank to make a firearm "frame or receiver," or on an existing frame or receiver to make it suitable for use[1] as part of a "weapon … which will or is designed to or may readily be converted to expel a projectile by the action of an explosive," that person has performed a manufacturing operation other than what is contemplated by the GCA of dealer-gunsmiths, *i.e.*, persons described by section 921(a)(11)(B) as "engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms." In this context, "machining or other manufacturing process" includes making a frame or receiver, or taking *any* of the steps to make an existing frame or receiver functional – that is, suitable for use as part of a weapon that will expel a projectile by the action of an explosive.[2] For example, in an AR-type weapon, "machining or other manufacturing process" would include any activity that creates a fire-control-cavity as designed. Although such an article may be classified as a "receiver" when it is indexed, machining or other manufacturing process takes place to create a receiver when material is actually removed from the cavity so that the fire-control-components may actually be installed.

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[1] *See Broughman* at 675 ("[T]he plain and ordinary meaning of the word 'manufacture' is 'to make into a product suitable for use.'" (quoting Merriam-Webster Online Dictionary (2010)) Consequently, the GCA required a manufacturer's license where a gunsmith assembled firearms from component parts.)

[2] For purposes of this Ruling, activities associated with tapping and mounting a scope are considered neither "machining" nor a "manufacturing process."

The activities discussed in ATF Ruling 2010-10 are not the manufacturing processes to create the firearm frame or receiver, or any of the steps that allow the frame or receiver to function when assembled into a complete weapon on behalf of non-licensed individuals. To the contrary, those gunsmithing activities are explicitly required to be done on behalf of a licensed manufacturer or importer who are required by 27 CFR 478.92(a)(2) to mark and serialize the frame or receiver prior to shipment to the gunsmith. As explained by the ruling, "[t]his will ensure that the frames or receivers can be traced by ATF in the event they are lost or stolen during the manufacturing process." This distinction is also legally significant because manufacturing processes that create essential features, depending on the type of firearm, are necessary for the frame or receiver to function as part of a complete "weapon." At this stage of production, the frame or receiver is different from one that a licensed gunsmith may receive and perform gunsmithing services because these manufacturing processes make the frame or receiver suitable for use in assembling a "weapon" under the GCA.

Distribution of Firearms Manufactured

Once the manufacturing processes have occurred and a frame or receiver has been made, however, to require licensing as a manufacturer, a person must still be engaged in the business through the "sale or distribution" of the firearms manufactured. ATF Ruling 2010-10 interpreted this phrase to exclude the transfer of firearms between Federal firearms licensees *who are involved in the manufacturing process*. The Ruling held, in part, that because the firearms manufactured were not "sold or distributed," the contracted gunsmiths did not satisfy this statutory requirement for licensing as manufacturers. Rather, that Ruling expressly prohibits licensed gunsmiths from distributing firearms outside the manufacturing process and requires them to be returned to the licensed manufacturer that initially produced and marked the frame or receiver. Underlying this analysis is the fact that the GCA provides special privileges to FFLs involved in firearms transactions with other FFLs. These include the authority to transfer firearms interstate, and to transfer firearms without a background check or completion of ATF Forms 4473 (Firearms Transaction Records). In light of this, no "distribution" occurs when a licensed manufacturer sends firearms to another FFL who performs contracted manufacturing activities and returns them.

ATF Ruling 2010-10 does recognize that gunsmiths may improve firearms by participating in the manufacturing process. However, none of the enumerated processes (*i.e.*, repairing, modifying, embellishing, refurbishing, installing parts, or specialized finishing) actually create a frame or receiver, or make an existing frame or receiver suitable for use in assembling a "weapon" capable of expelling a projectile. This is consistent with the traditional services that gunsmiths offer. Generally, licensed gunsmiths perform actions in repairing or improving firearms that are already complete weapons, or capable of being assembled as such. Gunsmiths do not perform the machining or other manufacturing processes to create frames or receivers, or make them suitable for use in assembling a weapon that can expel a projectile.

Although licensed gunsmiths return firearms to their customers after performing the contracted work, the GCA does not consider this to be a sale or distribution of the firearms manufactured. This is because the returned firearm has only been repaired or temporarily received for custom work – it has not been machined in a manner or otherwise created or made suitable for use as part of a weapon. However, when a licensed gunsmith takes in a frame or receiver to perform

machining or other manufacturing process, that gunsmith "distributes" a firearm to the customer upon return because that manufacturing activity results in the making of a different "frame or receiver" and also a "weapon … which will or is designed to or may readily be converted to expel a projectile" – both defined separately as a "firearm" under the GCA.

Further, permitting a licensed gunsmith to perform manufacturing processes on a frame or receiver on behalf of an unlicensed person would lead to an absurd result. If the above mentioned activities were permitted, firearms could be legally manufactured without any markings or serialization by dealer-gunsmiths who could avoid licensing as a manufacturer simply because his/her customer is unlicensed. For example, instead of purchasing marked and serialized receivers or complete weapons from licensed dealers, individuals might purchase unregulated castings or machined/molded bodies from a supplier, perform a minor machining or other operation sufficient to create a "firearm frame or receiver," contract with a gunsmith to perform necessary and substantial machining operations, and then assemble a complete weapon without marks of identification or records of production. Such activity runs contrary to a major purpose of the GCA in that it eliminates the ability of law enforcement to trace firearms used in crime, or stolen or lost firearms.

Use of Manufacturing Machines, Tools, or Equipment

An FFL or unlicensed machine shop may also desire to make available its machinery (*e.g.*, a computer numeric control or "CNC" machine), tools, or equipment to individuals who bring in raw materials, blanks, unfinished frames or receivers and/or other firearm parts for the purpose of creating operable firearms. Under the instruction or supervision of the FFL or unlicensed machine shop, the customers would initiate and/or manipulate the machinery, tools, or equipment to complete the frame or receiver, or entire weapon. The FFL or unlicensed machine shop would typically charge a fee for such activity, or receive some other form of compensation or benefit. This activity may occur either at a fixed premises, such as a machine shop, or a temporary location, such as a gun show or event.

A business (including an association or society) may not avoid the manufacturing license, marking, and recordkeeping requirements under the GCA simply by allowing individuals to initiate or manipulate a CNC machine, or to use machinery, tools, or equipment under its dominion or control to perform manufacturing processes on blanks, unfinished frames or receivers, or incomplete weapons. In these cases, the business controls access to, and use of, its machinery, tools, and equipment. Following manufacture, the business "distributes" a firearm when it returns or otherwise disposes a finished frame or receiver, or complete weapon to its customer. Such individuals or entities are, therefore, "engaged in the business" of manufacturing firearms even though unlicensed individuals may have assisted them in the manufacturing process.

Held, any person (including any corporation or other legal entity) engaged in the business of performing machining, molding, casting, forging, printing (additive manufacturing) or other manufacturing process to create a firearm frame or receiver, or to make a frame or receiver suitable for use as part of a "weapon … which will or is designed to or may readily be converted to expel a projectile by the action of an explosive," *i.e.*, a "firearm," must be licensed as a manufacturer under the GCA; identify (mark) any such firearm; and maintain required manufacturer's records.

Held further, a business (including an association or society) may not avoid the manufacturing license, marking, and recordkeeping requirements of the GCA by allowing persons to perform manufacturing processes on blanks or incomplete firearms (including frames or receivers) using machinery, tools, or equipment under its dominion and control where that business controls access to, and use of, such machinery, tools, or equipment.

Held further, this ruling is limited to an interpretation of the requirements imposed on persons under the GCA, and does not interpret the requirements of the National Firearms Act, 26 U.S.C. 5801 *et. seq.*

ATF Ruling 2010-10 is hereby clarified.

Date approved: January 2, 2015

B. Todd Jones
Director

EXHIBIT 14

U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Martinsburg, WV
25405

www.atf.gov

907010:AG
3311/302663

FEB [illegible]

Jason Davis, Esq.
The Law Offices of Davis & Associates
41593 Winchester Rd, Suite 200
Temecula, California 92591

Dear Mr. Davis,

This is in reference to your submitted item, an AR-15 pattern receiver casting, along with supporting correspondence recently received by the Firearms Technology Industry Services Branch (FTISB), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). You have submitted this item (see photo, last page) on behalf of your client, POLYMER 80, INC. (P80) for classification under the Gun Control Act of 1968 (GCA).

As you are aware, FTISB has previously determined that an AR-15 type receiver casting which is completely solid in the area of the trigger/hammer (fire-control) recess might not be classified as a firearm. Such a receiver casting could incorporate all other features of a functional firearm receiver, including pivot-pin and takedown-pin hole(s) and clearance for the takedown-pin lug, but must be completely solid in the fire-control recess area. We have determined that in order to be considered "completely solid in the fire-control recess area," the takedown-pin lug clearance area must be no longer than .800 inch, measured from immediately forward of the front of the buffer-retainer hole. In addition, ATF has held that "indexing" of the fire-control area, to include molding a polymer receiver in stages instead of as a single (homogenous) piece, is sufficient to require classification as a firearm receiver.

Our examination of the submitted item confirmed that the receiver casting has been cast from black polymer, and includes several features of a complete AR-15 type receiver, including a takedown pin hole and clearance for the takedown-pin lug. Our examination confirmed that the takedown-pin lug clearance area is less than .800 inch, measured from immediately forward of the front of the buffer-retainer hole. The sample has been cast entirely from a single type of polymer, to include the fire control recess area.

The submitted item was cut into several pieces in order to observe the internal configuration. This operation revealed that the submitted item incorporates a solid fire control cavity area, and was cast in a homogenous manner.

Your current correspondence, as well as supplemental information you provided in a letter dated February 3, 2015, confirmed that the submitted item was cast using "a single shot of molten material."

Based on our examination of the submitted item and your description of the manufacturing process used to produce it, we have determined that this item is NOT a firearm receiver, or a firearm.

We thank you for your inquiry and trust the foregoing has been responsive to your request.

Sincerely yours,

Michael R. Curtis
Acting Chief, Firearms Technology Industry Services Branch

Attachment

EXHIBIT 15

U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Martinsburg, WV 25405

www.atf.gov

907010:WJS
3311/303738

NOV 0 2 2015

Mr. Jason Davis
The Law Offices of Davis & Associates
41593 Winchester Road, Suite 200
Temecula, California 92590

Mr. Davis:

This is in reference to your correspondence, with enclosed samples, to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Firearms Technology Industry Services Branch (FTISB). In your letter, you asked for a classification of an AR10-type item identified by you as a "WARRHOGG BLANK" as well as a Glock-type "GC9 Blank" on behalf of your client, Polymer 80, Incorporated (see enclosed photos). Specifically, you wish to know if these items would be classified as a "firearm" under the Gun Control Act of 1968 (GCA).

You state the submitted **WARRHOGG BLANK** incorporates the following design features:

- *Magazine well.*
- *Magazine catch.*
- *Receiver extension/buffer tube.*
- *Pistol grip area.*
- *Pistol-grip screw hole.*
- *Pistol grip upper receiver tension hole.*
- *Pistol grip tension screw hole.*
- *Bolt catch.*
- *Front pivot-pin takedown hole.*
- *Rear pivot-pin takedown hole.*

As a part of your correspondence, you describe design features and the manufacturing process of the submitted "WARRHOGG Blank" to include the following statements:

- *The submitted WarrHogg .308 blank lower receiver blank is a solid core unibody design made out of a single casting without any core strengthening inserts. Moreover, it is void of any indicators that designate or provide guidance in the completion of the firearm. This submitted item incorporates a solid fire control cavity area, and was cast in a homogenous manner using a "single shot of molten material."*

For your reference in this matter, the amended Gun Control Act of 1968 (GCA), 18 U.S.C. § 921(a)(3), defines the term "**firearm**" *to include any weapon (including a starter gun) which will or is designed to or may be readily converted to expel a projectile by the action of an explosive...[and]...**the frame or receiver of any such weapon**...*

Also, 27 CFR § 478.11 defines "**firearm frame or receiver.**" *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.*

Also, the AECA, 27 CFR § 447.11, defines "**defense articles**" as—

...Any item designated in § 447.21 or § 447.22. This includes models, mockups, and other such items which reveal technical data directly relating to § 447.21 or § 447.22.

The USMIL § 447.22, **FORGINGS, CASTINGS, and MACHINED BODIES** states:

Articles on the U.S. Munitions Import List include articles in a partially completed state (such as forgings, castings, extrusions, and machined bodies) which have reached a stage in manufacture where they are clearly identifiable as defense articles. If the end-item is an article on the U.S. Munitions Import List, (including components, accessories, attachments and parts) then the particular forging, casting, extrusion, machined body, etc., is considered a defense article subject to the controls of this part, except for such items as are in normal commercial use.

During the examination of your sample, FTISB personnel found that the following machining operations or design features present or completed:

1. Front and rear pivot/take down pin holes.
2. Front and rear pivot/ take down detent retainer holes.
3. Front and rear pivot/take down lug clearance areas.
4. Selector-retainer hole.
5. Magazine-release and catch slots.
6. Trigger-guard formed.
7. Rear of receiver present and threaded to accept buffer tube.
8. Buffer-retainer hole.
9. Pistol-grip mounting area faced off and drilled, but not threaded.
10. Magazine well.
11. Receiver end-plate recess.

Machining operations or design features not yet present or completed:

1. Complete removal of material from the fire-control cavity area.
2. Machining or indexing of selector-lever hole.
3. Machining or indexing of trigger slot.
4. Machining or indexing of trigger-pin hole.
5. Machining or indexing of hammer-pin hole.

As a part of this evaluation, FTISB personnel noted the following markings:

Left Side

- **308**
- **POLYMER80**

FTISB has determined that an AR-10 type receiver blank could have all other machining operations performed, including front receiver pivot-pin and rear take down pin hole and clearance for the front receiver lug and rear take down pin lug clearance area (not to exceed 1.60 inches), but must be completely solid and un-machined in the fire-control recess area. The rear take down pin lug clearance area must be no longer than 1.60 inches, measured from immediately forward of the front of the buffer-retainer hole.

The FTISB examination of your submitted item, found that the most forward portion of the rear take down pin lug clearance area measures approximately 1.32 inches in length, less the maximum allowable 1.60 inch threshold. As a result, the submitted item is not sufficiently complete to be classified as the frame or receiver of a firearm; and thus, is not a "firearm" as defined in the GCA. Consequently, the aforementioned item is therefore not subject to GCA provisions and implementing regulations.

To reiterate the conclusion of FTISB's evaluation, our Branch has determined that the submitted Polymer 80, Incorporated AR10-type receiver blank incorporating the aforementioned design features is not classified as the frame or receiver of a weapon designed to expel a projectile by the action of an explosive; and thus, it is not a "firearm" as defined in (GCA), 18 U.S.C. § 921(a)(3)(B).

As a part of your correspondence, you describe design features and the manufacturing process of the submitted "**CG** or **CG9**" to include the following statement:

- *The submitted GC9 blank is a solid core unibody design made out of a single casting without any core strengthening inserts. Moreover, it is void of any indicators that designate or provide guidance in the completion of the firearm.*

Mr. Jason Davis

Please note, while not indicated in the accompanying correspondence, the submitted CG or CG9 appears to have been made utilizing additive manufacturing or 3-D printing technology and not "made out of a single casting."

During the examination of your sample **"CG or CG9,"** FTISB personnel found that the following machining operations or design features present or completed:

1. Slide lock lever location indexed.
2. Upper portion of slide lock spring recess.
3. Trigger slot.
4. Capable of accepting Glock 17 trigger mechanism housing.
5. Capable of accepting Glock 17 trigger bar.
6. Capable of accepting Glock 17 locking block.
7. Magazine well.
8. Magazine catch.
9. Accessory rail.
10. Slide-stop lever recess.
11. Magazine catch spring recess.

Machining operations or design features not yet present or completed:

1. Trigger-pin hole machined or indexed.
2. Locking block-pin hole machined or indexed.
3. Devoid of front or rear frame rails.
4. Barrel seat machined or formed.

As a result, the submitted "CG or CG9" is not sufficiently complete to be classified as the frame or receiver of a firearm; and thus, is not a "firearm" as defined in the GCA. Consequently, the aforementioned item is therefore not subject to GCA provisions and implementing regulations.

To reiterate the conclusion of FTISB's evaluation, our Branch has determined that the submitted Polymer 80, Incorporated Glock-type receiver blank incorporating the aforementioned design features is not classified as the frame or receiver of a weapon designed to expel a projectile by the action of an explosive, thus it is not a "firearm" as defined in (GCA), 18 U.S.C. § 921(a)(3)(B).

Please be aware, while not classified as a "firearm"; the submitted items are each classified as a "defense article" as defined in 27 CFR § 447.11. The U.S. Department of State (USDS) regulates all exports from, and particular imports into, the United States. Firearms, parts, and accessories for firearms are all grouped as "defense articles" by the USDS and overseen by their Directorate of Defense Trade Controls. Information regarding import/export of defense articles can be found on their web site at www.pmddtc.state.gov.

In conclusion, correspondence from our Branch is dependent upon the particular facts, designs, characteristics or scenarios presented. Please be aware that although other cases (submissions to our Branch) may appear to present identical issues, this correspondence pertains to a particular

issue or item. We caution applying this guidance in this correspondence to other cases, because complex legal or technical issues may exist that differentiate this scenario or finding from others that only appear to be the same.

Also, this determination is relevant to the items as submitted. If the design, dimensions, configuration, method of operation, or utilized materials or processes such as changing from additive manufacturing to injection molding, this classification would be subject to review and require a submission to FTISB of an exemplar utilizing the new manufacturing process.

We thank you for your inquiry and trust the foregoing has been responsive to your evaluation request. Please do not hesitate to contact us if additional information is needed.

Sincerely yours,

Michael R. Curtis
Chief, Firearms Technology Industry Services Branch

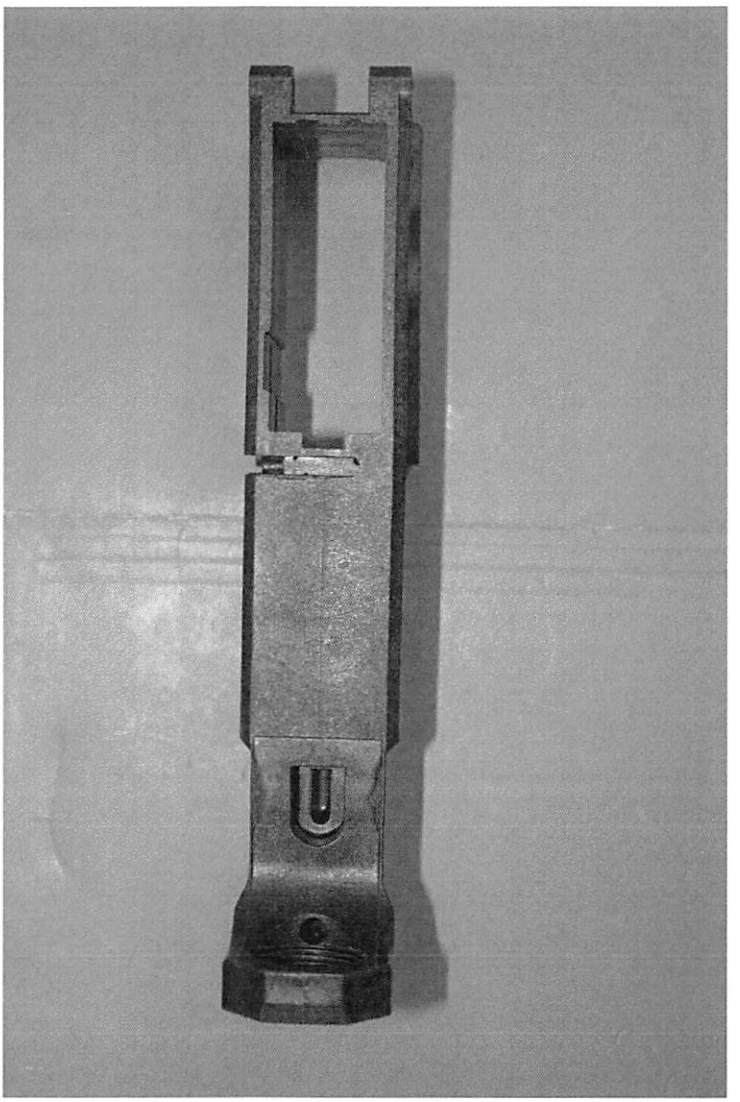
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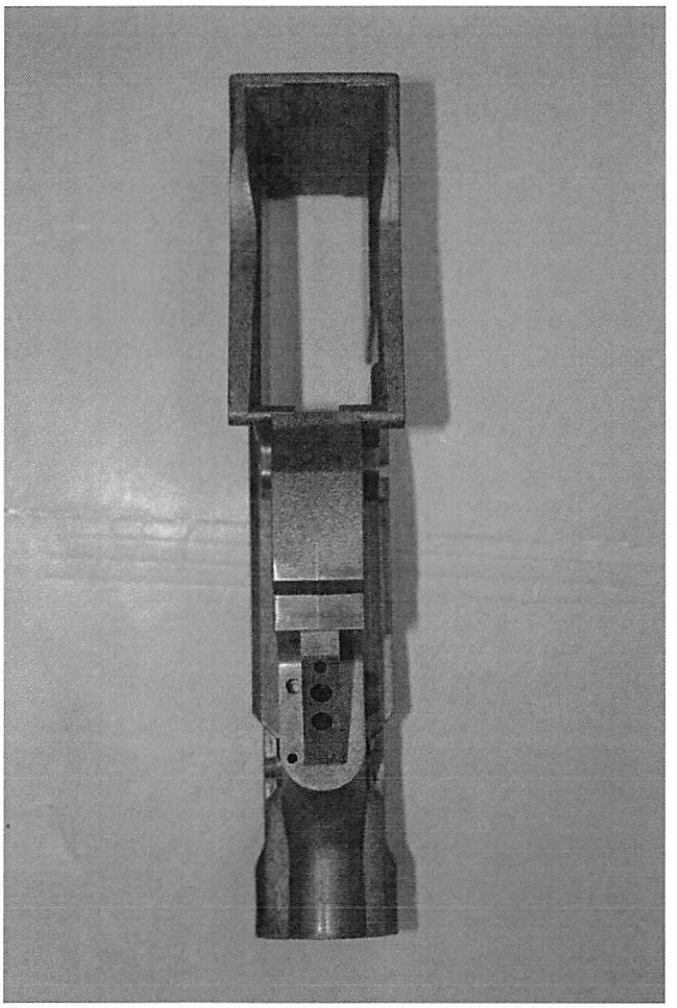
Polymer 80, Inc. WARRHOGG Receiver Blank

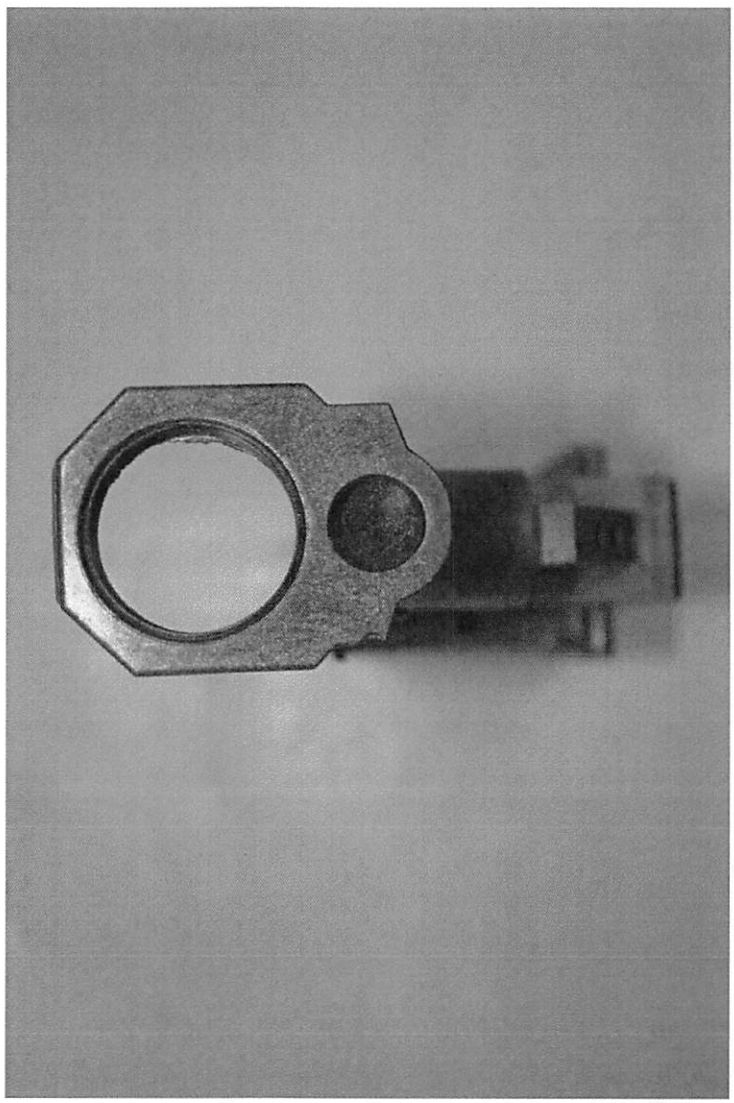


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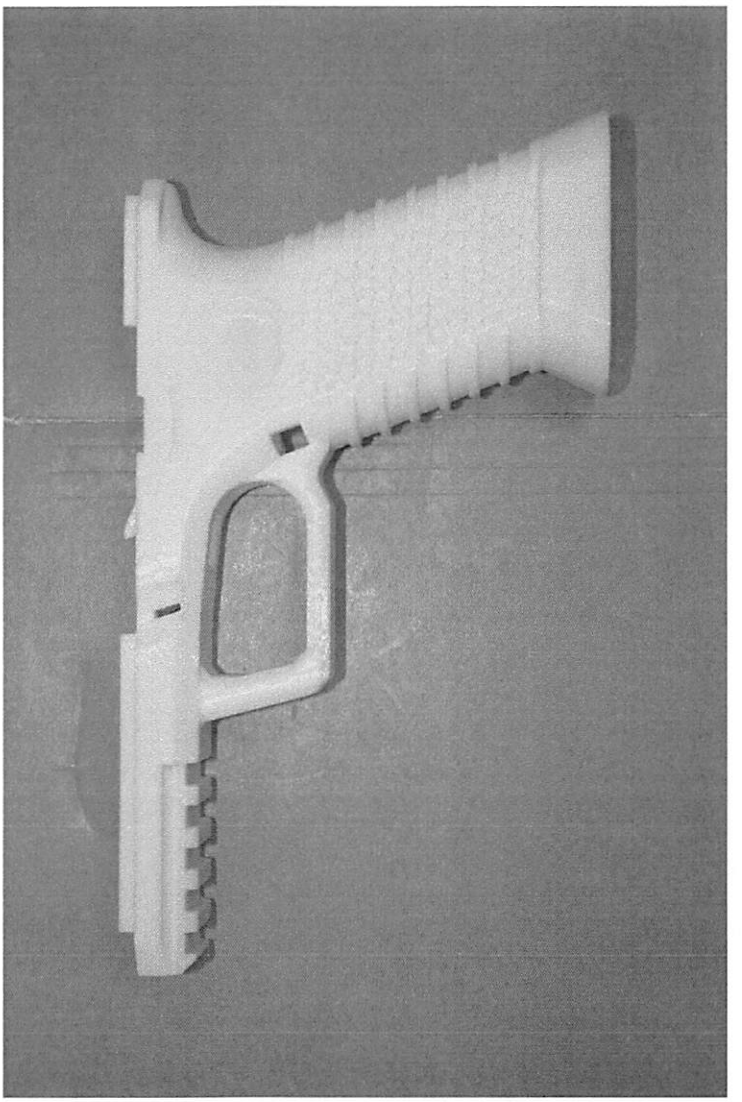


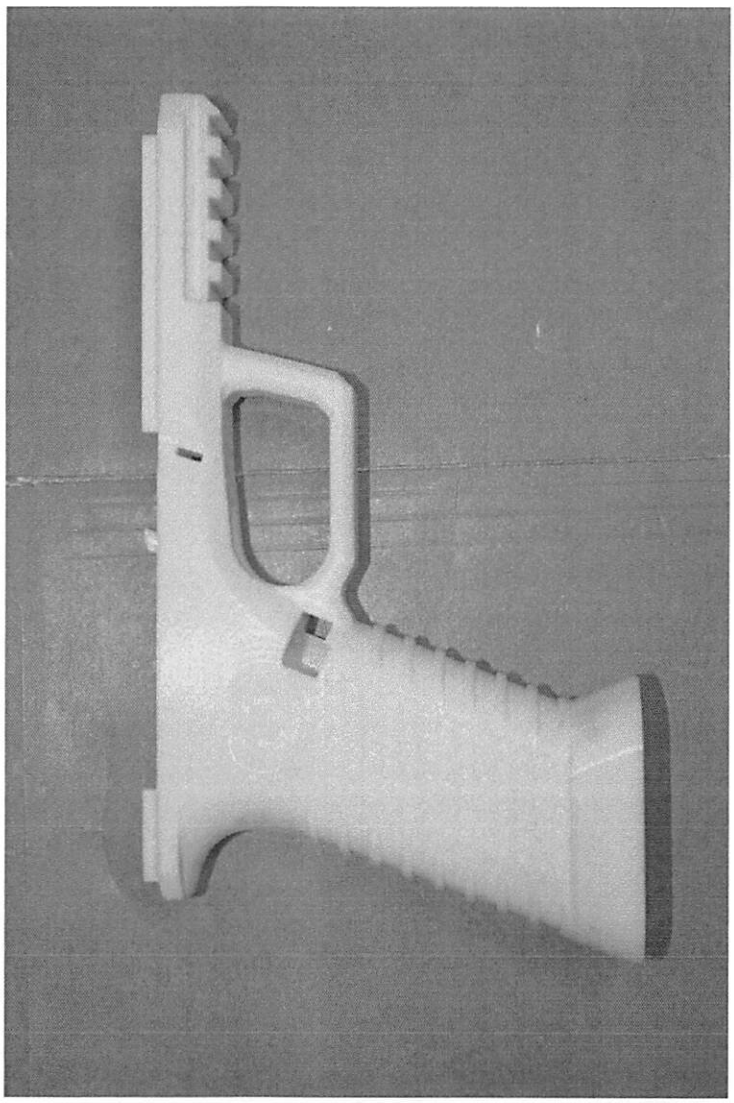


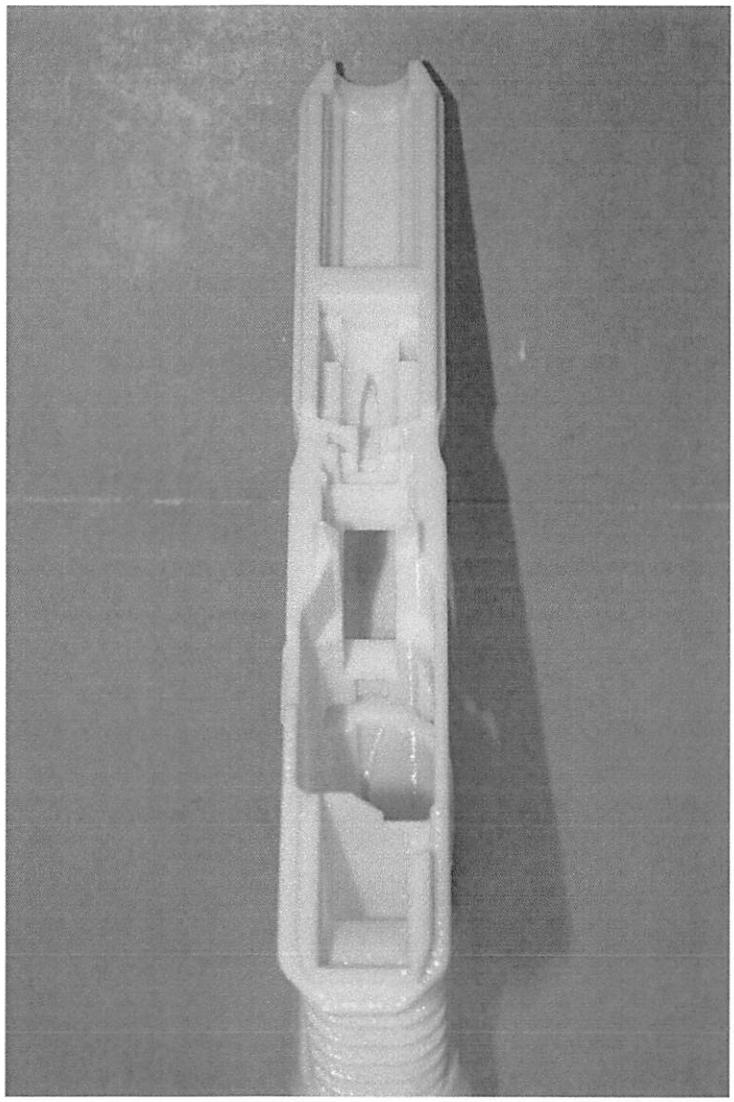


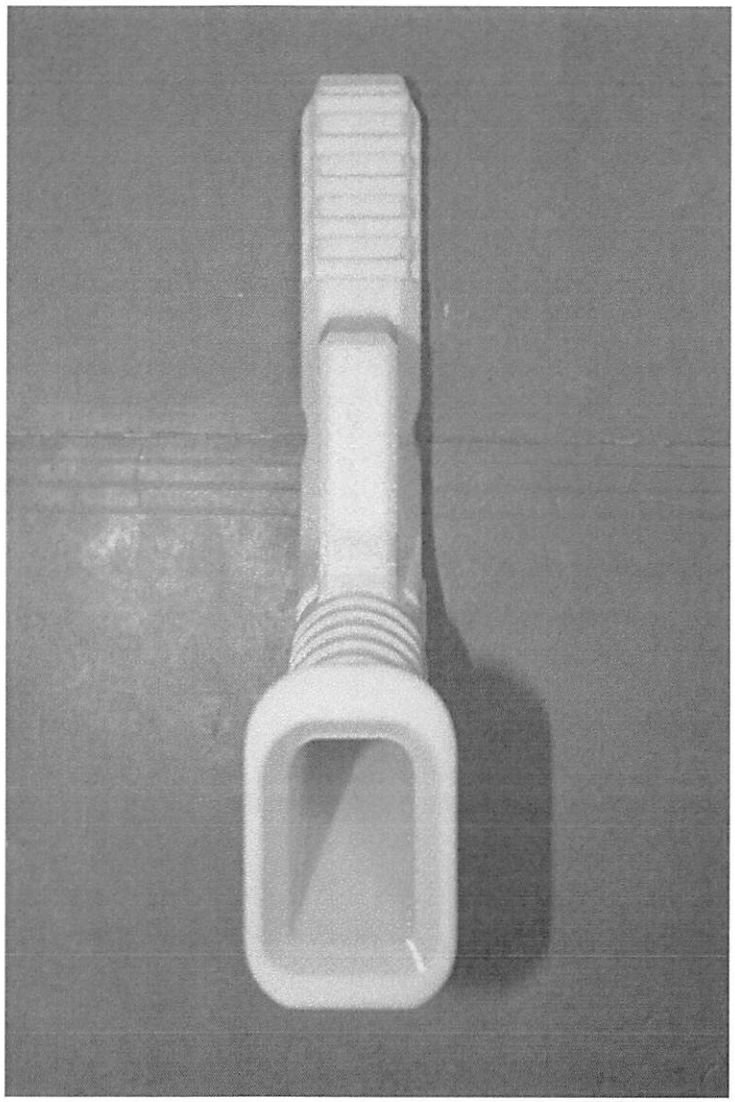


Polymer 80, Inc; GC or CG9 Receiver Blank







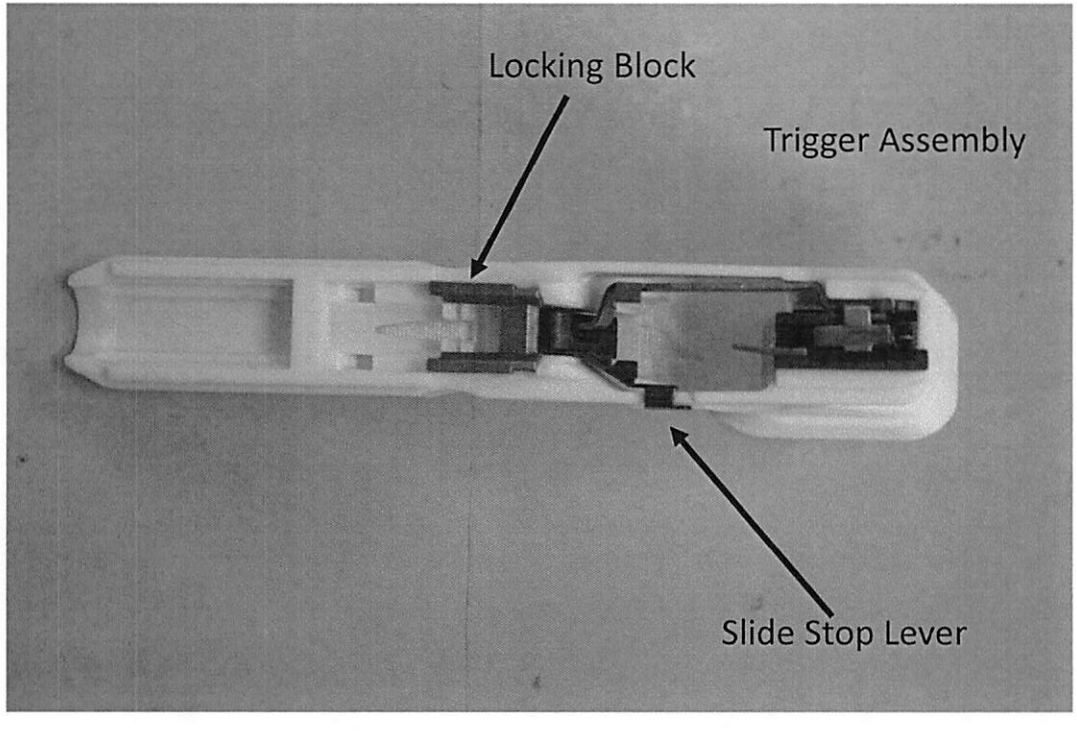


Capable of Accepting Glock 17 Trigger Mechanism and Trigger Bar Assemblies



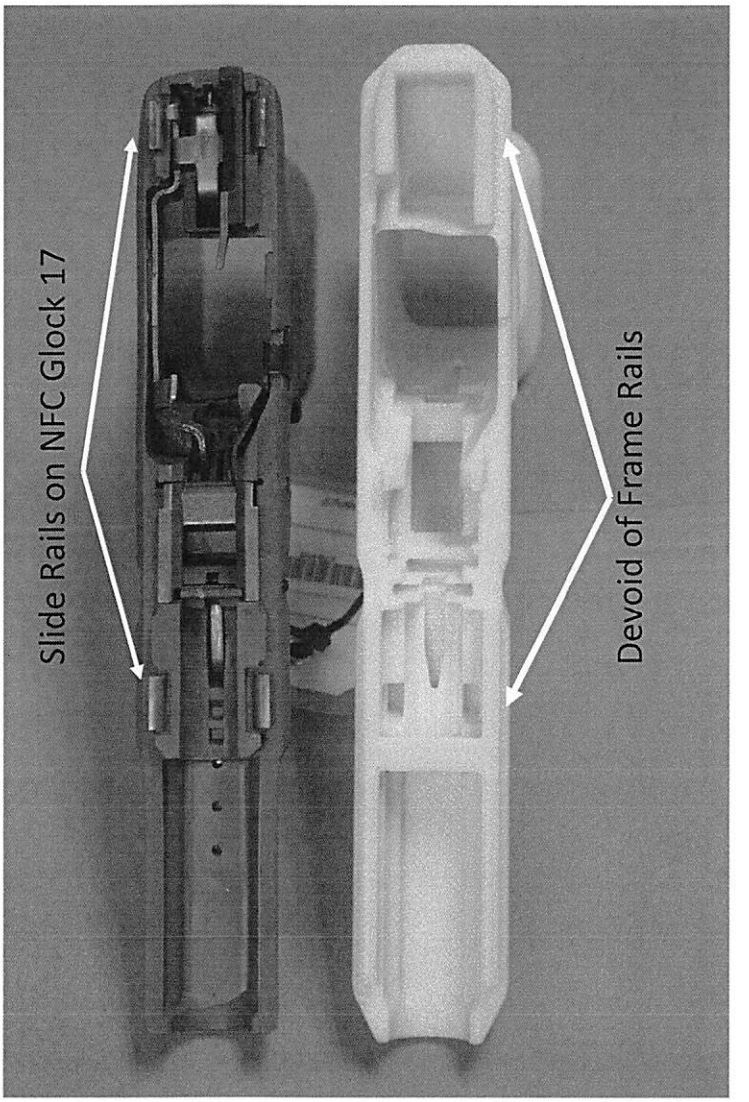
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Capable of Accepting Glock 17 Locking Block, Trigger Assembly and Slide Stop Lever

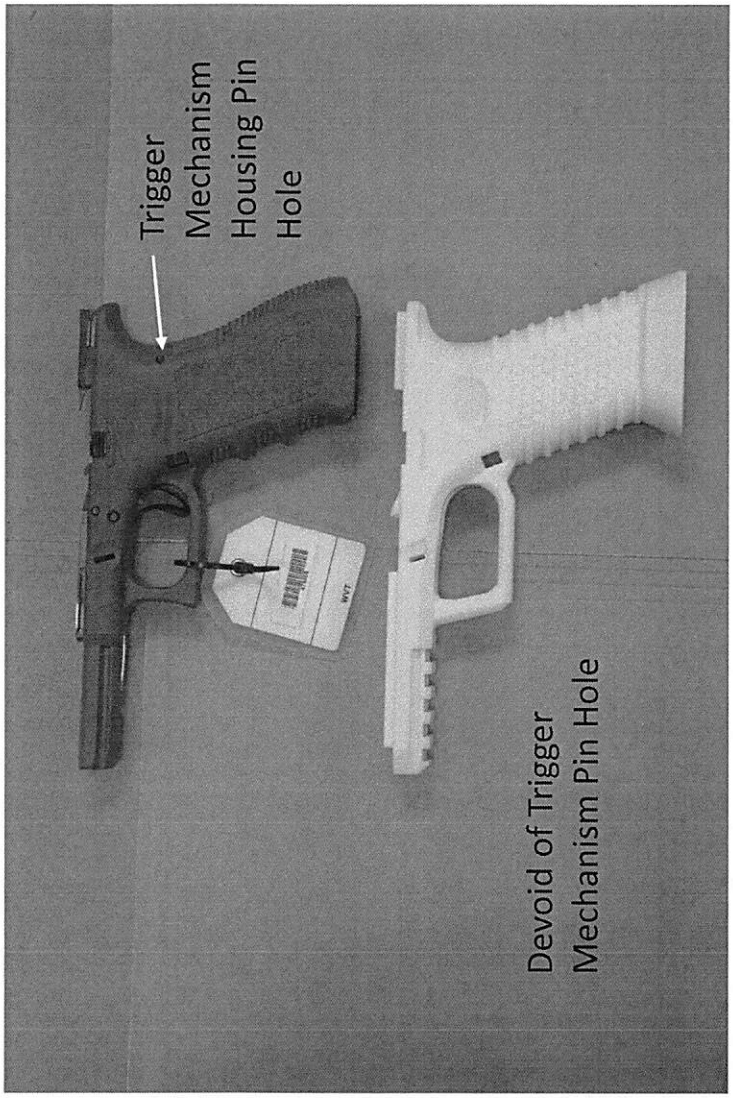


Case 3:20-cv-06761-EMC Document 177-15 Filed 09/07/23 Page 17 of 20

Internal Frame Comparison to NFC Glock 17



Frame Comparison to NFC Glock 17



Frame Comparison to NFC Glock 17

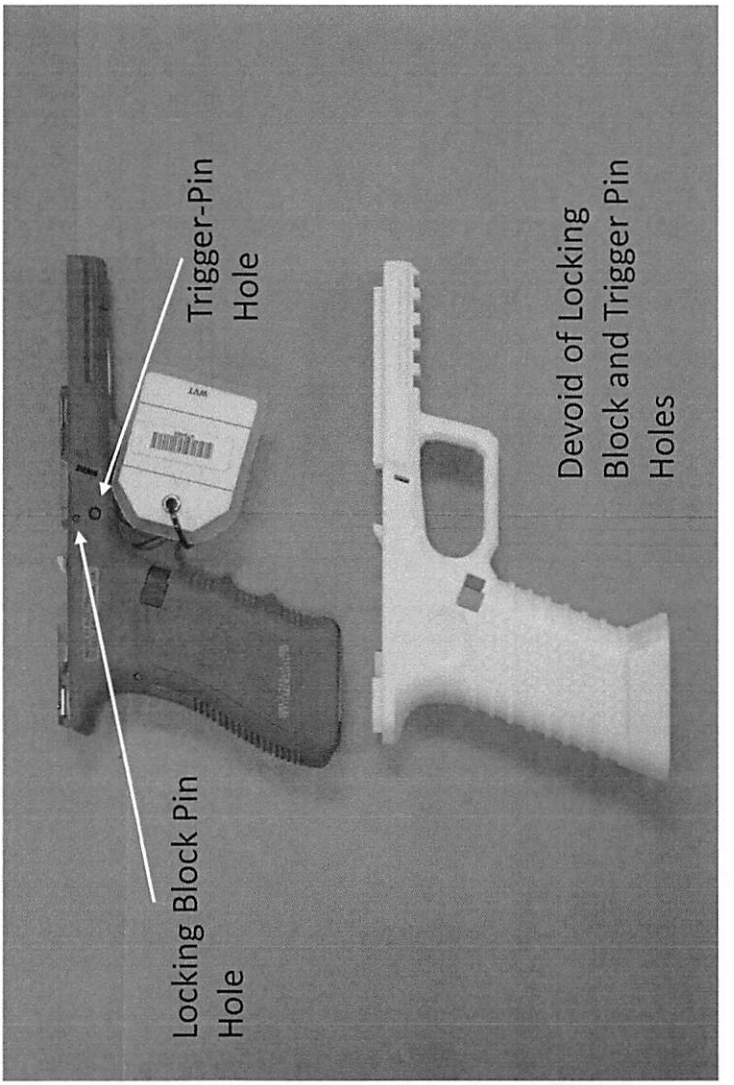


EXHIBIT 16

U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Martinsburg, WV 25405

www.atf.gov

JAN 1 8 2017

907010:WJS
3311/305402

Mr. Jason Davis
The Law Offices of Davis & Associates
27201 Puerta Real, Suite 300
Temecula, California 92691

Mr. Davis:

This is in reference to your correspondence, with enclosed samples, to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Firearms Technology Industry Services Branch (FTISB). In your letter, you asked for a classification of two Glock-type "PF940C Blank" on behalf of your client, Polymer 80 Incorporated (see enclosed photos). Specifically, you wish to know if each of these items would be classified as a "firearm" under the Gun Control Act of 1968 (GCA).

You state the submitted **PF940C** has critical machining operations not yet "implanted" as follows:

- *Drilling of the locking left and right block pin holes.*
- *Drilling of the left and right trigger pin holes.*
- *Drilling of the left and right trigger housing pin holes.*
- *Cutting of the left and right rail slots to allow for slide installation.*
- *Machining of the side walls that block slide installation.*
- *Machining of the cross walls that block barrel and recoil spring installation.*

As a part of your correspondence, you describe design features and the manufacturing process of the submitted "**PF940C**" to include the following statement:

• *The submitted PF940C blank is a solid core unibody design made out of a single casting without any core strengthening inserts. Moreover, it is void of any indicators that designate or provide guidance in the completion of the firearm.*

For your reference in this matter, the amended Gun Control Act of 1968 (GCA), 18 U.S.C. § 921(a)(3), defines the term "**firearm**" *to include any weapon (including a starter gun) which will or is designed to or may be readily converted to expel a projectile by the action of an explosive...[and]...**the frame or receiver of any such weapon**...*

Also, 27 CFR Section 478.11 defines "**firearm frame or receiver**". *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.*

Also, the AECA, 27 CFR Section 447.11, defines "**defense articles**" as—

...Any item designated in § 447.21 or § 447.22. This includes models, mockups, and other such items which reveal technical data directly relating to § 447.21 or § 447.22.

The USMIL, Section 447.22, **FORGINGS, CASTINGS, and MACHINED BODIES** states:

Articles on the U.S. Munitions Import List include articles in a partially completed state (such as forgings, castings, extrusions, and machined bodies) which have reached a stage in manufacture where they are clearly identifiable as defense articles. If the end-item is an article on the U.S. Munitions Import List, (including components, accessories, attachments and parts) then the particular forging, casting, extrusion, machined body, etc., is considered a defense article subject to the controls of this part, except for such items as are in normal commercial use.

During the examination of your sample "**PF940C**", FTISB personnel found that the following machining operations or design features present or completed:

1. Trigger slot.
2. Capable of accepting Glock 17 trigger mechanism housing.
3. Capable of accepting Glock 17 trigger bar.
4. Magazine well.
5. Magazine catch.
6. Accessory rail.
7. Slide-stop lever recess.
8. Magazine catch spring recess.

Machining operations or design features <u>not</u> yet present or completed:

1. Trigger-pin hole machined or indexed.
2. Trigger mechanism housing pin machined or indexed.
3. Locking block-pin hole machined or indexed.
4. Devoid of front or rear frame rails.
5. Barrel seat machined or formed.
6. Incapable of accepting Glock locking-block.

Note: *The dust cover, top of the barrel seat area and locking-block recess area became damaged during this evaluation.*

As a result of this FTISB evaluation, the submitted "**PF940C**" is not sufficiently complete to be classified as the frame or receiver of a firearm and thus is not a "firearm" as defined in the GCA. Consequently, the aforementioned items are therefore not subject to GCA provisions and implementing regulations.

To reiterate the conclusion of FTISB's evaluation, our Branch has determined that the submitted Polymer 80, Incorporated Glock-type receiver blanks incorporating the aforementioned design features are not classified as the frame or receiver of a weapon designed to expel a projectile by the action of an explosive, thus each of these items are not a "firearm" as defined in GCA, 18 U.S.C. § 921(a)(3)(B).

Please be aware, while not classified as a "firearm"; the submitted items are each classified as a "defense article" as defined in 27 CFR Section 447.11. The U.S. Department of State (USDS) regulates all exports from, and particular imports into, the United States. Firearms, parts, and accessories for firearms are all grouped as "defense articles" by the USDS and overseen by their Directorate of Defense Trade Controls. Information regarding import/export of defense articles can be found on their web site at www.pmddtc.state.gov.

Correspondence from our Branch is dependent upon the particular facts, designs, characteristics or scenarios presented. Please be aware that although other cases (submissions to our Branch) may appear to present identical issues, this correspondence pertains to a particular issue or item. We caution applying this guidance in this correspondence to other cases, because complex legal or technical issues may exist that differentiate this scenario or finding from others that only appear to be the same.

Please be aware, this determination is relevant to the item as submitted. If the design, dimensions, configuration, method of operation, processes or utilized materials, this classification would be subject to review and would require a submission to FTISB of a complete functioning exemplar.

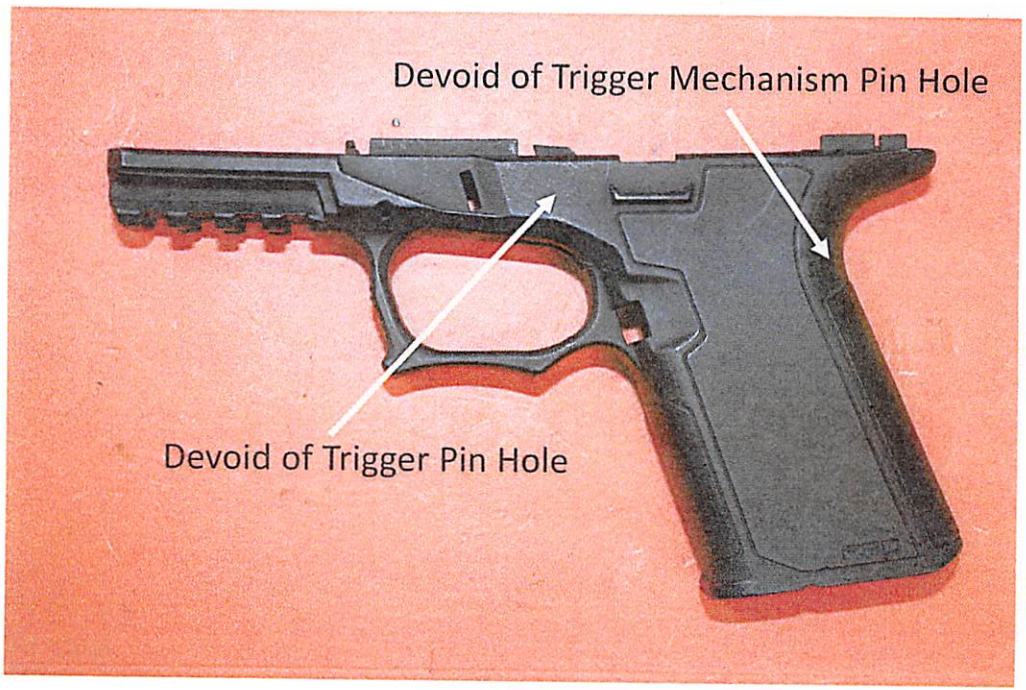
We thank you for your inquiry and trust the foregoing has been responsive to your evaluation request.

Sincerely yours,

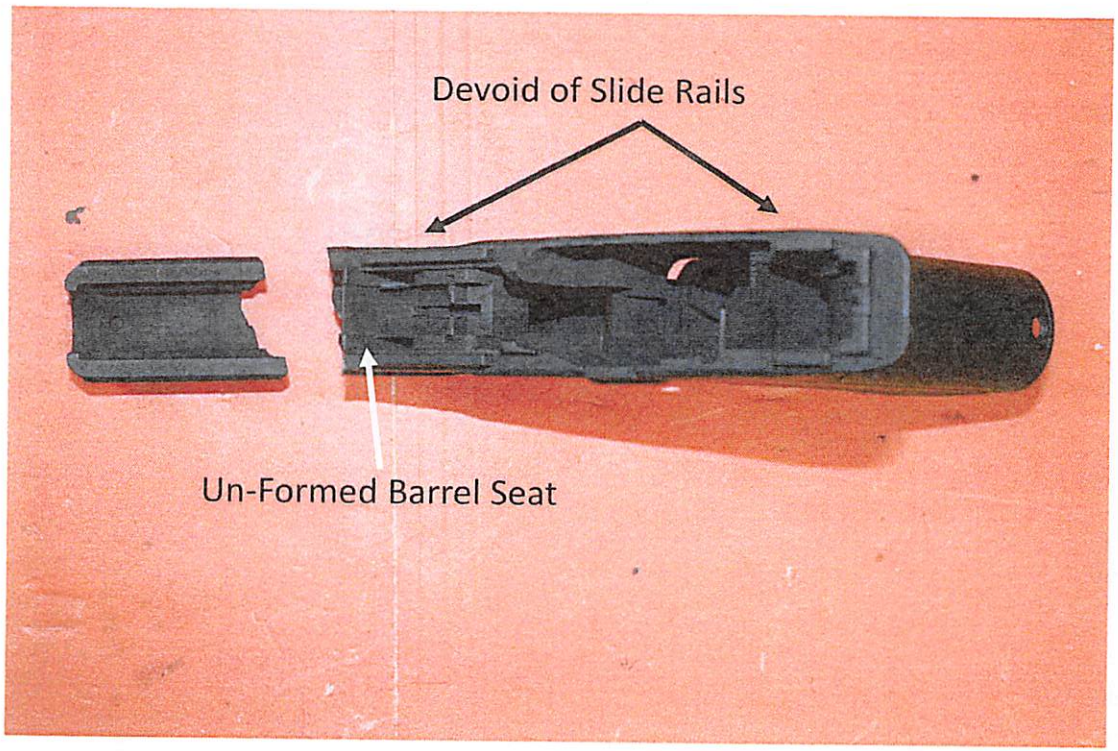
Michael R. Curtis
Chief, Firearms Technology Industry Services Branch

Enclosure

PF940C Blank, Submitted 10/6/16

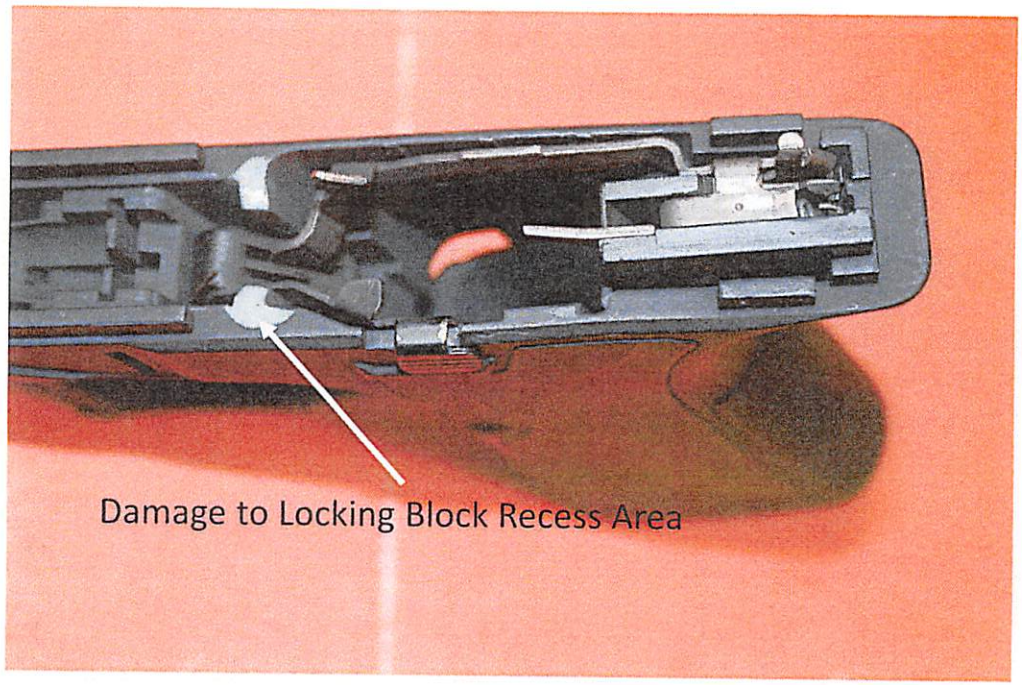


PF940C Blank, Dust Cover Area Damaged



Case 3:20-cv-06761-EMC Document 177-16 Filed 09/07/23 Page 7 of 8

PF940C Blank, With Trigger Mechanism Housing and Slide Stop Lever



Case 3:20-cv-06761-EMC Document 177-16 Filed 09/07/23 Page 8 of 8

PF940C Blank, Incapable of Accepting Glock Locking Block

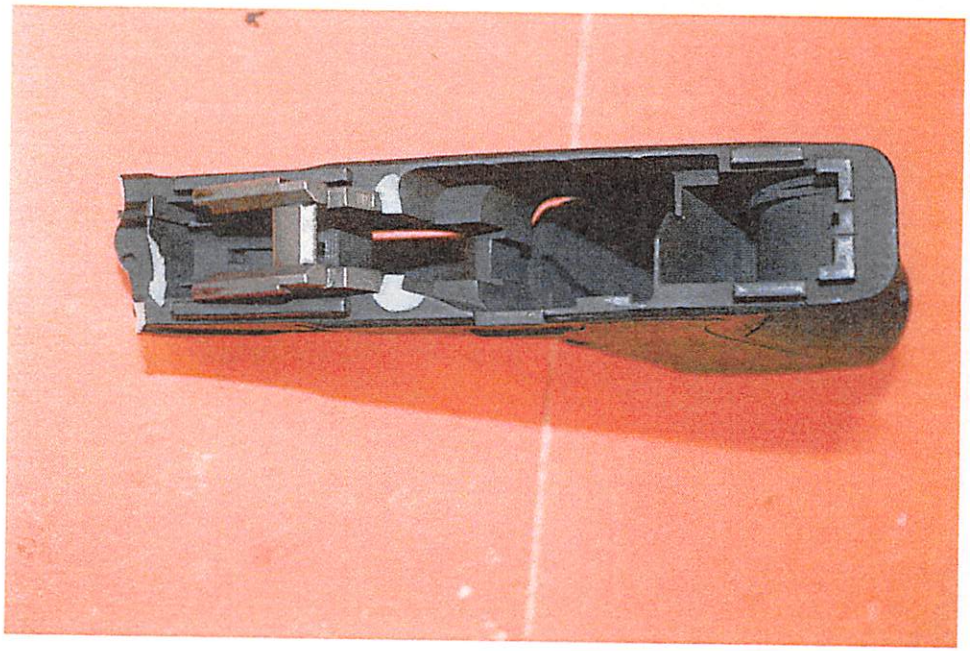


EXHIBIT 17

U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Martinsburg, WV 25405

www.atf.gov

903050:WJS
3311/300833

July 15, 2013

Mr. Tilden Smith
80 Percent Arms
202 East Alton Avenue
Suite A
Santa Ana, CA 92707

Dear Mr. Smith,

This is in reference to your correspondence, with enclosed samples, to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Firearms Technology Branch (FTB). In your letter, you asked for a classification of the partially completed AR-type receivers your company is planning to manufacture (see enclosed photos). Specifically, you want to know if the three submitted items, identified as samples 1, 2, and 3 (and reviewed below) would be classified as "firearms" under the Gun Control Act of 1968 (GCA).

SAMPLE #1

During the examination of this sample, FTB found that the following machining/drilling operations had been performed:

1. Front and rear assembly/pivot pin holes drilled.
2. Front and rear assembly/pivot-detent pin holes drilled.
3. Magazine-release and catch slots cut.
4. Rear of receiver drilled and threaded to accept buffer tube.
5. Buffer-retainer hole drilled.
6. Pistol-grip mounting area faced off and threaded.
7. Magazine well completed.
8. Trigger guard machined.
9. Receiver end-plate area machined.
10. Pistol-grip mounting area threaded.
11. Selector-lever detent hole drilled.

The machining operations not yet performed are as follows:

1. Milling out of fire-control cavity.
2. Selector-lever hole drilled.
3. Cutting of trigger slot.
4. Drilling of trigger pin hole.
5. Drilling of hammer pin hole.

The FTB examination of your submitted casting found that **SAMPLE #1** is not sufficiently complete to be classified as the frame or receiver of a firearm and thus would not be a "firearm" as defined in the GCA.

SAMPLE #2

During the examination of Sample #2, FTB observed that the following machining/drilling operations had been performed:

1. Front and rear assembly/pivot pin holes drilled.
2. Front and rear assembly/pivot-detent pin holes drilled.
3. Magazine release and catch slots cut.
4. Rear of receiver drilled and threaded to accept buffer tube.
5. Buffer-retainer hole drilled.
6. Pistol-grip mounting area faced off and threaded.
7. Magazine well completed.
8. Trigger guard machined.
9. Receiver end-plate area machined.
10. Pistol-grip mounting area threaded.
11. Selector-lever detent hole drilled.
12. Selector-lever hole drilled.

The machining operations not yet performed are as follows:

1. Milling out of fire-control cavity.
2. Cutting of trigger slot.
3. Drilling of trigger pin hole.
4. Drilling of hammer pin hole.

The FTB examination of this casting found that **SAMPLE #2** is sufficiently complete to be classified as the frame or receiver of a firearm and thus **is** a "firearm" as defined in the GCA.

SAMPLE#3

During the examination of this sample, FTB found that the following machining/drilling operations had been performed:

1. Front and rear assembly/pivot pin holes drilled.
2. Front and rear assembly/pivot-detent pin holes drilled.

3. Magazine-release and catch slots cut.
4. Rear of receiver drilled and threaded to accept buffer tube.
5. Buffer-retainer hole drilled.
6. Pistol-grip mounting area faced off and threaded.
7. Magazine well completed.
8. Trigger guard machined.
9. Receiver end-plate area machined.
10. Pistol-grip mounting area threaded.
11. Selector-lever detent hole drilled.
12. Hole machined into fire-control cavity; measuring approximately ¼ inch in diameter and approximately 9/16 inch deep.

The machining operations not yet performed are as follows:

1. Complete milling out of fire-control cavity.
2. Cutting of trigger slot.
3. Drilling of trigger pin hole.
4. Drilling of hammer pin hole.

The FTB examination of the submitted casting found that **SAMPLE #3** is sufficiently complete to be classified as the frame or receiver of a firearm and thus **is** a "firearm" as defined in the GCA.

In conclusion, we stress that the information found in correspondence from our Branch is intended only for use by the addressed individual or company with regard to a specific scenario described within that correspondence.

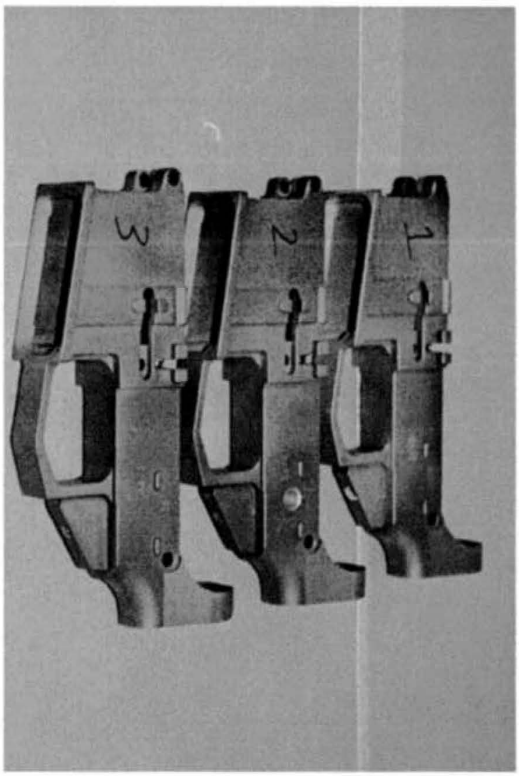
To facilitate return of your samples, please provide FTB with the appropriate FedEx account information within 60 days of receipt of this letter.

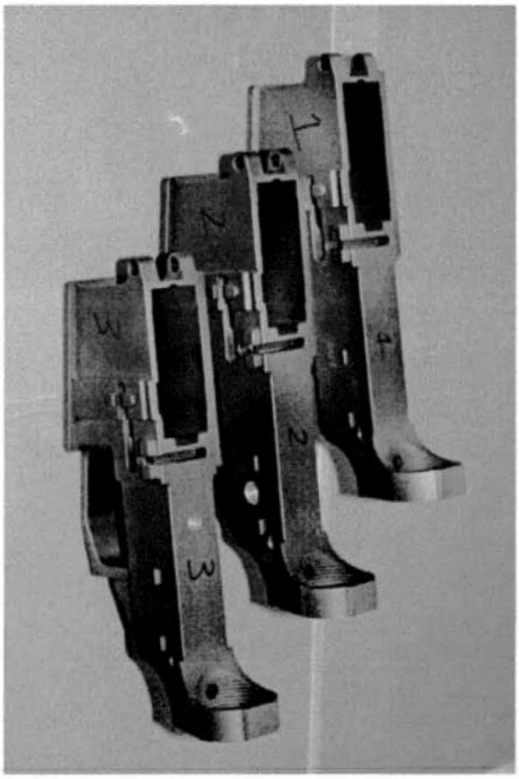
We thank you for your inquiry and trust the foregoing has been responsive to your evaluation request, noting that two findings did not meet your expectations. Please do not hesitate to contact us if additional information is needed concerning our determinations.

Sincerely yours,

Earl Griffith
Chief, Firearms Technology Branch

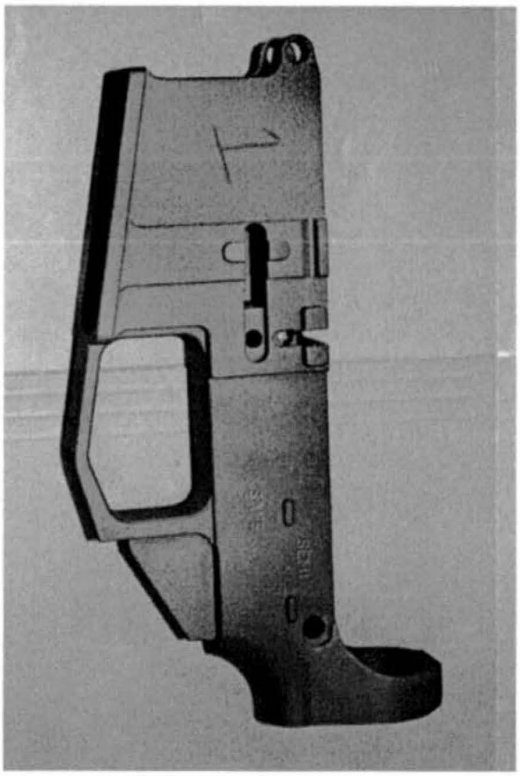
Enclosure

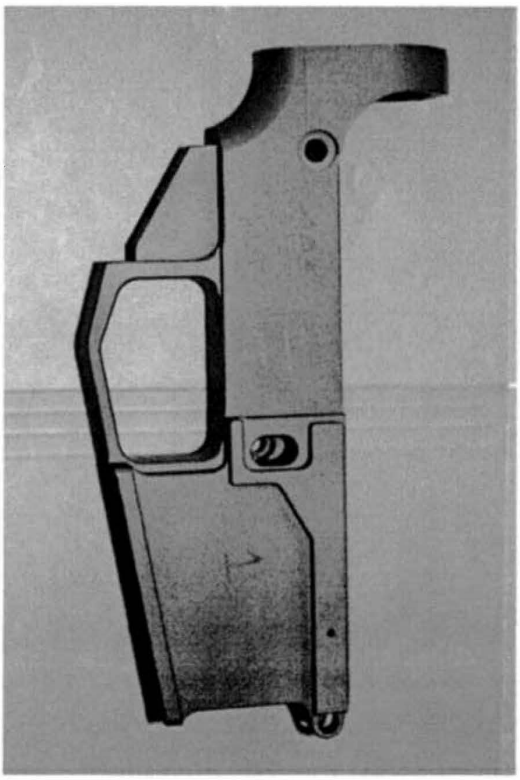




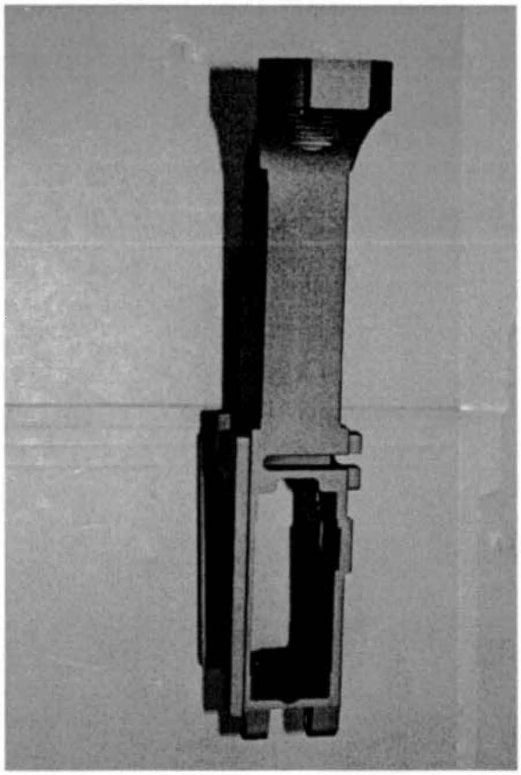
80 Percent Arms AR-type Forgings

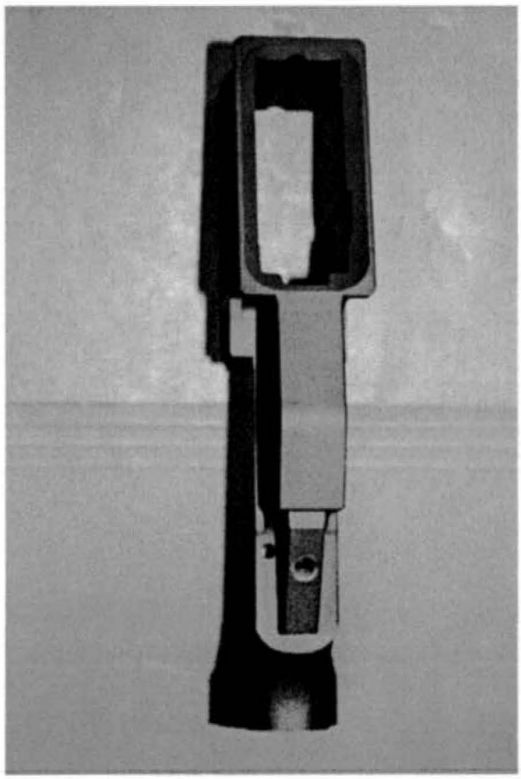
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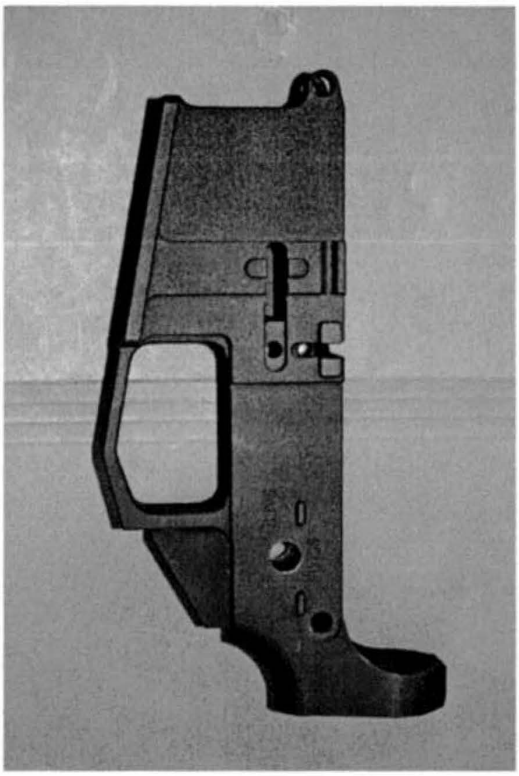


Sample #1, Photographs #1 and #2



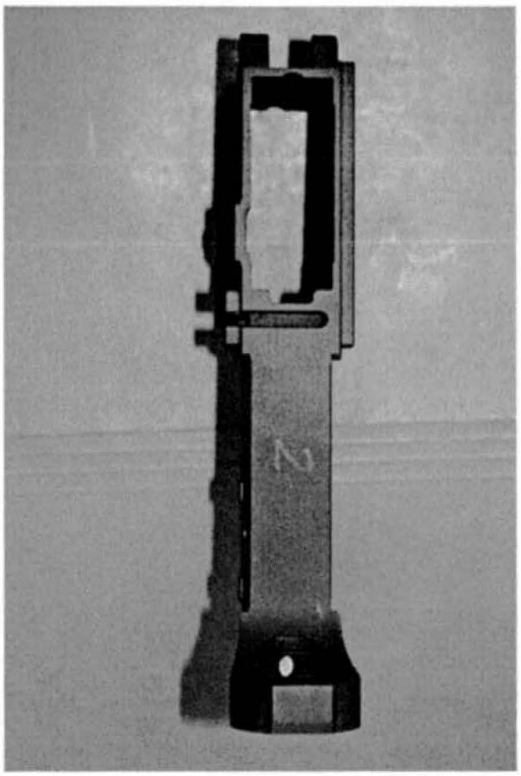


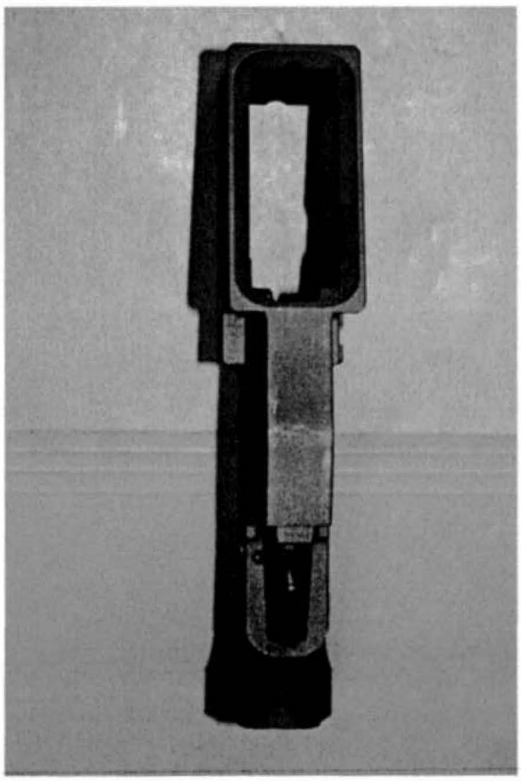
Sample #1, Photograph #3 and #4



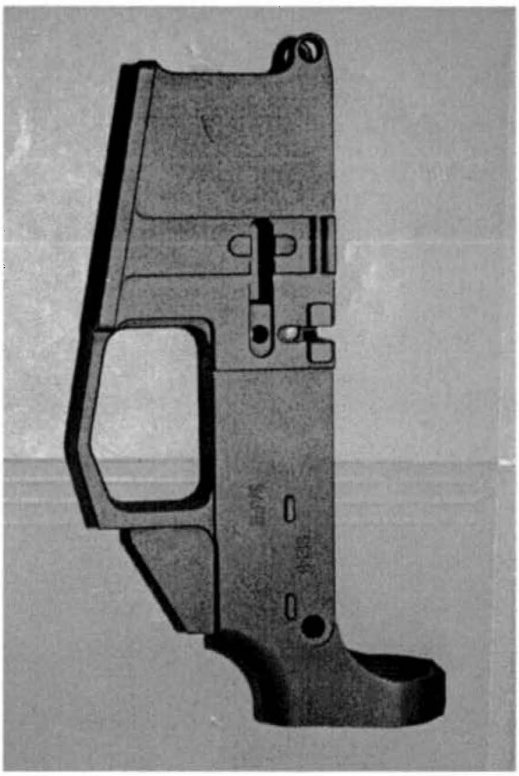


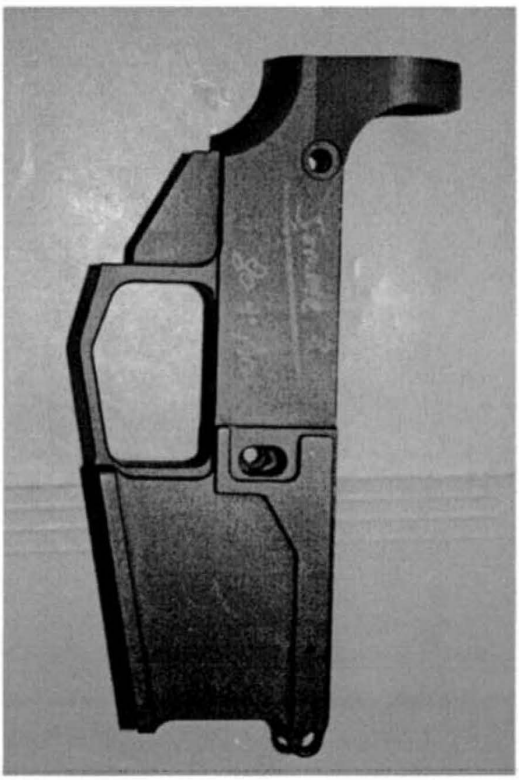
Sample #2, Photograph #1 and #2



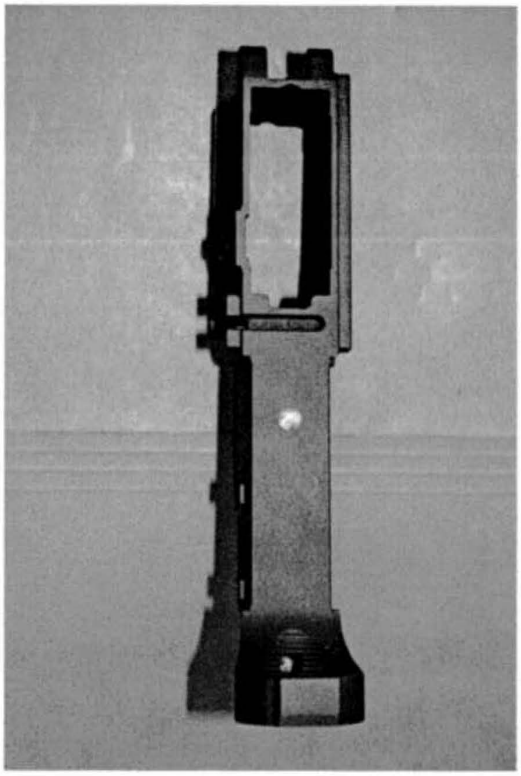


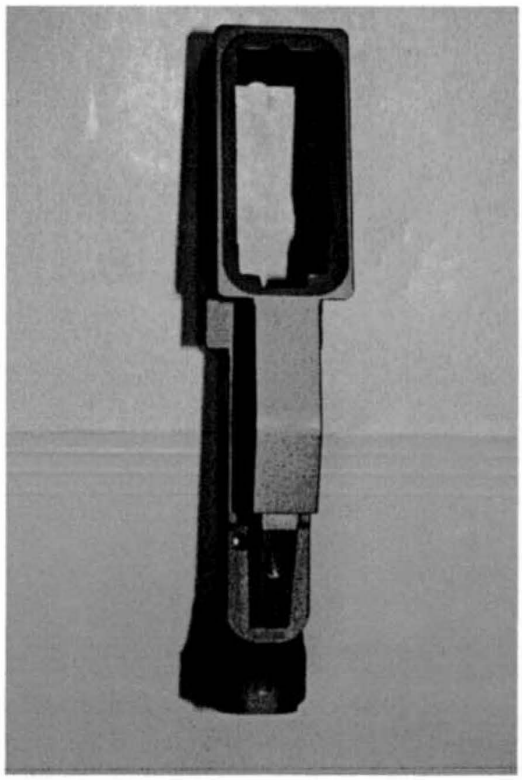
Sample #2, Photograph #3 and #4





Sample #3, Photograph #1 and #2





Sample #3, Photograph #3 and #4

EXHIBIT 18

U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Martinsburg, WV 25405

www.atf.gov

903050:GR
3311/301171

November 22, 2013

Mr. David Trease
President
TPM Arms, LLC
1000 West Bradley Avenue
Suite J
El Cajon, CA 92020

Dear Mr. Trease,

This is in reference to your correspondence to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Firearms Technology Branch (FTB), along with a submitted sample of an AR-15 type receiver blank, to determine if the machining operations performed have reached a point in manufacturing for your item to be considered a "firearm" under the amended Gun Control Act of 1968 (GCA).

As background, the GCA, 18 U.S.C. Section 921(a)(3), defines the term "**firearm**" as—

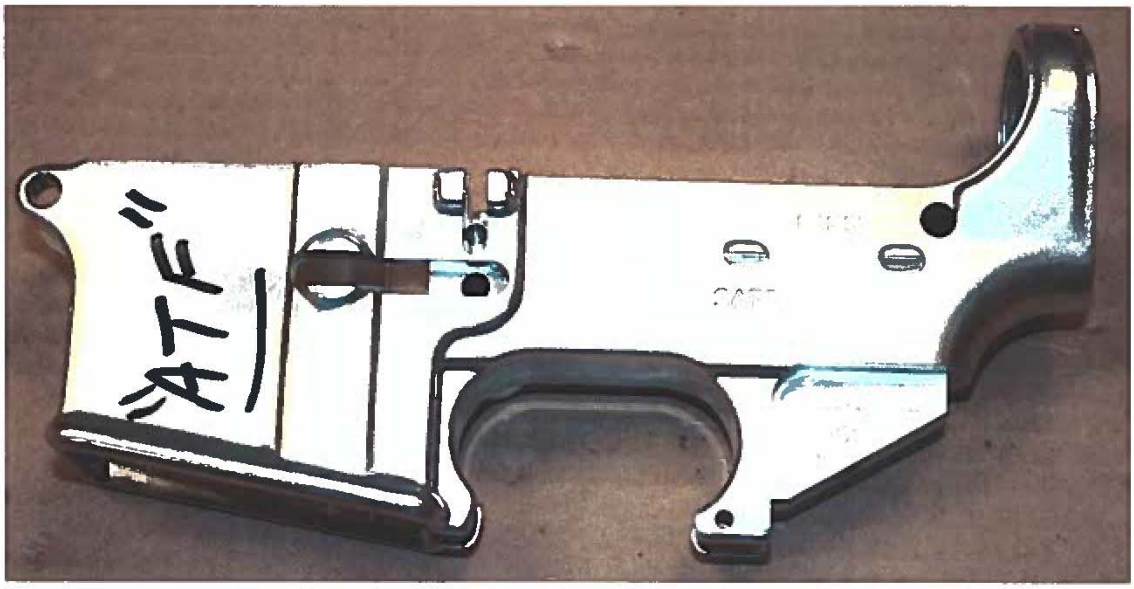
> *...(A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.*

Our Branch has previously determined that an AR-15 type receiver which has no machining of any kind performed in the area of the trigger/hammer recess might not be classified as a firearm. Such a receiver could have all other machining operations performed, including pivot-pin and takedown-pin hole(s) and clearance for the takedown-pin lug, but must be completely solid and un-machined in the trigger/hammer-recess area.

The FTB examination of your sample confirmed that the forging has been partially machined, with no machining of any kind performed in the area of the trigger/hammer recess. The machining operations performed for this sample include—

- Implementation of the magazine well.
- Threads cut for receiver extension.
- Holes drilled for front and rear takedown pins.
- Holes drilled for front takedown detent and spring.
- Hole drilled and machined for magazine catch.
- Hole drilled for bolt-catch plunger and spring.
- Hole drilled for magazine-release button and spring.
- Holes drilled for trigger guard.
- Hole drilled for buffer detent and spring.
- Hole drilled and tapped for pistol-grip screw.

Further, the trigger/hammer recess of your submitted sample is solid, and there are no index detents machined for the safety lever or the trigger/hammer pins (see photos below).





Based on our examination, FTB finds that the submitted item is not a "firearm" as defined in the GCA. Please note that this classification is based on the item received and examined by our Branch. Any changes to its characteristics would require re-evaluation by FTB.

Please provide our Branch with a FedEx account number or common carrier shipping label within 30 days so that we may return your forging.

We thank you for your inquiry and trust the foregoing is responsive to your request.

Sincerely yours,

for Earl Griffith
Chief, Firearms Technology Branch

EXHIBIT 19

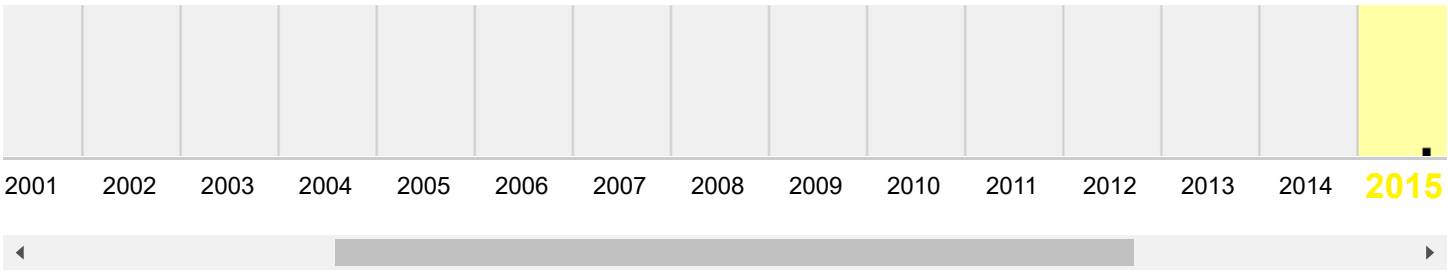
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https://www.atf.gov/qa-category/receiver-blanks

Calendar · Collections beta · Changes beta · Summary · Site Map

Saved **60 times** between September 5, 2015 and July 31, 2019.



Sat, 05 Sep 2015 07:15:14 GMT (why: webwidecrawl, wide00013, widecrawl)

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Note

This calendar view maps the number of times **https://www.atf.gov/qa-category/receiver-blanks** was crawled by the Wayback Machine, *not* how many times the site was actually updated. More info in the FAQ.

FAQ | Contact Us | Terms of Service (Dec 31, 2014)

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https://www.atf.gov/qa-category/receiver-blanks Go AUG SEP JUL
60 captures 05
5 Sep 2015 - 31 Jul 2019 2014 2015 2016
About this capture

Receiver Blanks

Answers to some common questions specific to receivers known as 80% receivers or unfinished receivers.

Are “80%” or “unfinished” receivers illegal? *Last Reviewed June 30, 2015*

Are there restrictions on who can purchase receiver blank? *Last Reviewed June 18, 2015*

What is an “80%” or “unfinished" receiver? *Last Reviewed June 18, 2015*

Are some items being marketed as non-firearm unfinished" or "80%" receivers actually considered firearms? *Last Reviewed June 18, 2015*

Have firearms made from unmarked receiver blanks been recovered after being used in a crime? *Last Reviewed June 18, 2015*

Is ATF aware of the receiver blanks, commonly referred to as 80% receivers? *Last Reviewed June 18, 2015*

When does a receiver need to have markings and/or serial numbers? *Last Reviewed June 18, 2015*

Can functioning firearms made from receiver blanks be traced? *Last Reviewed June 18, 2015*

Last Reviewed June 18, 2015

The Wayback Machine - https://web.archive.org/web/20150905204055/https://www.atf.gov/firearms/qa/are-%E2%...

Are "80%" or "unfinished" receivers illegal?

Receiver blanks that do not meet the definition of a "firearm" are not subject to regulation under the GCA. The ATF has long held that items such as receiver blanks, "castings" or "machined bodies" in which the fire-control cavity area is completely solid and un-machined have not reached the "stage of manufacture" which would result in the classification of a firearm per the GCA.

See comparison examples:

Firearms Home

Firearms Q&As

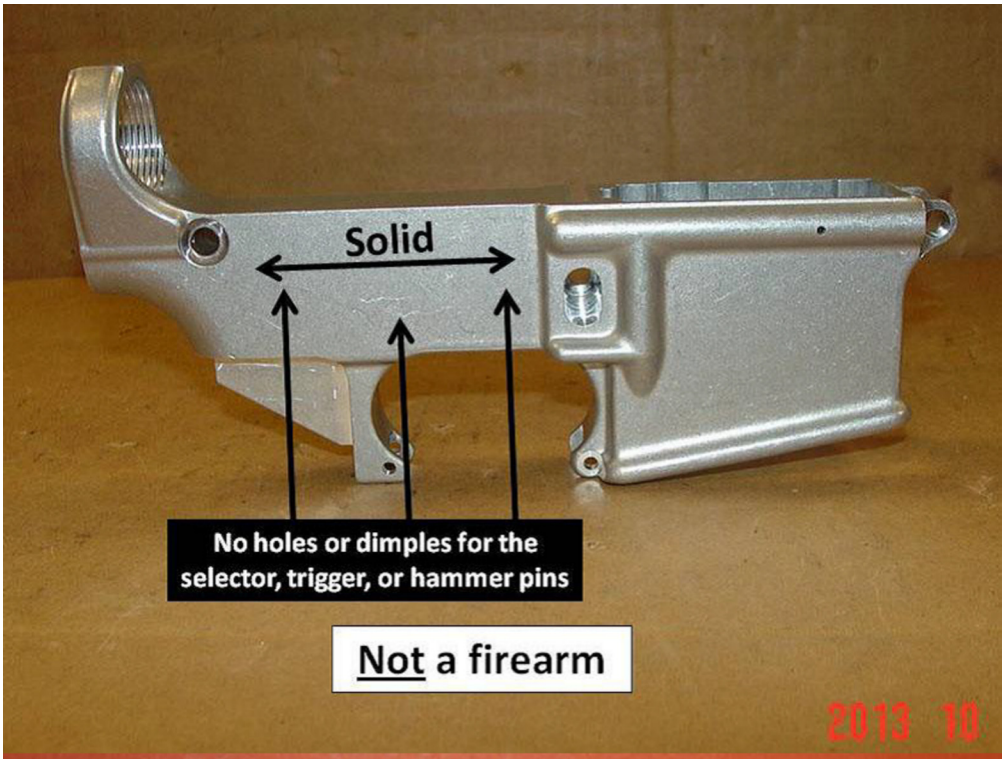
Tools & Services for Law Enforcement

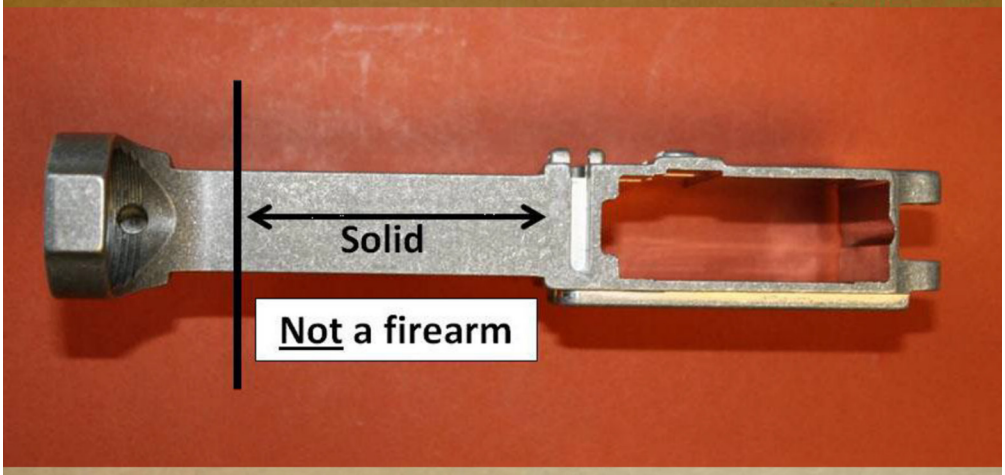
Tools & Services for Firearms Industry

Firearms Forms

Firearms Publications

Rules and Regulations


Solid
No holes or dimples for the selector, trigger, or hammer pins
Not a firearm
2013 10


Solid
Not a firearm


Fire control cavity partially machined
Firearm

Q&A Category: Receiver Blanks

Last Reviewed June 30, 2015

The Wayback Machine - https://web.archive.org/web/20150905203519/https://www.atf.gov/firearms/qa/are-th...

Are there restrictions on who can purchase receiver blank?

The GCA does not impose restrictions on receiver blanks that do not meet the definition of a “firearm.”

Q&A Category: Receiver Blanks

Last Reviewed June 18, 2015

The Wayback Machine - https://web.archive.org/web/20150905205031/https://www.atf.gov/firearms/qa/what-...

What is an "80%" or "unfinished" receiver?

"80% receiver," "80% finished," "80% complete," "unfinished receiver" are all terms referring to an item that some may believe has not yet reached a stage of manufacture that meets the definition of firearm frame or receiver found in the Gun Control Act of 1968 (GCA). These are not statutory terms or terms ATF employs or endorses.

Q&A Category: Receiver Blanks

Last Reviewed June 18, 2015

The Wayback Machine - https://web.archive.org/web/20150905205209/https://www.atf.gov/firearms/qa/are-so...

Are some items being marketed as non-firearm unfinished" or "80%" receivers actually considered firearms?

Yes, in some cases, items being marketed as unfinished or “80%” receivers do meet the definition of a “firearm” as defined in the GCA. Persons who are unsure about whether an item they are planning to buy or sell is considered a firearm under the GCA should contact ATF’s Firearms Technology Branch (FTB).

Q&A Category: Receiver Blanks

Last Reviewed June 18, 2015

The Wayback Machine - https://web.archive.org/web/20150905204024/https://www.atf.gov/firearms/qa/have-...

Have firearms made from unmarked receiver blanks been recovered after being used in a crime?

Yes, firearms that began as receiver blanks have been recovered after shooting incidents, from gang members and from prohibited people after they have been used to commit crimes.

Q&A Category: Receiver Blanks

Last Reviewed June 18, 2015

The Wayback Machine - https://web.archive.org/web/20150905201614/https://www.atf.gov/firearms/qa/atf-aw...

Is ATF aware of the receiver blanks, commonly referred to as 80% receivers?

ATF routinely collaborates with the firearms industry and law enforcement to monitor new technologies and current manufacturing trends that could potentially impact the safety of the public.

Q&A Category: Receiver Blanks

Last Reviewed June 18, 2015

The Wayback Machine - https://web.archive.org/web/20150905202302/https://www.atf.gov/firearms/qa/when-...

When does a receiver need to have markings and/or serial numbers?

Receivers that meet the definition of a “firearm” must have markings, including a serial number. See 27 CFR § 478.92 (Firearm manufacturers marking requirements).

Q&A Category: Receiver Blanks

Last Reviewed June 18, 2015

The Wayback Machine - https://web.archive.org/web/20150905203617/https://www.atf.gov/firearms/qa/can-fu...

Can functioning firearms made from receiver blanks be traced?

ATF successfully traces crime guns to the first retail purchaser in most instances. ATF starts with the manufacturer and goes through the entire chain of distribution to find who first bought the firearm from a licensed dealer. Because receiver blanks do not have markings or serial numbers, when firearms made from such receiver blanks are found at a crime scene, it is usually not possible to trace the firearm or determine its history, which hinders crime gun investigations jeopardizing public safety.

Q&A Category: Receiver Blanks

Last Reviewed June 18, 2015

EXHIBIT 20

Receiver Blanks

Answers to some common questions specific to receivers known as 80% receivers or unfinished receivers.

Are some items being marketed as non-firearm "unfinished" or "80%" receivers actually considered firearms?

When does a receiver need to have markings and/or serial numbers?

What is an “80%” or “unfinished" receiver?

Have firearms made from unmarked receiver blanks been recovered after being used in a crime?

Is ATF aware of the receiver blanks, commonly referred to as 80% receivers?

Can functioning firearms made from receiver blanks be traced?

Are “80%” or “unfinished” receivers illegal?

Are there restrictions on who can purchase receiver blanks?

Are some items being marketed as non-firearm "unfinished" or "80%" receivers actually considered firearms?

Yes. In some cases, items being marketed as “unfinished” or “80%” receivers do actually meet the definition of a “firearm” as defined in the Gun Control Act (GCA).

If you are unsure about whether an item you are planning to buy or sell is considered a firearm under the GCA, please contact ATF’s Firearms and Ammunition Technology Division (FATD) by email at fire_tech@atf.gov or by phone at 304-616-4300.

Last Reviewed June 24, 2020

When does a receiver need to have markings and/or serial numbers?

Receivers that meet the definition of a “firearm” must have markings, including a serial number. See 27 CFR § 478.92, Firearm manufacturers marking requirements.

Last Reviewed February 6, 2020

What is an “80%” or “unfinished" receiver?

“80% receiver,” “80% finished,” “80% complete” and “unfinished receiver” are all terms referring to an item that some may believe has not yet reached a stage of manufacture that meets the definition of "firearm frame" or "receiver" according to the Gun Control Act (GCA). These are not statutory terms and ATF does not use or endorse them.

Last Reviewed February 6, 2020

Have firearms made from unmarked receiver blanks been recovered after being used in a crime?

Yes. Firearms that began as receiver blanks have been recovered after shooting incidents, from gang members, and from prohibited people after they have been used to commit crimes.

Last Reviewed February 6, 2020

Is ATF aware of the receiver blanks, commonly referred to as 80% receivers?

Yes. ATF routinely collaborates with the firearms industry and law enforcement to monitor new technologies and current manufacturing trends that could potentially impact the safety of the public.

Last Reviewed February 6, 2020

Can functioning firearms made from receiver blanks be traced?

ATF is able to successfully trace most crime guns to the first retail purchaser. ATF starts with the manufacturer and goes through the entire chain of distribution to find who first bought the firearm from a licensed dealer.

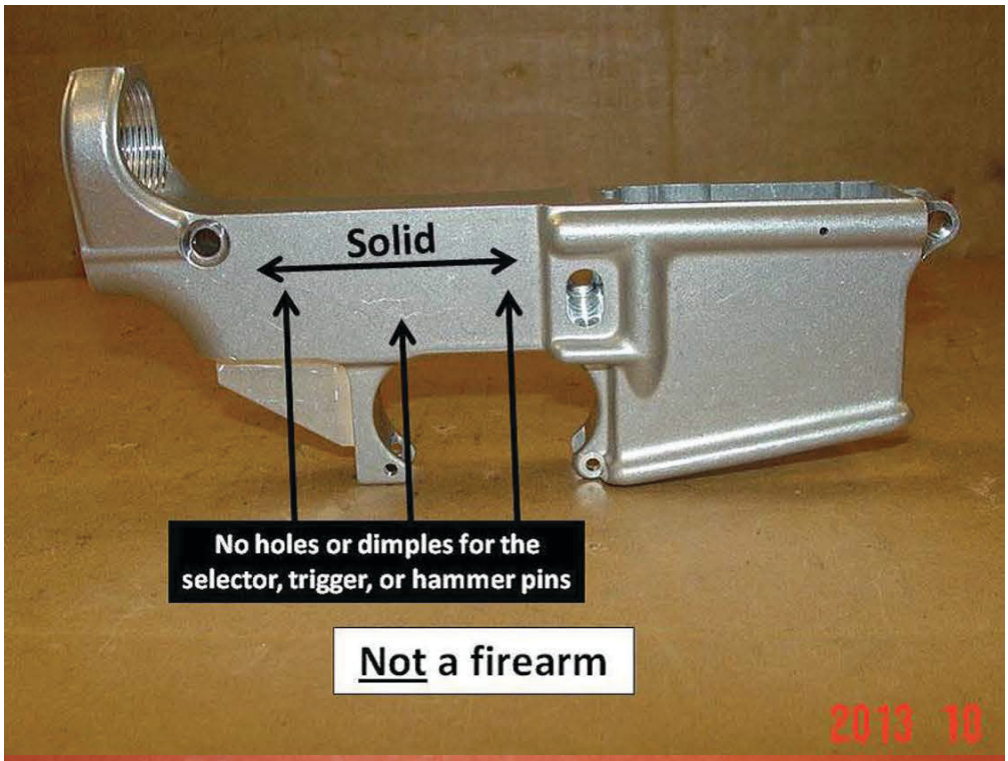
Because receiver blanks do not have markings or serial numbers, when firearms made from such receiver blanks are found at a crime scene, it is usually not possible to trace the firearm or determine its history, which hinders crime gun investigations and jeopardizes public safety.

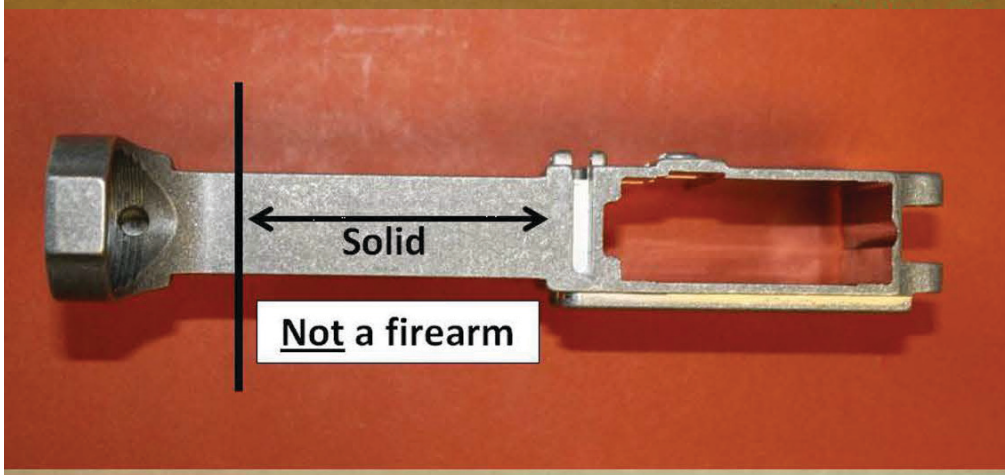
Last Reviewed February 6, 2020

Are “80%” or “unfinished” receivers illegal?

Receiver blanks that do not meet the definition of a "firearm" are not subject to regulation under the Gun Control Act (GCA). ATF has long held that items such as receiver blanks, "castings" or "machined bodies" in which the fire-control cavity area is completely solid and un-machined have not reached the "stage of manufacture" which would result in the classification of a firearm according to the GCA.

The following three photos are provided as examples. The first receiver has a solid, un-machined fire-control cavity area with no holes or dimples for the selector, trigger, or hammer pins. It does not meet the GCA definition of a firearm. The second receiver, shown from the top, likewise has a solid, un-machined fire-control cavity area. It does not meet the GCA definition of a firearm. The third receiver has a partially machined fire-control cavity and does meet the GCA definition of a firearm.


Solid
No holes or dimples for the selector, trigger, or hammer pins
Not a firearm
2013 10


Solid
Not a firearm


Fire control cavity partially machined
Firearm

Are there restrictions on who can purchase receiver blanks?

The Gun Control Act (GCA) does not impose restrictions on receiver blanks that do not meet the definition of a “firearm.”

Please note that some items marketed as non-firearm "unfinished" or "80%" receivers are actually considered firearms.

Last Reviewed June 24, 2020

EXHIBIT 21

10/17 - 10/23 5% OFF ALL PRODUCTS

P80 80% PISTOL BLANKS

18 PRODUCTS

SORT & FILTER



(/-BKC-BLK)

PF940Cv1 Compact Blank - Black (/-BKC-BLK)
$119.99

Add to compare



(/-BKC-FDE)

PF940Cv1 Compact Blank - FDE (/-BKC-FDE)
$119.99

Add to compare

Select up to 4 items to compare.

COMPARE 0 NOW



(/-BKC-GRY)

PF940Cv1 Compact Blank - GRY (/-BKC-GRY)
$119.99

★★★★★

Add to compare



(/-BKS-BLK)

PF940v2 Full Size Blank - BLK (/-BKS-BLK)
$119.99

ADD TO SHOPPING CART

★★★★★

Add to compare



(/-BKS-FDE)

PF940v2 Full Size Blank - FDE (/-BKS-FDE)
$119.99

ADD TO SHOPPING CART

★★★★★

Add to compare



(/-BKS-GRY)

PF940v2 Full Size Blank - GRY (/-BKS-GRY)
$119.99

ADD TO SHOPPING CART

★★★★★

Add to compare

Select up to 4 items to compare.

COMPARE 0 NOW



(/-BKSC-BLK)

PF940SC Sub Compact Blank - BLK (/-BKSC-BLK)
$119.99

Add to compare



(/-BKSC-FDE)

PF940SC Sub Compact Blank - FDE (/-BKSC-FDE)
$119.99

Add to compare



(/-BKSC-GRY)

PF940SC Sub Compact Blank - GRY (/-BKSC-GRY)
$119.99

Add to compare



(/-BKSC-HD)

PF940SC Sub Compact Blank - HD (/-BKSC-HD)
$119.99

ADD TO SHOPPING CART

Add to compare

Select up to 4 items to compare.

COMPARE 0 NOW



(/-BKSC-ODG)

PF940SC Sub Compact Blank - ODG (/-BKSC-ODG)
$119.99

ADD TO SHOPPING CART

★★★★★

Add to compare



(/-BKSC-COB)

PF940SC Sub Compact Blank - COB (/-BKSC-COB)
$119.99

ADD TO SHOPPING CART

★★★★★

Add to compare



(/-BK45-BLK)

PF45 Large Frame Blank - BLK (/-BK45-BLK)
$129.99

★★★★★

Add to compare



(/-BK45-FDE)

PF45 Large Frame Blank - FDE (/-BK45-FDE)
$129.99

★★★★★

Add to compare



(/-BK45-GRY)

Select up to 0 items to compare.

PF45 Large Frame Blank - GRY (/-BK45-GRY)
$129.99

COMPARE 0 NOW

Add to compare



(/-BKSS-BLK)

PF9SS Single Stack Blank - BLK (/-BKSS-BLK)
$99.99

Add to compare

Out of Stock.



(/-BKSS-FDE)

PF9SS Single Stack Blank - FDE (/-BKSS-FDE)
$99.99

ADD TO SHOPPING CART

Add to compare



(/-BKSS-GRY)

PF9SS Single Stack Blank - GRY (/-BKSS-GRY)
$99.99

ADD TO SHOPPING CART

Add to compare

Back to Top

Select up to 4 items to compare.

COMPARE 0 NOW

(/)

/Polymer80/138959999623430) (https://www.youtube.com/channel/UC6ZFh0ZS8668IKDwHWG7rvw/videos) (https://www.instagram.com/polymer80inc/) (https://www

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EXHIBIT 22

10/17 - 10/23 5% OFF ALL PRODUCTS

(/)

Polymer80 AR Receiver Blanks

AR RECEIVER BLANKS

5 PRODUCTS

SORT & FILTER



(/-BK556v3-BLK)

RL556v3 AR15 Blank - Black (/-BK556v3-BLK)
$74.99

ADD TO SHOPPING CART

★★★★★

Add to compare



(/-BK556v3-FDE)

RL556v3 AR15 Blank - FDE (/-BK556v3-FDE)
$74.99

★★★★★

Add to compare



(/-BK556v3-GRY)

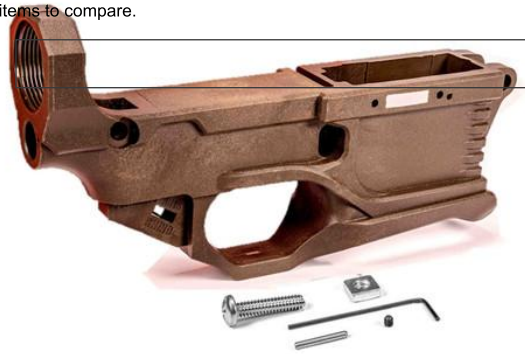
RL556v3 AR15 Blank - GRY (/-BK556v3-GRY)
$74.99

★★★★★

Add to compare

Select up to 4 items to compare.

COMPARE 0 NOW



(/-BK556v3-ODG)

RL556v3 AR15 Blank - ODG (/-BK556v3-ODG)
$74.99

ADD TO SHOPPING CART

★★★★★

Add to compare



(/-BK556v3-WHT)

RL556v3 AR15 Blank - White (/-BK556v3-WHT)
$74.99

ADD TO SHOPPING CART

★★★★★

Add to compare

Back to Top

Select up to 4 items to compare.

COMPARE 0 NOW (/)

POLYMER80

/Polymer80/138959999623430) (https://www.youtube.com/channel/UC6ZFh0ZS8668IKDwHWG7rvw/videos) (https://www.instagram.com/polymer80inc/) (https://www

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EXHIBIT 23

U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Office of Enforcement Programs and Services

Washington, DC 20226
www.atf.gov

September 27, 2022

OPEN LETTER TO ALL FEDERAL FIREARMS LICENSEES

Impact of Final Rule 2021-05F on Partially Complete AR-15/M-16 Type Receivers

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is issuing this open letter to further assist the firearms industry and the public in understanding whether a "partially complete, disassembled, or nonfunctional" receiver of an AR-15/M-16 variant weapon has reached a stage of manufacture such that it "may readily be completed, assembled, restored, or otherwise converted" to a functional receiver, and is therefore classified as a "**frame or receiver**" 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 items that are clearly identifiable as an unfinished component part of a weapon—specifically, partially complete, disassembled, or nonfunctional AR-type receivers (also known as receiver 'billets' or 'blanks').

Summary

As stated in Final Rule 2021-05F and the regulatory text, a partially complete AR-type receiver with no indexing or machining of any kind performed in the area of the fire control cavity is not classified as a "**frame or receiver**" or "**firearm**" provided that it is not sold, distributed, or marketed with any associated templates, jigs, molds, equipment, tools, instructions, or guides, such as within a receiver parts kit. 27 CFR 478.12(c), Example 4. Consistent with Final Rule 2021R-05F and the regulatory text, ATF is providing the visual aids below to further illustrate the section of an "unfinished" item that, with further manufacture, machining, or processing, will constitute the "fire control cavity;" the second set of visual aids illustrates the stage of manufacture or machining at which that item becomes a receiver as defined in Final Rule 2021R-05F.

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."* 18 U.S.C. § 921(a)(3). The GCA implementing regulations now 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). Moreover, 27 CFR 478.12(f)(1) also provides that the terms "frame" and "receiver" "shall include the specific part of a complete weapon … determined (classified) by the Director to be defined as a firearm frame or receiver prior to April 26, 2022." As explicitly set out in the regulations, 27 CFR 478.12(f)(1)(i), for AR-15/M-16 variant firearms, "[t]he receiver is the lower part of the weapon that provides housing for the trigger mechanism and hammer (*i.e.*, lower receiver)."

A current regulation, 27 CFR 478.12(c), explains when a clearly identifiable component of a weapon that is partially complete, disassembled, or nonfunctional is 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.*

Sections 478.11 and 479.11 also define "**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.*

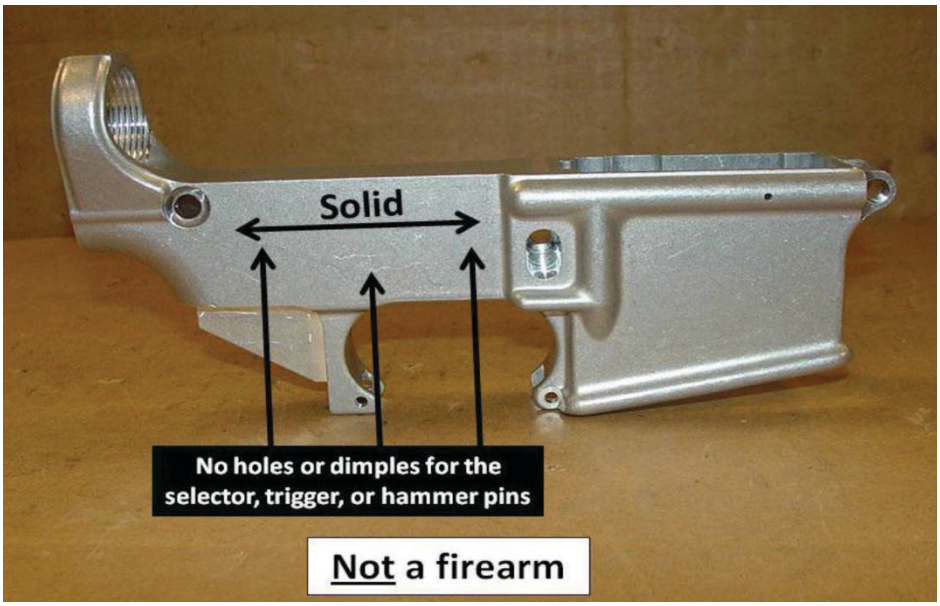
The above list of factors is a non-exhaustive list, but represents factors that have been identified by Federal courts as being relevant to a "**readily**" analysis with respect to firearms.

Analysis

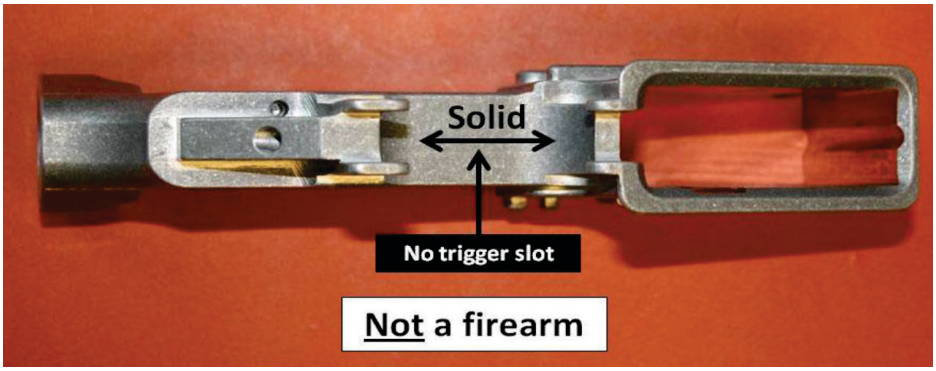
There are many partially complete, disassembled, or nonfunctional AR-type "receivers" being marketed as so-called "80%" receivers. However, Federal firearms statutes and supplemental regulations do not employ terms such as "80%," "80% finished," or "80% complete." These are merely terms used by some 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.

In an AR-15 variant weapon, the "fire control cavity" is the critical area of the receiver because this area "provides housing for the trigger mechanism and hammer." 27 CFR 478.12(f)(1)(i). To be a "functional" receiver, an AR-type receiver must include a cavity sufficient to house the relevant internal parts, including a hole for a selector and 2 pin holes (trigger pin and hammer pin) in precise locations. Removing or indexing any material in this critical area, or completing or indexing any of these holes, is therefore a crucial step in producing a functional receiver.

Thus, in order not to be considered "**readily**" completed to function, ATF has determined that a partially complete AR-type receiver must have no indexing or machining of any kind performed in the area of the trigger/hammer (fire control) cavity. A partially complete AR-type receiver with no indexing or machining of any kind performed in the area of the fire control cavity is not classified as a "**receiver**," or "**firearm**," if not sold, distributed, or marketed with any associated templates, jigs, molds, equipment, tools, instructions, or guides, such as within a receiver parts kit.



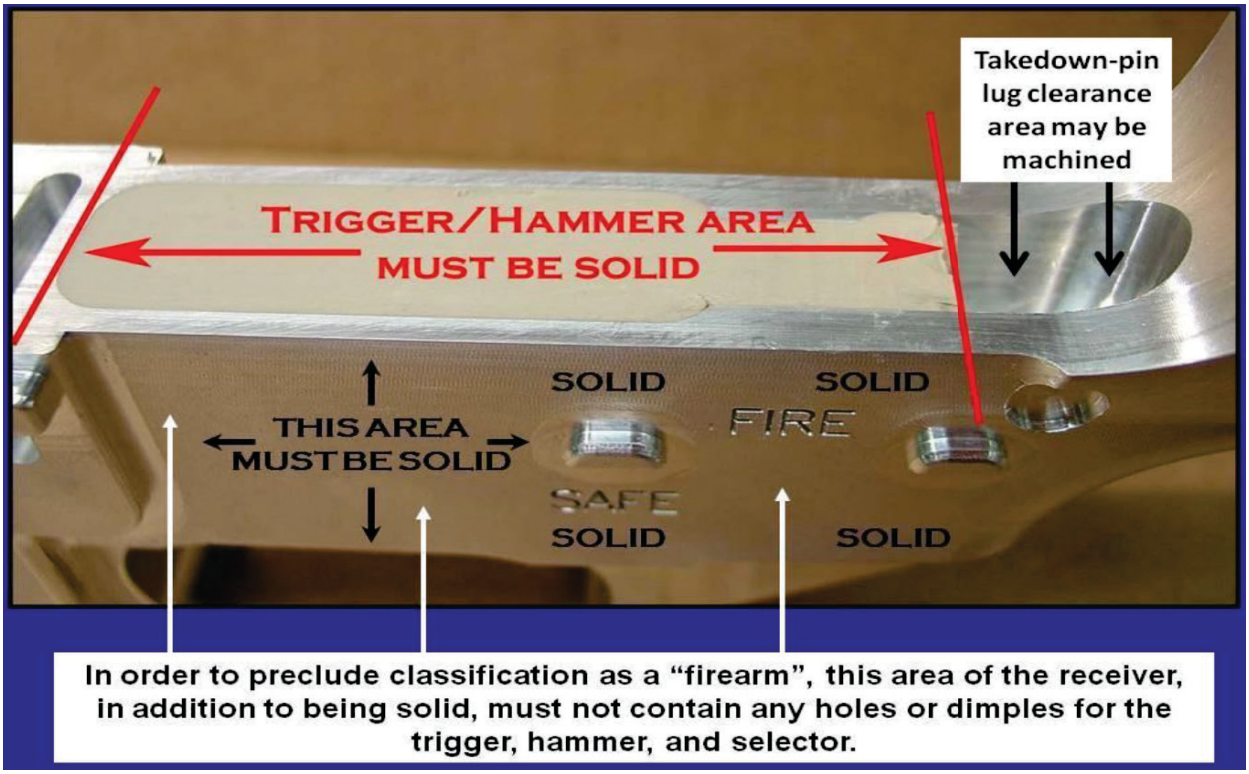
(if not sold, distributed, or marketed with any associated templates, jigs, molds, equipment, tools, instructions, or guides)

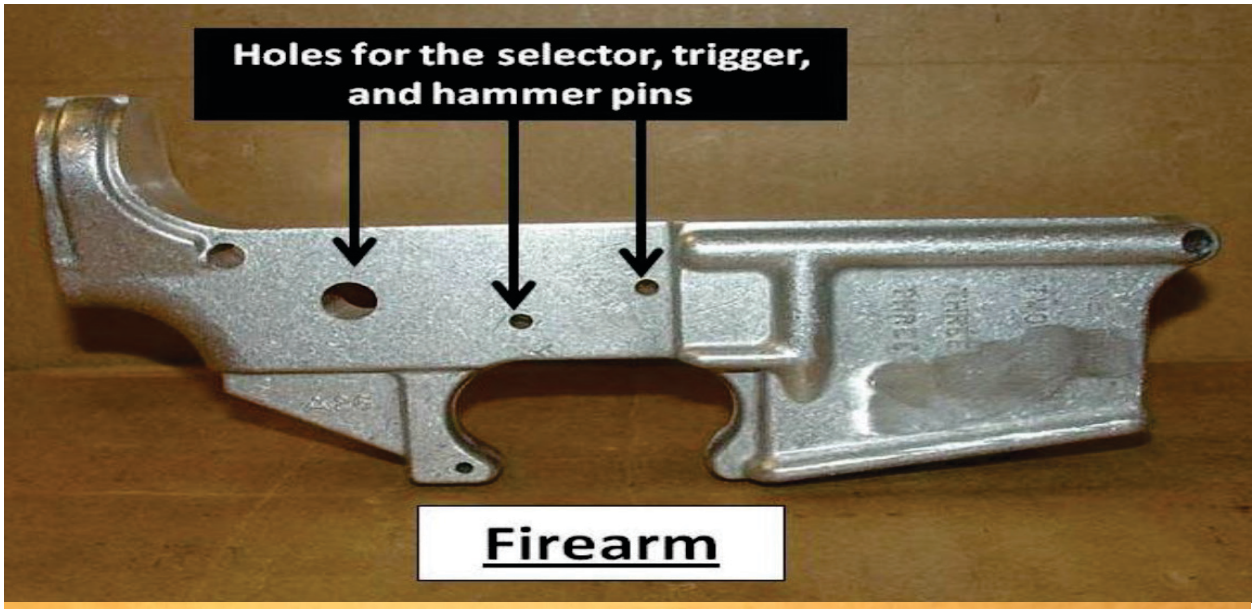


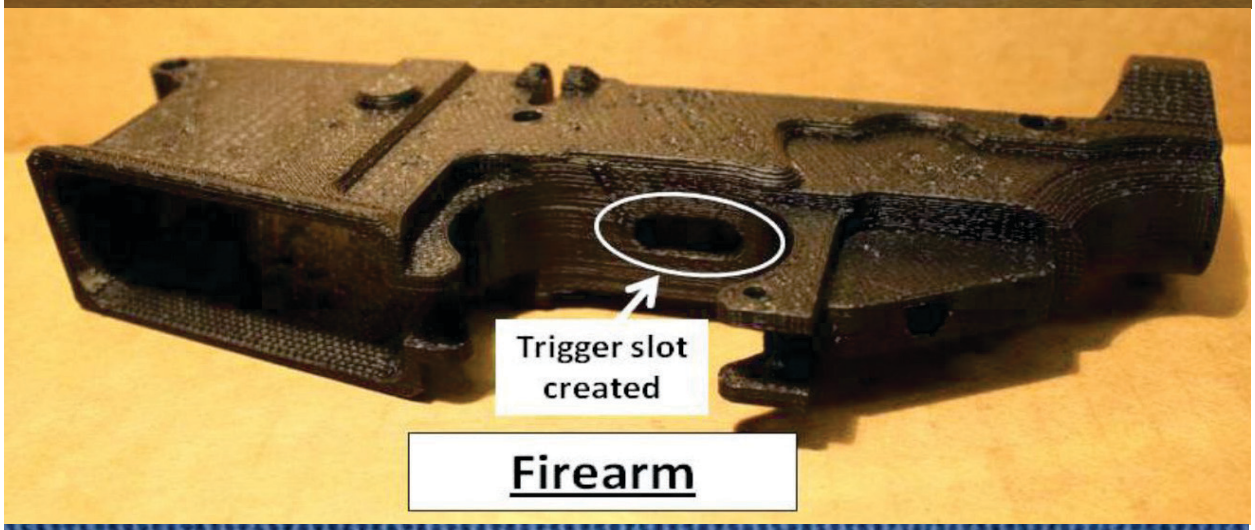
(if not sold, distributed, or marketed with any associated templates, jigs, molds, equipment, tools, instructions, or guides)

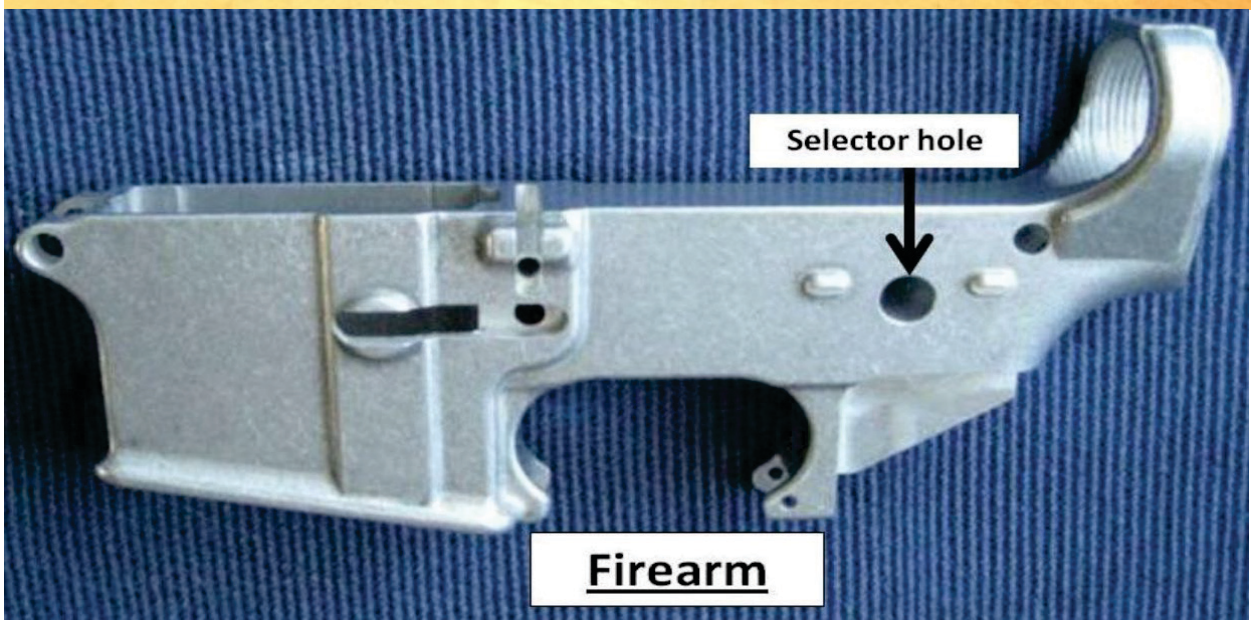
Because the front of the takedown-pin lug clearance area merges with the back of the fire control cavity in a functional AR-type receiver, it was necessary for ATF to determine the point at which the takedown-pin lug clearance area stops, and the fire control cavity begins. ATF has determined that drilling or milling a standard 0.800-inch takedown-pin area, measured from immediately forward of the front of the buffer retainer hole next to the fire control cavity, does not impact the ability of the fire control cavity to house the trigger mechanism and hammer. Provided this length is not exceeded, the fire control cavity remains *"without critical interior areas having been indexed, machined, or formed"* as stated in 27 CFR 478.12(c), Example 4.

The following illustration demonstrates the fire control cavity of an AR-type receiver:




Holes for the selector, trigger, and hammer pins
Firearm

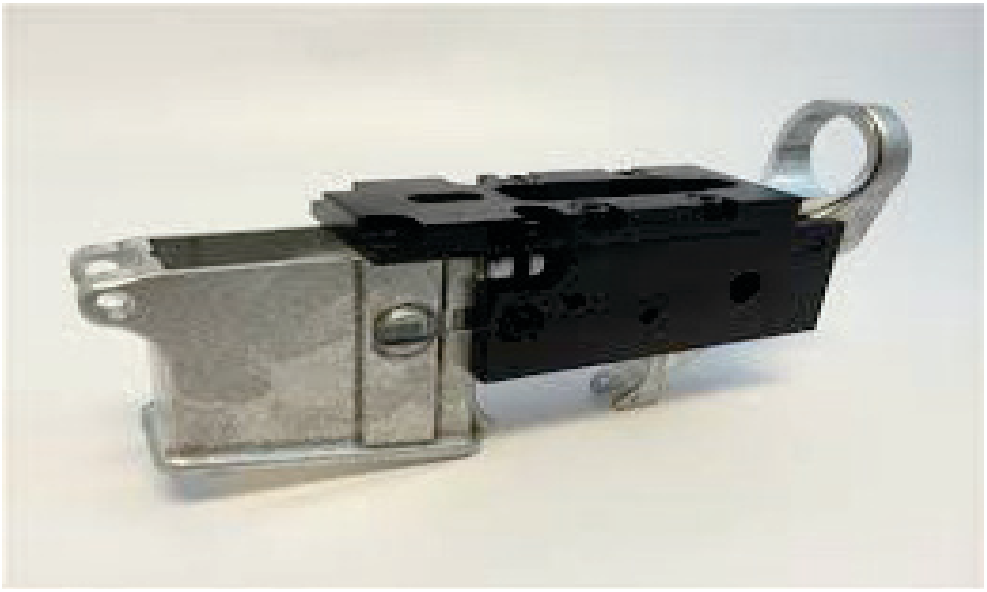

Trigger slot created
Firearm


Selector hole
Firearm

However, the above analysis only applies to partially complete, disassembled, or nonfunctional frames or receivers without any associated templates, jigs, molds, equipment, tools, instructions, guides, or marketing materials. Pursuant to Final Rule 2021R-05F, partially complete, disassembled, or nonfunctional frames or receivers that are sold, distributed, possessed with such items (or made available by the seller or distributor to the same person) may change the analysis, including those distributed as frame or receiver parts kits. 27 CFR 478.12(c). For example, jigs, templates, or instructions can provide the same indexing as if it were placed directly on the unfinished frame or receiver.



Firearm



Firearm

It is important that persons engaged in the business of manufacturing, importing, or dealing in these items do not take any steps to avoid licensing (18 U.S.C. §§ 922(a)(1), 923(a)), serialization (§ 923(i); 27 CFR 478.92(a)(2)), recordkeeping (§ 923(g)(1)(A); 27 CFR 478/125(i)), and other requirements and prohibitions of the law by selling or shipping the parts or parts kits in more than one box or shipment to the same person, or by conspiring with others to do so (18 U.S.C. §§ 2, 371).

Further, although unfinished frames or receivers that do not meet the definition of a "firearm" are not subject to regulation under GCA provisions, they are still considered "defense articles" on the U.S. Munitions Import List and, therefore, require an approved Application and Permit for Importation of Firearms, Ammunition and Implements of War (ATF Form 6) for importation into the United States under 27 CFR 447.41; 447.22, and are also subject to export controls.[1]

This information is provided to assist the firearms industry and general public in understanding whether a partially complete AR-type receiver has reached the stage of manufacture where it is classified as a "receiver" 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). If you have any questions, please contact the Firearms & Ammunition Technology Division at fire_tech@atf.gov or (304) 616-4300.

Digitally signed by ANDREW GRAHAM
Date: 2022.09.27 19:57:19 -04'00'

Acting Assistant Director
Enforcement Programs and Services

WILLIAM HENDERSON
Digitally signed by WILLIAM HENDERSON
Date: 2022.09.27 20:05:03 -04'00'

Acting Assistant Director
Field Operations

[1] Exporters should consult with the U.S. Departments of Commerce and State to determine applicable requirements.

EXHIBIT 24

From: Tomlinson, Martin M. (CIV) <Martin.M.Tomlinson@usdoj.gov>
Sent: Saturday, September 3, 2022 10:46 AM
To: Schapira, Liesel N.; Riess, Daniel (CIV)
Cc: Adam Skaggs; Dpucino@giffords.org; Matthew Wise; Clint Woods; Weitzman, Avi; Crain, Lee R.
Subject: RE: California v. ATF, N.D. Cal. No. 20-cv-06761

[WARNING: External Email]

Counsel,

We believe the Rule speaks for itself on this point. In particular, the Rule states:

> Companies that sell or distribute only unfinished frame or receiver billets or blanks, and not any associated jigs, templates, or similar tools to the same customer are *not* required to be licensed or to mark those articles with identifying information. However, companies that sell or distribute firearm parts kits, jigs, templates, or tools to the same customer with partially complete frames or receivers allowing them to be efficiently, quickly, and easily converted into functional weapons or functional frames or receivers must be licensed; must apply identifying markings to the partially complete frames or receivers; and must record them as firearms in their required records.

87 Fed. Reg. 24,700 (emphasis in original). The Rule also provides five non-exhaustive examples illustrating under what circumstances in which the sale of a receiver blank is not considered a frame or receiver – in particular we cite your attention to Examples 1 and 4. 87 Fed. Reg. 24,739. For any questions about specific products, ATF has a process (set forth in the Final Rule) by which makers or retailers can submit products for classification, and we will not make any representations or decisions in litigation about whether a specific product meets a definition under the Rule if ATF has not yet had a chance to make that determination in the first instance based upon a consideration of all the relevant facts.

Martin M. Tomlinson
Senior Trial Counsel | U.S. Department of Justice
Civil Division | Federal Programs Branch
P.O. Box 480; Ben Franklin Station
Washington, DC 20044
Phone: (202) 353-4556
Fax: (202) 616-8470

For overnight/courier deliveries:
Martin M. Tomlinson
Department of Justice
Federal Programs Branch, Room 12504
1100 L Street, N.W.
Washington, DC 20005

From: Schapira, Liesel N. <LSchapira@gibsondunn.com>
Sent: Thursday, September 01, 2022 11:42 PM
To: Riess, Daniel (CIV) <Daniel.Riess@usdoj.gov>; Tomlinson, Martin M. (CIV) <Martin.M.Tomlinson@usdoj.gov>

Cc: Adam Skaggs <askaggs@giffords.org>; Dpucino@giffords.org; Matthew Wise <Matthew.Wise@doj.ca.gov>; Clint Woods <Clint.Woods@doj.ca.gov>; Weitzman, Avi <aviweitzman@paulhastings.com>; Crain, Lee R. <LCrain@gibsondunn.com>
Subject: [EXTERNAL] California v. ATF, N.D. Cal. No. 20-cv-06761

Counsel,

We write regarding the joint status report due in *State of California et al. v. ATF* on September 13th.

Plaintiffs are considering their position with regard to next steps in this action. To aid in our consideration, we'd appreciate it if you could advise what the government's current position is on the effect of ATF Final Rule 2021R-05F Definition of "Frame or Receiver" and Identification of Firearms (the "Final Rule"). We understand that you stated recently in a different federal district that the regulation allows manufacturers to "sell[] receiver blanks . . . without a – without license." H'rg. Tr. (Aug. 9, 2022), *Div. 80 v. Garland*, No. 3-22-CV-00148, at 16:2-4. Is that the position the government is taking in this action as well? We understand, for instance, that putative intervenor Polymer80 has recently issued a press release about new product lines it is introducing to purportedly comply with ATF's Final Rule. Purporting to follow ATF's guidance, Polymer80 is currently selling an "unserialized 80% frame." In addition to the unserialized frame, Polymer80 will also sell two ghost gun "kits"—but those products will contain serialized frames or receivers. These options are all advertised on Polymer80's website, which also contains a "how to" page with instructions on how to build operational firearms from its unserialized blanks.

Is it the government's position that despite the text of the Final Rule manufacturers can sell "receiver blanks" without serialization or a background check?

We look forward to hearing from you.

Thank you,
Liesel

Liesel N. Schapira
(she/her)

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
200 Park Avenue, New York, NY 10166-0193
Tel +1 212.351.6349 • Fax +1 212.817.9549
LSchapira@gibsondunn.com • www.gibsondunn.com

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EXHIBIT 25

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.

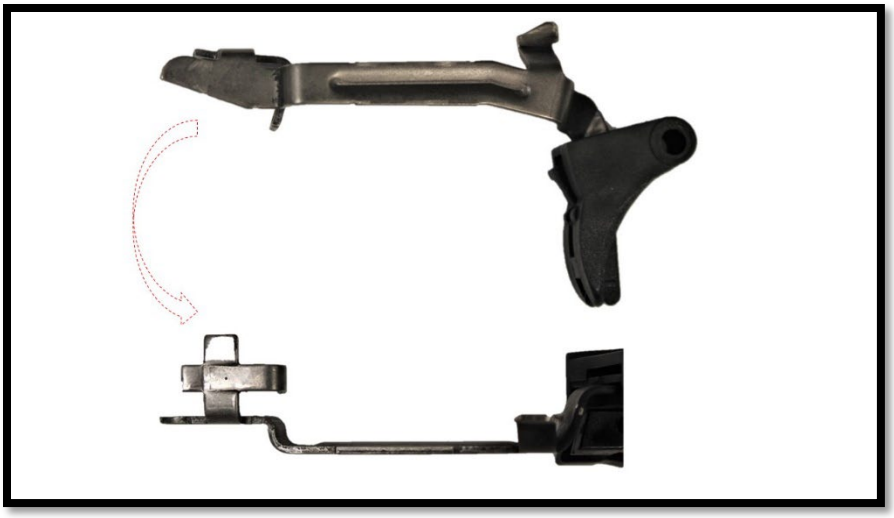


Figure 3

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).

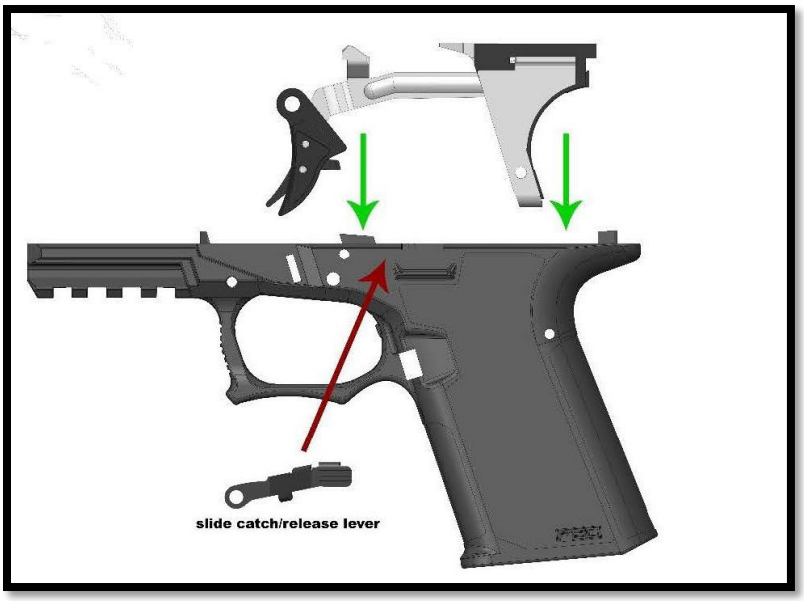


Figure 4

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.

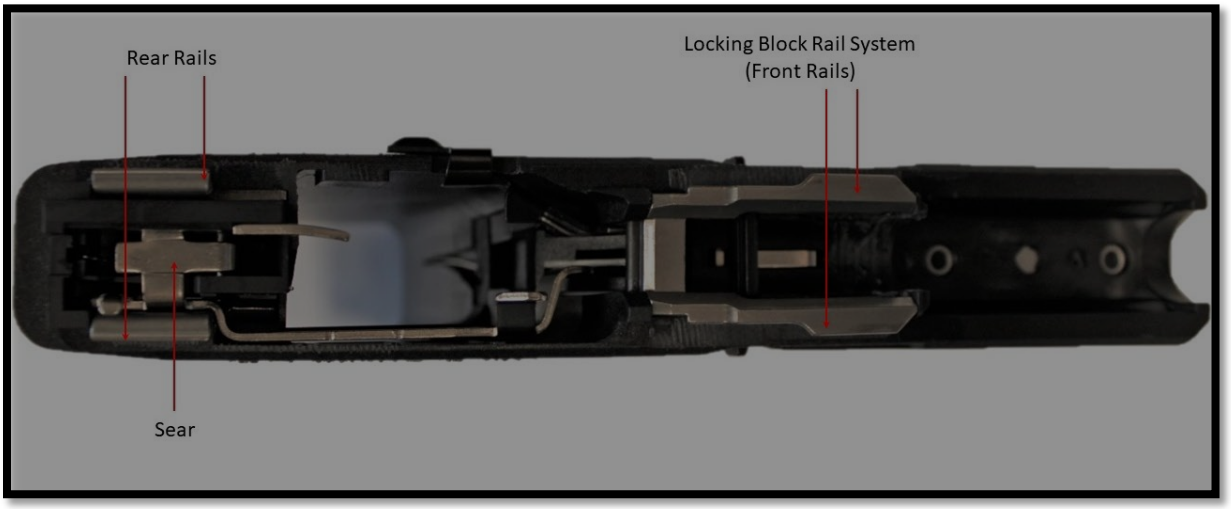


Figure 5

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

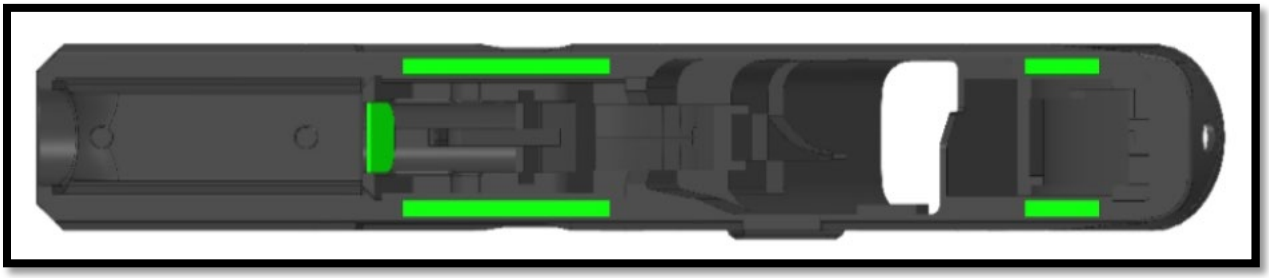


Figure 7

FIREARM - Poly80 with Temporary Rails and Barrel Blocking Tab

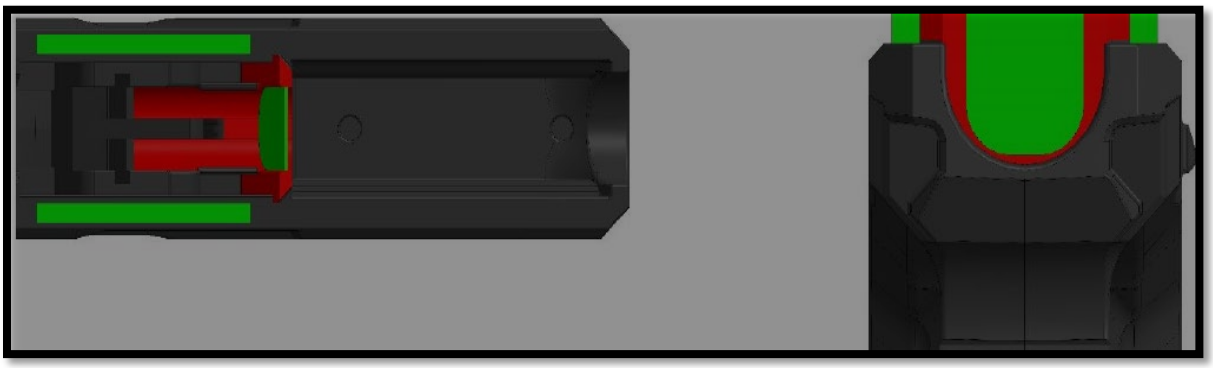


Figure 8

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.

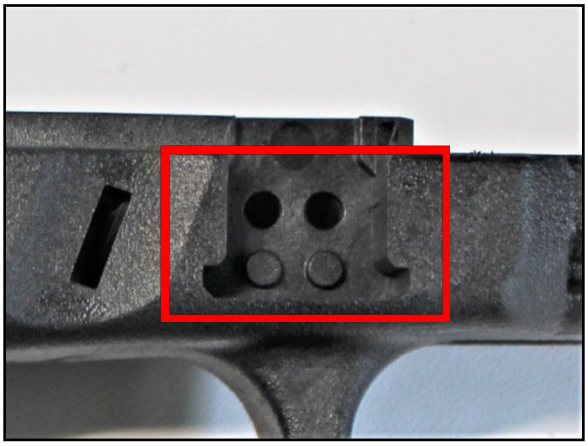


Figure 10

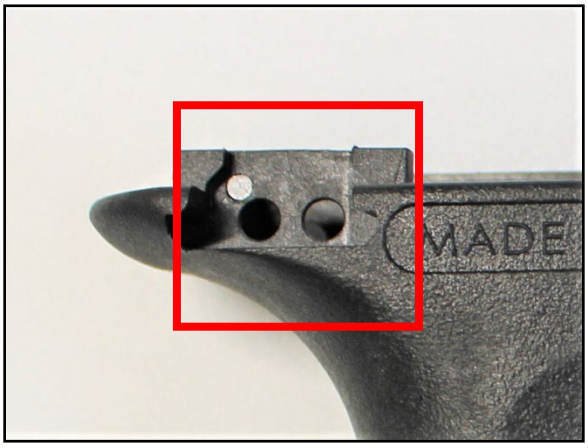


Figure 11

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

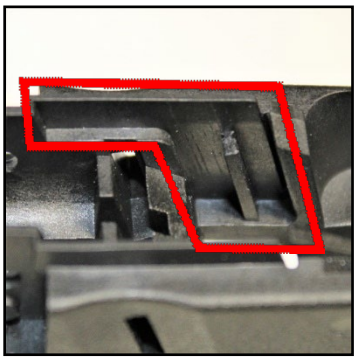
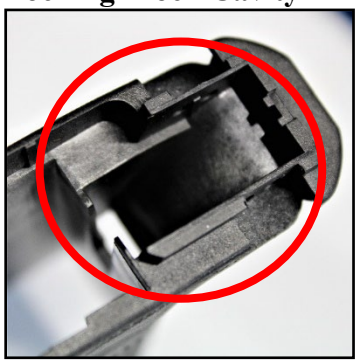


Figure 12

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.

MATTHEW VARISCO
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Date: 2022.12.27 10:45:27 -05'00'

Assistant Director
Enforcement Programs and Services

KRISTEN DETINEO
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Assistant Director
Field Operations

EXHIBIT 26

U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Office of the Director

Washington, DC 20226
www.atf.gov

March 21, 2023

PUBLIC SAFETY ADVISORY TO ALL FEDERAL FIREARMS LICENSEES, AND FIREARM PARTS, COMPONENTS, AND ACCESSORIES MANUFACTURERS AND DISTRIBUTORS

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is issuing this public safety Advisory to the firearms industry and the public to provide information regarding its investigative priorities related to possible willful efforts to violate the requirements of the Gun Control Act (GCA) as implemented by the Final Rule titled *Definition of 'Frame or Receiver' and Identification of Firearms* (Final Rule 2021R-05F) ("Frame or Receiver Final Rule" or the "Final Rule").[1] As with any suspected violations of the GCA, ATF may investigate such activities and, where appropriate, refer them for potential enforcement actions. ATF considers willful violations of the GCA, including the types described in this document, an investigative priority.

Specifically, since the Frame or Receiver Final Rule became effective on August 24, 2022, some suppliers of partially complete frames or receivers appear to be structuring their transactions or coordinating with other persons or entities to sell, distribute, or otherwise make available, in ostensibly independent or separate transactions, the compatible templates, jigs, molds, equipment, tools, instructions, or guides needed to complete the partially complete frames or receivers to the same individuals who purchase a partially completed frame or receiver from the original supplier. As explained further below, such conduct will affect how ATF analyzes what materials have been "made available by" the supplier under the Final Rule and, under certain circumstances, could be evidence of a willful intent to violate the requirements of the GCA, as implemented by the Frame or Receiver Final Rule, or defraud the United States, and ATF may investigate these activities.

ATF will prioritize investigations of suppliers who are engaged in activities that would require licensing under the GCA, particularly where those activities appear to involve willful misconduct. In determining whether a federal firearms license is required, ATF will consider all items made available by the seller, including marketing materials, applying the factors set forth in the regulatory text. The conduct and activities, including but not limited to marketing conduct, that ATF takes into consideration when enforcing the GCA and its classification decisions are further discussed below, along with details on how to report potential unlawful conduct to ATF.

[1] 87 Fed. Reg. 24652 (Apr. 26, 2022); 87 Fed. Reg. 51249 (Aug. 22, 2022) (corrections to final rule).

Public Safety Advisory

Background

The Frame or Receiver Final Rule, among other things, updates the regulatory definitions of "frame" and "receiver," and adds a definition of "readily" – an undefined statutory term in the GCA. These terms, set forth in the Final Rule at 27 CFR 478.12(c), explain when a partially complete frame or receiver, including one within a parts kit, has reached a sufficient stage of manufacture to be classified as a "**frame**" or "**receiver**," and therefore, a "**firearm**" under the GCA and its implementing regulations, as follows:

> *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.*

Additionally, 27 CFR 478.11 clarifies that the term "**firearm**" "*shall include a weapon parts kit that is designed to or may readily be completed, assembled, restored, or otherwise converted to expel a projectile by the action of an explosive.*"

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.

As ATF has repeatedly made clear, these regulatory definitions apply to every assessment of whether any partially complete frame or receiver – whether assessed individually, or in conjunction with other associated items – is a "firearm" under the GCA.[2] Thus, in determining whether any specific partially complete frame or receiver may be "readily" converted to a functional frame or receiver, ATF will consider items and conduct, such as a distributor or supplier making available instructions or marketing materials to the customer. Such marketing materials could include, for example, information on how a partially complete frame or receiver may readily be converted to a functional frame or receiver, serving essentially as instructions or a guide.

These materials may also include internet links to templates, jigs, molds, equipment, tools, instructions, guides, or marketing materials, including those provided by other vendors, that enable ready completion or assembly of the unfinished frame or receiver into a functional firearm. And if, in light of the information that those items provide to the customer, the partially complete frame or receiver that a distributor or supplier is selling can be "readily" converted to a functional frame or receiver, then the distributor or supplier is required to sell that item in compliance with the GCA's requirements for sales of firearms. When a supplier in such a circumstance intentionally fails to comply with the GCA's requirements, that may constitute a willful violation of the GCA, and ATF will consider referral for potential enforcement actions.

As stated in the Final Rule, partially complete, disassembled, or nonfunctional frames or receivers that are sold, distributed, or possessed with associated templates, jigs, molds, equipment, tools, instructions, guides, or marketing materials that allow them to readily be converted to a functional state, are "**frames**" or "**receivers**," and also "**firearms**" as defined in the GCA, 18 U.S.C. § 921(a)(3), and its implementing regulations, 27 CFR 478.11, 478.12(c).

To illustrate application of the GCA to specific circumstances and scenarios, ATF issues open letters, which are posted on its website and accessible to the general public. ATF has thus far issued two open letters to further illustrate application of the Frame or Receiver Final Rule. The first, issued on September 27, 2022, applied the Final Rule to stand-alone, partially complete AR-15/M-16-type *receivers,* describing when such items in isolation would be considered "receivers" and thus "firearms" under the GCA. The second, issued on December 27, 2022, applied the Final Rule to certain partially complete, stand-alone pistol *frames*, specifically concluding that these products on their own without any associated templates, jigs, molds, equipment, tools, instructions, guides, or marketing materials are both "frames" and "firearms," as defined in the GCA.[3] In addition, to assist the industry and the public in complying with the

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[2] *See* footnote 5, *infra.*; 87 Fed. Reg. 24663, 24692, 24699, 24700.

[3] The U.S. District Court for the Northern District of Texas has preliminarily enjoined the government from applying some provisions of the Final Rule with respect to certain manufacturers and their customers. *Vanderstok, et al. v. Garland, No. 4:22-00691; Polymer80, Inc. v. Garland, No. 4:23-00029.* The government is complying with those orders.

GCA and its implementing regulations, ATF provides requestors with letter classifications, which apply the regulatory definitions to voluntarily submitted samples.[4] Since the effective date of the Final Rule, for instance, ATF has issued approximately 40 such private letters upon request classifying different partially complete, stand-alone AR receivers. Based on ATF's individual consideration and examination of each such item submitted, ATF has classified approximately half of those standalone parts as "receivers" and "firearms," and half as not being "receivers" or "firearms."

Additionally, as set forth in the Frame or Receiver Final Rule, persons engaged in the business of manufacturing, importing, or dealing in "firearms," including "frames" or "receivers," **must not** take steps, through their marketing materials or other conduct, that result in willful violation of the GCA's requirements, including requirements for licensing (18 U.S.C. § 922(a)(1)(A)), serialization of the frame or receiver (18 U.S.C. § 923(i)), recordkeeping (18 U.S.C. § 923(g)(1)(A)), running background checks on unlicensed transferees (18 U.S.C. § 922(t)), or other requirements and prohibitions of the law. *See* 87 FR 24670, 24692, 24713. Any person convicted of willfully engaging in the business of importing, manufacturing, or dealing in firearms without a license, in violation of 18 U.S.C. § 922(a)(1)(A), or of aiding and abetting (18 U.S.C. §§ 2, 922(a)(1)(A)), or conspiring with another person to do so (18 U.S.C. § 371), could be subject to a fine and/or imprisonment. Persons who are licensed, but who willfully violate any provision of the GCA, including the failure to serialize firearms, are subject to the same penalties (18 U.S.C. § 924(a)(1)(D)). Assessing criminal intent, which must be proven beyond a reasonable doubt in a criminal matter, is a fact-specific inquiry under the law.

Analysis

When determining whether a partially compete, disassembled or non-functional frame or receiver is a "firearm" under the GCA, ATF applies the term "readily" and 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 must include consideration of any associated templates, jigs, molds, equipment, tools, instructions, guides, or marketing materials that are, directly or indirectly, sold, distributed, or possessed, or marketed 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. This is because such materials may affect how "readily" the part may be converted. For example, jigs, templates, or instructions can provide the same indexing as if placed directly on the partially complete frame or receiver.

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[4] The Final Rule expressly limits private letter classifications to the specific sample voluntarily submitted, and manufacturers and distributors cannot apply those determinations to any other sample, design, model, or configuration, including any configuration where associated templates, jigs, molds, equipment, tools, instructions, guides, or marketing materials are sold, distributed, possessed, or otherwise made available by the seller or distributor with the sample. As part of a voluntary classification, those items are also required to be submitted to ATF with the sample so that a proper and valid determination can be made. *See* 27 CFR 478.92(c), 479.102(c). If a requestor elects to change a sample or the associated materials set forth by the rule, that requestor must submit a current and complete sample if it wishes to have a valid classification.

To assist the firearms industry in complying with the licensing requirements of the GCA, the following examples illustrate activities on which ATF will prioritize investigative review as such activities and conduct may be indicative of a willful GCA violation:

1. *Structuring firearms transactions:* Structuring firearms transactions occurs when a supplier purposely sets up ostensibly separate transactions or methods of operating with the willful intent to violate the GCA's requirements with respect to licensing, serialization, recordkeeping, running background checks, or other provisions. This can include conduct such as selling, distributing, marketing, or otherwise making available to the same customers partially complete frames or receivers separately from their associated templates, jigs, molds, equipment, tools, instructions, guides, or marketing materials by shipping them in different boxes, on different days, or through straw purchasers. If the partially complete frame or receiver being sold by the supplier is "readily" converted to a functional state (*i.e.*, as a "firearm" under the GCA and its implementing regulations) when evaluated in conjunction with the materials that the supplier is otherwise making available in the ostensibly separate transactions, then the partially complete frame or receiver must be sold in compliance with the GCA's requirements.[5]

2. *Structuring firearms businesses:* Structuring ownership of a firearms business occurs when a supplier sets up multiple corporations, businesses, or other entities, or individual straw business owners, to sell, distribute, or otherwise make available to the same customers partially complete frames or receivers separately from their associated templates, jigs, molds, equipment, tools, instructions, guides, or marketing materials, with the willful intent to violate the GCA's requirements with respect to licensing, serialization, recordkeeping, and running background checks, or other provisions. If the partially complete frame or receiver being sold by the supplier can be "readily" converted to a functional state (*i.e.*, is a "firearm" under the GCA), based on an assessment of all factors listed in the Final Rule (including materials that the seller makes available to the buyer through other ostensibly separate corporate entities), then the partially complete frame or receiver must be sold in compliance with the GCA's requirements.[6] Such structuring, if done with a

[5] *See Morehouse Enterprises v. ATF*, No. 3:22-cv-116, 2022 WL 3597299 (D.N.D. 2022) ("The Court further disagrees that the Final Rule creates a new crime of "structuring," as the Final Rule only provides that one cannot conceal their transfer of a disassembled firearm in more than one box or shipment, which is consistent with the intent of the GCA and within the scope of the ATF to regulate."); *see, e.g., United States v. Zambrano*, 752 Fed. App'x 775, 790 (11th Cir. 2018) (unlawfully exported firearms that were disassembled and shipped in pieces). Likewise, attempts to structure transactions to circumvent the GCA, and courts' rejection of these attempts, are not new. *See also Abramski v. United States*, 573 U.S. 169, 183 (2014) (noting in the GCA "Congress's concern with the practical realities, rather than the legal niceties, of firearms transactions."); *id*. at 180 ("[N]o part" of the GCA would work if "the law addressed not the substance of a transaction, but only empty formalities.")

[6] *See generally MEW Sporting Goods, LLC v. Johansen*, 992 F.Supp.2d 665, 674-675 (N.D.W.V. 2014), *aff'd*, 594 Fed. App'x 143 (4th Cir. 2015) (corporate entity disregarded where it was formed to circumvent firearms licensing requirement); *United States v. King*, 735 F.3d 1098, 1106 (9th Cir. 2013) (Defendant felon could not "immunize

willful intent to violate the GCA, may amount to a criminal violation. *See* 18 U.S.C. § 924(a)(1)(D).

Finally, when two suppliers agree to work or coordinate to willfully violate the GCA or defraud the United States, and to take acts in furtherance of that willful agreement, both suppliers may be found to be improperly structuring firearms transactions or businesses. Such acts could include selling or distributing parts kits or disassembled firearms, including frames or receivers, through shell companies, related businesses, straw purchasers, or coconspirators. This conduct may rise to the level of a criminal conspiracy to commit an offense against the United States or to defraud the United States, in violation of 18 U.S.C. § 371, or aiding and abetting a willful violation of the GCA by a supplier, in violation of 18 U.S.C. § 2, and the underlying offense.

Reporting Potential Violations to ATF and Voluntary Classification Requests

Anyone who observes suspected violations of the GCA or ATF's implementing regulations may report them to ATF. Any persons can call their local field office, can contact ATF's Emerging Threats Unit, or report a potential violation to ATF's tip line at Submit a Tip | Bureau of Alcohol, Tobacco, Firearms and Explosives (atf.gov), https://www.atf.gov/atf-tips.

In addition, any person who wishes to obtain a classification of an item or kit 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). If a person wishes to obtain a classification, ATF requires a formal request and physical examination of a submitted sample. For further information, please contact the Firearms & Ammunition Technology Division at fire_tech@atf.gov or (304) 616-4300.

In addition, note that the Frame or Receiver Final Rule specifically provides that pre-Final Rule classifications regarding partially complete frames or receivers that were previously determined not to be "frames" or "receivers" are no longer valid.[7] Persons must be careful not to make inaccurate representations in their marketing regarding classifications issued by ATF, including making such representations based on classifications that have been

himself from prosecution" for dealing without a license by "hiding behind a corporate charter"); *United States v. Fleishli*, 305 F.3d 643, 652 (7th Cir. 2002) ("In short, a convicted felon who could not have legitimately obtained a manufacturer's or dealer's license may not obtain access to machine guns by setting up a sham corporation."); *National Lending Group, LLC v. Mukasey, 2008 WL 5329888* (D. Ariz. 2008), *aff'd*, 365 Fed. Appx. 747 (9th Cir. 2010) (straw ownership of corporate pawn shops); *Casanova Guns, Inc. v. Connally,* 454 F.2d 1320, 1322 (7th Cir.1972) ("[I]t is well settled that the fiction of a corporate entity must be disregarded whenever it has been adopted or used to circumvent the provisions of a statute."); *XVP Sports, LLC v. Bangs*, No. 2:11CV379, 2012 WL 4329258, at *5 (E.D. Va. 2012) ("unity of interests" existed between firearm companies controlled by the same person); *Virlow LLC v. Bureau of Alcohol, Tobacco, Firearms & Explosives,* No. 1:06–CV–375, 2008 WL 835828 (W.D. Mich. 2008) (corporate form disregarded where a substantial purpose for the formation of the company was to circumvent the statute restricting issuance of firearms licenses to convicted felons).

[7] 27 CFR 478.12(f)(2).

superseded by the Final Rule. Any such intentional misrepresentations are improper and should be reported to ATF.

Conclusion

No supplier, regardless of whether they are engaged in the business of manufacturing, importing, or dealing in frames or receivers (including partially complete frames or receivers that may readily be converted into functional frames or receivers), firearm parts kits, or complete disassembled weapons may arrange or structure transactions or ownership (or control) of business entities with the willful intent to violate the GCA, including the GCA's licensing, serialization, recordkeeping, and background check requirements. Similarly, suppliers of partially complete frames or receivers may not knowingly and intentionally conspire with other persons or entities to willfully violate the GCA, including its licensing, serialization, recordkeeping, and background check requirements.

ATF recognizes that the majority of suppliers and the public follow the GCA and its implementing regulations, including the Frame or Receiver Final Rule. This advisory is intended to assist the firearms industry and general public by providing additional information regarding ATF's investigative priorities related to violations of the GCA as implemented by the Final Rule.

The GCA and its implementing regulations, including the Final Rule, are critical public safety measures, and people must abide by them. For that reason, any intentional violations of such measures are an enforcement priority for ATF.

This Advisory offers the views of the Bureau of Alcohol, Tobacco, Firearms, and Explosives of the U.S. Department of Justice as to matters relating to investigations under and enforcement of the Federal Gun Control Act of 1968, as amended, 18 U.S.C. §§ 921 *et seq.* The Advisory is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law, by any party, in any matter, civil or criminal. Nothing in this document should be construed as mandating a particular outcome in a specific case, and nothing in this document limits the discretion of the U.S. Department of Justice or any U.S. government agency to take action, or not to take action, with respect to matters under its jurisdiction.



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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

STATE OF CALIFORNIA, BRYAN MUEHLBERGER, FRANK BLACKWELL, GIFFORDS LAW CENTER to PREVENT GUN VIOLENCE,

Plaintiffs,

v.

BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES, STEVEN DETTELBACH, in his official capacity, DANIEL HOFFMAN, in his official capacity, DEPARTMENT OF JUSTICE, MERRICK GARLAND, in his official capacity~~.~~,

Defendants.

CIVIL CASE NO.: 3:20-CV-06761-EMC

SUPPLEMENTAL FIRST ~~AMENDED~~AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

HON. EDWARD M. CHEN

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Pursuant to the Court's directive at the status conference held on August 29, 2023, Plaintiffs State of California~~, Bryan Muehlberger, Frank Blackwell,~~ and Giffords Law Center to Prevent Gun Violence~~, for their complaint allege, by and through their respective attorneys~~ submit this Supplemental Complaint, along with the exhibits attached thereto, against the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"); Steven Dettelbach, in his official capacity as Director of ATF; Daniel Hoffman, in his official capacity as Chief of the Firearms Technology Industry Services Branch of ATF; the United States Department of Justice ("DOJ"); and Merrick Garland, in his official capacity as Attorney General of the United States, as follows:

INTRODUCTION

1. Since 1968, the Gun Control Act ("GCA") has imposed important, common-sense gun safety restrictions on the purchase and sale of firearms in the United States.[1] These include, among other requirements, that any firearm sold or imported in the United States must have a unique serial number, and that licensed gun dealers must maintain identifying records, including the serial numbers of guns they sell and the identity of the buyer. These requirements allow law enforcement to trace guns recovered at crime scenes to their first retail purchaser. The GCA also requires licensed gun dealers to conduct criminal background checks on would-be gun purchasers, ensuring that weapons do not fall into the wrong hands. Federal law prohibits numerous categories of people from purchasing guns, including minors and individuals with disqualifying criminal convictions, people with records of domestic violence, those suffering from serious mental illness, or individuals who are addicted to drugs. These restrictions have been hallmarks of federal firearms regulation for decades. By preventing those who pose the greatest threat of violence from purchasing firearms, these laws have protected an incalculable number of Americans from harm.

2. But the protections of the GCA have been threatened by the rapid proliferation of so-called "ghost guns."[2] Ghost guns are, in effect, lethal do-it-yourself ("DIY") projects that allow anyone at home to build a fully operable firearm ***within minutes***. The resulting DIY weapons are

[1] *See generally* Gun Control Act of 1968, Pub. L. No. 90-618 (1968); Brady Handgun Violence Prevention Act, Pub. L. No. 103-159 (1993).

[2] Ghost guns are also sometimes referred to as privately made firearms or "PMFs."

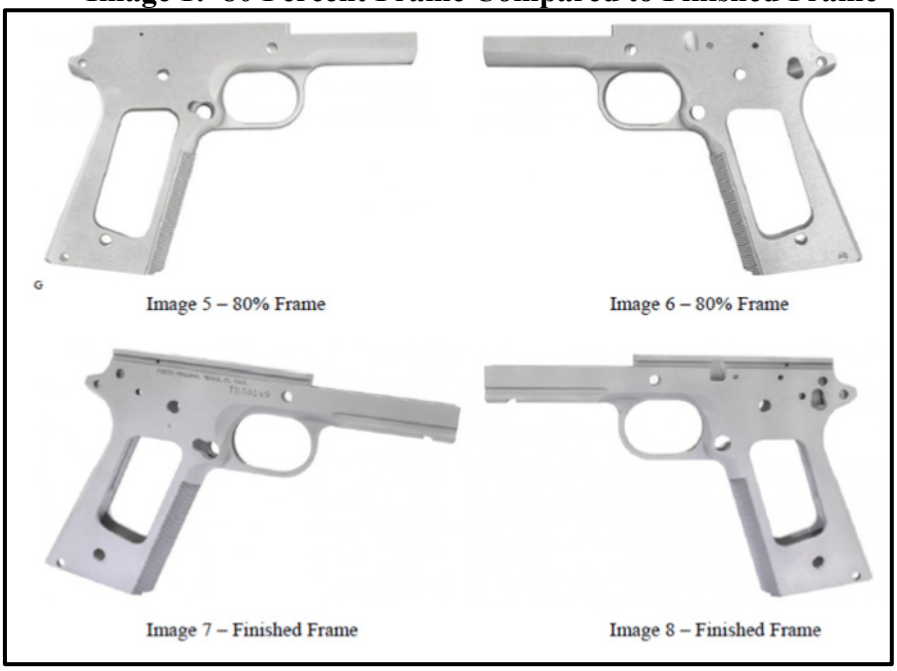
"ghosts" because, lacking serial numbers, they are not traceable by law enforcement when they are used in a crime. These ghost guns are readily accessible because of ATF's erroneous determination that the critical components of these firearms are excluded from the ambit of the GCA. Because of ATF's recent rulemaking and other final agency actions, ghost guns can be purchased without a background check by people who are prohibited from possessing firearms; the firearms do not have serial numbers; and gun dealers are not required to maintain any records of their sales or the identity of their purchasers. Anyone can buy them, and no one can trace them. As a result, ghost guns have become the weapon of choice for illegal gun traffickers and those—like organized criminal gangs and mass murderers—who seek to bear arms not for lawful means, but rather to engage in criminal activity and acts of violence.

3. Defendants have allowed ghost guns to proliferate because they have determined that the core component of a ghost gun is not a "firearm" under the GCA. That core component is a product that the ghost gun industry calls "80 percent" "receivers" for long guns or "frames" for handguns. A receiver or frame is the central piece of any firearm—the part of the firearm that houses the hammer, bolt, or breechblock, as well as the firing mechanism;[3] it is so central that the GCA expressly provides that a "frame or receiver" *is* a "firearm" for purposes of the GCA's regulatory regime. 18 U.S.C. § 921(a)(3). The GCA also provides that "firearms" include not only fully functional weapons, but also receivers and frames of such weapons that are "***designed to or may readily be converted***" into functional weapons. *Id*. (emphasis added). In reality, "80 percent" or "unfinished" receivers and frames are nearly finished firearms—products that require mere minutes to go from "unfinished" to ready-to-fire. They are therefore both "designed to" *and* "may readily be converted" into functional firearms with ease. For that reason, the monikers "80 percent" or "unfinished" are arbitrary terms that do not accurately reflect the limited amount of work remaining

[3] 27 C.F.R. § 478.12 (defining "frame" 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" and "receiver" as "the part of a rifle, shotgun, or projectile weapon other than a handgun, or variants thereof, that provides housing or aa structure for the primary component designed to block or seal the breech prior to initiation of the firing sequence (i.e., bolt, breechblock or equivalent), even if pins or other attachments are required to connect such component to the housing or structure.").

to convert a frame or receiver into an operable weapon.

Image 1: 80 Percent Frame Compared to Finished Frame



4. 80 percent receivers and frames are pieces of metal or composite plastic created for the sole and express purpose of allowing people to create a fireable weapon quickly and easily. To the lay eye, 80 percent receivers and frames are in all material respects ***indistinguishable*** from ready-to-fire receivers and frames, as shown in Image 1 above, in which the top images are 80 percent frames while the bottom images are the substantially similar finished frames.

5. Ghost gun manufacturers have also developed tools that make it easier than ever to convert 80 percent receivers and frames into fully operable firearms in as little as ***15 minutes***.[4] These tools include jig kits (a collection of tools, measurements, and physical guides designed to quickly make unfinished or 80 percent receivers functional), milling machines (a pre-programmed "mill" that automatically turns 80 percent receivers into functioning weapons) and even free, easy to use printable blueprints for building ghost guns.[5] Even without these products however, anyone with

[4] *80 Percent Lower Jig*, GUN BUILDERS DEPOT, https*://www.gunbuilders.com/80-lower-jig/* (last visited Oct. 12, 2022); *see Glock 80% Compact Polymer Pistol Frame Kit*, FANDWGUNS.GUNSAMERICA.COM, http://fandwguns.gunsamerica.com/ItemDetails/762360860/Glock-80-Compact-Polymer-Pistol-Frame-Kit.htm (last visited Oct. 18, 2022).

[5] Keegan Hamilton, *A Simple Plastic Tool Is Undermining New Ghost Gun Rule*s, VICE (Sept. 12, 2022), https://www.vice.com/en/article/epzb3a/ghost-gun-jig-tool.

internet access can easily find detailed instructions for completing their frame or receiver with common household tools. The fact that 80 percent receivers and frames are so easy to assemble into ghost guns and are sold without background checks or recordkeeping is the very reason these DIY products have dangerously proliferated. As one seller advertised, 80 percent receivers "allow gun owners to build their own firearms without having to go through a licensed dealer."[6]

6. Yet Defendants have determined that 80 percent receivers and frames are not "firearms" under the GCA, and that therefore the statutory requirements and prohibitions of the GCA do not apply to these products. Consequently, with nothing more than an internet connection and a credit card—and without needing to validate as to whether a purchaser is alive or dead, real or fake—anyone including minors and people with serious, violent criminal records can purchase an 80 percent receiver and convert it into a fireable weapon, often within mere minutes.

7. Plaintiffs originally filed this action over two years ago, in September 2020, to challenge Defendants' prior agency actions regarding ghost guns as arbitrary and capricious and in defiance of the plain meaning of the GCA. In April 2022, the administration issued new rulemaking that seemed intended to combat the proliferation of ghost guns. But ATF's new rule, which took effect in August 2022, is contrary to the text of the GCA in one critical aspect.[7] *See* Definition of "Frame or Receiver" and Identification of Firearms, 87 Fed. Reg. 24,652 (Apr. 26, 2022) (codified at 27 C.F.R. pts. 447, 478, 479) (hereinafter, the "Final Rule"). Though the Final Rule takes important steps to eliminate ghost gun-making "kits"—meaning where 80 percent receivers or frames are sold together with other essential firearm parts, such as the magazine to store ammunition, and the jigs to assemble the firearm—the Rule ***still permits*** the selling of unserialized "80 percent" receivers and frames as stand-alone items without any background checks or serialization. For example, Juggernaut Tactical sells both 80 percent lower receivers *and* jigs and tool kits on their website. These items are sold completely unregulated—as long as a buyer purchases each in a separate transaction. The company even specifically instructs its customers to purchase all the items needed

[6] *Why Our 80 Lower Jig Tools?*, 5D Tactical, https://www.5dtactical.com/categories/80-lower-jig-tools/ (last visited Oct. 19, 2022).

[7] 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.

to create a firearm from an 80 percent receiver or frame in separate transactions, as an easy workaround to the Final Rule.[8]

8. The Final Rule's exclusion of stand-alone 80 percent receivers and frames is contrary to the plain text of the GCA and arbitrarily and capriciously ignores the widely acknowledged truth that 80 percent receivers and frames "*may readily be*" converted into operable firearms quickly and easily, using basic household tools, even when sold without supporting kits or jigs. 18 U.S.C. § 921(a)(3). The Rule also ignores that these 80 percent receivers and frames are also "*designed to*" be converted into operable firearms, as there is no consumer market for 80 percent receivers and frames other than to convert them into operable firearms.[9] *Id.*

9. Indeed, ghost gun manufacturers and sellers have quickly recognized the narrow scope of the Final Rule, declaring: "there is really very little practical effect" of "the New ATF 'Ghost Gun' Kit Ban"[10] and "this rule will not stop anyone who really wants to make a gun from building their own."[11] And the federal government has not disputed this interpretation in litigation defending the Final Rule, confirming that it is "not going to be a problem" for ghost gun manufactures to continue to "sell[] receiver blanks . . . without a [] license."[12]

10. In the meantime, there continue to be record numbers of ghost guns sold, possessed by prohibited purchasers, and used in crimes. Since this lawsuit began in September 2020, the gun market has expanded exponentially, and, on information and belief, the ghost gun market has similarly expanded. According to the FBI, while an average of 13 million guns were sold legally in the U.S. each year between 2010 and 2019, that number increased to about 20 million annual gun

[8] *See infra* ¶ 97.

[9] *See, e.g., What Are the Benefits of Building Your Own AR? – Quick Assembly*, 5D TACTICAL, https://www.5dtactical.com/#tab-assembly (last visited Oct. 15, 2022) ("Our equipment provides the capability to swiftly complete an 80% lower receiver, with unparalleled precision. The Router Jig Pro can be assembled fast and ready to be used in just a few minutes. Once you're familiar with the user-friendly process, you can finish an 80 lower receiver and begin installing the lower parts kit in as little as 30 minutes!"); *see also supra* note 4 (noting that an 80 percent lower frame can be made into a fully functional firearm in as little as "15 minutes").

[10] The Reload, *The Early Impacts of the New ATF 'Ghost Gun' Kit Ban*, YOUTUBE (Sept. 2, 2022), https://www.youtube.com/watch/PU9fJjNI9Go/.

[11] *ATF Final Rule 2021R-05F (aka 80% Receiver Rule) Explained*, THEFIREARMBLOG.COM (Aug. 26. 2022), https://www.thefirearmblog.com/blog/2022/08/26/atf-2021r-05f-80-receiver-rule/.

[12] *See* Ex. 1, Transcript of Hearing on Plaintiff's Motion for Preliminary Injunction at 16:2–5, *Div. 80 v. Garland*, No. 3-22-CV-00148 (S.D. Tex. Aug. 9, 2022).

sales in both 2020 and 2021.[13] Although purchases of ghost guns are, by definition, not required to be recorded or disclosed, ghost gun retailers widely reported substantially increased demand. Indeed, ghost gun manufacturers have experienced backlogs and shipping delays due to increased demand since the beginning of the COVID-19 pandemic in early 2020.[14]

11. Given Defendants' failure to regulate 80 percent receivers and frames, ghost guns have flooded the country. In recent years, a record number of ghost guns were recovered in California as well as in numerous other states. In May 2020, for instance, *60 Minutes* reported that "at least 38 states and Washington D.C. have seen criminal cases involving ghost guns" and that ghost guns were used in "at least four mass shootings, violent police shootouts . . . and cases involving terrorism and white supremacists."[15] One widely publicized ghost gun mass shooting occurred at Saugus High School on November 14, 2019. On that day, a 16-year-old high school student wielding a ghost gun wounded three classmates and killed two others—15-year-old Gracie Anne Muehlberger, daughter of Plaintiff Bryan Muehlberger, and 14-year-old Dominic Blackwell, son of Plaintiff Frank Blackwell.[16] The Saugus shooting has unfortunately not been the last ghost gun school shooting. On November 29, 2021, a 15-year-old student shot and wounded a 16-year-old classmate with a ghost gun at Cesar Chavez High School in Phoenix, Arizona.[17] On January 21,

[13] *One in Five American Households Purchased a Gun During the Pandemic*, UNIVERSITY OF CHICAGO: NORC (March 24, 2022), https://www.norc.org/NewsEventsPublications/PressReleases/Pages/one-in-five-american-households-purchased-a-gun-during-the-pandemic.aspx.

[14] *Letter from Jerrold Nadler, Chairman, U.S. House Judiciary Committee, to Regina Lombardo, Acting Director*, ATF (Apr. 23, 2020), https://judiciary.house.gov/uploadedfiles/2020-04-23_letter_to_the_atf_re_ghost_guns.pdf?utmcampaign=2714-519 ("[A]t least 16 companies that sell ghost gun kits have reported order backlogs and shipping delays due to overwhelming demand" during the COVID-19 pandemic.); *see also* Tess Owen, *People Are Panic-Buying Untraceable 'Ghost Guns' Online in the Coronavirus Pandemic*, VICE (Mar. 27 2020), https://www.vice.com/en_us/article/g5x9q3/people-are-panic-buying-untraceable-ghost-guns-online-in-the-coronavirus-pandemic.

[15] Bill Whitaker, *Ghost Guns: The Build-It-Yourself Firearms That Skirt Most Federal Gun Laws and Are Virtually Untraceable*, CBS NEWS (May 10, 2020), https://www.cbsnews.com/news/ghost-guns-untraceable-weapons-criminal-cases-60-minutes-2020-05-10/.

[16] *15-Year Old Gracie Anne Muehlberger, 14-Year-Old Dominic Blackwell ID'd as Saugus High School Shooting Victims*, CBS L.A. (Nov. 15, 2019), https://losangeles.cbslocal.com/2019/11/15/gracie-anne-muehlbergerdominic-blackwell-saugus-high-school-shooting-victims/.

[17] Ivan Pereira, *'Ghost Guns' Showing Up in School Shootings, Experts Fear Trend Will Get Worse*, ABC NEWS (Mar. 17, 2022), https://abcnews.go.com/US/ghost-guns-showing-school-shootings-experts-fear-trend/story?id=83346844.

2022, a 17-year-old student in Rockville, Maryland used a ghost gun to shoot and critically wound a classmate.[18] On February 25, 2022, a 14-year-old student in New Mexico shot and killed his classmate during a fight over the ghost gun itself.[19] And on March 4, 2022, an 18-year-old student used a ghost gun to wound two teachers at a high school in Kansas.[20]

12. Defendants are keenly aware of the damage the ghost gun epidemic is inflicting—even noting in the Final Rule the "substantial increase" in ghost gun recoveries nationwide over the last several years.[21] Just weeks ago, in fact, the Department of Justice acknowledged its "serious concerns about the proliferation of untraceable firearms easily assembled from firearm parts kits and unfinished frames and receivers."[22] And President Biden "lamented the proliferation of these firearms, as they can be purchased in parts, are assembled at home with no serial number, can't be traced, and they're as deadly as any other weapon out there."[23] Thomas Chittum, ATF's former Assistant Director of Field Operations, recently admitted that it is "challenging [for ATF] to keep [ghost guns] outta the hands of people who are not allowed to possess firearms," and that the number of crimes committed with ghost guns is "increasing significantly and rapidly."[24] Current ATF Director Steven Dettelbach recently put a finer point on it, reiterating that ghost guns "hurt people like regular guns," but are "impossible to trace."[25] ATF also states on its website that when ghost guns without serial numbers "are found at [] crime scene[s], it is usually not possible to trace th[ose] firearm[s] or determine [their] history, which hinders crime gun

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] 87 Fed. Reg. 24,656 (explaining that from 2016 to 2021, "approximately 45,240 suspected [ghost guns]" were reported to have been recovered by law enforcement agencies; 1,758 in 2016, 2,552 in 2017, 3,960 in 2018, 7,517 in 2019, 10,109 in 2020, and 19,344 in 2021).

[22] Statement of Interest of the United States of America, *City of New York v. Arm or Ally, LLC*, No. 22-cv-5525, (S.D.N.Y. July 22, 2022), ECF No. 64 at 2.

[23] *Id.* (cleaned up).

[24] Ex. 5, Bill Whitaker, Ghost Guns: The Build-It-Yourself Firearms that Skirt Most Federal Gun Laws and Are Virtually Untraceable.

[25] Andy Sheehan, *ATF Director Says Agency Will Use All Its Tools to Stop Gun Violence*, CBS NEWS (Sept. 26, 2022), https://www.cbsnews.com/pittsburgh/news/atf-director-steven-dettelbach-stopping-gun-violence/.

investigations and jeopardizes public safety."[26] Despite these obvious and predictable consequences, ATF has failed to properly apply the plain text of the GCA to slow or stop the proliferation of the 80 percent frames and receivers fueling the ghost gun epidemic.

13. Plaintiffs therefore bring this action to require ATF to faithfully interpret and enforce the dictates of the GCA. ATF's determinations that 80 percent receivers are *not* firearms are both contrary to law and arbitrary and capricious.

14. *First*, ATF's determinations, codified in the Final Rule, classification letters, and other determinations, that 80 percent or unfinished receivers and frames—which can be converted into firearms in as little as 15 minutes—are *not* firearms contravenes the plain text of the GCA. Because 80 percent receivers are **"*designed to or may be readily converted*"** into fully fireable weapons, they ***are*** firearms under the GCA. To be sold legally, then, these products must be serialized, and their purchasers must undergo background checks.

15. *Second*, the Final Rule and ATF's other determinations that 80 percent receivers and frames are not firearms are arbitrary and capricious. ATF's Final Rule has arbitrarily determined that only 80 percent receivers and frames *sold with* jig kits, templates, or similar items qualify as firearms under the GCA, while leaving the 80 percent receivers and frames themselves entirely unregulated. The industry is already taking advantage of this arbitrariness, advising consumers how they can easily develop their own "kits" even if purchasers are now required to order more than one product in separate transactions.[27]

~~The Final Rule~~16. And ATF's actions purporting to implement the Final Rule, including "Open Letters" and classification letters, have arbitrarily concluded that certain 80 percent receivers and frames are not "firearms," even though they fall within the statutory definition. The Final Rule and these particular implementing classifications and determinations thus ~~fails~~fail to consider

[26] *Can Functioning Firearms Made From Receiver Blanks Be Traced?*, ATF, https://www.atf.gov/firearms/qa/can-functioning-firearms-made-receiver-blanks-be-traced (last updated Feb. 6, 2020).

[27] *See* Ex. 2 (Polymer80 webpage advertising "Product Changes in Accordance with ATF Final Rule") (noting that consumers are free to purchase one "Assemble for Thyself" kit to use on multiple, unserialized receivers they buy separately). *See also AR-15 80% Lower Adjustable Universal Jig Kit*, Juggernaut Tactical, https://jtactical.com/products/9 (last visited Oct. 15, 2022) ("Note: Due to ATF final rule 2021R-05F . . . you cannot order an 80% Lower and jig-related products at the same time. If you have both in your cart, you will not be able to complete the checkout process.").

important aspects of the problem, such as the deadly consequences of allowing manufacturers to sell untraceable weapons to prohibited possessors.

~~16~~17. The ghost gun epidemic is real. This Court should declare that 80 percent receivers and frames are firearms that must be regulated under the GCA, and that ATF's decision to permit the unregulated sale of "80 percent" and "unfinished" receivers and frames that are *not* within kits is arbitrary and capricious.

PARTIES

~~17~~18. Plaintiff State of California, represented by and through its Attorney General, is a sovereign state of the United States of America.

~~18~~19. Plaintiff Bryan Muehlberger resides in Santa Clarita, California. His daughter, 15-year-old Gracie Anne Muehlberger, was tragically murdered in the November 2019 Saugus High School Shooting in Santa Clarita, California, when a 16-year-old high school student used an untraceable ghost gun and opened fire on Mr. Muehlberger's daughter and her fellow students—killing Gracie and Dominic Blackwell, and injuring three others.

~~19~~20. Plaintiff Frank Blackwell resides in Santa Clarita, California. His son, 14-year-old Dominic Blackwell, was tragically murdered in the November 2019 Saugus High School Shooting in Santa Clarita, California, when a 16-year-old high school student used an untraceable ghost gun and opened fire on Mr. Blackwell's son Dominic and his fellow student Gracie Anne Muehlberger, and injured three others. Mr. Blackwell has filed this action in his personal capacity only.

~~20~~21. Plaintiff Giffords Law Center is a nonprofit unincorporated association operating under section 501(c)(3) of the Internal Revenue Code. Based in San Francisco, California, Giffords Law Center also operates offices in New York and Washington, D.C. Giffords Law Center is one of the nation's leading legal and policy organizations dedicated to finding sensible solutions that will prevent further gun violence.

~~21~~22. Defendant ATF is an administrative agency within the DOJ responsible for protecting communities from violence, violent criminal organizations, the illegal use and trafficking of firearms, the illegal use and storage of explosives, acts of arson and bombings, acts of terrorism, and the illegal diversion of alcohol and tobacco products. ATF is headquartered in Washington, D.C.

~~22~~23. Defendant Steven Dettelbach is the Director of ATF. His official address is in Washington, D.C. He is being sued in his official capacity. In that capacity, Director Dettelbach has responsibility for oversight of the activities of ATF.

~~23~~24. Defendant Daniel Hoffman is the Chief of the Firearms Technology Industry Services Branch of ATF. His official address is in Martinsburg, West Virginia. He is being sued in his official capacity. In that capacity, he is responsible for classifying firearms and ammunition under federal rules and regulations.

~~24~~25. Defendant DOJ is an executive agency within the federal government of the United States.

~~25~~26. Defendant Merrick Garland is the Attorney General of the United States. His official address is in Washington, D.C. He is being sued in his official capacity. In that capacity, Attorney General Garland has the authority to prescribe rules and regulations for carrying out the provisions of the Gun Control Act. 18 U.S.C. § 926(a). The Attorney General delegated the responsibility to investigate, administer, and enforce the provisions of the Gun Control Act to ATF. 28 C.F.R. § 0.130(a)(1).

JURISDICTION AND VENUE

~~26~~27. Plaintiffs bring this action under the Administrative Procedure Act, 5 U.S.C. §§ 500 *et seq*. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because Plaintiffs' causes of action arise under the laws of the United States.

~~27~~28. Venue is proper in this District pursuant to 28 U.S.C. § 1391(e)(1) because Plaintiff State of California, and Giffords Law Center reside in this District, and a substantial portion of the events giving rise to this case occurred in this District. Defendant ATF also maintains numerous Field Offices in this District.

STATUTORY BACKGROUND: THE GUN CONTROL ACT OF 1968

~~28~~29. The GCA has been the foundation of federal firearms law for more than half a century. Its genesis began with the assassination of President John F. Kennedy, who was shot and killed with a mail-order rifle Lee Harvey Oswald purchased for $19.95 in response to a magazine advertisement. Shortly after President Kennedy's death, Senator Thomas Dodd of Connecticut introduced legislation

restricting mail-order sales of shotguns and rifles. That legislation garnered bipartisan support and was endorsed by the National Rifle Association. But the bill ultimately died in committee. The debate continued, however, gaining even greater urgency in 1968 after the assassinations of Martin Luther King Jr. and Robert F. Kennedy.

~~29~~30. Following these jolting national tragedies, on October 22, 1968, President Lyndon B. Johnson signed into law the GCA, landmark legislation that asserted significant federal control over the firearms industry and those who were legally permitted to possess guns. Gun Control Act of 1968, Pub. L. No. 90-618 (1968). The GCA's major provisions include: (i) a ban on sales of guns to, *inter alia*, people convicted of felonies, people addicted to drugs, minors, and individuals with serious mental illnesses;[28] (ii) a requirement that all firearms dealers obtain a federal firearms license; (iii) a prohibition on the importation of firearms "with no sporting purpose"; and (iv) a mandate that all firearms be serialized. 18 U.S.C. §§ 921 *et seq*.

~~30~~31. The GCA has been amended multiple times to expand federal regulation of firearms. In 1993, for instance, following another national tragedy—the attempted assassination of President Ronald Reagan, which left his Press Secretary James Brady permanently disabled—President William J. Clinton signed the Brady Handgun Violence Prevention Act, which required that federal background checks be conducted on ***all*** sales of guns by licensed dealers. Brady Handgun Violence Prevention Act, Pub. L. No. 103-159 (1993). Federal law was amended further in 1994 with the passage of the Violence Against Women Act, which prohibited gun possession by individuals subject to certain domestic violence restraining orders, and again in 1996 to prohibit those convicted of particular domestic abuse crimes from possessing a firearm. 18 U.S.C. §§ 922(g)(8), (g)(9).

~~31~~32. The GCA regulates the possession and purchase of "firearms." Under the GCA, "firearm" is broadly defined to include not only fully functional weapons that "expel [] projectile[s] by the action of an explosive," but also items that are "designed to or may readily be converted" into fully functional weapons, and the "receiver" or "frame" of such weapons. 18 U.S.C. § 921(a)(3). A

[28] Specifically, federal law restricts people from accessing firearms if they have been committed to any mental institution or adjudicated as a mental defective, *see* 18 U.S.C. § 922(d)(4), which means they have been found by a court, board, commission, or other lawful authority to be a danger to self or others, or to lack the mental capacity to contract or manage their own affairs, as a result of their mental condition or illness, *see* 27 C.F.R. § 478.11(a).

firearm frame is the part of a handgun that houses "the hammer, striker, bolt or similar component prior to initiation of the firing sequence." *See* 27 C.F.R. § 478(a)(1). And a firearm receiver is the part of a rifle or shotgun or projectile weapon other than a handgun that houses "the primary component designed to block or seal the breech prior to initiation of the firing sequence (*i.e.*, bolt, breechblock, or equivalent)." *Id*. at § 478.12(a)(2). The parts of a handgun and rifle are depicted in Images 2 and 3 below.

~~32~~33. Because receivers and frames are defined as "firearms" in the GCA, these parts must also carry serial numbers. 18 U.S.C. § 923(i). Sellers and manufacturers of receivers and frames must obtain a federal firearms license, and individuals who purchase receivers and frames from gun dealers are subject to federal background checks. 18 U.S.C. §§ 923(a), 922(t).



Image 2: Semiautomatic-Pistol[29]

[29] *Firearms Parts and Components,* UNODC (Feb. 2019), https://www.unodc.org/e4j/en/firearms/module-2/key-issues/firearms-parts-and-components.html.

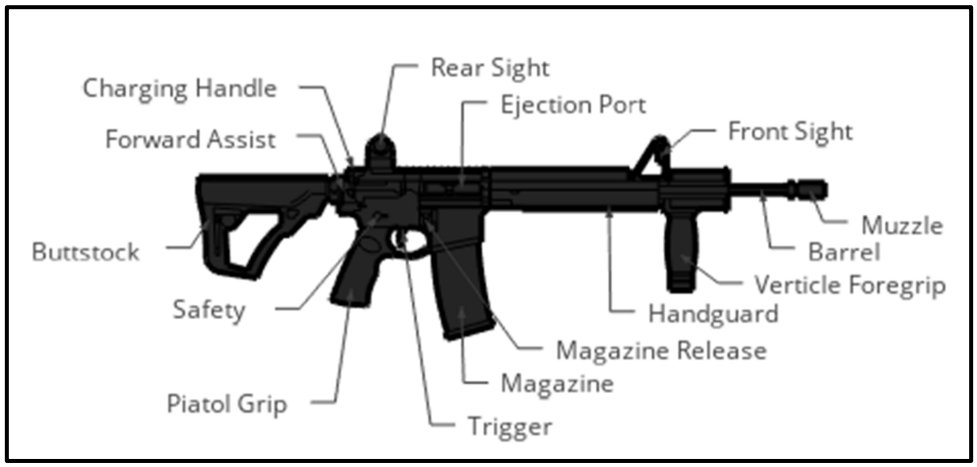


Image 3: AR-15 Rifle[30]

BACKGROUND ON ATF AND ITS ROLE IN REGULATING FIREARMS

~~33~~34. ATF was established as an independent agency in 1972 to regulate firearms, among other things.[31] According to the agency's website, ATF "recognizes the role that firearms play in violent crimes" and uses federal firearm legislation like the GCA "to target, investigate and recommend prosecution of [criminal] offenders to reduce the level of violent crime and to enhance public safety."[32]

~~34~~35. ATF, like any other agency, takes a wide variety of agency action, including standard notice-and-comment rulemaking and issuing guidance. It also issues "Classification Letters" with regard to specific products it regulates, like firearms and explosives. In these letters, ATF responds to questions that manufacturers, distributors, and others submit to ATF to adjudicate, such as whether the product they are proposing to sell is subject to the GCA's requirements, including background checks and serialization. According to the ATF Handbook, ATF encourages firearms manufacturers to "seek an ATF classification of its product prior to manufacture" in order to "avoid an unintended classification and violations of the law." *See* Ex. 3, *Do You Know How ATF Would Classify Your*

[30] *Simple AR-15 Diagram*, 3D WAREHOUSE, https://3dwarehouse.sketchup.com/model/1a2d3089-04fc-47a0-af95-fd3ff78ab966/Simple-AR15-Diagram (last visited Oct. 18, 2022).

[31] Prior to the establishment of ATF, Congress had delegated the enforcement of the GCA to the Alcohol and Tobacco Division of the Internal Revenue Service. When first formed, ATF was part of the United States Department of the Treasury, but following the 9/11 terrorist attacks, the Homeland Security Act of 2002 transferred ATF to the DOJ.

[32] *Firearms*, ATF, https://www.atf.gov/firearms (last visited Oct. 18, 2022).

Product?, *in* ATF NATIONAL FIREARM ACTS HANDBOOK, § 7.2.4 (Apr. 2009), https://www.atf.gov/firearms/docs/guide/atf-national-firearms-act-handbook-atf-p-53208/download. The ATF Handbook further explains that such Classification Letters "may generally be relied upon by their recipients as the agency's official position concerning the status of the firearms under Federal firearms laws." *Id.* at § 7.2.4.1. ATF also issues broad-ranging industry guidance in the form of questions and answers ("Q&As"), which are published on ATF's official website—guidance that on information and belief market participants refer to and/or rely on in designing, marketing, and distributing the 80 percent frames and receivers used to build ghost guns.

~~35~~36. As a law enforcement agency within the DOJ, ATF also investigates violent crimes. In that role, ATF relies significantly upon the GCA's requirement that firearms be adorned with unique, traceable serial numbers. GCA's serialization requirement requires firearm manufacturers or importers to affix weapons with unique serial numbers and other marks that identify the manufacturer or importer, as well as the make, model, and caliber of the firearm. Using this information, ATF's National Tracing Center can trace a firearm recovered at a crime scene from the manufacturer or importer through the distribution chain to the first retail purchaser.

~~36~~37. Tracing provides critical information necessary to investigate and solve crimes. ATF processes hundreds of thousands of crime gun trace requests each year from domestic and international law enforcement agencies.[33] Because there is no comprehensive electronic federal database of gun purchases, ATF relies on the records held by each dealer to connect a recovered firearm to its first retail buyer. As depicted in Image 4 below, when firearms contain serial numbers, ATF can generally determine the original Federal Firearms Licensee who sold the weapon. From that entity, using the records it is required to keep under the GCA, ATF is able to learn the name of the person who originally purchased the weapon. Identifying that initial purchaser is critical to law enforcement's ability to investigate and solve crimes committed with the recovered firearm.

[33] *ATF By the Numbers*, ATF (June 14, 2018), https://www.atf.gov/resource-center/infographics/atf-numbers.

[34] *How ATF Traces Firearms*, ATF (Aug. 17, 2018), https://www.atf.gov/resource-center/infographics/how-atf-traces-firearms.



Image 4: How ATF Traces Firearms[34]

~~37~~38. In addition to its critical role in the investigation of criminal activity, tracing also acts as a powerful deterrent—discouraging straw purchases or trafficking of firearms through secondary sales to prohibited persons.

~~38~~39. But tracing is effective *only if* law enforcement officials can trace a firearm based on its serial number. And ATF and its leaders have not required manufacturers and sellers of 80 percent frames and receivers to affix serial numbers to their products, so they do not in fact feature them. As a result, firearms dealers are not required to keep records of their sales of ghost gun frames and receivers. Thus, ATF and law enforcement are completely obstructed in their attempts to trace a ghost gun to its original source, and prohibited purchasers are more likely to purchase a ghost gun because they know that there are no records that would allow the purchase to be traced back to them.

[34] *How ATF Traces Firearms*, ATF (Aug. 17, 2018), https://www.atf.gov/resource-center/infographics/how-atf-traces-firearms.

FACTUAL BACKGROUND

A. Ghost Guns Are Designed to Circumvent Federal Firearms Requirements, Resulting in an Overwhelming Threat to Public Safety.

~~39~~40. Before a licensed gun dealer sells any firearm in the United States, a buyer must pass a background check to confirm that they are authorized to possess a firearm—namely, that they are not a minor, not disqualified because of a criminal conviction or domestic violence restraining order, and not otherwise prohibited from gun possession. 18 U.S.C. § 922(t).

~~40~~41. Licensed manufacturers or importers must also legibly identify each firearm with a unique serial number. 27 C.F.R. § 478.92. Specifically, the GCA requires that manufacturers and importers engrave, cast, stamp, or otherwise conspicuously place on the frame or receiver of each firearm an individual serial number and other identifying information, such as the model of the firearm, its caliber or gauge, and the manufacturer's name or the name of the foreign manufacturer. 27 C.F.R. § 478.92(a)(1)(i)-(ii). This serialization process ensures that every firearm—including those firearms recovered by law enforcement agencies at crime scenes—can be traced back to its manufacturer or importer and first retail purchaser. Tracing firearms helps link a recovered firearm to crime suspects in a criminal investigation by helping law enforcement officials track the movement of a firearm through the supply chain.

~~41~~42. Assault weapons, such as AR-15 rifles, were once placed under even stricter regulations under federal law, and remain subject to heightened regulation in many states. Generally, assault weapons are a class of semiautomatic firearms that share characteristics with military firearms specifically designed to kill humans quickly and efficiently. Wounds caused by assault rifles like AR-15s are more lethal than wounds caused by handguns because the bullets they fire travel at a higher velocity and impart a correspondingly higher level of energy when passing through a body. And when paired with large magazines full of ammunition, assault weapons can kill a large number of people extremely quickly. Because assault weapons are extremely dangerous and designed to kill, certain "semiautomatic assault weapons" were banned at the federal level between 1994 and 2004. While that law lapsed and there is currently no federal law prohibiting these lethal, military grade weapons, seven states—including California—prohibit the purchase, sale

and/or possession of assault weapons. California, for example, has banned over 75 assault weapon types, models, and series by name.

4243. Serialization requirements apply not only to complete, fully functional firearms, but also to "[a] firearm frame or receiver that is not a component part of a complete weapon at the time it is sold." 27 C.F.R. § 478.92(a)(2). The ATF website provides sample images of frames and receivers, along with the explanation that "A Frame or Receiver constitutes a FIREARM."

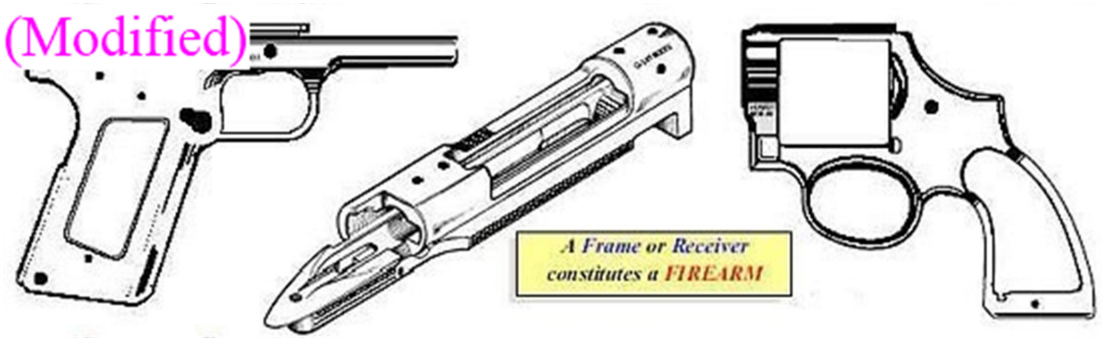


Image 5: ATF's Diagram of a Sample Frame and Receiver, Noting that Each Constitutes a Firearm[35]

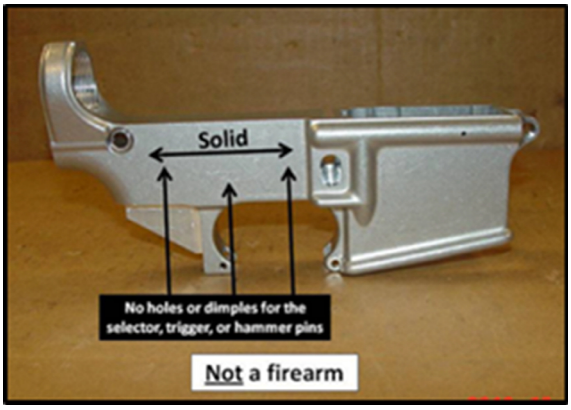
4344. Ghost guns are designed specifically to circumvent these common-sense requirements in the GCA. The 80 percent components used to build ghost guns are designed as, and may readily be converted into, lethal firearms. Today, they can be purchased by anyone with an internet connection and a credit card or other form of online payment (as well as at gun shows and from brick-and-mortar gun stores)—including people convicted of felonies or domestic violence, people addicted to drugs, minors, and individuals with serious mental illnesses, despite the fact that all of them are prohibited by federal law from purchasing and possessing firearms. As a result of ATF's decisions, no background check is required to buy 80 percent receivers and frames, no records of the buyers' identities must be kept, and no 80 percent receiver or frame has to carry federal serial numbers or other markings that clearly identify the product's manufacturer, importer, make, model, or caliber. Thus, while a person cannot purchase an assembled gun at a gun store without passing a background check to ensure that he is not a prohibited person under the GCA, a

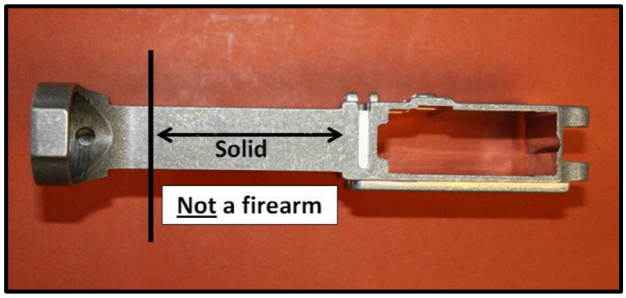
[35] *Firearms - Guides - Importation & Verification of Firearms, Ammunition - Gun Control Act Definitions – Firearm*, ATF, https://www.atf.gov/firearms/firearms-guides-importation-verification-firearms-ammunition-gun-control-act-definitions (last visited Oct. 18, 2022).

prohibited person can purchase an 80 percent frame or receiver from the very same gun store without any background check or any questions asked. With an 80 percent receiver or frame in hand, that prohibited person can then purchase all ancillary products needed to complete the firearm (like jigs and templates), either in a different contemporaneous transaction or from a different seller, and quickly and easily assemble a firearm functionally indistinguishable from the firearm he would have been be barred from buying after a background check.

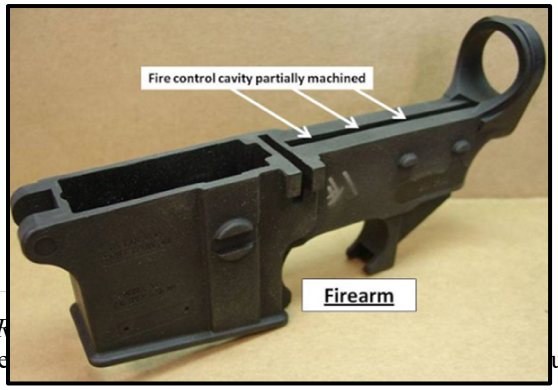
4445. As illustrated in Images 6, 7, and 8 below, which ATF itself provides, the sole difference between an 80 percent receiver and a finished receiver is hardly noticeable: an 80 percent receiver, shown in Images 6 and 7, "has a solid, un-machined fire-control cavity area with no holes or dimples for the selector, trigger, or hammer pins." ATF has concluded that the receiver does not meet the GCA definition of a "firearm."[36]

Images 6 and 7: 80% Receiver – *Not* a Firearm





The second receiver, shown in Image 8, "has a partially machined fire-control cavity and ATF has concluded that it ***does*** meet the GCA definition of a firearm."[37]



[36] *Are "80%" Or "Unfinished" R* https://www.atf.gov/firearms/qa/are unfinished%E2%80%9D-receivers-illegal.

[37] *Id.*

Image 8: Finished Receiver – *Is* a Firearm

~~45~~46. As a result of these minor differences, 80 percent receivers can easily be turned into lethal assault weapons. Using a jig—a device that guides the drilling and milling necessary to complete the receiver—a buyer can finish an 80 percent receiver "in ***under 30 minutes***" using basic household tools, such as simple drill bit, file set, and a hand drill, to drill the remaining holes.[38] As noted, one seller even boasted that using its jig could help complete an 80 percent frame or receiver in as little ***as 15 minutes***.[39] Of course, the same is true whether the jig is purchased in the same transaction as the 80 percent receiver (which would fall within the ambit of the Final Rule) or sold in a separate transaction as the purchase of the 80 percent receiver (which falls outside the Rule's ambit).

~~46~~47. Similarly, 80 percent frames, depicted in Image 9 below,[40] closely resemble finished frames, depicted in Image 10 below.[41] To complete an 80 percent frame, the buyer need only make simple cuts and drills into the frame,[42] which is a quick and easy process, especially when a jig kit is used. Even without a jig kit, common household tools—such as a simple drill bit, file set, and a hand drill, each of which can be inexpensively obtained from any hardware store—can be used to complete the firearm.

[38] *Easy Jig Gen 3 Multi-Platform – AR-15, AR-9 and .308 80% Lower Jig*, 80 PERCENT ARMS, https://www.80percentarms.com/products/easy-jig-gen-3-multi-platform-ar-15-ar-9-and-308-80-lower-jig// (last visited Oct. 11, 2022).

[39] *See supra* note 4.

[40] *Fusion Pro Line 80% 1911 Government Frame*, FUSION FIREARMS, https://fusionfirearms.com/fusion-pro-line-80-1911-government-frame-checkered-stainless (last visited Oct. 10, 2022) (stating that the operations left to be completed are "[c]utting of the slide rails," "[c]utting of the barrel seat," "[d]rilling of the hammer pin hole," and "[d]rilling of the sear pin hole").

[41] *1911 Frame, C-Class – Government Size*, FUSION FIREARMS, https://fusionfirearms.com/1911-frame-c-class-government-size (last visited Oct. 10, 2022).

[42] *80 Lower Jig*, GUN BUILDERS DEPOT, https://www.gunbuilders.com/80-lower-jig/ (last visited Oct. 12, 2022) ("We offer 80% jigs that require little to no machining experience and only require basic tools—a hand drill or drill press, a small vise, and other hand tools—to successfully cut and drill your new firearm").



(Modified)



Image 9: 80% Frame **Image 10: Finished Frame**

If the buyer wants to avoid drilling altogether, pre-programmed milling machines, called computer numerical controlled ("CNC") machines, can finish 80 percent receivers and frames at the press of a button.[43] To use a CNC machine, a buyer with no technical expertise needs only a generic computer and an 80 percent receiver or frame—which the machine's seller can ship, alone or in bulk, along with the machine itself. CNC machines, which can cost $2,500, have been used to mass produce ghost guns.[44] For example, in 2020, a resident of Washington State who had eight prior felony convictions and had been recently released from prison after serving time on a gun charge, was found with an arsenal of ghost guns, a drill press, and a CNC machine.[45] The arsenal included 17 pistols, 24 rifles, ten silencers, 20 unfinished lower receivers, and 300 pounds of ammunition.[46] And just this month, the New York Police Department arrested a Manhattan resident with a prior felony conviction preventing him from possessing firearms for using a CNC machine to finish and sell dozens of ghost guns.[47] Between October 2016 and May 2022, the man bought at least 55 ghost gun parts worth

[43] Ex. 4, EVERYTOWN FOR GUN SAFETY, UNTRACEABLE: THE RISING SPECTER OF GHOST GUNS (May 14, 2020) at 11. *See, e.g.*, *Ghost Gunner 3 Deposit*, Ghost Gunner, https://ghostgunner.net/product/ghost-gunner-3-deposit/ (last visited Oct. 10, 2022) ("Ghost Gunner 3 is a general purpose CNC mill that gives you the ability to finish 80% receivers and frames with ease, in the comfort of your own home.").

[44] *See e.g.*, *Ghost Gunner 3 Deposit*, *supra* note 43.

[45] *See Edmonds Felon Accused of Having 'Ghost Gun' Arsenal in Home,* HERALD NET (Mar. 1, 2020), https://www.heraldnet.com/news/supervised-edmonds-felon-accused-of-having-ghost-gun-arsenal/.

[46] *Id*.

[47] Jonathan Dienst, Cache of Ghost Guns Found in Ex-Con's Lower East Side Apartment: DA, NBC N.Y. (Oct. 12, 2022),

more than $7,000.[48] Two of the firearms found in his apartment were not locked or safely stored and were easily accessible to the two toddlers living in the apartment.[49] To state the obvious, the dangers associated with these arsenals are not diminished by the fact that the drill press or CNC machine was purchased in a separate transaction than the 80 percent receivers and frames.

4748. After the receiver or frame is finished, the buyer can easily complete the building process by using an assembly kit, which contains every part needed to make a fully functioning firearm, and is often sold by the same firms selling 80 percent receivers and frames. As one seller explained, "AR-15 kits . . . come with all the standard parts of an AR-15 . . . . [and] ***is essentially a complete [AR-15] that needs to be assembled*** . . . [so] building time doesn't take too long. ***Within an hour or two, you should be breaking it in at the range***."[50] In other words, within "an hour or two," an individual intent on harming others could use an 80 percent receiver to build a highly lethal, dangerous assault weapon capable of killing a large number of human beings quickly and efficiently.

2022), https://www.nbcnewyork.com/news/local/crime-and-courts/cache-of-ghost-guns-found-in-ex-cons-lower-east-side-apartment-da/3903381/.

[48] *Id*.

[49] *Id*.

[50] *Why is Purchasing an AR-15 Kit is Great for Beginners?*, THUNDER TACTICAL (May 10, 2019), https://web.archive.org/web/20200923221047/https://thundertactical.com/ar-15-kits-great-for-beginners/ (emphases added).

[51] Complete 16 .223/5.56/300BLK AR-15 80% Build Kit, 80 PERCENT ARMS, https://www.80percentarms.com/products/complete-16-223-5-56-300blk-ar-15-80-build-kit/ (last visited October 18, 2022).



Image 11: AR-15 Assembly Kit[51]

~~48~~49. Regardless of the method used to assemble the ghost gun, these unserialized weapons are hugely popular, affordable, and widely available online. Currently, there are at least 80 online retailers of ghost guns—68 percent of which entered the ghost gun market after 2014—that sell all of the parts necessary to build a ghost gun. That number is likely even larger than reported, because dealers are not required to obtain an ATF license to sell their products.

~~49~~50. Advertisements for ghost guns often highlight that 80 percent receivers and frames are unregistered and can be purchased without a background check. One seller, for example, touts that "ATF does NOT recognize an 80% complete lower as a firearm, and therefore an unfinished receiver is not subject to the same regulations as any other complete firearm . . . [t]his means no RED TAPE including: NO Registering . . . NO FFL Required . . . NO Transfer fees."[52] The same seller provides a basic guide to completing an 80% receiver and, as Image 12 demonstrates, makes a point of noting the ease with which anyone can turn an 80% receiver into a fully functioning firearm.[53]

[51] Complete 16 .223/5.56/300BLK AR-15 80% Build Kit, 80 PERCENT ARMS, https://www.80percentarms.com/products/complete-16-223-5-56-300blk-ar-15-80-build-kit/ (last visited October 18, 2022).

[52] *80% Lowers*, 80 PERCENT ARMS, https://www.80percentarms.com/80-lowers/ (last visited Oct. 11, 2022).

[53] *Id.*

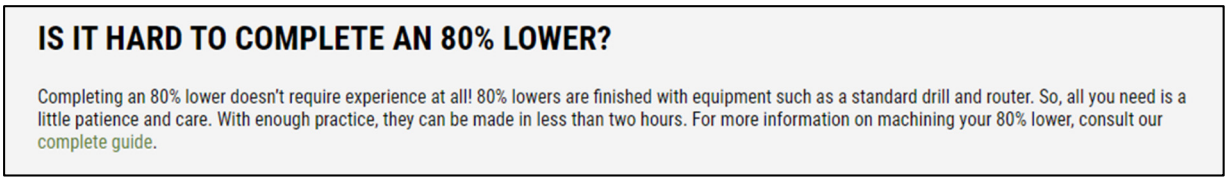


Image 12: 80 Percent Arms Advertisement[54]

~~50~~51. Because 80 percent receivers and frames can be obtained by individuals who are otherwise prohibited from purchasing firearms, and cannot be traced by law enforcement, it is unsurprising that ghost guns have become a weapon of choice for criminal organizations, gangs or groups engaging in violence, and other individuals who are intent on doing harm. For example:

a. In 2013, a Southern California man, who failed a background check because of his mental instability that caused a run-in with the police, could not legally purchase a gun built an assault rifle from a ghost gun kit that he bought online. He then used the ghost gun to kill five people during a rampage in Santa Monica.[55]

b. In 2017, a Northern California man that prosecutors described as a "deranged, paranoid killer," who was prohibited from owning a gun and under prosecution for multiple crimes, was nevertheless able to kill five people and injure at least ten with two assault-style rifles he assembled from unregulated ghost gun parts he ordered online.[56]

c. In 2020, 18 individuals in Los Angeles, California with links to a drug ring that also sold ghost guns were arrested, after law enforcement officers seized 28 pounds of methamphetamine, a quarter-pound of cocaine, crack cocaine, and 16 firearms, including several ghost guns.[57]

[54] *Id*.

[55] Robert Cavnar, *Santa Monica Shooter Built His Gun From Parts He Bought Online*, HUFFINGTON POST (June 15, 2013), https://www.huffingtonpost.com/robert-l-cavnar/santa-monica-shooter-buil_b_3447220.html (last visited Sept. 28, 2020).

[56] Ray Sanchez et al., *Gunman in Northern Rampage Was Not Supposed to Have Guns*, CNN (Nov. 15, 2017), https://www.cnn.com/2017/11/15/us/california-tehama-county-shootings/index.html; *see also* Andrew Blankstein & Corky Siemaszko, *California Mass Shooter Made His Own Rifles*, NBC NEWS (Nov. 16, 2017), https://www.nbcnews.com/news/us-news/california-mass-shooter-made-his-own-killing-machines-n821516.

[57] Richard Winton, *FBI Arrests Drug Ring that Also Sold 'Ghost Gun' AR-15s*, L.A. TIMES (Sept. 15, 2020), https://www.latimes.com/california/story/2020-09-15/fbi-arrests-drug-ring-that-also-sold-ghost-gun-ar-15s.

~~51~~52. Far right extremists have been using ghost guns to target communities of color. In 2020, the FBI seized ghost guns and arrested alleged white supremacists planning to start a race war at a Richmond, Virginia gun rights rally,[58] and a man linked to the right-wing "boogaloo" movement allegedly used a ghost gun to murder two law enforcement officers in California.[59]

~~52~~53. Other high-profile violent crimes allegedly committed with ghost guns include:

a. In Stockton, California, in 2014, perpetrators of a bank robbery used at least one ghost gun in the crime.[60]

b. In Walnut Creek, California, in 2015, a former Stanford student fatally shot his ex-girlfriend and then himself using guns he had assembled from parts he had ordered online.[61]

c. In Fresno, California, in 2017, investigators discovered that a criminal organization suspected of trafficking young women, firearms, and narcotics possessed a cache of ghost guns.[62]

d. In Washington, D.C., in the summer of 2018, a 25-year-old man was killed with a ghost gun during a shootout.[63]

e. In Santa Barbara, California, in 2019, a suspected cocaine dealer was found in possession of a ghost gun.[64]

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[58] Alain Stephens, *They Planned to Start a Race War. DIY Gun Kits Allowed Them to Build an Arsenal*, THE TRACE (Jan. 23, 2020), https://www.thetrace.org/2020/01/white-supremacists-the-base-fbi-virginia-diy-ghost-gun/.

[59] Cheri Mossburg, *A Man Allegedly Linked to the Boogaloo Movement Accused of Going to a BLM Protest with a Homemade Machine Gun to Kill Cops*, CNN (June 16, 2020), https://www.cnn.com/2020/06/16/us/steven-carrillo-california-officers-deaths-suspect-boogaloos/index.html.

[60] Joe Goldeen, Another Arrest, Reward in Bank of the West Heist, RECORD NET (Sept. 16, 2014), https://web.archive.org/web/20190411004805/https://www.recordnet.com/article/20140916/NEWS/140919728.

[61] Rick Hurd, *Former Stanford Student Built the Gun He Used to Kill Ex-girlfriend, Himself*, MERCURY NEWS (Aug. 4, 2015), https://www.mercurynews.com/2015/08/04/former-stanford-student-built-the-gun-he-used-to-kill-ex-girlfriend-himself/.

[62] Sontaya Rose, *Fresno Police Gang Crackdown Busts Prostitution Ring, Dozens Arrested*, ABC30 ACTION NEWS (Sept. 8, 2017), https://abc30.com/fresno-police-bulldog-gang-jerry-dyer-bust/2393264/.

[63] Peter Hermann & Tom Jackman, *District Seeks to Ban 'Ghost Gun' Kits as Seizures of Homemade Weapons Soar*, WASH. POST (Feb. 27, 2020), https://www.washingtonpost.com/local/public-safety/district-seeks-to-ban-ghost-gun-kits-as-seizures-of-homemade-weapons-soar/2020/02/27/d12be0da-5416-11ea-9e47-59804be1dcfb_story.html.

[64] Indy Staff, *Suspected Cocaine Dealer Arrested with a 'Ghost Gun*,' SANTA BARBARA INDEPENDENT (May 17, 2019), https://www.independent.com/2019/05/17/suspected-cocaine-dealer-arrested-with-a-ghost-gun/.

f. In Longmont, Colorado, in 2019, police recovered ghost guns in connection with a drug trafficking investigation.[65]

g. In Evesham, New Jersey, in 2019, a man wanted for violation of federal probation was found to be in possession of three ghost guns, as well as large quantities of cocaine and methamphetamine.[66]

h. In Washington, D.C., in December 2019, a man, who was previously convicted of illegally possessing an unregistered handgun two years prior, shot at two reserve police officers using a ghost gun.[67]

i. In San Francisco, California, in September 2020, a man who was previously convicted of a felony was arrested and found to be in possession of a ghost gun, ammunition, and significant quantities of methamphetamine and fentanyl.[68]

j. In Fultonville, New York, in 2020, a man manufactured and sold or transferred 19 fully assembled ghost guns, including short-barreled rifles and guns modified to be capable of fully automatic fire.[69]

k. In Fresno, California, in June 2021, federal agents searched the home of a man accused of dealing fentanyl and uncovered 13 firearms, including a ghost gun modified with an "auto sear" to be capable of fully automatic fire.[70]

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[65] Kelsey Hammon, *More Arrested Monday in Alleged Connection with Drug-Trafficking Operation*, TIMES-CALL (July 12, 2019), https://www.timescall.com/2019/07/10/more-arrested-monday-in-alleged-connection-with-drug-trafficking-operation/.

[66] Erin Vogt, '*Armed & Dangerous' Duo Found with Coke, Meth and Kids - Cops*, N.J. 101.5 (Aug. 6, 2019), https://nj1015.com/armed-dangerous-duo-found-with-coke-meth-and-kids-cops/.

[67] Peter Hermann, *Officers Who Were Fired on 'Could See the Muzzle Flashes,' Police Say*, WASH. POST (Dec. 13, 2019), https://www.washingtonpost.com/local/public-safety/officers-who-were-fired-on-could-see-the-muzzle-flashes-police-say/2019/12/13/72d645e2-1dcb-11ea-b4c1-fd0d91b60d9e_story.html.

[68] Press Release, U.S. Attorney's Office for the Northern District of California, *San Francisco Resident Sentenced to Six Years in Prison for Possession of Guns, Ammunition, and Drugs* (Sept. 20, 2022), https://www.justice.gov/usao-ndca/pr/san-francisco-resident-sentenced-six-years-prison-possession-guns-ammunition-and-drugs.

[69] Press Release, U.S. Attorney's Office for the Northern District of New York, *Montgomery County Man Sentenced to 30 Months for Unlawfully Selling "Ghost Guns"* (Sept. 2, 2021), https://www.justice.gov/usao-ndny/pr/montgomery-county-man-sentenced-30-months-unlawfully-selling-ghost-guns.

[70] Press Release, U.S. Attorney's Office for the Eastern District of California, *Federal Drug and Gun Charges Brought Against Fresno Man Accused of Dealing Fentanyl* (July 15, 2021),

l. In New York City, in July 2022, a Connecticut man with a prior felony conviction was charged with trafficking firearms. The man allegedly sold a number of ghost guns from 2019 to 2022 including to members of the Bloods street gang.[71]

https://www.justice.gov/usao-edca/pr/federal-drug-and-gun-charges-brought-against-fresno-man-accused-dealing-fentanyl.

[71] Press Release, U.S. Attorney's Office for the Southern District of New York, *Connecticut Man Charged in Manhattan for Trafficking "Ghost" Guns* (July 21, 2022), https://www.justice.gov/usao-sdny/pr/connecticut-man-charged-manhattan-trafficking-ghost-guns.



Image 13: AR-15-Style Ghost Gun Custom-Made for the Bloods Street Gang[72]

m. In San Diego, California, in April 2021, a man equipped with a ghost gun killed one person and seriously injured four others in what appeared to be a random shooting spree.[73]

n. In McAllen, Texas, in May 2021, a 73-year-old man manufactured 11 fully automatic ghost guns intending to sell them to members of a Mexican drug cartel.[74]

o. In Salem, Oregon, in March 2022, an ATF raid exposed a massive ghost gun manufacturing operation. Federal agents recovered 63 ghost guns, including rifles, pistols, and shotguns, high-capacity magazines, and a variety of other components and manufacturing equipment, in addition to hundreds of "counterfeit blue M30 oxycontin pills" laced with fentanyl and heroin.[75]

[72] *Id*.

[73] Clara Benitez, '*Ghost Gun' Used in Gaslamp Shooting*, FOX 5 NEWS (Apr. 24, 2021), https://fox5sandiego.com/news/local-news/ghost-gun-used-in-gaslamp-shooting/.

[74] Press Release, U.S. Attorney's Office for the Southern District of Texas, *Septuagenarian Charged with Manufacturing "Ghost Guns"* (June 15, 2021), https://www.justice.gov/usao-sdtx/pr/septuagenarian-charged-manufacturing-ghost-guns.

[75] Maxine Bernstein, *'Massive' Ghost Gun Manufacturing Operation Found in Oregon Raid, Feds Say*, OREGONIAN (Mar. 18, 2022), https://www.oregonlive.com/crime/2022/03/salem-man-accused-of-selling-homemade-ghost-guns-and-trafficking-fentanyl-in-exchange-for-guns-feds-say.html.

p. In Las Vegas, Nevada, in September 2022, two men engaged in a violent crime spree over multiple weeks, using a ghost gun to shoot four people across at least five crime scenes.[76]

~~53~~54. Similarly, reports indicate that ghost guns have increasingly been purchased and/or used by individuals who are prohibited from owning firearms under the GCA, including:

a. In Temple City, California, in 2018, a man who was banned from owning a gun was found with 28 firearms—11 of which were untraceable ghost guns—and 65,000 rounds of ammunition.[77]

b. In Plattsburgh, New York, in 2018, a man with a prior felony conviction brandished, during an argument, an unserialized Glock ghost gun that he purchased partially completed and finished himself.[78]

c. In Upper Darby, Pennsylvania, in 2018, a teenage exchange student bought parts online and built a ghost gun he planned to use to commit a school shooting.[79]

d. In Syracuse, New York, in 2019, a man with a prior felony conviction used a ghost gun to shoot his six-year-old nephew in the back.[80]

e. In Evansville, Indiana, in 2019, a 17-year-old teenager bought parts online to create a handmade ghost gun.[81]

[76] David Charns, *2 Accused of Shooting 4 Across Las Vegas in Violent Crime Spree with Ghost Gun*, 8NEWSNOW (Sept. 29, 2022), https://www.8newsnow.com/crime/2-accused-of-shooting-4-across-las-vegas-in-violent-crime-spree-with-ghost-gun/.

[77] Josh Haskell, *Temple City Father, Adult Daughter Found with Stockpile of Illegal Weapons, Ammunition*, KABC-TV L.A. (Feb. 21, 2018), https://abc7.com/temple-city-weapons-cache-father-daughter-guns-found-charged/3120273/.

[78] Bob Bennett, *Police: Convicted Felon Revealed Gun During Argument*, PRESS-REPUBLICAN (Apr. 16, 2018), https://www.pressrepublican.com/news/local_news/police-convicted-felon-revealed-gun-during-argument/article_690748e1-3549-5324-acef-42eb7cc2f82e.html/.

[79] Chad Pradelli, *Police: Exchange Student Built Gun from Parts Bought Online*, 6ABC ACTION NEWS (Apr. 2, 2018), https://6abc.com/police-exchange-student-built-gun-from-parts-bought-online/3292963/.

[80] Douglass Dowty, *DA: Syracuse Man Shot 6-Year-Old Nephew with Untraceable 'Ghost Gun'*, SYRACUSE.COM (Jan. 6, 2020), https://www.syracuse.com/crime/2020/01/da-syracuse-man-shot-6-year-old-nephew-with-untraceable-ghost-gun.html/.

[81] Philip Joens, *Indiana Teen Built 'Ghost Gun' from Online Parts*, COLUMBIA DAILY TRIBUNE (May 25, 2019), https://www.columbiatribune.com/news/20190525/indiana-teen-built-ghost-gun-from-online-parts/.

f. In New Orleans, Louisiana, in June 2021, a man with a prior felony pled guilty to being a felon in possession after he attempted to pass through airport security while carrying a Polymer80 ghost gun and two 30-round magazines.[82]

g. In Albany, New York, in August 2021, a man with a prior felony was sentenced to thirty months after being convicted of unlawfully possessing ghost guns.[83] Despite his prior felony, the man had over 38 firearms, an "auto sear," multiple silencers, two completed ghost rifles, and 15 unserialized finished receivers and frames.[84]

h. In Sacramento, California, in March 2022, a man prohibited from owning a firearm used an AR-15-style ghost gun to murder his three daughters and their court-mandated chaperone in a church.[85]

~~54~~55. Ghost guns are also increasingly used by illegal gun-trafficking rings. In 2015, for example, the New York State Attorney General announced a 32-count indictment of two defendants charged with illegally trafficking at least a dozen untraceable ghost guns, including AR-15s.[86] The two defendants were convicted of illegally trafficking ghost guns, and were sentenced to nine and eleven years in prison, respectively.[87] And in June 2019, the New Jersey Attorney General announced the indictment of nine men allegedly part of a criminal network that was illegally trafficking untraceable ghost guns, including assault rifles, assembled from kits purchased online.[88]

[82] Press Release, U.S. Attorney's Office for the Eastern District of Louisiana, *LaPlace Man Pleads Guilty to Being Felon in Possession of Ammunition* (June 25, 2021), https://www.justice.gov/usao-edla/pr/laplace-man-pleads-guilty-being-felon-possession-ammunition/.

[83] Press Release, U.S. Attorney's Office for the Northern District of New York, *Rensselaer County Felon Sentenced to 30 Months on Firearms Convictions* (Aug. 10, 2021), https://www.justice.gov/usao-ndny/pr/rensselaer-county-felon-sentenced-30-months-firearms-convictions.

[84] *Id*.

[85] *Man Used 'Ghost Gun' to Kill 3 Daughters in Church*, ABC10 (Mar. 6, 2022), https://www.abc10.com/article/news/local/sacramento/david-mora-church-shooting-gun/103-36f31f43-9c24-4b39-b9cf-0097910ae817.

[86] Press Release, N.Y. State Attorney General's Office, *A.G. Schneiderman Announces Thirty-Two Count Indictment Of Two Defendants Charged With Illegally Trafficking Untraceable 'Ghost Guns'* (Sept. 21, 2015), https://ag.ny.gov/press-release/2015/ag-schneiderman-announces-thirty-two-count-indictment-two-defendants-charged.

[87] Press Release, N.Y. State Attorney General's Office, *A.G. Schneiderman Announces 11 Year Jail Sentence Of Defendant Convicted For Illegally Trafficking Untraceable "Ghost Guns"* (Apr. 28, 2016), https://ag.ny.gov/press-release/2016/ag-schneiderman-announces-11-year-jail-sentence-defendant-convicted-illegally.

[88] Press Release, N.J. Attorney General's Office, Indictment in "Operation Stone Wall" Charges Nine Alleged Members of Ring that Trafficked Untraceable "Ghost Gun" Assault Rifles & Cocaine (June 5, 2019),

In July 2020, one of these men was sentenced to 14 years in prison for his role in the trafficking ring.[89] Similarly, in August 2021, a federal jury indicted four men for their part in a California drug and gun-trafficking ring.[90] Before their arrest, the men sold confidential informants a variety of drugs and ghost guns including an AR-15-style rifle, a shotgun, and handguns.[91] In June 2022, a joint state and federal investigation took down a Philadelphia-area ghost gun and drug trafficking ring that, while operative, was a one-stop shop for methamphetamine and fully automatic and fully untraceable ghost guns.[92] Law enforcement officials believe more arrests may be coming as they ascertain the full extent of this trafficking ring.[93]

~~55~~56. The increasing production and availability of ghost guns built with 80 percent components has led to a commensurate rise in violence attributable to unregistered, untraceable ghost guns. Law enforcement agencies connected at least 2,513 ghost guns to criminal activity between 2010 and April 2020. *See* Ex. 4, EVERYTOWN FOR GUN SAFETY, UNTRACEABLE: THE RISING SPECTER OF GHOST GUNS (May 14, 2020) at 17. Of that number, more than half—1,300 ghost guns—were used or sold by criminal enterprises to facilitate crimes including gun trafficking, robbery, drug trafficking, terrorism, and murder. *Id*. Ghost guns were linked to criminal cases in at least 38 states between late 2018 and May 2020. *See* Ex. 5, Bill Whitaker, *Ghost Guns: The Build-It-Yourself Firearms that Skirt Most Federal Gun Laws and Are Virtually Untraceable*, CBS NEWS 60 MINUTES (May 10, 2020),

Members of Ring that Trafficked Untraceable "Ghost Gun" Assault Rifles & Cocaine (June 5, 2019), https://www.nj.gov/oag/newsreleases19/pr20190605a.html.

[89] Julie Shaw, *Camden County Man Has Been Sentenced to 14 Years in Prison for His Role in "Ghost Guns" Trafficking Ring, Ag Says*, PHILA. INQUIRER (July 10, 2020), https://www.inquirer.com/news/new-jersey-attorney-general-operation-stone-wall-ghost-guns-christopher-stoner-sentence-20200710.html.

[90] Press Release, U.S. Attorney's Office for the Eastern District of California, *Three South Lake Tahoe Residents Charged with Drug Trafficking and Texas Man Charged with Trafficking Firearms* (Aug. 23, 2021), https://www.justice.gov/usao-edca/pr/three-south-lake-tahoe-residents-charged-drug-trafficking-and-texas-man-charged.

[91] *Id.*

[92] *'Ghost Guns' Trafficking Ring Taken Down in Bucks County*, MYCHESCO (June 12, 2022), https://www.mychesco.com/a/news/regional/ghost-guns-trafficking-ring-taken-down-in-bucks-county/.

[93] *Id.*

https://www.cbsnews.com/news/ghost-guns-untraceable-weapons-criminal-cases-60-minutes-2020-05-10/.

~~56~~57. The number of ghost guns recovered in connection with criminal activity is growing each year. In 2017, the District of Columbia recovered only three ghost guns.[94] But by 2019, law enforcement recovered 116 ghost guns in one year, before recovering another 106 ghost guns in just the first five months of 2020.[95] According to information from the District of Columbia's Department of Forensic Sciences, of the 250 ghost guns recovered in Washington D.C. between 2017 and May 29, 2020, at least 208, or 83.2%, were manufactured by a single company, Polymer80.[96]

~~57~~58. According to California law enforcement agencies, during 2020 and 2021, ghost guns "accounted for 25 to 50 percent of firearms recovered at crime scenes."[97] The "vast majority" of these weapons were wielded by individuals prohibited from owning a firearm.[98] In Los Angeles, the number of ghost guns recovered increased by 144% from 2015 to 2019.[99] In San Francisco, no ghost guns were recovered in 2015, but beginning in 2016, ghost gun recoveries began to sharply rise—increasing by 1517% from 2016 to 2019.[100]

~~58~~59. This is a national problem. In its 2022 Final Rule, ATF noted that there has been a "substantial increase" in ghost gun or privately made firearm ("PMF") recoveries nationwide over the last several years. 87 Fed. Reg. 24,656. From 2016 to 2021, "approximately 45,240 suspected PMFs" were reported to have been recovered by law enforcement agencies; 1,758 in 2016, 2,552 in 2017, 3,960 in 2018, 7,517 in 2019, 10,109 in 2020, and 19,344 in 2021. *Id.*

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[94] *AG Racine Sues Gun Manufacturer Polymer80 for Illegally Advertising and Selling Untraceable Firearms to District Consumers*, OFFICE OF THE ATT'Y GENERAL OF D.C. (June 24, 2020), https://oag.dc.gov/release/ag-racine-sues-gun-manufacturer-polymer80

[95] *Id.*

[96] *Id.*

[97] Glenn Thrush, *'Ghost Guns': Firearm Kits Bought Online Fuel Epidemic of Violence*, N.Y. TIMES (Jan. 26, 2022), https://www.nytimes.com/2021/11/14/us/ghost-guns-homemade-firearms.html.

[98] *Id.*

[99] Data released to Giffords Law Center following FOIA request.

[100] *Id.*

~~59~~60. These statistics—as indicative of exponential growth as they are—likely grossly underreport the massive scale of the problem because they rely on instances where ghost guns are recovered by law enforcement. Countless shootings and other acts of violence using ghost guns are never reported as ghost gun violence because no firearm was recovered, and ammunition from the scene of the crime cannot reveal that it was fired from a ghost gun, as opposed to a traditional, serialized weapon, since the ways that serialized and unserialized guns fire ammunition—and function in every other way—are indistinguishable.

~~60~~61. The sale of ghost guns in the United States presents an overwhelming threat to communities and people who may become victims of violence. Unregulated, ghost guns can be purchased by people with lengthy criminal records or serious mental illnesses, and other prospective shooters intent on doing harm. These ghost guns open the floodgates for such prohibited persons to obtain and use a range of firearms—from small hand-held pistols to high-powered AR-15 military-style assault weapons—in gun crimes, targeted acts of violence, and indiscriminate public mayhem. After these terrible crimes are committed and ghost guns are recovered, the inability to trace the ghost gun back to a particular buyer and seller prevents law enforcement from fully investigating the crime, allowing reckless sellers and illegal traffickers to operate with near impunity. Victims of crimes committed with ghost guns are often left without answers, and ghost gun trafficking remains undetected. Yet, year after year, the number of ghost guns continues to grow—including a surge of sales during the COVID-19 pandemic. This threat to public safety can be stopped, if only ATF—the federal agency delegated the authority to regulate firearms—reasonably applies the GCA's plain text and regulates ghost guns in the way that it regulates all other guns.

B. ATF at First Properly Concludes that Ghost Guns Fall Under the GCA, but Then Inexplicably Reverses Its Position.

~~61~~62. Beginning in the early 1980s and into the twenty-first century, ATF took the position in its Classification Letters that many unfinished receivers and frames that are identical to the 80 percent receivers and frames on the market today were "firearms" under the GCA, meaning that buyers of these unfinished frames and receivers were required to undergo background checks to determine whether they were legally entitled to own a firearm.

~~62~~63. The agency's conclusion, during this period, was based on an approach that analyzed how quickly and easily an unfinished receiver or frame could be turned into a fully functional firearm—that is, whether it could "readily be converted" to function as the firearm it was specifically designed to be. Using this "temporal" approach, ATF found that 80 percent receivers that required some machining but could be finished in under 75 minutes or in a "minimal amount of time" qualified as "firearms." *See, e.g.*:

- Ex. 6, Letter from Edward M. Owen, Jr., Chief, Firearms Technology Branch, ATF, to Henry A. Roehrich, SGW Incorporated (May 3, 1983) (classifying as a firearm a partially completed receiver that could be completed with additional milling that took roughly "**75 minutes**") (emphasis added).

- Ex. 7, Letter from Curtis H.A. Bartlett, Chief, Firearms Technology Branch, ATF, to Lane Browne, Mega Machine Shop, Inc. (Dec. 27, 2002) (classifying as a firearm each of the four "AR-15 type lower receiver samples" submitted for examination despite the fact that one of the samples had a "solid interior" because it could be finished in "**approximately 75 minutes"**) (emphasis added).

- Ex. 8, Letter from Sterling Nixon, Chief, Firearms Technology Branch, ATF, to Robert Serva, Dan Wesson Firearms (Aug. 19, 2004) (classifying as a firearm a "1911-type semiautomatic pistol frame" because the frame "can be completed **in a minimal amount of time** by a competent individual having the necessary equipment") (emphasis added).

~~63~~64. ATF's temporal analysis was also consistent with the GCA, which provides that "firearms" include not only fully functional weapons, but also receivers and frames of such weapons that are "***designed to or may readily be converted***" into functioning ones. 18 U.S.C. § 921(a)(3) (emphasis added). The speed and ease with which an 80 percent receiver or frame can be turned into

a functioning firearm speaks directly to whether or not that item was "designed to" be a functional weapon, and whether it "may readily be converted" into a functional weapon.

~~64~~65. But around 2006, ATF began changing course, without providing any justification for the switch. ATF stopped considering whether an unfinished frame or receiver is "designed to or may readily be converted" into a functioning firearm under the GCA. Instead, ATF began to mechanically analyze which machining operations still needed to be performed to determine whether a partially completed receiver or frame is a "firearm" under the GCA. Under this approach, ATF concluded that 80 percent receivers with fire-control cavity areas that are completely ***"solid and un-machined***" do not qualify as firearms under the GCA. Ex. 9, Letter from Sterling Nixon, Chief, Firearms Technology Branch, ATF to Justin Halford (Apr. 24, 2006) (classifying an "AR-15 pattern receiver" as a "firearm" because the sample did not have a solid "trigger/hammer area"). In recent years, ATF has analyzed 80 percent frames and receivers under the "machining operations" approach, with no mention of the ease or time it would take to convert the product into a functioning firearm. *See, e.g.*:

- Ex. 10, Letter from John R. Spencer, Chief, Firearms Technology Branch, ATF, to Alan Aronstein, Hi-Standard Manufacturing Company (Sept. 28, 2012) (classifying as not "firearms" a "1911-type receiver blank" and "target-pistol type receiver blank" after analyzing which "**machining operations**" had been "partially or fully completed") (emphasis added).

- Ex. 11, Letter from Earl Griffith, Chief, Firearms Technology Branch, ATF, to Doug Hughes, Kenney Enterprises, Inc. (May 17, 2013) (classifying as "not . . . a 'firearm'" a "partially completed AR-type receiver" because certain "**machining operations**" including "[m]illing out of fire-control cavity" were not yet performed) (emphasis added).

- Ex. 12, Letter from Earl Griffith, Chief, Firearms Technology Branch, ATF, to Bradley Reece, Palmetto State Defense, LLC (May 25, 2014) (classifying as "not a 'firearm'" an "AR-10 type receiver blank" because it "is completely **solid and un-machined** in the fire-control recess area") (emphasis added).

~~65~~66. ATF further memorialized the mechanical "machining operations" approach in a formal ruling (Ruling 2015-1, issued on January 2, 2015) regarding the manufacture and sale of ghost guns. *See* Ex. 13, ATF, RULING 2015-1 (Jan. 2, 2015). ATF explained that Ruling 2015-1 was issued in response to "inquiries from the public asking whether Federal Firearms Licensees (FFL), or

unlicensed machine shops, may engage in the business of completing, or assisting in the completion of, the manufacture of firearm frames or receivers *for unlicensed individuals* without being licensed as a manufacturer of firearms." *Id*. at 1 (emphasis added). In other words, ATF was asked to clarify whether sellers or gunsmiths could convert 80 percent frames or receivers into fully functioning firearms for buyers.

~~66~~67. In its Ruling, ATF clarified the obligations by again focusing on the "machining operations" performed on the 80 percent receivers. Specifically, Ruling 2015-1 explains that "when a person ***performs machining or other manufacturing process*** on [an unfinished frame or receiver] to make a firearm 'frame or receiver' . . . that person has performed a manufacturing operation." *Id*. at 3 (emphasis added). Similarly, when any person "make[s] available its machinery . . . to individuals who bring in raw materials, blanks, unfinished frames or receivers . . . for the purpose of creating operable firearms," that person is also "engaged in the business" of manufacturing firearms. *Id*. at 5. In both situations, where "machining" occurs, the seller "must be licensed as a manufacturer under the Gun Control Act of 1968 (GCA); identify (mark) any such firearm; and maintain required manufacturer's records." *Id*. at 1.

~~67~~68. In explaining the purported reasoning behind the Ruling, ATF stated that allowing a seller or gunsmith to perform "manufacturing processes on a frame or receiver" would result in firearms being "manufactured without any markings or serialization" which would "run[] contrary to a major purpose of the GCA [by] eliminat[ing] the ability of law enforcement to trace firearms used in a crime, or stolen or lost firearms." *Id*. at 5. But the machining test permits consumers to acquire partially complete receivers and frames without serial numbers, and use tools (in some cases, common household tools) to quickly and easily turn them into usable firearms. The result of ATF's mechanical "machining operations" test is the proliferation of unserialized, untraceable weapons, and ATF has doubled down on the "machining operations" approach in its explanation of the Final Rule.[101]

[101] ATF clarified in the Final Rule that "ATF has maintained and continues to maintain that a partially complete frame or receiver alone is not a frame or receiver if it still requires performance of certain ***machining operations*** (e.g., milling out the fire control cavity of an AR-15 billet or blank, or indexing for that operation) because it may not readily be completed to house or hold the applicable fire control components." 87 Fed. Reg. 24,668 (emphasis added).

~~68~~69. Through its continued use of the mechanical "machining operations" approach, ATF has issued a series of Classification Letters to Polymer80, beginning in 2015, that have gravely endangered the lives of Americans and severely inhibited law enforcement's ability to fight crime.

1. ATF's Classification Letters Regarding Polymer80 Have Permitted and Encouraged the Proliferation of Ghost Guns.

a. ATF's Ghost Gun Classification Letters Issued to Polymer80.

~~69~~70. Polymer80 is a leading ghost gun component manufacturer that markets and sells 80 percent receivers and frames and other ghost gun components to individuals online and via firearms dealers. Between 2015 and 2017, ATF issued a series of Classification Letters to Polymer80, analyzing Polymer80's products under the mechanical "machining" approach. Exs. 14, 15, 16. *First*, in early 2015, ATF issued a Classification Letter that classified Polymer80's AR-15-type receiver as "NOT a firearm receiver, or a firearm" (the "February 2015 Polymer80 Letter"). *See* Ex. 14, Letter from Michael R. Curtis, Acting Chief, Firearms Technology Industry Services Branch, ATF, to Jason Davis, Davis & Associates. ATF reasoned that because the receiver had a "**solid fire control cavity area**, and was cast in a homogenous manner" using "a single shot of molten material," it was not a firearm. *Id*. at 2 (emphasis added).

~~70~~71. ATF's February 2015 Polymer80 Letter did not deny that Polymer80's proposed product was designed to and may be readily converted into a fully functional weapon. Nor did the letter consider how quickly a DIY gunsmith could convert the product into a functional firearm using standard household tools, such as a simple drill bit, file set, and a hand drill, or a CNC machine. Notably, at least one retailer of the Polymer80 receiver advertised that the specific AR-15 type firearm at issue in the February 2015 Polymer80 Letter was "a fully automated system" that required "NO expensive jig kits and parts."[102] A 2018 product review of the receiver states, "Great product

[102] *See Polymer80 G150 Phoenix2 80% Receiver Lower Receiver Kit AR-15 Polymer*, MIDWAY USA, https://www.midwayusa.com/product/1092916295905 (last visited Oct. 18, 2022). As of October 19, 2022, the product has been discontinued.

for first time build . . . [e]asy to cut."[103] Another review from 2016 states, "Easy milling process, and very durable. Have had zero issues with this product."[104]

~~71~~72. In November 2015, ATF issued a second Classification Letter to Polymer80 (the "November 2015 Polymer80 Letter"), this time regarding two separate 80 percent components: first, an 80 percent receiver for an AR-10 assault rifle which Polymer80 identified as a "WARRHOGG BLANK" and, second, a Glock-type "CG" or "CG9" Blank handgun frame. *See* Ex. 15, Letter from Michael R. Curtis, Chief, Firearms Technology Industry Services Branch, ATF, to Jason Davis, Davis & Associates (Nov. 2, 2015). ATF concluded that both items were not firearms under the GCA because certain "machining operations" or "design features" were "not yet present or completed" on the items. *Id*. at 3-4. In particular, ATF's Classification Letter pointed out that the AR-10 receiver lacked (1) complete removal of material from the fire-control cavity area, (2) machining or indexing of selector-lever hole, (3) machining or indexing of trigger slot, (4) machining or indexing of trigger-pin hole, or (5) machining or indexing of hammer-pin hole. *Id*. at 3. ATF's letter noted that the GC9 Blank lacked a (1) machined or indexed trigger-pin hole, (2) machined or indexed locking block-pin hole, (3) front or rear frame rails, or a (4) machined or formed barrel seat. *Id*. at 4.

~~72~~73. ATF's November 2015 Polymer80 Letter did not deny that Polymer80's proposed products were designed to function as and could be readily converted into fully functional weapons. Nor did the letter consider how quickly a DIY gunsmith could convert the products into functional firearms. According to a 2016 review of the AR-10 type receiver at issue in the 2015 Polymer80 Letter on an online retailer's website, "This was easy . . . *I was done in about an hour and another hour to install the* [remaining parts]. Really is that easy."[105]

~~73~~74. On January 18, 2017, ATF issued a third Classification Letter to Polymer80 (the "2017 Polymer80 Letter"), regarding its Glock-type "PF940C Blank," ruling that it was "not

[103] *Id.* (Review by Six_shooter).

[104] *Id.* (Review by Brian).

[105] *See Polymer80 Warrhogg 80% Receiver Kit LR-308 Polymer*, MIDWAY USA, https://www.midwayusa.com/product/1092916305283 (last visited Oct. 19, 2022) (Review by Bill the plumber) (emphasis added). As of October 19, 2022, the product has been discontinued.

sufficiently complete to be classified as the frame or receiver of a firearm and thus is not a 'firearm' as defined in the GCA." *See* Ex. 16, Letter from Michael R. Curtis, Chief, Firearms Technology Industry Services Branch, ATF to Jason Davis, Davis & Associates (Jan. 18, 2017), at 3. The letter explained that the item was not "sufficiently complete" because the following "machining operations or design features were not yet present or completed": (1) trigger-pin hole machined or indexed, (2) trigger mechanism housing pin machined or indexed, (3) locking block-pin hole machined or indexed, (4) devoid of front or rear frame rails, (5) barrel seat machined or formed, and (6) incapable of accepting Glock locking-block. *Id*. at 2.

~~74~~75. ATF's 2017 Polymer80 Letter did not deny that Polymer80's proposed product was designed to function as and could be readily converted into a fully functional weapon. Nor did the letter consider how quickly a DIY gunsmith could convert the product into a functional firearm. Notably, at least one retailer of the Glock-type receiver at issue in ATF's 2017 Polymer80 Letter stated in its marketing for the 80 percent receiver that "***It's amazing to think in just 10-15 minutes you can have a fully functioning Glock that you made at home.***"[106]

~~75~~76. The Classification Letters ATF issued to Polymer80 are just a few of the Classification Letters that ATF has issued to manufacturers of 80 percent receivers and frames. Indeed, a number of other manufacturers of 80 percent receivers and frames—including KE Arms,[107] 80 Percent Arms,[108] Palmetto State Defense,[109] and TPM Arms[110]—have similarly received Classification Letters that ~~permit~~permitted those manufacturers to sell ghost guns outside the strictures of the GCA. Individually and even more so collectively, these pre-Final Rule

[106] *See Glock 80% Compact Polymer Pistol Frame Kit*, FANDWGUNS, http://fandwguns.gunsamerica.com/ItemDetails/762360860/Glock-80-Compact-Polymer-Pistol-Frame-Kit.htm (last visited Oct. 18, 2022) (emphasis added).

[107] *See* KE ARMS, http://www.kearms.com/ (last visited Oct. 18, 2022); Ex. 11 Letter from Earl Griffith, Chief of Firearms Technology Branch, ATF, to Doug Hughes, Kenney Enterprises, Inc. (May 17, 2013), at 2.

[108] *See* 80 PERCENT ARMS, https://www.80percentarms.com/ (last visited Oct. 18, 2022); Ex. 17, Letter from Earl Griffith, Chief of Firearms Technology Branch, ATF, to Tilden Smith, 80 Percent Arms (July 15, 2013), at 2.

[109] *See* PALMETTO STATE DEFENSE, https://www.psdmfg.com/ (last visited Oct. 18, 2022); Ex. 12, Letter from Earl Griffith, Chief of Firearms Technology Branch, ATF, to Bradley Reece, Palmetto State Defense, LLC (May 25, 2014), at 2.

[110] *See* TPM ARMS, https://tpmarms.com/ (last visited Oct. 18, 2022); Ex. 18, Letter from Earl Griffith, Chief of Firearms Technology Branch, ATF to David Trease, President, TPM Arms, LLC (Nov. 22, 2013), at 3.

Classification Letters ~~have~~ resulted in exponential explosion of the size of the ghost gun market, which accelerated during the COVID-19 pandemic, when demand for ghost guns surged.[111]

~~76~~77. As a result of these Classification Letters,[112] Polymer80 has become a prominent manufacturer of 80 percent receivers and frames and other ghost gun parts. It has been advertising, offering, and selling firearms on its website, www.Polymer80.com, and through a network of firearms dealers that consumers can access through the company's website. Moreover, ATF's pre-Final Rule Classification Letters to Polymer80 ~~have been~~became a linchpin for the industry. Indeed, individuals and businesses alike have relied on ATF's Classification Letters, such as the Polymer80 Classification Letters, when purchasing, selling, and/or designing 80 percent lower receivers and frames in the United States.[113]

b. Polymer80 Is a Major Contributor to the Ghost Gun Epidemic.

~~77~~78. Polymer80 contributes significantly to ghost gun violence nationwide. On information and belief, Polymer80's products constitute an outsized percentage of the ghost guns sold nationwide. Indeed, almost 90% of the ghost guns recovered by the Los Angeles Police Department last year were Polymer80's products.[114] The New York Police Department also reported that 90% of recovered ghost guns are made with parts from Polymer90.[115] Similarly, since 2017, Polymer80's products constitute over 83% of the ghost guns recovered by law enforcement officers in the District of Columbia.[116] On information and belief, Polymer80 ghost guns have become so

[111] *See supra* note 13.

[112] ~~ATF has refused to say clearly whether its pre-Final Rule Classification Letters remain in effect. However, recent guidance, ATF statements, and actions taken by Polymer80 and others in the industry suggest these letters still remain in effect. *See infra* ¶¶ 101-09.~~ [Footnote withdrawn]

[113] *See, e.g.*, Complaint at ¶ 41, *Cal. Rifle & Pistol Ass'n v. ATF*, No. 1:14-cv-01211 (E.D. Cal. July 21, 2014), where the California Rifle & Pistol Association (an organization comprised of individuals and businesses who, among other things, own, manufacture, and/or sell 80 percent receivers), stated that it has "reli[ed] . . . on the ATF's prior opinions, interpretations, and **letter rulings** regarding what constitutes a 'firearm' 'frame' or 'receiver.'" (emphasis added).

[114] Joshua Eaton, *Polymer80's Name Has Become Synonymous with 'Ghost Guns.' Now It's in the Crosshairs*, NBC NEWS (Mar. 27, 2022), https://www.nbcnews.com/news/us-news/polymer80-ghost-guns-kits-crime-rcna20864.

[115] Ali Bauman, *New York City Hall Targets Manufacturer Polymer80 in Fight against Ghost Guns*, CBS NEWS (May 11, 2022), https://www.cbsnews.com/newyork/news/polymer80-ghost-guns-new-york-city/.

[116] *See* Complaint at ¶ 1, *District of Columbia v. Polymer80, Inc.*, Case No. 2020-CA-002878-B (D.C. Super. June 24, 2020) (available at https://oag.dc.gov/sites/default/files/2020-06/Polymer80-Complaint.pdf (last visited Oct. 18, 2022)).

ubiquitous that law enforcement in some jurisdictions colloquially refer to all DIY handguns they recover as "Polys," even if a recovered gun was assembled with parts bought from a different seller.

~~78~~79. On information and belief, Polymer80 customers and other ghost gun consumers can purchase large quantities of ghost guns and resell them for a profit. For example, a five-time convicted felon from Easthampton, Massachusetts pled guilty to building AR-15 rifles from parts bought online and then sold in New Hampshire, making a $300 profit on each military-style rifle.[117] Another convicted felon, in Salem, Massachusetts, sold completed firearms for three times what he spent to purchase the parts, spending only 30 minutes to build each gun.[118]

~~79~~80. Polymer80 advertises and sells a variety of weapons on its website that can be made into fully operational firearms with minimal effort—including AR-15 rifles and multiple types of handguns. And until recently, Polymer80 sold 80 percent receivers in "Buy, Build, Shoot" kits, which contained "all the necessary components" to turn the 80 percent frames into fully functional firearms.[119] The handgun kits contained 80 percent frames as well as a "complete slide assembly, complete frame parts kit, 10 round magazine and a pistol case."[120] Many "buy, build, shoot" kits sold out during the first half of 2020, as manufacturers experienced rapidly increased ghost gun sales during the COVID-19 pandemic.[121]

~~80~~81. Like other ghost gun retailers, Polymer80 has permitted bulk purchases of its products and kits without restriction—including without any proof of identification, age, or eligibility to possess firearms as would be confirmed by undergoing a background check. Polymer80 has made no effort to confirm that its customers are even alive—claiming it sells firearms to a "growing market of

[117] Dan Crowley, *Easthampton Man Pleads Guilty to Illegal Possession of Firearms He Assembled, Intended to Sell*, DAILY HAMPSHIRE GAZETTE (Aug. 13, 2016) https://www.gazettenet.com/Easthampton-man-pleads-guilty-in-NH-federal-court-to-illegal-possession-of-a-firearm-as-a-convicted-felon-4061253 (last visited Sept. 16, 2020).

[118] Complaint, *United States v. Echeverria, et al.*, 19-MJ-06527, 11–12 (D. Mass. Oct. 28, 2019); *see also supra* Ex. 4, EVERYTOWN FOR GUN SAFETY, UNTRACEABLE: THE RISING SPECTER OF GHOST GUNS (May 14, 2020), at 11.

[119] *P80® Buy Build Shoot™ kit PF940v2™ - 10 Round Magazine*, POLYMER 80 (Aug. 12, 2020), https://web.archive.org/web/20200811213619/https://www.polymer80.com/pistol-frames/buy-build-shoot-kits/p80-bbs-kit-pf940v2-2343 (last visited Oct. 18, 2022).

[120] *Id.*

[121] *See* Letter from Jerrold Nadler, Chairman, U.S. House Judiciary Committee, to Regina Lombardo, Acting Director, *supra* note 14.

individuals who 'value their Fourth Amendment rights' to privacy."[122] In spring 2020, in fact, Plaintiff Bryan Muehlberger was able to order a ghost gun from Polymer80 in his deceased daughter's name, only four months after Gracie Anne Muehlberger was murdered in the Saugus High School ghost gun shooting. Despite the fact that the name he provided as the purchaser—Gracie's—did not match the name on the credit card used—Mr. Muehlberger's own—in mere minutes, he purchased a ghost gun kit on Polymer80.com for $650. Even if Gracie Anne Muehlberger were still alive, she would have been underage and prohibited from purchasing a firearm under the GCA. Polymer80's other "80 percent" and "unfinished" products are equally accessible.

~~81~~82. In December 2020, ATF executed a search warrant at Polymer80's headquarters. The search warrant relied in part on the allegations described above from Plaintiffs' original Complaint concerning Plaintiff Bryan Muehlberger's purchase of a Polymer80 ghost gun kit in his daughter's name.[123] In addition to that example, the search warrant identified at least seven other instances where Polymer80 shipped its products "to individuals within the United States who are prohibited from receiving or possessing firearms."[124] The search warrant also described Polymer80's social media marketing techniques—including marketing their products specifically to individuals who might not pass a background check.[125] Specifically, the search warrant pointed to an April 17, 2020 Instagram post where an individual featured in a video posted by Polymer80 explains that with Polymer80's products, "you don't have to worry about a background check."[126] An account with the name "@ellipsis415" responded to the video, remarking that it was strange to market products to

[122] 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.

[123] Polymer80 Search Warrant Affidavit at ¶ 87(h), available at https://s.wsj.net/public/resources/documents/ghostraid-121420-warrant.pdf (last visited Oct. 5, 2022) (explaining that "a Buy Build Shoot Kit was shipped by POLYMER80 in May 2020 to "Gracie Muehlberger;" at an address in Santa Clarita, CA" and that Gracie "was a 15 year old girl who was killed in the shooting at Saugus High School on November 14, 2019 by a minor who was using a ghost gun.").

[124] *Id.* at ¶¶ 87(a)-(g).

[125] *Id*. at ¶¶ 89-90.

[126] *Id*. at ¶ 89.

people who would not pass a background check. In response, Polymer80 expressed that any background check is an "infringement."[127]

2. ATF Provides Public Guidance Related to Ghost Guns.

~~82~~83. Also in 2015, ATF decided to explain its official agency position regarding ghost guns on a subsection of the Questions and Answers section of its website, entitled "Receiver Blanks" (hereinafter, the "Ghost Gun Guidance").[128] In or around June or September of 2015, the Ghost Gun Guidance was posted as a subsection on ATF's Question and Answers page.[129] *See* Ex. 19, pages from Archive.org showing the first archived version of the Ghost Gun Guidance page in September 2015. The Ghost Gun Guidance page states that it contains "answers to some common questions specific to receivers known as 80% receivers or unfinished receivers" and contains eight links to questions and answers. The questions and answers do not appear to have been materially changed since their initial debut on the website, nor have they changed after the Final Rule was made effective. The same eight questions and answers remain on the site today, each containing a note of the date that the answer was "last reviewed." The eight answers have last been reviewed by ATF between February 6, 2020 and June 24, 2020. *See* Ex. 20, *Receiver Blanks,* ATF, https://www.atf.gov/qa-category/receiver-blanks (last visited Oct. 10, 2022).

~~83~~84. The Ghost Gun Guidance contains legally determinative information regarding when ATF considers a receiver to have become a "firearm" for purposes of the GCA. For example, one of the listed questions asks: "Are '80%' or 'unfinished receivers' illegal?" ATF's answer states:

> Receiver blanks that do not meet the definition of a "firearm" are not subject to regulation under the Gun Control Act (GCA). ATF has long held that items such as receiver blanks, "castings" or "machined bodies" in which the fire-control cavity area is completely solid and un-machined have not reached the "stage of manufacture" which would result in the classification of a firearm according to the GCA.

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[127] *Id.*

[128] The Ghost Gun Guidance page is still live on ATF's website. *See Receiver Blanks*, ATF, https://www.atf.gov/qa-category/receiver-blanks (last visited Oct. 14, 2022).

[129] According to a website that catalogs webpage archives, the WayBackMachine (Archive.org), the earliest known Ghost Gun Guidance page was captured in September 2015. *See* Ex. 19, Pages from Archive.org showing the first archived version of the Ghost Gun Guidance page in September 2015. The screen capture contains the date that the website section was "last reviewed" by ATF and states it was last reviewed in June 2015. (Note that this was the first time that the "automated crawlers" became aware of the site and archived it, although the page may have been published some time earlier before detected by the archiving system).

See Ex. 20. The same response then includes three photos as "examples" of a finished receiver that meets the definition of a firearm and unfinished receivers that ATF has said do not. *See* Images 6-8, *supra* Section A.

~~84~~85. A further question asks: "Can functioning firearms made from receiver blanks be traced?" ATF responds that "it is usually not possible to trace the firearm or determine its history" when it was made from an 80 percent receiver. ATF then acknowledges that the inability to trace these firearms "hinders crime gun investigations and jeopardizes public safety."

~~85~~86. Similarly, another question reads: "Have firearms made from unmarked receiver blanks been recovered after being used in a crime?" In response, ATF again acknowledges that these untraceable ghost guns continue to be "recovered after shooting incidents, from gang members, and from prohibited people after they have been used to commit crimes."

~~86~~87. This Ghost Gun Guidance constitutes final agency action. Until recently, the Ghost Gun Guidance had presented ATF's definitive guidance to the industry and the public regarding 80 percent receivers, and was the primary authority that the public and manufacturers could rely on to understand ATF's position on the legality of 80 percent receivers.

~~87~~88. Moreover, ATF's Ghost Gun Guidance reflects actual agency policy, consistent with the Polymer80 Classification Letters, that "bind[s] private parties without undergoing the rulemaking process."[130] ATF's determination regarding 80 percent receivers, as described on its Q&A page, has directly resulted in a massive proliferation in both 80 percent receivers *and* in gun violence perpetrated with ghost guns, as described herein. Ghost gun manufacturers and dealers have cited the Ghost Gun Guidance as authority on their websites—for example, a dealer called "80% Lowers" quoted the Ghost Gun Guidance on its website, arguing that "80% lowers are not considered firearms" because ghost guns are "not capable of meeting the definition of a firearm under federal law."[131]

[130] *See* Memorandum from Att'y Gen. Jefferson B. Sessions III to ATF (Nov. 16, 2017), at 1, https://www.justice.gov/opa/press-release/file/1012271/download (explaining that agencies may no longer "issue guidance documents" that "bind private parties without undergoing the rulemaking process").

[131] *Are 80% Lowers Legal*, 80% LOWERS (June 11, 2020), https://web.archive.org/web/20220117095107/https:/www.80-lower.com/80-lower-blog/are-80-lowers-legal/ (last visited Sept. 28, 2020) (note that the website has been saved by the WayBackMachine and is an archived version).

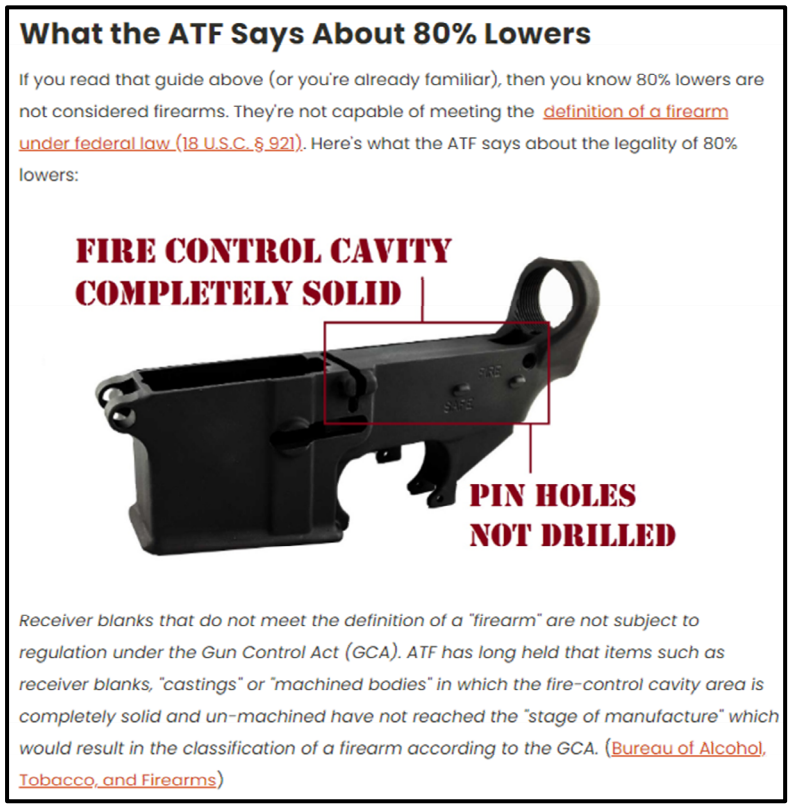


Image 14: 80% Lowers' Guidance on the Legality of Ghost Guns, Quoting ATF's Ghost Gun Guidance

C. ATF Issues the Final Rule but Carves Out Exceptions that Swallow the Rule.

~~88~~89. In 2021, after devastating mass shootings in Boulder, Colorado and Atlanta, Georgia, and amid increasing calls for actions to address gun violence across the United States, the White House announced that it intended to "issue a proposed rule to help stop the proliferation of 'ghost guns.'"[132] That proposed rule was published on May 21, 2021.[133]

~~89~~90. Eleven months later, on April 11, 2022, ATF issued its Final Rule, which was titled "Definition of 'Frame or Receiver' and Identification of Firearms." ATF stated that the goals of the Rule were to "provide a more comprehensive definition of 'frame' or 'receiver' so that these terms more accurately reflect how most modern-day firearms are produced and function," 87 Fed. Reg. 24,661, and to "reduce unserialized 'ghost guns.'"[134] Under the Final Rule, the term "frame" means

[132] *FACT SHEET: Biden-Harris Administration Announces Initial Actions To Address The Gun Violence Public Health Epidemic*, WHITE HOUSE (Apr. 7, 2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/07/fact-sheet-biden-harris-administration-announces-initial-actions-to-address-the-gun-violence-public-health-epidemic/.

[133] *See* Definition of "Frame or Receiver" and Identification of Firearms, 86 Fed. Reg. 27,720 (May 21, 2021).

[134] *FINAL RULE 2021R-05F-Definition of "Frame or Receiver" And Identification Of Firearms*, ATF, https://www.atf.gov/firearms/docs/guide/overview-final-rule-2021r-05f-definition-%E2%80%9Cframe-or-receiver%E2

"the part of a handgun, or variants thereof, that provides housing or a structure for the primary energized component designed to hold back the hammer, striker, bolt, or similar component prior to initiation of the firing sequence." 27 C.F.R. 478.12(a)(1). And a "receiver" means the "part of a rifle, shotgun, or projectile weapon other than a handgun, or variants thereof, that provides housing or a structure for the primary component designed to block or seal the breech prior to initiation of the firing sequence." *Id*. at (a)(2). Additionally, the Final Rule purports to address 80 percent component frames and receivers by stating that the definition of "frame" or "receiver" includes a partially complete frame or receiver, *including a parts kit*, "that is designed to or may readily be completed, assembled, restored, or otherwise converted to function as a frame or receiver." *See* 27 C.F.R. § 478.12(c).

~~90~~91. But the Final Rule also reiterates portions of ATF's legally flawed pre-Rule interpretation of the GCA. While the Final Rule provides that un-machined 80 percent frames and receivers ***sold with*** a jig, parts kit, and template are firearms subject to the serialization and background check requirements of the GCA,[135] in the next breath, it states that 80 percent receivers and frames are ***not firearms*** under the GCA if they are sold ***without*** a template, jig, or other items and materials.[136] So long as a customer buys an 80 percent frame or receiver in a separate transaction from the jig and tool kit and the manufacturer's instructions are separately provided, a customer (or prohibited person under the GCA) can purchase the 80 percent receiver without complying with the GCA's serialization, background check, and recordkeeping requirements.

~~91~~92. That result severely undermines the effectiveness of the GCA. It is also wrong as a matter of law. Even without a kit, an 80 percent receiver sold alone *can be* "readily converted" into a firearm. Indeed, that is its sole purpose. Until ATF begins classifying all 80 percent frames and

https://www.atf.gov/firearms/docs/guide/overview-final-rule-2021r-05f-definition-%E2%80%9Cframe-or-receiver%E2%80%9D-and-identification/download (last visited Oct. 4, 2022).

[135] *See* 27 C.F.R. § 478.12(c) Example 1 to Paragraph (c) (deeming the following a firearm: "A frame or receiver parts kit containing a partially complete or disassembled billet or blank of a frame or receiver that is sold, distributed, or possessed with a compatible jig or template is a frame or receiver.").

[136] *Id*. at Example 4 to Paragraph (c) (deeming *not* a firearm: "A billet or blank of an AR–15 variant receiver without critical interior areas having been indexed, machined, or formed that is not sold, distributed, or possessed with instructions, jigs, templates, equipment, or tools such that it may readily be completed is not a receiver").

receivers as firearms, it will continue to defy the GCA's plain language and leave mile-wide loopholes in the GCA's regulatory regime, resulting in a Final Rule that is arbitrary and capricious.

~~92~~93. When ghost gun manufacturers sought to enjoin the Final Rule in court, Defendants confirmed what the text of the Rule suggests: that gun manufacturers can still sell un-machined 80 percent components so long as they do not bundle those components with jigs or tool kits in the same package. To date, ghost gun manufacturers have brought at least three lawsuits against the Final Rule. In each, ATF has taken the position that ghost gun manufacturers would suffer no harm as a result of the Final Rule because they can still sell 80 percent frames and receivers without serialization, background check, and reporting requirements—just as they could prior to the Final Rule—so long as jigs and tool kits are sold separately.

~~93~~94. For example, on May 9, 2022, Division 80, a ghost gun manufacturer, brought suit in the Southern District of Texas seeking a nationwide preliminary injunction to suspend the Final Rule. *See Div. 80 v. Garland*, No. 3:22-cv-00148 (S.D. Tex. May. 9, 2022). At oral argument on the motion for preliminary injunction, ATF confirmed that it was not "going to be a problem" under the Final Rule for ghost gun manufactures to "sell[] receiver blanks . . . without a [] license." *See* Ex. 1, Transcript of Hearing on Plaintiff's Motion for Preliminary Injunction at 16:2-5, *Div. 80*, No. 3-22-CV-00148 (S.D. Tex. Aug. 9, 2022), ECF No. 68. ATF even clarified that selling both jigs and 80 percent frames and receivers, so long as they are purchased in different transactions, does not violate the Final Rule. *See id*. at 30:17-24; 31:13-16.

~~94~~95. In two other cases, ATF took similar positions, acknowledging that the Final Rule does not have the sweeping effect promised. On July 5, 2022, ghost gun manufacturers, some state attorneys general, and ghost gun consumers filed suit in the District of North Dakota seeking to enjoin the Final Rule from taking effect as scheduled. *See Morehouse Enters., LLC v. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, No. 3:22-cv-00116-PDW-ARS (D.N.D. July 5, 2022). In their opposition to the plaintiffs' motion for preliminary injunction, Defendants argued that ATF was not "regulating the individual tools, jigs, templates, or instructions sold with firearm parts kits" and that, "for the most part[,] ATF does not regulate individual firearm parts." *See* Defendants' Brief in Opposition to Plaintiffs' Motion for Preliminary and/or Permanent Injunction, *Morehouse Enters.*,

No. 3:22-cv-00116-PDW-ARS (D.N.D. Aug. 23, 2022), ECF No. 43. Similarly, in *VanDerStok v. Garland*, ghost gun consumers joined by a ghost gun manufacturer and a nonprofit organization brought suit in the Northern District of Texas seeking to enjoin the Final Rule. *VanDerStok, et al. v. Garland, et al.*, No. 4:22-cv-00691-O (N.D. Tex. Aug. 11, 2022). In opposing injunctive relief, Defendants confirmed that it "remains true that 'partially complete frame or receiver alone is not a frame or receiver if it still requires performance of certain machining operations'" and that the "only relevant policy change concerns ATF's consideration of jigs, templates, instructions, equipment, or tools that are sold alongside a partially-complete frame or receiver to determine whether that clearly-identifiable component has reached the 'critical stage of manufacture.'" *See* Defendants' Brief in Opposition to Plaintiffs' Motion for Preliminary Injunction, *VanDerStok*, No. 4:22-cv-00691-O (N.D. Tex. Aug. 29, 2022), ECF No. 41 (citing 87 Fed. Reg. 24,668). In other words, ATF has determined that the one-stop-shop purchase of single-transaction *kits* are firearms that are subject to the GCA, but that unmachined 80 percent frames and receivers ~~brought~~bought separately *are not*, no matter how easy it is to convert these parts into a fully fireable weapon.

~~95~~96. As a result, the ghost gun industry now recognizes the obvious: the Final Rule contains a massive loophole. Ghost gun manufactures, like Polymer80 and 80 Percent Arms, continue to sell 80 percent frames at will, and such products remain unregulated; they are still sold without background checks, serial numbers and recordkeeping.[137]

~~96~~97. Polymer80, for example, continues to sell unfinished receivers and frames. *See P80 80% Pistol Blanks*, POLYMER80, https://www.polymer80.com/pistols/pistolblanks (last visited Oct. 18, 2022), attached as Ex. 21 ("P80 80% Pistol Blanks"); *AR Receiver Blanks*, POLYMER80, https://www.polymer80.com/arreceivers (last visited Oct. 18, 2022), attached as Ex. 22 ("P80 AR Receiver Blanks"). Polymer80 has issued a press release noting that its unserialized 80 percent products are in full compliance with the Final Rule. Ex. 2, Polymer80 Product Changes in Accordance with ATF Final Rule. Moreover, while Polymer80 says that its "kits" that include

[137] Ex. 2, Polymer80 Product Changes in Accordance with ATF Final Rule; *see also ATF Final Ruling 2021R-05F | Complete Breakdown*, 80 PERCENT ARMS (Aug. 25, 2022), https://www.80percentarms.com/blog/atf-final-ruling-2021r05f-complete-breakdown/ ("Lowers are still shipping: you can keep placing new orders for lower receivers.").

receivers/frames plus jigs and other tools will be serialized, it will continue to sell "their complete line of pistols," other "parts and accessories," ***and*** "their AFT 'Assemble for Thyself' kit, which includes all the necessary components to build a complete firearm, no drilling required." *Id.* Consumers are free to purchase one "Assemble for Thyself" kit to use on multiple, unserialized receivers they buy separately.

~~97~~98. Similarly, Juggernaut Tactical still stocks both 80 percent lower receivers as well as jigs and tool kits on its website and sells them free and clear of the regulations that govern firearm transactions—so long as a buyer purchases each in a separate transaction. Juggernaut Tactical's policy is reflected in a warning at the bottom of its webpage stating that a receiver and jig cannot be purchased in the same transaction:

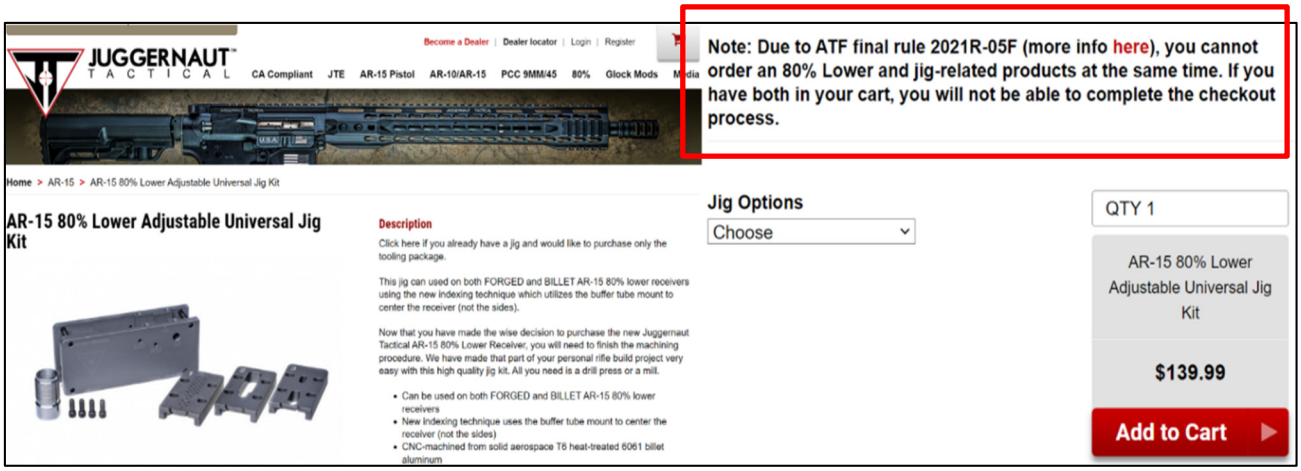


Image 15: Juggernaut Tactical's Universal Jig Kit for Sale (emphasis added)

~~98~~99. Ghost gun customers and commentators also quickly recognized the narrow scope of the Final Rule. In response to a YouTube video posted by a gun-rights lawyer describing the effects of the Final Rule, commenters recognized that so long as 80 percent components are sold separately from jigs and tool kits, they can continue using ghost guns without being subjected to the serialization, background check, or recordkeeping requirements of the GCA.[138] For these commenters, the Final Rule is little more than a minor inconvenience:

[138] *What The ATF's New Rules On Unfinished Frames And Receivers Really Means To You...*, YOUTUBE (Aug. 31, 2022), https://www.youtube.com/watch?v=XCZPSmx4hzw.

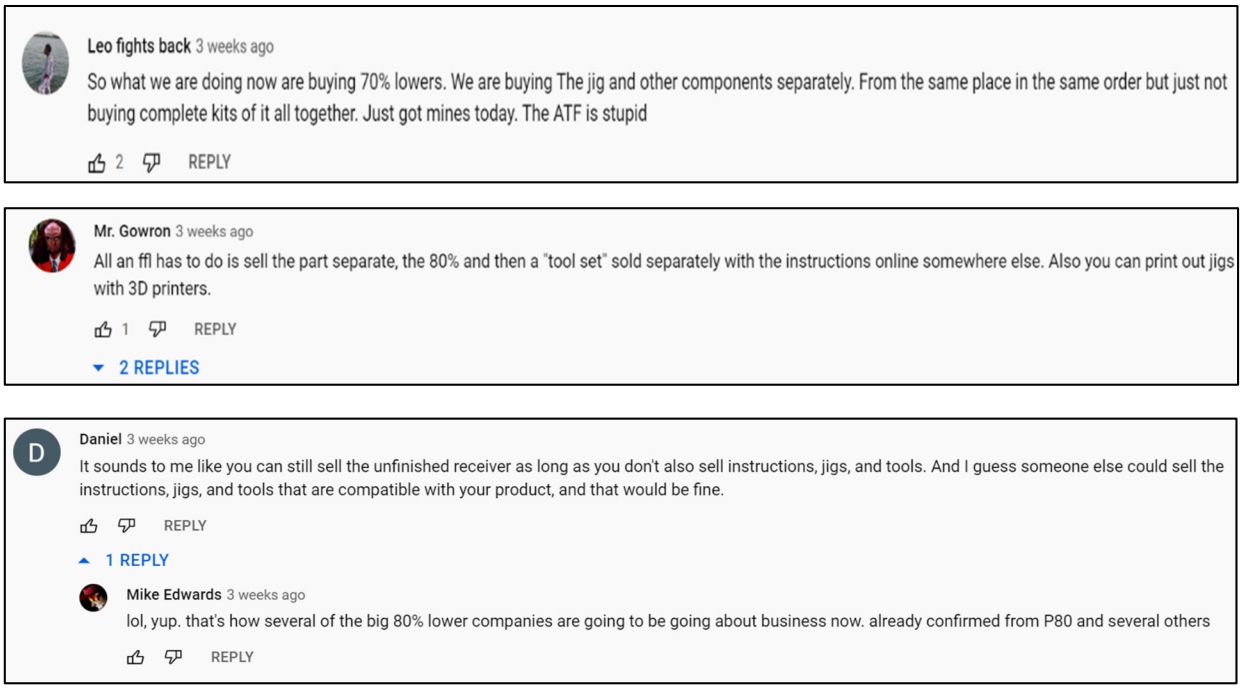


Image 16: YouTube Comments Identifying Flaws in the Final Rule

~~99~~100. ATF ~~has said nothing to repudiate the ghost gun industry's interpretation of the Final Rule. Instead, ATF~~ confirmed the Final Rule's limited scope in a new section of its website dedicated to providing guidance documents and examples of firearm frames and receivers.[139] In a slide-deck detailing the effect of the Final Rule, ATF observed that un-machined 80 percent receivers not sold, distributed, or possessed with instructions, jigs, templates, equipment, or tools are *not* firearm receivers under the GCA.[140]

[139] *Definition Of "Frame Or Receiver" And Identification Of Firearms*, ATF (Oct. 17, 2022), https://www.atf.gov/rules-and-regulations/definition-frame-or-receiver.

[140] *FINAL RULE 2021R-05F-Definition Of "Frame Or Receiver" And Identification Of Firearms*, ATF, https://www.atf.gov/firearms/docs/guide/overview-final-rule-2021r-05f-definition-%E2%80%9Cframe-or-receiver%E2%80%9D-and-identification/download (last visited Oct. 4, 2022).



Image 17: ATF Slides Explaining that, Under the Final Rule, Un-Machined 80 Percent Frames and Receivers Are Not Firearms Unless Sold in the Same Transaction as a Jig, Template, or Tool Kit

~~100~~101. Similarly, in an August, 26, 2022 YouTube video produced by ATF presenting those same slides, it confusingly stated that "not all items previously marketed as 80 percent firearms or 80 percent kits will be regulated under the final rule."[141] Again, ATF confirmed that an un-machined receiver billet or blank "not sold, distributed, or possessed with instructions, jigs, templates, equipment, or tools that make it readily [] completed, is not a receiver."[142]

[141] FINAL RULE 2021R-05F-Definition Of "Frame Or Receiver" And Identification Of Firearms, YOUTUBE, at 9:33 (Aug. 26, 2022), https://www.youtube.com/watch?v=q7XWhcx_Q3A.

[142] *Id.*

~~101~~102. In a "training aid" intended to clarify the definition of a "frame" or "receiver" under the Final Rule, ATF took the same position. In response to the question "Which "80 [percent] receiver" kits are regulated under the final rule?," ATF answered that an 80 percent receiver kit did not include an "unmachined body."[143] Only when "sold, distributed, or possessed with a compatible jig or template" will such 80 percent components be considered firearms.[144]

~~102~~103. On September 27, 2022, ATF issued an "Open Letter" "to all federal firearms licensees," for the purpose of "further assist[ing] the firearms industry and the public in understanding whether a 'partially complete, disassembled, or nonfunctional' receiver of an AR-15/M-16 variant weapon" is a "frame or receiver" or "firearm" under the Final Rule. Ex. 23, ATF, *Open Letter to All Federal Firearms Licensees – Impact of Final Rule 2021-05F on Partially Complete AR-15/M-16 Type Receivers*, at 1 (Sept. 27, 2022) (hereinafter "September 2022 Open Letter"). In the September 2022 Open Letter, ATF confirmed that 80 percent AR-type receivers—identical to ones sold before the Final Rule was issued—are *not* firearms if they lack "indexing or machining of any kind . . . in the area of the fire control cavity" and are "not sold, distributed, or marketed with any associated templates, jigs, molds, equipment, tools, instructions, or guides, such as within a receiver parts kit." *Id.* at 3 (emphasis in original). The 2022 Open Letter clarifies ATF's understanding and interpretation of the Final Rule—including that the pre-Rule machining analysis still stands and the only pertinent change with respect to 80 percent frames and receivers is whether or not those items are "sold, distributed, or marketed" with accessories like a jig or template.

~~103~~104. Moreover, ATF's September 2022 Open Letter included the *exact same images* of un-machined 80 percent receivers used in the pre-Rule Ghost Gun Guidance to underscore that these receivers are *not* firearms.[145] Indeed, the Ghost Gun Guidance, *supra* Section B.2~~.~~, which was originally posted to ATF's website in 2015, remains accessible today. *See Receiver Blanks,*

[143] ATF, *Training Aid For The Definition Of Frame Or Receiver & Identification Of Firearms: Overview Of Final Rule 2021R-05F* at 7 (2022), https://www.atf.gov/firearms/docs/guide/new-training-aid-overview-final-rule-2021r-05f-definition-frame-or-receiver-and/download.

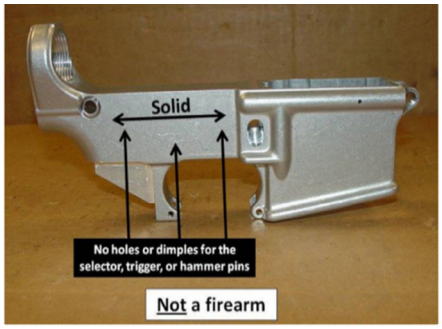
[144] *Id*. at 4-5.

[145] *Compare* Images 6 and 7, *supra with* Image 18, *infra*.

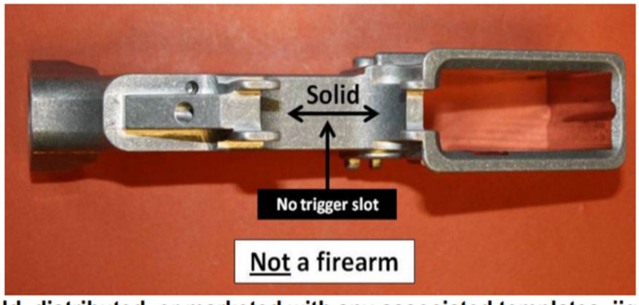
ATF.gov, https://www.atf.gov/qa-category/receiver-blanks (last visited Oct. 10, 2022) (also attached as Ex. 20).



Firearm



(if not sold, distributed, or marketed with any associated templates, jigs, molds, equipment, tools, instructions, or guides)



(if not sold, distributed, or marketed with any associated templates, jigs, molds, equipment, tools, instructions, or guides)

Image 18: Using the Same Photos from the 2015 Ghost Gun Guidance Documents, ATF Confirms in Its Open Letter that 80 Percent Receivers Sold Without Templates, Jigs, Molds, Equipment, Tools, Instructions, or Guides Are Not Considered Firearms

~~104~~105. The September 2022 Open Letter clarifies ATF's view that classifications of AR-15 or M-16 unfinished receiver variants have not changed—as long as those items are sold without "associated templates, jigs, molds, equipment, tools, instructions, or guides." Ex. 23 at 3. ~~Thus, the 2022 Open Letter implies as a consequence that at least some previously issued Classification Letters of 80 percent receivers sold without templates, jigs, or other accessories may still be in effect.~~

~~105. As for the specific Classification Letters issued to Polymer80 in February 2015, November 2015, and January 2017, identified *supra*, at least one – if not all – of the Letters has likely survived the Final Rule. The February 2015 Polymer80 Letter specifically classified Polymer80's AR-15 type receiver as "NOT a firearm receiver, or a firearm." Ex. 14. So, too, in the 2022 Open Letter, ATF confirmed that 80 percent AR-15 type receivers are *still* not considered "firearms" for~~

purposes of the GCA. Ex. 23 at 3. Moreover, in Defendants' Brief in Opposition to Plaintiffs' Motion for Preliminary Injunction in *VanDerStok*, Defendants clarified that the Final Rule "expressly grandfathers its prior classifications of the frame or receiver of existing split frame or receiver firearm designs, ***including AR-15*** and M-16 variants." Defendants' Brief in Opposition to Plaintiffs' Motion for Preliminary Injunction at 28-29, *VanDerStok*, No. 4:22-cv-00691-O (N.D. Tex. Aug. 29, 2022), ECF No. 41 (emphasis added).

106. ATF has not specifically opined on the Polymer80 products in the November 2015 and January 2017 Classification Letters (Exs. 15 and 16), which collectively classified Polymer80's AR-10 type receiver and two different types of Glock-type frames as not "firearms" under the GCA.[146] But those classifications may still be in effect. The Final Rule explains that classification decisions regarding "partially complete, disassembled, or nonfunctional frames" are not grandfathered in where those classifications were made "without [consideration of] any of the other parts, jigs, templates, or materials that are sold or distributed with the item or kit." 87 Fed. Reg. at 24,673. This language from the Final Rule taken together with the 2022 Open Letter suggests that Classification Letters for other unfinished frames and receivers, where there is no accompanying jig, template, or other materials, might still be in effect. And, in addition to its AR-15 style receiver, Polymer80 continues to sell Glock-style frames on its website, *see* Ex. 21, supporting the view that under the Final Rule, Polymer80's November 2015 and January 2017 Classification Letters continue to stand. Defendants' statements in litigation have also suggested that the Classification Letters issued to Polymer80 in February 2015, November 2015, and January 2017 likely remain in effect. Specifically, in *Division 80*, Defendants stated that "most classifications were grandfathered."[147] Defendants also provided the plaintiffs in that case with assurance that they could continue to "sell[] receiver blanks . . . without a [] license."[148]

[146] The November 2015 Polymer80 Letter classified two separate 80 percent components: an 80 percent receiver for an AR-10 assault rifle which Polymer80 identified as a "WARRHOGG BLANK" and a Glock-type "CG" or "CG9" Blank handgun frame. The 2017 Polymer80 Letter classified Polymer80's Glock-type "PF940C Blank." *Supra* ¶¶ 70-72.

[147] *See* Ex. 1, Transcript of Hearing on Plaintiff's Motion for Preliminary Injunction at 48:3-11, *Div. 80 v. Garland*, No. 3-22-CV-00148 (S.D. Tex. Aug. 9, 2022) ("As to the classification letters, Your Honor, most classifications were grandfathered."); *see also* 87 Fed. Reg. 24,653.

[148] *Id.* at 16:2-5.

106. On December 27, 2022, ATF issued another Open Letter to all federal firearms licensees "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" is a firearm under the Final Rule. Ex. 25, ATF, *Open Letter to All Federal Firearms Licensees – Impact of Final Rule 2021-05F on Partially Complete Polymer80, Lone Wolf, and Similar Semiautomatic Pistol Frames*, at 1 (Dec. 27, 2022) (hereinafter "December 2022 Open Letter"). In the December 2022 Open Letter, ATF concluded that certain partially complete striker-fired or "Glock-type" pistol frames that have "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," are firearms under the GCA, even when sold "without any associated templates, jigs, molds, equipment, tools, instructions, guides, or marketing materials." *Id.* at 1, 9. ATF's determination in the December 2022 Open Letter applies to such frames sold by two ghost gun manufacturers—Polymer80 and Lone Wolf—and to "similar" frames. *Id.* at 1. The December 2022 Open Letter on its face does ***not*** apply to multiple other categories of widely used, equally dangerous, and materially indistinguishable weapons, including partially complete hammer-fired pistol frames. On information and belief, ATF has not applied the analysis of the December 2022 Open Letter to those types of materially indistinguishable firearms.

107. Since the Final Rule took effect on August 24, 2022, ATF has issued several Classification Letters responding to requests for classification pursuant to the Final Rule. In each of these letters, which ATF issued between October 2022 and March 2023, ATF was asked to determine whether a particular product was a firearm under the GCA and Final Rule. In 23 of these letters (the "Post-Final Rule Classification Letters"), ATF concluded that a partially complete or 80 percent frame or receiver was not a firearm under the GCA and Final Rule. ATF analyzed the product at issue under the "machining operations" approach, which considers only what machining must still be performed on a submitted 80 percent receiver or frame to render a particular product capable of firing a projectile. Like ATF's pre-Final Rule Classification Letters, these letters make no mention of the

ease with which a person could convert the product into a fully functional weapon or the time it would take.

108. On October 6, 2022, ATF issued a Classification Letter (FATD Case No. 313696) determining that a submitted partially complete AR receiver is not a firearm under the GCA, as implemented by the Final Rule.

109. On October 6, 2022, ATF issued a Classification Letter (FATD Case No. 315916) determining that a submitted partially complete AR-type receiver is not a firearm under the GCA, as implemented by the Final Rule.

110. On October 6, 2022, ATF issued a Classification Letter (FATD Case No. 316248) determining that a submitted partially complete AR10-type receiver is not a firearm under the GCA, as implemented by the Final Rule.

111. On October 6, 2022, ATF issued a Classification Letter (FATD Case No. 317036) determining that a submitted partially complete AR-type receiver is not a firearm under the GCA, as implemented by the Final Rule.

112. On October 6, 2022, ATF issued a Classification Letter (FATD Case No. 318400) determining that a submitted partially complete AR10-type receiver is not a firearm under the GCA, as implemented by the Final Rule.

113. On October 6, 2022, ATF issued a Classification Letter (FATD Case No. 320538) determining that a submitted partially complete AR-type receiver is not a firearm under the GCA, as implemented by the Final Rule.

114. On October 6, 2022, ATF issued a Classification Letter (FATD Case No. 320540) determining that a submitted partially complete AR-type receiver is not a firearm under the GCA, as implemented by the Final Rule.

115. On October 6, 2022, ATF issued a Classification Letter (FATD Case No. 320542) determining that a submitted partially complete AR-type receiver is not a firearm under the GCA, as implemented by the Final Rule.

116. On October 6, 2022, ATF issued a Classification Letter (FATD Case No. 321010) determining that a submitted partially complete AR-type receiver with upper assembly, buttstock, and grip is not a firearm under the GCA, as implemented by the Final Rule.

117. On October 6, 2022, ATF issued a Classification Letter (FATD Case No. 321122) determining that a submitted partially complete AR-type receiver is not a firearm under the GCA, as implemented by the Final Rule.

118. On October 6, 2022, ATF issued a Classification Letter (FATD Case No. 321194) determining that a submitted partially complete AR-type receiver is not a firearm under the GCA, as implemented by the Final Rule.

119. On October 6, 2022, ATF issued a Classification Letter (FATD Case No. 321196) determining that a submitted partially complete AR-type receiver is not a firearm under the GCA, as implemented by the Final Rule.

120. On October 6, 2022, ATF issued a Classification Letter (FATD Case No. 321402) determining that a submitted partially complete AR-type receiver is not a firearm under the GCA, as implemented by the Final Rule.

121. On October 6, 2022, ATF issued a Classification Letter (FATD Case No. 321404) determining that a submitted partially complete AR-type receiver is not a firearm under the GCA, as implemented by the Final Rule.

122. On October 6, 2022, ATF issued a Classification Letter (FATD Case No. 321406) determining that a submitted partially complete AR-type receiver is not a firearm under the GCA, as implemented by the Final Rule.

123. On October 6, 2022, ATF issued a Classification Letter (FATD Case No. 321420) determining that a submitted partially complete AR-type receiver is not a firearm under the GCA, as implemented by the Final Rule.

124. On October 21, 2022, ATF issued a Classification Letter (FATD Case No. 322526) determining that a submitted partially complete AR-type receiver is not a firearm under the GCA, as implemented by the Final Rule.

125. On October 21, 2022, ATF issued a Classification Letter (FATD Case No. 322528) determining that a submitted partially complete AR-type receiver is not a firearm under the GCA, as implemented by the Final Rule.

126. On October 21, 2022, ATF issued a Classification Letter (FATD Case No. 322530) determining that a submitted partially complete AR-type receiver is not a firearm under the GCA, as implemented by the Final Rule.

127. On October 21, 2022, ATF issued a Classification Letter (FATD Case No. 322532) determining that a submitted partially complete AR-type receiver is not a firearm under the GCA, as implemented by the Final Rule.

128. On November 8, 2022, ATF issued a Classification Letter (FATD Case No. 322692) determining that a submitted partially complete AR-type receiver is not a firearm under the GCA, as implemented by the Final Rule.

129. On December 30, 2022, ATF issued a Classification Letter (FATD Case No. 324620) determining that a submitted partially complete AR-type receiver is not a firearm under the GCA, as implemented by the Final Rule.

130. On January 9, 2023, ATF issued a Classification Letter (FATD Case No. 324648) determining that a submitted partially complete AR-type receiver is not a firearm under the GCA, as implemented by the Final Rule.

131. On March 21, 2023, ATF also issued a "Public Safety Advisory" that purported to explain ATF's "investigative priorities" regarding "possible willful efforts to violate the requirements of the Gun Control Act (GCA) as implemented by the Final Rule." Ex. 26, ATF, *Public Safety Advisory to All Federal Firearms Licensees, And Firearm Parts, Components, and Accessories Manufacturers and Distributors* (March 21, 2023) ("March 2023 Public Safety Advisory"). The March 2023 Public Safety Advisory acknowledges that "some suppliers of partially complete frames or receivers appear to be structuring their transactions or coordinating with other persons or entities to sell, distribute, or otherwise make available, in ostensibly independent or separate transactions, the compatible templates, jigs, molds, equipment, tools, instructions, or guides needed to complete the partially complete frames or receivers to the same individuals who purchase a partially completed

frame or receiver from the original supplier." *Id.* The March 2023 Public Safety Advisory states: "When a supplier . . . intentionally fails to comply with the GCA's requirements, that may constitute a willful violation of the GCA." *Id.* The March 2023 Public Safety Advisory thus effectively concedes that products like those ATF has *not* deemed to be firearms are "firearms" under the GCA.

~~107~~132. Upon information and belief, ATF ~~has also provided and/or~~ will continue to provide ghost gun dealers with classification letters confirming that they may still make and sell 80 percent receivers and frames without abiding by the GCA's serial number, background check, and recordkeeping requirements. In an interview with VICE News, one ghost gun dealer, Tactical Machining, stated that ATF "approved in writing" the company's ability to continue to sell unserialized 80 percent receivers so long as they did not sell the receivers bundled with jigs or tool kits.[~~149~~146]

~~108~~133. Email discussions with ATF's counsel also confirm this understanding. When asked whether 80 percent receivers could continue to be sold without serialization, background check, or recordkeeping requirements, Defendants referred Plaintiffs to a portion of the Final Rule stating that: "Companies that sell or distribute only unfinished frame or receiver billets or blanks, and not any associated jigs, templates, or similar tools to the same customer are not required to be licensed or to mark those articles with identifying information."[~~150~~147]

~~109~~134. Defendants also directed Plaintiffs to two examples provided in the Final Rule—Example 1 and Example 4—illustrating circumstances under which the sale of a receiver blank would not be considered a frame or receiver.[~~151~~148] Both examples underscore that receiver blanks and jig and tool kits sold separately are not regulated as firearms under the GCA. Example 1 states that a partially complete frame or receiver "sold, distributed, or possessed with a compatible jig or template" is a frame or receiver and thus, a firearm. 87 Fed. Reg. 24,739. Example 4 states that

[~~149~~146] Keegan Hamilton, *A Simple Plastic Tool Is Undermining New Ghost Gun Rules*, VICE (Sept. 12, 2022), https://www.vice.com/en/article/epzb3a/ghost-gun-jig-tool ("'As we've been instructed, and our understanding here in Orlando, the unfinished receiver, without a jig, instructions, or template is NOT A FIREARM,' Jusick's letter from the ATF said. 'The combination of such an item (unfinished receiver) with other parts (Excluding the Jig) does not reach the standard for Readily Convertible. In other words, your manufacture and selling of unfinished receivers with a lower parts kit does not meet the firearm threshold.'").

[~~150~~147] *See* Ex. 24, Email from Martin M. Tomlinson to Liesel N. Schapira (Sept. 3, 2022) (citing 87 Fed. Reg. 24,700).

[~~151~~148] *Id.*

an un-machined receiver that is "not sold, distributed, or possessed with instructions, jigs, templates, equipment, or tools" is *not* a receiver and thus, *not a firearm*. *Id*. But ghost gun consumers can easily and quickly machine receiver blanks so long as they have access to instructions for doing so and can purchase jigs, tool kits or CNC machines. ~~*Supra* ¶¶ 94-98.~~ Indeed, that is the *entire point* of purchasing these products. Unless and until ATF closes the Final Rule's loophole, unfinished ghost guns will continue to quickly proliferate and cause harm in communities across the country.

~~D~~E. ATF's Ghost Gun Actions Have Harmed and Will Continue to Harm Plaintiffs.

~~110~~135. ATF's final agency ~~action, ~~actions—including the Final Rule, ~~has~~the September 2022 Open Letter, the December 2022 Open Letter (to the extent it excludes categories of weapons that are firearms under the GCA), and the Post-Final Rule Classification Letters—have allowed and ~~continues~~continue to allow ghost guns to proliferate, causing concrete injury to each of the named Plaintiffs.

~~111~~136. **State of California**. Plaintiff State of California is an epicenter of the growing ghost gun epidemic. As of 2020, the state was home to at least 18 of the then-estimated 80 current online ghost gun retailers—the most of any state—and more than double the number of retailers than existed in the State just six years before.[~~152~~149] As one of the states most affected by the proliferation of ghost guns, California has suffered, and will continue to suffer, concrete harm caused by ATF, including (1) significantly increased costs of policing and law enforcement; (2) interference with California's ability to enforce its laws with respect to firearms and firearm-related crime; and (3) harm to its quasi-sovereign interest in protecting the security and well-being of its residents.

~~112~~137. The proliferation of ghost guns increases the difficulty and costs of policing and law enforcement in California. The California Department of Justice's Bureau of Firearms, which conducts enforcement investigations to confiscate firearms from prohibited persons, has documented an exponential increase in ghost gun seizures: from 2015 to 2021, California's annual ghost gun seizures have increased from 26 to 12,388, representing a staggering 47,546% increase.[~~153~~150] This statistical evidence is consistent with the experience of California Bureau of

[~~152~~149] *See* Ex. 4 EVERYTOWN FOR GUN SAFETY, UNTRACEABLE: THE RISING SPECTER OF GHOST GUNS (May 14, 2020) at 12-14 (Everytown [for Gun Safety] undertook an investigation to better understand the size of the online marketplace for ghost guns and "uncovered a sample of 80 sellers offering unfinished frames and/or receivers for ghost guns." According to Everytown's analysis of business registrations from these online sellers in 2020, approximately 18 were located in California.).

[~~153~~150] *See* Press Release, Attorney General of California, *Attorney General Bonta Announces Arrest Of Suspect With Illegal Ghost Guns, Machine Gun Kits, And Assault Weapons* (Oct. 7, 2022), https://oag.ca.gov/news/press-releases/attorney-general-bonta-announces-arrest-suspect-illegal-ghost-guns-machine-gun.

Firearms agents in the field.[154]151 As a result, in recent years, Bureau of Firearms staff have devoted an increasing amount of time providing training to law enforcement personnel statewide on ghost guns. Given the insufficient federal restrictions on 80 percent receivers and frames, this training has focused particularly on the circumstances in which the ghost guns assembled from such parts are noncompliant with state law.

113138. The California Department of Justice's Bureau of Investigation, which provides statewide expert investigative services combating multi-jurisdictional criminal organizations, has also noted a rise in ghost gun seizures in recent years. In a 2022 multiagency operation, state and local law enforcement officers seized 58 firearms—including 12 ghost guns and ten assault weapons—in addition to cash and a variety of drugs in Central California.[155]152 That operation resulted in a total of 88 felony arrests of individuals suspected of robberies, at least two homicides, and a host of other violent crimes.[156]153 Similarly, in an ATF operation in April 2022, seven Los Angeles-area men were arrested and indicted for narcotics and ghost gun trafficking.[157]154 With the methamphetamine and cocaine seized was a cache of more than 30 firearms, most of which were ghost guns and seven of which were automatic.[158]155 These are just two examples of the many investigations in which state and federal law enforcement officers have seized ghost guns from persons involved in criminal activity in California.

114139. In addition, the transportation of untraceable firearms from other states into California makes California's local detective work solving crimes more difficult and amplifies the risk of violent attacks using these weapons. Law enforcement agencies in California have reported recovering ghost guns at dramatically increased rates—including, most notably, a 7,225% increase

[154]151 *See State of Washington v. U.S. Dep't of State*, 2:20-cv-00111-RAJ (W.D. Wash. 2020), ECF No. 56 [Declaration of Blake Graham] ¶ 30.

[155]152 Press Release, Attorney General of California, *Attorney General Bonta Announces 90 Arrests as Part of a Multiagency Gang Takedown In Stockton* (June 2, 2022), https://oag.ca.gov/news/press-releases/attorney-general-bonta-announces-90-arrests-part-multiagency-gang-takedown.

[156]153 *Id.*

[157]154 Richard Winton, *Seven Men Charged With Gun Trafficking in Inland Empire, 'Ghost Guns' Among 30 Firearms Seized*, L.A. TIMES (Apr. 13, 2022), https://www.latimes.com/california/story/2022-04-13/gun-trafficking-charges-inland-empire-ghost-guns-seized.

[158]155 *Id.*

from 2015 to 2021 in Santa Clara County, home of San Jose.[159]156 In January 2020, the ATF special agent in charge of the Los Angeles Field Division stated that 41% of the Los Angeles Field Division's cases have involved ghost guns.[160]157 He further noted that "[i]t concerns me as a law enforcement official that someone with rudimentary or basic skills can mass produce untraceable firearms in the comfort of their own home."[161]158 California's law enforcement officers have good reason to be concerned. In June 2019, a gunman used two self-assembled AR-15-style assault rifles to ambush Officer Tara O'Sullivan and her training officer, killing O'Sullivan.[162]159 Two months later, a convicted felon—who would have been unable to legally purchase a firearm—used a semiautomatic ghost rifle to shoot three California Highway Patrol officers, killing Officer Andre Moye.[163]160

[115]140. California's ghost gun epidemic has only worsened since those killings. During the first half of 2021, the Los Angeles Police Department reported a nearly 300% increase in ghost gun seizures as compared to the same period in 2020.[164]161 When compared to the rest of the United States, the urgency of California's ghost gun problem becomes clearer still: in 2020, 65% of all ghost guns seized by ATF were seized in California.[165]162 As ghost guns become more widespread, California's law enforcement personnel are forced not only to devote additional time and resources to solve or deter ghost gun-related crimes, but also to confront an ever-growing threat to their personal safety.

[159]156 Eli Wolfe, *UPDATE: San Jose Approves Ban On Ghost Guns*, SAN JOSE SPOTLIGHT (May 10, 2022), https://sanjosespotlight.com/san-jose-city-council-considers-banning-ghost-guns-homemade-firearms-weapons/.

[160]157 Brandi Hitt, *'Ghost Guns' Investigation: Law Enforcement Seeing Unserialized Firearms on Daily Basis in SoCal*, ABC7 (Jan. 30, 2020), https://abc7.com/ghost-guns-california-gun-laws-kits/5893043.

[161]158 *See* Brandi Hitt, *Orange County Lawyer Faces Federal Charges, Accused of Selling 'Ghost Guns'*, ABC7 (Feb. 20, 2020), https://abc7.com/ghost-guns-california-gun-laws-kits-melinda-romines/5950623.

[162]159 Sam Stanton, *Murder Charge Filed Against Adel Ramos In Death Of Sacramento Officer Tara O'Sullivan*, SACRAMENTO BEE (June 21, 2019), https://www.sacbee.com/news/local/article231840593.html.

[163]160 Richard Winton & Mark Puente, *Rifle Used In Deadly Riverside Shooting Was Untraceable 'Ghost Gun,' Sources Say*, L.A. TIMES (Aug. 14, 2019), https://www.latimes.com/california/story/2019-08-14/rifle-used-in-deadly-riverside-shooting-was-untraceable-ghost-gun-sources-say.

[164]161 Justin Ray, *'An Instrument Of Death': The Problem Of Ghost Guns In California*, L.A. TIMES (Nov. 15, 2021), https://www.latimes.com/california/newsletter/2021-11-15/ghost-guns-california-essential-california.

[165]162 *Id.*

~~116~~141. ATF's refusal to regulate the sale of 80 percent receivers and frames has also required California to repeatedly take legislative action to attempt to close this deadly loophole. California has constructed a comprehensive regulatory regime to protect its citizens from the dangers posed by firearms, including regulations that ensure that firearms sales and transfers are overseen by licensed firearms dealers, prohibit classes of dangerous people from possessing firearms, and prohibit the manufacture and possession of military-style firearms and large capacity magazines. First, in 2016, California enacted legislation requiring a self-assembled firearm to be engraved or permanently affixed with a unique serial number provided by the California Department of Justice, and requiring anyone in possession of an unserialized firearm to apply to the Department to serialize the firearm.[~~166~~163] Then, in 2019, California enacted legislation to regulate ghost guns and the sale of 80 percent receivers and frames. Specifically, A.B. 879 required the sale of unfinished frames and receivers used to assemble ghost guns to be conducted through licensed dealers, pursuant to a California-only background check and sale record.[~~167~~164]

~~117~~142. California accelerated efforts to implement A.B. 879 due in part to the role of ghost guns in the tragic deaths of law enforcement officers Tara O'Sullivan and Andre Moye. In the wake of these devastating incidents, the Legislature approved $5.9 million in 2020-21 and $8.3 million in 2021-22 for the California Department of Justice's Bureau of Firearms and California Justice Information Services to retain additional staff and enhance the Department's existing background check systems.[~~168~~165] These expenditures would have allowed the Department to implement A.B. 879 beginning July 1, 2022—three years earlier than originally planned.[~~169~~166]

~~118~~143. Then, informed by "continued" tragic ghost gun events that "caused enormous harm and suffering," California enacted A.B. 1621 just one day before A.B. 879 was to take effect.[~~170~~167] A.B. 1621—which builds on the goals of much of A.B. 879—followed a flurry of ghost

[~~166~~163] A.B. 857, adding CAL. PENAL CODE § 29180 (2019).

[~~167~~164] A.B. 879 (Cal. 2019), amending CAL. PENAL CODE §§ 16170, 18010, 27585, and 30400, and adding §§ 16351 and 16352 (2019).

[~~168~~165] S.B. 74 (Cal. 2020) (including referenced funding in item 0820-001-0001).

[~~169~~166] S.B. 118 (Cal. 2020).

[~~170~~167] A.B. 1621 (Cal. 2022).

gun bans enacted by California's cities and localities and takes a comprehensive approach to regulating ghost guns. The new law extends preexisting law requiring serialization of unserialized firearms and greatly expands the definition of firearm precursor parts to include "any forging, casting, printing, extrusion, machined body or similar article [1] that has reached a stage in manufacture where it may readily be completed, assembled or converted to be used as the frame or receiver of a functional firearm, or [2] that is *marketed or sold to the public* to become or be used as the frame or receiver of a functional firearm once completed, assembled or converted."~~171~~168

~~119~~144. Under A.B. 1621, the sale or transfer of a firearm precursor part is generally prohibited, and anyone who currently possesses a firearm precursor part must apply to the California Department of Justice for a serial number for the part (in addition to requesting a serial number before self-manufacturing a firearm).~~172~~169 However, completed frames and receivers, as well as parts that are considered to be a firearm under the Final Rule, are treated as firearms (i.e. they may generally only be sold or transferred by a licensed firearm dealer after a background check).~~173~~170 Thus, under A.B. 1621, firearm parts that fall outside the scope of the Final Rule may no longer be sold or purchased in California and must be serialized. A.B. 1621 will require the California Department of Justice's Bureau of Firearms and California Justice Information Services to expend additional resources to implement the law.

~~120~~145. ATF's final agency actions legalizing the sale of 80 percent frames and receivers at the federal level without these safeguards not only conflict with California's policies, but also threaten to disrupt California's carefully crafted regulatory scheme: when these items can be manufactured and sold in states across the country, and untraceable firearms can be made without consequences, ghost guns and the myriad dangers that attend them flow more freely across California's borders. ATF's actions thus frustrate the compelling ends served by California's firearms regulations.

~~171~~168 CAL. PEN. CODE § 16531(a) (2020) (emphasis added).

~~172~~169 CAL. PEN. CODE §§ 29180, 30400 (2020).

~~173~~170 CAL. PEN. CODE §§ 16519, 16520, 30400 (2020).

~~121~~146. Ghost guns built from 80 percent receivers and frames also threaten California's interest in protecting the security and well-being of its residents from untraceable weapons. The sale of these components enables Californians with criminal intent to obtain from outside the state firearms that they would otherwise be legally barred from purchasing in California—increasing the likelihood of gun violence and gun-related crime in California. Moreover, law enforcement must expend resources proactively monitoring California's borders to attempt to prevent 80 percent receivers and frames sold legally in other states from crossing into California.

~~122~~147. On November 14, 2019, a student at Saugus High School in Santa Clarita, California allegedly used a .45-caliber semiautomatic ghost gun to kill two students and injure three others before fatally shooting himself.~~174~~171 According to the United States Secret Service, the Saugus High School shooter was the youngest mass attacker in 2019.~~175~~172 The two victims killed during the Saugus shooting were 15-year-old Gracie Anne Muehlberger, Plaintiff Bryan Muehlberger's daughter, and 14-year-old Dominic Blackwell, Plaintiff Frank Blackwell's son.~~176~~173 Given the shooter's age, he would not have been able to legally obtain a "firearm," as defined under the GCA. In addition, the shooter's deceased father was reportedly a gun enthusiast from whom law enforcement had seized more than 40 firearms after a series of incidents that led to him becoming disqualified from possessing firearms. But despite being deemed unfit to own a firearm, authorities suspect the father turned to ghost guns—one of which landed in the hands of his underage son, the Saugus school shooter.~~177~~174 When law enforcement searched the boy's home after the Saugus

~~174~~171 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

~~175~~172 U.S. SECRET SERVICE NATIONAL THREAT ASSESSMENT CTR., MASS ATTACKS IN PUBLIC SPACES – 2019, at 13 (Aug. 2020), https://www.secretservice.gov/sites/default/files/reports/2020-09/MAPS2019.pdf.

~~176~~173 Elizabeth Chou, *Hundreds Attend Memorial Service For Gracie Anne Muehlberger, 15, Killed In Saugus School Shooting*, LOS ANGELES DAILY NEWS (Nov. 23, 2019), https://www.dailynews.com/2019/11/23/celebration-of-life-set-for-gracie-anne-muehlberger-killed-in-saugus-school-shooting-in-santa-clarita/.

~~177~~174 Ex. 5, Bill Whitaker, Ghost Guns: The Build-It-Yourself Firearms that Skirt Most Federal Gun Laws and Are Virtually Untraceable.

shooting, they found a collection of unregistered firearms,[~~178~~175] including a gun assembled from a kit.[~~179~~176]

~~123~~148. In April 2021, a man prohibited from possessing firearms used a ghost gun as he went on a rampage in San Diego's Gaslamp Quarter.[~~180~~177] The violence began after the shooter allegedly randomly targeted and executed 28-year-old Justice Boldin, a parking valet. The shooter then confronted and shot four others "completely unprovoked," inflicting life-threatening injuries upon two men, at least one of whom would have died but for the efforts of a former combat medic who happened to be nearby.[~~181~~178]

~~124~~149. This past February, a man used an AR-15-style ghost gun to shoot and kill his three daughters, their court-ordered chaperone, and himself at a Sacramento church.[~~182~~179] The shooter—who was subject to an involuntary mental health hold as recently as April 2021 and an ongoing domestic violence restraining order, and who was out on bail for charges including resisting arrest and battery of a police officer—was barred from possessing firearms.[~~183~~180] Nevertheless, the shooter was able to acquire a ghost gun and an illegal 30-round magazine and to use them to devastating effect during what should have been an ordinary supervised visitation. His daughters were 13, ten, and nine years old.[~~184~~181]

~~125~~150. The more 80 percent receivers and frames legally produced and the more ghost guns that are made, the more likely it is that people prohibited from gun ownership will be able to

[~~178~~175] Richard Winton, *Santa Clarita Shooting: Weapon Used In Saugus High Attack A 'Ghost Gun,' Sheriff Says*, L.A. TIMES (Nov. 21, 2019), https://www.latimes.com/california/story/2019-11-15/santa-clarita-shooting-teen-girls-wounded-at-saugus-high-school-recovering-suspect-in-critical-condition.

[~~179~~176] Dakin Andone, *supra* note ~~174~~171.

[~~180~~177] Dennis Romero, Wilson Wong, & Bill Feather, '*Ghost Gun' Used in Random San Diego Shooting That Killed 1, Injured 4, Police Say*, NBC NEWS (Apr. 23, 2021), https://www.nbcnews.com/news/us-news/1-dead-4-injured-san-diego-shootings-suspect-arrested-n1265034.

[~~181~~178] *Id.*

[~~182~~179] AP, *Investigators: Father Armed With Ghost Gun During Church Slaying of Daughters*, CBS NEWS (Mar. 6, 2022), https://www.cbsnews.com/sanfrancisco/news/investigators-father-armed-with-ghost-gun-during-church-slaying-of-daughters/.

[~~183~~180] *Id.*

[~~184~~181] *Id.*

use firearms to commit crimes in California, implicating the security and well-being of California residents.



Image 19: Ghost Gun Used in the Saugus High School Shooting[~~185~~182]

~~126~~151. **Bryan Muehlberger.** Plaintiff Bryan Muehlberger is the father of a victim of fatal ghost gun violence. Mr. Muehlberger lives in Santa Clarita, California, a city in Los Angeles County, and works in Los Angeles County. On November 14, 2019, Mr. Muehlberger received a call that his daughter, 15-year-old Gracie Anne Muehlberger, had been shot and killed in a shooting at Saugus High School. Gracie was only 14 weeks into her high school career when her life was tragically taken. The Saugus High School shooter opened fire on his classmates using a ghost gun that law enforcement officials believe he obtained from his father, who was legally prohibited from owning and possessing firearms. Gracie and a fellow student, 14-year-old Dominic Blackwell, were murdered in the attack, while three other students were injured. The attacker did not know Gracie or any of the other victims, all of whom were in the wrong place at the wrong time. Gracie was shot one time in the back—the ghost gun was fired at point blank range, penetrating Gracie's backpack, entering her back, and ultimately puncturing her left lung before exiting through her left breast. She dropped to the ground immediately, where she not only could not breathe due to the collapse of her left lung, but where she also drowned rapidly in her own blood, which filled her chest cavity completely. Gracie likely suffered in pain for a minute or two before succumbing to her life-ending injury.

~~127~~152. Particularly following his daughter's death, Mr. Muehlberger lives in acute fear of ghost gun violence. Mr. Muehlberger is especially vulnerable to the threat of ghost guns

[~~185~~182] Ex. 5, Bill Whitaker, Ghost Guns: The Build-It-Yourself Firearms that Skirt Most Federal Gun Laws and Are Virtually Untraceable.

because Los Angeles County, where Mr. Muehlberger lives and works, has a significant and growing rate of ghost gun possession and violence. In 2021, the Los Angeles Police Department announced that ghost guns "accounted for 33 percent of all guns recovered by the department" and that "the number of ghost guns seized by the department increased 400 percent since 2017 and more than doubled from 2020 to 2021 alone."~~186~~183

~~128~~153. Mr. Muehlberger's fear of ghost gun violence is a direct and reasonable response to the increased risk of violence he faces as a result of the proliferation of these untraceable weapons in the area he lives and works. Mr. Muehlberger works in Santa Monica, the same city where a shooter used a ghost gun to kill five people in 2013.~~187~~184 At the time of the Santa Monica shooting, Mr. Muehlberger was at his office, mere minutes from the scene of the crime. Because he drives through neighborhoods highly impacted by gun violence each day on his way to and from work, Mr. Muehlberger has become very cautious about getting into confrontations with strangers, fearing that those individuals may be carrying unregistered and dangerous ghost guns.

~~129~~154. Mr. Muehlberger has two other children; both recent graduates of Saugus High School. Mr. Muehlberger's sons are no strangers to the threat of gun violence: in addition to losing their sister in the Saugus High School ghost gun shooting, Mr. Muehlberger's older son experienced a school lockdown during his junior year at Saugus, after a fellow student threatened the use of a firearm. Mr. Muehlberger constantly worries that they, too, could become victims of ghost gun violence. When his sons spend time together or are in the same place at the same time, Mr. Muehlberger worries that he could lose both of them at once, were a dangerous individual to open fire with a ghost gun. Mr. Muehlberger's fear and anxiety is especially acute when he hears helicopters and ambulances, sounds which immediately bring him back to the moment he learned that his only daughter was shot and killed by a shooter using a ghost gun. Because of the grief he continues to experience following Gracie's death, and because of his fear surrounding his sons' safety, Mr. Muehlberger undergoes regular therapy to assist him in processing his ongoing trauma.

~~186~~183 A.B. 1621 (Cal. 2022).

~~187~~184 Stan Wilson, Josh Levs & Michael Martinez, *Santa Monica Shooting Victim Dies, Bringing Toll To 5*, CNN (June 9, 2013), https://www.cnn.com/2013/06/09/justice/california-college-gunman.

~~130~~155. Mr. Muehlberger's acute and ongoing fear of ghost gun violence is directly attributed to ATF's classifications of these weapons as not being "firearms" subject to the GCA. Were these guns not generally available—particularly to prohibited purchasers or people who can access them without background checks—Mr. Muehlberger would not need to fear the ongoing risk of violence caused by ghost guns. ATF's failure to adequately regulate ghost guns has allowed the legal sale of untraceable 80 percent receivers and frames and has facilitated a rampant market for ghost guns that still plagues Southern California, where Mr. Muehlberger lives and works. ATF's statements about the Final Rule suggest that the agency will continue issuing precisely the kinds of Classification Letters that allow the legal sale of ghost gun components and cause manufacturers to continue producing these dangerous items. Together, ATF's actions allow 80 percent receivers and frames to enter the stream of commerce and become the ghost guns that threaten the lives of individuals like Mr. Muehlberger and his family. If ATF adequately regulated 80 percent receivers and frames as firearms, ghost gun components could not legally be purchased by those ineligible to possess firearms, and the risk of violence faced by individuals like Mr. Muehlberger would be significantly reduced. Dangerous people who cannot legally purchase a firearm would have more difficulty obtaining one, and would-be violent criminals could be deterred by the knowledge that their firearms could be traced.

~~131~~156. **Frank Blackwell.** Plaintiff Frank Blackwell is the father of a victim of fatal ghost gun violence. Mr. Blackwell lives in Santa Clarita, California, a city in Los Angeles County, and works in Los Angeles County. On November 14, 2019, Mr. Blackwell's son, 14-year-old Dominic Blackwell, was shot and killed by the same shooter at Saugus High School who murdered Gracie Anne Muehlberger.

~~132~~157. Particularly following his son's death, Mr. Blackwell fears the threat of future violence committed with ghost guns. Mr. Blackwell's fear is a direct and reasonable response to the particular vulnerability to ghost gun violence that he faces as a result of living and working in Los Angeles County—where ghost gun possession and violence have been increasing exponentially. Because Mr. Blackwell is aware of the spread of ghost guns in Los Angeles County resulting from ATF's position on 80 percent receivers and frames, and has directly experienced the grave harm

caused by ghost guns, he often fears that individuals that he and his family encounter in places like restaurants and coffee shops may be in possession of ghost guns.

~~133~~158. In addition to Dominic, Mr. Blackwell has three children—one of whom currently attends Saugus High School. Mr. Blackwell often worries that they, too, may become victims of ghost gun violence. Mr. Blackwell experiences ongoing trauma, grief, and suffering as a result of Dominic's death at the hands of a shooter using a ghost gun and his ongoing fear for his other children's safety. Mr. Blackwell regularly attends therapy to assist him in processing this trauma.

~~134~~159. Mr. Blackwell's acute and ongoing fear of ghost gun violence is directly attributed to ATF's classifications of these weapons as not being "firearms" subject to the GCA. Were these guns not generally available—particularly to prohibited purchasers or people who can access them without background checks—Mr. Blackwell would not need to fear the ongoing risk of ghost gun violence. ATF's failure to adequately regulate ghost guns has allowed the legal sale of untraceable 80 percent receivers and frames and has facilitated a rampant market for ghost guns that now plagues Southern California, where Mr. Blackwell lives and works. ATF's statements about the Final Rule suggest that the agency will continue issuing precisely the kinds of Classification Letters that allow the legal sale of ghost gun components and cause manufacturers to continue producing these dangerous items. Together, ATF's actions allow 80 percent receivers and frames to enter the stream of commerce and become the ghost guns that threaten the lives of individuals like Mr. Blackwell and his family. If ATF regulated 80 percent receivers and frames as firearms, ghost gun components could not legally be purchased by those ineligible to possess firearms, and the risk of violence faced by Mr. Blackwell would be significantly reduced and his fears, anxiety, and stressed ameliorated. Dangerous people who cannot legally purchase a firearm would have more difficulty obtaining one, and would-be violent criminals could be deterred by the knowledge that their firearms can be traced.

~~135~~160. **Giffords Law Center.** Plaintiff Giffords Law Center's core mission is to save lives from gun violence by shifting culture, changing policies, and challenging injustice. ATF's arbitrary, capricious, and unlawful stance on ghost guns directly affects Giffords Law Center's

interests and mission by permitting the proliferation of untraceable firearms that can be purchased by prohibited and dangerous persons and without any background check. Giffords Law Center's ability to save lives is inhibited on a daily basis as a result of ATF's approval of the sale of ghost guns. That ghost gun sales are unregulated requires Giffords Law Center to expend a substantial portion of its budget and substantial human capital and resources to educate the public and combat the violence ghost guns cause. Addressing ghost guns and the violence they facilitate is currently among the organization's top policy and legislative priorities: in recent years, Giffords Law Center has contributed technical assistance to or monitored and analyzed over 100 state and federal bills pertaining to ghost guns. Giffords Law Center has also launched a series of specific ghost gun initiatives, including drafting proposed legislation, publishing white papers, and helping produce videos and other educational materials for the public.

~~136~~161. ATF's actions on ghost guns have required Giffords Law Center to expend more resources and staff time because ATF's regulatory approach undermines every other firearm policy that Giffords Law Center advocates for. This includes the organization's core policy platform of supporting background check and licensing laws at the federal and state level. Background check laws and other efforts to ensure firearms are legally and responsibly possessed are impeded and undermined by ATF's choice to create a loophole by which buyers can evade all otherwise applicable firearm sales regulations. This loophole has forced Giffords Law Center to redouble its violence prevention efforts and direct even more resources into addressing gun violence even in states with strong firearm laws, like the organization's home state of California. Increasingly, these expenditures have come in the form of legal action, as co-counsel or an amicus in lawsuits seeking to vindicate state firearm laws and to protect Americans. In addition to this action, Giffords Law Center has, as pro bono counsel to the San Francisco District Attorney, joined the California Attorney General and San Francisco District Attorney in a lawsuit against ghost gun retailers—*see People v. Blackhawk Manufacturing Group, Inc.*, No. CGC-21-594577 (S.F. Sup. Ct. Oct. 13, 2021)—and filed an amicus brief in a case, like this one, challenging ATF's action on ghost guns.[~~188~~185] *See Syracuse v.*

[~~188~~185] Glenn Thrush, *San Francisco Sues Three Online Retailers For Selling 'Ghost Guns,'* N.Y. TIMES (Aug. 18, 2021) https://www.nytimes.com/2021/08/18/us/sf-ghost-guns.html.

Bureau of Alcohol, Tobacco, Firearms and Explosives, No. 1:20-cv-06885-GHW (S.D.N.Y. Jan. 2, 2021).~~189~~186 Giffords Law Center has made this issue an urgent priority based on the fact that, in California, for example, ghost guns range from 25 to 50% of all crime guns recovered—representing one of the single most dangerous loopholes undermining the state's laws.~~190~~187 Every day, more lives are lost to ghost guns despite Giffords Law Center's increased efforts and resource expenditures.

~~137~~162. In addition to its legislative and legal work, Giffords Law Center provides policy expertise and technical assistance in support of violence intervention programs in communities disproportionately impacted by gun violence and ghost gun violence. Giffords Law Center also frequently partners with community-based organizations that provide direct support services to victims of gun violence. While these intervention efforts have contributed to dramatic reductions in gun violence in cities such as Oakland, California in recent years, many of these cities are also experiencing a surge in the numbers of ghost guns recovered, meaning all of these hard-fought gains in community safety are being compromised by ATF's actions. The risk of increased ghost gun violence and ATF's failure to regulate ghost gun sales have therefore contributed to increased expenditure of human and financial capital and resources by Giffords Law Center toward work supporting violence intervention programs and violence reduction work by community-based organizations. In sum, ATF's actions have forced Giffords Law Center to adjust many of its organizational priorities and divert substantial resources to combat ghost guns and resulting violence.

~~138~~163. **Statutory standing**. The interests of all named Plaintiffs—the State of California, Bryan Muehlberger, Frank Blackwell, and Giffords Law Center are within the zone of interests protected by the GCA. In enacting the GCA, Congress found that the "ease with which any person can acquire firearms . . . is a significant factor in the prevalence of lawlessness and violent crime in the United States." Omnibus Crime Control & Safe Streets Act of 1968, Pub. L. No. 90-357, § 901(a)(2), 82 Stat. 197, 225. All named Plaintiffs allege injury involving the increased

~~189~~186 *Syracuse v. ATF: Challenging the ATF's Classification of Ghost Guns*, GIFFORDS L. CTR. (Dec. 12, 2020), https://giffords.org/lawcenter/amicus-brief/syracuse-v-atf-challenging-the-atfs-classification-of-ghost-guns/.

~~190~~187 Glenn Thrush, *'Ghost Guns': Firearm Kits Bought Online Fuel Epidemic Of Violence*, N.Y. TIMES (Jan. 26, 2022), https://www.nytimes.com/2021/11/14/us/ghost-guns-homemade-firearms.html.

likelihood of violent crime that ATF's actions have caused. Therefore, all named Plaintiffs allege harm to interests within the zone of interests that the GCA protects.

CLAIMS FOR RELIEF

COUNT ONE: Violation of Administrative Procedure Act, 5 U.S.C. § 706(2)(A): ATF's Ghost Gun Actions Are Not in Accordance with Law.

~~139~~164. Plaintiffs repeat, reallege, and incorporate the allegations in the paragraphs above as though fully set forth herein.

~~140~~165. Individually and collectively, ATF's ghost gun determinations~~,~~ —including ~~the Classification Letters, Ruling 2015-1, the Ghost Gun Guidance,~~(i) the Final Rule, ~~and~~(ii) the Post-Final Rule Classification Letters, and (iii) additional explanatory materials interpreting the Final Rule, including the September ~~27,~~ 2022 Open Letter~~,~~; the December 2022 Open Letter; the August~~,~~ — 26, 2022 YouTube video~~,~~ — and informational slide-deck, and the Ghost Gun Guidance—constitute "final agency action for which there is no other adequate remedy." 5 U.S.C. § 704.[188]

166. In the alternative, individually and collectively, ATF's ghost gun determinations implemented before the Final Rule took effect on August 24, 2022—including (i) pre-Final Rule Classification Letters, (ii) Ruling 2015-1, and (iii) the Ghost Gun Guidance—constitute "final agency action for which there is no other adequate remedy." 5 U.S.C. § 704.

~~141~~167. Under the Administrative Procedure Act, this Court is empowered to "hold unlawful and set aside agency action, findings, and conclusion found to be . . . not in accordance with law." *Id.* § 706(2)(A).

~~142~~168. ATF's ghost gun determinations are "not in accordance with law" because they disregard the GCA. The GCA provides that "[t]he term 'firearm' means (A) any weapon (including a starter gun) which will or ***is designed or may readily be converted*** to expel a projectile by the action of an explosive;" and includes "(B) ***the frame or receiver of any such weapon***." 18 U.S.C. § 921(a)(3) (emphases added). Namely, unfinished 80 percent receivers and frames—sold as

[188] Defendants have agreed to produce to Plaintiffs any Classification Letter issued up to 30 days before summary judgment briefing begins in this case. Plaintiffs reserve the right to challenge any subsequently produced Classification Letters.

part of an assembly kit, with associated templates, or alone—fall within the statutory definition of firearms subject to the GCA's requirements. They are "designed" to be "readily converted" into firearms, as is evident from their design and marketing, which emphasizes how "easy" it is for even a novice to use the "world's fastest jig" to complete an 80% lower "in *under 30 minutes*."~~191~~189 Yet 80 percent receivers and frames may still be purchased without serial numbers and background checks, in direct violation of the GCA, as a result of ATF's determinations.

~~143~~169. ***The Final Rule.*** ATF's Final Rule contravenes the plain text of the GCA. Although it recognizes that 80 percent frames and receivers, when sold with jigs tool kits or other materials, are firearms under the GCA, ATF fails to acknowledge that an 80 percent receiver, whether sold with or without other products, is "readily convertible" to a fully functional weapon. Any buyer can easily and legally purchase, without serialization or background check safeguards, an 80 percent receiver in one transaction and a jig or tool kit in another. Or consumers can purchase machines to automate the conversion process in minutes. Even a novice can "readily convert[]" an 80 percent component into a fully functioning firearm in hours or minutes. Such receivers are therefore "firearms," and the Final Rule's failure to ~~regulate~~classify them as such conflicts with the GCA.

170. ***Post-Final Rule Classification Letters***. In at least 23 Classification Letters issued since the Final Rule took effect, ATF classified a partially complete frame or receiver that can be "readily converted" into a fully functioning weapon as not a firearm. These products are "firearms" under the plain text of the GCA. ATF's exclusion of these products from the definition of "firearm" conflicts with the GCA.

171. ***September 2022 Open Letter.*** ATF's September 2022 Open Letter reaffirms portions of the Final Rule that contravene the plain text of the GCA. In the letter, ATF concludes based on its legally flawed machining analysis that "a partially complete AR-type receiver with no indexing or machining of any kind performed in the area of the fire control cavity" is not a "frame or

~~191~~189 *See, e.g.*, *Easy Jig Gen 3 Multi-Platform – AR-15, AR-9 And .308 80% Lower Jig*, 80 PERCENT ARMS, https://www.80percentarms.com/products/easy-jig-gen-3-multi-platform-ar-15-ar-9-and-308-80-lower-jig/ (last visited Oct. 11, 2022).

receiver" or "firearm." Ex. 23 at 1. Because even a novice can "readily convert[]" a partially complete AR-type receiver into a fully functioning firearm, such receivers ***are*** "firearms." ATF's exclusion of these products from the definition of "firearm" conflicts with the GCA.

172. ***December 2022 Open Letter.*** In its December 2022 Open Letter, ATF concludes that, pursuant to the Final Rule, "partially complete Polymer80, Lone Wolf, and similar striker-fired semiautomatic pistol frames . . . have reached a stage of manufacture where they 'may readily be completed, assembled, restored, or otherwise converted' to a functional frame," and are therefore firearms, "*even without* any associated templates, jigs, molds, equipment, tools, instructions, guides, or marketing materials." Ex. 25 at 1. The December 2022 Open Letter conflicts with the GCA to the extent it fails to include or extend to other categories of similar weapons, such as partially complete hammer-fired pistol frames, that are just as readily convertible into fully functional firearms. ATF's exclusion of these materially identical products from the definition of "firearm" conflicts with the GCA.

~~144.~~ 173. ***Pre-Final Rule Classification Letters, Ruling 2015-1, Ghost Gun Guidance.*** In the alternative, and to the extent the Final Rule is vacated, altered, or amended at any point, ATF's determinations reflected in its pre-Final Rule Classification Letters to Polymer80, Ruling 2015-1, and the Ghost Gun Guidance similarly disregard the GCA.

~~145~~174. Each of the products in the pre-Final Rule Classification Letters constitutes a "firearm" under the plain text of the GCA. For example, the 2017 Polymer80 Letter states that the 80 percent receiver in question was not "sufficiently complete" because of the "machining operations" that were yet to be "completed." But at least one retailer of the 80 percent receiver at issue in the 2017 Polymer80 Letter markets it with the statement "***[i]t's amazing to think in just 10–15 minutes you can have a fully functioning Glock that you made at home.***"~~192~~190 It is difficult to conceive of what might possibly be "readily" converted to expel a projectile within the meaning of the GCA if an 80 percent receiver that requires only 10–15 minutes of labor does not. Similarly, consumers have reported that the product addressed in the November 2015 Polymer80 Letter could

~~192~~190 *See supra* note 4.

be converted into a fireable weapon in an hour or two. As one consumer said, it "[r]eally is that easy."[193][191] And the product addressed in the February 2015 Polymer80 letter was expressly advertised as "incredibly simple to drill and mill, and the material is forgiving."[194][192] Ruling 2015-1 and the Ghost Gun Guidance are no different; each permits products that are "***designed or may readily be converted*** to expel a projectile" to be sold as *non*-firearms exempt from the GCA's requirements. 18 U.S.C. § 921(a)(3) (emphasis added).

[146]175. Plaintiffs have been and will continue to be impacted and injured by [the Final Rule and Classification Letters to Polymer80 (and other 80 percent receiver and frame manufacturers),]ATF's ghost gun determinations because, among other reasons, the firearms assembled from 80 percent receivers and frames have been used and in the future will be used in connection with criminal activity that undermines the legitimate regulatory and law enforcement interests of Plaintiff California and that has harmed and will foreseeably cause future harm to Plaintiffs Bryan Muehlberger, Frank Blackwell, and Giffords Law Center to Prevent Gun Violence.

COUNT TWO: Violation of Administrative Procedure Act, 5 U.S.C. § 706(2)(A): ATF's Ghost Gun Actions Are Arbitrary and Capricious.

[147]176. Plaintiffs repeat, reallege, and incorporate the allegations in the paragraphs above as though fully set forth herein.

[148. ATF's Final Rule, 87 Fed. Reg. 24,652 constitutes]177. Individually and collectively, ATF's ghost gun determinations—including (i) the Final Rule, (ii) the Post-Final Rule Classification Letters, and (iii) additional explanatory materials interpreting the Final Rule, including the September 2022 Open Letter; the December 2022 Open Letter; the August 26, 2022 YouTube video and informational slide-deck; and the Ghost Gun Guidance—constitute "final agency action for which there is no other adequate remedy." 5 U.S.C. § 704.

178. In the alternative, individually and collectively, ATF's ghost gun determinations implemented before the Final Rule took effect on August 24, 2022—including (i) the Pre-Final Rule

[193][191] *See supra* note 105.

[194][192] *See* Polymer80 *80% Receiver and Jig Kit (AR-15),* 80% LOWERS, https://www.80-lower.com/products/Polymer80-lower-receiver-and-jig-kit-ar-15/ (last visited Oct. 19, 2022).

Classification Letters, (ii) Ruling 2015-1, and (iii) the Ghost Gun Guidance—constitute "final agency action for which there is no other adequate remedy." 5 U.S.C. § 704.

~~149~~179. Under the Administrative Procedure Act, this Court is empowered to "hold unlawful and set aside agency action, findings, and conclusion found to be . . . arbitrary, capricious, an abuse of discretion." *Id.* § 706(2)(A).

~~150~~180. The Final Rule arbitrarily deems as firearms only those 80 percent receivers and frames sold in kits or alongside jigs, templates, or similar aids, leaving 80 percent receivers and frames sold separately wholly unregulated. This arbitrary line leaves open obvious and easily navigable loopholes that run counter to the GCA's basic commands. ATF's Final Rule is, therefore, arbitrary and capricious.

~~151~~181. Moreover, ATF's approval of the unregulated manufacture and sale of 80 percent receivers and frames used to build ghost guns "entirely fail[s] to consider an important aspect of the problem" that ATF was purporting to regulate. *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). ATF has acknowledged serious problems with the current regulatory landscape, *see supra* ¶ 12, yet has failed to consider the ways in which the Final Rule will not abate those problems and may even contribute to the proliferation of untraceable firearms that impose costs across the country, including to the State of California and its law enforcement officers, Plaintiffs Bryan Muehlberger, Frank Blackwell, and other victims of ghost gun violence, and organizations expending limited resources to combat rising ghost gun violence, like Plaintiff Giffords Law Center.

~~152.~~ ATF has also failed to consider that 80 percent receivers and frames may be easily and legally purchased separate from an assembly kit.

182. ATF's post-Final Rule ghost gun determinations are also arbitrary and capricious. The Post-Final Rule Classification Letters, the September 2022 Open Letter, and the December 2022 Open Letter (which leaves major categories of 80 percent frames and receivers unregulated) rely on ATF's legally flawed machining analysis and fail to consider important aspects of the ghost gun problem.

~~153~~183. Alternatively, should the Final Rule be vacated, altered, or amended at any point, ATF's ghost gun actions, including its pre-Final Rule Classification Letters, Ruling 2015-1, and Ghost Gun Guidance, constitute "final agency action for which there is no other adequate remedy." 5 U.S.C. § 704.

~~154~~184. Because they are contrary to the GCA and because of ATF's failure to consider "important aspect[s] of the problem," ATF's ghost actions are arbitrary and capricious.

~~155~~185. Plaintiffs have been and will continue to be impacted and injured by ~~the Final Rule or, in the alternative,~~ ATF's ghost gun ~~actions,~~determinations because, among other reasons, the firearms assembled from 80 percent receivers and frames have been used and will continue to be used in connection with criminal activity that undermines the legitimate regulatory and law enforcement interests of Plaintiff State of California and that has harmed and will foreseeably cause future harm to Plaintiffs Bryan Muehlberger, Frank Blackwell, and Giffords Law Center.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter an order and judgment:

a. Declaring that 80 percent receivers and frames are "firearms" under the GCA, even when sold without a kit, template, or other materials, because they are "designed to" *and* "may readily be converted" into functional firearms with ease, *see* 18 U.S.C. § 921(a)(3);

b. Declaring null and void, with no force and effect, the portions of ATF's Final Rule ~~and guidance~~, August 26, 2022 YouTube video and informational slide-deck, and Ghost Gun Guidance providing that 80 percent receivers and frames are not "firearms" under the GCA unless sold with a kit, template, or other materials;

c. Declaring null and void, with no force and effect, the Post-Final Rule Classification Letters providing that certain standalone 80 percent receivers and frames are not "firearms" under the GCA;

d. Declaring null and void, with no force and effect, the September 2022 Open Letter providing that certain standalone 80 percent receivers are not "firearms" under the GCA;

~~e~~e. Declaring arbitrary and capricious within the meaning of 5 U.S.C. § 706(2)(A) the portions of ATF's Final Rule ~~and other guidance~~, the Post-Final Rule Classification Letters, the September 2022 Open Letter, the August 26, 2022 YouTube video and informational slide-deck, and the Ghost Gun Guidance providing that 80 percent receivers and frames are not "firearms~~,~~" under the GCA unless sold with a kit, template, or other materials;

f. Declaring arbitrary and capricious within the meaning of 5 U.S.C. § 706(2)(A) the December 2022 Open Letter insofar as it excludes categories of ghost gun products that fall within the GCA's definition of "firearm";

~~d~~g. In the alternative, declaring null, void, and with no force and effect ATF's pre-Final Rule Classification Letters, Ruling 2015-1, and the Ghost Gun Guidance finding that 80 percent receivers and frames are not "firearms" under the GCA;

~~e~~h. In the alternative, declaring arbitrary and capricious within the meaning of 5 U.S.C. § 706(2)(A) ATF's pre-Final Rule Classification Letters, Ruling 2015-1, and the Ghost Gun Guidance finding that 80 percent receivers and frames are not "firearms" under the GCA;

~~f~~i. Preliminarily and permanently enjoining Defendants from implementing and enforcing any agency action, decision, or guidance providing that 80 percent receivers and frames are not "firearms" under the GCA;

~~g~~j. Awarding Plaintiffs their reasonable costs, including attorneys' fees, in bringing this claim;

~~h~~k. Granting such other and further relief as this Court deems just and proper.

Dated: ~~October 20, 2022~~September 7, 2023 */s S. Clinton ~~Woods~~ Woods*

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