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6 EVERYTOWN FOR GUN SAFETY  
SUPPORT FUND  
7

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION  
11

12 STATE OF CALIFORNIA, et al.,

13 Plaintiffs,

14 v.

15 BUREAU OF ALCOHOL, TOBACCO,  
16 FIREARMS AND EXPLOSIVES, et al.,

17 Defendants.  
18  
19

Case No. 3:20-CV-06761-EMC

**UNOPPOSED MOTION FOR LEAVE TO FILE  
BRIEF OF EVERYTOWN FOR GUN SAFETY  
SUPPORT FUND AS AMICUS CURIAE IN  
SUPPORT OF PLAINTIFFS’ MOTION FOR  
SUMMARY JUDGMENT AND IN OPPOSITION  
TO DEFENDANTS’ MOTION FOR SUMMARY  
JUDGMENT**

Judge: Hon. Edward M. Chen  
Hearing Date: January 25, 2024  
Hearing Time: 1:30 PM  
Hearing Place: Courtroom 5, 17th Floor

20 Everytown for Gun Safety Support Fund (“Everytown”) respectfully seeks leave to file an  
21 amicus curiae brief in support of Plaintiffs’ cross-motion for summary judgment and in opposition  
22 to Defendants’ motion for summary judgment. This unopposed motion describes Everytown’s  
23 interest in this case and how its brief will be useful for the Court. Everytown’s proposed brief is  
24 attached as Exhibit A. All parties consent to this motion.

25 A “district court has broad discretion to appoint amici curiae,” *Hoptowit v. Ray*, 682 F.2d  
26 1237, 1260 (9th Cir. 1982), *abrogated on other grounds by Sandin v. Conner*, 515 U.S. 472 (1995),  
27 and generally this Court has “‘exercised great liberality’ in permitting amicus briefs,” *California*  
28 *ex rel. Becerra v. U.S. Dep’t of Interior*, 381 F. Supp. 3d 1153, 1164 (N.D. Cal. 2019) (quoting

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1 *Woodfin Suite Hotels, LLC v. City of Emeryville*, No. C 06-1254 SBA, 2007 WL 81911, at \*3 (N.D.  
2 Cal. Jan. 9, 2007)). “There are no strict prerequisites that must be established prior to qualifying  
3 for amicus status; an individual seeking to appear as amicus must merely make a showing that his  
4 participation is useful or otherwise desirable to the court.” *Id.* at 1164 (citing *Hoptowit*, 682 F.2d  
5 at 1260). The “classic role” of an amicus encompasses “assist[ing] a court in a case of public  
6 interest, supplementing the efforts of counsel, and drawing the court’s attention to law that escaped  
7 consideration.” *Id.* at 1163-64 (quoting *Miller-Wohl Co. v. Comm’r of Labor & Indus. State of*  
8 *Mont.*, 694 F.2d 203, 204 (9th Cir. 1982)). These considerations weigh in favor of Everytown’s  
9 participation here.

10 First, Everytown has an interest in this case. Everytown is the largest gun violence  
11 prevention organization in the country and has devoted substantial resources to researching the  
12 causes of and contributors to gun violence. Everytown has extensive experience litigating cases  
13 involving the interpretation of federal firearms laws, *see, e.g., Everytown for Gun Safety Support*  
14 *Fund v. ATF*, No. 21-cv-00376 (S.D.N.Y. 2021) (challenge to ATF action involving grant of federal  
15 firearms license); *City of Syracuse v. ATF*, No. 20-cv-06885 (S.D.N.Y. 2020) (challenge to ATF  
16 actions classifying unfinished frames and receivers as non-firearms), and has submitted numerous  
17 amicus briefs in cases involving challenges to federal firearms laws and regulations, *see, e.g.,*  
18 *Amicus Br., Garland v. VanDerStok*, No. 23A82 (U.S. August 1, 2023) (regarding stay of lower  
19 court’s vacatur of ATF rulemaking); *Amicus Br., Morehouse Enters., LLC v. ATF*, Nos. 22-2812,  
20 22-2854 (8th Cir. Dec. 5, 2022) (regarding ATF rulemaking); *Amicus Br., VanDerStok v. Garland*,  
21 No. 23-10718 (5th Cir. Aug. 16, 2023) (regarding ATF rulemaking).

22 Second, Everytown submits the amicus brief to provide the Court with further background  
23 on the proliferation of ghost guns in California and the realities of the current market for self-  
24 manufactured AR-style firearms. This information may be useful to the Court in addressing both  
25 Plaintiffs’ standing and whether ATF “failed to consider an important aspect of the problem,”  
26 *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983), in exempting  
27 standalone, partially complete AR-type lower receivers from regulation as firearms.

28 For the foregoing reasons, Everytown respectfully requests that this Court grant it leave to

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1 file the amicus curiae brief attached hereto as Exhibit A.  
2

3 Dated: December 1, 2023

COOLEY LLP

4

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By:  /s/ Kathleen R. Hartnett

6

Kathleen R. Hartnett

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Attorneys for Amicus Curiae  
EVERYTOWN FOR GUN SAFETY  
SUPPORT FUND

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294751013 v3

# **EXHIBIT A**

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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
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12 STATE OF CALIFORNIA, et al.,  
13 Plaintiffs,  
14 v.  
15 BUREAU OF ALCOHOL, TOBACCO,  
FIREARMS AND EXPLOSIVES, et al.,  
16 Defendants.

Case No. 3:20-CV-06761-EMC

**BRIEF OF AMICUS CURIAE EVERYTOWN FOR  
GUN SAFETY SUPPORT FUND IN SUPPORT OF  
PLAINTIFFS' CROSS-MOTION FOR SUMMARY  
JUDGMENT AND IN OPPOSITION TO  
DEFENDANTS' MOTION FOR SUMMARY  
JUDGMENT**

Judge: Hon. Edward M. Chen  
Hearing Date: January 25, 2024  
Hearing Time: 1:30 PM  
Hearing Place: Courtroom 5, 17th Floor

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## INTEREST OF AMICUS CURIAE

Amicus Everytown for Gun Safety Support Fund (“Everytown”) is the education, research, and litigation arm of Everytown for Gun Safety (“Everytown”), the largest gun violence prevention organization in the country. Everytown was founded in 2014 as the combined efforts of Mayors Against Illegal Guns, a national, bipartisan coalition of mayors combatting illegal guns and gun trafficking, and Moms Demand Action for Gun Sense in America, an organization formed after the Sandy Hook massacre. Everytown seeks to improve public understanding of the causes of gun violence and help to reduce that violence by conducting groundbreaking original research, developing evidence-based policies, communicating this knowledge to the American public, and advancing gun safety and gun violence prevention in communities and the courts.

Everytown has extensive experience litigating cases involving the interpretation of federal firearms laws and has submitted numerous amicus briefs in cases involving challenges to federal firearms laws and regulations. *See, e.g.*, Amicus Br., *Garland v. VanDerStok*, No. 23A82 (U.S. August 1, 2023) (regarding stay of lower court’s vacatur of ATF rulemaking); Amicus Br., *Morehouse Enters., LLC v. ATF*, Nos. 22-2812, 22-2854 (8th Cir. Dec. 5, 2022) (regarding ATF rulemaking); Amicus Br., *VanDerStok v. Garland*, No. 23-10718 (5th Cir. Aug. 16, 2023) (regarding ATF rulemaking); *Everytown for Gun Safety Support Fund v. ATF*, No. 21-cv-00376 (S.D.N.Y. 2021) (challenge to ATF action involving grant of federal firearms license); *City of Syracuse v. ATF*, No. 20-cv-06885 (S.D.N.Y. 2020) (challenge to ATF actions classifying unfinished frames and receivers as non-firearms).

## INTRODUCTION

The Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) acted lawfully and within its statutory authority in promulgating regulations that, in part, classify as “firearms” “partially complete” frames and receivers and weapons part kits. *See* Definition of “Frame or Receiver” and Identification of Firearms, 87 Fed. Reg. 24,652 (Apr. 26, 2022) (the “Final Rule”). However, in the Final Rule, ATF included an erroneous exemption. Specifically, ATF exempted from classification as a partially complete frame or receiver a “billet or blank of an AR-15 variant receiver without critical interior areas having been indexed, machined, or formed that is not sold,

1 distributed, or possessed with instructions, jigs, templates, equipment, or tools such that it may  
 2 readily be completed . . . .” *Id.* at 24,739 (codified at 27 C.F.R. § 478.12(c)). On September 27,  
 3 2022, ATF then provided guidance on applying the Final Rule to “partially complete AR-15/M-16  
 4 type receivers,” in which it clarified that standalone, partially complete AR-type receivers are not  
 5 firearms when sold without those items that assist in “finishing” the receiver so that it can be  
 6 assembled with other parts into a complete firearm. ATF, *Open Letter to All Federal Firearms*  
 7 *Licensees: Impact of Final Rule 2021-05F on Partially Complete AR-15/M-16 Type Receivers*  
 8 (Sept. 27, 2022).

9 Everytown submits this amicus brief in support of Plaintiffs’ motion for summary judgment.  
 10 This brief provides the Court with additional background on partially complete AR-type lower  
 11 receivers, which may assist the Court in addressing both Plaintiffs’ standing and ATF’s “fail[ure]  
 12 to consider an important aspect of the problem,” *Motor Vehicle Mfrs. Ass’n v. State Farm Mut.*  
 13 *Auto. Ins. Co.*, 463 U.S. 29, 43 (1983), in exempting standalone, partially complete AR-type lower  
 14 receivers from regulation as firearms. To that end, this amicus brief addresses three points.

15 First, the market in do-it-yourself (“DIY”), homemade firearms, also known as “ghost  
 16 guns,” first emerged and thrived in California—particularly the market in DIY AR-style firearms.  
 17 Second, there is no meaningful distinction between partially complete lower receivers (also known  
 18 as “80%” receivers) sold standalone and either (a) lower receivers that have been pre-drilled or  
 19 indexed (known as “stripped” receivers) or (b) 80% receivers that are sold together with jigs and  
 20 instructions. Today, the 80% receivers and jigs are still available for purchase separately, and as  
 21 their product descriptions and instructions demonstrate, a layperson can convert an 80% receiver  
 22 into a finished receiver in under an hour with the assistance of a jig and basic tools. Finally, ATF’s  
 23 continuing to allow the unregulated sale of the component parts of an AR-15 rifle has hindered  
 24 California’s ability to enforce its own laws and fails to address the ongoing safety concerns posed  
 25 by ghost guns.

## 26 ARGUMENT

### 27 I. PROLIFERATION OF GHOST GUNS IN CALIFORNIA FROM 2013 TO 2021

28 In 2013, Daniel Crowninshield, also known as “Dr. Death,” began operating a machine shop

1 in Sacramento where he manufactured unserialized, unregistered firearms—ghost guns—for  
 2 customers.<sup>1</sup> These customers, who were not required to pass a background check, would purchase  
 3 from Crowninshield or bring their own 80% AR-15 lower receivers to Crowninshield’s shop, where  
 4 he used machines to mill them into completed lower receivers in under twenty minutes, and for a  
 5 few hundred dollars.<sup>2</sup> Although Crowninshield—who was himself prohibited from possessing a  
 6 firearm due to two prior domestic violence misdemeanors—was eventually arrested,<sup>3</sup> his operation  
 7 was not an anomaly in California. That same year, Joseph Roh manufactured and sold hundreds of  
 8 AR-15 lower receivers through his manufacturing business in La Habra,<sup>4</sup> and brothers Luis and  
 9 Emiliano Cortez-Garcia sold “manufactured-to-order assault weapons,” including multiple fully  
 10 automatic assault rifles, through their business in Sacramento.<sup>5</sup>

11 These schemes exploited the perceived lack of regulation on the sale of 80% receivers and  
 12 the absence of laws restricting the manufacture of weapons without serial numbers for personal  
 13 use. Many California law enforcement agencies did not initially track this growing ghost gun  
 14 epidemic, but those that eventually did noted significant increases in ghost gun recoveries. For  
 15 example, from 2017 to 2018, there was a 940 percent increase in ghost gun recoveries in San Diego,  
 16 a 280 percent increase in Oceanside, and a fifty-one percent increase in San Jose.<sup>6</sup> By 2019, ATF  
 17 divisions in Los Angeles and Sacramento estimated that thirty percent of all firearms recovered by  
 18 agents in those divisions were unserialized.<sup>7</sup> Reported recoveries increased each year in California  
 19 from 2013 to 2021, with law enforcement recovering 12,388 ghost guns in California in 2021 alone

20 \_\_\_\_\_  
 21 <sup>1</sup> *Sacramento Gun Manufacturer Sentenced to Prison for Manufacturing and Assisting Other to*  
 22 *Manufacture AR-15 Rifles*, U.S. Att’y’s Office Eastern Dist. of Cal. (Feb. 16, 2017),  
 23 [https://www.justice.gov/usao-edca/pr/sacramento-gun-manufacturer-sentenced-prison-](https://www.justice.gov/usao-edca/pr/sacramento-gun-manufacturer-sentenced-prison-manufacturing-and-assisting-others)  
 24 [manufacturing-and-assisting-others](https://www.justice.gov/usao-edca/pr/sacramento-gun-manufacturer-sentenced-prison-manufacturing-and-assisting-others).

25 <sup>2</sup> *Id.*; Application for Search Warrant at 20, *In the Matter of the Search of 23526 Rosewood Road,*  
 26 *Auburn, California*, No. 2:13-sw-00659-CKD (E.D. Cal. Oct. 7, 2013).

27 <sup>3</sup> See Indictment, *United States v. Crowninshield*, 2:14-cr-0164 (E.D. Cal. June 12, 2014).

28 <sup>4</sup> *Owner Of La Habra Manufacturing Firm Charged With Illegally Manufacturing And Selling Key*  
 29 *Component For AR-15-Type Rifles*, U.S. Att’y’s Office Central Dist. of Cal. (Oct. 2, 2014),  
 30 [https://www.justice.gov/usao-cdca/pr/owner-la-habra-manufacturing-firm-charged-illegally-](https://www.justice.gov/usao-cdca/pr/owner-la-habra-manufacturing-firm-charged-illegally-manufacturing-and-selling-key)  
 31 [manufacturing-and-selling-key](https://www.justice.gov/usao-cdca/pr/owner-la-habra-manufacturing-firm-charged-illegally-manufacturing-and-selling-key).

32 <sup>5</sup> *Sacramento Man Sentenced to 5.5 Years in Prison for Illegally Manufacturing and Selling Assault*  
 33 *Rifles*, U.S. Att’y’s Office Eastern Dist. of Cal. (Aug. 11, 2017), [https://www.justice.gov/usao-](https://www.justice.gov/usao-edca/pr/sacramento-man-sentenced-55-years-prison-illegally-manufacturing-and-selling-assault)  
 34 [edca/pr/sacramento-man-sentenced-55-years-prison-illegally-manufacturing-and-selling-assault](https://www.justice.gov/usao-edca/pr/sacramento-man-sentenced-55-years-prison-illegally-manufacturing-and-selling-assault).

35 <sup>6</sup> Alain Stephens, *Ghost Guns Are Everywhere in California*, *The Trace* (May 17, 2019),  
 36 <https://www.thetrace.org/2019/05/ghost-gun-california-crime/>.

37 <sup>7</sup> *Id.*

1 in connection with criminal activity.<sup>8</sup>

2 With the growing market in 80% receivers in California, individuals who would have been  
 3 unable to pass a background check to legally acquire a firearm through a licensed firearms dealer  
 4 have used DIY AR-15s to carry out horrific crimes. For example, in 2013, after John Zawahari was  
 5 deemed ineligible to purchase a firearm at a gun store, he constructed his own unserialized AR-15,  
 6 which he used to carry out a shooting spree in Santa Monica, killing five people and wounding  
 7 several others.<sup>9</sup> Kevin Neal, who had multiple prior felony convictions, purchased the parts online  
 8 to construct an AR-15.<sup>10</sup> In 2017, Neal used the gun to kill his wife and neighbors, then continued  
 9 on a shooting spree throughout Tehama County, firing into an elementary school and killing several  
 10 passersby.<sup>11</sup> The following year, in San Diego, officers responded to a 911 call regarding a domestic  
 11 dispute at Joseph Darwich's residence. Darwich, who had prior convictions for assault and battery,  
 12 used a homemade, unserialized rifle to fire at least thirty-three rounds at the officers before shooting  
 13 himself.<sup>12</sup> In July 2019, Adel Sambrano Ramos, who had two prior domestic violence restraining  
 14 orders against him, assembled AR-15 rifles from parts and used the weapons to kill a Sacramento  
 15 police officer and hold off the police in an hours-long standoff.<sup>13</sup> One prohibited purchaser, Alfred  
 16

17 <sup>8</sup> Office of Gun Violence Prevention, Cal. Dep't of Justice, *Data Report: The Impact of Gun*  
 18 *Violence in California* 22 (Aug. 2023), [https://oag.ca.gov/system/files/media/OGVP-Data-Report-](https://oag.ca.gov/system/files/media/OGVP-Data-Report-2022.pdf)  
 19 [2022.pdf](https://oag.ca.gov/system/files/media/OGVP-Data-Report-2022.pdf). Reports on ghost gun recoveries often did not distinguish between pistols and rifles.  
 While the majority of ghost gun recoveries were likely pistols, homemade AR-style rifles were also  
 frequently trafficked and recovered in crimes. *See infra* at 5-7.

20 <sup>9</sup> *See* Stephens, *supra* note 6; Panella Engel, *Here's The Legal Loophole That Allowed The Santa*  
 21 *Monica Shooter To Own A Gun*, Business Insider (June 14, 2013),  
[https://www.businessinsider.com/legal-loophole-allowed-john-zawahari-to-obtain-a-gun-2013-](https://www.businessinsider.com/legal-loophole-allowed-john-zawahari-to-obtain-a-gun-2013-6?op=1)  
[6?op=1](https://www.businessinsider.com/legal-loophole-allowed-john-zawahari-to-obtain-a-gun-2013-6?op=1).

22 <sup>10</sup> Andrew Blankstein & Corky Siemaszko, *California mass shooter made his own rifles*, NBC  
 (Nov. 16, 2017), [https://www.nbcnews.com/news/us-news/california-mass-shooter-made-his-](https://www.nbcnews.com/news/us-news/california-mass-shooter-made-his-own-killing-machines-n821516)  
[own-killing-machines-n821516](https://www.nbcnews.com/news/us-news/california-mass-shooter-made-his-own-killing-machines-n821516).

23 <sup>11</sup> Richard Gonzales et al., *Police Find Body Of Tehama County Gunman's Wife, Making His Death*  
 24 *Toll 5*, NPR (Nov. 15, 2017), [https://www.npr.org/sections/thetwo-way/2017/11/15/564335359/in-](https://www.npr.org/sections/thetwo-way/2017/11/15/564335359/in-harm-s-way-school-staff-saved-students-during-tehama-county-shooting)  
[harm-s-way-school-staff-saved-students-during-tehama-county-shooting](https://www.npr.org/sections/thetwo-way/2017/11/15/564335359/in-harm-s-way-school-staff-saved-students-during-tehama-county-shooting).

25 <sup>12</sup> Rory Devine & Tom Jones, *Police Seizing More Homemade, Untraceable Weapons Used in*  
 26 *Local Crimes*, NBC 7 San Diego (May 21, 2019),  
[https://www.nbcsandiego.com/news/local/police-seizing-more-homemade-untraceable-weapons-](https://www.nbcsandiego.com/news/local/police-seizing-more-homemade-untraceable-weapons-used-in-local-crimes/159721/)  
[used-in-local-crimes/159721/](https://www.nbcsandiego.com/news/local/police-seizing-more-homemade-untraceable-weapons-used-in-local-crimes/159721/).

27 <sup>13</sup> Sam Stanton, *Death penalty sought against suspect in Sacramento Officer Tara O'Sullivan*  
 28 *slaying*, The Sacramento Bee (Jan. 23, 2020),  
<https://www.sacbee.com/news/local/crime/article239358248.html>; Max Resnik, *Suspect in*  
*Sacramento officer's death has troubled past*, KCRA (June 20, 2019),  
<https://www.kcra.com/article/adel-sambrano-ramos-criminal-past/28121246#>.

1 Villasenor, who was arrested in 2020 for illegally possessing several assault weapons constructed  
2 from 80% receivers, explained to law enforcement that “80% firearms kits were made for people  
3 ‘like me’ who needed to get around not being able to buy guns.”<sup>14</sup>

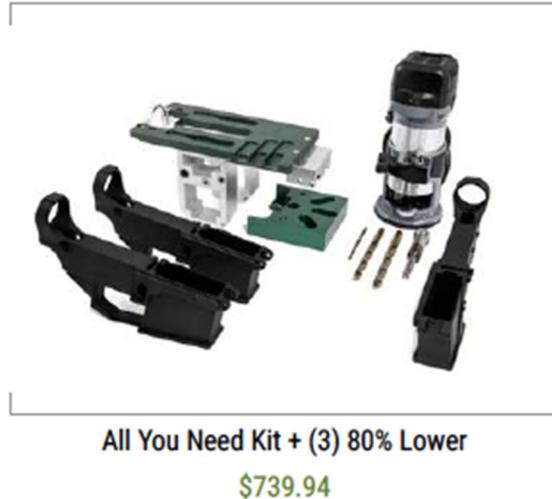
4           Meanwhile, as documented in numerous federal prosecutions, entrepreneurial criminals  
5 trafficked homemade AR-15s. *See, e.g.,* Complaint, *United States v. Romero*, No. 3:15-cr-00854  
6 (S.D. Cal. Mar. 5, 2015) (three men arrested for trafficking, among other things, AR-15 type semi-  
7 automatic rifles constructed from unfinished lower receivers); Complaint, *United States v.*  
8 *Guevara-Pimentel*, No. 2:16-cr-00021 (E.D. Cal. Jan. 21, 2016) (meth dealer sold undercover agent  
9 forty-nine firearms, including an unserialized AR-15 rifle); Complaint, *United States v. Rodriguez*,  
10 No. 2:18-cr-00042 (E.D. Cal. Feb. 15, 2018) (drug dealer sold multiple firearms to federal agent,  
11 including several ghost AR-15 rifles); Complaint, *United States v. Castillo*, No. 1:18-cr-00061  
12 (E.D. Cal. Feb. 28, 2018) (defendants sold fifteen firearms to confidential informants, including  
13 unserialized AR-15 rifles); Indictment, *United States v. Javier Villalobos*, No. 8:19-cr-00167 (C.D.  
14 Cal. Oct. 2, 2019) (three men indicted for dealing, among other things, three unserialized AR-style  
15 rifles).

16           The trafficking in homemade AR-15s, the use of homemade AR-15s in shootings, and the  
17 astonishing increase in ghost gun recoveries took place as an online marketplace developed in  
18 which gun-building kits and partially complete frames and receivers could be purchased by anyone  
19 with a credit card, without a background check. Prior to the Final Rule taking effect, online  
20 marketplaces freely sold pre-drilled or indexed lower receivers (also known as “stripped lower  
21 receivers”) or alternatively offered AR-15 “build kits,” which consisted of an 80% receiver, a  
22 compatible jig, and other necessary tools and parts for creating a finished receiver.

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<sup>14</sup> Complaint at ¶ 18, *United States v. Villasenor*, No. 2-20-cr-00050 (E.D. Cal. Jan. 30, 2020).



*Example of AR-15 build kit.<sup>15</sup>*

The Final Rule, by confirming that gun-building kits and some partially finished frames and receivers fall within the ambit of federal firearms laws, took a critically important step in reining in these online marketplaces. But, as the next two sections demonstrate, online marketplaces continue to sell products—jigs, tools, and instructions—for competing partially complete AR-style lower receivers, with serious public safety consequences for California, where those items continue to be trafficked and used in crimes.

## **II. PARTIALLY COMPLETE AR-STYLE LOWER RECEIVERS REMAIN EASY TO PURCHASE AND FINISH EVEN AFTER THE FINAL RULE HAS TAKEN EFFECT**

The Final Rule regulates a partially complete AR-15 lower receiver as a firearm only if “critical interior areas hav[e] been indexed, machined, or formed” or if it is “sold, distributed, or possessed with instructions, jigs, templates, equipment, or tools such that it may readily be completed.” 27 C.F.R. § 478.12(c). Online sellers are responding to this restriction by selling partially complete AR-style lower receivers and jigs separately. But, in practical effect, these 80% receivers remain as easy to acquire and then to finish with the use of a jig and without any expertise or special equipment as they were before the Final Rule.

Today, because both stripped lower receivers and “build kits” that include an 80% lower

<sup>15</sup> Aaron Esty Decl., Ex. 17, at 6, *Syracuse v. ATF*, No. 1:20-cv-06885-GHW (S.D.N.Y. Dec. 9, 2020), ECF No. 64-17.

1 receiver and a jig are classified as firearms under the Final Rule, companies have created a simple  
 2 workaround: selling the 80% lower receivers and the corresponding jigs, tools, and parts  
 3 separately. These sellers do not hide the fact that the 80% lower receivers are intended to be  
 4 converted into firearms, and instead advertise them as a means to avoid regulation. For example,  
 5 an FAQ page from one online retailer, Gun Builders Depot, explains the benefits of purchasing an  
 6 80% lower receiver, rather than purchasing a stripped receiver, as follows:

### 7 Advantages of Using an 80% Lower

8 Compared to buying a stripped lower receiver, buying and building an 80% lower for your  
 9 AR carries some unique benefits:

- 10 • It's not considered a firearm
- 11 • No FFL is required to buy one
- 12 • It ships straight to your house
- 13 • You don't have to pay any extra fees
- 14 • No background is required to build one\*
- 15 • You don't need to serialize it\*
- 16 • You don't need to register it\*

16

14 The Gun Builders Depot website goes on to explain that the differences between stripped  
 15 and 80% lower receivers are minimal:

### 16 Differences between an 80% and Stripped Lower

17 Now you how 80 lowers are legally different from AR-15 stripped receivers. One is considered  
 18 a firearm and one is not. But how are they physically different? A stripped receiver is ready to  
 accept a lower parts kit, buffer system, and upper receiver assembly.

19 Here's what needs to be completed on an 80% lower to make it functional

- 20 • Drill the hammer pin hole
- 21 • Drill the trigger pin hole
- 22 • Drill the safety selector lever hole
- 23 • Machine the fire control group cavity

### 23 Tools to Finish The Final 20%

24 Completing those four machining steps above is easy. Total machining time can vary, but  
 25 most first-timers get the job done in 2 hours or less. Experienced builders can complete a  
 26 lower in around 30 minutes with the right tools. Speaking of tools, you'll need an 80% jig to  
 get the job done. If you've ever done basic home improvement stuff, used a router or drill, or  
 put your hands on some power tools, you can do all these steps yourself.

17

27 <sup>16</sup> *What is an 80 Percent Lower?*, Gun Builders Depot, [https://www.gunbuilders.com/blog/what-](https://www.gunbuilders.com/blog/what-is-an-80-percent-lower/)  
 28 [is-an-80-percent-lower/](https://www.gunbuilders.com/blog/what-is-an-80-percent-lower/) (last updated Oct. 11, 2022).

<sup>17</sup> *Id.*

1 Thus, as Gun Builders Depot itself recognizes, the difference between a stripped lower  
2 receiver and an 80% lower receiver consists of just a few machining steps that can be easily  
3 achieved through the use of a jig and household tools in as little as 30 minutes. Yet, under ATF’s  
4 current approach, one is subject to federal firearms laws, while the other is not.

5 A review of online ghost gun retailers reveals just how easy it continues to be to obtain the  
6 component parts for constructing an AR-15 at home. As of December 1, 2023, at least thirty-three  
7 websites listed 80% AR-15 lower receivers for sale, and at least twenty-four websites offered jigs  
8 capable of finishing those receivers. *See* Appendix A. Often, sellers will specify in the product  
9 descriptions of their 80% lower receivers which of their jigs are compatible for finishing the  
10 receiver. For example, 5D Tactical advertises the AR-15 80% Billet Lower, a product “developed  
11 with DIY builders in mind,” as follows:

12 This 5D Tactical Billet Lower is produced for easy completion with  
13 no prior experience required. All of the necessary cuts have been  
14 completed on this lower, leaving only the trigger hole to be drilled  
with our easy-to-use Router Jig Pro.<sup>18</sup>

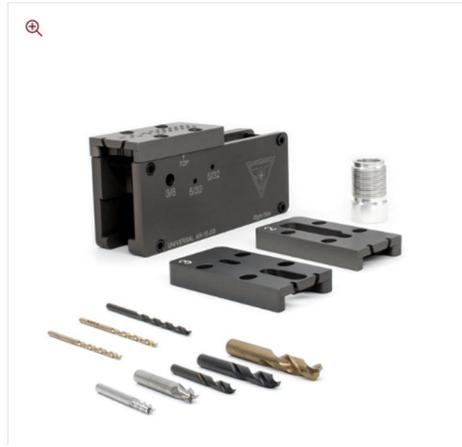
15 Similarly, 80 Percent Arms states that its Type III Hard Anodized Billet AR-15 80% Lower  
16 Receiver is compatible “with the Easy Jig® Gen 3 and Freedom Jig Router,” products which are  
17 also sold through their website.<sup>19</sup> Even where the seller does not link the unfinished receiver to a  
18 compatible jig, purchasers can finish their receivers by purchasing jigs with universal  
19 compatibility.<sup>20</sup>

25 <sup>18</sup> *AR-15 80% Billet Lower-Black Anodized*, 5D Tactical, <https://perma.cc/A3TC-9QWC> (last  
visited Dec. 1, 2023).

26 <sup>19</sup> *Type III Hard Anodized Billet AR-15 80% Lower Receiver*, 80 Percent Arms  
<https://www.80percentarms.com/products/type-iii-hard-anodized-billet-ar-15-80-lower-receiver/>  
27 (last visited Dec. 1, 2023).

28 <sup>20</sup> *See, e.g., Universal 80 Lower Jigs*, Modulus Arms, <https://www.modulusarms.com/universal-jigs/80-lower> (advertising the Router Jig Extreme as a “universal solution to finishing any 80  
percent AR15, AR10, or AR9 lower receiver on the market”) (last visited Dec. 1, 2023).

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Juggernaut Tactical - AR-15 80% Lower Universal Jig

SKU: JT-15UJIG

Availability: **In stock! Ships within 24 hours or the next business day!**

**\$149.99**

★★★★★ 1 review

Include Tooling?:

Quantity:



**SALE**

**\$299.00** ~~\$329.95~~

**5D TACTICAL THE ROUTER JIG PRO MULTIPLATFORM - AR-15/AR-9/AR-45/.308/AR-10**

5D TACTICAL

★★★★★ (1 review) Write a Review

Quantity:

**ADD TO CART** **BUY NOW**

Description Info 1 Review

Looking for a universal 80% lower jig capable of completing AR-15, AR-9, AR-45, .308 and AR-10 80% lowers? Look no further! The Router Jig PRO Multiplatform by 5D Tactical is the most advanced and most durable router based lower receiver jig ever created. Universal for all billet, forged and 80% lower receiver polymer AR-15, AR-9, AR-45, .308 and AR-10 receivers, guaranteed.

*Examples of universal jigs capable of finishing 80% AR-15 lower receivers.<sup>21</sup>*

Not only is it easy to find a compatible jig for completing an 80% AR-15 lower receiver, but these items are also relatively inexpensive. Partially complete AR-15 lower receivers can be purchased for as little as \$50,<sup>22</sup> single-use jigs are available for as low as \$60,<sup>23</sup> and jigs that can be reused to finish multiple receivers start at around \$100.<sup>24</sup> This low price point, as well as the wide availability online and the fact that that none of these products requires a background check for

<sup>21</sup> *Juggernaut Tactical – AR-15 80% Lower Universal Jig*, Gun Builders Depot, <https://www.gunbuilders.com/products/juggernaut-tactical-ar-15-80-lower-universal-jig/>, (last visited Dec. 1, 2023); *5D Tactical The Router Jig Pro Multiplatform*, Limitless America, <https://limitlessamerica.com/5d-tactical-the-router-jig-pro-multiplatform-ar-15-ar-9-ar-45-308-ar-10/> (last visited Dec. 1, 2023).

<sup>22</sup> *See, e.g., AR-15 Lower Receiver – Raw*, Thunder Tactical, <https://thundertactical.com/product/ar-15-lower-receiver-raw> (last visited Dec. 1, 2023).

<sup>23</sup> *See, e.g., Polymer80 P80-JIG-RL556v3 Jig Kit*, Gun Builders Depot, <https://www.gunbuilders.com/products/polymer80-p80-jig-rl556v3-jig-kit/> (last visited Dec. 1, 2023).

<sup>24</sup> *See, e.g., Liberty 80% Lower Jig (AR-15/AR-9)*, Gun Builders Depot, <https://www.gunbuilders.com/products/liberty-80-lower-jig-ar-15/ar-9-/> (last visited Dec. 1, 2023).

1 purchase, means the parts required for building an AR-15 at home continue to be easily accessible.

2 Furthermore, with the assistance of a jig, the process of converting an 80% AR-15 lower  
3 receiver into a finished receiver is quick and easy, requiring no expertise and little additional  
4 equipment. Sellers repeatedly emphasize the simplicity of the process. For example, 5D Tactical  
5 describes its jigs as follows:

6 Our universal 80% lower jig kits are the fastest and easiest to use  
7 80% lower receiver jigs on the market, enabling you to finish your  
8 AR-15 or .308 assembly in under 15 minutes with superior results.  
9 With ultra-hardened, heat-treated steel wear surfaces, each jig is  
10 incredibly durable and guarantees years of reliable finishing.”<sup>25</sup>

11 Similarly, the description of the Broken Arms 80% Lower Jig – AR 15/AR9 emphasizes the ease  
12 of modifying an 80% lower receiver and the minimal additional equipment required:

13 By now, you no doubt know about building an AR from scratch using  
14 little more than a drill press. This is the kit you’ll need to get it done:  
15 The Broken Arms 80% Jig is designed to eliminate the need for any  
16 sort of expensive equipment like a router or mill. It uses unique  
17 templates that allow you to fabricate any mil-spec AR-15’s forged or  
18 billet 80% lower or any mil-spec AR9 80% receiver with nothing  
19 more than a drill press and vise.”<sup>26</sup>

20 Some of the more advanced jigs require even less equipment, such as the Easy Jig® Gen 3  
21 Multi-Platform, which is advertised as the “world’s easiest to use, fully universal, 80% lower jig  
22 capable of finishing AR-15 . . . 80% lower receivers without the need for any additional adapter  
23 pieces.”<sup>27</sup> The product description emphasizes that the jig does not require a drill press or any  
24 measuring tools; only requires using a hand drill and handheld router; involves “drill[ing] only 1  
25 hole prior to milling”; and “can complete an 80% lower *in under 30 minutes*.”<sup>28</sup> Furthermore, a  
26 video is provided with clear and simple instructions.<sup>29</sup> Other jigs also come with instructions, and  
27 videos demonstrating how to finish an 80% AR-15 lower receiver are readily available on the  
28

25 *Multiplatform AR Jigs: Universal 80% Lower Jig Kits*, 5D Tactical, <https://perma.cc/66PE-BE73>  
(last visited Nov. 20, 2023).

26 *Broken Arms 80% Lower Jig – AR15/AR9*, Gun Builders Depot, <https://perma.cc/UT3K-2KR5>  
(last visited Nov. 20, 2023).

27 *Easy Jig® Gen 3 Multi-Platform – AR-15, AR-9 and .308 80% Lower Jig*, 80 Percent Arms,  
<https://perma.cc/QVX7-FAFC> (last visited Nov. 16, 2023).

28 <sup>28</sup> *Id.* (emphasis in original).

29 *Id.*

1 internet.<sup>30</sup>

2 As these websites demonstrate, jigs, tools, and instructions for finishing AR-type receivers  
3 remain widely available, easy to use, and inexpensive. While the Final Rule has changed how 80%  
4 AR-type receivers are sold by requiring customers to make more than one purchase to pair a  
5 partially complete receiver with the tools for completing it, the practical reality is clear and  
6 unchanged: a standalone, partially complete AR-style lower receiver that can be acquired without  
7 a background check or serial number remains as easy as ever to turn into a functioning AR-style  
8 firearm.

### 9 **III. HOMEMADE AR-15S CONTINUE TO BE TRAFFICKED AND USED IN CRIME IN CALIFORNIA**

10 Because it remains easy to build an untraceable, unserialized AR-15 given ATF's loophole,  
11 there will continue to be serious consequences for California. First, California will face difficulties  
12 in enforcing state laws regulating ghost guns and assault weapons. While California prohibits the  
13 sale or transfer of firearm precursor parts—including 80% AR-15 lower receivers—within the state,  
14 Cal. Penal Code §§ 16531, 30400, and prohibits the sale or possession of assault weapons, Cal.  
15 Penal Code § 30510, individuals are still finding ways to sidestep these prohibitions and build and  
16 traffic homemade AR-style assault rifles in California.<sup>31</sup> If partially complete AR-style lower  
17 receivers were also regulated by ATF as firearms under federal law—just as stripped lower  
18 receivers are—this illicit market could be greatly reduced.

19 Moreover, due to the continuing accessibility of AR-15 component parts, unserialized AR-  
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21 <sup>30</sup> See, e.g., *5D Tactical Router Jig PRO Instructions*, Vimeo, <https://vimeo.com/286975295>  
22 (providing video instructions for 5D Tactical's Router Jig Pro) (uploaded Aug. 27, 2018); *AR-15*  
23 *Easy Jig® Manual*, 80 Percent Arms (2016), <https://perma.cc/46UM-HM3H> (providing step-by-  
24 step instructions for finishing an 80% lower receiver with the Easy Jig®) (last visited Dec. 1, 2023).

25 <sup>31</sup> See, e.g., Complaint, *United States v. Ferrari*, No. 3:23-mj-01618-BGS (S.D. Cal. May 5, 2023)  
26 (unlicensed dealer sold twelve unserialized AR-15s); Complaint, *United States v. Valencia*, No.  
27 5:23-mj-00237 (C.D. Cal. May 10, 2023) (defendant sold undercover agent four privately made  
28 AR-variant rifles); Complaint, *United States v. Arabyan*, No. 2:23-mj-01095 (C.D. Cal. Mar. 9,  
2023) (defendant, a convicted felon, sold confidential informant multiple firearms, including a self-  
manufactured AR-15 style rifle bearing no serial number); Complaint, *United States v. Benner*, No.  
2:23-mj-00121 (E.D. Cal. Aug. 28, 2023) (defendant arrested after selling drugs and unserialized  
AR-15 for being a felon in possession of a firearm); Complaint, *United States v. Banda, Jr.*, No.  
1:23-cr-00106 (E.D. Cal. May 18, 2023) (defendant admitted to purchasing the component parts  
for, manufacturing, and selling AR-style rifles); Indictment, *United States v. Limon*, No. 2:23-cr-  
00270 (C.D. Cal. May 31, 2023) (eight defendants indicted for dealing drugs and firearms,  
including unserialized AR-15 rifles).

1 15 rifles continue to pose a threat to public safety in California. Perpetrators, particularly those who  
 2 would otherwise be prohibited from purchasing firearms, continue to use these weapons to commit  
 3 crimes and to circumvent firearms regulations. For example, in January 2023, Nathaniel Dixon, a  
 4 convicted felon, used a privately manufactured AR-15 style rifle to shoot and kill Selma Police  
 5 Officer Gonzalo Carrasco Jr.<sup>32</sup> That same month, Ricardo Firo fired dozens of rounds from an  
 6 unserialized AR-15 rifle at police responding to a domestic violence call, resulting in a six-hour  
 7 standoff outside of his home in Bakersfield.<sup>33</sup> Additionally, in September 2023, Benjamin Bautista  
 8 used a ghost AR-style rifle to fire more than a dozen shots at an inhabited residence in Spring  
 9 Valley.<sup>34</sup> These examples, and countless others, demonstrate the irreversible and deadly  
 10 consequences of ATF's continued non-regulation of partially complete AR-15 lower receivers.

### 11 CONCLUSION

12 This Court should grant Plaintiffs' cross-motion for summary judgment.

13 Dated: December 1, 2023

COOLEY LLP

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 16 By:           /s/ Kathleen R. Hartnett            
 Kathleen R. Hartnett

17 Attorneys for Amicus Curiae  
 18 EVERYTOWN FOR GUN SAFETY  
 SUPPORT FUND

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 25 <sup>32</sup> *Selma Cop Killer Officially Charged During Court Appearance*, Fresno Cnty. Sheriff's Office (Feb. 3, 2023), <https://www.fresnosheriff.org/media-relations/selma-cop-killer-officially-charged-during-court-appearance.html>.

26 <sup>33</sup> Jason Kotowski, *BPD officer shielded woman from gunfire during southwest Bakersfield*  
 27 *standoff: reports*, KGET (Jan. 31, 2023), <https://www.kget.com/news/crime-watch/bpd-officer-shielded-woman-from-gunfire-during-southwest-bakersfield-standoff-reports/>.

28 <sup>34</sup> *Man shot up Spring Valley home with 'Frankenstein-style' ghost gun assault rifle: Sheriff's*  
*Dept.*, NBC 7 San Diego (Sept. 29, 2023), <https://www.nbcsandiego.com/news/local/man-shot-up-spring-valley-home-with-frankenstein-style-ghost-gun-assault-rifle-sheriffs-dept/3315927/>.

**Appendix A: Online sellers of partially complete AR-15 lower receivers and compatible jigs as of December 1, 2023**

<b>Vendor</b>	<b>80% AR-style lower receivers for sale</b>	<b>Compatible Jigs for sale</b>	<b>Website URL</b>
3CR Tactical	Yes	Yes	<a href="https://3crtactical.com/">https://3crtactical.com/</a>
5D Tactical, LLC	Yes	Yes	<a href="https://www.5dtactical.com">https://www.5dtactical.com</a>
80 Percent Arms Inc.	Yes	Yes	<a href="https://www.80percentarms.com">https://www.80percentarms.com</a>
80-Lowers	Yes	Yes	<a href="https://www.80-lower.com">https://www.80-lower.com</a>
Gun Builders Depot	Yes	Yes	<a href="https://www.80lowerjig.com/">https://www.80lowerjig.com/</a>
AAO Manufacturing	Yes	No	<a href="https://aaomfg.com">https://aaomfg.com</a>
American Made Tactical	No	Yes	<a href="https://americanmadetactical.com">https://americanmadetactical.com</a>
American Resistance Gear	Yes	No	<a href="https://americanresistancegear.com/">https://americanresistancegear.com/</a>
Broken Armory	No	Yes	<a href="https://www.brokenarmory.com/">https://www.brokenarmory.com/</a>
Brownells	No	Yes	<a href="https://www.brownells.com">https://www.brownells.com</a>
Classic Firearms	Yes	Yes	<a href="https://www.classicfirearms.com">https://www.classicfirearms.com</a>
Davidson Defense	Yes	No	<a href="https://davidsondefense.com">https://davidsondefense.com</a>
Daytona Tactical	Yes	No	<a href="https://daytonatactical.com">https://daytonatactical.com</a>
Delta Team Tactical	Yes	No	<a href="https://www.deltateamtactical.com">https://www.deltateamtactical.com</a>
Durkin Tactical	Yes	No	<a href="https://www.durkintactical.com">https://www.durkintactical.com</a>
EP Armory	Yes	Yes	<a href="https://www.eparmory.com">https://www.eparmory.com</a>
Ghost Gun Jigs	No	Yes	<a href="https://ghostgunjigs.com">https://ghostgunjigs.com</a>
Ghost Gunner	No	Yes	<a href="https://ghostgunner.net/">https://ghostgunner.net/</a>
Ghost Guns	No	Yes	<a href="https://ghostguns.com">https://ghostguns.com</a>
Gun California	No	Yes	<a href="http://guncalifornia.com">http://guncalifornia.com</a>
Hellfire Armory	Yes	Yes	<a href="https://www.hellfirearmory.com">https://www.hellfirearmory.com</a>
JL Billet	Yes	No	<a href="https://jlbillet.com">https://jlbillet.com</a>
Joe Bob Outfitters	Yes	No	<a href="https://www.joeboboutfitters.com">https://www.joeboboutfitters.com</a>
Juggernaut Tactical	Yes	Yes	<a href="https://jtactical.com">https://jtactical.com</a>
Limitless America	Yes	Yes	<a href="https://limitlessamerica.com/">https://limitlessamerica.com/</a>
LTT Firearms	Yes	Yes	<a href="https://www.lttfirearms.com/">https://www.lttfirearms.com/</a>
Mas Defense	Yes	Yes	<a href="https://masdefense.com">https://masdefense.com</a>
Matrix Arms	Yes	No	<a href="https://www.matrixarms.com/">https://www.matrixarms.com/</a>
Modulus Arms	Yes	Yes	<a href="https://www.modulusarms.com">https://www.modulusarms.com</a>
Moriarti Armaments	Yes	No	<a href="https://moriartiarmaments.com/">https://moriartiarmaments.com/</a>
New Frontier Armory	Yes	No	<a href="https://www.newfrontierarmory.com/">https://www.newfrontierarmory.com/</a>
Outdoor Sports USA	Yes	No	<a href="https://outdoorsportsusa.com">https://outdoorsportsusa.com</a>
Polymer 80	Yes	Yes	<a href="https://www.polymer80.com">https://www.polymer80.com</a>
Pro2A Tactical	Yes	No	<a href="https://pro2a-tactical.com/">https://pro2a-tactical.com/</a>
R&B Tactical Tooling	No	Yes	<a href="https://www.rbtacticaltooling.com">https://www.rbtacticaltooling.com</a>
Right to Bear	Yes	No	<a href="https://www.righttobear.com/">https://www.righttobear.com/</a>
Tactical Machining, LLC	Yes	No	<a href="https://www.tacticalmachining.com">https://www.tacticalmachining.com</a>
Tactical Shit	No	Yes	<a href="https://shop.tacticalshit.com/">https://shop.tacticalshit.com/</a>
Tennessee Arms Company, LLC	Yes	No	<a href="https://www.tnarmsco.com">https://www.tnarmsco.com</a>
Thunder Guns	Yes	No	<a href="https://thundertactical.com">https://thundertactical.com</a>
US Patriot Armory Inc.	Yes	Yes	<a href="https://www.uspatriotarmory.com">https://www.uspatriotarmory.com</a>
Wolfpack Armory	Yes	No	<a href="https://www.wolfpackarmory.com/">https://www.wolfpackarmory.com/</a>

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<b>Vendor</b>	<b>80% AR-style lower receivers for sale</b>	<b>Compatible Jigs for sale</b>	<b>Website URL</b>
TOTAL	33	24	

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6 EVERYTOWN FOR GUN SAFETY  
SUPPORT FUND  
7

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION

11  
12 STATE OF CALIFORNIA, et al.,  
13 Plaintiffs,  
14 v.  
15 BUREAU OF ALCOHOL, TOBACCO,  
16 FIREARMS AND EXPLOSIVES, et al.,  
17 Defendants.

Case No. 3:20-CV-06761-EMC

**[PROPOSED] ORDER GRANTING  
UNOPPOSED MOTION FOR LEAVE TO FILE  
BRIEF OF EVERYTOWN FOR GUN SAFETY  
SUPPORT FUND AS AMICUS CURIAE IN  
SUPPORT OF PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT AND IN OPPOSITION  
TO DEFENDANTS' MOTION FOR SUMMARY  
JUDGMENT**

Judge: Hon. Edward M. Chen  
Hearing Date: January 25, 2024  
Hearing Time: 1:30 PM  
Hearing Place: Courtroom 5, 17th Floor

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Amicus Curiae Everytown for Gun Safety Support Fund (“Everytown”) filed an Unopposed Motion for Leave to File Brief in Support of Plaintiffs’ Motion for Summary Judgment and in Opposition to Defendants’ Motion for Summary Judgment.

Having considered Everytown’s Motion, pleadings and filings in this action, and all other matters properly before the Court, the Court **GRANTS** Everytown’s Motion.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Hon. Edward M. Chen  
UNITED STATES DISTRICT COURT

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