

1 BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

2 LESLEY FARBY
3 Assistant Branch Director

4 DANIEL RIESS (Texas Bar No. 24037359)
TAISA M. GOODNATURE (New York Bar No. 5859137)
5 JEREMY S.B. NEWMAN (Massachusetts Bar No. 688968)
Trial Attorneys
6 United States Department of Justice
Civil Division
7 Federal Programs Branch
1100 L Street NW
8 Washington, DC 20005
Telephone: (202) 353-3098
9 FAX: (202) 616-8460
daniel.riess@usdoj.gov

10 Attorneys for Defendants

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

15 STATE OF CALIFORNIA,
16 *et al.*
Plaintiffs,

17 v.

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

21 Defendants.

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

) **DEFENDANTS’ COMBINED REPLY BRIEF IN**
) **SUPPORT OF MOTION FOR SUMMARY**
) **JUDGMENT AND OPPOSITION TO**
) **PLAINTIFFS’ CROSS-MOTION FOR**
) **SUMMARY JUDGMENT**

) Noting Date: January 25, 2024

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INTRODUCTION

This case at its core involves a policy disagreement, rather than a legal dispute, between the parties.¹ The Rule at issue in this case regulates, among other things, partially complete firearm frames and receivers. Plaintiffs believe that the Rule and Letters did not go far enough in their regulation of partially complete AR-type receivers. They have challenged the Rule and Letters as inconsistent with the GCA and as arbitrary and capricious. However, although Plaintiffs clearly disagree with the scope and degree of ATF's regulation of such receivers, that disagreement does not make the Rule and Letters unlawful.

As an initial matter, Plaintiffs fail to establish Article III standing to maintain this action, because they do not identify any evidence connecting their purported injuries to the particular products whose classification under the Rule they challenge. Plaintiffs fare no better on the merits. ATF correctly concluded that unindexed and unmachined receiver blanks without jigs or supporting materials are not firearms under the GCA. Such products are not “designed to . . . expel a projectile by the action of an explosive,” 18 U.S.C. § 921(a)(3)(A), or designed to function as a “frame or receiver,” 87 Fed. Reg. at 24,739 (27 C.F.R. § 478.12(c)). Rather, they are designed to be converted into a functional receiver only with significant additional machining operations, and then aggregated with other weapon parts to form an operable weapon that will expel a projectile. “[T]he word ‘designed,’ when applied to a manufactured object such as a firearm, refers to what the gun was conceived of and designed for, and not to any modifications made afterwards.” *United States v. Gravel*, 645 F.3d 549, 551 (2d Cir. 2011). Therefore, whereas courts consistently construe the term “designed to” in the GCA to reach unserviceable firearms that are designed to function but cannot function in their present state because of damage or poor craftsmanship, the term does not reach manufactured items that cannot function as a firearm without additional machining operations that require considerable time and expense.

ATF also properly recognized that such unindexed and unmachined receiver blanks are not “readily” completed, either into an operable weapon or a functional receiver. 18 U.S.C. § 921(a)(3)(B);

¹ Defendants adopt throughout this brief the same naming conventions used in Defendants' opening summary judgment brief. *See* Defs.' Mot. for Summ. J., ECF No. 182 (Defs.' MSJ).

1 87 Fed. Reg. at 24,739 (27 C.F.R. § 478.12(c)). Rather, ATF's extensive analysis has shown that absent
2 supporting materials such as a jig, an AR-type receiver blank without indexing or machining in the fire
3 control cavity can be completed into a functional receiver only with great difficulty. Plaintiffs argue to
4 the contrary primarily based on the testimony of their expert, a former ATF official. But that expert
5 testimony is inadmissible extra-record evidence in this APA case, and Plaintiffs fail to meet their burden
6 to establish any of the narrow exceptions to the Rule that APA cases must be resolved based on the
7 administrative record. Even if the Court were to consider that expert testimony, the rebuttal declaration
8 of ATF's Chief of the Firearms Technology Industry Services Branch shows that the analysis of Plaintiffs'
9 expert is flawed and unpersuasive.

10 ATF has also provided a rational explanation for the Rule and Letters' treatment of partially
11 complete AR-type receivers. Contrary to Plaintiffs' assertion, ATF's treatment of such receivers utilizes
12 factors relevant to whether they may be readily completed to be functional as provided in the Rule. ATF
13 has also sufficiently explained its line-drawing decision not to expand the scope of the Rule in accordance
14 with Plaintiffs' policy preferences. An agency's decision is not arbitrary and capricious merely because
15 it could have reached more conduct than it did, and an agency's line-drawing determinations are entitled
16 to weight when it acts in accordance with its technical expertise. The APA does not allow a litigant to
17 substitute its judgment for the agency's decision, but instead requires only that the agency act rationally
18 and explain its actions. ATF has done so here.

19 This Court should reject Plaintiffs' APA claims and grant summary judgment in favor of
20 Defendants.

21 ARGUMENT

22 **I. Plaintiffs Have Not Established Article III Standing to Challenge the Relevant Agency 23 Actions.**

24 This case should be dismissed because Plaintiffs fail to establish Article III standing. Although
25 Plaintiffs relegate any discussion of standing to the end of their brief, *see* Mem. in Supp. of Pls.' Mot. for
26 Summ. J. at 33-40, ECF No. 184 (Pls.' MSJ), standing is of course a threshold jurisdictional matter that a
27 court must address before reaching the merits of any claim, *see, e.g., Warth v. Seldin*, 422 U.S. 490, 498-
28 99 (1975).

1 None of the evidence on which Plaintiffs attempt to rely supports a conclusion that their purported
2 injuries result from the specific agency actions that they challenge here—namely, those implementing
3 ATF’s determination “that a partially complete AR-style receiver is not a ‘firearm’ unless certain ‘interior
4 areas’ have been machined and indexed” or “that receiver is ‘sold, distributed, or possessed with’ with
5 [sic] jigs, instructions, or other materials.” Pls.’ MSJ at 2. With respect to California, for example,
6 Plaintiffs contend that “California has spent nearly \$370,000 since 2018 administering its Unique Serial
7 Number Application (USNA program),” which requires background checks and serialization in
8 connection with certain unserialized weapons and “firearm precursor parts.” *Id.* at 35 (citing Gonzalez
9 Decl. ¶¶ 7-18, ECF No. 188). But Plaintiffs make no effort to establish that any of those expenditures
10 related to the standalone AR-type receiver blanks whose classification under the Rule they challenge, as
11 opposed to other products that fall within the scope of the Rule.

12 Plaintiffs’ effort to rely on funding that the State has allocated toward implementation of A.B.
13 1621 (Cal. 2022) fares no better. *Id.* at 34.² That funding supports the creation of ten new positions within
14 the California Bureau of Firearms to process serialization applications for certain “firearm precursor parts”
15 and for enforcement of related criminal penalties. *Id.*; *see* Crain Decl. Ex. 16, at 166-71,³ ECF No. 185.
16 But as the guidebook that Plaintiffs cite makes clear, *see* Pls.’ MSJ at 36, A.B. 1621 imposes requirements
17 under California law on numerous categories of products apart from standalone AR-type receiver blanks,
18 *see* Gonzalez Decl. Ex. B, at 4-6. Plaintiffs make no effort to establish that if the Court were to vacate the
19 actions that Plaintiffs challenge here, any of the new law enforcement positions for which California has
20 allocated funding could be eliminated.

21 That leaves Plaintiffs’ contention that they need not connect any of California’s expenditures to
22 ATF’s classification of the products at issue here. To be sure, the Court credited that argument at the
23 motion to dismiss stage, before Plaintiffs had the opportunity to conduct any discovery. *See* Pls.’ MSJ at
24 36-37; *California v. ATF*, No. 20-CV-06761-EMC, 2023 WL 1873087, at *6 (N.D. Cal. Feb. 9, 2023).

25
26 ² Defendants also preserve the argument made at length in Defendants’ motion to dismiss that California’s
27 expenditures on policy initiatives are self-inflicted and thus cannot give rise to Article III standing. *See*
generally Defs.’ Mot. to Dismiss Pls.’ First Am. Compl., ECF No. 125.

28 ³ Because the cited exhibit lacks consistent internal pagination, Defendants refer to the pagination
generated by the ECF system.

1 Thereafter, however, Plaintiffs obtained leave to conduct third-party discovery to “substantiate Plaintiffs’
2 allegations that [the relevant] products ha[d] caused their alleged injuries.” Pls.’ Mot. to Compel
3 Completion of the Admin. R. and for Leave to Conduct Limited Disc. at 16, ECF No. 151; Civ. Minutes,
4 ECF No. 170. Plaintiffs chose not to take advantage of that opportunity. In this posture, Plaintiffs should
5 not be heard to complain that they lack evidence necessary to connect their purported injuries to the
6 particular products whose classification they challenge.

7 Plaintiffs’ arguments with respect to Giffords Law Center’s (GLC) standing fail for substantially
8 the same reasons. In particular, Plaintiffs argue that GLC has diverted organizational resources in four
9 respects to respond to “ghost gun-related violence.” Pls.’ MSJ at 39. But none of these resource
10 expenditures is focused on standalone AR-type receiver blanks in particular. *See* Cutilletta Decl. ¶¶ 12-
11 16, ECF No. 187. Indeed, Plaintiffs’ failure to connect the cited organizational expenditures to the
12 challenged agency actions is underscored by their invocation of GLC’s “pursui[t] [of] legal action aimed
13 at combatting ghost-gun related violence, including as co-counsel in a lawsuit filed in July 2023 against a
14 leading ghost gun company”—namely, Polymer80. Pls.’ MSJ at 39; *see* Cutilletta Decl. ¶ 16. But as
15 Plaintiffs acknowledge earlier in their brief, ATF has determined that “partially complete Polymer80 . . .
16 striker-fired semiautomatic pistol frames” *are* firearms under the Rule’s definitions. Pls.’ MSJ at 27.

17 For these reasons, neither California nor GLC has established Article III standing to challenge the
18 relevant agency actions, and Defendants are entitled to summary judgment on that basis alone. In any
19 event, to the extent Plaintiffs suggest that the Court may grant their motion for summary judgment based
20 merely on a “genuine question of material facts as to the standing elements,” Pls.’ MSJ at 40 (quoting
21 *Cent. Delta Water Agency v. United States*, 306 F.3d 938, 947 (9th Cir. 2002)), they are mistaken. With
22 respect to Defendants’ motion, it is true that, “[t]o *survive* a motion for summary judgement [sic], a
23 plaintiff need not definitively establish standing” but need only “set forth sufficient evidence to create a
24 genuine issue of material fact concerning such requirements.” *Murphy v. Best Buy Stores, L.P.*, 690 F.
25 App’x 553, 555 (9th Cir. 2017) (emphasis added). “To *prevail* on a . . . motion for summary judgment,”
26 however, “a plaintiff must establish that there exists no genuine issue of material fact as to justiciability.”
27 *Dep’t of Com. v. U.S. House of Representatives*, 525 U.S. 316, 329 (1999) (emphasis added).⁴ Plaintiffs

28 ⁴ There accordingly is no basis for Plaintiffs’ suggestion that they are “non-movants with respect to standing.” Pls.’ MSJ at 40. To be sure, in opposing Defendants’ motion for summary judgment, Plaintiffs

1 do not even attempt to satisfy that standard, *see* Pls.’ MSJ at 40, and their motion for summary judgment,
2 even if this Court were to conclude that genuine issues of material fact as to standing preclude Defendants’
3 motion for summary judgment.

4 **II. ATF’s Actions Concerning AR-Type Receiver Blanks Are Consistent With Statutory** 5 **Authority.**

6 Plaintiffs agree with much of the Rule and with ATF’s regulation of partially complete frames and
7 receivers. Plaintiffs agree that in the Rule, ATF properly interpreted the statutory term “frame or receiver”
8 in the GCA to include partially complete receivers that may readily be converted to a functional state.
9 Pls.’ MSJ at 21. Plaintiffs further agree that many of ATF’s classifications of partially complete frames
10 and receivers under the Rule were correct. Pls.’ MSJ at 10 & n.5. Yet Plaintiffs disagree with ATF about
11 the treatment under the GCA of one narrow type of product: partially complete AR-type receivers with no
12 machining or indexing in the fire control cavity that are not sold, distributed, or possessed with
13 instructions, jigs, templates, equipment, or tools, which are sometimes called receiver blanks. This brief
14 uses the phrase “disputed receiver blanks” as a shorthand for this category of products whose classification
15 is in dispute. ATF correctly determined that the disputed receiver blanks are not firearms under the GCA,
16 and Plaintiffs’ contrary arguments are incorrect.

17 **A. The Disputed Receiver Blanks Are Not Firearms Under § 921(a)(3)(A).**

18 Plaintiffs incorrectly argue that the disputed receiver blanks are firearms under subsection (A) of
19 the GCA’s definition of firearm. Pls.’ MSJ 16-21. That subsection defines firearms to include “any
20 weapon (including a starter gun) which will or is designed to or may readily be converted to expel a
21 projectile by the action of an explosive.” 18 U.S.C. § 921(a)(3)(A). Grammatically, this provision
22 encompasses three distinct categories of products: (1) a “weapon . . . which will . . . expel a projectile by
23 the action of an explosive” (*i.e.*, an operable firearm); (2) a “weapon . . . which . . . is designed to . . . expel
24 a projectile by the action of an explosive”; or (3) a “weapon . . . which . . . may readily be converted to
25 expel a projectile by the action of an explosive.” Plaintiffs do not contend that the disputed receiver blanks
26

27 are non-movants with respect to all elements of their claims, including standing. But with respect to
28 supporting their own cross-motion for summary judgment, it is black-letter law that standing is
“indispensable part of the plaintiff’s case” that “must be supported in the same way as any other matter
on which the plaintiff bears the burden of proof.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992).

1 are operable firearms that meet the first prong of this subdivision, but they argue that the disputed receiver
2 blanks meet the “designed to” and “may readily be converted to” prongs. Both contentions are incorrect.

3 **1. The Disputed Receiver Blanks Are Not Designed To Expel A Projectile**
4 **By The Action Of An Explosive.**

5 The disputed receiver blanks are not “designed to . . . expel a projectile by the action of an
6 explosive.” 18 U.S.C. § 921(a)(3)(A). They are instead designed to be converted—with the expenditure
7 of substantial time and effort—into a weapon part (*i.e.*, a functional receiver), which can then be
8 aggregated with other weapon parts to assemble an operable weapon that will expel a projectile. “The
9 term ‘designed’ is not defined in the statute,” so it is construed in accordance with its “ordinary,
10 contemporary, common meaning.” *Gravel*, 645 F.3d at 551 (citation omitted). As the Second Circuit
11 explained, common dictionary definitions of “design” include “‘conceive and plan out in the mind,’ ‘to
12 plan or have in mind as a purpose,’ . . . ‘to devise or propose for a specific function[,]’” and “[t]o form
13 plan or scheme of, conceive and arrange in mind, originate mentally, plan out, contrive.” *Id.* (quoting
14 Webster's Third Int'l Dictionary (1993); Black's Law Dictionary (6th ed. 1990)). Therefore, “the word
15 ‘designed,’ when applied to a manufactured object such as a firearm, refers to what the gun was conceived
16 of and designed for, and not to any modifications made afterwards.” *Id.*⁵

17 The disputed receiver blanks are not conceived of and designed for expelling a projectile by the
18 action of an explosive. Such a product is a partially complete version of a single weapon part (albeit an
19 important part) that cannot expel a projectile on its own. It is designed to be converted, through significant
20 additional machining operations, into a functional receiver, meaning a weapon part that will house a
21 crucial fire control component. *See* 87 Fed. Reg. at 24,735 (27 C.F.R. § 478.11). Such a functional
22 receiver can then be aggregated with all of the other parts of an AR-variant rifle to create an operable
23 weapon that will fire a projectile.

24 The phrase “designed to . . . expel a projectile by the action of an explosive” does not encompass
25 partially complete weapon parts, even if they are designed for the purpose of being modified to the point
26 that they could become part of an operable weapon. That is because the word “designed” refers to what
27 a product “was conceived of and designed for, and not to any modifications made afterwards.” *Gravel*,

28 ⁵ The federal firearms laws recognize that under certain circumstances, a product that is originally a
designed for one purpose can be “redesigned” for a different purpose. *See, e.g.*, 18 U.S.C. § 921(a)(25).

1 645 F.3d at 551. The “designed to” prong of § 921(a)(3)(A) therefore includes “unserviceable firearms,”
2 meaning firearms that were designed to be operable weapons but cannot operate because they are damaged
3 or poorly constructed. *See* 87 Fed. Reg. at 24,685 & nn.99-100. Both the House Report and Senate Report
4 explain that “[t]his provision makes it clear that so-called unserviceable firearms come within the
5 definition.” H.R. Rep. No. 90-1577, at 10, 1968 U.S.C.C.A.N. 4410, 4416 (June 21, 1968); S. Rep. No.
6 90-1097, at 111, *as reprinted in* 1968 U.S.C.C.A.N. 2112, 2200 (1968); 27 C.F.R. § 478.11 (defining
7 “unserviceable firearm” as a firearm which is incapable of discharging a shot by means of an explosive
8 and is incapable of being readily restored to a firing condition.”). That is also how courts have consistently
9 construed “designed to,” including in the cases cited by Plaintiffs. For example, in *United States v.*
10 *Dotson*, 712 F.3d 369 (7th Cir. 2013), the court explained: “A gun is still a gun—a weapon designed to
11 expel a projectile by means of explosive action—even though it is in bad condition and can be restored to
12 working condition only by a gunsmith.” *Id.* at 370. The court accordingly concluded that a pistol was a
13 firearm even though “it was inoperable because of significant damage, missing/broken parts, and extensive
14 corrosion.” *Id.* Similarly, in *United States v. Thomas*, No. CR 17-194 (RDM), 2019 WL 4095569 (D.D.C.
15 Aug. 29, 2019), the court explained that an otherwise complete revolver was still a firearm even though it
16 was missing its trigger and hammer, because “an inoperable weapon that ‘will’ not expel a projectile—
17 like the revolver here—still falls within the statutory definition of a firearm if it is ‘designed’ to do so.”
18 *Id.* at *5.⁶

19 Plaintiffs disregard the statute’s plain language in arguing that the disputed receiver blanks are
20 firearms because they are purportedly “‘designed to’ become an operable firearm,” Pls.’ MSJ at 16, or are

21
22 ⁶ *See also United States v. Davis*, 668 F.3d 576, 577 (8th Cir. 2012) (damaged weapon with no trigger is
23 a firearm because “proof the firearm was operable is not required because the plain language of § 921(a)(3)
24 requires ‘only that the “weapon . . . is designed to . . . expel a projectile by the action of an explosive”’)”
25 (quoting *United States v. York*, 830 F.2d 885, 891 (8th Cir. 1987)); *United States v. Rivera*, 415 F.3d 284,
26 286 (2d Cir. 2005) (“Where a weapon designed to fire a projectile is rendered inoperable, whether on
27 purpose or by accident, it is not removed from the statute’s purview; although it is temporarily incapable
28 of effecting its purpose, it continues to be ‘designed’ to fire a projectile.”); *United States v. Yannott*, 42
F.3d 999, 1006 (6th Cir. 1994) (weapon that “was rendered incapable of firing a projectile in its current
condition because of the broken firing pin” is still a firearm because “the law is clear that a weapon does
not need to be operable to be a firearm”); *United States v. Ruiz*, 986 F.2d 905, 910 (5th Cir. 1993) (“the
filing down of the gun’s hammer did not change the fact that the gun was designed to expel a projectile,
but rather it merely temporarily altered the gun’s capability to accomplish the purpose for which it was
designed”).

1 “designed to be the foundational component—the receiver—of an AR-15 assault rifle” once additional
2 machining is performed, *id.* at 18. The relevant provisions of the GCA define firearm to include a product
3 “designed to . . . expel a projectile by the action of an explosive,” 18 U.S.C. § 921(a)(3)(A), or in other
4 words, and an unmachined receiver blank is not designed to expel a projectile. Plaintiffs essentially
5 propose to add words to the statute: “designed to ***be completed into a functional part that, when***
6 ***aggregated with other parts, will form an operable weapon that will*** expel a projectile by the action of
7 an explosive.” However, “our constitutional structure does not permit this Court to ‘rewrite the statute
8 that Congress has enacted.’” *Puerto Rico v. Franklin California Tax-Free Tr.*, 579 U.S. 115, 130 (2016)
9 (quoting *Dodd v. United States*, 545 U.S. 353, 359 (2005)).

10 As the Seventh Circuit explained, “[a]n airplane is designed to fly; a defect in manufacture or
11 maintenance that prevents it from flying does not alter its design.” *Dotson*, 712 F.3d at 371. By contrast,
12 a wing or propeller or fuselage is not designed to fly, let alone an incomplete wing or propeller or fuselage.
13 By the same token, an unmachined receiver blank is not designed to expel a projectile by the action of an
14 explosive.

15 **2. The Disputed Receiver Blanks May Not Readily Be Converted To** 16 **Expel A Projectile.**

17 Plaintiffs fail to show that the disputed receiver blanks “may readily be converted to expel a
18 projectile by the action of an explosive.” 18 U.S.C. § 921(a)(3)(A). As an initial matter, Plaintiffs appear
19 largely to agree with Defendants on the construction of “readily.” The Rule defines readily as “[a] process,
20 action, or physical state that is fairly or reasonably efficient, quick, and easy, but not necessarily the most
21 efficient, speediest, or easiest process, action, or physical state.” 87 Fed. Reg. at 24,735. The Rule also
22 lists eight factors relevant to the determination in the context of classification of firearms: (1) time, (2)
23 ease, (3) expertise, (4) equipment, (5) parts availability, (6) expense, (7) scope, and (8) feasibility. *See id.*
24 Plaintiffs similarly state that “readily” is a “relative term . . . that describes a process that is fairly or
25 reasonably efficient, quick, and easy, but not necessarily the most efficient, speedy, or easy process,” and
26 endorses the same eight factors. Pls.’ MSJ at 19-20 (quoting *United States v. One TRW, Model M14, 7.62*
27 *Caliber Rifle*, 441 F.3d 416, 422 (6th Cir. 2006)).
28

1 Plaintiffs are incorrect that the disputed receiver blanks may readily be converted to expel a
2 projectile by operation of an explosive. In fact, as described below, the disputed receiver blanks may not
3 readily be converted into a functional receiver of a weapon, at least without supporting materials such as
4 a compatible fixture or jig. *See infra* Part II.B.2. Once a receiver is functional, the receiver must still be
5 aggregated with all other parts of the firearm to construct an operable weapon that will expel a projectile.
6 Therefore, it follows that the disputed receiver blanks may not readily be converted into an operable
7 weapon under Section 921(a)(3)(A).

8 **B. The Disputed Receiver Blanks Are Not Receivers Under § 921(a)(3)(B).**

9 The GCA defines firearm to include the weapon’s “frame or receiver.” 18 U.S.C. § 921(a)(3)(B).
10 As relevant here, the Rule defines frame or receiver to include:

11 a partially complete, disassembled, or nonfunctional frame or receiver, including a frame or
12 receiver parts kit, that is designed to or may readily be completed, assembled, restored, or
13 otherwise converted to function as a frame or receiver, *i.e.*, to house or provide a structure for the
14 primary energized component of a handgun, breech blocking or sealing component of a projectile
15 weapon other than a handgun, or internal sound reduction component of a firearm muffler or
16 firearm silencer, as the case may be.

17 87 Fed. Reg. at 24,739 (27 C.F.R. § 478.12(c)). The Rule therefore defines frame or receiver to include a
18 partially complete, disassembled, or nonfunctional frame or receiver that is either “designed to . . . function
19 as a frame or receiver,” or “may readily be completed, assembled, restored, or otherwise converted to
20 function as a frame or receiver.” Plaintiffs argue that the disputed receiver blanks are designed to function
21 and may readily be converted to function as a frame or receiver. They are wrong on both counts.

22 **1. The Disputed Receiver Blanks Are Not Designed To Function As A Frame Or
23 Receiver**

24 The disputed receiver blanks are not designed to “function as a frame or receiver.” 87 Fed. Reg.
25 at 24,739 (27 C.F.R. § 478.12(c)). Rather, they are designed to be converted into a functional receiver
26 through a complex set of machining operations. They are far from being able to function as a receiver
27 because the fire control cavity is solid and unmachined. *See* Sept. 2022 Open Letter at 3-4. They cannot
28 house fire control components unless and until a complex set of machining operations are performed,
including various milling, drilling, and cutting operations. *See* Defs.’ MSJ at 18-19; Suppl. Am. Compl.,
Ex. 11.

1 Plaintiffs offer no specific argument for why the disputed receiver blanks are designed to function
2 as a receiver under § 921(a)(3)(B), and instead appear to be relying on a rehash of their argument that the
3 disputed receiver blanks are designed to be an operable weapon under § 921(a)(3)(A). *See* Pls.’ MSJ at
4 21. This argument ignores the distinction between being designed to perform a function and being
5 designed to be converted into something that will perform a function. *See Gravel*, 645 F.3d at 551
6 (“designed” refers to what a product “was conceived of and designed for, and not to any modifications
7 made afterwards”). Therefore, unserviceable or damaged receivers may, depending on the factual
8 circumstances, be designed to function as a receiver under the Rule. Defs.’ MSJ at 10 n.5; 87 Fed. Reg.
9 at 24,685-86 & nn. 99-100, 105. But the disputed receiver blanks, which were designed to have a solid
10 fire control cavity that cannot be used to house fire control components, plainly are not designed to
11 function as a receiver in their present state.

12 **2. The Disputed Receiver Blanks Cannot Readily Be Converted To Function As**
13 **A Frame Or Receiver.**

14 ATF correctly concluded that an AR-type receiver blank without indexing or machining in the fire
15 control cavity may not readily be converted to function as a receiver if not sold, distributed, or possessed
16 with jigs or other supporting materials. *See* 87 Fed. Reg. at 24,739 (27 C.F.R. § 478.11(c), Example 4);
17 Sept. 2022 Open Letter at 1-5. ATF applied its technical expertise to reach this conclusion. Based on its
18 experience in classifying firearms and building partially complete frames or receivers, ATF determined
19 that without supporting materials including jigs, it is quite difficult to perform the complex, precise
20 machining operations needed to convert such a product into a functional receiver. *See* Defs.’ MSJ at 18-
21 19; 87 Fed. Reg. at 24,668, 24,688-89; Suppl. Am. Compl., Ex. 11.

22 Plaintiffs argue that this Court should wholly disregard ATF’s technical expertise and instead
23 accept the conclusion of Plaintiffs’ expert, James E. Yurgealitis, that such products may readily be
24 converted into functional receivers, based on a few pages of analysis. *See* Pls.’ MSJ at 20-22; Yurgealitis
25 Decl. ¶¶ 30-40. Yet ironically, Mr. Yurgealitis derives his purported expertise almost entirely from the
26 fact that he used to work for ATF. *See* Yurgealitis Decl. ¶ 1. Plaintiffs cite to no case law supporting the
27 contention that a court should disregard an agency’s conclusion based on the contrary views of one former
28 agency employee.

1 As an initial matter, the Court should not consider Mr. Yurgealitis's declaration in ruling on the
2 merits of this case⁷ because it is outside the administrative record. When a court reviews agency action,
3 "the focal point for judicial review should be the administrative record already in existence, not some new
4 record made initially in the reviewing court." *Camp v. Pitts*, 411 U.S. 138, 142 (1973). Therefore, "the
5 Supreme Court has expressed a general rule that courts reviewing an agency decision are limited to the
6 administrative record." *Lands Council v. Powell*, 395 F.3d 1019, 1029 (9th Cir. 2005) (citation omitted);
7 accord *San Luis & Delta-Mendota Water Auth. v. Locke*, 776 F.3d 971, 992 (9th Cir. 2014) ("In general,
8 a court reviewing agency action under the APA must limit its review to the administrative record.")
9 (citation omitted). Although the Ninth Circuit has recognized "narrow exceptions" to this general rule
10 against discovery in APA cases, "[t]he scope of these exceptions permitted by [the Ninth Circuit's]
11 precedent is constrained, so that the exception does not undermine the general rule." *Lands Council*, 395
12 F.3d at 1030. "[T]he party seeking to admit extra-record evidence initially bears the burden of
13 demonstrating that a relevant exception applies." *San Luis & Delta-Mendota Water Auth.*, 776 F.3d at
14 993 (citation omitted). Expert reports are a type of extra-record evidence subject to the record-review
15 rule. For example, in *San Luis & Delta-Mendota Water Authority v. Jewell*, the Ninth Circuit held that
16 the district court erred in considering expert reports in an APA case because the district court "[i]n effect
17 . . . opened the [agency decision] to a post-hoc notice-and-comment proceeding involving the parties'
18 experts, and then judged the [agency decision] against the comments received." 747 F.3d 581, 604 (9th
19 Cir. 2014). That is exactly what Plaintiffs are asking this Court to do here through Mr. Yurgealitis's expert
20 testimony. If Plaintiffs thought that it was important for ATF to consider Mr. Yurgealitis's views in
21 determining how to define frame or receiver, they should have submitted those views during the Rule's
22 comment period.

23 Furthermore, Plaintiffs' argument that they meet their burden of establishing an exception to the
24 record-review rule is relegated to a mere footnote in their opening brief. See Pls.' MSJ at 14 n.9.
25 Accordingly, their argument is waived, and Plaintiffs cannot remedy the waiver through more extended
26 argument in their reply brief. See *Cheever v. Huawei Device USA, Inc.*, No. 18-cv-06715-JST, 2019 WL

27
28 ⁷ Defendants do not dispute that Plaintiffs may support their standing with evidence outside the
administrative record, but Plaintiffs improperly rely on Mr. Yurgealitis's declaration to support their
claims on the merits. See Pls.' MSJ at 18-30.

1 8883942, at *3 (N.D. Cal. Dec. 4, 2019) (“Arguments raised only in footnotes, or only on reply, are
2 generally deemed waived’ and need not be considered.”) (quoting *Estate of Saunders v. Comm’r*, 745 F.3d
3 953, 962 n.8 (9th Cir. 2014)).

4 Even if it were not waived, Plaintiffs’ argument for submission of Mr. Yurgealitis’s testimony is
5 meritless. Although Plaintiffs’ footnote does not spell out their argument in detail, they appear to be
6 relying on two exceptions to the record-review rule, where admission is “necessary to explain technical
7 terms or complex subject matter” or “necessary to determine whether the agency has considered all
8 relevant factors and has explained its decision.” *Lands Council*, 395 F.3d at 1030 (citation omitted). With
9 respect to explaining technical terms, the administrative record already contains hundreds of pages
10 describing AR-variant rifles, *see* Defs.’ MSJ at 18-23 (citing relevant portions of the administrative
11 record), and Plaintiffs do not explain why Mr. Yurgealitis’s report is necessary. Regarding the “relevant
12 factors” exception, it does not allow supplementation to admit documents that “might have supplied a
13 fuller record,” but that “do not ‘address issues not already there.’” *Sw. Ctr. for Biological Diversity v.*
14 *U.S. Forest Serv.*, 100 F.3d 1443, 1450-51 (9th Cir. 1996) (quoting *Friends of the Earth v. Hintz*, 800 F.2d
15 822, 829 (9th Cir. 1986)). “[T]o satisfy the ‘relevant factors’ exception, . . . the document in question
16 must do more than raise ‘nuanced points’ about a particular issue; it must point out an ‘entirely new’
17 general subject matter that the defendant agency failed to consider.” *Pinnacle Armor Inc, v. U.S.*, 923 F.
18 Supp. 2d 1226, 1234 (E.D. Cal. 2013) (citation omitted); *see also In re Delta Smelt Consol. Cases*, No.
19 1:09-CV-1053 OWW DLB, 2010 WL 2520946, at *5 (E.D. Cal. June 21, 2010) (“the ‘relevant factors’
20 exception only applies when Federal Defendants fail to consider a general subject matter that is
21 demonstrably relevant to the outcome of the agency’s decision, not when specific hypotheses and/or
22 conclusions are omitted from consideration”). As the portions of the administrative record cited in
23 Defendants’ opening brief show, *see* Defs.’ MSJ at 18-23, Defendants gave extensive consideration to the
24 “general subject matter” of how to determine whether a partially complete frame or receiver, and
25 particularly a partially complete AR-type receiver, qualifies as a firearm. *See also* ATF000001-
26 ATF000645 (previous firearms classifications ATF considered when issuing the Rule).

27 Even if the Court were to consider Mr. Yurgealitis’s declaration, it would not support Plaintiffs’
28 argument. As the declaration of Daniel Hoffman, ATF’s Chief of the Firearms Technology Industry

1 Services Branch, explains,⁸ contrary to Mr. Yurgealitis's conclusions, it is "extremely difficult" to
2 complete an unindexed AR-type receiver with a solid fire control cavity in the absence of particularly
3 specialized supporting materials such as jigs. Decl. of Daniel Hoffman ¶ 37. As Chief Hoffman explains,
4 ATF conducted dozens of builds of AR-type receivers, using different tools and manufacturing methods,
5 to determine the agency's approach to classifying such products. *Id.* ¶ 21. Mr. Yurgealitis's conclusion
6 that for ease of completion, it does not matter whether the fire control cavity is machined or indexed, *see*
7 Yurgealitis Decl. ¶ 36, is incorrect. To the contrary, ATF concluded based on its technical expertise and
8 extensive experience building AR-type receivers that the fire control cavity is the critical interior area for
9 completing an AR-type receiver because it houses the trigger mechanism and hammer. *See* Hoffman
10 Decl. ¶¶ 19, 27-29. And ATF's 0.800-inch clearance threshold for AR-15 variant receivers, and similar
11 1.600-inch threshold for AR-10 variant receivers, properly reflects the "readily" analysis because
12 "removal of any additional material will impact the fire control cavity's ability to accept fire control
13 components." *Id.* ¶¶ 31-33.

14 Mr. Yurgealitis is also incorrect to assert that in issuing the challenged classification letters, ATF
15 did not "assess whether the products under analysis were sold or distributed with 'jigs, templates,
16 equipment, or tools.'" Yurgealitis Decl. ¶ 40. The Rule clearly provides that each classification request
17 "must contain any associated templates, jigs, molds, equipment, or tools that are made available by the
18 seller or distributor of the item or kit to the purchaser or recipient of the item or kit," 87 Fed. Reg. at
19 24,743 (27 C.F.R. § 478.12(c)), and ATF considers such supporting materials in issuing classifications,
20 *id.* at 24,739 (27 C.F.R. § 478.12(c)). As Chief Hoffman explains, each of the classification letters states
21 that it "does not apply if any" jigs or supporting materials were sold, distributed, or made available with
22 the product. Hoffman Decl. ¶ 36 (quoting, *e.g.*, ATF Supp 000221). And the Rule makes clear that a
23 receiver blank "with a compatible jig or template is a frame or receiver, as a person with online instructions
24 and common hand tools may readily complete or assemble the frame or receiver parts to function as a
25 frame or receiver." 87 Fed. Reg. at 24,739 (27 C.F.R. § 478.12(c), Example 1).

26
27
28 ⁸ If the Court does not consider Mr. Yurgealitis's declaration, it need not consider Chief Hoffman's
rebuttal declaration. But if the Court considers Mr. Yurgealitis's declaration, the Court should in fairness
consider Defendants' rebuttal expert testimony.

1 ATF's focus on the presence or absence of jigs as an important part of the analysis properly reflects
2 application of the factors that both sides agree govern the "readily" analysis. The availability of equipment
3 such as jigs (factor #4 in the readily analysis) significantly affects most of the other factors, significantly
4 reducing the time to complete (factor #1), increasing the ease of completion (factor #2), reducing the
5 required expertise (factor #3), reducing the required expense (factor #6), and increasing the feasibility of
6 completion (factor #8). Hoffman Decl. ¶ 22.

7 Mr. Yurgealitis's conclusion that an AR-type receiver without indexing or machining in the fire
8 control cavity, and without jigs or supporting materials, can easily be completed in 1-3 hours, without
9 material expertise and with simple household tools, Yurgealitis Decl. ¶¶ 27, 38c-d, is incorrect. ATF
10 found that *with* a jig or fixture, experienced individuals could complete partially complete AR-type
11 receivers in an average of 1.5 to 3 hours. Hoffman Decl. ¶ 24. But completing such a product without a
12 jig or fixture is considerably more difficult. It took Chief Hoffman, an expert with nearly three decades
13 of experience, four and a half hours to complete such a product, and even then, he was only able to make
14 a "substandard" quality product. *Id.* ¶ 35. The question whether it is difficult or easy to complete an
15 unindexed and unmachined AR-type receiver blank is "primarily" an "issue[] of fact . . . where analysis .
16 . . requires a high level of technical expertise"; accordingly, this Court "must defer to the informed
17 discretion of the responsible federal agencies." *Sierra Club v. EPA*, 346 F.3d 955, 961 (9th Cir. 2003)
18 (citation and quotations omitted).

19 The cases cited by Plaintiffs do not support their contention that the disputed receiver blanks may
20 readily be completed into a functional receiver. Each of the cases involved whether a weapon could be
21 "readily restored to shoot" automatically, as necessary to be a machinegun under the National Firearms
22 Act, 26 U.S.C. § 5845(d), not whether a partially complete receiver could be readily completed. Although
23 in two cases, the courts concluded that restoration would take at least four hours, *see One TRW, Model*
24 *M14*, 441 F.3d at 423 (four to six hours); *United States v. Smith*, 477 F.2d 399, 400 (8th Cir. 1973), in
25 neither case did the Court conclude that completion would be difficult, require atypical or advanced
26 machinery, or require any expertise. In the other case cited by Plaintiffs, the machinegun "was restored"
27 to shoot automatically "with 90 minutes of work, using widely available parts and equipment and common
28 welding techniques." *United States v. Dodson*, 519 F. App'x 344, 353 (6th Cir. 2013). None of these

1 cases support the contention that a receiver may readily be completed where, as here, it can only be
2 completed by a seasoned expert in considerable time on a substandard basis. *See Hoffman Decl.* ¶ 35.

3 **III. The Rule Is Not Arbitrary and Capricious.**

4 APA arbitrary and capricious review is “highly deferential, presuming the agency action to be
5 valid and affirming the agency action if a reasonable basis exists for its decision.” *Nw. Ecosystem All. v.*
6 *U.S. Fish & Wildlife Serv.*, 475 F.3d 1136, 1140 (9th Cir. 2007) (citation omitted). “A reasonable basis
7 [for the agency’s decision] exists where the agency ‘considered the relevant factors and articulated a
8 rational connection between the facts found and the choices made.’” *Arrington v. Daniels*, 516 F.3d 1106,
9 1112 (9th Cir. 2008) (citation omitted). “The court ‘may not substitute its judgment for that of the agency
10 concerning the wisdom or prudence of [the agency’s] action.’” *River Runners for Wilderness v. Martin*,
11 593 F.3d 1064, 1070 (9th Cir. 2010) (citation omitted). Here, ATF provided a reasoned explanation for
12 promulgating the Rule after considering relevant factors. The APA requires no more.

13 **A. The Rule Accords With the GCA.**

14 Plaintiffs err in contending that the Rule and Letters are arbitrary and capricious because they
15 ignore the GCA’s plain text. Pls.’ MSJ at 23-26. As an initial matter, this contention simply rehashes
16 Plaintiffs’ argument that the Rule and Letters are “not in accordance with law” under a different
17 framework.⁹ For the reasons already explained above, this argument is meritless because the Rule and
18 Letters fully comply with the GCA’s text. *See supra* part II.

19 In any event, Plaintiffs’ contention misses its mark. First, Plaintiffs’ contention that the Rule and
20 Letters (and similar materials) fail to consider whether the submitted items were “designed to” be
21 converted to functional firearms, *id.* at 23-24, is premised on a misunderstanding of the GCA’s text. The
22 GCA defines “firearm” to include “any weapon . . . which will or is designed to or may readily be
23 converted to expel a projectile by the action of an explosive.” 18 U.S.C. § 921(a)(3). Under this definition,
24 a weapon that is designed to expel a projectile by the action of an explosive, or that may readily be
25 converted to expel a projectile by the action of an explosive, is a firearm. As explained above, Plaintiffs

26 ⁹ Plaintiffs misplace their reliance on *Massachusetts v. EPA*, 549 U.S. 497 (2007), in challenging a rule
27 as arbitrary and capricious based on an alleged failure to conform to statutory text. That case involved an
28 agency’s determination not to regulate at all despite a congressional command to regulate whenever the
agency made certain findings. *See id.* at 532-35. Because Congress has not dictated that ATF regulate
under certain prescribed circumstances, the case is inapposite.

1 misread the GCA’s definition as including an item which is designed *to be converted* to expel a projectile
2 by the action of an explosive. *See supra* part II.A.1. It is thus irrelevant that the Letters did not consider
3 whether the items in question were designed to be converted to expel a projectile by the action of an
4 explosive. Rather, the only pertinent issue related to the GCA’s “designed to” language is whether the
5 submitted items were themselves designed to expel a projectile by the action of an explosive. And
6 Plaintiffs could not plausibly contend that ATF erred in any determination as to whether any of the items
7 in question were, or were not, designed to expel a projectile by the action of an explosive.

8 Second, Plaintiffs err in contending that the Rule and Letters are arbitrary and capricious because
9 they ignore the term “readily” in the GCA. Pls.’ MSJ at 24-26. As an initial matter, because the GCA
10 does not define the word “readily,” Plaintiffs’ actual contention is not that ATF allegedly failed to comply
11 with the GCA, but that the Letters do not comply with the Rule’s definition of “readily.” In particular,
12 Plaintiffs argue that ATF does not consider how quickly or easily a product may be converted to be a
13 functional frame or receiver, but instead utilizes a supposedly distinct evaluation involving consideration
14 of only the machining operations left to be performed.

15 This argument is meritless. As explained previously, Plaintiffs’ purported distinction is illusory.
16 *See* Defs.’ MSJ at 13-15. ATF has adopted a standard process that utilizes the eight factors relevant to
17 the “readily” analysis in classifying unfinished frames and receivers. *See* Hoffman Decl. ¶ 28. Moreover,
18 in classifying products, ATF considers which machining operations must be performed to complete the
19 product to be a functional frame or receiver in the course of applying the Rule’s “designed to or may
20 readily be completed, assembled, restored, or otherwise converted to function” standard. *See id.* ¶ 33.
21 Among the factors relevant to determining whether a process may “readily” be performed are time and
22 ease. 27 C.F.R. § 478.11; 87 Fed. Reg. at 24,735. And in applying the Rule to a partially complete frame
23 or receiver, the machining operations necessary for its completion are highly relevant to the time and ease
24 with which it can be rendered functional. For example, if a product has many complex machining
25 operations left to be performed before it is functional, it is likely to take a longer time to complete and be
26 more difficult to complete. *See id.* ¶ 33. By contrast, if the product requires only a small number of
27 simple operations, it is more likely to be easier to complete, and to take a shorter time to do so. *See id.* In
28 applying the “readily” standard, therefore, ATF must examine which machining operations must be

1 performed to make the product a completed, functional frame or receiver. Additionally, the Rule goes
2 beyond machining operations in providing that indexing of locations for drilling holes, or supporting
3 materials such as jigs, are relevant to classifying a partially complete frame or receiver. If an item has
4 been indexed to indicate precisely where holes should be drilled, then it will be easier to complete and
5 will take less time to do so. *See id.* Similarly, supporting materials included with an item (such as jigs)
6 reduce the time needed to complete a partially complete frame or receiver, and make it easier to do so.
7 *See id.* In short, ATF’s consideration of the degree of machining operations left to be performed, whether
8 an item is indexed, and whether it is sold with supporting materials such as jigs all involve consideration
9 of the time and ease with which a product can be completed.

10 Defendants have also articulated a rational explanation for how ATF determines whether a
11 partially complete AR-type receiver sold without supporting materials may be readily completed to be a
12 functional receiver. *Contra* Pls.’ MSJ at 24-25. That explanation is set forth in the September 2022 Open
13 Letter. In accordance with the Rule, ATF’s analysis preceding this determination “examines how
14 efficiently, quickly, and easily” such a partially complete receiver “can be completed, assembled, restored,
15 or otherwise converted to house or provide a structure for the applicable fire control component.” ATF
16 Supp. 00201. In an AR-15 variant weapon, the area known as the “fire control cavity” is critical because
17 it “provides housing for the trigger mechanism and hammer.” *Id.* (quoting 27 C.F.R. § 478.12(f)(1)(i)).
18 ATF has determined that to be a “functional” receiver, an AR-type receiver must include a cavity large
19 enough to house the relevant internal parts, including holes for certain of these parts. *Id.*; *see also* Hoffman
20 Decl. ¶ 34. Removing or indexing any material in this critical area, or completing or indexing any of these
21 holes, is thus a crucial step in producing a functional receiver. ATF Supp. 00201.

22 Based on this conclusion, ATF has explained that for a partially complete AR-type receiver to be
23 readily completed, it must, *inter alia*, have some type of indexing or machining performed in the area of
24 the fire control cavity, unless sold with supporting materials. *See id.* By contrast, such an item with no
25 indexing or machining in this crucial area may not be readily completed if not sold with supporting
26 materials, and ATF does not classify such an item as a “receiver” (and thus, a firearm). *Id.*

27 However, because another cavity within the receiver—the takedown-pin lug clearance area—
28 merges with the fire control cavity in a functional AR-type receiver, it was necessary for ATF to determine

1 the point at which the former area ends and the fire control cavity begins. ATF Supp 00202. ATF
2 accordingly determined that drilling or milling a certain area—namely, a standard 0.800-inch takedown-
3 pin area—does not affect the ability of the fire control cavity to house the trigger mechanism and hammer.
4 *Id.* In other words, drilling or milling an area greater in size than 0.800 inches would breach the fire
5 control cavity, allowing a person to use that milled-out area to more quickly and easily drill out the fire
6 control cavity to house the trigger mechanism and hammer. Therefore, as ATF explained, because drilling
7 or milling an area less than 0.800 inches does not breach the fire control cavity, an item with such an area
8 remains “without critical areas having been indexed, machined, or formed,” and cannot be readily
9 converted to be a functional receiver. *Id.* (quoting 27 C.F.R. § 478.12(c), Example 4). ATF has thus
10 provided a rational explanation for its determination, which is all that the APA requires.¹⁰

11 **B. ATF Sufficiently Explained Its Decision to Consider in Its Classification Decisions**
12 **Associated Items Sold with the Item or Otherwise Made Available to the End Buyer.**

13 Under the Rule, when ATF makes a classification decision regarding whether a particular partially
14 complete frame or receiver may readily be converted to be a functional frame or receiver, ATF “may
15 consider any associated templates, jigs, molds, equipment” or the like “that are sold, distributed, or
16 possessed with the item or kit, or otherwise made available by the seller or distributor of the item or kit”
17 to the end buyer. 27 C.F.R. § 478.12(c). ATF has sufficiently explained why it did not expand the scope
18 of the Rule to include consideration of the existence of templates, jigs, and similar items available at any
19 point in time elsewhere in the marketplace but not sold with the item or kit or otherwise made available
20 by the seller to the buyer. Defs.’ MSJ at 29-33. The general administrative-law requirement that an
21 agency “articulate a satisfactory explanation for its action,” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v.*
22 *State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983), “is not particularly demanding,” *Tabibian v. Sec’y*
23 *of Interior*, No. 15-253, 2016 WL 953246, at *2 (D. Nev. 2016) (citing *Pub. Citizen, Inc. v. FAA*, 988 F.2d
24 186, 197 (D.C. Cir. 1993)). “Nothing more than a ‘brief statement’ is necessary, as long as the agency
25 explains ‘why it chose to do what it did.’” *Id.* (quoting *Tourus Records v. DEA*, 259 F.3d 731, 737 (D.C.
26 Cir. 2001)). “[U]nder that standard, [courts] must ‘uphold a decision of less than ideal clarity if the

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28 ¹⁰ Moreover, while it is correct that ATF’s analysis of partially complete AR-type receivers is similar to
its pre-Rule analysis of such items, *see* Pls.’ MSJ at 25, that is because many ATF classifications predating
the Rule made use of the “readily” analysis formalized by the Rule.

1 agency's path may reasonably be discerned.” *Hernandez v. Garland*, 52 F.4th 757, 768 (9th Cir. 2022)
2 (citation omitted).

3 ATF is aware that kits, jigs, or similar items may be sold in the marketplace separately from
4 partially complete frames and receivers. Although the Rule does not and cannot regulate tools, equipment,
5 or instructions used to manufacture firearms, it does address retailers who seek to undermine or circumvent
6 the GCA by selling products that may readily be converted into firearms without complying with the
7 Rule's requirements. *See* Defs.' MSJ at 30. Based on ATF's expertise in enforcing federal firearm laws,
8 the agency drew this line where it did, because of such factors as the difficulty of enforcing a rule of
9 broader scope and the costs to manufacturers of a broader rule. *Id.* at 30-31. The additional time and
10 expense required to obtain additional equipment also affects whether an item may be readily converted
11 into a functional frame or receiver. And ATF was also concerned, based on comments received, that if its
12 classification decisions had instead broadly examined whichever “instructions, guides, templates, [and]
13 jigs” might be separately available in any marketplace at any time rather than focusing on items sold,
14 distributed, or possessed with the item or otherwise made available by its seller to the end buyer, then it
15 might be difficult to predict which such items ATF might rely on in any given case. *Cf.* 87 Fed. Reg. at
16 24,699. ATF thus made a line drawing decision: it would look only to jigs, templates, and similar items
17 sold, distributed, possessed, or made available with a partially complete frame or receiver in determining
18 whether it can be readily converted into a functional frame or receiver. 27 C.F.R. § 478.12(c).

19 Plaintiffs have made it clear that they disagree with where ATF decided to draw the line. *See* Pls.'
20 MSJ at 29-30. But that policy disagreement does not render the agency's explanation insufficient. Rather,
21 in the guise of purporting to seek additional explanation, Plaintiffs are really asking that the Court
22 “substitute its judgment for that of the agency,” which the APA does not permit. *State Farm*, 463 U.S. at
23 43. Like the plaintiffs in *California ex rel. Becerra v. Azar*, 950 F.3d 1067 (9th Cir. 2020), Plaintiffs here
24 are arguing that because the agency “defined [a] term” “too narrowly,” “and did not have a reasoned basis
25 for drawing the line” where it did, a regulatory provision was arbitrary and capricious. *Id.* at 1103. The
26 Ninth Circuit rejected this argument, concluding that there was “no basis to conclude that this line-drawing
27 determination, an inherently discretionary task, ‘is so implausible’ that a difference with [the] plaintiffs’
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1 views ‘could not be ascribed to a difference in view or the product of agency expertise.’” *Id.* at 1104
2 (quoting *State Farm*, 463 U.S. at 43). The same is true here, and the same result should follow.¹¹

3 More fundamentally, Plaintiffs provide no authority supporting their assertion that they may
4 prevail on an arbitrary-and-capricious claim merely by arguing that the Rule could have regulated more
5 conduct than it does.¹² As explained previously, regulatory agencies need not “regulate everything that
6 could be thought to pose any sort of problem,” *Pers. Watercraft Indus. Ass’n v. Dep’t of Com.*, 48 F.3d

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8 ¹¹ Plaintiffs err in contending that *ExxonMobil Gas Marketing Company v. FERC*, 297 F.3d 1071 (D.C.
9 Cir. 2002), which upheld an agency’s line-drawing discretion, is inapposite because that case involved the
10 application of deference under *Chevron, U.S.A. Inc. v. Natural Resources Defense Council*, 467 U.S. 837
11 (1984). Pls.’ MSJ at 22 n.11. The point of law cited by Defendants in *ExxonMobil* relied on precedent
12 involving a different agency that did not involve an application of *Chevron*. See *ExxonMobil*, 297 F.3d at
13 1085 (citing *Cassell v. FCC*, 154 F.3d 478, 485 (D.C. Cir. 1998)). Moreover, this Court need not decide
14 whether the Rule is entitled to *Chevron* deference because it reflects the best statutory interpretation. A
15 court has no occasion to reach the question of deference when an agency rule adopts “not only a reasonable
16 [position], but the position that [the court] would adopt even if there were no formal rule and [the court]
17 were interpreting the statute from scratch.” *Edelman v. Lynchburg Coll.*, 535 U.S. 106, 114 (2002); see
18 also *Becerra v. Empire Health Found.*, 142 S. Ct. 2354, 2362 (2022) (agency’s “regulation correctly
19 construes the statutory language at issue” because, *inter alia*, “[t]he provisions are technical” and “[t]he
20 text and context support the agency’s reading”). Alternatively, at a minimum, the Court should accord
21 appropriate weight to ATF’s interpretation in light of “the thoroughness evident in its consideration, the
22 validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which
23 give it power to persuade.” *Hernandez v. Garland*, 38 F.4th 785, 791-92 (9th Cir. 2022) (citation omitted).

24 ¹² Plaintiffs also misplace their reliance on the case law they do cite. In *Center for Biological Diversity v.*
25 *U.S. Fish & Wildlife Service*, 33 F.4th 1202 (9th Cir. 2022), the agency had attempted to substitute its
26 judgment for that of Congress. See *id.* at 1207-08, 1224. By contrast, as already explained above, the
27 Rule and Letters are consistent with the GCA. Also inapposite are cases such as *National Resources*
28 *Defense Council (NRDC) v. EPA*, 966 F.2d 1292 (9th Cir. 1992), and *Harlan Land County v. USDA*, 186
F. Supp. 2d 1076 (E.D. Cal. 2001), because the GCA affords ATF broader discretion to regulate than the
Clean Water Act and Clean Air Act, which place explicit limits on agencies’ authority to regulate. Thus,
in *NRDC*, EPA subjected construction sites to certain water pollution permit requirements, but exempted
sites of a particular size (less than five acres) on the grounds that such sites were not industrial in nature.
Id. at 1305-06. The Ninth Circuit found the agency’s exception “inadequate and therefore arbitrary and
capricious” because the agency “cite[d] no information to support its perception that construction activities
on less than five acres are non-industrial in nature” and because of established precedent that once
Congress has delineated an area requiring permits, EPA may not create permit exceptions. *Id.* at 1306.
But this case does not involve a statute that has so circumscribed the agency’s authority, nor is ATF’s
rationale grounded merely in an unsupported “perception.” See also *id.* at 1303-04 (acknowledging that
a court’s role under the APA “is not to determine whether [an agency] has chosen the best among all
possible methods.” We can only determine if its choices are rational.”). Similarly, the cited portion of
Harlan Land County turns on the degree to which the Clean Air Act is subject to *de minimis* exemptions
where Congress has required an agency to act. See *id.* at 1085. By contrast, Congress has not required
ATF to take particular action but has instead vested it with regulatory authority to interpret the GCA. See
18 U.S.C. § 926(a).

1 540, 544 (D.C. Cir. 1995) (citations omitted), and “[n]othing prohibits federal agencies from moving in
2 an incremental manner,” *FCC v. Fox Television Stations*, 556 U.S. 502, 522 (2009) (citation omitted).
3 And because “[a]n agency does not have to ‘make progress on every front before it can make progress on
4 any front,’” “[r]egulations . . . are not arbitrary just because they fail to regulate everything that could be
5 thought to pose any sort of problem.” *Pers. Watercraft Indus. Ass’n*, 48 F.3d at 544 (quoting *United States*
6 *v. Edge Broad. Co.*, 509 U.S. 418, 434 (1993)).

7 Plaintiffs also err in arguing that ATF has failed to explain how it will consider whether partially
8 complete AR-type receivers are “possessed with” such items as instructions, guides, or tools. Pls.’ MSJ
9 at 28. The “possession” of a firearm involves either its “direct physical control” or the “power and intent
10 to exercise” such control, though lacking physical custody. *Henderson v. United States*, 575 U.S. 622,
11 626 (2015). If one retailer sells a partially complete receiver, and a different retailer sells an instruction,
12 guide, or tool separately without knowledge of the other sale, then neither retailer possesses the receiver
13 with the instruction, guide, or tool. Rather, it is only if a buyer purchases and brings together these items
14 that that individual possesses a partially complete receiver with instructions, guides, or tools. To the extent
15 that Plaintiffs raise concerns about licensees evading the Rule through improper structuring of transactions
16 or entities, those concerns may be ameliorated by the application of ordinary criminal principles like
17 conspiracy and aiding and abetting liability to any unlawful conduct. *See* 87 Fed. Reg. at 24,713 & n.138.
18 The Rule thus addresses the issue of the possession of partially complete AR-type receivers with items
19 such as instructions, guides, or tools by requiring any person seeking a classification of a partially
20 complete frame or receiver to submit “any associated templates, jigs, molds, equipment, or tools that are
21 made available by the seller” to the end buyer, and “any instructions, guides, or marketing materials” that
22 are “made available by the seller . . . with the item or kit.” *See* 27 C.F.R. § 478.12(c).¹³

23 There is also no merit to Plaintiffs’ argument that ATF’s explanation of the rationale for its line-
24 drawing represents a “post hoc rationalization.” Pls.’ MSJ at 29. ATF explicitly considered that partially
25 complete frames and receivers may be purchased separately from an assembly kit or from templates, jigs,
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27 ¹³ Furthermore, Plaintiffs’ contention that the Letters are inconsistent with the GCA, Pls.’ MSJ at 29,
28 simply restates under a different rubric their argument that the agency has acted inconsistently with its
statutory authority. But as already explained above, the GCA does not require ATF to define “frame” and
“receiver” in the particular way that Plaintiffs might prefer. Pls.’ MSJ at 29.

1 and other similar equipment, and the agency discussed its decision to address this problem through well-
2 established criminal law in the Rule itself. *See* Defs.’ MSJ at 30 (citing 87 Fed. Reg. at 24,713 & n.138).
3 The Rule specifies that sellers or distributors may not undermine the Rule’s requirements “by working
4 with others or structuring transactions to avoid the appearance that they are not commercially
5 manufacturing and distributing firearms,” or they will run afoul of criminal law. 87 Fed. Reg. at 24,713.
6 And ATF made clear that it drew its line of regulated behavior where it did based on, *inter alia*, the
7 difficulty of enforcing a broader rule. The Rule shows that ATF was responding to commenters concerned
8 that it would be difficult to predict which “instructions, guides, templates, [and] jigs” the ATF Director
9 would rely on in any given case, raising potential vagueness concerns. *Id.* at 24,699. ATF responded to
10 such concerns by establishing a principle that could be easily administered and would give clear notice to
11 the public: companies that sell only unfinished frame or receiver billets or blanks, and not any associated
12 jigs, templates, or similar tools to the same customer would *not* be required to be licensed or to mark those
13 articles with identifying information; however, companies that sell firearm parts kits, jigs, templates, or
14 tools to the same customer with partially complete frames or receivers allowing them to be efficiently,
15 quickly, and easily converted into functional weapons or functional frames or receivers must be licensed
16 and must mark those items with identifying information. *Id.* at 24,700. ATF recognized that, had it not
17 adopted such an approach, it would have needed to expend additional law enforcement resources
18 monitoring the development and distribution of such tools and equipment throughout the marketplace.
19 Further, ATF was concerned about the regulatory burden of requiring all suppliers that produce partially
20 complete frames or receivers for already-licensed manufacturers to be licensed, purchase marking
21 equipment, and keep records—a concern reflected in comments on the Rule. *See* Defs.’ MSJ at 31 (citing
22 87 Fed. Reg. at 24,697, 24,699, 24,714).

23 In sum, that ATF has provided additional context and support for its position during the course of
24 this litigation—tailoring its defense of the Rule, as it must, to the specific arguments advanced by
25 Plaintiffs—does not constitute a post hoc rationalization. *See Am.’s Cmty. Bankers v. FDIC*, 200 F.3d
26 822, 836 (D.C. Cir. 2000) (holding that an agency may offer an argument “in support of its administrative
27 position which bolsters rather than duplicates the consistent position upon which its decision was made”);
28 *Caritas Med. Ctr. v. Johnson*, 603 F. Supp. 2d 81, 92 (D.D.C. 2009) (rejecting the argument that an

1 agency's justifications were "post-hoc rationalizations" because "[w]hile the defendant's arguments in
2 this litigation expand on the points raised in the text of the final rule, [its] position has not changed")
3 (citation omitted).¹⁴

4 **C. Plaintiffs Otherwise Fail to Articulate an APA Arbitrary and Capricious Claim.**

5 None of the other arguments advanced by Plaintiffs under the rubric of an arbitrary-and-capricious
6 claim has merit. *See* Pls.' MSJ at 26-28. Initially, as explained above, Plaintiffs are simply mistaken in
7 contending that in classifying various partially complete AR-15 receivers, ATF failed to consider the
8 factors identified by the Rule as "relevant in making [such a] determination." 27 C.F.R. § 478.11
9 (definition of "readily"); *see* Pls.' MSJ at 26. Moreover, Plaintiffs err in arguing that various Letters only
10 "cursorily recite" the eight factors listed as relevant in determining whether a partially complete receiver
11 may be readily converted to be functional, rather than discussing these factors at length. Pls.' MSJ at 26.
12 As explained above, ATF has adopted a standard process for its classifications that tracks the factors
13 relevant to the Rule's "readily" definition. Furthermore, the Rule states only that "[w]ith respect to the
14 classification of firearms, factors relevant in making [the] determination" as to whether an item may be
15 readily converted to be functional "include" eight enumerated factors. 27 C.F.R. § 478.11 (definition of
16 "readily"). The Rule does not mandate that ATF must list these factors in its classification letters or must
17 explain precisely how the agency analyzed and balanced these factors. Instead, it simply states that these
18 factors are relevant in ATF's classification determination. Nor do Plaintiffs establish that the agency
19 "relied on factors which Congress has not intended it to consider [or] entirely failed to consider an
20 important aspect of the problem." *State Farm*, 463 U.S. at 43. Congress did not intend that ATF should
21 ignore the degree of machining operations remaining to be performed, and as previously demonstrated,
22 ATF's classification letters tacitly consider the eight factors that the Rule enumerates as relevant.

23 Additionally, Plaintiffs incorrectly contend that ATF's classification of partially complete AR-
24 type receivers do not reflect that its agents assembled such items or considered how long it would take to
25 do so. Pls.' MSJ at 27-28. To the contrary, ATF has conducted dozens of firearms builds from partially
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27 ¹⁴ In any event, even if the Court were to disagree that Defendants had not adequately explained its
28 rationale, the proper remedy would be to remand without vacatur for additional explanation. *See infra*
part IV.

1 complete receivers to determine when a partially complete AR-type receiver may be readily completed or
2 otherwise converted to a functional state. Hoffman Decl. ¶¶ 4, 24. ATF completed partially complete
3 AR-type receivers of varying types of composition using a variety of tools and manufacturing methods.
4 *Id.* ¶ 24. The agency also considered the types of fixtures and jigs that would be necessary to complete
5 these receivers to be functional. *Id.* ¶¶ 25-26. Before issuing its September 27, 2022 Open Letter, ATF
6 completed or attempted to complete numerous partially complete AR-type receivers with fixtures and jigs,
7 and determined the average length of time that completing such receivers would require. *Id.* ¶ 27.
8 Plaintiffs have thus failed to demonstrate that ATF has acted unreasonably with respect to its regulation
9 of partially complete AR-type receivers.

10 **IV. Any Relief Must Be Narrowly Tailored.**

11 For the reasons explained in Defendants' opening brief, in the event this Court were to conclude
12 that any of Plaintiffs' claims are meritorious, it should enter relief that is "no broader than required by the
13 precise facts" and that reasonably specifies its scope. Defs.' MSJ at 33-34 (quoting *Friends of the Earth,*
14 *Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 193 (2000)). Plaintiffs' proposed remedial
15 measures do not satisfy that standard for the reasons explained below. See Pls.' Proposed Order, ECF No.
16 184-1. Moreover, if the Court were to conclude that any of Plaintiffs' claims has merit, Defendants
17 respectfully request an opportunity to brief the question of an appropriate remedy.

18 First, Plaintiffs request that the Court vacate certain challenged agency actions and permanently
19 enjoin Defendants from enforcing, relying upon, or referring to them. See Pls.' Proposed Order ¶¶ 1-6.
20 But Section 706(2) of the APA does not provide for such relief. Although the Ninth Circuit's precedents
21 have assumed that vacatur is an available remedy for a successful APA challenge to a regulation, *see, e.g.,*
22 *California Wilderness Coal. v. U.S. Dep't of Energy*, 631 F.3d 1072, 1095 (9th Cir. 2011), the APA itself
23 does not reference vacatur, instead remitting plaintiffs to traditional equitable remedies like injunctions, 5
24 U.S.C. § 703.¹⁵ There is no indication that Congress intended to create a new and radically different
25 remedy in providing that courts reviewing agency action should "set aside" agency "action, findings, and
26

27 ¹⁵ It is well established that this Court is not bound by the Ninth Circuit's "assumptions concerning . . .
28 issues that [we]re not contested," which "are not holdings" of the Court of Appeals. *Branham v. Montana*,
996 F.3d 959, 963 (9th Cir.) (quoting *FDIC v. McSweeney*, 976 F.2d 532, 535 (9th Cir. 1992)), *cert.*
denied, 142 S. Ct. 454 (2021).

1 conclusions.” *Id.* § 706(2); *see United States v. Texas*, 599 U.S. 670, 693 (2023) (Gorsuch, J., concurring
2 in the judgment) (detailing “serious” arguments that “warrant careful consideration” as to whether the
3 APA “empowers courts to vacate agency action”).

4 To the contrary, the ordinary meaning of “set aside,” 5 U.S.C. § 706(2), is to disregard, not to
5 nullify. *See, e.g., Webster’s New International Dictionary of the English Language* 2291 (2d ed. 1958)
6 (defining “set aside” as: (a) “[t]o put to one side; discard; dismiss,” and (b) “[t]o reject from consideration;
7 overrule” (emphasis omitted)). This understanding is consistent with limits on judicial review of acts of
8 the other branches of government. For example, in the context of reviewing statutes for constitutionality,
9 courts “have no power *per se* to review and annul acts of Congress on the ground that they are
10 unconstitutional.” *Mass. v. Mellon*, 262 U.S. 447, 488 (1923). Instead, judicial review “amounts to little
11 more than the negative power to disregard an unconstitutional enactment.” *Id.* Thus, when the APA was
12 enacted, it was well understood that courts’ “setting aside” unconstitutional statutes referred to
13 disregarding such statutes in deciding the cases before them, not vacating the statutes. *See, e.g., Erie R.*
14 *Co. v. Tompkins*, 304 U.S. 64, 87 (1938); Act of Aug. 24, 1937, ch. 754, § 3, 50 Stat. 752-753; *Home*
15 *Bldg. & Loan Ass’n v. Blaisdell*, 290 U.S. 398, 432 (1934); *Mallinckrodt Chem. Works v. Missouri ex rel.*
16 *Jones*, 238 U.S. 41, 54 (1915).

17 The structure of the APA confirms in at least three respects that Section 706(2)’s instruction to
18 “set aside” deficient agency action does not provide for vacatur as a remedy. First, whereas Section 706(2)
19 supplies a rule of decision directing courts to disregard unlawful “agency actions, findings, and
20 conclusions,” 5 U.S.C. § 706(2), Section 703 pertains to remedies. And absent a “special statutory review
21 proceeding” authorizing a court to act directly upon an agency order, Section 703 remits plaintiffs to
22 traditional remedies such as “declaratory judgments or writs of prohibitory or mandatory injunction or
23 habeas corpus.” *Id.* § 703. It does not speak of vacatur.

24 Second, Section 706(2) requires a court to “hold unlawful and set aside” not only “agency action,”
25 but also “findings[] and conclusions.” *Id.* § 706(2). It would make little sense for a court to vacate an
26 agency’s “findings” and “conclusions.” But it is entirely sensible for a court to disregard unfounded
27 agency findings and conclusions in resolving the case before it.

28

1 Third, because Section 706 provides the substantive standard for holding agency action
2 “unlawful,” *id.*, it must be applicable in all forms of action where Section 706 applies, including “actions
3 for declaratory judgments or [on] writs of prohibitory or mandatory injunction or habeas corpus,” as well
4 as “in civil or criminal proceedings for judicial enforcement,” *id.* § 703. No one would suggest that a
5 court hearing a habeas petition or an enforcement action could vacate a regulation. But Section 706(2)
6 fits naturally in those contexts if it is understood as an instruction to disregard unlawful agency actions,
7 conclusions, and findings.

8 Alternatively, even if vacatur were an available remedy pursuant to the APA, nothing about the
9 term “set aside” requires that vacatur function universally or that more narrowly tailored declaratory or
10 injunctive relief cannot be granted instead. Instead, if it is an available remedy at all, vacatur is an
11 equitable remedy subject to ordinary equitable principles, including principles supporting remedies no
12 broader than necessary to afford complete relief to the particular parties to a case. *See, e.g., Nat’l Wildlife*
13 *Fed’n v. Espy*, 45 F.3d 1337, 1343 (9th Cir. 1995) (stating that the court “is not required to set aside every
14 unlawful agency action.”); *see California Cmty. Against Toxics v. EPA*, 688 F.3d 989, 994 (9th Cir. 2012)
15 (per curiam) (declining to enter vacatur in favor of remand). Congress enacted the APA against a
16 background understanding that statutory remedies should be construed in accordance with “traditions of
17 equity practice.” *Hecht Co. v. Bowles*, 321 U.S. 321, 329 (1944). Traditionally, remedies “operate with
18 respect to specific parties,” not “on legal rules in the abstract.” *California v. Texas*, 141 S. Ct. 2104, 2115
19 (2021) (quoting *Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S. Ct. 1461, 1486 (2018)). By contrast,
20 universal vacatur violates “the bedrock practice of case-by-case judgments with respect to the parties in
21 each case.” *Arizona v. Biden*, 31 F.4th 469, 484 (6th Cir. 2022) (Sutton, C.J., concurring). There is no
22 basis to conclude that Congress contemplated creating such extraordinary remedial power when it enacted
23 the APA. Indeed, both committee reports characterize Section 706(2) as authorizing a court to hold agency
24 action unlawful, without mentioning the phrase “set aside.” *See* S. Rep. No. 79-752, at 27 (1945), App.
25 354; H.R. Rep. No. 79-1980, at 44 (1946), App. 420. This silence further confirms that Congress did not
26 intend for that phrase to establish the novel and far-reaching remedy of universal vacatur.

27 Indeed, the APA is explicit that its provisions do not affect “the power or duty of the court” to
28 “deny relief on” any “equitable ground,” 5 U.S.C. § 702(1), and equitable relief does not “automatically

1 follow[] a determination” that a defendant acted illegally, *see eBay Inc. v. MercExchange, LLC*, 547 U.S.
2 388, 392-93 (2006). The problems caused by universal injunctions are well catalogued. Such injunctions
3 conflict with principles of Article III and equity, circumvent Rule 23’s class-action requirements,
4 “incentivize forum shopping,” “short-circuit the decisionmaking benefits of having different courts weigh
5 in on vexing questions of law,” and overburden courts’ “emergency dockets.” *See, e.g., Arizona v. Biden*,
6 40 F.4th 375, 395-98 (6th Cir. 2022) (Sutton, C.J., concurring); *Los Angeles Haven Hospice, Inc. v.*
7 *Sebelius*, 638 F.3d 644, 664 (9th Cir. 2011). And those concerns apply equally to universal vacatur.
8 *Texas*, 143 S. Ct. at 1985-86 (Gorsuch, J., concurring in the judgment). Universal vacatur of a rule, if
9 authorized at all, thus should be reserved for “truly extraordinary circumstances.” *Id.* No such
10 circumstances exist here.

11 Equitable principles further counsel against broad relief in this action because challenges to the
12 Rule remain pending in other courts. *See Miller v. Garland*, 1:22-cv-02579-CKK (D.D.C.); *Morehouse*
13 *Enters., LLC v. ATF*, No. 3:22-cv-00116-PDW-ARS (D.N.D.); *Polymer80, Inc. v. Garland*, No. 4:23-cv-
14 00029-O (N.D. Tex.); *Polymer80, Inc. v. Garland*, No. 23-10527 (5th Cir.); *VanDerStok v. Garland*, No.
15 4:22-cv-00691-O (N.D. Tex.). This Court accordingly should not enter relief that may conflict with the
16 decision of other courts or prevent other courts from rendering meaningful decisions on the merits of other
17 parties’ claims. *See, e.g., Texas*, 599 U.S. at 694 (Gorsuch, J., concurring in the judgment) (“Universal
18 injunctions . . . continue to deprive other lower courts of the chance to weigh in on important questions
19 before [the Supreme] Court has to decide them.”).

20 Additionally, to the extent the Court were to hold that any challenged agency action is inadequately
21 explained or otherwise arbitrary and capricious, the proper remedy would be to direct the agency to further
22 consider the relevant issues, without further immediate relief. *See, e.g., Weinberger v. Romero-Barcelo*,
23 456 U.S. 305, 312-313, 314, 320 (1982). The ordinary remedy for an insufficiently explained final agency
24 action is for the Court to remand the matter for the agency to provide a better explanation, which courts
25 sometimes describe as “remand without vacatur.” “It is a well-established maxim of administrative law
26 that if the record before the agency does not support the agency action, or if the agency has not considered
27 all relevant factors, the proper course, except in rare circumstances, is to remand to the agency for
28 additional investigation or explanation.” *Calcutt v. FDIC*, 598 U.S. 623, 628-29 (2023) (citation and

1 internal punctuation omitted); *see also Sierra Club*, 346 F.3d at 963 (“[T]he normal course of action when
2 the record fails to support an agency’s decision ‘is to remand to the agency for additional investigation or
3 explanation.’” (citation omitted)).

4 That approach accords with traditional equitable principles by avoiding “needless[] disrupt[ion]”
5 when an agency can likely cure a defect through further consideration and explanation. *Bloomberg L.P.*
6 *v. SEC*, 45 F.4th 462, 477-78 (D.C. Cir. 2022); *see Romero-Barcelo*, 456 U.S. at 320. Indeed, Plaintiffs
7 themselves rely on *Innovator Enterprises, Inc. v. Jones*, 28 F. Supp. 3d 14 (D.D.C. 2014), in which the
8 court held that remand was the appropriate remedy where the court held that ATF had failed to articulate
9 a satisfactory explanation and to examine the relevant data in support of a firearm silencer classification.
10 In that case, the court correctly recognized that “there may be sensitive issues lurking that are beyond the
11 ken of the court” and that “[t]he agency, not the court, has the authority, discretion, and presumed expertise
12 to act in the first instance to address matters within its domain of authority, subject of course to appropriate
13 judicial review.” *Id.* at 25 (cleaned up) (quoting *Fox v. Clinton*, 684 F.3d 67, 80 (D.C. Cir. 2012)); *see*
14 *Pls.’ MSJ* at 26.

15 CONCLUSION

16 For the reasons stated above and in Defendants’ Motion for Summary Judgment, Defendants
17 respectfully request that the Court enter judgment for Defendants on all of Plaintiffs’ claims.

18 DATED: December 7, 2023

Respectfully submitted,

19
20 BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

21 LESLEY FARBY
22 Assistant Branch Director

23 /s/ Daniel Riess
24 DANIEL RIESS
25 TAISA S. GOODNATURE
26 JEREMY S.B NEWMAN
27 Trial Attorneys
28 *Attorneys for Defendants*