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25 **UNITED STATES DISTRICT COURT**
26 **NORTHERN DISTRICT OF CALIFORNIA**
27 **SAN FRANCISCO DIVISION**

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

Plaintiffs,

v.

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

Defendants.

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

**PLAINTIFFS' REPLY BRIEF IN
FURTHER SUPPORT OF PLAINTIFFS'
CROSS-MOTION FOR SUMMARY
JUDGMENT**

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

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I. INTRODUCTION

1
2 The Bureau of Alcohol, Tobacco, Firearms & Explosives (“ATF”) has determined that certain
3 partially complete AR-style receivers—the fundamental components of deadly AR-style rifles—are
4 not firearms under the federal Gun Control Act (“GCA”). Because of that determination, firearm
5 manufacturers can continue to make these receivers with no serial number and sell them in person or
6 online without ever conducting a background check. Buyers, in turn, can put together a “ghost” AR-
7 style rifle within hours. Unable to defend ATF’s actions on their merits, Defendants urge this Court
8 not to intervene in what Defendants mischaracterize as a “policy disagreement.” ECF No. 197 (“Defs.’
9 Opp.”), at 1. But Plaintiffs do not challenge ATF’s actions as bad policy. Rather, as Plaintiffs
10 explained in their opening brief, ATF’s actions are unlawful for at least two reasons.

11 *First*, ATF’s actions are contrary to law because partially complete AR-style receivers are
12 “firearms” within the unambiguous meaning of the GCA. Whether or not they are fully indexed or
13 machined, or sold together with a jig, partially complete AR-style receivers are plainly “designed to”
14 function as receivers and ultimately to “expel a projectile by the action of an explosive.” 18 U.S.C.
15 § 921(a)(3)(A). Defendants’ interpretation of this statutory language to exclude any item that requires
16 even one small modification to perform the intended function is simply wrong, and it finds no support
17 even in the few out-of-circuit cases they cite. Partially complete AR-style receivers can also be
18 “readily” completed—into either a functional receiver or an operable weapon, or both. *Id.*
19 § 921(a)(3)(B). Defendants do not dispute that the statutory term “readily” incorporates factors like
20 time and ease. Nor do they cite anything in the Administrative Record or elsewhere supporting their
21 bald assertion that partially complete AR-style receivers are “quite difficult” to complete or convert.
22 In short, ATF’s actions were contrary to law and must be set aside on that basis.

23 *Second*, ATF’s actions with regard to these AR-style receivers were arbitrary and capricious.
24 To the extent they even acknowledge the Challenged Classification Letters, Defendants all but concede
25 that ATF did not analyze relevant factors (like time) when deciding whether a particular AR-style
26 receiver product can be “readily” completed or converted into an operable weapon. ATF also failed to
27 articulate in the Administrative Record any rational explanation for its disparate treatment of materially
28 indistinguishable partially complete AR-style receivers. While Defendants refer repeatedly to ATF’s

1 supposedly “extensive” analysis, Defendants’ opposition brief is almost completely devoid of citations
2 to the Administrative Record. Instead, Defendants attempt to paper over the absence of any
3 contemporaneous analysis in the Administrative Record with a post-hoc declaration. But even if that
4 declaration were to support ATF’s actions with respect to partially complete AR-style receivers (it does
5 not), it is a “settled proposition[]” that—to preserve public confidence in the administrative process
6 and ensure the orderly functioning of judicial review—a court may not consider additional or other
7 reasons an agency proffers after the fact in defense of the original decision. *Dep’t of Commerce v. New*
8 *York*, 139 S. Ct. 2551, 2573 (2019). The declaration thus “serve[s] only to underscore the absence of
9 an adequate explanation in the [A]dministrative [R]ecord itself.” *Ctr. for Bio. Diversity v. U.S. Bureau*
10 *of Land Mgmt.*, 698 F.3d 1101, 1124 (9th Cir. 2012) (quotation marks omitted).

11 Defendants’ continued challenge to Plaintiffs’ standing also lacks merit. Defendants have
12 submitted no evidence countering the declarations of Laura Cutilletta, Giffords Law Center’s
13 (“GLC’s”) Chief of Staff and Vice President for Programs, and Salvador Gonzalez, a Special Agent
14 Supervisor for the California Department of Justice’s Bureau of Firearms, and thus the facts alleged in
15 those declarations are undisputed. And while Defendants reprise their unsuccessful argument from the
16 motion to dismiss stage that Plaintiffs’ injuries are not connected to AR-style receivers, that contention
17 is incorrect. As both Ms. Cutilletta and Mr. Gonzalez have averred, ATF’s actions excluding partially
18 complete AR-style receivers from regulation create a dangerous loophole that Plaintiffs must expend
19 time, money, and resources to address.

20 This Court should grant summary judgment in favor of Plaintiffs. As detailed in Plaintiffs’
21 Proposed Order, this Court should adopt the “normal remedy for [an] unlawful agency action” and set
22 aside the particular portion of the Final Rule and specific agency actions determining that certain
23 partially complete AR-style receivers are not firearms. *Se. Alaska Conserv. Council v. U.S. Army*
24 *Corps of Eng’rs*, 486 F.3d 638, 654 (9th Cir. 2007), *rev’d on other grounds sub nom. Coeur Alaska v.*
25 *Se. Alaska Conserv. Council*, 557 U.S. 261 (2009). Although Defendants have now twice briefed the
26 issue of remedy, they have not identified any reason why this Court should depart from this Circuit’s
27 standard practice of vacating unlawful agency action.

II. ARGUMENT

A. Partially Complete AR-Style Receivers Are “Firearms” Within The Plain Meaning Of The GCA.

Defendants do not dispute that the GCA requires ATF to classify a product as a firearm if that product is “designed to” or “may readily be converted” to expel a projectile. *See* Defs.’ Opp. 1, 6; *see also* 18 U.S.C. § 921(a)(3)(A). Defendants also agree that the GCA requires ATF to classify a product as a firearm if it is a “receiver,” which in turn depends on whether the product is either “designed to” or “may readily be converted” to function as a receiver. *See* Defs.’ Opp. 1, 5, 9; *see also* 18 U.S.C. § 921(a)(3)(B). Defendants instead argue that certain partially complete AR-style receivers fall outside of these categories. That argument is not supported by the GCA’s plain text.

1. Partially Complete AR-Style Receivers Are “Designed To” Function As Receivers And To Expel Projectiles.

As Plaintiffs explained in their opening brief, partially complete AR-style receivers—whether or not indexed or machined, and whether or not sold standalone—are designed specifically to function as receivers and ultimately as an operable AR-style gun. *See* ECF No. 184 (“Pls.’ MSJ”), at 17. Defendants do not meaningfully dispute this point. Nor do they suggest that partially complete AR-style receivers could ever “really be anything” else. *Id.* (quoting ATF 000674); *see* Defs.’ Opp. 6 (conceding that partially complete AR-style receivers are “designed for the purpose of being modified to the point that they could become part of an operable weapon”).

Instead, Defendants argue that these products are not “designed to” expel projectiles within the meaning of the GCA because certain additional steps must be performed before they can expel projectiles. *See* Defs.’ Opp. 1, 6–8. Defendants argue, in other words, that the phrase “designed to” excludes any item that cannot *already* perform the intended function—no matter what the original design purpose of the item is. This argument finds no support in the statutory text. It contravenes both ordinary understanding and well-established canons of construction. “Designed to”—as Defendants concede—refers to what an item was “conceived of and designed” ultimately *to do*. Defs.’ Opp. 6. No ordinary person would suggest, as Defendants argue, that a nearly complete airplane “wing . . . is not designed to fly,” *id.* at 8; *see Perrin v. United States*, 444 U.S. 37, 42 (1979) (explaining that a

1 “fundamental canon of statutory construction is that, unless otherwise defined, words will be
 2 interpreted as taking their ordinary, contemporary, common meaning”). And of course, no ordinary
 3 person would suggest that a nearly complete airplane wing was not “designed” *to be a wing*. See Defs.’
 4 Opp. 9 (arguing that partially complete AR-style receivers are not “receivers” under the GCA because
 5 they “are not designed to ‘function as a . . . receiver’”).

6 Defendants’ arguments that “significant” or “complex” steps are needed to complete or convert
 7 a partially complete AR-style receiver are wholly unsupported by the Administrative Record. Defs.’
 8 Opp. 1, 6, 9; see *infra* Section II.B.2. Moreover, they incorrectly conflate the “designed to” prong of
 9 subsection (A) with the “readily converted” prong. The relevant question for purposes of the “designed
 10 to” prong is not, as Defendants suggest, whether the item can “readily” be converted into a receiver or
 11 an operable weapon, but whether the item was manufactured *for the purpose of becoming* a receiver or
 12 an operable weapon. See *S.E.C. v. McCarthy*, 322 F.3d 650, 656 (9th Cir. 2003) (noting the “well-
 13 established canon of statutory interpretation that the use of different words or terms within a statute
 14 demonstrates that Congress intended to convey a different meaning for those words”).¹

15 Defendants’ heavy reliance on *United States v. Gravel*, 645 F.3d 549 (2d Cir. 2011), is
 16 misplaced. In *Gravel*, the parties agreed that the weapon at issue was originally “designed to” shoot
 17 automatically and therefore qualified as a “machinegun” under the National Firearms Act (“NFA”).
 18 The question presented in *Gravel* was whether the later disabling of the weapon such that it could no
 19 longer shoot automatically meant that the weapon no longer qualified as a “machinegun.” *Id.* at 550–
 20 51. Finding that the weapon was still a machinegun, the Second Circuit held that the ordinary meaning
 21 of “designed to” must “consider what was contemplated at the time the [weapon] was being conceived
 22 and devised.” *Id.* at 552. *Gravel* thus does not support Defendants’ argument, see Defs.’ Opp. 1, that

23 ¹ Defendants also suggest that the phrase “designed to” is limited *only* to “unserviceable” firearms
 24 or formerly functional weapons, see ECF No. 182 (“Defs.’ MSJ”) at 1, 10, but that categorical
 25 limitation appears nowhere in the text or legislative history of the GCA. Although *United States v.*
 26 *Dotson*, 712 F.3d 369 (7th Cir. 2013), and *United States v. Thomas*, 2019 WL 4095569 (D.D.C.
 27 Aug. 29, 2019), addressed formerly functional weapons, neither case held or even implied that
 28 “designed to” is limited only to that category. To the contrary. In concluding that the revolver at
 issue was “designed” to expel a projectile, the *Thomas* court reasoned that “nothing in that
 definition [of ‘designed’], nor ordinary usage of the word, suggests that the ‘design’ or ‘plan’ for a
 thing changes merely because that thing is inoperable.” 2019 WL 4095569, at *4.

1 “designed to” excludes “items that cannot function as a firearm without additional machining
2 operations.” Nor does it support Defendants’ view, *see id.* at 10, that items “designed to perform a
3 function” are distinct from items “designed to be converted into something that will perform a
4 function.”

5 Indeed, there is no real dispute that partially complete AR-style receivers were in fact
6 “conceived of, and planned for use as,” *Gravel*, 645 F.3d at 552, AR-style receivers—and ultimately
7 as operable AR-style weapons. Even where “the fire-control cavity has not been machined,” a partially
8 complete “AR-15-type lower receiver . . . *could never really be anything but an AR-15-type lower*
9 *receiver.*” ATF 000674 (emphasis added). This Court should therefore hold that that these products
10 are “firearms” under the “designed to” prong of 18 U.S.C. § 921(a)(3)(A) or under 18 U.S.C.
11 § 921(a)(3)(B), and that ATF’s actions concluding otherwise are contrary to law.

12 **2. Partially Complete AR-Style Receivers May Be “Readily Converted” To** 13 **Function As Receivers And To Expel Projectiles.**

14 Plaintiffs and Defendants broadly agree that the statutory term “readily . . . converted” demands
15 an analysis of how efficiently, quickly, and easily an item can be converted into a receiver or functional
16 weapon. *See* Defs.’ Opp. 8 (noting that the parties “appear largely to agree” that “readily” refers to a
17 process “that is fairly or reasonably efficient, quick, and easy but not necessarily the most efficient,
18 speediest, or easiest”). But the record does not support Defendants’ argument that—as a sweeping
19 categorical matter—“the disputed receiver blanks may [not] be readily converted” under this definition.
20 *Id.* at 8–9.

21 Defendants first suggest that ATF’s conclusion that certain partially complete AR-style
22 receivers are not “readily converted” to expel projectiles follows necessarily from the fact that a person
23 must take certain steps to complete the receiver as part of an operable firearm. *See* Defs.’ Opp. 9
24 (arguing that a completed receiver must “still be aggregated with all other parts of the firearm”). But
25 this argument ignores the reality that the particular steps required to take a product from a partially
26 complete AR-style receiver to a functional AR-style weapon are relatively “easy” and “reasonably
27 efficient.” *United States v. One TRW Model M14, 7.62 Caliber Rifle*, 441 F.3d 416, 422 (6th Cir.
28 2006).

1 Even if Defendants were correct that “the disputed receiver blanks may [not] be readily
 2 converted” into *functional AR-style weapons* (and Defendants are not), those products are certainly
 3 readily convertible into *functional receivers*. See Pls.’ MSJ 21. Aside from a few conclusory
 4 assertions that the process is “quite difficult,” see Defs.’ Opp. 2, 10, Defendants do not seriously dispute
 5 that a person can complete these do-it-yourself products in a few hours using “ordinary tools.” *United*
 6 *States v. TRW Rifle 7.62X51MM Caliber*, 447 F.3d 686, 692 (9th Cir. 2006). In fact, Defendants’ own
 7 declarant testified that he “completed [his] first AR-type receiver” in a few hours “using a [jig], a hand
 8 drill, and a drill press.” See ECF No. 198 (“Hoffman Decl.”) ¶ 38; see *id.* ¶ 27 (explaining that partially
 9 complete AR-style receivers “averaged 1.5 – 3 hours to complete” and that “once completed,” they
 10 “functioned as an AR-type receiver”).² Courts have frequently deemed analogous processes—
 11 requiring only a few hours and basic tools—as satisfying the ordinary meaning of “readily.” *One TRW*
 12 *Model M14, 7.62 Caliber Rifle*, 441 F.3d at 422–23 & n.11 (a remanufactured M–14 that “could be
 13 restored to fully-automatic-shooting capacity” in six hours was “readily” restorable); *United States v.*
 14 *Smith*, 477 F.2d 399, 400 (8th Cir. 1973) (firearm could be “readily restored to shoot automatically,”
 15 even though “[t]o do so would take about an 8-hour working day in a properly equipped machine
 16 shop”); accord *TRW Rifle 7.62X51MM Caliber*, 447 F.3d at 692 (“[T]wo hours. . . is . . . within a range
 17 that may properly be considered ‘with fairly quick efficiency,’ ‘without needless loss of time,’ or
 18 ‘reasonably fast.’”); *United States v. Dodson*, 519 F. App’x 344, 353 (6th Cir. 2013) (gun that could
 19 be restored with “90 minutes of work, using widely available parts,” met definition of “readily”).³

20 _____
 21 ² Like Mr. Hoffman, first-time builders can also complete AR-style receivers in just a few hours.
 22 See Yurgealitis Decl. ¶ 27; see also Yurgealitis Ex. K. And even if it took an inexperienced first-
 23 time builder a few hours more than Mr. Hoffman to complete an AR-style receiver, such a
 24 difference would be immaterial. See, e.g., *United States v. Smith*, 477 F.2d 399 (8th Cir. 1973).

25 ³ Defendants try to distinguish these cases—many of which ATF itself cited in the Final Rule—by
 26 arguing that they interpreted the term “readily” in the NFA. See Defs.’ Opp. 14. But Defendants
 27 fail to explain why that distinction matters. “Related statutes should be ‘construed as if they are
 28 one law.’” *California v. Trump*, 963 F.3d 926, 947 n.15 (9th Cir. 2020) (quoting *Erlenbaugh v.*
United States, 409 U.S. 239, 243 (1972)); accord *Diaz-Rodriguez v. Garland*, 55 F.4th 697, 717
 (9th Cir. 2022). And here, Defendants previously conceded that the NFA is related to the GCA.
 See Defs.’ MSJ 4, 10–11; see also 87 Fed. Reg. at 24,741 (discussing the GCA and NFA together
 for purposes of defining “frame or receiver”). In fact, the GCA was enacted to amend and expand
 the NFA. See generally National Firearms Act, ATF.gov, <https://www.atf.gov/rules-and-regulations/national-firearms-act> (last visited Dec. 26, 2023). The Court should therefore construe

B. ATF’s Actions With Respect To Partially Complete AR-Style Receivers Are Arbitrary And Capricious.

As Plaintiffs explained in their opening brief (Pls.’ MSJ 22–30), ATF’s actions with respect to partially complete AR-style receivers—Example 4 of the Final Rule, a YouTube video and PowerPoint deck, a Question and Answer webpage, a September 2022 Open Letter, and the 23 Challenged Classification Letters—are arbitrary and capricious. By determining whether a given product is a firearm based on a single, arbitrary measurement of the fire control cavity, ATF ignored critical factors relevant to the classification of these products. *See* Pls.’ MSJ 10–11, 24–26; *see also, e.g.*, ATF Supp 000223–225 (finding that the submitted item was not a “firearm” because “[t]he forward edge of the takedown pin lug clearance area” did “not measure more than .800 inch”). What is more, ATF entirely failed to explain or justify this deeply flawed approach in the Administrative Record. *See* Pls.’ MSJ 28–30. Instead, Defendants now submit a declaration that attempts to provide belated support for ATF’s decisions. But it is hornbook administrative law that an agency must justify its actions in the Administrative Record itself. Defendants’ declaration—and their near-exclusive reliance on it—only confirms ATF’s failure to comply with the “basic” obligation to “give adequate reasons for its decisions.” *Encino Motorcars LLC v. Navarro*, 579 U.S. 211, 221 (2016).

1. The Post-Hoc Hoffman Declaration Should Be Stricken In Part, And In Any Event, Only Confirms ATF’s Actions Are Arbitrary And Capricious.

Defendants submitted with their opposition brief a declaration from Daniel Hoffman, the Chief of the Firearms Technology Industry Services Branch and a Firearms Enforcement Officer at ATF. Under the guise of “rebutting” testimony from Plaintiffs’ declarant Jim Yurgealitis, Mr. Hoffman purports to justify ATF’s disparate treatment of materially indistinguishable AR-type receivers with explanations that are not contained in the Administrative Record. To the extent it belatedly supplements the Administrative Record, the Hoffman Declaration should be stricken. *See, e.g.*,

the word “readily”—present in both statutes, *see* 26 U.S.C. § 5845—the same way in both statutes. *See Brown v. Gardner*, 513 U.S. 115, 118 (1994) (looking to how a term is used in “analogous statutes”).

1 Hoffman Decl. ¶ 28 (discussing the “standard procedure” and “[f]orm” that ATF purportedly uses to
2 evaluate whether submitted items meet the Final Rule’s definition of “readily”).⁴

3 It is a “settled proposition[]” of administrative law that “in reviewing agency action, a court is
4 ordinarily limited to evaluating the agency’s *contemporaneous explanation* in light of the existing
5 administrative record.” *Dep’t of Commerce*, 139 S. Ct. at 2573 (emphasis added). This requirement
6 “is meant to ensure that agencies offer genuine justifications for important decisions . . . that can be
7 scrutinized by courts and the interested public.” *Id.* at 2575–76. Under this established regime, a court
8 generally may not consider reasons proffered after the fact in defense of an agency’s decision. *Id.*; *see*
9 *also, e.g., Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 419 (1971); *Scholl v.*
10 *Mnuchin*, 494 F. Supp. 3d 661, 690 (N.D. Cal. 2020) (rejecting defendants’ explanation of IRS action
11 because the explanation “was not publicly advanced by the agency at the time it reached its
12 determination and therefore constitutes an impermissible post hoc rationalization”); *King Cty. v. Azar*,
13 320 F. Supp. 3d 1167, 1177 (W.D. Wash. 2018) (“As Defendants well know, the Court cannot consider
14 *post hoc* justifications or materials outside the administrative record.”). Accordingly, courts in the
15 Ninth Circuit routinely refuse to consider post-hoc declarations purporting to explain agency action
16 because those declarations constitute “improper[] attempts to correct omissions in the record after the
17 fact.” *Nat. Res. Def. Council, Inc. v. Evans*, 2003 WL 22025005, at *2 (N.D. Cal. Aug. 26, 2003); *see*
18 *also, e.g., Nat’l Urb. League v. Ross*, 489 F. Supp. 3d 939, 981 (N.D. Cal. 2020) (finding that agency’s
19 employee declarations were “merely post hoc rationalizations which have traditionally been found to
20 be an inadequate basis for review” (cleaned up)); *Schroeder v. United States*, 683 F. Supp. 2d 1129,
21 1142 (D. Or. 2010) (refusing to consider agency employee declaration that “[a]t best . . . offer[ed] post-
22 hoc reasons *which th[e] court may not consider*” (emphasis added)).

23 The Hoffman Declaration offers exactly the kind of post-hoc justification that courts regularly
24 refuse to consider. Mr. Hoffman tries to supplement the Administrative Record by: (a) noting that

25 _____
26 ⁴ Plaintiffs do not object to certain paragraphs in the Hoffman Declaration that, like Mr. Yurgealitis’s
27 declaration, can assist the Court in understanding technical terms. *See* Hoffman Decl. ¶¶ 10–22;
28 *see also Ctr. for Bio. Diversity v. Salazar*, 2010 WL 11575282, at *2 (N.D. Cal. 2010) (courts may
consider extra-record evidence where it “is necessary to explain technical terms or complex subject
matter involved in the agency action”).

1 ATF “attempted to complete numerous partially complete AR-type receivers with a fixture/jig” before
2 issuing its September 2022 Open Letter, Hoffman Decl. ¶ 27; (b) detailing a purported “standard
3 procedure,” including a “[f]orm” that ATF supposedly uses when classifying products, *id.* ¶ 28; and
4 (c) insisting that ATF did analyze features other than the fire control cavity when determining whether
5 a partially complete AR-style receiver can “readily” be completed or converted, *id.* ¶¶ 29–32. None of
6 these statements appear anywhere in the Administrative Record. Defendants’ nearly exclusive reliance
7 on Mr. Hoffman’s declaration to justify ATF’s actions, *see* Defs.’ Opp. 12–17, 24, is thus an implicit
8 concession that the Administrative Record does not contain an “adequate explanation” or analysis as
9 to these challenged products. *Ctr. for Bio. Diversity*, 698 F.3d at 1124; *Encino Motorcars LLC*, 579
10 U.S. at 221 (“an agency must give adequate reasons for its decisions” and “articulate a satisfactory
11 explanation for its action[s]”); *Humane Soc. of U.S. v. Locke*, 626 F.3d 1040, 1050–51 (9th Cir. 2010)
12 (an agency has a “duty to explain cogently the bases of its decisions”).

13 While the Court need not consider the Yurgealitis Declaration to conclude that the
14 Administrative Record fails to support ATF’s actions regarding partially complete AR-style receivers,
15 the Court may largely strike the Hoffman Declaration and still consider the Yurgealitis Declaration.
16 *See Nat. Res. Def. Council v. Kempthorne*, 506 F. Supp. 2d 322, 343–47 (E.D. Cal. 2007) (granting
17 plaintiffs’ motion to strike declaration submitted by defendant agency, except for paragraphs “drawn
18 directly from the [administrative record] itself,” and reaffirming earlier decision to admit extra-record
19 evidence submitted by plaintiffs). The Hoffman Declaration seeks improperly to supplement the
20 Administrative Record with analysis ATF supposedly undertook that appears nowhere in the record.
21 *See* Hoffman Decl. ¶¶ 27–32. By contrast, the Yurgealitis Declaration assists the Court in
22 “determin[ing] whether the agency has considered all relevant factors or explained its course of conduct
23 or grounds of decision.” *Ctr. for Bio. Diversity*, 2010 WL 11575282, at *2; *see* Yurgealitis Decl. ¶¶ 1–
24 2, 29–40. Because “[i]t will often be impossible . . . for the court to determine whether the agency took
25 into consideration all relevant factors unless it looks outside the record to determine what matters the
26 agency should have considered but did not,” *Asbestos Disease Awareness Org. v. Wheeler*, 508 F.
27 Supp. 3d 707, 733 (N.D. Cal. 2020) (Chen, J.) (cleaned up), courts in this Circuit consider extra-record
28 declarations for this purpose. *See, e.g., Idaho Conserv. League v. Mumma*, 956 F.2d 1508, 1520 n.22

1 (9th Cir. 1992) (relying on expert declaration to determine whether agency’s process omitted
 2 consideration of relevant factors); *Bair v. Cal. State Dep’t of Transp.*, 867 F. Supp. 2d 1058, 1067
 3 (N.D. Cal. 2012) (similar). Defendants do not identify any portion of the Administrative Record that
 4 addresses the issues that Mr. Yurgealitis asserts ATF should have considered but did not. The Court
 5 may therefore consider Mr. Yurgealitis’s declaration as it determines whether ATF excluded or failed
 6 to consider factors relevant to its classification decisions. *See Ctr. for Food Safety v. Perdue*, 2022 WL
 7 4793438, at *8 (N.D. Cal. Sept. 30, 2022) (considering extra-record data that “[the agency] did not
 8 analyze . . . in the Final Rule” for the purposes of determining whether the agency had considered all
 9 relevant factors).⁵

10 **2. ATF’s Actions Are Not The Result Of Reasoned Decision-Making.**

11 ATF’s actions with respect to partially complete AR-style receivers are not the result of
 12 “reasoned decisionmaking” for at least three reasons. *All. for the Wild Rockies v. Petrick*, 68 F.4th 475,
 13 493 (9th Cir. 2023). *First*, they ignore the GCA’s clear dictate that products “designed to” be or that
 14 may “readily be converted” into fireable weapons must be classified as firearms. *Second*, ATF’s so-
 15 called “standard process” for determining whether a given product “may readily be converted”
 16 necessarily excludes consideration of relevant factors. *Third*, ATF’s treatment of jigs and similar tools
 17 ignores important “aspect[s] of the [ghost gun] problem,” *Nat. Res. Def. Council v. E.P.A.*, 526 F.3d
 18 591, 602 (9th Cir. 2008), *i.e.*, that even if jigs and tools are not sold literally *with* a given partially
 19 complete receiver, those tools are readily available to and easily obtained by the average consumer.

20
 21
 22 ⁵ Contrary to Defendants’ contentions, *see* Defs.’ Opp. 11–12, Plaintiffs have not waived their
 23 argument that this Court may consider Mr. Yurgealitis’ declaration. Defendants have long been on
 24 notice not only that Plaintiffs planned to submit a declaration with their opening summary judgment
 25 brief, but also of the precise bases on which Plaintiffs argued in their brief that this declaration is
 26 admissible extra-record evidence. *See* ECF Nos. 151–55. Defendants even reserved the right to
 27 seek to depose Mr. Yurgealitis (yet declined to do so). Defendants had a full opportunity to respond
 28 to Plaintiffs’ arguments that Mr. Yurgealitis’s declaration is admissible to assist the Court in
 understanding technical terms and evaluating relevant factors that ATF failed to consider. *See*
 Defs.’ Opp. 10–15; *see also Watkins v. United States*, 846 A.2d 293, 296 (D.C. Cir. 2004) (finding
 “no waiver” where party raised argument in a footnote in sufficient detail that “upon receipt of the
 brief, the government had been apprised of the essence of the [] claim”).

1 **a. ATF Ignored The GCA’s Clear Statutory Commands.**

2 As Plaintiffs explained in their opening brief, Pls.’ MSJ 23–26, ATF’s failure to implement the
3 GCA’s statutory requirements through the regulation of partially complete AR-style receivers is
4 arbitrary and capricious. It is hornbook law that agency action is “arbitrary and capricious if the
5 agency . . . entirely failed to consider an important aspect of the problem.” *Motor Vehicle Mfrs. Ass’n*
6 *v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). To determine whether an agency considered
7 all the “relevant factors” and “important aspect[s] of the problem,” courts look to the language of the
8 relevant statutes. *Michigan v. EPA*, 135 S. Ct. 2699, 2706–08 (2015) (holding that cost was a relevant
9 factor that agency unreasonably failed to consider after the Supreme Court interpreted statutory phrase
10 “appropriate and necessary”); *Ctr. for Bio. Diversity v. U.S. Bureau of Land Mgmt.*, 698 F.3d 1101,
11 1122 (9th Cir. 2012) (holding that “groundwater withdrawals were a relevant factor” that agency failed
12 to consider after court looked to the Endangered Species Act). Here, ATF’s actions both disregarded
13 and misinterpreted “designed to” and “readily” in the GCA.

14 *1. Designed To.* ATF admittedly “did not consider” whether specific AR-style receiver
15 products were “designed to” become a functional receiver and/or expel a projectile, as the GCA
16 requires. Defs.’ Opp. 16. Defendants argue, without citation, that a “designed to” analysis was
17 “irrelevant.” *Id.* But even if ATF disagrees with the plain meaning of “designed to,” *see supra*
18 Section II.A.1, it must still make classification decisions based on the “factors which Congress []
19 intended it to consider.” *Nat. Res. Def. Council*, 526 F.3d at 602. Here, that includes what a particular
20 product is “designed to” do. *See* 18 U.S.C. § 921(a)(3)(A).

21 *2. Readily Convertible.* Defendants’ assertion that ATF necessarily considered whether a given
22 product may “readily be converted” because it “adopted a standard [classification] process” likewise
23 does not pass muster. Defs.’ Opp. 16. Defendants’ proffered “standard process” assesses whether
24 “critical [interior] areas” are “indexed, machined, or formed.” *Id.* at 18. But the Administrative Record
25 provides no analysis supporting Defendants’ argument that this “standard process” satisfies the GCA’s
26 requirement that any “readily” convertible product be classified as a firearm. *See* Pls.’ MSJ 24–26.
27 Defendants’ reliance on their “standard process” also contradicts their concession that “readily” refers
28 to a process “that is fairly or reasonably efficient, quick, and easy.” Defs.’ Opp. 8. ATF’s rigid

1 machining test is unmoored from the governing statute, which demands that ATF actually consider
2 how long it would take to complete a particular AR-style receiver.

3 **b. ATF Failed To Examine The Relevant Data, Including Factors The**
4 **Agency Itself Identified As Relevant.**

5 As Plaintiffs explained in their opening brief, Pls.’ MSJ 26–28, ATF failed to consider the data
6 relevant to determining whether a partially complete AR-type receiver is a firearm. In response,
7 Defendants yet again invoke ATF’s “standard process”—one in which ATF classifies an AR-style
8 receiver based solely on whether “critical [interior] areas” are “indexed, machined, or formed.” Defs.’
9 Opp. 18. In relying upon that purported process, ATF effectively concedes that it failed to consider
10 the eight factors ATF itself has deemed relevant to assessing how “readily” an AR-type receiver may
11 be completed or converted into a fireable weapon. ATF’s process therefore does not reflect “reasoned
12 decisionmaking.” *Motor Vehicle Mfrs.*, 463 U.S. at 30–31 (agency actions must be “the product of
13 reasoned decisionmaking,” and agencies “must examine the relevant data and articulate a satisfactory
14 explanation for its action”). Nor was ATF’s “standard process” clearly explained. *Humane Soc. of*
15 *U.S.*, 626 F.3d at 1050–51 (an agency has a “duty to explain cogently the bases of its decisions”).

16 As Defendants acknowledge, whether a product may “readily be converted” to expel a projectile
17 refers to the speed and ease of the conversion process. *See* Defs.’ Opp. 8. To conduct such an analysis,
18 ATF has stated that it must apply “eight factors relevant to the determination in the context of
19 classification of firearms: (1) time, (2) ease, (3) expertise, (4) equipment, (5) parts availability,
20 (6) expense, (7) scope, and (8) feasibility.” *Id.* (citing 87 Fed. Reg. 24,652, 24,735 (Apr. 26, 2022)).
21 But ATF ignores those factors in its analysis of the challenged partially complete AR-style receivers.
22 Instead, the agency has adopted a rigid, binary test: If certain “critical [interior] areas” are “indexed,
23 machined, or formed,” Defs.’ Opp. 18, AR-style unfinished receivers are firearms, 27 C.F.R.
24 § 478.12(c). ATF implements that binary test with arbitrary measurements pertaining to the fire control
25 cavity. ATF determined, for example, that one partially complete AR-type receiver was a firearm
26 because “[t]he forward edge of the takedown pin lug clearance area . . . measure[d] more than .800
27 inch”; it determined that another partially complete AR-style receiver was not a firearm because “[t]he
28

1 forward edge of the takedown pin lug clearance area . . . does not measure more than .800 inch.”
2 *Compare* ATF Supp 000236, *with* ATF Supp 000241.

3 Defendants even admit that ATF only “*tacitly* consider[ed] the eight factors that the Rule
4 enumerates as relevant” in each of the Challenged Classification Letters. Defs.’ Opp. 23 (emphasis
5 added). According to Defendants, ATF’s “tacit” analysis was appropriate because ATF “adopted a
6 standard process that utilizes the eight factors”—*i.e.*, a rigid, binary machining test. *See id.* at 16. That
7 is wrong.

8 Defendants cite nothing in the Administrative Record that delineates ATF’s “standard process”
9 or how that process “utilized” the eight factors. Instead, Defendants rely solely on the Hoffman
10 Declaration, improperly attempting to supplement the Administrative Record with post-hoc testimony.
11 *See supra* Section II.B.1; *see also* *W. Watersheds Project v. Bernhardt*, 392 F. Supp. 3d 1225, 1248
12 (D. Or. 2019) (“Defendants’ arguments that [agency] findings were made or were made ‘implicitly’
13 are improper *post hoc* rationalizations.”).⁶ Regardless, the actual “analysis” ATF applied in the
14 Challenged Classification Letters consists solely of determining whether the “front of the takedown
15 pin lug clearance area” contains “drilling or milling” in a length greater than .800 inches. *See, e.g.*,
16 ATF Supp 000221–23. But the Administrative Record does not support that analysis, either—let alone
17 articulate how it can substitute for the eight factors identified in the Final Rule.

18 The sole portion of the Administrative Record on which Defendants rely—ATF’s September
19 2022 Open Letter, Defs.’ Opp. 17 (citing ATF Supp 000199–205)—merely stated ATF’s *conclusion*
20 that partially complete AR-style receivers are not “readily” completed where they are sold standalone
21 and lack “indexing or machining” in the fire control cavity. Yet it did not state the *basis* for that
22 conclusion. *See* ATF Supp 000201. As to why ATF focused on the “fire control cavity” (and the
23 related “takedown-pin lug clearance area” measurement), all the September 2022 Open Letter states is

24 _____
25 ⁶ Defendants’ out-of-circuit cases do not suggest that the Court should consider Defendants’ post-
26 hoc explanations. In *Caritas Medical Center v. Johnson*, 603 F. Supp. 2d 81, 92 (D.D.C. 2009),
27 for example, the court made clear that it was considering arguments that “expand[ed] on the points
28 raised in the text of the final rule,” rather than those that supplanted the text. *Id.* at 92. Similarly,
in *America’s Community Bankers v. FDIC*, 200 F.3d 822 (D.C. Cir. 2000), the court accepted the
defendant’s arguments because—rather than providing an entirely new rationale—they “continued
to support” those the agency affirmatively made in the administrative record itself. *Id.* at 836.

1 that “[r]emoving or indexing any material” in the fire control cavity is “a crucial step in producing a
 2 functional receiver.” *Id.* The Open Letter fails to explain why such actions are “crucial” or why their
 3 absence necessarily indicates that a given product is *not* readily convertible. Indeed, loading
 4 ammunition into a firearm is a “crucial step in producing” a fireable weapon, yet that “crucial step” is
 5 easy. It takes seconds. And like the September 2022 Open Letter, none of the Challenged
 6 Classification Letters contain any application of ATF’s eight factors or explanation why the “fire
 7 control cavity” measurement is sufficient to assess whether a product is “readily convertible.”

8 Defendants’ post-hoc explanations confirm ATF’s failure to comply with the APA. *Dep’t of*
 9 *Commerce*, 139 S. Ct. at 2573; *Scholl*, 494 F. Supp. 3d at 690. Defendants assert for the first time and
 10 without any citation to the record that “drilling or milling an area greater in size than 0.800 inches
 11 would . . . allow[] a person to use that milled-out area to *more quickly and easily* drill out the fire
 12 control cavity to house the trigger mechanism and hammer.” Defs.’ Opp. 18 (emphasis added);
 13 *compare* ATF Supp 000201 (stating that drilling the fire control cavity is a “crucial step” but failing to
 14 explain the 0.800 threshold or how it contributes to a quicker and easier build). This Court “may not
 15 accept” Defendants’ “post hoc rationalizations,” *Motor Vehicle Mfrs.*, 463 U.S. at 50, which “serve
 16 only to underscore the absence of an adequate explanation in the administrative record itself,” *Humane*
 17 *Soc. of U.S.*, 626 F.3d at 1050.⁷

18 **c. ATF Failed To Articulate A Satisfactory Explanation For Its Treatment**
 19 **Of Jigs, Templates, Equipment, Or Tools.**

20 Finally, ATF’s distinction between unfinished AR-style receivers “sold, distributed, or
 21 possessed with instructions, jigs, templates, equipment, or tools,” 27 C.F.R. § 478.12(c), and those
 22 sold, distributed, or possessed *without* those items is arbitrary and capricious. Defendants admit that
 23 “the presence or absence of jigs [is] . . . important” and “significantly affects” most of the factors ATF
 24

25 ⁷ Defendants ignore the district court’s decision in *Innovator Enterprises, Inc. v. Jones*, 28 F. Supp.
 26 3d 14 (D.D.C. 2014). There, the court held that an ATF classification letter analyzing whether a
 27 device qualified as a “firearm silencer” was “deeply flawed”—and therefore arbitrary—because
 28 ATF’s analysis focused “solely on the physical characteristics of the device.” *Id.* at 25. Defendants
 do not even try to distinguish ATF’s methodology with respect to AR-style receivers—because
 they cannot do so. *See* Pls.’ MSJ 24–28.

1 considers relevant to whether a product is “readily” completed or converted. Defs.’ Opp. 14. ATF
 2 knows that “equipment such as jigs” is “significant[]” because jigs “reduc[e] the time to complete”
 3 unfinished receivers, “reduc[e] the required expertise,” “reduc[e] the required expense,” and
 4 “increase[e] the feasibility of completion.” *Id.*; *see also* Yurgealitis Decl. ¶¶ 27–28, 36. And ATF
 5 admits that these products are “available . . . elsewhere in the marketplace.” Defs.’ Opp. 18. Yet
 6 despite the wide accessibility of those “significant[]” tools, ATF considers how they affect the ease
 7 with which a product can be converted into a firearm *only* if they are “sold, distributed, or possessed
 8 with” an unfinished receiver.⁸ 27 C.F.R. § 478.12(c). This approach ignores critical and obvious
 9 information that should materially impact the analysis, rendering ATF’s actions arbitrary and
 10 capricious. *See, e.g., Ctr. for Bio. Diversity*, 698 F.3d at 1122 (agency action was arbitrary and
 11 capricious where evidence indicated that “groundwater withdrawals” may impact the agency’s
 12 biological opinion but were not considered); *Bidi Vapor LLC v. U.S. Food & Drug Admin.*, 47 F.4th
 13 1191, 1203 (11th Cir. 2022) (agency action was arbitrary and capricious where agency ignored aspects
 14 of tobacco companies’ submissions before denying the tobacco companies’ request).

15 ATF utterly fails to justify its refusal to consider the ready availability of jigs on the
 16 marketplace. Defendants do not explain how the availability of jigs from different sellers, or even from
 17 the same seller in a different transaction, would make a given partially complete AR-type receiver any
 18 less “readily convertible” than one sold with that very same jig in a kit. Although Defendants suggest
 19 that “the additional time and expense required to obtain additional equipment also affects whether an
 20 item may be readily converted into a functional frame or receiver,” Defs.’ Opp. 19, Defendants fail to
 21 identify that conclusion or any support for it in the Administrative Record. Nor would such a
 22 conclusion make sense: At most, the procurement of a jig would reflect a modest start-up cost. *See*
 23 Yurgealitis Decl. ¶¶ 24, 39(d) (noting jigs to complete certain unfinished receivers can be purchased
 24

25 ⁸ As *Amicus* Everytown for Gun Safety noted, at least two manufacturers of unfinished AR-style
 26 receivers that ATF deemed “not firearms” in the Challenged Classification Letters (*see* ATF Supp
 27 000408–412; 000438–457; 000468–472; 000502–506) sell *both* AR-style unfinished receivers and
 28 compatible kits with tools and parts on the very same website and even in the same transaction.
Compare Crain Exs. 21, 21-A, 21-B, 21-C, 21-D, 22, 22-A, 22-B, 22-C, 22-D, *with* Everytown
Amicus Br., App’x A.

1 for as little as \$29.99); ECF No. 193-1 (“Everytown Amicus Br.”), at 9 (explaining that “AR-15 lower
 2 receivers can be purchased for as little as \$50” and that “single-use jigs are available for as low as
 3 \$60”). Once procured, jigs can easily create ready-made pipelines of AR-style rifles sold without
 4 background checks or serial numbers. *See* Yurgealitis Decl. ¶ 40 (explaining that “[j]igs can help
 5 facilitate drilling and machining and—once bought—can be used over and over again to convert AR-
 6 15 variant ‘incomplete’ receivers into functional receivers with ease”). Purchasers who can access jigs
 7 online, in a hardware store down the block, or in their own homes can still “readily” convert their
 8 weapons. *See id.*; Hoffman Decl. ¶ 27 (builds completed by ATF “with a fixture/jig . . . averaged 1.5-
 9 3 hours to complete”).

10 Defendants justify the gaps in their analysis by arguing that they simply had to exclude certain
 11 products in order to limit compliance and enforcement costs. Defs.’ Opp. 19. But these costs don’t
 12 impact whether a weapon “is designed to or may readily be converted to expel a projectile.” 18 U.S.C.
 13 § 921(a)(3). Nor do Defendants explain why the failure to consider the availability of jigs on the
 14 broader market would result in greater compliance and enforcement costs—indeed, providing clarity
 15 to the market could actually result in *fewer* administrative costs by more clearly articulating the types
 16 of products that fall under the definition of “firearm” under the GCA. Similarly, Defendants’ purported
 17 consideration of criminal law does not help them. *See* Defs.’ Opp. 21–22. Criminal prohibitions on
 18 “manufacturing[] or dealing in firearms without a license” do not bear on the statutory text or the
 19 analysis of a given product, what it was “designed” to do, and how “readily” it can be converted into a
 20 deadly weapon. 87 Fed. Reg. at 24,713 (discussing “[f]ederal felony violations that can apply to
 21 circumstances involving the final rule’s requirements”).

22 Defendants ask the Court to defer to ATF’s “line drawing,” irrespective of how ATF decided
 23 to draw the purported lines or whether they conform to the statutory text. That’s not how the APA
 24 works.⁹ As Defendants’ own cases confirm, an agency’s line drawing must be “consistent with [an

25
 26 ⁹ Defendants contend in a footnote that “this Court need not decide” whether to apply *Chevron*
 27 deference because ATF’s challenged decisions “reflect[] the best statutory interpretation.” Defs.’
 28 Opp. 20 n11. As detailed above and in Plaintiffs’ opening brief, ATF’s “statutory interpretation”
 is contrary to the plain meaning and intent of the GCA. Nor do ATF’s actions regarding AR-type
 receivers reflect the “thoroughness” the agency displayed in *Hernandez v. Garland*, 38 F.4th 785,

1 agency’s] statutory obligation,” and the agency must “demonstrate[] that line’s relationship to the
 2 underlying regulatory problem.” *Cassell v. F.C.C.*, 154 F.3d 478, 485 (D.C. Cir. 1998); *see California*
 3 *ex rel. Becerra v. Azar*, 950 F.3d 1067, 1103–04 (9th Cir. 2020) (finding defendant’s explanation for a
 4 distinction between medical providers with different levels of education—that more education makes
 5 providers more qualified to provide certain services—not “so implausible”). Because ATF disregarded
 6 the availability of jigs and other common household tools, its actions are arbitrary and capricious. *See*
 7 *Cassell*, 154 F.3d at 485.

8 **C. This Court Can And Should Declare Unlawful ATF’s Actions, Vacate Them In**
 9 **Relevant Part, And Remand To ATF.**

10 In their opening brief, and in their Proposed Order, Plaintiffs requested a narrow remedy
 11 tailored to specific ATF actions. Should this Court agree that ATF’s actions with respect to partially
 12 complete AR-style receivers were unlawful—either because they were contrary to law or because they
 13 were arbitrary and capricious—Plaintiffs respectfully request that this Court: (1) declare one
 14 subsection of the Final Rule (Example 4) and related agency actions to be unlawful and enjoin
 15 Defendants from enforcing them; (2) vacate one subsection of the Final Rule (Example 4) and related
 16 agency actions; and (3) remand to ATF for further proceedings consistent with the Court’s opinion.¹⁰

17 Defendants concede, as they must, that declaratory and injunctive relief are appropriate
 18 remedies should the Court find an APA violation. Defendants appear to take issue only with Plaintiffs’
 19 additional request that the Court vacate a portion of the Final Rule and other agency actions that rely
 20 on that portion of the Final Rule. *See* Defs.’ Opp. 24–27. But the APA explicitly provides that a
 21 “reviewing court shall . . . hold unlawful *and set aside* agency action, findings, and conclusions found
 22 to be” “arbitrary, capricious, . . . or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A)
 23 (emphasis added). An unbroken line of Ninth Circuit precedent stands for the proposition that “the
 24 normal remedy for an unlawful agency action is to . . . vacate the agency’s action.” *Se. Alaska Conserv.*

25
 26 791–92 (9th Cir. 2022), because ATF’s analysis was not “extensive,” nor was “its reasoning. . .
 persuasive [or] consistent.” *Id.* at 792.

27 ¹⁰ Plaintiffs’ Proposed Order specifically identifies each of the discrete agency actions for which
 28 Plaintiffs seek relief. *See* ECF No. 184-1.

1 Council, 486 F.3d at 654 (internal quotation marks omitted); *see Cal. Wilderness Coal. v. U.S. Dep’t*
 2 *of Energy*, 631 F.3d 1072, 1095 (9th Cir. 2011) (cited at Defs.’ Opp. 24). In fact, “[i]n the Ninth
 3 Circuit,” vacatur is not only a permissible remedy but “the **presumptive** remedy for [unlawful] agency
 4 action.” *Ctr. for Bio. Diversity v. U.S. Bureau of Land Mgmt.*, 2023 WL 3796675, at *3 (D. Idaho June
 5 2, 2023) (emphasis added) (citing *Env’t Def. Ctr. v. Bureau of Ocean Energy Mgmt.*, 36 F.4th 850, 882
 6 (9th Cir. 2022)); *see also, e.g., Defs. of Wildlife v. U.S. Fish & Wildlife Serv.*, 584 F. Supp. 3d 812,
 7 833–34 (N.D. Cal. 2022) (vacating final rule after concluding that rule was arbitrary and capricious);
 8 *Montana Wildlife Fed’n v. Bernhardt*, 2022 WL 742477, at *4–5 (D. Mont. Mar. 11, 2022) (vacating
 9 BLM leasing decisions that were contrary to law); *Ksanka Kupaqa Xa’lcin v. U.S. Fish & Wildlife*
 10 *Serv.*, 534 F. Supp. 3d 1261, 1273–74 (D. Mont. 2021) (vacating agency opinion that failed to consider
 11 the effects of agency action on listed species); *California v. Bernhardt*, 472 F. Supp. 3d 573, 630–32
 12 (N.D. Cal. 2020) (vacating agency rescission of earlier rule that restricted venting and flaring of
 13 methane from oil and gas operations on public lands).¹¹ Nor does vacatur violate any “equitable
 14 principles.” Defs.’ Opp. 27. While Defendants profess concern that vacatur could “conflict with the
 15 decision of other courts” considering challenges to the Final Rule, *id.*, Plaintiffs ask for relief that is
 16 narrowly tailored to one part of the Final Rule and the precise agency actions that have injured
 17 Plaintiffs, *see Texas v. Becerra*, 2023 WL 2754350, at *30 (N.D. Tex. Mar. 31, 2023) (defendants’
 18 argument that “setting aside [a] Rule will affect other court decisions made or currently pending” was
 19 “more relevant to the question of the scope of” vacatur than to the propriety of vacatur).

20 Remand without vacatur also would make little sense here. *Contra* Defs.’ Opp. 27–28. It “is
 21 the exception rather than the rule” in this Circuit, *Defs. of Wildlife*, 584 F. Supp. 3d at 833, and is
 22 reserved only for those “**limited circumstances**” in which equity demands it, *Pollinator Stewardship*
 23

24 ¹¹ Aside from ignoring a mountain of contrary authority, Defendants’ arguments are without merit.
 25 Defs.’ Opp. 25. Defendants claim, for example, that section 706(2) must not provide for vacatur
 26 because it would make “little sense” for a court to vacate an agency’s “findings” and “conclusions.”
 27 Yet courts routinely do just that. *See, e.g., Fogo De Chao (Holdings), Inc. v. DHS*, 211 F. Supp.
 28 3d 31, 41–42 (D.D.C. 2016) (finding); *Aragon v. Tillerson*, 240 F. Supp. 3d 99, 120 (D.D.C. 2017)
 (conclusion). Defendants’ interpretation would also make section 706(2)’s “hold unlawful”
 command superfluous. Congress would not have required courts to both “hold unlawful and set
 aside” rules if a court could “set aside” a rule by merely deeming it unlawful. 5 U.S.C. § 706(2).

1 *Council v. EPA*, 806 F.3d 520, 532 (9th Cir. 2015) (citation omitted; emphasis added). To determine
 2 whether equity demands remand without vacatur, Ninth Circuit courts “weigh the seriousness of the
 3 agency’s errors against the disruptive consequences of an interim change that may itself be changed.”
 4 *Migrant Clinicians Network v. U.S. EPA*, 88 F.4th 830 (9th Cir. 2023) (internal quotation marks
 5 omitted). And “[b]ecause vacatur is the presumed remedy, the burden is on the agency to establish
 6 [that] equity demands” remand without vacatur. *See Ctr. for Bio. Diversity*, 2023 WL 3796675, at *3;
 7 *see also W. Watersheds Project v. Zinke*, 441 F. Supp. 3d 1042, 1083 (D. Idaho 2020) (“The burden is
 8 on [the agency] to show that compelling equities demand anything less than vacatur.”).

9 Although they devoted multiple pages in two separate briefs to the question of remedy,¹²
 10 Defendants have not carried their burden of justifying remand without vacatur. Nor could they.
 11 Vacating Example 4 in the Final Rule and discrete agency actions relying on Example 4 would not
 12 “cause serious and irreparable harms that significantly outweigh the magnitude of the agency’s error.”
 13 *Klamath-Siskiyou Wildlands Ctr. v. NOAA*, 109 F. Supp. 3d 1238, 1241–43 (N.D. Cal. 2015) (citation
 14 omitted). To the contrary, leaving these actions in place would cause serious and irreparable harms
 15 by allowing the continued sale of partially complete AR-style receivers without serialization or a
 16 background check. Nor are ATF’s fundamental errors, *see supra* Sections II.A–B, “minor” enough to
 17 justify remand without vacatur, *California*, 472 F. Supp. 3d at 630, and Defendants’ cases do not
 18 support that approach here, *see Calcutt v. FDIC*, 598 U.S. 623, 629–30 (2023) (deciding only whether
 19 to remand with specific instructions); *Sierra Club v. EPA*, 346 F.3d 955, 963 (9th Cir. 2003) (vacating
 20 and remanding arbitrary and capricious agency action; deciding only whether to remand with specific
 21 instructions). In short, there is “no reason” for this Court “to depart from the standard remedy of
 22 vacatur.” *WildEarth Guardians v. Jeffries*, 370 F. Supp. 3d 1208, 1251 (D. Or. 2019).

23
 24
 25
 26 ¹² The Court should reject Defendants’ request to brief the question even further. *See* Defs.’ Opp. 24.
 27 Defendants have “not offer[ed] a reason why they could not have briefed the issue[s] in the first
 28 place, or otherwise why further briefing is necessary.” *Defs. of Wildlife v. Salazar*, 729 F. Supp.
 2d 1207, 1228 n.15 (D. Mont. Aug. 5, 2010) (vacating agency rule despite defendants’ request to
 “further brief” remedy).

1 **D. Plaintiffs’ Undisputed Evidence Confirms They Have Standing.**

2 Defendants have not submitted any evidence contradicting the multiple declarations and
3 exhibits Plaintiffs submitted in support of their standing, *see* ECF No. 187 (“Cutilletta Decl.”); ECF
4 No. 188 (“Gonzalez Decl.”)—and thus the facts contained in those declarations are uncontested.
5 Instead, Defendants recycle the same legal arguments they advanced—and this Court rejected—at the
6 motion to dismiss stage. *See* Defs.’ Opp. 2–5. These arguments are no more persuasive now. *See*
7 *Yaak Valley Forest Council v. Vilsack*, 563 F. Supp. 3d 1105, 1114 (D. Mont. 2021), *appeal dismissed*,
8 2022 WL 571529 (9th Cir. Jan. 26, 2022).

9 Defendants assert that Plaintiffs have not shown that their injuries “result from the specific
10 agency actions that they challenge here.” Defs.’ Opp. 3; *see* ECF No. 125 (Defs.’ Mot. to Dismiss Am.
11 Compl.), at 1 (arguing that “Plaintiffs lack standing to challenge the Rule because they do not allege
12 that they will suffer harm caused by the narrow class of products for which they disagree with ATF”).
13 But this Court already rejected that argument, holding that Plaintiffs’ allegations—allegations that
14 Plaintiffs have now proven through sworn declarations and documentation, *see* Pls.’ MSJ 33–40—were
15 legally sufficient to establish standing. With respect to Plaintiff California, this Court found the
16 requisite “risk” that California would be harmed by ATF’s actions because (i) “it is predictable that 80
17 percent receivers/frames will be sold standalone”; and (ii) “it is predictable that at least some [of those
18 products] will be used in crimes,” especially because “[t]he entire point of buying” them “is to avoid
19 regulation.” *See* ECF No. 135, at 10–11. The Court additionally concluded that California had alleged
20 standing based on “its enactment and implementation of state legislation on ghost guns made necessary
21 by the federal government’s failure to fully implement the GCA.” *Id.* at 13–18. And with respect to
22 Plaintiff GLC, this Court found that GLC had standing because ATF’s actions frustrate its core mission
23 and “forced the organization to divert its resources to focus on ghost guns.” *Id.* at 19, 23.¹³

24 Having failed to grapple with this Court’s legal analysis, Defendants instead suggest that
25

26 ¹³ Although Defendants largely conflate Plaintiffs in the standing analysis, Defendants do not dispute
27 that this Court has jurisdiction should it find that even one Plaintiff has standing. *See* ECF No. 135,
28 at 7 (“[i]n a multi-plaintiff suit, only one plaintiff need have standing in order for the case to
proceed”).

1 Plaintiffs’ request to take limited third-party discovery, *see* ECF No. 151, was a silent concession that
2 Plaintiffs could not establish standing without such discovery, *see* Defs.’ Opp. 3–4. Not so. Plaintiffs
3 have never suggested that they *needed* third-party discovery to prove their standing. Nor have Plaintiffs
4 ever conceded that they could not establish standing without establishing the exact size of the loophole
5 that ATF created in allowing untraceable ghost gun products to be sold without background checks.
6 Critically, Defendants do not dispute that ATF created a loophole when it determined that certain
7 partially complete AR-style receivers are not firearms—or that the loophole involves a particularly
8 deadly and dangerous weapon. Pls.’ MSJ 3; Everytown Amicus Br. 2–6; *see also* ECF No. 135, at 11
9 (crediting California’s contention that “the loophole/exception is substantial; to wit, there is an easy
10 way to avoid regulation by making a purchase of an 80 percent receiver/frame standalone”). Even if
11 ATF were to regulate all ghost gun products *other than* partially complete AR-style receivers, the
12 “predictable effect of [ATF’s] action[s]” is increased demand for and use of those partially complete
13 AR-style receivers, which will continue to injure California and GLC for the reasons Plaintiffs have
14 identified. *See Dep’t of Commerce*, 139 S. Ct. at 2566.

15 Defendants also mistakenly suggest that no evidence in the record “connect[s]” Plaintiffs’
16 injuries and ATF’s actions with respect to partially complete AR-style receivers. Defs.’ Opp. 3. Ghost
17 gun sellers are already relying on the Final Rule’s loophole to market and sell partially complete AR-
18 style receivers—specifically to customers who might wish to avoid federal background check and
19 serialization laws. *See Cutilletta Decl.* ¶ 8 & Ex. A (“we can ship them right to your front door with
20 no FFL required”); *see also* Pls.’ MSJ 5–7; Everytown Amicus Br. 6–11 (discussing widespread
21 availability of AR-style receivers after Final Rule has taken effect). California has submitted evidence
22 that, of the total number of ghost guns recovered statewide since 2018, approximately 15-20% of those
23 ghost guns were made with AR-style receivers. *See Gonzalez Decl.* ¶ 14. In addition to the time and
24 money California must expend to locate and confiscate such unserialized AR-style receivers, California
25 also must (i) record each such AR-style receiver in the statewide Automated Firearm System (AFS)
26 and (ii) assign each recovered AR-style receiver a serial number. *See id.* ¶¶ 12–14. Of the millions of
27 dollars California has allocated statewide to address the ongoing and worsening ghost gun epidemic, a
28 significant portion of those expenditures has focused on AR-style receivers. *See id.* ¶¶ 14–17. GLC’s

1 Chief of Staff similarly offered uncontroverted testimony that GLC’s core mission has been frustrated
 2 by ATF’s conclusion that an unfinished AR-type receiver in particular is not a “firearm” under the
 3 GCA. *See* Cutilletta Decl. ¶¶ 7–10. She testified further that “ATF’s decision not to classify a
 4 significant category of unfinished receivers as ‘firearms’ creates a continued risk of ghost gun
 5 violence . . . and therefore requires GLC to keep expending resources on violence intervention
 6 programs and violence reduction work,” and that if ATF properly classified AR-type receivers as
 7 firearms, then “GLC could devote fewer of its limited resources to combatting ghost guns and ghost
 8 gun-related violence” and instead focus on other organizational priorities. *Id.* ¶¶ 15, 19.¹⁴

9 Plaintiffs’ evidence is more than sufficient to establish standing. To the extent the Court
 10 concludes that there is any genuine dispute of material fact as to justiciability (and there is none), the
 11 Court should deny both parties’ summary judgment motions and proceed to a trial on standing.

12 III. CONCLUSION

13 The Court should deny Defendants’ Motion for Summary Judgment and grant Plaintiffs’
 14 Cross-Motion for Summary Judgment.

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22 ¹⁴ Moreover, as *Amicus* Everytown for Gun Safety explains, citing judicially noticeable public
 23 records, “the continuing accessibility of AR-15 component parts . . . pose[s] a threat to public safety
 24 in California” because perpetrators “continue to use these [specific AR-style] weapons to commit
 25 crimes and to circumvent firearms regulations.” Everytown Amicus Br. 11–12 (collecting criminal
 26 complaints filed in California federal district courts within the past year against defendants for
 27 using, purchasing, manufacturing, dealing, and/or selling unserialized AR-15 style firearms); *see*
 28 *also* Crain Ex. 23 (convicted felon used privately manufactured AR-15 style rifle to shoot and kill
 Selma, California police officer); Crain Ex. 24 (man using unserialized AR-15 rifle fired dozens of
 rounds at police responding to a domestic violence call, leading to 6-hour standoff outside man’s
 home in Bakersfield, California); Crain Ex. 25 (man used ghost AR-style rifle to fire more than a
 dozen shots at an inhabited residence in Spring Valley, California).

1 *Dated:* January 4, 2024

/s/ S. Clinton Woods

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SIGNATURE ATTESTATION

Pursuant to Local Rule 5-1(i), I hereby attest that concurrence in the filing of the document has been obtained from each of the other Signatories.

Dated: January 4, 2024

/s/ Lee R. Crain
Lee R. Crain

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[Additional Counsel Listed on Next Page]
**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

STATE OF CALIFORNIA, et al.,

Plaintiffs,

v.

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

Defendants.

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

**DECLARATION OF LEE R. CRAIN IN
FURTHER SUPPORT OF PLAINTIFFS’
CROSS-MOTION FOR SUMMARY
JUDGMENT**

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

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1 I, LEE R. CRAIN, declare as follows:

2 1. I am an attorney admitted to practice law before this Court *pro hac vice*. I am a
3 partner at the law firm of Gibson, Dunn & Crutcher LLP, counsel for Plaintiff Giffords Law Center to
4 Prevent Gun Violence in the above-captioned action. I offer this declaration in opposition to
5 Defendants' Motion for Summary Judgment and in further support of Plaintiffs' Cross-Motion for
6 Summary Judgment.

7 2. Attached hereto as **Exhibit 21** is a true and correct copy of an AAO Manufacturing
8 webpage listing various partially-complete AR-type receivers for sale, available at
9 <https://aaomfg.com/ar-lowers-parts/> (last visited Jan. 2, 2024).

10 3. Attached hereto as **Exhibit 21-A** is a true and correct copy of an AAO Manufacturing
11 webpage listing various AR-type "Lower Parts Kit[s]" for sale, available at
12 <https://aaomfg.com/lower-parts-kits-and-lower-build-kits/> (last visited Dec. 27, 2023).

13 4. Attached hereto as **Exhibit 21-B** is a true and correct copy of an AAO Manufacturing
14 webpage listing a partially-complete AR-15 receiver for sale, available at [https://aaomfg.com/80-
15 ar15-lower-receiver-7075-raw/](https://aaomfg.com/80-ar15-lower-receiver-7075-raw/) (last visited Jan. 2, 2024).

16 5. Attached hereto as **Exhibit 21-C** is a true and correct copy of an AAO Manufacturing
17 webpage listing a "Lower Parts Kit" that is compatible with unfinished AR-15 receivers for sale,
18 available at <https://aaomfg.com/ar15-ar9-ar40-lower-parts-kit-lpk-lrpk-mil-spec/> (last visited Jan. 2,
19 2024).

20 6. Attached hereto as **Exhibit 21-D** is a true and correct copy of a shopping cart on the
21 AAO Manufacturing webpage, assembled on January 2, 2024, comprising the products listed in
22 **Exhibit 21-B** and **Exhibit 21-C**.

23 7. Attached hereto as **Exhibit 22** is a true and correct copy of a Wolfpack Armory
24 webpage listing various partially-complete AR-type receivers for sale, available at
25 <https://www.wolfpackarmory.com/80-percent-lower-receivers> (last visited Dec. 27, 2023).

1 8. Attached hereto as **Exhibit 22-A** is a true and correct copy of a Wolfpack Armory
2 webpage listing various partially-complete AR-type receiver build kits for sale, available at
3 <https://www.wolfpackarmory.com/firearms-kits> (last visited Dec. 27, 2023).

4 9. Attached hereto as **Exhibit 22-B** is a true and correct copy of a Wolfpack Armory
5 webpage listing a partially-complete AR-15 receiver for sale, available at
6 <https://www.wolfpackarmory.com/product-page/cerakoted-billet-ar15-80-lower-receiver> (last visited
7 Dec. 27, 2023).

8 10. Attached hereto as **Exhibit 22-C** is a true and correct copy of a Wolfpack Armory
9 webpage listing a “Build Your Own AR15 Rifle Kit” for sale, available at
10 <https://www.wolfpackarmory.com/product-page/ar15-rifle-kit> (last visited Dec. 27, 2023).

11 11. Attached hereto as **Exhibit 22-D** is a true and correct copy of a shopping cart on the
12 Wolfpack Amory webpage, assembled on January 2, 2023, comprising the products listed in **Exhibit**
13 **22-B** and **Exhibit 22-C**.

14 12. Attached hereto as **Exhibit 23** is a true and correct copy of a press release issued by
15 the Fresno County Sheriff’s Office titled, “Selma Cop Killer Officially Charged During Court
16 Appearance,” dated February 3, 2023, available at [https://www.fresnosheriff.org/media-](https://www.fresnosheriff.org/media-relations/selma-cop-killer-officially-charged-during-court-appearance.html)
17 [relations/selma-cop-killer-officially-charged-during-court-appearance.html](https://www.fresnosheriff.org/media-relations/selma-cop-killer-officially-charged-during-court-appearance.html).

18 13. Attached hereto as **Exhibit 24** is a true and correct copy of an article published by
19 *KGET* titled “BPD Officer Shielded Woman from Gunfire During Southwest Bakersfield Standoff:
20 Reports,” dated January 31, 2023, available at [https://www.kget.com/news/crime-watch/bpd-officer-](https://www.kget.com/news/crime-watch/bpd-officer-shielded-woman-from-gunfire-during-southwest-bakersfield-standoff-reports/)
21 [shielded-woman-from-gunfire-during-southwest-bakersfield-standoff-reports/](https://www.kget.com/news/crime-watch/bpd-officer-shielded-woman-from-gunfire-during-southwest-bakersfield-standoff-reports/).

22 14. Attached hereto as **Exhibit 25** is a true and correct copy of an article published by
23 *NBC San Diego* titled “Man Shot Up Spring Valley Home with ‘Frankenstein-Style’ Ghost Gun
24 Assault Rifle: Sheriff’s Dept.,” dated September 28, 2023, available at
25 [https://www.nbcsandiego.com/news/local/man-shot-up-spring-valley-home-with-frankenstein-style-](https://www.nbcsandiego.com/news/local/man-shot-up-spring-valley-home-with-frankenstein-style-ghost-gun-assault-rifle-sheriffs-dept/3315927/)
26 [ghost-gun-assault-rifle-sheriffs-dept/3315927/](https://www.nbcsandiego.com/news/local/man-shot-up-spring-valley-home-with-frankenstein-style-ghost-gun-assault-rifle-sheriffs-dept/3315927/).

1 I declare under penalty of perjury that the foregoing is true and correct.
2

3 *Dated:* January 4, 2024

/s/ Lee R. Crain

4 Lee R. Crain
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EXHIBIT 21



Home / AR15 / AR10 / AR9 80% Lowers

AR15 / AR10 / AR9 80% Lowers

[AR15 / AR10 / AR9 80% Lowers](#)

[AR10 80% Lower Receivers](#)

[AR15 80% Lowers](#)

[Glock Magazine 80% AR9 Lowers](#)

[S&W Magazine 80% AR9 Lowers](#)

[Sig P320 P250 Magazine 80% Lower](#)

Sort By: [Featured Items](#)



AR10 80% LOWER RECEIVER

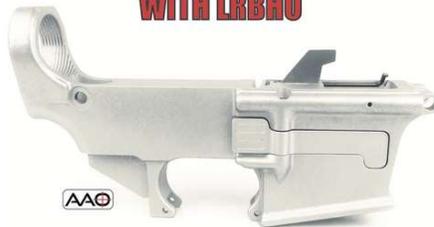


**AR-10 GEN 1 DPMS STYLE
7075 80% LOWER RECEIVER**



AR10 80% Lower Receiver 7075 Aluminum
~~\$134.99~~ \$109.99

AR 15 SIG P320/P250 MAG LOWER WITH LRBHO



FLAT FRONT DESIGN



AR15 Sig P320 / P250 Magazine 80% Lower
with LRBHO
~~\$139.00~~ \$109.99

AR15 GLOCK MAG LOWER ANODIZED BLACK



**FLAT FRONT DESIGN
STANDARD LOWER**



80% AR9/AR40 - Glock Magazine -
Standard Lower - Flat Front - 7075
Anodized Black
~~\$109.99~~ \$89.99

AR15 GLOCK MAG LOWER



**FLAT FRONT DESIGN
7075 ALUMINUM STANDARD LOWER**



80% AR9/AR40 - Glock Magazine -
Standard Lower - Flat Front - 7075 Raw
(No LRBHO)
~~\$99.99~~ \$79.99

AR15 80% - 223/5.56



7075 ALUMINUM MACHINED TO MIL-SPEC STANDARDS



80% AR15 Lower Receiver - 7075 Raw
~~\$109.00~~ \$48.50

AR 15 S&W MAG LOWER WITH LRBHO



FLAT FRONT DESIGN



80% AR9 - S&W 9mm M&P Magazine
w/LRBHO - Flat Front - AR15 Based Lower
Receiver - 7075 Raw
~~\$129.99~~ \$109.99



AR15 GLOCK MAG LOWER WITH LRBHO



FLAT FRONT DESIGN

★★★★★

80% AR9/AR40 - Glock 9mm Mag w/LRBHO - Flat Front - AR15 Based Lower Receiver - 7075 Raw

~~\$129.99~~ \$109.99

AR15 GLOCK MAG LOWER WITH LRBHO



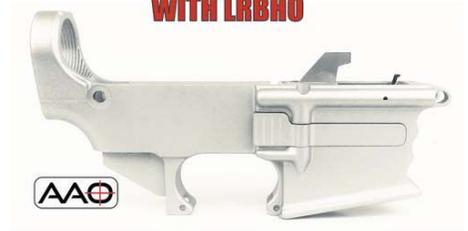
FINGER GROOVED DESIGN ANODIZED BLACK

★★★★★

80% AR9/AR40 - Glock 9mm Mag w/LRBHO - Finger Groove Front - AR15 Based Lower Receiver - 7075 - Anodized Black

~~\$139.99~~ \$119.99

AR15 GLOCK MAG LOWER WITH LRBHO



FINGER GROOVE DESIGN

★★★★★

80% AR9/AR40 - Glock 9mm Mag w/LRBHO - Finger Groove Front - AR15 Based Lower Receiver - 7075 Raw

~~\$129.99~~ \$109.99

AR15 80% - 223/5.56

ANODIZED



7075 ALUMINUM TYPE 3 HARDCOAT ANODIZED

★★★★★

80% AR15 Lower Receiver - 7075 - Anodized Black

~~\$119.99~~ \$65.00

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Lower Parts
AR15 AR9 AR40 AR45 UPPER RECEIVERS

Info

AAO Manufacturing
3247 Hwy 63 S
Building 6
Lucaledale
MS, 39452
USA
(601) 514 - 0660

Subscribe to our newsletter

Get the latest updates on new products and upcoming sales



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EXHIBIT 21-A



MIL-SPEC LOWER PARTS KIT



COMPLETE 31 PIECE LOWER PARTS KIT

★★★★★

AR15/AR9/AR40 - Lower Parts Kit - LPK - LRPK - Mil-Spec

~~\$69.95~~ \$42.99

MIL-SPEC LOWER PARTS KIT



COMPLETE 31 PIECE LOWER PARTS KIT

★★★★★

5 Pack - AR15/AR9/AR40 - Lower Parts Kit - LPK - LRPK - Mil-Spec

~~\$349.95~~ \$209.00

LRPK WITH 3.5lb DROP IN TRIGGER



3.5lb DROP IN TRIGGER INCLUDED

★★★★★

AAO MFG
AR15/AR9/AR40 Lower Parts Kit Marksman Kit with 3.5lb Drop in Trigger LRPK LPK

~~\$165.00~~ \$119.95

AR-15 MIL-SPEC LOWER BUILD KIT



MIL-SPEC LRPK AND MIL-SPEC COMPLETE STOCK SET

★★★★★

AR-15 Carbine Lower Build Kit

~~\$129.95~~ \$99.50

AR-15 MIL-SPEC BUILD KIT



MIL-SPEC LRPK WITH 6 POSITION BUFFER TUBE KIT

★★★★★

AR15 Mil-Spec Lower Build Kit With Carbine 6 Position Buffer Tube

~~\$109.00~~ \$90.00

AR-15 MIL-SPEC PISTOL BUILD KIT



MIL-SPEC LRPK AND PISTOL BUFFER KIT

★★★★★

AR15 Pistol Lower Build Kit

~~\$99.00~~ \$73.50

EXHIBIT 21-B



CART 2

Home / AR15 / AR10 / AR9 80% Lowers / 80% AR15 Lower Receiver - 7075 Raw

80% AR15 Lower Receiver - 7075 Raw

~~\$109.00~~ \$48.50
(You save \$60.50)

★★★★★ (90 reviews) [Write a Review](#)

SKU:

A15-80

Shipping:

Calculated at Checkout

[Buy in bulk and save](#)



Option - Bulk Order:

Non-Bulk Order

Option - Safe / Fire Bullet Engraving:

Print Engraving - LEFT - Safe Fire + 0.00

Option - Serial Number / CA Engraving:



Extra Mag Well Engraving:

No Extra Engraving + 0.00

Current Stock: 8

Quantity:

1

Add to Cart



Description

RAW - AAO 80% AR15 LOWER RECEIVER

Made in the USA

FAQ:

Q - What is the difference between an AAO 80% lower and others?

A - Safe / Fire laser etched into the AAO Lower.

- You can quickly test your upper to lower fitment with the AAO Lower before you mill, this is due to a small pocket milled into the rear takedown pin area.

- High quality and best in class precision machining for a good price. We are real gun guys and we fire what we make, so it has to be good.

Q - What material do you use?

A - All of our lowers are machined from: 7075-T6 Aluminum

Q - What LRPK (LPK) will work?

A - We recommend the AAO MFG LRPK, however any standard mil-spec LRPK will work.

Q - What does RAW or "IN THE WHITE" mean?

A - Raw means "unfinished" or "in the white", the unit has been fully deburred and is ready for you to finish.

Q - What information do you need if I choose CA Compliance Engraving via the drop down menus?

A - Leave your information in the notes section of the checkout page.

- CA Compliance list information as follows: Your Name, Your City, State, Multi Cal, Your Serial#
- If ordering multiples lowers list your serial numbers as: 0001:0006 (serial number 0001 through 0006)

Q - Do you offer a bulk discount or other discounts?

A - Yes, purchase TEN AAO AR15 80% Lowers and RECEIVE A 10% DISCOUNT on your lowers.

Q - What calibers can be built with a finished lower?

.223/5.56 - .22 - .204 Ruger - 300 AAC Blackout - 6.5 Grendel - 7.62x39 - 458 SOCOM - 45ACP - 9mm - FN 5.7 - 7.62x25 - 5.45x39



- Anyone can legally purchase a 80% Lower Receiver. An 80% Lower Receiver DOES NOT have to be sold through or registered through a dealer with a FFL (Federal Firearms License).

Q - What JIG do you recommend to finish the AAO lower?

A - AAO Lowers are compatible with any JIG that will complete a standard Mil-Spec AR Lower. If you are finishing an AAO 9mm Lower, the Ejector and LRBHO are removable so it can work with any standard Mil-Spec JIG.

Q - What are the operations that must be completed to make the 80% lower fully functional:

A - Machine the following using your JIG to finish our 80 percent AR15 Lower Receiver. Our 80% Lower Receiver has a fully broached finished Mag Well.

- fire control group
- safety select hole
- trigger opening
- trigger pin holes
- hammer pin holes
- The AAO 80% Lower Receiver has been machined to match MIL-SPEC from a 7075 AR15 Lower Forging.

Q - What is a AR15 80% Lower Receiver?

A - 80% lower receivers are parts that have been partially completed.

- 80 percent or 80% is a generic term that means that everything is complete on the lower except for the fire control group, safety select, trigger opening, trigger pin holes & hammer pin holes.

- Utilizing a jig and the right techniques, any 80 percent lower can be quickly transformed into a highly accurate and functional firearm.

Q - Does a AR15 80% Lower Receiver require transfer or registration through an FFL?

A - No. This is a do-it-yourself product.. You start with a 80% product and end up with a complete functional product after your finish the machining using your jig.

Q - Is it legal to do this? May I lawfully make a firearm for my own personal use, provided it is not being made for resale?

A - This quote is taken directly from the ATF Website <http://www.atf.gov/files/firearms/industry/0501-firearms-top-10-qas.pdf>: "Firearms may be lawfully made by persons who do not hold a manufacturer's license under the GCA (Gun Control Act) provided they are not for sale or distribution and the maker is not prohibited from receiving or possessing firearms."

Q - Can I build and then transfer a finished firearm to another individual?

A - Yes you can, however you must mark the firearm in accordance with 27 CFR 472.92 (formally 178.92). You must follow all laws that are in place today. Do yourself a favor an protect yourself, don't put a completed firearm in anyone's hands unless you have gone through proper channels and background checks. Following the proper channels will protect us, our family, and our friends. For any firearm transfer it is your responsibility to understand the federal and local laws and how they apply.

Q - Is it legal to assemble a firearm from commercially available parts kits that can be purchased via the internet or via Firearms News?

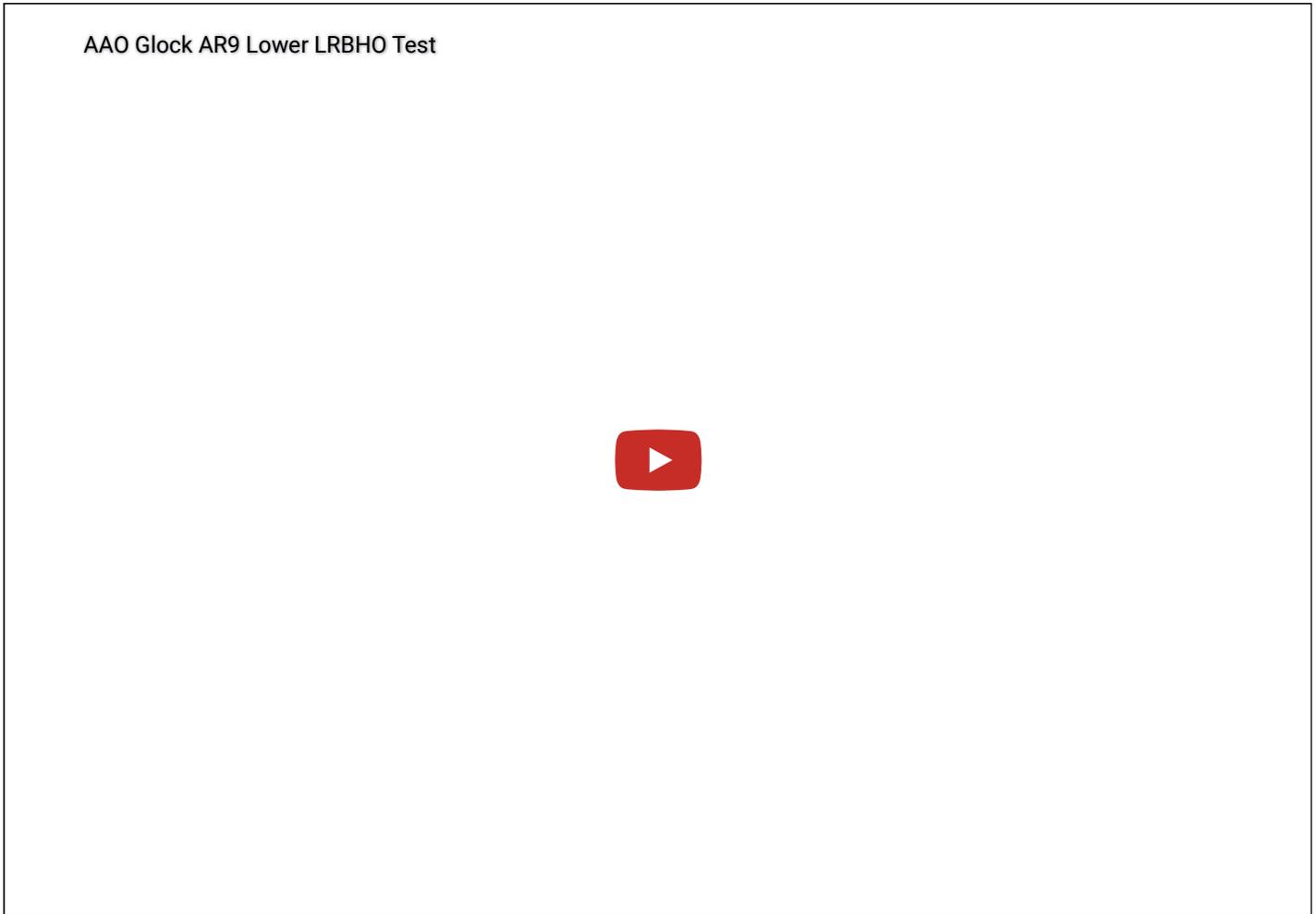
A - This quote is taken directly from the ATF Web Site: "Firearms may be lawfully made by persons who do not hold a manufacturer's license under the GCA provided they are not for sale or distribution and the maker is not prohibited from receiving or possessing firearms. However, a person is prohibited from assembling a non-sporting semiautomatic rifle or shotgun from 10 or more imported parts, as set forth in regulations in 27 C.F.R.

478.39" <https://www.atf.gov/file/61721/download>



Videos

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AAO Glock AR9 Lower LRBHO Test
 AAO Glock AR Lower LRBHO Test with model A15-GL-80. Patent Pe...



AAO S&W AR9 Lower - Minor 9mm Bolt Mod
 The AAO S&W AR9mm runs and functions great with a AR Glock 9mm...



AAO Lower - AR9 LRBHO How To and Adjust
 How to adjust the Last Round Bolt Hold Open (LRBHO) on your AA...



CART 2



Laser etch safe fire into Lower
All AAO Lower are laser etched. More info: <http://www.aaomfg...>

90 Reviews

Show Reviews

Related Products

Ar15 80% ENHANCED LOWER



**7075 ALUMINUM - THREADED BOLT CATCH
THREADED / CAPTURED REAR DETENT**

Enhanced 80% AR15
Lower Receiver - 7075
Raw
~~\$105.00~~ \$69.99

AR15 80% - 223/5.56

ANODIZED



7075 ALUMINUM TYPE 3 HARDCOAT ANODIZED

80% AR15 Lower
Receiver - 7075 -
Anodized Black
~~\$119.00~~ \$65.00

Ar10 80% LOWER RECEIVER



**AR-10 GEN 1 DPMS STYLE
7075 80% LOWER RECEIVER**

AR10 80% Lower
Receiver 7075
Aluminum
~~\$134.99~~ \$109.99

**AR15 GLOCK MAG LOWER
WITH LRBHO**



FLAT FRONT DESIGN

80% AR9/AR40 -
Glock 9mm Mag
w/LRBHO - Flat Front
- AR15 Based Lower
Receiver - 7075 Raw
~~\$129.99~~ \$109.99

AR 15 MIL-SPEC UPPER RECEIVER



7075 FORGED RAW UPPER RECEIVER

AR15 Stripped Raw
7075 Forged Upper
Receiver
~~\$109.00~~ \$46.00



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CART 2

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Lower Parts
AR15 AR9 AR40 AR45 UPPER RECEIVERS

Info

AAO Manufacturing
3247 Hwy 63 S
Building 6
Lucaledale
MS, 39452
USA
(601) 514 - 0660

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EXHIBIT 21-C



Home / Lower Parts / AR15/AR9/AR40 - Lower Parts Kit - LPK - LRPK - Mil-Spec

AR15/AR9/AR40 - Lower Parts Kit - LPK - LRPK - Mil-Spec

~~\$69.95~~ \$42.99

(You save \$26.96)

★★★★★ (39 reviews) [Write a Review](#)

SKU:

A15-LRPK

Shipping:

Calculated at Checkout



Current Stock: 47

Quantity:



Description

AR15/AR9/AR40 Lower Parts Kit - LPK - LRPK - Mil-Spec

Everything that you need to turn your stripped AR9/AR40/AR15 Lower into a fully functional unit.

Our LRPK is the perfect way to finish off your build. All of our parts are Mil-Spec and built to the highest standards.

31 TOTAL PIECES

- SELECTOR SEMI-AUTO
- SELECTOR DETENT
- SELECTOR DETENT SPRING
- BOLT CATCH
- BOLT CATCH PIN
- BOLT CATCH SPRING
- BOLT CATCH PLUNGER
- PISTOL GRIP (A2 STYLE)
- PISTOL GRIP SCREW
- PISTOL GRIP WASHER
- TAKEDOWN PIN
- TAKEDOWN PIN DETENT
- TAKEDOWN PIN SPRING
- PIVOT PIN
- PIVOT PIN DETENT
- PIVOT PIN SPRING
- MAGAZINE CATCH
- MAGAZINE CATCH BUTTON



- HAMMER ASSEMBLY - SEMI-AUTO

- HAMMER PIN

- HAMMER SPRING

- TRIGGER - SEMI-AUTO

- TRIGGER PIN

- TRIGGER SPRING

- DISCONNECTOR - SEMI-AUTO

- DISCONNECTOR SPRING

- BUFFER RETAINER

- BUFFER RETAINER SPRING

- TRIGGER GUARD

- TRIGGER GUARD PINS

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CART



AAO Glock AR9 Lower LRBHO Test
AAO Glock AR Lower LRBHO Test with model A15-GL-80. Patent Pe...

39 Reviews

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Related Products



5 Pack -
AR15/AR9/AR40 -
Lower Parts Kit - LPK
- LRPK - Mil-Spec
~~\$349.95~~ \$209.00



AAO MFG
AR15/AR9/AR40
Lower Parts Kit
Marksman Kit with



AR15 Stripped
Anodized 7075
Forged Upper
Receiver
~~\$119.00~~ \$50.00



AR15 Stripped Raw
7075 Forged Upper
Receiver
~~\$109.00~~ \$46.00



AR9 LRBHO
Replacement Spring,
hold down, and
allens
\$14.99



~~\$165.00~~ \$119.95



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Info

AAO Manufacturing
 3247 Hwy 63 S
 Building 6
 Lucedale
 MS, 39452
 USA
(601) 514 - 0660

Categories

- AR15 / AR10 / AR9 80% Lowers
- Lower Parts
- AR15 AR9 AR40 AR45 UPPER RECEIVERS

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EXHIBIT 21-D



Home / Your Cart

Your Cart (2 items)



80% AR15 Lower Receiver - 7075 Raw

Option - Bulk Order: **Non-Bulk Order**

Option - Safe / Fire Bullet Engraving: **Print Engraving - LEFT - Safe Fire + 0.00**

Option - Serial Number / CA Engraving: **No Serial Number Engraving + 0.00**

Extra Mag Well Engraving: **No Extra Engraving + 0.00**

[Change](#)

Price
\$48.50

Quantity:

Quantity selector: 1

Total
\$48.50



AR15/AR9/AR40 - Lower Parts Kit - LPK - LRPK - Mil-Spec

Price
\$42.99

Quantity:

Quantity selector: 1

Total
\$42.99



Subtotal: \$91.49

Shipping: [Add Info](#)

Coupon Code: [Add Coupon](#)

Grand total: \$91.49

Check out

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CART 2

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Lower Parts
AR15 AR9 AR40 AR45 UPPER RECEIVERS

Info

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3247 Hwy 63 S
Building 6
Lucaledale
MS, 39452
USA
(601) 514 - 0660

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EXHIBIT 22



30% OFF!



80% LOWER VARIETY PACK

~~\$447.30~~ \$402.57
Christmas Sale 12/20 - 12/31

ADD TO CART



AR47 80% LOWER RECEIVER (GEN II)

~~\$159.00~~ \$99.00
Christmas Sale 12/20 - 12/31

ADD TO CART



AR45 80% LOWER RECEIVER (GEN II)

~~\$159.00~~ \$99.00
Christmas Sale 12/20 - 12/31

ADD TO CART



AR9 80% BILLET LOWER RECEIVER (GEN II)

~~\$159.00~~ \$99.00
Christmas Sale 12/20 - 12/31

ADD TO CART



Quick View

AR15 80% BILLET LOWER RECEIVER

~~\$159.00~~ \$99.00

Christmas Sale 12/20 - 12/31

ADD TO CART

40% OFF!



AR45 80% LOWER RECEIVER 10 PACK

~~\$959.40~~ \$863.46

Christmas Sale 12/20 - 12/31

ADD TO CART

40% OFF!



AR9 80% BILLET LOWER RECEIVER 10 PACK

~~\$959.40~~ \$863.46

Christmas Sale 12/20 - 12/31

ADD TO CART

40% OFF!



AR45 AND AR9 80% LOWER RECEIVER 10 PACK

~~\$959.40~~ \$863.46

Christmas Sale 12/20 - 12/31

ADD TO CART

40% OFF!



AR47 80% LOWER RECEIVER (GEN II) 10 PACK

~~\$959.40~~ \$863.46
Christmas Sale 12/20 - 12/31

ADD TO CART



80% PRACTICE LOWER

~~\$18.00~~ \$16.20
Christmas Sale 12/20 - 12/31

OUT OF STOCK

AR15 80% BILLET LOWER RECEIVER 10 PACK

~~\$959.40~~ \$863.46
Christmas Sale 12/20 - 12/31

ADD TO CART

WOLFPACK ARMORY CUSTOM FIREARMS & PARTS

WOLFPACK ARMORY
CUSTOM FIREARMS & PARTS

MANUFACTURED IN U.S.A

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- ORDERING INFO
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- PRIVACY POLICY

CONTACT

WOLFPACK ARMORY
2205 ROCK UNION RD.
FAIRMONT, WV 26554
(304) 534-3330
MON-FRI 10:30 - 5:30

EMAIL ADDRESS

SUBSCRIBE NOW

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EXHIBIT 22-A



BUILD YOUR OWN AR47 RIFLE KIT

\$799.00

Christmas Sale 12/20 - 12/31

ADD TO CART



BUILD YOUR OWN AR45 RIFLE KIT

\$699.00

Christmas Sale 12/20 - 12/31

ADD TO CART



BUILD YOUR OWN AR9 PISTOL KIT

\$649.00

Christmas Sale 12/20 - 12/31

ADD TO CART



BUILD YOUR OWN AR15 PISTOL KIT

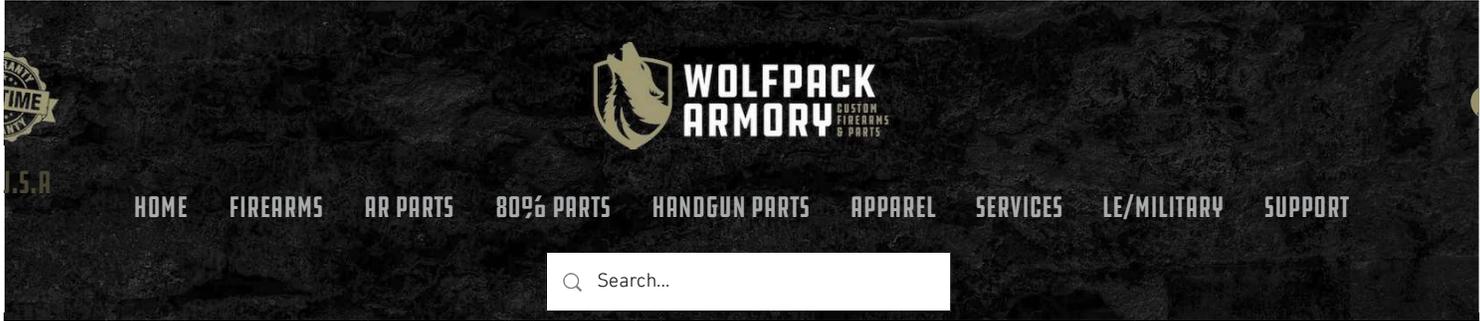
\$749.00

Christmas Sale 12/20 - 12/31

ADD TO CART

EXHIBIT 22-B

LIMITED TIME OFFER - FREE SHIPPING ON ALL ORDERS OVER \$199



BUY NOW, PAY LATER WITH  AT CHECKOUT [LEARN MORE](#)

CURRENT LEAD TIME ESTIMATES FOR THIS PRODUCT CAN BE VIEWED AT THE TOP OF YOUR CART PAGE.

Home / 80% Lower Receivers / AR15 80% Billet Lower Receiver

< Prev | Next >

AR15 80% Billet Lower Receiver

~~\$159.00~~ \$99.00

Christmas Sale 12/20 - 12/31

OR 4 INTEREST-FREE PAYMENTS OF \$24.75 WITH  [LEARN MORE](#)

COLOR

SELECT 

QUANTITY

1

ADD TO CART

BUY NOW



*No FFL Required

This item is not considered a firearm by the BATFE and DOES NOT require a Federal Firearms License to purchase.



WPA Stripped 80% lower receiver set with option to Cerakoted in the color of your choice.

Precision Machined Billet Aluminum AR15 80% Lower Receiver

Competition Flared Magwell

Includes: Threaded Bolt Catch Pin and Screw

Rear pocket not cut

Add On's:

[-80% S/F Markings](#)

[-Custom Magwell Engraving](#)

[-NFA/Compliance Markings](#)

[-Additional Cerakote Options](#)

[-Complete Uppers](#)

Cerakote Colors:

-Wolfpack Bronze - Our own custom blended bronze gives your pistol a look like no other pistol on the market.

-OD Green - Olive Drab Green

WOLFPACK ARMORY
CUSTOM FIREARMS & PARTS

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HOME FIREARMS AR PARTS 80% PARTS HANDGUN PARTS APPAREL SERVICES LE/MILITARY SUPPORT

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CURRENT LEAD TIME ESTIMATES FOR THIS PRODUCT CAN BE VIEWED AT THE TOP OF YOUR CART PAGE.

Home / Firearm Kits / Build Your Own AR15 Rifle Kit

< Prev | Next >

Build Your Own AR15 Rifle Kit



\$749.00

Christmas Sale 12/20 - 12/31

OR 4 INTEREST-FREE PAYMENTS OF \$187.25 WITH [LEARN MORE](#)

SELECT COLOR

SELECT

SELECT UPPER RECEIVER

SELECT

SELECT BARREL

SELECT

SELECT MUZZLE DEVICE

SELECT

SELECT TRIGGER GROUP

SELECT

SPECIAL INSTRUCTIONS: (OPTIONAL)

500

QUANTITY

1

ADD TO CART

BUY NOW



EXHIBIT 22-D

LIMITED TIME OFFER - FREE SHIPPING ON ALL ORDERS OVER \$199



- HOME
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- AR PARTS
- 80% PARTS
- HANDGUN PARTS
- APPAREL
- SERVICES
- LE/MILITARY
- SUPPORT

Search...

BUY NOW, PAY LATER WITH AT CHECKOUT

LEARN MORE

CURRENT LEAD TIME ESTIMATES:

STANDARD PRODUCTS (RECEIVER SETS & SMALL PARTS): 5-14 BUSINESS DAYS

FIREARMS & KITS: 1-2 WEEKS

CUSTOM ASSEMBLIES: 1-6 WEEKS

CARBON FIBER BARRELS: 6-8 WEEKS

FREE SHIPPING ON ALL ORDERS OVER \$199

MY CART



AR15 80% BILLET LOWER RECEIVER

\$124.00



~~\$184.00~~ \$124.00

COLOR: WOLFPACK BRONZE

- 1 +



BUILD YOUR OWN AR15 RIFLE KIT

\$749.00



\$749.00

SELECT COLOR: BLACK

SELECT UPPER RECEIVER: FORGED A3

SELECT BARREL: 16" 5.56 NATO

SELECT MUZZLE DEVICE: BLAST MASTER

SELECT TRIGGER GROUP: MIL SPEC TRIGGER

- 1 +

ENTER A PROMO CODE

ADD A NOTE

SUBTOTAL

\$873.00

DELIVERY

FREE

TEXAS, UNITED STATES

STANDARD SHIPPING - \$0.00

TOTAL \$873.00

*PLEASE NOTE THAT THERE WILL BE A 5% CREDIT CARD FEE FOR ORDER CANCELLATIONS.

CHECKOUT

Secure Checkout

Don't Forget..

New Colors Now Available!



Touch up Cerakote
\$28.99

[ADD TO CART](#)



Night Howler (Plan B Compatible)
~~\$89.00~~ \$59.63

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AR45 Lower Parts Kit
\$59.99

[ADD TO CART](#)



WPA Blast Master
~~\$39.99~~ \$35.99

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CUSTOM FIBERGLASS & PARTS

MANUFACTURED IN U.S.A

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CONTACT

WOLFPACK ARMORY

2205 ROCK UNION RD.
FAIRMONT, WV 26554
(304) 534-3330
MON-FRI 10:30 - 5:30





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EXHIBIT 23



(<https://www.fresnosheriff.org/>)



Selma Cop Killer Officially Charged During Court Appearance

[Home \(/\)](#) / [Media \(/media-relations.html\)](/media-relations.html)

/ [Selma Cop Killer Officially Charged During Court Appearance](#)

Media Relations

Selma Cop Killer Officially Charged During Court Appearance (</media-relations/selma-cop-killer-officially-charged-during-court-appearance.html>)

Around 11:45 am on Tuesday, January 31, Selma Police Officer Gonzalo Carrasco Jr. was patrolling the 2600 block of Pine Street in Selma when he pulled over to do a subject check on a man later identified as Nathaniel Dixon.

As Carrasco got out of his vehicle to approach, Dixon immediately pulled out a privately manufactured AR-15 style rifle and fired several .223 rounds, striking Officer Carrasco. Dixon then took off running while still armed with his gun. A nearby citizen dialed 911 and told dispatchers someone had shot an officer.

Selma Police officers, Fresno County Sheriff's deputies, Cal Fire firefighters and Selma EMS responded and provided medical aid to Officer Carrasco. He was transported to Community Regional Medical Center. He was taken to surgery and later passed away.

Multiple officers and deputies responded to the area and began searching for the gunman who was described as having a tattoo on his face. Around 12:10 pm, a deputy spotted the suspect near Fig and Sequoia and he was taken into custody. Dixon was not armed at the time. Law enforcement made it a top priority to find that gun, especially since an elementary school was located along Dixon's escape path. Our biggest concern was that a child might get their hands on that weapon.



After an extensive search, deputies found the gun in a homeowner's yard, along with other personal items Dixon had discarded. From this point, Selma Police requested the Fresno County Sheriff's Office take over the entire investigation.

23 year old Nathaniel Dixon of Selma is now in the Fresno County Jail. The District Attorney's Office has filed charges of murder, special circumstances and enhancements for the murder of a police officer, intentional discharge of a firearm causing death and being a felon

in possession of a gun and ammunition. He is not eligible for bail.

24 year old Gonzalo Carrasco Jr. began his career with the department in May of 2021. He is survived by his parents, brother, sisters and girlfriend, who is currently pregnant with their child. This marks the first line of duty death for the Selma Police Department, which was formed in 1893.

Funeral services for Selma Police Officer Gonzalo Carrasco will be held in downtown Fresno at Selland Arena on Thursday, February 16, 2023, at 10:00 am.

The Fresno Deputy Sheriff's Association is supporting the Selma Police Officer's Association by establishing a memorial fund in which all donations will be given to Officer Carrasco's family.

Please send contributions to:

**Fresno Deputy Sheriff's Association
C/O Selma POA Memorial Fund
1360 Van Ness Avenue
Fresno, CA 93721**

Donations can also be made at this website:

<https://porac.org/members/fund-a-hero/line-of-duty-death> (<https://porac.org/members/fund-a-hero/line-of-duty-death>)

Anyone with additional information about this case is asked to please contact Sheriff's Detective Richard Antunez at (559) 600-8221 or Crime Stoppers at (559) 498-7867, www.valleycrimestoppers.org (<http://www.valleycrimestoppers.org>) You will remain anonymous and may be eligible for a cash reward. Reference case # 23-1223.

Selma Cop Killer Officially Charged During Court Appearance



Officer Gonzalo Carrasco Jr. Selma Police Department

June 24, 1998 – January 31, 2023









EXHIBIT 24

AROUND KERN COUNTY

Holiday events around Bakersfield and Kern County



63°

SIGN UP

CRIME WATCH

BPD officer shielded woman from gunfire during southwest Bakersfield standoff: reports

by: [Jason Kotowski](#)

Posted: Jan 31, 2023 / 03:42 PM PST

Updated: Jan 31, 2023 / 07:53 PM PST

SHARE



Officer Adrian Rodas used vehicles for protection while moving the woman out of the line of fire as rounds were sprayed from an AR-15-style rifle, say the reports filed in Superior Court.

Rodas and the woman weren't hit, and neither were other officers who described bullets passing near them during a six-hour standoff on Jan. 17 with a gunman holed up in a southwest Bakersfield house. [Multiple officers exchanged gunfire with the shooter.](#)

A nearby resident reported suffering a graze wound to his cheek, according to court documents. The resident, whose name is redacted, said he moved his family to a safe place in the house and was in the kitchen when he heard more gunfire and dropped for cover. He noticed bleeding and checked his face, then saw what appeared to be a 9mm round on the ground.

Several vehicles and homes were hit, the documents say. Dozens of rounds were fired.

Ricardo Firo, 59, eventually surrendered after officers deployed tear gas, the reports say. He's being held without bail on multiple charges of attempted murder and assault with a gun on a peace officer, among other offenses.

Article Continues After the Ad

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When taken to Kern Medical, Firo told hospital staff, "I got an (expletive) kicking coming, I shot at the (expletive) cops," the reports say.

A search of the home turned up an AR-15-style rifle with no serial number, a 9mm handgun with no serial number, numerous spent .223 and 9mm casings and numerous rounds of live ammunition, according to the reports.

A preliminary hearing is scheduled Thursday.

Police were dispatched after 8 p.m. to a report of a woman being held against her will by Firo, her ex-boyfriend. In a phone call to her brother, the woman said Firo threatened to shoot her in the bathtub if police arrived then go outside while armed to commit "suicide by cop," according to the documents.

Article Continues After the Ad

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Delano doctor charged in multimillion-dollar insurance fraud scheme surrenders license



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Next story in 5

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The brother said Firo had previously been arrested over a domestic violence incident in Port Hueneme, where his sister lives, the documents say. She had been visiting Firo in Bakersfield and, two days earlier, Firo put a gun to her head while threatening her, the man said his sister told him.

Officers arrived and made calls over a loudspeaker for Firo to surrender. About four minutes later, the woman left the home.

That's when Firo opened fire, the reports say.

Rodas ushered the woman to safety and officers established a perimeter around the home and took cover behind patrol vehicles and other vehicles on the street. One officer said he heard a "snap or pop" go past his right ear, then multiple ricochets behind him, the documents say. Another officer said a round flew past his head.

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It appears at least three homes and three civilian vehicles were hit by gunfire.

A SWAT team was called to the scene at about 9:20 p.m. Negotiations began around 11 p.m.

At 3:40 a.m., after roughly five hours of negotiations, SWAT officers deployed tear gas and Firo left by the front door and dropped to his knees, according to the documents. Handcuffed and taken to a patrol vehicle, Firo asked police why they hadn't just killed him instead, the documents say.

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Officer Adrian Rodas used vehicles for protection while moving the woman out of the line of fire as rounds were sprayed from an AR-15-style rifle, say the reports filed in Superior Court.

Rodas and the woman weren't hit, and neither were other officers who described bullets passing near them during a six-hour standoff on Jan. 17 with a gunman holed up in a southwest Bakersfield house. [Multiple officers exchanged gunfire with the shooter.](#)

A nearby resident reported suffering a graze wound to his cheek, according to court documents. The resident, whose name is redacted, said he moved his family to a safe place in the house and was in the kitchen when he heard more gunfire and dropped for cover. He noticed bleeding and checked his face, then saw what appeared to be a 9mm round on the ground.

Several vehicles and homes were hit, the documents say. Dozens of rounds were fired.

Ricardo Firo, 59, eventually surrendered after officers deployed tear gas, the reports say. He's being held without bail on multiple charges of attempted murder and assault with a gun on a peace officer, among other offenses.

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When taken to Kern Medical, Firo told hospital staff, "I got an (expletive) kicking coming, I shot at the (expletive) cops," the reports say.

A search of the home turned up an AR-15-style rifle with no serial number, a 9mm handgun with no serial number, numerous spent .223 and 9mm casings and numerous rounds of live ammunition, according to the reports.

A preliminary hearing is scheduled Thursday.

Police were dispatched after 8 p.m. to a report of a woman being held against her will by Firo, her ex-boyfriend. In a phone call to her brother, the woman said Firo threatened to shoot her in the bathtub if police arrived then go outside while armed to commit "suicide by cop," according to the documents.

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The brother said Firo had previously been arrested over a domestic violence incident in Port Hueneme, where his sister lives, the documents say. She had been visiting Firo in Bakersfield and, two days earlier, Firo put a gun to her head while threatening her, the man said his sister told him.

Officers arrived and made calls over a loudspeaker for Firo to surrender. About four minutes later, the woman left the home.

That's when Firo opened fire, the reports say.

Rodas ushered the woman to safety and officers established a perimeter around the home and took cover behind patrol vehicles and other vehicles on the street. One officer said he heard a "snap or pop" go past his right ear, then multiple ricochets behind him, the documents say. Another officer said a round flew past his head.

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EXHIBIT 25



CRIME AND COURTS

Man shot up Spring Valley home with 'Frankenstein-style' ghost gun assault rifle: Sheriff's Dept.

The home on Chavacan Lane was occupied when it was fired on at 1 a.m. on Sept. 4

Published September 28, 2023 • Updated on September 29, 2023 at 1:32 pm

The home on Chavacan Lane was occupied when it was fired on at 1 a.m. on Sept. 4. NBC 7's Dave Summers has the details.

A 46-year-old man was in jail Thursday after being arrested in San Diego on suspicion of shooting at an inhabited dwelling in Spring Valley and firing an illegal firearm with negligence, both felonies, sheriff's



The shooting happened on Sept. 4 around 1 a.m. near the 10000 block of Chavacan Lane, according to Detective James Walker of the San Diego County Sheriff's Department.



The assault rifle has a collapsible stock (seen expanded here), that, when folded, makes it small enough to fit in a backpack, according to Detective James Walker of the San Diego County Sheriff's Department

Deputies from the Rancho San Diego Sheriff's Station arrived and found more than a dozen gun casings, along with multiple bullet holes in a nearby home.

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who wished to not be identified by name. He says he and his family were startled awake by the shooting. He told NBC 7 that his security cameras recorded the suspect at the time of the shooting.

"It's pretty disturbing to know that somebody would just come out here and start shooting," that neighbor said.

Based on eyewitness accounts and security video, it appears the suspect pulled up in his SUV to the front of the condominium complex, parked the vehicle then got out, aimed his rifle toward the hills, and began firing.

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No one was hurt, the detective said.

An investigation was conducted by Rancho San Diego detectives with additional assistance from the San Diego Police Department, Walker said. Detectives identified Benjamin Bautista as a suspect in the shooting.

"He walked up my walkway with the AR-15 it was caught on camera," said another neighbor who did not wish to be identified.

Before the shooting, this witness, fearing retribution, says the gunman was looking for his estranged wife who was visiting the couple next door.

"The neighbors are very nervous that he might come back. Especially the ones who got it on camera," they said.

On Wednesday, around 8 a.m., Rancho San Diego detectives, along with the Crime Suppression Team, arrested Bautista near the 3200 block of Towser Street in San Diego.



investigation. The firearm has been linked to the Sept. 4 shooting and was in the custody of the Sheriff's Department.

Walker said the weapon's creation is still being investigated, and that it was much more complex than a ghost gun pistol, calling it more of "a Frankenstein-style" weapon with parts likely from a variety of sources.

Bautista was booked Wednesday into the San Diego Central Jail with bail set at \$75,000. His arraignment is set for Friday at 1:30 p.m. at East Division Court in El Cajon.

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