

No. 25-11206

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**United States Court of Appeals**  
*for the*  
**Fifth Circuit**

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ELITE PRECISION CUSTOMS L.L.C.; TIM HERRON; FREDDIE BLISH;  
FIREARMS POLICY COALITION, INCORPORATED, A NONPROFIT CORPORATION,

*Plaintiffs-Appellants,*

– v. –

BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES; TODD  
WALLACE BLANCHE, ACTING U.S. ATTORNEY GENERAL; DANIEL DRISCOLL,  
ACTING DIRECTOR, U.S. BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND  
EXPLOSIVES,

*Defendants-Appellees.*

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On Appeal from the United States District Court for the Northern District of  
Texas, Case No. 4:25-cv-44, the Honorable Mark Timothy Pittman

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**BRIEF OF AMICI CURIAE GIFFORDS LAW CENTER TO PREVENT  
GUN VIOLENCE AND BRADY CENTER TO PREVENT GUN VIOLENCE  
IN SUPPORT OF DEFENDANTS-APPELLEES**

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## CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that, in addition to the persons and entities listed in Plaintiffs-Appellants' Certificate of Interested Persons, the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. Undersigned counsel makes these representations to assist the Judges of this Court in evaluating possible disqualification.

### **Amici Curiae:**

**Brady Center to Prevent Gun Violence** has no parent corporations and does not issue stock. Therefore, no publicly held corporation owns 10% or more of its stock.

**Giffords Law Center to Prevent Gun Violence** has no parent corporations and does not issue stock. Therefore, no publicly held corporation owns 10% or more of its stock.

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## STATEMENT OF INTEREST

Amicus curiae Brady Center to Prevent Gun Violence (“Brady”) is the nation’s oldest non-partisan, non-profit organization dedicated to reducing gun violence through education, research, legal advocacy, and political action. Brady works to free America from gun violence by passing and defending gun violence prevention laws, reforming the gun industry, and educating the public about responsible gun ownership. Brady has a substantial interest in ensuring that the Constitution is construed to allow democratically elected officials to address the nation’s gun-violence epidemic, and to safeguard the interest of every American in living safe and secure lives in their homes and communities.

Amicus curiae Giffords Law Center to Prevent Gun Violence (“Giffords Law Center”) is a survivor-led non-profit organization serving lawmakers, advocates, attorneys, gun-violence survivors, and others who seek to reduce gun violence. Founded after a 1993 mass shooting at a San Francisco law firm, the organization merged with the gun safety organization led by former Congresswoman Gabrielle Giffords in 2017. Through partnerships with gun violence researchers, public health experts, and community organizations, Giffords Law Center researches, drafts, and defends laws, policies, and programs proven to reduce gun violence.<sup>1</sup>

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<sup>1</sup> Plaintiffs-Appellants (“Plaintiffs”) and Defendants-Appellees (“Defendants”) have consented to amici filing this brief. *See* Fed. R. App. P. 29(a)(2). Giffords

## SUMMARY OF ARGUMENT

The statutes challenged here, 18 U.S.C. §§ 922(a)(3), (a)(5), and (b)(3) (collectively, the “Sale Restrictions”), prevent interstate trafficking of handguns and allow states to enforce their own gun safety laws. They do not ban anyone from buying firearms. These laws prohibit individuals from purchasing handguns directly from dealers outside their state of residence and prevent both individuals and dealers from transferring firearms to persons they have reason to believe reside in another state. They merely impose a brief delay on purchasing and minimal additional cost.

These are longstanding federal laws that follow a tradition of government regulation over the commercial trade in firearms, rooted in concerns about public safety. These laws save lives. They prevent guns from being acquired by those who have no right to own them under local law because they are prone to misuse them. Gun violence is a national crisis, and gun crime is fueled in significant part by out-of-state purchases. Striking down the Sale Restrictions would directly result in increased gun trafficking and violence across the country and put countless lives at risk.

The district court correctly applied the two-step *Bruen* framework and reached

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Law Center to Prevent Gun Violence and Brady Center to Prevent Gun Violence submit this brief in support of Defendants. No counsel for a party authored this brief in whole or in part. No person other than amici or their counsel contributed money to fund this brief’s preparation or submission.

the right result: because nothing in the challenged laws stops an individual legally authorized to purchase a handgun from doing so from any retailer in any state, the Sale Restrictions are presumptively lawful measures that do not implicate the plain text of the Second Amendment and are therefore valid under *Bruen*'s first step. The Court need go no further. Binding precedent holds that conditions on the commercial sale of firearms that do not amount to a “functional prohibition on keeping” or a “*de facto* prohibition”—which the Sale Restrictions do not—are not subject to the historical analysis in step two of *Bruen*.

Amici therefore urge the Court to affirm the judgment of the district court. Striking down the Sale Restrictions would contravene both Supreme Court and Fifth Circuit caselaw. It would also undermine the infrastructure that state and federal governments rely on to keep firearms away from those who pose a risk to public safety, and to give meaning to their respective gun safety laws.

## ARGUMENT

### **I. The District Court Properly Applied The Two-Step *Bruen* Analysis**

The Supreme Court in *Bruen* established a two-step framework for determining the validity of a firearm regulation. *First*, the reviewing court must determine whether “the Second Amendment’s plain text covers an individual’s conduct” prohibited by the regulation. *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 24 (2022). *Second*, if the plain text covers that conduct, “[t]he

government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Id.*; *see also Reese v. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 127 F.4th 583, 589 (5th Cir. 2025); *McRorey v. Garland*, 99 F.4th 831, 838 (5th Cir. 2024) (“*Bruen* requires an historical showing by the government ‘when the Second Amendment’s *plain text* covers an individual’s conduct.’”) (citation modified).

Here, the district court correctly determined that the Sale Restrictions do not implicate the plain text of the Second Amendment under the first step of *Bruen*, and therefore did not reach the second step. The Court should affirm on this basis.

**A. The District Court Properly Determined That The Sale Restrictions Do Not Implicate The Plain Text Of The Second Amendment**

“Like most rights, the right secured by the Second Amendment is not unlimited.” *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008). “[L]aws imposing conditions and qualifications on the commercial sale of arms” are “presumptively lawful regulatory measures” because they do not implicate the right to “keep and bear arms” on their face. *Id.* at 626–27, n.26. *Bruen* reaffirmed that a “variety” of firearm regulations do not implicate the Second Amendment’s plain text. 597 U.S. at 38 n.9, 72, 80; *see also United States v. Rahimi*, 602 U.S. 680, 699 (2024) (reaffirming laws imposing conditions and qualifications on the commercial sale of arms as presumptively lawful); *id.* at 734 (Kavanaugh, J., concurring)

(recognizing longstanding laws imposing conditions and qualifications on the commercial sale of arms as one of the “traditional exceptions”).

This Circuit distinguishes between regulations that merely impose conditions on acquisition—such as background checks, waiting periods, or licensing requirements—and those that it has ruled so burdensome as to function as outright or *de facto* bans on acquisition. The former are presumptively lawful and do not implicate the Second Amendment’s plain text unless “put toward abusive ends.” *McRorey*, 99 F.4th at 836–37, 839, n.19. The latter “would be subject to constitutional challenge under *Bruen*’s rigorous historical requirement.” *Id.* at 838 n.18; *see also Reese*, 127 F.4th at 590. “Lengthy wait times” or “exorbitant fees” that effectively deny individuals the right to possess firearms fall within this latter category. *Bruen*, 597 U.S. at 38 n.9; *see also McRorey*, 99 F.4th at 838–39.

Both *McRorey* and *Reese* distinguish conditions on sale from outright bans and functional prohibitions. *McRorey* determined that a federal background check requirement creating, at maximum, a ten-day delay is a presumptively lawful condition on sale—and not “put toward abusive ends.” 99 F.4th at 838–39. *Reese*, by contrast, held that a federal ban on sales to persons under the age of twenty-one by Federal Firearm Licensees (“FFLs”) is “a complete ban of the most common way for a young adult to secure a firearm” and thus “more than a functional prohibition” on keeping firearms. 127 F.4th at 589–90 n.2.

This Circuit’s application of *Bruen*—treating commercial regulations not “put toward abusive ends” or serving as “functional prohibition[s]” as presumptively lawful—is similar to the approach taken by other Circuits, which have ruled that the Second Amendment’s plain text only prohibits “meaningful constraints” on the right to keep arms. *See United States v. Vlha*, 142 F.4th 1194, 1198–200 (9th Cir. 2025) (upholding longstanding federal law regulating the unlicensed manufacture of firearms because “requiring commercial firearm manufacturers to obtain licenses under the shall-issue scheme challenged here does not meaningfully constrain would-be purchasers from obtaining firearms”); *B&L Prods., Inc. v. Newsom*, 104 F.4th 108, 119 (9th Cir. 2024) (upholding a law prohibiting the sale of firearms on certain fairgrounds or state property because the challenged statutes only placed a “minor constraint on the precise locations within a geographic area where one can acquire firearms” and did not implicate the Second Amendment); *see also Teixeira v. Cnty. of Alameda*, 873 F.3d 670, 680 (9th Cir. 2017) (en banc) (“[G]un buyers have no right to have a gun store in a particular location, at least as long as their access is not meaningfully constrained.”).

The Second Circuit ruled that § 922(a)(3), one of the statutes challenged here, is presumptively lawful under *Bruen*’s first step because the challenger could not identify any “meaningful constraint” on his ability to acquire firearms. *See United States v. Vereen*, 152 F.4th 89, 98, 99 (2d Cir. 2025) (noting “[t]he only apparent

restriction that § 922(a)(3) imposed on [challenger’s] conduct, then, was that he buy guns under his own name”—but the Second Amendment does not protect the “right to acquire arms in secret from an anonymous straw purchaser”), *cert. denied sub nom.*, *Perez v. United States*, No. 25-6198, 2026 WL 79986 (U.S. Jan. 12, 2026).

Here, the district court analyzed the Sale Restrictions under the *McRorey/Reese* framework and correctly concluded that they could not be characterized as an outright or functional prohibition on keeping or bearing arms. *See Elite Precision v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 805 F.Supp.3d 711, 717–19 (N.D. Tex. 2025) (hereinafter “Op.”). The district court held that the plain text of the Second Amendment does not cover the conduct regulated by the Sale Restrictions because they “do not regulate the right to keep and bear arms—only the ability to purchase them in specific and narrow circumstances, and thus ultimately the manner in which they can be acquired.” *Id.* at 717. This is precisely the distinction that *McRorey* and *Reese* contemplate.

### **B. Plaintiffs’ Arguments Are Without Merit**

None of Plaintiffs’ counter-arguments is availing. Their challenge rests on four meritless contentions: that acquiring firearms is categorically covered by the Second Amendment’s plain text; that the district court improperly applied means-ends analysis; that *Reese*—rather than *McRorey*—is controlling; and that there is no distinct class of presumptively lawful regulations. Each fails in turn.

*First*, Plaintiffs argue that because the Second Amendment protects not only “keeping” but also “acquiring” firearms, the Sale Restrictions implicate its plain text. Plaintiffs’ Br. at 18–19, dated Feb. 4, 2026 (hereinafter “Plaintiffs’ Br.”). But that claim misstates controlling precedent and would render superfluous the Supreme Court’s repeated assurances that conditions on commercial firearm sales are presumptively lawful. *See supra* Part I.A. While courts have held that “[t]he right to ‘keep and bear’ can implicate the right to purchase,” there is no categorical rule under which any condition on the precise manner of purchase implicates the Second Amendment’s plain text. *McRorey*, 99 F.4th at 838. Indeed, this Court made clear that although the right to keep and bear arms may implicate the right to purchase where there is a *de facto* prohibition on possession, it “is not the same thing as [the statute] being covered by the plain text of the amendment.” *Id.* Here, there is no *de facto* prohibition.

*Second*, Plaintiffs contend that the district court engaged in an improper means-ends scrutiny analysis when it concluded that the Sale Restrictions do not “infringe” on a Second Amendment right because the Sale Restrictions do not “serve an illegitimate purpose aimed at repressing the right, regulate the right more broadly than needed for a legitimate purpose, or effectively destroy the right.” Plaintiffs’ Br. at 19–23 (citing Op. at 718–19). Plaintiffs misconstrue the district court’s analysis.

The district court properly asked a threshold question: whether the Sale

Restrictions fall within the Second Amendment’s plain text. This inquiry is required under *Bruen*, *McRorey*, and *Reese*. See *supra* Part I.A. At this step, in examining whether the regulations effectively prohibited the purchase of firearms, the district court considered only whether a “presumptively lawful [] measure[]” amounted to a *de facto* ban or was put toward “abusive ends.” Op. at 718–19. The court reasoned that because the Sale Restrictions impose only “a slight delay on possession” and “increased cost,” they are “presumptively lawful regulatory measures” that do not implicate the plain text of the Second Amendment. *Id.* (citing *Heller*, 554 U.S. at 626–27, n.26). The district court compared the Sale Restrictions to the “shall-issue” licensing schemes and to the background check requirements that *Bruen* and *McRorey* ruled to be presumptively lawful. See *id.* at 718–19. This is not a means-ends analysis. The district court did not “assess the costs and benefits of firearms restrictions,” nor ask whether “the right is *really worth* insisting upon.” *Bruen*, 597 U.S. at 23, 38 n.9.

*Third*, Plaintiffs argue that *Reese*, not *McRorey*, is the controlling precedent. They contend that this case differs from *McRorey* because background checks “did not actually prevent any sales to an individual who could legally acquire a firearm, but the [Sale Restrictions], like the law at issue in *Reese*, do[] prevent certain categories of sales.” Plaintiffs’ Br. at 26. This is incorrect. As this Court has already ruled, *Reese* and *McRorey* applied the same standard to the laws challenged in those

cases. Under this standard, the Sale Restrictions must be upheld.

In *Reese*, this Circuit struck down a law prohibiting all commercial handgun sales to eighteen-to-twenty-year-olds because the Court ruled that it eliminated “the most common way for a young adult to secure a firearm.” 127 F.4th at 590. This Court expressly noted that its result was not contrary to *McRorey* precisely because the restriction at issue was “more than a ‘functional prohibition,’ it is an outright ban.” *Id.* at 590 n.2 (citation omitted). The critical inquiry, therefore, is not whether a regulation conditions some sales, but whether it operates as a functional prohibition on acquiring firearms altogether. The Sale Restrictions do no such thing. *See supra* Part I.A.

Far from functioning as a ban, the Sale Restrictions do not prohibit any out-of-state purchases and have no impact on the most common way of acquiring firearms—buying directly from an in-state FFL. Customers can still purchase a firearm from an out-of-state dealer by arranging to have it shipped to their home state—a process that imposes, at most, a modest delay in time and cost. *See Op.* at 719. The Second Amendment does not “guarantee a certain type of retail experience” or prevent states from imposing “minor constraint[s] on the precise locations within a geographic area where one can acquire firearms.” *B&L Prods.*, 104 F.4th at 119. The minor burdens imposed here fall well short of the categorical prohibition that this Court concluded was at issue in *Reese*.

Indeed, Plaintiffs concede that one individual plaintiff, who resides in New Mexico, purchases handguns from out-of-state dealers on several occasions each year by having the dealer ship the gun to a licensed dealer in New Mexico. *See* Plaintiffs’ Br. at 7–8. This confirms that the Sale Restrictions impose nothing more than a brief delay and a modest increase in cost of \$30–40. This Circuit has already characterized the delay imposed by the Sale Restrictions as “de minimis.” *See Mance v. Sessions*, 896 F.3d 699, 709 (5th Cir. 2018) (“The delay incurred if a handgun is purchased out of state and transferred to an in-state FFL is de minimis.”). Moreover, Plaintiffs frame in-state dealers as holding an “absolute veto” over out-of-state purchases, yet fail to allege a single instance where the law has actually operated that way.<sup>2</sup> *See* Plaintiffs’ Br. at 27.

*Fourth*, Plaintiffs argue that the Court should skip *Bruen*’s first step entirely because there is no separate class of “presumptively lawful” regulations. Plaintiffs’ Br. at 29–32.<sup>3</sup> But the district court did not suggest that conditions and qualifications

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<sup>2</sup> FFLs regularly advertise the option to ship firearms to a buyer’s home state. *See, e.g.*, TAR RIVER ARMS, <https://tarriverarms.com/home/online-gun-shop> (last visited May 10, 2026) (advertising the ability to ship firearms to an in-state FFL); FERRARI FIREARMS AND TRAINING, *How to Buy a Gun Online — Complete FFL Transfer Guide*, <https://ferrarifirearms.com/how-to-buy-a-gun-online> (last visited May 10, 2026) (offering shipping to a local FFL within two to five days).

<sup>3</sup> The Supreme Court has repeatedly endorsed the view that there are “presumptively lawful” regulations. *See McDonald v. City of Chicago*, 561 U.S. 742, 786 (2010) (“We made it clear in *Heller* that our holding did not cast doubt on such longstanding regulatory measures as ‘prohibitions on the possession of firearms

on the commercial sale of arms are categorically lawful. Rather, it specified that such conditions are “[not] necessarily constitutional,” and that “abusive ends” could negate the presumption of lawfulness—precisely as *McRorey* and *Bruen* contemplate. *See* Op. at 718 (citing *McRorey*, 99 F.4th at 839–40); *see also Bruen*, 597 U.S. at 38 n.9.

Because the Sale Restrictions impose only modest conditions and qualifications on the commercial sale of firearms, the plain text of the Second Amendment is not implicated. The inquiry should end here.

**C. The Sale Restrictions Are Consistent With The Nation’s Historical Tradition Of Firearm Regulation**

Even if the Sale Restrictions implicated the Second Amendment’s plain text, they should be upheld under step two of *Bruen*. That step “involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition.” *Rahimi*, 602 U.S. at 692. “A court must ascertain whether the new law is ‘relevantly similar’ to laws that our tradition is understood to permit,

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by felons and the mentally ill,’ ‘laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.’ We repeat those assurances here.”) (quoting *Heller*, 554 U.S. at 626–27); *Bruen*, 597 U.S. at 80–81 (Kavanaugh, J., concurring) (repeating *Heller*’s assurances that certain regulatory measures are presumptively lawful); *Rahimi*, 602 U.S. at 699 (reaffirming many prohibitions on the possession of firearms as presumptively lawful); *see also id.* at 735 (Kavanaugh, J., concurring) (recognizing longstanding laws imposing conditions and qualifications on the commercial sale of arms as presumptively constitutional).

‘applying faithfully the balance struck by the founding generation to modern circumstances.’” *Id.* (quoting *Bruen*, 597 U.S. at 29) (citation modified). “[T]he Second Amendment permits more than just those regulations identical to ones that could be found in 1791.” *Id.* at 691–92. Courts must interpret the Constitution so as not to leave “law trapped in amber.” *Id.* at 691.

The proper analytical method under *Bruen* and *Rahimi* is to use historical analogues to understand the principles underlying “how” and “why” historical regulations restricted gun ownership and compare them to contemporary laws imposing similar restrictions. *Id.* at 692. The *Rahimi* majority soundly rejected the “historical twin” method, which required courts to identify historical regulations that are near-identical matches to the challenged modern statute, rather than looking to the principles underlying the historical tradition. *Id.* at 700.

Plaintiffs make two critical errors. *First*, Plaintiffs claim that the relevant historical inquiry is “whether [] historical laws evidence a principle that residents of one state can be barred from purchasing a firearm in another state.” Plaintiffs’ Br. at 35. They offer no basis for why only so narrow a principle could be relevantly similar to “how” and “why” the Sale Restrictions burden Second Amendment rights. *Rahimi*, 602 U.S. at 692. *Second*, Plaintiffs improperly attempt to hold the government to the rejected “historical twin” standard by marching through each of the Government’s provided analogues one-by-one and claiming that none comports

with their chosen principle. *See* Plaintiffs’ Br. at 36–52; *Bruen*, 597 U.S. at 30; *Rahimi*, 602 U.S. at 700. This error leaves Plaintiffs “slaying a straw man.” *Rahimi*, 602 U.S. at 701.

The appropriate framework under step two of *Bruen* is to analyze whether there is a tradition of government regulation over the commercial trade in firearms due to concerns that the arms might fall into dangerous hands. *Vereen*, 152 F.4th at 101 (upholding the Sale Restrictions, finding “a Founding-era historical tradition of restricting arms transactions across borders”); *see, e.g., Teixeira*, 873 F.3d at 685–87 (citing colonial laws where governments controlled firearms by prohibiting out-of-colony firearm sales and regulating commerce in firearms with Native Americans);<sup>4</sup> *United States v. Serrano*, 651 F.Supp.3d 1192, 1211–12 (S.D. Cal. 2023) (identifying state laws banning the sale of firearms to out-of-state residents and to Native Americans as “designed to combat illegal arms and ammunition

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<sup>4</sup> Historical judgments about what constitutes a threat have been proven wrong over time. Many laws in our history reflect outmoded, unjustified, or even invidious judgments. Nothing in amici’s reliance on those laws in Second Amendment analysis reflects endorsement of their factual premises. But *Bruen* does not require such endorsement. Rather, these historical examples remain relevant in assessing burdens on firearms rights accepted by earlier generations. *See United States v. Rowson*, No. 22 Cr. 310, 2023 WL 431037, at \*22 (S.D.N.Y. Jan. 26, 2023) (“It goes without saying that, in our modern era, a law that would disarm a group based on race, nationality, or political point of view—or on the assumption that these characteristics bespoke heightened dangerousness—would be anathema, and clearly unconstitutional. But the Second Amendment’s inquiry into historical analogues is not a normative one.” (citation omitted)).

trafficking” and ensure “individuals considered dangerous did not obtain firearms”); *United States v. Holton*, 639 F.Supp.3d 704, 711–12 (N.D. Tex. 2022) (finding colonial governments restricted “where and to whom individuals could sell guns”). In other words, the principle underlying the Sale Restrictions is supported by historical analogues and thus satisfies the “why” of *Rahimi*. 602 U.S. at 692.

The Government also showed that the burdens imposed by the Sale Restrictions are consistent with relevant historical analogues. *See* Defendants-Appellees’ Br. at 21–26, dated May 6, 2026 (hereinafter “Defendants’ Br.”). Thus, the Government’s principle also satisfies the “how” of *Rahimi*. 602 U.S. at 698 (analyzing whether the “burden on the right to bear arms [] fits within our regulatory tradition”).

The court’s analysis in *Libertad* is instructive. *See* Defendant’s Br. at 7, 15; *United States v. Libertad*, 681 F.Supp.3d 102 (S.D.N.Y. 2023). Evaluating many of the same analogues the Government relies on here, the *Libertad* court upheld § 922(a)(3), discerning “expansive authority exercised by colonial and early state legislatures as well as early congresses over the transfer of firearms between individuals and across borders.” 681 F.Supp.3d at 106, 114; Defendants’ Br. at 21–26. These analogues provide a useful comparison for “how” the Sale Restrictions burden Second Amendment rights.

Likewise, many analogues support the “why” of the Sale Restrictions’ burden

on Second Amendment rights. *Libertad*, 681 F.Supp.3d at 115 (finding analogues exhibited a tradition of imposing a “slight threshold burden on all or at least a large portion of gunowners . . . to demonstrate that they were so entitled [to keep and bear arms] and not dangerous”). Taken together, these historical analogues establish that the Sale Restrictions comport with the principles underpinning our nation’s tradition of firearms regulation.

Plaintiffs’ “historical twin” approach is particularly inapt here. It is unreasonable to expect an exact match for a law that imposes restrictions on the interstate sale of firearms because the Sale Restrictions implicate major societal concerns and dramatic technological changes not present at the Founding or into the nineteenth century. *See Bruen*, 597 U.S. at 27 (“[C]ases implicating unprecedented societal concerns or dramatic technological changes may require a more nuanced approach.”). Widespread fast interstate travel and trade simply did not exist for much of the eighteenth and nineteenth centuries. There was no two-day shipping option. In 1825, when the Erie Canal was completed, passengers were amazed to travel at speeds of “up to five miles an hour,” while freight boats could finally ship goods “at about two miles an hour.” Carol Sheriff, *THE ARTIFICIAL RIVER: THE ERIE CANAL AND THE PARADOX OF PROGRESS* 63 (Hill & Wang 1997). Using the Erie Canal in the 1820s, the journey from Albany to Buffalo “now took between five and seven days”—a trip that takes just over four hours by car today. *Id.* There is a reason

that these regulations first came about when cars first became widely owned, and then were revised when the highway system made interstate travel more accessible. *See* Federal Firearms Act of 1938, ch. 850, 52 Stat. 1250 (repealed 1968); Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, § 901(a)(1), 82 Stat. 197, 225; *see generally* Shari Eli et al., *The Model T*, 85 J. ECON. HIST. 100 (2025) (describing mass adoption of automobiles leading up to the 1930s); Federal-Aid Highway Act of 1956, ch. 462, 70 Stat. 374 (funding expansion of the highway system through the 1960s).

For much of this country’s history, the challenged laws would likely have imposed prohibitive expense and delayed taking possession of the purchased handgun for weeks or months, whereas today the cost is de minimis and the delay is mere days. In fact, buying a gun in-state during the Founding Era would normally have taken longer than it does to buy a gun out-of-state and have it shipped to an in-state dealer today. *See Rocky Mountain Gun Owners v. Polis*, 701 F.Supp.3d 1121, 1133 (D. Colo. 2023) (“[T]he Founders would not have expected instant, widespread availability of the firearm of their choice.”).<sup>5</sup>

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<sup>5</sup> *See e.g.*, Kevin Sweeney, *An Eighteenth-Century Gun Culture Shaped by Constraints*, DUKE CTR. FOR FIREARMS L. (Sep. 6, 2023), <https://firearmslaw.duke.edu/2023/09/an-eighteenth-century-gun-culture-shaped-by-constraints> (noting that producing a muzzle-loading firearm from scratch “required two men with blacksmithing skills and would have taken several days,” and that “[b]uilding an entire musket from scratch would have taken a gunsmith an

As *Bruen* held, cases “implicating unprecedented societal concerns or dramatic technological changes” that were not present or anticipated at the time of the Founding require a “more nuanced approach” that relies on “historical analogies.” 597 U.S. at 27; *Rahimi*, 602 U.S. at 692. This is certainly such a case. See also *Hanson v. District of Columbia*, 120 F.4th 223, 240 (D.C. Cir. 2024) (holding that a more nuanced approach was required where no relevantly similar historical analogue could exist because of dramatic technological changes to handguns); *Duncan v. Bonta*, 133 F.4th 852, 873 (9th Cir. 2025) (en banc) (concluding dramatic technological changes would warrant an “even more flexible approach than the Court applied in *Rahimi*”).

## II. The Sale Restrictions Respond To Interstate Regulatory Concerns

On average, 128 people die by gunshot every day across the nation. See Ctrs. for Disease Control & Prevention, *Underlying Cause of Death, 2018-2024, Single Race*, WONDER, <https://wonder.cdc.gov/ucd-icd10-expanded.html> (last visited May 10, 2026) (calculated based on five-year average of the latest available data). The Sale Restrictions serve important public functions and save lives: preventing

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entire week, and longer for a rifle”).

guns from falling into the hands of those prone to misusing them, inhibiting violent crimes, and ensuring that state handgun regulations are properly enforced.

As *Heller* recognized, there is a “problem of handgun violence in this country.” 554 U.S. at 636. This problem is fueled in large part by handguns that were purchased out of state. Nationwide, from 2017 to 2021, 28% of crime guns recovered by law enforcement were purchased out of state.<sup>6</sup> Handguns account for 68% of all gun crime traced to a purchaser between 2017 and 2021,<sup>7</sup> and they are by far the most common murder weapon in the country.<sup>8</sup> Handguns are also more likely to be trafficked than long guns; the median “time-to-crime” (“TTC”) for handguns is 2.3 years, as opposed to 4.1 years for rifles and 7.0 years for shotguns.<sup>9</sup> TTC is the time elapsed between a gun’s last known retail sale and its recovery by law enforcement, and the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) considers a TTC of less than three years to be a trafficking indicator.<sup>10</sup>

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<sup>6</sup> BUREAU OF ALCOHOL, TOBACCO, FIREARMS & EXPLOSIVES, *National Firearms Commerce and Trafficking Assessment (NFTCA): Crime Gun Tracing Updates and New Analysis*, vol. IV, pt. III, 10 (last updated Apr. 6, 2026).

<sup>7</sup> *Id.* at 2.

<sup>8</sup> From 2020 to 2025, handguns accounted for 36% of all homicides and were the most common type of weapon involved in homicides. FED. BUREAU OF INVESTIGATION, *Crime Data Explorer*, <https://cde.ucr.cjis.gov/LATEST/webapp/#!/pages/explorer/crime/crime-trend> (data as of Mar. 15, 2026).

<sup>9</sup> BUREAU OF ALCOHOL, TOBACCO, FIREARMS & EXPLOSIVES, *supra* note 6, at 11.

<sup>10</sup> *Id.* at 9; Brady Ctr. to Prevent Gun Violence et al., *Unchecked*,

### **A. There Is A Documented Pattern Of Industrial-Scale Interstate Gun Trafficking**

It is well documented that trafficked firearms flow from states with weak gun safety laws into states that have passed strong gun safety laws.<sup>11</sup> Three out of four crime guns that are recovered after crossing state lines are traced back to states that lack expanded background check laws.<sup>12</sup> This is a measurable nationwide trend: states with stricter gun laws see increased gun homicide rates when they border states with weaker gun laws.<sup>13</sup> To take 2023 as an example, the latest year for which the ATF provides data: in California, 12.8% of crime guns recovered were bought in

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*Unaccountable, Deadly: A Handful of Gun Dealers Are Fueling Pennsylvania's Gun Violence* 7, [https://assets.bradyunited.org/production/files/PA\\_Report\\_100825.pdf](https://assets.bradyunited.org/production/files/PA_Report_100825.pdf) (last visited May 10, 2026).

<sup>11</sup> See, e.g., Brian Knight, *State Gun Policy and Cross-State Externalities: Evidence from Crime Gun Tracing*, 5 AM. ECON. J.: ECON. POL'Y 200 (2013) (finding that firearms tend to flow from states with weak laws to states with strict laws); Erin G. Andrade et al., *Firearm Laws and Illegal Firearm Flow Between U.S. States*, 88(6) J TRAUMA ACUTE CARE SURG. 752 (2020) (“The major patterns that emerge from this network show that guns move from southeastern states with weaker gun laws into states with stricter firearm laws in the northeast; into Illinois from neighboring states, and into California from western states and Texas.”); Erik J. Olson et al., *American Firearm Homicides: The Impact of Your Neighbors*, 86 J. TRAUMA AND ACUTE CARE SURG. 797 (2019) (finding that nearly two thirds of crime guns recovered in states with strong gun laws were originally sold in states with weak gun laws).

<sup>12</sup> EVERYTOWN RESEARCH & POLICY, *Five Things to Know About Crime Guns, Gun Trafficking, and Background Checks* (Oct. 10, 2022), <https://everytownresearch.org/report/five-things-to-know-about-crime-guns>.

<sup>13</sup> GIFFORDS L. CTR. TO PREVENT GUN VIOLENCE, *Trafficking & Straw Purchasing*, <https://giffords.org/lawcenter/gun-laws/policy-areas/crime-guns/trafficking-straw-purchasing> (last visited May 10, 2026); see also Olson et al., *supra* note 11, at 797–802.

Arizona.<sup>14</sup> In Illinois, 15.7% of crime guns recovered were bought in Indiana.<sup>15</sup> By contrast, Illinois sourced only 1.7% of Indiana's crime guns, and California sourced only 2% of Arizona's crime guns.<sup>16</sup> In New Jersey, 79% of all crime guns recovered were originally sold in other states, and in Washington D.C., that number was 94%.<sup>17</sup>

Interstate gun trafficking operates at an industrial scale. Between 2017 and 2021, the ATF recovered nearly 400,000 crime guns that had crossed state borders.<sup>18</sup> By the end of this year, approximately 1.27 million guns will have been illegally trafficked since 2017.<sup>19</sup> And this considers only guns that are recovered and traced; the true number of trafficked guns is undoubtedly higher.<sup>20</sup> The Sale Restrictions are a critical part of the Government's longstanding effort to stem the tide of this trafficking activity that netted traffickers approximately \$100 million per year between 2017 and 2023.<sup>21</sup>

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<sup>14</sup> BUREAU OF ALCOHOL, TOBACCO, FIREARMS & EXPLOSIVES, *U.S. – Firearms Trace Data Reports, Year: 2023*, <https://www.atf.gov/resource-center/data-statistics/firearms-trace-data-reports> (last visited May 10, 2026).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* ATF statistics treat the District of Columbia as a separate state.

<sup>18</sup> EVERYTOWN RESEARCH & POLICY, *supra* note 12.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Nick Suplina et al., *The Supply Side of Violence: How Gun Dealers Fuel Firearm Trafficking*, EVERYTOWN RESEARCH & POLICY, Appendix 3 (Dec. 2, 2025), <https://everytownresearch.org/report/how-gun-dealers-fuel-firearm-trafficking>; *see also* Defendants' Br. at 16 (describing Congress' purpose in creating the Sale restrictions).

A small number of states drive this interstate gun trafficking activity. In 2023, over half of all traced firearms were originally sold in ten states: Georgia, Texas, Arizona, Florida, Virginia, Indiana, South Carolina, North Carolina, Mississippi, and Tennessee.<sup>22</sup> Nine of those ten states do not have bulk sale restrictions.<sup>23</sup> Multiple sales—and particularly multiple handgun sales—are, however, a known trafficking indicator.<sup>24</sup> Because federal law imposes no limitation on the number of firearms a person can purchase from a gun dealer in a single transaction, this means that, in states without bulk sale restrictions, “if you have the money and you have a valid driver’s license and can pass [an instant background check], you can literally go in there and buy every single firearm in the store.”<sup>25</sup> The Sale Restrictions

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<sup>22</sup> BUREAU OF ALCOHOL, TOBACCO, FIREARMS & EXPLOSIVES, *supra* note 14.

<sup>23</sup> See GIFFORDS L. CTR. TO PREVENT GUN VIOLENCE, *Bulk Gun Purchases*, <https://giffords.org/lawcenter/gun-laws/policy-areas/crime-guns/bulk-gun-purchases> (last visited May 10, 2026) (listing the five states, including Virginia, that have bulk sale restrictions). Virginia passed a slate of gun safety laws in 2020–21 aimed at combating trafficking, and thus likely will drop in this list over time. See, e.g., Maggie Astor, *Virginia, Longtime Gun-Rights Bastion, Recently Tightened Its Firearms Laws*, N.Y. TIMES (Nov. 23, 2022), [www.nytimes.com/2022/11/23/us/virginia-gun-laws-restrictions.html](http://www.nytimes.com/2022/11/23/us/virginia-gun-laws-restrictions.html); see also Va. Code Ann. § 18.2-308.2:2 (2025).

<sup>24</sup> See, e.g., Christopher S. Koper, *Crime Gun Risk Factors: Buyer, Seller, Firearm, and Transaction Characteristics Associated with Gun Trafficking and Criminal Gun Use* (report to the Nat’l Inst. of Justice, U.S. Dep’t of Justice, 2007) (finding that guns sold in multiple sales were up to 64% more likely to be used in crime, and accounted for roughly a quarter of recovered guns); BUREAU OF ALCOHOL, TOBACCO, FIREARMS & EXPLOSIVES, *supra* note 6, at 22 (identifying frequent multiple sales of handguns by FFLs as a major trafficking indicator).

<sup>25</sup> Ron Cassie, *The Iron Pipeline: Nearly Two-Thirds of Baltimore’s Guns Come*

respond to this well-documented pattern by narrowing the regulatory disparity between states that traffickers exploit and other states.

This trafficking inflicts devastating, real-world harm on communities across the country. ATF data shows that trafficked guns are used in shootings twice as often as guns that are not trafficked.<sup>26</sup> A significant number of firearm trafficking investigations involve guns that were used in furtherance of violent or drug-related crimes: 28% of trafficking investigations involve firearms used in furtherance of a drug offense, 19% involve firearms used in aggravated assaults, 11% involve firearms used in homicides, and 9% involve firearms used in attempted homicides.<sup>27</sup> Trafficked guns frequently go to recipients who would otherwise be unable to legally access a firearm: nearly 88% of recipients of trafficked guns are otherwise prohibited from buying guns due to prior prohibiting convictions.<sup>28</sup>

## **B. Firearm Dealers Cannot Reasonably Enforce The Regimes Of All 50 States**

The Sale Restrictions serve another important purpose: preventing FFLs from being expected to reliably vet out-of-state handgun purchasers. As this Court has

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*from Out-of-State*, BALT. MAG. (Dec. 2020), [www.baltimoremagazine.com/section/community/iron-pipeline-gun-violence-out-of-state-traffickers](http://www.baltimoremagazine.com/section/community/iron-pipeline-gun-violence-out-of-state-traffickers) (quoting Timothy Jones, an ATF Special Agent in Charge, describing Georgia laws).

<sup>26</sup> Suplina et al., *supra* note 21. 6% of all recovered crime guns are used in shootings; for trafficked crime guns, that number is 15%.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

previously ruled, “[i]t is unrealistic to expect that each [FFL] can become, and remain, knowledgeable about the handgun laws of the 50 states and the District of Columbia, and the local laws within the 50 states and the District.” *Mance*, 896 F.3d at 707. As a few examples of the significant variation in gun laws: twenty-eight states impose limitations on juvenile offenders;<sup>29</sup> fifteen states and the District of Columbia impose limitations on people with violent or gun-related misdemeanors;<sup>30</sup> and seventeen states and the District of Columbia impose limitations on those who misuse alcohol.<sup>31</sup> And, particularly relevant here, some states prohibit their residents from buying certain models of handguns that do not meet certain design and safety standards.<sup>32</sup> Firearm regulations are also dynamic, and handgun regulation in particular is unusually complex. *See Mance*, 896 F.3d at 708–09 (noting that some states impose waiting periods or purchase limits on handguns alone). FFLs cannot be expected to track all of these complex differences, and even nationwide databases used for firearms sales, like the National Instant Criminal Background Check System (“NICS”), cannot capture all of these differences.

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<sup>29</sup> *See* GIFFORDS L. CTR. TO PREVENT GUN VIOLENCE, *Firearm Prohibitions: Summary of State Law*, <https://giffords.org/lawcenter/gun-laws/policy-areas/who-can-have-a-gun/firearm-prohibitions> (last visited May 10, 2026) (collecting state statutes).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *See, e.g.*, 501 Mass. Code Regs. §§ 7.01–.16 (2016) (listing design and safety standards of firearms approved for sale in Massachusetts).

It is similarly unreasonable to expect FFLs to have all the facts necessary to enforce the regimes of other states. Most states rely on federal databases for background checks.<sup>33</sup> And a state may provide the federal government with the data necessary for other states to enforce its purchase restrictions. But “for various reasons, some records are not timely provided or are not provided at all.” *Mance*, 896 F.3d at 707. As a result, many NICS background checks take longer than three days, at which point the dealer may proceed with the transaction (a “default proceed”).<sup>34</sup> Currently, the Sale Restrictions help states that conduct their own background checks in solving this problem by routing handgun sales through an in-state dealer. The in-state dealer will run the background check through the state point of contact, which will have better access to the data required to approve or deny a handgun purchase.<sup>35</sup> Without the Sale Restrictions, default proceeds can be expected to spike because NICS cannot resolve issues with incomplete state-level data as quickly as state agencies. *See id.* (explaining that “states voluntarily provide records for use in the databases accessed by NICS,” but “for various reasons, some

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<sup>33</sup> FED. BUREAU OF INVESTIGATION, *NICS Participation Map* 1, <https://www.fbi.gov/file-repository/nics-participation-map-06032025.pdf/view> (last updated June 2025).

<sup>34</sup> U.S. Gov’t Accountability Off., GAO-16-483, *Gun Control: Analyzing Available Data Could Help Improve Background Checks Involving Domestic Violence Records* 1 (July 2016).

<sup>35</sup> *See, e.g.*, Cal. Dep’t of Just., Off. of the Att’y Gen., *Bureau of Firearms*, <https://oag.ca.gov/firearms> (last visited May 10, 2026).

records are not timely provided, or are not provided at all.”).

### **C. The Sale Restrictions Protect State Sovereignty**

Finally, striking down these laws would force states to choose between giving up their own sovereignty or attempting to police out-of-state FFLs. Enhanced oversight of FFLs reduces illegal gun trafficking, but individual states lack the jurisdiction and resources to travel around the country inspecting FFLs that may sell handguns to their citizens.<sup>36</sup> Nor does the ATF generally have the resources to continuously inspect and ensure that every FFL complies with federal law.<sup>37</sup> Without the Sale Restrictions, “citizens will be able to avoid any regulations, such as background checks, required by their state of residence—an affront on state sovereignty.” Op. at 720.

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<sup>36</sup> Jon S. Vernick & Daniel W. Webster, *Curtailing Dangerous Sales Practices by Licensed Firearm Dealers*, in *Reducing Gun Violence in America: Informing Policy with Evidence and Analysis* 133, 134 (Johns Hopkins Univ. Press ed. 2013).

<sup>37</sup> See Off. of the Inspector Gen., U.S. Dep’t of Just., *Audit of the Bureau of Alcohol, Tobacco, Firearms and Explosives’ Risk-Based Inspection Selection Processes and Administrative Actions Issued to Federal Firearms Licensees* (Apr. 20, 2023), <https://oig.justice.gov/reports/audit-bureau-alcohol-tobacco-firearms-and-explosives-risk-based-inspection-selection> (concluding the ATF’s “compliance inspection activity remains a concern” and explaining that “[d]ue to resource challenges, ATF has not achieved its stated goal of inspecting FFLs every 3 years, and . . . some FFLs had not received an onsite inspection for over 10 years”).

## CONCLUSION

The Court should affirm the district court's judgment.

Dated: May 13, 2026  
New York, New York

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 13, 2026, I electronically filed the foregoing document and accompanying materials with the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

*/s/ Elizabeth Vicens*

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*/s/ Elizabeth Vicens*

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