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NRA

February 28, 2025

The Honorable Pamela Bondi, United States Attorney General
United States Department of Justice
950 Pennsylvania Avenue, Northwest
Washington, District of Columbia 20530-0001

Re: Comments and Suggestions of the National Rifle Association on President Trump's Executive Order *Protecting Second Amendment Rights*

Dear Attorney General Bondi:

We are writing to provide you with the National Rifle Association's input on the President's Feb. 7 Executive Order *Protecting Second Amendment Rights*. As you know, NRA is a nonprofit, nonpartisan, single-issue organization devoted to advancing the right to keep and bear arms for our millions of members, as well as for all Americans wishing to own and use firearms for self-defense and other legitimate purposes.

We have the nation's largest network of certified firearm safety and training instructors; we sponsor competitive and educational efforts throughout the country; and we are active daily on Capitol Hill, in statehouses, and in federal and state courts pursuing our mission. We are involved in every aspect of lawful gun ownership and use in America and represent the interests of individuals seeking self- and family protection, industry members, hunters, competitors, law enforcement officers, collectors, and grassroot advocates, among others.

As the country's oldest, largest, and most effective Second Amendment advocacy organization, NRA is uniquely situated to assist in this critical effort.

The "Systemic Bias" Against the Second Amendment in the Federal Bureaucracy

The first main point we wish to emphasize to assist in your review is that there has been a purposeful, long-term effort to create "systemic bias" against the right to keep and bear arms within the federal bureaucracy. This effort dates back many decades but was especially acute during the Clinton-Gore administrations and was revived with a vengeance during the Obama-Biden and Biden-Harris administrations.

The origins, inspirations, and methods of the government campaign against firearms derive in large part from the public/private anti-smoking and anti-tobacco campaigns of the 1970s and '80s. In 1995, then-U.S. Attorney for the District of Columbia Eric Holder gave a speech[1] in which he stated, "What we need to do is change the way in which people think about guns, especially young people, and make it something that's not cool, that it's not acceptable, it's not hip to carry a gun anymore, in the way in which we changed our attitudes about cigarettes." The future Obama-Biden administration attorney general went on: "We have to be repetitive about this. It's not enough to have a catchy ad on a Monday and then only do it Monday. We need to do this every day of the week, and just really brainwash people into thinking about guns in a vastly different way."

The Centers for Disease Control's chief gun control advocate, National Center for Injury Prevention and Control Director Mark Rosenberg, similarly pushed for a cultural anti-gun campaign in the early 1990s. In a 1994 interview with the New York Times,[2] Rosenberg said, "We need to revolutionize the way we look at guns, like what we did with cigarettes." The taxpayer-funded activist added, "It used to be that smoking was a glamour symbol, cool, sexy, macho. Now it is dirty, deadly and banned."

Of course, unlike smoking cigarettes, the right to keep and bear arms is a fundamental civil liberty. But that was no impediment to the activists, who seized upon the same "public health" rhetoric, institutions, lawfare, and public relations strategies to portray firearm ownership as, essentially, a disease in need of a cure.

Thus, while President Trump's order focuses mainly on the abuses of the prior administration, our suggestions also necessarily encompass long-running issues that were revived or amplified under the Biden-Harris administration.

This multi-pronged anti-gun campaign has resulted in a series of piecemeal efforts to counter official abuses through legislation, funding riders, congressional investigations, litigation, and public education campaigns. The NRA has been involved in all these arenas.

Yet President Trump's Executive Order is the first attempt to gain a comprehensive understanding of anti-gun bias in government. We therefore commend your work and offer our assistance in identifying, in the order's language, "ongoing infringements of the Second Amendment rights of our citizens" and suggesting remedial action.

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[1] Nick Gillespie, "Eric Holder in 1995: We 'really need to brainwash people into thinking about guns in a vastly different way,'"reason.com (March 19, 2012), https://reason.com/2012/03/19/eric-holder-in-1995-we-really-need-to-br/ (last visited Feb. 26, 2025).

[2] Fox Butterfield, "New Tactics Urged in Fight Against Crime," nytimes.com (Oct. 16, 1994), https://www.nytimes.com/1994/10/16/us/new-tactics-urged-in-fight-against-crime.html (last visited Feb. 28, 2025).

The Changing Legal Landscape of the Second Amendment

The second overarching point we wish to emphasize is that there has been an ongoing line of U.S. Supreme Court cases dating back to 2008 that restore the Second Amendment to its legitimate place as a fundamental civil right. During that time, five significant decisions have been issued to clarify the meaning and contours of the Second Amendment and its application to federal, state, and local gun control. These decisions authoritatively repudiated a legal orthodoxy rooted in the 20th Century that denied the Second Amendment's protection of private, individual rights.[3]

Indeed, most of the modern landscape of gun control arose under an erroneous conception of the Second Amendment and how it applies to these laws.

The Supreme Court has now made clear that gun control unmoored from a relevant historical tradition dating to the founding era is presumptively invalid. This point is critical in any honest evaluation of the government's current policies as they affect the Second Amendment. The government has the burden of justifying its actions under this standard, and it cannot simply assume that all 20th Century gun control meets these criteria.

We therefore preface our recommendations with a brief overview of these precedents.

Revival of the Second Amendment in the U.S. Supreme Court: 2008 to the Present

***District of Columbia v. Heller*, 554 U.S. 570 (2008)** – *Heller* was the first U.S. Supreme Court opinion to squarely address the "collective right" or "organized militia" orthodoxy that had effectively neutered the Second Amendment in the lower courts. The case concerned a challenge to Washington, D.C.'s, ban on handguns, as well as its requirement that any other firearms kept in the home be at all times "unloaded and dissembled or bound by a trigger lock or similar device."[4] These at the time were considered the strictest gun control laws in the nation.

Using the text of the amendment; post-ratification commentary from the 19th Century; pre- Civil war case law; post-Civil War legislation and commentary; and analogous state constitutional provisions, the Court determined the Second Amendment guarantees an "individual right to possess and carry weapons in case of confrontation."[5] The right, moreover, "extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time

[3] This tradition was summarized by the first point in the Summary of Argument of the petitioner's brief in *District of Columbia v. Heller*, 554 U.S. 570 (2008): "The text and history of the Second Amendment conclusively refute the notion that it entitles individuals to have guns for their own private purposes. Instead, it protects the possession and use of guns only in service of an organized militia."
[4] 554 U.S. 575.
[5] *Id*. at 592.

of the founding",[6] although what arms are protected is also determined by "the sorts of weapons … in common use at the time" (internal quotation marks omitted).[7]

The Court further explained that the amendment's prefatory clause "announces the purpose for which the right was codified: to prevent elimination of the militia."[8] But it does not "limit or expand the scope of the operative clause,"[9] the "central component" of which is "self-defense."[10]

Applying this understanding to the challenged laws, the Court held "the District's ban on handgun possession in the home violates the Second Amendment, as does its prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense."[11]

In doing so, the majority rejected dissenting Justice Stephen Breyer's proposal for "a judge-empowering 'interest-balancing inquiry' that 'asks whether the statute burdens a protected interest in a way or to an extent that is out of proportion to the statute's salutary effects upon other important governmental interests.'"[12] The Second Amendment, the Court wrote, "is the very product of an interest balancing by the people" and "whatever else it leaves to future evaluation, it surely elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home."[13]

The Court also declined to "establish a level of scrutiny for evaluating Second Amendment restrictions."[14] This was because "[u]der any of the standards of scrutiny that we have applied to enumerated constitutional rights, banning from the home the most preferred firearm in the nation to keep and use for protection of one's home and family would fail constitutional muster" (internal quotation marks and citations omitted).[15] Instead, the majority indicated that "historical justifications"[16] would be needed to uphold gun control laws in future cases.

Heller had not challenged the District's authority to register or license the carrying of handguns, and the Court did "not address the licensing requirement."[17] Instead, it instructed: "Assuming that Heller is not disqualified from the exercise of Second Amendment rights, the District must permit him to register his handgun and must issue him a license to carry it in the home."[18]

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[6] *Id*. at 582.
[7] *Id*. at 627.
[8] *Id*. at 599.
[9] *Id*. at 578.
[10] *Id*. at 599.
[11] *Id*. at 635.
[12] *Id*. at 634.
[13] *Id*. at 635.
[14] *Id*. at 634.
[15] *Id*. at 628-29
[16] *Id*. at 635.
[17] *Id*. at 631.
[18] *Id*. at 635.

***McDonald v. City of Chicago*, 561 U.S. 742 (2010)** – Even after *Heller*, anti-gun state and local jurisdictions continued to insist they were immune from the Second Amendment's reach because it applied only to actions of the federal government. *McDonald* debunked this fallacy by holding that "the Second Amendment is fully applicable to the States"[19] via the Fourteenth Amendment. Five justices agreed on this premise, although there was not a majority for whether the specific mechanism of incorporation was the Privileges or Immunities or Due Process Clause. The Court then applied this holding to reverse the decision of the Seventh Circuit upholding the handgun bans of the City of Chicago and the Village of Oak Park, Illinois.[20] The Court also reiterated its rejection of an "interest-balancing test" as the standard of review in Second Amendment cases, repeating *Heller*'s admonition that the "enshrinement of constitutional rights necessarily takes certain policy choices off the table."[21]

***Caetano v. Massachusetts*, 577 U.S. 411 (2016)** – A per curiam opinion issued without oral argument, *Caetano* concerned the conviction of a homeless victim of domestic violence who possessed a stun gun to prevent further abuse by her former boyfriend.[22] It is notable mainly for its holding reiterating that modern weapons not in existence at the founding can still be protected by the Second Amendment and for its inherent holding that the Second Amendment protects bearing arms outside the home. It also illustrated the shocking lack of professionalism among the many courts that refused to follow the clear guidance of *Heller*.

The opinion ordered the Massachusetts Supreme Judicial Court to reconsider its decision that stun guns are not protected under the Second Amendment, because it "contradicts this Court's precedent."[23] Specifically, the High Court held the state court could not use the fact that stun guns did not exist at the time of the Second Amendment's adoption to find that they are not "in common use" or that they are too "unusual" to receive Second Amendment protection.[24] The Supreme Court also faulted the state court for relying on the theory that stun guns are not "readily adaptable to use in the military" to find that they fall outside the Second Amendment's ambit.[25]

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[19] 561 U.S. 749.
[20] *Id*. at 791.
[21] *Id*. at 790-91.
[22] 577 U.S. 412-413 (Alito, J., concurring).
[23] 577 U.S. 412.
[24] *Id*. at 412.
[25] *Id*.

Caetano herself was later "found … not guilty after a jury-waived, facts stipulated trial" pursuant to an agreement reached between the prosecution and defense.[26] She then successfully petitioned the court to have her record sealed.[27]

The Massachusetts stun gun ban under which Caetano was prosecuted was eventually found facially invalid under the Second Amendment *in Ramirez v. Commonwealth*, 479 Mass. 331 (Mass. Sup. J. Ct. 2018).

***New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022)** – The years following *Heller* and *McDonald* proved frustrating for Second Amendment advocates, as anti-gun jurisdictions and courts minimized those decisions to the point of near irrelevance. Incredibly, appellate courts generally adopted some version of the *Heller* dissent's "interest balancing" test to resolve Second Amendment cases, rather than the majority's use of text, history, and tradition to determine if the challenged law was consistent with the amendment's original meaning.[28] Interest balancing resulted in courts upholding virtually every gun control law to come before them, even though most of these laws originated at a time when the Second Amendment was considered not to protect individual rights at all.[29]

Meanwhile, the U.S. Supreme Court passed up case after case that would have offered opportunities to clarify some of the most important outstanding questions about the right. These included the degree to which the right to "bear" protected the carrying of arms in public for self-defense, whether mandatory permits or licenses to carry could be subject to discretionary issuance, and the proper standard of review for Second Amendment cases.

The breakthrough finally came with the Supreme Court's decision in *NYSRPA v. Bruen*, the most important Second Amendment case in American law since *Heller* and *McDonald*. Notably, by the time that case reached the Supreme Court, President Trump had, during his first term, appointed three Originalist justices (Neil Gorsuch, Brett Kavanaugh, and Amy Coney Barrett). They joined three members of the original *Heller* and *McDonald* majorities – Chief Justice John Roberts, Clarence Thomas, and Samuel Alito – in forming the majority in *Bruen*.

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[26] Eugene Volokh, "Charges dropped in *Caetano v. Massachusetts* Second Amendment stun gun case," washingtonpost.com (July 7, 2016), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/07/07/charges-dropped-in-caetano-v-massachusetts-second-amendment-stun-gun-case/ (last visited Feb. 28, 2025).

[27] *Id*.

[28] *See* Alan Gura, "The Second Amendment as a Normal Right: Ruling out ad hoc interest-balancing," 127 Harv. L. Rev. F. 223 (April 2014), *available at* https://harvardlawreview.org/forum/vol-127/the-second-amendment-as-a-normal-right/ (last visited Feb. 28, 2025).

[29] Illustrating this trend was Justice Thomas's dissent, joined by *Heller*'s author Justice Scalia, from the court's denial of certiorari in *Jackson v. City and County of San Francisco*, 576 U.S 1013 (2015), in which the Ninth Circuit used a form of interest balancing to uphold requirements for the storage of firearms similar to those invalidated in *Heller*. "Despite the clarity with which we described the Second Amendment's core protection for the right of self-defense," Thomas wrote, "lower courts, including the ones here, have failed to protect it." He added, "The Court should have granted a writ of certiorari to review this questionable decision and to reiterate that courts may not engage in this sort of judicial assessment as to the severity of a burden imposed on core Second Amendment rights."

The case concerned New York's system for licensing of concealed handgun carry, the only way for residents of the state to lawfully carry a firearm in public for self-defense. Besides the usual vetting for whether applicants are legally disqualified from receiving or possessing firearms, New York required applicants to show "proper cause" for carrying a handgun in public.[30] This, in turn, required applicants to "demonstrate a special need for self-protection distinguishable from that of the general community."[31] Thus, the regime made the issuance of licenses the exception, rather the rule, and gave licensing officials discretion to deny licenses even to otherwise qualified applicants. Plaintiffs challenged this scheme as a violation of the Second Amendment.

By the time the case reached the U.S. Supreme Court, the state had abandoned its claim there was no right to bear arms in public. As the court noted, "In this case, petitioners and respondents agree that ordinary, law-abiding citizens have a similar right to carry handguns publicly for their self-defense."[32] It then quickly disposed of the question of "bearing" arms in public: "We too agree, and now hold, consistent with *Heller* and *McDonald*, that the Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense outside the home."[33] It continued, "Because the State of New York issues public-carry licenses only when an applicant demonstrates a special need for self-defense, we conclude that the State's licensing regime violates the Constitution."[34]

The Court also rejected what it called "the Courts of Appeals … 'two-step' framework for analyzing Second Amendment challenges that combines history with means-end scrutiny.[35]" It then reasserted and elaborated upon the proper mode of analysis:

> *In keeping with* Heller*, we hold that when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command."*[36]

The majority emphasized the lower courts had not complied with its precedents. "*Heller* and *McDonald* expressly rejected the application of any judge-empowering interest-balancing inquiry that asks whether the statute burdens a protected interest in a way or to an extent that is out of proportion to the statute's salutary effects upon other important governmental interests"

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[30] 597 U.S. 12.
[31] *Id*.
[32] *Id*. at 9.
[33] *Id*. at 10.
[34] *Id*.
[35] *Id*. at 17.
[36] *Id*.

(internal quotation marks omitted).[37] It also flatly rejected the Biden administration's recommendation of adopting intermediate scrutiny: "Not only did *Heller* decline to engage in means-end scrutiny generally, but it also specifically ruled out the intermediate-scrutiny test that respondents and the United States now urge us to adopt."[38]

Applying the proper standard to the case before them, the Court first observed, "It is undisputed that petitioners Koch and Nash—two ordinary, law-abiding, adult citizens—are part of 'the people' whom the Second Amendment protects. … Nor does any party dispute that handguns are weapons 'in common use' today for self-defense." (Internal citations omitted.)[39] It then concluded that *Heller* itself resolved the question of public carry, a proposition to which the respondents had already assented.[40]

The Court then turned to the question of whether New York had produced evidence of a "relevantly similar"[41] historical tradition that would justify its discretionary licensing scheme. In doing so, it noted that it need not resolve whether the relevant tradition should date back to the adoption of the Bill of Rights or the later adoption of the Fourteenth Amendment because "the public understanding of the right to keep and bear arms in both 1791 and 1868 was, for all relevant purposes, the same with respect to public carry."[42]

First, the Court rejected as inapplicable colonial era prohibitions against bearing arms so as to spread "'fear' or 'terror' among the people."[43] These, the Court explained, required "something more than merely carrying a firearm in public."[44] Second, it rejected proffered antebellum laws that focused on the manner of carry (open versus concealed) but that still recognized a general right to carry.[45] Third, it ruled as inapplicable mid-Nineteenth Century "surety" laws that also recognized a generalized right to carry but focused their requirements only on those specifically determined to present a heightened risk of breaching the peace or injuring another, in which case the person had to post a bond to continue exercising the right to carry.[46] Even then, the Court noted, the respondents offered little evidence these surety laws were used or enforced.[47]

"None of these historical limitations on the right to bear arms," the Court held, "approach New York's proper-cause requirement because none operated to prevent law-abiding citizens with ordinary self-defense needs from carrying arms in public for that purpose."[48]

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[37] *Id*. at 22.
[38] *Id*. at 23.
[39] *Id*. at 31-2.
[40] *Id*. at 32.
[41] *Id*. at 29
[42] *Id*. at 38.
[43] *Id*. at 47.
[44] *Id*. at 50.
[45] *Id*. st 53-4.
[46] *Id*. at 58-9.
[47] *Id*. at 58.
[48] *Id*. at 60.

The Court also rejected the use of "late-19th century" territorial laws as too remote from the founding, as affecting only "miniscule territorial populations," as bereft of any serious judicial scrutiny, and as short-lived transitional measures.[49]

The Court also admonished the respondents: "The constitutional right to bear arms in public for self-defense is not a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees" (internal quotation marks and citation omitted).[50] It continued: "We know of no other constitutional right that an individual may exercise only after demonstrating to government officers some special need."[51]

***U.S. v. Rahimi*, 602 U.S. 680 (2024)** – This case concerned a federal prohibition, 18 U.S.C. 922(g)(8), on the receipt or possession of a firearm by a person subject to a domestic violence restraining order meeting certain qualifications. In explaining the procedures and findings necessary for the prohibition to apply, the Court wrote:

> *First, the defendant must have received actual notice and an opportunity to be heard before the order was entered. § 922(g)(8)(A). Second, the order must prohibit the defendant from either "harassing, stalking, or threatening" his "intimate partner" or his or his partner's child, or "engaging in other conduct that would place [the] partner in reasonable fear of bodily injury" to the partner or child. § 922(g)(8)(B). A defendant's "intimate partner[s]" include his spouse or any former spouse, the parent of his child, and anyone with whom he cohabitates or has cohabitated. § 921(a)(32). Third, under Section 922(g)(8)(C), the order must either contain a finding that the defendant "represents a credible threat to the physical safety" of his intimate partner or his or his partner's child, § 922(g)(8)(C)(i), or "by its terms explicitly prohibit[ ] the use," attempted use, or threatened use of "physical force" against those individuals, § 922(g)(8)(C)(ii).*[52]

Measuring this regime against the *Bruen* standard of review, the Court concluded:

> *When a restraining order contains a finding that an individual poses a credible threat to the physical safety of an intimate partner, that individual may—consistent with the Second Amendment—be banned from possessing firearms while the order is in effect. Since the founding, our Nation's firearm laws have included provisions preventing individuals who threaten physical harm to others from misusing firearms. As applied to the facts of this case, Section 922(g)(8) fits comfortably within this tradition.*[53]

More specifically, the Court relied on the surety and going armed for the purpose of affray laws:

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[49] *Id*. at 66-8
[50] *Id*. at 70.
[51] *Id*.
[52] 602 U.S.688.
[53] *Id*. at 690.

> *Taken together, the surety and going armed ["to the Terror of the People"] laws confirm what common sense suggests: When an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed. Section 922(g)(8) is by no means identical to these founding era regimes, but it does not need to be. ... Its prohibition on the possession of firearms by those found by a court to present a threat to others fits neatly within the tradition the surety and going armed laws represent.* (Internal citation omitted).[54]

In contrast to applying these precedents to ordinary, law-abiding Americans (as *Bruen* declined to do), the *Rahimi* Court reasoned, "Section 922(g)(8) restricts gun use to mitigate demonstrated threats of physical violence, just as the surety and going armed laws do. Unlike the regulation struck down in *Bruen*, Section 922(g)(8) does not broadly restrict arms use by the public generally."[55]

Critically, all these regimes also employed judicial due process when making the determination of who posed a heightened risk: "Section 922(g)(8) applies only once a court has found that the defendant 'represents a credible threat to the physical safety' of another. § 922(g)(8)(C)(i). That matches the surety and going armed laws, which involved judicial determinations of whether a particular defendant likely would threaten or had threatened another with a weapon."[56]

Ultimately, the holding in *Rahimi* was narrow and cannot be reasonably read to endorse broad, permanent firearm prohibitions that lack judicial due process and relevant findings. "An individual found by *a court* to pose a *credible threat* to the *physical safety of another* may be *temporarily disarmed* consistent with the Second Amendment" (emphasis supplied).[57]

Important Lessons from U.S. Supreme Court's Second Amendment Jurisprudence

The foregoing examination of the case law highlights several principles that should guide the Department of Justice in fulfilling the mandate of President Trump's Executive Order.

1. The Second Amendment is a fundamental individual right grounded in the concept of self-defense.
2. The Second Amendment is not a "second class right;" it is entitled to the same respect and protection as any other civil right.
3. Lower courts (and federal, state, and local governments) have (at best) consistently misunderstood and misapplied the Second Amendment. At worst, they have defied the U.S. Supreme Court's clear pronouncements on its meaning and application.
4. Law-abiding people cannot be discretionarily deprived of the right to keep and bear arms by government bureaucrats.

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[54] *Id*. at 698.
[55] *Id*..
[56] *Id*. at 699.
[57] *Id*. at 702.

5. Government attempts to deprive individuals of the right to arms must include judicial due process and findings relevant to the question of the person's heightened propensity for terrorizing or harming others with a firearm.
6. The test for whether the government can enact gun control laws is whether they affect conduct covered by the Second Amendment's plain text and, if so, whether there is a relevantly similar historical tradition dating to the founding era. The more isolated, rare, modern, and unenforced a law is, and the more it affects peaceable Americans who wish to keep and bear commonly used arms for self-defense, the more likely it is to fail this test.
7. The modern era of gun control – including the licensing of acquisition, possession, and carry; the National Firearms Act; the Gun Control Act of 1968; categorial bans on common firearms; and the Brady Handgun Violence Prevention Act – developed under the erroneous elite consensus that the Second Amendment did not protect an individual right to arms or that an individual could only invoke the right in the context of participation in an organized militia. The validity of these laws, or specific applications of these laws, under a proper understanding of the Second Amendment is therefore suspect.

Indeed, lower courts have been more apt to closely scrutinize laws challenged under the Second Amendment in the post-*Bruen* era. Nevertheless, gun control activists in and outside of government have redoubled their defiance of the Second Amendment. Court enforcement alone is insufficient to counter the massive resistance that continues to emanate from anti-gun jurisdictions and from various quarters of the U.S. government itself. President Trump's executive order is a critical mandate for the government to proactively root out Second Amendment bias and infringements.

Suggestions and Priorities for Each of the Executive Order's Categories

What follows are priority items in each of the Executive Order's categories. This should not be considered an exhaustive accounting of all government actions relevant to the order. Rather, they are items NRA believes provide obvious and emblematic examples in need of immediate repeal or remediation and that should guide the DOJ's further inquiries.

I. All Presidential and agencies' actions from January 2021 through January 2025 that purport to promote safety but may have impinged on the Second Amendment rights of law-abiding citizens

1. Rescind former Surgeon General Vivek Murthy's 2024 advisory: *Firearm Violence, a Public Health Crisis in America*.

   Before becoming surgeon general for the first time under Barack Obama, Murthy used his position as a doctor to amplify his politically motivated calls for gun control. Murthy, as president of the political advocacy group, Doctors for America, repeatedly petitioned the government for a wide variety of sweeping gun controls that were not only

unconstitutional but lacked evidentiary support. The NRA warned that Murthy would likely use his position as surgeon general to pursue an anti-gun agenda. [58] Those concerns were borne out with Murthy's 2024 advisory that is more aptly described as anti-gun advocacy than science and that hearkens back to the Clinton era public health effort to portray firearm ownership as a disease in need of a cure.[59] Indeed, Murthy revives his earlier calls for gun control in the advisory, including a ban on America's most popular semi-automatic long guns and the types of magazines that are factory standard for self-defense firearms.[60]

2. Rescind the Biden-Harris administration's export crackdown imposed via the Bureau of Industry and Security (BIS) in the Department of Commerce.

President Trump, during his first administration, was responsible for finalizing a long-running effort to transfer administration of nonstrategic "dual use" exports (i.e., those with both private sector and government/military utility) from the Department of State to the Department of Commerce.[6162] The idea was to "build a taller fence around a smaller yard" by enhancing export controls of defense articles administered by the State Department that "provide the United States with a critical military or intelligence advantage, or, in the case of weapons, are inherently for military end use."[63] At the same time, export of items that did not meet this threshold would be overseen by the U.S. Department of Commerce, which would more holistically promote American goods against foreign competitors, while ensuring sufficient safeguards remained to protect U.S. exports from diversion or misuse.

When the project began under the Obama-Biden administration, the first items proposed for this transfer of jurisdiction by the career professionals involved were firearms and ammunition. For political reasons, those items were instead left to languish, while more sophisticated and consequential technology was moved from the State Department to Commerce's jurisdiction.[64] President Trump finished the job with respect to non-military firearms and ammunition, but the Biden-Harris administration reimposed harsh export restrictions on these items through an April 30, 2024, BIS rulemaking, Revision of

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[58] Letter from Chris Cox, Executive Director, NRA-ILA, to Senators Harry Reid and Mitch McConnell (Feb. 26, 2014).
[59] *The U.S. Surgeon General's Advisory on Firearm Violence: A Public Health Crisis in America*, Office of the U.S. Surgeon General, (2024).
[60] *Id.* at 29.
[61] Control of Firearms, Guns, Ammunition and Related Articles the President Determines No Longer Warrant Control Under the United States Munitions List (USML), 85 Fed. Reg. 4,136 (Jan. 23, 2020).
[62] International Traffic in Arms Regulations: U.S. Munitions List Categories I, II, and III, 85 Fed. Reg. 3,819 (Jan. 23, 2020).
[63] International Traffic in Arms Regulations: U.S. Munitions List Categories I, II, and III, 83 Fed. Reg. 24,198 (May 24, 2018).
[64] Cora Currier, *In Big Win for Defense Industry, Obama Rolls Back Limits on Arms Exports*, ProPublica, Oct. 14, 2013.

Firearms Licensing Requirements.[65] It also sought to restrict Commerce from promoting U.S. gun companies to lawful foreign customers, even though promotion of U.S. business is part of Commerce's mandate.

Unduly restricting exports hurts U.S. businesses and drives foreign buyers to overseas competitors who are far less concerned with and capable of preventing diversion and misuse than the companies and officials involved in U.S. exports. The rule should be rescinded and affirmative efforts made to create efficiencies in the licensing of exports through BIS. BIS should also be encouraged to promote the U.S. firearms industry to eligible foreign customers.

3. End the Department of Veterans Affairs (VA) illegal reporting of beneficiaries to the National Instant Criminal Background Check System (NICS) and purge the system of any such illegally reported individuals.

Because of a misinterpretation of the meaning of "adjudicated as a mental defective"[66] dating back to 1998, the VA has been illegally and unconstitutionally reporting harmless beneficiaries to NICS simply because they have undergone the administrative procedure of being found "incompetent" to manage their monetary benefits and assigned a fiduciary to administer the benefits on their behalf.[67] Notably, this procedure does not ordinarily involve a judge or any necessary finding that the individual is a danger to self or others.[68] Also of note is that the Obama-Biden administration sought to expand this unconstitutional concept to beneficiaries of the Social Security Administration through a rulemaking which was overturned under Congressional Review Act legislation signed into law by President Trump during his first term.[69]

Beginning in 2024, Congress blocked the VA's illegal reporting via an annual funding rider that prohibits the department from reporting beneficiaries to NICS as "mental defectives" without "the order or finding of a judge, magistrate, or other judicial authority of competent jurisdiction that such person is a danger to himself or herself or others."[70]

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[65] Revision of Firearms License Requirements, 89 Fed. Reg. 34,680 (Apr. 30, 2024).
[66] *See* 18 U.S.C. § 922(g)(4).
[67] *See* 38 C.F.R. §§ 3.103, 3.353.
[68] Letter from Senators Charles E. Grassley and Johnny Isakson to Robert A. McDonald, Secretary, U.S. Department of Veteran Affairs (March 16, 2016).
[69] Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Social Security Administration relating to Implementation of the NICS Improvement Amendments Act of 2007, Pub. L. No. 115-8 (2017).
[70] *Appropriations Bill Passes with Language Protecting Veterans' Second Amendment Rights*, NRA-ILA (March 11, 2024), https://www.nraila.org/articles/20240311/appropriations-bill-passes-with-language-protecting-veterans-second-amendment-rights.

Yet that rider must be renewed every year, and it does not grant relief to upwards of 200,000 individuals who were erroneously reported and likely remain in the system.[71]

The administration should order VA to permanently adhere to the requirements of the funding rider and to cooperate with the FBI in ensuring all individuals who were reported before the rider took effect and who do not meet its terms are removed from NICS. It should also order the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to revise its regulatory definition of "adjudicated as a mental defective" at 27 C.F.R. § 478.11 to ensure it applies only to those who have been found by a judge or magistrate to pose a danger of physical harm to self or others because of marked subnormal intelligence, mental illness, or mental incompetency,

4. Dismantle the National Extreme Risk Protection Order Resource Center.

This is a joint effort between the DOJ and the Bloomberg School of Public Health at John Hopkins University that promotes state enactment and enforcement of "red flag" firearm confiscation orders.[72] The types of laws being promoted through the center often allow for *ex parte* emergency orders that authorize firearm seizures before the respondent even has an opportunity to answer the petitioner's allegations. Those allegations, moreover, do not have to assert illegal activity, just vague concerns of the potential for future dangerousness. Moreover, the laws typically provide no mechanisms for the stabilization or incapacitation of the supposedly dangerous individual, other than firearm prohibitions and seizures.[73] Respondents may be otherwise left to their own devices and, indeed, left in possession of other types of weapons or means of committing lethal harm. The point – the entire point – is ensuring respondents cannot exercise the right to keep and bear firearms.

Biden's Justice Department doled out $2 million to the Bloomberg School of Public Health for its part in the effort, which includes a website that extols the benefits of red flag laws, summarizes existing state red flag laws, and provides training in the laws' implementation.[74] It also advertises training seminars to be held on the laws throughout the year and archives videos and other resources from past events. Even more ominously, the website in many cases links to fillable forms that can be used to apply for a red flag

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[71] *UPDATE: Legislation Introduced to Protect Veterans' Second Amendment Rights*, NRA-ILA (Feb. 26, 2025), https://www.nraila.org/articles/20250226/legislation-introduced-to-protect-veterans-second-amendment-rights.
[72] *Just Launched: National Extreme Risk Protection Order Resource Center*, U.S. Department of Justice (March 25, 2024), https://bja.ojp.gov/news/just-launched-national-extreme-risk-protection-order-resource-center.
[73] *State-by-State*, National ERPO Resource Center, https://erpo.org/state-by-state/.
[74] *Justice Department Launches the National Extreme Risk Protection Order Resource Center*, U.S. Department of Justice (March 23, 2024), https://www.justice.gov/archives/opa/pr/justice-department-launches-national-extreme-risk-protection-order-resource-center.

order in a given jurisdiction. It is about as close to "point, click, ban" as can be imagined (although completed forms must be printed and properly filed with the local courts).[75]

5. End the DOJ's funding of state "red flag" firearm seizure laws under the Bipartisan Safer Communities Act (BSCA) that do not meet the act's standards of due process.

   The BSCA, in part, authorized grant funding through the DOJ's Byrne State Crisis Intervention Program for states to implement their "red flag" gun confiscation orders (called extreme risk protection orders in the BSCA).[76] Currently, 21 states and Washington, D.C., have red flag laws on their books.[77] The BSCA, however, imposed a lengthy list of due process standards a law would have to meet to be eligible for this funding.[78] The Biden-Harris administration, however, ignored these standards to award millions of taxpayer dollars in grants to states whose laws were not compliant.[79]

   The DOJ should strictly police these standards in awarding any further grants under the BSCA and prioritize grants to states that are employing innovative and constitutional approaches other than red flag laws to address firearm-related violence.

6. End government funding of gun control advocacy posing as firearm-related "research."

   As mentioned earlier in this report, the U.S. public health apparatus long ago began partnering with gun control activists in a comprehensive strategy to change public opinion on the desirability of owning firearms.[80] This campaign was based on anti-tobacco and anti-smoking efforts. In essence, it treats firearm ownership as an inherently dangerous disease in need of a cure. One of the main mechanisms for this campaign is the funding of research highlighting the supposed dangers of firearm ownership through the Centers for Disease Control (CDC) and the National Institutes of Health (NIH). When this activism and coordination were revealed, Congress responded in 1996 by reducing CDC's budget by the amount it spent on this dubious "research" and by passing appropriation riders prohibiting CDC (and later NIH) from using taxpayer funds to promote "gun control."[81] Although these funding riders have continued, the Obama-Biden administration reinterpreted "gun control" to allow funding of the same sorts of

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[75] *National Extreme Risk Protection Order (ERPO) Resource Center*, ERPO.org.
[76] Bipartisan Safer Communities Act, Pub. L. No. 117-159 (2022).
[77] *ERPO Laws by State*, Institute for Firearm Injury Prevention at the University of Michigan, https://firearminjury.umich.edu/erpo-by-state/.
[78] Letter from Sen. Roger Marshall, et. al. to Amy L. Solomon, Principal Deputy Assistant Attorney General of the United States and Karhlton F. Moore, U.S. Department of Justics Office of Justice Programs (July 25, 2023
[79] U.S. Taxpayers Funding "Red Flag" Gun Confiscation Orders, NRA-ILA (March 20, 2023), https://www.nraila.org/articles/20230320/us-taxpayers-funding-red-flag-gun-confiscation-orders.
[80] Jason Ouimet, *Trust the Science?*, NRA America's First Freedom (Dec. 6, 2021), https://www.americas1stfreedom.org/content/trust-the-science/.
[81] Omnibus Consolidated Appropriations Act, 1997 , Pub. L. No. 104-208 (1996).

"research" that had originally been banned.[82] In truth, this "research" is simply propaganda that uses the prestige associated with anything purporting to be "science" to convince people "the evidence" shows that owning a gun is hazardous to individual and public health. This funding, and the output of this propaganda, increased under the Biden-Harris administration.[83] It should be entirely eliminated.

7. End the FBI's extra-legal administration of NICS.

The FBI administers NICS and is supposed to do so in accordance with the Brady Handgun Violence Prevention Act[84] and its implementing regulations.[85] These authorities strictly limit access to NICS for authorized purposes, i.e., firearm transfers by federal firearm licensees (FFLs), the issuance of firearm and explosive related licenses or permits, and background checks for employees of FFLs.[86] The FBI, moreover, is only authorized to deny a transfer if a statutory basis exists for the denial.[87] It can also temporarily delay a transfer to research ambiguous or incomplete records that may indicate a person is disqualified under statute.[88]

Information has come to light, however, that FBI uses NICS in non-authorized ways. For example, it coordinates with certain states to run monthly spot checks of existing holders of state firearm related licenses or permits through the system to determine if they are still eligible for these credentials.[89] Nothing in the relevant statutes authorizes this dragnet surveillance of permit holders, however. Vetting is authorized only for the issuance and renewal of such permits.[90]

Similarly, the FBI has acknowledged that it will delay firearm transfers for persons on various "watchlists" even though being "watch-listed" is not a statutory basis for denial. The FBI's justification is that it needs time to notify relevant authorities and to determine if there is any other statutory basis of denial that might apply.[91] But NICS fishing expeditions are not legally authorized. These watchlists, moreover, have long been opposed by civil libertarians for their lack of transparency, due process, over-inclusiveness, and lack of mechanisms to correct mistakes.

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[82] Eliot Marchall, *Obama Lifts Ban on Funding Gun Violence Research*, Science Advisor (Jan. 15, 2013), https://www.science.org/content/article/obama-lifts-ban-funding-gun-violence-research.
[83] Kirsten Wier, *A thaw in the freeze on federal funding for gun violence and injury prevention research*, American Psychological Association (Apr. 1, 20211), https://www.apa.org/monitor/2021/04/news-funding-gun-research.
[84] P.L. 103-159 (Nov. 30. 1993).
[85] 28 CFR §§ 25.1-.11
[86] 28 CFR. § 25.6, 25.11
[87] 18 U.S.C. § 922(t)(2).
[88] 18 U.S.C. § 922(t)(1).
[89] Sierra Smucker, et. al., *Using National Instant Criminal Background Check Data for Gun Policy Analysis: A Discussion of Available Data and Their Limitations*, RAND Corporation, 12 (Sept. 8, 2012).
[90] 28 CFR. § 25.6
[91] William J. Krouse, *Gun Control: National Instant Criminal Background Check System (NICS) Operations and Related Legislation*, Congressional Research Service, 40 (Oct. 17, 2019).

The FBI and DOJ were also criticized under the Biden Administration for strong-arming people into "voluntarily" adding themselves to NICS as prohibited persons, for example, to avoid prosecution or as part of plea agreements that did not result in disqualifying convictions.[92] Again, there is no legal authority for FBI to do this.

There are additionally concerns over how the FBI is administering new provisions under the BSCA that allow the FBI additional time to research potentially disqualifying juvenile records for transfers involving individuals aged 18 to 20, if "cause exits" to believe such information exists. There is information that FBI is routinely delaying transfers to this age group, not because of specific "cause," but to rule out the possibility of relevant juvenile records existing.[93] This creates an unauthorized waiting period (a long-promoted anti-gun agenda item) for firearm purchases.

Moreover, the FBI was reported to have been using congressional legislation[94] requiring the reporting of NICS *denials* to local authorities to keep information about NICS *delays*,[95] which is *not* congressionally authorized. Delays are common and are often followed by the transfer being allowed to proceed. There is no basis for information about attempts to purchase firearms that are ultimately allowed to proceed to be maintained by the FBI. Indeed, federal statutes prevent this information from being retained.[96]

Finally, provisions of federal law provide for appeals of erroneous or unjustified NICS decisions.[97] The FBI must resolve these appeals within 60 days of receiving the relevant information from the appellant.[98] The agency, however, has been known to take months or even over a year to process such appeals.[99] It has also been known to suspend the processing of appeals altogether, when it determines on its own accord that it does have the resources or manpower to process them.[100] Processing appeals, however, is not a discretionary function for the FBI. It is a necessary component of administering NICS constitutionally.

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[92] Gabe Kaminsky, *EXCLUSIVE: The FBI Secretly Pressured Americans To Waive Away Their Gun Rights*, Daily Caller, (Sept. 6, 2022), https://dailycaller.com/2022/09/06/fbi-second-amendment-nics/.
[93] *Biden's FBI Boasts About its Young Adult Waiting Period*, NRA-ILA (Apr. 1, 2024), https://www.nraila.org/articles/20240401/biden-s-fbi-boasts-about-its-young-adult-waiting-period.
[94] 18 U.S.C. § 925B.
[95] Jon Rydberg, orchidadvisors.com, "NICS Denial Notification Act to Require FFLs Provide Buyer Addresses" (Aug. 2, 2022), https://orchidadvisors.com/nics-denial-notification-act-to-require-ffls-provide-buyer-addresses/ (last visited Feb. 27, 2025).
[96] 18 U.S.C. § 922(t)(2)(c)..
[97] 34 U.S.C. § 40901(g), 28 CFR § 25.10.
[98] 34 U.S.C. § 40901(g).
[99] *See*, *e.g.*, Dru Stevenson, "New NICS Case: Snyder v. United States, Part I" (Nov. 26, 2019), https://firearmslaw.duke.edu/2019/11/new-nics-case-snyder-v-united-states-part-i (last visited Feb. 28, 2025).
[100] *Id*.

The DOJ should investigate these and any other questionable uses of NICS and limit the FBI's administration of NICS to those uses expressly authorized by statute. All NICS procedures without an explicit statutory basis should be prohibited.

8. End ATF's capricious determinations of NICS permit exemptions.

In general, there is a requirement under the Brady Handgun Prevent Act that an FFL run a NICS inquiry any time the FFL transfers a firearm to an unlicensed individual. This requirement does not apply, however, if the transferee presents the FFL with "a license or permit that …allows such other person to possess or acquire a firearm; … was issued not more than 5 years earlier by the State in which the transfer is to take place; and … the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a firearm by such other person would be in violation of law."[101]

Almost every state issues concealed carry permits that could potentially qualify for this exemption. Yet ATF's determinations about which permits do or do not qualify are inconsistent, opaque, and often rely on criteria not explicitly mentioned in the statutory language. This defeats the congressional intent of the license exception. ATF should be required to publish its criteria and to use only the statutory language to guide its decisions. It should also conduct a review of all state concealed carry or other firearm-related licenses or permits to determine if they meet the statutory language.

9. Prevent Medicaid from reimbursing healthcare providers for screening patients for gun injury risk, counseling them on safer storage practices, and sharing violence prevention resources.

This was another Biden-Harris initiative aimed at reinforcing the anti-gun orthodoxy in the government's public health apparatus.[102] It is important to note that physicians typically have no training or knowledge of firearm related issues. Their attempts to discuss a patient's choices in this regard risk boundary violations and will rarely if ever be germane to whatever legitimate healthcare needs prompted the individual to seek care or treatment. Particularly given the limited time and resources available to physicians relying on Medicaid reimbursement, this is a waste of resources, at best, and an intrusion on the privacy and constitutional rights of the potentially vulnerable population of Medicare patients, at worst.

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[101] 18 U.S.C. § 922(t)(3).

[102] *FACT SHEET: President Biden and Vice President Harris Announce Additional Actions to Reduce Gun Violence and Save Lives*, White House, (Sept. 26, 2024), https://www.whitehouse.gov/briefing-room/statements-releases/2024/09/26/fact-sheet-president-biden-and-vice-president-harris-announce-additional-actions-to-reduce-gun-violence-and-save-lives/.

10. End the government's use of the procurement process to pressure firearm and ammunition companies into adopting extra-legal gun control policies.

In March 2023, Joe Biden issued an executive order that, among other things, required the Department of Defense (DoD) to "further firearm and public safety practices" through its "acquisition of firearms."[103] Similar plans have long been proposed by gun control activists for the law enforcement agencies of large cities.[104] The idea is that companies bidding on firearm-related contracts would have to commit to developing "safer" firearm designs, such as the fabled "smart guns," or "best practices" that limit the sorts of products they make available to the civilian market.

DOJ's review should determine whether and to what degree this requirement has found its way into both military and civilian procurement policies of the federal government. Any such policy that could restrict civilian access to otherwise lawful firearms or ammunition or limit the government's options for providing the best equipment for its uniformed personnel and law enforcement officer should be immediately rescinded.

11. Ensure surplus military and law enforcement firearms and ammunition that are eligible for sale through the Civilian Marksmanship Program or otherwise are made available as required or authorized.

Several provisions of law authorize or require surplus firearms,[105] ammunition, once fired brass, and related equipment be made available for sale to eligible private entities.[106] The DOJ should ensure this surplus property, as well as lawful property acquired through forfeiture, is promptly made available and not wastefully disposed of as scrap or unnecessarily destroyed at taxpayer expense. There is no reason items originally paid for with taxpayer money and lawful for civilians to possess cannot be, with appropriate safeguards, recirculated to the private market.

II. Rules promulgated by the Department of Justice, including by the Bureau of Alcohol, Tobacco, Firearms, and Explosives, from January 2021 through January 2025 pertaining to firearms and/or Federal firearms licensees

1. Definition of Frame or Receiver and Identification of Firearms, April 26, 2022

This rule was marketed through the credulous anti-gun media and punditry as a means of regulating "ghost guns," or unmarked firearms manufactured by those other than federal

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[103] President Joseph R. Biden, Executive Order on Reducing Gun Violence and Making Our Communities Safer, White House (March 14, 2023)
[104] Robert A. Levy, *Pistol Whipped: Baseless Lawsuits, Foolish Laws*, 10 J. L. & Pol'y 37,38 (2001).
[105] For information on the CMP, *see* GAO-19-287, "Civilian Marksmanship Program: Information on the Sale of Surplus Army Firearms" (Feb. 2019), *available at* https://www.gao.gov/assets/gao-19-287.pdf (last visited Feb. 28, 2025).
[106] *Senator Inhofe's Spent Brass Measure Benefits Gun Owners*, Ammoland.com (August 2, 2011), https://www.ammoland.com/2011/08/senator-inhofes-spent-brass-measure-benefits-gun-owners/.

firearm licensees (FFLs).[107] The latter have long been required to stamp firearms with specified markings and keep detailed records of their production and distribution.[108] The rule does not prohibit the making or possession of personally made, unserialized firearms, however (and the Second Amendment would not allow for such a restriction, as this has been an unbroken practice in the U.S. since its founding).

Rather, it creates requirements for the marking of personally made firearms that find their way into the inventories of FFLs.[109] But if the concern is that criminals are making firearms for themselves or for other scofflaws, the FFL distribution system is largely irrelevant, as criminals intentionally avoid it and easily bypass it already.

More significantly, the rule redefines certain key terms in federal gun laws, such as "frame," "receiver," and even "firearm" itself, to try to bring more unfinished gun parts, parts at an earlier stage of manufacture, and build kits under the jurisdiction of laws that pertain to operable guns.[110] Essentially, the ATF hopes to unilaterally expand its own jurisdiction by redefining one of the primary commodities it regulates.

To the degree the rule is concerned about law enforcement at all, it appears aimed more squarely at prosecution of future technical violations of bureaucratic requirements by otherwise law-abiding Americans and industry members than at those ruthlessly committing crimes in the streets. This was certainly consistent with Biden-Harris administration practice, which emphasized revoking FFLs for technical violations and spot-checking apparently lawful multiple firearm purchases over pursuing violent criminals who actually harm others with firearms.[111]

Meanwhile, the rule creates a number of logistical headaches for manufacturers, who will have to interpret and apply its minutiae and ambiguities, likely with little aid from ATF, which is notoriously stingy with help in complying with the law and which regularly reverses its own determinations, anyway.

The rule also sets a very disturbing precedent of allowing a federal regulatory agency to vastly increase its own jurisdiction, both by fundamentally diverging from terms already defined in federal law and by creating new terms that apply to regulated commodities that were never contemplated by lawmakers.

Besides its marquee "ghost gun" provisions, moreover, the rule also changes a number of other practices pertaining to firearm commerce, almost all of them to the disadvantage of industry members and law-abiding gun owners. For example, a rule that used to effectively allow active FFLs to purge their business records after 20 years now requires

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[107] *See*, *e.g.*, Michael Balsamo and Zeke Miller, *Biden aims at 'ghost gun' violence with new federal rule*, Associated Press, (Apr. 11, 2022), https://apnews.com/article/biden-bureau-of-alcohol-tobacco-firearms-and-explosives-gun-politics-5f0f26cdb5d3bcbc6f9c5daf471c118d.
[108] 18 U.S.C. § 923(i), 26 U.S.C. §§ 5842, 5843.
[109] Definition of "Frame or Receiver" and Identification of Firearms, 87 Fed. Reg. 24,652 (April 26, 2022).
[110] *Id.*
[111] Mark Chesnut, *ATF Gloats Over Increased FFL Revocations*, NRA America's 1st Freedom (February 23, 2024), https://www.americas1stfreedom.org/content/atf-gloats-over-increased-ffl-revocations/.

those records to be maintained indefinitely.[112] Again, it's difficult to see how this makes sense in solving street level gun crimes. But it's easy to see how it could facilitate the creation of a comprehensive federal registry of firearms and their owners.

The rule was challenged in court, and a district judge in the Northern District of Texas found it facially unlawful and vacated it in its entirety. This ruling was partially upheld by the Fifth Circuit. The government appealed the Fifth Circuit ruling to the U.S. Supreme Court.[113] The case was briefed, and oral argument was heard on Oct. 8, 2024. A decision remains pending.[114]

ATF's rule exceeds its statutory authority and will not materially improve public safety. It would, however, impose unnecessary burdens on law-abiding industry members and gun owners. It should be rescinded it its entirety, and the government should abandon its defense of the rule in court.

2. Factoring Criteria for Firearms With Attached "Stabilizing Braces," Jan. 21, 2023

Stabilizing braces are devices that attach to a large format pistol so that it can be secured to the user's forearm for safer, more accurate use. They were originally invented to help disabled veterans operate these sorts of firearms. [115] The above rule reversed more than a decade of prior statements by ATF that attaching a stabilizing brace to a pistol did not create a short-barreled rifle (SBR) regulated under the National Firearms Act (NFA).[116] The NFA requires a person to apply to the government before making or receiving an SBR and to pay a transfer tax of $200 for each such item[117]. Failure to comply is a felony punishable by imprisonment and a heavy fine.[118] Millions of pistol braces and braced pistols were lawfully sold to law-abiding Americans with ATF's full knowledge and assent.[119] The rule, however, threatened to retroactively turn those owners into felons. ATF's rule gave current owners of braced pistols that were previously understood to be lawful various options for "compliance," including such things as destroying the braced pistol or surrendering it to the government. Owners could also attempt to register the pistol with the federal government, which would permanently maintain the record of the individual as the owner of an SBR.[120]

The rule itself purports to create various "factoring criteria" for determining when the addition of a brace to a pistol creates a regulated firearm, including both subjective and

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[112] Definition of "Frame or Receiver" and Identification of Firearms, 87 Fed. Reg. 24,652 (April 26, 2022).
[113] Brief for Respondents VanDerStok, Andren, Tactical Machining, Firearms Policy Coalition, Inc., and Blackhawk Manufacturing Group, Inc., *Garland v. VanDerStok*, Docket No. 23-852 (Aug. 13, 2024).
[114] *Bondi v. VanDerStok*, Docket No. 23-852, U.S. Supreme Court, https://www.supremecourt.gov/docket/docketfiles/html/public/23-852.html.
[115] *Comments of the National Rifle Association on ATF's Proposed Rule 2021R-08*, NRA-ILA, 2 (Sept. 8, 2021).
[116] *Id*. at 19,20.
[117] 26 U.S.C. 5811, 5821.
[118] 26 U.S.C. § 5871.
[119] William J. Krouse, *Handguns, Stabilizing Braces, and Related Components*, Congressional Research Service, (Feb. 12, 2021).
[120] Factoring Criteria for Firearms With Attached "Stabilizing Braces", 88 Fed. Reg. 6,478 (Jan. 31, 2023).

objective measurements.[121] The criteria are useless, however, because no thresholds or scoring system is assigned to them to guide the analysis. Essentially, the ATF rule states, "We'll consider these factors, and we'll know an SBR when we see it."

ATF's arbitrary and overreaching rule provoked multiple lawsuits, including by the NRA. These cases have resulted in a series of injunctions on both procedural and substantive grounds.[122][123] Notably, a federal court in Texas stayed nationwide enforcement of the rule in its entirety on Nov. 8, 2023.[124] The government has appealed that ruling.

This rule is punitive, illegal, unconstitutional, and unworkable. It should be repealed in its entirety. The government should also abandon its defense of the rule in court.

3. Definition of "Engaged in the Business" as a Dealer in Firearms, April 19, 2024

True to form, the Biden-Harris administration used the BSCA's removal of a word from the GCA to issue a 125-page rule that entirely rewrites federal standards for who must obtain an FFL to legally sell guns.[125] Previously, an individual only needed a federal license to sell firearms when engaged in "a course of trade or business" involving "repetitive" buying and reselling of firearms with the "principal objective" of "livelihood and profit." The BSCA removed the "livelihood" element so that profit-seeking alone would fulfill the required objective of the sales.[126] Moderate supporters of the BSCA claimed this change was merely a codification of how courts had applied the previously existing law. They wanted to make clear, so they said, that a person could be subject to licensure even if the person had means of support other than selling guns.[127]

Instead, the Biden-Harris administration treated the BSCA's amendment as a mandate to pursue the firearm prohibition movement's longstanding aspiration to ban private gun sales. Channeling sales through the network of federally licensed dealers ensures that there is a paper trail of privately-owned guns. It also subjects buyers to background checks through NICS. Proponents of this policy claim it will promote public safety by blocking prohibited persons from obtaining firearms and allowing police to trace the origins of guns recovered from crime scenes. But the government's own data show that

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[121] I*d.*
[122] NRA Scores Legal Victory Against ATF; "Pistol Brace Rule" Enjoined From Going Into Effect Against NRA Members, NRA-ILA (Apr. 1, 2024), https://www.nraila.org/articles/20240401/nra-scores-legal-victory-against-atf-pistol-brace-rule-enjoined-from-going-into-effect-against-nra-members.
[123] Brendan Pierson, *Second appeals court finds US pistol brace restrictions likely illegal*, Reuters (Aug. 9, 2024), https://www.reuters.com/legal/government/second-appeals-court-finds-us-pistol-brace-restrictions-likely-illegal-2024-08-09/.
[124] Stephen Gutowski*, Federal Judge Blocks Nationwide Enforcement of Pistol-Brace Ban*, The Reload, (Nov. 8, 2023), https://thereload.com/federal-judge-blocks-nationwide-enforcement-of-pistol-brace-ban/.
[125] Definition of "Engaged in the Business" as a Dealer in Firearms, 89 Fed. Reg. 28,968 (Apr. 19, 2024).
[126] Bipartisan Safer Communities Act, Pub. L. No. 117-159 (2022).
[127] Letter from Senators John Cornyn and Thom Tillis to Helen Koppe, Enforcement Programs and Services Office of Regulatory Affairs Bureau of Alcohol, Tobacco, Firearms and Explosives (2023).

violent criminals either avoid the background check requirement through measures such as theft or black-market sales, or they use "straw buyers" to purchase guns from dealers on their behalf.[128][129] Forcing law-abiding gun owners to go through a dealer to sell a gun to a trusted neighbor or co-worker won't change this, but it will put more lawfully owned guns "on paper," a prerequisite to any future scheme of large-scale registration and confiscation, should guns be retroactively banned (see the Biden-Harris administration's above-described braced pistol rule).

As for the rule itself, its main feature is a series of "rebuttable presumptions" about when a firearm seller is either "engaged in the business" of dealing in firearms or has the objective to "predominantly earn a profit." These presumptions are meant to guide the "fact-specific" inquiry into when a person's gun sales cross the threshold that require that person to be federally licensed.

Yet demonstrating the ATF's skepticism of its own legal interpretations, these presumptions are explicitly meant to apply only in "civil or administrative proceedings," even though the underlying statutes may also be criminally enforced. Such civil proceedings include applications for, or renewals of, firearm licenses or civil forfeiture actions by the government seeking to confiscate firearms, ammunition, and profits from gun sales.

This supposed distinction between civil and criminal proceedings, however, goes to the heart of the rule's overall game plan. Normally, administrative rules are meant to give more specificity and detail to broad statutory regimes so regulated entities have a clearer understanding of the obligations under the law. In this case, however, the ATF merely wants to create more confusion and uncertainty. They know the rule is irrelevant to the behavior of real criminals, and they even admit their new standards cannot be strictly applied in criminal cases. But the rule may create enough doubt in the mind of conscientious, law-abiding gun owners that they simply avoid engaging in or facilitating private transfers altogether. It is, in other words, regulation by intimidation.

Enforcement of the rule against various plaintiffs was preliminary enjoined by a judge in the Northern District of Texas on June 11, 2024.[130] The government then appealed that decision to the Fifth Circuit Court of Appeals, and that case is pending.

ATF's rule is internally inconsistent and exceeds its statutory authority. It will have no beneficial effect on public safety, but it will dissuade law-abiding gun owners from

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[128] Mariel Alper and Lauren Glaze, *Source and Use of Firearms Involved in Crimes: Survey of Prison Inmates, 2016*, U.S. Department of Justice Bureau of Justice Statistics, (Jan. 2019).
[129] Following the Gun: Enforcing Federal Laws Against Firearms Traffickers, Bureau or Alcohol, Tobacco, Firearms and Explosives, Chapter 3, 10 (June 2000).
[130] *Texas v. Bureau of Alcohol, Tobacco, Firearms and Explosives*, Case no. 2:24-CV-089-Z (N.D. Tex. June 11, 2024).

engaging in private transfers that lawful are and constitutionally protected. It should be repealed in its entirety, and the government should abandon its defense in court.

III. Agencies' plans, orders, and actions regarding the so-called "enhanced regulatory enforcement policy" pertaining to firearms and/or Federal firearms licensees

On June 23, 2021, the Biden-Harris administration announced a new policy of "zero tolerance for rogue gun dealers that willfully violate the law."[131] The policy supposedly targeted "willful" violations of a specified list of infractions, including transferring a firearm to a prohibited person; failing to conduct a required background check; falsifying records, such as a firearms transaction form; failing to respond to a trace request; and refusing to permit ATF to conduct an inspection. A single such violation would, under the policy, presumably result in revocation of the FFL's license.

Willfulness has specific meaning in the context of federal firearms licensing law and requires the government to prove "a purposeful disregard of, a plain indifference to, or a reckless disregard of a known legal obligation."[132] The standard was added to the law by the Firearm Owners Protection Act of 1986 (FOPA), specifically to raise the government's burden in taking adverse actions against FFLs.[133] This was in response to congressional findings that ATF was taking an overly harsh approach to routine inspections of FFLs, including revoking licenses for honest and harmless mistakes, instead of working with the FFLs to improve compliance. In essence, the willfulness standard was meant to require the government to prove bad faith or a gross dereliction of a known legal duty before revoking an FFL.

Yet despite the Biden-Harris administration's contention that it was targeting "bad apple gun dealers" openly flouting the law, it ignored its obligations under FOPA and returned to revoking FFLs and ruining livelihoods for harmless paperwork errors. ATF Order 5370.1E, issued on Jan. 28, 2022, provided insights into ATF's revamped conception of "willfulness" under Biden-Harris's "zero tolerance."[134] Indeed, rather than hold itself accountable for establishing the required mental state of the violation, it turned the law on its head by claiming the specified "zero tolerance" violations *inherently* demonstrated willfulness.

Incredibly, the order even insisted that an FFL's (especially a longstanding FFL's) prior record of spotless compliance could be used against the business when it later did make a mistake, because it was tantamount to an admission the FFL understood the law. "Use inspection reports to establish willfulness even if the inspection found no violations (i.e.,

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[131] *Fact Sheet: Biden-Harris Administration Announces Comprehensive Strategy to Prevent and Respond to Gun Crime and Ensure Public Safety*, White House (June 23, 2021).
[132] ATF O 5370.1G, Bureau of Alcohol, Tobacco, Firearms and Explosives (Aug. 29, 2024).
[133] Firearms Owners' Protection Act, Pub. L. No. 99-308 (1986).
[134] ATF O 5370.1E, Bureau of Alcohol, Tobacco, Firearms and Explosives (Jan. 28, 2022).

acknowledgement of Federal firearms regulations)," the order instructed. In a similar vein, the inspectors could "[d]emonstrate that the FFL has complied with the specific regulation on other occasions." Longtime compliance actually worked against the FFL under the scheme. "Demonstrate that the FFL has substantial experience as an FFL," the order continued. [135]

FFLs who hired legal counsel and challenged their revocations were often successful in saving their businesses. But the administration was counting on the fact that many FFLs were small mom and pop type operations that could not afford to take on the U.S. government in administrative or legal proceedings. In 2024, ATF revoked more FFLs than in any year over at least the preceding two decades.[136]

Eventually, however, the ATF's policy was challenged in a lawsuit by the owner of a Texas gun store. The effort noted each transaction form required by federal law for the retail sale of a firearm (the so-called Form 4473) requires nearly 100 inputs, any of which could be affected by a clerical error or a misunderstanding by the customer of the information required.[137] That means a gun shop selling a few thousand guns a year has hundreds of thousands of opportunities to wind up with mistakes in its records. Just one such mistake, under zero tolerance, was all it might take for a longstanding, law-abiding business to be shuttered by ATF.

After the suit was filed, ATF quietly revoked O 5370.1E and replaced it with ATF O 5370.1G on Aug. 29, 2024. The new order continues to insist, "Consistent with [then President Biden's] directive on enhanced regulatory enforcement, ATF has zero tolerance for willful violations that put public safety at risk and will take appropriate administrative action." Yet it omits O 5370.1E's language about "inherently" willful violations and counsels a more fact specific approach to each case. In particular, it states: "Not every repeat violation is per se willful. A single, or even a few, inadvertent errors in failing to complete forms may not amount to 'willful' failures even where the legal requirement to complete the forms was known."[138]

On Jan. 15, 2024, after learning of ATF's revised enforcement standards, the plaintiff voluntarily withdrew his lawsuit without prejudice.[139]

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[135] *Id.*
[136] Champe Barton, *ATF Steps Up Policing of Lawbreaking Gun Dealers, Revoking Highest Number of Licenses in Two Decades*, The Trace (Oct. 23, 2024), https://www.thetrace.org/2024/10/atf-gun-dealer-licenses-revoked-biden/.
[137] *Faced With Litigation (and the Election), ATF Quietly Backed Off Zero Tolerance*, NRA-ILA (Jan. 27, 2025), https://www.nraila.org/articles/20250127/faced-with-litigation-and-the-election-atf-quietly-backed-off-zero-tolerance.
[138] ATF O 5370.1G, Bureau of Alcohol, Tobacco, Firearms and Explosives (Aug. 29, 2024).
[139] *Cargill v. Bureau of Alcohol, Tobacco, Firearms and Explosives*, Case no. 1:22-cv-01063-DAE (W. D. Tex. Jan. 1, 2015)

Nevertheless, industry members complain that ATF zero tolerance, for all intents and purposes, continues in effect.

It is especially telling that the prior administration tried to funnel more gun sales through FFLs via its illegal "Engaged in the Business" rulemaking but then tried to shutter as many FFLs as possible over innocent mistakes. The Biden-Harris administration, it seems, just did not like any sort of firearm sales.

ATF's enhanced regulatory enforcement policy should be formally repudiated by the current administration. Those who tried to justify "inherent" willfulness should have no further role in crafting ATF enforcement policies or making legal determinations on behalf of the agency. There should also be a review of FFLs that were revoked under this policy, and cases that did not involve a proper application of "willfulness" or involved inadvertent mistakes posing no material risk to public safety should be reopened. Going forward, ATF must enforce a proper standard of willfulness that requires the agency to carry its burden to establish this element under the specific facts of each case.

IV. Reports and related documents issued by the White House Office of Gun Violence Prevention

The Biden-Harris administration welcomed many fellow gun control activists into its ranks. Indeed, their initial choice to head ATF was David Chipman, who was a "senior policy advisor" at two of the most active national gun control groups.[140][141] When Chipman's anti-gun record was revealed, and then amplified at his confirmation hearing, his nomination was withdrawn.[142] Yet other career firearm prohibition advocates were later put on the public payroll via the so-called White House Office of Gun Violence Prevention, headed by none other than vice president and failed presidential candidate, Kamala Harris.

The deputy directors of the new office include Robert Wilcox, who also served as special assistant to the president.[143] Wilcox previously worked as the senior director of federal government affairs at Everytown for Gun Safety.[144] There, his salary was underwritten by billionaire anti-gunner Michael Bloomberg. Wilcox, as an anti-gun lobbyist, pushed such

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[140] *Giffords Thanks David Chipman for Three Decades of Service in Pursuit of Public Safety*, Giffords (May 20, 2022), https://giffords.org/press-release/2022/05/giffords-thanks-david-chipman-for-three-decades-of-service/.
[141] Paul LeBlanc, *Biden's planned pick for ATF director a fierce advocate for gun control*, CNN (Apr. 7, 2021), https://www.cnn.com/2021/04/07/politics/david-chipman-joe-biden-atf-director/index.html.
[142] Mike Balsamo and Alexandra Jaffe, *Senate opposition leads White House to withdraw ATF nominee*, Associated Press (Sep. 9, 2021), https://apnews.com/article/business-gun-politics-susan-collins-angus-king-lisa-murkowski-e0d6522c455c86bd5d877307c4d5b19c.
[143] Chip Brownlee, *The Legacy of the White House Office of Gun Violence Prevention*, The Trace (Feb. 4, 2025), https://www.thetrace.org/2025/02/white-house-gun-violence-rob-wilcox/.
[144] *Everytown Expert Testifies Before House Oversight and Judiciary Subcommittees*, Everytown for Gun Safety (March 23, 2023), https://www.everytown.org/press/everytown-expert-testifies-before-house-oversight-and-judiciary-subcommittees/.

radical policies as banning America's most popular rifle, the AR-15; banning private firearm transfers; holding law-abiding firearm dealers accountable for the acts of criminals; and limiting the capacity of magazines used in self-defense firearms. Wilcox was not just another policy wonk or expert bureaucrat whose job is to serve the public at large. He was an activist dedicated to the destruction of Americans' Second Amendment rights. The White House Office of Gun Violence Prevention allowed him to pursue his life's work of diminishing the Second Amendment at taxpayer's expense.

The office helped perpetrate the Biden-Harris administration's "whole of government" approach to suppressing Second Amendment rights, pulling levers throughout the federal bureaucracy to clamp down on gun owners and firearm-related businesses.[145] It also was involved in creating a red flag law clearinghouse within the DOJ to promote state laws to seize lawfully owned guns from supposedly "dangerous" individuals. Additionally, it held summits with anti-gun state officials to encourage them to pursue other anti-gun policies and litigation within their own jurisdictions.[146]

Indeed, lawfare against the firearm industry returned under the Biden-Harris administration, with crime-ridden cities looking for scapegoats within the firearm industry and for ways to undermine the federal Protection of Lawful Commerce in Arms Act, which prevents meritless strike suits against gun industry members. There were accusations that the White House's anti-gun office was actively involved in one and possibly more of these lawsuits, prompting an investigation by the House Committee on Oversight and Accountability.[147]

At this point, the White House Office of Gun Violence Prevention is inoperative, and its staff have resigned. Yet a full accounting of the office's activities, budget, and anti-gun "accomplishments" has yet to be compiled. NRA supports such an accounting, as well as the full release of the office's records, both public and internal. America's taxpayers and gun owners deserve to know just how their money was spent by the White House Office of Gun Violence Prevention.

V. The positions taken by the United States in any and all ongoing and potential litigation that affects or could affect the ability of Americans to exercise their Second Amendment rights

As previously mentioned, the modern gun control environment arose largely under the erroneous assumption that the Second Amendment did not protect an individual right to

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[145] Chip Brownlee, *Biden Is Deploying a 'Whole-of-Government' Approach to Gun Violence Prevention*, The Trace (Oct. 1, 2024), https://www.thetrace.org/2024/10/biden-administration-gun-violence-prevention/.
[146] *White House Office of Gun Violence Prevention Year One Progress Report*, White House (Sept. 2024).
[147] Comer Issues Subpoenas to Biden-Harris Administration for Possible Collusion with Anti-Second Amendment Groups on Litigation Against Firearm Manufacturer, Committee on Oversight and Government Reform (Oct. 3, 2024), https://oversight.house.gov/release/comer-issues-subpoenas-to-biden-harris-administration-for-possible-collusion-with-anti-second-amendment-groups-on-litigation-against-firearm-manufacturer%ef%bf%bc/.

keep and bear arms or that any such right could be "balanced away" by deferential means-end scrutiny. *Heller* and *Bruen* squarely refuted these understandings, and the federal judiciary is already engaged in the necessary process of reappraising many of these overreaching laws against *Bruen*'s text, history, and tradition standard of review.[148][149]

In general, the NRA would encourage the government to take a more expansive view of the Second Amendment as a fundamental civil right and to cast a critical eye on applications of the law that affect peaceable individuals who possess common arms for self-defense and other legitimate purposes. We would also encourage the government to interpret statutes in a way that avoids creating constitutional questions under the Second Amendment. Finally, we urge the government to recognize the need for robust due process and relevant findings of an individual's propensity for dangerous or aggressive behavior in judging the sort of convictions or procedures that could lead to a loss of Second Amendment rights.

The government should not try to justify laws that limit or impede the right of peaceable individuals to obtain common firearms, ammunition, magazines, or accessories. These include defending bans on semiautomatic firearms, limits on magazine capacity, or laws that ban common varieties of ammunition, such as hollow point rounds.

The government should not try to justify burdensome prior restraints masquerading as vetting mechanisms as preconditions to exercising Second Amendment rights. The Supreme Court in *Bruen* already ruled against a "may-issue" licensing system that gave issuing officials broad discretion to deny the right to bear arms in public to ordinary, law-abiding people who wanted them for the constitutional purpose of self-defense.[150] High fees, prolonged waiting times, short periods of validity, redundant background checks, subjective disqualifiers, elaborate training requirements, the necessity of making multiple trips to different locations during work hours, and lack of redressability for erroneous or illegitimate denials all point to using vetting as a pretext for infringing the right to keep and bear arms.

The government should not try to limit the right of prohibited persons to regain their Second Amendment rights when the original basis for their prohibition no longer applies, whether from recovery from mental illness, rehabilitation after conviction, or other material changes in circumstances. The government should not interpret provisions of federal law that allow for restoration of Second Amendment rights in a way that renders them practically meaningless or that creates legal traps for people who have satisfied a

[148] *District of Columbia v. Heller*, 554 U.S. 570 (2008).
[149] *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1,17 (2022).
[150] *Id*. at 71.

state restoration scheme, only to later discover that restoration is not recognized by the federal government.

The government should not defend overbroad categorical prohibitions that encompass people who are not demonstrably dangerous – including nonviolent felons – or that use illegitimate proxies for dangerousness. When an action is legal under the law of the state where it occurred, the government should refrain from using that action as the basis of a prohibition unless, under the circumstances, it created a demonstrable risk of physical harm to a person. The government should keep in mind that *Rahimi* already foreclosed using broad notions of "irresponsibility" or lack of fitness as the basis for a prohibition on Second Amendment rights.[151]

The government should avoid defending retroactive applications of the law on persons who acquired firearms, ammunition, or related equipment legally or who acted in good faith reliance on existing agency guidance during the relevant timeframe.

The government should not use lawful possession of firearms, or a person having obtained a firearm-related license or permit, as the basis for no-knock warrants or for treating that person as a per se danger to public safety or to the safety of law enforcement officers.

The government should not defend expansive "sensitive place" laws that disarm individuals in publicly accessible places or places where there are no security measures in place to exclude unauthorized persons or items.

Finally, the DOJ should evaluate using the Civil Rights Division to investigate violations of Second Amendment rights by state and local governments. Many states and localities have openly defied *Heller*, *McDonald*, and *Bruen* by making their firearms law *more* restrictive after each decision. Moreover, there are ongoing reports the New York City Police Department License Division – which has previously been investigated by DOJ for official corruption[152] – has continued to conduct essentially open-ended background checks on concealed carry applicants and is taking more than a year to process applications in many cases.[153] According to one such report, "Hiring a lawyer has become an unofficial part of the process in New York."[154]

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[151] 602 U.S. 774.
[152] Press Release, U.S. Att'y Ofc., SDNY, "Former New York City Police Department Official Sentenced To 18 Months For Conspiring To Bribe Fellow Officers In Connection With Gun License Bribery Scheme (Jan 31, 2019), *available at* Southern District of New York | Former New York City Police Department Official Sentenced To 18 Months For Conspiring To Bribe Fellow Officers In Connection With Gun License Bribery Scheme | United States Department of Justice (last visited Feb. 28, 2025).
[153] *See*, *e.g.*, Dan Rivoli, Spectrum News, "New Yorkers' right to carry firearms tested at NYPD" (Feb. 24, 2025), https://ny1.com/nyc/all-boroughs/politics/2025/02/25/nypd-concealed-carry-license-permits (last visited Feb. 27, 2025).
[154] *Id*.

These actions, and the public statements that have accompanied them, often evince bad faith. The DOJ should no more tolerate deliberate and systemic violations of the Second Amendment than it would similar treatment of any other fundamental civil right.

VI. Agencies' classifications of firearms and ammunition

The federal Gun Control Act, as amended, states that the Attorney General "shall authorize a firearm or ammunition to be imported" if the firearm or ammunition "is of a type that does not fall within the definition of a firearm as defined in section 5845(a) of the Internal Revenue Code of 1986 [i.e., is not a firearm regulated under the National Firearms Act] and is generally recognized as particularly suitable for or readily adaptable to sporting purposes …."[155] The law previously said that the government "may authorize" such importation; importantly, Congress amended the law to require the government to approve the importation of firearms so described.

This law has become known as the "sporting purposes test."[156] Pursuant to this law, the ATF long ago established its "Handgun Factoring Criteria," which bases a handgun's eligibility for importation on the number of points it receives for things such as its size, caliber, type of sights, and safety mechanisms.[157]

Until the 1980s, the Factoring Criteria and, thus, the "sporting purposes" test, were used to block the importation of relatively inexpensive handguns. However, in 1989, ATF stopped the importation of 43 so-called "semiautomatic assault rifles" which it had previously approved for importation and which had been imported for many years.[158] To justify its sudden reinterpretation of the sporting purposes test, ATF alleged that, while the rifles in question were indeed used for sports, they were used for sports based upon defensive rifle skills, rather than on more traditional sport shooting styles. Furthermore, ATF ignored the fact that functionally identical American-made rifles were the most common type of rifle in sports that ATF considered sufficiently sporting: the annual National Rifle Matches.

Moreover, ATF ignored part of the language of the sporting purposes test, by focusing on the question of whether the rifles were "particularly suitable for . . . sporting purposes," and ignoring the language of the law providing for the importation of rifles that are "readily adaptable to sporting purposes." A Treasury Department Firearm Advisory Panel had noted some years before several specific examples of minor modifications that could be made to "adapt" rifles for sporting purposes and thus make them eligible for importation.

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[155] 18 U.S.C. § 925(d).
[156] Study on the Importability of Certain Shotguns, Bureau of Alcohol, Tobacco, Firearms and Explosives, ii (Jan 2011).
[157] ATF Form Form 4590, "Factoring Criteria for Weapons," *available a*t https://www.atf.gov/files/forms/download/atf-f-5330-5.pdf.
[158] Vivian S. Chu, *Federal Assault Weapons Ban: Legal Issues*, Congressional Research Service, 5-6 (Feb. 14, 2013).

In 1993, President Clinton directed the Treasury Department to stop the importation of "assault pistols," all of which met the Handgun Factoring Criteria standards and which, on that basis, had been imported for several years.

In 1998, ATF expanded its 1989 rifle importation ban to include rifles capable of using ammunition magazines that hold more than 10 rounds.[159] To justify this, ATF cited the provision of the so-called "Public Safety and Recreational Firearm Use Protection Act of 1994" (otherwise known as the "assault weapon" and "large" magazine ban) which prohibited the domestic manufacture of ammunition magazines holding more than 10 rounds, while allowing the importation of any such magazines manufactured before the law took effect, banning only those manufactured thereafter. (*See* Bureau of Alcohol, Tobacco, Firearms and Explosives "General Information" section from ATF's *Federal Firearms Regulations Reference Guide*, particularly items 20, 21.[160]) While the 1994 Act expired in 2004, the agency has yet to rescind its 1998 decision.

In January 2011, ATF proposed criteria that would ban the importation of shotguns with features that it alleged were non-"sporting."[161] The NRA and others strongly questioned the agency's latest re-interpretation of the "sporting purposes" test.[162] An appropriations rider was subsequently included in 2012 Commerce, Justice and Science appropriations legislation to help prohibit the ATF from banning the importation of shotguns that were then being legally imported.[163]

On July 2, 2012, ATF revised its January 2011 study in response to comments it had received.[164] In particular, it removed "forward pistol grips" and "integrated rail systems" from its list of features that would render a shotgun ineligible for importation.

NRA did not agree with ATF's limited change.[165] First, the "sporting purposes" test itself ignores the U.S. Supreme Court's 2008 decision in *Heller*, that the "the inherent right of self-defense has been central to the Second Amendment right" throughout U.S. history, that the amendment protects a fundamental individual right to "possess and carry arms for purposes of confrontation," and the right to arms "extends, prima facie, to all instruments that constitute bearable arms."[166]

Second, ATF ignored the fact that the features it considered non-sporting are widely used in practical or action shooting sports, which are among the most popular shooting sports

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[159] *Department of the Treasury Study on the Sporting Suitability of Modified Semiautomatic Assault Rifles*, Bureau of Alcohol, Tobacco and Firearms (April 1998).
[160] *Federal Firearms Regulations Reference Guide 2014*, Bureau of Alcohol, Tobacco, Firearms and Explosives.
[161] Study on the Importability of Certain Shotguns, Bureau of Alcohol, Tobacco, Firearms and Explosives (Jan 2011).
[162] Comments of the National Rifle Association on the "ATF Study on the Importability of Certain Shotguns", NRA-ILA (Apr. 29, 2011.
[163] *Rumor Alert: Appropriations Bill Blocks New Shotgun Ban – Does Not Repeal 'Sporting Purposes" Test*, NRA-ILA (Dec. 22, 2011), http://www.nraila.org/legislation/federal-legislation/2011/12/rumor-alert-appropriations-bill-blocks-new-shotgun-ban—does-not-repeal-"sporting-purposes"-test.aspx.
[164] *Report on the Importability of Certain Shotguns*, Bureau of Alcohol, Tobacco, Firearms and Explosives (July 2, 2012).
[165] *BATFE Modifies Shotgun Import Ban Study, Still Gets It Wrong*, NRA-ILA (July 13, 2012), http://www.nraila.org/legislation/federal-legislation/2012/7/batfe-modifies-shotgun-import-ban-study,-still-gets-it-wrong.aspx.
[166] *District of Columbia v. Heller*, 554 U.S. 570, 582 592, 628 (2008).

in the United States today. ATF's plan also created arbitrary distinctions between the types of features that could legally be incorporated into domestic versus imported shotguns. To date, the funding rider blocking enforcement of the ATF's shotgun importability study remains in effect, although it must be renewed annually.

The "sporting purposes" test also determines important exceptions from otherwise overbroad regulatory categories including destructive devices,[167] armor piercing ammunition,[168] the general ban on loaning or renting firearms to persons from out of state,[169] the assembly of a semiautomatic rifle or a shotgun from imported parts,[170] and circumstances under which a non-immigrant alien may lawfully possess a firearm.[171]

ATF must interpret all these sections consistently with the Supreme Court's finding that self-defense is the "central component" of the right to keep and bear arms. It must also recognize as "sports" for the purposes of these provisions practical and action shooting competitions that emphasize dynamic, scenario-based stages that use the sorts of firearms Americans typically own for defensive purposes and emphasize the skills of defensive firearm use, including accuracy, speed, drawing from a holster, movement, firearm reloads and manipulations, use of cover, engaging multiple targets, and transitioning between different sorts of firearms.

There is also no reason in logic or law that ATF continues to ban the importation of firearms that may be lawfully acquired and possessed when made in the United States.

Finally, ATF's refusal to grant "sporting purposes" exceptions to the definition of "armor piercing ammunition" prevent the development of ammunition technology, including rounds that could reduce the use of lead.

VII. The processing of applications to make, manufacture, transfer, or export firearms.

The National Firearms Act requires approval of applications to make or transfer firearms regulated under its terms. These include highly popular items such as sound suppressors.[172] The export of firearms also requires licenses issued under the authority of either the State Department or the Commerce Department.

A right delayed is a right denied. And in the case of commercial exports, delays in the processing of licenses can lead to lost contracts and the diversion of business from U.S. companies to foreign competitors, including those with far lower standards of preventing diversion and misuse.

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[167] 26 U.S.C. § 5845(f), 18 U.S.C.A. § 921(a)(4).
[168] 18 U.S.C. § 921(a)(17)(B)-(C).
[169] 18 U.S.C. § 922(a)(5).
[170] 18 U.S.C. § 922(r).
[171] 18 U.S.C. § 922(y)(2)(A)
[172] *National Firearms Act Handbook*, Bureau of Alcohol, Tobacco, Firearms and Explosives (April 2009).

A transfer of a firearm by an FFL under the GCA is supposed to be approved, and in most cases is approved, instantly through NICS. "Instant," in fact, is the system's middle name. Yet ATF's process for approving NFA applications to make or transfer, which also relies primarily on a NICS check, can take many months.[173] It is unclear why this should be the case, particularly in an era where technology is improving efficiencies in almost every other conceivable domain. DOJ should investigate opportunities to leverage modern technological improvements and updated processes to move the vetting of NFA applications towards a similarly "instant" process.

Moreover, unlike the GCA, the NFA does not have explicit statutory language that provides a mechanism of relief for unwarranted denials. This has created problems for those whose denials were in error or based on outdated information.

The issue of export licenses is admittedly a more complicated process and involves interagency review for security reasons. But, as mentioned above, the Biden-Harris administration exacerbated this situation with its export crackdown on licenses approved by the Commerce Department (which was supposed to have a more business-friendly process than its counterparts in the State Department). We have already recommended that this crackdown be reversed.

DOJ's review should carefully investigate the reasons for these delays. It should also inquire into current processes for correcting unjustified denials under the NFA. The status quo contains puzzling inconsistencies. No one – businesses, individuals, or government regulators – seems well served by the present regime.

On a final note, Americans have long lawfully possessed "machineguns," which became regulated under the NFA beginning in 1934.[174] The further acquisition and possession of these arms was banned by federal statute, as of May 19, 1986.[175] Machineguns lawfully possessed before that date were grandfathered in under the ban and may continue to be possessed and transferred in accordance with the NFA.[176]

The government has long taken the position that it lacks the authority to grant amnesty to allow for the registration and taxation of machineguns that were originally acquired lawfully but the discovery of which occurred after the NFA's requirements took effect.[177] This is particularly curious, given the Biden-Harris administration's contrary claim that it had the authority to grant such amnesty for non-conforming braced pistols under the

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[173] David Burnett, *Has the ATF Finally Done Something About Wait Times for Suppressors?*, NRA America's 1st Freedom (Jan. 26, 2022), https://www.americas1stfreedom.org/content/has-the-atf-finally-done-something-about-wait-times-for-suppressors/.
[174] National Firearms Act, Pub. L. No. 73-474 (1934).
[175] Firearm Owners' Protection Act, Pub. L. No. 99-308 (1986).
[176] 18 U.S.C. § 922(o).
[177] Bump-Stock-Type Devices, 83 Fed. Reg. 66,514, 66,535-36 (Dec. 26, 2018).

rulemaking cited above and even to waive the transfer tax for those who voluntarily disclosed possession.[178]

A typical scenario for the discovery of an unregistered machinegun might include a long-stored war trophy found by the survivors of a veteran or an old firearms collection that ended up in the hands of a legatee. Often, the individuals who end up with these firearms may be unaware of their special categorization under the law. Some unregistered machineguns may even be unwittingly in the possession of museums, historical societies, or veterans' organizations.[179]

These guns, when discovered, should be registerable under the NFA, with taxed waived for those who voluntarily disclose possession of them. If it can be done for braced pistols, as the government previously asserted, it could be done for machineguns.

Conclusion

The foregoing is not an exhaustive accounting of every possible infringement of the Second Amendment occurring under the auspices of the United States government. But it should serve to make the point that the right to keep and bear arms is undermined by unconstitutional statutes and policies, inefficiencies, and an enduring strain of anti-gun animus throughout the federal bureaucracy. The NRA's constant exposure to the workings of the federal government also convinces us that there are principled professionals in the bureaucracy who respect the Second Amendment and who want to serve the American public without trampling on their rights. We always stand ready to cooperate with such individuals and to use our own expertise and experience to improve processes wherever possible. It is in that spirit that we submit this report. It is a testament to President Trump's commitment to the Second Amendment that he undertook this historic process of review, and we are glad to assist however we can.

[178] Factoring Criteria for Firearms With Attached "Stabilizing Braces," 88 Fed. Reg. 6,478 (Jan. 31, 2023).
[179] *WWII Nazi machine gun found in Abbot Hall safe*, Marblehead Current (Dec. 4, 2024), https://marbleheadcurrent.org/2024/12/04/nazi-machine-gun-found-in-abbot-hall-safe/.