

ONE HUNDRED EIGHTEENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON THE JUDICIARY

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WASHINGTON, DC 20515-6216

(202) 225-6906  
judiciary.house.gov

February 29, 2024

The Honorable Steven Dettelbach  
Director  
Bureau of Alcohol, Tobacco, Firearms, and Explosives  
99 New York Ave, N.E.  
Washington, DC 20226

Dear Director Dettelbach:

The Committee on the Judiciary continues to conduct oversight of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). We write regarding our serious concerns about ATF's recent attempt to regulate the lawful private sale of firearms.<sup>1</sup> ATF's regulatory notice is well beyond the scope of its authority and threatens to violate the Second Amendment rights of millions of Americans.

For years, Congress has consistently rejected misguided universal background check legislation.<sup>2</sup> However, in March 2023, President Biden issued an Executive Order, which the White House described as directing the Attorney General to "increase the number of background checks conducted before firearm sales, moving the U.S. as close to universal background checks as possible without additional legislation."<sup>3</sup> It appears that the Biden Administration is attempting to abuse the federal rulemaking process to circumvent Congress in order to achieve a far-left policy outcome.

On September 8, 2023, ATF began its effort to regulate the lawful private sale of firearms by publishing a notice in the *Federal Register*.<sup>4</sup> The proposed rule seeks to drastically expand the universe of Americans who would be classified as a "dealer" under federal law requiring them to obtain a license to become a Federal Firearms Licensee (FFL).<sup>5</sup> Under federal law, an individual

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<sup>1</sup> Steven Nelson, *Biden gun rule being drafted to effectively ban private sales: ATF whistleblowers*, N.Y. POST (Jan. 31, 2024).

<sup>2</sup> 159 Cong. Rec. S2613 (Apr. 17, 2013) (roll call no. 97 on S. Amdt. 715 to S. 649, Safe Communities, Safe Schools Act of 2013, 54 yeas, 46 nays); H.R. 8, 116<sup>th</sup> Cong. (2019).

<sup>3</sup> Press Release, FACT SHEET: President Biden Announces New Actions to Reduce Gun Violence and Make Our Communities Safer (Mar. 14, 2023); *see also* Exec. Order No. 14,092, 88 FR 16527 (Mar. 17, 2023);

<sup>4</sup> Alcohol, Tobacco, Firearms, and Explosives Bureau, Definition of "Engaged in the Business" as a Dealer in Firearms, 88 Fed. Reg. 61993 (Sep. 8, 2023) [hereinafter "ATF Rule"].

<sup>5</sup> *Id.*

who willfully engages in the business of dealing in firearms without a license is subject to a term of imprisonment of up to five years and a fine of up to \$250,000, or both.<sup>6</sup>

As justification for its overreach, ATF cited the Bipartisan Safer Communities Act (BSCA), which was signed into law in 2022 and made minor definitional changes in the relevant firearm statutes.<sup>7</sup> The BSCA modified the statutory definition of “engaged in business of dealing in firearms” to remove the requirement that a person’s “principal objective” must include both “livelihood and profit.”<sup>8</sup> In the proposed rule, ATF relies on this modification to draw the conclusion that “even a single transaction, or offer to engage in a transaction, when combined with other evidence, may be sufficient to require a license” as an FFL.<sup>9</sup> However, the BSCA did not remove—and ATF’s proposed rule largely ignores—the provision in the statute stating that the term “engaged in business” “shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms.”<sup>10</sup>

In addition, the proposed rule goes beyond federal law to create several presumptions about when an individual is “engaged in the business of dealing in firearms,” which would require them to register as an FFL under federal law. However, when passing the Gun Control Act of 1968 (GCA), Congress did not include any of these presumptions—and ATF fails to cite any legal authority allowing it to make these presumptions in the proposed rule.<sup>11</sup> The rule states that “absent reliable evidence to the contrary,” individuals are presumed to be “engaged in the business of dealing in firearms” if their conduct falls within one of ATF’s specified presumptions.<sup>12</sup> In other words, the rule flips the burden of proof and presumes that Americans engaged in conduct disfavored by ATF are breaking the law unless they can prove their innocence.

To make matters worse, ATF’s proposed rule states these “presumptions are not exhaustive.”<sup>13</sup> This language gives Americans no certainty about the enforcement of federal law, and gives ATF blanket authority to create new presumptions with no notice.<sup>14</sup> This language mirrors ATF’s recent “frame or receiver” rule, which the U.S. Court of Appeals for the Fifth Circuit unanimously vacated, where the court explained that “key determinations . . . are exceedingly unclear under the Final Rule, such that the individual must guess at what he is and is not allowed to do.”<sup>15</sup> A concurring opinion called ATF’s rulemaking “a vague, indeterminate,

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<sup>6</sup> 18 U.S.C. § 922(a)(1)(a); 18 U.S.C. § 924(a)(1)(D).

<sup>7</sup> 18 U.S.C. § 921(a)(1)(a)(21)-(22).

<sup>8</sup> *Id.*

<sup>9</sup> ATF Rule 62000.

<sup>10</sup> 18 U.S.C. § 921(a)(21).

<sup>11</sup> Pub. L. 90-168, 82 Stat. 1213 (1968); ATF Rule.

<sup>12</sup> *Id.* at 61997.

<sup>13</sup> *Id.*

<sup>14</sup> ATF acknowledges that the presumptions in its rule have serious constitutional deficiencies—and therefore “shall not apply to any criminal case”—but still hopes they may be “useful to courts in criminal cases, for example, when instructing juries regarding permissible inferences.” ATF Rule, 62006.

<sup>15</sup> *VanDerStok v. Garland*, 23-10718 (5th Cir. 2023).

multi-factor balancing test” that “will act like a Sword of Damocles hanging over the heads of American gun owners.”<sup>16</sup>

To advance the Committee’s oversight of ATF and to better understand ATF’s basis for issuing the proposed rule, we request that you provide the following information:

1. Please explain when ATF first began to conceive of the need to regulate the lawful private sale of firearms through an agency notice.
2. Please identify the offices and individuals within ATF that conceived, drafted, reviewed, and approved the September 8, 2023, notice in the *Federal Register* entitled, “Definition of “Engaged in the Business” as a Dealer in Firearms.”
3. Please provide all communications between the Executive Office of the President and ATF regarding the September 8, 2023, notice.
4. Please explain whether the Justice Department reviewed and approved ATF’s September 8, 2023, notice, including the entities involved in the review and the timing of the review.
5. Please explain whether the Office of Management and Budget reviewed and approved ATF’s September 8, 2023, notice, including the entities involved in the review and the timing of the review;
6. Please explain how ATF plans on enforcing the final rule that will come from the September 8, 2023, notice;
7. Please produce all documents and communications in your possession between ATF and any organizations ATF consulted, collaborated, and discussed the September 8, 2023, notice with.

We ask that you provide this information as soon as possible but no later than 5:00 p.m. on March 14, 2024.

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<sup>16</sup> Id., at 29 (Oldham, J., concurring).

The Honorable Steven Dettelbach

February 29, 2024

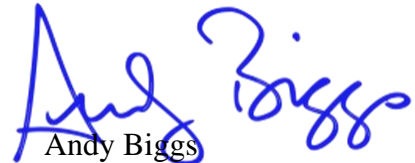
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The House Committee on the Judiciary has jurisdiction over the Bureau of Alcohol, Tobacco, Firearms and Explosives and federal administrative procedure pursuant to House Rule X. If you have any questions about these requests, please contact Committee staff at (202) 225-6906. Thank you for your prompt attention to this matter.

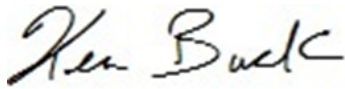
Sincerely,



Jim Jordan  
Chairman



Andy Biggs  
Chairman  
Subcommittee on Crime and Federal  
Government Surveillance



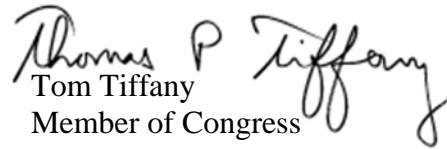
Ken Buck  
Member of Congress



Matt Gaetz  
Member of Congress



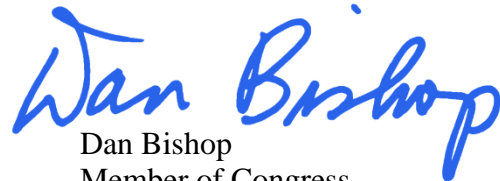
Tom McClintock  
Chairman  
Subcommittee on Immigration Integrity,  
Security, and Enforcement



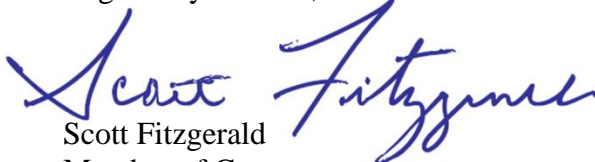
Tom Tiffany  
Member of Congress



Thomas Massie  
Chairman  
Subcommittee the Administrative State,  
Regulatory Reform, and Antitrust



Dan Bishop  
Member of Congress



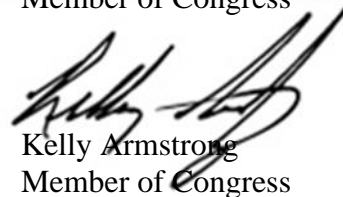
Scott Fitzgerald  
Member of Congress



Cliff Bentz  
Member of Congress



Ben Cline  
Chairman  
Subcommittee on Responsiveness and  
Accountability to Oversight



Kelly Armstrong  
Member of Congress



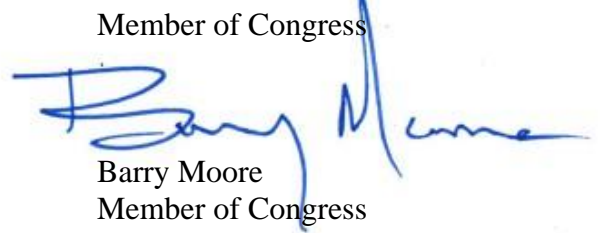
Lance Gooden  
Member of Congress



Jeff Van Drew  
Member of Congress



Troy Nehls  
Member of Congress



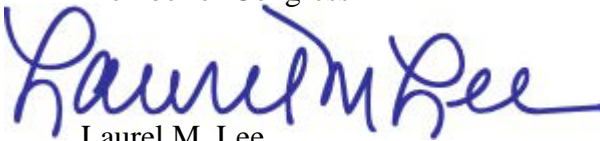
Barry Moore  
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Nathaniel Moran  
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Laurel M. Lee  
Member of Congress



Russell Fry  
Member of Congress