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March 9, 2024

The Honorable Gina Raimondo
Secretary
Department of Commerce
1401 Constitution Avenue NW
Washington, D.C. 20230

Alan F. Estevez
Under Secretary
Bureau of Industry and Security
Department of Commerce
1401 Constitution Avenue NW
Washington, D.C. 20230

Dear Secretary Raimondo and Under Secretary Estevez,

We write to address your response letter dated January 26, 2024, regarding the Department of Commerce Bureau of Industry and Security's (BIS) pause in issuance and renewal of export licenses for certain firearms, related components, and ammunition. We find that your justifications for this pause are insufficient and contradictory, causing legitimate American businesses to needlessly suffer. Furthermore, we are quickly approaching day 135 of this "approximately 90-day" pause with no end in sight.

Mischaracterization of Government Reports

In our original letter dated November 7, 2023, 87 of my colleagues and I requested more information regarding the impetus for BIS's unprecedented actions. Your response letter notes only two sources as justification: a Government Accountability Office (GAO) report and a Bureau of Alcohol, Tobacco, and Firearms (ATF) report. Upon review, neither of these documents supports the actions of BIS to pause licensing activities or the curtailment of American firearms exporters, as BIS is widely expected to do.

Your letter severely mischaracterizes the data and conclusion of the GAO report. Nowhere in the report did it recommend or indicate that licensing activities should be suspended or that permanent changes to export licensing policy are necessary. The report's title summarizes the conclusion: "Firearms Trafficking: More Information is Needed to Inform U.S. Efforts in Central America."¹ In other words, contrary to BIS's claims, the existing data is not sufficient to warrant

¹ <https://www.gao.gov/assets/gao-22-104680.pdf>

permanent changes. Additionally, the *only* recommendation in the GAO report identified the State Department—not BIS, nor the whole of the U.S. government, as your letter claims—as the agency appropriate for further investigating the matter. This is because the report was extremely limited in scope: of the numerous countries importing U.S. firearms and related items, this report only examined Belize, El Salvador, Guatemala, and Honduras. Beyond the small sample size, the GAO report admits that “U.S. agencies have no reliable data on criminals’ acquisition of firearms” in these four countries, dispelling BIS’s claim that law-abiding gun exporters are to blame. This report is nowhere near sufficient grounds to grind an entire industry to a halt.

Even more damning, the GAO report repeatedly admits that the firearms used in international crimes are overwhelmingly sourced through illegal markets working across porous borders and through theft. Given this “ample availability of illicit firearms,”² BIS’s efforts to curtail legally-operating American exporters will not have positive outcomes. As the second report cited by your letter openly admits, less than 1% of firearms lawfully exported from the U.S. were associated with an international gun crime.³ Furthermore, of that small number of crimes involving a firearm legally exported from the U.S., neither report shows systemic inadequacies nor fault by the exporter. American exporters are not the problem, yet they are being targeted while the real perpetrators of violence go unpunished.

Interestingly, the most notable mention of BIS in the GAO report is a reference acknowledging that there is no BIS presence in the four Central American countries studied.⁴ As you know, BIS has a general policy of conducting end-use checks onsite in partner countries to ensure proper transfer of firearms. Yet of these four countries that have high levels of gun crime, which your Department cites as reasons for restricting American exports, BIS only conducted two end-use checks in FY21 for a single country.⁵ Beyond whether there is a reasonable excuse for this neglect, it is unconscionable to blame and punish American exporters for BIS’s own shortcomings.

Inhibiting Lawful Commerce

The congressional mandate for the Department of Commerce is simple: “foster, promote, and develop the foreign and domestic commerce, the mining, manufacturing, and fishery industries of the United States.”⁶ At every step of this process, BIS has left American exporters in uncertainty about whether they will be able to receive or renew their licenses, and whether the pause will result in permanent changes that could decimate their livelihoods. While your letter claims that BIS has been in regular communication with industry stakeholders, it is unequivocally clear that everyone was caught off-guard by this pause announced on a non-descript FAQ page posted on an obscure corner of the BIS website with no advance notice. According to estimates from NSSF, the industry’s premier trade group, a 90-day pause results in an \$89 million loss for the industry—and we’re at nearly 135 days.

Given the complete lack of adequate justification, BIS cannot continue to maintain the pause or pursue permanent, damaging changes to export licensing policy under the guise of maintaining

² Ibid, pp. 19-20.

³ <https://www.atf.gov/file/175296/download>

⁴ <https://www.gao.gov/assets/gao-22-104680.pdf>

⁵ <https://www.gao.gov/assets/gao-22-104680.pdf>

⁶ <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title15-section1512&num=0&edition=prelim>

U.S. foreign policy. None of the evidence cited by BIS demonstrates how current export license policy results in diversion or an increase in international gun crimes. The industry is already highly regulated, and any policy changes to limit access to markets or limit the ability of exporters to conduct business will only drive importing countries to look elsewhere for firearms. The black market will continue to thrive, and giving it a monopoly over firearms supply will only increase violence and hamper the ability of the U.S. government to collaborate in international investigations. The American supply chain for firearms is the safest source for self-defense—cutting it off will only make the situation worse.

Despite this, there have been multiple reports about permanent changes to export licensing policy being considered. Everything from prohibiting the export of sporting rifles to creating an international gun registry that would include Americans who purchase a firearm while living abroad. One leaked report even suggested that BIS is considering making gun manufacturers responsible for every end-user who ultimately purchases their product—an impossibly high burden that would require the exporters to go through multiple layers of bureaucracy to monitor the customers of the in-country distributors that they are selling to.⁷

While international gun crimes do exist, these solutions put forth by BIS show a startling lack of creativity and precision. Not only do they not target the actual problems plaguing these countries—black markets and poor law enforcement—they make the problem worse by targeting the law-abiding exporters that provide the means for self-defense. There are a number of other diplomatic tools at the U.S. government’s disposal to improve the situation; destroying American businesses is not one of them. We demand that BIS lift the pause immediately and we respectfully request answers to the following inquiries by March 29, 2024:

1. When will this “approximately 90-day” pause end?
2. Does BIS plan to issue a proposed rulemaking on this issue?
 - a. If so, when?
 - b. If so, what permanent changes to export licensing policy are being considered?
3. Per our previous letter asking the same question, to which we have not received an answer, why was it necessary to pause licensing activities for the duration of this assessment?
4. The FAQ page announcing the pause says that BIS will hold and not deny license applications submitted during this pause.
 - a. What is the status of these applications?
 - b. How many applications has BIS received during the pause?
 - c. How many license-holders have had their license expire during the pause?
5. Is BIS working with the Department of State on this issue?
6. Is BIS working with the ATF on this issue?
7. Is BIS considering alternative diplomatic solutions that do not limit or target American exporters? If so, what are they?

We look forward to your prompt response.

Sincerely,

⁷ <https://thereload.com/app/uploads/2023/12/Commerce-Department-Rule-Draft-1.pdf>

A handwritten signature in black ink that reads "Mark E. Green". The signature is written in a cursive, flowing style.

Mark E. Green, M.D.
Member of Congress

CC: Jenny T. Hogan
Director, Office of Congressional and Public Affairs
Bureau of Industry and Security
Department of Commerce
1401 Constitution Avenue NW
Washington, D.C. 20230