

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION**

STATE OF TEXAS, *et al.*,

Plaintiffs,

v.

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

Defendants.

Civil Action No. 2:24-cv-00089-Z  
Judge Matthew J. Kacsmaryk

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Dated: January 16, 2025

Respectfully submitted,

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**UNITED STATES DISTRICT COURT  
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STATE OF TEXAS, *et al.*,

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**DECLARATION OF SUPERINTENDENT**

I, Colonel Patrick J. Callahan, hereby declare:

1. I am the Colonel/Superintendent of the New Jersey State Police ("NJSP"), a position I have held since 2017. As Colonel of the NJSP, I serve as the Superintendent of NJSP, oversee all of NJSP's functions, and appoint command staff to ensure that the department runs smoothly. Prior to holding this position, I served as the Deputy Superintendent of Operations, supervising and directing the operational activities of the 1,800 enlisted members assigned to Field Operations as well as the operational duties and responsibilities of the Traffic and Public Safety Office, Victims Services Unit, Fatal Accident Investigation Unit, Highway Traffic Safety Unit, and the Criminal Investigations Offices within Field Operations.
2. I submit this Declaration in support of the Definition of "Engaged in the Business" as a Dealer in Firearms ("Final Rule"), 89 Fed. Reg. 28,968, issued by the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF"). As Colonel, I am over the age of eighteen, competent to testify as to the matters herein, and have personal knowledge of the matters set forth below, or

have knowledge of the matters based on my review of information and records gathered by members of my staff. I have also familiarized myself with the Final Rule in order to understand its immediate impact on the work of NJSP's Regional Operations & Intelligence Center ("ROIC") and on New Jersey law enforcement more broadly.

The ROIC's Role in New Jersey Law Enforcement

3. NJSP is committed to protecting, preserving, and safeguarding the constitutional and civil rights of all New Jerseyans through impartial and courteous law enforcement with integrity and professionalism. NJSP ensures public safety and provides quality service in partnership with our communities. NJSP is comprised of four branches: Investigations, Homeland Security, Operations, and Administration.
4. The Investigations Branch prevents, disrupts, interdicts, and investigates violent and organized criminals, terrorism, corruption, and casino related crime that undermine New Jersey's public safety and security, while also providing technical, forensic, and regulatory services to support the State's law enforcement community.
5. The ROIC is housed within the Investigations Branch, serving as New Jersey's primary focal point for information sharing and intelligence production. The ROIC collects crime, threat, and disaster related information, conducts analysis, develops intelligence products, and provides timely and relevant alerts, warnings, and notifications to law enforcement, public safety and private sector entities to strengthen preparedness, prevention, enforcement, investigative, response, and resiliency efforts.
6. Much of the ROIC's efforts to collect crime information involves analyzing incidents of homicide, sexual assault, burglary, robbery, aggravated assault, theft, unlawful possession of a handgun, and other firearm related offenses.

The ROIC and NJSP Facilitate Crime Gun Tracing to Investigate Crimes

7. The ROIC facilitates the tracing of firearms recovered at crime scenes to generate investigative leads, identify criminal trafficking networks, and uncover improper firearms sales or other firearms-related offenses.
8. Tracing refers to the process of researching the movement of a firearm from the manufacturer through the distribution chain to the individual who purchased the firearm from a licensed firearms dealer. New Jersey law requires its law enforcement agencies to fully utilize federal tools to transmit and receive trace information relating to the seizure and recovery of firearms. *See* N.J. Stat. Ann. §§ 52:17B-9.18; 52:17B-9.19.
9. When law enforcement recovers a firearm at a crime scene in New Jersey, the investigating officer makes an initial submission through use of the NJTrace 2.0 system. A ROIC analyst then reviews the submission and records for accuracy and analysis. After finishing the review of the weapon and the possessor, the ROIC analyst marks the submission “Complete.” Once both the weapon button and the possessor button are marked “Complete,” the record is automatically transmitted to the ATF’s Electronic Tracing System (“eTrace”). eTrace is an internet-based system that allows participating law enforcement agencies to submit firearm trace requests to the ATF National Tracing Center (“NTC”). The ROIC usually receives the requested information within one week, but can submit expedited requests for more serious crimes.
10. A trace request is made in the first instance to a firearm’s manufacturer, which is federally obligated to serialize the firearms it produces and keep records of where each serialized firearm was distributed. This process identifies the FFL that sold or transferred the weapon to a

consumer. That FFL is federally obligated to create and retain records about the purchaser of each serialized firearm and produce that information in response to trace requests.

11. In New Jersey, law enforcement submits trace requests for all serialized firearms recovered in connection with crimes. According to ATF's data, of the total 4,619 crime firearms recovered in New Jersey and traced in 2023, tracing successfully identified a purchaser and source state for approximately 3,173 firearms. ATF's 2023 New Jersey data summary is publicly available here: <https://www.atf.gov/resource-center/firearms-trace-data-new-jersey-2023>.
12. A successful trace will show the manufacturer, distributor, the Federal Firearms Licensee ("FFL") who most recently recorded the sale or transfer of the firearm, and identify who purchased the firearm from the FFL.
13. In 2024, of the 4,229 firearms entered unto eTrace, 2,750 firearms (65%) were successfully traced to a purchaser.
14. When the eTrace request generates few evidentiary leads, it reduces the probability that law enforcement can identify the path a gun traveled before it was used in a crime.

The Final Rule Improves Crime Gun Tracing and Investigative Leads

15. Crime gun tracing only traces firearms transfers pursuant to federally regulated sales, and to successfully trace crime guns, the eTrace system relies on FFLs to keep records of firearm sales and transfers, and to respond to information requests.
16. Unlicensed dealing and private person-to-person sales allow crime guns to change hands multiple times without documentation, and these unrecorded transfers undermine the value of trace data and information available for law enforcement. For example, of the 14,080 crime guns recovered in New Jersey between 2017 and 2021 and successfully traced to a known purchaser, the purchaser and the person who used the gun in a crime were the same individual

in only 8% of instances. ATF's New Jersey Reference Tables from the National Firearms Commerce and Trafficking Assessment Volume III is publicly available here: <https://www.atf.gov/firearms/docs/report/new-jersey-state-report/download>.

17. The Final Rule will enhance eTrace's capacity to complete crime gun trace requests by enhancing the system's capacity to identify "secondary purchasers" of crime guns. This is so because federal law will require that a greater percentage of "secondary sellers" will have to obtain federal licensures and so will have to maintain records on their firearms sales, which will be accessible to law enforcement when conducting a trace on a crime gun.
18. The combination of information available through eTrace data, secondary transfer records, and background check material, will significantly assist law enforcement in conducting firearms trafficking investigations that identify and interdict the flow of illegal guns into New Jersey.
19. Because more dealers are required to register as FFLs, keep records on firearm transfers, and respond to trace requests, the Final Rule will improve the value of crime gun tracing as a tool for New Jersey law enforcement.

The ROIC and NJSP Detectives Benefit From Improved Nationwide Crime Gun Data and Information Made Available By the Final Rule

20. There is no single source of data on how guns make their way into the hands of individuals who use them to commit violent crimes. As an intelligence gathering unit, the ROIC relies on both federal and state sources to predict the flow of firearms and allocate resources.
21. When a person purchases a firearm from an FFL, the FFL relays the buyer's information to the FBI through the National Instant Criminal Background Check System ("NICS") to verify the purchaser has no disqualifiers which would prohibit them from possessing the firearm. This keeps guns out of the hands of criminals who are likely to harm others with these weapons.

22. Expanded licensing requirements will result in more background checks and better recordkeeping nationwide, which will improve the quality of national crime gun data that the ROIC uses to inform its own decision-making and information available to law enforcement.

The Final Rule Helps New Jersey Deter and Investigate Interstate Firearms Trafficking,  
Reducing Law Enforcement Costs

23. The vast majority of crime guns recovered in New Jersey are traced to out-of-state FFLs, especially those in states with weaker firearms laws. In 2023, of the crime guns recovered in New Jersey and traced to source states, almost 80% were traced to out-of-state FFLs. ATF's 2023 New Jersey data summary is publicly available here: <https://www.atf.gov/resource-center/firearms-trace-data-new-jersey-2023>.

24. Overwhelmingly these crime guns have been subject to unregulated transfers outside the recordkeeping and background check requirements. These transfers mostly occur out-of-state.

25. Prior to the Final Rule, firearms traffickers could often lawfully acquire firearms in other states while avoiding background checks and recordkeeping requirements.

26. The Intelligence & Criminal Enterprise section of the NJSP Investigations Branch is responsible for monitoring and investigating firearms trafficking into New Jersey. These types of firearms trafficking investigations are often more expensive and time-consuming in part because the prevalence of unregulated transfers occurring in other states.

27. In these cases, trace information is often unavailable or outdated, and investigating officers have to take additional steps to generate investigative leads to identify the source of a crime gun. For example, officers must establish a trafficked gun's chain of custody by conducting in person interviews, long term surveillance operations of suspects, traveling out of state to interview interstate trafficking suspects, and working with out of state law enforcement to identify and tactically plan interviews and surveillance operations on out of state suspects.

28. In addition to eTrace, the ATF also offers the National Integrated Ballistic Information Network (“NIBIN”), which provides NJSP with an automated ballistic imaging network. This tool allows investigating officers to match ballistics evidence with other cases across the nation, which can uncover previously hidden connections between violent crimes in different states and jurisdictions. These leads are especially helpful in cases where out of state off record transfers occur because it can link together otherwise unassociated crimes, which gives NJSP investigators a better chance to identify unknown shooters and the way in which a crime gun transferred among them. While this tool is a critical in solving gun crimes, it requires a lot of resources to collect the necessary data, wait on the turnaround, and then follow up on leads. For example, in New Jersey, the crime gun first goes to NJSP’s Ballistics Unit (“BU”) for analysis and NIBIN data collection. The BU normally takes 2 business days to submit the information to NIBIN. NIBIN then takes 3 business days to return network evidence. If potential nationwide leads are generated, ROIC can then communicate with the relevant local, state, or federal counterparts to try to identify the firearm’s final user, and alert the jurisdiction of potential criminal threats.
29. These tasks result in significant New Jersey law enforcement expenses.
30. NJSP expends significant resources on interstate firearms trafficking cases. The New Jersey Crime Gun Center, which supports traces submitted by local agencies, is staffed by 1 (one) Investigator 4, 2 (two) civilian part time employees (944s), 1 (one) part time Mission Support Specialist, and 2 (two) ATF Task Force Officers. The Firearms Trafficking Unit of NJSP, for example, is primarily tasked with investigating gun trafficking into and within the New Jersey.

31. NJSP estimates that firearm traceability-related issues significantly increase NJSP costs in labor alone. NJSP is one of hundreds of State, county, and local New Jersey law enforcement agencies expending resources on these crime traces.
32. Eliminating the Final Rule would revert back to the system which allowed firearms traffickers to lawfully acquire firearms in other states while avoiding background checks and recordkeeping requirements.
33. Eliminating the Final Rule would expose New Jersey to increased firearms trafficking, allow persons disqualified from possessing firearms to nonetheless obtain them by avoiding background checks, and reduce the availability of useful investigative leads.
34. I believe the Final Rule helps reduce the trafficking of firearms into New Jersey by making it harder for traffickers to lawfully source firearms from other states without encountering background checks and recordkeeping requirements.
35. I also believe the Final Rules helps reduce New Jersey's costs associated with firearms trafficking by requiring more dealers to register as FFLs and assist law enforcement in response to trace requests.

The Final Rule Will Help Promote New Jersey Public Safety

36. As discussed above, the overwhelming majority of New Jersey's recovered crime guns have been subject to unregulated transfers outside the recordkeeping and background check requirements. These transfers mostly occur out-of-state. Often times these guns are found in the hands of people with prior criminal records, domestic violence restraining orders, juveniles, or persons who could not otherwise pass a background check.
37. The high rate of out of state transfers of crime guns is especially concerning with firearms offenders. For example, the United States Sentencing Commission found that more than 68%

of firearms offenders were rearrested for a new crime during the eight-year follow-up period compared to 46.3% of non-firearms offenders. The Commission's Recidivism Among Federal Firearms Offenders Report is publicly available. *Recidivism Among Federal Firearms Offenders*, U.S. SENTENCING COMMISSION, June 2019, [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2019/20190627\\_Recidivism\\_Firearms.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2019/20190627_Recidivism_Firearms.pdf).

38. Firearms offenders recidivate at a higher rate, recidivated more quickly following release into the community, and continued to recidivate later in life than non-firearms offenders. *See id.* Firearms offenders are also more likely to be rearrested for more serious crimes, like assault and drug trafficking. *Id.*
39. NJSP oftentimes confirms that traffickers themselves are certain prohibited persons with prior criminal records who could not pass a background check.
40. ATF data shows that crime guns are rarely purchased at a retail firearm dealer just prior to their use in crime. The relevant data is publicly available. *Firearm Trafficking Channels and Methods Used*, ATF, April 2024, <https://www.atf.gov/firearms/docs/report/nfcta-volume-iii-part-iii/download>. Instead, criminals typically favor guns obtained from private sales or straw purchasers. *Id.* at 2.
41. A large majority of firearms in the secondary market were diverted via transfers after a retail sale. *Id.* at 6.
42. The Final Rule's implementation of more background checks and recordkeeping helps targets straw purchasers, preventing a detrimental trafficking channel in New Jersey from putting guns into the hands of individuals who use them to commit violent crimes.

43. Lack of trace records undermines public safety, and is associated with a greater rate of unsolved crime. As a result, New Jerseyans face greater barriers to securing justice when investigating crime guns that originate out of state. The vast majority of New Jersey's crime guns originate from out of state.
44. The lack of records on private sales is resulting in unsolved crimes that allow criminals who perpetrate firearm crimes to avoid apprehension and prosecution, and commit further offenses. The new Final Rule's record keeping will make it easier for law enforcement officers in the future to trace crime guns to their source when they are used in crime, thereby protecting the public.

#### Conclusion

45. As described above and based on my experience and on my review of information and records gathered by members of my staff, I believe the Final Rule will help NJSP and New Jersey more broadly by: (1) improving crime gun tracing, which is a vital law enforcement tool; (2) deterring interstate firearms trafficking and reducing costs associated with investigating firearms trafficking; and (3) promoting public safety in New Jersey.
46. The Final Rule reduces costs that NJSP has had to expend by expanding the definition of dealers who must obtain FFLs to deal firearms, and thus be required to maintain transfer records and run background checks.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 15<sup>th</sup> day of January, 2025, in Trenton, NJ.

A handwritten signature in blue ink, appearing to read "Patrick J. Callahan", written over a horizontal line.

Patrick J. Callahan, Colonel/Superintendent

New Jersey State Police

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Defendants.

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Judge Matthew J. Kacsmaryk

**DECLARATION OF JAMES COPE**

I, James Cope, pursuant to 28 U.S.C. § 1746, hereby declare that the following is true and correct:

1. I am the Chief Special Agent of the Arizona Attorney General's Office Special Investigations Section (SIS), a position I have held since 2023. As Chief Special Agent, I supervise 84 special agents and I oversee all investigations conducted by the Criminal Division of the Arizona Attorney General's Office. Prior to becoming the Chief Special Agent, I was a Supervising Special Agent in the Major Fraud Section of the Arizona Attorney General's Office. Prior to joining the Arizona Attorney General's Office, I was an officer with the Phoenix Police Department for over 30 years. For the last 22 years of my career at the Phoenix Police Department, I was assigned to the Phoenix Police Department Drug Enforcement Bureau where I supervised undercover street narcotic buy squads, the juvenile drug enforcement squad, intelligence unit, the conspiracy unit and the commercial narcotic interdiction unit. I have conducted, assisted and supervised major felony investigations including homicides, organized crime, public corruption, and drug trafficking.

2. I submit this Declaration in support of the Definition of “Engaged in the Business” as a Dealer in Firearms (Final Rule), 89 Fed. Reg. 28,968, issued by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). I am over the age of eighteen. As the Chief Special Agent, I am competent to testify as to the matters herein, and have compiled the information in the statements set forth below through personal knowledge and on the basis of documents that have been provided to and/or reviewed by me. I have also familiarized myself with the Final Rule in order to understand its immediate impact on the Arizona Attorney General’s Office Special Investigations Section.

The Arizona Attorney General’s Office Special Investigations Section

3. The Arizona Attorney General’s Office Special Investigations Section protects Arizona’s residents by preventing and investigating crime.
4. SIS is composed of 84 special agents and handles all investigations conducted by the Criminal Division of the Arizona Attorney General’s Office. SIS provides expertise in specialized areas of law under the Arizona Attorney General’s statutory criminal jurisdiction, including vulnerable adult abuse, consumer fraud, drug trafficking, human smuggling, environmental crimes, medical fraud, money laundering, white collar crimes, political corruption, youth tobacco enforcement, antitrust, high technology crimes and foreign prosecution of defendants who have fled to Mexico. SIS agents also participate on the state’s joint terrorism task force and the internet crimes against children task force.

Law Enforcement Officers in Arizona Rely on Crime Gun Tracing as an Investigative Tool

5. SIS, along with other Arizona law enforcement agencies, submit firearms recovered at crime scenes and seized during the execution of search warrants to ATF for tracing.

6. Tracing refers to the process of researching the movement of a firearm from the manufacturer through the distribution chain to the individual(s) who purchased the firearm from a licensed firearms dealer.
7. When SIS recovers a firearm in Arizona in any kind of investigation, an agent submits a trace request using ATF's Electronic Tracing System (eTrace). eTrace is an internet-based system that allows participating law enforcement agencies to submit firearm trace requests to the ATF National Tracing Center (NTC).
8. A trace request is made in the first instance to a firearm's manufacturer, which is federally obligated to serialize the firearms it produces and keep records of where each serialized firearm was distributed. This process identifies the Federal Firearms Licensee ("FFL") that sold or transferred the weapon to a consumer. That FFL is federally obligated to create and retain records about the purchaser of each serialized firearm and produce that information in response to trace requests.
9. In Arizona, law enforcement submits trace requests for most serialized firearms recovered in connection with crimes. According to ATF's data, of the total 13,927 firearms recovered in Arizona and traced in 2023, tracing successfully identified a purchaser and state where the dealer was located for approximately 11,569 firearms. A true and correct copy of ATF's 2023 Arizona data summary is attached as Exhibit A.
10. A successful trace will show the manufacturer, distributor, the FFL who most recently recorded the sale or transfer of the firearm, and identify who purchased the firearm from the FFL.
11. When an eTrace request generates incomplete information, it reduces the probability that law enforcement can identify the path a gun traveled before it was used in a crime.

The Final Rule Improves Crime Gun Tracing

12. To successfully trace crime guns, the eTrace system relies on FFLs to keep records of firearm sales and transfers, and to respond to information requests.
13. Arizona does not regulate firearms dealers under state law. As a result, federal law exclusively determines whether a person must obtain a Federal Firearms License to transfer firearms.
14. Prior to the Bipartisan Safer Communities Act (BSCA) and the Final Rule, gaps in federal licensing requirements allowed some firearms dealers located in Arizona to sell firearms lawfully without obtaining without a license.
15. Unlicensed dealing and private person-to-person sales in Arizona allow crime guns to change hands multiple times without documentation. For example, of the 39,771 crime guns recovered in Arizona between 2017 and 2021 and successfully traced to a known purchaser, the purchaser and the person who used the gun in a crime were the same individual in only 14% of instances. A true and correct copy of ATF's Arizona Reference Tables from the National Firearms Commerce and Trafficking Assessment Volume II is attached as Exhibit B.
16. When SIS recovers a serialized firearm, it may be able to be traced to the initial FFL sale, but that information is of limited value when the firearm is subsequently resold or transferred at a gun show in an unrecorded transfer.
17. Once licensed, FFLs must keep records associated with the acquisition and disposition of firearms and respond to trace requests from ATF in connection with criminal investigations. FFLs are also obligated to retain these records, and if the dealer stops operating, these records must be transferred to ATF.
18. SIS benefits from expanded licensing requirements because recordkeeping by newly licensed Arizona firearms dealers will make it easier to investigate crimes involving firearms.

The Final Rule Promotes Public Safety in Arizona by Expanding Background Checks

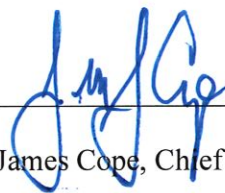
19. In addition to creating and maintaining records documenting the sale of firearms, FFLs are responsible for verifying a purchaser's identity and submitting a purchaser's information to the National Instant Criminal Background Check System (NICS) to run background checks.
20. New licensees would be required to use NICS to verify the criminal history of the purchaser.
21. By requiring more Arizona dealers to facilitate background checks prior to selling firearms, the Final Rule helps ensure fewer prohibited persons in Arizona obtain access to firearms, which promotes public safety and thwarts crime in Arizona.
22. ATF data shows that crime guns are rarely purchased at a retail firearm dealer just prior to their use in crime, likely due to background checks and record keeping requirements. *See* National Firearms Commerce and Trafficking Assessment Volume III, Part III at 1. Instead, criminals typically favor guns obtained from unregulated private sales or straw purchasers. *Id.* at 2.
23. A majority of firearms in the secondary market were diverted via transfers after a retail sale. *Id.* at 6.
24. As discussed above, the overwhelming majority of Arizona's recovered crime guns have been subject to unregulated transfers outside the recordkeeping and background check requirements. These transfers mostly occur in Arizona. For instance, of the 39,771 crime guns recovered in Arizona between 2017 and 2021 and traced to a known purchaser, 32,771 (82%) were initially purchased in Arizona. Ex. B.
25. The Final Rule's implementation of more background checks and recordkeeping targets straw purchasers, preventing a detrimental trafficking channel in Arizona from putting guns into the hands of criminals.

Clarifying Licensing Requirements Reduces Noncompliance

26. The Final Rule also helps Arizona residents understand when they are required to obtain a Federal Firearms License by listing activities that rise to the level of being “engaged in the business” of dealing firearms.
27. The Final Rule identifies activities that are presumed to qualify as being engaged in the business of dealing firearms. The Final Rule also provides examples where a person is not presumed to be engaged in the business of dealing firearms, including when a person transfers a firearm as bona fide gifts and when a person transfers firearms occasionally to obtain more valuable, desirable, or useful firearms for their personal collection or hobby.
28. By clarifying the types of activities that require a Federal Firearms License, the Final Rule makes it easier for law abiding gun owners in Arizona to understand the law and satisfy their obligations.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 15th day of January, 2025, in Phoenix, Arizona.



James Cope, Chief Special Agent

Arizona Attorney General's Office  
Special Investigations Section

# EXHIBIT A

# Firearms Trace Data: Arizona - 2023

## Data Source: Firearms Tracing System

*January 1, 2023 – December 31, 2023*

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1. ATF Firearms Trace Data Disclaimer
2. Table: Total Number of Firearms Recovered and Traced in Arizona in Calendar Year 2023
3. Table: Firearm Types with an Arizona Recovery
4. Table: Top Calibers Reported on Firearm Traces with an Arizona Recovery
5. Table: Top Categories Reported on Firearm Traces with an Arizona Recovery
6. Table: Top 15 Source States for Firearms with an Arizona Recovery
7. Table: Time-To-Crime Rates for Firearms with an Arizona Recovery
8. Table: Age of Possessors for Firearms with an Arizona Recovery
9. Table: Top Recovery Cities for Firearms with an Arizona Recovery
10. Analytical Criteria Used to Compile the Enclosed Statistics

### ATF Firearms Trace Data Disclaimer

Firearm traces are designed to assist law enforcement authorities in conducting investigations by tracking the sale and possession of specific firearms. Law enforcement agencies may request firearms traces for any investigative reason, and those reasons are not necessarily reported to the federal government. Not all firearms used in crime are traced and not all firearms traced are used in crime.

Firearms selected for tracing are not chosen for purposes of determining which types, makes or models of firearms are used for illicit purposes. The firearms selected do not constitute a random sample and should not be considered representative of the larger universe of all firearms used by criminals, or any subset of that universe. Firearms are normally traced to the first retail seller, and sources reported for firearms traced do not necessarily represent the sources or methods by which firearms in general are acquired for use in crime.

### Total Number of Firearms Recovered and Traced in Arizona in Calendar Year 2023

13,927

### Firearm Types with an Arizona Recovery

JANUARY 1, 2023 – DECEMBER 31, 2023

<b>Pistols</b>	10,300
<b>Rifles</b>	1,729
<b>Revolvers</b>	708
<b>Shotguns</b>	688
<b>Machineguns</b>	179
<b>Machinegun Conversion Devices</b>	159
<b>Other*</b>	164

\*Other includes Receivers/Frames, Derringers, Unknown Types, Silencers, Combinations, a Destructive Device, and a Flare Gun.

## Top Calibers Reported on Firearm Traces with an Arizona Recovery

JANUARY 1, 2023 – DECEMBER 31, 2023

<b>9mm</b>	6,199
<b>.40 Cal</b>	1,172
<b>.22 Cal</b>	969
<b>.45 Cal</b>	881
<b>.380 Cal</b>	730
<b>12GA</b>	577
<b>7.62mm</b>	565
<b>5.56mm</b>	463
<b>.38 Cal</b>	297
<b>MULTI</b>	233

**NOTE:** There were 1,380 additional traces that were associated with other calibers. There were 461 traces with an unknown caliber.

## Top Categories Reported on Firearm Traces with an Arizona Recovery

JANUARY 1, 2023 – DECEMBER 31, 2023

<b>Firearm Under Investigation</b>	3,448
<b>Possession of Weapon</b>	1,864
<b>Weapon Offense</b>	1,813
<b>Dangerous Drugs</b>	1,172
<b>Aggravated Assault</b>	900
<b>Found Firearm</b>	844
<b>Health - Safety</b>	583
<b>Weapons Trafficking</b>	384
<b>Homicide</b>	374
<b>Family Offense</b>	372

**NOTE:** There were 2,173 additional traces that were associated with other categories.

## Top 15 Source States for Firearms with an Arizona Recovery

JANUARY 1, 2023 – DECEMBER 31, 2023

<b>Arizona</b>	9,664
<b>California</b>	237
<b>Texas</b>	213
<b>New Mexico</b>	129
<b>Washington</b>	97
<b>Colorado</b>	90
<b>Florida</b>	89
<b>Nevada</b>	86
<b>Georgia</b>	53
<b>Indiana</b>	48
<b>Missouri</b>	48
<b>Oregon</b>	46
<b>Utah</b>	45
<b>Michigan</b>	43
<b>Illinois</b>	39

**NOTE:** An additional 34 states and Puerto Rico accounted for 642 other traces. The source state was identified in 11,569 total traces.

## Time-To-Crime Rates for Firearms with an Arizona Recovery

JANUARY 1, 2023 – DECEMBER 31, 2023

Under 3 Months	1,325
3 Months to Under 7 Months	949
7 Months to Under 1 Year	933
1 Year to Under 2 Years	1,665
2 Years to Under 3 Years	1,592
3 Years and Over	5,089

1/1/2023-12/31/2023 Arizona Average Time-to-Crime: **5.64 Years**

1/1/2023-12/31/2023 National Average Time-to-Crime: **6.76 Years**

## Age of Possessors for Firearms with an Arizona Recovery

JANUARY 1, 2023 – DECEMBER 31, 2023

17 and Under	320
18 to 21	1,098
22 to 24	730
25 to 30	1,309
31 to 40	1,851
41 to 50	1,220
Over 50	917

1/1/2023-12/31/2023 Arizona Average Age of Possessor: **35 Years**

1/1/2023-12/31/2023 National Average Age of Possessor: **35 Years**

## Top Recovery Cities for Firearms with an Arizona Recovery

JANUARY 1, 2023 – DECEMBER 31, 2023

Phoenix	4,640
Tucson	2,250
Glendale	1,012
Mesa	783
Tempe	767
Scottsdale	461
Yuma	282
Chandler	245
Peoria	235
Goodyear	220

**NOTE:** There were 164 additional municipalities that accounted for 3,027 other traces. The recovery city could not be determined for five traces.

## Analytical Criteria Used to Compile the Enclosed Statistics

### Total Number of Firearms Recovered and Traced

- Includes traces with a recovery state of Arizona. Traces in which the recovery state was not provided were included when the requesting agency state was equal to Arizona.
- Includes Firearms Recovered and Traced between 1/1/2023 – 12/31/2023 or, if the recovery date was blank, firearms with trace entry dates between 1/1/2023 – 12/31/2023.
- Duplicate traces, Firearms Not Recovered, Gun Buyback and Firearms Turned In are not included in this figure.
- Data was extracted from the Firearms Tracing System (FTS) on April 10, 2024.
- All traces may not have been submitted or completed at the time of this study.

### Firearm Types and Calibers with an Arizona Recovery

- Includes same criteria as Total Number of Firearms Recovered and Traced.

### Top Categories Reported on Firearm Traces with an Arizona Recovery

- Includes same criteria as Total Number of Firearms Recovered and Traced.

### Top Source States for Firearms with an Arizona Recovery

- Includes same criteria as Total Number of Firearms Recovered and Traced.
- Traces must identify a purchaser and the state in which the final dealer is located.

### Time-to-Crime Rates for Firearms with an Arizona Recovery

- Includes same criteria as Total Number of Firearms Recovered and Traced.
- Traces must identify a purchaser.
- Time-to-Crime was calculated for those traces in which the purchase date could be subtracted from the recovery date.

### Age of Possessors for Firearms with an Arizona Recovery

- Includes same criteria as Total Number of Firearms Recovered and Traced.
- Includes traces that provide a possessor and the possessor's date of birth.
- Possessor's age is calculated by subtracting the possessor's date of birth from the recovery date.

**Top Recovery Cities for Firearms with an Arizona Recovery**

- Includes same criteria as Total Number of Firearms Recovered and Traced.
- Includes traces with a recovery city or, if the recovery city was not provided, traces requested by agencies with jurisdiction only within that city.

[View All 2023 Firearms Trace Data](#)

*Last Reviewed December 9, 2024*

# EXHIBIT B

## ARIZONA

### FFL BURGLARIES, ROBBERIES, & LARCENIES, 2017 - 2021

Total Theft Incidents

124

Total # of Firearms Involved

370

Average # of Firearms Involved per Theft Incident

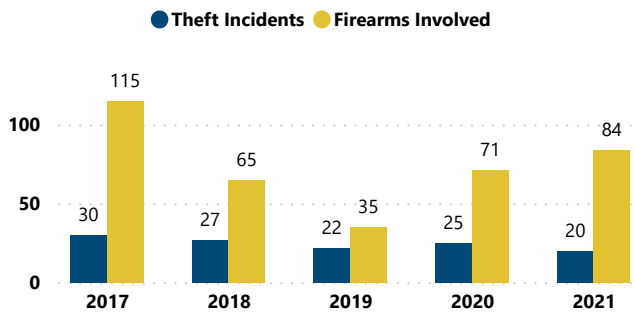
3

Median # of Firearms Involved per Theft Incident

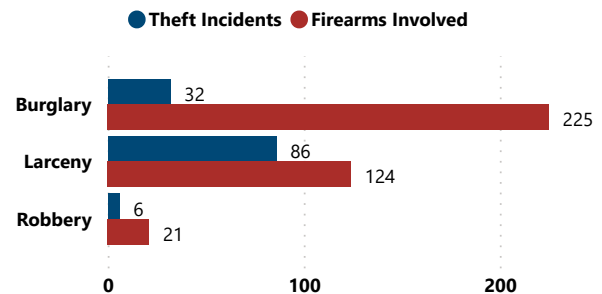
1



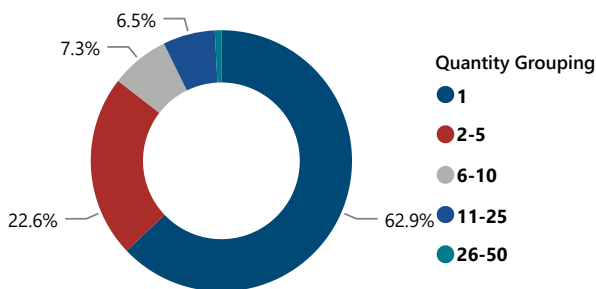
Total # of Incidents and Firearms Involved by Theft Year



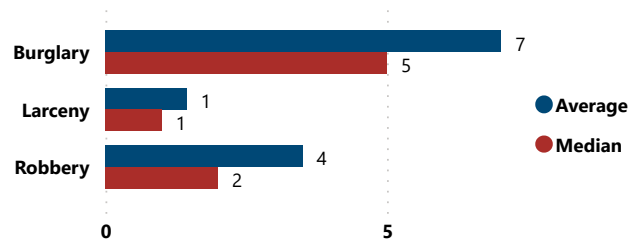
Total # of Incidents and Firearms Involved by Theft Type



% of Thefts by Number of Firearms Stolen



Average and Median # of Firearms Involved per Theft Incident by Theft Type



Thefts and Firearms Stolen by FFL Type

FFL Type	Total Incidents	% Total Incidents	Total # Firearms Involved	% Total Firearms Involved
01	79	63.7%	251	67.8%
02	25	20.2%	70	18.9%
03	1	0.8%	1	0.3%
07	13	10.5%	41	11.1%
08	2	1.6%	2	0.5%
09	1	0.8%	2	0.5%
10	3	2.4%	3	0.8%
<b>Total</b>	<b>124</b>	<b>100.0%</b>	<b>370</b>	<b>100.0%</b>

Firearms Stolen by Weapon Type

Weapon Type	Total # Firearms Involved	% of Total
PISTOL	206	55.7%
REVOLVER	68	18.4%
RIFLE	58	15.7%
SHOTGUN	24	6.5%
RECEIVER/FRAME	6	1.6%
DERRINGER	5	1.4%
SILENCER	2	0.5%
MACHINE GUN	1	0.3%
<b>Total</b>	<b>370</b>	<b>100.0%</b>

## RECOVERED FIREARMS ASSOCIATED WITH ALL FFL BURGLARIES, ROBBERIES, & LARCENIES WITHIN STATE, 2017 - 2021

Total Theft Incidents w/ at  
Least 1 Recovered Firearm

130

Total # of Recovered  
Firearms

237

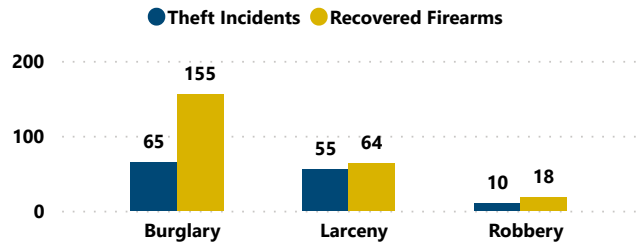
Average # of Firearms Recovered  
per Theft Incident w/ at Least 1  
Recovered Firearm

2

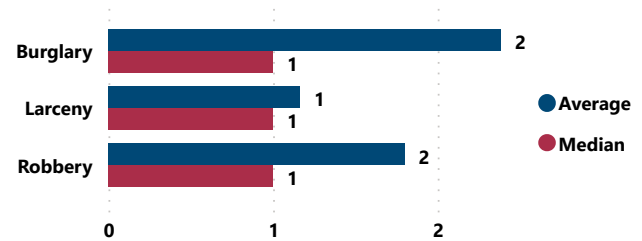
Median # of Firearms Recovered per  
Theft Incident w/ at Least 1  
Recovered Firearm

1

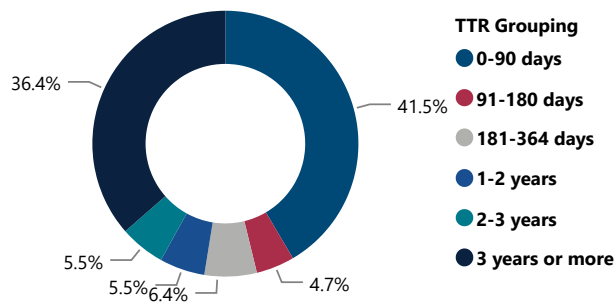
**Total # of Theft Incidents Involving at Least 1 Recovered Firearm by Theft Type**



**Average and Median # of Firearms Recovered per Theft Incident Involving at Least 1 Recovered Firearm by Theft Type**



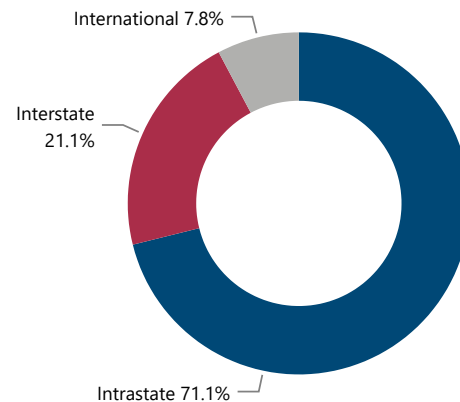
**% Total of Recovered Firearms by Time-to-Recovery Grouping**



**Recovered Firearms by Possessor Age**

Possessor Age Grouping	# of Recovered Firearms	% of Total Recovered Firearms w/ Possessor Age Determined
17 and below	9	5.36%
18-24	25	14.88%
25-34	75	44.64%
35 and older	59	35.12%
<b>Total</b>	<b>168</b>	<b>100.00%</b>

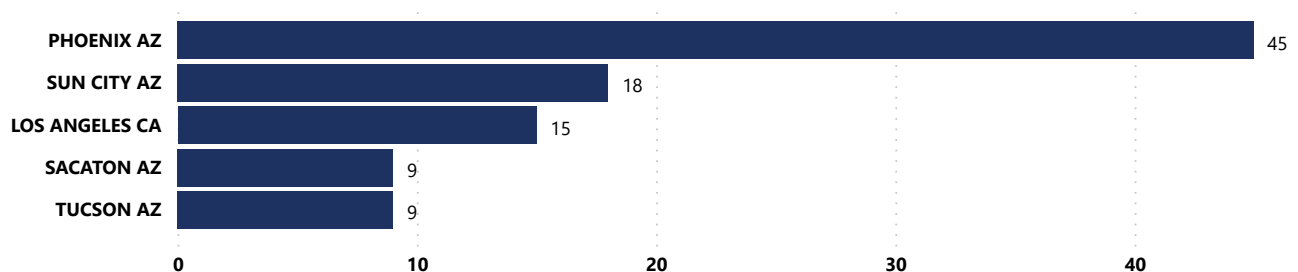
**% Total of Recovered Firearms by Theft-to-Recovery Location**



**Distance Between FFL Theft Location and Recovery Location**

Distance (Miles) from FFL Theft to Recovery Location	# of Recovered Firearms	% of Total Recovered Firearms w/ Distance Measured
(A) 0-10	60	50.00%
(B) 11-25	25	20.83%
(C) 26-50	6	5.00%
(D) 51-100	6	5.00%
(E) 101-200	2	1.67%
(F) 201-300	7	5.83%
(G) More than 300	14	11.67%
<b>Total</b>	<b>120</b>	<b>100.00%</b>

**Top Recovery Cities Associated with Theft State**



## CRIME GUNS RECOVERED AND TRACED, 2017 - 2021

Traced Crime Guns

# 49,292

Traced Crime Guns to a Known Purchaser

# 39,771

Median TTC (Years)

# 2.1

Median Age of Possessor

# 31

### Top Recovery Cities

Recovery City	# of Recovered Crime Guns
PHOENIX	13,294
TUCSON	7,563
GLENDALE	2,821
TEMPE	2,118
SCOTTSDALE	1,367
<b>Total</b>	<b>27,163</b>

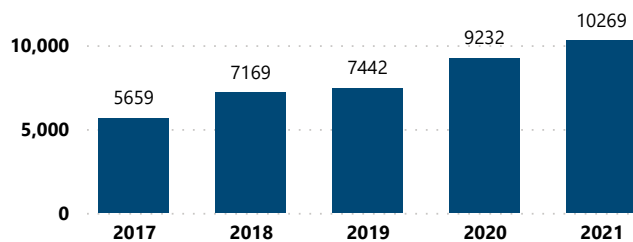
### Top Source States

Source State	# of Recovered Crime Guns
AZ	32,771
CA	963
TX	653
NM	398
CO	369
<b>Total</b>	<b>35,154</b>

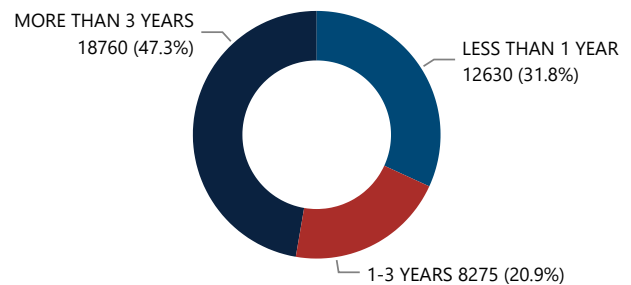
### Top Source Cities

Source City	Source State	# of Recovered Crime Guns
PHOENIX	AZ	8,389
TUCSON	AZ	6,159
GLENDALE	AZ	3,855
MESA	AZ	2,449
TEMPE	AZ	1,658
<b>Total</b>		<b>22,510</b>

### Crime Guns Traced to a Known Purchaser by Year



### Crime Guns by TTC Grouping



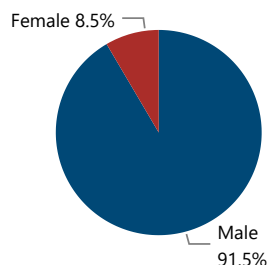
### Crime Guns by Possessor Age

Possessor Age Group	# of Recovered Firearms	% of Total Recovered Firearms w/ Possessor Age Determined
17 and below	844	2.6%
18-21	3,630	11.0%
22-24	3,964	12.0%
25-34	10,291	31.3%
35-44	6,398	19.4%
45-54	3,422	10.4%
55-64	2,678	8.1%
65 and Over	1,698	5.2%
<b>Total</b>	<b>32,925</b>	<b>100.0%</b>

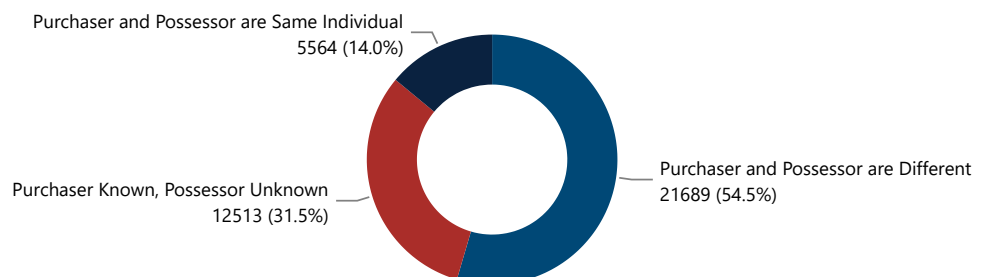
### Crime Guns by FFL-to-Recovery Location

Distance (Miles) from FFL to Recovery Location	# of Recovered Firearms	% of Total Recovered Firearms w/ Distance Measured
0 - 10	14,737	42.7%
11 - 25	7,918	22.9%
26 - 50	2,090	6.1%
51 - 100	1,759	5.1%
101 - 200	2,127	6.2%
201 - 300	505	1.5%
More than 300	5,403	15.6%
<b>Total</b>	<b>34,539</b>	<b>100.0%</b>

### Crime Guns by Possessor Gender



### Crime Guns by Purchaser/Possessor Grouping when Purchaser is Known



## CRIME GUNS SOURCED FROM THIS STATE, 2017 - 2021

Traced Crime Guns

# 65,802

Traced Crime Guns to a Known Purchaser

# 60,952

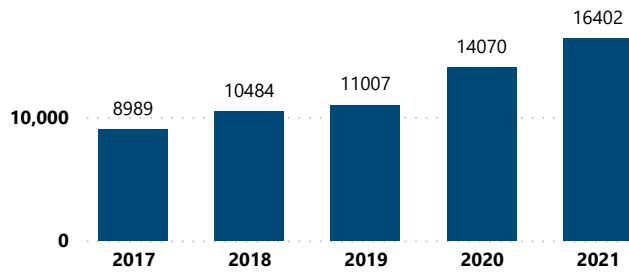
Median TTC (Years)

# 2.4

Median Age of Purchaser

# 32

Crime Guns Traced to a Known Purchaser by Year



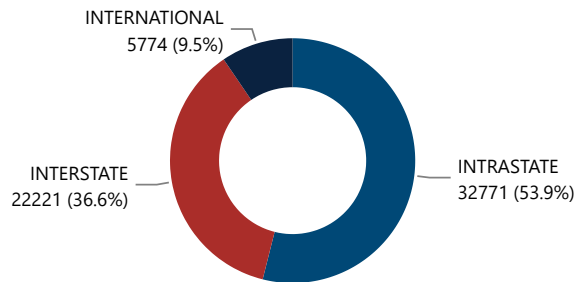
Top Recovery States

Recovery State	Recovered Crime Guns
AZ	32,771
CA	15,059
SO	2,267
NV	1,118
BJ	799
<b>Total</b>	<b>52,014</b>

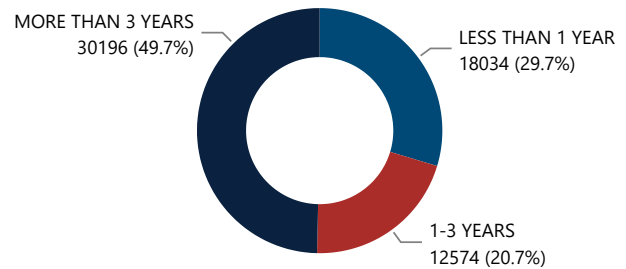
Top Recovery Cities

Recovery City/State	Recovered Crime Guns
PHOENIX, AZ	11,416
TUCSON, AZ	6,159
LOS ANGELES, CA	2,992
GLENDALE, AZ	2,459
TEMPE, AZ	1,712
<b>Total</b>	<b>24,738</b>

Crime Guns by Source-to-Recovery Location



Crime Guns by TTC Grouping



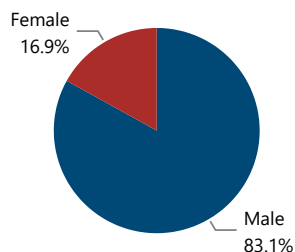
Crime Guns by Purchaser Age

Purchaser Age Group	# of Recovered Firearms	% of Total Recovered Firearms w/ Purchaser Age Determined
18-21	3,288	5.6%
22-24	9,844	16.8%
25-34	19,242	32.9%
35-44	10,535	18.0%
45-54	7,224	12.4%
55-64	4,977	8.5%
65 and Over	3,367	5.8%
<b>Total</b>	<b>58,477</b>	<b>100.0%</b>

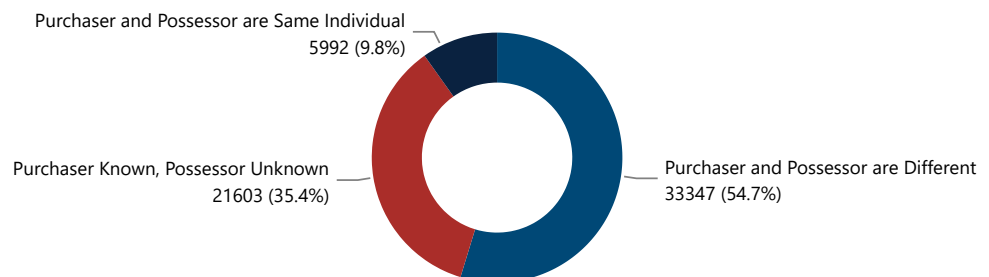
Crime Guns by Purchaser-to-FFL Location

Distance (Miles) from Purchaser's Known Residence to FFL Location	# of Recovered Firearms	% of Total Recovered Firearms w/ Distance Measured
0 - 10	36,323	62.5%
11 - 25	13,189	22.7%
26 - 50	3,538	6.1%
51 - 100	2,321	4.0%
101 - 200	2,067	3.6%
201 - 300	328	0.6%
More than 300	368	0.6%
<b>Total</b>	<b>58,134</b>	<b>100.0%</b>

Crime Guns by Purchaser Gender



Crime Guns by Purchaser/Possessor Grouping when Purchaser is Known



## RECOVERED CRIME GUN CHARACTERISTICS, 2017 - 2021

Most Frequently Traced  
Crime Gun Type

PISTOL

Most Frequently Traced  
Crime Gun Caliber

9

Most Frequently Traced Crime Gun  
Make-Type-Caliber

GLC-P-9

Suspected PMFs  
Recovered and Traced

844

### Most Common Types of Crime Guns Recovered and Traced

Weapon Description	2017	% Change 2017-2018	2018	% Change 2018-2019	2019	% Change 2019-2020	2020	% Change 2020-2021	2021	% Change 2017-2021	Total
PISTOL	4,299	33.3 %	5,732	5.9 %	6,068	36.2 %	8,264	10.1 %	9,099	111.7 %	33,462
RIFLE	1,334	15.0 %	1,534	-7.2 %	1,423	5.6 %	1,503	-5.7 %	1,418	6.3 %	7,212
REVOLVER	845	12.3 %	949	-14.8 %	809	-7.3 %	750	-11.7 %	662	-21.7 %	4,015
SHOTGUN	620	-8.5 %	567	9.3 %	620	1.3 %	628	-1.3 %	620	0.0 %	3,055
<b>Total</b>	<b>7,098</b>	<b>23.7 %</b>	<b>8,782</b>	<b>1.6 %</b>	<b>8,920</b>	<b>24.9 %</b>	<b>11,145</b>	<b>5.9 %</b>	<b>11,799</b>	<b>66.2 %</b>	<b>47,744</b>

### Top Crime Gun Calibers

Caliber	# of Recovered Crime Guns
9	17,160
40	5,172
22	4,617
45	3,992
380	3,221
12	2,473
38	1,641
ZZ	1,553
556	1,416
762	1,403
<b>Total</b>	<b>42,648</b>

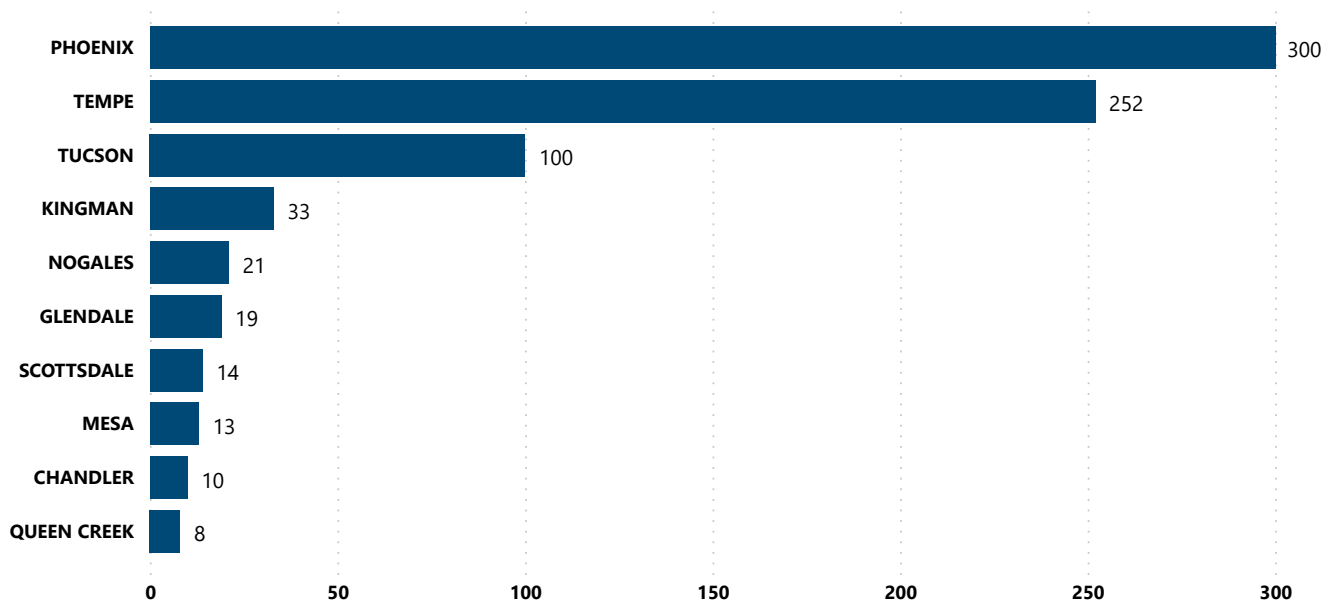
### Top Crime Gun Type-Caliber Combinations

Weapon Type-Caliber	# of Recovered Crime Guns
P-9	16,884
P-40	5,121
P-45	3,771
P-380	3,213
S-12	2,467
R-22	1,836
P-22	1,830
PR-38	1,420
R-556	1,170
R-762	1,016
<b>Total</b>	<b>38,728</b>

### Top Crime Gun Make-Type-Caliber Combinations

Make-Weapon Type-Caliber	# of Recovered Crime Guns
GLC-P-9	3,712
TAS-P-9	2,452
SW-P-9	2,232
GLC-P-40	1,862
SR-P-9	1,607
SW-P-40	1,272
IMC-P-9	1,071
SIG-P-9	811
SR-P-380	747
GLC-P-45	598
<b>Total</b>	<b>16,364</b>

### Top Recovery Cities for Suspected PMF Traces



## BALLISTIC EVIDENCE IN NIBIN, 2017 - 2021

Total Casings and Test Fires

68,862

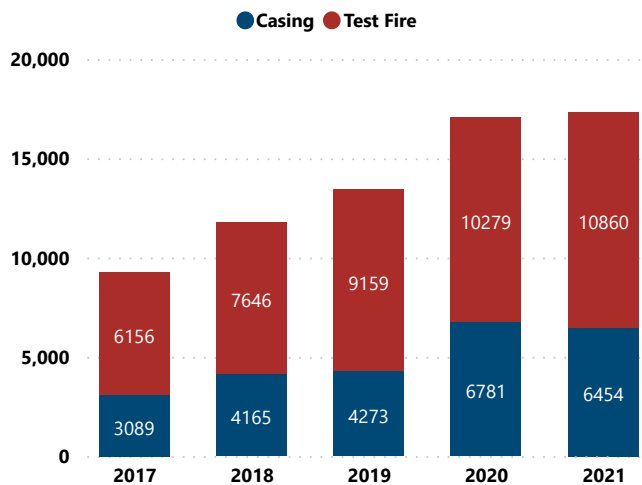
Casings and Test Fires with  
NIBIN Leads

12,605

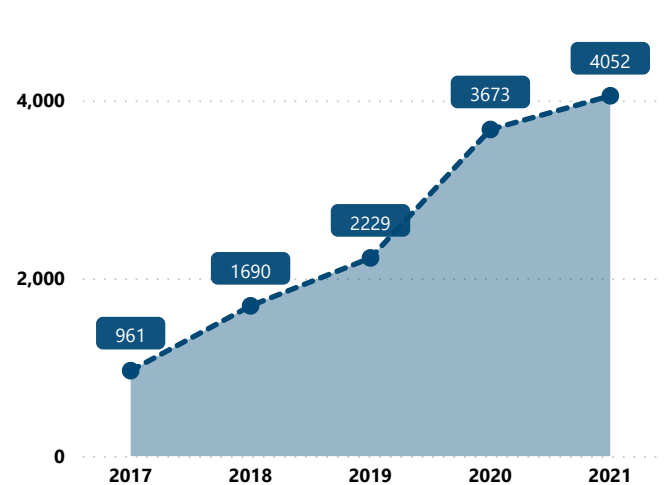
Lead Rate

18.3%

Total Casings and Test Fires by Year



Total Casings and Test Fires with Leads by Year



## RECOVERED PISTOLS IN NIBIN, 2017 - 2021

Total Pistols

31,138

Pistols with Leads

3,254

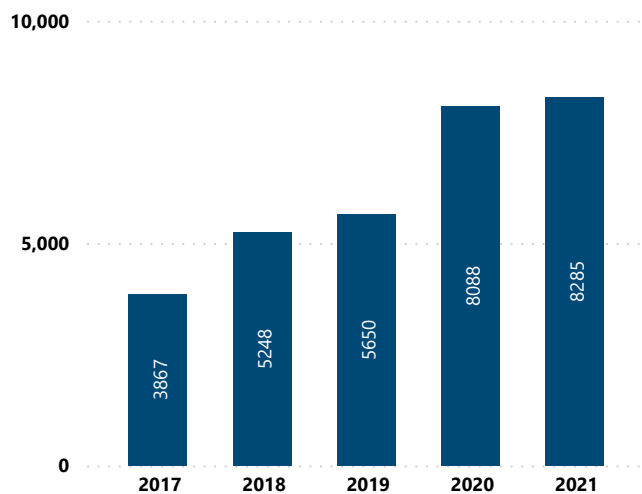
Lead Rate

10.5%

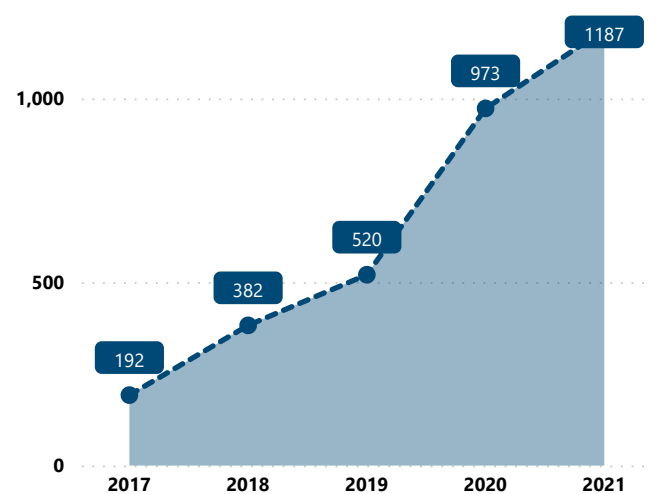
Median TTFS (Years)

1.3

Total Pistols by Year



Total Pistols with Leads by Year





THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

THE STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL



ANDREA JOY CAMPBELL  
ATTORNEY GENERAL

LETITIA JAMES  
ATTORNEY GENERAL

December 7, 2023

**Via Federal eRulemaking Portal**

The Honorable Merrick B. Garland  
Attorney General of the United States  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

The Honorable Steven M. Dettelbach  
Director  
Bureau of Alcohol, Tobacco, Firearms, and Explosives  
99 New York Avenue, NE  
Washington, DC 20226

RE: Definition of “Engaged in the Business” as a Dealer in Firearms, Docket No. ATF 2022R-17, AG Order No. 5781-2023, RIN 1140-AA58, 88 Fed. Reg. 61993 (September 8, 2023)

Dear Attorney General Garland and Director Dettelbach,

The undersigned State Attorneys General of New York, Massachusetts, Arizona, California, Colorado, Connecticut, Delaware, the District of Columbia, Hawai‘i, Illinois, Maine, Maryland, Michigan, Minnesota, Nevada, New Jersey, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington (“the States”) write in support of the rule proposed by the U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) titled “Definition of Engaged in the Business as a Dealer in Firearms,” 88 Fed. Reg. 61993 (Sept. 8, 2023) (“Proposed Rule”). The Proposed Rule strengthens ATF’s ability to satisfy its statutory mandate under the Bipartisan Safer Communities Act (“BSCA”) and to enhance public safety by providing clear standards, ensuring that more gun sales are subject to background checks, and reducing the opportunities for gun trafficking. The

States write to express their strong support of the Proposed Rule and offer suggestions to further enhance its protections against gun violence and the unlawful transfer of guns.

## I. Need for the Proposed Rule

Gun violence has an increasing and enormously damaging impact on communities across the United States every year, with CDC data showing that more people died from gun-related injuries in 2021 than in any prior year.<sup>1</sup> Guns are now the leading cause of death among children aged 1-19.<sup>2</sup>

The guns that are used in shootings are often unlawfully obtained through a variety of methods, including straw purchases, private vendors at gun shows, and illicit online marketplaces. Many straw purchasers—that is, people who purchase guns for others, while misrepresenting that they are the actual purchaser—do so repeatedly and for profit. These practices endanger people in our states by making it easier for people who cannot lawfully purchase firearms to obtain them illegally.<sup>3</sup> Between 2017 and 2021, the number of traced crime guns (that is, guns recovered in connection with criminal investigations that are traced using the ATF’s crime gun tracing systems) purchased at gun shows grew by 19%.<sup>4</sup> Private vendors at gun shows in states that do not require background checks at gun shows are a source of trafficked guns into other states.<sup>5</sup> More recently, changing technology has allowed prohibited persons to obtain guns in new and alarming ways, including sites that create online marketplaces for guns.<sup>6</sup>

The transfer of firearms by some FFLs who are going out of business is also a significant source of trafficked guns.<sup>7</sup> The current lack of oversight as closing FFLs liquidate their inventories leaves a sizeable opportunity for improper transfer of guns. Law enforcement agencies have noted an increase in crime guns traced to FFLs who shutter their businesses and liquidate their inventories,

<sup>1</sup> John Gramlich, *What the data says about gun deaths in the U.S.*, Pew Research Center (April 26, 2023), <https://www.pewresearch.org/short-reads/2023/04/26/what-the-data-says-about-gun-deaths-in-the-u-s/>.

<sup>2</sup> KFF, *Firearms are the Leading Cause of Death for Children in the United States But Rank No Higher Than Fifth in Other Industrialized Nations* (last accessed Nov. 9, 2023), <https://www.kff.org/health-reform/press-release/firearms-are-the-leading-cause-of-death-for-children-in-the-united-states-but-rank-no-higher-than-fifth-in-other-industrialized-nations/>; Denise Mann, *With Cases Soaring, Guns Are Now Leading Cause of Death for U.S. Kids*, U.S. NEWS & WORLD REPORT (Aug. 21, 2023), <https://www.usnews.com/news/health-news/articles/2023-08-21/with-cases-soaring-guns-are-now-leading-cause-of-death-for-u-s-kids>.

<sup>3</sup> See, e.g., Press Release, U.S. Attorney’s Office—Eastern District of New York, *Georgia Men Charged with Trafficking Dozens of Handguns Into New York* (Sep. 28, 2022), <https://www.justice.gov/usao-edny/pr/georgia-men-charged-trafficking-dozens-handguns-new-york>.

<sup>4</sup> *Here’s where guns used in crimes are bought*, USAFacts (Apr. 6, 2023), <https://usafacts.org/articles/heres-where-guns-used-in-crimes-are-bought/>.

<sup>5</sup> See, e.g. Liz Kellar, ‘Private vendor’ charged with illegally selling hundreds of guns in Knoxville to New York Gun Traffickers, KNOXVILLE NEWS SENTINEL, July 26, 2022, <https://www.knoxnews.com/story/news/crime/2022/07/26/knoxville-gun-show-vendor-sold-weapons-new-york-traffickers/10154768002/>.

<sup>6</sup> 88 Fed. Reg. 61997; see also Richard A. Oppel Jr. & Adeel Hassan, *How Online Gun Sales Can Exploit a Major Loophole in Background Checks*, N.Y. TIMES, Aug. 13, 2019, <https://www.nytimes.com/2019/08/13/us/guns-background-checks.html>.

<sup>7</sup> 88 Fed. Reg. 62006-7.

strongly suggesting a lack of compliance and/or lack of clarity on the liquidation process after revocation or other termination of a license.<sup>8</sup>

Many guns are trafficked across state lines, exploiting the differences in state regulations. Between 2016 and 2020, 27% of traced guns, or 390,154 guns, were recovered in a different state than where they were originally sold, and 74% of those guns were originally purchased in states without background check laws.<sup>9</sup> As a result, it is increasingly difficult for State background check laws to effectively protect the public without the support of a strong Federal regulatory framework.

This rule would enhance the existing regulatory framework, by clarifying the situations in which individuals selling guns are subject to federal licensing and background check requirements and reducing the number of guns transferred to prohibited persons. In doing so, it would curtail the opportunities outlined above for prohibited persons to obtain firearms. Clarifying the scope of the requirements would also assist local, state, tribal, and federal law enforcement by ensuring that accurate and adequate records are kept for more transactions, providing them with the information they need to effectively inspect gun dealers, trace crime guns, prosecute gun charges, and help keep the communities they serve safe.

The proposed rule is an exercise of ATF's inherent authority to amend its own regulations to implement the broadened definition of "engaged in the business" promulgated by Congress in the BSCA. It is a function explicitly authorized by 18 U.S.C. 926(a), as clarifying a definition within the rule is a "rule[] [or] regulation necessary to carry out the provisions" of the Gun Control Act ("GCA"). ATF's regulatory authority under the GCA plays a critical role in protecting the public from gun violence and has been repeatedly reaffirmed by federal courts in the decades since the GCA's passage.<sup>10</sup> As recognized in the Proposed Rule, these requirements would come at modest cost to most people falling under the clarified definition. Furthermore, requiring regulatory compliance by dealers operating on the margin of the current scheme would have the equitable effect of subjecting them to the same requirements as current FFLs engaged in substantially similar business activities.

## **II. Recommendations to Further Strengthen and Clarify the Definition of "Engaged in the Business"**

### **A. ATF's Clarification of the Meaning of "Dealer" is a Major Step Forward**

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<sup>8</sup> See, e.g., Brian Sharp, *New report traces city crime guns to small group of dealers, and most of the main sellers are local*, WXXI NEWS, June 8, 2023, <https://www.wxixnews.org/local-news/2023-06-08/where-are-rochester-crime-guns-coming-from-upcoming-report-aims-to-identify-sellers>.

<sup>9</sup> Everytown Research and Policy, *Five Things to Know About Crime Guns, Gun Trafficking, and Background Checks* (May 24, 2021), <https://everytownresearch.org/report/five-things-to-know-about-crime-guns/>.

<sup>10</sup> See, e.g., *Second Amendment Found. v. ATF*, No. 21-CV-116, 2023 WL 7490149, at \*7 (N.D. Tex. Nov. 13, 2023) (recognizing that "authority to administer and enforce the NFA and GCA through 'all needful rules and regulations' is vested in the Attorney General, who properly delegated this responsibility to the ATF Director" and that this authority includes the ability to "interpret relevant provisions to ensure efficient and accurate implementation"); *Nat'l Rifle Ass'n v. Brady*, 914 F.2d 475, 479 (4th Cir. 1990) (emphasizing ATF's "statutory discretion to promulgate regulations" and its "technical expertise essential to determinations of statutory enforcement").

The States commend the ATF for incorporating and defining the statutory changes to the definition of “engaged in the business” by replacing “with the principal objective of livelihood or profit” with the language “to predominantly earn a profit.”<sup>11</sup> The States fully support the proposed definition of “predominantly earn a profit.”<sup>12</sup> The proposed definition is consistent with the BSCA and eliminates an area of doubt as to whether a person must be licensed to purchase and sell firearms with the intent to earn a profit even when neither profit nor livelihood are their *principal* objective.

The States also support the clarification that a person may have intent to “predominantly earn a profit” “even if the person does not actually obtain pecuniary gain from the sale or disposition of firearms.”<sup>13</sup> This clarifies that intent—not profit—is the appropriate factor. This clarification recognizes that the primary focus of this rule is ensuring appropriate regulation of the transfer of guns, a purpose not furthered by requiring the ATF to engage in the type of detailed financial analysis necessary to determine whether reporting on profit is accurate.

The States also commend ATF for clarifying that firearms dealing may occur “wherever, or through whatever medium [sales] may be conducted,” and by including a nonexclusive list of examples including gun shows, auction houses, mail orders, and through internet or other electronic means.<sup>14</sup> Firearms dealing is not limited to sales at brick-and-mortar stores, and the background check and recordkeeping requirements that protect the public must apply regardless of the location or medium where guns are sold.

## **B. ATF Should Close the Estate Auction Loophole**

ATF has issued informal guidance in the past that has created a distinction between “estate-type” and “consignment-type” auctioneers, with only the latter deemed to be engaged in the business of selling firearms.<sup>15</sup> This distinction relies upon the practice in estate-type auctions of title and possession of the items to be auctioned remaining with the sellers, whereas in consignment-type auctions, the auctioneer takes possession. The Proposed Rule would maintain this distinction.<sup>16</sup> While the States recognize that estate-type auctioneers do not possess or take title to firearms, and therefore are not said to be engaged in selling firearms, estate-type auctions represent a source of guns that can be purchased without background checks.

As an initial matter, the States urge the ATF to clarify in its guidance to auctioneers that, to the extent that they operate in states that require background checks on private transactions, estate-style auctioneers risk aiding and abetting illegal transactions if they knowingly facilitate sales of guns without background checks. Further, the States urge the ATF to clarify, too, that to the extent that estate-style auctioneers facilitate an individual auction involving more than five guns or facilitate auctions involving more than 25 guns in a given 12-month period, then they must be a

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<sup>11</sup> 88 Fed. Reg. 61995-6.

<sup>12</sup> 88 Fed. Reg. 62021-2.

<sup>13</sup> 88 Fed. Reg. 62021.

<sup>14</sup> 88 Fed. Reg. 62020 (definition of “Dealer”).

<sup>15</sup> See, e.g., ATF Q&A, Does an auctioneer who is involved in firearms sales need a dealers’ license?, <https://www.atf.gov/firearms/qa/does-auctioneer-who-involved-firearms-sales-need-dealer-license> (July 10, 2020).

<sup>16</sup> 88 Fed. Reg. 61999.

federally-licensed firearms dealer or risk federal aiding-and-abetting liability. While the States recognize that the ATF has considered and rejected a numerical threshold more broadly in the Proposed Rule,<sup>17</sup> they believe that the use of a numerical threshold in this instance would provide clarity to auctioneers and would close this particular loophole.

The States note that closing this loophole is consistent with Congress' intent in enacting the BSCA. In discussing the reasons for a broad definition of "dealer," ATF noted a letter from Senators John Cornyn and Thom Tillis, explaining that "[o]ur legislation aims at preventing someone who is disqualified from owning or possessing a firearm from shopping around for an unlicensed dealer."<sup>18</sup> If the estate auction loophole is not closed, that is precisely what will happen.

### **C. The Presumptions of Being "Engaged in the Business" Create a Strong Legal Framework for Preventing Illegal Gun Trafficking**

The Proposed Rule includes a list of instances in which "[a] person shall be presumed to be engaged in the business of dealing firearms," including: (1) selling or offering for sale guns while also representing to potential purchasers a "willingness and ability to purchase and sell additional firearms"; (2) spending more money on buying guns for resale than that person makes in a year; (3) repetitive purchases for resale (or repetitive sales) of guns that involve some illegality (either through the use of straw purchasers or sellers, or inasmuch as the guns are stolen, lack a legible serial number, are illegally imported, or are prohibited under the National Firearms Act); and (4) repetitive sales of guns that are new, recently purchased, or similar in type.<sup>19</sup> The States applaud this provision as it promises to provide clear, consistent guidance about when someone who sells firearms must become a federally licensed dealer. The inclusion of these presumptions ensures that those who repetitively sell guns are only doing so after confirming the legality of the sale (through the completion of ATF Form 4473 and the associated background check).

Although the presumptions laid out in the Proposed Rule provide a useful legal framework for identifying likely cases of dealing in firearms, certain of the presumptions have aspects that could be improved in order to close loopholes or clarify the applicable standards. For instance, the States suggest that the presumption in Subsection (c)(3)(iv)(A) of the revised definition, which would apply to a person who "[r]epetitively sells or offers for sale firearms [w]ithin 30 days after the person purchased the firearms" have the applicable period extended to 90 days in order to make it more difficult to structure transactions in a way that would evade licensing and background check obligations. The States also suggest that ATF clarify that the list of examples of guns "that cannot lawfully be purchased or possessed" in subsection (c)(3)(iii) includes weapons, the possession of which is prohibited under state or local laws. The presumption in Subsection (c)(3)(ii), which would apply to any person who "[s]pends more money or its equivalent on purchases of firearms for the purpose of resale than the person's reported gross taxable income" seems to create a potentially unreliable standard, whereby high-income gun dealers could sell large amounts of firearms without ever being subject to the presumption, while a single sale could be enough to

<sup>17</sup> 88 Fed. Reg. 62016.

<sup>18</sup> 88 Fed. Reg. 61997 n. 29 (quoting Cornyn/Tillis Letter at 3).

<sup>19</sup> 88 Fed. Reg. 62021.

cause a person with a low or fixed income to be presumed to be dealing unlawfully.<sup>20</sup> The States advise ATF to instead adopt a numerical threshold of ten guns per year, which would make applying the presumption easier for courts and law enforcement while avoiding the inequities of ATF's income-based approach.

The States are also concerned about ATF's inclusion of an exception wherein "a person would not be presumed to be engaged in the business requiring a license as a dealer when the person transfers firearms only as bona fide gifts or occasionally sells firearms only to obtain more valuable, desirable, or useful firearms for their personal collection or hobby, unless their conduct also demonstrates a predominant intent to earn a profit."<sup>21</sup> By excluding these situations from the presumptions that would otherwise apply, ATF risks creating a significant loophole whereby firearms traffickers could shift the burden of proof simply by claiming that any suspicious transaction was a gift.<sup>22</sup> While evidence of a bona fide gift should of course be sufficient to rebut a presumption that a person is dealing in firearms, a seller's unsupported assertion that a firearms transfer was a gift should not stop the presumptions from applying in the first place.

**D. ATF Should Clarify That the Presumptions Supporting the Intent to "Predominantly Earn a Profit" Also Presumptively Establish Being "Engaged In The Business" of Dealing in Firearms**

The States applaud ATF's proposed revisions to the regulatory definition of "predominantly earn a profit," which adopt and effectuate Congress' welcome redefinition of the term in BSCA. As a federal court has already recognized, these definitions "provide ample detail for Defendants to have notice, and for the jury to separate lawful conduct from unlawful conduct."<sup>23</sup> The proposed presumptions of intent to predominantly earn a profit effectively set forth common scenarios that each raise a strong inference that a person's "intent underlying the sale or disposition of firearms is predominantly one of obtaining pecuniary gain, as opposed to other intents," in keeping with BSCA's statutory text and Congress' intent.<sup>24</sup>

A person who advertises or promotes a firearms business, acquires physical space to display or store firearms for sale, makes records to calculate profits and losses, secures merchant or security services for a firearms enterprise, establishes a business entity or a business license, or purchases business insurance is behaving in a manner consistent with a commercial, for-profit enterprise, and manifestly inconsistent with the "other intents, such as improving or liquidating a personal firearms collection," that Congress intended to exempt.<sup>25</sup> ATF's rule appropriately makes these presumptions rebuttable and applicable only in civil or administrative proceedings (although they

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<sup>20</sup> The presumption comparing expenditures to reported income may also create challenges for law enforcement, which would need to ascertain a suspect's total aggregate outlay for firearms, obtain his or her tax statements, and compare the two, a process significantly more involved than simply noting how many firearms the suspect had sold.

<sup>21</sup> 88 Fed. Reg. 62001-2.

<sup>22</sup> The loophole for claimed gifts would be particularly concerning because straw purchasers will sometimes mischaracterize their later transfers or sales of firearms to be in the nature of a gift. *See, e.g., United States v. Gearheart*, No. 23-cr-13, 2023 WL 5925541, at \*2 & n.3 (W.D. Va. Sept. 12, 2023) (straw purchaser initially told investigators that she bought gun as a gift).

<sup>23</sup> *United States v. Deare*, No. 21-CR-212-01, 2023 WL 4757201, at \*2 (W.D. La. July 25, 2023).

<sup>24</sup> *See* 18 U.S.C. § 921(a)(22).

<sup>25</sup> *See id.*

are, of course, helpful to courts in criminal cases), keeping the burden appropriately on the government to prove all required elements of any criminal offense.

As the Proposed Rule currently stands, the presumptions that may be used to establish intent to predominantly earn a profit are separate from the presumptions of being engaged in the business of dealing in firearms, and the States suggest that ATF could strengthen the Proposed Rule, effectuate the will of Congress, and clear up significant confusion by clarifying that the presumptions that a person has “the intent to predominantly earn a profit from the sale or disposition of firearms” *also* establish a presumption that the person is “engaged in the business” of dealing in firearms. Each of ATF’s proposed presumptions for the intent to earn a profit also demonstrates the other elements of the statutory definition as well, since they involve setting up a commercial enterprise, indicating that the person is “devot[ing] time, attention, and labor to dealing in firearms as a regular course of trade or business to predominantly earn a profit through the repetitive purchase and resale of firearms.”

For instance, a person who “[p]urchases, rents, or otherwise secures or sets aside permanent or temporary physical space to display or store firearms they offer for sale,” as contemplated in Section (2)(ii) of the proposed regulatory definition of “predominantly earn a profit,”<sup>26</sup> not only demonstrates that the seller possesses a profit motive, but also establishes that the seller “devotes time, attention and labor to dealing with firearms,” and intends to engage in “the repetitive purchase and resale of firearms,” satisfying all elements of BSCA’s revised statutory definition of engaged in the business. The pattern holds throughout each of the other presumptions in ATF’s proposed definition—purchasing merchant services for firearms transactions, for instance, or securing a business license to purchase and sell firearms,<sup>27</sup> both evidence the devotion of time and labor and the intent to engage in repetitive transactions as well as the profit motive. Many federal courts have agreed, finding that conduct indicating the running of a commercial enterprise supported not only the conclusion that a defendant was acting for the purpose of profit, but also that he was engaged in the business of dealing in firearms.<sup>28</sup>

Accordingly, the Proposed Rule should clarify that the presumptions in subsection (2) of ATF’s proposed definition of “predominantly earn a profit,” if proven, also establish a rebuttable presumption that a person is “engaged in the business” of dealing in firearms, within the meaning

<sup>26</sup> See 88 Fed. Reg. 62021.

<sup>27</sup> As contemplated in Sections 2(iv) and 2(vii) of the proposed definition of “Predominantly earn a profit.” See 88 Fed. Reg. 62022.

<sup>28</sup> See, e.g., *United States v. King*, 646 F. Supp. 3d 603, 606 (E.D. Pa. 2022) (finding that a defendant who “had 615 firearms in his barn, many of which were marked with price tags, as well as receipts for advertisements in a local newspaper offering firearms for sale. . . . clearly trips that trigger [to require a license] because it goes well beyond the occasional buying and selling that occurs with maintaining a personal collection or for pursuing a hobby.”); *United States v. McGowan*, 746 F. App’x 679, 681 (9th Cir. 2018) (evidence including how defendant “would frequently post guns for sale” demonstrated that he met the definition of being “engaged in the business”); *United States v. Valdes*, 681 F. App’x 874, 877-878 (11th Cir. 2017) (per curiam) (factors such as sales of firearms at gun shows, offering to obtain specific firearms for customers, and handing out business cards supported knowledge that defendant was engaged in the business of dealing in firearms); see also *United States v. Kish*, 424 F. App’x 398, 406 (6th Cir. 2011) (presence of firearms at store with revoked license, combined with display and price tags, supported proposition that defendants were engaged in the business of dealing in firearms); *United States v. Angelini*, 607 F.2d 1305, 1307 (9th Cir. 1979) (evidence that defendant “had regularly attended gun shows and displayed firearms for sale” supported “overwhelming” showing that he was engaged in the business of firearms dealing).

of 18 U.S.C. § 921(a)(21)(C). The States likewise recommend that the definition of intent to “predominantly earn a profit” should specify that there is “no minimum threshold number of firearms purchased or sold” that is necessary to meet the definition.

### **III. Enforcement and Implementation of the Proposed Rule**

The States urge ATF to prioritize enforcement of the Proposed Rule as soon as it is in place. The States further urge the Department of Justice and the Attorney General to ensure that they are prosecuting cases referred by ATF and devoting sufficient resources to aggressively pursuing cases against individuals and entities that violate the Proposed Rule.

In addition, although there is need of widespread enforcement, there are certain practices that are driving the trafficking of illegal guns that merit closer examination by federal law enforcement.

*First*, as ATF acknowledges in the Proposed Rule, “the proliferation of new communications technologies and e-commerce has made it simple for persons to advertise and sell firearms to a large potential market at minimal cost and with minimal effort.”<sup>29</sup> Many online marketplaces allow non-FFLs to list guns for sale, and in states that do not require background checks on private gun transactions, there is evidence that suggests that these online marketplaces attract purchasers who are prohibited under federal law from possessing or purchasing firearms.<sup>30</sup> To the extent that non-FFLs are repeatedly selling guns using online marketplaces, the online marketplaces know that such persons may be violating the federal law prohibiting being engaged in the business of dealing firearms without a license and, should they continue aiding such sales, risk aiding-and-abetting liability under 18 U.S.C. § 2. The States urge ATF to issue clear guidance to operators of online marketplaces about what steps they should take to avoid such liability and ensure that their marketplaces are not being used to traffic firearms.

*Second*, as ATF notes, improperly liquidated firearms inventories of formerly licensed firearms dealers are often a major source of crime guns.<sup>31</sup> The Proposed Rule clarifies the requirements for the disposition of business inventory after revocation or other termination of a license as critical for the orderly and lawful disposition of firearms. The States encourage ATF to investigate and, where appropriate, prosecute any individuals who, during or after liquidation, are found to be illegally engaged in the business of selling firearms without a license.

*Finally*, the States note that in some instances in the past, individual ATF agents have encouraged people who are illegally engaged in the business of dealing firearms without a license to apply to be federally-licensed firearms dealers, rather than taking action to enforce the law against those illegal sales.<sup>32</sup> The States urge ATF to vigorously enforce the law and ensure that no employees

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<sup>29</sup> 88 Fed. Reg. 61997.

<sup>30</sup> See, e.g., Government Accountability Office, *Internet Firearm Sales: ATF Enforcement Efforts and Outcomes of GAO Covert Testing* (Dec. 21, 2017), <https://www.gao.gov/products/gao-18-24>].

<sup>31</sup> 88 Fed. Reg. 62006.

<sup>32</sup> See, e.g., Application for a Warrant by Telephone or Other Reliable Means and Supporting Affidavit, *In the Matter of the Search of Target Device 1, an Apple iPhone, serial number FFNHH76RPLJM*, Case No. 1:23-MJ-209 (M.D. N.Car.) (following evidence that Kala Paul Rounds was associated with straw purchasing and firearms trafficking, an ATF agent “informed ROUNDS that he was required to obtain his license to become an FFL if he wished to engage

of the agency encourage individuals who have engaged in the business of dealing in firearms without a license to apply for FFLs. Individuals who have engaged in the unlicensed business of dealing firearms are violating federal law—they cannot (and should not) be trusted to sell guns lawfully.

### CONCLUSION

For the foregoing reasons, the States strongly support ATF's thorough and well-reasoned Notice of Proposed Rulemaking regarding the definition of being "engaged in the business" of dealing in firearms. The States look forward to ATF's adoption of the Proposed Rule and to continued collaboration with ATF and the Department of Justice to safeguard the public from the threat of gun violence.

Sincerely,



Andrea Joy Campbell  
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Letitia James  
Attorney General of New York



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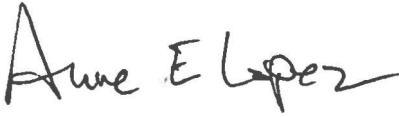
in the business of dealing firearms legally"); Application for a Warrant by Telephone or Other Reliable Means and Supporting Affidavit, *In the Matter of the Search of The Premises Located at 111 Pomona Drive, Suite B, Greensboro, NC 27407*, Case No. 1:22-MJ-426-1 (M.D. N.Car.) ("I informed RACHAL that he was in violation of federal law, and that he needed to obtain his FFL."); Indictment, *U.S.A. v. David Joseph Mull*, case No. 1:23-cr-0094 (S.D. Ind.) (noting that following the receipt of an ATF cease-and-desist letter "advising him that it was unlawful to engage in the business of dealing firearms without a license," Mr. Mull continued selling "in excess of 500 guns . . . for over \$350,000," many of which were transported to Mexico).



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A handwritten signature in blue ink, appearing to read "Bob Ferguson".

Bob Ferguson  
Attorney General of Washington

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION

STATE OF TEXAS, *et al.*,

Plaintiffs,

v.

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

Defendants,

Case No. 2:24-cv-00089-Z

Judge Matthew J. Kacsmatyk

**[PROPOSED] ANSWER TO PLAINTIFFS' COMPLAINT**

Intervenor-Defendants the State of New Jersey, Arizona, Colorado, Connecticut, Delaware, Hawai'i, Maryland, Michigan, Minnesota, Oregon, Rhode Island, Vermont, and Washington (collectively, "Intervenor-Defendants") answer the Complaint for Declaratory and Injunctive Relief of Plaintiffs the State of Texas, the State of Louisiana, the State of Mississippi, the State of Utah, Jeffrey W. Tormey, Gun Owners of America, Inc., Gun Owners Foundation, Tennessee Firearms Association, and Virginia Citizens Defense League (collectively, "Plaintiffs") as follows:

1. This paragraph states legal conclusions, to which no response is required.
2. Admitted that the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") issued the Final Rule entitled "Definition of 'Engaged in the Business' as a Dealer in Firearms," 89 Fed. Reg. 28,968 (the "Rule") on April 19, 2024. This paragraph otherwise describes the relief sought in the Complaint, to which no response is required. To the extent a response is required, denied that Plaintiffs are entitled to the relief sought, or any relief.
3. This paragraph states legal conclusions, to which no response is required.

4. Admitted that the Rule set an effective date of 30 days from publication in the Federal Register. Admitted that certain other rules issued by ATF cited in this paragraph set effective dates of 90 days or 120 days from publication in the Federal Register. Admitted that in the Rule's preamble, ATF stated: "ATF intends to further update the guidance once it issues this final rule." Rule, 89 Fed. Reg. at 28,971. This paragraph otherwise states legal conclusions, to which no response is required.

5. Admitted.

## **I. JURISDICTION AND VENUE**

6. This paragraph states legal conclusions, to which no response is required.

7. This paragraph states legal conclusions, to which no response is required.

## **II. PARTIES**

8. Admitted.

9. Admitted.

10. Admitted

11. Admitted.

12. Intervenor-Defendants lack information to admit or deny factual allegations in this paragraph about Plaintiff Jeffrey W. Tormey, and accordingly deny those allegations. This paragraph otherwise states legal conclusions, to which no response is required.

13. Intervenor-Defendants lack information to admit or deny the allegations in the first four sentences of this paragraph, and accordingly deny those allegations. The fifth sentence of this paragraph states legal conclusions, to which no response is required.

14. Intervenor-Defendants lack information to admit or deny these allegations, and accordingly deny these allegations.

15. Intervenor-Defendants lack information to admit or deny these allegations, and accordingly deny these allegations.

16. Intervenor-Defendants lack information to admit or deny these allegations, and accordingly deny these allegations.

17. The first two sentences are admitted. The third sentence states legal conclusions, to which no response is required.

18. Admitted.

19. Admitted.

20. Admitted.

### **III. STATUTORY HISTORY**

#### **A. The Federal Firearms Act of 1938 (“FFA”)**

21. This paragraph states legal conclusions, to which no response is required.

22. This paragraph states legal conclusions, to which no response is required.

#### **B. The Gun Control Act of 1968 (“GCA”)**

23. This paragraph states legal conclusions, to which no response is required.

24. This paragraph states legal conclusions, to which no response is required.

25. This paragraph states legal conclusions, to which no response is required.

26. Admitted that in 1979, ATF issued an Advanced Notice of Proposed Rulemaking, Definition of the Phrase “Engaged in the Business,” 44 Fed. Reg. 75,186 (Dec. 19, 1979) (the “ANPRM”). Intervenor-Defendants refer the Court to the ANPRM for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with that document.

27. Admitted that this allegation quotes a portion of a sentence from the ANPRM. Intervenor-Defendants refer the Court to the ANPRM for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with that document.

28. Admitted.

29. This paragraph states legal conclusions, to which no response is required.

**C. The McClure-Volkmer Firearms Owners' Protection Act ("FOPA")**

30. This paragraph states legal conclusions, to which no response is required.

31. This paragraph states legal conclusions, to which no response is required.

32. This paragraph states legal conclusions, to which no response is required.

33. This paragraph states legal conclusions, to which no response is required.

34. This paragraph states legal conclusions, to which no response is required.

35. This paragraph states legal conclusions, to which no response is required.

36. Admitted that on October 29, 1986, ATF adopted a temporary rule, published at 51 Fed. Reg. 39,612. Admitted that on March 31, 1988, ATF issued a Final Rule, Commerce in Firearms and Ammunition, 53 Fed. Reg. 10,480 (Mar. 31, 1988) ("1988 Final Rule"). Intervenor-Defendants refer the Court to those documents for a complete and accurate statement of their contents and deny this allegation to the extent inconsistent with those documents.

37. Admitted that this allegation quotes from the 1988 Final Rule. Intervenor-Defendants refer the Court to that document for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with that document.

**D. The Bipartisan Safer Communities Act ("BSCA")**

38. This paragraph states legal conclusions, to which no response is required.

39. This paragraph states legal conclusions, to which no response is required.

40. This paragraph states legal conclusions, to which no response is required.

41. This paragraph states legal conclusions, to which no response is required.

42. Admitted that the last sentence quotes from a portion of a sentence in the Rule, with alterations and emphasis added. Intervenor-Defendants refer the Court to the Rule for a complete

and accurate statement of its contents and deny this allegations to the extent inconsistent with the Rule. This paragraph otherwise states legal conclusions, to which no response is required.

43. This paragraph states legal conclusions, to which no response is required.

44. This paragraph states legal conclusions, to which no response is required.

45. Admitted that on March 14, 2023, President Biden issued Executive Order 14092, which was published at 88 Fed. Reg. 16,527 (Mar. 14, 2023). Intervenor-Defendants refer the Court to that Executive Order for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with the Executive Order.

46. Admitted that on August 31, 2023, DOJ issued a press release announcing a Notice of Proposed Rulemaking (“NPRM”). That NPRM was published in the Federal Register on September 8, 2023, Notice of Proposed Rulemaking, Definition of “Engaged in the Business” as a Dealer in Firearms, 88 Fed. Reg. 61,993 (Sept. 8, 2023). Intervenor-Defendants refer the Court to the press release and NPRM for a complete and accurate statement of their contents, and deny this allegation to the extent inconsistent with those documents.

47. Admitted that certain commenters submitted the comments cited in this paragraph. This paragraph otherwise states legal conclusions, to which no response is required.

#### **IV. THE FINAL RULE**

48. This allegation characterizes the Rule. Intervenor-Defendants refer the Court to the Rule for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with the Rule.

49. This allegation characterizes the Rule. Intervenor-Defendants refer the Court to the Rule for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with the Rule.

50. This allegation characterizes the Rule. Intervenor-Defendants refer the Court to the Rule for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with the Rule.

51. Admitted that this allegation quotes the regulatory definition of “dealer” that was codified in 27 C.F.R. § 478.11 before the Rule’s effective date.

52. Admitted that this allegation quotes the Rule’s definition of “dealer,” with emphasis added. Intervenor-Defendants refer the Court to the Rule for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with the Rule.

53. Admitted that this allegation quotes subsection (c) of the regulatory definition of “engaged in the business” that was codified in 27 C.F.R. § 478.11 before the Rule’s effective date.

54. Admitted that this allegation quotes provisions of the Rule. Intervenor-Defendants refer the Court to the Rule for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with the Rule.

55. Admitted that this allegation quotes provisions of the Rule. Intervenor-Defendants refer the Court to the Rule for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with the Rule.

56. Admitted that this allegation quotes provisions of the Rule. Intervenor-Defendants refer the Court to the Rule for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with the Rule.

57. Admitted that this allegation quotes the regulatory definition of “principal objective of livelihood and profit” that was codified in 27 C.F.R. § 478.11 before the Rule’s effective date.

58. This allegation characterizes the Rule. Intervenor-Defendants refer the Court to the Rule for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with the Rule.

59. This allegation characterizes the Rule. Intervenor-Defendants refer the Court to the Rule for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with the Rule.

60. This allegation characterizes the Rule. Intervenor-Defendants refer the Court to the Rule for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with the Rule.

61. This allegation characterizes the Rule. Intervenor-Defendants refer the Court to the Rule for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with the Rule.

62. This allegation characterizes the Rule. Intervenor-Defendants refer the Court to the Rule for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with the Rule.

63. This allegation characterizes the Rule. Intervenor-Defendants refer the Court to the Rule for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with the Rule.

64. This allegation characterizes the Rule. Intervenor-Defendants refer the Court to the Rule for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with the Rule.

65. This allegation characterizes the Rule. Intervenor-Defendants refer the Court to the Rule for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with the Rule.

66. This allegation characterizes the Rule. Intervenor-Defendants refer the Court to the Rule for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with the Rule.

67. This allegation characterizes the Rule. Intervenor-Defendants refer the Court to the Rule for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with the Rule.

68. This allegation characterizes the Rule. Intervenor-Defendants refer the Court to the Rule for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with the Rule.

69. This allegation characterizes the Rule. Intervenor-Defendants refer the Court to the Rule for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with the Rule.

70. This allegation characterizes the Rule. Intervenor-Defendants refer the Court to the Rule for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with the Rule.

71. This allegation characterizes the Rule. Intervenor-Defendants refer the Court to the Rule for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with the Rule.

## **V. LEGAL ANALYSIS**

72. This paragraph states legal conclusions, to which no response is required.

73. This paragraph states legal conclusions, to which no response is required.

74. This paragraph states legal conclusions, to which no response is required.

75. This paragraph states legal conclusions, to which no response is required.

76. This paragraph states legal conclusions, to which no response is required.

77. This paragraph states legal conclusions, to which no response is required.

78. This paragraph states legal conclusions, to which no response is required.

79. This paragraph states legal conclusions, to which no response is required.

80. This allegation characterizes the Rule. Intervenor-Defendants refer the Court to the Rule for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with the Rule.

81. This paragraph states legal conclusions, to which no response is required.

82. This paragraph states legal conclusions, to which no response is required.

83. This allegation characterizes the Rule. Intervenor-Defendants refer the Court to the Rule for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with the Rule.

84. This allegation characterizes the Rule. Intervenor-Defendants refer the Court to the Rule for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with the Rule.

85. This allegation characterizes the Rule. Intervenor-Defendants refer the Court to the Rule for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with the Rule.

86. This paragraph states legal conclusions, to which no response is required.

87. This paragraph states legal conclusions, to which no response is required.

88. This paragraph states legal conclusions, to which no response is required.
89. This paragraph states legal conclusions, to which no response is required.
90. This paragraph states legal conclusions, to which no response is required.
91. This paragraph states legal conclusions, to which no response is required.
92. This paragraph states legal conclusions, to which no response is required.
93. This paragraph states legal conclusions, to which no response is required.
94. This paragraph states legal conclusions, to which no response is required.
95. This paragraph states legal conclusions, to which no response is required.
96. This paragraph states legal conclusions, to which no response is required.
97. This paragraph states legal conclusions, to which no response is required.
98. This paragraph states legal conclusions, to which no response is required.
99. This paragraph states legal conclusions, to which no response is required.
100. This paragraph states legal conclusions, to which no response is required.
101. This paragraph states legal conclusions, to which no response is required.
102. This paragraph states legal conclusions, to which no response is required.
103. This paragraph states legal conclusions, to which no response is required.
104. This paragraph states legal conclusions, to which no response is required.
105. This paragraph states legal conclusions, to which no response is required.
106. This paragraph states legal conclusions, to which no response is required.
107. This paragraph states legal conclusions, to which no response is required.
108. This paragraph states legal conclusions, to which no response is required.
109. This paragraph states legal conclusions, to which no response is required.
110. This paragraph states legal conclusions, to which no response is required.

111. This paragraph states legal conclusions, to which no response is required.

112. This paragraph states legal conclusions, to which no response is required.

113. This paragraph states legal conclusions, to which no response is required.

114. This paragraph states legal conclusions, to which no response is required.

115. This paragraph states legal conclusions, to which no response is required.

116. This paragraph states legal conclusions, to which no response is required.

117. This paragraph states legal conclusions, to which no response is required.

118. This allegation characterizes the Rule. Intervenor-Defendants refer the Court to the Rule for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with the Rule.

119. This allegation characterizes the Rule. Intervenor-Defendants refer the Court to the Rule for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with the Rule.

120. This allegation characterizes the Rule. Intervenor-Defendants refer the Court to the Rule for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with the Rule.

121. The first sentence of this paragraph characterizes the Rule. Intervenor-Defendants refer the Court to the Rule for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with the Rule. The second sentence of this paragraph states legal conclusions, to which no response is required.

122. This allegation characterizes the Rule. Intervenor-Defendants refer the Court to the Rule for a complete and accurate statement of its contents and deny this allegation to the extent

inconsistent with the Rule. This paragraph otherwise states legal conclusions, to which no response is required.

123. This allegation characterizes the Rule. Intervenor-Defendants refer the Court to the Rule for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with the Rule.

124. This allegation characterizes the Rule. Intervenor-Defendants refer the Court to the Rule for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with the Rule.

125. This paragraph states legal conclusions, to which no response is required.

126. This paragraph states legal conclusions, to which no response is required.

127. This allegation characterizes the Rule. Intervenor-Defendants refer the Court to the Rule for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with the Rule.

128. This allegation characterizes the Rule. Intervenor-Defendants refer the Court to the Rule for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with the Rule.

129. This paragraph states legal conclusions, to which no response is required.

130. This paragraph states legal conclusions, to which no response is required.

131. This paragraph states legal conclusions, to which no response is required.

132. This paragraph states legal conclusions, to which no response is required.

133. This paragraph states legal conclusions, to which no response is required.

134. This allegation characterizes the Rule. Intervenor-Defendants refer the Court to the Rule for a complete and accurate statement of its contents and deny this allegation to the extent

inconsistent with the Rule. This paragraph otherwise states legal conclusions, to which no response is required.

135. This allegation characterizes the Rule. Intervenor-Defendants refer the Court to the Rule for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with the Rule. This paragraph otherwise states legal conclusions, to which no response is required.

136. This allegation characterizes the Rule. Intervenor-Defendants refer the Court to the Rule for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with the Rule. This paragraph otherwise states legal conclusions, to which no response is required.

137. This allegation characterizes the Rule. Intervenor-Defendants refer the Court to the Rule for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with the Rule. This paragraph otherwise states legal conclusions, to which no response is required.

138. This allegation characterizes the Rule. Intervenor-Defendants refer the Court to the Rule for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with the Rule. This paragraph otherwise states legal conclusions, to which no response is required.

139. This allegation characterizes the Rule. Intervenor-Defendants refer the Court to the Rule for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with the Rule. This paragraph otherwise states legal conclusions, to which no response is required.

140. This allegation characterizes the Rule. Intervenor-Defendants refer the Court to the Rule for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with the Rule. This paragraph otherwise states legal conclusions, to which no response is required.

141. This allegation characterizes the Rule. Intervenor-Defendants refer the Court to the Rule for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with the Rule. This paragraph otherwise states legal conclusions, to which no response is required.

142. This allegation characterizes the Rule. Intervenor-Defendants refer the Court to the Rule for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with the Rule. This paragraph otherwise states legal conclusions, to which no response is required.

143. This allegation characterizes the Rule. Intervenor-Defendants refer the Court to the Rule for a complete and accurate statement of its contents and deny this allegation to the extent inconsistent with the Rule. This paragraph otherwise states legal conclusions, to which no response is required.

144. This paragraph states legal conclusions, to which no response is required.

145. This paragraph states legal conclusions, to which no response is required.

146. This paragraph states legal conclusions, to which no response is required.

147. This paragraph states legal conclusions, to which no response is required.

148. This paragraph states legal conclusions, to which no response is required.

149. This paragraph states legal conclusions, to which no response is required.

150. This paragraph states legal conclusions, to which no response is required.

- 151. This paragraph states legal conclusions, to which no response is required.
- 152. This paragraph states legal conclusions, to which no response is required.
- 153. This paragraph states legal conclusions, to which no response is required.
- 154. This paragraph states legal conclusions, to which no response is required.
- 155. This paragraph states legal conclusions, to which no response is required.
- 156. This paragraph states legal conclusions, to which no response is required.
- 157. This paragraph states legal conclusions, to which no response is required.
- 158. This paragraph states legal conclusions, to which no response is required.
- 159. This paragraph states legal conclusions, to which no response is required.
- 160. This paragraph states legal conclusions, to which no response is required.
- 161. This paragraph states legal conclusions, to which no response is required.
- 162. This paragraph states legal conclusions, to which no response is required.
- 163. This paragraph states legal conclusions, to which no response is required.
- 164. This paragraph states legal conclusions, to which no response is required.
- 165. This paragraph states legal conclusions, to which no response is required.
- 166. This paragraph states legal conclusions, to which no response is required.
- 167. This paragraph states legal conclusions, to which no response is required.
- 168. This paragraph states legal conclusions, to which no response is required.

## **VI. CLAIMS FOR RELIEF**

### **COUNT 1**

#### **Violation of APA, 5 U.S.C. § 706(2)(C): In Excess of Statutory Jurisdiction of Authority**

- 169. Intervenor-Defendants incorporate their responses to the prior paragraphs.
- 170. This paragraph states legal conclusions, to which no response is required.

- 171. This paragraph states legal conclusions, to which no response is required.
- 172. This paragraph states legal conclusions, to which no response is required.
- 173. This paragraph states legal conclusions, to which no response is required.
- 174. This paragraph states legal conclusions, to which no response is required.
- 175. This paragraph states legal conclusions, to which no response is required.

### **COUNT 2**

#### **Violation of APA, 5 U.S.C. § 706(2)(A): Arbitrary, Capricious, Abuse of Discretion, Not in Accordance with Law**

- 176. Intervenor-Defendants incorporate their responses to the prior paragraphs.
- 177. This paragraph states legal conclusions, to which no response is required.
- 178. This paragraph states legal conclusions, to which no response is required.
- 179. This paragraph states legal conclusions, to which no response is required.
- 180. This paragraph states legal conclusions, to which no response is required.
- 181. This paragraph states legal conclusions, to which no response is required.
- 182. This paragraph states legal conclusions, to which no response is required.

### **COUNT 3**

#### **Violation of APA, 5 U.S.C. § 706(2)(B): Contrary to Constitutional Right, Power, Privilege or Immunity**

- 183. Intervenor-Defendants incorporate their responses to the prior paragraphs.
- 184. This paragraph states legal conclusions, to which no response is required.
- 185. This paragraph states legal conclusions, to which no response is required.
- 186. This paragraph states legal conclusions, to which no response is required.
- 187. This paragraph states legal conclusions, to which no response is required.
- 188. This paragraph states legal conclusions, to which no response is required.

**COUNT 4**

**Fifth Amendment: Void for Vagueness**

- 189. Intervenor-Defendants incorporate their responses to the prior paragraphs.
- 190. This paragraph states legal conclusions, to which no response is required.
- 191. This paragraph states legal conclusions, to which no response is required.
- 192. This paragraph states legal conclusions, to which no response is required.

**COUNT 5**

**Second Amendment: Right to Keep and Bear Arms**

- 193. Intervenor-Defendants incorporate their responses to the prior paragraphs.
- 194. This paragraph states legal conclusions, to which no response is required.
- 195. This paragraph states legal conclusions, to which no response is required.
- 196. This paragraph states legal conclusions, to which no response is required.
- 197. This paragraph states legal conclusions, to which no response is required.

**COUNT 6**

**Fourth Amendment: Right Against Unreasonable Searches and Seizures**

- 198. Intervenor-Defendants incorporate their responses to the prior paragraphs.
- 199. This paragraph states legal conclusions, to which no response is required.
- 200. This paragraph states legal conclusions, to which no response is required.
- 201. This paragraph states legal conclusions, to which no response is required.

**COUNT 7**

**Constitution, Article I, Sections 1 and 7: Separation of Powers**

- 202. Intervenor-Defendants incorporate their responses to the prior paragraphs.
- 203. This paragraph states legal conclusions, to which no response is required.

204. This paragraph states legal conclusions, to which no response is required.

205. This paragraph states legal conclusions, to which no response is required.

## **VII. DEMAND FOR RELIEF**

No response is required to Plaintiffs' Demand for Relief. To the extent a response is required, denied that Plaintiffs are entitled to the requested relief, or any relief.

## **DEFENSES**

As and for their defenses to all causes of action purported to be set forth by Plaintiffs in the Complaint, Defendant-Intervenor States allege as follows, subject to its right to amend and assert such other defenses as may become available during discovery in this action.

### **FIRST DEFENSE: NO VIOLATION OF APA**

The Rule does not violate the Administrative Procedure Act.

### **SECOND DEFENSE: NO CONSTITUTIONAL VIOLATION**

The Rule is not unconstitutional.

**WHEREFORE**, Defendant-Intervenor States respectfully request:

1. That Plaintiffs' Complaint and each cause of action therein be dismissed with prejudice;
2. That Plaintiffs take nothing by way of the Complaint;
3. That the Court order such other and further relief for Defendant-Intervenor States as the Court may deem appropriate.

Dated: January 16, 2025

Respectfully submitted,

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**JEREMY M. FEIGENBAUM\***

*Solicitor General, State of New Jersey*

---

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