IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
Amarillo Division

STATE OF TEXAS, STATE OF LOUISIANA, STATE OF MISSISSIPPI, STATE OF UTAH, JEFFREY W. TORMEY, GUN OWNERS OF AMERICA, INC., GUN OWNERS FOUNDATION, TENNESSEE FIREARMS ASSOCIATION, and VIRGINIA CITIZENS DEFENSE LEAGUE,

Plaintiffs,

v.

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

Defendants.

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

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO STAY

INTRODUCTION

On April 19, 2024, the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") promulgated a Final Rule entitled "Definition of 'Engaged in the Business' as a Dealer in Firearms," 89 Fed. Reg. 28968 (Apr. 19, 2024) (the "Rule"). Under the Rule, Plaintiffs were presumed criminals for engaging in lawful private and noncommercial sales of firearms. As the Trump White House put it, the Rule "attack[ed] gun-owning Americans and undermine[d] the Second Amendment...."[1] This Court preliminarily enjoined Defendants' enforcement of the Rule on June 11, 2024, agreeing that it was "substantially likely" to be "unlawful" under the amended Gun Control Act. ECF # 70 at 14.

So, it seems uncontroversial that the Rule is unlawful and should be relegated to the dustbin of history, along with other Biden-era gun control. The only dispute now is whether this Court should rule on the parties' cross-motions for summary judgment, or whether Defendants should be permitted to continue stalling this case to pursue the temporary Band-Aid of easily reversible rulemaking. And stall this case, Defendants have. Following the change in presidential administrations some 16 months ago, Defendants sought and obtained a series of abeyances of their interlocutory appeal to the Fifth Circuit. But once the Fifth Circuit declined to indulge Defendants' delay tactics any further, Defendants dismissed their appeal and now seek a stay here – thus asking this Court for the very same relief that the Fifth Circuit just denied. This Court should deny Defendants' Motion to Stay and rule on the parties' fully briefed case.

LEGAL STANDARD

The "moving party bears a heavy burden to show why a stay should be granted absent statutory authorization." *Coastal (Bermuda) Ltd. v. E.W. Saybolt & Co., Inc.*, 761 F.2d 198, 203 n.6 (5th Cir. 1985). Where "a discretionary stay is proposed, something close to genuine necessity should be the mother of its invocation." *Id.* Indeed, "[t]he granting of indefinite stays should not be a quotidian exercise." *Id.* at 204. Thus, "the suppliant for a stay must make out a clear case of

[1] Russell T. Vought, *Major Discretionary Funding Changes*, Exec. Off. of the President (May 2, 2025), https://tinyurl.com/5n86f5vv, at 19.

hardship or inequity in being required to go forward, *if there is even a fair possibility that the stay* for which he prays *will work damage to some one else*." *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936) (emphasis added).

ARGUMENT

Briefing on the parties' cross-motions for summary judgment was completed over a year ago in January of 2025, and there are no further issues for the parties to litigate prior to resolution on the merits. Although conceding as much, Defendants nevertheless wish to re-stay this case indefinitely. Noting that ATF recently published a Notice of Proposed Rulemaking in the Federal Register, involving the "engaged in the business" issue (*see* Revising Regulations Defining "Engaged in the Business" as a Dealer in Firearms, 91 Fed. Reg. 24424 (May 6, 2026)), Defendants speculate that this "could moot this case and would at the very least significantly impact any remaining issues." ECF # 173 ("Mot. Stay") at 7. Plaintiffs disagree, for a number of reasons.

First, and as noted above, the Fifth Circuit recently denied Defendants' request to further delay this case (No. 24-10612, Doc. 189-1), setting the case for argument shortly thereafter. The Fifth Circuit took this action *despite* Defendants' newly offered assurances that a new proposed rule was imminently forthcoming (*see* No. 24-10612, Doc. 178, at 3). The Fifth Circuit thus thought this case should proceed irrespective of ATF's new proposed rule, and the fact that the proposed rule now has been proposed should not alter that calculus.

Second, there is no guarantee that Defendants will finalize a replacement rule *at all*. For example, although promising[2] for over a year that ATF would issue a new rulemaking to replace the Biden ATF's notorious 2022 "Frame or Receiver" rule (87 Fed. Reg. 24652 (Apr. 26, 2022)), ATF then backtracked, reporting[3] that it had decided to keep its Biden-era rule, only to quickly

[2] *See* https://assets.nationbuilder.com/firearmspolicycoalition/pages/6573/attachments/original/1775164199/2026.04.02_310_JSR_re_Stay.pdf?1775164199 at 1 ("ATF has advised that it plans to take agency action to amend the challenged rule.").

[3] https://x.com/GunOwners/status/2042267175461802077.

flip-flop again to promising[4] a new rule days later. Similarly here, there is no guarantee that ATF will see the proposed rule through to fruition, rather than simply changing its mind and abandoning its proposed rulemaking entirely.[5] Defendants seemingly acknowledge as much, stating that any "final action" on the rule could be "such as issuance of a final rule" (Mot. Stay at 2) – or apparently "such as" other things as well.

Third, even if ATF ultimately does issue a new final rule, there is no way of knowing *when* that might be. It took Defendants 15 months even to *propose* their new rule, despite the Fifth Circuit having given them nearly a year to get their act together. Likewise, it took eight months for the current Rule to be finalized after the proposed rule was issued. *Cf.* 88 Fed. Reg. 61993 (Sept. 8, 2023); 89 Fed. Reg. 28968 (Apr. 19, 2024). And although the Rule under review had a short 30-day effective date, many ATF rules have taken 90 days or more to take effect. *Cf.* 86 Fed. Reg. 30826 (June 10, 2021); 88 Fed. Reg. 6478 (Jan. 31, 2023). In other words, Defendants already have shown that they are in no great rush to promulgate a new rule to replace the existing one and, should this Court grant Defendants the new and open-ended stay they seek, there is no telling when a new final rule might issue. It is easy to imagine that Plaintiffs will find themselves waiting another year *or more* for a replacement final rule.

Fourth, there is no guarantee that a new rule – if one is ever issued – will affect the issues in this case, much less moot Plaintiffs' claims entirely. After receiving public comment, ATF could choose to tweak, modify, or even scrap some or all proposals in the proposed rule. Any replacement final rule could read entirely differently than the proposed rule. ATF has done that before. For example, the Fifth Circuit struck down ATF's final rule on pistol stabilizing braces (*see* 88 Fed. Reg. 6478) in *Mock v. Garland*, 75 F.4th 563 (5th Cir. 2023), on the theory that it was completely different than, and thus not a "logical outgrowth" of, the proposed rule. *Id.* at 586. Sensitive to

[4] https://x.com/GunOwners/status/2044053667825774961.

[5] *See* https://tinyurl.com/3cxyd32u (reporting a 2020 Trump Administration attempt to end a U.S. Army Corps of Engineers ban on public carry of firearms on federal lands, only for the proposed rule to "stall[] in bureaucratic limbo ever since").

this recent history, it is hardly inconceivable that ATF might respond to public comments and criticism by issuing a *second* proposed rulemaking, further dragging out the process.

Fifth, even if a replacement rule is finalized, it is likely to be subject to its *own* legal challenges. And it might be enjoined, in separate litigation that itself could take *years* to resolve. Indeed, anti-gun organizations already have signaled their opposition to recently promulgated ATF regulations.[6] If this happens, the result could be *two* enjoined final rules, with no clarity as to which – or either – is the current law. It all could take years to play out, and resolution might mean that the current Rule is placed right back into effect. Plaintiffs should not be required to wait for *new* litigation about a *new* rule to be resolved before obtaining resolution here.

Sixth, the current Rule was promulgated more than two years ago, and this case still remains in the district court, demonstrating how long APA litigation like this can take to resolve. Meanwhile, less than three years remain (32 months) before presidential administrations will once again change hands. And when that occurs, there is no guarantee that a subsequent administration will see things the same as this administration and, in fact, a subsequent administration might seek to place the current Rule right back into effect. That would leave Plaintiffs re-bringing this *same* challenge in a few years' time, against these *same* Defendants, litigating these *same* issues. Plaintiffs should not be the victims of the inevitable see-sawing political agendas of different administrations.

Seventh, the new proposed rule concedes that the current Rule is blatantly unlawful. As the proposed rule explains, "many provisions of the rule were – and are – at odds with the statutory text." 91 Fed. Reg. at 24426; *cf.* ECF # 70 at 18 (this Court concluding that "several presumptions conflict with the statutory text"). Indeed, citing this Court's prior grant of preliminary injunction to Plaintiffs, the proposed rule concedes that, "[o]n further review, ATF agrees that the EIB rule is replete with procedural and substantive problems." 91 Fed. Reg. at 24426; *see also id.* at 24433 (agreeing that "the presumptions could have been used to relieve the Government of its burden of proof"), at 24430 ("ATF now believes that the definitions identified by the EIB rule are too

[6] *See, e.g.*, https://tinyurl.com/4a7eedza; https://tinyurl.com/327z3e8a; https://tinyurl.com/2s2ddys6.

restrictive"), at 24430 ("the effectively permanent restraint on firearms sales after the 30-day period is arguably unlawful"). Nevertheless, in spite of their new proposed rule conceding that Plaintiffs *should prevail* and that this Court's initial decision *was correct* on the merits, Defendants resist this Court doing the natural thing and simply entering judgment for Plaintiffs here – vacating the Rule, and enjoining enforcement of its provisions. Just why it is Defendants are so resistant to that, they do not say, aside from vaguely invoking "judicial resources" (Mot. Stay at 7) – apparently forgetting that this Court already has issued a preliminary opinion explaining why the Rule is unlawful (a determination the proposed new rule agrees with). Little more needs to be done to convert this Court's preliminary conclusions into a final judgment.

Eighth, perhaps telegraphing just *why* it is that ATF concedes defeat but resists a judgment, ATF recently has shown that it does not respect the judgments of federal courts, instead seeking to conserve within itself maximum discretion to continue its offending behavior in the future. For example, despite the fact that numerous courts enjoined ATF's Biden-era pistol stabilizing brace rule,[7] and despite the fact that another judge of this Court vacated that rule in its entirety,[8] ATF and DOJ continue to enforce the pistol brace rule's underlying legal theories. First, even after the pistol brace rule was enjoined, DOJ brought an indictment for possession of an alleged unregistered short-barreled rifle (in reality, a pistol equipped with a stabilizing brace), arguing that DOJ was enforcing *the statute*, not *the rule* – even though admitting that its underlying interpretive framework was *identical*. *See United States v. Taranto*, No. 1:23-cr00229-CJN (D.D.C.). As DOJ rationalized it, the subsequent vacatur of the pistol brace rule had occurred based on logical outgrowth, and no "court … has held the rule is an incorrect interpretation of the statute."[9] Thus, DOJ felt entitled to continue to use similar factors as those discussed in the rule. ATF then doubled down, sending an email to a member of Plaintiff GOA, claiming that *all* firearms with stabilizing

[7] *See, e.g.*, *Texas v. BATFE*, 700 F. Supp. 3d 556 (S.D. Tex. 2023); *Watterson v. BATFE*, 2023 U.S. Dist. LEXIS 183109 (E.D. Tex. June 7, 2023); *Britto v. BATFE*, 2023 U.S. Dist. LEXIS 200933 (N.D. Tex. Nov. 8, 2023).
[8] *Mock v. Garland*, 2024 U.S. Dist. LEXIS 105230 (N.D. Tex. June 13, 2024).
[9] https://storage.courtlistener.com/recap/gov.uscourts.txsd.1905516/gov.uscourts.txsd.1905516.104.0.pdf at 5.

braces *continue* to be illegal short-barreled rifles – even after vacatur of the pistol brace rule. *Id.* at 6. Again, ATF theorized that, even without *the rule*, it could enforce the very same legal theories under the cutesy guise of enforcing "*the statute*." *Id.*

In other words, were this Court to stay the case, and later declare it moot without resolving Plaintiffs' claims on the merits, ATF would be free to engage in similar behavior here – on the theory that no court had repudiated the merits of its "engaged in the business" theories. Tellingly, ATF's proposed *replacement rule* does not contain any *replacement provisions*. Instead, ATF simply "proposes *repealing* those sections of the EIB rule that" this Court found objectionable. 91 Fed. Reg. at 24426 (emphasis added). But without any substantive *replacement* that binds ATF to a correct application of the statute, ATF could argue – just as it did with pistol braces – that it is free to continue enforcing "*the statute*" rather than "*the rule*," using the very same legal theories as contained in the current Rule. If that were to occur, all the ATF theories this Court has repudiated – no sales, no purchases, no profit, etc. – could find themselves right back in ATF's pitching rotation, as if nothing has changed. Again, that has happened before with these Defendants.

Ninth, while purporting to repeal many of the most objectionable provisions of the current Rule, ATF's new proposed rule continues to echo the existing Rule, making the same sort of objectionable claims. For example, the proposed rule continues to deny that ATF was seeking to create universal background checks in its promulgation of the current Rule. 91 Fed. Reg. at 24429.[10] And although the proposed rule now admits that one's "defense" and "protection" firearms can be part of one's "personal collection," the proposed rule continues to maintain that permissible sales from one's "personal collection" constitute only a "narrow statutory exception," rather than the broad safe harbor for noncommercial activity that Congress clearly intended. *Id.*

Likewise, while the proposed rule admits that the current Rule's restrictions on "former licensee inventory" improperly restricted a former licensee's ability to get rid of old inventory, the proposed rule maintains that former licensees may not sell *too many* guns *too quickly* after

[10] Curiously, ATF's denial conflicts with the Trump White House's own assessment of the matter. *See* Vought, *supra*, at 19.

discontinuing business. 91 Fed. Reg. at 24430. Just where that invisible line is to be drawn, the proposed rule does not say. Of course, this continues to ignore Plaintiffs' point that a former licensee is always free to dispose of inventory – some or all – without being "engaged in the business" because, no matter how many post-license sales might be made, there can be no requisite "purchases" to be "engaged in the business." *See* ECF # 83 at 24. Whether a former FFL can sell *none* of its former inventory (*see* 89 Fed. Reg. at 29091), or a *few* guns here and there (*see* 91 Fed. Reg. at 24430), the result is the same – a GOA member "whose retirement savings are now frozen in unsellable inventory." ECF # 70 at 11. Finally, while the proposed rule proposes to eliminate the current Rule's language about one not having to actually earn a profit to be "engaged in the business," simply reverting to the statutory text with no explanation, the proposed rule does not appear to explain why that change is made. 91 Fed. Reg. at 24431. Of course, this Court already has explained that proof of profit *is* required – just like repetitive purchases and resales. ECF # 70 at 16.

Tenth, the current Rule was not cut from whole cloth. Rather, it represents a collection of the most strained and tenuous legal theories that ATF had been collecting at the margin for years. Without this Court's repudiation of this accumulated baggage, and without ATF offering any *substantive replacement* for the provisions of its current Rule, the state of the law will simply revert to the way it was prior to the current Rule being promulgated – with ATF free to target law-abiding gun owners for being engaged in the business under any cockamamie theory that ATF believes will stick. In other words, *not the Rule, but still the Rule*.

Eleventh, Defendants dispute that Plaintiffs need a judgment from this Court, claiming instead that, if "the Court were to vacate the Rule, that could interfere with ATF's ability to promulgate a final rule[11] that reflects ATF's current assessment of the best path forward, in line

[11] To the extent that a decision from this Court might constrain Defendants' ability to further violate the statute in future rulemakings and prosecutions, *that is a good thing*. Indeed, Defendants have proposed a new rulemaking subsequent to vacatur of their pistol brace rule by another judge of this Court in *Mock v. Garland*, 2024 U.S. Dist. LEXIS 105230 (N.D. Tex. June 13, 2024). And yet that proposed rule nowhere alleges that *Mock* impaired ATF's ability to enact a rule in compliance with the statute. *See* Removing Factoring Criteria for Firearms with Attached

with the President's priorities." Mot. Stay at 7. Unsurprisingly, Defendants do not explain this curious claim. To the contrary, although "comments submitted by members of the public" (*id.*) no doubt are helpful to an agency, there is no question that ATF needs some guardrails that only this Court can offer. Indeed, it is not "the *President's* priorities" that ultimately matter here, but rather statutory fidelity to the language *Congress* enacted. And it ultimately is the role of courts – not the Executive – to "say what the law is." Just like it can never be a legitimate government interest to violate a constitutional right (*see Firearms Pol'y Coal., Inc. v. Bondi*, 805 F. Supp. 3d 721, 733 (N.D. Tex. 2025)), it cannot possibly be "hardship to Defendants" (Mot. Stay at 7) for this Court to require them to faithfully execute the statute Congress wrote.

Twelfth, Defendants claim that their requested stay would "not prejudice Plaintiffs." Mot. Stay at 7. But Defendants request an indefinite stay "pending a final action by ATF on the May 6, 2026" notice of proposed rulemaking. *Id.* at 8. Such an open-ended stay could not be more vague. So long as Defendants never concluded their rulemaking, Plaintiffs' case would languish.[12] Meanwhile, this Circuit's "default rule is that vacatur is the appropriate remedy" for an unlawful rulemaking. *Data Mktg. P'ship, LP v. U.S. DOL*, 45 F.4th 846, 859 (5th Cir. 2022). Seeking an open-ended stay with no requirement that they ever *do anything*, Defendants do not explain why departure from the "default rule" of vacatur is warranted here.

Thirteenth, Defendants continue to invoke this Court's *preliminary* injunction as some magic talisman that protects Plaintiffs completely and absolutely. *See* Mot. Stay at 7. But whether that is true is far from clear. As the Supreme Court once recounted, it was "urged that the preliminary injunction issued by the District Court is a complete defense to civil or criminal penalties." *Edgar v. Mite Corp.*, 457 U.S. 624, 630 (1982). But that appears to be an open question. As the Court noted, "that is not a frivolous question by any means; it is an issue to be decided when and if the [government] initiates an action." *Id.* For his part, Justice Powell believed that "[n]either

"Stabilizing Braces," Docket No. ATF-2026-0335, ATF No. 2025R-11P, https://www.federalregister.gov/d/2026-08930/p-3. Defendants offer no credible theory why it would be any different here.

[12] *See* abandoned USACE rulemaking in note 5, *supra*.

the terms of the preliminary injunction nor prior equity practice provides any support for an interpretation of the District Court's order as a grant of total immunity from future prosecution." *Id.* at 649 (Powell, J., concurring). Recently, the Fifth Circuit weighed in, noting in *Braidwood Mgmt. v. Becerra*, 104 F.4th 930 (5th Cir. 2024), that the parties had negotiated a settlement on the theory that "the district court's injunction was incapable of immunizing them from statutory penalties in the event the district court's judgment was later vacated or reversed...." *Id.* at 939, *rev'd on other grounds sub nom. Kennedy v. Braidwood Mgmt.*, 606 U.S. 748 (2025). But the question remains open. *See* Michael T. Morley, *Erroneous Injunctions*, 71 Emory L.J. 1137, 1137 (2022) (emphasis added) ("Once an … injunction has been reversed, vacated, or dissolved, the government may enforce the challenged legal provision against the plaintiff if it violates that provision in the future. *It is less clear, however, whether the government may similarly prosecute that plaintiff or impose other punitive measures against it for violating the challenged provision while the injunction was in effect.* … [T]he Supreme Court expressly left this issue unresolved in *Edgar*...."). In other words, because the Rule has only been preliminarily enjoined – not vacated and subjected to a permanent injunction – the risk remains that Plaintiffs might be subjected to future enforcement if this Court's injunction – which on "its face does nothing more than temporarily restrain conduct" (*Edgar*, 457 U.S. at 651 (Stevens, J., concurring in part and concurring in the judgment)) – were dissolved. That is the case not only for Plaintiffs' future actions, but for actions that were taken during the pendency of this Court's injunction. Indeed, the Court already found that Plaintiff Tormey's intended course of conduct likely met the requirements of the Rule, which would render him "engaged in the business." *See* ECF # 70 at 8-9.

Fourteenth, even if this Court were to grant Defendants' Motion to Stay, and Defendants then were to issue a new final rule that addresses all of the challenged Rule's legal defects, thereafter claiming mootness, Plaintiffs no doubt would argue against mootness under the "voluntary cessation" and "capable of repetition, yet evading review" doctrines. *See, e.g.*, *K.P. v. LeBlanc*, 627 F.3d 115, 121 (5th Cir. 2010); *Libertarian Party v. Dardenne*, 595 F.3d 215, 216 (5th Cir. 2010). Indeed, as Defendants admit, their new proposed rule was carefully designed to

"change or eliminate each aspect of the 2024 Rule that this Court found was likely unlawful." Mot. Stay at 2. That sort of attempt to manipulate a court's jurisdiction is precisely what the exceptions to mootness were designed to prevent. At bottom, the best conservation of "judicial resources" (*id.* at 7) would be to avoid litigation of such entirely new issues, and to allow this Court to rule on the parties' aging cross-motions.

Fifteenth and finally, Defendants cite a number of cases where courts have stayed or dismissed actions pending various agency actions. Mot. Stay at 7-8. But those cases involved issues like fracking, air quality permits, and healthcare mandates. None involved the scope of *criminal* liability based on an administrative rulemaking that had unilaterally declared the plaintiffs guilty of felony crimes. Meanwhile, plenty of other cases have refused such stays. *See Asylumworks v. Mayorkas*, 2021 U.S. Dist. LEXIS 102835, at *12-13 (D.D.C. June 1, 2021)(rejecting stay when defendant agency "does not anticipate a final rule until … a year from now barring potential delays.... Meanwhile, plaintiffs would continue to be subject to the challenged rules, without any resolution of their claims that these rules are unlawful."); *California v. EPA*, 360 F. Supp. 3d 984, 993-94 (N.D. Cal. 2018)(denying stay even though agency "proposed rulemaking that, in part, intends to amend the regulations," because "Plaintiffs have made a credible assertion of possible harm that could result from a stay. Even if [the agency] exercises complete diligence in passing the proposed regulation … diligence does not eliminate the ordinary uncertainty in the rulemaking process, which creates at least a 'fair possibility' of harm."). That is the case here.

CONCLUSION

Defendants have not begun to bear their "heavy burden" to justify an indefinite stay. Aside from vaguely invoking "the President's priorities," they have not even begun to explain how they will suffer any "hardship or inequity" at all by this Court's resolution of this case on the merits. On the other hand, there is a laundry list of harms to Plaintiffs, ranging from possible, to probable, to guaranteed. This Court should deny Defendants' Motion to Stay and rule on the parties' Cross-Motions for Summary Judgment.

Date: May 22, 2026

Respectfully submitted.

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CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on May 22, 2026, and that all counsel of record were served by CM/ECF.

/s/Stephen D. Stamboulieh
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