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JOSH SHAPIRO
ATTORNEY GENERAL

March 22, 2021

Dear Attorney General Garland,

As you transition to your new role as United States Attorney General, we ask for your help in closing a regulatory loophole that allows criminals, domestic abusers, and other individuals who legally cannot possess firearms to evade common-sense gun laws. Specifically, we ask that you direct the Department to expedite new rulemaking from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) recognizing that the federal Gun Control Act requires unfinished frames and receivers to be treated the same as fully-finished frames and receivers so that we can put an end to the alarming rise of ghost guns in our communities.

As your partners in law enforcement, we are proud to work with you to reduce criminals' access to guns through enforcement actions, data sharing, and other vital collaborations. Our agencies' joint successes have taken thousands of illegal guns off the streets, shuttered criminal organizations, and made our communities safer. We are immensely grateful for this important and ongoing collaboration.

ATF's interpretation of the federal Gun Control Act allows a dangerous loophole that gives criminals ready access to even the most dangerous types of firearms: the "80% receiver" loophole. Some of us have expressed our views through legal action, and others had the opportunity to meet with ATF and shared our view that addressing this loophole is an urgent public safety priority.

A so-called "80% receiver" refers to a frame or receiver that that can easily become capable of receiving necessary components to assemble into an operable firearm. In fact, they are sold with the express intention that the average person can build a gun from them with common tools and no advanced skill. They are readily available at gun shops, gun shows, and even online for home delivery with no serial number, no background check, and often in "kits" with all of the other parts needed to build a complete gun. Without serial numbers, these firearms are untraceable ghost guns; and without background checks, we cannot prevent them from being sold directly to criminals.

Simply put, this loophole allows unserialized ghost guns to be bought and sold without oversight. This is not a theoretical problem: more and more, criminals are taking advantage of this loophole to obtain guns that are later used in crimes. For example, the Philadelphia Police Department has seen ghost gun recoveries skyrocket from 13 in 2018 to 250 in 2020. Those of us working these cases day in and day out recognize that this loophole must be closed as quickly as possible.

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ATF's interpretation that 80% receivers not be treated as firearms is inconsistent with Congress's intent when it passed the Gun Control Act and with public safety priorities. Violent felons, domestic abusers, juveniles, and people who have been involuntarily committed due to severe mental illness who would be prohibited from purchasing a fully-functioning, traceable firearm under federal law cannot be allowed to buy a product that lets them assemble an untraceable ghost gun in an afternoon. We hope that under the Biden Administration's leadership, ATF will reconsider its interpretation and ensure that existing federal law is properly enforced.

Some of our states have already taken steps to close this dangerous loophole. For example, Pennsylvania's Uniform Firearms Act has similar language to federal law in how it defines a firearm. In 2019, Attorney General Shapiro issued a common-sense, binding legal opinion that 80% receivers must be treated the same as fully-functioning firearms under Pennsylvania law.¹ He also entered into an agreement with the largest gun show promoter in the Commonwealth to stop selling 80% receivers at all of their gun shows as long as they are not subject to background checks—proving that even ardent supporters of the Second Amendment recognize the dangerous consequences of ATF's current interpretation.

The District of Columbia has seen similar spikes in ghost gun recoveries, going from just three in 2017 to 306 in 2020. To try to stop this influx, the D.C. Council enacted a law last year amending the definition of "firearm" and expressly banning the sale of ghost guns to D.C. residents.² D.C. Attorney General Karl Racine also filed a lawsuit against Polymer80, the company that manufactures nearly 90 percent of all ghost guns recovered there. The lawsuit asserts that their 80% receiver products are firearms under D.C. law, and that Polymer80 therefore unlawfully sold firearms to D.C. residents. That case remains ongoing.

In New Jersey, Attorney General Grewal successfully sued a recalcitrant out-of-state ghost gun company to force it to stop advertising and selling its products to New Jersey buyers who cannot lawfully possess them, and secured voluntary compliance from more than a dozen other ghost gun sellers after issuing them cease-and-desist letters.

Rhode Island Attorney General Peter Neronha championed a 2020 bill that outlawed these ghost guns.³ That law has already borne results, with the office announcing a plea deal earlier this month for a defendant who was in possession of an unserialized 9mm ghost gun and 18 rounds of ammunition.⁴

¹ <https://www.attorneygeneral.gov/wp-content/uploads/2019/12/19.12.16-Receivers-Legal-Opinion.pdf>.

² <https://code.dccouncil.us/dc/council/acts/23-324.html>.

³ <http://webserver.rilin.state.ri.us/PublicLaws/law20/law20010.htm>.

⁴ <https://www.ri.gov/press/view/40659>.

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While states can close this loophole within our own borders, we need federal action to institute a nationwide solution; even when states try to close this loophole, 80% receivers can still be readily purchased online, or trafficked into our states from other jurisdictions. Additionally, many states rely on ATF's interpretation of federal law for their enforcement actions.

Congress has previously considered bills that would close this loophole. However, ATF need not—and should not—wait for Congress to act to close off criminals' illegal access to untraceable firearms. Existing law provides you all the authority you need; you can begin the process of issuing rulemaking today to reverse this erroneous interpretation and close this loophole.

Federal action would help ATF, our offices, and our colleagues in federal, state, and local law enforcement agencies across the country to combat the ever-increasing prevalence of ghost guns in our communities. Until then, we are fighting gun trafficking and possession by prohibited purchasers with one arm tied behind our backs.

To be clear, such a change would not in any way restrict the rights of lawful gun owners to purchase 80% receivers and assemble firearms on their own. It would simply require that these products have serial numbers and that purchasers undergo simple background checks—just like they currently do for other firearm purchases.

Collaboration between federal, state, and local law enforcement is critical to stopping the flow of illegal guns in our communities and across our state borders. The rise of untraceable ghost guns undermines that effort. By closing this loophole, ATF can take a tremendous step forward towards the goal we all share: keeping Americans safe from gun violence.

Sincerely,



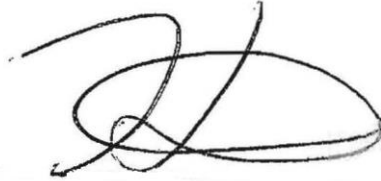
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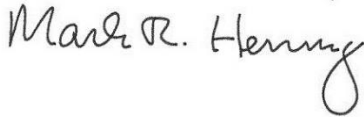
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