No. 23-852

IN THE
Supreme Court of the United States

MERRICK B. GARLAND, ATTORNEY GENERAL, *et al.*,
Petitioners,
v.
JENNIFER VANDERSTOK, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF THE DISTRICT OF COLUMBIA, NEW JERSEY, PENNSYLVANIA, ARIZONA, CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, HAWAII, ILLINOIS, MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN, MINNESOTA, NEVADA, NEW YORK, NORTH CAROLINA, OREGON, RHODE ISLAND, VERMONT, WASHINGTON, WISCONSIN, AND THE NORTHERN MARIANA ISLANDS AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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QUESTIONS PRESENTED

1. Whether "a weapon parts kit that is designed to or may readily be completed, assembled, restored, or otherwise converted to expel a projectile by the action of an explosive," 27 C.F.R. 478.11, is a "firearm" regulated by the Gun Control Act of 1968.

2. Whether "a partially complete, disassembled, or nonfunctional frame or receiver" that is "designed to or may readily be completed, assembled, restored, or otherwise converted to function as a frame or receiver," 27 C.F.R. 478.12(c), is a "frame or receiver" regulated by the Gun Control Act of 1968.

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INTRODUCTION AND INTEREST OF *AMICI CURIAE*

Over two years ago, the Bureau of Alcohol, Tobacco, and Firearms ("ATF") issued a commonsense regulation recognizing that weapon parts kits and certain partially complete frames and receivers—which can easily be assembled into functional weapons—are "firearms" under the federal Gun Control Act of 1968 ("GCA" or "the Act"). *See* Definition of "Frame or Receiver" and Identification of Firearms, 87 Fed. Reg. 24652 (Apr. 26, 2022) (codified at 27 C.F.R. pts. 447, 478, 479). Notably, the Final Rule does not *ban* these kits, but merely regulates them. Under federal law, manufacturers and dealers must keep records of, conduct background checks on, and serialize such "firearms" to prevent them from falling into the hands of children or criminals, and to allow the weapons to be traced if they are used to commit crimes. 18 U.S.C. §§ 922(t), 923(g), (i). Those requirements are crucial to preventing and solving violent, firearm-related offenses.

The District of Columbia, New Jersey, Pennsylvania, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New York, North Carolina, Oregon, Rhode Island, Vermont, Washington, Wisconsin, and the Northern Mariana Islands (collectively, "*Amici* States"), submit this brief in support of petitioners. As protectors of public safety and welfare, *Amici* States' "dominant interest" in "preventing violence . . . cannot be questioned. It is a matter of genuine local concern." *United Auto., Aircraft &*

Agric. Implement Workers of Am. v. Wis. Emp. Rels. Bd., 351 U.S. 266, 274 (1956). The Final Rule is vital to public safety and law enforcement in our jurisdictions.

In recent years, gun violence has skyrocketed across the country. Gun-related homicides rose by 45% between 2019 and 2021, contributing to "the largest two-year increase [in homicides] ever recorded" by the Centers for Disease Control and Prevention. Ari Davis et al., *U.S. Gun Violence in 2021: An Accounting of a Public Health Crisis* 7 (Johns Hopkins Ctr. For Gun Violence Sols. 2023), https://tinyurl.com/mszmmzdc.[1] Concurrently, advances in firearms technology have contributed to the rapid proliferation of "ghost guns": unserialized firearms that can be built at home, including from easily assembled weapon parts kits featuring partially complete frames or receivers. Individual states have worked diligently to protect their citizens from gun violence and address this emerging threat. But there is a natural limit to states' abilities to combat a nationwide problem that crosses state borders. Absent federal enforcement, ghost guns have continued to proliferate, including in the very states that have been trying to keep them out.

Consistent with the GCA, the Final Rule at issue in this litigation fills this gap in state-by-state

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[1] Preliminary data shows that this rate remains at a record high with about 19,500 gun homicides recorded in 2022. *CDC Provisional Data: Gun Suicides Reach All-time High in 2022, Gun Homicides Down Slightly from 2021,* Johns Hopkins Bloomberg Sch. of Pub. Health (July 27, 2023), http://tinyurl.com/knfbvnjk.

enforcement by expressly regulating weapon parts kits and partially complete frames or receivers as firearms. *See* 87 Fed. Reg. 24652. In doing so, it advances the "twin goals" of the GCA: "to keep guns out of the hands of criminals and others who should not have them, and to assist law enforcement authorities"—the bulk of whom operate at the state and local level—"in investigating serious crimes." *Abramski v. United States*, 573 U.S. 169, 180 (2014). Since the Final Rule went into effect, law enforcement agencies in several jurisdictions have seen the number of unserialized weapons recovered either plateau or decrease, often for the first time in several years. *Amici* States thus have a strong interest in ensuring that the Final Rule remains valid and effective in complementing state efforts to keep untraceable weapons out of the hands of violent criminals.

SUMMARY OF ARGUMENT

This Court should reverse the Fifth Circuit's decision, for several reasons.

1. To begin, the court below erred by striking down the Final Rule. The Final Rule plays a central role in federal regulation of untraceable firearms and is consistent with the text, history, and purposes of the GCA. As the Final Rule recognizes, readily assembled weapon parts kits and partially complete frames or receivers are "firearms" under the statute's plain text. The history and context of the Act confirm this commonsense interpretation. Congress engineered a broad scheme to regulate the interstate flow of firearms, and the Final Rule ensures that the Act and similar state laws are not thwarted by developments

in gun technology. Put simply, the Final Rule prevents ghost gun manufacturers from "undermin[ing]" the GCA's "core provisions." Pet'rs' Br. 41 (quoting *Abramski*, 573 U.S. at 179-80). This Court has also emphasized the GCA's anti-circumvention purpose when interpreting other provisions of the statute, explaining that the scheme only works if there is "substance" behind its terms, not just "empty formalities." *Abramski*, 573 U.S. at 180. The Final Rule ensures that weapon parts kits do not circumvent the Act's provisions.

2. The Final Rule's protections are a matter of national importance, and gutting the rule would severely harm *Amici* States and their residents. The Final Rule is a vital backstop to states' efforts to stem the flow of ghost guns and combat the violence engendered by prohibited persons possessing untraceable weapons. In response to the recent influx of ghost guns, at least 17 jurisdictions have enacted their own laws regulating weapon parts kits and partially complete frames or receivers. But absent federal enforcement, the number of unserialized guns has nonetheless proliferated, leaving in its wake a spike in crime and violence. The Final Rule serves a vital coordinating function, consistent with the GCA, that states cannot exercise on their own. Striking down the Final Rule would allow further proliferation of ghost guns, harming public safety and stymying law enforcement.

ARGUMENT

I. The Final Rule Fits Squarely Within The GCA's Comprehensive Scheme.

The Fifth Circuit's ruling, which invalidated key portions of the Final Rule, is wrong. Among other things, the court misconstrued the GCA and erroneously invalidated the ATF's regulation, which is faithful to the GCA's text. *See VanDerStok v. Garland,* 86 F.4th 179, 196 (5th Cir. 2023) ("hold[ing] unlawful the two challenged portions of the Final Rule as improper expansions of ATF's statutory authority"). The Fifth Circuit also disregarded the history and purpose of the GCA, which is critical to interpreting the Final Rule. Additionally, this Court has emphasized the GCA's anti-circumvention purpose when interpreting the Act. The Final Rule is necessary to prevent circumvention by ensuring that weapon parts kits are subject to the same reporting and tracking requirements as more conventional firearms.

A. The Final Rule is consistent with the text, history, and purpose of the GCA.

Under a plain reading of the GCA, easy-to-assemble weapon parts kits and partially complete frames or receivers fall within the statutory definition of "firearm." Both are "designed to . . . expel a projectile by the action of an explosive," and "may readily be converted" to do just that. 18 U.S.C. § 921(a)(3). As the ATF recognized, the text focuses on a weapon's *proximity* to full functionality and not on its immediate ability to fire a projectile. 87 Fed. Reg. at 24685; *see* 18 U.S.C. § 921(a)(3) (defining a "firearm" to include a "starter gun," which is filled

with blanks but can readily be converted to fire an explosive). Weapon parts kits similarly meet that proximity threshold because they are, by design, easy to convert into a fully functional firearm—and in fact, they are consistently marketed as practical substitutes for conventional weapons. *See, e.g.*, *FNS – Lower Parts Kit*, *Complete Kits for a Complete Build*, JSDSupply, https://tinyurl.com/yvhp94pw (last visited July 2, 2024) (describing kits as essentially "fully functional firearm[s] without the hurdles of a background check or government fees").

This interpretation is reinforced by the GCA's history and context as an effort to end "mail order murder." H.R. Rep. No. 90-1577, at 19, *as reprinted in* 1968 U.S.C.C.A.N 4410, at *4425. At the time the Act was passed, Congress and the public were reeling from the high-profile murders of President John F. Kennedy, Martin Luther King, Jr., and Robert F. Kennedy, whose deaths focused attention on mail-order guns and helped pressure Congress to act. *See* Franklin E. Zimring, *Firearms & Federal Law: The Gun Control Act of 1968*, 4 J. Legal Stud. 133, 147-48 (1975). Congress thus passed the GCA to curb easy access to these weapons and solve the "interstate mail order gun problem." *Id.* at 145 (citing an unpublished report from Senator Thomas Dodd). The GCA must be read in light of that context and overall scheme. *See FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000). That means adopting a commonsense, functional understanding of "firearm" that considers proximity to full use and recognizes the crucial anti-circumvention role that the GCA was designed to play.

The Final Rule's regulation of readily assembled weapon parts kits and partially complete frames or receivers fits within the GCA's purpose of closing the gaps that led to widespread interstate trafficking of firearms to unknown individuals, despite state laws intended to prevent those problems. In the same way that mail-order guns previously enabled "criminals, immature juveniles, and other irresponsible persons" to obtain firearms when "they could not purchase guns under the laws in their own jurisdictions," Zimring, *supra* at 145, today's unregulated supply of unserialized gun kits lets people evade the gun laws of their states. This modern incarnation of the mail-order gun problem undermines the purposes of the GCA: to "control the indiscriminate flow of [guns] across State borders" and to "[e]nsure that strong local or State laws are not subverted by a deadly interstate traffic in firearms." H.R. Rep. No. 90-1577, at 8, 19 (1968), *as reprinted in* 1968 U.S.C.C.A.N 4410, at *4413, *4425.

For example, according to a House Judiciary Committee Report, Congress banned the "interstate mail-order shipments of firearms . . . so that *State* and *local* authorities may better exercise the controls they deem desirable over . . . such firearms." H.R. Rep. No. 90-1577, at 12 (1968), *as reprinted in* 1968 U.S.C.C.A.N 4410, at *4418 (emphasis added) (explaining the purpose of 18 U.S.C. § 922(a)(2)). Legislators also banned licensees from selling to persons barred from gun ownership in the state where the licensee does business—as well as to those whom the licensee believes do not reside in that state—to close a loophole allowing individuals to avoid "*State* and *local* laws controlling firearms by the simple

expediency of crossing a State line to purchase one." *Id.* at 14, *as reprinted in* 1968 U.S.C.C.A.N 4410, at *4420 (emphasis added) (explaining the purpose of 18 U.S.C. § 922(b)(2)-(3)). The GCA was meant to protect the integrity of state gun laws against interstate circumvention—a task Congress correctly recognized was uniquely suited for the federal government:

> [C]ontrols on interstate gun traffic which only the Federal Government can apply, and without which no State gun law is worth the paper it is written on[,] [are vital]. . . . Without such Federal assistance, any State gun law c[ould] be subverted by any child, fugitive, or felon who orders a gun by mail or buys one in a neighboring State which has lax gun laws.

114 Cong. Rec. 13647 (1968) (statement of Sen. Joseph Tydings).

If the GCA was designed to solve a state-law-circumvention problem presented by mail-order guns, then it must also be read to solve an identical circumvention problem presented by ghost guns. This Court interprets the GCA practically, focusing on "substance" and not "empty formalities." *Abramski*, 573 U.S. at 180. By updating the GCA's critical definitions to cover developments in firearms technology, the Final Rule adheres to that guidance. *See infra* Part II.C.

B. The Final Rule advances the GCA's purpose in line with this Court's prior interpretation of the Act.

The Final Rule is also in line with the Court's precedent. This Court has previously held that the

GCA should be construed practically and in light of its anti-circumvention purpose. For example, in *Huddleston v. United States*, 415 U.S. 814 (1974), the Court held that Section 922(a)(6)'s prohibition on "making false statements in connection with the acquisition of a firearm" covered the redemption of a firearm from a pawnshop. *Id.* at 819. After examining the "aims and purposes of the Act," "the method Congress adopted to achieve those objectives," and the "statements of congressional purpose," the Court reasoned that exempting pawnshop redemptions from the Act would let "every evil Congress hoped to cure [to] continue unabated." *Id.* at 824, 828-29. Similarly, in *Barrett v. United States*, 423 U.S. 212 (1976), the Court concluded that the GCA covered the in-state purchase of a firearm that had previously traveled interstate, as a contrary ruling would create an untenable "gap in the statute's coverage" by "remov[ing] from the statute the most usual transaction, namely, the felon's purchase or receipt from his local dealer." *Id.* at 218, 221.

The Court followed a similar rationale in 2014 in *Abramski*, when it held that the GCA's prohibition on false statements in connection with a firearms purchase barred the use of so-called "straw purchasers": those who buy guns on behalf of others while falsely claiming to be buying them for themselves. 573 U.S. at 171-72. The Court explained that the "overarching reason" for this conclusion was to give effect to the Act's provisions. *Id.* at 179. The GCA had "establishe[d] an elaborate system to verify a would-be gun purchaser's identity and check on his background," and ignoring the problem posed by straw purchasers would enable a "true buyer" to flout

those very provisions, thwarting the Act's "twin goals." *Id.* at 180. The Court ultimately read the GCA to give effect to its purpose: after all, "no part of [the GCA's] scheme would work if the statute turned a blind eye to straw purchases—if, in other words, the law addressed not the substance of a transaction, but only empty formalities." *Id.* at 180.[2]

Overall, the Court's interpretation of the GCA has trended toward inclusion rather than exclusion, and an inclusive reading should apply here. Unregulated weapon parts kits—like straw purchasers, pawn-shop redemptions, and mail-order guns—similarly circumvent the Act's provisions. Just as those earlier incarnations enabled a buyer to hide his identity and avoid detection, kits let a buyer do the same by skirting background checks and assembling an unserialized, fully functional firearm. And unlike in *Abramski*, buyers of such kits need not recruit a third-party intermediary but can instead ship all the parts to their home and build the weapon alone. This Court should thus follow its previous guidance and interpret the Act practically to give effect to its anti-circumvention rationales. In fact, a contrary ruling—which would distinguish kit-assembled guns from conventional ones, when the only difference for the buyer is a few tools and some labor—would elevate "empty formalities" over "substance," directly

[2] In its recent decision in *Garland v. Cargill*, 602 U.S. 406 (2024), this Court held that a bump stock is not a "machinegun" under the National Firearms Act of 1934 because a bump stock does not allow a gun to fire more than one shot by a single function of the trigger. *Id.* at 410. That holding has no bearing on whether weapon parts kits or nearly complete frames or receivers are "firearms" under the Gun Control Act of 1968.

contravening this Court's guidance in *Abramski* to avoid "undermin[ing]—indeed, for all important purposes, . . . virtually repeal[ing]"—the Act's provisions. 573 U.S. at 179-80.

II. The Final Rule Complements State Efforts To Regulate Unserialized Firearms.

Absent federal regulation, unserialized firearms have flooded *Amici* States' communities. Many of these weapons end up in the hands of people banned from gun ownership, directly undermining the GCA's core provisions as well as state law. *See* 87 Fed. Reg. at 24657 n.20. At the same time, gun violence and homicides have spiked in recent years. In response to this influx, many states (including many *Amici* States) have passed laws regulating weapon parts kits and partially complete frames or receivers. The Final Rule lends critical federal support to these existing state efforts, protecting the public from violent crime committed with ghost guns.[3] Invalidating the core of the Final Rule would diminish the effectiveness of those state efforts.

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[3] A broad group of states has long recognized the problem posed by unserialized guns, and many criminalize the removal of a serial number from a firearm (or the possession of a firearm so altered). *See, e.g.*, Ala. Code § 13A-11-64; Ind. Code § 35-47-2-18; Mont. Code Ann. § 45-6-326; Neb. Rev. Stat. §§ 28-1207, -1208; S.D. Codified Laws § 22-14-5; Tex. Penal Code Ann. § 31.11.

A. At least 17 jurisdictions, including the District, have passed their own laws regulating kits and other unserialized firearms.

As the primary actors charged with "defining and enforcing criminal laws," states are responsible for addressing the violence associated with weapon parts kits and other firearms. *Torres v. Lynch*, 578 U.S. 452, 464 n.9 (2016) (quotation mark and citation omitted). In light of the surge of kits and unserialized guns, states have targeted the possession, manufacture, and transfer of such firearms, and have imposed detailed marking and recordkeeping requirements on licensees.

At least 17 jurisdictions directly regulate kits and other unserialized parts. And at least 16 jurisdictions target the possession of unserialized firearms. Three specifically define and target the possession of any "ghost gun." *See, e.g.*, D.C. Code §§ 22-4514, 7-2501.01(9B); N.Y. Penal Law § 265.01(9)-(10); R.I. Gen. Laws Ann. §§ 11-47-8(e), -2(8). Others do the same, albeit using different language.[4] And at least two states prohibit people who are otherwise banned from owning guns from also possessing an unserialized frame or receiver or similar component

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[4] *See, e.g.*, Cal. Penal Code §§ 16519, 16531, 30400; Colo. Rev. Stat. § 18-12-111.5; Del. Code Ann. tit. 11, § 1459A(b); Haw. Rev. Stat. Ann. § 134-10.2; 720 Ill. Comp. Stat. Ann. 5/24-5.1(c), (d); Md. Code Ann., Pub. Safety § 5-703(b)(2); Minn. Stat. Ann. § 609.667(3); Nev. Rev. Stat. Ann. § 202.363; N.J. Stat. Ann. §§ 2C:39-9(k), 2C:39-3(n); 2023 Or. Laws Ch. 229 § 3(2)(a) (H.B. 2005); Vt. Stat. tit. 13, §§ 4083(a)(1), (b)(1) (effective Feb. 28, 2025); Wash. Rev. Code Ann. § 9.41.326(2).

part. *See* Conn. Gen. Stat. Ann. § 53-206j(f); Or. Rev. Stat. § 166.250(1).

At least ten states also target the ghost gun manufacturing and assembly process. Connecticut has adopted a detailed scheme for regulating self-manufacturing—specifically, requiring someone to apply for a unique serial number from the state, engrave that number on the gun's frame or receiver, and pass a background check. *See* Conn. Gen. Stat. Ann. § 53-206j. Six other states prohibit the manufacturing of an untraceable firearm or the acquisition of certain component parts for the purpose of building a firearm. *See* Cal. Penal Code §§ 16519, 16531, 30400; Colo. Rev. Stat. § 18-12-111.5(5)(a); Haw. Rev. Stat. Ann. § 134-10.2; N.J. Stat. Ann. § 2C:39-9(k); 2023 Or. Laws Ch. 229 § 3(1)(a) (H.B. 2005); Wash. Rev. Code Ann. §§ 9.41.326(1), 9.41.190. The rest have more generalized restrictions.[5]

Many states also target the sale and transportation of unserialized firearms and their component parts. At least 15 jurisdictions criminalize the sale or transfer of unserialized firearms and partially complete frames or receivers, either generally or when transferred to non-licensees or prohibited persons.[6] And many states place detailed

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[5] *See, e.g.*, Mass. Gen. Laws ch. 269, § 11E; Nev. Rev. Stat. Ann. § 202.3635; R.I. Gen. Laws Ann. § 11-47-8(e); Vt. Stat. tit. 13, § 4083(c)(1) (effective Feb. 28, 2025).

[6] *See* Cal. Penal Code § 30400; Colo. Rev. Stat. § 18-12-111.5; Conn. Gen. Stat. Ann. § 29-36a(e); Del. Code Ann. tit. 11, § 1459A; D.C. Code §§ 7-2504.08(a), 7-2505.01 to .02; Haw. Rev. Stat. § 134-10.2; 720 Ill. Comp. Stat. Ann. 5/24-5.1(b); Md. Code Ann., Pub. Safety § 5-703(a)(1) to (2); Mass. Gen. Laws ch. 269, § 11E; Nev. Rev. Stat. Ann. §§ 202.3625, .364; N.J. Stat. Ann.

restrictions on dealers at the point of sale, using background checks, recordkeeping, and serialization requirements.[7]

B. Despite state efforts, the number of unserialized firearms has grown exponentially.

Absent federal enforcement, however, states and other localities (including those with laws targeting ghost guns) have continued to see self-assembled, unserialized firearms flow into their communities. For example, in 2018, six different police agencies reported the following ghost gun recovery numbers: San Diego (53), the District of Columbia (25), Chicago (21), New York City (18), Philadelphia (17), and Prince George's County, Maryland (17). Travis Taniguchi et al., *The Proliferation of Ghost Guns: Regulation Gaps and Challenges for Law Enforcement* 15 (Nat'l Police Found., 2021) [hereinafter "NPF Report"], https://tinyurl.com/mry6vf78. Three years later, in 2021, those numbers skyrocketed—even in states regulating ghost guns—with the same agencies reporting ten- to 30-fold increases: San Diego (545), District of Columbia (439), Chicago (455), New York City (225), Philadelphia (571), and Prince George's

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§ 2C:39-9(n); N.Y. Penal Law § 265.60-.64; 2023 Or. Laws Ch. 229 § 4(a)(1) (H.B. 2005); R.I. Gen. Laws Ann. § 11-47-8(e); Vt. Stat. tit. 13, §§ 4083(a)(2), (b)(2) (effective Feb. 28, 2025).

[7] *See, e.g.*, Cal. Penal Code §§ 29180, 29182; Colo. Rev. Stat. § 18-12-111.5(7)(a); Del. Code Ann. tit. 11, §§ 1448A, 1448B, 1459A; 720 Ill. Comp. Stat. Ann. 5/24-5.1; Md. Code Ann., Pub. Safety § 5-703; Mass. Gen. Laws ch. 269, § 11E; Nev. Rev. Stat. Ann. § 202.3625; N.J. Stat. Ann. § 2C:58-2; N.Y. Penal Law § 265.07; R.I. Gen. Laws Ann. § 11-47-40; Wash. Rev. Code Ann. §§ 9.41.092, .111, .113, .328.

County (264).[8] Across the country, the story is the same. Federal recovery numbers for unserialized guns have soared, jumping 15-fold between 2016 and 2022. 87 Fed. Reg. at 24656; Press Release, Off. of Pub. Affs.,U.S. Dep't of Just., *Fact Sheet: Update on Justice Department 's Ongoing Efforts to Tackle Gun Violence* (June 14, 2023), http://tinyurl.com/aevcx77t.

The number of ghost gun sellers has also ballooned, making these weapons increasingly accessible. According to the ATF, when the Final Rule was issued, there were about 129 companies selling weapon parts kits or partially complete frames or receivers. *See* 87 Fed. Reg. at 24718. These companies operate in 27 states across the country. NPF Report 2. And the number of ghost gun sellers steadily increased for years before the Final Rule went into effect—a phenomenon that tracks the increasing spread of ghost guns nationwide. *See* Everytown for Gun Safety, *Untraceable: The Rising Specter of Ghost Guns* 13 (2020), https://tinyurl.com/y6kyt62r (finding 26 ghost gun sellers in 2014 compared to 80 sellers by 2020).

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[8] *See* Ryan Hill, *'Ghost guns are everywhere': San Diego's firefight continues to get ghost guns off of the street*, ABC 10 News (Feb. 19, 2022), https://tinyurl.com/3d9pkh8j (San Diego); Data on file with the Metropolitan Police Department (current as of July 28, 2023) (District of Columbia); Jeff Pegues, *Rise in crime fueled in part by 'ghost' guns, ATF says*, CBS News (Feb. 2, 2022), https://cbsn.ws/3NPmkbp (Chicago and New York City); Brian Saunders, *Philadelphia arrests gunmaker as Biden regulates ghost guns*, Phila. Trib. (Apr. 11, 2022), https://tinyurl.com/r2w5rvfm (Philadelphia); Ovetta Wiggins, *Baltimore plans to sue 'ghost gun' part maker as state law takes effect*, Wash. Post (May 31, 2022), https://wapo.st/3PXsrwU (Prince George's County).

Moreover, weapon parts kits are affordable and easy to assemble, with some partial kits costing less than $100 and requiring only basic tools and instructions to build a functional firearm. *Stealth Arms Parts & Accessories*, JSDSupply, https://tinyurl.com/yrna3m37 (last visited July 2, 2024); *see Polymer80*, 80% Lowers, https://tinyurl.com/5n7b6uf8 (last visited July 2, 2024).

This combination of widespread access and federal inaction enabled individuals to circumvent state gun laws and bring unserialized weapons into the very states that have been trying to keep them out. For example, even though California has attempted to curb unserialized guns since at least 2016, as of 2019, these weapons accounted for nearly 30% of all guns recovered in the state by the ATF. NPF Report 5. Meanwhile, the number of unserialized guns recovered by California law enforcement agencies increased from 167 in 2016 to nearly 12,900 in 2022, a 77-fold increase. Cal. Dep't of Just., *Armed and Prohibited Persons System Report 2021*, at 26, https://tinyurl.com/5ffwh2kd; Cal. Dep't of Just., *Armed and Prohibited Persons System Report 2022*, at 25, https://tinyurl.com/ytdyyxby. According to local authorities, that is because guns are easily trafficked across the state's borders. *See* Bill Whitaker, *Ghost Guns: The build-it-yourself firearms that skirt most federal gun laws and are virtually untraceable*, CBS News (May 10, 2020), https://cbsn.ws/3Li5zoM (interviewing the Los Angeles County Sheriff).

Similarly, New Jersey has regulated unserialized firearms since at least 2018. But at the same time, the state has seen large increases in the number of

ghost guns recovered at crime scenes, from 55 guns in 2019 to 101 in 2020, 257 in 2021, and 428 in 2022 respectively.[9] In fact, analysis of recent data from the New Jersey State Police ("NJSP") shows how individuals possessing privately made firearms ("PMFs") often have criminal histories or disqualifying backgrounds. Of 78 unique possessors of PMFs identified in New Jersey so far in 2024, 81% had prior criminal histories, and 58% had prior felony convictions. Additionally, 51% of the possessors had prior gun arrests, and 17% were previously involved in shootings. The PMFs may also be used in multiple crimes, with 15 of the PMFs recovered so far in 2024 used in 26 shootings.[10]

However, early evidence suggests that the Final Rule is having its intended effect of promoting public safety. For example, NJSP data indicates that crime-gun recoveries of PMFs in New Jersey have declined since this Court allowed the Final Rule to take effect in August 2023,[11] from an average of 34.29 PMFs recovered per month from January to July 2023, to an average of 18.80 recoveries from August to December 2023.[12] Further, as of June 28, 2024, there were 100 PMFs recovered in New Jersey so far this year as

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[9] Data on file with New Jersey State Police (current as of Dec. 23, 2023).

[10] Data on file with New Jersey State Police (current as of June 28, 2024).

[11] *Garland v. Vanderstok*, 144 S. Ct. 44 (2023) (Mem.).

[12] Data on file with New Jersey State Police (current as of June 28, 2024).

compared to 195 in the first six months of 2023.[13] Likewise, in the District of Columbia, ghost gun recoveries fell from 524 in 2022 to 407 in 2023, which was the first decrease in the past six years.[14] Finally, ghost gun recoveries in Philadelphia have similarly plateaued since the Final Rule went into effect with 575 PMFs recovered in 2022, 526 PMFs recovered in 2023, and 217 PMFs recovered so far in 2024.[15] While this data is limited, it is indicative of the real-world impact the Final Rule is having and the critical public safety interests it advances.

The Final Rule thus advances the GCA's core aims at a time when federal assistance is critical. Without *banning* the sale of kits or self-manufactured guns, the Final Rule ensures that states can at least trace these weapons and that they are not bought by criminals or children as a means of evading state law.

C. The Final Rule works to close the gaps inherent in state-by-state enforcement.

The Final Rule addresses the problems that have contributed to this alarming proliferation of untraceable guns in multiple ways. First, by updating the regulatory definitions, the Final Rule ensures that sellers run a background check on potential purchasers before delivering a kit or nearly complete frame or receiver. This makes it harder for

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[13] Data on file with New Jersey State Police (current as of June 16, 2024). Note that recent data is subject to update and may reflect lags in reporting.

[14] Data on file with the Metropolitan Police Department (current as of Feb. 22, 2024).

[15] Data on file with the Pennsylvania Office of Attorney General (current as of June 11, 2024).

prohibited persons to acquire a gun and thus safeguards the numerous federal and state laws that exclude certain people from gun ownership.[16]

Indeed, without meaningful federal oversight, unserialized guns have increasingly fallen into the hands of prohibited persons, with often deadly results. In 2019, for example, a man with multiple felony convictions used a self-made semi-automatic rifle, assembled from parts, to kill one police officer and injure two others. Andrew Blankstein & Eric Leonard, *Ex-con who killed California cop used homemade 'ghost gun,'* NBC News (Aug. 15, 2019), https://nbcnews.to/3vLC09U. In 2022, a 15-year-old boy was shot by another student in a school bathroom with a ghost gun that was purchased online. Stephanie Ramirez, *Mother of Magruder shooting victim sues school, county*, Fox 5 Wash. D.C. (Dec. 1, 2022), http://tinyurl.com/bdetpps6. The data tell a similar story.[17] By exerting the ATF's authority over kits and readily convertible frames or receivers, the Final Rule helps keep these guns away from felons and children, consistent with Congress's intent. *See supra* Section I.

Second, the Final Rule ensures that licensees mark kits and nearly complete frames or receivers

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[16] *See, e.g.*, 18 U.S.C. § 922(g); Del. Code Ann. tit. 11, § 1448; D.C. Code § 22-4503; Nev. Rev. Stat. Ann. § 202.360; N.J. Stat. Ann. § 2C:58-3(c)

[17] In Philadelphia, for example, roughly half of all people arrested in possession of a ghost gun from 2022 through mid-2024 had been banned from possessing a gun because of disqualifying convictions, including violent felonies. Data on file with the Pennsylvania Office of the Attorney General (current as of June 11, 2024).

with a unique serial number and keep records of all relevant transactions. Tracing is a critical law enforcement tool, and over 8,600 law enforcement agencies across 46 countries rely on the ATF's web-based tracing application. 87 Fed. Reg. at 24659. But that service has less utility if a large number of unserialized guns are untraceable because federal and state record-keeping laws are not enforced. *See* 18 U.S.C. § 923(g); *see also supra* Part II.A. The effective administration of justice will be thwarted if prosecutors cannot trace guns and use such evidence to enforce the Act's provisions against straw purchasers, firearm traffickers, and gun thieves. *See* 87 Fed. Reg. at 24660.

Third, the Final Rule may also help states apply their own laws to avoid gaps that would allow ghost guns to proliferate. State authorities often follow the federal government's lead when drafting or assessing the scope of their own gun laws. *See, e.g.*, Cal. Penal Code § 16519 (defining a key term based on federal gun regulations); *Moore v. State*, 983 A.2d 583, 595 (Md. Ct. Spec. App. 2009) (explaining that the state legislature enacted certain gun laws expecting that they would be read "consistent with federal law"). This ripple effect makes the Final Rule even more critical to state-level gun regulation, as it not only helps to fill the gaps in enforcement described above, but also helps states interpret or revise their own gun laws, in keeping with Congress's intent. *See* H.R. Rep. No. 90-1577, at 8, 12 (1968), *as reprinted in* 1968 U.S.C.C.A.N. 4410, at *4413, *4418.

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The Final Rule stops a growing segment of the modern gun industry from exploiting new technology to widen the very gaps that the GCA sought to close. It is no surprise that law enforcement "strongly supports" efforts to treat ghost guns the same as other firearms. Int'l Ass'n of Chiefs of Police, *2018 Resolutions* 15 (Nov. 2018), https://tinyurl.com/mrk3svww. The Final Rule makes crucial clarifications to the GCA's definitions and helps states fulfill their "very highest duty" to safeguard the lives and well-being of their citizens. *United States v. Cruikshank*, 92 U.S. 542, 553 (1875). It falls squarely within the GCA's framework and is plainly valid.

CONCLUSION

The judgment of the U.S. Court of Appeals for the Fifth Circuit should be reversed.

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