

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

DIVISION 80, LLC

Plaintiff,

v.

MERRICK GARLAND, in his official
capacity as Attorney General of the United
States, *et al.*,

Defendants.

No. 3:22-CV-00148

District Judge Jeffrey V. Brown

**AMICUS BRIEF OF 16 MAJOR CITIES, THE DISTRICT ATTORNEYS FOR THE
COUNTIES OF DALLAS, BEXAR AND TRAVIS, TEXAS AND PROSECUTORS
AGAINST GUN VIOLENCE IN SUPPORT OF DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION**

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IDENTITY AND INTEREST OF *AMICI CURIAE*

Amici curiae are a group of 16 major cities across the United States (the “Amici Cities”), the District Attorneys for the Counties of Dallas, Bexar and Travis, Texas (the “Amici District Attorneys”), and Prosecutors Against Gun Violence (“PAGV,” and together with the Amici Cities and the Amici District Attorneys, the “Amici”).

The Amici Cities include: Baltimore, Maryland; Boston, Massachusetts; Chicago, Illinois; Columbus, Ohio; Dayton, Ohio; Hartford, Connecticut; Los Angeles, California; Newark, New Jersey; New York, New York; Oakland, California; Philadelphia, Pennsylvania; Providence, Rhode Island; Rochester, New York; San Francisco, California; Syracuse, New York; and Seattle, Washington. The Amici Cities, which have a collective population of over 24 million Americans, are deeply concerned with the growing spread of ghost guns. They are a coalition of municipalities, diverse in terms of geography, size and composition, that are all united by a common purpose—to protect the health and safety of their residents from the rising tide of gun violence on their streets and across the country.

PAGV is an independent, nonpartisan group that identifies and promotes prosecutorial and policy solutions for the national public health and safety crisis of gun violence. PAGV’s membership comprises over 70 elected prosecutors, who serve over 65 million Americans in 30 states. Its mission includes sharing best practices for prosecuting gun offenders and defending common-sense gun safety policies.

The Amici District Attorneys include John C. Creuzot, the Dallas County Criminal District Attorney, Joe D. Gonzalez, the Bexar County Criminal District Attorney, and José Garza, the Travis County District Attorney. The Amici District Attorneys serve a collective population of over 5.8 million Texans. PAGV’s members, the Amici District Attorneys, and the local law

enforcement officers with whom they collaborate daily, play a critical role in promoting citizen safety—the highest objective of state and local governments. As local leaders in the nationwide effort to curb gun violence and promote public safety, prosecutors witness the tragic effects of the proliferation of unregulated ghost guns on a daily basis.

Amici believe that the Bureau of Alcohol, Tobacco, Firearms, and Explosives’ (“ATF”) rule regulating ghost guns (“87 FR 24652” or the “Final Rule”), is urgently needed to stop the dangerous proliferation of ghost guns and to protect public safety. Amici therefore respectfully submit this brief to illustrate, based on specific, real-world examples and numerical trends, the increasing prevalence of ghost guns on the streets of the Amici Cities—as well as other cities across the United States—and the unique challenges they present to prosecutors and local law enforcement agencies that are tasked with preventing and prosecuting gun crime and protecting public safety.

INTRODUCTION

The Amici have witnessed firsthand the damage being done by the drastic rise in the use of internet-ordered gun-building kits, which purchasers can easily access without undergoing a background check and use to assemble what are known as “privately manufactured firearms” or “ghost guns.” Indeed, prosecutors and other law enforcement agencies in the Amici Cities have reported dramatic increases in the use of ghost guns in connection with criminal activity in their cities, and the ghost gun market has been thriving, especially during the pandemic. As detailed *infra*, the ready acquisition of ghost guns by high-risk individuals, including minors, has led to horrific incidents of gun crime in the Amici Cities and elsewhere—incidents that might have been prevented if ghost guns had been subject to more stringent federal regulation.

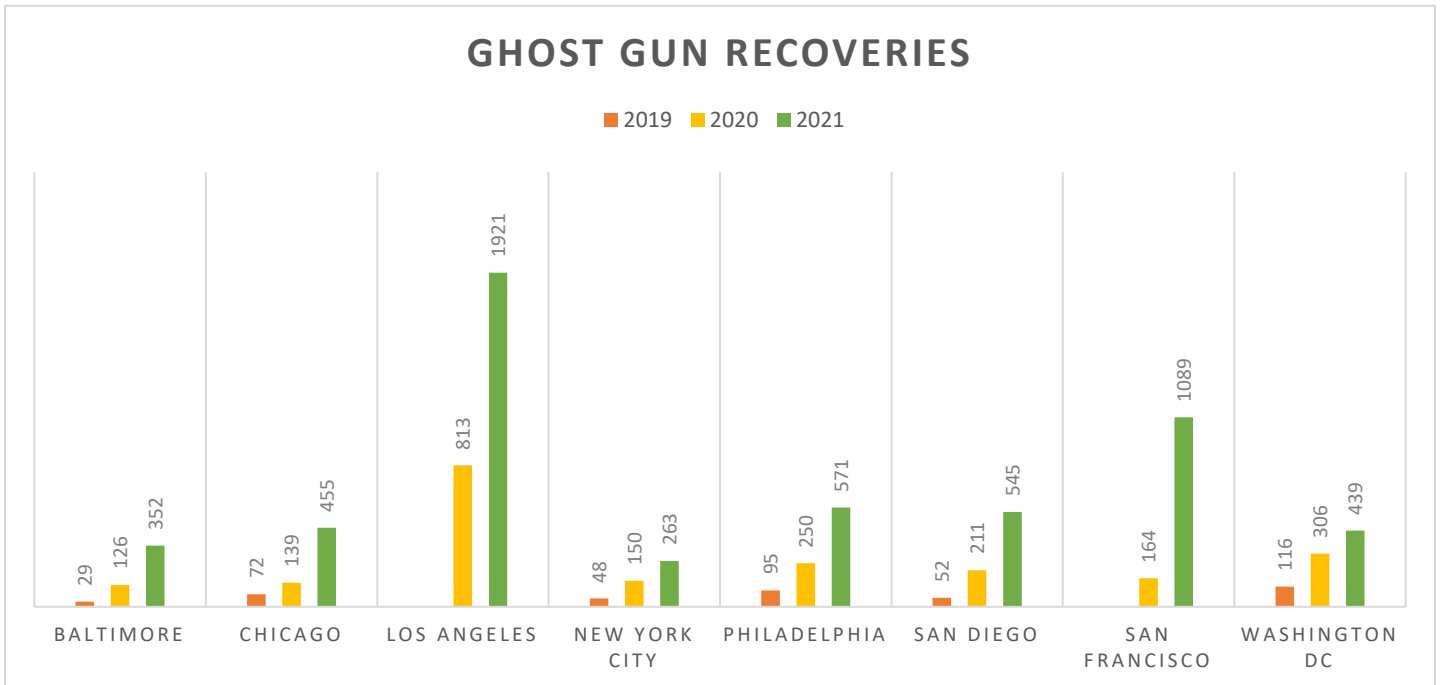
In short, the recent emergence and growing prevalence of ghost guns poses a genuine threat

to the residents of the Amici Cities and undermines the ability of law enforcement and prosecutors to effectively address and deter gun violence. For these and many other reasons, the Amici Cities, the Amici District Attorneys, and PAGV respectfully urge this Court to uphold the constitutionality of ATF’s Final Rule, which is urgently needed to stem the proliferation of ghost guns and promote public safety.

ARGUMENT

I. Law Enforcement in Cities Across the Country Are Increasingly Recovering Ghost Guns, Underscoring the Urgent Need for Federal Regulation

Over the past several years, there has been a dramatic and alarming increase in the criminal use of unserialized ghost guns in cities across the country, including the Amici Cities. Indeed, every city in the chart depicted below saw a significant increase in ghost gun recoveries in 2021, and that trend is representative of the rapidly increasing rates of ghost gun recoveries in dozens of major municipalities across the United States.



The increase in ghost gun recoveries shows no signs of slowing down in 2022. Indeed, by way of example, as of April 28, 2022, the New York Police Department reported an over 300% increase

in ghost gun recoveries as compared to January through April 2021.¹

Notably, ghost guns are nearly impossible to trace, and law enforcement in many cities have only recently begun to classify ghost guns separately from other recovered guns.² Accordingly, the figures reported above³—which represent only those firearms *actually seized* by police and classified as ghost guns—likely understate the true prevalence and rise of the use of ghost guns in each of the listed cities over the past several years.

It is also worth noting that less populous cities than those reported above are similarly seeing a dramatic increase in recoveries. For example:

- Law enforcement in Newark, New Jersey saw a 414% increase in ghost gun seizures from 2020 to 2021.⁴

¹ Dan Krauth and Brett Cohen, *Ghost Guns: Eyewitness News Investigates A Growing Menace*, ABC News, Apr. 28, 2022, available at <https://abc7ny.com/ghost-guns-nypd-atf-street-crime/11798077/>.

² See T. Taniguchi, K. Hoogesteyn, K. Renouard, and D. Esserman, *The Proliferation of Ghost Guns: Regulation Gaps and Challenges for Law Enforcement*, National Police Foundation, 2021. For example, law enforcement agencies with limited exposure to the recovery of ghost guns may “process them in the same manner as any other firearm.”

³ Data for 2019 and 2021 the chart on page 3 is sourced from the National Police Foundation report, unless otherwise indicated: T. Taniguchi, K. Hoogesteyn, K. Renouard, and D. Esserman, *supra* n. 2. The remaining data was sourced as follows: **Baltimore**, see Priya Krishnakumar, *High Number of Firearm Recoveries Underscores America’s Worsening Gun Violence Epidemic*, CNN, Jan. 30, 2022, available at <https://www.pennlive.com/news/2022/01/lawmakers-call-for-extending-attorney-generals-jurisdiction-to-address-philadelphia-gun-violence.html> (2021 data); **Chicago**, see Jeff Pegues, *Rise in Crime Fueled in Part by “Ghost” Guns, ATF Says*, CBS News, Feb. 2, 2022, available at <https://www.cbsnews.com/news/ghost-guns-crime-increase-atf/> (2021 data); **Los Angeles**, Los Angeles Police Department, 2021 Crime & Initiatives, available at https://lapdonlinestrgeacc.blob.core.usgovcloudapi.net/lapdon/linemedia/2022/01/2021_crime_initiatives.pdf (2020 and 2021 data; Los Angeles did not track ghost gun recoveries until 2020); **New York**, *The City of New York v. Arm or Ally LLC* (S.D.N.Y. 2022), available at <https://www1.nyc.gov/assets/home/downloads/pdf/press-releases/2022/ghost-gun-complaint.pdf> (2019, 2020, and 2021 data); **Philadelphia**, see Jan Murphy, *Lawmakers Call For Extending Attorney General’s Jurisdiction to Address Philadelphia Gun Violence* (2021 data); **San Diego**, *Biden’s Ghost Gun rule could bolster San Diego’s ban*, ABC News 10 San Diego, Apr. 11, 2022, available at <https://www.10news.com/news/local-news/bidens-ghost-gun-rule-could-bolster-san-diegos-ban> (2021 data); **San Francisco**, Mark Morales and Pervaiz Shallwani, *NYC announces lawsuit against ghost gun retailers who illegally sell parts in the city*, CNN, June 29, 2022, available at https://www.wktv.com/news/state/nyc-announces-lawsuit-against-ghost-gun-retailers-who-illegally-sell-parts-in-the-city/article_3b44c8ac-8ccc-5ee8-9e9c-2f9a52dfed7f.html (2021 data); Omar Pérez, *San Francisco official signs ban on ghost guns into legislation*, KRON4, Dec. 9, 2021, available at <https://www.kron4.com/news/bay-area/san-francisco-officially-signs-ban-on-ghost-guns-into-legislation/> (2020 data); **Washington, D.C.**, Executive Office of the Mayor, *Mayor Bowser Announces New Intelligence-Led Policing Unit Focusing on Violent Crime*, Apr. 25, 2022, available at <https://mayor.dc.gov/release/mayor-bowser-announces-new-intelligence-led-policing-unit-focusing-violent-crime> (2021 data).

⁴ *Mayor Ras Baraka’s and Public Safety Director O’Hara’s Joint Statement on President Biden’s Strategy to Reduce Gun Crime*, Feb. 4, 2022, available at <https://www.newarknj.gov/news/mayor-ras-barakas-and-public-safety-director-oharas-joint-statement-on-president-bidens-strategy-to-reduce-gun-crime>.

- Law enforcement in Hartford, Connecticut seized 29 ghost guns in 2021, an increase of 314% from 2020. As of May 25, 2022, law enforcement in Hartford have already seized 26 ghost guns.⁵
- The Seattle Police Department seized 83 ghost guns between May 2019 and May 2022. Year to date, the percentage of ghost gun recoveries has more than tripled, proportionally, since 2020.⁶
- In 2019, only 6.7% of guns recovered by local law enforcement in Oakland, California were classified as ghost guns. In 2020, that number jumped to 16.5%. As of March 2021, ghost guns accounted for 21.7% of confiscated firearms.⁷

If left unchecked, the use of ghost guns, including in connection with criminal activity, will only continue to surge throughout the United States. This is particularly true in large cities, where the rise in ghost guns has only exacerbated the already massive problem of gun violence. More than two-thirds of the country's most populous cities experienced more homicides in 2021 than in the year prior, and experts have reported that homicides are increasingly committed through the use of guns.⁸ Indeed, 77% of reported murders in 2020 were the result of gun violence—up from 74% in 2019.⁹ ATF's Final Rule is therefore critical to municipalities' efforts to stem the already rising threat of gun violence in cities across the country.

II. Ghost Guns are Increasingly Used in Connection with Criminal Activity by High-Risk Individuals

As the availability and accessibility of ghost guns increases, so too does their usage in connection with criminal activity. This is particularly true given the attractiveness of ghost guns to high-risk individuals, including those convicted of violent crimes, many of whom are prohibited from legally obtaining and possessing weapons and may be prone to violence. Indeed, as the

⁵ See Decl. of C. Mastroianni, Intelligence Division Sergeant for the Hartford Police Department.

⁶ See Decl. of A. Diaz, Interim Chief of Police for the Seattle Police Department.

⁷ *Oakland City Councilmembers Propose Ban on Ghost Guns*, CBS Bay Area, Jan. 11, 2022, available at <https://www.cbsnews.com/sanfrancisco/news/oakland-city-councilmembers-propose-ban-on-ghost-guns/>.

⁸ Priya Krishnakuma, Emma Tucker, Ryan Young, and Pamela Kirkland, *Fueled by Gun Violence, Cities Across the US are Breaking All-Time Homicide Records This Year*, CNN, Dec. 12, 2021, available at <https://www.cnn.com/2021/12/12/us/homicides-major-cities-increase-end-of-year-2021/index.html>.

⁹ *Id.*

prevalence of ghost guns has risen over the past several years, prosecutors and law enforcement officers have seen an uptick in the use of these firearms by persons previously convicted of a violent felony, individuals who have committed domestic violence offenses, violent extremists, organized crime syndicates, and minors. The ATF Final Rule is thus necessary to lessen the increasing and grave threat to public safety posed by the unfettered access to untraceable firearms by people who have committed violent crimes and other high-risk individuals.

A. Persons Previously Convicted of a Violent Crime

Federal law and the laws of nearly every state prohibit individuals who have been convicted of, or who are under indictment for, a felony from acquiring or possessing firearms.¹⁰ Many states further restrict access to firearms by people convicted of specified misdemeanors, typically those misdemeanors that involve the use of violence or the misuse of firearms.¹¹

The rapidly growing market for internet mail-order ghost gun kits offers individuals who are not legally able to purchase guns from licensed dealers the ability to easily and anonymously purchase unserialized firearm kits online without undergoing a background check. Although a black market for untraceable firearms has long existed, acquiring guns on the black market is typically a difficult, costly and dangerous proposition. In contrast, individuals previously convicted of a felony and others who cannot pass a background check can instead buy gun-building kits online, thereby bypassing the risks associated with participation in the black market. A recent study that looked at 114 federal prosecutions involving the use of a ghost gun found that nearly 40% of those cases involved defendants who were legally prohibited from purchasing or

¹⁰ Giffords Law Center, *Firearms Prohibitions*, <https://giffords.org/lawcenter/gun-laws/policy-areas/who-can-have-a-gun/firearm-prohibitions/>.

¹¹ *Id.*

possessing a firearm.¹² And the ATF has documented the fact that ghost gun distributors are regularly selling these gun-building-kits directly to individuals legally prohibited from possessing firearms.¹³

The Amici Cities and prosecutors across the country have seen countless examples of violent criminal activity conducted with the use of a ghost gun by individuals otherwise unable to legally possess a firearm. For instance:

- In November 2019, a California man with a criminal record dating back to 1992—including a decade in prison following his conviction for the attempted murder of a police officer—used an AR-15-style ghost gun to murder a California highway patrol officer and wound two others following a traffic stop outside Los Angeles.¹⁴
- In November 2020, a Baltimore man with a prior felony conviction was sentenced to 21 years in federal prison for a string of armed robberies committed using a ghost gun that had been assembled from a gun-building kit.¹⁵
- In September 2020, a Washington, D.C. resident with a prior felony conviction pleaded guilty to felony possession of a firearm and ammunition after he was found by law enforcement to be carrying a .40-caliber pistol, loaded with ten rounds of ammunition, that he had constructed using a ghost gun kit.¹⁶
- Also in September 2020, a man with multiple prior felony convictions obtained a ghost gun and ambushed two Los Angeles County Sheriff's Deputies as they sat in their police car. Both Sheriff's Deputies sustained multiple gunshot wounds.¹⁷
- In October 2020, a Washington man who had been convicted of multiple felonies,

¹² *Untraceable: The Rising Specter of Ghost Guns*, Everytown For Gun Safety, May 14, 2020, available at <https://everytownresearch.org/report/the-rising-specter-of-ghost-guns/>.

¹³ ATF Search Warrant Affidavit for Polymer80, at ¶ 87, available at <https://s.wsj.net/public/resources/documents/ghostraid-121420-warrant.pdf>.

¹⁴ Andrew Blankstein and Eric Leonard, *Ex-con who killed California cop used homemade 'ghost gun'*, NBC News, Aug. 15, 2019, available at <https://www.nbcnews.com/news/crime-courts/ex-con-who-killed-california-cop-used-homemade-ghost-gun-n1042811>.

¹⁵ U.S. Attorney's Office, District of Maryland Press Release, *Baltimore Man Sentenced to 21 Years in Federal Prison for Five Bank Robberies, Five Armed Robberies of Liquor Stores, and Related Firearms Charges*, Nov. 12, 2020, available at <https://www.justice.gov/usao-md/pr/baltimore-man-sentenced-21-years-federal-prison-five-bank-robberies-five-armed-robberies>.

¹⁶ U.S. Attorney's Office, District of Maryland Press Release, *D.C. Felon Pleads Guilty in Federal Court in Maryland to Illegal Possession of a "Ghost Gun" Firearm and Ammunition*, Sept. 22, 2020, available at <https://www.justice.gov/usao-md/pr/dc-felon-pleads-guilty-federal-court-maryland-illegal-possession-ghost-gun-firearm-and>.

¹⁷ *Ghost Gun Kit Seller Polymer80 Sued Over Gun Used to Shoot Two Los Angeles Sheriff's Deputies Last September*, Everytown for Gun Safety, Aug. 9, 2021, available at <https://everytownlaw.org/case/ghost-gun-kit-seller-polymer80-sued-over-gun-used-to-shoot-two-los-angeles-sheriffs-deputies-last-september/>.

including a prior conviction for unlawful possession of a firearm, was sentenced to 70 months in prison after agents seized a weapons cache of 17 pistols and 24 rifles from his home, nearly all of which were ghost guns that the defendant had manufactured using parts purchased online.¹⁸

- In April 2021, a man with a criminal record for unlawfully carrying a concealed weapon used a ghost gun to shoot five people, killing one, in San Diego.¹⁹
- In December 2021, law enforcement officers recovered an AR-15 ghost gun and an unknown caliber ghost gun from the home of a Pennsylvania man who had prior felony convictions for burglary and theft.²⁰

These cases powerfully underscore the immediate need for ATF’s Final Rule in order to keep ghost guns out of the hands of individuals who are prohibited from legally obtaining and possessing firearms.

B. Domestic Abusers

It has long been understood that domestic violence and gun violence are “deeply interconnected.”²¹ Where a domestic violence perpetrator has access to a gun, a survivor’s risk of death increases “at least five-fold.”²² Indeed, “a woman is shot by her domestic partner every sixteen hours [in the United States].”²³ Moreover, even when they are not fired, guns are used by

¹⁸ USAO Press Release, *Felon sentenced to more than five years in prison for arsenal of 'ghost guns' and smuggled silencers*, Oct. 9, 2020, available at <https://www.justice.gov/usao-wdwa/pr/felon-sentenced-more-five-years-prison-arsenal-ghost-guns-and-smuggled-silencers>.

¹⁹ Richard Allyn, *Untraceable “ghost gun” allegedly used in fatal Gaslamp shooting spree*, CBS8, Apr. 23, 2021, available at <https://www.cbs8.com/article/news/local/untraceable-ghost-gun-allegedly-used-in-fatalgaslamp-shooting-sprees/509-cc352272-85d9-4e4b-bc1b-7446dcb96660>.

²⁰ Tony Rhodin, *Man had 2 ghost guns, 3 shotguns near Nazareth area pot grow operation, authorities say*, LehighValleyLive, Dec. 7, 2021, available at <https://www.lehighvalleylive.com/news/2021/12/man-had-2-ghost-guns-3-shotguns-near-nazareth-area-pot-grow-operation-authorities-say.html>.

²¹ See Everytown for Gun Safety, *Domestic Violence*, available at <https://www.everytown.org/issues/domestic-violence/>.

²² Caroline Ramsey, *Firearms in the Family*, 78 Ohio St. L.J. 1257, 1274-75 (2017); see also Giffords Law Center, *Domestic Violence & Firearms*, available at <https://giffords.org/lawcenter/gun-laws/policy-areas/who-can-have-a-gun/domestic-violence-firearms/> (“[D]omestic violence assaults involving a gun are 12 times more likely to end in death than assaults with other weapons or physical harm.”).

²³ Jennifer Mascia, *Once Every 16 Hours, an American Woman Is Fatally Shot by a Current or Former Romantic Partner*, The Trace, Feb. 9, 2016, available at <https://www.thetrace.org/2016/02/women-domestic-violence-death-statistics/>.

domestic abusers to exercise control over domestic violence survivors:²⁴ “Abused women frequently report that their intimate partners brandish guns to threaten deadly force.”²⁵ Of female survivors alive today, 4.5 million have reported that an intimate partner threatened them with a gun.²⁶ Once threatened, “women are more likely to endure long-term abuse out of fear that leaving the relationship will result in their death or the death of their children.”²⁷ Significantly, guns and domestic violence have been found to have a disproportionate impact on Black, Indigenous, and Hispanic women.²⁸

To address these risks, Congress and over half the states have passed laws that prohibit persons likely to threaten their intimate partners with violence from obtaining firearms.²⁹ Studies have shown that firearm relinquishment laws³⁰ and background checks are critical to keeping domestic violence survivors safe.³¹ Firearm relinquishment laws have been linked to a 16%

²⁴ Jennifer L Vainik, *Kiss, Kiss, Bang, Bang: How Current Approaches to Guns and Domestic Violence Fail to Save Women’s Lives*, 91 Minn. L. Rev. 1113, 1117 (2007); see also Jane K. Stoever, *Intimate Partner Violence and Restorative Justice: Firearms and Domestic Violence Fatalities: Preventable Deaths*, 53 Fam. L.Q. 183, 185 (2019) (“[A] domestically abusive individual is likely to use the firearm to perpetrate abuse against an intimate partner and children.”).

²⁵ Vainik, *supra* note 26, at 1117.

²⁶ Stoever, *supra* note 26, at 186.

²⁷ Vainik, *supra* note 26, at 1117.

²⁸ Everytown for Gun Safety, *Guns and Violence Against Women*, Oct. 17, 2019, available at <https://everytownresearch.org/report/guns-and-violence-against-women-americas-uniquely-lethal-intimate-partner-violence-problem/> (“Compared to non-Hispanic white women, Black women are twice as likely to be fatally shot by an intimate partner, and younger Black women—between the ages of 18 and 34—are at the greatest risk: They are nearly three times more likely to be shot and killed by an intimate partner than are white women in the same age group.”).

²⁹ See Kellie Descrochers, *Municipalities Are Not Kingdoms: Regulating Gun Ownership in Cases Involving Domestic Violence in Light of the Pauler Decision*, 29 B.U. Pub. Int. L.J. 277, 285 (2020).

³⁰ Seventeen states and the District of Columbia require those convicted of domestic violence misdemeanors to turn in their firearms after conviction, and twenty-eights states have enacted laws that facilitate the removal of firearms from individuals when they become subject to protective orders. See Giffords Law Center, *Who can have a gun: Domestic Violence & Firearms*, available at <https://giffords.org/lawcenter/gun-laws/policy-areas/who-can-have-a-gun/domestic-violence-firearms/>. The strongest state laws, such as New Jersey’s, require officers to remove firearms after the issuance of a protective order, while other’s permit judges to require domestic violence offenders to surrender their firearms. *Id.*

³¹ See Giffords Law Center, *Who can have a gun Firearm Relinquishment*, available at <https://giffords.org/lawcenter/gun-laws/policy-areas/who-can-have-a-gun/firearm-relinquishment/> (citing M. Zeoli, *et al.*, *Analysis of the Strength of Legal Firearms Restrictions for Perpetrators of Domestic Violence and Their Associations With Intimate Partner Homicide*, *American Journal of Epidemiology* 187, No. 11 (2018): 2365–2371).

reduction in intimate partner gun homicides,³² and background checks have been shown to reduce domestic violence homicides by 47%.³³ From 1994 to 2012, federal domestic violence-related firearm prohibitions blocked the sale of approximately 314,000 purchases of firearms.³⁴

These protective measures for domestic violence survivors, however, is severely undermined by the proliferation and accessibility of ghost guns. Indeed, the very existence of a market for unserialized ghost guns, which can easily be acquired without a background check, obstructs the enforcement of laws requiring the relinquishment of firearms upon conviction of a domestic violence offense or issuance of a domestic violence restraining order. The Amici Cities and prosecutors across the country have seen the grave danger that ghost guns pose to domestic violence survivors. For example:

- In September 2019, police officers in Chico, California responded to a call regarding a domestic violence dispute between a man and his girlfriend. The man was already the subject of a restraining order filed by his estranged wife, which prohibited him from owning any firearms or ammunition. Officers found ammunition, a semi-automatic AR-15 rifle with an extended magazine, and two loaded pistols at the man's residence. The man was arrested for possession of illegal firearms and for being a prohibited person in possession of firearms. Two months later, when conducting a welfare check at the man's residence, officers found the man holding a loaded AR-15 rifle with at least nine rounds and the safety selector switch set to "fire." Officers also found a semi-automatic handgun, a .308 rifle, a 9mm handgun, and ammunition. The man later admitted that he knew he was not permitted to possess firearms pursuant to his restraining order. He explained, however, that all of his guns were ghost guns that were purchased "80% built from different online websites." He added that "80% firearms were made for people 'like me' who needed to get around not being able to buy guns."³⁵
- In July 2020, a man in Pennsylvania was arrested for shooting and killing his ex-wife and her friend with a ghost gun. The man's ex-wife had filed for two separate protection-from-abuse orders in the year prior to her murder and the man had been required to relinquish

³² See Giffords Law Center, *supra* n. 33.

³³ Stoeber, *supra* note 26, at 185; see also Aaron Edward Brown, *This Time I'll Be Bulletproof: Using Ex Parte Firearm Prohibitions to Combat Intimate-Partner Violence*, 50 Colum. Human Rights L. Rev. 159, 180 (2019).

³⁴ See Brown, *supra* note 35, at 178. (noting that this number does not account for those who willingly surrendered their firearms to comply with federal law).

³⁵ See *United States v. Villasenor*, 2:20-cr-00050-KJM (E.D. Cal.), Dkt. No. 1.

his firearms pursuant to those orders.³⁶

- In August 2020, police officers in San Jose, California arrested an individual for felony domestic violence. The survivor reported that the abuser had pointed a gun at her during the incident. When the officer explained to the assailant that he would not be permitted to get his firearm back pursuant to a “Gun Violence Restraining Order,” the individual replied, “Then I’ll just build another one.”³⁷
- In February 2022, a man in Sacramento, California used an unregistered homemade semiautomatic rifle-style weapon to kill his three daughters, a chaperone who was supervising his visit with them, and himself inside of a local church. The man was subject to a domestic violence restraining order that barred him from possessing a firearm.³⁸
- In May 2022, an Ohio man who was in violation of an Aggravated Menacing and Domestic Protection Order pointed a firearm at two victims—an adult and a minor—and threatened to shoot the victims’ entire family. Dayton Police later found a ghost gun rifle with no serial numbers located in the man’s residence.³⁹

C. Minors

There has also been an alarming rise in recent years in the use of ghost guns by minors.

In 2021 alone, police officers in Washington D.C. arrested nearly 100 teenagers who were in possession of ghost guns.⁴⁰ Moreover, as a result of the accessibility and proliferation of ghost guns among minors, prosecutors and law enforcement in the Amici Cities have seen an increase in school-related incidents involving these firearms. For example:

- In 2019, a sixteen-year-old killed two students and injured three others with a ghost gun at a California high school.⁴¹

³⁶ John Finerty, *State Struggles to Bolster PFA Orders*, June 27, 2020, available at https://www.nnewsonline.com/news/local_news/state-struggles-to-bolster-pfa-orders/article_618d2d90-0d07-5f0e-bcb8-8a0e667a201e.html; Marcia Moore, *UPDATE Fernanders’ Murder Charges Headed to Snyder County Court*, Sept. 29, 2020, https://www.dailyitem.com/news/fernanders-murder-charges-headed-to-snyder-county-court/article_41052d22-0285-11eb-9aa6-630b1abad5ed.html.

³⁷ *City of Syracuse, NY, et al., v. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, et al., 1:20-cv-06885-GHW (S.D.N.Y. 2020), Complaint at ¶ 131, available at https://assets.nationbuilder.com/firearmspolicycoalition/pages/5834/attachments/original/1648681797/Syracuse_v_ATF_Complaint.pdf?1648681797.

³⁸ *A Father Used a Ghost Gun to Kill His Three Daughters. It’s a Sign of a Growing Crisis*, The Guardian, Mar. 8, 2022, <https://www.theguardian.com/us-news/2022/mar/08/a-father-used-a-ghost-gun-to-kill-his-three-daughters-its-a-sign-of-a-growing-crisis>.

³⁹ [See Decl. of J. Musto, Deputy Law Director at the City of Dayton Law Department].

⁴⁰ Jodie Fleischer, Rick Yarborough, Jeff Piper, and Skye Witley, *Record Number of Ghost Guns Found in DC in 2021*, NBC News, Nov. 19, 2021, available at <https://www.nbcwashington.com/news/local/dc-gun-violence/record-number-of-ghost-guns-found-in-dc-in-2021/2888734/>.

⁴¹ Dakin Andone, *The gunman in the Saugus High School shooting used a ‘ghost gun,’ sheriff says*, CNN, Nov. 21, 2019, available at <https://www.cnn.com/2019/11/21/us/saugus-shooting-ghost-gun/index.html>.

- In November 2021, a sixteen-year-old boy in Arizona sold a ghost gun to a fifteen-year-old boy at school. After an altercation between the two boys, the purchaser of the gun used it to shoot and wound the teenager from whom he bought the ghost gun.⁴²
- In December 2021, a teenager brought a loaded ghost gun to school in Brooklyn, New York.⁴³
- In January 2022, a seventeen-year-old Maryland student was charged with attempted second-degree murder after shooting a fifteen-year-old at his school with a ghost gun.⁴⁴
- In April 2022, a 17-year-old shot and killed a 16-year-old and injured two other teens with a ghost gun outside of a high school in the Bronx, New York.⁴⁵

Disturbingly, many of the incidents of violence involving ghost guns and minors have been the result of accidents, which could have easily been prevented if ghost guns had been more stringently regulated and thus less accessible to the children involved. For example:

- In August 2021, an eight-year-old boy accidentally shot and killed himself in Newark, New Jersey with a ghost gun.⁴⁶
- In November 2021, a seventh grader in California was fatally shot with a ghost gun in his own home. Investigators are still trying to determine whether the 12-year-old boy accidentally shot himself or if his 15-year-old friend, who the police say brought the weapon into the apartment, discharged it while showing it off.⁴⁷
- In December 2021, a 13-year-old boy in Georgia accidentally shot and killed his 14-year-old sister with a ghost gun that he himself had built. The boy had been manufacturing ghost guns and selling them out of his home. After two people tried to steal one of his ghost guns, the boy opened fire to prevent the theft and, in the process, accidentally shot and killed his older sister.⁴⁸

⁴² Aaron Marquez, *2 School Shootings, 1 Common Problem: Teens Had Easy Access to a Firearm*, AZ Central, Dec. 6, 2021, available at <https://www.azcentral.com/story/opinion/op-ed/2021/12/06/school-shootings-show-arizona-do-more-ghost-guns-gun-safety/8852461002/>.

⁴³ Thomas Tracy and Michael Else-Rooney, *21 Weapons Recovered at Brooklyn High School Campus Day After Student Caught with Gun and \$30,000*, Daily News, Dec. 2, 2021, available at <https://www.nydailynews.com/new-york/education/ny-weapons-brooklyn-high-school-campus-20211203-kg4k7xpxpmbcepnocj2j2rf4py-story.html>.

⁴⁴ Dan Morse, *Magruder High School student charged as adult with attempted second-degree murder*, The Washington Post, Jan. 22, 2022, available at <https://www.washingtonpost.com/dc-md-va/2022/01/22/magruder-high-shooting-ghost-gun-student-charged/>.

⁴⁵ Aaronn Katersky, Mark Crudele, and Ivan Pereira, *17-year-old arrested in connection with Bronx high school shooting that left teen dead*, ABC News, Apr. 9, 2022, available at <https://abcnews.go.com/US/17-year-arrested-connection-bronx-high-school-shooting/story?id=83981645>.

⁴⁶ Rebecca Panico, *Fatal shooting of 8-year-old is 'horrible and tragic,' Newark mayor says and calls for accountability*, NJ.com, updated Aug. 31, 2021, available at <https://www.nj.com/essex/2021/08/fatal-shooting-of-8-year-old-is-horrible-and-tragic-newark-mayor-says-and-calls-for-accountability.html>.

⁴⁷ Glenn Thrush, *'Ghost Guns': Firearm Kits Bought Online Fuel Epidemic of Violence*, The New York Times, Nov. 14, 2021, available at <https://www.nytimes.com/2021/11/14/us/ghost-guns-homemade-firearms.html>.

⁴⁸ Yaron Steinbuch, *Georgia boy, 13, accused of accidentally killing sister with 'ghost gun'*, New York Post, Dec. 3, 2021, available at <https://nypost.com/2021/12/03/georgia-teen-accidentally-killed-sister-with-ghost-gun/>.

- In January 2022, a 14-year-old boy in Florida was accidentally shot and killed by his friend who was “playing” with a loaded ghost gun in the boy’s bedroom. Authorities believe the boy who was killed ordered the weapon online and assembled it himself.⁴⁹

Simply put, subjecting gun-building kits to the same regulations as fully assembled firearms is essential to keeping children safe from intentional gun violence and fatal accidents.

D. Gun Trafficking by Individuals and Organized Crime Syndicates

Gun-building kits also make it easy and convenient for any individual or organized crime syndicate to become an unlicensed gun manufacturer and distributor. With just a few tools and some simple instruction, a criminal entrepreneur can easily turn nearly finished frames and receivers purchased over the internet into finished, usable, and untraceable guns. For example, the Tenth Circuit recently affirmed an 87-month sentence of a defendant who used gun-building kits to manufacture and sell ghost guns—including fully automatic pistols and silencers—out of his basement.⁵⁰ The court took note of the extreme danger posed by the defendant’s illicit business and found the sentence necessary to deter others from manufacturing and selling illegal and untraceable weapons using easily accessible kits and tools.⁵¹

The Tenth Circuit case is not unique, and the conduct at issue is becoming dangerously common. For example:

- In November 2021, an 18-year-old in Illinois was charged with assembling and selling ghost guns to numerous people, including a minor, after purchasing the parts online.⁵²
- Just a few weeks earlier in Queens, New York, a couple was charged with the criminal sale of a firearm in the third degree after law enforcement found a stockpile of illegal ghost

⁴⁹ Corey Arwood, *Vero Beach boy shot, killed Jan. 30 while playing with gun made from parts bought online*, TC Palm, March 15, 2022, available at <https://www.tcpalm.com/story/news/crime/indian-river-county/2022/03/15/14-year-old-vero-beach-boy-shot-killed-friend-playing-gun-made-parts-bought-online/7049145001/>.

⁵⁰ *United States v. Trujillo*, 817 F. App’x 634, 635-36 (10th Cir. 2020).

⁵¹ *Id.* at 640.

⁵² Mary Schenk, *Champaign 18-year-old charged with producing, selling ‘ghost guns’*, Thew News-Gazette, Nov. 10, 2021, available at https://www.news-gazette.com/news/local/courts-police-fire/champaign-18-year-old-charged-with-producing-selling-ghost-guns/article_3e10de2a-b841-54b8-814a-8352082ad134.html.

guns in their basement apartment in which they lived with their child.⁵³

- In 2020, a man in Fairfax, Virginia pleaded guilty to unlawfully dealing firearms without a license in connection with his practice of purchasing gun-building kits online, using them to manufacture untraceable ghost guns, and selling them to anyone with enough money to purchase them, regardless of whether the purchaser could lawfully possess a firearm.⁵⁴
- In 2019, a New York City police officer pleaded guilty to second-degree criminal possession of a weapon after admitting to using gun-building kits to manufacture and sell dozens of handguns and rifles to people who could not legally possess them, including members of motorcycle gangs.⁵⁵
- That same year, a Texas man who had been making and trafficking ghost guns from his home, was killed by law enforcement after he shot and killed a canine agent.⁵⁶

The flourishing market for gun-building kits has also fueled the rise of larger illegal gun-dealing enterprises. In September 2020, federal prosecutors charged 15 members of the Sureños street gang in Concord, California with operating an illicit outdoor bazaar out of a shopping center parking lot where they distributed both drugs and illegal firearms, including ghost guns.⁵⁷ Similarly, the Los Angeles Police Department in 2018 arrested ten members of a street gang involved in the manufacture and sale of ghost guns, and seized approximately 50 rifles and

⁵³ Queens District Attorney's Office Press Release, *Cache of Ghost Guns Seized Following Investigation; Queens Couple Charged with Illegal Possession and Sale of Firearms*, Oct. 15, 2021, available at <https://queensda.org/cache-of-ghost-guns-seized-following-investigation-queens-couple-charged-with-illegal-possession-and-sale-of-firearms/>.

⁵⁴ U.S. Attorney's Office, Eastern District of Virginia Press Release, *Ghost Gun and Machine Gun Conversion Device Dealer Pleads Guilty*, Sept. 29, 2020, available at <https://www.justice.gov/usao-edva/pr/ghost-gun-and-machine-gun-conversion-device-dealer-pleads-guilty>.

⁵⁵ Associated Press, *Police officer charged with illegally making, selling guns*, ABC News, Mar. 2, 2019, available at <https://abcnews.go.com/US/wireStory/police-officer-charged-illegally-making-selling-guns-61430183>; see also Michael Woyton, *Former NYC Environmental Cop Admits Selling Illegal Weapons*, The Patch, Dec. 5, 2019, available at <https://patch.com/new-york/midhudsonvalley/former-nyc-environmental-cop-admits-selling-illegal-weapons>.

⁵⁶ See KTSM, Aaron Bracamontes *Document names El Paso man shot, killed by law enforcement after killing K-9 agent*, updated Dec. 19, 2019, available at <https://www.ktsm.com/crime/document-names-el-paso-man-shot-killed-by-law-enforcement-after-killing-k-9-agent/>; see also *United States v. Paul Jarvis*, Western District of Texas Case No. EP:19-M-9978-MAT, Criminal Complaint (Dec. 16, 2019) available at <https://storage.courtlistener.com/recap/gov.uscourts.txwd.1074713/gov.uscourts.txwd.1074713.1.0.pdf>.

⁵⁷ U.S. Attorney's Office, Northern District of California Press Release, *15 Charged on Drugs and Guns Charges as Part of Anti-Gang Sweep in Concord and Surrounding Areas*, Sept. 15, 2020, available at <https://www.justice.gov/usao-ndca/pr/15-charged-drugs-and-guns-charges-part-anti-gang-sweep-concord-and-surrounding-areas>.

handguns manufactured by the gang for sale on the black market.⁵⁸ In addition to manufacturing and selling ghost guns at scale, street gangs (many of whose members are likely unable to pass a background check) also manufacture ghost guns for use in their criminal endeavors.⁵⁹

E. Domestic Terrorists and Violent Extremists

Ghost guns have been deemed the “weapon of choice” by domestic terrorists and white supremacist extremists who seek to avoid detection by law enforcement.⁶⁰ A June 2021 report by the Joint Counterterrorism Assessment Team—a coalition of federal law enforcement and intelligence agencies, including the FBI—states that violent extremists use ghost guns to “circumvent security, avoid some state government regulations, and evade detection of and complicate law enforcement and investigative efforts.”⁶¹ As Mike Sena, the director of the Northern California Regional Intelligence Center, has explained, the “go-to” for individual extremists, whether they are “international terrorists, domestic terrorists, or violent extremists,” is to “try to get a hold of a [ghost gun] because of the belief that [law enforcement] will never be able to figure out where [the] weapon came from.”⁶² Indeed, in the absence of more stringent federal regulation, terrorists and other violent extremists can acquire and use “ghost versions” of military-grade weapons, such as AR-15 assault rifles, even when such weapons are banned under local

⁵⁸ Richard Winton, *L.A. Gangs stockpile untraceable ‘ghost guns’ that members make themselves*, Los Angeles Times, July 6, 2018, available at <https://www.latimes.com/local/lanow/la-me-la-gangsters-homemade-guns-20180706-story.html>.

⁵⁹ *Id.* (explaining that Southern California gangs are making their own weapons because they cannot buy them legally or are paying others to make them for them to get around gun laws).

⁶⁰ See Everytown for Gun Safety, *Ghost Guns: A Weapon of Choice for White Supremacists Arrested Ahead of Virginia Rally*, Jan. 27, 2020, available at <https://www.everytown.org/press/ghost-guns-a-weapon-of-choice-for-white-supremacists-arrested-ahead-of-virginia-rally/>.

⁶¹ *First Responder’s Toolbox*, NCTC, DHS & FBI, June 22, 2021, at 3, available at <https://www.documentcloud.org/documents/21037764-privately-made-firearms>. The authenticity of this report has been confirmed by The Trace and NBC Bay Area through federal law enforcement sources. See Alain Stephens, *The Feds are Increasingly Worried About Extremists Acquiring Ghost Guns, Leaked Report Shows*, The Trace, Aug. 6, 2020, available at <https://www.thetrace.org/2021/08/ghost-gun-government-report-3d-print-extremism-terrorism/>.

⁶² See Stephens, *supra* n. 61.

law.⁶³ Dangerous extremists have been able to acquire in the highly-accessible ghost gun market deadly weapons that they likely would not have been able to obtain had the Final Rule been in place—weapons that they have gone on to use in mass shootings and other violent crimes.

Prosecutors and law enforcement in the Amici Cities have seen this become an all-too-common occurrence. For example:

- In 2020, a man in California shot and murdered a federal security officer and a sheriff’s deputy using a “homemade” AR-15 style rifle.⁶⁴ The man was linked to the Boogaloo Movement, “a right-wing extremist group that harbors a mistrust of law enforcement and government, and anticipates a second American Civil War.”⁶⁵
- In May 2020, law enforcement in Queens arrested two men who were assembling an arsenal of weapons, including “an AR-15 style assault rifle ‘ghost’ gun with a silencer attachment and high capacity magazine,”⁶⁶ which is illegal under New York law.⁶⁷ One of the men’s social media posts suggested that these weapons were likely intended for use in a mass shooting: he had advocated for a “racial civil or holy war”; posted a picture of himself giving a Nazi salute with the caption that he “hate[s] women jews and n----rs”; posted a picture where he displayed a large knife with the caption that read, “overthrowing [Jews] is our Christian duty”; posted a photograph of a Planned Parenthood location being blown up by the comic book character The Joker; commented in response to a bloody crime scene photograph from the December 2019 machete attack at a synagogue in Monsey, New York that it was “pretty f-----g exciting”; and “posted Instagram messages displaying suicidal ideations” and fantasies “about ‘martyring’ himself and ‘going out in a blaze of glory’ in a mass shooting.”⁶⁸
- In July 2021, a grand jury in North Carolina indicted a 21-year-old New Jersey National Guardsman for allegedly supplying ghost guns to members of a white nationalist group

⁶³ Assault weapons are banned in California, Connecticut, Maryland, New Jersey, and New York (and, as such, are banned in the following Amici Cities: Baltimore, Hartford, Los Angeles, Oakland, San Francisco, Newark, New York, Rochester, and Syracuse. See Cal. Penal Code §§ 30500-30685; Conn. Gen. Stat. §§ 53-202a to 53-202c; Md. Code, Crim. Law §§ 4-301 to 4-306; N.J. Stat. Ann. §§ 2C:39-1 to 2C:39-20, N.Y. Penal Law §§ 265.00-265.55.

⁶⁴ Stephen Stock and Jeremy Carroll, *Ghost Guns Sought by Violent Extremists, Tied to Thousands of Potential Crimes, Feds Warn*, NBC Bay Area, Aug. 7, 2021, available at <https://www.nbcbayarea.com/investigations/ghost-guns-sought-by-violent-extremists-tied-to-thousands-of-potential-crimes-feds-warn/2624959/>.

⁶⁵ *Alleged Oakland, Ben Lomond Gunman Steve Carrillo Linked to Far Right ‘Boogaloo’ Movement*, CBS SF Bay Area, June 16, 2020, available at <https://sanfrancisco.cbslocal.com/2020/06/16/steven-carrillo-david-underwood-murder-santa-cruz-deputy-fatal-shooting-fatal-oakland-federal-building-shooting/>.

⁶⁶ U.S. Attorney’s Office, Eastern District of New York Press Release, Two Queens Men Charged After Buying Three Illegally Defaced Firearms and Two Assault Rifles, U.S. Dep’t Justice (May 13, 2020), available at <https://www.justice.gov/usao-edny/pr/two-queens-men-charged-after-buying-three-illegally-defaced-firearms-and-two-assault>.

⁶⁷ See N.Y. Penal Law §§ 265.02, 265.10.

⁶⁸ See U.S. Attorney’s Office, Eastern District of New York Press Release, *supra* n. 66.

who had appeared in videos giving the “Heil Hitler” salute.⁶⁹

ATF’s Final Rule is essential to keep untraceable ghost guns out of the hands of dangerous extremists.

⁶⁹ See Stephens, *supra* n. 61; see also Justin Rohrlich, *NJ National Guardsman Charged in Neo-Nazi ‘Ghost Gun’ Conspiracy*, The Daily Beast, July 2, 2021, available at <https://www.thedailybeast.com/new-jersey-national-guardsman-joseph-maurino-charged-in-neo-nazi-ghost-gun-conspiracy>.

CONCLUSION

There can be no doubt that ghost gun kits have enabled countless individuals in cities across the country to flout some of the most fundamental gun regulations, including the laws prohibiting convicted felons and domestic abusers from possessing firearms; have led to a substantial increase in guns and gun violence in cities across the country; and have undermined the efforts of law enforcement and prosecutors across the country to deter and prosecute gun violence. ATF's Final Rule is absolutely necessary to stop the dangerous proliferation of ghost guns and to promote public safety. For the foregoing reasons, Amici urge the Court to uphold the constitutionality of 87 FR 24652.

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