



Written by [Bob Adelman](#) on February 12, 2024

DOJ Urges Supreme Court to Uphold “Ghost Gun” Infringements

After an appeals court [ruled against the ATF](#) (the Bureau of Alcohol, Tobacco, Firearms and Explosives), the rogue agency [asked the high court](#) on Tuesday to consider its case and toss the lower court’s ruling.

As part of the the attempts by the Biden administration’s Department of Justice (DOJ) to continue to chip away at the Second Amendment’s guarantee of the right to keep and bear arms, it ordered the ATF to expand the definition of a firearm to include the parts and pieces that make up a “ghost gun” — parts that can either be ordered online or built by a 3D printer and assembled at home.

In its attempt to persuade the high court that it really meant no harm — that it was just trying to do its job — its defense of its infringement appeared benign:



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The Rule’s interpretation of the Act does not prohibit the manufacture of any firearm or the sale of a firearm to any individual lawfully entitled to possess one. Nor does it prohibit such a person from making a firearm at home.

Instead, the Rule simply clarifies that the Act requires commercial manufacturers and sellers of covered weapon parts kits and partially complete frames or receivers to obtain licenses, mark their products with serial numbers, conduct background checks, and keep transfer records.

Simple: The ATF is just trying to keep up with advances in technology and marketing that make it increasingly easier for citizens — sovereign citizens, it should be noted — to create and assemble firearms at home. Just as Americans have been doing since Revolutionary times.

And just as the Fifth Circuit Court of Appeals ruled back in November, holding that “Congress has neither authorized the expansion of firearm regulation not permitted the criminalization of previously lawful conduct [and therefore] the proposed rule constitutes unlawful agency action, in direct contravention of the legislature’s will.”

The Fifth Circuit ruling dismantled the ATF’s claim that it was simply following its mandate:

ATF’s proposed definition is not only imprecise, ambiguous, and violative of the statutory text, it also legislates.



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Thus, the challenged portion of the Final Rule that redefines “firearm” to include weapon parts kits constitutes unlawful agency action....

It is not the province of an executive agency [i.e., the ATF] to write laws for our nation. That vital duty ... lies solely with the legislature....

[And] unless and until Congress so acts to expand or alter the language of the Gun Control Act [GCA], [the] ATF must operate within the statutory text’s existing limits.

But, declares the ATF in its request for the high court to reconsider the lower court’s ruling:

Under the Fifth Circuit’s interpretation, anyone could buy a kit online and assemble a fully functional gun in minutes — no background check, records, or serial number required.

The result would be a flood of untraceable ghost guns into our Nation’s communities, endangering the public and thwarting law-enforcement efforts to solve violent crimes.

This freedom to build firearms at home without kowtowing to the ATF’s revised inclusion that they must be registered is anathema to the ATF:

This Court’s review is warranted because the Fifth Circuit declared invalid key provisions of an important regulation and adopted an interpretation of the Act that would effectively nullify its central provisions by allowing criminals and other prohibited persons to obtain untraceable firearms without background checks, serial numbers, or transfer records....

If left in place, the Fifth Circuit’s decision would give the manufacturer and distributor respondents the green light to resume unfettered distribution of ghost guns without background checks, records, or serial numbers.

That would pose an acute threat to public safety.

The real reason the Biden administration wants the Supreme Court to review and toss the lower court’s ruling is because there is a “timer” set to make the lower court’s ruling in favor of the Second Amendment permanent. When the Supreme Court put a temporary hold on the Fifth Circuit’s ruling, it noted that that temporary hold would expire after all appeals elsewhere had played out. As Jake Fogleman, writing for *The Reload*, noted:

Because the stays on the orders striking down the ATF’s rule are set to expire pending the “disposition of a petition for a writ of certiorari,” that means that the Fifth Circuit’s decision against the ATF’s rule would immediately take effect if the Supreme Court rejects the DOJ’s request.

Such an outcome would blow a hole in the federal government’s firearms regulations.

If the high court does accept the DOJ’s petition to review the lower court’s ruling, it is likely to affirm it, having done so already in other recent decisions, including rulings against overreaches by the Environmental Protection Agency (EPA) and the Department of Education (ED).

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