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

STATE OF TEXAS, STATE OF LOUISIANA, STATE OF MISSISSIPPI, STATE OF UTAH, JEFFREY W. TORMEY, GUN OWNERS OF AMERICA, INC., GUN OWNERS FOUNDATION, TENNESSEE FIREARMS ASSOCIATION, and VIRGINIA CITIZENS DEFENSE LEAGUE, *Plaintiffs*, v. BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES, et al., *Defendants*.	Case No. 2:24-cv-00089-Z

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO ALTER OR AMEND THE JUDGMENT

INTRODUCTION

Displeased that this Court's recent vacatur of the Biden ATF's "engaged in the business" rule (the "Rule") interferes with their *latest* rulemaking on the matter, Defendants now ask this Court to take a scalpel to a Rule that was a cudgel to gun owners. To that end, Defendants vaguely seek to preserve "aspects" of the Rule that they believe were not addressed in this Court's prior rulings. But they refuse to state *which* aspects they wish to see un-vacated. Apparently, Defendants expect Plaintiffs – or this Court – to do the long division for them. Not only should this Court deny Defendants' vague request for that reason alone but, for the reasons that follow, the Rule is not severable in the way Defendants think. Virtually all of its provisions supported the Biden Administration's goal of universal gun owner registration – the funneling of *all* firearm transactions through licensed dealers to generate paper trails to be preserved in perpetuity. Accordingly, because

ATF never would have promulgated any remaining tidbits of the Rule on their own, this Court rightly vacated the Rule in its entirety, and it should deny Defendants' request to undo that result.

ARGUMENT

I. Defendants Misstate Plaintiffs' Position on the Motion.

Defendants claim that "Plaintiffs oppose the requested relief." Opposed Motion to Alter or Amend the Judgment ("Mot.") at 1. To the contrary, the private Plaintiffs explained their position in no uncertain terms: "[t]o the extent some portion or portions of the regulations promulgated by the Rule merely track statutory language verbatim, *we would not object* to preserving such language," but "[o]therwise, since you have declined to provide any specific provisions or language you believe should be saved, or on what grounds, *we must oppose* your motion." *See* Exhibit A. So Defendants' claim that Plaintiffs simply "oppose" is inaccurate.

Indeed, the Final Rule purported to both (i) "conform[]" ATF's regulations "with the BSCA's statutory changes" and (ii) "further clarify" the "conduct that presumptively falls within the definition of 'engaged in the business'...." 89 Fed. Reg. at 28968, 28974, 28991. Regulatory conformance to the statutory text was never the issue. The problem was that the Rule seized on the opportunity to sweep much further, essentially rewriting the statute to suit ATF's radical political agenda. Again, Plaintiffs do not oppose preserving regulatory definitions which simply mirror statutory language. *See* Compl. ¶¶47-49. But Plaintiffs *are* opposed to preserving provisions in the Rule that purport to require (or support the requirement that) ordinary gun owners be licensed in order to engage in private, noncommercial firearm transactions – *i.e.*, the rest of the Rule.

II. Defendants Never Identify Which Rule Provisions They Wish to Preserve, So This Court Should Deny Their Motion on That Basis Alone.

Next, although Defendants vaguely seek to "preserve" some nonspecific portion(s) of the Rule, they have failed to explain (either to Plaintiffs during consultation or to the Court in their

Motion) the precise boundaries of their request – much less articulate *why* severance is warranted. Instead, government counsel relayed to Plaintiffs that Defendants seek to "preserve … every part of the Rule that was not explicitly challenged and decided on the merits." Exhibit A. Defendants' Motion is similarly vague, asking the Court to limit its ruling "to the aspects actually ruled unlawful by this Court." Mot. at 1. But just what "every part" is, or what "aspects" that includes, Defendants do not say. Instead, seemingly unwilling to review 126 pages of dense Federal Register text, or parse the Rule's approximately 3,500 words of regulatory text (89 Fed. Reg. at 29090-93), Defendants apparently expect Plaintiffs to infer which "parts" and "aspects" Defendants wish preserved, and Defendants apparently expect this Court to imagine arguments in support of their request. On the contrary, Defendants' lack of specificity and explication alone is enough reason to deny their Motion.

One example illustrates the point. As Defendants recount, this Court found "[t]he Rule impermissibly redefines 'engaged in the business' to require no minimum number of firearms transactions." Mot. at 2. And so, naturally, this Court found that ATF's new definition of "engaged in the business" must be vacated. ECF # 176 at 2. The question thus becomes, what "part" or "aspects" of that definition do Defendants propose to keep? Do they wish to retain everything in 27 C.F.R. § 478.13 *except* for the exact language "there is no minimum threshold number of firearms purchased or sold that triggers the licensing requirement"? Or perhaps subsection (b) can go, but nothing else? Or do Defendants agree that it was appropriate to vacate that entire provision, but not others? Defendants fail to delineate the boundaries of their request, and this Court is not required to flesh out their vague argument for them.

III. Defendants Seek to Re-Promulgate Many of the Same Legal Theories This Court Already Rejected.

Defendants also minimize this Court's holdings. In their Motion, they claim this Court ruled only on "four specific challenges to the Rule." Mot. at 1-2. But this Court's opinion went much further than Defendants let on. For example, Defendants claim this Court found only that "[t]he Rule impermissibly redefines 'engaged in the business' to require no minimum number of firearms transactions." Mot. at 2. To the contrary, this Court explained (i) that there must be "purchase *and* resale," (ii) that each activity must involve "'firearms,' in the plural," and (iii) that the language "regular course" contemplates "a series of events." ECF # 70 at 15-16.[1] Likewise, Defendants claim that this Court narrowly rejected the Rule's "exclu[sion] [of] firearms acquired for personal protection from the definition of a 'personal collection.'" Mot. at 2. On the contrary, this Court found that the Rule "arbitrarily eviscerates" the safe harbor by making it inapplicable "for the majority of gun owners." ECF # 70 at 17-18.[2] Finally, Defendants summarize that this Court found "[t]he Rule impermissibly establishes presumptions." Mot. at 2. In reality, this Court explained that the presumptions are problematic not only because they "flip the statute on its head," reversing the burden of proof, *but also* because they "conflict with the statutory text." ECF # 70 at 18.

Of course, it is unsurprising that Defendants seek to minimize the scope of this Court's rulings. As Defendants reveal, this Court's vacatur has been cramping ATF's style when it comes to promulgating a new proposed rule on this topic. Mot. at 3 (labeling the Court's ruling "unduly burdensome"), at 5-6 (admitting that ATF's new NPRM "does not go so far as to repeal the Rule in its entirety"), at 6 ("Vacatur of the entire rule risks disrupting the ongoing regulatory process."). But the reason this Court's ruling is proving inconvenient to ATF's current rulemaking process is

[1] Notably, Defendants continue to deny that the statute requires multiple transactions, claiming in their latest "engaged in the business" rulemaking that, "[f]or a person to engage in the business of dealing in firearms, it is not necessary to prove an actual sale of firearms." 91 Fed. Reg. at 24427 n.15.

[2] Rejecting this Court's holding in their latest rulemaking, Defendants continue to label the safe harbor a "narrow, predetermined exception" (91 Fed. Reg. at 24429) rather than the broad protection that Congress intended for "the majority of gun owners." ECF # 70 at 17-18.

because ATF seeks to re-promulgate many of the same foolish legal theories this Court rejected.

As the private Plaintiffs explained in their recently filed comments to ATF on the new proposed rule, "the NPRM explicitly endorses many of the flawed legal theories underlying the Biden rule." Exhibit B at 2; *see also id.* at 13 (Commenters warning that ATF's re-promulgation of the same Biden-era legal theories will force them to sue ATF all over again). For example, ATF's new NPRM purports to repeal the current "presumptions" (91 Fed. Reg. at 24426-27), but then doubles down on the underlying theories, asserting that "the presumptions already involved facts sufficient to create a prima facie case … involv[ing] fact patterns from which a fact finder could find that a person was engaged in the business." *Id.* at 24427. But this Court found *not only* that the presumptions could "relieve the Government of its burden of proof" (*id.* at 24426), *but also* that the presumptions "conflict with the statutory text." ECF # 70 at 18.[3] It therefore cannot be – as the NPRM claims – that simply meeting one of the presumptions "create[s] a prima facie case" justifying a prison sentence. And, contrary to this Court's holding that the statute generally "require[s] … actual profit from firearms transactions" (Mot. at 2), Defendants nevertheless reject that conclusion in the NPRM, positing that "it is not necessary to prove an actual sale of firearms," thereby rejecting the requirement of proof of *actual profit*. 91 Fed. Reg. at 24427 n.15.

At bottom, Defendants object that this Court's vacatur of the Rule is now proving to be

[3] The NPRM thus perpetuates the very same harms that Plaintiffs first alleged to this Court. For example, under the NPRM, GOA's member who simply "keeps a 'digital spreadsheet of information on their extensive collection'" (ECF # 83-1 at APPX.435) could go be sent to prison *on that basis alone* – without any proof of profit, much less intent to engage in the business. And as to ordinary gun owners who commonly sell firearms within 30 days of acquiring them (*see, e.g.*, ECF # 53-1 ¶8 ("I sometimes have purchased a firearm I intended to carry, but after carrying it for a bit, decided it was not for me, and therefore I sold it.")), the NPRM would continue to label this criminal behavior *by itself*, because ATF still believes that "[t]he presumptions all involved fact patterns from which a fact finder could find that a person was engaged in the business." 91 Fed Reg. at 24427. It seems that ATF has learned nothing from this Court's opinions thus far.

"unduly burdensome" on their new rulemaking. But that is because ATF's new rulemaking proposes to do many of the *very same things* that the Rule did. The fact that this Court's vacatur impedes ATF from implementing the *same problematic regulations – again in a new rulemaking* – is a feature, not a bug.[4]

If further proof is needed that ATF's new NPRM seeks to re-promulgate the very same violations that this Court already found, consider this. The vacated Biden Rule claimed that a person could be "engaged in the business" without ever selling a single firearm. 89 Fed. Reg. at 29021 (asserting that there is no "minimum number of firearms to actually be sold to be 'engaged in the business'"). But this Court – and another – flatly rejected that atextual notion, explaining that the statute "require[s] the 'purchase and resale' of firearms...." ECF # 70 at 15; *see also Butler v. Bondi*, 805 F. Supp. 3d 1175, 1203 (N.D. Ala. 2025) ("A one-time purchase of one gun with the promise to buy other guns does not establish that the buyer is devoting his time, attention, and labor to regularly dealing firearms as a business."). Strikingly, rather than concede defeat on this issue, ATF's current NPRM rejects this Court's and the Alabama court's conclusions, and doubles down on ATF's Biden-era claim, asserting that, "[f]or a person to engage in the business of dealing in firearms, *it is not necessary to prove an actual sale of firearms*." 91 Fed. Reg. at 24427 n.15 (emphasis added). But that is *the exact same theory* this Court rejected in this case. No doubt,

[4] Defendants' Motion also seeks absurd results. Notably, this Court ruled that Plaintiffs had standing to challenge the Rule's restrictions on so-called "former licensee inventory," explaining that Plaintiff "GOA describes a former FFL whose retirement savings are now frozen in unsellable inventory." ECF # 70 at 11. Even so, this Court did not explicitly discuss those restrictions' defects in its merits analysis. *See id.* at 14-19. And so, Defendants presumably wish to preserve the Rule's "former licensee inventory" provisions, since they seek to "limit the scope of the vacatur … to the aspects actually ruled unlawful by this Court." Mot. at 1. And yet Defendants' NPRM *concedes* that the Rule's "effectively permanent restraint on firearms sales after the 30-day period is arguably unlawful." 91 Fed. Reg. at 24430. In other words, Defendants seek to preserve their ability to promulgate a rule they concede violates the statute.

vacatur proves "burdensome" for ATF to re-promulgate the same unlawful provision again, but that is because agencies are not free to simply reenact regulations that have been vacated.

IV. The Rule Is Not Severable Because Its Provisions All Serve the Same End: Universal Firearm Registration.

Undaunted, Defendants press on, triumphing that the vacated Rule contained a severability clause. Mot. at 4; *see also id.* at 5 ("[t]he record does not indicate 'any reason to disregard the severability clause'"). But a severability clause is not some magic talisman that, once waved, provides special protection for an unlawful rulemaking. Rather, courts "must apply the APA's 'default' remedy – vacatur." *Airlines for Am. v. DOT*, 166 F.4th 487, 488 (5th Cir. 2026). And "[g]enerally, the entire regulation must be vacated[,] unless 'we can say without any substantial doubt that the agency would have adopted the severed portion on its own.'" *Id.* at 488 (citation omitted). The presence of a severability clause might be *evidence* supporting such a finding, but it is not by itself sufficient.[5] And here, ATF never would have promulgated the Rule without the provisions that this Court explicitly struck.

Indeed, the Rule's provisions are not distinct parts of some omnibus rule – serving various purposes and accomplishing various ends. Rather, they are spokes of a single wheel, all designed to serve a comprehensive scheme and intended to accomplish one singular purpose – to eliminate private sales of firearms and thereby to implement universal background checks. The Biden White House said so, in so many words: "President Biden signed an Executive Order directing the

[5] Defendants wholly failed to provide any meaningful severability analysis during briefing. *See* Defendants' Memorandum of Law in Support of their Motion for Summary Judgment, ECF # 90 at 64-65 ("If the Court concludes that specific provisions of the Rule are unlawful, the Court should limit any relief to those provisions."). Notwithstanding their recitation of the severability standard, *id.* at 64, Defendants failed to apply it, and that failure constitutes forfeiture. *See Ward v. Cross Keys Bank (In re Karcredit, LLC)*, 2022 U.S. App. LEXIS 25116, at *12-13 (5th Cir. Sept. 7, 2022) ("parties must present issues in a procedurally adequate manner in order to preserve them").

Attorney General to move as close to universal background checks as possible...."[6] It was in support of *that* overarching mission that ATF crafted the Rule, which went far beyond simply aligning the regulation with the statutory text. There is no need for this Court to parse every provision and strike the Rule line by line, because virtually every provision of the Rule operates to support a section the underlying legal theories that this Court rejected.

For example, the Rule's new definition of "dealer" states that dealing "activities [occur] wherever, or through whatever medium, they are conducted, such as at a gun show or event, flea market, auction house, or gun range or club; at one's home; by mail order; over the internet (*e.g.*, online broker or auction); through the use of other electronic means (*e.g.*, text messaging service, social media raffle, or website); or at any other domestic or international public or private marketplace or premises." 89 Fed. Reg. at 29090. Of course, *actual* gun dealers know where they are allowed to engage in the business – ATF's regulations make very clear that business activities can occur only at the licensed premises, or occasionally at a gun show. *See* 27 C.F.R. § 478.50 ("Locations covered by license."). This has been established law for decades. And so the Rule's revelation – that dealing can occur at a "gun show" (where private sales are common), "gun range" (where friends and acquaintances may buy, sell, or trade), "over the internet" (such as on sites like Texas Gun Trader where private sales flourish), and through "text messaging" (how private buyers and sellers coordinate logistics) – was not geared at *existing* licensees, but rather unlicensed, noncommercial, private firearm sellers like Plaintiff Tormey. *See* ECF # 1-1 ¶¶8-9 (Tormey explaining that he buys and sells firearms in private transactions at "local gun shows" and "through various mediums"); *cf.* 89 Fed. Reg. at 28973 ("The proliferation of sales at larger-scale gun shows,

[6] *FACT SHEET: Biden-Harris Administration Takes Another Life-Saving Step to Keep Guns Out of Dangerous Hands*, White House (Aug. 31, 2023), https://tinyurl.com/5hcer36d.

flea markets, similar events, and online has also altered the marketplace since the GCA was enacted in 1968.").

Similarly, the Rule added unnecessary definitions for unambiguous statutory terms, going out of its way to define "purchase" and "sale." 89 Fed. Reg. at 29090. ATF's explanation that a firearm "sale" can include the exchange of a "controlled substance" (*id.*) is in no way geared to the traditional firearm dealer -- they do not ordinarily trade guns for drugs. Rather, firearms exchanged for something like "a service" envisions, for example, a contractor who agrees to paint a foyer in exchange for a shotgun – a deal that does not make the homeowner engaged in the business of dealing in firearms. Once again, absent the Rule's stated goal to criminalize the private sale of firearms, none of these definitions would have been necessary, and ATF would never have enacted them on their own.

V. *VanDerStok* Does Not Support Defendants.

Defendants' citation to *VanDerStok* does not change the calculus. *See* Mot. at 3-4. There, the district court concluded that only "two specific provisions of an ATF rule were unlawful." *Id.* at 3. That rule – ATF's 2022 "frame or receiver" rule – was an *omnibus* rulemaking covering multiple unrelated subjects spanning privately made firearms, silencers, and even the time period that FFLs must retain transaction records. *See* 87 Fed. Reg. 24652. Unlike here, the *VanDerStok* plaintiffs did not challenge all (or even most) of the 2022 rule – "[t]hey argued that the GCA cannot be fairly read to reach weapon parts kits or unfinished frames or receivers." *Bondi v. VanDerStok*, 604 U.S. 458, 466 (2025). Defendants admit as much. *See* Mot. at 4 ("'The district court analyzed the legality of only two of the numerous provisions of the Rule....'" (quoting *VanDerStok v. Garland*, 2023 U.S. App. LEXIS 20224, at *3 (5th Cir. July 24, 2023))). In stark contrast here, Plaintiffs challenged nearly *every aspect* of a rule that focused single-mindedly on one issue:

unlicensed private sales.[7] Limited vacatur therefore cannot be a "complete remedy for [Plaintiffs'] alleged harms." Mot. at 5.

VI. At Most, This Court Should Reinforce Its Prior Ruling with Further Analysis of the Rule's Many Defects.

Alternatively, even if this Court agrees with Defendants that wholesale vacatur was the incorrect remedy (it was not), then simply un-striking portions of the Rule is not the answer. Rather, the Court should enter additional findings, tracking Plaintiffs' Complaint and Motion for Summary Judgment, on every single issue Plaintiffs identified in note 7, *supra*. For example, Plaintiffs explicitly challenged – and this Court already acknowledged – the Rule's restrictions on "a former FFL whose retirement savings are now frozen in unsellable inventory." ECF # 70 at 11. ATF's latest rulemaking largely keeps this GOA member's inventory on ice, thawing its restrictions only slightly. *See* 91 Fed. Reg. at 24430 (denying that "former licensees" can hold "'fire sales' of large swathes of inventory"); Exhibit B at 8 ("The NPRM does nothing to fix the problem. To the contrary, the NPRM contemplates only 'an occasional firearm in a private sale years later' as permissible conduct for a 'former licensee' – not the sort of 'fire sale' that would be necessary to recoup what may be left of one's business investment."). Thus, if this Court finds that its opinion did not sufficiently cover certain topics (it did), then the remedy is not unraveling its judgment, but rather reenforcing it with additional legal analysis of why the Rule is unlawful.

[7] *See* Compl. ¶¶73-76 (definition of "dealer"), ¶¶82-86 (definitions of "purchase," "sale," "resale," and "something of value"); ECF # 83 at 22-26 (definition of "former licensee inventory"), at 26-29 (definition of "personal collection"); Compl. ¶¶73-76 (definition of "predominantly earn a profit"), ¶¶73-76 (definition of "engaged in the business as a dealer in firearms other than a gunsmith or a pawnbroker"), ¶¶118-22, 148-50 ("fact-specific inquiry" with "no minimum number of transactions"), ¶¶89-90, 103 (presumptions for being "engaged in the business"), ¶¶89-90, 103 (presumptions to "predominantly earn a profit"); ECF # 83 at 26 ("conduct that does not support a presumption"); Compl. ¶103 ("rebuttal evidence"), ¶¶123-26 ("not exhaustive"), ¶¶123-26 ("criminal proceedings"); ECF # 83 at 22-26 ("former licensee inventory" provisions of 27 C.F.R. § 478.57), at 22-26 ("former licensee inventory" provisions of 27 C.F.R. § 478.78).

CONCLUSION

For the foregoing reasons, Defendant's vague Motion should be denied. The Rule was a means to a singular end – universal background checks and registration. But even though that end has now been rejected, Defendants wish to preserve the means, incorporating many of the Rule's worst defects into a *new* rulemaking reaching a substantially similar end. This Court need not assist Defendants in their quest to perpetually document gun owners' constitutionally protected (and private) activities. The Rule should stay vacated in its entirety.

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CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on July 23, 2026, and that all counsel of record were served by CM/ECF.

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