

# Congress of the United States

Washington, DC 20515

March 18, 2022

Mr. Marvin Richardson  
Acting Director  
Bureau of Alcohol, Tobacco, Firearms, and Explosives  
99 New York Avenue N.E.  
Washington, DC 20226

Dear Acting Director Richardson:

The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) continues the Biden Administration's assault on Americans' Second Amendment rights. We have heard from concerned constituents that the ATF is attempting to restrict the ability of law-abiding Americans to make their own silencers. This ATF attempt to expand the definition of a silencer—like the ATF's other regulatory actions—is contrary to years of ATF precedent and beyond the scope of the agency's authority under federal law. We demand that you immediately stop this effort to curtail fundamental Second Amendment rights.

The Second Amendment to the Constitution guarantees to all Americans the right to keep and bear arms.<sup>1</sup> Relevant federal firearm laws, including the National Firearms Act (NFA) nor the Gun Control Act (GCA), do not prohibit a law-abiding American from constructing a firearm, including the ability to construct silencers.<sup>2</sup> On its website, the ATF explains:

Firearms may be lawfully made by persons who do not hold a manufacturer's license under the Gun Control Act [GCA] provided they are not for sale or distribution and the maker is not prohibited from receiving or possessing firearms.<sup>3</sup>

The long-held policy of ATF has been to require any individual making his or her own silencer to first file a Form 1 application, pay the \$200 fee, and receive approval from ATF.<sup>4</sup> Form 1 is the ATF's "Application to Make and Register a Firearm."<sup>5</sup>

We have learned that the ATF has begun denying Form 1 requests from law-abiding citizens seeking to make silencers for their personal use. These individuals sought to follow the law by filing Form 1 requests, and they often did so carefully following published ATF guidance. The individuals sought approval to make silencers from individually sourced raw

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<sup>1</sup> U.S. Const. amend. II.

<sup>2</sup> 26 U.S.C. § 5845 (defining "firearm" to include "silencer").

<sup>3</sup> U.S. Dep't of Justice, Bur. of Alcohol, Tobacco, Firearms, and Explosives, Top 10 Frequently Asked Questions and Answers, <https://www.atf.gov/resource-center/docs/0501-firearms-top-10-qaspdf/download>.

<sup>4</sup> U.S. Dep't of Justice, Bur. of Alcohol, Tobacco, Firearms, and Explosives, How can I make and register an NFA firearm? <https://www.atf.gov/firearms/qa/how-can-i-make-and-register-nfa-firearm>.

<sup>5</sup> U.S. Dep't. of Justice, Bur. of Alcohol, Tobacco, Firearms, & Explosives, Firearms Forms, Application to Make and Register a Firearm. <https://www.atf.gov/firearms/docs/form/form-1-application-make-and-register-firearm-atf-form-53201/download>.

Mr. Marvin Richardson

March 18, 2022

Page 2

materials, components, or kits that included items that are manufactured for other non-firearm purposes, such as flashlight tubes or fuel filters. In denying the Form 1 requests, the ATF informed these individuals that they were in violation of the NFA because they had not received prior approval to own the materials in question, which the ATF claims to meet the legal definition of a silencer. Because of the ATF's actions, these law-abiding citizens are now concerned that they could be in violation of a law that carries punishments of up to 10 years in prison and \$250,000 in fines.<sup>6</sup>

We have also learned from constituents that once the ATF receives a Form 1 application to manufacture a silencer, the agency requires the applicant to send in photographs of the parts he or she will use and a description of the assembly process. The ATF tells the applicant that without this information, it will disapprove the application and refund the \$200 fee. The ATF's requirement—which is nowhere in statute or existing processes—potentially opens these otherwise law-abiding citizens to self-incrimination by admitting that they possess the raw materials that ATF now defines as a “silencer” and demonstrates their constructive intent to violate the law.

The ATF's continued assault of the Second Amendment threatens millions of law-abiding American firearm owners. The ATF has overstepped its authority by changing the definition of what constitutes a silencer from the definition as passed by Congress. The American public deserves to know the ATF now believes that the mere possession of otherwise legal items are now considered to be violations of federal law.

To better understand ATF's basis for making these Form 1 denials, we request that you provide the following information:

1. Please explain why the ATF is denying Form 1 applications for the manufacture of silencers using raw materials, components, or kits.
2. Please explain whether these denials reflect a change in policy in how the ATF regulates self-made silencers.
3. Please explain what the ATF has done to inform the American people of its position regarding a Form 1 application and devices it believes are silencers as opposed to individually sourced raw materials, components, or kits, so that law abiding Americans can attempt to comply with the law.
4. Please explain how the ATF evaluates whether a Form 1 application for a silencer is going to be used for individually sourced raw materials, components, or kits that, in ATF's view, is already legally a silencer.
5. Please explain why the ATF has repeatedly approved Form 1 applications for silencers made from individually sourced raw materials, components or kits if the

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<sup>6</sup> See 18 U.S.C. § 3571(b) & (c).

Mr. Marvin Richardson

March 18, 2022

Page 3

agency's policy is that these individually sourced raw materials, components or kits are considered silencers.

6. Please explain how the ATF intends to handle approved Form 1 applications that occurred before February 28, 2022, for silencers made from individually sourced raw materials, components or kits.
7. Please explain how the ATF plans to make tax-free registration available for applicants who in good faith attempted to comply with federal law. If ATF does not plan to make tax-free registration available for applicants who in good faith attempted to comply with the federal law, please explain why.
8. Please produce all documents and communications, including but not limited to ATF legal opinions, referring or relating to the ATF's definition of a silencer or what constitutes individually sourced raw materials, components, or kits.

We ask that you provide this information as soon as possible but no later than 5:00 p.m. on April 1, 2022.

If you have any questions about these requests, please contact House Judiciary Committee staff at (202) 225-6906. Thank you for your prompt attention to this matter.

Sincerely,



Andy Biggs  
Ranking Member  
Subcommittee on Crime, Terrorism, and  
Homeland Security  
Committee on the Judiciary



Jim Jordan  
Ranking Member  
Committee on the Judiciary



Elise M. Stefanik  
Chairwoman  
Republican Conference



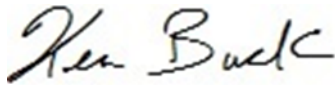
Steve Chabot  
Member of Congress



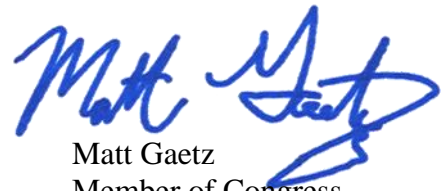
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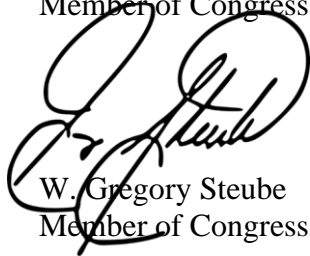
Matt Gaetz  
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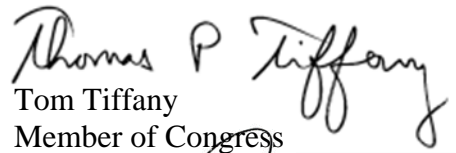
Mike Johnson  
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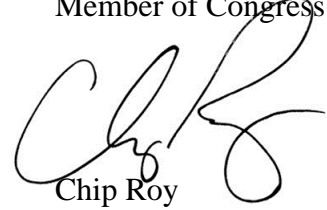
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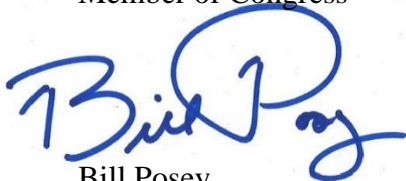
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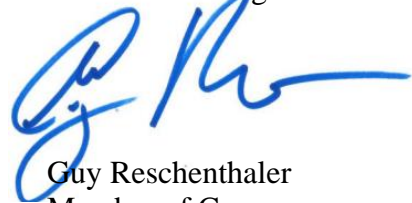
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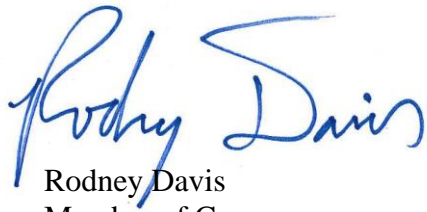
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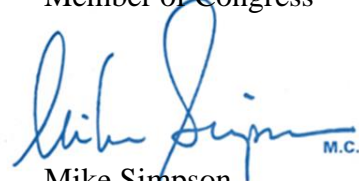
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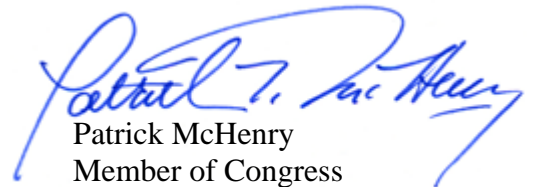
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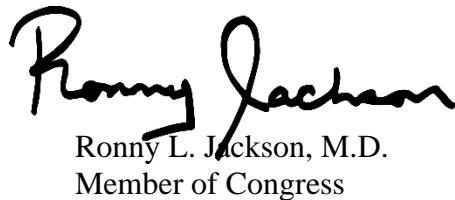
Kelly Armstrong  
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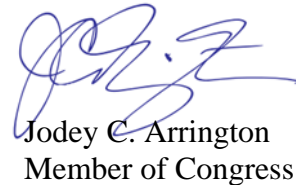
Greg Pence  
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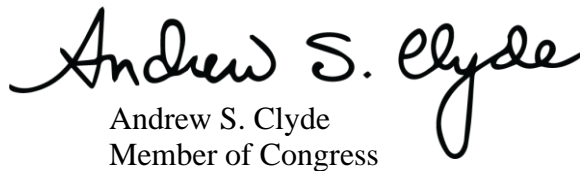
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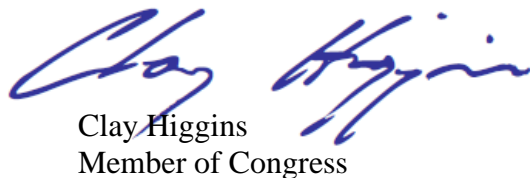
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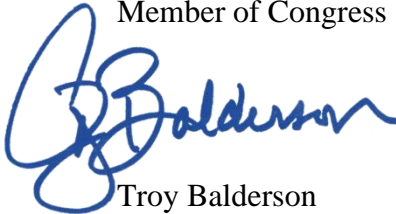
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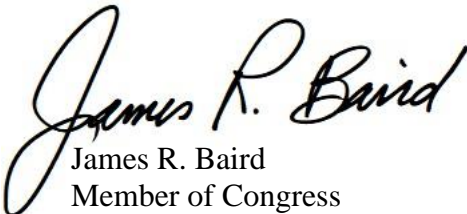
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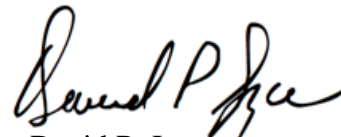
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Vicky Hartzler  
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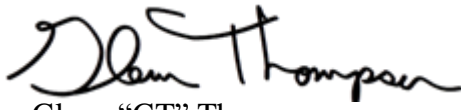
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Tracey Mann  
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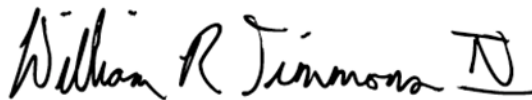
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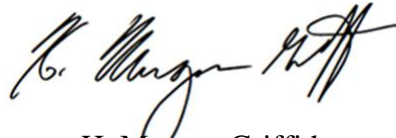
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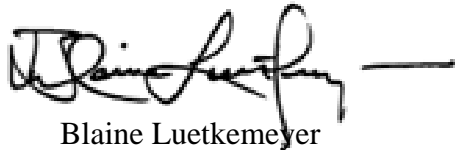
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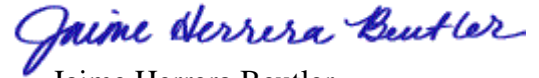
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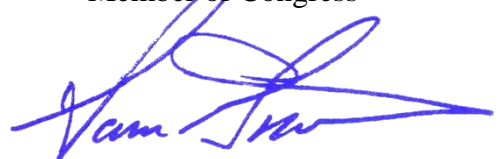
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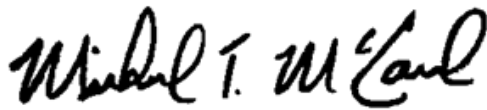
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Sam Graves  
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Michael T. McCaul  
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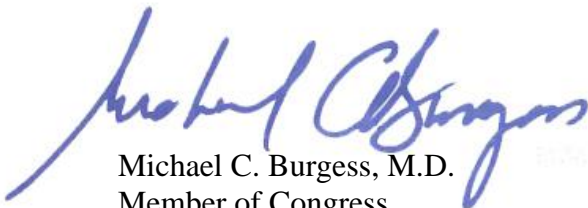
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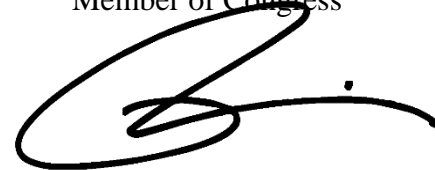
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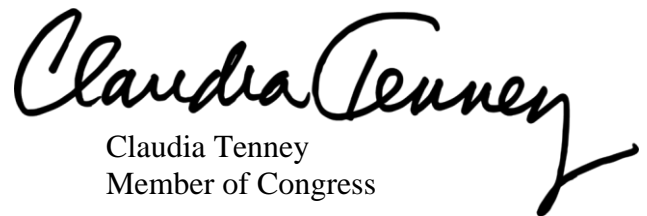
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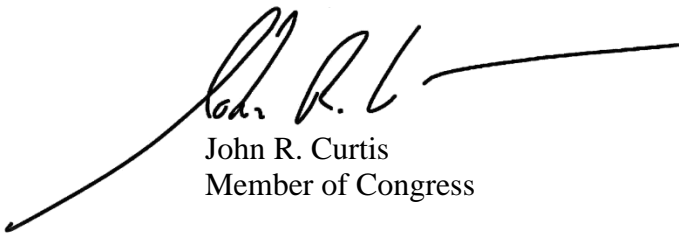
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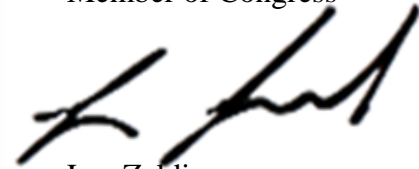
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Ben Cline  
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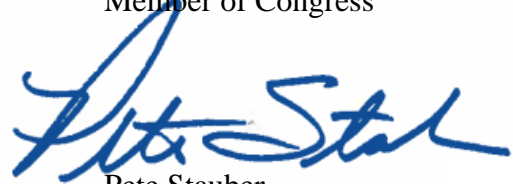
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Member of Congress



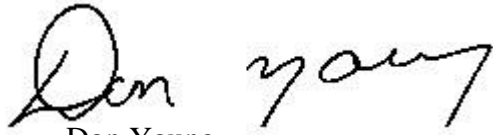
Roger Williams  
Member of Congress



Bryan Steil  
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Andy Harris, M.D.  
Member of Congress



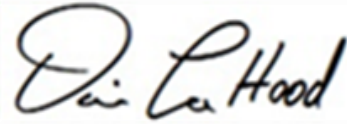
Don Young  
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Steven M. Palazzo  
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David Schweikert  
Member of Congress



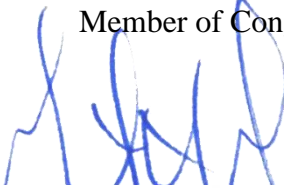
Darin LaHood  
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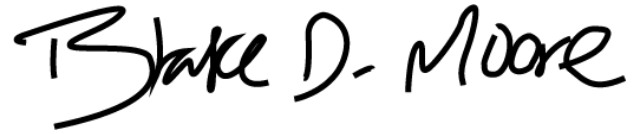
David Kustoff  
Member of Congress



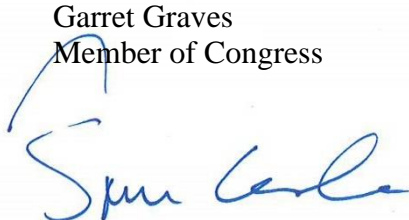
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