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IDENTITY AND INTEREST OF *AMICI CURIAE*

Amici curiae are a group of municipalities across the United States (collectively, the “Amici Cities”). The Amici Cities include: Columbus, Ohio; Dayton, Ohio; Durham, North Carolina; Hartford, Connecticut; Los Angeles, California; New York, New York; Paterson, New Jersey; Pittsburgh, Pennsylvania; Providence, Rhode Island; Rochester, New York; and Seattle, Washington. Each of the Amici Cities is deeply concerned with the growing spread of unregulated “ghost guns.” These weapons threaten public safety in our cities, including because they appeal to and are readily obtainable by criminals, precisely because they are not regulated under federal law. The Amici Cities respectfully submit this brief to illustrate, through specific incidents and numerical trends, the increasing prevalence of ghost guns in the Amici Cities, the unique challenges they present to efforts to prevent gun crime and protect public safety in the Amici Cities, and the urgent need to regulate them under federal law.¹

INTRODUCTION

In this case, Plaintiffs challenge the decision of the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) to exempt certain unfinished frames and receivers, which can be quickly and easily transformed into fully operative guns, from regulation as “firearms” under the Gun Control Act of 1968 (the “GCA”), 18 U.S.C. §§ 921-928; 26 U.S.C. §§ 5081-5872. The consequence of this exemption is that such unfinished frames and receivers are not covered by federal gun control laws, including laws requiring serial numbers on firearm frames and background checks of prospective firearms purchasers. (*See generally* Pls.’ Mem. in Supp. of Mot. for Summ. J. (“Pls.’ S.J. Br.”) (Dkt. No. 62).) We refer herein to the firearms constructed

¹ A letter motion has been filed concurrently herewith for leave to file this amicus brief. As stated in the letter motion, Plaintiffs consent to the filing of this brief, and Defendants have stated that they take no position.

from such unfinished frames and receivers that ATF has exempted from regulation, as well as the frames and receivers themselves, by their common colloquial name, “ghost guns.” (*See id.* at 2.)

Ghost guns are becoming increasingly prevalent in the Amici Cities and pose a significant threat to the Amici Cities and their residents. Data and declarations from Amici Cities provided in connection with this brief show increased recoveries of unserialized weapons (which either are or are likely to be ghost guns) over the last several years. For example, the Los Angeles Police Department (“LAPD”) has seized *hundreds* of clandestinely manufactured firearms having no serial numbers in 2020 alone, and a New York Police Department (“NYPD”) Detective with extensive experience with dangerous weapons has personally observed an increasing number of seizures of such weapons in the past five years. Similarly, police in Seattle have recovered significantly more unserialized weapons in 2020 than in prior years.

To make matters worse, ghost guns have repeatedly been found in the Amici Cities and elsewhere in the hands of persons previously convicted of felonies, to whom regulated firearms cannot be sold under federal law, who have used such weapons to commit new crimes. It is not surprising that ghost guns have been acquired by persons previously convicted of felonies, because, unlike federally regulated firearms, ghost guns can be acquired without the federally required background checks designed to prevent sale to convicted felons and other persons prohibited from firearm ownership under federal law.² This fact is not lost on one of the most prominent retailers of ghost gun kits (Polymer80), whose website specifically states that *it is legal for convicted felons to purchase them*.³ Ghost guns also invariably do not contain serial

² See, e.g., Brian Mann, *Do-It-Yourself ‘Ghost Guns’ Bypass Background Checks and Firearm Registration*, NPR; All Things Considered (Nov. 21, 2017, 3:54 p.m.), <https://www.npr.org/2017/11/21/565686173/do-it-yourself-ghost-guns-bypass-background-checks-firearm-registration> (sale of ghost gun kits is “a legal system that bypasses background checks and firearm registration”).

³ See *Are Felons Restricted from Owning a Firearm that Was Built from an 80% Receiver*, Polymer80

numbers, as federally regulated firearms must, which makes them particularly attractive to anyone who wants to surreptitiously possess or use a finished firearm, because the absence of serial numbers helps shield recovered firearms and their possessors from identification by law enforcement.

The ready acquisition of ghost guns by persons convicted of felonies has led to terrible incidents of gun crime in the Amici Cities and elsewhere – incidents that might not have occurred were ghost guns subject to federal regulation and potentially denied through the background checking process. For example, several months ago in Los Angeles, a person previously convicted of a felony used a ghost gun to ambush and severely wound two sheriff’s deputies who were sitting in their patrol car. About a year earlier, a different individual with a prior felony conviction used a “ghost” assault rifle with a high-capacity magazine to murder a California highway patrol officer and wound two others outside Los Angeles. Additionally, persons previously convicted of felonies have on multiple other occasions been found in possession of ghost guns in and around the Amici Cities, including in one recent powder keg instance in greater Seattle, where a man on federal supervision from an earlier firearms conviction was found to have amassed a veritable arsenal of ghost guns and 300 pounds of ammunition.

Additionally, dangerous extremists have gone on shooting rampages or planned mass shootings with especially deadly assault versions of ghost weapons that are illegal under state law. For example, two men in Queens, one of whom had advocated for “racial civil or holy war”

(hereinafter “Polymer80 FAQ”), <https://polymer80.happyfox.com/kb/article/24-are-felons-restricted-from-owning-a-firearm-that-was-built-from-an-80-receiver/> (last visited Dec. 14, 2020).

and made other comments suggesting an intended mass shooting, were recently arrested in possession of a high capacity “ghost” weapon.

Based on the data and incidents like these, there can be no doubt that ATF’s failure to regulate ghost guns has produced preventable gun crime, and threatens to produce more preventable gun crime, in the Amici Cities and across the country.

Moreover, ghost guns, because they lack serial numbers, frustrate the ability of law enforcement officials in the Amici Cities to effectively investigate and prosecute gun crimes.

Finally, the Amici Cities (and the states in which they sit), with their limited jurisdiction, cannot effectively regulate ghost guns on their own, since such efforts can easily be circumvented when they have not been adopted by neighboring jurisdictions.

In short, the recent emergence and increased prevalence of ghost guns has created a genuine threat to the residents of our cities – a threat that can be expected only to grow worse in the years to come if ghost guns remain unregulated by ATF. The Amici Cities therefore respectfully request that the Court grant the Plaintiffs’ Motion for Summary Judgment and require ATF to regulate ghost guns as mandated by federal law, to help stem the tide of criminal activity connected to ghost guns in the Amici Cities and across the country.

ARGUMENT

I. LAW ENFORCEMENT IN MULTIPLE AMICI CITIES AND ELSEWHERE HAVE RECORDED A SIGNIFICANT RISE IN RECOVERIES OF GHOST GUNS, SOME OF WHICH WERE USED IN VIOLENT CRIMES.

The Plaintiffs in this action include several large cities that have seen a dramatic rise in ghost gun recoveries in recent years. (Pls.’ S.J. Br. at 38-39 (explaining, *inter alia*, that ghost gun recoveries respectively tripled and quadrupled in Chicago and Washington D.C. from 2018 to 2019).) The recent rise of ghost gun recoveries in those cities is part of a broader trend. Police departments in a number of the Amici Cities have been tracking guns seized in their cities

that are unserialized and are thus potential ghost guns, which seizures occur in connection with arrests, search warrants, investigations, or other related law enforcement activity.⁴ Data and declarations from Amici Cities that have been obtained for use in this brief show an overall rise in such recoveries in the past few years.⁵ And according to such data and declarations, recovered unserialized weapons have been used in violent crimes, including shootings and assaults. What is more, because ghost guns by their nature are nearly impossible to trace, and are favored by those seeking to evade police, we expect that the figures below significantly understate the true prevalence of ghost guns in the Amici Cities.

Los Angeles, California. The LAPD has seized *hundreds* of clandestinely manufactured firearms having no serial numbers (which the LAPD considers ghost guns) in 2020. (Decl. of Benjamin Meda in Supp. of Amicus Br. of Municipalities (“Meda Decl.”) ¶ 6 (attached as Ex. 1).) A detective with over 30 years of experience, 17 years of which are with the LAPD Gun Unit, has “observed an increasing number of ghost gun seizures in the past five years,” further noting that the weapons seized often were “AR-15 style assault weapons” and “semiautomatic handguns.” (*Id.*) As reflected in data in a spreadsheet the LAPD has provided with its declaration, LAPD has recovered *over 600* firearms with Polymer80 components in 2020. (Ex.

⁴ As ghost guns are a relatively new issue for the Amici Cities, not all maintain data on them. Further, data from those Amici Cities that do maintain data may not always perfectly correspond to the universe of unfinished frames and receivers at issue in this lawsuit – for example, by tracking “firearms that lack commercial serial numbers or other identifying marks,” which raises at least the possibility that this category includes commercially manufactured firearms with obliterated serial numbers. Still, the data from the three Amici Cities that provided data in connection with this brief – Los Angeles, Rochester, and Seattle – specifically note if the recovered weapon contained unfinished frames or receivers sold by online retailer Polymer80, which are the precise type of “80%” weapons mentioned in a 2015 ATF ruling as exempt from regulation under the GCA, as challenged by the Plaintiffs here. And many of them did contain such Polymer80 parts. Additionally, certain of the Amici Cities specifically track *homemade* unserialized firearms, which seems (at least very likely) to exclude *commercially manufactured* firearms with serial numbers removed. The specifics of the data tracked by the Amici Cities and provided in connection with this brief is explained in the attached exhibits.

⁵ All data provided in connection with the brief that are not publicly available have been set forth in declarations attached hereto.

A to Meda Decl.) These data accord with *ATF's own* recent estimate that 41% of their cases in Los Angeles involve ghost guns.⁶

Seattle, Washington. Between October 2017 and October 2020, Seattle police recovered 17 “homemade” firearms, meaning firearms that “lack commercial serial numbers or other identifying marks.” (Decl. of Seattle Police Detective Kevin M. Jones (“Jones Decl.”) ¶¶ 4, 6 (attached as Ex. 2); Ex. A to Jones Decl.) As of October 5, 2020, Seattle police had recovered only two or three such weapons in connection with incidents reported in each year from 2017 through 2019, but had recovered ten such weapons in connection with incidents reported in 2020. (*Id.*) Ten of the 17 total collected homemade weapons contained components sold by Polymer80. (*See id.*) All of the homemade weapons collected by Seattle police were either rifles, semi-automatic rifles, or semi-automatic pistols, and six were used in the commission of drive-by shootings, armed robberies, or felony harassment. (Ex. A to Jones Decl.)

Rochester, New York. The Monroe County Crime Lab, which serves Rochester, began tracking recoveries of homemade firearms lacking serial numbers in 2018. (Decl. of Patrick Beath in Supp. of Amicus Br. of Municipalities (“Beath Decl.”) ¶¶ 4-5 (attached as Ex. 3).) Between 2018 and 2020, the Rochester Police Department turned over 22 such weapons to the crime lab, 13 of which were built from Polymer80 parts. (Ex. A to Beath Decl.) The crime lab is also often provided with firearms seized by other authorities, including the Drug Enforcement Administration (“DEA”) and state police. (Beath Decl. ¶ 3.) From 2018 to 2020, the crime lab processed a total of 28 homemade guns lacking serial numbers, 19 of which had been made with components sold by Polymer80. (Ex. A to Beath Decl.) One of these, which had been seized

⁶ Brandi Hitt, ‘Ghost Guns’ Investigation: Law Enforcement Seeing Unserialized Firearms on Daily Basis in SoCal, Eyewitness News, abc7 (L.A., Cal.) (Jan. 30, 2020), <https://abc7.com/5893043/>. State and federal authorities similarly reported encountering ghost guns “every day on the streets of Southern California.” *Id.*

and provided to the crime lab by the DEA, was a Polymer80 ghost gun that had been custom configured to allow fully automatic fire. (*Id.*)

New York, New York. According to recent public testimony of an assistant chief of the New York Police Department, in 2017 the NYPD seized 32 weapons that were either “ghost guns” or “3D[-printed] guns,”⁷ 14 such weapons in 2018, and 21 such weapons in the six months between January and June 2019. (Tr. at 75:9-11, Comm. on Public Safety, City Council of N.Y. (June 27, 2019) (attached as Ex. 4).) An NYPD executive director warned that, based on ghost gun trends on the west coast, it was expected that ghost guns would become more common in New York City as well. (*Id.* at 72:12-73:19 (“What we’re seeing happening on the west coast . . . [is] going to wind up moving its way here.”).)

Other data and reports. Data and reports from several cities other than the Amici Cities indicate that ghost gun seizures are also dramatically increasing in those cities. Philadelphia, Pennsylvania began tracking ghost gun collections in the fall of 2018 and recovered 13 ghost guns the remainder of that year.⁸ In 2019, however, the number of recovered ghost guns in Philadelphia shot up to 95.⁹ Additionally, a Baltimore, Maryland police spokesman reported “a major uptick in ghost gun seizures over the last year.”¹⁰ And in Boston, there are police records

⁷ It is unclear from this testimony how many of the seized weapons were “ghost guns” (as opposed to 3D-printed guns) and precisely what type of weapons were included within this category.

⁸ Mensah M. Dean, *Ghost Guns Proliferate as Philadelphia Grapples with Gun Violence*, Phila. Inquirer, <https://www.inquirer.com/news/ghost-guns-philadelphia-violence-tom-wolf-josh-shapiro-sekou-kinebrew-mark-oliva-20200312.html> (last updated Mar. 13, 2020). It is unclear from the article specifically what types of weapons are counted by Philadelphia as “ghost guns.”

⁹ *Id.*

¹⁰ Peter Hermann & Tom Jackman, *District seeks to Ban ‘Ghost Gun’ Kits as Seizures of Homemade Weapons Soar*, Wash. Post (Feb. 27, 2020, 3:38 p.m.), https://web.archive.org/web/20200818145956if_/https://www.washingtonpost.com/local/public-safety/district-seeks-to-ban-ghost-gun-kits-as-seizures-of-homemade-weapons-soar/2020/02/27/d12be0da-5416-11ea-9e47-59804be1dcfb_story.html.

showing the number of recovered “unserialized firearms” from 2019 onward. (*See* Oct. 2, 2020 letter from L. Cullinane to J. Maconochie at 1 (attached as Ex.5).)¹¹ In 2019, Boston police recovered 15 such weapons, and between January 2020 and October 2020, they seized at least 15 more. (*Id.* at 3-4.) The vast majority of these weapons (24 of the 30 recovered) contained unfinished frames sold by ghost gun retailer Polymer80. (*Id.*) According to the records, all of these weapons were semi-automatic pistols, and three had been used in assaults or shootings. (*See id.*)

Thus, there is an unmistakable trend toward increasing recoveries of ghost guns by law enforcement in the Amici Cities that have tracked such recoveries, as well as in other cities. Unless this court requires ATF to regulate ghost guns, it is likely that the prevalence of these dangerous and federally unregulated weapons, and their use in violent crime, will continue to rise in the years ahead.

II. THE AVAILABILITY OF FEDERALLY UNREGULATED GHOST GUNS HAS LED TO GUN CRIMES IN THE AMICI CITIES AND ELSEWHERE THAT MIGHT NOT OTHERWISE HAVE OCCURRED AND CREATES A GRAVE RISK OF MORE SUCH PREVENTABLE CRIME.

The Amici Cities have a strong interest in protecting their residents from gun-related crimes. ATF’s failure to regulate ghost guns as firearms under the GCA has significantly undermined this interest and harmed the Amici Cities by creating a pathway for dangerous individuals to obtain ghost guns without having to go through a federal background check and commit gun crimes they might not otherwise have been able to commit.

Recognizing the commonsense principle that selling firearms to certain individuals may

¹¹ Data from the Boston Police Department were obtained pursuant to a request for information. The Boston Police Department's records define ghost guns as “unserialized firearms.” (Ex. 5 at 1.) For clarity, the attached records indicate that certain of the “unserialized” firearms *did* include serial numbers on their *slides or barrels* – but not on their *frames or receivers*, as required by federal law. *See* 18 U.S.C. § 923(i) (mandating “serial number engraved or cast on the receiver or frame of the weapon”).

be too risky, federal law defines classes of persons – such as persons convicted of felonies, persons under certain restraining orders, people adjudicated to be mentally incompetent, and others – who are prohibited from receiving or possessing firearms. *See* 18 U.S.C. § 922(g); *accord District of Columbia v. Heller*, 554 U.S. 570, 626 (2008) (noting “longstanding prohibitions on the possession of firearms by felons and the mentally ill”). However, because ATF has exempted ghost guns from regulation under federal law, including the background check regime that operates to preclude sales to such persons, these individuals (including dangerous criminals) can easily acquire ghost guns.¹²

Indeed, ghost guns are particularly attractive to criminals. Courts have recognized that “[f]irearms without serial numbers” (a hallmark of ghost guns) “are of particular value to those engaged in illicit activity because the absence of serial numbers helps shield recovered firearms and their possessors from identification.” *United States v. Marzzarella*, 614 F.3d 85, 98 (3d Cir. 2010). In one recent criminal case, the Tenth Circuit observed that the defendant, an illegal arms trafficker in Colorado, had boasted to undercover agents that the “best part” of the AR-15-style ghost guns he sold them “was their lack of serial numbers.” *United States v. Trujillo*, 817 F. App’x 634, 636 (10th Cir. 2020). In fact, as noted above, prominent ghost gun retailer Polymer80 states on its website (in the *very first* entry on its “Frequently Asked Questions” page) that “[c]onvicted felons are not restricted from purchasing” the ghost gun kits it sells.¹³

¹² While the Amici Cities recognize that all persons prohibited from owning a firearm are not inherently violent or dangerous, preventing the prohibited persons that *are* prone to commit violent crime from obtaining guns is extremely important for maintaining the safety of the Amici Cities’ residents, and the background check system is a critical method for deterring and often preventing gun acquisitions by such individuals.

¹³ Polymer80 FAQ, *supra* n.3 (emphasis added). Polymer80 goes on to note that “felons completing Polymer80 frames into firearms is illegal,” *id.*, as if anyone purchasing a Polymer80 kit would leave it unassembled for this reason. To the contrary, the Polymer80 website includes detailed ghost gun assembly instructions accessible to anyone who accesses the website, including prohibited persons. *How-To Manuals*, Polymer80, <https://www.polymer80.com/how-to-manuals>.

This statement is, of course, accurate in light of ATF's failure to regulate ghost guns.

Unfortunately, the concern that unregulated ghost guns will be acquired and used by persons previously convicted of felonies to commit additional crimes in the Amici Cities and elsewhere is not theoretical. For example, on September 15, 2020, authorities arrested a man with a prior felony conviction who had used a ghost gun to ambush and severely wound two Los Angeles County Sheriff's deputies as they sat in their patrol car in Compton.¹⁴ The previous year, a different man with a prior felony conviction, which "should have prohibited him from possessing or purchasing any firearm under California law," was able to "construct an illegal homemade assault rifle with a high capacity magazine by using unregulated parts."¹⁵ He then used the weapon to murder a California highway patrol officer and wound two others following a traffic stop outside Los Angeles.¹⁶ In Baltimore, a different man with a prior felony conviction was recently sentenced for "commit[ting] five bank robberies and five armed robberies at liquor stores" with a ghost gun in 2018.¹⁷ The U.S. Attorney announcing the sentencing explained that, "[a]s a convicted felon, [the man] should not have been able to purchase a gun, but he was able

¹⁴ *Convicted Felon Deonte Murray Charged in Compton Ambush Shooting of 2 LA Deputies*, CBS Los Angeles (Sept. 30, 2020, 5:07 PM), <https://losangeles.cbslocal.com/2020/09/30/deonte-lee-murray-arrested-ambush-shooting-of-la-deputy-in-compton/> (attributing to Sheriff's Capt. Kent Wegener that the gun used in the shooting of the deputies and recovered by investigators was a ghost gun); *Man Charged with Ambush Shooting of 2 Sheriff's Deputies*, Los Angeles County District Attorney's Office News Release (Sept. 30, 2020), <http://da.lacounty.gov/media/news/man-charged-ambush-shooting-2-sheriffs-deputies> (indicating that the defendant was charged with attempted murder and possession of a firearm by a felon).

¹⁵ Andrew Blankstein and Eric Leonard, *Ex-con who killed California cop used homemade 'ghost gun'*, NBC News (Aug. 15, 2019), <https://www.nbcnews.com/news/crime-courts/ex-con-who-killed-california-cop-used-homemade-ghost-gun-n1042811> (reporting that multiple law enforcement officials characterized the weapon as "a homemade 'ghost gun' designed to skirt the state's strict ban on [assault] weapons").

¹⁶ *Id.* The shooting occurred in Riverside, California, about an hour east of Los Angeles.

¹⁷ Press Release, U.S. Attorney's Office, D. Md., *Baltimore Man Sentenced to 21 Years in Federal Prison for Five Bank Robberies, Five Armed Robberies of Liquor Stores, and Related Firearms Charges*, U.S. Dep't of Justice (Nov. 12, 2020), <https://www.justice.gov/usao-md/pr/baltimore-man-sentenced-21-years-federal-prison-five-bank-robberies-five-armed-robberies>.

to obtain a gun that had been assembled from firearm parts kits” and thus “circumvent the laws designed to prevent felons from possessing firearms.”¹⁸

These violent crimes, committed by individuals with previous felony convictions who could not have lawfully purchased regulated firearms from licensed manufacturers but *could* acquire ghost guns, *may not have occurred at all* had ATF properly regulated ghost guns. Had ghost guns been regulated, the perpetrators would have been subjected to background checks regardless of whether they attempted to purchase an unfinished ghost gun or a regulated firearm, and thus might not have been able to obtain *any* firearm to use in a crime. For this reason, ATF’s failure to regulate ghost guns can fairly be said to have led to preventable crime in the Amici Cities and elsewhere, and the above-described incidents may just be the tip of the iceberg.

On a number of other recent occasions, law enforcement have found persons with prior felony convictions in possession of ghost guns – including *arsenals* of such weapons – in and around the Amici Cities. For example, a recent arrest and a separate raid in greater Los Angeles resulted in authorities finding several persons convicted of felonies in possession of ghost guns.¹⁹ In greater Seattle, a person on federal supervision from an earlier firearms conviction, who later admitted to having become susceptible to internet doomsday predictions, had “amassed an arsenal of homemade ‘ghost guns’” and 300 pounds of ammunition.²⁰ These are, in a sense, the

¹⁸ *Id.*

¹⁹ See Brian Day, *Traffic Stop Leads to Recovery of ‘Ghost Gun,’ Meth, Suspected Stolen Credit Cards, \$180,000 in Cash; 2 Arrested*, Pasadena Now (Oct. 2, 2020, 8:57 AM), <https://www.pasadenanow.com/main/traffic-stop-leads-to-recovery-of-ghost-gun-meth-suspected-stolen-credit-cards-180000-in-cash-2-arrested/> (police said weapon seized from a vehicle driven by a man on probation following an auto theft conviction was a “ghost gun”); Jeremiah Dobruck, *Police Seize 13 Guns in Raid on Suspected Firearms Dealer, Long Beach Police Say*, Long Beach Post (Nov. 18, 2020), <https://lbpost.com/news/crime/swat-wesley-drive-lbcc-search-ghost-guns> (Long Beach Police Department spokesman described three of 13 weapons seized during a raid as “ghost guns” and identified four persons arrested during the raid, two of whom were booked as felons in possession of a firearm).

²⁰ Gene Johnson, *Edmonds Man Who Made ‘ghost guns’ to Serve Almost 6 Years*, HeraldNet (Everett, Wash.) (Oct. 9, 2020, 8:46 PM), <https://www.heraldnet.com/news/edmonds-man-who-made-ghost-guns-to-serve-5-years-in->

fortunate occasions where law enforcement found and removed ghost guns before they were violently used, but the point remains that these individuals might not have been unable to acquire and possess firearms in the first place had ATF regulated ghost guns. The Amici Cities are concerned that more and more people in their midst that are prohibited from acquiring federally regulated firearms have amassed and will continue to amass ghost guns due to the ATF's failure to regulate these weapons, threatening our cities.

To make matters worse, ATF's failure to regulate ghost guns allows dangerous people to acquire and use especially deadly forms of weapons – “ghost versions” of military-grade weapons such as AR-15 assault rifles – even when those weapons are banned under local law.²¹ In this way, ATF's failure to regulate ghost guns has enabled especially dangerous people to acquire especially dangerous weapons they might not otherwise have been able to obtain, leading to the occurrence or prospect of especially violent crimes, such as killing sprees and mass shootings, in the Amici Cities and elsewhere.

For example, Los Angeles police have repeatedly recovered ghost assault weapons in recent months when executing search warrants and responding to shootings and other incidents. (Meda Decl. ¶¶ 9-11, 13-14.)²² In one instance, in June 2020, officers executing a search warrant for machine gun trafficking “recovered 16 ghost guns, including multiple AR-15 type assault rifles, semiautomatic pistols, and a semi-automatic shotgun,” as well as “[t]emplates and

prison/.

²¹ Assault weapons are banned in California, Connecticut, Maryland, New Jersey, and New York (and, as such, are banned in Amici Cities Hartford, Los Angeles, New York, Paterson, and Rochester). *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.

²² As in the discussion of Los Angeles ghost gun data in Section I, above, “ghost gun” is defined here as “a clandestinely manufactured firearm having no serial number.” (Meda Decl. ¶ 4.)

tools use[d] to manufacture these types of firearms.” (*Id.* ¶ 10.) And in July, LAPD officers responding to a “shots-fired call” discovered a “ghost” “semiautomatic, .223 caliber AR-15 type assault rifle,” which had been fired in the direction of an unknown victim. (*Id.* ¶ 11.) Several months earlier in May, officers executing a warrant on a suspected drug lab recovered the exact same type of ghost assault weapon. (*Id.* ¶ 13.) And in September 2020, officers executing a warrant on a domestic violence suspect with a prior felony conviction likewise recovered “a semiautomatic, .223 caliber, AR-15 type assault rifle,” as well as “two semiautomatic handguns.” (*Id.* ¶ 14.)

Similarly, in May 2020, authorities conducting a sting operation arrested two men from Queens who had begun to assemble an arsenal of weapons, including “an AR-15 style assault rifle ‘ghost’ gun with a silencer attachment and high capacity magazine,”²³ which is illegal under New York law. *See* N.Y. Penal Law §§ 265.02, 265.10. One of the men’s social media posts strongly indicated that these weapons were intended for use in a mass shooting: he had advocated for a “racial civil or holy war”; posted that he “hate[s] women jews and n-----rs” while giving a Nazi salute; posted a suspicious picture of the entrance to a Jewish community center in Queens; and “posted Instagram messages displaying suicidal ideations and fantasizes about ‘martyring’ himself and ‘going out in a blaze of glory’ in a mass shooting.”²⁴

And on two separate recent occasions, individuals in the greater Boston area were arrested in possession of semi-automatic ghost guns and other paraphernalia in circumstances also suggesting the potential for violence on a mass scale. Police recovered from one man “two

²³ Press Release, U.S. Attorney’s Office, E.D.N.Y., *Two Queens Men Charged After Buying Three Illegally Defaced Firearms and Two Assault Rifles*, U.S. Dep’t Justice (May 13, 2020), <https://www.justice.gov/usao-edny/pr/two-queens-men-charged-after-buying-three-illegally-defaced-firearms-and-two-assault>.

²⁴ *Id.*

un-serialized AR-15 style semi-automatic rifles considered ‘ghost guns,’” as well as 26 large-capacity firearm feeding devices, hundreds of rounds of ammunition, and a ballistic vest carrier.²⁵ In the other case, police arrested a man with “a ‘long standing history of arrest involving violent gun use,’”²⁶ a copy of Hitler’s *Mein Kampf*,²⁷ and “two semi-automatic ‘ghost guns,’ nearly 3,000 rounds of ammunition, eight large-capacity firearm feeding devices, a cache of gun parts and accessories, an instructional DVD on how to build an untraceable AR-15 assault rifle at home, and a 3D mold for building ‘ghost guns.’”²⁸

Finally, illustrating that ghost versions of assault weapons have in fact been used to commit violent crimes in the Amici Cities and elsewhere, gang members admitted in August 2020 to having used a “ghost” semi-automatic short-barreled assault rifle to exchange fire with rival gang members. (Meda Decl. ¶ 9.) In addition, in Spring 2020, a man went on a series of shooting rampages in Northern California with a self-built AR-15-style “ghost weapon,” killing a Federal Protective Service officer and a police officer.²⁹ According to ATF, the weapon was a “machine gun with a silencer attached to its barrel,”³⁰ which is illegal in California. *See Cal.*

²⁵ Press Release, Office of Massachusetts Attorney General, *Two Individuals Arraigned on Charges of Possessing Illegal, Untraceable ‘Ghost Guns’* (Aug. 6, 2020) (hereinafter “Massachusetts AG Press Release”), <https://www.mass.gov/news/two-individuals-arraigned-on-charges-of-possessing-illegal-untraceable-ghost-guns>.

²⁶ Christopher Gavin, *Winthrop man had homemade ‘ghost’ guns and 3,000 rounds of ammunition, prosecutors say*, Boston.com (Aug. 5, 2020), <https://www.boston.com/news/crime/2020/08/05/winthrop-man-had-homemade-ghost-guns-prosecutors-say> (quoting a Massachusetts Assistant Attorney General).

²⁷ *Id.*

²⁸ Massachusetts AG Press Release, *supra* n.25.

²⁹ *Alleged Oakland, Ben Lomond Gunman Steve Carrillo Linked to Far Right ‘Boogaloo’ Movement*, CBS SF BayArea (June 16, 2020, 4:16 PM), <https://sanfrancisco.cbslocal.com/2020/06/16/steven-carrillo-david-underwood-murder-santa-cruz-deputy-fatal-shooting-fatal-oakland-federal-building-shooting/>; *see also* Cheri Mossburg & Theresa Waldrop, *A Man Allegedly Linked to the Boogaloo Movement Accused of Going to a BLM Protest with a Homemade Machine Gun to Kill Cops*, CNN (June 16, 2020, 4:16 PM), <https://www.cnn.com/2020/06/16/us/steven-carrillo-california-officers-deaths-suspect-boogaloos/> (citing the complaint filed against the shooter stating that he used a “ghost gun”).

³⁰ Tommy Beer, *Accused Killer of California Cops Was Associated with Right-Wing ‘Boogaloo Movement,’*

Penal Code §§ 33410, 32625. The man was a member of the “Boogaloo Movement” – “a right-wing extremist group that harbors a mistrust of law enforcement and government, and anticipates a second American Civil War.”³¹ And this was not the only time that armed members of the Boogaloo Movement have turned to ghost guns as part of a violent plot. In October 2020, the FBI broke up an alleged plot to kidnap Governor Gretchen Whitmer by men with Boogaloo ties,³² recovering a number of ghost guns and homemade bombs.³³

In sum, ATF’s failure to regulate has already enabled dangerous persons to acquire ghost guns – including ghost assault weapons – and commit (or plan to commit) violent crimes with them in the Amici Cities and elsewhere. Such crimes might have been prevented had ghost guns been subject to federal regulation. As ghost guns continue to proliferate across the country, this trend will likely continue if ATF continues to leave ghost guns unregulated.

III. ATF’S FAILURE TO REGULATE GHOST GUNS FRUSTRATES THE ABILITY OF THE AMICI CITIES TO INVESTIGATE AND PROSECUTE GUN CRIMES.

ATF’s failure to regulate ghost guns has not only led to gun crimes that might have been prevented, but also has frustrated the ability of law enforcement officials in the Amici Cities to effectively investigate and prosecute gun crimes once they occur. This is because, as a consequence of ATF’s failure to regulate, ghost guns invariably do not contain serial numbers,

Forbes (June 16, 2020), <https://www.forbes.com/sites/tommybeer/2020/06/16/accused-killer-of-california-cops-was-associated-with-right-wing-boogaloo-movement/?sh=48d397e759bd>.

³¹ *Alleged Oakland, Ben Lomond Gunman, supra* n.29.

³² Ben Collins *et al.*, *Whitmer Conspiracy Allegations Tied to ‘Boogaloo’ Movement*, NBC News, (Oct. 8, 2020, 8:11 PM EDT), <https://www.nbcnews.com/tech/tech-news/whitmer-conspiracy-allegations-tied-boogaloo-movement-n1242670>.

³³ Gus Burns, *‘Ghost Guns,’ Bomb Materials Found During Investigation into Men Accused of Gov. Whitmer Kidnapping Plot*, mLIVE (Oct. 28, 2020), <https://www.mlive.com/public-interest/2020/10/ghost-guns-bomb-materials-found-during-investigation-into-men-accused-of-gov-whitmer-kidnapping-plot.html> (at a defendant’s detention hearing, Assistant U.S. Attorney mentioned “the discovery of ghost guns,” and an FBI agent testified that two such guns were recently seized that “were manufactured using parts purchased online or from a ‘gray market’ dealer”).

which are a critical investigative and prosecution tool and must appear on federally regulated firearms.

Serial numbers provide crucial information for law enforcement, as they are the “principal means of tracing origin and transfers in ownership” of firearms. *United States v. Adams*, 305 F.3d 30, 34 (1st Cir. 2002); *see also United States v. Harris*, 720 F.3d 499, 502-03 (4th Cir. 2013) (noting that ATF has stated that serial numbers serve “important governmental interests” including tracing firearms, identifying lost or stolen firearms, and prosecuting firearm offenses). Serial number tracing can establish “a chain of custody” that will “greatly assist[] in the difficult process of solving crimes.” *United States v. Mobley*, 956 F.2d 450, 454 (3d Cir. 1992). In addition, “serial number tracing also provides agencies with vital criminology statistics,” which help authorities strategize and efficiently allocate resources. *Marzzarella*, 614 F.3d at 100. Serial numbers also “allow[] for the identification of individual dealers involved in the trafficking of firearms and the matching of ballistics data with recovered firearms.” *Id.*

Law enforcement officials in the Amici Cities and in law enforcement agencies around the world make hundreds of thousands of requests each year to ATF’s National Tracing Center (“NTC”) to trace guns based on their serial numbers, using the NTC’s database.³⁴ Specifically, the NTC is able to use a “gun’s serial number to identify its original manufacture or importer” and then “track the firearm through the . . . distribution chain to its first retail purchaser.”³⁵ This enables investigators to “identify possible suspects or [gun] traffickers and link them to specific

³⁴ ATF, *Fact Sheet - National Tracing Center* (June 2020) (“ATF NTC Fact Sheet”), <https://www.atf.gov/resource-center/fact-sheet/fact-sheet-national-tracing-center> (reporting 450,000 trace requests processed in 2019, in partnership with 7,800 law enforcement agencies across 46 countries).

³⁵ *Id.*

firearms found in criminal investigations.”³⁶ Investigators “can also help detect domestic and international trafficking patterns, and identify local trends in the sources and types of crime guns” through the use of serial numbers.³⁷ Ultimately, firearm tracking enables ATF and police to: (1) recover lost or stolen firearms before they are used in crimes; (2) identify and flag potentially dangerous individuals who purchase multiple firearms in quick succession; and (3) “develop links that help lead to the prosecution of violent crime gun offenders.”³⁸ However, *none of this is possible for ghost guns*, due to their lack of serial numbers, as ATF readily admits.³⁹

In sum, being able to trace guns by serial number is an important tool used by the Amici Cities to investigate and prosecute gun crime, but it is unavailable with respect to ghost guns due to ATF’s failure to regulate them and thereby require serialization of these weapons.

IV. STATE AND LOCAL LAW WILL NOT SUFFICE TO EFFECTIVELY PROTECT RESIDENTS OF THE AMICI CITIES FROM THE THREAT POSED BY GHOST GUNS.

A number of states and localities have passed laws seeking to protect their residents from the deadly threat of ghost guns, but these laws do not suffice, and federal regulation of ghost guns is required to protect the residents of the Amici Cities.

A number of the Amici Cities are located in states that have passed laws or introduced bills banning ghost guns and other untraceable homemade weapons. In July 2020, the New York

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ ATF, *Can functioning Firearms made From Receiver Blanks be Traced?*, <https://www.atf.gov/firearms/qa/can-functioning-firearms-made-receiver-blanks-be-traced> (“Because [ghost guns] do not have markings or serial numbers, . . . it is usually not possible to trace [them] . . .”). Although ATF can employ forensic methods to try to trace guns with altered or obliterated serial numbers, *see* ATF NTC Fact Sheet, *supra* n.34, these methods are unlikely to be availing for weapons that never had serial numbers to begin with.

Senate approved a bill that, if enacted, would “[c]riminalize[] the sale of ghost guns and require[] gunsmiths to register and serialize firearms, rifles, shotguns, and unfinished frames or receivers they assemble, manufacture, fabricate, [or] build.”⁴⁰ California, Connecticut, Hawaii, New Jersey, Rhode Island, and Washington, as well as Washington D.C., have all enacted similar provisions into law.⁴¹ And New York City (one of the Amici Cities) itself prohibits the possession of unfinished firearm frames and receivers. N.Y.C. Admin. Code § 10-314.⁴²

These laws, however, are by themselves insufficient to protect residents of the Amici Cities without complementary federal regulation by ATF, because local laws can be circumvented by simply acquiring ghost guns in less restrictive neighboring jurisdictions. As Los Angeles County Sheriff Alex Villanueva explained in a recent *60 Minutes* report on ghost guns, “[s]tate-by-state” regulations are insufficient because criminals “can just defeat [those] by going to another state.”⁴³ This problem is not merely hypothetical – several ghost gun traffickers have recently been caught attempting to have weapon components shipped to Pennsylvania (which has relatively weaker gun laws), so that they could be sold in neighboring New Jersey (which bans ghost guns).⁴⁴ Indeed, although he was not discussing ghost guns specifically, the

⁴⁰ N.Y. State Senate, Senate Bill S7763A, <https://www.nysenate.gov/legislation/bills/2019/s7763/amendment/a>.

⁴¹ Cal. Penal Code § 29180; Conn. Pub. Act No. 19-6 (2019); H.B. 2744, 30 Leg. (Haw. 2020); N.J. Stat. Ann. § 2C:39-9(k); R.I. Gen. Laws § 11-47-8; Wash. Code Ann. § 9.41.090; D.C. Act 23-245 (2020).

⁴² <https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCAadmin/0-0-0-7044>.

⁴³ Bill Whitaker, *Ghost Guns: The Build-It-Yourself Firearms that Skirt Most Federal Gun Laws and are Virtually Untraceable*, *60 Minutes* (May 10, 2020), <https://www.cbsnews.com/news/ghost-guns-untraceable-weapons-criminal-cases-60-minutes-2020-05-10/>.

⁴⁴ See, e.g., Anthony Bellano, *'Ghost Gun' Ring Sold Untraceable AR-15s in Camden County: Cops, Patch* (Mar. 18, 2019, 12:21 PM), <https://patch.com/new-jersey/gloucestertownship/ghost-gun-ring-sold-untraceable-ar-15s-camden-county-cops> (discussing a 2019 investigation that “resulted in the takedown of a network that trafficked untraceable firearms, including six AR-15 assault rifles” in New Jersey, in which the defendants discussed New Jersey law preventing them from shipping the firearms to New Jersey and a plan to ship them to Pennsylvania instead).

New Jersey Attorney General recently explained that “[f]our out of five crime guns in New Jersey originate in states with weaker gun laws, with the largest number coming from Pennsylvania.”⁴⁵

Thus, state and local laws are not enough to protect residents of the Amici Cities from the rising tide of violent crime committed with ghost guns. Rather, appropriate federal regulation by ATF – which Plaintiffs seek here – is necessary.

CONCLUSION

For the foregoing reasons, the Amici Cities respectfully request that the Court grant the Plaintiffs’ Motion for Summary Judgment.

⁴⁵ *New Jersey and Pennsylvania cops dismantle gun ring*, AP News (Jan. 28, 2020), <https://apnews.com/article/e3e61af8b8a3d351cfe26baf1fc0e87d>.

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