

EMPOWER OVERSIGHT

Whistleblowers & Research



August 26, 2021

VIA ELECTRONIC TRANSMISSION: FOIAREQUEST@STATE.GOV

U. S. Department of State
Office of Information Programs and Services
2201 C Street N.W., Suite B266
Washington, D.C. 20520-0000

RE: FREEDOM OF INFORMATION ACT REQUEST

To Whom It May Concern:

Introduction

Empower Oversight Whistleblowers & Research (“Empower Oversight”) is a nonpartisan, nonprofit educational organization dedicated to enhancing independent oversight of government and corporate wrongdoing. We help insiders safely and legally report waste, fraud, abuse, corruption, and misconduct to the proper authorities, and we hold those authorities accountable to act on such reports by, among other means, publishing information to inform the public.

Background

We write today seeking information about the State Department’s August 20, 2021 announcement of a ban on the importation of ammunition manufactured or located in Russia.¹ The Department is purportedly imposing this ban as part of sanctions against Russia for the poisoning of Russian opposition figure Aleksey Navalny in August of 2020. However, as explained below, there is ample reason to suspect this is merely a pretext, and the true purpose is to restrict U.S. citizens’ access to ammunition. We seek documents so the public can determine the facts about State Department’s ban, which is unlikely to meaningfully affect the Russian government but will clearly affect the American public’s Second Amendment rights.

¹ <https://www.state.gov/fact-sheet-united-states-imposes-additional-costs-on-russia-for-the-poisoning-of-aleksey-navalny/>; see Stephen Gutowski, *Biden Bans Russian Ammo Amid Continued Shortage*, THE RELOAD (Aug. 20, 2021) (<https://thereload.com/biden-bans-russian-ammo-amid-continuing-shortage/>).

In 2020, then-candidate Biden ran on a stark gun control platform.² He explicitly planned to restrict citizens' access to ammunition, namely by seeking legislation to outlaw online ammunition sales.³ In April of 2021, after no such law had passed, President Biden publicly stated: “[w]hether Congress acts or not, I’m going to use all the resources at my disposal as President” to pursue his gun control agenda.⁴ In late June of 2021, his administration announced it would pursue a “whole-of-government approach”⁵ across government agencies to pursue gun control, with President Biden publicly stating that the “entire administration . . . will continue taking action where we can.”⁶

Eight weeks later, the State Department announced its ban on importing Russian ammunition, imposed under the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (“CBW Act”), ostensibly as a second round of sanctions against the government of Russia for its use of a nerve agent in the August 2020 poisoning of Russian opposition figure Aleksey Navalny.⁷ The poisoning of Mr. Navalny is a clear human rights violation, and the other sanctions announced that day properly targeted the operatives involved in poisoning him and the entities that developed Russia’s chemical weapons.⁸ However, there is no apparent relationship between ammunition manufacturers in Russia and Mr. Navalny’s poisoning.

As noted by the NRA, “the ammunition import restriction seems more aimed at punishing American gun owners and businesses than as a foreign policy tool to influence the Russian Federation. Ammunition exports to the United States are only a small percentage of the GDP of the Russian Federation, but Russian origin ammo makes up a large part of the American ammunition supply.”⁹ According to one press report, roughly 40% of all ammunition sold in the United States originates from Russia.¹⁰ And as widely reported, even before the State Department’s latest actions, the United States has been in the midst of a historic ammunition

² <https://joebiden.com/gunsafety/>

³ *Id.*

⁴ <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/04/08/remarks-by-president-biden-on-gun-violence-prevention/>

⁵ <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/23/fact-sheet-biden-harris-administration-announces-comprehensive-strategy-to-prevent-and-respond-to-gun-crime-and-ensure-public-safety/>

⁶ <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/06/23/remarks-by-president-biden-and-attorney-general-garland-on-gun-crime-prevention-strategy/>

⁷ While the CBW Act gives the President the authority to impose sanctions, Executive Order 12851 delegates that authority to the Secretary of State.

⁸ <https://www.state.gov/u-s-imposes-additional-costs-on-russia-for-aleksey-navalny-poisoning/>. Those sanctions were issued pursuant to different legal authorities than the CBW Act. Oddly, the Treasury Department’s own press release about the set of sanctions announced that day by it and the State Department omits the ban on importing Russian ammunition from its description of the State Department’s activities. <https://home.treasury.gov/news/press-releases/jy0328>

⁹ *Biden Administration Bans Importation of Russian Ammunition*, NATIONAL RIFLE ASSOCIATION INSTITUTE FOR LEGISLATIVE ACTION, (Aug. 22, 2021) (<https://www.nraila.org/articles/20210822/biden-administration-bans-importation-of-russian-ammunition>).

¹⁰ *Russian Ammo Imports Halted, May Send Demand, Prices and Shortages to New Levels*, GUNS AND AMMO (Aug. 21, 2021) (<https://www.gunsandammo.com/editorial/russian-ammo-imports-banned-halted/424581>).

shortage already expected to last for years.¹¹ The State Department’s ban, if implemented, is likely to substantially exacerbate the ammunition shortage and drive up prices for American citizens.

Simply put, the State Department’s use of the CBW Act –a law designed to punish foreign nations for using chemical and biological weapons– to potentially cut off 40% of the ammunition in America is a drastic step that deserves intense public and Congressional scrutiny. In light of President Biden’s past statements on gun control, and the disconnect between the State Department’s stated purpose in imposing the ammunition ban and the ban’s likely effects, it is reasonable to question whether the Department’s justification is pretextual. The President said he wanted to restrict the availability of ammunition; that he would use the entire administration to pursue his gun control agenda; and now the State Department has taken action restricting availability of ammunition – but claims it is for an entirely different reason.

The Supreme Court has held that, under the Administrative Procedure Act (“APA”), courts can set aside an agency action as “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law” when the agency’s stated rationale for the action is pretextual or contrived.¹² Where government documents “tell a story that does not match the explanation” given by an agency, such a disconnect can be evidence that the agency’s stated reasoning is in fact contrived, and thus be grounds for setting the agency action aside.¹³ The Supreme Court has emphasized the legal requirement that “agencies offer genuine justifications for important decisions, reasons that can be scrutinized by courts and the interested public.”¹⁴ While that was in the context of APA litigation, given the likely effects the State Department’s ban will have on Americans’ constitutional rights, there is a clear public interest in discovering through FOIA how the State Department has performed its duties here.

Transparency from the State Department is the only way to ensure public trust that the Department has not deceptively twisted the CBW Act sanctions process in order to pursue the President’s gun control agenda by administrative fiat. In light of this, we are filing this FOIA request to seek key facts.

Records Request

1. All records of communications from January 20, 2021 to the present to, from, or copying personnel in the Bureau of International Security and Nonproliferation, the Office of the Under Secretary for Arms Control and International Security Affairs, the Office of the Legal Advisor, the Office of the Deputy Secretary of

¹¹ *E.g.*, Patrick Reilly, *US Sees Ammunition Shortage Amid Record Firearms Purchases: Report*, NEW YORK POST (Aug. 1, 2021) (<https://nypost.com/2021/08/01/us-sees-ammunition-shortage-amid-record-firearms-purchases-report/>); Martha Bellisle, *Ammunition Shelves Bare as U.S. Gun Sales Continue to Soar*, ASSOCIATED PRESS (July 31, 2021) (<https://apnews.com/article/sports-business-health-coronavirus-pandemic-gun-politics-86e61939eb4ae1230e110ed6d7576b70>); Stephen Gutowski, *Manufacturers Say Ammo Shortage Will Stretch Out for Years*, THE RELOAD (May 21, 2021) (<https://thereload.com/manufacturers-say-ammo-shortage-will-stretch-out-for-years/>).

¹² *Department of Commerce v. New York*, 139 S. Ct. 2551 (2019).

¹³ *Id.*

¹⁴ *Id.*

State, and the Office of the Secretary of State regarding restrictions on imports of ammunition manufactured or located in Russia.

2. All records of communications from January 20, 2021 to the present between State Department personnel and any personnel from, or representatives of, Everytown for Gun Safety,¹⁵ Moms Demand Action,¹⁶ Giffords,¹⁷ the Giffords Law Center to Prevent Gun Violence,¹⁸ and Brady.¹⁹
3. All records of communications from January 20, 2021 to the present between State Department personnel and any Congressional members or staff regarding ammunition manufactured or located in Russia.

Definitions

“COMMUNICATION(S)” means every manner or method of disclosure, exchange of information, statement, or discussion between or among two or more persons, including but not limited to, face-to-face and telephone conversations, correspondence, memoranda, telegrams, telexes, email messages, voice-mail messages, text messages, meeting minutes, discussions, releases, statements, reports, publications, and any recordings or reproductions thereof.

“DOCUMENT(S)” or “RECORD(S)” mean any kind of written, graphic, or recorded matter, however produced or reproduced, of any kind or description, whether sent, received, or neither, including drafts, originals, non-identical copies, and information stored magnetically, electronically, photographically or otherwise. As used herein, the terms “DOCUMENT(S)” or “RECORD(S)” include, but are not limited to, studies, papers, books, accounts, letters, diagrams, pictures, drawings, photographs, correspondence, telegrams, cables, text messages, emails, memoranda, notes, notations, work papers, intra-office and inter-office communications, communications to, between and among employees, contracts, financial agreements, grants, proposals, transcripts, minutes, orders, reports, recordings, or other documentation of telephone or other conversations, interviews, affidavits, slides, statement summaries, opinions, indices, analyses, publications, questionnaires, answers to questionnaires, statistical records, ledgers, journals, lists, logs, tabulations, charts, graphs, maps, surveys, sound recordings, data sheets, computer printouts, tapes, discs, microfilm, and all other records kept, regardless of the title, author, or origin.

“REFERS,” “REFERRING TO,” “REGARDS,” REGARDING,” “RELATES,” “RELATING TO,” or “PERTAINS TO” mean containing, alluding to, responding to, commenting upon, discussing, showing, disclosing, explaining, mentioning, analyzing,

¹⁵ <https://www.everytown.org/>

¹⁶ <https://momsdemandaction.org/>

¹⁷ <https://giffords.org/>

¹⁸ <https://giffords.org/lawcenter/gun-laws/>

¹⁹ <https://www.bradyunited.org/>

constituting, comprising, evidencing, setting forth, summarizing, or characterizing, either directly or indirectly, in whole or in part.

Instructions

The words “and” and “or” shall be construed in the conjunctive or disjunctive, whichever is most inclusive. The singular form shall include the plural form and vice versa. The present tense shall include the past tense and vice versa.

Fee Waiver Request

Empower Oversight agrees to pay up to \$25.00 in applicable fees, but requests a waiver of any fees that may be associated with processing this request, in keeping with 5 U.S.C. § 552 (a)(4)(A)(iii).

Empower Oversight is a non-profit educational organization as defined under Section 501(c)(3) of the Internal Revenue Code, which intends to use its editorial skills to translate information disclosed in connection with this FOIA request into a distinct work and to distribute that work to an audience, and has no commercial interest in making this request. Accordingly, pursuant to 5 U.S.C. § 552 (a)(4)(A)(ii)(II), it is subject only to “reasonable standard charges for document duplication.”

Moreover, the information that Empower Oversight seeks is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the government. The public has a significant interest in understanding the basis for the State Department’s restrictions on the importation of Russian ammunition, which implicates the public’s Second Amendment rights. Empower Oversight is committed to government accountability and public integrity and is committed to public disclosure of documents via its website, and by providing these documents to the media for public dissemination. Hence, information it receives that either confirms or dispels the concerns described above will be published to empower Americans to accurately assess the proper level of public confidence they should have in the integrity of the State Department’s sanctions under the CBW Act—making this request undeniably eligible for a waiver or reduction of fees under 5 U.S.C. § 552 (a)(4)(A)(iii).

Request for Expedited Processing

Empower Oversight also requests expedited processing of this request. As noted above, Empower Oversight is primarily engaged in disseminating information to the public. The request is of widespread and exceptional media interest²⁰ and the information sought involves

²⁰ *E.g.*, Brett Samuels, *Biden Administration Announces New Sanctions on Anniversary of Navalny Poisoning*, THE HILL, (Aug. 20, 2021) (<https://thehill.com/homenews/administration/568759-biden-administration-announces-new-sanctions-on-anniversary-of>); Alex Rouhandeh, *US Sanctions Russia for Poisoning of Opposition Leader Alexei Navalny*, NEWSWEEK (Aug. 20, 2021) (<https://www.newsweek.com/us-sanctions-russia-poisoning-opposition-leader-alexei-navalny-1621655>); Susan Heavey and Tim Ahmann, *U.S. Sanctions Russians Over Navalny’s Poisoning, Chemical Weapons*, REUTERS (Aug. 20, 2021) (<https://www.reuters.com/world/europe/us-sanctions-russians-over-navalnys-poisoning-chemical-weapons-treasury-2021-08-20/>); Zachary Basu, *U.S. and U.K Sanction More Russians on Anniversary of Navalny Poisoning*, AXIOS (Aug. 20, 2021) (<https://www.axios.com/navalny->

possible questions about the government's integrity which affect public confidence. The State Department has said that these sanctions will take effect upon the publication of a Federal Register notice expected on September 7, 2021, and they will remain in place for a minimum of 12 months.²¹ Given this impending disruption to the American ammunition market –and resulting implications for Americans' Second Amendment rights– disclosing the requested documents as soon as possible is important for the public to assess the integrity of the Department's looming use of sanctions in this manner.

For ease of administration and to conserve resources, we ask that documents be produced in a readily accessible electronic format. In the event our request for a fee waiver is denied or if you have any questions about this request, please contact us immediately.

Thank you for your prompt attention to this matter.

Cordially,

/Bryan Saddler/

sanctions-russia-us-uk-putin-d86211b4-3c38-4309-b46c-c886f282a1b3.html); Clyde Hughes, *U.S., Britain Place Sanctions on Individuals, Entities Tied to Navalny Poisoning*, UNITED PRESS INTERNATIONAL (Aug. 20, 2021) (https://www.upi.com/Top_News/World-News/2021/08/20/sanctions-Britain-Navalny-poisoning-Russia/7011629479259/); *UK, US Sanction More Russians for Navalny Poisoning*, AGENCE FRANCE-PRESSE (Aug. 20, 2021) (<https://www.france24.com/en/live-news/20210820-uk-us-sanction-more-russians-for-navalny-poisoning>); *Russian Ammo Imports Halted, May Send Demand, Prices and Shortages to New Levels*, GUNS AND AMMO (Aug. 21, 2021) (<https://www.gunsandammo.com/editorial/russian-ammo-imports-banned-halted/424581>); Stephen Gutowski, *Biden Bans Russian Ammo Amid Continued Shortage*, THE RELOAD (Aug. 20, 2021) (<https://thereload.com/biden-bans-russian-ammo-amid-continuing-shortage/>); Forrest Cooper, *State Department Bans Import of Russian Ammo on Spurious Grounds*, RECOIL (Aug. 20, 2021) (<https://www.recoilweb.com/state-department-bans-import-of-russian-ammunition-on-spurious-grounds-170123.html>).

²¹ <https://www.state.gov/fact-sheet-united-states-imposes-additional-costs-on-russia-for-the-poisoning-of-aleksey-navalny/>