

EMPOWER OVERSIGHT

Whistleblowers & Research



January 31, 2024

Via Electronic Transmission

Attorney General Merrick Garland
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530

Director Steven M. Dettelbach
Bureau of Alcohol, Tobacco, Firearms and Explosives
U.S. Department of Justice
99 New York Avenue NE
Washington, D.C. 20226

RE: Draft Ruling Banning Private Sale of Firearms

Attorney General Garland and Director Dettelbach:

INTRODUCTION

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

BACKGROUND

On March 14, 2023, President Joseph Biden issued Executive Order 14092, which required that the Department of Justice (“DOJ”) “clarify the definition of who is engaged in the business of dealing in firearms, and thus required to become Federal firearms licensees (FFLs), in order to increase compliance with the Federal background check requirement for firearm sales.”¹ President Biden announced the purpose of the executive order was to “move us as close as we can to universal background checks without new legislation.”²

The Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) subsequently submitted a proposed rulemaking to the Department of Justice, which Attorney General Merrick

¹ <https://www.govinfo.gov/content/pkg/DCPD-202300195/pdf/DCPD-202300195.pdf>.

² <https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/03/14/remarks-by-president-biden-on-efforts-to-reduce-gun-violence>.

Garland approved on August 30, 2023.³ The draft rule was open for comments from September 8 to December 8, 2023.⁴ The draft rule received immense comment and was interpreted by many to require that any private citizen who sells even a single firearm online might be required to register as an FFL⁵—despite clear language in law since 1986 that the term “engaged in the business” of selling firearms “shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms.”⁶

Empower Oversight has now learned through two sources in the ATF that at the direction of the White House, the ATF has drafted a 1,300-page document in support of a rule that would effectively ban private sales of firearms from one citizen to another by requiring background checks for every sale. The document’s drafting is reportedly being overseen by Senior Policy Counsel Eric Epstein, who worked as the Phoenix Field Office’s Division Counsel during Operation Wide Receiver (a precursor of Operation Fast and Furious).

Such an expansive rule that treats all private citizens the same as federal firearms licensees would circumvent the separation of powers in the Constitution, which grants “all legislative Powers” to Congress while requiring that the President “take Care that the Laws be faithfully executed.” To the extent such a rule prevents the private sale of firearms, it would also clearly violate the Second Amendment to the United States Constitution, which declares that “the right of the people to keep and bear Arms, shall not be infringed.”

Nor would such a rule only hurt law-abiding firearms owners. The lessons of the Ruby Ridge and Waco standoffs should make clear that attempting to enforce such an expansive regulation could endanger countless ATF field agents who are forced to serve as the face of the Biden Administration in going after private firearms owners for constitutionally-protected firearms sales.

RECORDS REQUEST

In order to shed light on the drafting of this unconstitutional measure, Empower Oversight requests the following records, for the period from January 1, 2023 to the present, pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552:

1. All emails to or from ATF Senior Policy Counsel Eric Epstein which include the terms “ban,” “private sale,” “universal background,” and “gun control.”
2. Any and all records containing communications between DOJ and ATF regarding the implementation of Executive Order 14092.
3. Any and all records containing communications between DOJ or ATF and the White House regarding the development and/or implementation of Executive Order 14092.
4. Any and all records containing communications between DOJ and ATF referring or relating to regulating or banning the sale of firearms between private individuals.

³ <https://www.atf.gov/firearms/definition-engaged-business-dealer-firearms>.

⁴ <https://www.federalregister.gov/documents/2023/09/08/2023-19177/definition-of-engaged-in-the-business-as-a-dealer-in-firearms>.

⁵ ATF received 370,200 comments on the rulemaking. <https://www.regulations.gov/docket/ATF-2023-0002/comments>. A search of the word “private” yields 61,027 results, the majority of which are clearly opposed to the proposed rule. <https://www.regulations.gov/docket/ATF-2023-0002/comments?filter=private>.

⁶ Enacted by the Firearms Owners Protection Act of 1986, Pub. L. 99-308, 100 Stat. 449 (found today at 18 U.S.C. § 921(a)(21)(C)).

5. Any and all records containing communications between DOJ or ATF and the White House referring or relating to regulating or banning the sale of firearms between private individuals.

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, Slack 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.

“PERSON” means individuals, entities, firms, organizations, groups, committees, regulatory agencies, governmental entities, business entities, corporations, partnerships, trusts, and estates.

“REFERS,” “REFERRING TO,” “REGARDS,” “REGARDING,” “RELATES,” “RELATING TO,” “CONCERNS,” “BEARS UPON,” or “PERTAINS TO” mean containing, alluding to, responding to, commenting upon, discussing, showing, disclosing, explaining, mentioning, analyzing, constituting, comprising, evidencing, setting forth, summarizing, or characterizing, either directly or indirectly, in whole or in part.

“INCLUDING” means comprising part of, but not being limited to, the whole.

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.

In producing the records described above, you shall segregate them by reference to each of the numbered items of this FOIA request.

If you have any questions about this request, please contact [REDACTED] by e-mail at [REDACTED].

FEE WAIVER REQUEST

Empower Oversight agrees to pay up to \$25.00 in applicable fees, but notes that it qualifies as a “representative of the news media” and 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 helps insiders safely and legally report waste, fraud, abuse, corruption, and misconduct to the proper authorities, and seeks to hold those authorities accountable to act on such reports by, among other means, publishing information concerning the same.

Further, the information that Empower Oversight seeks is in the public interest because it is likely to contribute significantly to the public’s understanding of the Department’s handling of allegations that it or its employees was negligent or engaged in wrongdoing.

Empower Oversight is committed to government accountability, public integrity, and transparency. In the latter regard, the information that that Empower Oversight receives that tends to explain the subject matter of this FOIA request will be disclosed publicly via its website, and copies will be shared with other news media for public dissemination.

For ease of administration and to conserve resources, we ask that documents be produced in a readily accessible electronic format. Thank you for your time and consideration. Please do not hesitate to contact me with any questions.

Cordially,

/Tristan Leavitt/
Tristan Leavitt
President