

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

MARYLAND AND CITY COUNCIL OF )  
BALTIMORE, )

Plaintiff, )

v. )

Case No. 1:23-cv-03762-RDM

BUREAU OF ALCOHOL, TOBACCO, )  
FIREARMS AND EXPLOSIVES, )

Defendant. )

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**REPLY IN SUPPORT OF THE NATIONAL SHOOTING SPORTS FOUNDATION’S  
MOTION TO INTERVENE**

The National Shooting Sports Foundation, Inc. (“NSSF”) submits this reply in support of its motion to intervene pursuant to Federal Rule of Civil Procedure 24(a) and (b) to oppose public disclosure of agency records under the Freedom of Information Act, 5 U.S.C. § 552.

Respectfully submitted this 28th day of February 2024,

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## ARGUMENT

### **A. NSSF has standing to intervene**

Baltimore contends that NSSF has not alleged an injury-in-fact because it “never tells the Court what *concrete harm* its members will suffer if the Court grants Baltimore’s” FOIA requests. (Doc. 21 at 9). Baltimore supports that contention with four arguments, each of which is legally incorrect, is factually incorrect, willfully ignores NSSF’s actual intervention arguments, or some combination of the three. NSSF will address each argument in turn.

*First.* Baltimore argues that NSSF’s theory of standing is a purely legal one: In Baltimore’s view, NSSF has demonstrated only that Congress, through the Tiahrt Rider, created a privacy interest in the information contained in the acquisition and disposition records that Federal Firearms Licensees (“FFLs”) must submit to the ATF, but has not shown how the disclosure of that information would harm FFLs.

In making this argument, Baltimore not only defies common sense, it willfully ignores every position taken by NSSF in support of intervention. For starters, NSSF cited the well-established principle that injury is “especially obvious in FOIA litigation because if the plaintiff succeeds, the public release of the requested materials is both imminent and irreversible.” (Doc. 11-3 at 11 (*citing 100Reporters, LLC v. U.S. Dep’t of Justice*, 307 F.R.D. 269, 279 (D.D.C. 2014); and *Swan v. SEC*, 96 F.3d 498, 500 (D.C. Cir. 1996))). Those cases categorically take as a given the fact that “the submitter of documents to a government agency has a cognizable interest in maintaining the confidentiality of those documents that is sufficient under Rule 24.” *100Reporters*, 307 F.R.D. at 277. That presumption applies with added force here because of the Tiahrt Rider, which specifically prohibits the ATF from disclosing the type of information sought in Baltimore’s FOIA requests. Stated differently, the Tiahrt Rider explicitly protects the confidentiality of the information submitted to the ATF, and that protection is a cognizable interest held by the FFLs

submitting the information and any individual purchaser whose information is submitted. In that way, there is no distinction between the legal interest created by the Tiahrt Rider and the disclosure of the information the statute protects. Disclosure is simultaneously the violation of law and the injury-in-fact. (*See* Declaration of Andrew R. Graham, attached as Exhibit “A,” at ¶¶ 9, 14) (“[T]he release of ‘trace data’ can . . . lead to the . . . disclosure of confidential and sensitive information about individual firearms purchasers and FFLs.”).

But even if that were not the case, Baltimore’s position inexplicably ignores the fact that NSSF identified specific ways in which Baltimore’s FOIA requests would harm NSSF’s members. In support of intervention, NSSF cited past ATF admonitions that “the appearance of a [FFL] or a first unlicensed purchaser of record” in a gun trace “in no way suggest that either the FFL or the first purchaser has committed criminal acts.” (Doc. 11-3 at 11 (quoting Bureau of Alcohol, Tobacco, Firearms and Explosives, Crime Gun Trace Analysis Report: The Illegal Youth Firearms Market in Detroit 17 (February 1999)). The ATF’s admonition is nothing more than a common-sense recognition of the fact that the public is likely to assume that any FFL or individual identified in a “crime gun trace” is engaged in criminal activity, when that simply is not the case. (*See* Ex. A at ¶¶ 9, 14).

Forging that association is often the point of FOIA requests like the one at issue here. Special interest groups and state and municipal entities regularly seek gun-trace data as the bases for follow-on lawsuits against FFLs and gun manufacturers. *See, e.g., Ctr. for Investigative Reporting v. U.S. Dep’t of Just.*, 14 F.4th 916 (9th Cir. 2021); *Everytown for Gun Safety Support Fund v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 984 F.3d 30 (2d Cir. 2020); *Lindsay-Poland v. U.S. Dep’t of Just.*, No. 22-cv-07663-EMC, 2023 WL 8810796 (N.D. Cal. Dec. 19, 2023); *Brady Ctr. to Prevent Gun Violence v. U.S. Dep’t of Just.*, 410 F. Supp. 3d 225 (D.D.C.

2019) (Moss, J.); *see also City of Chicago v. ATF*, 423 F.3d 777 (7th Cir. 2005) (dismissing case on remand following institution of the Tiahrt Rider). They then misuse the trace data, relying on a defendant's appearance in the data to create the misimpression of criminal or civil wrongdoing by members of the firearms industry.

For example, in July of 2023, Everytown for Gun Safety Support Fund released a report that made sweeping and unsupported assertions about “the relationship between gun sellers and gun trafficking.” *Inside the Gun Shop: Firearms Dealers and their Impact*, Everytown Research & Policy (July 6, 2023), <https://everytownresearch.org/report/firearms-dealers-and-their-impact/> (last visited February 26, 2024).<sup>1</sup> Relying on aggregate gun-trace data, the report explicitly draws the conclusion that the ATF's above admonition warns against – that each trace signifies an illegal act by the seller. Everytown invites readers of a report purporting to link “gun sellers and gun trafficking” to search for firearms dealers in their area by providing an interactive and searchable map embedded in the report's webpage. The report provides no evidence – none – that any of the gun dealers that appear in the search have engaged in any wrongdoing. Instead, the report presents the search feature after making vague assertions that guns are sometimes used in crimes and that sometimes guns used in crimes were once purchased at a licensed dealer. Worse still, the report specifically identifies, by name, several FFLs, going so far as providing pictures of those FFLs' physical storefronts. The report does not allege any wrongdoing, of any kind, by any of the identified FFLs. But it still impliedly – and unfairly – connects those FFLs specifically, and all FFLs generally, with gun trafficking and other criminal activity. *Id.*

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<sup>1</sup> While every litigant is entitled to its choice of counsel, it is no coincidence that Everytown is named counsel for Baltimore in this case. (*See* Doc. 1 at 15; *see generally* Docs. 8–10).

The Everytown report is, in other words, proof positive of the harms that result from the release of gun-trace data of the kind Baltimore seeks in this case. (Ex. A at ¶¶ 9, 11, 14).

Baltimore does not dispute the fact that the Supreme Court has held that the public disclosure of information that incorrectly associates a party with criminal activity is an injury sufficient to confer standing. (See Doc. 21 at 12 (citing *TransUnion, LLC v. Ramirez*, 594 U.S. 413, 432 (2021))). In *TransUnion*, the plaintiffs sued a credit reporting agency for disseminating to third-parties credit reports that had the potential to create the misimpression that the plaintiffs were associated with terrorist groups and serious criminal activity. *Id.* at 431–32. The Court held that the plaintiffs had standing to sue because “[t]he harm from being labeled a ‘potential terrorist’ bears a close relationship to the harm from being labeled a ‘terrorist,’” and the harm from being labelled a “terrorist . . . bears a sufficiently close relationship to the harm from a false and defamatory statement.” *Id.* at 433. Baseless assumptions about a firearms purchaser or an FFL engaging in criminal activity are similarly injurious, and under *TransUnion*, the imminent disclosure of information sought in Baltimore’s FOIA requests is an injury-in-fact sufficient to confer standing.

**Second.** Baltimore next argues that disclosure of the requested information will not cause an injury-in-fact because the information sought “is not confidential.” (Doc. 21 at 10). According to Baltimore, individual firearms purchasers and FFLs have no expectation of privacy in any information submitted to the ATF. (Doc. 21 at 10). Baltimore does not rebut the numerous cases finding a privacy interest in information submitted to federal agencies under legal compulsion; nor does it grapple with any of the Tiahrt Rider’s various prohibitions on the disclosure of information submitted to the ATF. Instead, Baltimore takes the position that the information sought in its FOIA requests is not confidential because the Tiahrt Rider allows the ATF to publish aggregate reports



about gun-trace data, which the ATF generates and publishes on its publicly available website. (Doc. 21 at 10).

While that position, in a vacuum, would be true enough, it misrepresents the substance of Baltimore's inquiry to the ATF. Baltimore's FOIA requests do not seek aggregate reports like those the ATF generates and posts on its website.<sup>2</sup> Quite the opposite, in fact. Consider Baltimore's first FOIA request, which seeks "[r]ecords sufficient to identify the [FFLs] that are the top ten sources of firearms recovered in Baltimore from 2018 through 2022." (Doc. 1-1 at 2). That request goes further, seeking, for each of those FFLs, "records sufficient to show": (A) "The number of firearms recovered in Baltimore annually from 2018 through 2022"; (B) the "average time-to-crime" for the recovered firearms; and (C) the number of recovered firearms connected to various types of criminal offenses, including homicide. (*Id.*) Baltimore wants to specifically identify the ten highest-volume Baltimore-area FFLs, how many guns each of those FFLs sold, and any and all connections between those guns and Baltimore crimes. That is as far from "aggregate" data as it is possible to be, and demonstrably is an injury-in-fact. (Ex. A at ¶¶ 9, 14).

Undeterred, Baltimore alternatively argues that FFLs and individual purchasers have no expectation of privacy in the information submitted to the ATF because sometimes that information is used during state and federal criminal proceedings. (Doc. 21 at 11). The obvious flaw in that argument is that this is not a criminal proceeding.<sup>3</sup>

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<sup>2</sup> There is an inherent illogic to Baltimore's argument that its FOIA requests only seek aggregate data similar to the reports the ATF generates and posts on its website. If that were all Baltimore sought, there would be no need for any FOIA requests because, as Baltimore points out, the ATF's aggregate reports are accessible on the ATF's public website. Furthermore, one of the reasons why data of this nature is aggregated is to protect the privacy interest implicated by disclosing such information in a non-aggregated format.

<sup>3</sup> If the data were being sought as part of a bona fide criminal investigation by a law enforcement agency, there would be no need for this FOIA action. (*See* Ex. A at ¶ 7). Accordingly,

More generally, each of Baltimore’s “no expectation of privacy” arguments run afoul of precedent from this Court, the D.C. Circuit, and the Supreme Court clearly establishing the principle that the government cannot force a business entity to submit information to a federal agency under a guarantee of confidentiality and then turn around and broadcast that information to the general public. *See, e.g., Food Marketing Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2362 (2019); *100Reporters*, 307 F.R.D. at 277 (“[T]his Court routinely has recognized that the submitter of documents to a government agency has a cognizable interest in maintaining the confidentiality of those documents that is sufficient under Rule 24(a.)”); *Public Citizen Health Research Grp. v. FDA*, 185 F.3d 898, 900 (D.C. Cir. 1999) (same).

Baltimore’s attempts to distinguish *Food Marketing Institute* are unavailing. (*See* Doc. 21 at 12). Baltimore argues that the plaintiff in *Food Marketing Institute* had standing to intervene because the challenged FOIA disclosure would cause “some *financial injury*.” (*Id.* (emphasis in Baltimore’s brief)). That misreads *Food Marketing Institute*. In that case, the Supreme Court held that information submitted to the government is “confidential” for purposes of FOIA Exemption 4 if it is “customarily kept private” by the submitting entity and whether the information was provided to the government with an assurance of privacy. *Food Marketing Institute*, 139 S. Ct. at 2366. Both conditions are met here. The information FFLs submit to the ATF – done under threat of civil, criminal, or regulatory penalty – is the sort that FFLs do not normally disclose. (*See* Ex. A at ¶ 11). And the Tiahrt Rider operates as an unequivocal assurance that the ATF will maintain the confidentiality of any submitted information: it prohibits, in nearly all instances, the use or disclosure of firearm acquisition and disposition records. Consolidated and Further Continuing

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the institution of this action constitutes a tacit admission that the information requested is not part of a criminal investigation.

Appropriations Act, 2012, Pub. L. No. 112-55, 125 Stat. 552, 609–10 (2011) (codified at 18 U.S.C. § 923 note) (“[N]o person or entity . . . shall knowingly and publicly disclose such data.”). (*See also* Ex. A at ¶ 11 (“Tracing requests are very sensitive and are handled in strictest confidence . . .”).

At various points in its response, Baltimore implies that the information sought in its FOIA requests is not “confidential” because it does not fall within FOIA’s Exemption 4. (*See, e.g.*, Doc. 21 at 16 (“Nor does the Request ask for information about pricing, revenue, sales volume, market research, strategy, or any “commercial or financial information” that are within the ambit of FOIA Exemption 4.”)). That is a false dichotomy.<sup>4</sup> The applicability of Exemption 4 to Baltimore’s FOIA requests is not outcome-determinative on the question of whether NSSF and its members have standing. That is so for two reasons. First, Exemption 4 is not the only basis to prevent agency disclosure of confidential or sensitive information. Exemption 3 applies to “[i]nformation that is prohibited from disclosure by another federal law,” and Exemption 6 applies to “[i]nformation that . . . would invade another’s personal privacy.” 5 U.S.C. § 552(b)(3), (6). Second, the applicability of Exemption 4 – and the question of whether that Exemption precludes disclosure in this case – is a merits determination separate from the justiciability question of whether disclosure would constitute an injury-in-fact sufficient to confer standing.

It also ignores that whether or not Baltimore’s FOIA request falls within Exemption 4 – or any FOIA exemption, for that matter – is irrelevant to the question of confidentiality. The requested information is made confidential by normal operation of the Tiahrt Rider. According to the Tiahrt Rider, the information is not subject to FOIA at all, nor any civil process (such as subpoena), and

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<sup>4</sup> As addressed below, it is also simply incorrect, as the information being sought is manifestly commercial in nature.

cannot be used in a civil proceeding. There is simply no way for Baltimore to get around the unequivocal statutory language. As this Court has held, “[t]he text of the Tiahrt Rider is clear: it prohibits the expenditure of appropriated funds ‘to disclose . . . **any** information required to be kept by licensees pursuant to [§ 923(g)] or required to be reported pursuant to paragraphs (3) and (6) of such section.’” *Brady Ctr. to Prevent Gun Violence v. U.S. Dep’t of Just.*, 410 F. Supp. 3d 225, 241 (D.D.C. 2019) (quoting § 923, 125 Stat. at 609–10) (emphasis added) (Moss, J.); *see also United States v. Gonzalez*, 520 U.S. 1, 5 (1997) (reiterating well-established principle of statutory construction that the “word ‘any’ has an expansive meaning”).

**Third.** Baltimore’s third standing argument is that NSSF lacks associational standing because it has not identified a specific member who would have standing to sue individually. (Doc. 21 at 13–14). Baltimore does not contest that the member interests NSSF seeks to protect are “germane to [its] purpose” or that the participation of NSSF’s individual members is necessary here. (See Doc. 11-3 at 10–11). *Hunt v. Wash. State Apple Adver. Comm’n*, 432 U.S. 333, 343 (1977) (holding that an association has standing to bring suit on its members’ behalf when: (1) its members would have standing in their own right; (2) “the interests it seeks to protect are germane to the organization’s purpose”; and (3) “neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit”). But in Baltimore’s view, NSSF must specifically identify one of its members who would have standing to sue on its own behalf, which requires NSSF to specifically identify an FFL that “sells guns in or around Baltimore” and is a member of NSSF. (*Id.* at 14). Baltimore is incorrect.

NSSF’s position in support of intervention is and has been that its members include Baltimore-area FFLs who were selling firearms between from 2018 through 2022; those members

either submitted information to the ATF or had their information submitted to the ATF; and they therefore would have standing to challenge on their own behalf Baltimore's FOIA requests.

Any implicated NSSF member FFL would have Article III standing because disclosure of the requested information would cause an injury-in-fact that this Court can redress by denying Baltimore's FOIA requests. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992). FFLs submit to the ATF all acquisition and disposition records as required by federal law, including records related to firearms transfers involving individuals living in Baltimore and the surrounding areas. They keep such records confidential except when disclosure is required by federal law. Public disclosure of that information would harm the FFL and its business in the form of: reputational harm from association with a “crime-gun” trace; decreased sales resulting from the loss of consumer confidence in the confidentiality of information submitted to the ATF; and a potentially prohibitive increase in operating costs associated with an increased risk of litigation exposure from suits against gun manufacturers and FFLs.

It is probable that Baltimore wants NSSF to name a member FFL for standing purposes because it appreciates the apprehension and chilling effect caused by such a request. Accordingly, since naming a member FFL is not necessary to establish standing in this case, it would be fundamentally unfair to randomly produce a member and subject him or her to exactly the kind of reputational harm NSSF's intervention seeks to prevent (and Baltimore's suit seeks to achieve).

Even if NSSF did name a member now, there is no way to know which *particular* NSSF member will ultimately be disclosed pursuant to Baltimore's FOIA requests. Baltimore's clumsy standing test requirement – that a seller “sells guns in or around Baltimore” – may be facially appealing, but upon consideration lacks merit. Such a seller might make the “top ten” trace gun list, but that is speculative at best. It is just as likely that sellers outside of that artificial geographic

area will comprise the list. It is not possible to know which FFLs will be on the list Baltimore is seeking unless and until the ATF conducts the analysis being sought in this litigation. But disclosure of this information will establish a new and dangerous precedent that implicates the interests of *all* NSSF members by exposing them to immense reputational and financial harm. Again, even requiring the public identification of at least one FFL for standing purposes would serve the chilling of firearm sales the suit seeks to accomplish.

**Fourth.** Baltimore's fourth standing argument is that the information sought in Baltimore's FOIA requests is not commercial or financial in nature. (Doc. 21 at 7). That position is not tenable. As Baltimore notes, "Exemption 4 paradigmatically applies to records that a business owner customarily keeps private because they actually reveal basic commercial operation, such as sales statistics, profits and losses, and inventories, or they relate to the income-producing aspects of a business or to information in which the submitter has a commercial interest." (*Id.*) (citing this Court's decision in *Shteynluger v. Ctrs. for Medicare & Medicaid Servs.*, No. 20-cv-2982, 2023 WL 6389139, at \*19 (D.D.C. Sept. 30, 2023)). But, as this Court made clear in the *Shteynluger* decision, Exemption 4 withholding is appropriate when the information sought is "customarily and actually treated as private by its owner." *Id.* at \*22 (citations and emphasis omitted). That is inarguably the case here. (Ex. A at ¶ 11).

**B. NSSF meets the requirements for intervention under Rule 24(a)**

Baltimore contends that NSSF does not meet the requirements for intervention as of right under Federal Rule of Civil Procedure 24(a). For the reasons below, Baltimore is incorrect.

**First.** NSSF and its members have Article III standing to intervene and therefore have an interest sufficient under Rule 24(a). *See Fund for Animals*, 322 F.3d at 735 ("Our conclusion that the NRD has constitutional standing is alone sufficient to establish that the NRD has 'an interest

relating to the property or transaction which is the subject of the action[.]” (quoting Fed. R. Civ. P. 24(a)(2))).

**Second.** Baltimore’s FOIA requests will impair the privacy and/or proprietary interests of NSSF’s members and their customers, and they will have the practical effect of preventing NSSF from preserving the confidentiality of its members’ sensitive information.

Baltimore reiterates its wholly indefensible position that its “FOIA Request asks for basic statistical information about crime guns recovered in Baltimore.” (Doc. 21 at 15). That position is contradicted by the substance of its FOIA requests – as noted above, for example, Baltimore’s first FOIA request seeks “[r]ecords sufficient to identify the [FFLs] that are the top ten sources of firearms recovered in Baltimore from 2018 through 2022.” (Doc. 1-1 at 2).

**Third.** The ATF does not adequately represent NSSF’s interests in this case. Baltimore argues that the ATF “has consistently adopted and defended NSSF’s preferred reading of the Tiahrt Rider, taking the view that the Tiahrt Rider prohibits disclosure of information from the FTS database under FOIA.” (Doc. 21 at 16).

The ATF’s past positions are irrelevant here. As a practical matter, agencies change positions all the time. Even absent that practical reality, it is also true as a matter of law that ATF does not adequately represent NSSF’s interests here. As NSSF noted in its initial brief in support of intervention, the adequate representation “requirement of [Rule 24(a)] is satisfied if the applicant shows that representation of his interest ‘may be’ inadequate; and the burden of making that showing should be treated as minimal.” *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972); *accord Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 735–36 (D.C. Cir. 2003). And in the FOIA context, the D.C. Circuit “has often concluded that governmental entities do not adequately represent the interests of aspiring intervenors.” *Fund for Animals*, 322 F.3d at

736–37 (explaining that even a “partial congruence of interests . . . does not guarantee the adequacy of representation”). That is because in a FOIA action, a plaintiff’s interest lies in disclosure, a federal agency’s interest lies in appropriately responding to plaintiff’s requests, and an intervenor’s interest lies in protecting its confidential information. *Dimond v. District of Columbia*, 792 F.2d 179, 192–93 (D.C. Cir. 1986) (concluding that District did not adequately represent interests of intervenor seeking to intervene *in support of District’s position* because District’s interest concerned all District residents and intervenor’s interests were its own, narrow, and financial); *see also Appleton v. F.D.A.*, 310 F. Supp. 2d 194, 197 (D.D.C. 2004). In this specific context, NSSF and its members have every reason to be concerned that ATF may be less than steadfast in its continued defense of the Tiahrt Rider. That fear was well-founded: just recently, for the first time ever, the ATF released the list of FFLs participating in the Demand Letter 2 program in violation of the Tiahrt Rider. This disclosure was extremely damaging to the reputations of the businesses who were identified, and NSSF seeks to intervene to guarantee that similar harm does not befall its members in this case.

The damaging effects of the ATF’s disclosure have already been felt by FFLs. Several news organizations and public interest groups have used the released Demand Letter 2 Program data to publicly identify individual FFLs, making baseless allegations that those FFLs have engaged in criminal or civil regulatory misconduct. *See, e.g., The Suppliers of America’s Gun Violence Epidemic*, BradyUnited.org, <https://www.bradyunited.org/reports/americas-gun-violence-suppliers> (last visited February 27, 2024); *see also* Nick Penzenstadler, *Gun shops that sell the most guns used in crime revealed in new list*, USA Today, February 15, 2024, <https://www.usatoday.com/story/news/investigations/2024/02/15/shops-selling-most-crime-guns-revealed-atf/72581120007/>.



For example, Brady United recently issued a report naming dozens of individual FFLs included in the released Demand Letter 2 Program data. In most respects, Brady United's report mirrors Everytown's July 2023 report: naming FFLs without offering evidence that those FFLs violated applicable ATF regulations. As to at least one identified FFL, however, the Brady United report goes further. The report describes a series of 2022 sales made by a named Texas FFL to individuals alleged to have ties to Mexican cartels. The report lays out certain details of the sales, which it ultimately characterizes as "straw sales." In support, the report cites a docket entry from a 2023 Northern District of Texas case, giving the impression that a federal district court concluded that the named FFL had sold guns to purchasers that it knew or should have known were strawmen working on behalf of Mexican cartels. But that is entirely misleading. The case the report cites in support of its straw sale conclusion was a criminal case brought against the defendant purchasers and their confederates, and the docket entry cited was the criminal complaint against those same defendants. *See* BradyUnited.org, *supra*, at 10 (citing *United States v. Lara*, Case No. 23-mj-00613-BJ (N.D. Texas Aug. 22, 2023) (Docket No. 1)). The Texas FFL was not a party to that case. And neither the criminal complaint nor any order from the district court gave any indication that the FFL engaged in any wrongdoing in making those sales.

That would be misleading enough on its own. But the criminal complaint in the *Lara* case alleged that the purchasers and their confederates engaged in a conspiracy to violate 18 U.S.C. § 922(a)(6) by making knowingly false material statements to the FFL. What matters for purposes of § 922(a)(6) is that the knowingly false statements be material "to the lawfulness of the sale or other disposition" of a firearm and intended to or likely to deceive the FFL. 18 U.S.C. § 922(a)(6) (emphasis added). That is, the government's case depended on a jury finding beyond a reasonable doubt that the FFL likely would not have sold the defendants the guns but-for the defendants'

knowingly false statements. *See United States v. Morales*, 687 F.3d 697, 700–01 (6th Cir. 2012) (collecting cases recognizing that the core of § 922(a)(6) is that the defendant knowingly conceals from the FFL the information the FFL needs to evaluate the lawfulness of the sale). So in support of its contention that a series of firearms sales were wrongful because the FFL knew or should have known the purchasers were cartel strawmen, the Brady Report misleadingly cited the criminal complaint that prosecutors intended to establish the exact opposite conclusion.

Worse still is the fact that the Brady United report relies on ATF data to make definitive conclusions that particular FFLs are engaged in criminal or civil regulatory wrongdoing while also lamenting the severely limited usefulness of that same data: “While the data this report analyzes contains the most information on sources of crime guns nationwide available in decades, it lacks critical information such as the exact number of crime guns traced to each of these dealers, where these firearms were recovered, and in which types of crimes these firearms were recovered.” *Id.* at 15. According to the report, organizations like Brady United need more gun-trace information and more information about individual FFLs. More information, it contends, “is the only way that the public can accurately understand the sources of gun violence in their communities.” *Id.*

It is not possible reconcile the report’s conclusion, made with unequivocal certainty, that FFLs wrongfully facilitate gun crimes with its conclusion that the only way to properly evaluate the sources and causes of gun crimes is the public disclosure of more ATF data. Interest groups like Brady United and others seek ATF data as a cudgel to use against FFLs, not as a means to “develop targeted strategies to reduce gun violence.” *Id.* And as the Everytown report, the Brady United report, and the various FOIA lawsuits brought by state and municipal entities like Baltimore make clear, it is irrelevant to those entities whether the FFL at issue has done anything wrong.

What matters is the public identification and the implication of wrongdoing, criminal or otherwise, that follows.

Those are precisely the kinds of harm that the Tiahrt Rider was enacted to prevent, and NSSF is entitled to intervene in this case to protect its member FFLs from them.

**CONCLUSION**

For the reasons above, NSSF respectfully requests that this Court grant its motion to intervene in this action.

Respectfully submitted this 28th day of February, 2024.

**BRADLEY ARANT BOULT CUMMINGS, LLP**

*/s/ John Parker Sweeney*

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ATTORNEYS FOR INTERVENOR NATIONAL SHOOTING  
SPORTS FOUNDATION, INC.

**CERTIFICATE OF SERVICE**

I hereby certify that on February 28, 2024, I caused the foregoing to be filed via the Court's ECF filing system, which automatically served a copy to all counsel of record.

*/s/ John Parker Sweeney* \_\_\_\_\_

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

<b>MARYLAND AND CITY COUNCIL OF</b>	)	
<b>BALTIMORE,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 1:23-cv-03762-RDM</b>
	)	
<b>BUREAU OF ALCOHOL, TOBACCO,</b>	)	
<b>FIREARMS AND EXPLOSIVES,</b>	)	
	)	
<b>Defendant.</b>	)	

**DECLARATION OF ANDREW R. GRAHAM**

I, Andrew R. Graham, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the statements made below are true and correct and state as follows:

1. The statements made in this declaration are based on my personal knowledge from serving as Deputy Assistant Director (“DAD”) over the Bureau of Alcohol, Tobacco, Firearms and Explosives’ National Services Center in Martinsburg, West Virginia, which houses ATF’s National Tracing Center, National Firearms Act Branch, Firearms Ammunition Technology Division and Firearms Explosives Services Division (licensing). Before that role, I served as the DAD of the ATF’s Field Operations (Industry Operations) Inspections. I retired from the ATF in December of 2022.
2. I have also read and am familiar with the Complaint in this action.
3. Pursuant to the Gun Control Act, the Bureau of Alcohol, Tobacco, Firearms and Explosives is authorized to administer firearms tracing. The Attorney General has delegated ATF the sole federal agency authorized to trace firearms.

4. The Bureau of Alcohol, Tobacco, Firearms & Explosives (ATF) is the sole federal agency that is authorized to administer firearms tracing. The ATF's National Tracing Center (NTC) is authorized to trace a firearm for a law enforcement agency involved in a bona fide criminal investigation. The NTC's mission is to accurately and efficiently conduct firearms tracing for both active and out-of-business federal firearm licensees, and other related programs to provide investigative leads for federal, state, local and foreign law enforcement agencies.

5. To carry out its firearms tracing functions, ATF maintains the Firearms Tracing System, which is a law enforcement information database. The Firearms Tracing System is maintained at the National Tracing Center ("NTC"). In response to requests from law enforcement, the NTC provides ATF field agents and other law enforcement agencies with Firearms Trace Result Reports commonly referred to as "trace data," as well as investigative leads obtained from the traced firearm. Firearms tracing begins when a law enforcement agency discovers a firearm at a crime scene and seeks to learn the origin or background of that firearm in order to develop investigative leads. ATF tracing is a process of tracking the movement of a firearm from its manufacture or import to its introduction into U.S. commerce by the manufacturer, importer through the distribution chain, or wholesaler/retailer to identify an unlicensed purchaser. That information can help link a suspect to a firearm in a criminal investigation and identify potential traffickers.

6. "Tracing" a firearm is the systematic tracking of a recovered firearm from its manufacturer or importer, through its subsequent introduction into the distribution chain (wholesaler/retailer), to identify an unlicensed purchaser. A firearm trace begins when the NTC receives a request from a Federal, State, local, or foreign law enforcement agency that has recovered a firearm or suspects that a certain firearm has been used in crime. The NTC is only

authorized to trace a firearm for a law enforcement agency involved in a bona fide criminal investigation. ATF's NTC assists law enforcement with firearm traces by accepting trace requests electronically through its e-Trace web-based application, allowing firearms to be traced by local, state, federal and international law enforcement agencies. Authorized users can search e-Trace using submission fields including gun serial number, type of crime, date of recovery and names of individuals involved. In addition, participating law enforcement agencies can opt to share firearms trace data with all other e-Trace users in their state who have also opted to share their data, allowing users to detect patterns of crime across jurisdictions. The NTC also accepts manual submission of the same trace request, ATF Form 3312.1 National Tracing Center (NTC) Trace Request via e-mail to [firearmtracerequest@atf.gov](mailto:firearmtracerequest@atf.gov) or means of fax to 1-800-578-7223.

7. Federal law does not prohibit the City of Baltimore's police department or any other law enforcement agency for that matter from seeking trace data, so long as the request concerns a bona fide criminal investigation.

8. To conduct a trace, the requesting agency must provide the NTC with the firearms type (i.e., pistol, revolver, shotgun), manufacturer or importer if applicable, caliber, and the serial number of the recovered firearm. In addition, the requesting agency typically provides other associated information, like Crime Code (e.g., possession of weapon; firearm under investigation, weapon offense, found firearm, homicide, carrying concealed weapon etc.), recovery location, and possessor information. In a typical case, after receiving a trace request, NTC personnel have to determine if the trace request, or serial number, manufacturer, etc., is associated with an active federal firearms licensee (FFL) or inactive FFL. If the trace involves an active FFL NTC works with the FFL to search their records for the serial number being traced. This is done via e-mail, telephonically or in person depending upon the FFLs circumstance. Large manufacturers,

importers and wholesalers voluntarily participate in an NTC program referred to as NTC Connect, which grants the NTC secure and limited access to the FFLs cloud-based records in order to search for specific crime guns. Many trace requests involve FFLs that are no longer in business. Any FFL discontinuing business operations is required by federal law to send their firearm transaction records to the NTC within 30 days of discontinuance. NTC stores these records in its out of business repository in order to complete crime gun trace requests. The NTC first step in the trace process is to contact the manufacturer or importer to determine when and to whom the firearm in question was sold. When the NTC requests information from the manufacturer or importer, ATF informs the licensee only about the firearm involved in the trace by make, model, and serial number; the manufacturer or importer is not informed of any circumstances relating to the alleged criminal conduct nor the identity of the law enforcement agency that recovered the firearm. If a trace process leads to an out of business FFL, the NTC researches its out-of-business record repository for firearm transaction records associated with the trace request, to determine the firearms acquisition and final retail disposition information to a purchaser.

9. In most instances, the manufacturer or importer has sold the firearm to a Federal Firearms Licensee (“FFLs”) wholesaler. NTC personnel then contact the wholesaler to determine when and to whom the firearm in question was sold, usually to an FFL retailer. The tracing process continues as long as records allow and is considered successful when ATF can identify an unlicensed purchaser, commonly, the first retail purchaser (a non-FFL) from an FFL that acquired a firearm via completion of ATF F 4473 transaction record and a federally mandated background check to ensure the buyer is not a prohibited person. ATF’s trace data disclaimer indicates that firearm traces are designed to assist law enforcement authorities in conducting investigations by tracking the sale and possession of specific firearms. Law enforcement agencies may request



firearm traces for any criminal investigative reason and those reasons are not necessarily reported to the federal government. Not all firearms used in crime are traced and not all firearms traced are used in crime. The disclaimer concludes that firearms are normally traced to the first retailer seller, and sources reported for firearms traced do not necessarily represent the sources or methods by which firearms in general are acquired for use in crime.

10. The “trace data” is maintained in the Firearms Tracing System of completed crime gun traces and includes the 8-digit (abbreviated FFL number) identification number of the FFLs involved in the sale or transfer of the firearm, along with any information obtained from the ATF Form 4473 regarding the retail purchaser of the firearm.

11. Tracing requests are very sensitive and are handled in strictest confidence because of a purchaser’s or individual’s personally identifiable information (“PII”). Because firearms tracing depends in significant part on the expectation of confidentiality and reliance on ATF’s nondisclosure policy to maintain confidentiality, the release of “trace data” can undermine confidence in the NTC and the entire tracing process, interfere with law enforcement investigations, and ultimately lead to the unintended and unauthorized disclosure of confidential and sensitive information about individual firearms purchasers and FFLs.

12. ATF sometimes prepares statistical reports utilizing trace data in the Firearms Tracing System database to provide the public and law enforcement agencies with insight into firearms recoveries. The agency publishes a limited number of aggregate statistical reports that ATF believes will provide helpful insights to the public. Those reports, which are available on the ATF’s public website, do not disclose any law-enforcement or other sensitive materials. That is because the Consolidated and Further Continuing Appropriations Act of 2012, commonly referred to as the Tiahrt Rider, severely prohibits the disclosure of information submitted to the ATF or

14. Given the sensitive nature of the information submitted to the ATF by FFLs as part of their disclosure requirements, and the context in which any gun-crime trace occurs, the ATF has issued regular notices in connection with its tracing operations reminding the public that the appearance of an FFL or a first unlicensed purchaser of record in a gun trace in no way suggests that either the FFL or the first purchaser has committed criminal acts.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 27, 2024.

  
\_\_\_\_\_  
**Andrew R. Graham**