Written by **Bob Adelmann** on June 13, 2024

Federal Judge Expands Ruling Against ATF in "Gun Show Loophole" Case

In May, U.S. District Court Judge Matthew Kacsmaryk gave himself 10 days to consider making his initial temporary restraining order (TRO) against the ATF permanent. On Tuesday he did so, and he expanded his decision to cover all four states in his jurisdiction: Texas, Louisiana, Mississippi, and Utah.

The new order prohibits the ATF from enforcing its new expanded definition of who constitutes a "gun dealer" while the judge takes his time crafting a permanent decision against the government agency.

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At issue is the ATF's attempt to learn the name and address of every gun owner in America, necessary before full-on confiscation by the rogue agency can begin.

The ATF's agenda is elegant in its simplicity. If it can redefine all gun owners as gun dealers, then two things happen: The agency knows where they live, and it has carte blanche to override their Fourth Amendment rights to be "secure" in their possessions. Since gun dealers must seek the government's permission to operate as a business, this will allow the government — namely the ATF and its notorious thugs — to enter the private residences of those newly defined gun dealers at any time without a warrant.

That's what this case is all about.

As the complainants noted back in May, the ATF is "seeking to declare countless thousands of Americans unlawfully 'engaged in the business'" when they merely offer a firearm for sale at a gun show. Hence the "gun show loophole" that the liberal, anti-gun, anti-Second Amendment media and the Biden administration's enforcement arm, the ATF, want to "close."

The original complaint was explicit:

> While purporting to amend federal regulations to comport with recently amended federal firearms statutes, the Final Rule goes far beyond the subtle change Congress made to the law, subjecting hundreds of thousands of law-abiding gun owners to ***presumptions of criminal guilt*** for all manner of activities relating to the innocuous, statutorily authorized, and constitutionally protected private sale of firearms. [Emphasis in the complaint.]

Though the complaint refers to "hundreds of thousands" of law-abiding gun owners who become "gun dealers" when they offer to sell privately a single firearm, the real number is in the millions.

Here's the expanded definition that Judge Kacsmaryk just put on eternal hold:

> The Final Rule's new definition is: "Any person engaged in the business of selling firearms

> at wholesale or retail; any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms; or any person who is a pawnbroker.
>
> The term shall include any person who engages in such business or occupation on a part-time basis.
>
> **The term shall include such activities wherever, or through whatever medium, they are conducted, such as at a gun show or event, flea market, auction house, or gun range or club; at one's home; by mail order; over the Internet (e.g., online broker or auction); through the use of other electronic means (e.g., text messaging service, social media raffle, or website); or at any other domestic or international public or private marketplace or premises."** [Emphasis in the complaint.]

As the original complaint filed by the states of Texas, Louisiana, Mississippi, and Utah, along with Gun Owners of America, the Gun Owners Foundation, the Tennessee Firearms Association, and the Virginia Citizens Defense League, stated:

> Shockingly, where ATF declares that whether a person is engaged in the business as a dealer in firearms is a fact-specific inquiry, it also states that "there is no minimum threshold number of firearms purchased or sold that triggers the licensing requirement.
>
> Similarly, there is no minimum number of transactions that determines whether a person is 'engaged in the business' of dealing in firearms.
>
> For example, **even a single** firearm transaction **or offer** to engage in a transaction, when combined with other evidence (e.g., where a person represents to others a willingness and ability to purchase more firearms for resale), may require a license; whereas, a single isolated firearm transaction without such evidence would not require a license.
>
> At all times, the determination of whether a person is engaged in the business of dealing in firearms is based on the totality of the circumstances." [Emphasis in the complaint.]

In other words, left in place, the expanded definition of just who would be a "gun dealer" is left to the tender care and mercy of the ATF thugs itching to confiscate all firearms in the country.

The original complaint claimed that the ATF's attempt to expand the definition to include every gun owner in the country "violates [the law] because it is arbitrary, capricious, an abuse of discretion, and not in accordance with law." Further, "it is contrary to constitutional right, power, privilege, or immunity." And it violates the Fifth Amendment's due process protections and is void for vagueness.

But the real threat — the one power that the ATF hungers for — is its violation of the Fourth Amendment. From the complaint:

> The Fourth Amendment states that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

> Yet once an individual receives an FFL [federal firearms license], ATF reserves the right "to enter during business hours" without a warrant, "the premises, including places of storage, of any … licensed dealer for the purpose of inspecting or examining records, documents, ammunition and firearms."
>
> For most forced to obtain an FFL by the Final Rule, this "premises" is the private home.
>
> For most forced to obtain an FFL by the Final Rule, "business inventory" is their personal collection of firearms.
>
> ATF can conduct this inspection without a warrant and entirely without notice.

In his initial TRO Kacsmaryk held that Louisiana, Mississippi, and Utah didn't have standing to sue. In his present ruling, though, he wrote that "all plaintiffs have standing."

As to the issue of the collection of names of gun owners, the ATF originally argued that unless those gun groups listed their membership in the complaint, they didn't have standing.

Regarding this, the judge wrote, "Defendants [the ATF] argue that the organizations must identify their members by *name* to have associational standing…. Defendants may be correct that some other Circuits require a named member … but this Circuit does not." (Emphasis in the ruling.)

In his 21-page ruling, the judge noted that, if allowed to stand, the ATF would simply be able to declare an individual gun owner offering to sell a firearm privately as a gun dealer — a declaration of guilt. The onus of proving his innocence would be on the gun owner, a complete perversion of the rule of law. Wrote the judge: "They [the ATF] flip the statute on its head by requiring firearms owners prove innocence rather than the government prove guilt."

Hence, concluded Kacsmaryk, "Plaintiffs' Motion for a preliminary injunction is **GRANTED**. Defendants are hereby **ENJOINED** from enforcing the regulations … against all Plaintiffs pending the resolution of this lawsuit."

His ruling doesn't leave other innocent gun owners twisting in the wind, however. Similar lawsuits on the same issue are pending in other courts across the country. Kacsmaryk's ruling will serve nicely as a precedent for those other courts to follow.

Related article:

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