



Written by [Bob Adelman](#) on March 22, 2023

ATF Arrogance on Display: Agency Issues Enforcement of Final Rule Even After Court Determines It's Unlawful

On Tuesday, the rogue and unconstitutional Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) [issued an announcement](#) that it was going to strictly enforce its final rule against gun dealers, even for the most minor of infractions.

In his big-boy voice, anti-gun ATF Director Steven Dettelbach declared:

That means they [gun dealers] need to run background checks and sell guns with serial numbers. That is what the ghost gun rule is about.

Today's advisory is simple. If you're dealing [in] firearms — including items that can be readily converted to a working firearm — ATF is going to make sure that you are following the same laws as everyone else.



Arthit Pornpikanet/iStock/Getty Images Plus

The problems with his pronouncement from on high are several: Dettelbach's agency's rules continue to change; their enforcement puts increasing pressure on law-abiding gun dealers; and, worst of all, the rule he is enforcing has already been declared beyond the agency's purview and therefore is unlawful.

Dettelbach accuses gun dealers of trying to subvert the new rule against ghost guns — a rule that contravenes his agency's long-standing opinion that the pieces and parts that might make up a "ghost gun" don't, of themselves, make them a firearm. Now, apparently, they do.

Said Dettelbach:

Some suppliers of partially complete frames or receivers appear to be attempting to willfully circumvent the rule by (1) selling parts from the type of firearms parts kit covered by the final rule in separate transactions, or (2) coordinating with other distributors to sell, market or make available individual parts that, when put together, create a frame or receiver.

In determining whether a dealer has violated his now-unlawful rule, the agency will also violate the First Amendment's guarantee of free speech:

ATF will consider the seller's marketing conduct and materials. This may include the seller providing information on how a partially complete frame or receiver may readily be converted to a firearm, serving essentially as instructions or a guide.



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It may also include internet links to templates, jigs, molds, equipment, tools or other materials that enable ready completion or assembly of the unfinished frame or receiver into a firearm.

This is because such materials may affect how “readily” the part may be converted.

And the consequences if a law-abiding gun dealer happens to step, however briefly or unintentionally, outside the agency’s ever-changing edicts?

When a supplier in such a circumstance fails to comply with the GCA’s [the unconstitutional Gun Control Act of 1968] requirements, that may constitute a willful violation of the GCA. ATF considers such conduct, and all willful violations of the GCA, an investigative priority.

Under the ATF’s old rules, that “investigative priority” would usually result in a conversation with the dealer himself, and perhaps a warning. Now, though, there is no such warning, as more former gun dealers learned the hard way last year: the closures following those “investigations” set a record in 2022.

As for [the court ruling](#) that the ATF so willfully ignored, it involved the firearm-kit maker Defense Distributed, which has had a running battle with the ATF since the invention of 3-D printers. Last November, Judge Reed O’Connor of the U.S. District Court for the Northern District of Texas granted a preliminary injunction against the ATF’s enforcement of the final rule.

On March 2, after hearing more arguments from the ATF, he made his temporary injunction permanent:

This Court previously held that any injury to the Government’s general interest [i.e., that of the Biden administration and its anti-gun ATF] in law enforcement and public safety is appreciably undermined by the Court’s preliminary determination that the Final Rule is likely unlawful.

Once again, this reasoning is strengthened by the fact that the Government’s likely *ultra vires* [beyond its legal authority] enforcement efforts upset decades of ATF regulatory precedent against a public that has relied on that historic posture.

And so, in words that the ATF brazenly chose to ignore in its haste to shut off the legitimate flow of legally owned firearms to law-abiding citizens, Judge O’Connor wrote:

The court grants the motion ... and ORDERS that Defendants and their officers, agents, servants, and employees are enjoined from implementing and enforcing against Defense Distributed and its customers....

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