

May 11, 2022

Via Email & U.S. Mail

Gary M. Restaino
Acting Director
Bureau of Alcohol, Tobacco, Firearms
and Explosives
99 New York Avenue, NE
Washington, D.C. 20226

Dear Acting Director Restaino,

On behalf of Everytown for Gun Safety, the nation's largest gun violence prevention organization, and the City of New York, we write to urge the ATF to revoke the federal firearms license ("FFL") of Polymer80, Inc., (FFL No. 9-88-019-07-2J-04702¹), a Nevada company that public information indicates is by far the largest source of ghost guns used in crimes and recovered by law enforcement nationally and in a number of major cities.

As further discussed below, we respectfully submit that a review of just the universe of publicly available evidence that ATF itself has uncovered clearly demonstrates that Polymer80 has repeatedly violated federal gun laws and has acted with plain indifference to its obligations under those laws. Allowing Polymer80 to continue to conduct its business despite its outsized role in fueling the epidemic of ghost gun proliferation across the country and the substantial evidence of serious violations of federal laws presents a clear and present danger to public safety. It would also send a terrible message to bad actors in this industry and would be wholly inconsistent with the Administration's crackdown on ghost gun sellers and its "zero tolerance" approach to wayward gun manufacturers and sellers.

To begin, we applaud your agency's efforts to rein in the deadly proliferation of ghost guns across the country, culminating with the April 11 White House announcement of the finalization of a new administrative rule that confirms that gun-building kits and their core components are subject to the same firearms regulations as fully functional firearms – including the requirements of serialization and background checks when sold by an FFL.

That said, we are deeply concerned that Polymer80 continues to be licensed by the ATF despite clear evidence of numerous willful violations of the Gun Control Act that should disqualify Polymer80 from retaining its FFL. ATF is well-aware of the evidence of these illegal

¹ Polymer80's current FFL expires on September 1, 2022, and to continue to be federally licensed to manufacture firearms, Polymer80 would have to apply to the ATF for a renewal prior to that date.

acts and in fact launched a criminal investigation into Polymer80 in December 2020, when it raided Polymer80's headquarters. In the accompanying search warrant (the "Search Warrant"²), the ATF represented to a federal court that it had determined and had probable cause to believe that Polymer80 had violated federal (and state) gun laws – including but not limited to the prohibition against selling firearms without background checks or serial numbers.

Since the December 2020 raid, the evidence of the connection between Polymer80's reckless business practices and gun violence in communities across the country has only strengthened. For example, as recently disclosed in litigation against Polymer80, the number of untraceable ghost guns recovered by the LAPD saw a leap from 813 recoveries in 2020 to 1,921 recoveries in 2021 -- and of those 1,921, *Polymer80 supplied 90% of them*.³ These statistics are consistent with ATF's prior disclosure that over 86% of the 1,475 privately made firearms (aka ghost guns) entered into its National Integrated Ballistic Information Network ("NIBIN") database in 2019 were made from Polymer80 parts.⁴ Other cities such as Washington, D.C. and Syracuse, N.Y. have similarly reported that ghost guns built with Polymer80 kits and parts comprise the vast majority of such weapons recovered by their police departments in recent years.⁵ And Polymer80 ghost guns continue to be recovered in connection with shootings and other crimes in cities across the country.⁶ Just recently, for example, law enforcement recovered a Polymer80 9mm handgun in connection with the shooting death of a 16-year old girl in the Bronx.⁷

Consistent with the Biden-Harris Administration's announced "zero tolerance" policy toward FFLs who willfully violate federal gun laws,⁸ and for the reasons further set forth below, we urge the ATF to promptly revoke Polymer80's FFL.

Substantial Evidence Shows Polymer80 Willfully Violated Federal Law Relating To "Handguns"

² <https://s3.documentcloud.org/documents/21112212/ghostraid-121420-warrant.pdf>

³ <https://everytownlaw.org/wp-content/uploads/sites/5/2022/02/2022.02.22-Motion-to-Compel-Further-Verified-Responses.pdf>. Everytown Law is co-counsel for plaintiffs in this litigation.

⁴ Search Warrant ¶28(e).

⁵ See Plaintiffs' Local Rule 56.1 Statement at ¶¶ 27,46, *City of Syracuse, NY, et al. v. Bureau of Alcohol, Tobacco, Firearms and Explosives*, No. 20-CV-06885-GHW (S.D.N.Y. Dec. 9, 2020), ECF No. 63, at ¶¶27, 46.

⁶ <https://everytownresearch.org/report/ghost-guns-recoveries-and-shootings/> (last visited Apr. 25, 2022).

⁷ <https://nypost.com/2022/04/10/ghost-gun-recovered-after-nyc-shooting/>

⁸ <https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/01/fact-sheet-president-bidens-historic-actions-to-make-our-communities-safer-by-reducing-gun-crime/>.

As the Search Warrant makes clear, as of October 10, 2020, Polymer80 had “shipped at least 1,490 Buy Build Shoot Kits to customers throughout the United States,” including over 200 into California.⁹ These Buy Build Shoot kits contain “all the necessary components to build a complete PF940c or PF940v2 pistol.”¹⁰ Accordingly, as the Search Warrant also states, these Buy Build Shoot kits constitute “handguns” under 18 U.S.C. § 921(a)(29), as they are “a combination of parts from which a firearm having a short stock and designed to be held and fired by the use of a single hand can be assembled.”¹¹

The Child Safety Lock Act of 2005 makes it “unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer any handgun to any person ... unless the transferee is provided with a secure gun storage or safety device (as defined in section 921(a)(34)) for that handgun.” 18 U.S.C. § 922(z). Polymer80 is a licensed manufacturer (Type 07 license), but there is no indication on its website or in the Search Warrant that Polymer80 has ever provided a “secure gun storage or safety device” along with its Buy Build Shoot kits. In addition, there is no indication Polymer80 provided the warnings required under federal gun regulations relating to the risks of the misuse of “handguns” by juveniles. *See* 27 C.F.R. § 478.103 (requiring licensees to provide warnings about the risk of handguns to minors). Because the Buy Build Shoot kits clearly qualify as “handguns” under federal law, each of the nearly 1,490 or more sales of them appears to constitute a willful violation of the federal gun laws.¹²

Substantial Evidence Shows Polymer80 Willfully Violated Federal Law Relating to “Firearms”

Under the Gun Control Act, a “firearm” is defined as “any weapon... which will or is designed to or may readily be converted to expel a projectile by the action of an explosive....” 18 U.S.C. § 921(a)(3). ATF’s Chief Counsel, as stated in the Search Warrant, “has determined that the Buy Build Shoot Kits are, as a matter of law, firearms pursuant to 18 U.S.C. § 921(a)(3).”¹³ That conclusion makes perfect sense, since those kits clearly are both “designed to” be and “may readily be converted” into an operable weapon. As the Search Warrant further explains, Polymer80 failed to affix serial numbers to the frames sold as part of these Buy Build Shoot kits and failed to run background checks on purchasers of these kits.¹⁴ Accordingly, for

⁹ Search Warrant ¶80.

¹⁰ Id. ¶46 (quoting Polymer80’s website).

¹¹ Id. ¶65.

¹² It should be noted that these violations of the Child Safety Lock Act are totally separate from – and not dependent on – the question of whether Buy Build Shoot kits also constitute “firearms” under federal law, as discussed below.

¹³ Search Warrant ¶65 & n.6.

¹⁴ Search Warrant ¶¶66, 73.

these and other reasons, the direct sale across state lines to unlicensed individuals of Buy Build Shoot kits also constitutes clear evidence of violations of numerous provisions of the Gun Control Act, including 18 U.S.C. §§ 922(t), 922(a)(2), 922(b)(3),¹⁵ as well as 922(c) and 923(i).

Significantly, Polymer80 went ahead and began selling Buy Build Shoot kits in 2019 even though, in 2018, the ATF had specifically put the company on notice that its pistol kits may well be subject to federal regulation as “firearms” and “handguns” as defined in federal law. As the Search Warrant outlines, in December 2017 Polymer80 submitted its unfinished PF940v2 pistol frame to ATF for a determination. ATF wrote back in February of 2018, noting that “clearly the submitted sample is simply a component of a larger product” and explaining that it would “not render a classification on a partial product submission.” ATF instructed Polymer80 to “submit the complete Polymer80 Model PF940v2 80% Standard Pistol Frame Kit,” if Polymer80 wanted to receive an evaluation and classification of the product.¹⁶ In this same letter, ATF also specifically flagged for Polymer80 the definitions of both “firearm” and “handgun” under federal law.¹⁷ Instead of following ATF’s guidance, Polymer80 never subsequently submitted to the ATF the complete PF940v2 pistol frame kit (or, later, its Buy Build Shoot kit) for a determination as to whether such kits constituted firearms and/or handguns.¹⁸ Instead, as the evidence discussed above shows, it plowed ahead with selling these kits in violation of federal law.¹⁹

Evidence of Additional Violations of Law

While the above-described evidence of willful violations of federal firearms laws is more than sufficient to require revocation or non-renewal of Polymer80’s FFL, the Search Warrant

¹⁵ Search Warrant ¶¶73.

¹⁶ Id. ¶¶43-44 & Government’s Exhibit 3.

¹⁷ Id. Ex. 3.

¹⁸ Id. ¶45.

¹⁹ The fact that ATF had provided Polymer80 with a determination letter in January 2017 stating that the PF940C unfinished frame is not – on its own – a firearm (Search Warrant ¶¶37-45) does not change the analysis. First, that letter did not offer any opinion on whether an all-inclusive kit like the Buy Build Shoot kit constitutes a “handgun” or “firearm” under federal law. Second, the record shows that this determination letter (which Everytown contends reflects a legally erroneous conclusion on the firearm issue, *see* Complaint, *City of Syracuse, NY, et al. v. Bureau of Alcohol, Tobacco, Firearms and Explosives*, No. 20-CV-06885-GHW (S.D.N.Y. Aug. 28, 2020), ECF No. 11) was obtained through misrepresentation and omission of material facts. Specifically, the record shows that, among other things, Polymer80: (a) misrepresented that the unfinished frame was “void of any indicators that designate or provide guidance in the completion of the firearm,” when in fact it was selling that frame with a “jig” that did provide such guidance, and (b) failed to disclose to ATF that this product was being sold or would be sold as part of a kit. And, as noted above, when ATF later advised Polymer80 to submit the full kit product it was selling, Polymer80 chose to bury its head in the sand and not find out the answer.

outlines a number of additional ways in which the public record shows that Polymer80's sales practices directly contributed to violations of gun laws, including: (i) delivering handguns in the form of a Buy Build Shoot kit to 18-year-olds who are prohibited by law from possessing handguns;²⁰ (ii) selling Buy Build Shoot Kits to individuals with felony convictions or who are otherwise prohibited by law from possessing firearms;²¹ (iii) shipping large capacity magazines into California, where they are illegal;²² and (iv) selling Buy Build Shoot kits into California where the assembled, functional firearms would be in violation of California's gun laws.²³

ATF Should Revoke Polymer80's FFL

ATF may revoke a license if the licensee "has willfully violated any provision of [the Gun Control Act] or any rule or regulation prescribed by the Attorney General under [the Gun Control Act]" 18 U.S.C. § 923(e). *See also* 27 C.F.R. § 478.73(a). The Gun Control Act also requires ATF to deny a license (or a license renewal) to an applicant who has willfully violated the Gun Control Act or its implementing regulations. *See* 18 U.S.C. § 923(c), (d)(1)(C).

Under either scenario – revocation or non-issuance/non-renewal – a licensee has "willfully violated" the Gun Control Act or ATF regulations within the meaning of 18 U.S.C. § 923(d)(1)(C) and 18 U.S.C. § 923(e) if the licensee knew of or was "plainly indifferent" to their obligations under the Gun Control Act or ATF regulations and nevertheless committed the violation. *Stein's, Inc. v. Blumenthal*, 649 F.2d 463, 467 (7th Cir. 1980) (denying FFL); *see also Willingham Sports, Inc. v. Bureau of Alcohol, Tobacco, Firearms and Explosives*, 348 F. Supp. 2d 1299, 1309–10 (S.D. Ala. 2004) (revoking FFL). The licensee need not have had "bad purpose or evil motive" for ATF to deny or revoke a license. *Id.* A licensee whose conduct shows "plain indifference to the regulatory requirements" commits a willful violation that justifies the denial of a license. *Lewin v. Blumenthal*, 590 F.2d 268, 269 (8th Cir. 1979); *see also DiMartino v. Buckles*, 129 F. Supp. 2d 824, 832 (D. Md. 2001) ("Any single violation of the federal statutes or regulations controlling the firearms industry can be a basis for denying an application for a new license or revoking an existing license."), *aff'd by unpublished order*, 19 Fed. Appx. 114, 2001 U.S. App. LEXIS 20906, 2001 WL 1127288 (4th Cir. 2001).²⁴

²⁰ Search Warrant ¶87(b), (e).

²¹ *Id.* ¶87(a), (c), (d), (f), (g).

²² *Id.* ¶¶58, 59.

²³ *Id.* ¶87 & n.11 (stating ATF's view that "[c]urrently, manufacturing or assembling a firearm made with POLYMER80 pistol frames is unlawful in California").

²⁴ While Polymer80 appears to have stopped selling the Buy Build Shoot kits following ATF's raid, other sellers continue to offer Polymer80 pistol frame kits paired with a second kit that together contain all the parts needed to build a functioning Glock-style pistol – without requiring background checks or serial numbers or providing safety devices or warnings. *See, e.g., Polymer 80 PF940v2*, <https://jsdsupply.com/shop/polymer-80-pf940v2/> and PF940v2 Full Build Kit - Minus Frame, <https://jsdsupply.com/shop/pf940v2-full-build-kit-minus-frame/>; *Kangal-19 Black LSB Kit (Lock Stock and Barrel) for G19 Gen3*,

* * *

For all of the reasons set forth above, we urge the ATF to promptly revoke (or not renew²⁵) Polymer80's license to continue manufacturing and distributing firearms and firearm-building kits and parts.

Respectfully,

Eric L. Adams
Mayor of New York, NY

Nicholas O. Suplina
Senior Vice President of Law & Policy
Everytown for Gun Safety

CC: The Hon. Merrick Garland
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<https://indieguns.com/kangal-19-black-lsb-kit-lock-stock-barrel-for-g19-gen3/> (offering for sale a "P80 Frame Kit," "P80 Frame Parts Kit," and "Complete Slide Assembly" in a kit which "includes everything needed to build a complete pistol").

²⁵ As noted above, Polymer80's FFL is set to expire on September 1, 2022, absent a renewal.