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ATF Rulemaking Comments
Mail Stop 6N-518, Office of Regulatory Affairs
Enforcement Programs and Services
Bureau of Alcohol, Tobacco, Firearms and Explosives
99 New York Ave. NE
Washington, DC 20226

Re: **Docket No. ATF-2026-0265; RIN 1140-AA88**
Comment on Proposed Rule on Licensee Violations of the Gun Control Act, entitled "Defining 'Willfully' for Firearms Violations"

To Whom It May Concern:

We respectfully submit this comment on behalf of our client, Everytown for Gun Safety Support Fund ("Everytown"),[1] in response to the May 8, 2026 notice of proposed rulemaking ("NPRM") issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"). Everytown opposes the proposed rule, which is unequivocally bad for public safety and wrong on the law. The proposed rule misinterprets the clear language of the Gun Control Act ("GCA" or "the Act"), would weaken enforcement of the statute, and would endanger the public by prohibiting the revocation of licenses from federal firearms licensees ("FFLs" or "licensees") that are plainly indifferent to their obligations under the Act. **The GCA's licensing system for firearm industry participants helps ensure responsible business practices and keeps guns out of dangerous hands by preventing the illegal diversion of firearms. But the proposed rule would impair ATF's ability to enforce the GCA and to hold FFLs appropriately responsible for unlawful conduct. In ATF's own words, FFLs that do not comply with the requirements of the GCA "might continue to violate the [GCA's] regulations" if the proposed rule goes into effect, "thereby increasing the risk of harm to public safety."[2]** Everytown therefore urges ATF to withdraw the proposed rule.

[1] Everytown for Gun Safety Support Fund is the education, research and litigation arm of Everytown for Gun Safety, the largest gun violence prevention organization in the country, with nearly 11 million supporters and more than 700,000 donors. The Everytown Support Fund seeks to improve our understanding of the causes of gun violence and help to reduce it by conducting groundbreaking original research, developing evidence-based policies, communicating this knowledge to the American public, and advancing gun safety and gun violence prevention in communities and the courts.

[2] ATF, Notice of Proposed Rulemaking, *Defining "Willfully" for Firearms Violations*, 91 Fed. Reg. 25201, 25207 (May 8, 2026).

To start, ATF's proposed interpretation of the GCA is flat-out wrong. The proposed rule would amend ATF's regulation on license revocations, 27 C.F.R. § 478.73, to define willful violations of the GCA as those in which a defendant "intends to engage in conduct that the law forbids and acts with actual knowledge that [their] conduct is unlawful."[3] But that new proposed definition contradicts the well-established understanding—honed across decades of court cases and agency guidance—that willful violations of the GCA in the civil context include reckless, not just knowing, violations. The proposed rule incorrectly interprets the GCA to break with this consensus, enabling FFLs to maintain their licenses despite recklessly engaging in unlawful conduct—an outcome that would create serious, unnecessary public safety risks.

The proposed rule misinterprets the GCA in other respects as well. The proposed rule would shield licensees from liability for employee violations of the GCA unless a licensee has actual knowledge of its employee's violation *and* ratifies it by (i) failing to cure the violation, (ii) concealing it, or (iii) failing to take appropriate remedial or disciplinary action against the employee.[4] This newly minted interpretation countermands the common-law understanding of vicarious liability. Under established common-law principles, FFLs can be liable for their employees' conduct without actual knowledge of it. ATF's new interpretation would not only upend that established understanding, but it would also discourage employers from diligently ensuring compliance with the GCA through basic preventive measures like employee background checks, training, and discipline. By weakening the compliance incentives that drive licensees to take those measures in the first place, the proposed rule would undermine safeguards that were clearly intended by the statute to prevent the trafficking and misuse of firearms.

Finally, ATF lacks discretionary policy authority to adopt the interpretive changes reflected in the proposed rule. ATF has no statutory authority to redefine statutory terms of art with a settled common-law meaning. "Willfully" is such a term, with a particular meaning in civil settings, and Congress has amended the GCA without disturbing that settled definition. Similarly, ATF cannot override established common-law principles of vicarious liability that govern FFL revocations. Absent an explicit delegation from Congress on these issues, ATF can at most offer its opinion on the best reading of the GCA. For all of the reasons discussed here, however, the proposed rule wrongly interprets the GCA. And even if ATF possessed some discretionary authority, the proposed rule would be an invalid use of that authority because it ignores the adverse incentives it would create for FFLs and the resulting harm to public safety, and it fails to justify any purported benefits.

For all these reasons, ATF should withdraw the proposed rule.

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[3] *Id.* at 25209.

[4] *See id.*

I. <u>ATF's proposed definition of "willfully" contravenes the text and purposes of the GCA.</u>

ATF proposes a definition of "willfully," as used in 18 U.S.C. § 923(e), that would effectively prohibit ATF from revoking an FFL's license for reckless violations of the GCA. The agency contorts precedent—most notably *Bryan v. United States*, 524 U.S. 184 (1998)—and basic principles of statutory interpretation to reach that result. But the agency's purported reinterpretation of the statute fails at each step. Longstanding judicial and agency interpretations of the GCA compel the conclusion that "willfully" in this context should be given its common-law civil meaning—a definition that plainly encompasses reckless violations. Precedent interpreting similar statutes refutes the agency's claims that making the same statutory term's definition context-dependent is improper. And even if ATF were correct that "willfully" should take on its criminal *mens rea* meaning in the civil context, the agency misreads *Bryan* to hold that *only* knowing violations of the Act can merit license revocation.

A. The longstanding common-law definition of "willfulness" confirms that the GCA authorizes license revocation for reckless violations of the Act.

The longstanding civil meaning of "willfulness" encompasses reckless violations, and nothing in the text of the GCA supports a different interpretation here. That understanding aligns with broad and deep precedent, from both courts and federal agencies, and it reflects the enforcement goals advanced by the 1986 amendments that introduced "willfully" into the statute.

Nearly 100 years of precedent make clear that, in the civil context, "willful" encompasses reckless conduct. As the Supreme Court has explained in a long line of cases, "willful" ordinarily means that an individual "either knew or showed reckless disregard for the matter of whether [their] conduct was prohibited by statute."[5] This unbroken line of cases arises from the "interpretive assumption that Congress knows how [a court] construes statutes and expects it to run true to form," as well as "the rule that a common law term in a statute comes with a common law meaning, absent anything pointing another way."[6]

There is no reason to depart from the common-law understanding of willfulness in interpreting the GCA. Indeed, courts of appeals uniformly agree that the definition of "willful" for the purposes of FFL license-revocation proceedings encompasses both knowing violations and reckless violations—namely, situations where a licensee is plainly indifferent to its

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[5] *See Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47 (2007); *McLaughlin v. Richland Shoe Co.*, 486 U.S. 128 (1988); *Trans World Airlines, Inc. v. Thurston*, 469 U.S. 111 (1985); *United States v. Ill. Cent. R. Co.*, 303 U.S. 239 (1938).

[6] *Safeco*, 551 U.S. at 48 (citations omitted).

obligations.[7] ATF asserts that this circuit-court consensus "rests on one case, *Safeco*."[8] But that is plainly wrong; many of the circuit court cases that permitted license revocations for recklessness (or plain indifference) were decided before *Safeco*. And *Safeco* itself was merely summarizing 80 years of precedent on the civil definition of "willful."[9]

That understanding of "willfully" is consistent with the legislative history of the GCA. The 1986 amendments to the Act, which added "willfully" to the provision of the GCA on license revocation, were geared to minimize the application of harsh penalties against those who made honest mistakes. But Congress recognized that licensees who make honest mistakes are differently situated from those who operate with reckless disregard for relevant statutes and regulations.[10] Courts have similarly recognized that although Congress's use of "willfully" does not sweep in "negligent" violations of the GCA, it does extend to "reckless violations."[11] This approach makes good sense from a public safety perspective. It is one thing to acknowledge the complexity of the GCA and to recognize that some licensees will make honest mistakes despite their genuine efforts to be in compliance; it is another thing entirely to incentivize licensees to inoculate themselves from liability by maintaining an intentional ignorance of the law or their own organization's conduct. Indeed, ATF at times acknowledges that under the proposed rule "avoidable violations could go uncorrected without the threat of consequences or incentive for mitigating or corrective action."[12]

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[7] *See Simpson v. Attorney General*, 913 F.3d 110, 114 (3d Cir. 2019) (joining all eight circuits to have considered the issue in holding that a person acts willfully under the GCA if he "(1) knew of his legal obligation under the GCA, and (2) either purposefully disregarded or was plainly indifferent to GCA requirements"); *accord General Store, Inc. v. Van Loan*, 560 F.3d 920, 923 (9th Cir. 2009) (holding that "'plain indifference'… is indistinguishable from a 'reckless' violation"); *Armalite Inc. v. Lambert*, 544 F.3d 644, 647-49 (6th Cir. 2008) ("Where willfulness is a statutory condition of civil liability, the Supreme Court has generally taken it to cover not only knowing violations of a standard, but reckless ones as well.") (cleaned up); *RSM, Inc. v. Herbert*, 466 F.3d 316, 321-22 (4th Cir. 2006) ("[W]hen determining the willfulness of conduct, we must determine whether the acts were committed in deliberate disregard of, or with plain indifference toward, either known legal obligations or the general unlawfulness of the actions."); *Fairmont Cash Mgmt., LLC v. James*, 858 F.3d 356, 362 (5th Cir. 2017); *Borchardt Rifle Corp. v. Cook*, 684 F.3d 1037, 1043 (10th Cir. 2012); *Article II Gun Shop, Inc. v. Gonzales*, 441 F.3d 492, 497 (7th Cir. 2006); *Willingham Sports, Inc. v. ATF*, 415 F.3d 1274, 1277 (11th Cir. 2005) (per curiam).

[8] 91 Fed. Reg. at 25203.

[9] *See* 551 U.S. at 57 (citing cases).

[10] *See, e.g.*, 131 Cong. Rec. S9101-05 (July 9, 1985) (Statement of Sen. Bob Kasten) ("The need for effective and appropriate law enforcement dictates that the Government not spend scarce resources prosecuting honest citizens who make mistakes, but the minority who operate in *disregard* of the law.") (emphasis added).

[11] *Armalite*, 544 F.3d at 647.

[12] 91 Fed. Reg. at 25207.

What is more, the Supreme Court and circuit-court consensus aligns with ATF's consistent interpretation of the statute as encompassing reckless violations.[13] This "longstanding practice of the government—like any other interpretive aid—can inform a court's determination of what the law is."[14] That the relevant agency and the judiciary have been aligned for decades on the meaning of "willfully" confirms this is not a close interpretive call. Rather, ATF is taking what had been a consensus view—one reflecting the common-law understanding that Congress is presumed to have embraced—and replacing it with its own definition of "willfully." That ATF would alter the longstanding meaning of "willfully" in this one civil context—to the apparent benefit of an industry the agency regulates—is particularly unjustified given the admitted (albeit undersold) public safety risks ATF would be creating through this new interpretation.[15] This kind of regulatory freelancing, in the face of overwhelming authority to the contrary, is precisely the sort of agency action *Loper Bright* reined in.

B. *Bryan* does not negate the longstanding meaning of "willfully" for license revocations under the GCA.

ATF is wrong that *Bryan v. United States*[16] compels a different understanding of the meaning of willfulness under § 923(e).[17] Indeed, ATF's reliance on *Bryan* is misplaced for two reasons: First, even in the criminal context, *Bryan* does not reject plain indifference as a way to show a willful violation. Second, Supreme Court precedent is clear that "willfully" can mean different things in criminal and civil applications, even when used in the same statute.

As an initial matter, ATF fundamentally misreads *Bryan*, which interpreted the provision of the GCA that imposes criminal penalties on anyone who "willfully violates" a provision of the Act.[18] In ATF's view, *Bryan* established that a defendant must "deliberately violate a known legal duty" under the Act to be considered to have "willfully" violated it—and that mere "unintentional conduct that showed a plain indifference" to GCA requirements would therefore

[13] *See, e.g.*, ATF O 5370.1B (2013) at 5 ("The term willfulness means a purposeful disregard of, or plain indifference to, a known legal obligation. ATF is not required to prove the licensee intended to violate the law. Rather, ATF must prove that the licensee knew his legal obligations under the GCA and either disregarded those obligations or demonstrated a plain indifference to them."); ATF O 5370.1C (2017) at 2 (similar, but expressly encompassing a "reckless disregard of a known legal obligation"); ATF O 5370.1H (2025) at 3 (retaining, in May 2025, a definition of willfulness that includes both "a plain indifference to, [and] a reckless disregard of a known legal obligation"); *see also* Appellee Br. 18-19, *Willingham Sports, Inc. v. ATF*, 2005 WL 3577668, No. 05-10755-A (11th Cir. 2005) (advocating for "willfulness" to encompass circumstances "where the licensee knows of a legal obligation and either purposefully disregards or is plainly indifferent to its requirements").

[14] *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386 (2024) (cleaned up).

[15] *See infra* Section III.B.

[16] 524 U.S. 184.

[17] *See* 91 Fed. Reg. at 25202.

[18] 524 U.S. 184, 186; *see also* 18 U.S.C. § 924(a)(1)(D).

be insufficient.[19] In other words, ATF contends that *Bryan* effectively eliminated liability for "reckless" violations of the GCA.[20]

That is not what *Bryan* held. Rather, it established that to be subject to the GCA's criminal penalties, a criminal defendant must act with general "knowledge that [their] conduct is unlawful,"[21] and *not* with "more particularized" knowledge of the "specific law or rule" that they are accused of violating.[22] Courts have subsequently clarified that "*Bryan* … did not overturn longstanding Supreme Court precedent holding that reckless disregard can amount to criminal willfulness."[23] Indeed, in *RSM, Inc.*—one of the cases ATF cites for the proposition that circuit courts have "incorrectly" interpreted "willfully" as used in § 923(e)[24]—the Fourth Circuit, *applying* the standard in *Bryan*, held that a licensee's "plain indifference toward[] either known legal obligations or the general unlawfulness of [its] actions" is sufficient to demonstrate willfulness under **both** *Bryan* and § 923(e).[25] The Seventh Circuit has similarly explained that it is "incorrect" to say that "*Bryan* eliminated the 'plain indifference standard' and held that willfulness requires a 'bad purpose to disobey or to disregard the law.'"[26]

ATF implicitly recognizes that *Bryan* is not as limiting as the agency elsewhere suggests. Despite proposing a definition of "willfully" that would require a knowing violation of the GCA—i.e., that a person "intends to engage in conduct that the law forbids and acts with actual knowledge that the … conduct is unlawful"[27]—ATF would allow evidence of repeat violations and "willful blindness" to establish the required intent.[28] ATF claims this covers "much of what a proper definition of 'plain indifference' would have captured."[29] But that move just acknowledges that a licensee's plain indifference to the GCA's requirements *is* sufficient for license revocation; ATF, apparently, just wants to give licensees one free reckless bite at the apple. Nothing in *Bryan* supports that result.

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[19] *See* 91 Fed. Reg. at 25202-03.

[20] *See id.* at 25203; *see also General Store*, 560 F.3d at 924 (equating "plain indifference" with "a reckless violation").

[21] 524 U.S. at 192.

[22] *Id.* at 190-92; *see also id.* at 198-99 (explaining that "disregard of a known legal obligation" is "not necessary" … to "establish a willful violation" of the GCA).

[23] *United States v. Blankenship*, 846 F.3d 663, 672 (4th Cir. 2017).

[24] 91 Fed. Reg. at 25203 n.6.

[25] 466 F.3d at 321-22.

[26] *Article II Gun Shop*, 441 F.3d at 497.

[27] 91 Fed. Reg. at 25209.

[28] *Id.* at 25204.

[29] *Id.*

Regardless of how ATF reads *Bryan*, any daylight between the meaning of "willfully" in the civil and criminal provisions of the GCA is permissible because courts often read more searching intent requirements into a criminal provision of the same statute. Both *Bryan* and *Safeco* support, rather than refute, that approach. As *Bryan* explained, "willfully" is "a word of many meanings whose construction is often dependent on the context in which it appears."[30] The Supreme Court emphasized that it was interpreting "willfully" in that case specifically in the "criminal context," where the term "typically refers to a culpable state of mind."[31] *Safeco* relied on this discussion in *Bryan* in distinguishing the "[c]ivil use of the term"[32] and giving "'willfully' two distinct meanings within a single statute."[33] The Court explained that "in the criminal law 'willfully' typically narrows the otherwise sufficient intent, making the government prove something extra, in contrast to its civil law usage."[34] It was for that reason that the Court concluded that "[t]he vocabulary of the criminal side of [the statute] is consequently beside the point in construing the civil side."[35]

Safeco is far from an outlier in adopting different definitions of the same *mens rea* language across one statute depending on whether the relevant provision is criminal or civil in nature. For decades, the Supreme Court has read a more searching intent requirement into the Sherman Act for criminal, as distinct from civil, antitrust violations. Even though "[b]oth civil remedies and criminal sanctions" under the Sherman Act "are authorized with regard to the same generalized definitions of the conduct proscribed … without reference to or mention of intent or state of mind," the Court has held that only "criminal offenses defined by the Sherman Act should be construed as including intent as an element."[36]

Likewise, courts have consistently understood "willfully" to require a greater showing in the criminal, as opposed to civil, context under the Bank Secrecy Act—a statute that closely mirrors the structure of the GCA.[37] Relying on *Safeco*'s "clear articulation of the distinct meanings that attach to the term 'willfully' in the civil and criminal contexts—even within the same statute[,]" the Fourth Circuit confirmed that "a 'willful' violation" of the § 5321 civil-penalty provision "includes both knowing and reckless violations, even though more is required

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[30] 524 U.S. at 191 (quotation marks omitted).

[31] *Id.*

[32] 551 U.S. at 57 n.9.

[33] *United States v. Horowitz*, 978 F.3d 80, 88 (4th Cir. 2020) (discussing *Safeco*).

[34] *Safeco*, 551 U.S. at 60.

[35] *Id.*

[36] *United States v. U.S. Gypsum Co.*, 438 U.S. 422, 438, 443 (1978).

[37] One section of the statute authorizes civil penalties for "any person willfully violating, or willfully causing any violation of" one set of provisions of the statute. 31 U.S.C. § 5321(a)(5)(C). And in the next section, the statute authorizes criminal penalties for any "person willfully violating this subchapter or a regulation prescribed or order issued under this subchapter." *Id.* § 5322(a).

to sustain a criminal conviction for a willful violation of the same requirement under § 5322."[38] In fact, just as with the license-revocation provision of the GCA, "[e]very court of appeals to consider the construction of 'willful' in Section 5321 of the Bank Secrecy Act has determined that civil liability lies where the United States proves the defendant acted at least recklessly."[39]

Given this robust line of case law interpreting "willfully" differently across the civil and criminal provisions of the same statute, there is no obstacle to interpreting "willfully" differently under civil, as opposed to criminal, provisions of the GCA.

II. <u>The GCA does not permit ATF's proposed limits on vicarious liability.</u>

ATF's proposed reinterpretation of the GCA's vicarious liability standard is even more misguided. Despite ATF's attempt to jettison it in the proposed rule, the GCA firmly incorporates the traditional, common-law understanding of vicarious liability. Vicarious liability is an "elementary" common-law principle,[40] and the Supreme Court has been clear that "where a common-law principle is well established … the courts may take it as given that Congress has legislated with an expectation that the principle will apply except 'when a statutory purpose to the contrary is evident.'"[41] Those principles are dispositive here, as there is no statutory basis to read common-law vicarious liability principles out of the GCA. The license-revocation provision authorizes ATF to "revoke any license issued under this section if the holder of such license has willfully violated any provision of this chapter or any rule" thereunder.[42] Nothing in that text suggests an intent to diverge from the common-law understanding of when "the holder of such license" is responsible for an employee's willful violation.[43]

That the law places responsibility on entities or employers for the conduct of employees should not be controversial. Respondeat superior is a longstanding feature of agency law.[44] And it is a principle that carries particular force when there are public safety reasons for that assignment of responsibility. After all, a "business entity cannot be left free to break the law merely because its owners … do not personally participate in the infraction."[45] Indeed, in some statutory contexts the law places even criminal responsibility on *individuals* in supervisory

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[38] *Horowitz*, 978 F.3d at 88.

[39] *United States v. Reyes*, 164 F.4th 78, 86 (2d Cir. 2026).

[40] *United States v. A & P Trucking Co.*, 358 U.S. 121, 125 (1958) ("[I]t is elementary that … impersonal entities can be guilty of 'knowing' or 'willful' violations of regulatory statutes through the doctrine of respondeat superior.").

[41] *Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 108 (1991) (citations omitted); *see also Neder v. United States*, 527 U.S. 1, 21 (1999).

[42] 18 U.S.C. § 923(e).

[43] *Id.*

[44] Restatement (Third) of Agency § 2.04 (Am. L. Inst. 2006) ("An employer is subject to liability for torts committed by employees while acting within the scope of their employment.").

[45] *A & P Trucking*, 358 U.S. at 126.

positions. As the Supreme Court has explained, "[t]he requirements of foresight and vigilance imposed on responsible corporate agents are beyond question demanding, and perhaps onerous, but they are no more stringent than the public has a right to expect of those who voluntarily assume positions of authority in business enterprises whose services and products affect the health and well-being of the public that supports them."[46]

Holding licensees liable for the actions of their employees under the GCA is consistent with the manifest public safety purposes of the statute: "to provide support to Federal, State, and local law enforcement officials in their fight against crime and violence," without unduly restricting law-abiding citizens.[47] That an FFL did not know of or expressly authorize an employee's violation of the GCA in advance does not affect whether a firearm has been sold to someone with a dangerous background or has been unlawfully diverted; the threat to the public is the same in each case. FFLs know that they are selling a dangerous product and that lapses in oversight can put firearms directly into the hands of prohibited purchasers. They are uniquely situated to forestall their employees' violations before a firearm ever reaches a dangerous purchaser. A vicarious-liability regime that creates incentives for close supervision of employees thus furthers the purposes of the GCA and promotes public safety.

Against that backdrop, federal courts reviewing ATF license-revocation decisions have consistently read the GCA to incorporate the common-law understanding of vicarious liability. Courts have held FFL employers liable for the willful violations of their employees acting within the scope of employment, without inquiring into the employer's knowledge, approval, or remedial response.[48] This is consistent with how courts interpret vicarious liability in other statutory contexts. The common-law understanding is presumed even in statutes dealing with the higher stakes of criminal penalties,[49] and even when a statute enumerates specific circumstances

[46] *United States v. Park*, 421 U.S. 658, 672 (1975).

[47] Gun Control Act of 1968, Pub. L. No. 90-618, § 101, 82 Stat. 1213, 1213-14.

[48] For instance, the Seventh Circuit has held that when "the licensee is a corporation, it is chargeable with the conduct and knowledge of its employees." *Stein's Inc. v. Blumenthal*, 649 F.2d 463, 467-68 (7th Cir. 1980); *see also Moreno v. ATF*, 113 F.Supp.3d 916, 923-24 (W.D. Tex. 2015) ("Petitioner does not dispute that the sale occurred, or that it was transacted by an employee in the course and scope of his employment with her. The employee's actions are therefore imputed to Petitioner."). Similarly, the Fifth Circuit has rejected the argument that the actions of a "rogue employee" can allow a licensee to escape liability, holding instead that an employee's "multiple undisputedly willful violations of the Gun Control Act" were attributable to the licensee "and authorized the ATF to revoke its" license. *Fairmont Cash Mgmt.*, 858 F.3d at 362-63.

[49] *See United States v. Bank of New England, N.A.*, 821 F.2d 844, 856 (1st Cir. 1987) ("The acts of a corporation are, after all, simply the acts of all of its employees operating within the scope of their employment. The law on corporate criminal liability reflects this."); *Standard Oil Co. of Tex. v. United States*, 307 F.2d 120, 127 (5th Cir. 1962) (holding corporations criminally responsible for acts of agents is "part of the law of respondeat superior," and an employee's "violation of [corporate] instructions" does not "shield the corporation from criminal responsibility").

in which employers are liable for the actions of their employees.[50] Common-law vicarious liability is the expected norm; any language in the statute not specifically pointing to the contrary has been read as "intended to supplement, and not to supplant, the common law theory of respondeat superior as a basis for vicarious liability."[51]

ATF's proposal to essentially rewrite § 478.73(c)(3) would abandon these longstanding principles of vicarious liability and create a firearms licensing regime that would frustrate the animating enforcement goals of the GCA. Under ATF's proposed rule, the agency could revoke an FFL's license for an employee's conduct only if the licensee both had actual knowledge of the employee's violation and ratified it by (i) failing to cure the violation, (ii) concealing it, or (iii) failing to take appropriate remedial or disciplinary action against the employee.[52]

There are many problems with this approach. For one thing, this novel standard would require complicated, burdensome fact-finding by courts and the agency to enforce. More importantly, ATF would be granting an industry an unprecedented and unwarranted safe harbor that is not according to law and not found in any other context, as liability would hinge almost entirely on steps the licensee took or failed to take *after* the violation occurred. These *post hoc* measures may already be considered by ATF when determining whether license revocation is the appropriate response to a given GCA violation. But allowing FFLs to avoid revocation *whenever* they take *post hoc* action would substantially reduce the incentive for licensees to put in place precautionary or supervisory measures to *prevent* violations of the Act. Such measures include training employees on legal compliance, recordkeeping, and recognizing the warning signs of straw purchasing. Another essential prophylactic measure, as the firearm industry's own trade association recognizes, is employee background checks.[53] Such checks reduce the risk that licensees will bring on the kinds of employees who are disproportionately likely to contribute to unlawful firearms sales and diversion. But FFLs have much less incentive to do a check on the

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[50] *Hollinger v. Titan Cap. Corp.*, 914 F.2d 1564, 1578-79 (9th Cir. 1990) (concluding that an express statement by Congress about employer liability was insufficient to displace the background assumption that vicarious liability still generally applies).

[51] *Id.* at 1576-77.

[52] *See* 91 Fed. Reg. at 25209.

[53] *See Great Reasons to Conduct Pre-Employment Background Checks*, NSSF, Jan. 6, 2017, *available at* https://web.archive.org/web/20251107191533/https:/www.nssf.org/articles/great-reasons-to-conduct-pre-employment-background-checks/ (describing employee background checks as "an essential component of your store's overall security planning"); *Employee Background Checks — Yes, You Should*, NSSF, Feb. 24, 2016, available at https://web.archive.org/web/20250715042443/https:/www.nssf.org/articles/employee-background-checks-yes-you-should/ ("Be sure to conduct a background check to include anyone who may be in possession of firearms in your store. This could be the person receiving, anyone with keys or combinations to the firearms vault or showcases, gunsmiths, salespeople, etc."); *Employee Theft — Discovering it, Stopping it, Preventing it,* NSSF, Feb. 26, 2015, *available at* https://web.archive.org/web/20250621083528/https:/www.nssf.org/articles/employee-theft-discovering-it-stopping-it-preventing-it/ ("Your employee theft-prevention efforts should be part of the company culture … Do you retain the services of a qualified company to perform criminal conviction checks?").

front end if they can avoid license revocation on the back end by taking remedial action against any employee who gets caught. What is more, this change would particularly benefit larger retailers—i.e., the very entities with the resources to implement reasonable preventive measures—as those are the FFLs who will be able to more plausibly claim they lacked knowledge of an individual employee's conduct.

Courts have consistently rejected this type of watered-down liability regime, and for good reason—many more violations of the GCA would have occurred or gone unaddressed if FFLs could escape vicarious liability through some post hoc *mea culpa*. For instance, the district court in *Moreno v. ATF* upheld ATF's license revocation after an employee sold a rifle from the licensee's store in the parking lot of a local restaurant, even though the licensee lacked knowledge of the violation and "took remedial actions upon learning of it."[54] Similarly, in *Fairmont Cash Management, L.L.C. v. James*, an employee repeatedly sold guns to undercover ATF employees, and the Fifth Circuit upheld ATF's decision to revoke the FFL's license on the grounds that the FFL was "vicariously liable for the illegal acts of its employees regardless [of] whether it approved of them."[55] The court did so despite the FFL's argument that the employee in question was a "rogue" employee whose actions could not be imputed to the FFL.[56] These were not cases in which the FFL took the fall for a one-time slip by one bad-apple employee. Rather, the bad actions of the employee were the result of an employer-fostered culture of willful ignorance of the law or gross lack of oversight: the FFL in *Moreno* had failed to allow ATF to inspect her business and had failed to keep good records on numerous occasions;[57] and the "rogue" employee in *Fairmont Cash Management* was one of many problematic employees at the business who, collectively, racked up a total of 78 violations of the GCA.[58] Had ATF's proposed rule been in effect and applied by a court, each of these licensees might have escaped liability through their proffered defenses, and there would have been little incentive for those or other FFLs to implement safeguards or mechanisms to ensure the same violations did not recur.

III. <u>**The proposed rule is purely interpretive and would have no effect on courts' application of the GCA.**</u>

In addition to misreading the GCA, the proposed rule suffers from a more basic flaw: ATF has no policymaking authority over the subject matter at issue in the proposed rule. Rather, and as the agency at times appears to acknowledge, the proposed rule simply reflects an "interpretive analysis."[59] Accordingly, even if the proposed rule were promulgated, courts

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[54] 113 F. Supp. 3d at 923-24.

[55] 858 F.3d at 358, 363.

[56] *Id.* at 362.

[57] 113 F. Supp. 3d at 918-19.

[58] 858 F.3d at 358-59.

[59] 91 Fed. Reg. at 25205.

would not defer to the agency's interpretation under *Loper Bright*,[60] and ATF could repeal the rule without notice and comment.[61] That the proposed rule would carry no real legal weight if finalized suggests that ATF's purpose in promulgating it would only be to attempt to tie the agency's own hands—unduly narrowing the revocation actions ATF can bring and seeking to prevent even future administrations from applying the longstanding meaning of "willfully." By effectively prohibiting ATF from pursuing license revocations in the face of reckless violations of the GCA or ATF regulations, the proposed rule would attempt to lock the agency itself into an unlawfully narrow understanding of its own authority—an understanding that ATF perhaps expects would escape judicial review, given the obstacles to challenging agency non-enforcement decisions. To be sure, ATF has some case-by-case enforcement discretion under § 923(e). But misreading the Act is not an exercise of enforcement discretion; it is an abdication of the agency's statutory responsibilities. ATF has no authority to attempt to rewrite critical provisions of the GCA by codifying that (mis)interpretation in the Code of Federal Regulations.

A. ATF has no delegated authority to discretionarily define "willfully" in § 923(e) or to jettison common-law principles of vicarious liability.

After *Loper Bright*, an agency presumptively lacks authority to alter a statute's substantive reach unless there is evidence that a statute clearly "delegates [such] discretionary authority to an agency."[62] Absent such authority, courts will "independently interpret the statute and effectuate the will of Congress."[63]

Congress did not delegate to ATF discretionary authority to define "willfully" in § 923(e) of the GCA. Indeed, ATF does not even argue that it *has* that discretionary authority. The closest it comes is its conditional claim that "[i]nsofar as any aspects of this rulemaking *may* represent an exercise of discretionary authority by ATF … the GCA at 18 U.S.C. 926(a) delegates such discretion to ATF."[64] But the broad general power under § 926(a) to "prescribe only such rules and regulations as are necessary to carry out the provisions of this chapter" does not create discretion under the circumstances here.

When Congress employs technical or industry-specific terminology, agencies charged with administering the statute may often fill in the details of such terms, consistent with the

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[60] 603 U.S. at 413.

[61] 5 U.S.C. § 553(b) (expressly exempting "interpretive rules" from notice and comment requirements); *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 101 (2015) (holding that "[b]ecause an agency is not required to use notice-and-comment procedures to issue an initial interpretive rule, it is also not required to use those procedures when it amends or repeals that interpretive rule").

[62] 603 U.S. at 395.

[63] *Id.*

[64] 91 Fed. Reg. at 25205 (emphasis added).

terms' ordinary usage and statutory context.[65] But when Congress uses a term with a settled common-law meaning, courts "must infer, unless the statute otherwise dictates, that Congress means to incorporate the established meaning of these terms."[66] Courts have repeatedly read the common-law definition of "willfully" into § 923(e),[67] and Congress has amended the GCA without ever disturbing that settled meaning. Moreover, intent is a quintessentially legislative question because the level of culpability required for liability (or here, license revocation) is key to the substantive reach of a statute. "Congress knows how [courts] construe statutes" that address intent, including the specific meaning of "willfully."[68] There are thus no details about the meaning of that term for ATF to "fill up."[69]

Similarly, the GCA does not delegate to ATF the authority to modify the common-law presumption of vicarious liability. In *Meyer v. Holley*, the Supreme Court applied that presumption to the Fair Housing Act.[70] There, as here, the statute said "nothing about vicarious liability."[71] But because it was "well established that traditional vicarious liability rules ordinarily make principals or employers vicariously liable for acts of their agents or employees in the scope of their authority or employment," and there was an absence of contrary congressional intent, the Court held that the statute did not deviate from those rules.[72] ATF at times describes its vicarious-liability proposal "as a matter of policy."[73] But it never explains how it could have the discretion to impose its policy preferences to override Congress's reliance on established and controlling common-law vicarious liability principles.

B. Even if ATF had the requisite discretionary authority, the proposed rule would still be arbitrary and capricious.

Even if a court found that ATF has the discretionary authority to define "willfully" or to limit the extent of vicarious liability, the exercise of that authority reflected in the proposed rule would still be unlawful because it would not satisfy the requirements of reasoned decision-making.[74] Specifically, in exercising any discretion the statute confers, ATF must show it has

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[65] *See Bondi v. VanDerStok*, 604 U.S. 458, 464, 470-72 (2025).

[66] *Neder*, 527 U.S. at 21; *see also Morissette v. United States*, 342 U.S. 246, 263 (1952) (where Congress "borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word").

[67] *Supra* Section I.A.

[68] *Safeco*, 551 U.S. at 58.

[69] *Loper Bright*, 603 U.S. at 395.

[70] 537 U.S. 280 (2003).

[71] *Id.* at 285.

[72] *Id.*

[73] 91 Fed. Reg. at 25205.

[74] *See Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

"examine[d] the relevant data and [must] articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'"[75] And it cannot ignore "an important aspect of the problem" or "offer[] an explanation for its decision that runs counter to the evidence before" it.[76] The proposed rule defies those requirements.

First, ATF has failed to consider a central aspect of the problem before it: the effect the rule would have on FFL incentives—and thus, on public safety. To be sure, ATF gestures at "some risk to public safety from FFLs that do not take the necessary steps to rehabilitate neglectful practices."[77] But its discussion of these risks—that it euphemistically downplays as "unfavorable social outcomes"—in the section of the proposed rule on "Costs" illustrates the key piece that is missing from the agency's reasoning. There, ATF discusses the number of revoked federal firearms licenses per year (an average of 152 from 2022 to 2024) and posits that "an unknown proportion *of these 152 violators per year* might continue to violate the existing regulations, thereby increasing the risk of harm to public safety."[78] But the assumption that the average number of violators would remain unchanged, in the face of revisions to GCA regulations that would make it harder to revoke FFL licenses, is unreasoned and ignores that federal regulatory policy affects FFL incentives.

Under the proposed rule, a licensee would know that it can escape liability for employee conduct so long as it takes some action after the violation has already occurred. That knowledge would meaningfully alter the licensee's risk assessment when it comes to supervising employees and putting in place compliance measures. That risk is particularly acute because certain violations of federal firearms law simply cannot be undone. Even one mistake on a firearm transaction or inventory record can mean an untraceable crime gun and an investigation going cold, yet the most common violations cited by ATF are indeed failures to complete such records accurately and completely as prescribed.[79] Once an FFL fails to run a required background check, or transfers a firearm to a prohibited person, the gun is in the community. No subsequent corrective action by the licensee can retrieve it or unwind the danger it poses. There are thus real-world consequences to what ATF and some commenters at times dismiss as "paperwork mistakes."[80] This is the type of harm that no after-the-fact remediation by the FFL can prevent.

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[75] *Id.* (citation omitted).

[76] *Id.*

[77] 91 Fed. Reg. at 25207.

[78] *Id*. (emphasis added).

[79] *See* Bureau of Alcohol, Tobacco, Firearms and Explosives, Fact Sheet – Facts and Figures for Fiscal Year 2025, http://www.atf.gov/resource-center/fact-sheet/facts-and-figures-fiscal-year-2025 (last accessed Aug. 3, 2026) (citing a "[f]ailure to maintain an accurate/complete/timely acquisition and disposition record of firearms" pursuant to 27 C.F.R. § 478.125(e) as the top firearms violation in 2025, with 40,763 total violations).

[80] *See, e.g.*, 91 Fed. Reg. at 25204; Nat'l Rifle Ass'n, Comment Letter on Proposed Rule Defining "Willfully" for Firearms Violations at 19 (July 11, 2026).

Likewise, if the proposed rule were finalized, a licensee would also know that it is much harder to revoke a federal firearms license for a first-time offense, as one instance of plain indifference to the GCA's requirements is not enough to merit license rescission under the proposed definition in § 478.73(c)(1). So an FFL would have strong incentives to wait until ATF has identified a first-time violation before investing the time and resources to put in place preventive measures.

If ATF takes both recklessness (i.e., plain indifference) and ordinary principles of vicarious liability off the table, it creates an inevitable and pernicious moral hazard—encouraging licensees to look the other way in light of an easily exploitable immunity gambit. Ignoring these adverse incentives is directly contrary to the GCA's aim to limit access to firearms by "those whose possession thereof [is] contrary to the public interest" by channeling commerce in firearms through a regulatory scheme focused on "federally licensed … dealers."[81]

Second, and relatedly, ATF ignores key aspects of how reckless FFLs undermine public safety. Trafficked and crime guns do not appear out of thin air—they have to come from somewhere, and, more often than not, that "somewhere" is the legal market. Everytown's research estimates that by the end of 2026, roughly 1.27 million guns will have been illegally trafficked since 2017, and that the vast majority of those guns—96 percent—were once part of the inventory of a licensed dealer.[82]

Theft and loss is one trafficking channel directly tied to FFLs. In 2025 alone, according to ATF, FFLs reported 10,383 firearms as lost or stolen, including 1,748 taken in burglaries, 1,338 in larcenies, 77 in robberies, and 7,220 unaccounted for as inventory "losses."[83] The agency's data also shows that more than 17 percent of 1,452 trafficking cases between 2017 and 2021 involved guns stolen from an FFL.[84] Those thefts can occur when FFL employees turn a blind eye to store security and inventory control. Similarly, situations where guns are "lost" through off-the-books transactions by complicit employees are troubling avenues for prohibited purchasers to access guns.

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[81] *Huddleston v. United States*, 415 U.S. 814, 824 (1974).

[82] *See* Nick Suplina, Marianna Mitchem & Chelsea Parsons, The Supply Side of Violence: How Gun Dealers Fuel Firearm Trafficking, Everytown for Gun Safety Support Fund (Dec. 2, 2025), https://everytownresearch.org/report/how-gun-dealers-fuel-firearm-trafficking/.

[83] *See* Bureau of Alcohol, Tobacco, Firearms & Explosives, 2025 Federal Firearms Licensee Theft/Loss Report (Mar. 5, 2026), https://www.atf.gov/firearms/report/firearms-theft-loss/2025-federal-firearms-licensee-theft/loss-report.

[84] *See* ATF, National Firearms Commerce and Trafficking Assessment (NFCTA), Volume III: Firearms Trafficking Investigations—Part III: Firearm Trafficking Channels and Methods Used, at 2 Tbl. FTC-02 (Apr. 2024), https://www.atf.gov/firearms/docs/report/nfcta-volume-iii-part-iii/download.

The two most common trafficking channels—straw purchasing and unlicensed dealing—are also connected to FFLs. This is because traffickers have to acquire their guns somewhere, and they overwhelmingly acquire them from licensed dealers, often through the very high-volume, repeat, or otherwise suspicious transactions a diligent FFL is positioned to detect and refuse.[85] Together, straw purchasing and unlicensed dealing account for more than half of all trafficked firearms.[86] This essentially means that FFLs with inadequate security, inventory management, employee oversight, and point-of-sale diligence sit at the head of every major trafficking pipeline. By overlooking the adverse incentives the proposed rule would create, the agency fails to appreciate the public safety risks that would result from limiting vicarious liability in this manner.

Third, on the other side of the ledger, ATF fails to justify any policy need for the rule. The agency expresses concern that, in applying the longstanding definition of "willfully," the result was "culpability [that] amounted to simple negligence."[87] But the NPRM is strikingly devoid of specifics, and it certainly does not identify an example of a *court* sustaining a revocation under circumstances that amounted to "simple negligence." The agency's discussion of the proposed rule's supposed benefits is similarly lacking: ATF points to an uptick in enforcement proceedings under the prior administration, but the agency never justifies its apparent assumption that the pre-2021 enforcement rates represent the "correct" baseline level of enforcement.[88] Instead, what is clear is that ATF views even the act of subjecting a potentially reckless FFL to a *hearing* as a significant harm.[89] But the "costs" imposed on FFLs of enforcing the Act by its terms is not some evil to be avoided; rather, that is how ATF holds unlawful licensees accountable and encourages others to stay within the bounds of the law.

Finally, ATF wholly ignores the fact that it provides to all licensees, free of charge, (1) an in-person qualification inspection that provides detailed guidance, instruction, and training on how to comply with the GCA, (2) three to four seminars per year in every state focused on providing guidance and training on how to comply with the GCA, (3) local ATF Field Office contact information if licensees ever have questions, and (4) in-person training on the GCA to any licensee upon request. ATF has thus taken substantial steps to reduce any costs and burdens

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[85] *See* Suplina et al., *supra* n.82.

[86] *See* ATF, NFCTA, Volume III at 2 Tbl. FTC-02, *supra* n.84.

[87] 91 Fed. Reg. at 25204.

[88] *See id.* at 25206.

[89] *See id.* At least one commenter appears to ask the agency to go even further in avoiding hearings, suggesting that willfulness must be "found" before ATF "can initiate FFL revocation." Gun Owners of America, Comments on ATF's "Willfulness" NPRM at 3 (July 7, 2026). Of course, ATF should determine that a violation—with the required degree of culpability—has occurred before initiating revocation. But to the extent this comment seeks a freestanding, pre-enforcement evidentiary standard that is specific only to willfulness, no such standard is authorized by the GCA.

on licensees for GCA compliance; what remains is the time and effort required to remain in compliance with the law, which is a cost that licensees should of course be asked to bear.

IV. Conclusion

In short, ATF should withdraw the proposed rule. It is wrong on the law and would impair, not promote, the GCA's public safety purposes. On the law, the proposed rule would override decades of settled judicial precedent and agency understanding. Those precedents definitively resolve the substantive questions that ATF purports to address through this proposed rule. And those precedents properly reflect the balance that ATF (at times) acknowledges it should achieve: holding accountable licensees that violate their GCA obligations, including those that turn a blind eye or ignore repeat violations, while not punishing good-faith licensees who make an innocent mistake. That current law already reflects this balance reinforces that the proposed rule serves no valid legal purpose and is instead an impermissible effort to codify a lax enforcement policy—one that seeks to prohibit ATF from scrutinizing reckless FFL practices that can, and too often do, have tragic results. That outcome would decidedly impair public safety. If ATF codified this rule, the predictable result would be that the agency jeopardizes public safety by making it more difficult to stop reckless licensees and their employees from violating the GCA. The better course—the one aligned with ATF's mission as well as the text and purposes of the GCA—is to abandon this endeavor and withdraw the proposed rule.

We appreciate the opportunity to submit this comment letter on behalf of Everytown and thank the agency for its careful attention to the legal and factual points raised in it.

Sincerely,

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