Congress of the United States Washington, DC 20515

October 20, 2022

The Honorable Joseph R. Biden, Jr. President of the United States of America The White House Washington, DC 20500

Dear President Biden:

The Trump administration moved export oversight of firearms and their technical data from the State Department to the Commerce Department, a change that removed critically important protections to prevent the distribution of computer files used to make 3D-printed firearms and their components. Consequently, it is far too easy for anyone to download from the internet the computer code to 3D-print unserialized, untraceable, plastic "ghost guns." These 3D-printed weapons circumvent our system of gun safety rules and regulations, and pose a serious threat to public safety and national security. We must do more to regulate them and keep them out of the wrong hands and off our streets, an effort that should include a return of their regulatory oversight to the State Department.

Before the Trump administration, 3D-printed firearms and their associated technical files were regulated as "defense articles" under the International Security Assistance and Arms Export Control Act of 1976 (the "Export Control Act"). As "defense articles," 3D firearms and their technical data were placed on the U.S. Munitions List and governed by the International Traffic in Arms Regulations ("ITAR"), which restrict exports of military technologies in order to protect U.S. national security and foreign policy objectives. This treatment was warranted given legitimate concerns that terrorist groups or outlaw nations could manufacture plastic guns, smuggle them through metal detectors at overseas airports, and use them in attacks, including assassinations, thereby putting Americans and others in grave danger.

The Trump administration undid those needed restrictions on 3D-printed firearms. Through rulemaking proceedings, the Trump administration removed 3D-printed gun files from the Munitions List and regulation under ITAR, instead placing them under the control of the Commerce Department — which regulates the export of non-Munitions List items under the Export Control Act. The Trump administration justified this change in part based on a

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¹ 22 U.S.C. § 2778(a)(1).

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"significant worldwide market for firearms in connection with civil and recreational activities such as hunting, marksmanship, competitive shooting, and other non-military activities."

Citing the threat to public health and safety posed by the distribution of blueprints for 3D-printed firearms on the internet, twenty-two states and the District of Columbia sued the State Department in federal district court in Washington State to stop the transfer of control over the computer code used to 3D-print firearms from the State Department to the Commerce Department.³ The district court issued an injunction blocking the Trump administration's rules from taking effect. But on appeal, the U.S. Court of Appeals for the Ninth Circuit — without reaching the merits of the policy change — concluded that the matter was not subject to judicial review and vacated the injunction, allowing the Trump rules to go into effect.⁴

During the 2020 presidential campaign, then-candidate Joe Biden promised to keep the computer code used to 3D-print firearms under State Department control.⁵ Instead, thus far, your Administration has allowed jurisdiction over them to remain at the Commerce Department, under the final rule the Trump administration issued in January 2020,⁶ which contains a glaring enforcement loophole that allows the dissemination of instructions for the printing of 3D guns. Specifically, although the rule continues to subject to export control "software" or "technology" for the production of a firearm or firearm frame or receiver, the scope of the enforcement guidance has been very limited. The rule applies only to software or technology that (1) is "made available by posting on the internet in an electronic format;" (2) is "ready for insertion" into a 3D printer;⁸ and (3) is in a particular file format for 3D printing, "such as AMF or G-code."

The Trump rule and enforcement strategy is far too narrow. First, its application only to files "made available by posting on the internet in an electronic format" would allow for posting an advertisement online offering 3D-firearm files and the delivery of those files by email. Second, because the rule also applies only to files that are "ready for insertion into" a 3D printer, it does not cover files that can be easily converted to a 3D-file-printing format (such as AMF or G-code) using commonly available 3D-printing software and then inserted into a 3D printer. Someone could therefore post raw design files online, along with a link to free software that could promptly convert them into a machine-readable format, thereby avoiding the rule. These are big loopholes for those seeking to print 3D guns to exploit.

² Control of Firearms, Guns, Ammunition and Related Articles the President Determines No Longer Warrant Control Under the United States Munitions List (USML), Docket No. 191107-0079, 83 FR 24166 (May 24, 2018).

³ State of Washington v. U.S. Den't of State 2:18-cy-01115. Compl. for Decl. and Inj. Relief (W.D. Wash, July 30).

³ State of Washington v. U.S. Dep't of State, 2:18-cv-01115, Compl. for Decl. and Inj. Relief (W.D. Wash. July 30, 2018).

⁴ State of Washington v. U.S. Dep't of State, 996 F.3d 552 (9th Cir. 2021).

⁵ Joe Biden's Plan to End Gun Violence, Joe Biden for President: Official Campaign Website (2020), https://joebiden.com/gunsafety/#.

⁶ Control of Firearms, Guns, Ammunition and Related Articles the President Determines No Longer Warrant Control Under the United States Munitions List (USML), Docket No. 191107-0079, 85 FR 4136 (Jan. 23, 2020).
⁷ Id. at 4162.

⁸ *Id*.

⁹ *Id.* at 4172.

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On May 5, 2021, shortly after the Ninth Circuit's decision, we wrote to you asking your Administration to undo the Trump rule change. Specifically, in that letter, to which we have yet to receive a response, we asked your Administration to transfer regulatory control over 3D-printed firearms and their technical data back to the State Department, return them to the Munitions List, and once again control them under ITAR. Ontinued oversight of 3D-printed firearms by the Commerce Department under the Trump rule carries unnecessary national security and public safety risks.

We therefore again urge you to undo the Trump 3D-gun rules, an action that is entirely within your authority, and return regulatory control over 3D-printed firearms and their technical data to the State Department. Through ITAR, the State Department has more experience and expertise with defense articles such as 3D-printed firearms and their technical data and is better positioned to enforce regulatory controls. Furthermore, the State Department's export controls require government approval before placing an item into the "public domain," but Commerce Department rules generally allow publication without pre-approval. Thus, any file that has already been published is automatically not subject to the Commerce Department's Export Administration Regulations, including the Trump 3D-printed gun rules.

If oversight is to remain at the Commerce Department, at a minimum, your Administration must strengthen the Trump administration's regulations and enforcement guidance so that they effectively control exports of computer files used to 3D-print firearms. Specifically, the Commerce Department should strike the "ready for insertion" qualification and clarify that "software' or 'technology' for the production of a firearm, or firearm frame or receiver" includes files that are emailed or otherwise made available to foreign persons. If the Commerce Department believes that the Trump rule is broad enough to apply to any known versions of currently viable 3D-firearm files, it should issue nonbinding guidance to that effect. Such guidance would put 3D-firearm file distributors on notice that they risk violating the Export Control Reform Act¹¹ if they disseminate these files.

To help us further understand the issues relating to the regulation of 3D-printed firearms and their technical data, we request that your Administration provide us with written answers to the following questions by November 9, 2022:

- 1. Will your Administration return regulatory oversight of 3D-printed firearms and their technical data back to the Department of State and under ITAR? If not, why not?
- 2. If your Administration chooses to keep regulatory oversight of 3D-printed firearms and their technical data at the Commerce Department, will it commit to strengthening the Trump regulations? Specifically, will the Commerce Department amend 15 C.F.R. § 734.7(c) by striking the "ready for insertion" qualification and clarifying that "software' or 'technology' for the production of a firearm, or firearm frame or receiver"

¹⁰ Letter from Senator Edward J. Markey to President Biden (May 5, 2021), https://www.markey.senate.gov/imo/media/doc/letter_to_biden_3d_guns.pdf

¹¹ 50 U.S.C. §§ 4801–4852.

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- includes files that are emailed or otherwise made available to foreign persons? If not, why not?
- 3. If the Commerce Department believes that the current version of 15 C.F.R. § 734.7(c) is broad enough to apply to any known versions of currently viable 3D-firearm files, will it issue guidance to that effect? If not, why not?

We applaud your commitment to protecting the public from gun violence with a particular focus on stopping the proliferation of ghost guns. As part of that priority, we believe transferring regulatory control of 3D-printed firearms and their technical data back to the State Department, or amending the Commerce Department's current regulations to close existing loopholes, would help avoid the proliferation of these dangerous, untraceable weapons.

We thank you for your prompt attention to this important public safety and national security issue, and look forward to your response. If you have any questions about this request, please contact Veda Beltran at Veda Beltran@markey.senate.gov or Mark Olson at Mark.Olson@mail.house.gov.

Sincerely,

Edward J. Markey **United States Senator**

Grace Meng Member of Congress

United States Senators

/s/ Sheldon Whitehouse

/s/ Cory A. Booker

/s/ Richard Blumenthal

/s/ Elizabeth Warren

Members of Congress

/s/ Nydia M. Velázquez

/s/ Eleanor Holmes Norton

/s/ Thomas R. Suozzi

/s/ Juan Vargas

/s/ Henry C. "Hank" Johnson, Jr

/s/ Bonnie Watson Coleman

/s/ Barbara Lee

/s/ Madeleine Dean

/s/ Raúl M. Grijalva

/s/ Bobby L. Rush

/s/ Ro Khanna

/s/ Karen Bass

/s/ Mike Doyle

/s/ André Carson

/s/ Dwight Evans

/s/ Jake Auchincloss

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Members of Congress /s/ Adriano Espaillat /s/ Betty McCollum /s/ Mark DeSaulnier /s/ Jerrold Nadler

/s/ Marie Newman