

ATF'S PROPOSED CHANGES TO FFL RECORDKEEPING REQUIREMENTS MUST SAFEGUARD GUN OWNERS' PRIVACY

I. INTRODUCTION AND SUMMARY.

Gun Owners of America (“GOA”) has become aware of a forthcoming Notice of Proposed Rulemaking (“NPRM”) to be issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”).¹ This NPRM reportedly will seek public comment on the appropriate duration of ATF’s business recordkeeping requirement for Federal Firearms Licensees (“FFLs”). Currently, a Biden-era requirement² demands that FFLs retain gun owners’ transaction records *forever*. Prior to that Biden-era requirement, promulgated in 2022, FFLs only needed to keep their records for 20 years.

Ideally, ATF’s record retention period should be *zero* years – a number that the statute permits and the Constitution requires. However, GOA is concerned that ATF may propose to change from the current *permanent* recordkeeping only to some fixed period of *20 years or more*. Of course, a retention period of 20 years would merely represent a return to the pre-Biden *status quo*, while a retention period in excess of 20 years would not even accomplish that. Neither of these options is what gun owners expect from this Administration.

There is also the issue of what ATF does with an FFL’s out of business records (“OOB”) when it receives them. Currently, ATF keeps these records *forever*, permanently digitized into ATF’s infamous registry of a *billion* gun owner transactions. That is simply unacceptable. Ever since GOA brought that issue to light in 2022,³ there have been serious concerns raised by gun

¹ President Trump’s nominee for ATF Director, Robert Cekada, recently explained to Senator Ted Cruz that, “in accordance with the President’s Executive Order, Protecting Second Amendment Rights, ATF has been working with the Department to conduct a thorough review of existing regulations to assess whether they infringe on Second Amendment rights. As part of this review, we are examining the law enforcement value of older firearm transaction records. The results of that review should be forthcoming shortly.” Response 2, *Questions of Senator Ted Cruz for Robert Cekada*, U.S. Senate Comm. on the Judiciary (Feb. 4, 2026), <https://tinyurl.com/4mxftaju>.

² See Definition of “Frame or Receiver” and Identification of Firearms, 87 Fed. Reg. 24652 (Apr. 26, 2022); 27 C.F.R. § 478.129(b).

³ See Aidan Johnston, *ATF’s Illegal Gun Owner Registry*, GOA (May 2022), <https://tinyurl.com/5crjf76m>.

owners, the media, and in both Houses of Congress. Simply maintaining the status quo, whereby ATF keeps OOB records permanently – a quintessential national gun registry – is a nonstarter. Thus, any rule promulgated by ATF with respect to how long *FFLs* are required to keep records must also address how long *ATF* maintains OOB records before destruction.

The *same* records must be destroyed by the *same* date regardless of whether they are held by the *FFL* or by *ATF*. For example, if *ATF* proposed a 20-year or more retention period for *FFLs* and a separate one for *ATF*, the situation could arise where some records are kept for up to 40 years or more – 20 years or more at the *FFL*, which then goes out of business, plus another 20 years or more at *ATF*'s OOB records center. Again, this is unacceptable.

In fact, that sounds a lot like a federal registry of *generations* of American gun owners – one that violates federal law at least twice over, and inevitably will inspire future attempts to confiscate the people's arms. Indeed, given that an American cannot even purchase a handgun from a dealer until age 21 (*see* 18 U.S.C. § 922(b)(1)), coupled with potentially *40 years or more* until records of that sale are destroyed, many persons will not live to see the day where the government does not retain records of their firearm purchases. Obviously, such pervasive monitoring of gun owners violates their Second Amendment right to be free from centralized federal registration of their personal (and very private) property.

In addition to the constitutional violation, any proposed retention period *ATF* might adopt that exceeds 20 years – the requirement that preexisted the change by Biden's *ATF* – also violates the Firearms Owners' Protection Act of 1986. This Act froze *ATF*'s ability to require the recordation or transfer of additional OOB records following its date of enactment. Accordingly, because of that statutory freeze, that particular statute permits *at most* *ATF*'s prior retention period of 20 years. And should *ATF* exceed this 20-year limitation, *GOA*'s ongoing litigation will

continue in *Morehouse Enterprises, LLC v. BATFE*, No. 3:22-cv-00116-PDW-ARS (D.N.D.). Indeed, GOA specifically challenged the “requirement that dealers maintain records in excess of 20 years....” Complaint ¶686, ECF No. 1.

Of course, an ATF working for “the most pro-Second Amendment” administration in history⁴ should not do *the bare minimum* for gun owners, merely reimplementing a prior 20-year retention period. Instead, and consistent with President Trump’s pro-Second Amendment policies, ATF’s own research on the matter, and even anti-gun organizations’ prior proposals, ATF should adopt an OOB retention period of much *less than* 20 years. Again, the retention period ideally should be *zero* years – a number that the statute permits and the Constitution requires. But if ATF insists on enforcing atextual and ahistorical recordkeeping requirements, then it should at least move the OOB ball towards the right endzone. Gun owners expect forward progress, not merely a reversal of Biden-era infringements.

II. BACKGROUND.

A. OOB Retention from 1968 to 1985.

The federal regulation of firearm businesses is a modern invention, dating only to 1938 originally and, in its current form, to the 1968 passage of the Gun Control Act (“GCA”). As relevant here, the GCA contemplates (*but does not require*) the maintenance of business records, providing only that each FFL “shall maintain *such records* of importation, production, shipment, receipt, sale, or other disposition of firearms at his place of business *for such period*, and in such form, *as the Attorney General may by regulations prescribe.*” 18 U.S.C. § 923(g)(1)(A) (emphases added). However, the GCA provides that, once an FFL’s “discontinuance of ... business is absolute,” any “records required to be kept ... shall be delivered within thirty days after the business discontinuance to the Attorney General” (now ATF). *Id.* § 923(g)(4).

⁴ <https://www.facebook.com/reel/1448305209966131>; <https://x.com/AAGDhillon/status/1977148523838857499>.

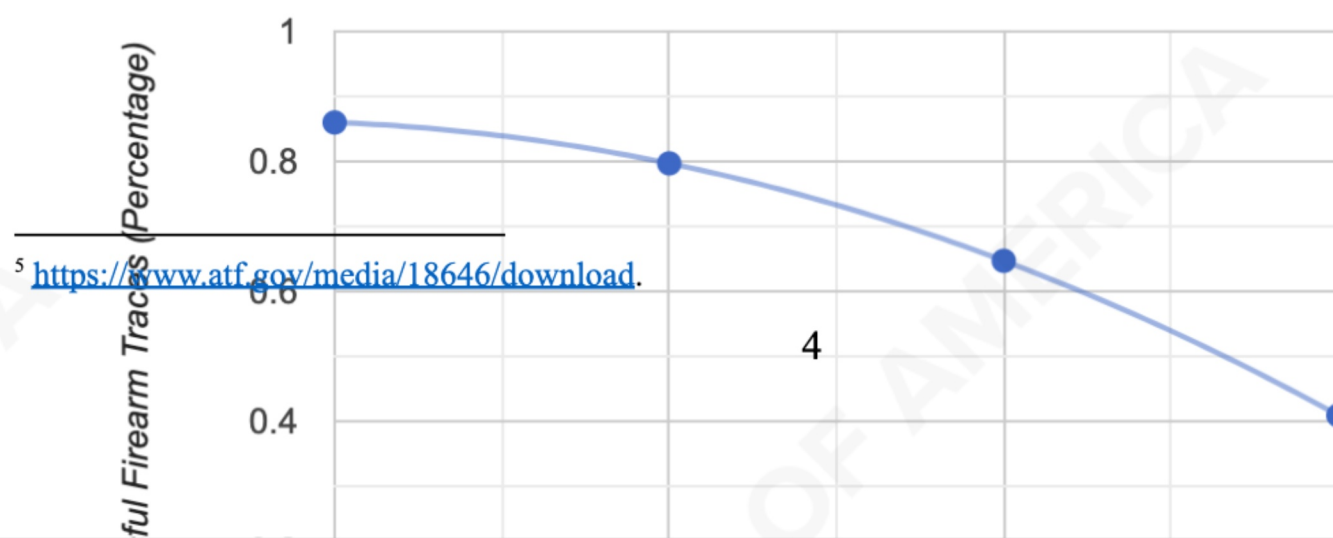
One such record that ATF requires be kept is the “Firearms Transaction Record,” or ATF Form 4473, which contains identifying information about each person who purchases a firearm from a licensed dealer.⁵ As ATF explained in 1985, these transaction records “allow[] the Government to trace the ownership of firearms...” Retention of Firearms Transaction Records, 50 Fed. Reg. 26702, 26702 (June 28, 1985). For the first 17 years following the GCA’s 1968 enactment, ATF initially required FFLs to maintain these “records of firearms transactions ... permanently,” until such time that the GCA required a discontinuing FFL to transfer its OOB records to ATF. *Id.*

B. ATF’s 1985 Change to OOB Retention.

ATF’s initial, permanent OOB retention requirement did not last. Citing “ever-increasing storage costs” and an ATF study confirming the limited utility of decades-old OOB records, ATF amended its retention requirement in 1985, adopting a more workable “20 year record retention period....” 50 Fed. Reg. at 26702. This period, ATF observed, would still allow some “86% of [firearm] traces [to] be made,” while the loss of ATF’s ability to trace the remaining “14% ... c[ould] be justified by the reduction in cost of the paperwork burden.” *Id.* at 26703. Other retention periods offered different trace success rates. As ATF observed:

With a retention period of five years; we would lose the ability to trace 59.1% of the firearms; with a period of 10 years, we would lose 35.3%; and with a period of 15 years, we would lose the ability to trace 20.3% of the requested traces. [*Id.*]

In other words, ATF’s own study shows that trace success falls off dramatically after about 15 years:



But even trace success does not necessarily correlate with solved crimes or criminal convictions.

ATF has released “no data to show how many trace requests lead to an arrest or a conviction.”⁶

Indeed, ATF certified to 52 members of the House of Representatives that:

“The NTC [or National Tracing Center] has no ability to determine the successful prosecution of hundreds of thousands of crime gun traces it completes annually, nor does it have any way to link a trace for a specific prosecution for a particular year.”⁷

Rather, all a trace accomplishes is identifying “who first purchased a gun – not the owner when it was used in a crime.” *Id.* If anything, the *older* an OOB record is, the *less* likely it is that it reflects the firearm’s current owner. Indeed, people buy and sell firearms all the time, and the same firearm may change hands repeatedly over the years. ATF can hardly justify keeping *nearly a billion* gun owner records for decades on end without evidence that tracing these much older firearms leads to actual success in criminal cases.⁸

Moreover, given the dubious effectiveness of even *completed* firearm traces, it is curious that ATF never cited gun owners’ *privacy* – much less the Second Amendment’s flat prohibition

⁶ <https://interactive.wbez.org/everyotherhour/barely-a-trace/>.

⁷ <https://www.gunowners.org/wp-content/uploads/Letter-Response-Rep.-Michael-Cloud-R-TX-51-x-GOP-co-signers-Federal-Gun-Registry-signed-letter.pdf>.

⁸ Johnston, *supra*.

of any “infringement” of the right to keep and bear arms – as justification to reduce the 1985 retention period. Yet it seems obvious that, if mere *bureaucratic efficiency* and *cost savings* can “justify” lowering recordkeeping requirements in spite of some loss in the ability to trace firearms, then protecting an enumerated constitutional right should justify far more in terms of record deletion. Regardless, despite ATF’s choice in 1985 of 20 years for record retention, Congress would step in to protect gun owners’ privacy just one year later.

C. The Firearms Owners’ Protection Act of 1986.

In 1986, Congress enacted the Firearms Owners’ Protection Act (“FOPA”) in part to assuage the public’s growing fears that ATF would use OOB records to create a central registry of gun owners. Just two years prior, the film “Red Dawn” had released to great commercial success. In one scene depicting a Soviet-backed invasion of the United States, invading Nicaraguan troops were instructed to “[g]o to the sporting goods store” and “[f]rom the files, obtain form 4473,” which “w[ould] contain descriptions of weapons and lists of private ownership” for confiscation.⁹ The American public widely understands that FFL recordkeeping requirements established a de facto registry of gun owners. In fact, some commenters on ATF’s 1985 rulemaking expressed “fears that the recordkeeping will be used as a data base for future firearms registration.” 50 Fed. Reg. at 26702. Thus, to prevent that very scenario, Congress enacted 18 U.S.C. § 926(a), which provides:

No such rule or regulation prescribed after the date of the enactment of the Firearms Owners’ Protection Act may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or any political subdivision thereof, nor that any system of registration of firearms, firearms owners, or firearms transactions or dispositions be established. Nothing in this section expands or restricts the Secretary’s authority to inquire into the disposition of any firearm in the course of a criminal investigation.

⁹ <https://www.youtube.com/watch?v=Bmf415-A0wU>.

Accordingly, the FOPA's prospective language prohibited any *future* regulatory attempts to establish any system of registration of gun owners more expansive than what existed at the time.

D. Indefinite OOB Retention Under the Biden-Era “Frame or Receiver” Rule.

From the mid-1980s until 2022, ATF's 20-year OOB retention period remained undisturbed. But with avowed anti-gunners in charge during the Biden years, ATF sought to undo what had become the recordkeeping norm. Thus, tucked away inside its omnibus 2022 rulemaking on unfinished frames and receivers, ATF required that FFLs “maintain their records until licensed activity is discontinued.” Definition of “Frame or Receiver” and Identification of Firearms, 87 Fed. Reg. 24652, 24732 (Apr. 26, 2022); *see* 27 C.F.R. § 478.129(b).

ATF's rationale was entirely pretextual. Citing “advancements in electronic scanning and storage technology,” “reduced costs of storing firearm transaction records,” and “public safety benefits of ensuring ... tracing,” ATF dismissed the public's overwhelmingly negative comments and simply “reverse[d]” its 1985 rulemaking. 87 Fed. Reg. at 24667. ATF barely addressed Congress's 1986 ban on new systems of registration, summarily asserting that “ATF is already restricted by law from creating any such registry, and this rule does not create one.” *Id.* at 24690.

Of course, Biden White House officials saw indefinite OOB retention as a key step towards universal registration. As the Biden White House admitted in 2023, its mission was “to move as close to universal background checks as possible” by routing as many firearm transactions through licensed dealers as it could, all to generate paper trails that FFLs could *never* destroy.¹⁰ The idea was that these records, once transferred to ATF upon inevitable business closure, would contain *decades* of data on American gun owners, including their names

¹⁰ *FACT SHEET: Biden-Harris Administration Takes Another Life-Saving Step to Keep Guns Out of Dangerous Hands*, White House (Aug. 31, 2023), <https://tinyurl.com/5hcer36d>.

and addresses, and the makes, models, and quantities of the firearms they purchased – in other words, a gun and gun owner registry.

The Biden Administration laid the groundwork for this universal registration scheme through a series of ATF rulemaking efforts. Complementing indefinite OOB retention, the Biden ATF’s “Engaged in the Business” rule presumed nearly every private sale of a firearm to be evidence of criminal conduct. *See* Definition of “Engaged in the Business” as a Dealer in Firearms, 89 Fed. Reg. 28968 (Apr. 19, 2024). With gun owners either forced to become licensed to sell their personal firearms, or naturally choosing to route their sales through licensed dealers instead, ATF’s regulatory dragnet recorded untold numbers of these additional transactions. And, hastening ATF’s receipt of these records – including all the identifying information on gun owners contained therein – the Biden Administration then sought to close as many licensed dealers as possible via its “zero tolerance” FFL revocation policy.¹¹ With FFL revocations spiking over inadvertent and minor errors,¹² OOB records became more relevant than ever, and completed the Biden-era scheme to have universal registration of all firearms.

E. ATF’s Latest OOB Retention Proposal.

Now under the Trump Administration, ATF appears poised to propose a rule seeking to scale back its Biden-era upheaval, and once again allow FFLs to purge business records after a fixed period of time. Of course, GOA is concerned about *just what time period* ATF might propose. A period of 20 years would do no more than return to the anti-gun status quo, while a period in excess of 20 years would be a nonstarter in the Second Amendment community. Additionally, GOA is concerned that once FFLs deliver their OOB records to ATF, even if those

¹¹ *See Fact Sheet: Biden-Harris Administration Announces Comprehensive Strategy to Prevent and Respond to Gun Crime and Ensure Public Safety*, White House (June 23, 2021), <https://tinyurl.com/2eezxkwf>.

¹² *See Complaint for Declaratory and Injunctive Relief, Morehouse Enters., L.L.C. v. BATFE*, No. 3:23-cv-00129-PDW-ARS (D.N.D. July 11, 2023), ECF No. 1 (detailing ATF’s weaponization of this “zero tolerance” revocation policy).

records are old and outdated, ATF nevertheless might claim the need for its *own* decades-long retention period, effectively restarting the clock for all OOB records once in ATF custody. On the contrary, whatever time period ATF adopts for FFLs should also apply to ATF destruction of records. ATF should take this opportunity to deliver gun owners a much-needed victory after decades of attacks on their privacy.

III. ATF SHOULD ADOPT AN OOB RETENTION PERIOD THAT MAXIMALLY PROTECTS GUN OWNERS' PRIVACY.

A. Any OOB Retention Period in Excess of 20 Years Violates the Firearms Owners' Protection Act and Keeps *Morehouse Enterprises, LLC v. BATFE* Alive.

Should ATF adopt an OOB retention period in excess of 20 years, it will run headlong into the FOPA's plain text. Indeed, federal law provides that “[n]o such rule or regulation prescribed after the date of the enactment of the [FOPA] may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States...” 18 U.S.C. § 926(a). GOA made precisely this argument in *Morehouse Enterprises, LLC v. BATFE*, No. 3:22-cv-00116-PDW-ARS (D.N.D.), which challenges ATF's “requirement that dealers maintain records in excess of 20 years...” Complaint ¶686, ECF No. 1. *Morehouse* remains pending today.

Of course, a 2026 ATF “rule or regulation” requiring “transfer[] to a [U.S.] facility” of 20-year-old or older OOB “records required to be maintained” clearly postdates the FOPA's “date of enactment” by decades. Accordingly, “[n]o such rule or regulation ... may require” what ATF seeks. Only the 1985 rulemaking establishing a 20-year OOB retention period remains in effect, having predated the FOPA's enactment by a year. Thus, should ATF exceed its FOPA-capped 20-year OOB retention period, ATF will remain subject to GOA's ongoing

Morehouse litigation. Any consideration of an OOB retention period greater than 20 years is a nonstarter.

B. Decades-Long OOB Retention Violates the Second Amendment as Originally Understood.

In February 2025, President Trump pledged to “protect the Second Amendment rights of all Americans.”¹³ But without protection from firearm *registration* – the historical precursor to firearm *confiscation* – the Second Amendment remains at serious risk. Indeed, this inevitable pattern – that “registration leads to confiscation” – has played out time and again in the history of other nations – “Stalin’s atrocities, the killing fields of Cambodia, the Holocaust, to name but a few.” *Silveira v. Lockyer*, 328 F.3d 567, 569 (9th Cir. 2003) (Kozinski, J., dissenting from denial of rehearing en banc). In fact, British attempts at gun confiscation provided the spark to the Revolutionary War.¹⁴ And even in the modern United States, the registration-confiscation pipeline continues to rear its ugly head.¹⁵ As recently as December 2025, anti-gun House Representative Ilhan Omar stated that it was “important... to create a registry so we know where the guns are.”¹⁶ Next, she stated the intent of the program: then her anti-Second Amendment colleagues “can actually start a buyback program” also known as a gun confiscation program.

¹³ <https://www.whitehouse.gov/presidential-actions/2025/02/protecting-second-amendment-rights/>.

¹⁴ <http://www.lawandfreedom.com/site/constitutional/DCvHellerAmicus.pdf>.

¹⁵ <https://reason.com/2013/12/11/how-government-officials-sealed-the-doom/>.

¹⁶ Ilhan Omar, posted by Gun Owners of America (@GunOwners), [X](https://x.com/GunOwners/status/1995561688540840128) (Dec. 1, 2025), <https://x.com/GunOwners/status/1995561688540840128> (video statement regarding firearm registration and buyback).

Although naturally ATF objects to the characterization,¹⁷ there is no doubt that ATF's database of a *billion* transaction records constitutes a federal registry of gun owners. ATF's records bear every one of the hallmarks of a registry – personally identifying information, physical locations, and detailed firearm specifications. For this reason, Members of Congress have introduced the No REGISTRY Rights Act, which would “delete all existing firearm transaction records, dismantling the current database.”¹⁸

Unsurprisingly, there is no historical tradition of requiring firearm registration in the United States. As then-Judge Kavanaugh explained in *Heller v. District of Columbia*, 670 F.3d 1244 (D.C. Cir. 2011), “registration of lawfully possessed guns is not ‘longstanding.’ Registration ... has not been traditionally required in the United States and, indeed, remains highly unusual today...” *Id.* at 1291 (Kavanaugh, J., dissenting). ATF's current system of record retention is something the Founders never intended, and it violates the Second Amendment, as originally understood. To the extent that ATF insists on maintaining its OOB infringement, it certainly should not adopt a document retention period that is *longer* than it was before.

C. ATF's Own Research and the Policy Preferences of Anti-Gun Organizations Both Indicate that a Ten-Year OOB Retention Period Is More than Sufficient for Law Enforcement Concerns.

Again, when it comes to OOB retention, there is only one truly constitutional answer:

ATF should adopt a *zero*-year retention period, allowing FFLs to purge records of gun owners

¹⁷ Responding to Senator Ted Cruz, nominee for ATF Director Robert Cekada recently claimed that “ATF does not have an illegal firearm registry,” and that “ATF maintains firearm transaction records in accordance with federal recordkeeping requirements enacted by Congress.” See Response 1, *Questions of Senator Ted Cruz, supra*; Responding to Representative Harriet Hageman, ATF Director Steven Dettelbach claimed that “[i]t is not an illegal registry.” See *Oversight of the Bureau of Alcohol, Tobacco, Firearms, and Explosives: Hearing Before the H. Comm. on the Judiciary*, 118th Cong. (2024) (statement of Steven Dettelbach, Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives); And according to ATF Public Affairs Officer Carolyn Gwathmey, “ATF does not maintain a federal gun registry for firearms that fall under the Gun Control Act, and none of the records ATF maintains relating to those firearms may be used to create such a registry.” See Daniel Funke, *Fact Check: Claim that ATF Has 'Gun Registry' Is Missing Context*, USA TODAY (Feb. 9, 2022), <https://www.usatoday.com/story/news/factcheck/2022/02/09/fact-check-claim-atf-has-gun-registry-missing-context/9304431002/>.

¹⁸ <https://cloud.house.gov/posts/release-rep-cloud-and-sen-risch-introduce-bill-to-block-federal-gun-registry>.

before federal bureaucrats can ever consolidate them in West Virginia. But should ATF insist on enforcement of a time period for recordkeeping requirements, it should at least take affirmative steps to protect gun owners' privacy, and not merely revert to the pre-Biden status quo.

For example, ATF's own data confirms the law-enforcement viability of sub-20-year retention periods, which still enable the vast majority of trace requests to be completed. A 10-year retention period, for example, would only lose the ability to trace 35.3% of firearms, or approximately one third. 50 Fed. Reg. at 26703. Ironically, the anti-gun Giffords group has urged ATF to adopt a 10-year retention period for records of multiple handgun sales, on the theory that doing so would "align with the average time before a gun is recovered after use in a crime."¹⁹ Thus, it would seem that Giffords would have little reason to object to a similar retention period for other transaction records.

IV. CONCLUSION.

Of course, ATF should entirely eliminate its out of business records center, and destroy all such records. And merely reverting to the prior 20-year rule, which existed during more than one *Democrat* administration, would hardly be a victory for the allegedly "most pro-2A" administration in history. Indeed, a 20-year period only would continue to expand ATF's ballooning registry of gun owners.

Recognizing that *any* registration of firearms is a Second Amendment infringement, and cognizant of the fact that Congress in 1986 took explicit steps to protect gun owner privacy, ATF should adopt – if any – a far lesser OOB retention period, especially when the data shows that records held more than 10-15 years have limited law enforcement utility.

¹⁹ <https://files.giffords.org/wp-content/uploads/2020/11/Extend-ATF%E2%80%99s-retention-of-records-of-multiple-sales-of-firearms-so-that-they-are-deleted-after-ten-years-instead-of-two-years-1.pdf>.