Dear Attorney General Garland and Director Dettelbach:

On March 14, 2023, President Biden signed an Executive Order on Reducing Gun Violence and Making Our Communities Safer. The President did so from Monterey Park, California—where, on January 21, 2023, 11 individuals were shot and killed, and nine more were injured. This signing was a solemn occasion in which President Biden remembered those whose lives were taken, recognized survivors and heroes, and reminded all of us that we have more work to do to prevent senseless gun violence. This Executive Order is the President’s latest call to action. We echo his call, and encourage the Department of Justice and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) to ensure that this Executive Order is implemented fully, robustly, and swiftly.

As you well know, the Executive Order includes directives to encourage effective use of extreme risk protection orders—which keep firearms out of the hands of individuals who pose a danger to themselves or others—and to promote secure firearm storage. It also contains directives to hold the gun industry accountable by publicly releasing inspection reports of Federal Firearms Licensees who have violated existing laws and regulations and by encouraging the Federal Trade Commission to issue a public report on how gun manufacturers market firearms to minors and to civilians, including through the use of militaristic images. We applaud these directives, and the many others outlined in the Executive Order, and we commend the President’s strong commitment to ending gun violence.

Today, we write to highlight one directive in particular: the President’s clarion call to clarify the definition of who is “engaged in the business” of dealing in firearms—a step that moves us closer to closing the background check loophole. The background check loophole in federal law permits unlicensed gun sellers—those who are not “engaged in the business” of dealing in firearms—to sell guns without conducting a background check on the purchaser. These sellers have, for decades, taken advantage of commercial marketplaces, like gun shows, to turn a profit by funneling firearms into the hands of convicted felons, domestic abusers, gun traffickers, and other prohibited persons. The internet—with websites like Armlist—has only expanded the no-background-check-required marketplace. For example, between 2018 and 2020, investigators
from Everytown for Gun Safety collected over nine million posts on Armslist; 68-percent of the posts listed firearms for sales. Of those posts, 78-percent were by unlicensed sellers.

The shooting in Monterey Park took place almost six months to the day that President Biden signed the Bipartisan Safer Communities Act (BSCA)—the first significant gun violence prevention legislation in almost three decades—into law. With BSCA, Congress, on a strong bipartisan basis, revised the definition of “engaged in the business” and gave the President an administrative tool to close the background check loophole. The previous definition only covered firearms dealers who devote time, attention, and labor to dealing in firearms as a regular course of trade or businesses with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms. BSCA changed that. Now, “engaged in the business” refers to firearms dealers who devote time, attention, and labor to dealing in firearms as a regular trade or business to predominantly earn a profit through the repetitive purchase and resale of firearms.

It was—and remains—our intent, in making this statutory change, that more firearms dealers be required to become licensed firearms dealers because with more licensed firearms dealers, there will be more firearms sales that require a background check. And with more firearms sales requiring background checks, there will be fewer firearms that end up in the hands of gun traffickers and prohibited persons, trafficked in our communities and across state lines, and used in violent crime. That is why we support regulatory action—including rulemaking—in an attempt to get “as close to universal background checks as possible without additional legislation.”

To that end, we write to encourage the Department and ATF to heed the President’s directive and move swiftly to finish the job that Congress started. We believe that the Department and ATF should both issue guidance and complete a rulemaking that makes clear who is “engaged in the business” of dealing in firearms under BSCA. We also believe that this guidance and rulemaking should include a presumption that individuals making commercial sales—whether at a gun show or an online marketplace—are “engaged in the business” and required to become licensed. In addition, we urge the Department and ATF to further define the “occasional sales,” “personal collection,” and “hobby” exceptions to the “engaged in the business” rule. These exceptions should now be read pursuant to how BSCA narrowed the definition.

BSCA was a landmark moment for us in Congress, the President and his Administration, and—most importantly—communities all across the nation. But now, it must be implemented swiftly. In March, President Biden directed the Department and ATF to do just that, and we ask you to do the same.

Sincerely,
Robin L. Kelly
Member of Congress

Lucy McBath
Member of Congress

Robert Menendez
United States Senator

Eric Swalwell
Member of Congress

Patrick K. Ryan
Member of Congress

Greg Landsman
Member of Congress

Mike Quigley
Member of Congress

Eleanor Holmes Norton
Member of Congress

Jake Auchincloss
Member of Congress

Jennifer L. McClellan
Member of Congress

Frederica S. Wilson
Member of Congress
Raúl M. Grijalva  
Member of Congress

Edward J. Markey  
United States Senator

Ed Case  
Member of Congress

Katie Porter  
Member of Congress

Grace Meng  
Member of Congress

John B. Larson  
Member of Congress

Mary Gay Scanlon  
Member of Congress

Debbie Wasserman Schultz  
Member of Congress

Mark DeSaulnier  
Member of Congress

Suzanne Bonamici  
Member of Congress
J. Luis Correa  
Member of Congress

Julia Brownley  
Member of Congress

Jared Moskowitz  
Member of Congress

Sheila Jackson Lee  
Member of Congress

Darren Soto  
Member of Congress

Richard Blumenthal  
United States Senator

Chellie Pingree  
Member of Congress

James P. McGovern  
Member of Congress

Glenn Ivey  
Member of Congress

Zoe Lofgren  
Member of Congress
MARK TAKANO
Member of Congress

Mike Thompson
Member of Congress

Ron Wyden
United States Senator

Ruben Gallego
Member of Congress

Jason Crow
Member of Congress

Martin Heinrich
United States Senator

Amy Klobuchar
United States Senator

Elizabeth Warren
United States Senator

Diana DeGette
Member of Congress

Robert P. Casey, Jr.
United States Senator