

# Congress of the United States

Washington, DC 20515

May 8, 2023

The Honorable Merrick B. Garland  
Attorney General  
United States Department of Justice  
950 Pennsylvania Avenue NW  
Washington, DC 20530

The Honorable Steven M. Dettelbach  
Director  
Bureau of Alcohol, Tobacco, Firearms  
and Explosives  
99 New York Avenue NE  
Washington, DC 20226

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,



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Robin L. Kelly  
Member of Congress



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Lucy McBath  
Member of Congress



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Robert Menendez  
United States Senator



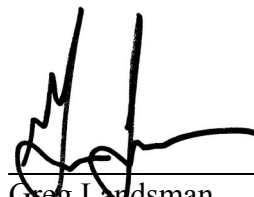
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Eric Swalwell  
Member of Congress



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Patrick K. Ryan  
Member of Congress



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Greg Landsman  
Member of Congress



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Mike Quigley  
Member of Congress



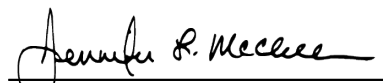
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Eleanor Holmes Norton  
Member of Congress



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Jake Auchincloss  
Member of Congress



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Jennifer L. McClellan  
Member of Congress



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Frederica S. Wilson  
Member of Congress



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Yvette D. Clarke  
Member of Congress



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Sean Casten  
Member of Congress



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Barbara Lee  
Member of Congress



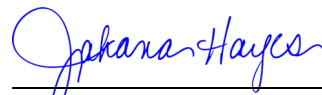
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Dwight Evans  
Member of Congress



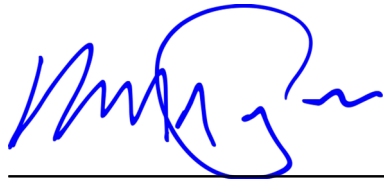
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Lisa Blunt Rochester  
Member of Congress



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Jahana Hayes  
Member of Congress



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Mark Pocan  
Member of Congress



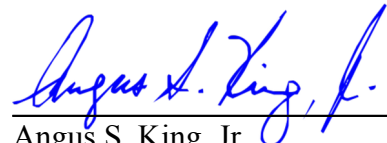
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Shontel M. Brown  
Member of Congress



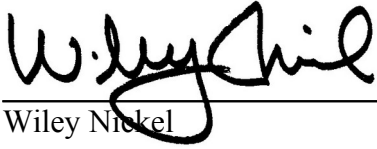
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Cory A. Booker  
United States Senator



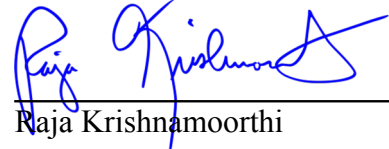
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Angus S. King, Jr.  
United States Senator



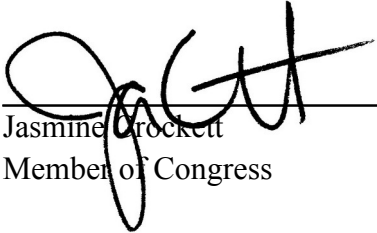
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Wiley Nickel  
Member of Congress



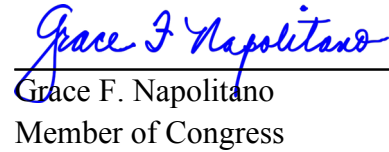
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Raja Krishnamoorthi  
Member of Congress



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Jasmine Crockett  
Member of Congress



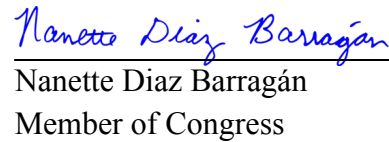
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Grace F. Napolitano  
Member of Congress



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Adriano Espaillat  
Member of Congress



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Nanette Diaz Barragán  
Member of Congress

*André Carson*

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André Carson  
Member of Congress



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Paul D. Tonko  
Member of Congress



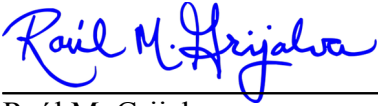
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Jesús G. "Chuy" García  
Member of Congress



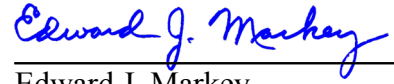
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Kirsten Gillibrand  
United States Senator



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Raúl M. Grijalva  
Member of Congress



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Edward J. Markey  
United States Senator



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Ed Case  
Member of Congress



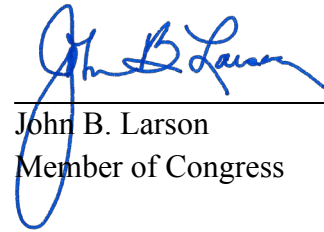
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Katie Porter  
Member of Congress



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Grace Meng  
Member of Congress



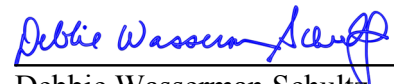
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John B. Larson  
Member of Congress



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Mary Gay Scanlon  
Member of Congress



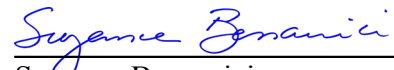
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Debbie Wasserman Schultz  
Member of Congress



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Mark DeSaulnier  
Member of Congress



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Suzanne Bonamici  
Member of Congress

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Dianne Feinstein  
United States Senator

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Jack Reed  
United States Senator

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Becca Balint  
Member of Congress

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Peter Welch  
United States Senator

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Seth Magaziner  
Member of Congress

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Bernard Sanders  
United States Senator

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Donald M. Payne, Jr.  
Member of Congress

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Danny K. Davis  
Member of Congress

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Nikema Williams  
Member of Congress

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Rashida Tlaib  
Member of Congress



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Henry C. "Hank" Johnson, Jr.  
Member of Congress



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Emanuel Cleaver, II  
Member of Congress



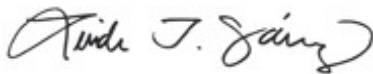
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Haley M. Stevens  
Member of Congress



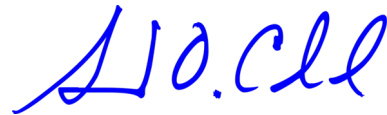
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Earl Blumenauer  
Member of Congress



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Linda T. Sánchez  
Member of Congress



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Salud Carbajal  
Member of Congress



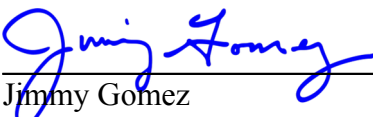
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Jared Huffman  
Member of Congress



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Joseph D. Morelle  
Member of Congress



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Jimmy Gomez  
Member of Congress



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Raphael Warnock  
United States Senator





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Alex Padilla  
United States Senator



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Angie Craig  
Member of Congress



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Dan Goldman  
Member of Congress



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Terri A. Sewell  
Member of Congress



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Jeanne Shaheen  
United States Senator



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Chris Van Hollen  
United States Senator



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Mazie K. Hirono  
United States Senator



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Stephen F. Lynch  
Member of Congress



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Ritchie Torres  
Member of Congress



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Susie Lee  
Member of Congress



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J. Luis Correa  
Member of Congress



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Julia Brownley  
Member of Congress



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Jared Moskowitz  
Member of Congress



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Sheila Jackson Lee  
Member of Congress



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Darren Soto  
Member of Congress



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Richard Blumenthal  
United States Senator



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Chellie Pingree  
Member of Congress



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James P. McGovern  
Member of Congress



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Glenn Ivey  
Member of Congress



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Zoe Lofgren  
Member of Congress



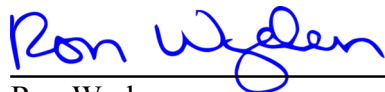
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MARK TAKANO  
Member of Congress



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Mike Thompson  
Member of Congress



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Ron Wyden  
United States Senator



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Ruben Gallego  
Member of Congress



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Jason Crow  
Member of Congress



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Martin Heinrich  
United States Senator



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Amy Klobuchar  
United States Senator



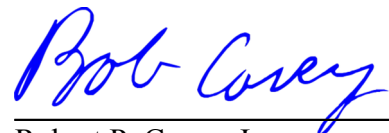
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Elizabeth Warren  
United States Senator



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Diana DeGette  
Member of Congress



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Robert P. Casey, Jr.  
United States Senator