

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,



Robin L. Kelly
Member of Congress



Lucy McBath
Member of Congress



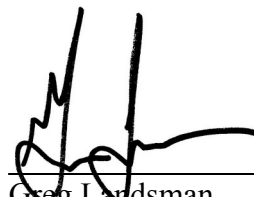
Robert Menendez
United States Senator



Eric Swalwell
Member of Congress



Patrick K. Ryan
Member of Congress



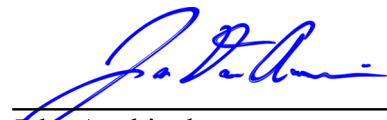
Greg Landsman
Member of Congress



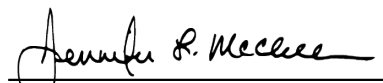
Mike Quigley
Member of Congress



Eleanor Holmes Norton
Member of Congress



Jake Auchincloss
Member of Congress



Jennifer L. McClellan
Member of Congress



Frederica S. Wilson
Member of Congress



Yvette D. Clarke
Member of Congress



Sean Casten
Member of Congress



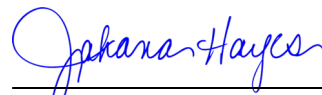
Barbara Lee
Member of Congress



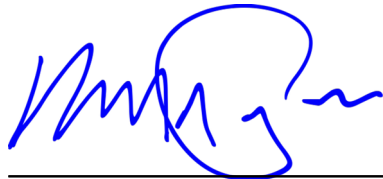
Dwight Evans
Member of Congress



Lisa Blunt Rochester
Member of Congress



Jahana Hayes
Member of Congress



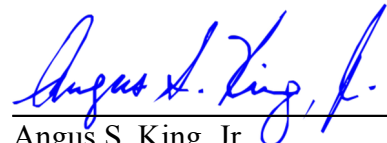
Mark Pocan
Member of Congress



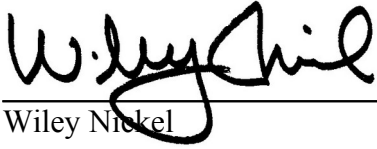
Shontel M. Brown
Member of Congress



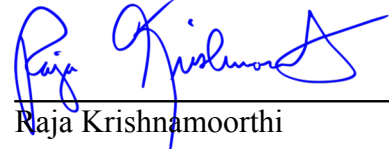
Cory A. Booker
United States Senator



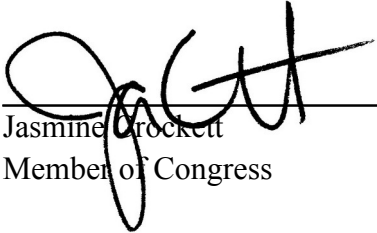
Angus S. King, Jr.
United States Senator



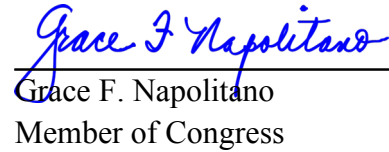
Wiley Nickel
Member of Congress



Raja Krishnamoorthi
Member of Congress



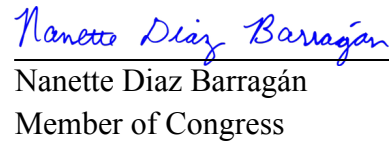
Jasmine Crockett
Member of Congress



Grace F. Napolitano
Member of Congress



Adriano Espaillat
Member of Congress



Nanette Diaz Barragán
Member of Congress

André Carson

André Carson
Member of Congress



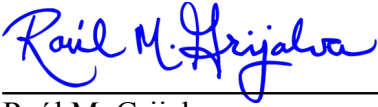
Paul D. Tonko
Member of Congress



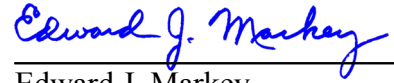
Jesús G. "Chuy" García
Member of Congress



Kirsten Gillibrand
United States Senator



Raúl M. Grijalva
Member of Congress



Edward J. Markey
United States Senator



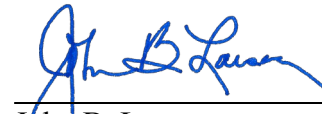
Ed Case
Member of Congress



Katie Porter
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Grace Meng
Member of Congress



John B. Larson
Member of Congress



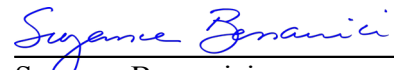
Mary Gay Scanlon
Member of Congress



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Member of Congress



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Member of Congress



Suzanne Bonamici
Member of Congress

Dianne Feinstein
United States Senator

Jack Reed
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Becca Balint
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Bernard Sanders
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Danny K. Davis
Member of Congress

Nikema Williams
Member of Congress

Rashida Tlaib
Member of Congress



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



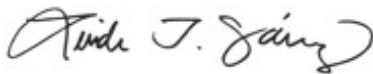
Emanuel Cleaver, II
Member of Congress



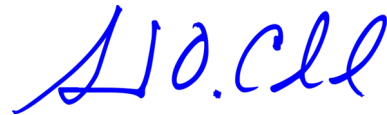
Haley M. Stevens
Member of Congress



Earl Blumenauer
Member of Congress



Linda T. Sánchez
Member of Congress



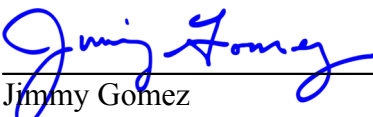
Salud Carbajal
Member of Congress



Jared Huffman
Member of Congress



Joseph D. Morelle
Member of Congress



Jimmy Gomez
Member of Congress



Raphael Warnock
United States Senator



Alex Padilla
United States Senator



Angie Craig
Member of Congress



Dan Goldman
Member of Congress



Terri A. Sewell
Member of Congress



Jeanne Shaheen
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Chris Van Hollen
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Mazie K. Hirono
United States Senator



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Ritchie Torres
Member of Congress



Susie Lee
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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



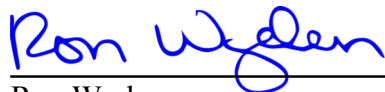
Zoe Lofgren
Member of Congress



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



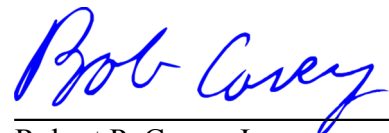
Amy Klobuchar
United States Senator



Elizabeth Warren
United States Senator



Diana DeGette
Member of Congress



Robert P. Casey, Jr.
United States Senator