

1 Department of Justice for that unfinished frame or unfinished receiver.” SDMC §
2 53.18(c)(1)-(2). San Diegans are free to self-manufacture firearms, provided they
3 start with a serialized unfinished frame or receiver.

4 Under the current Bureau of Alcohol, Tobacco, Firearms, and Explosives
5 (ATF) regulatory regime, manufacturers and importers must impress unique serial
6 numbers upon both completed “firearms” and any “firearm frame or receiver that is
7 not a component of a complete weapon[.]” 27 C.F.R. § 478.92(a). However, the
8 current ATF regulations narrowly define the terms “frames” and “receivers” as
9 firearm components that are readily operational without any additional
10 modification. *See* 27 C.F.R. §§ 478.11, 479.11. Consequently, the ATF’s definition
11 and, thus, its serialization system, do not extend to unfinished frames and receivers
12 which require some degree of physical alteration.

13 Because unfinished frames and receivers are excluded from the current
14 serialization system, Plaintiffs contend that Section 53.18’s serialization exceptions
15 are illusory, and Section 53.18 operates as a total and complete ban on the
16 purported right to self-manufacture firearms. *See* Compl. ¶¶ 72, 78. According to
17 Plaintiffs, there is no conceivable way that a San Diego resident who wishes to self-
18 manufacture a firearm can procure a serialized, unfinished frame or receiver and,
19 therefore, he or she must violate Section 53.18 to exercise a purported Second
20 Amendment right.

21 Recent regulatory rule making severely undermines Plaintiffs’ contention
22 that Section 53.18 renders their right to self-manufacture a firearm strictly illusory.
23 On April 26, 2022, the Department of Justice (DOJ) and the ATF issued a final rule
24 entitled “Definition of ‘Frame and Receiver’ and Identification of Firearms.”
25 Definition of ‘Frame and Receiver’ and Identification of Firearms, 87 Fed. Reg.
26 24652 (Apr. 26, 2022). The new rule proposes changes to various regulations in 27
27 CFR parts 447, 478, and 479 in order to “amend[] ATF’s regulations to clarify the
28 definition of ‘firearm’ and to provide a more comprehensive definition of ‘frame or

1 receiver[.]” 87 Fed. Reg. 24652, 24661 (citing 86 Fed. Reg. 27720 (May 21,
2 2021)). Among other things, the rule requires Federally Licensed Firearm
3 Manufacturers and Importers to imprint with serial numbers unfinished frames or
4 receivers. 87 Fed. Reg. 24652, 24664, 24728. The rule takes effect 120 days after
5 April 11, 2022.

6 After the effective date, any “partially complete, disassembled, or
7 nonfunctional frame or receiver, including a frame or receiver parts kit, that is
8 designed to or may readily be completed, assembled, restored, or otherwise
9 converted to function as a frame or receiver” will need to be serialized prior to sale.
10 87 Fed. Reg. 24652, 24739. The final rule provides examples clarifying when such
11 items are considered readily completed, assembled, restored, or otherwise
12 converted to function as the frame or receiver.¹ 87 Fed. Reg. 24652, 24653. And
13 when determining whether a frame or receiver is subject to serialization, “the
14 Director may consider any associated templates, jigs, molds, equipment, tools,
15 instructions, guides, or marketing materials that are sold, distributed, or possessed
16 with the item or kit, or otherwise made available by the seller or distributor of the
17 item or kit to the purchaser or recipient of the item or kit.” 87 Fed. Reg. 24652,
18 24739. Based on the examples and explanations of “frame or receiver,” the new
19 rule will require serialization of nearly all unfinished frames and receivers currently
20 sold for self-manufacture. 87 Fed. Reg. 24652, 24739. If Plaintiffs lack access to
21 unfinished frames and receivers in the future, it will not be because of Section
22 53.18.

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24 ¹ “Example 1 to paragraph (c) – Frame or receiver: A frame or receiver parts kit
25 containing a partially complete or disassembled billet or blank of a frame or receiver that is sold,
26 distributed, or possessed with a compatible jig or template is a frame or receiver, as a person with
27 online instructions and common hand tools may readily complete or assemble the frame or
28 receiver parts to function as a frame or receiver; Example 2 to paragraph (c)—Frame or receiver:
A partially complete billet or blank of a frame or receiver with one or more template holes drilled
or indexed in the correct location is a frame or receiver, as a person with common hand tools may
readily complete the billet or blank to function as a frame or receiver.” 87 Fed. Reg. 24652,
24739.

1 The plain language of Section 53.18 is consistent with the new rule.
2 Moreover, Section 53.18 explicitly provides that it is “to be applied and interpreted
3 consistent with state and federal law.” *See* SDMC § 53.18(a). Under Section 53.18,
4 an unfinished frame or receiver subject to serialization is “a piece of any material
5 that does not constitute the completed [frame or receiver] of a firearm, but that has
6 been shaped or formed in any way for the purpose of becoming the [frame or
7 receiver] of a firearm, and which may be made into a functional [frame or receiver]
8 of a firearm through milling, drilling, or other means.” *See* SDMC § 53.18(b)(11) -
9 (12). Section 53.18 and the new ATF rule both require serialization of partially
10 complete frames or receivers that, with minimal effort, can be manufactured into
11 completed firearms. Even if Section 53.18 were repealed, the new ATF rule still
12 forecloses Plaintiffs’ ability to self-manufacture firearms using non-serialized
13 unfinished frames or receivers.

14 Plaintiffs declared that regulatory change was a condition precedent to the
15 ability to self-manufacture firearms using unfinished frames and receivers. *See*
16 Compl. ¶ 72 n.1 (“Thus, no serialization process exists for firearm frames or
17 receivers—much less *unfinished* frames or receivers—and none will exist unless
18 and until the regulatory scheme is changed to specifically require it.”). The
19 regulatory system has changed – and serialization is now required for unfinished
20 frames and receivers. San Diegans now, or will soon, have the same access to
21 serialized unfinished frames and receivers as other California residents and citizens
22 of other states.

23 The ATF final rule is a common-sense measure designed to close a
24 regulatory loophole that previously allowed prohibited persons to construct and
25 possess untraceable firearms. Neither the ATF final rule, nor Section 53.18 violates
26 the Second Amendment because the Gun Control Act and the ATF final rule “do
27 not prohibit individuals from assembling or otherwise making their own firearms
28 from parts for personal use, such as self-defense or other lawful purposes.” 87 Fed.

1 Reg. 24652, 24676. San Diegans remain free to manufacture any legal firearm, so
2 long as they start with serialized components.

3 Section 53.18 does not violate Plaintiffs' Second Amendment rights,
4 including the purported right to self-manufacture firearms. This Court should
5 dismiss Plaintiffs' claims.

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8 Dated: May 16, 2022

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CITY OF SAN DIEGO

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JAMES FAHR; DESIREE
BERGMAN; COLIN RUDOLPH; SAN
DIEGO COUNTY GUN OWNERS
PAC; AND FIREARMS POLICY
COALITION, INC.,

Plaintiffs,

v.

CITY OF SAN DIEGO, CALIFORNIA
AND DAVID NISLEIT, IN HIS
OFFICIAL CAPACITY AS CHIEF OF
POLICE OF SAN DIEGO CITY,
CALIFORNIA

Defendants.

Case No. 21cv1676 BAS (BGS)

DECLARATION OF SERVICE

I, the undersigned, declare under penalty of perjury that I am, and was at the time of service of the papers herein referred to, over the age of eighteen years and not a party to the action; and I am employed in the County of San Diego, California, in which county the within-mentioned service occurred. My business address is 1200 Third Avenue, Suite 1100, San Diego, California, 92101. I served the foregoing documents described as:

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Executed on May 16, 2022, at San Diego, California.

Maritza Beltran

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Legal Secretary II

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