No. 25-693

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ADAM RICHARDS, ET AL.,

Plaintiffs-Appellants,

v.

GAVIN NEWSOM, in his official capacity as Governor
of the State of California, ET AL.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Central District of California
No. 8:23-cv-02413-JVS-KES
Hon. James V. Selna

BRIEF OF EVERYTOWN FOR GUN SAFETY SUPPORT FUND, BRADY CENTER TO PREVENT GUN VIOLENCE, AND GIFFORDS LAW CENTER AS AMICI CURIAE IN SUPPORT OF DEFENDANTS-APPELLEES

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CORPORATE DISCLOSURE STATEMENT

Everytown for Gun Safety Support Fund, Brady Center to Prevent Gun Violence, and Giffords Law Center to Prevent Gun Violence have no parent corporations. Each organization has no stock; hence, no publicly held company owns 10% or more of any of the organizations' stock.

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STATEMENT OF INTEREST

Amici curiae are nonprofit organizations dedicated to reducing gun violence through education, research, and advocacy.[1] Everytown for Gun Safety Support Fund is the education, research, and litigation arm of Everytown for Gun Safety, the largest gun-violence prevention organization in the nation, with millions of supporters across the country. Brady Center to Prevent Gun Violence is the nation's longest-standing nonpartisan, nonprofit organization dedicated to counteracting gun violence through education, research, legal advocacy, and political action. Giffords Law Center is a law and policy organization serving lawmakers, advocates, gun-violence survivors, and others who seek to reduce gun violence and guard the safety of their communities.

INTRODUCTION AND SUMMARY OF ARGUMENT

That firearm dealers should have video surveillance systems on their premises is not novel and should not be controversial. The Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") recommends it, the largest gun industry trade association deems it "essential," and a growing number of states and localities mandate it. Requiring licensed firearm dealers to maintain video surveillance systems complements the state and federal regulatory frameworks, which funnel

[1] No party's counsel authored this brief in whole or part and, apart from Everytown, no person contributed money to fund its preparation or submission. All parties consent to this brief's submission.

firearm purchases through these licensees. Dealers are the first line of defense in preventing firearms from falling into dangerous hands, including persons prohibited from possessing firearms due to age, prior criminal convictions, or other factors. As the National Shooting Sports Foundation ("NSSF"), the largest gun industry trade association, has stated: "It is a simple fact: firearm retailers are the frontline defenders against criminal firearm activity."[2]

As such, dealers are expected to take steps to prevent the diversion of firearms to the criminal market, which occurs mainly through retail thefts, trafficking by individuals who purchase from dealers and resell to criminals, and straw purchases (when someone buys a gun on behalf of another while representing themselves as the true purchaser). Gun thefts, trafficking, and straw purchasing are vulnerabilities in the system that can be easily exploited to allow bad actors to illegally obtain firearms.

Video surveillance systems, like those required by Cal. Penal Code § 26806, directly address those weak points. Video recordings provide crucial assistance to law enforcement investigations into straw purchases, thefts, and other forms of trafficking, and also help to deter these crimes in the first place. Section 26806 thus promotes public safety and complements the larger firearm regulatory infrastructure,

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[2] Larry Keane, *Firearm Retail Employee Saved Lives by Denying Gun Sale*, NSSF (July 9, 2025), https://www.nssf.org/articles/firearm-retail-employee-saved-lives-by-denying-gun-sale/.

which serves the same objective. Records created by the video surveillance systems required by Section 26806 also promote transparency in the event that a gun sale is later called into question, affording law enforcement authorities and affected parties access to crucial information about what transpired.

This Court should refuse to strike down Section 26806, which was validly enacted by the representatives of the people of California, and should affirm the district court's dismissal of Plaintiffs' claims.

ARGUMENT

I. Section 26806's video surveillance requirement aligns with ATF recommendations, industry best practices, and other states' firearm dealer regulations.

The ATF and gun industry associations recommend that federal firearms licensees ("FFLs") implement video recording systems. The ATF, which is charged with regulating licensed dealers and ensuring compliance with firearms laws, has published many resources for FFLs on the topic of store premises security.[3] Beyond generally recommending that FFLs implement video surveillance systems, the ATF and the gun industry suggest specifications that align with the requirements set forth by Section 26806. The ATF recommends, for instance, that FFLs place video cameras "in a direction that will capture people's faces and features," and that such

[3] *See, e.g.*, *Federal Firearms Licensee Quick Reference and Best Practices Guide*, ATF, https://www.atf.gov/firearms/federal-firearms-licensee-quick-reference-and-best-practices-guide (last updated Dec. 2021).

systems should be "recording at all times"[4]—guidance that echoes Section 26806(a)(2) (requiring systems to produce recordings that "allow for the clear identification of any person") and Section 26806(a)(4) (requiring systems to record 24 hours per day). The NSSF similarly states that video surveillance systems are "essential for every FFL,"[5] and that modern cameras allow FFLs to "zoom in, after the fact or live, and see the face of the person."[6] Many gun dealers recognize the benefits of video recordings and voluntarily follow these recommendations. For example, Walmart has a policy of videotaping the point of sale for all firearms transactions.[7] The specifications set forth in Section 26806, including requiring continuous, clear recordings that capture different locations at an FFL's premises, *see* Cal. Penal Code § 26806(a)(1)–(4), thus align with existing guidance from regulatory and industry entities.

Unsurprisingly, California is not alone in imposing video recording requirements on FFLs. Illinois, Maryland, New York, and Washington all require

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[4] *Learn About Firearms Safety and Security*, ATF, https://www.atf.gov/firearms/learn-about-firearms-safety-and-security (last updated Jan. 6, 2025).

[5] John Bocker, *Security Cameras — Yes, You Need Them*, NSSF (Feb. 15, 2017), https://www.nssf.org/articles/security-cameras-yes-you-need-them/.

[6] John Bocker, *Security Camera System Technology Today*, NSSF (Feb. 21, 2017), https://www.nssf.org/articles/security-camera-system-technology-today/.

[7] Walmart, *Walmart Policies and Guidelines*, *Firearms and Ammunition Guidelines* (Sept. 3, 2019), https://corporate.walmart.com/policies.

FFLs to maintain video surveillance systems that capture footage of their premises. *See* 430 Ill. Comp. Stat. Ann. 68/5-50(a); Md. Code Ann., Pub. Safety § 5-145.1(a)(1)(i); N.Y. Gen. Bus. Law § 875-b(2); Wash. Rev. Code Ann. § 9.41.110(11). Like California, Illinois, New York, and Washington all require FFL video cameras to cover every point of sale, entrance, and exit, and Illinois and Washington additionally require coverage of all areas where firearms are displayed. *Compare* 430 Ill. Comp. Stat. Ann. 68/5-50(a) *and* N.Y. Gen. Bus. Law § 875-b(2) *and* Wash. Rev. Code Ann. § 9.41.110(11)(a)(iii)(A–C) *with* Cal. Penal Code § 26806(a)(3). Illinois and Washington also require FFLs to conspicuously post a sign alerting visitors that the premises are under surveillance. *Compare* 430 Ill. Comp. Stat. Ann. 68/5-50(b) *and* Wash. Rev. Code Ann. § 9.41.110(11)(c) *with* Cal. Penal Code § 26806(c).

Like California, Washington specifies that FFLs' video systems record at a minimum frame rate of 15 frames per second to ensure sufficient clarity. *Compare* Wash. Rev. Code Ann. § 9.41.110(11)(a)(iv) *with* Cal. Penal Code § 26806(a)(4). And New York requires that dealers maintain video recordings for at least two years, *see* N.Y. Gen. Bus. Law § 875-b(2), twice as long as the one-year minimum required by Section 26806(a)(6).

Video surveillance at gun dealers also is not a novel concept even within California. Many localities in the state already require firearms dealers operating

within their borders to install and maintain some form of video surveillance.[8]

II. Licensed dealers are the front line of defense for preventing firearms from entering the criminal market.

Section 26806 is properly understood against the backdrop of comprehensive State and federal regulations with which every licensed firearm dealer in California must comply. *See, e.g.*, 1-ER-15, 18, 24 (district court repeatedly observed that firearm transfers are subject to a "comprehensive" regulatory framework). The federal Gun Control Act ("GCA") designates FFLs as the "principal agent of [law] enforcement" in "restricting . . . access to firearms." *Huddleston v. United States*, 415 U.S. 814, 824 (1974). The GCA's purpose is to "curb crime by keeping 'firearms out of the hands of those not legally entitled to possess them.'" *Id.* (quoting S. Rep. No. 90-1501 (1968)). The ATF likewise emphasizes that FFLs are the "first line of defense in preventing firearms from getting into the hands of criminals."[9] This is largely because FFLs are uniquely positioned to recognize and prevent suspicious and illegal

[8] These jurisdictions include but are not limited to: Oakland; Pinole; Pleasant Hill; San Bruno; San Francisco; Santa Cruz County; Scotts Valley; and South San Francisco. *See* ATF, *State Laws and Published Ordinances* (35th ed.) (Nov. 30, 2023), at https://www.atf.gov/firearms/state-laws-and-published-ordinances-firearms-35th-edition (California Municipal M–Z).

[9] ATF, *Best Practices*, FFL Newsletter at 2 (2013), https://www.atf.gov/firearms/docs/newsletter/federal-firearms-licensees-newsletter-september-2013-volume-1/download.

sales, which funnel firearms into the criminal market, and to secure their own inventory and premises in a manner that reduces the likelihood of theft.

Accordingly, federal and state law impose a variety of requirements on dealers, including conducting background checks prior to the transfer of every firearm (*see, e.g.*, 1-ER-4), securing firearm inventory and dealer facilities (*see* Cal. Penal Code § 26890), maintaining accurate inventory and transaction records (*see* 18 U.S.C. § 923(g)(1)(A); 27 C.F.R. § 478.121), timely reporting thefts or losses (*see* 18 U.S.C. § 923(g)(6); Cal. Penal Code § 26885(b)), and aiding law enforcement by helping trace firearms involved in crimes to their last retail point of sale (*see* 18 U.S.C. § 923(g)(7); 27 C.F.R. § 478.25a).

The breadth of regulations to which California's licensed gun dealers are subject reflects their critical role in ensuring that firearms end up only in the hands of individuals who are legally permitted to possess them. As the district court recognized, the provisions of Section 26806 complement these existing regulatory obligations and directly advance the State's public safety interests, particularly by deterring bad actors and aiding law enforcement in investigating and prosecuting thieves and straw purchasers. *See* 3-ER-334 ("Defendants' stated purpose of 'requiring security systems is to "curb gun store theft and straw purchasing" and to

assist in "related enforcement efforts."""").

An FFL's size or premises type does not affect the importance of its compliance with regulatory requirements designed to promote public safety; the same public safety concerns and risks inherent to the sale of firearms apply to FFLs regardless of sales volume or whether they operate from a standard retail storefront or a home office. Any party wishing to engage in the business of legally dealing in firearms, whether as a brick-and-mortar retailer or a residential dealer, must follow the same steps: apply for a federal firearms license; discuss all applicable federal, state, and local laws with an ATF representative; and comply with the GCA and its implementing regulations (*see* 18 U.S.C. § 921, *et seq.*; 27 C.F.R. § 478.11, *et seq.*), along with state and local laws.[10] California dealers must also obtain a license from the State in order to sell or transfer firearms. Cal. Penal Code § 26500. All dealers are subject to inspections by the ATF and State officials to ensure that they are in compliance with applicable laws and identify any violations of them.

Like these other requirements, Section 26806 is uniformly applicable to FFLs. Including home-based dealers and FFLs operating out of storefronts within the scope of Section 26806 makes sense: home-based dealers account for a substantial

[10] *See, e.g.*, *Apply for a License*, ATF, https://www.atf.gov/firearms/apply-license (last visited Aug. 1, 2025).

percentage of FFLs[11] and face many of the same risks. Categorically exempting them from Section 26806's requirements, as Plaintiffs appear to suggest (*see, e.g.*, Appellants' Br. 9), would undercut the purpose of the law and is pragmatically unsound.

III. Video surveillance deters retail firearm theft and unlawful purchasing and assists investigations into those crimes.

A central purpose of federal and state gun laws is to prevent crime by keeping firearms out of the possession of persons with a heightened risk of misusing them, including individuals with felony convictions, domestic abusers, and minors. Ways that FFLs accomplish this goal include performing background checks prior to the transfer of every firearm, declining suspicious transactions, and securing their premises and inventory in a manner that reduces the likelihood of theft. Preventing the diversion of firearms from the lawful to the criminal market is a weighty responsibility with severe public safety implications: in a review of cases between 2017 and 2021, the ATF found that end users of trafficked firearms[12] were convicted

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[11] According to federal statistics, approximately one-third of federally licensed firearms dealers nationwide operate out of residential zoned premises. *See* ATF, National Firearms Commerce and Trafficking Assessment: Firearms in Commerce 115 (2022), https://www.atf.gov/firearms/docs/report/national-firearms-commerce-and-trafficking-assessment-firearms-commerce-volume/download.

[12] Trafficked firearms refers to firearms that ATF agents identified that "'move[d] . . . into the illegal market for a criminal purpose.'" *See* ATF, National Firearms Commerce and Trafficking Assessment: Firearms Trafficking Investigations – Volume III, Part I 2 (2024), https://www.atf.gov/firearms/docs/report/nfcta-volume-iii-part-i/download.

felons in 59.6% of cases, and known gang members or associates in 29.1% of cases.[13] The video recording requirements specified in Section 26806 will assist law enforcement in identifying and prosecuting individuals responsible for gun trafficking. Thefts from FFLs, unlicensed dealing,[14] and straw purchases are three of the top sources of trafficked firearms.[15]

A. Video surveillance assists straw purchasing investigations and prosecutions and deters unlawful purchasing itself.

As noted above, FFLs are required to perform a background check prior to each firearm transfer. *See, e.g.*, 1-ER-4. If the background check clears, the dealer may complete and sign the ATF Form 4473 (*see* 1-ER-15), certifying its own belief that the transfer is not unlawful. During the firearm transfer process, dealers are expected to remain alert to widely recognized and well-established conduct indicating that a potential purchaser may be unfit to receive a firearm. Purchasers

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[13] *See* ATF, National Firearms Commerce and Trafficking Assessment: Firearms Trafficking Investigations – Volume III, Part VI 13 (2024), https://www.atf.gov/firearms/docs/report/nfcta-volume-iii-part-vi/download.

[14] This occurs when gun traffickers purchase firearms from FFLs for the purpose of illegally reselling them, often to individuals who are legally prohibited from possessing firearms. Congress recently created new criminal offenses for unlawfully trafficking in firearms, *see* 18 U.S.C. § 933. California also prohibits acquiring a firearm for the purpose of selling, loaning, or transferring it in violation of California law, which requires a background check for almost every firearm sale. *See* Cal. Penal Code §§ 27515, 27520.

[15] *See* ATF, National Firearms Commerce and Trafficking Assessment: Firearms Trafficking Investigations – Volume III, Part V 2 (2024), https://www.atf.gov/firearms/docs/report/nfcta-volume-iii-part-iii/download.

may be unfit because they pose a risk of harm to themselves or others[16] or because they are straw purchasing a firearm.[17]

Straw purchasing enables individuals to illegally obtain firearms from licensed dealers without undergoing a background check and is thus a major vehicle for the diversion of firearms into the criminal market.[18] In recognition of this grave public safety risk, federal law criminalizes straw purchasing. *See* 18 U.S.C. §§ 922(a)(6), 932(b). California also prohibits dealers from transferring a firearm to anyone whom they know or have cause to believe is not the actual purchaser when the dealer knows that the firearm will be subsequently transferred in circumvention of various requirements. *See* Cal. Penal Code § 27515.

Investigating and prosecuting straw purchasing cases can present a challenge, however, because many well-established indicators of straw purchasing are rarely reflected in the official firearm sales paperwork but instead are observable to the

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[16] *See, e.g.*, *Delana v. CED Sales, Inc.*, 486 S.W.3d 316, 320–26 (Mo. 2016) (claim against FFL arising out of gun sale allowed to proceed in part because purchaser's "severe mental illness would have been apparent" to dealer).

[17] *See, e.g.*, *Minnesota v. Fleet Farm LLC*, 679 F. Supp. 3d 825, 834 (D. Minn. 2023) (describing "red flags" of straw purchasing that are observable to dealers).

[18] *See, e.g.*, *Don't Lie for the Other Guy*, ATF, https://www.atf.gov/firearms/dont-lie-other-guy ("Straw purchased firearms often end up in the hands of criminals and are used in violent crimes, including homicides, robberies, and gang-related activities.") (last updated Dec. 20, 2024); ATF, National Firearms Commerce and Trafficking Assessment: Firearms Trafficking Investigations – Volume III, Part III 2 (2024), https://www.atf.gov/firearms/docs/report/nfcta-volume-iii-part-iii/download (39.5% of firearm trafficking cases investigated by the ATF concerned guns trafficked by straw purchasers).

dealer prior to and during the transaction. Common indicators of straw purchasing include: a purchaser taking photographs or videos of firearms; a purchaser talking on the phone while looking at firearms; a person accompanying the purchaser who scouts, handles, or selects the firearms; a companion providing payment while the straw purchaser completes the official paperwork; and the straw purchaser handing the firearm to a companion shortly after the transaction.[19] FFL surveillance videos bridge this gap, recording such conduct and providing law enforcement with critical tools for investigating and prosecuting straw purchasers and co-conspirators.

In one federal prosecution, for example, officials used surveillance video from two FFLs to establish coordination between the straw purchaser and the actual purchaser.[20] On one occasion, FFL surveillance video showed that the straw and actual purchasers arrived in the same car; the straw purchaser first waited in the parking lot while the actual purchaser went into the store alone, and then after twenty-five minutes, the straw purchaser entered and immediately bought two

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[19] *See, e.g.*, ATF, *Federal Firearms Licensee Seminar, South Bend Police Department* 84–92 (Mar. 30, 2023), https://everytownlaw.org/wp-content/uploads/sites/5/2024/09/March-2023-FFL-Seminar.pdf (ATF training seminar for FFLs listing common signs of straw purchasing and emphasizing importance of recognizing and eliciting such indicators to prevent illegal sales).

[20] *See* Press Release, U.S. Att'y's Off., E.D.N.C., *Ringleader of Multi-State Gun Trafficking Scheme Sentenced to More Than 10 Years in Prison* (Feb. 23, 2023), https://www.justice.gov/usao-ednc/pr/ringleader-multi-state-gun-trafficking-scheme-sentenced-more-10-years-prison.

firearms.[21] On another occasion, the straw purchaser completed the ATF Form 4473 while the actual purchaser paid in cash.[22] In another recent straw purchasing prosecution, officials used FFL surveillance video to show the actual purchaser selecting the firearm and providing cash to the straw purchaser, who handed the firearm to the actual purchaser as soon as they left the store.[23] Criminal dockets across the country offer numerous additional examples of straw purchasing prosecutions based on evidence from video surveillance from licensed firearms dealers.[24]

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[21] *See id.*

[22] *See* Indictment at ¶ 12, *United States v. Squire*, No. 4:22-CR-00019-1FL (E.D.N.C. Mar. 16, 2022).

[23] *See* Press Release, U.S. Att'y's Off., D.S.D., *Sioux Falls Duo Sentenced to Federal Prison for Making a False Statement in the Acquisition of a Firearm and Possession of a Firearm by a Prohibited Person* (Apr. 5, 2024), https://www.justice.gov/usao-sd/pr/sioux-falls-duo-sentenced-federal-prison-making-false-statement-acquisition-firearm-and.

[24] *See, e.g.*, Press Release, R.I. Att'y Gen., *Providence Pair Charged with Straw Purchasing Multiple Firearms* (May 8, 2024), https://riag.ri.gov/press-releases/providence-pair-charged-straw-purchasing-multiple-firearms ("[I]nvestigators reviewed video surveillance footage from the firearms dealer, which depicted [the actual purchaser] handling the seized firearms and providing [the straw purchaser] with money to purchase them."); Press Release, Baxter Cnty. Sheriff, *Gassville Man Sentenced on Federal Firearms Charge* (Nov. 3, 2017), https://www.baxtercountysheriff.com/press_view.php?id=1838 ("Video evidence from the store indicated that [the actual purchaser] then took cash money out of a bag and handed it over to [the straw purchaser], who then made application to purchase the firearm."); Press Release, Dauphin Cnty. Dist. Att'y's Off., *Straw Purchase of Firearm Results in Prison Sentences for Samantha Hawkins and Cecil Evans* (Nov. 20, 2020), https://dauphin.crimewatchpa.com/da/310/post/straw-purchase-firearm-results-prison-sentences-samantha-hawkins-and-cecil-evans ("Video surveillance presented at trial showed both [straw and actual purchasers] handling the firearm that [straw purchaser] eventually purchased.").

FFL surveillance video also provides indispensable evidence regarding the culpability of co-conspirators. *See, e.g.*, Factual Statement in Support of Plea Agreement at 2, *United States v. Sanchez*, No. 5:20-CR-1807-01 (S.D. Tex. Nov. 19, 2020), (detailing how, after being "confronted with" FFL surveillance video, straw purchaser admitted that the co-conspirator told her which guns to buy); Complaint ¶ 12, *United States v. Lara*, No. 4:23-MJ-00613 (N.D. Tex. Aug. 22, 2023) (alleging that FFL surveillance video showed gun trafficking ringleader with straw purchaser while selecting firearm).[25] The nature of straw purchasing means that co-conspirators will not be documented within the official transaction paperwork, but their identity and behavior is often observable within or just outside of the store. Section 26806 helps ensure that such culpable conduct is captured.[26]

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[25] *See also* Press Release, U.S. Att'y's Off., E.D.N.C., *Armed Career Criminal Facilitating the Sale of Firearms to Juveniles Sentenced to 18 Years* (Dec. 19, 2023), https://www.justice.gov/usao-ednc/pr/armed-career-criminal-facilitating-sale-firearms-juveniles-sentenced-18-years (describing FFL video showing trafficking ringleader and straw purchaser in the store together); Press Release, U.S. Att'y's Off., D. Del., *Dover Man Pleads Guilty To Conspiring To Straw Purchase Gun While On Probation For Same Offense* (Feb. 16, 2018), https://www.justice.gov/usao-de/pr/dover-man-pleads-guilty-conspiring-straw-purchase-gun-while-probation-same-offense (describing FFL video showing straw and actual purchasers in the store together); Carl Hessler Jr., *Montgomery County Jury Convicts Man in Straw Purchase Scheme*, The Pottstown Mercury (updated Sept. 2, 2022), https://www.pottsmerc.com/2022/09/02/montgomery-county-jury-convicts-man-in-straw-purchase-scheme/ (same).

[26] While this section is focused on straw purchases, the ATF also uses FFL surveillance footage during the investigation of other gun-related crimes, including mass shootings.

As illustrated by the above examples, video recordings are a powerful tool for officials investigating and prosecuting illegal firearms purchases and trafficking. For this reason, individuals contemplating involvement in such schemes may be deterred by the knowledge that their conduct, likeness, and verbal statements will be captured on camera. The requirement that FFLs prominently display signage stating that customers are under surveillance, Cal. Penal Code § 26806(c), thus advances the law's preventive objectives as well.[27]

B. Video evidence aids investigations into retail theft of firearms and deters such thefts.

Another source of firearms' diversion into the criminal market is through thefts from dealers.[28] In fact, thefts from FFLs are the third most common channel for gun trafficking.[29] As the ATF explains, "[s]tolen firearms are immediately in the possession of criminal offenders. As such these firearms are at greater risk of rapidly being used in shootings."[30] And because most firearms stolen from FFLs are

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[27] *Cf.* ATF, *Don't Lie for the Other Guy*, *supra* note 18 ("By posting prominent signage in the store indicating the illegality and penalties associated with straw purchases, retailers can deter attempts and raise public awareness.").

[28] *See* ATF, National Firearms Commerce and Trafficking Assessment: Firearms Thefts – Volume II, Part V 1 (2023), https://www.atf.gov/firearms/docs/report/nfcta-volume-ii-part-v-firearm-thefts/download.

[29] ATF, National Firearms Commerce and Trafficking Assessment: Firearm Trafficking Investigations, *supra* note 18, at 2.

[30] ATF, National Firearms Commerce and Trafficking Assessment: Protecting America from Trafficked Firearms – Volume IV, Part VI 9 (2025),

recovered by law enforcement within 50 miles of the theft,[31] such thefts implicate the public safety of the immediate communities in which the dealers are based.[32] Video footage from FFLs that meets Section 26806's requirements helps federal, state, and local law enforcement in investigating thefts from FFLs and prosecuting the individuals responsible.

First, it is critical that FFLs' surveillance systems capture video sufficient to allow clear identification of individuals recorded. *See* Cal. Penal Code § 26806(a)(1)–(2) (requiring that FFLs' digital video surveillance systems "clearly record images" and "allow for the clear identification of any person"). Federal, state, and local law enforcement regularly rely on still images and video obtained from these systems in the immediate aftermath and subsequent investigation of gun store thefts. When such thefts happen, law enforcement often asks the public for assistance in identifying

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https://www.atf.gov/firearms/docs/report/nfcta-volume-iv-part-vi-%E2%80%93-nibin-updates-and-new-analysis/download.

[31] *See* ATF, National Firearms Commerce and Trafficking Assessment: Firearms Thefts, *supra* note 28, at 10.

[32] Due to the risk of firearm thefts from FFLs, California requires every FFL to comply with various security requirements, including securely storing all firearm inventory using specified methods. *See* Cal. Penal Code § 26890(a). The ATF and NSSF similarly recommend that FFLs adopt a variety of security measures to decrease the risk of theft. *See, e.g.*, ATF, *Safety and Security Information for Federal Firearms Licensees* at 6–13 (June 2021), https://www.atf.gov/firearms/docs/guide/safety-and-security-information-federal-firearms-licensees-atf-p-33172/download; *Operation Secure Store*, NSSF, https://nssfrealsolutions.org/programs/operation-secure-store/ (partnership between ATF and NSSF offering resources including risk assessments for FFLs). *See also* ATF, *Learn About Firearms Safety and Security, supra* note 4 (detailing "steps that you can take to diminish the risk of theft to your firearms business").

one or more suspects based on available video recordings.[33] These time-sensitive efforts, which may prevent further circulation of stolen guns into dangerous hands, are made possible by publicizing images and video of sufficient quality to clearly identify the individuals involved.

Video obtained from FFLs' surveillance systems is also used to investigate potentially related crimes, and as evidence in subsequent criminal prosecutions.[34] In

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[33] *See, e.g.*, Pub. Affs. Bureau, *Detectives Seek Community's Help Following Gun Store Burglary*, Fairfax Cnty. Police Dep't (Sept. 20, 2024), https://fcpdnews.wordpress.com/2024/09/20/detectives-seek-communitys-help-following-gun-store-burglary/ (publicizing law enforcement request for public assistance in identifying suspects in late night FFL burglary); Special Advisory, *ATF Requests the Public's Help to Identify Individuals Involved in Firearm Store Burglaries*, ATF, https://www.atf.gov/news/advisories/atf-requests-public%E2%80%99s-help-identify-individuals-involved-firearm-store-burglaries (Sept. 1, 2022) (same); *Police Release Surveillance Video of Gun Store Robbery*, WMAR (Mar. 10, 2017), https://www.wmar2news.com/news/state/police-release-surveillance-video-of-gun-store-robbery-in-rockville (same); *Police: Burglary at NY Shooter Supply Overnight*, CBS 6 Albany (Oct. 29, 2017), https://cbs6albany.com/news/local/police-burglary-at-ny-shooter-supply-overnight (same).

[34] *See, e.g.*, ATF, National Firearms Commerce and Trafficking Assessment: Firearm Trafficking Investigations, *supra* note 12, at 15 (recounting how ATF agents used FFL security cameras to help identify burglary and trafficking suspects); Omari Fleming, *Arrests Made in SoCal Gun Store Burglary Spree, 100+ Stolen Weapons from San Diego*, NBC 7 San Diego (July 17, 2024), https://www.nbcsandiego.com/news/local/arrests-made-in-socal-gun-store-burglary-spree-100-stolen-weapons-from-san-diego/3568687/ (detailing how surveillance video from multiple FFLs helped law enforcement investigate burglary ring); Press Release, U.S. Att'y's Off., D. Del., *Two Indicted in Federal Court for Burglary of Firearms Dealer* (July 8, 2020), https://www.atf.gov/news/press-releases/two-indicted-federal-court-burglary-firearms-dealer (publishing images from surveillance video and requesting assistance identifying additional individuals involved in a burglary following the indictment of two parties); Press Release, U.S. Att'y's Off.,

one federal prosecution, for example, surveillance video showed a suspect in two overnight FFL burglaries wearing a distinctive hat and gloves and throwing a trash can through an FFL's door to obtain entry. Complaint ¶¶ 16, 41, *United States v. Maillet*, No. 2:19-CR-00149 (W.D. Wash. July 23, 2019). Authorities were able to match the particular trash can, hat, and gloves to the suspect, helping confirm his identity and linking him to the burglary for which he was eventually convicted. *Id.* ¶¶ 23, 40–41.[35] Officials in another FFL burglary case were able to use surveillance video to help confirm the identity of a suspect based on the particular boots he wore during the break-in. *See* Plea Agreement at 2, 3, *United States v. Jones-Davis*, No. 8:22-CR-00159 (D. Neb. May 3, 2023).

Section 26806's requirement that FFLs record all views of entries or exits and firearm display areas is similarly tailored to ensure that law enforcement is able to obtain images sufficient to identify, arrest, and prosecute individuals responsible for FFL thefts.[36] *See, e.g.*, Cal. Penal Code § 26806(a)(3); *see also id.* § 26806(a)(7) (requiring

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E.D. Pa., *Bethlehem Man Who Burglarized Firearms Dealers and Stole More Than 150 Guns Sentenced to 40 Months in Prison* (May 6, 2025), https://www.justice.gov/usao-edpa/pr/bethlehem-man-who-burglarized-firearms-dealers-and-stole-more-150-guns-sentenced-40 (surveillance videos from multiple FFLs contributed to successful prosecution for gun store burglary spree).

[35] *See also* Press Release, U.S. Att'y's Off., W.D. Wash., *Gun Store Burglar Sentenced to Nearly Five Years in Prison*, (Oct. 7, 2020), https://www.justice.gov/usao-wdwa/pr/gun-store-burglar-sentenced-nearly-five-years-prison (noting that surveillance video helped link suspect to crime).

[36] *See, e.g.*, Sarah Heise, *Several Detained in Connection with Rocklin Gun Store*

recordings to accurately display the date and time).[37]

For example, prosecutors in *United States v. Terrero-Terrero* relied in part on "surveillance video captured from the FFL's interior and exterior video system" to convict a defendant who stole more than 150 guns during three FFL burglaries. *See* Gov't Sentencing Mem. 3, *United States v. Terrero-Terrero*, No. 24-CR-00020 (E.D. Pa. 2024). Video obtained from one FFL showed the defendant wearing a particular sweatshirt, and video from another FFL depicted the model of a getaway vehicle that investigators were able to associate with the defendant. *Id.* at 2–3. In another incident, after two guns were stolen from Baraboo, Wisconsin, gun store Jim's Gun Supply, a Baraboo law enforcement officer proposed an ordinance requiring gun shops to have security cameras and keep the footage for 90 days in order to assist officers in recovering firearms stolen in FFL thefts. The gun shop owner stated that "the ordinance is actually a smart idea," noting that "[i]f the cameras had been there

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Burglary, KCRA 3 (July 13, 2016), https://www.kcra.com/article/several-detained-in-connection-with-rocklin-gun-store-burglary/6429614 (describing how investigators used FFL surveillance video to identify the license plate and model of vehicle used in gun store burglary); Shelby Filangi, *Pueblo County Sheriff: Suspect Steals 'Thousands of Dollars Worth of Guns' from 3 Businesses*, KRDO (Nov. 15, 2021), https://krdo.com/news/2021/11/15/pueblo-county-sheriff-suspect-steals-thousands-of-dollars-worth-of-guns-from-3-businesses/ (same).

[37] *See, e.g.*, Press Release, *Centralia Resident Charged In Federal Court For Burglarizing Gun Dealer And Attempting To Sell 39 Stolen Firearms*, U.S. Att'y's Off., S.D. Ill. (Dec. 5, 2014), https://www.justice.gov/usao-sdil/pr/centralia-resident-charged-federal-court-burglarizing-gun-dealer-and-attempting-sell-39 (investigators used timestamped FFL surveillance video to establish time of initial burglary as well as two subsequent entries).

[the police] could have . . . got both guns back . . . . I feel I'm at fault for not having the system. I should have had something like this."[38]

Second, Section 26806's requirement that FFLs' video systems operate 24 hours per day is important. *See* Cal. Penal Code § 26806(a)(4). Between 2017 and 2021, there were reports of 34,339 firearms stolen from FFLs.[39] Almost 80 percent of stolen firearms (among all types of FFL thefts) were stolen in burglaries, defined as thefts involving the unlawful entry of a structure with intent to commit a felony or theft therein.[40] This is significant because the distinguishing element of burglaries—unlawful entry of a structure—suggests that these thefts often occur outside an FFL's normal business hours. Myriad examples of federal prosecutions demonstrate that these thefts often occur when the shops are closed.[41]

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[38] Amy Reid, *Gun Rights Group Threatens Lawsuit Over Baraboo Ordinance Requiring Security Cameras at Gun Shops*, Channel 3000 (Oct. 31, 2019), https://www.channel3000.com/news/local-news/gun-rights-group-threatens-lawsuit-over-baraboo-ordinance-requiring-security-cameras-at-gun-shops/article_d666da9e-66cc-5c1d-af28-e3dec260f8ee.html.

[39] *See* ATF, *supra* note 28, at 2.

[40] *See id.* at 1–2.

[41] *See, e.g.*, Press Release, U.S. Att'y's Off., N.D. Cal., *East Bay Residents Charged With Stealing 27 Firearms From Hayward Gun Store* (Aug. 3, 2020), https://www.justice.gov/usao-ndca/pr/east-bay-residents-charged-stealing-27-firearms-hayward-gun-store (27 firearms stolen "after business hours when the store was closed"); Press Release, U.S. Att'y's Off., S.D. Ind., *Bedford Man Sentenced to 14 Months in Federal Prison After Stealing 16 Firearms From Local Gun Shop* (May 15, 2023), https://www.justice.gov/usao-sdin/pr/bedford-man-sentenced-14-months-federal-prison-after-stealing-16-firearms-local-gun (16 handguns stolen from an FFL at approximately 2 a.m.); Press Release, U.S. Att'y's Off., C.D. Ill., *Peoria Man*

It is therefore critical for footage to be recorded at all hours, especially late at night and early in the morning when witnesses are unlikely to be present. The district court followed this same reasoning when it observed that "theft and other crimes occur even after regular business hours and to fulfill the purpose of the regulatory scheme, there must be deterrence and identification of stolen weapons day and night." *See* 1-ER-23.

In addition to helping law enforcement solve crime, video recording systems deter crime, including thefts. *See* ATF, *Safety and Security Information for Federal Firearms Licensees*, *supra* note 32, at 7 ("The presence of video cameras can significantly deter crime."). Just as homes protected by security systems prominently advertise that fact, displaying that an FFL's premises are under audio and video surveillance—as required by Section 26806(c)—changes the risk calculus for individuals considering committing crimes.[42] Many potential thieves will be deterred if they are aware that

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Sentenced to Over 12 Months in Prison for Involvement in Looting a Gun Store and Providing False Statements to the ATF (Oct. 22, 2021), https://www.justice.gov/usao-cdil/pr/peoria-man-sentenced-over-12-months-prison-involvement-looting-gun-store-and-providing (29 firearms stolen during an FFL burglary at 2:00 a.m.); Press Release, U.S. Att'y's Off., D. Del., *Wilmington Man Sentenced for Stealing Firearms From a Federally Licensed Firearms Dealer* (Apr. 28, 2022), https://www.atf.gov/news/press-releases/wilmington-man-sentenced-stealing-firearms-federally-licensed-firearms-dealer (35 firearms stolen from three consecutive "early morning hours" burglaries of the same FFL).

[42] In its guidance intended to help FFLs prevent firearm loss from theft, the ATF also recommends that dealers post signs stating that the premises are under video surveillance. *See* ATF, *Loss Prevention for Firearms Retailers* at 2 (Jan. 2016),

their images and voices will be recorded. Illinois's experience with its FFL video security system law—which similarly requires FFLs to post surveillance signage[43]—bears this out. Illinois officials reported a remarkable decrease in the number of firearms stolen from FFLs after its law went into effect.[44]

This deterrent effect provides another justification for applying the same requirements to both brick-and-mortar retailers and home-based dealers:[45] if prospective thieves, straw purchasers, and firearm traffickers knew that their conduct would be comprehensively recorded when they visit certain types of FFLs but not others, they might specifically seek out and target the dealers for which the requirements of Section 26806 did not apply. That would severely undermine California's public safety objectives.

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https://www.atf.gov/firearms/docs/guide/loss-prevention-firearms-retailers/download. The NSSF similarly states that "FFL[s] should actually benefit greatly by letting its visitors know that all activities are being recorded." *See* Bocker, *supra* note 6.

[43] 430 Ill. Comp. Stat. Ann. 68/5-50(b).

[44] *See* Press Release, Ill. State Police, *Guns Stolen from Firearms Dealers Drops Following Illinois State Police Inspections* (Jan. 23, 2025), https://isp.illinois.gov/Media/CompletePressRelease/2104.

[45] *See, e.g.*, ATF, *supra* note 28 at 5 ("Thefts from FFLs operating from offices and single-family dwellings were more likely to be larceny type thefts, accounting for 77% (469 out of 610 incidents) of thefts from offices and 79% (370 out of 470 incidents) of thefts from single family dwellings.").

IV. Section 26806 can help law-abiding dealers mitigate risk and provide valuable information in cases involving law-breaking dealers.

In addition to the benefits discussed above, dealers themselves are likely to benefit from the video recordings mandated by Section 26806. Many dealers understand and appreciate the importance of their role as the first line of defense against firearms entering dangerous hands. Clear, accurate video and audio recordings like those required by Section 26806 can help protect these responsible dealers, who abide by their obligations under state and federal law, in the event that particular transactions are challenged in the criminal,[46] regulatory,[47] or civil[48] contexts. By creating a record of the absence of any red flags of illegal purchasing during a firearms transaction, Section 26806 can help such dealers avoid liability in the event that they are sued or investigated for transferring firearms unlawfully.

To be sure, some dealers neglect or flout their responsibilities—willfully

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[46] *See, e.g.*, Press Release, U.S. Att'y's Off., D. Mass., *Federal Firearms Licensee Sentenced to Prison for Firearm Trafficking and Straw Purchasing Conspiracy* (Jan. 10, 2025), https://www.justice.gov/usao-ma/pr/federal-firearms-licensee-sentenced-prison-firearm-trafficking-and-straw-purchasing (FFL faced criminal charges for straw purchasing conspiracy).

[47] *See, e.g.*, 27 C.F.R. §§ 478.73–478.76 (FFLs may request a hearing if the ATF issues a license revocation notice after finding that the FFL has willfully violated the GCA).

[48] *See, e.g.*, *Norberg v. Badger Guns*, No. 2010-CV-020655 (Wis. Cir. Ct. Milwaukee Cnty. Oct. 13, 2015) (described below).

ignoring or even actively facilitating suspicious purchases.[49] But Section 26806 serves a purpose here too. For dealers that choose to jeopardize public safety, it is important to have a record of their conduct in order to facilitate accountability and to differentiate them from their law-abiding counterparts.

In one example of a law-breaking dealer, a notorious FFL in Wisconsin was found negligent on the basis of the straw sale of a gun that was used to shoot two police officers. Video surveillance showed the actual purchaser, an 18-year-old, "hanging . . . on the shoulder" of the straw purchaser while he filled out the Form 4473. *See Milwaukee Case Considers Gun Dealer's Responsibility In Shootings*, NPR (Oct. 13, 2015), https://www.npr.org/2015/10/13/448378952/milwaukee-case-considers-gun-dealers-responsibility-in-shootings. The straw purchaser initially marked "No" in response to the Form 4473 question asking whether he was the actual buyer of the firearm. At that point the dealer was legally obligated to stop the transaction, but the store clerk allowed the customer to change his answer. *Id.* The actual and straw purchaser even left the store together to acquire additional cash to complete the purchase. *Id. See also* Michael Smerconish, *Firearm Lawsuit Puts Gun Sellers On Notice*, The Philadelphia Inquirer (Oct. 29, 2015), https://www.goupstate.com/story/opinion/columns/2015/10/29/smerconish-

[49] An ATF analysis of one year of data concerning firearms used in crimes found that "a small number of licensed dealers account for a large proportion of the firearms traced." ATF, Commerce in Firearms in the United States 2 (2000).

firearm-lawsuit-puts-gun-sellers-on-notice/30095669007/ (plaintiffs' attorney noted that they relied on "some very powerful visual evidence through the surveillance [video] in securing the verdict"). In such cases, the availability of video evidence facilitates the truth-seeking process and promotes accountability of those who shirk their responsibilities.

CONCLUSION

This Court should affirm the district court's order dismissing all claims.

Respectfully submitted,

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9th Cir. Case Number(s) 25-693

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