



January 9, 2025  
via e-mail to [megan.bennett@atf.gov](mailto:megan.bennett@atf.gov)

Megan Bennett  
Assistant Director, Office of Enforcement Programs and Services  
Bureau of Alcohol, Tobacco, Firearms and Explosives  
99 New York Avenue, NE  
Washington, DC 20226

Re: Recent FIPB Pistol Brace Guidance to Gun Owners of America Member  
Violates Southern District of Texas Court Order

Dear Ms. Bennett:

My name is Erich Pratt. I am the Senior Vice President of Gun Owners of America, Inc. (“GOA”) and the Senior Vice President of Gun Owners Foundation (“GOF”). GOA and GOF are nonprofit corporations dedicated, *inter alia*, to preserving and defending the Second Amendment rights of gun owners. GOA and GOF together have more than two million members and supporters nationwide.

As you know, ATF issued a Final Rule in early 2023 entitled “Factoring Criteria for Firearms with Attached ‘Stabilizing Braces,’” 88 Fed. Reg. 6478 (the “Rule”), which purported to “clarify” when a pistol equipped with a stabilizing brace is in fact a short-barreled rifle (“SBR”) subject to taxation, registration, and attendant criminal penalties under the National Firearms Act (“NFA”), 26 U.S.C. § 5801 *et seq.*

This Rule was slated to affect millions of commonly owned firearms, claiming them to be unregistered SBRs possessed in violation of the NFA. Yet the Rule offered no clear guidance as to when ATF would consider a braced pistol to be an unregistered SBR. Instead, the Rule merely referenced a stabilizing brace’s “surface area” and then identified six “factors” ATF would consider, behind closed doors, in making individual determinations. Even so, the Rule emphasized that it only “serve[d] to clarify that *certain* weapons equipped with ‘stabilizing braces’ are short-barreled rifles regulated under the NFA,” 88 Fed. Reg. at 6554 (emphasis added), not that *every* weapon equipped with a stabilizing brace would be an SBR.

GOA and GOF sued ATF in the U.S. District Court for the Southern District of Texas to enjoin the Rule, explaining that the Rule violates the Administrative Procedure Act and the Second

Amendment, among other provisions of law.<sup>1</sup> On October 27, 2023, the Southern District of Texas preliminarily enjoined the Rule as to the individual “Plaintiff[] ... and his resident family members, as well as *GOA’s current members and their resident family members.*” *Texas v. BATFE*, 700 F. Supp. 3d 556, 573 (S.D. Tex. 2023) (emphasis added). This injunction remains in effect during the pendency of ATF’s appeal to the Fifth Circuit. Other district courts have similarly enjoined or vacated the Rule, and the U.S. Courts of Appeals for the Fifth and Eighth Circuits have rejected the Rule as well. *See, e.g., Watterson v. BATFE*, 2023 U.S. Dist. LEXIS 183109 (E.D. Tex. June 7, 2023); *Britto v. BATFE*, 2023 U.S. Dist. LEXIS 200933 (N.D. Tex. Nov. 8, 2023); *Colon v. BATFE*, 2024 U.S. Dist. LEXIS 13966 (M.D. Fla. Jan. 26, 2024); *Mock v. Garland*, 2024 U.S. Dist. LEXIS 105230 (N.D. Tex. June 13, 2024); *see also Mock v. Garland*, 75 F.4th 563 (5th Cir. 2023); *Firearms Regul. Accountability Coal., Inc. v. Garland (“FRAC”)*, 112 F.4th 507 (8th Cir. 2024).

**One would think that ATF, a federal law enforcement agency, would abide by the district court’s injunction not to enforce the Rule, not to mention the similar injunctions (and one vacatur) entered by other federal courts. Unfortunately, one would be wrong.**

On December 12, 2024, a member of Gun Owners of America received a response to a question posed to ATF, signed not by any identifiable ATF official, but rather generically “FIPB,” standing for ATF’s Firearms Industry Programs Branch (attached with personal information redacted). In this December 12, 2024 email, FIPB adopted a legal position about pistol braces that is (i) at odds with the opinions of various courts to have considered the Rule, (ii) likely in violation of various injunctions against ATF’s enforcement of the Rule, and (iii) in conflict with the statute and even the Final Rule itself.

Specifically, our member reported having “recently purchased a CZ Scorpion Mini+ pistol, and ... considering installing a pistol brace.” However, “hav[ing] encountered conflicting information regarding whether this modification would require the firearm to be registered as an SBR,” the member asked for “clarification on the applicable regulations.”

In its response to that request, FIPB responded with the position that “[f]ederal law **requires a pistol with an attached stabilizing brace or stock be registered as a short barreled rifle....**” FIPB’s email contains no qualification of that broad statement. In fact, ATF has no idea what sort of brace this GOA member planned to install on the pistol. In other words, FIPB advised this GOA member that **if** a pistol is equipped with a stabilizing brace, **then** it is an SBR *as a categorical matter* – irrespective of multiple courts’ orders that ATF **not** enforce that reasoning, and even despite the Rule’s factorial test and ATF’s assurance that only “**certain** weapons equipped with ‘stabilizing braces’” would be SBRs under that test. 88 Fed. Reg. at 6554 (emphasis added).

FIPB continued. Despite acknowledging an injunction issued by the Northern District of Texas against the Rule, FIPB then posited that, irrespective of injunctions against enforcement of *the Rule*, “ATF remains responsible for enforcement of *statutory provisions* ... under the NFA,”

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<sup>1</sup> *See* Complaint for Declaratory and Injunctive Relief (“GOA Complaint”), *Texas v. BATFE*, No. 6:23-CV-00013 (S.D. Tex. Feb. 9, 2023), ECF No. 1, <https://tinyurl.com/36tu63nn>.

opining that ATF may enforce its new view of *the law, the Rule* and orders enjoining it notwithstanding.

In other words, it would thus seem that FIPB now considers all braced pistols to be SBRs – an alarming change in position which was not announced publicly, or in any representation to any court, but rather in a private communication to one GOA member. Of course, FIPB’s entirely new position goes much further than even the highly contested Final Rule, which opined that nearly every – *but not every* – pistol with a stabilizing brace would be an SBR. *See Mock*, 2024 U.S. Dist. LEXIS 105230, at \*11-12 (“Under the Final Rule, the ATF estimated about 99% of pistols with stabilizing braces would be reclassified as NFA rifles.”); *FRAC*, 112 F.4th at 521 (“By the ATF’s own estimation, 99% of braced weapons are ‘rifles’ under the NFA and GCA, not just a simple ‘majority.’”). But as noted, both the Eighth Circuit and the Fifth Circuit have flatly rejected this result. *See FRAC*, 112 F.4th 507; *Mock*, 75 F.4th at 585.

And in addition to being even more expansive than the Rule itself, FIPB’s new position likely violates the Southern District of Texas’s order that ATF’s expansion of NFA liability *not* extend to members of GOA.

Ignoring the district court’s order in our case, FIPB’s email adopts the cutesy theory that, even though ATF has been enjoined from enforcing *the Rule*, it may still enforce its interpretation of *the statute* – which not coincidentally just so happens to be identical to (if not worse than) the interpretation laid out in the Rule. *See* attachment (“ATF is complying with the Court’s order,” but “[t]he District Court’s order does not prohibit enforcement of the [NFA] or [GCA],” only “action in reliance on the Final Rule....”).

Not only is this spurious theory too cute by half, but also it likely violates the orders of the numerous courts who have expressly stated that ATF *may not enforce the legal theories advanced in the Rule*. For ATF to claim to enforce those *same theories* under *the statute* but not under *the Rule* is a distinction without a difference, and one that demonstrates FIPB’s contempt for these federal courts and the rule of law.

Even worse than FIPB’s purported blanket ban on pistols with stabilizing braces, during litigation over the Rule, ATF previously asserted without explanation that *the specific firearm at issue here* – a CZ Scorpion Mini with a stabilizing brace attached – was an SBR,<sup>2</sup> but had that conclusion rejected by the U.S. Court of Appeals for the Eighth Circuit. *See FRAC*, 112 F.4th at 525 (“the ATF judged the pictured weapons to be short-barreled rifles,” but “the Slideshows ... are devoid of any explanation as to how the ATF applied the Final Rule to the pictured weapons,” and indeed, the brace Rule “allows the ATF to arrive at whatever conclusion it wishes without “adequately explain[ing] the standard on which its decision is based.”); *see also id.* at 524 (the Final Rule makes it ““nigh impossible for a regular citizen to determine what constitutes a braced pistol, and ... whether a specified braced pistol requires NFA registration.””).<sup>3</sup>

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<sup>2</sup> *See* <https://perma.cc/GX8K-A4TW>, at 35.

<sup>3</sup> A district court in Texas similarly rejected ATF’s classification of a PDW-equipped-Scorpion. *Mock*, 2024 U.S. Dist. LEXIS 105230, at \*12 (**Error! Main Document Only.**“ATF contemporaneously issued approximately sixty adjudications pursuant to the Final Rule that

In other words, ATF’s theory – specifically applied to the CZ Scorpion pistol at issue here – was rejected as applied to a firearm equipped with an PDW stabilizing brace. And yet FIPB’s email takes the position that the very same firearm – when equipped *with any stabilizing brace* – is a short-barreled rifle. The audacity of that claim – which directly conflicts with decisions of two federal courts – cannot be understated.

What is more, as GOA explained to the court in its pistol brace case, numerous prior ATF classification letters “have determined that a stabilizing brace, when added *generally to any* pistol, does not turn the firearm into a short-barreled rifle under the NFA.” GOA Complaint, *supra* note 1, ¶76.<sup>4</sup> And, although the Final Rule “Final Rule” purported to “rescind[] all [of these] previous braced-weapon classifications, declaring them ‘no longer valid,’”<sup>5</sup> that rescission was enjoined, and then later vacated. *Mock v. Garland*, 2024 U.S. Dist. LEXIS 105230, \*19 (N.D. Tx. June 13, 2024).

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reclassified different configurations of firearms with stabilizing braces as NFA rifles. The ATF provided no explanations for how the agency came to these classifications and there is no ‘meaningful clarity about what constitutes an impermissible stabilizing brace.’ ... In fact, the Fifth Circuit ‘[could not] find a single given example of a pistol with a stabilizing brace that would constitute an NFA-exempt braced pistol.’ ... Such “unexplained” and “inconsistent” positions’ are arbitrary and capricious.”)

<sup>4</sup> See also *id.* ¶55 (ATF concluding in a Nov. 26, 2012 letter that a “submitted ‘brace,’ when attached to a firearm, ... ‘would not be subject to NFA Controls’”), ¶57 (ATF approving another brace design using Velcro straps on the forearm), ¶58 (ATF “stating that attaching [SIG Sauer’s] pistol brace to an AR-type pistol’s buffer tube would not convert the firearm from a pistol to an SBR”), ¶59 (ATF noting in 2014 that “certain firearm accessories such as the SIG Stability Brace have not been classified ... as shoulder stocks” irrespective of the firearm to which they are attached), ¶60 (ATF approving the “SigTac SB15 pistol stabilizing brace” on shotguns), ¶61 (ATF “stat[ing] that attaching [the “Blade AR Pistol Stabilizer”] to a pistol would not convert the pistol into a ‘firearm’ as defined by the NFA), ¶63 (ATF “confirm[ing]” in a 2015 open letter that “a pistol stabilizing brace, if used as designed and described in the November 26, 2012 classification letter, ‘is not considered a shoulder stock and therefore may be attached to a handgun without making a NFA firearm”), ¶66 (“[A]t no time did ATF communicate a policy whereby the mere fact of attachment of an approved brace to a firearm would automatically convert that firearm into an NFA-controlled SBR.”), ¶67 (ATF approving in 2015 “an adjustable brace ... ‘for use as a pistol stabilizing brace provided the raised ridges are removed from the rear of the device’”), ¶68 (ATF approving in 2016 a “‘Tailhook’ model of brace ... ‘when attached to an AR-type pistol’”), ¶69 (ATF approving in 2017 a “second generation of ‘Tailhook’ brace, ‘when attached to an AR-type pistol’”), ¶73 (ATF concluding in 2017 that “attaching the Shockwave Blade Pistol Stabilizer to an AR-type handgun alone as a forearm brace, does not ‘make’ a NFA weapon”), ¶74 (ATF approving in 2018 a brace “if the subject brace were ‘used as designed to assist shooters in stabilizing a handgun while shooting with a single hand, and the stabilizing brace is installed on an AR-15 type pistol’”) (emphases added).

<sup>5</sup> *FRAC*, 112 F.4th at 518.

This means that ATF's prior "braced-weapon classifications" are back in effect, never having been lawfully rescinded. This includes ATF's repeated determination that certain braces can be *placed on any pistol* without running afoul of the NFA. And again, one of those classification letters involved a brace used on the CZ Scorpion, the very firearm about which our member inquired. GOA Complaint ¶67. FIBP's email to our member does not purport to rescind ATF's prior classification letter approving the use of a brace on such pistol.

We are not aware that ATF has promulgated any subsequent rulemaking where it is now possible "for a regular citizen to determine what constitutes a braced pistol" (*FRAC*, 112 F.4th at 524) versus a short-barreled rifle. Nor are we aware of any new ATF classification letter as pertaining to stabilizing braces vis-à-vis the CZ Scorpion Mini.

Thus, FIPB is doing precisely what it is enjoined from doing – making ad hoc determinations, in secret, based on vague and unpublished criteria that no ordinary person could hope to understand. Of course, "[a] designation by an unnamed official, using unspecified criteria, that is put in a desk drawer, taken out only for use at a criminal trial, and immune from any evaluation by the judiciary, is the sort of tactic usually associated with totalitarian regimes." *United States v. Pulungan*, 569 F.3d 326, 328 (7th Cir. 2009).

A final point bears emphasis. It is difficult to imagine FIPB's novel interpretation of the NFA, and unprecedented attempt to circumvent the orders of several federal district courts, surviving the imminent turnover in presidential administrations, and forthcoming confirmation of a new ATF Director. To the contrary, lawless actions like these stand out like a sore thumb for those, like GOA, who seek to stamp out government weaponization and corruption wherever it exists.

GOA previously submitted its concerns via an email sent to Acting Chief Matthew Shear and Chief William Ryan this Monday, January 6, 2025, outlining GOA's concerns with FIPB's interpretation. **We requested an answer by close of business yesterday, Wednesday, January 8, 2025. No response was received, and thus it appears that both Chief Ryan and Acting Chief Shear stand behind the unlawful position in the December 12, 2025 email to our member. Thus, we are now elevating our concerns to you.**

Accordingly, we **demand your immediate clarification** that the FIPB email sent to our member does not, in fact, represent ATF's official position on this issue, but rather was issued in error.

To the contrary, we **demand your strong assurances** that it is your understanding that the mere fact that a pistol is equipped with a stabilizing brace does not dispositively render it a short-barreled rifle.

Finally, we **demand your guarantee** that ATF intends to comply with the district court orders enjoining enforcement of the Rule. This compliance includes refraining from enforcement of the Rule's flawed and repudiated theories repackaged in an injunction-sidestepping 'statutory' theory, or any other theory which purports to comply with the injunctions but nonetheless exposes GOA members to criminal liability.

Rather, it is our understanding that, pending resolution of existing litigation, ATF is – or should be – awaiting further guidance, and *not* taking *any* definitive positions or issuing classifications with respect to the status of pistols equipped with stabilizing braces. **Please let us know if this understanding is not correct.**

**Please send your response to us, in writing, within three (3) business days of the date of this letter, or by the close of business on January 14, 2025.** We remind you, the FIPB email to our member was signed “FIPB” – a branch you direct under the Office of Enforcement Programs and Services. Thus, if we do not receive your response within three business days, we will safely assume that the flawed positions articulated in the December 12 email to our member are properly attributed to you. And in that case, we will proceed accordingly.

We suggest that you consider this letter carefully. And we look forward to your prompt reply.

Sincerely yours,



Erich Pratt

Attachment

cc: Matthew Shear, Acting Chief, FIPB  
William Ryan, Chief, FATD  
Andrew Lange, Deputy Assistant Director  
James Vann, Deputy Assistant Director