

United States Senate

WASHINGTON, DC 20510-4404

February 21, 2024

Mr. Alan Estevez
Under Secretary of Commerce for Industry and Security
1401 Constitution Ave. NW
Washington, D.C. 20230

Under Secretary Estevez,

On October 27, 2023, your office announced an approximately 90-day pause on the issuance of new export licenses for gun manufacturers seeking to export their products to most foreign end-users. At the time, you claimed that this decision was rooted in a commitment to, “further U.S. national security and foreign policy interests.” Over these past 90 days, however, our national security has not improved. In fact, it has rapidly deteriorated. Today, our country faces a situation where American servicemembers are subjected to a constant barrage of attacks from hostile terrorist groups, where our border is overwhelmed by an endless flow of illegal migrants, and where our defense supply base continues to be depleted at a shocking rate. Of course, none of these threats to our national security were caused by the law-abiding Americans whose only “crime” was to pursue a career in the firearms industry.

While there is little evidence to suggest that the Commerce Department’s pause on issuing new export licenses materially improved our national security, there is substantial evidence to suggest that the pause has caused direct financial harm to countless small and medium-sized businesses across the United States. According to industry experts, the 90-day pause implemented by the Commerce Department is likely to cost American businesses hundreds of millions of dollars in lost revenue. The Department’s pause on issuing new export licenses for firearms comes at the very same time that the Department has loosened restrictions on exporting products controlled under the Chemical Weapons Convention and Missile Technology Control Regime. It is difficult, therefore, for us to conclude that the Commerce Department’s pause on issuing new licenses is truly motivated by a desire to promote U.S. national security.

Nevertheless, 90 days have now passed and the Commerce Department’s pause remains in full effect. The decision to keep the pause in place was never formally communicated to the businesses impacted by the decision, leaving the industry in a state of continued paralysis. We are concerned that the rationale behind the continued imposition of the pause is to afford the Department additional time to promulgate new, unprecedentedly burdensome rules surrounding the approval of future export licenses for gun manufacturers. If the way in which the Commerce Department announced the current pause is indicative of how you intend to impose these new rules, we have grave concerns that this new regulatory regime will be implemented without proper Congressional oversight and industry input.

Despite no formal announcement being made by the Commerce Department, leaked documents that have not been disputed by your office provide the American public with a window into the new regulations you intend to impose on small and medium-sized businesses that manufacture firearms. If accurate, this new regulatory regime stands to devastate the American firearms industry. The proposed regulations, including the requirement that a business provide the Commerce Department with the information of every single potential end-user of their products prior to a license being granted, create an impossibly high burden for manufacturers to meet. There is a real concern that these regulations are being crafted in a manner to deliberately make compliance impossible.

While the Export Control Reform Act (ECRA) does afford the President narrow authority to alter existing export-license regulations, Congress made clear in statute that his ability to do so is tied to meeting a series of clearly defined conditions. Section 1751 of ECRA makes clear that the President can only use this authority after the federal government has fully considered the impact such a decision would have on our economy, on our strategic competitiveness, and only when taking such an action would protect a, “specific United States national security and foreign policy interest.”¹ We are not remotely convinced that any of these criteria have been met.

It is with these concerns in mind that we ask that you answer the following questions:

1. Can you commit to a specific date at which the existing pause on reviewing new export licenses for gun exporters will be lifted?
2. Can you provide a full accounting of the number of export-license applications that have been submitted and put on “Hold Without Action” status during the duration of the existing pause? For each license on “Hold Without Action” and subsequently approved, without disclosing information that identifies a specific applicant or company, please provide the importing country on the license application, the date when the license application was submitted, and the actual date when it was approved.
3. Will the proposed policy changes being considered by the Commerce Department be applied to export-license applications relevant to Israel and Ukraine?
4. Will you commit to providing a standard comment period, prior to the imposition of any new export regulations, that will allow industry leaders and business owners to submit input and feedback on the impact these regulations will have?
5. Will you commit to notifying the relevant Congressional Committees in both the Senate and the House at least 30 days in advance of the imposition of new export regulations, in order to ensure Congress has the appropriate time to review the impact of such regulations and perform appropriate oversight?
6. Do you agree that, should these regulations reflect a commutative cost to the American economy of at least \$100 million, that Congress has the authority under the Congressional Review Act to retroactively terminate the proposed regulations?

The stated mission of the Commerce Department is to, “create the conditions for economic growth and opportunity for all communities.” Your department’s concerted and deliberate attempts to punitively target the American firearms industry stands in direct conflict with that mission. We urge you to uphold your commitment to promoting economic opportunity, lift the ongoing pause on issuing new export

¹ 50 U.S.C. § 4811 (2018)

licenses, and refrain from imposing any new regulations that would unduly harm countless small and medium sized business across the United States.

Sincerely,



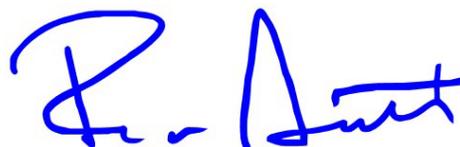
Senator Mike Lee



Senator Steve Daines



Senator Kevin Cramer



Senator Rick Scott



Senator Tom Cotton



Senator Mike Braun



Senator James E. Risch



Senator Mike Crapo

Bill Cassidy, M.D.

Senator Bill Cassidy, M.D.

John Barrasso

Senator John Barrasso

Pete Ricketts

Senator Pete Ricketts

Markwayne Mullin

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