

United States Senate

WASHINGTON, DC 20510

August 3, 2026

ATF Rulemaking Comments
Mail Stop 6N-518
Office of Regulatory Affairs
Enforcement Programs and Services
Bureau of Alcohol, Tobacco, Firearms and Explosives
United States Department of Justice
99 New York Avenue NE
Washington, DC 20226

Attention: *RIN 1140-AA64*

Re: Notice of Proposed Rulemaking: Selecting Biological Sex on ATF Forms

To Whom It May Concern:

On May 6, 2026, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) proposed a rule that would eliminate the non-binary gender marker box for firearm purchases.¹ At a time when the ATF should be focused on combating violent crime and enforcing existing firearms laws, the agency is instead devoting taxpayer resources to a rule that serves no legitimate public safety purpose while further marginalizing transgender and intersex Americans; feeding into a long record of an Administration that attacks trans citizens. As written, the rule would expose both transgender and intersex gun owners and federal firearms licensees (FFLs) to criminal liability, potentially widen dangerous loopholes in background check laws, and unnecessarily target transgender and intersex Americans. We urge the ATF to abandon this ill-conceived rule.

The practical consequences of this proposal are deeply troubling for transgender Americans, and for FFLs. By requiring individuals who have lawfully changed the sex marker on their government-issued identification to report a different sex on ATF forms, the rule forces transgender Americans and FFLs into an impossible position. They must either contradict their legal identification or risk accusations that they made a false statement in connection with a firearm purchase or sale – exposing both the individual and the FFL to potential criminal liability. If implemented, this will be a trap of the government's own making. It creates conditions for law-abiding citizens and FFLs to face criminal investigation or prosecution because of contradictory federal requirements.

¹ United States, Bureau of Alcohol, Tobacco, Firearms and Explosives. "Selecting Biological Sex on ATF Forms." *Federal Register*, vol. 91, no. 87, 6 May 2026.
<https://www.federalregister.gov/documents/2026/05/06/2026-08932/selecting-biological-sex-on-atf-forms>

Additionally, this proposed rule might also frustrate the operation of the National Instant Criminal Background Check System (NICS) by expanding a potential pool of people into an existing loophole. In most cases, the NICS system will deliver instant results on whether someone is eligible to purchase a gun; however, in a small number of cases the NICS system is unable to make an instant determination about whether the potential purchaser is lawfully entitled to own a firearm. Under current law, the FBI has three days to process the application, and if it does not conclude the check within three days, the dealer has discretion to proceed with the sale. These firearm sales are known as the “Charleston Loophole,” as sometimes prohibited persons acquire a firearm in this window. If this rule goes into effect as written, there will be a mismatch between the sex recorded on state IDs and the gender individuals will now be legally required to report on the ATF form, which will almost certainly create delays and push more sales into the Charleston loophole.

Furthermore, by eliminating the “non-binary” option, this proposed rule creates practical barriers for trans Americans to purchase firearms lawfully. Yet, ATF has not shared any rationale as to why this group of citizens should be subjected to additional scrutiny. In fact, the available evidence suggests that trans people are at a much higher risk of experiencing violent crimes with firearms than any other population. For example, the U.S. Department of Justice's Bureau of Justice Statistics 2017-2020 Report on Violent Victimization by Sexual Orientation found that transgender individuals experience violent victimization at a rate approximately 2.5 times higher than cisgender people.² A nationally representative sample from the Williams Institute found transgender people were more than four times as likely to experience violent victimization, and the number of trans people who were murdered in the U.S. nearly doubled between 2017 and 2021, according to data from Everytown for Gun Safety.^{3,4} Of the total victims, 73% were killed with a gun. This proposed rule weaponizes bureaucracy against a vulnerable community, creating barriers based solely on gender identity, instead of a threat to the community.

The proposed rule is part of a larger campaign to marginalize transgender Americans. Following the 2025 mass shooting at Annunciation Catholic School in Minneapolis, senior administration officials repeatedly highlighted the shooter's transgender identity and used the tragedy to characterize transgender people as an inherent public safety threat. Department of Homeland Security Secretary Kristi Noem and FBI Director Kash Patel both publicly emphasized the suspect's transgender identity, while Trump adviser Alex Bruesewitz labeled the

² Truman, J., Morgan, R. U.S. Department of Justice. (June 2022). *Violent Victimization by Sexual Orientation and Gender Identity, 2017-2020*. <https://bjs.ojp.gov/library/publications/violent-victimization-sexual-orientation-and-gender-identity-2017-2020>

³ Flores, A., Meyer, I., Langton, L., Herman, J. American Journal of Public Health (April 2021). *Gender Identity Disparities in Criminal Victimization: National Crime Victimization Survey, 2017-2018*. <https://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2020.306099>

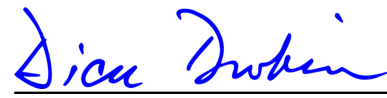
⁴ Everytown for Gun Safety Support Fund. *How Guns Fuel Violence Against Transgender People in America* (November 2019). <https://everytownresearch.org/report/how-guns-fuel-violence-against-transgender-people-in-america?/>

perpetrator "another deranged trans terrorist."^{5, 6, 7} Similarly, on the 24th anniversary of the 9/11 attacks, Donald Trump Jr. went further, claiming that "there is no more violent group in the world per capita than the trans community," despite no credible evidence supporting that assertion.⁸ These statements followed years of President Trump's own rhetoric portraying transgender people as a societal threat, including his declaration that "it will be the official policy of the United States government that there are only two genders, male and female," alongside promises to "stop the transgender lunacy" through executive action targeting transgender Americans.⁹ Against this backdrop, the proposed ATF rule risks transforming that political narrative into federal firearms policy. The federal government should not adopt regulations that reinforce unsupported stereotypes or imply that transgender identity itself is a predictor of violent crime, particularly when available evidence does not support such a conclusion.

This proposal is an extraordinary example of government overreach. It increases government surveillance and documentation of transgender Americans who want to lawfully purchase a firearm and imposes new administrative burdens without producing any measurable public safety benefit. The rule also puts FFLs and transgender Americans in an impossible situation by forcing them to lie and possibly commit a crime. The American people deserve an ATF focused on reducing violent crime, not on creating new mechanisms to scrutinize, intimidate, and further disenfranchise transgender citizens. We urge the ATF to withdraw this proposal in its entirety and focus its resources on policies that genuinely protect public safety while respecting the constitutional rights and equal dignity of every American.

Sincerely,



Christopher S. Murphy
United States Senator

Richard J. Durbin
United States Senator

⁵ Noem, Kristi. X (Aug 2025) <https://x.com/EnvoyNoem/status/1960803291195118047?lang=en>

⁶ Karnowski, Steve, Mark Vancleave, and Giovanna Dell'Orto. "A Shooting at a Minneapolis Catholic School Kills 2 Children, Injures 17 People." *Associated Press*, 27 Aug. 2025, <https://apnews.com/article/minneapolis-school-shooting-annunciation-0fb27d2c911fe63a9f04791b444f298>

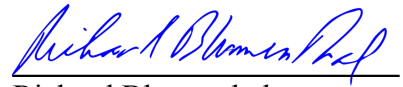
⁷ Global Project Against Hate and Extremism. "Minneapolis Shooting Sparks Wave of Anti-Trans Hate Online." *Global Project Against Hate and Extremism*, 4 Sept. 2025, <https://globalextrémism.org/post/minneapolis-shooting-sparks-wave-of-anti-trans-hate-online/>

⁸ GLAAD. "Donald Trump Jr." *GLAAD Accountability Project*, GLAAD, <https://glaad.org/gap/donald-trump-jr/>

⁹ Trump, Donald J. *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*. Executive Order 14168, 20 Jan. 2025. *Federal Register*.



Adam B. Schiff
United States Senator



Richard Blumenthal
United States Senator