The Honorable Robert S. Lasnik

**UNITED STATES DISTRICT COURT**
**WESTERN DISTRICT OF WASHINGTON**
**AT SEATTLE**

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| STATE OF WASHINGTON, et al.<br><br>Plaintiffs,<br><br>v.<br><br>UNITED STATES DEPARTMENT OF STATE, et al.,<br><br>Defendants. | NO. 2:18-cv-01115-RSL<br><br>DECLARATION OF MARY B. McCORD |

I, Mary B. McCord, pursuant to 28 U.S.C. § 1746, hereby declare and say as follows:

1. I am over the age of 18 and have personal knowledge of all the facts stated in this declaration.

2. I am currently a Senior Litigator and Visiting Professor of Law at the Institute for Constitutional Advocacy and Protection at Georgetown University Law Center in Washington, D.C. I have held this position since July 1, 2017. In this position, I have represented cities, businesses, and individuals in lawsuits raising a variety of constitutional and statutory issues. I have also authored or co-authored several amicus briefs on behalf of current and former federal, state, and local prosecutors and law enforcement officials, and have co-authored letters to government officials on behalf of former national security officials.



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3. Prior to holding my current position, I was the Acting Assistant Attorney General for National Security at the Department of Justice from October 2016 through mid-May 2017, and the Principal Deputy Assistant Attorney General for National Security at the Department of Justice from May 2014 through October 2016. In those roles, I oversaw all federal counterterrorism, espionage, and export-control prosecutions. These included prosecutions of terrorists brought to the United States from abroad for terrorist acts committed overseas, as well as prosecutions of terrorism-related offenses committed within the United States. It also included prosecution of cases arising from violations of the Arms Export Control Act (AECA), 22 U.S.C. § 2751 *et seq.*, and the International Trafficking in Arms Regulations (ITAR), 22 C.F.R. §§ 120-130. In addition, my responsibilities included representing the Department of Justice at interagency policy meetings, including Deputies Committee meetings, held by the National Security Staff of the Executive Office of the President, on a full range of national security issues including counterterrorism policy, terrorist threats to aviation, border security, export control policy, arms control policy, intelligence collection, cyber threats to national security, and foreign attempts to influence the U.S. elections, among others. My work put me in close contact with officials from all of the national security departments and agencies, including the Departments of Defense, Homeland Security, State, and the Treasury, and the intelligence community, among others.

4. Prior to my position in the National Security Division at the Department of Justice, I was an Assistant United States Attorney (AUSA) for the District of Columbia from October 1994 to May 2001 and July 2002 through May 2014. During my tenure as an AUSA, in addition to prosecuting at trial and litigating on appeal in cases arising under federal and District of Columbia criminal law, I served as a Deputy Chief of the Sex Offense Section for one year, Deputy Chief of the Appellate Division for six years, and Chief of the Criminal Division for two years. As Chief of the Criminal Division, I supervised all federal violent and organized crime prosecutions, including narcotics and gun trafficking; all federal white collar offenses; and all prosecutions of federal national security offenses (in conjunction with the

officials at the National Security Division of the Department of Justice). My work put me in close contact with law enforcement officials at the Federal Bureau of Investigation, the Bureau of Alcohol, Tobacco, Firearms, and Explosives, and the Department of Homeland Security, among others.

5. This declaration is submitted in support of the request for an injunction filed by the States of Washington, California, Connecticut, Colorado, Delaware, Hawaii, Illinois, Iowa, Maryland, Minnesota, New Jersey, New York, North Carolina, Oregon, Rhode Island, Vermont, the Commonwealths of Virginia, Massachusetts, and Pennsylvania, and the District of Columbia ("plaintiff States").

6. I have considered the likely impacts of an unrestricted export of Defense Distributed's Computer Aided Design (CAD) files to any interested person, entity, or foreign power, and have concluded that its likely effect would be detrimental to the national security, foreign relations, and public safety interests of the United States and the plaintiff States.

**Unrestricted Export Would Threaten To Defeat Existing Security Protocols on Which Public Safety Depends**

7. A plastic firearm that is both fully operable and virtually undetectable by conventional security measures would threaten to defeat existing security protocols on which public safety depends. Such a device would rarely, if ever, be detected by metal detectors, which form the backbone of well-developed protocols used across the United States and around the world for public safety.

8. Metal detectors stand between those carrying firearms and boarding airplanes, entering packed stadiums and arenas, attending concerts, visiting courthouses and other government buildings, and—increasingly—going to school.

9. A plastic firearm, including a 3D-printed plastic firearm, would evade this well-honed system because there would be no current-conducting metal on which the detector would alert.

10. Although the federal Undetectable Firearms Act, 18 U.S.C. § 922(p), requires firearms to include enough metal to be detectable by a walk-through metal detector, this requirement easily could be evaded by bad actors who seek to smuggle 3D-printed plastic firearms through such metal detectors. For example, it is my understanding that the Defense Distributed CAD files for the "Liberator" 3D-printed plastic firearm include the insertion of a six-ounce piece of metal to comply with this requirement, but that the metal piece can be removed without rendering the firearm inoperable.

11. Although most firearms ammunition should be detectable by metal detectors, depending on the sensitivity and calibration of the equipment used, a single bullet might be undetectable.

12. The law enforcement and national security community, of which I was a part for more than 20 years, has consistently expressed concerns about the development of plastic weapons—whether firearms or improvised explosive devices—that can evade detection by metal detectors.

13. Allowing widespread private manufacture and access to operable 3D-printed plastic firearms would seriously undermine the utility of one of the primary currently available forms of protection for sensitive and/or crowded sites nationwide and worldwide.

**Unrestricted Export Would Pose Serious National Security Risks**

14. The export of CAD files for the manufacturing of 3D-printed plastic firearms means that the files will be available not only to U.S. persons (U.S. citizens and Lawful Permanent Residents (LPRs)), but also to foreign persons both inside and outside of the United States. *See* 22 CFR § 120.17 (defining "export" for purposes of ITAR to include "transmission" of technical data "out of the United States in any manner" and "releasing or otherwise transferring technical data to a foreign person in the United States").

15. Unrestricted export of these CAD files means that bad actors, including members of foreign terrorist organizations and those inspired by them, both inside and outside

of the United States, would be able to make undetectable and untraceable firearms that could be used to inflict harm on persons residing in or visiting the State of Washington and other plaintiff States.

16. Foreign terrorist organizations like al-Qa'ida and ISIS have long encouraged the use of firearms to commit acts of terrorism on U.S. soil in the name of those groups. Such terrorist organizations call on individuals to cause as much bloodshed as possible in the hope of spreading fear, gaining notoriety, and attracting additional followers. Individuals such as Omar Mateen, the shooter at Orlando's Pulse Nightclub who killed 49 people, and Syed Farook and Tashfeen Malik, the shooters at a county government training event in San Bernardino, California, who killed 14, have, regrettably, answered that call.

17. Thus far, those in the United States who have been susceptible to terrorists' call to violence have in some instances been limited in the bloodshed that they are able to cause with firearms. That appears due, at least in part, to the security protocols, and in particular the metal detectors, that hinder them from being able to bring firearms into crowded, heavily-attended places. Would-be terrorists know that they currently would likely fail if they tried to enter, for example, Seattle's CenturyLink Field with a metal firearm, due to the stadium's use of walk-through metal detectors.

18. With the unrestricted export of files facilitating the private manufacture of 3D-printed plastic firearms, the 72,000 fans who pack CenturyLink for a Seahawks game suddenly would become much more vulnerable to terrorists who seek to cause as much bloodshed as possible. The ability to bring firearms undetected to public spaces and then open fire as widely and indiscriminately as possible is a longstanding tactical objective for groups such as al-Qa'ida and ISIS.

19. With the availability of the CAD files for the manufacturing of 3D-printed plastic firearms, members of foreign terrorist organizations abroad, and those inspired by them, may travel to the United States for the purpose of making such weapons and using them to commit a terrorist attack in one of the plaintiff States. In addition, members of foreign terrorist

organizations outside the United States, and those inspired by them, may manufacture 3D-printed plastic firearms abroad and attempt to smuggle them into the United States, whether by land, air, or sea. These plastic firearms would prove more difficult to detect than conventional metal firearms, depending on the screening systems used at the various entry points.

20. In addition, in my experience, foreign terrorist organizations have made a priority of targeting commercial aviation and aggressively pursue innovative methods to undertake attacks, including by smuggling undetectable explosives onto commercial airplanes. The availability of the CAD files for manufacturing 3D-printed plastic firearms increases the risk that members of foreign terrorist organizations and those inspired by them will successfully be able to bring such weapons onto a commercial airplane bound for the United States. Even if foreign airports that are the last points of departure for the United States utilize security screening devices such as millimeter wave imaging technology, designed to detect metallic and non-metallic items, vulnerabilities in those systems and the persons who operate them increase the risk of 3D-printed plastic firearms being used to commit an in-air attack, including a hijacking. They also increase the risk that 3D-printed plastic firearms made abroad could be transported in the checked baggage of passenger planes or on cargo planes bound for the United States, for use in a possible terrorist attack in one of the plaintiff States.

21. In addition to the above, metal detectors represent the principal means of protecting prominent federal, state, and local officials in their frequent public appearances. One goes through a metal detector before entering the White House, the Supreme Court, and the Capitol in Washington D.C., as well as iconic buildings in many state capitals—and even at many campaign events and rallies for candidates not yet elected to public office.

22. There are numerous foreign adversaries intent on causing chaos and confusion in the United States. Increasing the ability to bypass existing security protocols with an undetectable firearm would provide an assassination option for hostile foreign actors that is currently much more difficult, and thus presents a serious national security risk.

**Unrestricted Export Would Harm Foreign Relations**

23. The United States and other countries rely on international arms embargoes, export controls, and other measures to restrict the availability of defense articles, including firearms, sought by foreign terrorist organizations. Unrestricted access to the CAD files for manufacturing 3D plastic firearms would allow these organizations and those inspired by them to readily manufacture and use such weapons in foreign countries, harming U.S. foreign relations with those countries.

24. Wide international access to the CAD files would likewise provide armed insurgent groups, transnational criminal organizations, and foreign countries subject to U.S. or U.N. arms embargoes (such as North Korea and Iran) with technology allowing for the ready manufacture of 3D-printed plastic firearms and components. This would undermine global export control and non-proliferation regimes designed to prevent the dangerous spread and accumulation of weapons and related technologies, damaging U.S. leadership in this area.

25. Even if IP addresses located in hostile foreign countries such as North Korea and Iran were blocked by Defense Distributed from accessing the CAD files, there are multiple ways to defeat an IP block, including through the use of proxies and virtual private networks.

26. Easy internet access to the CAD files also could contribute to increased armed conflict and crime in countries with which the United States seeks to maintain good relations, causing destabilizing effects on economies and societies. Such destabilization would negatively impact U.S. foreign relations with those countries and could result in damage to the economies of the plaintiff States and their citizens who have family members and business interests in those countries.

27. If the CAD computer files were used to assemble an undetectable 3D-printed plastic firearm in a foreign country, and that weapon were then used to commit an act of terrorism, piracy, or other serious crime, this sequence of events, and the foreign country's likely interest in holding the United States accountable, could cause very serious and lasting harm to the foreign relations interests of the United States.

28. That risk is particularly great because many foreign countries, including critical allies like Canada, the United Kingdom, and Japan, have more restrictive firearms laws than those in the United States. Unrestricted export of the CAD files for use in manufacturing 3D-printed firearms would undercut the domestic laws of those countries and increase the risk of violence there, thereby damaging U.S. foreign relations with those countries.

**Unrestricted Export Would Undermine Law Enforcement's Ability to Investigate and Solve Crimes Committed with Firearms**

29. The ready availability of the CAD files would mean that 3D-printed plastic firearms may be privately manufactured and put into the marketplace with no serial numbers, making them untraceable by law enforcement, which would seriously impede the ability to investigate and solve crimes committed with firearms.

30. Under federal law, all firearms manufactured for commercial sale in the United States are required to bear a serial number which, along with other required markings on the firearm, generally allow it to be uniquely identified. When a law enforcement agency recovers a firearm, it can submit the serial number and other identifying details to the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) to "trace" the gun to the federal firearm licensee who made the first retail sale of the firearm, thus leading to the identity of the first retail purchaser of the firearm.

31. In individual cases, a successful firearms trace can lead to the perpetrator of a crime or to a person who may have relevant information about a particular crime. In my experience as a federal prosecutor, firearms trace information frequently led to information relevant to solving violent crimes, including by revealing "straw" purchasers, or those who purchased a gun for someone legally prohibited from buying or possessing a firearm.

32. Firearms trace information can also be helpful in discerning meaningful patterns in gun trafficking, for example, by identifying gun buyers who are responsible for purchasing a disproportionate share of firearms recovered from crime scenes in certain areas

or gun sellers who supply a disproportionate share of firearms used in crime and may wittingly or unwittingly be fueling illegal gun trafficking.

33. Although federal law requires all firearms manufactured for commercial sale in the United States to have serial numbers, bad actors who download the CAD files for the manufacture of 3D-printed plastic firearms readily can evade this requirement and produce undetectable and untraceable firearms.

34. Law enforcement agencies in the plaintiff States that locate 3D-printed plastic guns that have no serial numbers will have no information from which to seek a firearms trace from the ATF, reducing their ability to solve crimes in their jurisdictions. This is so even if the 3D-printed plastic gun is in compliance with the Undetectable Firearms Act.

35. In addition, it is my understanding that the plastic barrel of a 3D-printed plastic gun does not contain grooves called "rifling" that leave unique striations on the soft outer metal of bullets fired from it. This means that law enforcement agencies and prosecutors will not be able to rely on forensic experts to match bullets used to commit crimes with the firearms from which they were shot.

36. When a gun is fired and the bullet speeds down the barrel, it encounters ridges and grooves that cause it to spin, increasing the accuracy of the shot. Those ridges dig into the soft metal of the bullet, leaving striations. At the same time that the bullet is blasted forward, the cartridge case explodes backward with equal force against the mechanism that absorbs the recoil, stamping an impression into the soft metal at the base of the cartridge case, which is then ejected from the gun.

37. When a law enforcement agency recovers bullets or cartridge cases from a crime scene, forensic examiners can test-fire a suspect's gun to see if it produces striations and impressions that match the evidence. When there is a match, prosecutors may rely on a firearms identification expert to testify that the microscopic striations and impressions left on bullets and cartridge cases are unique, reproducible, and therefore, like "ballistic fingerprints" that can be used to identify a gun.

38. In my experience, firearms identification has produced valuable evidence to support prosecutions of violent crimes committed with firearms. Law enforcement agencies that locate bullets shot from 3D-printed plastic firearms will not be able to rely on firearms identification to prove that the bullets were shot from a suspect's 3D-printed plastic firearm, reducing the ability of law enforcement agencies in the plaintiff States to solve crimes committed with such weapons.

**Federal and State Laws Do Not Adequately Protect Americans from the Threat Posed by Plastic Guns**

39. Federal and state regulation of the manufacture and sale of firearms is based on the premise that commercial firearms production and distribution require an investment of resources that makes it feasible only for commercial entities, which must comply in order to maintain their licenses. The wide availability of the CAD files for the production of 3D-printed plastic handguns in the home, and the ubiquity and relative low cost of 3D printers, would up-end the entire regulatory regime.

40. Bad actors who seek to make or sell 3D-printed firearms for criminal purposes have no motivation to comply with federal or state firearms laws, and can easily evade them because of the ready ability to make the weapons cheaply and with minimal equipment. Although bad actors today can purchase firearms on the black market, or through straw purchasers, obtaining firearms from such illicit sources increases the costs to the purchasers, who still bear the risk that those firearms might be traced back to them by law enforcement. That risk is minimal for 3D-printed plastic firearms that contain no serial numbers and are not distributed by licensed firearms dealers. Moreover, by bypassing licensed firearms dealers, purchasers of 3D-printed plastic firearms also bypass background checks required under current federal law.

41. Laws such as the Undetectable Firearms Act, while laudable, do little to deter bad actors—whether terrorists, drug dealers, or domestic abusers—from making 3D-printed plastic weapons such as the Liberator without the non-functional piece of metal required to

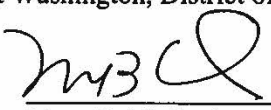
comply with the Act. This is especially so where the weapons will never pass through the hands of a licensed firearms dealer whose livelihood depends on compliance with federal and state regulations.

42. In my judgment, the entry of an injunction in this matter would help to prevent the further dissemination of any Defense Distributed CAD files for the manufacture of 3D-printed plastic firearms that may have been made available via the internet, thereby decreasing the risk of harm to the national security and foreign relations interests of the United States and to the public safety and law enforcement interests of the plaintiff States.

43. I am not receiving compensation for offering my opinion in this case. I am serving pro bono because of my grave concerns about the dangers of the unchecked global release of Defense Distributed's CAD files for the manufacture of 3D-printed plastic firearms.

I declare under penalty that the foregoing is true and correct.

DATED this 7th day of August, 2018, at Washington, District of Columbia.



Mary B. McCord