

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
MINORITY (202) 225-5051

<https://oversight.house.gov>

February 14, 2024

The Honorable Gina Raimondo
Secretary
U.S. Department of Commerce
1401 Constitution Avenue NW
Washington, DC 20230

Dear Secretary Raimondo:

The Committee on Oversight and Accountability (Committee) is conducting oversight into the nature and origin of the decision by the U.S. Department of Commerce (Commerce) to pause, for approximately 90 days, the issuance of new export licenses related to certain firearms, firearm components, and ammunition pertaining to non-governmental end users in certain countries.¹

The Committee is also investigating the need for an administrative rulemaking related to the pause, transparency in the rulemaking process, and what information was relied on by Commerce in effectuating the pause and any resulting rulemaking, including any economic analysis conducted by or relied on by Commerce in making this decision. This oversight is essential to assist the Committee in determining whether legislation is necessary to ameliorate deficiencies related to federal rulemaking in general, and to ensure integrity in the system maintained by Commerce to process export licenses related to items on the Commerce Control List, including certain firearms and related components.

The Committee initially requested documents and information regarding these matters on November 28, 2023. It has been over 75 days since that request. Despite repeated efforts by the Committee to obtain compliance, Commerce only provided 311 pages of public facing materials—some of which were cited in the initial request letter—on January 26, 2024, devoid of any internal documents or communications that would provide context as to their relevancy to the decision to institute the pause.² As a result, the attached subpoena is being issued pursuant to the authority delegated to the Chairman of the Committee under Rule XI, clause 2(m)(1)(B) of the Rules of the House of Representatives and Rule 12(g) of the Committee's Rules.

¹ Letter from James Comer, Chairman, Committee on Oversight and Accountability, to Gina Raimondo, Secretary, Dep't. of Commerce (Nov. 28, 2023).

² See Letter from Jeremy T. Horan, Director, Office of Congressional and Public Affairs, Bureau of Industry and Security, Dep't of Commerce, to James Comer, Chairman, Committee on Oversight and Accountability (Jan. 26, 2024).

On October 27, 2023, the Bureau of Industry and Security (BIS) announced that it would “[e]ffective immediately... pause[] for approximately 90 days the issuance of new export licenses involving certain firearms, related components, and ammunition under its jurisdiction...” with exceptions for a limited list of countries.³ In addition to pausing export licenses, the International Trade Administration (ITA), which assists entities and individuals seeking to have access to U.S. manufactured goods, announced that it was also “paus[ing] acceptance of new requests for export assistance (fee or non-fee-based) for firearms and ammunition to non-governmental end users worldwide...” except for those located in certain listed countries.⁴ Specifically, the announced “pause” applies to issuances of new licenses for any item related to four Export Control Classification Numbers for certain firearms, components, and ammunition destined for any non-governmental end user apart from those located in Ukraine, Israel, or those specified in regulations.⁵ This 90 day “pause” is purportedly to enable Commerce “to more effectively assess and mitigate risk of firearms being diverted to entities or activities that promote regional instability, violate human rights, or fuel criminal activities.”⁶

The Committee’s November 28 request for documents and communications was intended to enable oversight into possible politicization of Commerce’s activities to further build out American industry’s access to global markets and to learn more regarding the origin and nature of the pause and whether it was done consistent with the law.⁷ Commerce acknowledged receipt of the correspondence that same day.⁸ The deadline for Commerce to provide the requested information was December 13. Commerce, however, did not produce any documents or communications on that date.

On December 19, Committee staff requested “a status update on Commerce’s progress in producing the documents requested by the Chairman to the committee”⁹ as no documents had been received. Commerce replied that it was “working diligently on the response to the Chairman’s letter...”¹⁰ On January 3, 2024, Committee staff again requested “a status update on Commerce’s progress in producing the documents requested in the Chairman’s November 28, 2023 letter” as no documents had been received.¹¹ Commerce replied that “our response to Chair

³ U.S. Dep’t of Commerce, Bureau of Industry and Security: *Firearms Pause & Review: Frequently Asked Questions* (Oct. 27, 2023), available at <https://www.bis.doc.gov/index.php/documents/policy-guidance/3374-2023-10-27-bis-faqs-firearms-pause-and-review/file>.

⁴ U.S. Dep’t of Commerce, International Trade Administration, *Firearms Export Control Pause & Review* (Oct. 27, 2023), available at <https://www.trade.gov/sites/default/files/2023-10/firearms%20export%20pause%20and%20review%20102723.pdf>.

⁵ *See supra*, n.3; *see also* 15 C.F.R. § 740, Supp. No. 1 (A:1, Wassenaar participating states).

⁶ *Id.*

⁷ *See supra*, n.1.

⁸ E-mail from Commerce Staff to Committee Staff (Nov. 28, 2023), *on file with Committee staff*.

⁹ E-mail from Committee Staff to Commerce Staff (Dec. 19, 2023), *on file with Committee staff*.

¹⁰ E-mail from Commerce Staff to Committee Staff (Dec. 20, 2023), *on file with Committee staff*.

¹¹ E-mail from Committee Staff to Commerce Staff (Jan. 3, 2024), *on file with Committee staff*.

Comer's letter is undergoing internal clearance, we are prioritizing it, and we will be in touch as we finalize it."¹²

After Commerce's continued failure to produce the requested documents, the Committee wrote again on January 19, reiterating its outstanding requests for documents and information¹³ and noting that "[i]f Commerce continues to fail to produce the requested documents by January 26, 2024, we will consider other measures, including the use of compulsory process, to gain compliance and obtain this material."¹⁴ Commerce acknowledged receipt of that request the same day it was transmitted.¹⁵

On January 24, Committee staff again inquired of Commerce staff whether "Commerce will begin to produce the requested documents... to the Committee on or before this Friday, January 26?" and offered to discuss the production over the phone.¹⁶ Commerce staff replied that "[w]e are prioritizing our response to the Chairman, with the goal of transmitting a response to your office on or before Friday. If we anticipate any divergence from that goal, we will be sure to reach out on or before Friday."¹⁷ Committee staff again contacted Commerce staff the morning of January 26, requesting "updates on whether Commerce will begin producing the requested documents today" and reiterating that "[a] response from Commerce that does not include a production of requested documents will not satisfy the Chairman's request."¹⁸

Later that same day, Commerce produced 311 pages of documents consisting entirely of public facing materials. Commerce bates-stamped and transmitted the FAQs promulgated by BIS and ITA—both of which were cited in the Committee's initial letter and available online¹⁹—the accessible version (which is 10 pages longer than the standard version) of a Government Accountability Office (GAO) report published online since January 11, 2022,²⁰ and Volume II—*Crime Gun Intelligence and Analysis* of the National Firearms Commerce and Trafficking Assessment (NFCTA), published January 11, 2023 and available online.²¹

¹² E-mail from Commerce Staff to Committee Staff (Jan. 4, 2024), *on file with Committee staff*.

¹³ Letter from James Comer, Chairman, Committee on Oversight & Accountability, to Gina Raimondo, Secretary, Dep't. of Commerce (Jan 19, 2024).

¹⁴ *Id.*

¹⁵ E-mail from Commerce Staff to Committee Staff (Jan. 19, 2024), *on file with Committee staff*.

¹⁶ E-mail from Committee Staff to Commerce Staff (Jan. 24, 2024), *on file with Committee staff*.

¹⁷ E-mail from Commerce Staff to Committee Staff (Jan. 24, 2024), *on file with Committee staff*.

¹⁸ E-mail from Committee Staff to Commerce Staff (Jan. 26, 2024), *on file with Committee staff*.

¹⁹ See Enclosures to *supra*, n.2, marked HOC-COMMERCE-000001-000005, also available at <https://www.bis.doc.gov/index.php/documents/policy-guidance/3374-2023-10-27-bis-faqs-firearms-pause-and-review/file> and <https://www.trade.gov/sites/default/files/2023-10/firearms%20export%20pause%20and%20review%20102723.pdf>.

²⁰ Enclosures to *supra*, n.2, marked HOC-COMMERCE-000006-000065; also available at <https://www.gao.gov/assets/720/718417.pdf>.

²¹ Enclosures to *supra*, n.2, marked HOC-COMMERCE-000066-000311, also available at <https://www.atf.gov/firearms/national-firearms-commerce-and-trafficking-assessment-nfcta-crime-guns-volume-two>.

On January 29, 2024, Committee staff confirmed receipt of the written response and “311 pages which consists entirely of publicly available materials (FAQ’s already cited in the initial request letter, a GAO report, and the NFCTA) which Commerce appears to have baste stamped...” and requested an answer on “whether Commerce intends to voluntarily comply with the document requests,” as well as additional information relating to Commerce’s efforts to search for responsive documents, including “1) whether Commerce has run any searches to determine what documents are responsive to the requests, 2) the date those searches were run, 3) the terms used, 4) how many documents were returned as potentially responsive to each of the requests, [5]) what efforts Commerce has made to prepare those for production and the dates those efforts were initiated, and [6]) a list of officials who are involved in preparing those documents for production.”²²

Commerce replied by quoting their January 26 response letter promising to “engage with Committee staff regarding the Committee’s priorities for gathering additional information,” and purported “to confirm that Commerce will voluntarily provide additional material in response to the Committee’s requests.”²³ Commerce did not provide any additional information requested by staff regarding any efforts it had made to comply with the document requests.²⁴ Staff provided availability to discuss the document requests on either January 30, or 31, and requested that Commerce “have the information [staff] requested in my earlier e-mail from this morning available at that discussion” to facilitate being able to prioritize the requests.²⁵ At the request of Commerce, to accommodate a February 1, 2024, briefing on the subject matter of the initial request,²⁶ staff provided additional availability for the afternoon following the briefing and on the next day, February 2.²⁷

At the February 1 briefing with Committee staff, Commerce confirmed that a rulemaking is now contemplated at the end of the pause; however, the representatives from Commerce declined to answer questions regarding the nature or substance of the anticipated rulemaking, and despite asserting that the idea for the pause originated within Commerce, the briefers failed to provide any specificity to that origin story under questioning.

During a call on February 2 between Commerce and Committee staff, Commerce confirmed that, as of that call, and despite requesting that Committee staff work to prioritize and narrow the scope of the requests, Commerce had taken no steps to run searches for documents potentially responsive to the four requests in my initial letter.

It has now been over 75 days since the Committee’s initial request, and Commerce has failed to produce any documents that were not either cited in the initial letter or publicly

²² E-mail from Committee Staff to Commerce Staff (Jan. 29, 2024), *on file with Committee staff*.

²³ E-mail from Commerce Staff to Committee Staff (Jan. 29, 2024), *on file with Committee staff*.

²⁴ *Id.*

²⁵ E-mail from Committee Staff to Commerce Staff (Jan. 29, 2024), *on file with Committee staff*.

²⁶ E-mail from Commerce Staff to Committee Staff (Jan. 31, 2024), *on file with Committee staff*.

²⁷ E-mail from Committee Staff to Commerce Staff (Jan. 31, 2024), *on file with Committee staff*.

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available online. The Committee has oversight jurisdiction and “may at any time conduct investigations of any matter...” notwithstanding concurrent jurisdiction maintained by another standing committee under House Rule X. Additionally, House Rule X charges the Committee with legislative jurisdiction over “[g]overnment management and accounting measures generally” and “[o]verall economy, efficiency, and management of government operations and activities...”.

As Chairman of the Committee, I urge you to cooperate speedily and in good faith with this subpoena. If you have any questions regarding this subpoena, please coordinate with Oversight Committee staff at (202) 225-5074.

Sincerely,

A handwritten signature in black ink that reads "James Comer". The signature is written in a cursive style with a horizontal line underneath it.

James Comer

Chairman

Committee on Oversight and Accountability