

LEGAL ADVISORY

Silencer Shop Foundation v. ATF

What the NFA ruling and ATF’s October 9, 2026 guidance actually do — and what they do not do.

Field	Detail
Issued to	U.S. LawShield® Members and Industry / Dealer Partners
Case	Silencer Shop Foundation v. ATF, No. 6:25-CV-056-H (N.D. Tex.), consolidated with Jensen v. ATF
Judge	Hon. James Wesley Hendrix, U.S. District Court, Northern District of Texas
Judgment entered	August 5, 2026 (stayed 7 days)
Injunction effective	August 12, 2026, upon lapse of the 7-day stay
ATF guidance issued	October 9, 2026 — Open Letter to All Federal Firearms Licensees and the Public Regarding the NFA Making and Transfer Requirements for Certain Firearms and Devices, with accompanying FAQs
Advisory date	October 9, 2026 (revised; supersedes the August 12, 2026 advisory)

UPDATE — ATF RELEASED ITS GUIDANCE. On October 9, 2026, ATF [issued an Open Letter](#) to all federal firearms licensees and the public, signed by Director Robert Cekada, together with a set of [Frequently Asked Questions](#) posted on ATF’s website. Effective today, and as a matter of Department of Justice enforcement discretion, ATF **will no longer require ATF approval** before making or transferring silencers, short-barreled rifles, short-barreled shotguns, or any other weapons, and **will no longer require those items to be registered** in the National Firearms Registration and Transfer Record. The policy applies to **everyone** otherwise subject to those requirements — not just the plaintiffs in the litigation. This advisory has been revised throughout to reflect the new guidance.

BOTTOM LINE

The NFA is not repealed — but as of October 9, 2026 ATF is not enforcing its registration and advance-approval provisions for \$0-tax items against anyone. A federal district court held that the National Firearms Act’s registration and advance-approval requirements are unconstitutional as applied to silencers, short-barreled rifles, short-barreled shotguns, and any other weapons (AOWs), but it issued a **party-specific** injunction, not a nationwide one. On October 9, 2026, ATF extended that exemption by policy. Citing the “inequity and disuniformity” created by party-specific relief, the Department of Justice announced that it will not enforce the NFA’s making, transfer, registration, marking, and interstate-transport provisions as to those items against **any person** — covered by the injunction or not.

- **Two sources of protection, with very different durability.** Named plaintiffs and their members and customers hold a federal court judgment. Everyone else holds an enforcement policy that the Department can rescind at any time — and ATF’s own FAQs say so expressly, adding that there is no automatic grandfathering and no guaranteed amnesty if enforcement resumes. By definition, protection under the court judgment is more durable, but both the injunction and ATF policy are not as permanent as a law change would be.

- **Federally, the Form 4 is now optional for silencers and AOWs.** Dealers process them as ordinary GCA firearms: Form 4473, NICS, in-state purchaser, bound book. No Form 3 is required between FFLs. Forms 1, 2, 3, and 4 remain available on a voluntary basis, and ATF will continue to approve them.
- **State law did not change at all.** Nine jurisdictions still ban silencers outright. Fifteen more make possession lawful *only* if the item is registered under the NFA or held in compliance with federal law. ATF says it “cannot opine” on whether an unregistered item held under its enforcement discretion satisfies those statutes — and the GCA still makes it a federal crime for an FFL to transfer a firearm in violation of state or local law.
- **The Gun Control Act is untouched.** Form 4473 and, except for qualifying license or permit holders, NICS still apply to every dealer transfer, everywhere. The special occupational tax is still due. Machine guns and destructive devices remain fully regulated.
- **SBRs and SBSs sit in a gray zone.** ATF says it will not enforce 18 U.S.C. § 922(b)(4) — the GCA bar on a licensee delivering an SBR or SBS without Attorney General authorization — until it issues new regulations creating a non-NFA approval process. A Form 20 is still required to transport an SBR or SBS across state lines.

The single most important point for members: Whether you may lawfully take an unregistered item home is now mostly a *state-law* question, and getting it wrong can be a state felony. ATF has told you it will not enforce the NFA against you; it has also told you that if the policy or the injunction goes away, federal law has no grandfather clause and the Attorney General is not required to offer an amnesty. If you are unsure, call U.S. LawShield® before you take possession — not after.

1. WHAT THE COURT ACTUALLY HELD

Congress enacted the NFA in 1934 under its power to lay and collect taxes, and the Supreme Court upheld it on that basis in *Sonzinsky v. United States* (1937). The registration, application, and approval machinery existed to support collection of the \$200 making and transfer taxes.

The One Big Beautiful Bill Act reduced those making and transfer taxes to **\$0** for silencers, SBRs, SBSs, and AOWs, effective January 1, 2026. Judge Hendrix reasoned that a defining feature of a tax is that it raises at least some revenue, and a tax set at zero raises none. Because the challenged registration provisions were enacted to support a tax that no longer exists, they lost their footing under the Taxing Clause.

The court rejected the government’s fallback arguments. The remaining special occupational tax has its own separate registration and enforcement scheme, and the government could not retroactively recast a Title 26 tax statute as a Commerce Clause regulation that Congress never invoked.

Provisions enjoined (as to covered parties)

- 26 U.S.C. § 5812(a)–(b) — transfer applications and approval
- 26 U.S.C. § 5822 — making applications and approval
- 26 U.S.C. § 5841(a)–(c), (e) — registration and proof of registration
- 26 U.S.C. § 5861(b)–(f) — offenses tied to unregistered or improperly transferred/made firearms
- 27 C.F.R. § 479.62(a)–(d) (Form 1) and § 479.84(a)–(d) (Form 4)
- **Jensen plaintiffs only:** 26 U.S.C. § 5842(b) (individual-maker marking) and § 5861(i) (possession of an unmarked firearm)

What the court expressly did not decide

The plaintiffs' Second Amendment claims were dismissed without prejudice as abandoned. The opinion does not hold that suppressors are protected "arms," and it does not address whether any of these items are "dangerous and unusual." Those questions remain open for future litigation.

2. CURRENT PROCEDURAL POSTURE

Date	Event
Aug. 5, 2026	Final judgment and permanent injunction entered; court stays its own injunction for seven days to allow the government to seek appellate relief.
Aug. 11, 2026	Forty-seven Members of the U.S. House and Senate, led by Rep. Andrew Clyde, write to Attorney General Todd Blanche asking that ATF apply the ruling nationwide to all regulated parties.
Aug. 12, 2026	Seven-day window closes. The government did not seek an extended stay from the district court or the Fifth Circuit. (ATF's Open Letter describes the injunction as effective August 12, 2026.)
Aug. 13, 2026	Injunction becomes operative. The Department of Justice does not appeal.
Oct. 9, 2026	Attorney General issues a statement; ATF issues its Open Letter and FAQs. Effective immediately, ATF ceases enforcement of the NFA's making, transfer, registration, marking, and interstate-transport provisions for \$0-tax items as to all persons . NFA administration continues on a voluntary basis.

Verify posture before every transaction. An unappealed district court judgment is still a district court judgment, and an enforcement policy is only a policy. ATF's FAQs list three ways enforcement could resume: Congress imposes a new tax on these items, the district court's injunction is dissolved or overturned, or the Department rescinds the guidance. Confirm current status the day of the transfer — not the day you read this.

ATF's October 9, 2026 guidance — what it says

The Open Letter is addressed to all FFLs and the public and is accompanied by a 24-question FAQ. The operative language: "effective October 9, 2026, ATF will no longer require individuals to seek ATF approval under the NFA before making or transferring short-barreled rifles, short-barreled shotguns, silencers, and 'any other weapon[s]' as defined in 26 U.S.C. § 5845(e). ATF will also no longer require such items to be registered in the National Firearms Registration and Transfer Record. These policies apply uniformly to anyone otherwise subject to these requirements, not just to the plaintiffs in the litigation."

ATF is explicit that this is enforcement discretion, not a legal determination that the NFA is invalid as to non-parties. The FAQs state that the district court's order "only benefits the plaintiffs" and that other courts "could reach different conclusions." The policy is justified on uniformity grounds and on the practical impossibility of operating an industry in which identical items are regulated differently depending on who is holding them.

Provisions ATF will no longer enforce (as to \$0-tax items only)

- The requirement to apply for and obtain prior approval to make an NFA firearm (Form 1)
- The requirement that those engaged in the business register NFA firearms within 24 hours of making (Form 2)
- The requirement to apply for and obtain prior approval to transfer an NFA firearm (Forms 3 and 4)
- The requirement to register a firearm in the National Firearms Registration and Transfer Record

- The prohibitions on making, receiving, transferring, and possessing unregistered NFA firearms — **except** 26 U.S.C. § 5861(h) (obliterated serial numbers) and § 5861(k) (illegally imported items), which ATF will continue to enforce
- 26 U.S.C. § 5861(j) — transporting, delivering, or receiving an unregistered NFA firearm in interstate commerce. The court did not enjoin this provision, but the Department will not enforce it, including for persons not covered by the injunction
- The NFA requirement to mark all NFA firearms (26 U.S.C. § 5842)
- Any other NFA provision specifically enjoined by the district court’s judgment

Five still enforced restrictions ATF identified

- **Special (occupational) tax.** Anyone engaged in the business of manufacturing, importing, or dealing in NFA firearms — including silencers, SBRs, SBSs, and AOWs — must still pay the SOT. The FAQs state that an FFL that deals in these items without paying the SOT violates 26 U.S.C. § 5861(a).
- **Machine guns and destructive devices.** The \$200 tax remains, and every NFA provision continues to apply to them.
- **The Gun Control Act.** Silencers, SBRs, SBSs, and AOWs are all statutory “firearms” under 18 U.S.C. § 921(a)(3). Prohibited-person rules, Form 4473, NICS, recordkeeping, and the in-state purchaser rule all remain in force.
- **SBR / SBS transport and sale.** 18 U.S.C. § 922(a)(4) still requires a Form 20 before an individual transports an SBR or SBS interstate, registered or not. 18 U.S.C. § 922(b)(4) still bars a licensee from delivering an SBR or SBS without Attorney General authorization; because no non-NFA mechanism exists yet, ATF “will not enforce” § 922(b)(4) while it drafts regulations.
- **State and local law.** Nothing in the injunction or the policy affects state or local law. Most states criminalize some or all NFA items with exceptions tied to federal registration or compliance. ATF tells individuals and dealers to consult local authorities or counsel, warns that it is “unclear whether state courts will apply the safe harbor” of 18 U.S.C. § 926A to unregistered items, and reminds FFLs that § 922(b)(2) still prohibits transfers in violation of state or local law.

Voluntary registration continues

ATF will continue to maintain the NFRTR and will approve Form 1, Form 2, Form 3, and Form 4 submissions from anyone who wishes to file them. Nothing in the guidance requires anyone to abandon a pending application or an existing registration. A member who wants a registered item — for state-law reasons, for interstate travel, or as insurance against a change in policy — may still get one.

The reverse is also now available, and it is a one-way door. A person who started an NFA application and no longer wishes to register, or who wishes to remove a previously registered item from the NFRTR, may write the NFA Division at NFAFAX@atf.gov. The NFA Division has advised that the request must be a letter bearing a handwritten ink signature and date, the serial number(s), the reason for the request, and the requester’s address; the signed letter may be scanned and emailed. A draft letter meeting these requirements is provided in Appendix A. ATF cautions that “once an item is removed, it cannot be re-registered unless the Attorney General declares an amnesty.” Members should not unregister anything without advice.

The dealer NFRTR inventory problem now has an answer — partially

Our August advisory flagged that a suppressor registered on a Form 2 and moved by Form 3 to a dealer would remain on that dealer’s NFRTR after an unregistered transfer, with no mechanism to remove it. FAQ 18 now supplies one: a business that transferred an NFA item on a Form 4473 may write the NFA Division at

NFAFAX@atf.gov to have the item removed from its NFA inventory. There is no ATF form for this. The NFA Division has advised that it requires a signed letter of request — handwritten ink signature and date, serial number(s), reason for the request, and address — which may be scanned and emailed to NFAFAX@atf.gov; a typed or electronic signature will not be processed. ATF has published no processing timeline. A draft letter meeting these requirements is provided in Appendix A. Dealers should continue to document each transfer contemporaneously and retain the removal request and any ATF response with the transaction file.

Questions about the Open Letter should be directed to ATF's Firearms Industry Programs Branch at fipb@atf.gov.

3. WHO IS ACTUALLY COVERED BY THE INJUNCTION — AND WHY IT STILL MATTERS

Relying on *Trump v. CASA* (2025), the court declined to issue a universal injunction. Coverage flows through one of three channels: **named plaintiff**, **member of a plaintiff organization**, or **customer in a qualifying transaction** with a plaintiff company or a commercial member of a plaintiff association.

After October 9, the question “am I covered?” no longer determines whether ATF will enforce the NFA against you today. It determines **what you are relying on**. A covered party holds a federal court judgment that binds ATF. Everyone else is relying on a Department of Justice enforcement policy that can be withdrawn without notice. ATF's FAQs answer the two groups in separate sections for exactly that reason. For the durability of your position, and for any future state-law argument that an item was “lawfully held under federal law,” the distinction remains important.

Lead case — Silencer Shop Foundation plaintiffs (relief includes AOWs)

Category	Plaintiffs
Organizations	Silencer Shop Foundation Gun Owners of America, Inc. Gun Owners Foundation Firearms Regulatory Accountability Coalition, Inc.
Companies	B&T USA, LLC Palmetto State Armory, LLC SilencerCo Weapons Research, LLC (d/b/a SilencerCo)
Individual	Brady Wetz

Consolidated case — Jensen plaintiffs (no AOW relief; added marking relief)

Category	Plaintiffs
Organizations	Texas State Rifle Association FPC Action Foundation Citizens Committee for the Right to Keep and Bear Arms
Company	Hot Shots Custom, LLC
Individuals	John Jensen Jeremy Neusch David Lynn Smith

Note the asymmetry. The Jensen plaintiffs failed to establish standing as to AOWs. A person whose only path to coverage is Jensen-side membership gets **no** AOW protection. Conversely, the lead-case plaintiffs did not obtain the marking relief the Jensen plaintiffs received.

The fifteen plaintiff states

Texas, Alaska, Georgia, Idaho, Indiana, Kansas, Louisiana, Montana, North Dakota, Oklahoma, South Carolina, South Dakota, Utah, West Virginia, and Wyoming.

This is the most widely misunderstood point in the entire ruling. State-plaintiff status protects the **state government**, its agencies, and its political subdivisions. It does **not** protect the residents of that state. A Texan is not covered because he lives in Texas. He is covered because he is a GOA or TSRA member, or because he bought from a plaintiff company — or he is not covered at all.

Who is not covered by the injunction (and is therefore relying on enforcement discretion alone)

- Members of the general public with no plaintiff, membership, or customer connection
- Residents of a plaintiff state, on the basis of residency alone
- Donors and supporters of a plaintiff organization who are not actual members
- Spouses, children, and other household members who do not independently qualify
- **A trust, LLC, or corporation** merely because a trustee, officer, beneficiary, or owner is personally a member
- A covered customer engaging in unrelated NFA activity outside the qualifying transaction
- Jensen-only members, as to AOWs
- Anyone dealing in machine guns or destructive devices

NFA trusts. A very large share of member-held suppressors and SBRs are titled in a trust. The trust is the applicant, the transferee, the registrant, and the possessor. An individual trustee's GOA membership may not automatically travel to the trust, so a trust that takes an unregistered item is likely relying on ATF's enforcement discretion, not on the injunction. ATF will still approve a voluntary Form 4 to a trust. Members with existing gun trusts should not restructure a pending acquisition on an assumption of coverage, and U.S. LawShield NFA Trust members should contact us before changing course on a pending transfer.

4. WHAT DID NOT CHANGE — AND WHAT CHANGED ONLY BY POLICY

This is where dealers face the most exposure, because several requirements that feel like “NFA paperwork” are actually Gun Control Act requirements that neither the injunction nor the October 9 guidance touched. The table also flags the provisions ATF has chosen not to enforce — a different thing from a provision that has been enjoined or repealed.

Requirement	Status	Why it matters
Form 4473 + NICS	Unchanged	A silencer is a “firearm” under 18 U.S.C. § 921(a)(3)(C). Every dealer transfer to a non-licensee requires a completed 4473 and, unless the buyer is otherwise exempt, a NICS check. ATF FAQ 9 and FAQ 12 confirm this expressly.
Prohibited persons	Unchanged	18 U.S.C. § 922(g) applies in full. No one may sell or deliver any of these items to a person they know or have reasonable cause to believe is prohibited.

Requirement	Status	Why it matters
Non-resident sales	Unchanged	A suppressor is an “other firearm,” not a rifle or shotgun. Under § 922(b)(3) a dealer may not transfer one over the counter to an out-of-state resident; it still must ship to an FFL in the buyer’s state. ATF FAQ 19 adds that unlicensed individuals may not transfer these items to residents of other states.
SBR / SBS dealer transfers	Not enforced pending regulations	18 U.S.C. § 922(b)(4) bars a licensee from delivering an SBR or SBS except as authorized by the Attorney General. It is a GCA provision and was not enjoined. ATF concedes no non-NFA authorization mechanism exists and says it will not enforce § 922(b)(4) until regulations are issued. Transfers to state and local government entities remain lawful under § 925(a). Form 4 remains available and remains the conservative course.
SBR / SBS interstate transport	Unchanged	18 U.S.C. § 922(a)(4) still requires an approved Form 20 before an individual transports an SBR or SBS across state lines, even if the firearm is unregistered.
Interstate transport of unregistered items	Not enforced	26 U.S.C. § 5861(j) was NOT enjoined by the court, but the Department has announced it will not enforce it as to unregistered \$0-tax items, including for non-parties and for manufacturers returning repaired items. State law still applies on arrival and in transit, and ATF warns that the § 926A safe harbor may not protect unregistered items in state court.
Illegally imported and unserialized items	Fully enforced	26 U.S.C. § 5861(h) (obliterated serial numbers) and § 5861(k) (illegally imported items) remain in force and are expressly carved out of the nonenforcement policy.
Machine guns & destructive devices	Fully regulated	\$200 tax and the complete NFA scheme remain. Nothing in the ruling or the guidance touches them.
SOT / FFL / manufacturer requirements	Unchanged	The special occupational tax and licensing scheme for NFA manufacturers, importers, and dealers survives. ATF FAQ 14 adds that FFLs manufacturing these items must hold the appropriate manufacturing license, must serialize every firearm and silencer, and — for businesses manufacturing silencers before November 20, 2026 — must register with the Department of State under the International Traffic in Arms Regulations.
State and local law	Unchanged	See Section 5. This is the largest practical trap created by the ruling, and the October 9 guidance makes it larger, not smaller.

The judgment is not retroactive housekeeping. The court did not order ATF to delete NFRTR records, cancel pending applications, redesign eForms, refund previously paid taxes, or vacate prior convictions. Members with approved stamps keep them. ATF has established a process for requesting removal of an item from the NFRTR by contacting the NFA Division at NFAFAX@atf.gov. The NFA Division requires a letter of request bearing a handwritten ink signature (a draft is provided in Appendix A); ATF has not specified a processing timeline. Once an item is removed, ATF warns that it cannot be re-registered unless the Attorney General declares an amnesty. Members with pending Form 4s should not abandon them without advice; ATF will continue to process and approve them.

Making an SBR, SBS, or Suppressor. As of October 9, ATF no longer requires anyone — covered or not — to file a Form 1, submit fingerprints or photographs, notify a CLEO, or obtain approval before making one of these items, and it is not enforcing the NFA marking requirement. Three limits remain. First, state law may prohibit manufacture even where federal relief applies, and some states criminalize manufacture separately from possession; if you have any question about your state, call the U.S. LawShield member hotline. Second, the GCA still prohibits an unlicensed individual from engaging in the business of manufacturing or dealing in these items. Third, nonenforcement of the marking requirement is policy, not law. U.S. LawShield’s

recommendation is that members who build may still want to serialize and mark the item: it costs little, it preserves the ability to register voluntarily or under a future amnesty, it helps with state-law compliance and resale, and it forecloses an argument under § 5861(i) if enforcement resumes.

5. STATE LAW — THE TRAP THE RULING AND THE GUIDANCE CREATE

A federal court cannot make a state statute go away, and neither can an ATF Open Letter. If silencers were prohibited in your state on August 4, they are prohibited today. And if your state’s law made possession lawful **only because** the item was registered under the NFA, or only because the holder had “complied with” the NFA, that condition is now much harder — sometimes impossible — to satisfy for an unregistered item.

ATF has now said this itself, twice. FAQ 6 and FAQ 11 state that “ATF cannot opine on whether holding an unregistered firearm or silencer pursuant to ATF’s enforcement discretion will qualify for state-law purposes as lawfully held (or registered) under federal law,” and direct members of the public to “check with state and local authorities.” FAQ 16 warns FFLs that the GCA “continues to prohibit transferring statutory firearms (including silencers) in violation of state and local law,” that willful violations carry “federal criminal penalties and license revocation,” and that neither the injunction nor the enforcement policy “relieve FFLs of their obligation to comply with state and local law.”

A buyer in one of these states who takes an unregistered suppressor home under federal nonenforcement may have simultaneously committed a state felony. Federal preemption does not help; the state is not enforcing federal law, it is enforcing its own statute that happens to reference a federal condition.

Tier 1 — Nine jurisdictions: outright prohibition

These bans apply regardless of federal registration status and regardless of this ruling. Narrow law-enforcement, military, and in some cases wildlife-agency exemptions exist.

Jurisdiction	Statute	Rule
California	Cal. Penal Code §§ 33410–33415	Possession of a silencer by any person, firm, or corporation is a felony. Narrow exemption for listed law enforcement and licensed manufacturers.
Delaware	11 Del. C. § 1444; 7 Del. C. § 710	Possession of a firearm silencer as a destructive weapon is a class E felony, even with a federal stamp.
Hawaii	Haw. Rev. Stat. §§ 134-8, 134-11	Manufacture, possession, sale, or acquisition is a class C felony carrying a mandatory term.
Illinois	720 ILCS 5/24-1(a)(6); 520 ILCS 5/2.33(s)	Possession of any device designed to silence the report of a firearm is unlawful use of weapons.
Massachusetts	Mass. Gen. Laws ch. 269, § 10A	Selling, keeping for sale, giving, using, or possessing a silencer is prohibited.
New Jersey	N.J. Stat. § 2C:39-3(c); § 2C:39-9	Knowingly possessing a silencer is a crime of the fourth degree; manufacture, transport, and sale barred separately.
New York	N.Y. Penal Law § 265.02(2)	Possession is criminal possession of a weapon in the third degree, a class D felony.
Rhode Island	R.I. Gen. Laws § 11-47-20	Manufacture, sale, purchase, and possession are unlawful; minimum one year and one day.

Jurisdiction	Statute	Rule
District of Columbia	D.C. Code § 7-2502.02; § 22-4514	Silencers cannot be registered or possessed. No sport or self-defense exception.

Tier 2 — Fifteen states: possession conditioned on NFA registration or federal compliance

In each of these fifteen states the underlying statute **prohibits** silencers and then supplies an exemption, affirmative defense, or carve-out that depends on the item being registered under the NFA or lawfully possessed under federal law. Remove the federal registration and the state exemption has nothing to attach to. Because ATF continues to accept and approve voluntary Form 4 applications, the registration path remains fully available in these states, and industry practice since August has been to **continue processing Form 4 transfers in all fifteen states**. U.S. LawShield expects that practice to continue, and recommends it until state law can be modified.

The "Risk" column reflects how tightly the state exemption is bound to federal registration:

- **Registration** — possession is keyed to the item actually being registered, or to the holder actually holding a federal license. These statutes need legislative repair before a covered, unregistered transfer can be lawful.
- **Compliance** — the exemption turns on having "complied with" the NFA. Where compliance has become legally impossible or has no practical content, the exemption's operation is unsettled.
- **Ambiguous** — the statute hooks into federal law generally rather than registration specifically. Could be read either way; no state appellate authority yet.

State	Statute	How the statute is keyed to federal law	Risk
Alaska	Alaska Stat. § 11.61.200(a)(4) § 11.61.200(c)	A silencer is a prohibited weapon and possession is misconduct involving weapons. Registration under the National Firearms Act operates as an affirmative defense.	Registration
Colorado	Colo. Rev. Stat. § 18-12-102	A firearm silencer is a "dangerous weapon"; possession is a class 5 felony. It is an affirmative defense that the defendant holds a valid permit and license for possession — a license hook, not merely a registration hook.	Registration
Connecticut	Conn. Gen. Stat. § 53a-211 § 26-75 (hunting)	Possession of a silencer is a class D felony except where possession is permitted under federal law. Separately, using a silencer while hunting remains banned outright; 2025–2026 repeal bills did not pass.	Ambiguous
Georgia	Ga. Code § 16-11-122 § 16-11-124(4) § 27-3-4(9) (hunting)	No person may possess a silencer except as provided in § 16-11-124, which exempts a person "authorized to possess the same because he has registered the ... silencer in accordance with the dictates of the National Firearms Act." Registration is the sole civilian pathway.	Registration
Michigan	Mich. Comp. Laws § 750.224(1)(b), (3)	Manufacture, sale, or possession of a muffler or silencer is a felony. The prohibition does not apply to "a person licensed by the secretary of the treasury of the United States or the secretary's delegate." Michigan keys to a federal license rather than to registration, which is arguably an even narrower opening.	Registration
Mississippi	Miss. Code § 97-37-31	Ownership and possession are lawful for any person "duly authorized under federal law" to possess the device. General federal-authorization language, not registration-specific.	Ambiguous
Montana	Mont. Code § 45-8-336	Note the structure: § 45-8-336 criminalizes possessing a silencer with the purpose of committing an offense, and §	Ambiguous

State	Statute	How the statute is keyed to federal law	Risk
	§ 45-8-337 § 87-6-401(1)(c) (hunting)	45-8-337 makes possession of "a silencer that is not registered under federal law" prima facie evidence of that unlawful purpose. Montana is not a flat ban — it is an evidentiary presumption that flips against the owner the moment the item is unregistered.	
Nevada	Nev. Rev. Stat. § 202.350(1)(b)(4), (4)	Manufacture, possession, sale, or use of a silencer is a category B felony "unless authorized by federal law." General federal-authorization language.	Ambiguous
North Carolina	N.C. Gen. Stat. § 14-288.8(c)(3) § 113-291.1(c) (hunting)	A silencer is a "weapon of mass death and destruction," possession of which is a class F felony. The definition expressly excludes a device owned or possessed "in compliance with 26 U.S.C. Chapter 53, §§ 5801–5871."	Compliance
North Dakota	N.D. Cent. Code § 62.1-05-01 § 20.1-01-36 (hunting)	A person is guilty of a class C felony for possessing a silencer "unless that person has complied with the National Firearms Act."	Compliance
Ohio	Ohio Rev. Code § 2923.11(K)(4) § 2923.17(C) § 1533.04 (hunting)	A suppressor is "dangerous ordnance." Possession is unlawful unless the suppressor is "registered in the national firearms registration and transfer record." The hunting statute independently repeats the registration condition, so an unregistered can would be unlawful to hunt with even if possession were somehow resolved.	Registration
Oregon	Or. Rev. Stat. § 166.272(1)–(3)	Knowing possession of a firearms silencer is a class B felony. It is a defense that the silencer "was registered as required under federal law." Registration-worded, but framed as a defense rather than a definitional carve-out.	Compliance
Pennsylvania	18 Pa. Cons. Stat. § 908(a), (b)(1)	Possession of an "offensive weapon," which includes a firearm specially made or adapted for silent discharge, is a first-degree misdemeanor. It is a defense that the actor "complied with the National Firearms Act."	Compliance
Washington	Wash. Rev. Code § 9.41.250(1)(c) § 9.41.251	Suppressors are lawful to possess if "registered and possessed in accordance with federal law." Washington has a distinctive second problem: the statute separately criminalizes the unlawful use of a suppressor, so a resident could plausibly end up owning a can he cannot lawfully fire.	Registration
Wisconsin	Wis. Stat. § 941.298(2)	Sale, delivery, or possession of a firearm silencer is a class H felony, but the prohibition does not apply to "any person who has complied with the licensing and registration requirements under 26 U.S.C. 5801 to 5872."	Compliance

Two defensive doctrines exist — but they are arguments, not shields. Ex post facto protection means a state cannot retroactively criminalize conduct that was lawful when it occurred, and the rule of lenity means genuinely ambiguous criminal statutes are construed in the defendant's favor. There is also a real question whether a statute conditioning legality on compliance with a requirement that no longer exists can be enforced at all. These are respectable arguments. They are also arguments you make **after you have been arrested**. U.S. LawShield's guidance for members in Tier 2 states is unambiguous: continue using the Form 4 process until your legislature or your state attorney general resolves the conflict.

Tier 3 — Twenty-seven states with no NFA-conditioned restriction

Alabama, Arizona, Arkansas, Florida, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Minnesota, Missouri, Nebraska, New Hampshire, New Mexico, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, Wyoming.

These states either are silent on silencers or regulate them without conditioning possession on NFA registration. This is where buyers — covered by the injunction or not — can actually realize the benefit of the ruling and the October 9 guidance. Hunting-use restrictions still vary and should be checked separately.

6. HOW A TRANSFER WORKS IN A NON-RESTRICTED STATE — TEXAS EXAMPLE

Texas is the cleanest illustration because Texas removed the state-level hook years ago.

- **HB 957 (87th Leg., 2021), effective September 1, 2021**, struck firearm silencers from the prohibited weapons list in Tex. Penal Code § 46.05.
- **SB 1596 (89th Leg., 2025), effective September 1, 2025**, struck short-barrel firearms from that same list.

The practical result: Texas no longer conditions possession of a silencer or a short-barrel firearm on NFA registration. Texas is also one of the fifteen plaintiff states, though — as noted above — that fact protects state agencies, not individual Texans. After October 9, it no longer matters for ATF-enforcement purposes whether the Texas buyer is covered; it still matters for what the buyer is relying on.

The transaction, step by step

1. **Determine what the buyer is relying on.** If the buyer holds current membership in a plaintiff organization, or the item originated with a plaintiff company, document that basis and retain it — the buyer has the protection of a court judgment. If not, the buyer is relying on ATF's October 9 enforcement policy. Note which in the file.
2. **Confirm the item category.** Silencers, SBRs, SBSs, and AOWs are within both the injunction (for lead-case plaintiffs) and the ATF policy (for everyone). Machine guns and destructive devices are never covered by either.
3. **For SBRs and SBSs, make a deliberate choice.** § 922(b)(4) still requires Attorney General authorization for a licensee to deliver an SBR or SBS, and Form 4 remains the only authorization mechanism ATF currently offers. ATF has said it will not enforce § 922(b)(4) until regulations are issued. A dealer that transfers an SBR or SBS without a Form 4 is relying on nonenforcement of a GCA criminal statute, not on the court's injunction. Either course is defensible; decide in advance, apply it consistently, and document it.
4. **Run a standard 4473.** A silencer or AOW is a GCA firearm. Record a silencer as an "other firearm." This step does not go away.
5. **Run NICS.** Proceed only on a Proceed. Delays and denials operate exactly as they do on any other firearm.
6. **Confirm residency.** A suppressor is an "other firearm" for § 922(b)(3) purposes. A Texas dealer cannot hand one to a non-Texas resident; it ships to an FFL in the buyer's state — and that state's law then controls.
7. **Log the acquisition and disposition.** Bound book entry as usual.
8. **Clear the item from your NFRTR.** Send the NFA Division a signed letter of request — handwritten ink signature and date, serial number(s), reason for the request, and licensed premises address — scanned

and emailed to NFAFAX@atf.gov (draft letter at Appendix A). Keep the request, any response, and a contemporaneous internal record of the transfer and its basis with the 4473.

9. **Buyer takes possession same day.** No Form 4, no fingerprints, no photographs, no CLEO notification, no wait.

What a Texas member should expect at the counter. Same paperwork as buying a rifle: driver's license, 4473, background check, walk out. That is the whole change — and after October 9 it applies to every buyer, not just the plaintiffs' members and customers. But it only holds while the buyer stays in a state that does not condition possession on registration. Drive that same suppressor into a Tier 2 state and the analysis changes completely.

A dealer is never obligated to rely on the injunction or the policy

Many FFLs will keep every silencer on Form 4, at least until ATF issues its SBR/SBS regulations and the first Industry Operations inspections under the new policy have occurred. That is a legitimate, defensible business decision, and no member should read a dealer's caution as ignorance of the law. ATF will continue to approve voluntary Form 4s. Some buyers will want the registration for state-law reasons, for interstate travel, or as insurance against a reversal of the policy, and a dealer may reasonably accommodate them.

7. GUIDANCE FOR DEALERS

Coverage under the injunction still matters — three routes

A dealer that is itself covered by the injunction has a court judgment behind its transfers; a dealer that is not is relying on the October 9 policy. The practical difference is small today and could be large if the policy is rescinded. The three routes to dealer coverage are:

1. **Membership in a plaintiff association.** The opinion describes GOA, FRAC, and Gun Owners Foundation collectively as suing on behalf of members that include “gun owners and firearms manufacturers, retailers, and importers” (Mem. Op. at 8–9). GOA is a lead-case plaintiff, so it carries AOW relief. FRAC is the industry-side coalition. TSRA and CCRKBA are Jensen-side, so no AOW. Joining one or more of these plaintiff organizations is the best route.
2. **Customer status with a plaintiff company.** A dealer that buys inventory from SilencerCo, B&T USA, Palmetto State Armory, or Hot Shots Custom may be considered a “customer” in that transaction, but this is unclear, and it is untested whether that status protects the dealer's *downstream* transfer to a consumer.
3. **Being a named plaintiff.** Only those four specifically named companies qualify for this route.

The entity trap. The membership has to be held by the licensed entity. If the FFL is Smith Guns LLC and the owner holds a personal GOA membership, the LLC is not obviously covered. Dealers should enroll under the business name and the license, and keep the confirmation with the transaction file.

Operating under the October 9 guidance

- **Decide your policy now and put it in writing.** Whether you will transfer without a Form 4; in which states; for which item categories (silencers and AOWs versus SBRs and SBSs); and what documentation you require. Train every counter employee to it. Inconsistency across a sales floor is the real risk.
- **Process silencers and AOWs as GCA firearms.** FAQ 12: 4473, NICS unless the buyer is exempt, in-state residents only, bound book, and no transfer in violation of state or local law. All other GCA restrictions still apply.

- **FFL-to-FFL transfers no longer require a Form 3.** FAQ 13 confirms ATF will not require Form 3s for interstate transfers of silencers or AOWs between licensees; they may be filed voluntarily. Keep your acquisition and disposition records exactly as before.
- **Pay your SOT.** The special occupational tax was not enjoined and is not covered by the policy. FAQ 14 states that a non-SOT FFL may not engage in the business of dealing in these items. If you have let your SOT lapse because “the NFA is gone,” you have a § 5861(a) problem.
- **Manufacturers have additional obligations.** Appropriate manufacturing license, serialization of every firearm and silencer, and, for businesses manufacturing silencers before November 20, 2026, ITAR registration with the Department of State (FAQ 14). Returning a customer’s unregistered silencer after repair is permitted; ATF is not enforcing § 5861(j) (FAQ 17).
- **Make a deliberate decision on SBRs and SBSs.** ATF will not enforce § 922(b)(4) until regulations exist, but the statute is still on the books and the Form 4 path still works. Transfers to state and local government entities for official use remain lawful under § 925(a) regardless. The more conservative course remains Form 4 until the regulations issue; a dealer that proceeds without one should say so in its written policy.
- **Clear transferred items from your NFRTR.** Send a signed letter of request to NFAFAX@atf.gov for the items transferred on a 4473 and keep the correspondence. The NFA Division has advised that a handwritten ink signature is required; use the draft letter at Appendix A. Your NFRTR will not match your shelves until ATF processes the request, and an IOI will expect you to be able to explain every gap with contemporaneous records.
- **State law is now your primary exposure.** § 922(b)(2) still prohibits transferring a firearm in violation of state or local law, including the law of the buyer’s jurisdiction. FAQ 16 warns that willful violations carry federal criminal penalties and license revocation. In Tier 1 states, nothing has changed. In Tier 2 states, keep using the Form 4.
- **Do not accept a trust at face value.** A trustee’s personal membership may not establish that the trust is covered by the injunction. ATF will still approve a Form 4 to a trust; if the transferee is an entity and the buyer wants to proceed without one, note that the transfer relies on enforcement discretion.
- **Watch for the state-line problem.** Non-resident buyers raise § 922(b)(3). Buyers who intend to travel face the destination and transit states’ laws, an uncertain § 926A safe harbor, and — for SBRs and SBSs — a continuing Form 20 requirement.
- **Expect regulations, inspections, and further litigation.** ATF has said it is drafting a non-NFA SBR/SBS authorization process “as quickly as possible.” Additional suits, a rescission of the policy, or a legislative fix could change this materially and quickly.

8. GUIDANCE FOR MEMBERS

- **Know what you are relying on.** If you are a current member of a plaintiff organization or bought from a plaintiff company, you hold the protection of a court judgment. If not, you are relying on ATF’s October 9 policy. Both work today; only one of them is binding on the government tomorrow.
- **If you are in a Tier 2 state, use the Form 4.** ATF still accepts and approves it. The federal protection is real; the state exposure is also real, and the state exposure is the one that puts you in a county jail.
- **If you are in a Tier 1 state, nothing has changed for you.** Do not acquire, do not import, do not build.
- **Interstate travel.** ATF will not enforce § 5861(j) against unregistered silencers and AOWs, but an SBR or SBS still requires an approved Form 20 before it crosses a state line. The law of every state you enter or pass through applies on arrival, and ATF itself says it is unclear whether state courts will apply the § 926A safe harbor to unregistered items. In ATF’s words, “exercise caution.”

- **Keep your existing stamps, and do not unregister anything without advice.** Approved registrations remain valid and useful. ATF will remove an item from the NFRTR on receipt of an ink-signed letter of request (see Appendix A), but once removed it cannot be re-registered unless the Attorney General declares an amnesty.
- **If you have a pending Form 4, you may let it proceed.** ATF will continue to approve voluntary applications. Get advice before withdrawing one — especially if a trust is the transferee or you live in a Tier 2 state.
- **If you build, serialize anyway.** No Form 1 is required federally, but state law may prohibit manufacture, you may not engage in the business of making or selling these items without a license, and an unmarked item is harder to register later or to defend if the policy changes.
- **There is no grandfather clause.** ATF's FAQ 24 is blunt: federal law does not generally permit later registration of an unregistered NFA item, nothing automatically grandfathers them, and an amnesty is at the Attorney General's discretion. Weigh that before you decide not to register.
- **Household members.** Federal nonenforcement now applies to everyone, but in a Tier 2 state a spouse with access to an unregistered suppressor is a separate state-law question. Constructive possession analysis has not gone anywhere.

9. WHAT TO WATCH

- ATF's promised regulations and forms creating a non-NFA authorization process for licensee transfers of SBRs and SBSs under § 922(b)(4), and the end of the interim nonenforcement period.
- Whether the Department rescinds or narrows its enforcement-discretion policy, and whether any amnesty or forbearance accompanies a change.
- How quickly ATF processes NFRTR removal requests sent to NFAFAX@atf.gov, and whether it replaces the ink-signed letter requirement with a form or an eForms function.
- State attorney general opinions and legislative sessions in the Tier 2 states — several will move to decouple their statutes from NFA registration, and some may move the other way.
- Litigation in other districts, including suits challenging the policy or seeking the same relief for different plaintiff groups, and any ruling that reaches a different conclusion on the taxing-power question.
- Congressional response: restoring a nominal non-zero tax, or re-enacting the scheme under the Commerce Clause, would reopen everything.
- Whether the analysis eventually reaches machine guns and destructive devices, which retain their \$200 tax and were therefore untouched by this reasoning.

IMPORTANT NOTICE

This advisory is provided for general educational and informational purposes only. It is not legal advice, does not create an attorney-client relationship, and does not substitute for individualized counsel regarding a specific firearm, trust, business, transfer, or proposed manufacture. The legal landscape described here is changing rapidly and may have changed since the date of this advisory. ATF's October 9, 2026 guidance is a statement of enforcement policy, not a change in the law, and may be modified or withdrawn. Confirm current federal and state law, the current procedural posture of this litigation, and the current status of ATF's policy before acting.

U.S. LawShield members with questions about how this ruling affects them should contact their Independent Program Attorney through the member portal or the non-emergency helpline.

Primary sources and further reading

ATF, Open Letter to All Federal Firearms Licensees and the Public Regarding the National Firearms Act Making and Transfer Requirements for Certain Firearms and Devices (Oct. 9, 2026) (signed by Director Robert Cekada)

ATF, FAQs to Accompany the Open Letter Regarding the National Firearms Act Making and Transfer for Certain Firearms and Devices (Oct. 9, 2026)

Memorandum Opinion and Order and Final Judgment, Silencer Shop Foundation v. ATF, No. 6:25-CV-056-H, 2026 WL 2255460 (N.D. Tex. Aug. 5, 2026)

Letter from Rep. Andrew S. Clyde et al. to Attorney General Todd Blanche (Aug. 11, 2026), clayde.house.gov/uploadedfiles/clayde_blancheletter_nfaruling_aug26.pdf

Silencer Central, “How NFA Deregulation Affects Your State” (Aug. 12, 2026), silencercentral.com/blog/how-nfa-deregulation-affects-your-state-law/

APPENDIX A — DRAFT LETTER OF REQUEST TO THE ATF NFA DIVISION

ATF's October 9, 2026 FAQs (FAQ 18 and FAQ 22) direct anyone who wants an item removed from the National Firearms Registration and Transfer Record — a dealer clearing an item transferred on a Form 4473 from its NFA inventory, or an individual or trust that no longer wishes to register or wishes to unregister an item — to write the NFA Division at NFAFAX@atf.gov. The NFA Division has confirmed what that letter must contain. The draft below is written to those requirements and may be adapted by dealers, individuals, and trusts.

What the NFA Division requires

The NFA Division has advised that **a letter of request with an ink signature is required** to process updates, modifications, additions, removals, destructions, and corrections to the NFRTR. A typed or electronic signature is not sufficient. The signed letter may be scanned and emailed to NFAFAX@atf.gov. The NFA Division can be reached at (304) 616-4500 if further assistance is needed. Every request must include:

- **A handwritten signature and date.** Print the letter, sign and date it in ink, then scan it. Do not type the signature or paste an image of one.
- **The serial number(s)** of every firearm or silencer covered by the request, exactly as they appear on the item and on the approved form.
- **The reason for the request** — for example, removal from a licensee's NFA inventory following a GCA transfer, withdrawal of a pending application, or removal of a registered item from the NFRTR.
- **The requester's address.** For a licensee, the licensed premises address as it appears on the FFL; for a trust, the address shown on the registration.

Before you send it

1. **Removal is a one-way door.** ATF has stated that once an item is removed from the NFRTR, it cannot be re-registered unless the Attorney General declares an amnesty. Members should not unregister anything without advice, and dealers should send a removal request only after the transfer is complete and recorded.
2. **Match the serial number to the record.** Confirm the manufacturer, model, caliber, and serial number against the approved Form 2, 3, or 4 (or the pending application) before sending. A mismatch will delay processing.
3. **One letter per registrant.** A dealer may list multiple items on a single letter. A trust and an individual trustee are separate registrants and should send separate letters.
4. **Sign in the right capacity.** A licensee letter should be signed by a responsible person on the license. A trust letter should be signed by a trustee, identified as such. A letter for an individually registered item should be signed by the registrant.
5. **Scan the signed original as a single PDF** and send it to NFAFAX@atf.gov. A suggested subject line: "Request for NFRTR Removal — [FFL No. / Registrant Name] — [Serial No(s)].". Keep the signed original, the scan, the sent email, and any ATF response with the transaction file or with the item's NFA records.
6. **Do not wait for a response to document the transfer.** ATF has published no processing timeline. Your contemporaneous records are what an Industry Operations Investigator will ask for in the meantime.

Draft letter

Blank form fields are to be completed by licensee.

Name of Licensee:

Address:

Telephone: | Email:

FFL No. | EIN - | SOT Class

Date:

VIA EMAIL — NFAFAX@atf.gov

Bureau of Alcohol, Tobacco, Firearms and Explosives - National Firearms Act Division

Re: Letter of Request — Removal of Firearm(s) from the NFRTR

Dear NFA Division:

Pursuant to the Bureau's Open Letter to All Federal Firearms Licensees and the Public and the accompanying Frequently Asked Questions dated October 9, 2026, the undersigned respectfully requests that the firearm(s) and/or silencer(s) identified below be removed from the National Firearms Registration and Transfer Record (NFRTR).

Reason for request:

The undersigned is a federal firearms licensee and special (occupational) taxpayer. On the date of this letter the item(s) listed below were transferred to an unlicensed transferee as statutory firearms under the Gun Control Act on ATF Form 4473, with a NICS background check completed or qualifying NICS exemption, in reliance on ATF's October 9, 2026 enforcement policy. The acquisition and disposition were recorded in the licensee's permanent records as required by 27 C.F.R. § 478.125. The item(s) are no longer in the licensee's inventory, and the licensee requests that its NFA inventory and the NFRTR be updated to reflect the disposition. See ATF FAQ No. 18 (Oct. 9, 2026).

Item(s) covered by this request:

Manufacturer / Importer	Model / Type (SBR, SBS, Silencer, AOW)	Caliber / Gauge	Serial Number

Please direct any questions regarding this request to the undersigned at the telephone number or email address above, and please confirm by reply email when the NFRTR has been updated.

Thank you for your assistance.

(Handwritten signature in ink — required)

Printed Name: Title / Capacity:

Date signed: