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Buying a Gun Is About to Get More Complicated for Nonbinary People

The ATF has told The Trace that the federal background check form for gun sales is being revised to recognize only two sexes.

By Will Van Sant ● Sep 19, 2025

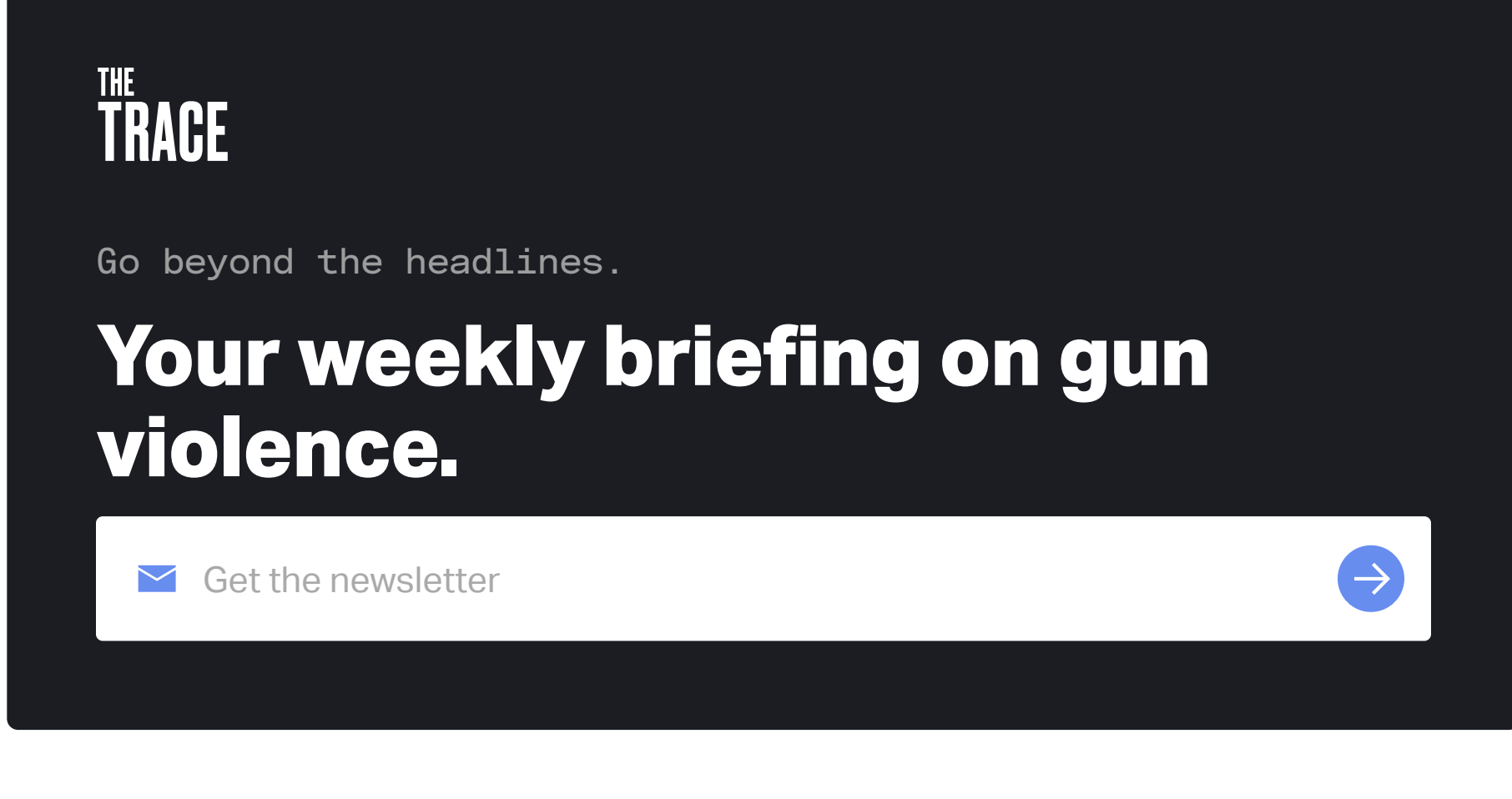


A store worker gestures behind the counter in a gun store in Rio Rico, Santa Cruz County, Arizona. Charly Triballieu / AFP via Getty Images

The federal background check form for gun sales is being slimmed down, and the Bureau of Alcohol, Tobacco, Firearms, and Explosives said this week that the new form will comply with President Donald Trump’s executive order that the government recognize only two sexes. As a result, nonbinary will likely be struck as a sex option, reversing an update the agency made in 2020 after requests from the gun industry.

News that the agency will revert to giving applicants only male and female options on the background check form follows a [report](#) this month that the Trump administration has discussed limiting gun rights for transgender people. And it comes as the killing of conservative commentator Charlie Kirk has spurred [calls](#) to limit the broader rights of trans people, who have been [falsely implicated](#) in high-profile shootings.

In an [order](#) signed on Inauguration Day, Trump declared male and female immutable categories. The administration has since targeted trans people in many ways, including [removing](#) federal workplace protections, [purging](#) openly trans military service members, and deploying “patriotic education measures” meant to [eliminate](#) support for trans kids in public schools.



Soon after Trump’s order, the ATF scrubbed internal documents of gender references that did not conform, according to a former top agency official who was involved. The official, who requested anonymity to openly discuss internal agency matters, left the ATF this year.

At the time, they said, the ATF planned to strike nonbinary from the background check form, too. But other changes supported by gun rights interests were also being pursued.

In June, *The Washington Post* [reported](#) that questions on the form meant to determine if a potential buyer is prohibited from purchasing a gun — such as whether they’ve been committed to a mental institution, convicted of misdemeanor domestic violence, or dishonorably discharged from the military — would be collapsed into a single, catch-all question.

Any changes to the form are governed by a rule-making process that involves public notice and comment. The official said it’s likely that the agency will unveil the changes all at once, rather than piecemeal.

It’s unclear just when that will happen, though some elected leaders are eager for the agency to act. In April, Rep. Clay Higgins, a Trump loyalist and fierce ATF critic who chairs the House Subcommittee on Federal Law Enforcement, sent a [letter](#) to the agency’s acting director, saying the subcommittee had been “investigating necessary changes” to the background check form. Higgins called on the agency to amend the form so that applicants don’t unwittingly misrepresent their criminal histories and to remove the nonbinary option, per Trump’s order.

In response to questions, the agency this week said: “The ATF is in the process of updating and simplifying the Firearm Transaction Form to make it more concise and user-friendly for both purchasers and [federally regulated gun dealers]. Additionally, reviews and appropriate changes are being made to ensure consistency with the President’s Executive Order Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government.”

The background check form is perhaps the most conspicuous control on domestic firearms commerce. The number of background checks that the FBI completes is used to gauge firearms sales in the country.

Gun rights groups and the National Shooting Sports Foundation, an industry trade group, welcome simplification of the form. But striking the nonbinary option may create uncertainty for gun dealers and is at odds with the industry’s interest in expanding beyond its historically white male market.

Matthew Larosiére, a gun rights attorney who in 2019 wrote critically about the ATF’s use of sex on the form, said applicants should be required to provide “the least amount of information possible for conclusive identification.” Larosiére doubts that including sex on the form is necessary but says if the question is going to be asked, then the nonbinary option should remain, both for Second Amendment reasons and to avoid compliance headaches for gun dealers. “I don’t see any advantage in going back to pure binary on the form,” he said.

In 2017, when states began including nonbinary as a sex choice on driver’s licenses, gun dealers were flummoxed. The background check form only allowed applicants to identify as male or female. How were dealers to handle customers with a primary government ID that recognized them as nonbinary and a background check form with no such option?

In 2018 and 2019, Larry Keane, chief lobbyist and general counsel for the National Shooting Sports Foundation, raised the issue several times with ATF officials, according to emails that The Trace obtained through an ongoing public records lawsuit filed by Reporters Committee for Freedom of the Press. The emails show Keane coordinating ATF involvement in the NSSF’s annual Las Vegas trade show, making inquiries about specific agency enforcement actions, sharing gun-related news stories with top brass, and generally enjoying a degree of access that would make many lobbyists envious. And, as expected given his role, Keane is eager to address difficulties that gun dealers face with sales and compliance.

In July 2019, after New Hampshire became the 13th state to allow driver’s license holders to identify as nonbinary, Keane notified ATF leaders and encouraged the agency to consider changing the form “to allow a third option.” Initially, the agency said it was permissible for dealers to accept licenses for nonbinary people as a means of identification, but that applicants still had to choose male or female on the background check form. Then in May 2020, the agency revised the form, allowing applicants to select nonbinary, male, or female as their sex. The NSSF, which [credited](#) gun owners with returning Trump to office, did not respond to requests for comment on changes to the background check form.

The form is just one area where the administration is in conflict with gun interests. The recent federal takeover of policing in Washington, which has included street patrols by ATF agents, has also sparked [criticism](#). And this month, the news [broke](#) that Department of Justice officials had reportedly discussed labeling transgender people mentally ill to curtail their gun rights. Soon after Trump’s order, a spokesperson for The Liberal Gun Club, a left-leaning gun rights group, told The Trace that she feared such a move.

“I told you so,” the spokesperson, Lara Smith, said in a recent interview, “and I don’t mean that to be as flippant as it sounds, but we knew, we knew they were going to try this. Now, is it not just trans people, is it people on the left that they are going to try and disarm, or political dissidents generally?”

All of the country’s major gun rights organizations, including the National Rifle Association, Second Amendment Foundation, and Gun Owners of America, which [sees](#) its mission as grounded in the Christian Bible, [condemned](#) the reported DOJ discussions. “I was pleasantly surprised about how quickly these big gun groups came out and said, ‘No, you can’t do this,’” said Smith, who called the DOJ talks “a trial balloon that went up like a lead balloon.”

Larosiére, the gun rights attorney, said it was “frankly stupid” for some on the right to consider sacrificing the gun rights of transgender people in the interest of notching a perceived culture-war win. “The Second Amendment says, ‘the right of the people,’” Larosiére said. “I believe that it’s a right inherent in you as a human being, it does not depend on how you identify.”

Will Van Sant

Will is a staff writer at The Trace. His reporting focuses on the gun lobby and related topics. Previously, he spent seven years on the investigative reporting team at *Newsday*, chronicling the cronyism, self-enrichment, and abuses of power endemic to government and law enforcement in New York. Stories that break ground, reveal connections, and dive below the surface are his jam. Will loves to learn things that he’s not supposed to know.

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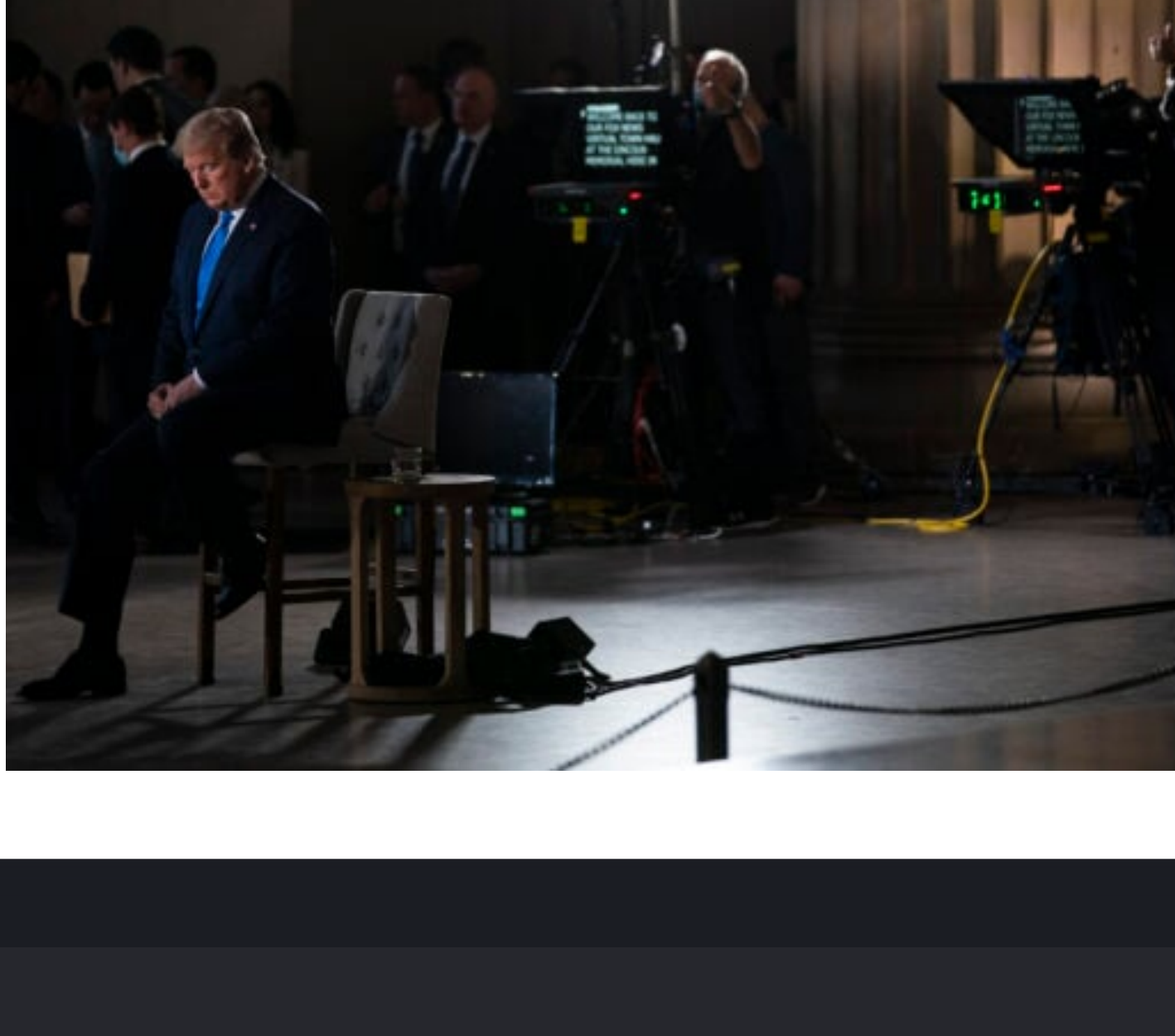
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