

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of:

Nicholas Ayala

Inmate Number: 97331-509

FCI Edgefield

P.O. Box 725

Edgefield, SC 29824

ORDER DENYING EXPORT PRIVILEGES

On November 16, 2022, in the U.S. District Court for the Southern District of Florida, Nicholas Ayala (“Ayala”) was convicted of violating 18 U.S.C. § 371 and 18 U.S.C. § 554. Specifically, Ayala was convicted of conspiring to smuggle various handguns and firearms from the United States to Ecuador. As a result of his conviction, the Court sentenced him to 36 months in prison, three years of supervised release, and a \$400 special assessment.

Pursuant to Section 1760(e) of the Export Control Reform Act (“ECRA”),¹ the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. § 371 and 18 U.S.C. § 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. § 4819(e). In addition, any Bureau of Industry and Security (“BIS”) licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked.

Id.

¹ ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. §§ 4801-4852.

BIS received notice of Ayala's conviction for violating 18 U.S.C. § 371 and 18 U.S.C § 554. As provided in Section 766.25 of the Export Administration Regulations ("EAR" or the "Regulations"), BIS provided notice and opportunity for Ayala to make a written submission to BIS. 15 C.F.R. § 766.25.² BIS has not received a written submission from Ayala.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Ayala's export privileges under the Regulations for a period of 10 years from the date of Ayala's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Ayala had an interest at the time of his conviction.³

Accordingly, it is hereby **ORDERED**:

First, from the date of this Order until November 16, 2032, Nicholas Ayala, with a last known address of Inmate Number: 97331-509, FCI Edgefield, P.O. Box 725, Edgefield, SC 29824, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives ("the Denied Person"), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

- A. Applying for, obtaining, or using any license, license exception, or export control document;

² The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2022).

³ The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 *Fed. Reg.* 73411, November 18, 2020).

- B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or
- C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

- A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;
- B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;
- C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

- D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or
- E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to Section 1760(e) of ECRA and Sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Ayala by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, Ayala may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Ayala and shall be published in the *Federal Register*.

Sixth, this Order is effective immediately and shall remain in effect until November 16, 2032.

John Sonderman
John Sonderman
Director
Office of Export Enforcement

Issued this 6 day of September , 2023.