No. 23-852

In the Supreme Court of the United States

MERRICK B. GARLAND, ATTORNEY GENERAL, ET AL., PETITIONERS

v.

JENNIFER VANDERSTOK, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE PETITIONERS

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record
BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General
BRIAN H. FLETCHER
Deputy Solicitor General
NICOLE FRAZER REAVES
Assistant to the Solicitor General
MARK B. STERN
SEAN R. JANDA
Attorneys

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTIONS PRESENTED

In the Gun Control Act of 1968 (Act), 18 U.S.C. 921 *et seq.*, Congress imposed licensing, background-check, recordkeeping, and serialization requirements on persons engaged in the business of importing, manufacturing, or dealing in firearms. The Act defines a "'firearm'" to include "any weapon * * * which will or is designed to or may readily be converted to expel a projectile by the action of an explosive," as well as "the frame or receiver of any such weapon." 18 U.S.C. 921(a)(3)(A) and (B). In 2022, the Bureau of Alcohol, Tobacco, Firearms and Explosives issued a regulation clarifying that certain products that can readily be converted into an operational firearm or a functional frame or receiver fall within that definition. See 87 Fed. Reg. 24,652 (Apr. 26, 2022) (codified in relevant part at 27 C.F.R. 478.11, 478.12(c)). The Fifth Circuit held that those regulatory provisions are inconsistent with the Act. The questions presented are:

1. Whether "a weapon parts kit that is designed to or may readily be completed, assembled, restored, or otherwise converted to expel a projectile by the action of an explosive," 27 C.F.R. 478.11, is a "firearm" regulated by the Act.

2. Whether "a partially complete, disassembled, or nonfunctional frame or receiver" that is "designed to or may readily be completed, assembled, restored, or otherwise converted to function as a frame or receiver," 27 C.F.R. 478.12(c), is a "frame or receiver" regulated by the Act.

PARTIES TO THE PROCEEDING

Petitioners were the defendants-appellants below. They are the U.S. Department of Justice; the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); Merrick B. Garland, in his official capacity as Attorney General of the United States; and Steven Dettelbach, in his official capacity as Director of ATF.

Respondents include the plaintiffs-appellees below. They are Jennifer VanDerStok; Michael G. Andren; Tactical Machining, L.L.C.; and Firearms Policy Coalition, Inc. Respondents also include the intervenor plaintiffs-appellees below. They are Blackhawk Manufacturing Group, Inc. (doing business as 80 Percent Arms); Defense Distributed; Second Amendment Foundation, Inc.; Not An L.L.C. (doing business as JSD Supply); and Polymer80, Inc.

RELATED PROCEEDINGS

United States District Court (S.D. Tex.):

VanDerStok v. *Garland*, No. 22-cv-691 (July 5, 2023)

United States Court of Appeals (5th Cir.):

VanDerStok v. *Garland*, No. 23-10463 (appeal dismissed Aug. 14, 2023)

VanDerStok v. *Garland*, No. 22-11071 (appeal dismissed Sept. 6, 2023)

VanDerStok v. *Garland*, No. 22-11086 (appeal dismissed Sept. 6, 2023)

VanDerStok v. *Garland*, No. 23-10718 (Nov. 9, 2023)

Supreme Court of the United States:

Garland v. *VanDerStok*, No. 23A82 (Aug. 8, 2023)

Garland v. *Blackhawk Manufacturing Group, Inc.*, No. 23A302 (Oct. 16, 2023)

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BRIEF FOR THE PETITIONERS

OPINIONS BELOW

The court of appeals' opinion (Pet. App. 1a-66a) is reported at 86 F.4th 179. The district court's opinion and order is reported at 680 F. Supp. 3d 741. This Court's order granting a stay pending appeal (Pet. App. 179a) is reported at 144 S. Ct. 44. The court of appeals' order granting in part and denying in part a stay pending appeal (Pet. App. 180a-183a) is unreported but is available at 2023 WL 4945360. The district court's order denying a stay pending appeal (Pet. App. 184a-185a) is unreported.

This Court's order vacating the injunction pending appeal (Pet. App. 118a) is reported at 144 S. Ct. 338. The court of appeals' order granting in part and denying in part the motion to vacate the injunction pending appeal (Pet. App. 119a-125a) is unreported. The district court's

opinion and order granting an injunction pending appeal (Pet. App. 126a-178a) is not yet reported but is available at 2023 WL 5978332.

JURISDICTION

The judgment of the court of appeals was entered on November 9, 2023. The petition for a writ of certiorari was filed on February 7, 2024, and granted on April 22, 2024. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Pertinent statutory and regulatory provisions are reproduced in the appendix to this brief. App., *infra*, 1a-14a.

STATEMENT

This case concerns a 2022 rule issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to address the urgent public safety and law enforcement crisis posed by the exponential rise of untraceable firearms commonly called "ghost guns." Ghost guns could be made from kits and parts that were widely available online and allowed anyone with basic tools and rudimentary skills to assemble a fully functional firearm in as little as twenty minutes. Because some manufacturers of those kits and parts asserted that they were not "firearms" regulated by federal law—and thus sold them without serial numbers, transfer records, or background checks—ghost guns were attractive to criminals, minors, and others who are legally prohibited from buying firearms. Responding to that concern, and consistent with ATF's longstanding interpretation and implementation of the Gun Control Act of 1968 (GCA or Act), Pub. L. No. 90-351, Tit. IV, 82 Stat. 225 (18 U.S.C.

921 *et seq.*), the rule makes clear that weapon parts kits and partially complete frames and receivers that can readily be converted into functional firearms or complete frames and receivers qualify as regulated "firearms." The rule does not prohibit the purchase, sale, or possession of any firearm, nor does it prohibit any individual lawfully entitled to possess a firearm from making one at home; instead, it simply ensures that ghost guns are subject to the same straightforward and inexpensive administrative requirements that apply to commercial sales of all other firearms. But the Fifth Circuit invalidated the relevant provisions of the rule, adopting an interpretation of the Act that permits ready evasion of its central requirements in contravention of text, context, and common sense.

A. Legal Framework

1. Congress adopted the GCA in response to "widespread traffic in firearms." § 901(a)(1), 82 Stat. 225. Congress found that "the ease with which any person"—including "criminals" and "juveniles"—"can acquire firearms * * * is a significant factor in the prevalence of lawlessness and violent crime." § 901(a)(2), 82 Stat. 225. Congress was particularly concerned about the "mail-order" distribution of firearms, which allowed buyers to evade state and local regulations. § 901(a)(4), 82 Stat. 225.

In the Act, Congress imposed requirements on persons engaged in the business of importing, manufacturing, or dealing in "firearms." 18 U.S.C. 922, 923. Such persons must obtain a federal firearms license, keep records of the acquisition and transfer of firearms, and conduct a background check before transferring a firearm to a non-licensee. 18 U.S.C. 922(t), 923(a) and (g)(1)(A). Importers and manufacturers are also

required to mark firearms with a serial number. 18 U.S.C. 923(i).

"The twin goals" of the Act's "comprehensive scheme" are "to keep guns out of the hands of criminals and others who should not have them" and "to assist law enforcement authorities in investigating serious crimes." *Abramski* v. *United States*, 573 U.S. 169, 180 (2014). The background-check requirement serves "Congress's principal purpose in enacting the statute—to curb crime by keeping firearms out of the hands of those not legally entitled to possess them," including "felon[s]." *Id.* at 181 (citation and internal quotation marks omitted). And the recordkeeping and serialization requirements allow "law enforcement to determine where, by whom, or when" a firearm was manufactured and "to whom [it was] sold or otherwise transferred." 87 Fed. Reg. 24,652, 24,652 (Apr. 26, 2022). Those requirements "help[] to fight serious crime": "When police officers retrieve a gun at a crime scene, they can trace it to the buyer and consider him as a suspect." *Abramski*, 573 U.S. at 182. Over 8500 law-enforcement agencies use ATF's system for tracing firearms recovered at crime scenes. 87 Fed. Reg. at 24,659.

Congress broadly defined "'firearm'" as "(A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device." 18 U.S.C. 921(a)(3). By including "the frame or receiver of any such weapon," 18 U.S.C. 921(a)(3)(B), Congress ensured that the key structural component of a firearm is subject to serial-number, background-check, and recordkeeping

requirements even if it is sold alone. Congress did not, however, define the terms "frame" or "receiver."

2. Congress authorized the Attorney General to prescribe "such rules and regulations as are necessary to carry out" the Act. 18 U.S.C. 926(a). The Attorney General has delegated that authority to ATF. 28 C.F.R. 0.130(a). In addition to issuing regulations and other general guidance, ATF encourages manufacturers to submit potentially regulated items on a voluntary basis so that the agency can assess whether they qualify as firearms under the Act. See Office of Enforcement Programs & Services, ATF, U.S. Dep't of Justice, *ATF National Firearms Act Handbook* 41 (rev. Apr. 2009), https://perma.cc/EQ22-M2RG. ATF responds to such submissions with classification letters setting forth the agency's "official position concerning the status of the firearms under Federal firearms laws." *Ibid.*; see 27 C.F.R. 478.92(c); 87 Fed. Reg. at 24,667, 24,710.

In 1968, shortly after Congress adopted the Act, ATF's predecessor agency promulgated a regulation defining "frame or receiver" as "[t]hat part of a firearm which provides housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive the barrel." 33 Fed. Reg. 18,555, 18,558 (Dec. 14, 1968) (emphasis omitted); see 87 Fed. Reg. at 24,652, 24,654. Although the 1968 regulations did not explicitly address the issue, ATF has "long held" that a frame or receiver need not be complete or functional in order to qualify as a "frame or receiver" under the Act. 87 Fed. Reg. at 24,685. Instead, the agency recognized that "a piece of metal, plastic, or other material becomes a frame or receiver when it has reached a 'critical stage of manufacture'"—that is, when a product "is 'brought to a stage of

completeness that will allow it to accept the firearm components [for] which it is designed * * * , using basic tools in a reasonable amount of time.'" *Ibid.* (citation omitted).

That approach is reflected in dozens of classification letters issued over the past half century. For example, ATF has consistently found that partially complete frames qualify as firearms if they can "be readily converted to functional condition," Pet. App. 209a-210a (1978 letter), or if they are "basically complete" and require only a small amount of machining to attain functionality, J.A. 8 (1992 letter); see, *e.g.*, J.A. 10-12, 21-22, 27-28, 38-39, 41-42, 47-48, 50-54 (other letters applying similar analyses).

ATF has also long considered the length of time necessary to complete a frame or receiver in making classification determinations. In 1980, for example, ATF explained that "an unfinished receiver" would "likely qualify as a firearm" if it "could be converted to functional condition within a few hours" using "common hand tools," Pet. App. 214a, and ATF has accordingly classified such items as firearms, see *id.* at 216a (receiver that required "[a]pproximately 75 minutes" of work to become "functional"); J.A. 13-14 (receiver that took 75 minutes to complete using common tools); J.A. 24 (considering whether a partially complete receiver could be completed "using basic tools in a reasonable amount of time"); J.A. 31 (receiver that took "[l]ess than 30 minutes * * * to assemble [into] a functional firearm"); J.A. 57-62 (receiver that took less than five minutes to complete); see also J.A. 6, 18-19, 71-73, 75-100 (additional classification letters).

Relying on those considerations, ATF has also concluded that certain items are *not* sufficiently complete

to be regulated as a frame or receiver. For example, ATF has determined that products are not frames or receivers where "major machining operations [we]re required" to permit an item's use as a frame or where "the completion of the missing steps cannot be accomplished with common hand tools." J.A. 32, 36; see J.A. 16-17.

B. ATF's 2022 Rule

1. In recent years, "technological advances" have made it easier for companies to manufacture and sell "firearm parts kits" and "easy-to-complete frames or receivers" that allow anyone with basic tools to assemble a functional firearm "quickly and easily"—often, in a matter of minutes. 87 Fed. Reg. at 24,652. For example, the "Buy Build Shoot" kit marketed by respondent Polymer80 allowed a purchaser to assemble a fully functional Glock-variant semiautomatic pistol in as little as 21 minutes. Pet. App. 236a-237a; see p. 23, *infra* (photograph). Similarly, companies have marketed "partially complete or unassembled frames or receivers" that can "readily be completed or assembled to a functional state"—for example, by removing a few temporary plastic rails, a process that takes minutes. 87 Fed. Reg. at 24,663; see Pet. App. 196a.[1]

Some manufacturers of those kits and parts asserted that they were not "firearms" regulated by the Act and sold them without complying with the Act's requirements. 87 Fed. Reg. at 24,655, 24,662-24,663. Those firearms—commonly called "ghost guns" because of their lack of serial numbers—were widely available

[1] For pictures, see p. 34, *infra*. For a video of the assembly of a frame parts kit into a complete, functional pistol, see https://web.archive.org/web/20200331211935/https://www.youtube.com/watch?v=ThzFOIYZgIg (cited at 87 Fed. Reg. at 24,686 n.106).

online. *Id.* at 24,652; see *id.* at 25,665. And the lack of serial numbers, transfer records, and background checks made ghost guns uniquely attractive to people who were legally prohibited from buying guns or who planned to use them in crime. *Id.* at 24,677.

As a result, police departments around the Nation confronted an explosion of crimes involving ghost guns. In 2017, law enforcement agencies submitted roughly 1600 ghost guns to ATF for tracing. Pet. App. 194a. By 2021, that number was more than 19,000—an increase of more than 1000% in just four years. *Ibid.* And those submissions to ATF have been almost entirely futile because the lack of serial numbers and transfer records makes ghost guns "nearly impossible to trace." *Ibid.* Out of 45,240 unserialized firearms submitted for tracing between 2016 and 2021, ATF was able to complete only 445 traces to individual purchasers—a success rate of less than one percent. 87 Fed. Reg. at 24,656, 24,659.

2. In 2021, ATF issued a notice of proposed rulemaking "to clarify the definition of 'firearm' and to provide a more comprehensive definition of 'frame or receiver.'" 86 Fed. Reg. 27,720, 27,725 (May 21, 2021). After public comment, ATF promulgated the rule at issue here, which took effect on August 24, 2022. See 87 Fed. Reg. at 24,652 (Rule). The Rule makes a variety of updates to ATF's regulations, including definitional provisions and recordkeeping, serialization, and other requirements. See *id.* at 24,735-24,739, 24,742-24,744, 24,746-24,747. This case concerns two discrete provisions of the Rule that clarify the Act's application to ghost guns.

a. First, the Rule reaffirms that the Act's definition of "firearm" in Section 921(a)(3)(A)—which encompasses any weapon that "is designed to or may readily be converted" into a functional firearm, 18 U.S.C.

921(a)(3)(A)—includes certain weapon parts kits. Tracking the statutory language, the Rule defines "firearm" to "include a weapon parts kit that is designed to or may readily be completed, assembled, restored, or otherwise converted to expel a projectile by the action of an explosive." 27 C.F.R. 478.11. ATF explained that kits covered by the Rule fit within the natural reading of the statutory definition of "firearm" and that the Rule simply "makes explicit that manufacturers and sellers of such kits" are "subject to the same regulatory requirements applicable to the manufacture or sale of fully completed and assembled firearms." 87 Fed. Reg. at 24,662.

The Rule defines "[r]eadily" as "[a] process, action, or physical state that is fairly or reasonably efficient, quick, and easy." 27 C.F.R. 478.11 (emphasis omitted). And it provides that, "[w]ith respect to the classification of firearms, factors relevant in making this determination include" "[t]ime," "[e]ase," "[e]xpertise," "[e]quipment," "[p]arts availability," "[e]xpense," "[s]cope," and "[f]easibility." *Ibid.* ATF explained that it defined "'readily'" by starting with "a common dictionary definition of that term and then provid[ing] more clarity" by "listing relevant factors that courts have adopted" in applying the term in the firearms context. 87 Fed. Reg. at 24,699-24,700; see *id.* at 24,663, 24,678-24,679.

b. Second, the Rule clarifies that the undefined terms "frame" and "receiver" in the Act's definition of "firearm" include "a partially complete, disassembled, or nonfunctional frame or receiver, including a frame or receiver parts kit, that is designed to or may readily be completed, assembled, restored, or otherwise converted to function as a frame or receiver." 27 C.F.R. 478.12(c). ATF noted that it had long interpreted the Act to cover

partially complete or nonfunctional frames and receivers that can be made functional "using basic tools in a reasonable amount of time." 87 Fed. Reg. at 24,685. ATF acknowledged that, in applying that standard, it had not previously considered other materials sold with a partially complete frame or receiver, such as "templates" and "jigs" (tools that hold a partially complete frame or receiver in place so that holes can be drilled or material can be removed in the precise locations necessary to make it functional). *Id.* at 24,668. But ATF concluded that those items can "serve the same purpose as indexing" or partial machining on the frame or receiver itself, allowing a buyer to "quickly" and "easily" complete a frame or receiver with common tools. *Ibid.*; see *id.* at 24,689.

The Rule thus specifies that, in determining whether a part qualifies as a "frame or receiver," ATF "may consider any associated templates, jigs, molds, equipment, tools, instructions, guides, or marketing materials that are sold, distributed, or possessed with the item or kit." 27 C.F.R. 478.12(c). At the request of commenters seeking additional clarity, the Rule explicitly excludes any "forging," "casting," or other "unmachined body" that "has not yet reached a stage of manufacture where it is clearly identifiable as an unfinished component part of a weapon." *Ibid.* ATF explained that this exclusion makes clear that "[c]ompanies that sell or distribute only unfinished frame or receiver * * * blanks" of the sort typically purchased in bulk by commercial firearm manufacturers "are *not* required to be licensed or to mark those articles" with serial numbers. 87 Fed. Reg. at 24,700.

The Rule also lists examples of products that fall within its interpretation of "frame or receiver." A kit

containing the necessary parts and "a compatible jig or template" so that "a person with online instructions and common hand tools may readily complete or assemble" the parts "to function as a frame or receiver" is covered. 27 C.F.R. 478.12(c). So is a "partially complete billet or blank of a frame or receiver"—that is, a machined, molded, or manufactured frame or receiver structure—"with one or more template holes drilled or indexed in the correct location" so that "a person with common hand tools may readily complete the billet or blank to function as a frame or receiver." *Ibid.* In contrast, a "billet or blank" that lacks "index[ing], machin[ing], or form[ing]" on "critical interior areas"—and is sold without associated "instructions, jigs, templates, equipment, or tools" that would enable it to "readily be completed"—"is not a receiver." *Ibid.*[2]

c. The Rule's interpretation of the Act does not prohibit the manufacture of any firearm or the sale of a firearm to any individual lawfully entitled to possess one. Instead, the Rule simply clarifies that the Act requires commercial manufacturers and sellers of covered weapon parts kits and partially complete frames or receivers to obtain licenses, mark their products with serial numbers, conduct background checks, and keep transfer records. Those are the same "conditions and qualifications on the commercial sale of arms," *District*

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[2] In *California* v. *ATF*, No. 20-cv-6761, 2024 WL 779604 (N.D. Cal. Feb. 26, 2024), a district court held that ATF failed to adequately explain its conclusion that certain unindexed AR-15-style receiver blanks cannot readily be converted into functional receivers and therefore are not "firearms" under 18 U.S.C. 921(a)(3)(B). See 27 C.F.R. 478.12(c) (Example 4). The government has appealed, and the court of appeals has stayed the appeal pending this Court's decision in this case. Order, *California* v. *ATF*, No. 24-2701 (9th Cir. May 13, 2024).

of Columbia v. *Heller*, 554 U.S. 570, 627 (2008), that around 80,000 licensed manufacturers and distributors of firearms comply with in millions of transactions each year, Pet. App. 203a.

The Rule's interpretation of the Act also does not prohibit a person who is lawfully entitled to possess a firearm from making a firearm at home. To the contrary, the Rule repeatedly emphasizes "that firearms privately made by non-prohibited persons solely for personal use generally do not come under the purview of the [Act]." 87 Fed. Reg. at 24,686. The Rule's interpretation therefore "does not restrict law-abiding citizens' ability to make their own firearms from parts * * * without a license as long as they are not engaged in the business of manufacturing" firearms. *Id.* at 24,686-24,687. And it does not require such individuals "to mark" with a serial number "firearms they make for their personal use." *Id.* at 24,687; see *id.* at 24,653, 24,665, 24,669-24,670, 24,673, 24,676-24,677, 24,690, 24,706, 24,715-24,717, 24,723, 24,725 (confirming that the Rule generally does not apply to the private making of firearms).

C. Procedural History

1. Respondents—two individuals, two advocacy organizations, and five entities that manufacture or distribute some products covered by the Rule—filed or intervened in this suit. Pet. App. 74a-77a. Three of the manufacturing respondents—Blackhawk Manufacturing Group, Tactical Machining, and Polymer80—are already federal firearms licensees. See 18 U.S.C. 923(a); ATF, U.S. Dept. of Justice, *Complete Federal Firearms Listings* (Jan. 2024), https://perma.cc/RRL3-MQ8B. As relevant here, respondents challenged the provisions of the Rule clarifying that certain weapon parts kits fall

within the Act's definition of "firearm" and that the statutory term "frame or receiver" includes certain partially complete frames or receivers. Pet. App. 10a, 78a.

The district court granted respondents' motions for summary judgment, concluding that the two challenged provisions of the Rule contradict the Act. Pet. App. 67a-114a. The court vacated the entire Rule—including its many unchallenged provisions—without addressing ATF's express specification that the provisions of the Rule are severable. *Id.* at 111a-114a; see *id.* at 116a; see also 87 Fed. Reg. at 24,730.[3]

2. The government appealed and sought a stay pending appeal. The Fifth Circuit stayed the district court's vacatur of the unchallenged portions of the Rule but otherwise denied relief. Pet. App. 180a-183a. This Court stayed the district court's judgment in its entirety. *Id.* at 179a. The district court then granted two respondents and their customers an injunction pending appeal. *Id.* at 126a-178a. The Fifth Circuit narrowed the injunction to the parties, *id.* at 119a-125a, and this Court vacated it altogether, *id.* at 118a.

3. After briefing and argument, the Fifth Circuit affirmed in part and vacated in part the district court's judgment. Pet. App. 1a-66a.

a. The Fifth Circuit held that the Act's definition of "firearm" does not encompass "weapon parts kit[s] that [are] designed to or may readily be completed, assembled, restored, or otherwise converted to expel a

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[3] The district court had previously entered preliminary injunctions prohibiting the government from enforcing the challenged provisions of the Rule against some respondents and their customers. Pet. App. 10a-11a. The government appealed those injunctions, but dismissed the appeals after they were rendered moot by the district court's final judgment. *Id.* at 11a-12a.

projectile by the action of an explosive," 27 C.F.R. 478.11. Pet. App. 19a-28a. The court noted that the Act's "predecessor statute," the Federal Firearms Act, ch. 850, Pub. L. No. 75-785, 52 Stat. 1250, "had specific language that authorized regulation of 'any part or parts of' a firearm." Pet. App. 20a (citation omitted). Because "Congress removed this language when it enacted the GCA," the court believed that only complete firearms (or complete frames or receivers) are covered by the Act. *Ibid.* (emphasis omitted). The court also noted that other provisions of the federal firearms laws contain language expressly addressing "parts" or "combination[s] of parts." *Id.* at 21a-22a & n.15. That, in the court's view, indicated that Congress did not intend to include "aggregations of weapon parts" in the definition of "'firearm.'" *Id.* at 22a.

The Fifth Circuit acknowledged that it had previously held that a firearm is still covered by the Act even if it is "disassembled" into its component parts. Pet. App. 25a-26a (citing *United States* v. *Ryles*, 988 F.2d 13 (5th Cir.), cert. denied, 510 U.S. 858 (1993)). But the court stated that "[a]ssembling a weapon parts kit takes much longer than [the] thirty seconds" required to reassemble the weapon at issue in that case and "involves many additional steps." *Id.* at 26a. And the court held that "[b]ecause of these differences," weapon parts kits cannot be "readily converted" into a functional firearm and thus are not covered by the Act. *Ibid.* (citation omitted).

b. The Fifth Circuit also held invalid the provision of the Rule defining "frame or receiver" to include a partially complete, disassembled, or nonfunctional frame or receiver. Pet. App. 15a-19a. The court noted that although "the first subsection" of the Act's "definition

of 'firearm'" includes "flexible language such as 'designed to or may readily be converted to expel a projectile by the action of an explosive,' * * * the subsection immediately thereafter, which contains the term 'frame or receiver,' does not include such flexibility." *Id.* at 17a (quoting 18 U.S.C. 921(a)(3)(A)). And the court believed that the Rule improperly treated as "frames or receivers" items that are "not yet frames or receivers but that can easily become frames or receivers" because "'a part cannot be both *not yet* a receiver and a receiver at the same time.'" *Id.* at 17a-18a (citation omitted).

The Fifth Circuit also viewed the Rule's definition of "frame or receiver" as "materially deviat[ing] from past definitions of these words to encompass items that were not originally understood to fall within the ambit of the [Act]." Pet. App. 16a. The court acknowledged that ATF's prior "understanding of 'frame or receiver'" had "closely tracked the public's common understanding of such terms at the time of enactment." *Ibid.* But the court rejected the government's reliance on ATF's 50-year history of relying on that common understanding to classify certain partially complete frames or receivers as frames or receivers, asserting that "because ATF may have acted outside of its clear statutory limits in the past does not mandate a decision in its favor today." *Id.* at 18a.

c. The Fifth Circuit acknowledged the government's argument "that the district court's universal vacatur of the entire Final Rule (i.e., not just the two challenged portions) was overbroad." Pet. App. 31a. Rather than resolving the issue, the court vacated the judgment and remanded "for further consideration of the remedy" in light of its "holding on the merits." *Id.* at 31a-32a.

d. Judge Oldham concurred to discuss what he perceived as "additional problems" with the Rule's challenged provisions, including issues that had not been raised by respondents or addressed by the district court. Pet. App. 33a; see *id.* at 33a-66a. He asserted, among other things, that ATF changed its regulatory approach without justification; that the Rule improperly imported the term "restored" from another statute, the National Firearms Act of 1934 (NFA), ch. 757, 48 Stat. 1236; and that the Rule's definition of "readily" is unconstitutionally vague. Pet. App. 33a-56a.

SUMMARY OF ARGUMENT

The challenged provisions of the Rule follow directly from the Act's plain text. The Fifth Circuit's contrary holding ignores the words Congress wrote and would effectively nullify the Act's careful regulatory scheme by allowing anyone to anonymously buy a kit online and assemble a fully functional gun in minutes—no background check, records, or serial number required.

A. The Rule correctly recognizes that a parts kit that can readily be converted into a functional firearm is a "firearm" regulated by the Act. Congress did not limit the Act's coverage to fully assembled or operable guns; instead, it broadly defined "'firearm'" to include "any weapon" that "may readily be converted to expel a projectile by the action of an explosive." 18 U.S.C. 921(a)(3)(A). Closely tracking that text, the Rule makes clear that a weapon parts kit that may "readily be completed, assembled, restored, or otherwise converted to expel a projectile by the action of an explosive" is a "firearm." 27 C.F.R. 478.11. The Rule's terms "completed," "assembled," and "restored" fit comfortably within the ordinary meaning of the statutory term "converted." And the Rule's definition of "readily" to refer

to a process that is "fairly or reasonably efficient, quick, and easy," *ibid.*, is consistent with both ordinary meaning and relevant precedent. In holding otherwise, the Fifth Circuit contradicted the plain text of the Act.

B. The Rule also correctly clarifies that "frame[s]" and "receiver[s]," 18 U.S.C. 921(a)(3)(B), include "partially complete, disassembled, or nonfunctional" frames and receivers that "may readily be completed, assembled, restored, or otherwise converted to function as" frames or receivers, 27 C.F.R. 478.12(c)—by, for example, drilling a few holes and removing temporary plastic rails. A frame or receiver need not be fully complete or functional to fall within the ordinary meaning of those terms, and the Act lacks any language specifying that a frame or receiver must be complete, operable, or functional. In reaching a contrary conclusion, the Fifth Circuit failed to meaningfully engage with the Act's text and wrongly dismissed ATF's consistent practice.

C. The Fifth Circuit's interpretation would also frustrate the Act's manifest design by transforming its central definition into an invitation to evasion. Congress adopted the Act's background-check, recordkeeping, and serialization requirements because it was concerned that felons, juveniles, and those seeking guns for criminal purposes could easily acquire them by mail. The Fifth Circuit's reading would recreate the same problem, allowing prohibited persons to bypass the Act's core regulations and obtain firearms that anyone with novice skills and common tools can make functional in a matter of minutes. In other cases involving anti-circumvention concerns under the Act, this Court has declined to presume that Congress adopted such self-defeating legislation. The same conclusion applies here.

D. Neither the rule of lenity nor the canon of constitutional avoidance supports the Fifth Circuit's interpretation. The rule of lenity is inapplicable because there is no ambiguity to resolve; the ordinary tools of interpretation establish that the Rule adopts the best reading of the Act. The constitutional-doubt canon is inapplicable for the same reason. And in any event, the Rule's interpretation of the Act poses no constitutional problem.

ARGUMENT

Congress imposed serialization, background-check, and recordkeeping requirements on commercial manufacturers and sellers of "'firearm[s],'" including firearm "frame[s]" and "receiver[s]." 18 U.S.C. 921(a)(3)(A) and (B). The question presented here is whether manufacturers and sellers can avoid those requirements simply by selling firearms as easy-to-assemble kits, or by selling frames and receivers that require a few minutes of work with common tools to be made functional. The Rule correctly recognizes that the answer to that question is no: Text, context, and common sense all make clear that Congress did not subject the Act's carefully crafted scheme to such trivial evasion.

A. The Weapon Parts Kits Covered By The Rule Are "Firearms" Under The Act

If a State placed a tax on the sale of tables, chairs, couches, and bookshelves, IKEA could not avoid paying by insisting that it does not sell any of those items and instead sells "furniture parts kits" that must be assembled by the purchaser. So too with guns: A company in the business of selling kits that can be assembled into working firearms in minutes—and that are designed, marketed, and used for that express purpose—is in the business of selling firearms. And here Congress

expressly defined a firearm to include not just a functional weapon, but also one that "may readily be converted" to function. 18 U.S.C. 921(a)(3)(A). The Rule closely tracks that statutory text, and the Fifth Circuit could invalidate it only by failing to give effect to the words Congress wrote.

1. The Rule's treatment of weapon parts kits follows directly from the Act's plain text

The Act defines "'firearm'" to encompass "any weapon * * * which * * * may readily be converted to expel a projectile by the action of an explosive." 18 U.S.C. 921(a)(3)(A). Echoing that text, the Rule defines a "firearm" to "include a weapon parts kit that is designed to or may readily be completed, assembled, restored, or otherwise converted to expel a projectile by the action of an explosive." 27 C.F.R. 478.11. And the Rule defines "readily" as "fairly or reasonably efficient, quick, and easy," elaborating on that definition with commonsense factors drawn from relevant caselaw. *Ibid.* Both of those elements of the Rule follow from a natural reading of the statute, and the weapon parts kits covered by the Rule thus fall squarely within the Act's definition of "firearm."

a. The ordinary meaning of "convert" is "to change or turn from one state to another: alter in form, substance, or quality: transform, transmute." *Webster's Third New International Dictionary of the English Language Unabridged* 499 (1968) (*Webster's*) (capitalization and emphasis omitted); see 2 *The Oxford English Dictionary* 944 (1978) (*Oxford*) ("[t]o turn or change *into* something of different form or properties; to transform"); *The American Heritage Dictionary of the English Language* 291 (1969) (*American Heritage*) ("[t]o change into another form, substance, state, or product;

transform; transmute") (emphasis omitted). The Act thus includes partially complete or unassembled weapons that may readily be "transform[ed]" into working firearms—or, put differently, that may readily be "change[d]" into a functional firearm from a different "state" or "form." *Webster's* 499.

Consistent with that plain-text reading, the Rule includes parts kits that can readily be "completed, assembled, restored, or otherwise converted" into functional firearms. 27 C.F.R. 478.11. The terms "completed," "assembled," and "restored," *ibid.*, all fit comfortably within the ordinary meaning of "convert" because they describe a type of "transform[ation]" or "change" from one "state" or "form" "to another," *Webster's* 499 (capitalization and emphasis omitted). To "complete" means "to bring to an end often into or as if into a finished or perfected state." *Webster's* 465 (emphasis omitted). So, when a buyer "complete[s]" a parts kit, he transforms it from an unfinished state into a "finished" one. *Ibid.* (emphasis omitted). Similarly, when someone "assemble[s]" a parts kit, he "fit[s] together various parts" of the weapon "so as to make [it] into an operative whole." *Webster's* 131 (emphasis omitted). And if he "restore[s]" a parts kit, he "brings [it] back" to its "former or original state" as a usable weapon. *Webster's* 1936 (emphasis omitted). A weapon parts kit that may readily be "completed, assembled, restored, or otherwise converted" into an operational firearm, 27 C.F.R. 478.11, is thus a weapon that may readily be "converted" into an operational firearm, 18 U.S.C. 921(a)(3)(A).[4]

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[4] See 2 *Oxford* 725 (defining "[c]omplete" as "[t]o bring to an end") (emphasis omitted); *American Heritage* 272 (defining "complete" as "[t]o make whole or complete * * * [c]omplete suggests the final stage in assembling parts into a whole") (emphases omitted); *Oxford*

b. The Rule also mirrors the Act in its use of the term "readily." In the Act, that term modifies the phrase "be converted." 18 U.S.C. 921(a)(3)(A). In the Rule, it modifies the equivalent phrase "be completed, assembled, restored, or otherwise converted." 27 C.F.R. 478.11. And the Rule's definition of "readily" reflects both ordinary meaning and relevant precedent.

The ordinary meaning of "readily" is "with fairly quick efficiency: without needless loss of time: reasonably fast: speedily" and "with a fair degree of ease: without much difficulty: with facility: easily." *Webster's* 1889 (capitalization and emphasis omitted). Other dictionary definitions of "readily" are of a piece. See 8 *Oxford* 195-196 ("[p]romptly, in respect of the time of action; quickly, without delay; also, without difficulty, with ease or facility"); *American Heritage* 1085 ("[p]romptly" and "[e]asily"). Thus, as ATF noted, the Rule's definition of "readily" to refer to a process that is "fairly or reasonably efficient, quick, and easy" reflects "common dictionary definition[s]." 87 Fed. Reg. at 24,699-24,700.

The factors listed in the Rule to guide the application of that definition are "based on case law interpreting" the term "'readily'" in federal firearms laws. 87 Fed. Reg. at 24,663. Consistent with the term's plain meaning, those factors all focus on "speed[]," "ease," or "efficiency." *Webster's* 1889 (capitalization omitted). Three factors—"[t]ime," "[e]ase," and "[s]cope, i.e., the extent

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1978 Supp. 37 (defining "[a]ssemble" as "[t]o put together (the separately manufactured parts of a composite machine or mechanical appliance)") (emphasis omitted); *American Heritage* 79 (defining "assemble" as "[t]o fit or join together the parts of") (emphasis omitted); 8 *Oxford* 553 (defining "[r]estore" as "[t]o bring back (a * * * thing) to a previous, original, or normal condition") (emphasis omitted); *American Heritage* 1108 (defining "restore" as "[t]o bring back to a previous, normal condition") (emphasis omitted).

to which the subject of the process must be changed to finish it," 27 C.F.R. 478.11 (emphasis omitted)—speak directly to the efficiency, speed, and ease of conversion. Whether a person needs to have special "[e]xpertise" or "[e]quipment"; whether he will incur "[e]xpense[s]"; and whether additional "[p]arts" are "required" and "easily" "availab[le]," *ibid.*; likewise affect the efficiency, speed, and ease of conversion. The Rule's final factor is "[f]easibility, i.e., whether the process would damage or destroy the subject of the process, or cause it to malfunction." *Ibid.* (emphasis omitted). If an attempt to complete a parts kit results in it being damaged or destroyed, that strongly indicates that the kit cannot be readily—that is, efficiently, speedily, or easily—converted into a functional firearm.

c. The Rule's discussion of covered weapon parts kits underscores that those kits fall squarely within the Act's definition of "firearm." As ATF explained, many kits include all the parts and tools necessary for anyone with novice skills to assemble "a functional weapon within a short period of time," 87 Fed. Reg. at 24,662; see *id.* at 24,692—sometimes less than 30 minutes, *id.* at 24,686 n.106. Such a kit undoubtedly can be converted into a functional firearm "readily" because it can be converted "with fairly quick efficiency" and "a fair degree of ease." *Webster's* 1889 (emphasis omitted).

Pictures of covered parts kits show how little needs to be done to build a functional firearm. For example, the first picture below depicts respondent Polymer80's "Buy Build Shoot" kit with the frame inside a red plastic jig. The second picture shows the kit assembled into a fully functional Glock-variant semiautomatic pistol—a process that can be accomplished in as little as 21 minutes:

Pet. App. 232a, 238a; see *id.* at 236a-238a.

d. The Rule broke no new ground in interpreting the Act to cover collections of parts that can readily be assembled into functional weapons. Courts have long treated dissembled firearms and parts kits that can readily be converted into functional firearms as "firearms" regulated by the Act. See, *e.g.*, *United States* v. *Wick*, 697 Fed. Appx. 507, 508 (9th Cir. 2017) ("Uzi parts kits" that "contained all the necessary components to assemble a fully functioning firearm with relative ease"); *United States* v. *Stewart*, 451 F.3d 1071, 1072-1073 n.2 (9th Cir. 2006) (rifle kits including receivers that "had not yet been completely machined" but could "easily * * * be converted" into functional firearms). ATF thus emphasized that the Rule's provision addressing parts kits "reflect[s] existing case law." 87 Fed. Reg. at 24,661.

2. Neither the Fifth Circuit nor respondents have justified departing from the Act's plain text

The Fifth Circuit failed to justify its conclusion that a weapon parts kit that can readily be converted into a functional firearm is not a "firearm" under the Act. And the various additional arguments advanced by Judge Oldham and respondents likewise lack merit.

a. The Fifth Circuit at times seemed to assert that a collection of parts can *never* be a firearm. The court emphasized that the Act's predecessor statute regulated "any part or parts of" a firearm and that Congress omitted that language when it adopted the Act. Pet. App. 20a (quoting Federal Firearms Act, 52 Stat. 1250); see VanDerStok Cert. Br. 27. But the Rule does not extend to weapon parts writ large, such as standalone triggers, barrels, stocks, or magazines. All of those parts were regulated by the Act's predecessor statute, but none of them are covered by the Act as interpreted

in the Rule because they cannot "readily be completed, assembled, restored, or otherwise converted" into an operational weapon. 27 C.F.R. 478.11. Consistent with the Act's text, the Rule reaches only kits and other *aggregations* of parts that may readily be assembled into a functional firearm.

The Fifth Circuit also emphasized that other provisions of the federal firearms laws explicitly refer to combinations of parts. Pet. App. 21a-22a. For example, the Act defines a "destructive device" to include "any combination of parts either designed or intended for use in converting any device into any destructive device * * * and from which a destructive device may be readily assembled." 18 U.S.C. 921(a)(4)(C); see, *e.g.*, 18 U.S.C. 921(a)(25) and (30)(B); 26 U.S.C. 5845(b). Here, Congress achieved the same end by defining "firearm" to include weapons that "may readily be converted to expel a projectile by the action of an explosive," 18 U.S.C. 921(a)(3)(A): That definition's plain text encompasses weapon parts kits that may readily be assembled into functional firearms because assembling a kit is a type of "conver[sion]," *ibid.* "[T]he fact that Congress has referenced [parts] specifically" in order to capture collections of parts in other statutes "does not foreclose it from using different language to accomplish that same goal" here. *Lac du Flambeau Band of Lake Superior Chippewa Indians* v. *Coughlin*, 599 U.S. 382, 395 (2023). And that is particularly true because both the relevant language in the definition of "destructive device" and the other provisions on which the Fifth Circuit relied were enacted at different times and address different issues.

b. Ultimately, moreover, even the Fifth Circuit acknowledged that the Act's definition of "firearm" must include some collections of parts: The court reaffirmed

its precedent holding that a shotgun that had been "'disassembled'" into its component parts was still a firearm. Pet. App. 25a-26a (citation omitted). The only distinction the court drew between that shotgun and the weapon parts kits covered by the Rule is that assembling the kits "takes much longer than thirty seconds" and "involves many additional steps." *Id.* at 26a. But the court made no effort to ground that distinction in the statutory text, and it could not plausibly have done so: Dictionary definitions, ordinary usage, and common sense confirm that a kit can "readily be converted" into a functional firearm, 18 U.S.C. 921(a)(3)(A), if the conversion can quickly and easily be accomplished with common tools. See pp. 19-24, *supra*.

Statutory context confirms that the Fifth Circuit erred in suggesting that a device can "readily be converted" into a functional firearm only if the conversion can be accomplished in a matter of seconds. Congress specifically identified "a starter gun" as an example of a weapon that "may readily be converted to expel a projectile by the action of an explosive." 18 U.S.C. 921(a)(3)(A). A starter gun typically has a plugged or blocked barrel, and the process of converting such a device into a functional firearm can take much longer than 30 seconds. Before the Act's enactment, for example, one "do-it-yourself gunsmith" distributed firearms to gang members by buying starter pistols in bulk; "he would then, at his residence, disassemble them, and using an electric hand drill mounted in a drill press stand, bore out the plugged barrel and enlarge the cylinder chambers to accommodate .22-caliber cartridges." S. Rep. No. 1340, 88th Cong., 2d Sess. 14 (1964); see 87 Fed. Reg. at 24,684-24,685. The Fifth Circuit's cramped interpretation of "readily" would exclude that process—

and would thus exclude the Act's paradigmatic example of a weapon that can "readily be converted" into a functional firearm.

c. At times, the Fifth Circuit posited applications of the Rule that have no basis in the Rule itself. The court asserted, for example, that the Rule reaches "any objects that could, if manufacture is completed, become functional at some ill-defined point in the future" and regulates "minute weapon parts that might later be manufactured into functional weapons." Pet. App. 23a-24a, 27a. But that is a caricature of the Rule. The Rule does not purport to regulate weapon parts in general; only kits that can be assembled into functional firearms. And the Rule does not reach any collection of parts that might someday become a functional weapon; instead, it reaches only parts kits that can "readily" be converted into such a weapon—expressly incorporating the limiting language from the Act on which the court focused. See *id.* at 23a-24a. The court's misunderstanding of the Rule's scope "left the panel slaying a straw man." *United States* v. *Rahimi*, No. 22-915, 2024 WL 3074728, at *11 (U.S. June 21, 2024).

If ATF ever sought to apply the Rule to a parts kit that could not readily be converted into a functional firearm, the affected parties would be free to challenge that action as beyond ATF's statutory authority. But the hypothetical possibility of such invalid applications does not justify relief in this facial, pre-enforcement challenge. As this Court has emphasized, the possibility that a "regulation may be invalid as applied" in some cases "does not mean that the regulation is facially invalid." *INS* v. *National Ctr. for Immigrants' Rights, Inc.*, 502 U.S. 183, 188 (1991). Instead, respondents' burden is to show that the Rule itself is inconsistent

with the statute on its face. *Ibid.* And respondents cannot do so because the Rule closely tracks the statutory text.

d. Judge Oldham argued that by defining "firearm" to include weapon parts kits that "may readily be * * * restored" into functional weapons, 27 C.F.R. 478.11, ATF impermissibly borrowed the word "restored" from the NFA, which defines a "'machinegun'" as "any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger," 26 U.S.C. 5845(b); see Pet. App. 40a-51a. That argument is doubly flawed.

First, although "convert" and "restore" are not synonymous, a restoration is a type of conversion. See p. 20, *supra*. Imagine that someone disassembles a firearm into its component parts. If she then assembles it again, she has "restore[d]" the firearm by "bring[ing] [it] back" to its "former * * * state" as a usable weapon. *Webster's* 1936 (emphasis omitted). That is a type of "conver[sion]": She has "change[d]" the parts from "one state" (an incomplete one) into "another" (a former or original one). *Webster's* 499 (emphasis omitted). A weapon parts kit that "may readily be * * * restored" into an operational firearm, 27 C.F.R. 478.11, is thus a weapon that "may readily be converted" into such a firearm, 18 U.S.C. 921(a)(3)(A).

Second, and relatedly, any weapon parts kit that can readily be "restored" to a functional firearm can likewise readily be "assembled" or "otherwise converted" into such a firearm. 27 C.F.R. 478.11. Judge Oldham did not explain how the Rule's inclusion of the word "restored" materially alters its meaning. Instead, he asserted that the word "readily" has a different meaning

in the NFA than in the Act, and that the Rule improperly relied on cases interpreting "readily" in the context of the NFA. Pet. App. 51a-53a. But that asserted error has nothing to do with the word "restored." And Judge Oldham neither cited any authority holding that "readily" means something different in the Act than it does in the NFA nor purported to ground that distinction in the statutory text. Instead, he asserted that the word should be interpreted to include longer and more difficult processes in the context of the NFA merely because that statute applies to machineguns and other especially dangerous weapons. *Id.* at 49a. But that loose appeal to statutory purpose provides no reason to depart from the ordinary meaning of the word that Congress used in both the NFA and the Act. And Judge Oldham provided no reason to doubt that the Rule's interpretation of "readily" comports with the plain meaning of the word as used in the Act. See pp. 21-22, *supra*.

e. Respondents have not endorsed the Fifth Circuit's interpretation of "readily" or Judge Oldham's arguments about the NFA. And the remaining arguments they have offered are unpersuasive.

First, respondents have noted that the Act reaches a "weapon" that "may readily be converted" into a functional firearm, 18 U.S.C. 921(a)(3)(A), and have asserted that a weapon parts kit is not yet a "weapon." VanDerStok Cert. Br. 23. But as ATF explained, the Act contemplates that a product may qualify as a "weapon" even if it "may not yet function as a weapon." 87 Fed. Reg. at 24,684. A "starter gun," for example, does not function as a weapon, but the Act makes clear that some starter guns are covered because they may "readily be converted" to function as weapons. 18 U.S.C. 921(a)(3)(A). So too with a weapon parts kit.

Second, respondents have posited a novel interpretation of "convert" that would limit that term to "something that one does to change a finished product from one thing into another." VanDerStok Cert. Br. 23; see *id.* at 17. But respondents cite no dictionary (or other) definition to support that idiosyncratic meaning. To the contrary, the definition they endorse—"to change from one form or function to another," *id.* at 17 (citation omitted)—naturally includes assembly of a parts kit: When assembled, a kit is changed from one form (an aggregation of parts) into another (a functional firearm).

Third, respondents have noted that a weapon parts kit that contains a "frame" or "receiver" qualifies as a "firearm" under 18 U.S.C. 921(a)(3)(B), which defines those parts as firearms even when sold by themselves. VanDerStok Cert. Br. 21. It is true that weapon parts kits covered by the Rule typically include a partially complete frame or receiver that is also covered by the Rule; if the kit as a whole can readily be converted into a functional firearm, then it will ordinarily include a part that can readily be converted into a functional frame or receiver—and that thus qualifies as a "frame or receiver" under the Rule. See Part B, *infra*. But respondents and the Fifth Circuit take a different view, reading Section 921(a)(3)(B) to include only *complete and functional* frames and receivers. And the fact that kits qualify as firearms under both provisions of the definition is no surprise, because overlap is inherent in Sections 921(a)(3)(A) and (B): A complete firearm that falls within Section 921(a)(3)(A) will typically have a frame or receiver that also falls within Section 921(a)(3)(B).

Finally, respondents have asserted that any weapon parts kit that does not include a "frame" or "receiver" cannot be a "firearm" because another provision of the

Act requires that every firearm be marked with a serial number "on the receiver or frame of" such weapon, 18 U.S.C. 923(i). VanDerStok Cert. Br. 22-23. But the structure of the Act makes clear that Section 923(i)'s serialization requirement does not limit Section 921(a)(3)'s definition of "firearm" to weapons that include a traditional frame or receiver. Some firearms that "expel a projectile by the action of an explosive," 18 U.S.C. 921(a)(3)(A), lack any part resembling a traditional pistol frame or rifle receiver. See, *e.g.*, ATF, *Novelty Guns* (June 5, 2015), https://perma.cc/N33C-4YR8 (pictures of firearms made from a pen, a ring, a lighter, and an umbrella, among other objects). And the Act's definition of a firearm also covers other items that ordinarily do not include anything resembling a traditional frame or receiver, such as "any firearm muffler or firearm silencer" and "any destructive device." 18 U.S.C. 921(a)(3)(C) and (D).

B. The Frames And Receivers Covered By The Rule Are "Firearms" Under The Act

The Act defines a firearm to include "the frame or receiver" of a firearm. 18 U.S.C. 921(a)(3)(B). The Rule correctly interprets that term to encompass "a partially complete, disassembled, or nonfunctional frame or receiver, including a frame or receiver parts kit, that is designed to or may readily be completed, assembled, restored, or otherwise converted to function as a frame or receiver." 27 C.F.R. 478.12(c). Again, that interpretation follows directly from a natural reading of the text, and neither the Fifth Circuit nor respondents have justified their contrary conclusion.

1. A partially complete or nonfunctional frame or receiver is still a frame or receiver

a. A "frame" is "the basic structure and principal component of a firearm," Chester Mueller & John Olson, *Shooter's Bible Small Arms Lexicon and Concise Encyclopedia* 87 (1st ed. 1968) (*Olson's*) (emphasis omitted), "which serves as a mounting for the barrel and operating parts of the arm," *Webster's* 902 (emphasis omitted). And a "receiver" is the "part of a gun that houses the breech action and firing mechanism." *Olson's* 168 (emphasis omitted); see *Webster's* 1894 (defining "receiver" as "the metal frame in which the action of a firearm is fitted and to which the breech end of the barrel is attached" or "the main body of the lock in a breech mechanism") (emphasis omitted).

A "frame" or "receiver" need not be fully complete or functional to fall within the ordinary meaning of those terms. A product that is missing "a single hole necessary to install the applicable fire control component, or that has a small piece of plastic that can easily be removed to allow installation of that component," Pet. App. 196a, does not cease to be "the basic structure," *Olson's* 87, or "main body" of a gun, *Webster's* 1894. The Act likewise does not specify that a "frame" or "receiver" must be "complete," "operable," or "functional." So ATF in the Rule correctly declined "to read into the definition of 'frame or receiver' terms like 'finished,' 'operable,' 'functional,' or a minimum percentage of completeness." 87 Fed. Reg. at 24,686.

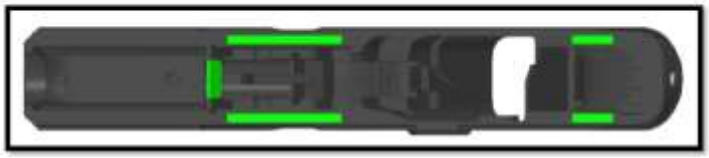
Nor does ordinary usage support reading those missing adjectives into the Act. A bicycle is still a bicycle even if it lacks pedals, a chain, or some other component needed to render it complete or allow it to function—or if it is shipped with plastic guards or other temporary

pieces that must be removed before use. No one could reasonably dispute that a company selling such products was selling "bicycles." And the same is true of a tennis racquet sold unstrung, pants that must be cut to length, and any number of other products that buyers must complete, customize, or otherwise finish before they can be used.

Again, there is no reason in language or logic to treat firearm frames and receivers any differently. Consider images of two frames from a recent ATF document implementing the Rule. J.A. 259, 263.

Figure 6

FIREARM – **Poly80 with Temporary Rails**



The top picture depicts a complete frame of a Glock-variant handgun; no one disputes that it is a "frame" covered by the statute. The bottom two pictures depict a partially complete frame sold by respondent Polymer80. J.A. 263. The primary difference between the two is the presence of the "temporary rails or blocking tabs" that are circled in red and highlighted in green in

the bottom pictures. J.A. 262. Those plastic tabs "are easily removable by a person with novice skill, using common tools, such as a Dremel-type rotary tool, within minutes." *Ibid.* Once the tabs are removed, the Polymer80 product is "immediately capable of accepting" the remaining parts of a firearm. *Ibid.* And once a few holes are drilled for the pins that hold those parts in place—again, a task that anyone can complete in minutes—the Polymer80 product is a fully functional frame. It is entirely natural to refer to the Polymer80 product as a "frame." In fact, it is hard to know what else to call it.

The Rule thus accords with the natural reading of the statute and ordinary usage. As ATF explained, "the crucial inquiry is at what point an unregulated piece of metal, plastic, or other material becomes a 'frame or receiver' that is a regulated item under Federal law." 87 Fed. Reg. at 24,685. That is inevitably a question of degree that cannot be reduced to bright-line rules that address every firearm design. But consistent with ordinary usage, ATF made clear that a part is not a frame or receiver unless it has "reached a stage of manufacture where it is clearly identifiable as an unfinished component part of a weapon." 27 C.F.R. 478.12(c). And the Rule's focus on whether a frame or receiver can "readily" be converted to a functional state, *ibid.*, incorporates a concept that is familiar in the law and that accords with ordinary usage.

Some examples illustrate the point. On the one hand, the Rule includes frames and receivers missing a few holes or including unnecessary pieces of plastic that can easily be removed. Pet. App. 196a. The Rule also covers kits containing all necessary parts to rapidly assemble a frame or receiver using tools that are part of

the kit and common hand tools. 27 C.F.R. 478.12(c). That includes "'partially complete' pistol frame products" like the Polymer80 pistol frame pictured above. J.A. 262. On the other hand, the Rule does not cover products that are precursors to frames or receivers, but lack indexing, tabs, or tools that would allow an individual to easily make the products functional (and are not otherwise readily convertible to a functional frame or receiver). See J.A. 243-253; see also 27 C.F.R. 478.12(c). For example, the Rule does not treat as a "'frame or receiver'" a standalone "partially complete AR-type receiver with no indexing or machining of any kind performed in the area of the fire control cavity." J.A. 243-244 (emphasis omitted); see J.A. 248-249 (photographs of products that are not frames or receivers under the Rule); see also 27 C.F.R. 478.12(c) (identifying additional examples of the Rule's treatment of products).

b. The Rule's understanding of "frame or receiver" is consistent with ATF's longstanding interpretation and implementation of the Act. Long before adopting the Rule, ATF had "held that a piece of metal, plastic, or other material becomes a frame or receiver when it has reached a 'critical stage of manufacture'"—that is, when a product "is 'brought to a stage of completeness that will allow it to accept the firearm components [for] which it is designed * * * , using basic tools in a reasonable amount of time.'" 87 Fed. Reg. at 24,685 (citation omitted). Indeed, since shortly after Congress adopted the Act, ATF has consistently determined that various products qualify as "frames or receivers" based on the manufacturing stage that those products have reached and how readily they can be completed. For example, ATF has long determined that partially complete frames may be treated as firearms if they can "be

readily converted to functional condition," Pet. App. 210a (1978 classification letter), or if they are "basically complete" and require only a small amount of machining to attain functionality, J.A. 8 (1992 classification letter); see p. 6, *supra*. ATF has also consistently considered the length of time necessary to complete a functional frame or receiver when making classifications. See p. 6, *supra*. And it has repeatedly considered whether standard hand tools can be used to readily bring a partially complete frame or receiver to a functional state. See pp. 6-7, *supra*. The Rule is thus consistent with ATF's longstanding approach to the Act's definition of "frame or receiver."

2. The Fifth Circuit's contrary interpretation lacks merit

The Fifth Circuit held that a frame or receiver qualifies as a "frame or receiver" under the Act only if it is fully complete and functional. Respondents take the same view. On that understanding, even a single missing hole, superfluous piece of plastic, or other trivial bit of user assembly would allow a nearly complete frame or receiver to be commercially manufactured and sold without a serial number, background check, or transfer record. That interpretation lacks any basis in the Act's text and contradicts decades of practice.

a. The Fifth Circuit emphasized that, when Congress defined "firearm," it expressly included in Section 921(a)(3)(A) items that are "'designed to or may readily be converted to'" function as a firearm, but that Congress did not include a similar phrase for frames and receivers. Pet. App. 17a (quoting 18 U.S.C. 921(a)(3)(A)). In the court's view, that omission indicates that "frame or receiver" includes only complete, functional frames and receivers. *Ibid.* But that inference does not follow.

If Congress had limited the definition of "firearm" in Section 921(a)(3)(A) to weapons that "*will* * * * expel a projectile by the action of an explosive," 18 U.S.C. 921(a)(3)(A) (emphasis added), it would have departed from ordinary meaning by including only *functional* weapons. Express language broadening the definition to include a weapon that is "designed to or may readily be converted" to expel a projectile, *ibid.*, was needed to avoid that result.

In contrast, Congress did not define "frame or receiver" in Section 921(a)(3)(B) or elsewhere. Accordingly, those terms should be interpreted consistent with their "ordinary meaning." *Encino Motorcars, LLC* v. *Navarro*, 584 U.S. 79, 85 (2018) (citation omitted). As explained above, that ordinary meaning is not limited to complete or functional frames or receivers. See pp. 32-36, *supra*. The definitions on which the Fifth Circuit relied underscore that conclusion: Where, unlike here, Congress *has* provided an express definition, it has repeatedly defined "firearm" and other weapons-related terms to include non-operational weapons or weapons that can easily be converted or restored to an operational state. See, *e.g.*, 18 U.S.C. 921(a)(25) and (30)(B); 26 U.S.C. 5845(b), (c), and (d). ATF properly took the same approach in interpreting the undefined terms "frame" and "receiver."

The Fifth Circuit also noted that "'a part cannot be both *not yet* a receiver and a receiver at the same time'" and faulted the Rule for treating items that are "not yet frames or receivers" as frames or receivers. Pet. App. 17a-18a (citation omitted). But the Rule does no such thing. Instead, it defines the point in the manufacturing process at which an item becomes a "frame or receiver"—and thus ceases to be a not-yet frame or

receiver. Indeed, although the court acknowledged that the dictionary definitions of "frame" and "receiver" discussed above are the "set, well-known definitions" of those terms, *id.* at 15a, it failed to explain how those definitions exclude the partially complete frames and receivers covered by the Rule. For example, the court never explained how a receiver missing a single hole necessary to install a fire control component—or including a small piece of plastic that must be removed before its installation—is not "the basic structure" of a gun. *Olson's* 87. Nor did the court explain how the Polymer80 product pictured above, see p. 34, *supra*, could be anything other than "the basic structure" of a handgun. *Olson's* 87.

b. Although the Fifth Circuit acknowledged that ATF's previous regulatory definition of "frame or receiver" reflected the ordinary meaning of those terms, see Pet. App. 15a-16a, the court did not meaningfully grapple with ATF's decades-long practice of applying that definition to include certain partially complete frames and receivers. ATF's recognition that certain not-yet-functional frames and receivers have reached a stage of manufacturing that renders them "frames or receivers" under the Act both comports with the Act's plain meaning and is consistent with ATF's longstanding regulatory approach. See pp. 6-7, 36-37, *supra*.

Respondents note that before the Rule, ATF generally did not consider jigs and templates sold with a product when determining whether it could readily be converted into a functional frame or receiver. VanDerStok Cert. Br. 18-21. ATF acknowledged as much in the Rule. See 87 Fed. Reg. at 24,668. But ATF concluded that it was appropriate to consider such materials because they "serve the same purpose as indexing" or partial

machining on the frame or receiver itself, allowing a buyer to "quickly" and "easily" complete a frame or receiver with common tools. *Ibid.*; see *id.* at 24,689. The Rule simply recognized that such jigs and templates are directly relevant to the question that ATF has long asked: Whether a partially complete frame or receiver can "be readily converted to functional condition." Pet. App. 210a.

c. Finally, Judge Oldham and respondents also faulted the Rule for purportedly deviating from ATF's past practice of regulating frames and receivers only after they became "80% complete." Pet. App. 34a; see *id.* at 33a-40a; Defense Distributed Cert. Br. 3. As ATF has repeatedly explained, however, including in the Rule, "[t]he term "80% receiver' is a term used by some industry members, the public, and the media to describe a frame or receiver that has not yet reached a stage of manufacture to be classified as a 'frame or receiver' under Federal law," but "that term is neither found in Federal law nor accepted by ATF." 87 Fed. Reg. at 24,663 n.47; see 86 Fed. Reg. at 27,726 n.42 (same).

ATF has consistently made clear that it "do[es] not make classifications based on the percentage of completeness of a particular item" and does "not use[]" "[t]he terminology '80% finished.'" J.A. 5 (1990 classification letter); see J.A. 110, 117, 124, 138, 246-247, 258 (all similar); J.A. 112 (2013 ATF bulletin noting that "in some cases, items being marketed as '80%' actually meet the definition of a 'firearm'"); J.A. 118-119, 127, 149 (all similar). Rather, for the past 55 years ATF has classified a product as a frame or receiver if it can readily be completed to function as a frame or receiver. The Rule carries forward the same approach.

C. The Fifth Circuit's Interpretation Would Effectively Nullify The Act's Core Requirements

This Court generally avoids interpretations of a statute that would make it "self-defeating," *Pugin* v. *Garland*, 599 U.S. 600, 607 (2023) (citation omitted), or would facilitate "evasion of the law" and "enable offenders to elude its provisions in the most easy manner," *The Emily*, 22 U.S. (9 Wheat.) 381, 389-390 (1824). The Fifth Circuit's interpretation of the Act would contradict that fundamental principle by transforming the Act's central definition into an invitation for evasion: Felons, minors and other prohibited persons could easily buy and build firearms from the manufacturing respondents and other online sellers, entirely circumventing the Act's background-check requirement. Anyone seeking an untraceable gun for use in crime could do the same thing, evading the Act's serialization and record-keeping requirements. As it has done before, the Court should decline to adopt such a self-defeating construction of the Act.

1. The Court has repeatedly applied the anti-circumvention principle when interpreting the Act. Most recently, in *Abramski* v. *United States*, 573 U.S. 169 (2014), a person asked a middleman, a so-called straw purchaser, to buy a gun on his behalf. *Id.* at 175-177. In analyzing that transaction, the Court treated the "real buyer," rather than the straw purchaser, as the firearm's "'transferee'" for purposes of the Act's provisions regulating firearms sales. *Id.* at 183; see *id.* at 177-189. The Court explained that treating the straw purchaser as the "transferee" would "undermine * * * the gun law's core provisions" by allowing a "felon or other person who cannot buy or own a gun" to "accompany the straw [purchaser] to the gun shop, instruct

him which firearm to buy, give him the money to pay at the counter, and take possession as they walk out the door." *Id.* at 179-180. Indeed, the Court found that such a reading would "deny effect to the regulatory scheme, as criminals could always use straw purchasers to evade the law." *Id.* at 183. The Court refused to read the statutory provisions in a manner that would permit such ready "evasion" and thereby render the Act's requirements "meaningless" or "utterly ineffectual." *Id.* at 181, 185.

Similarly, in *Barrett* v. *United States*, 423 U.S. 212 (1976), the Court addressed the Act's bar on certain prohibited persons receiving firearms that had been transported in interstate commerce. *Id.* at 212-213. The Court rejected the defendant's argument that the Act does not prohibit the intrastate transfer to a prohibited person of a firearm that had previously moved in interstate commerce. *Id.* at 215-225. In reaching that conclusion, the Court repeatedly relied on anti-circumvention principles, declining to undermine Congress' "manifest purpose of" preventing prohibited persons from acquiring firearms. *Id.* at 216; see *id.* at 218 (declining to "create[]" "a gap in the statute's coverage"); *id.* at 219 ("Congress surely did not intend to except" such transfers from the Act).

And in *Huddleston* v. *United States*, 415 U.S. 814 (1974), the Court held that the Act's prohibition on knowingly making false statements in connection with a firearms acquisition applied to the redemption of a firearm from a pawnshop. *Id.* at 819-829. The Court explained that a contrary conclusion would, among other things, allow "every evil Congress hoped to cure" to "continue unabated." *Id.* at 829.

2. Those familiar principles confirm that Section 921(a)(3) covers weapon parts kits and partially complete frames and receivers that can readily be completed. Congress adopted the Act to address concerns about "the ease with which any person"—"including criminals [and] juveniles"—could "acquire firearms," especially via "mail-order." Pub. L. No. 90-351, Tit. IV, § 901(a)(2) and (4), 82 Stat. 225. By applying the Act's background-check, recordkeeping, and serialization requirements to the commercial sale of firearms, Congress sought to prevent prohibited persons from acquiring firearms in the first place—and to ensure that guns can be traced when they are used in crime.

The Fifth Circuit's reading of Section 921(a)(3) would thwart the Act's careful design. It would allow respondents and others to circumvent the Act's core requirements while producing and broadly distributing—including via mail and to juveniles—kits that anyone can easily assemble into fully functional firearms. And it would entirely excuse from the Act's coverage products that, but for a few holes or temporary pieces of plastic, are fully functional frames and receivers. That interpretation would effectively render the Act's background-check, recordkeeping, and serialization requirements optional for anyone willing to put in a few minutes of work with common hand tools.

This is not a situation where the Fifth Circuit's interpretation merely "draws a line more narrowly than one of [the Act's] conceivable statutory purposes might suggest." *Garland* v. *Cargill*, No. 22-976, 2024 WL 2981505, at *10 (U.S. June 14, 2024). Instead, as in *Abramski*, the Fifth Circuit's reading would "undermine—indeed, for all important purposes, would virtually repeal—the gun law's core provisions." 573 U.S. at 179-180.

3. The recent explosion in the availability and unlawful use of ghost guns demonstrates the extent to which the Fifth Circuit's interpretation would frustrate the Act's comprehensive regulatory scheme. The availability of ghost guns exponentially increased over the past few years. Ghost gun kits were available online to anyone with a credit card—or, for that matter, an anonymous pre-paid "debit card" bought at "7-Eleven." Tom Jackman & Emily Davies, *Teens buying 'ghost guns' online, with deadly consequences*, Wash. Post, July 12, 2023 (*Teens Buying Ghost Guns*) (citation omitted), https://perma.cc/B6C8-6CW5. Minors in particular "discovered the ease with which they c[ould] acquire the parts for a ghost gun" and "ha[d] been buying, building[,] and shooting the homemade guns with alarming frequency." *Ibid.*

Tens of thousands of ghost guns are being recovered by law enforcement each year—more than 19,000 in 2021, a 1000% increase from 2017. Pet. App. 194a. And the public-safety harms caused by ghost guns have only become more apparent as this litigation has progressed: Between March 2023 and July 2023, for example, 13,828 suspected ghost guns were recovered by law enforcement and reported to ATF. J.A. 276. Police departments are also confronting "the soaring use of ghost guns in violent crimes." *Teens Buying Ghost Guns*; see 87 Fed. Reg. at 24,656-24,658.

By ensuring that ghost guns are regulated as what they actually are—firearms—the two challenged provisions of the Rule "prevent easy circumvention of the [Act's] entire regulatory scheme" and are thus "critical to public safety." Pet. App. 195a. The Fifth Circuit's contrary reading of the Act would instead create "a

large and obvious loophole" in its core provisions. *Maui* v. *Hawaii Wildlife Fund*, 590 U.S. 165, 178-179 (2020).

D. Neither The Rule Of Lenity Nor The Canon Of Constitutional Doubt Supports The Fifth Circuit's Interpretation

1. The Fifth Circuit stated in passing that even if it had viewed the Act as ambiguous, it would have "reach[ed] the same conclusion" under "the rule of lenity." Pet. App. 30a n.26; see VanDerStok Cert. Br. 30-31. But lenity "comes into operation at the end of the process" of statutory interpretation, *Maracich* v. *Spears*, 570 U.S. 48, 76 (2013) (citation omitted), and "applies only" if "a criminal statute contains a 'grievous ambiguity'"—that is, only if, even after applying all the traditional tools of interpretation, a court "'can make no more than a guess as to what Congress intended,'" *Ocasio* v. *United States*, 578 U.S. 282, 295 n.8 (2016) (citation omitted). There is no such grievous ambiguity here: Dictionary definitions of the relevant terms, statutory context, ATF's longstanding practice, precedent, and common sense all make clear that parts kits and partially complete frames and receivers that can readily be completed fall within the Act's definition of "firearm."

Respondents suggest that the rule of lenity would apply "even if" their reading of the Act is not "the best interpretation." VanDerStok Cert Br. 30. But the rule of lenity does not come into play simply because both parties offer linguistically plausible interpretations of a criminal statute—and it certainly cannot be used to override a better reading arrived at via other tools of statutory interpretation. Rather, this Court has "repeatedly emphasized" that lenity "applies only if, 'after considering text, structure, history and purpose, there

remains a grievous ambiguity.'" *Abramski*, 573 U.S. at 188 n.10 (citation omitted); see *Ocasio*, 578 U.S. at 295 n.8. Here, those interpretive tools all support the government's reading.

2. Respondents also invoke the constitutional-doubt canon, arguing that "[t]he Rule's interpretation of" the Act "raises a serious constitutional problem regarding the Second Amendment." Defense Distributed Cert. Br. 22; see VanDerStok Cert. Br. 28-29. But the constitutional-doubt canon applies only when "the alternative is a serious likelihood that the statute will be held unconstitutional" and "the statute [is] genuinely susceptible to two constructions after, and not before, its complexities are unraveled." *Almendarez-Torres* v. *United States*, 523 U.S. 224, 238 (1998); see *Iancu* v. *Brunetti*, 588 U.S. 388, 397 (2019) (explaining that the canon "applies only when ambiguity exists"). The constitutional-doubt canon does not allow courts to "rewrite a law." *Brunetti*, 588 U.S. at 397 (citation omitted). As discussed, the Act is not "genuinely susceptible to two constructions," *Almendarez-Torres*, 523 U.S. at 238, so the canon is inapplicable.

In any event, the Rule's interpretation of the Act is entirely consistent with the Second Amendment. In *District of Columbia* v. *Heller*, 554 U.S. 570 (2008), the Court emphasized that "laws imposing conditions and qualifications on the commercial sale of arms" are "presumptively lawful" under the Second Amendment. *Id.* at 626-627 & n.26; see *New York State Rifle & Pistol Ass'n* v. *Bruen*, 597 U.S. 1, 80-81 (2022) (Kavanaugh, J., concurring). The Act's longstanding and uncontroversial serialization, background-check, and recordkeeping requirements are "presumptively lawful" "conditions and qualifications on the commercial sale of arms."

Heller, 554 U.S. at 627 & n.26. And neither respondents nor the courts below have suggested that those routine requirements pose any Second Amendment problem as applied to commercial sales of functional firearms or complete frames and receivers.

Respondents, the Fifth Circuit, and Judge Oldham have instead suggested that applying the same requirements to sales of weapon parts kits or partially complete frames and receivers might violate the Second Amendment by regulating at-home gun-making. See Pet. App. 8a, 26a-28a, 36a-37a; Defense Distributed Cert. Br. 22-25. But again, the Rule's interpretation of the Act does not prohibit anyone who is lawfully entitled to possess a firearm from making one at home; does not restrict such a person's ability to make her own firearms from parts for personal use; and does not require her to mark a personally assembled firearm with a serial number. Indeed, the Rule repeatedly disclaims any intent to regulate the private making of firearms by persons permitted to possess them. See p. 12, *supra* (noting over a dozen places in which the Rule makes that clear).

Instead, the Rule's interpretation simply requires commercial manufacturers and sellers of weapon parts kits and partially complete frames and receivers covered by the Rule to comply with the same serialization, background-check, and recordkeeping requirements that tens of thousands of licensed manufacturers and dealers comply with every day. Those routine requirements pose no Second Amendment problem.

3. Respondents also assert that the Rule's interpretation of the Act raises vagueness concerns. VanDerStok Cert. Br. 29-30; Defense Distributed Cert. Br. 18-21; see Pet. App. 53a-56a (Oldham, J., concurring)

(similar). But like countless other laws, the Rule's provisions covering parts kits and frames and receivers that can readily be completed or made functional merely "call[s] for the application of a qualitative standard" to "real-world" facts. *Johnson* v. *United States*, 576 U.S. 591, 604 (2015).

Judge Oldham and respondents primarily criticize the Rule's interpretation of "readily." But that term appears in the Act itself, and neither respondents nor Judge Oldham suggests that the Act is unconstitutionally vague. To the contrary, courts have rejected vagueness challenges to the Act's inclusion of products that "may readily be converted" into functional firearms. 18 U.S.C. 921(a)(3)(A); see, *e.g.*, *United States* v. *Quiroz*, 449 F.2d 583, 585 (9th Cir. 1971); *United States* v. *16,179 Molso Italian .22 Caliber Winlee Derringer Convertible Starter Guns*, 443 F.2d 463, 464-466 (2d Cir.), cert. denied, 404 U.S. 983 (1971). The Rule simply provides an uncontroversial definition of "readily" and lists the factors that courts have long used in applying that term in the firearms context—elaborations that provide *more* clarity about the Act's meaning, not less.

Of course, the "readily" standard will inevitably produce close cases at the margins. But "[c]lose cases can be imagined under virtually any statute," and the Court has thus emphatically rejected the suggestion that "the mere fact that close case[s] can be envisioned renders a statute vague." *United States* v. *Williams*, 553 U.S. 285, 305-306 (2008). Here, moreover, ATF has taken care to provide as much clarity as possible. It revised the Rule in response to comments from industry participants seeking assurances that parts commonly sold to commercial manufacturers are not "firearms." 87 Fed. Reg. at 24,700. And ATF has long provided a procedure by

which any company that seeks to manufacture or sell a product without complying with the Act's requirements can receive a determination from ATF whether the product falls within the Act. See p. 5, *supra*. Accordingly, although the Rule makes clear that the Act does not permit the sort of evasions that led to the recent explosion in the unlawful sale and use of ghost guns, ATF has also provided ample protection for legitimate firearms manufacturers and sellers and those seeking to comply with the law in good faith.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General
BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General
BRIAN H. FLETCHER
Deputy Solicitor General
NICOLE FRAZER REAVES
Assistant to the Solicitor General
MARK B. STERN
SEAN R. JANDA
Attorneys

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APPENDIX

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APPENDIX

1. 18 U.S.C. 921(a) provides in pertinent part:

Definitions

(a) As used in this chapter—

* * * * *

(3) The term "firearm" means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.

(4) The term "destructive device" means—

(A) any explosive, incendiary, or poison gas—

(i) bomb,

(ii) grenade,

(iii) rocket having a propellant charge of more than four ounces,

(iv) missile having an explosive or incendiary charge of more than one-quarter ounce,

(v) mine, or

(vi) device similar to any of the devices described in the preceding clauses;

(B) any type of weapon (other than a shotgun or a shotgun shell which the Attorney General finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a

projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and

(C) any combination of parts either designed or intended for use in converting any device into any destructive device described in subparagraph (A) or (B) and from which a destructive device may be readily assembled.

The term "destructive device" shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 7684(2), 7685, or 7686 of title 10; or any other device which the Attorney General finds is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting, recreational or cultural purposes.

* * * * *

(25) The terms "firearm silencer" and "firearm muffler" mean any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.

* * * * *

(30) The term "handgun" means—

(A) a firearm which has a short stock and is designed to be held and fired by the use of a single hand; and

(B) any combination of parts from which a firearm described in subparagraph (A) can be assembled.

* * * * *

2. 18 U.S.C. 922(r) provides:

Unlawful acts

(r) It shall be unlawful for any person to assemble from imported parts any semiautomatic rifle or any shotgun which is identical to any rifle or shotgun prohibited from importation under section 925(d)(3) of this chapter as not being particularly suitable for or readily adaptable to sporting purposes except that this subsection shall not apply to—

(1) the assembly of any such rifle or shotgun for sale or distribution by a licensed manufacturer to the United States or any department or agency thereof or to any State or any department, agency, or political subdivision thereof; or

(2) the assembly of any such rifle or shotgun for the purposes of testing or experimentation authorized by the Attorney General.

3. 18 U.S.C. 926(a) provides:

Rules and regulations

(a) The Attorney General may prescribe only such rules and regulations as are necessary to carry out the provisions of this chapter, including—

(1) regulations providing that a person licensed under this chapter, when dealing with another person so licensed, shall provide such other licensed person a certified copy of this license;

(2) regulations providing for the issuance, at a reasonable cost, to a person licensed under this chapter, of certified copies of his license for use as provided under regulations issued under paragraph (1) of this subsection; and

(3) regulations providing for effective receipt and secure storage of firearms relinquished by or seized from persons described in subsection (d)(8) or (g)(8) of section 922.

No such rule or regulation prescribed after the date of the enactment of the Firearms Owners' Protection Act may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or any political subdivision thereof, nor that any system of registration of firearms, firearms owners, or firearms transactions or dispositions be established. Nothing in this section expands or restricts the Secre-

tary's[1] authority to inquire into the disposition of any firearm in the course of a criminal investigation.

4. 26 U.S.C. 5845(b) provides:

Definitions

For the purpose of this chapter—

(b) Machinegun

The term "machinegun" means any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person.

5. Federal Firearms Act, ch. 850, Pub. L. No. 75-785, 52 Stat. 1250 provides in pertinent part:

AN ACT

To regulate commerce in firearms.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That as used in this Act.

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[1] So in original. Probably should be "Attorney General's".

* * * * *

(3) The term "firearm" means any weapon, by whatever name known, which is designed to expel a projectile or projectiles by the action of an explosive and a firearm muffler or firearm silencer, or any part or parts of such weapon.

* * * * *

6. Gun Control Act of 1968, Pub. L. No. 90-531, Tit. IV, § 901(a), 82 Stat. 225-226 provides:

TITLE IV—STATE FIREARMS CONTROL ASSISTANCE

FINDINGS AND DECLARATION

SEC. 901. (a) The Congress hereby finds and declares—

(1) that there is a widespread traffic in firearms moving in or otherwise affecting interstate or foreign commerce, and that the existing Federal controls over such traffic do not adequately enable the States to control this traffic within their own borders through the exercise of their police power;

(2) that the ease with which any person can acquire firearms other than a rifle or shotgun (including criminals, juveniles without the knowledge or consent of their parents or guardians, narcotics addicts, mental defectives, armed groups who would supplant the functions of duly constituted public authorities, and others whose possession of such weapons is similarly contrary to the public interest) is a significant factor in the prevalence of lawlessness and violent crime in the United States;

(3) that only through adequate Federal control over interstate and foreign commerce in these weapons, and over all persons engaging in the businesses of importing, manufacturing, or dealing in them, can this grave problem be properly dealt with, and effective State and local regulation of this traffic be made possible;

(4) that the acquisition on a mail-order basis of firearms other than a rifle or shotgun by nonlicensed individuals, from a place other than their State of residence, has materially tended to thwart the effectiveness of State laws and regulations, and local ordinances;

(5) that the sale or other disposition of concealable weapons by importers, manufacturers, and dealers holding Federal licenses, to nonresidents of the State in which the licensees' places of business are located, has tended to make ineffective the laws, regulations, and ordinances in the several States and local jurisdictions regarding such firearms;

(6) that there is a causal relationship between the easy availability of firearms other than a rifle or shotgun and juvenile and youthful criminal behavior, and that such firearms have been widely sold by federally licensed importers and dealers to emotionally immature, or thrill-bent juveniles and minors prone to criminal behavior;

(7) that the United States has become the dumping ground of the cast off surplus military weapons of other nations, and that such weapons, and the large volume of relatively inexpensive pistols and revolvers (largely worthless for sporting purposes), imported

into the United States in recent years, has contributed greatly to lawlessness and to the Nation's law enforcement problems;

(8) that the lack of adequate Federal control over interstate and foreign commerce in highly destructive weapons (such as bazookas, mortars, antitank guns, and so forth, and destructive devices such as explosive or incendiary grenades, bombs, missiles, and so forth) has allowed such weapons and devices to fall into the hands of lawless persons, including armed groups who would supplant lawful authority, thus creating a problem of national concern;

(9) that the existing licensing system under the Federal Firearms Act does not provide adequate license fees or proper standards for the granting or denial of licenses, and that this has led to licenses being issued to persons not reasonably entitled thereto, thus distorting the purposes of the licensing system.

7. 27 C.F.R. 478.11 provides in pertinent part:

Meaning of terms.

* * * * *

Firearm. Any weapon, including a starter gun, which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; or any destructive device; but the term shall not include an antique firearm. In the case of a licensed collector, the term shall mean only curios and relics. The term shall include a weapon parts kit that is designed to or may readily be completed, as-

sembled, restored, or otherwise converted to expel a projectile by the action of an explosive. The term shall not include a weapon, including a weapon parts kit, in which the frame or receiver of such weapon is destroyed as described in the definition "frame or receiver".

* * * * *

Readily. A process, action, or physical state that is fairly or reasonably efficient, quick, and easy, but not necessarily the most efficient, speediest, or easiest process, action, or physical state. With respect to the classification of firearms, factors relevant in making this determination include the following:

(1) Time, *i.e.*, how long it takes to finish the process;

(2) Ease, *i.e.*, how difficult it is to do so;

(3) Expertise, *i.e.*, what knowledge and skills are required;

(4) Equipment, *i.e.*, what tools are required;

(5) Parts availability, *i.e.*, whether additional parts are required, and how easily they can be obtained;

(6) Expense, *i.e.*, how much it costs;

(7) Scope, *i.e.*, the extent to which the subject of the process must be changed to finish it; and

(8) Feasibility, *i.e.*, whether the process would damage or destroy the subject of the process, or cause it to malfunction.

* * * * *

8. 27 C.F.R. 478.12 provides in pertinent part:

Definition of Frame or Receiver.

(a) Except as otherwise provided in this section, the term "frame or receiver" means the following—

(1) The term "frame" means the part of a handgun, or variants thereof, that provides housing or a structure for the component (*i.e.,* sear or equivalent) designed to hold back the hammer, striker, bolt, or similar primary energized component prior to initiation of the firing sequence, even if pins or other attachments are required to connect such component (*i.e.,* sear or equivalent) to the housing or structure.

(2) The term "receiver" means the part of a rifle, shotgun, or projectile weapon other than a handgun, or variants thereof, that provides housing or a structure for the primary component designed to block or seal the breech prior to initiation of the firing sequence (*i.e.,* bolt, breechblock, or equivalent), even if pins or other attachments are required to connect such component to the housing or structure.

(3) The terms "variant" and "variants thereof" mean a weapon utilizing a similar frame or receiver design irrespective of new or different model designations or configurations, characteristics, features, components, accessories, or attachments. For example, an AK-type firearm with a short stock (*i.e.,* pistol grip) is a pistol variant of an AK-type rifle, an AR-type firearm with a short stock (*i.e.,* pistol grip) is a pistol variant of an AR-type rifle, and a revolving cylinder shotgun is a shotgun variant of a revolver.

* * * * *

(c) *Partially complete, disassembled, or nonfunctional frame or receiver.* The terms "frame" and "receiver" shall include a partially complete, disassembled, or nonfunctional frame or receiver, including a frame or receiver parts kit, that is designed to or may readily be completed, assembled, restored, or otherwise converted to function as a frame or receiver, *i.e.,* to house or provide a structure for the primary energized component of a handgun, breech blocking or sealing component of a projectile weapon other than a handgun, or internal sound reduction component of a firearm muffler or firearm silencer, as the case may be. The terms shall not include a forging, casting, printing, extrusion, unmachined body, or similar article that has not yet reached a stage of manufacture where it is clearly identifiable as an unfinished component part of a weapon (*e.g.,* unformed block of metal, liquid polymer, or other raw material). When issuing a classification, the Director may consider any associated templates, jigs, molds, equipment, tools, instructions, guides, or marketing materials that are sold, distributed, or possessed with the item or kit, or otherwise made available by the seller or distributor of the item or kit to the purchaser or recipient of the item or kit. The following are nonexclusive examples that illustrate the definitions:

Example 1 to paragraph (C)—Frame or receiver: A frame or receiver parts kit containing a partially complete or disassembled billet or blank of a frame or receiver that is sold, distributed, or possessed with a compatible jig or template is a frame or receiver, as a person with online instructions and common hand tools may readily complete or assemble the frame or receiver parts to function as a frame or receiver.

Example 2 to paragraph (C)—Frame or receiver: A partially complete billet or blank of a frame or receiver with one or more template holes drilled or indexed in the correct location is a frame or receiver, as a person with common hand tools may readily complete the billet or blank to function as a frame or receiver.

Example 3 to paragraph (C)—Frame or receiver: A complete frame or receiver of a weapon that has been disassembled, damaged, split, or cut into pieces, but not destroyed in accordance with paragraph (e), is a frame or receiver.

Example 4 to paragraph (C)—Not a receiver: A billet or blank of an AR–15 variant receiver without critical interior areas having been indexed, machined, or formed that is not sold, distributed, or possessed with instructions, jigs, templates, equipment, or tools such that it may readily be completed is not a receiver.

Example 5 to paragraph (C)—Not a receiver: A flat blank of an AK variant receiver without laser cuts or indexing that is not sold, distributed, or possessed with instructions, jigs, templates, equipment, or tools is not a receiver, as a person cannot readily fold the flat to provide housing or a structure for the primary component designed to block or seal the breech prior to initiation of the firing sequence.

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9. 27 C.F.R. 478.92(c) provides:

Identification of firearms and armor piercing ammunition by licensed manufacturers and licensed importers.

(c) *Voluntary classification of firearms and armor piercing ammunition.* The Director may issue a determination (classification) to a person whether an item, including a kit, is a firearm or armor piercing ammunition as defined in this part upon receipt of a written request or form prescribed by the Director. Each such voluntary request or form submitted shall be executed under the penalties of perjury with a complete and accurate description of the item or kit, the name and address of the manufacturer or importer thereof, and a sample of such item or kit for examination. A firearm sample must include all accessories and attachments relevant to such classification as each classification is limited to the firearm in the configuration submitted. Each request for classification of a partially complete, disassembled, or nonfunctional item or kit must contain any associated templates, jigs, molds, equipment, or tools that are made available by the seller or distributor of the item or kit to the purchaser or recipient of the item or kit, and any instructions, guides, or marketing materials if they will be made available by the seller or distributor with the item or kit. Upon completion of the examination, the Director may return the sample to the person who made the request unless a determination is made that return of the sample would be or place the person in violation of law. Submissions of armor piercing ammunition with a projectile or projectile core constructed entirely from one or a combination of tungsten steel alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium must include a list of known handguns in which the

ammunition may be used. Except for the classification of a specific component as the frame or receiver of a particular weapon, a determination made by the Director under this paragraph shall not be deemed by any person to be applicable to or authoritative with respect to any other sample, design, model, or configuration.

10. 33 Fed. Reg. 18,555 (Dec. 14, 1968) provides in pertinent part:

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Firearm frame or receiver. That part of a firearm which provides housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive the barrel.

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