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

REPLY BRIEF FOR THE PETITIONERS

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Respondents "agree with the Government" that "this Court should grant the Government's petition to determine" whether the Rule "is consistent with the definition of 'firearm'" in the Gun Control Act of 1968 (Act), 18 U.S.C. 921 *et seq.* VanDerStok Br. in Support of Cert. 1-2; see Defense Distributed Br. in Support of Cert. 11-12. And although respondents attempt to rehabilitate the Fifth Circuit's decision on the merits, they offer no persuasive defense of the court's departure from the natural reading of the Act's plain language. Nor do respondents justify transforming the Act's central definition into a self-defeating invitation for evasion by allowing anyone with access to the internet to anonymously buy a parts kit or partially complete frame or receiver that can be assembled into a working firearm in as little as 20 minutes. The Court should grant certiorari and reverse.

A. Respondents Agree That The Fifth Circuit's Decision Warrants This Court's Review

As the petition explains (at 28-31), this Court's review is warranted because the Fifth Circuit invalidated central provisions of an important regulation and adopted a cramped reading of the Act that would allow criminals and other prohibited persons to circumvent the Act's background-check, serial-number, and record-keeping requirements and easily obtain untraceable firearms. Indeed, this Court has twice recognized the legal and practical significance of this case by granting emergency relief that allowed the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to continue enforcing the Act as interpreted by the Rule while this case played out in the lower courts. See Pet. 10, 13. Respondents thus correctly recognize that review is warranted in light of "the importance of the issue" and the fact that the Fifth Circuit "held unlawful a significant federal regulation." VanDerStok Br. in Support of Cert. 31; see Defense Distributed Br. in Support of Cert. 11-12.

Respondents likewise agree that, because of the importance of the questions presented, the absence of a conflict in the courts of appeals does not counsel against certiorari. See VanDerStok Br. in Support of Cert. 32; Defense Distributed Br. in Support of Cert. 11-12; see also Pet. 30-31. And although no square conflict has yet emerged, the Court's resolution of this case will provide guidance to lower courts resolving other challenges to the Rule. See Pet. 30 n.5; cf. *California* v. *Bureau of*

Alcohol, Tobacco, Firearms, & Explosives, No. 20-cv-6761, 2024 WL 779604 (N.D. Cal. Feb. 26, 2024).[1]

B. The Fifth Circuit's Decision Is Wrong

Respondents contend that the Fifth Circuit correctly held that the Rule is inconsistent with the Act's treatment of the terms "firearm" and "frame or receiver." VanDerStok Br. in Support of Cert. 12-28; Defense Distributed Br. in Support of Cert. 13-17. A full discussion of those questions can await the merits briefing and argument that all parties agree is warranted. But respondents offer no persuasive defense of the Fifth Circuit's decision.

1. The Act explicitly includes "any weapon" that "is designed to or may readily be converted to expel a projectile by the action of an explosive" within the definition of "'firearm.'" 18 U.S.C. 921(a)(3). Under the plain meaning of "convert," the parts kits covered by the Rule—those that are "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—fall squarely within the statutory definition. See Pet. 14-20. Respondents' assertion that the Act only "captures nonfunctional but complete firearms" such as "malfunctioning," "intentionally disabled," or "temporarily disassembled" firearms, VanDerStok Br. in Support of Cert. 16 (emphasis omitted),

[1] The district court in *California* held that ATF "failed to properly implement" the Rule's definition of "readily" when determining that a product addressed in one of the Rule's examples was not a receiver. 2024 WL 779604, at *18; see *id.* at *24-*28; see also 87 Fed. Reg. 24,652, 24,739 (Apr. 26, 2022). In reaching that conclusion, the *California* court noted its disagreement with the Fifth Circuit's determination that the Rule's definition of "frame or receiver" is inconsistent with the Act. 2024 WL 779604, at *18 n.11.

ignores the ordinary meaning of "convert," which is more expansive. And, contrary to respondents' claims, see VanDerStok Br. in Support of Cert. 21-22, the Rule does not permit the government to regulate standalone weapon parts writ large, Pet. 16-17.

The Rule likewise correctly reads the term "frame or receiver" to include partially complete or nonfunctional frames and receivers that can readily be completed or made functional. 27 C.F.R. 478.12(c). The Act does not define the terms "frame" and "receiver," which should thus be given their "ordinary, contemporary, common meaning." *Delaware* v. *Pennsylvania*, 143 S. Ct. 696, 705 (2023) (citation omitted). Neither dictionary definitions nor ordinary usage requires that a frame or receiver can only be described as such if it is "complete," "operable," or "functional." Pet. 21-27. Respondents thus do not and could not deny that, as a matter of ordinary usage, it would be perfectly natural to describe a pistol frame as a "frame" even if it is missing "a single hole necessary to install the applicable fire control component" or "has a small piece of plastic that can easily be removed to allow installation of that component." Pet. App. 196a. Indeed, respondents themselves used the terms in precisely that way when marketing their products to the public, describing them as "80% frames" and "80% receivers"—or often simply as "frames" and "receivers."[2]

Respondents are wrong to assert that the government has substantially changed its regulatory approach.

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[2] Polymer80 sells the relevant products on a section of its website entitled "Pistol Frame[s] and Jigs." Polymer80, *Pistol Frame and Jigs*, https://perma.cc/DLG5-GRGX. Similarly, Blackhawk markets the "GST-9" "[f]rame." 80% Arms, *GST-9*, https://perma.cc/4N5Y-YQHM.

See VanDerStok Br. in Support of Cert. 18-20. ATF has recognized in decades of classification letters issued across numerous Administrations that products that need minimal additional work to be converted into complete frames and receivers are frames and receivers. See Pet. 4, 25. The only substantial change reflected in the Rule is that, in applying that standard, ATF now considers accompanying jigs, templates, and other specialized tools that serve the same function as indexing or partial machining on the frame or receiver itself. Pet. 7.

Finally, respondents do not and cannot dispute that their interpretation would invite widespread circumvention of the Act's background-check, serial-number, and record-keeping requirements—a result that would thwart the Act's careful design and profoundly harm public safety. See Pet. 20-21, 28. This Court "should not lightly conclude that Congress enacted a self-defeating statute." *Pugin* v. *Garland*, 143 S. Ct. 1833, 1841 (2023) (citation omitted).

2. Respondents invoke the rule of lenity and the constitutional-doubt canon. VanDerStok Br. in Support of Cert. 28-31; Defense Distributed Br. in Support of Cert. 17-25. Those arguments lack merit. The rule of lenity has a role to play only if, "after considering text, structure, history, and purpose, there remains a grievous ambiguity or uncertainty in the statute." *United States* v. *Castleman*, 572 U.S. 157, 172-173 (2014) (citation omitted). And the constitutional-doubt canon applies only when there are "competing plausible interpretations of a statutory text." *Clark* v. *Martinez*, 543 U.S. 371, 381 (2005). Neither interpretive tool is relevant here because the Rule reflects the best reading of

the statute and respondents' contrary interpretation is not plausible.

In any event, the Rule does not "raise[] serious constitutional doubts." *Clark*, 543 U.S. at 381. This Court's Second Amendment decisions have emphasized that "laws imposing conditions and qualifications on the commercial sale of arms" are "presumptively lawful." *District of Columbia* v. *Heller*, 554 U.S. 570, 626-627 & n.26 (2008); see *New York State Rifle & Pistol Ass'n* v. *Bruen*, 142 S. Ct. 2111, 2162 (2022) (Kavanaugh, J., concurring). The Rule does not prohibit anyone from possessing a firearm or making one at home; instead, it merely confirms that those engaged in "commercial sale[s]" of weapon parts kits and covered frames and receivers must abide by the Act's longstanding and uncontroversial serialization, background-check, and recordkeeping requirements. *Heller*, 554 U.S. at 627; see *Abramski* v. *United States*, 573 U.S. 169, 180 (2014).

Respondents' invocation of vagueness is equally unavailing. See VanDerStok Br. in Support of Cert. 29-30; Defense Distributed Br. in Support of Cert. 18-21. Like countless other laws, the Rule's provision covering frames or receivers that can readily be made functional "call[s] for the application of a qualitative standard" to "real-world" facts. *Johnson* v. *United States*, 576 U.S. 591, 604 (2015). Indeed, that standard closely parallels the express "may readily be converted" language in Section 921(a)(3)(A), which respondents do not suggest raises any constitutional concern. 18 U.S.C. 921(a)(3)(A).

* * * * *

For the foregoing reasons and those stated in the petition for a writ of certiorari, the petition should be granted.

Respectfully submitted.

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