No. 23-852

In the Supreme Court of the United States

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

Petitioners,

v.

JENNIFER VANDERSTOK, ET AL.,

Respondents.

On Writ of Certiorari to
the United States Court of Appeals
for the Fifth Circuit

BRIEF FOR *AMICUS CURIAE* NATIONAL SHOOTING SPORTS FOUNDATION, INC. IN SUPPORT OF RESPONDENTS AND AFFIRMANCE

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QUESTION PRESENTED

In this brief, *Amicus Curiae* will focus on the second question presented in this case:

> 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.

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INTRODUCTION AND INTEREST OF *AMICUS CURIAE*[1]

National Shooting Sports Foundation, Inc. (NSSF) is the trade association of the firearm, ammunition, hunting, and shooting sports industry. Founded in 1961, NSSF has approximately 10,500 members, including federally licensed firearm and ammunition manufacturers, distributors, and retailers, as well as manufacturers, distributors, and retailers of products for the hunting, shooting, and self-defense markets, public and private shooting ranges, gun clubs, and sportsmen's organizations, in addition to individual hunters and recreational target shooters. NSSF's mission is to promote, protect, and preserve hunting and the shooting sports.

As in this case, NSSF submits *amicus* briefs addressing legal issues that affect its members and the industry. *See*, *e.g.*, Br. for NSSF as *Amicus Curiae*, *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244 (2024) (No. 22-451); Br. for *Amicus Curiae* NSSF, *VanDerStok v. Garland*, 86 F.4th 179 (5th Cir. 2023) (No. 23-10718), ECF No. 146. NSSF also submitted comments to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) on its proposed rule. *See* Ltr. of Lawrence G. Keane, Sec'y & Gen. Counsel, NSSF, to Marvin Richardson, Acting Dir., ATF, Docket No. ATF

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[1] Pursuant to this Court's Rule 37.6, *Amicus Curiae* states that no counsel for any party authored this brief in whole or in part and that no person or entity, other than *Amicus Curiae*, its members, or its counsel, made a monetary contribution toward the preparation or submission of this brief.

2021R-05 (Aug. 18, 2021), *available at* https://tinyurl.com/4a5cts8j.

NSSF submits this brief to present its views on ATF's expansive redefinition of "frame or receiver" as defined in the Gun Control Act of 1968 (GCA). For decades, ATF interpreted the GCA's clear definition of "frame or receiver" to not encompass an untold number of products—including "partially complete" frames or receivers—that could be "converted" into a frame or receiver. NSSF's members have long relied upon that interpretation to comply with the plethora of attendant regulations governing frames or receivers. But ATF upended that settled definition to include "partially complete" products that *may become* "frames or receivers" in contravention of the GCA's plain statutory text. As a result, ATF's regulatory overreach will impose significant costs and compliance burdens on industry members. What is more, failure to divine the magical point at which a product can be "converted to function as a frame or receiver" risks criminal penalties.

It is common sense that a precursor to a frame is not a frame, and a precursor to a receiver is not a receiver. "In ordinary nomenclature, a frame or receiver is a finished part which is capable of being assembled with the other parts to put together a firearm. Raw material which is only partially machined requires further fabrication." Stephen P. Halbrook, *Firearms Law Deskbook* § 6:9 (Oct. 2023 Update) (footnote omitted).

Concluding that a *potential* frame or receiver does not qualify as a frame or receiver does not require any

expertise in firearms because the GCA's definition is unequivocal. It may be, as Justice Alito has said, that "a person who sees an old Chevy with three wheels in a junkyard would still call it a car." *Pereira v. Sessions*, 585 U.S. 198, 231 (2018) (Alito, J., dissenting). But if a statute defined a car to include its chassis, no one reading the law would call a partial chassis a chassis—much less a car. Congress has defined a "firearm" to include a "frame or receiver"—not a precursor to a frame or receiver. ATF may not depart from the congressional definition and declare by regulatory fiat that an incomplete frame or receiver or potential frame or receiver is—*voilà*!—a firearm.

SUMMARY OF ARGUMENT

It is imperative to our separation of powers that federal agencies act within the limits of the authority that Congress grants those agencies by statute. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) brazenly exceeds its mandate here. While the advancement of firearm technology since Congress passed the Gun Control Act of 1968 (GCA) may present new challenges, only Congress can amend that language to expand ATF's authority. And, in any event, when ATF considers a new regulation, it must take into account the significance of the burden it may pose.

While Congress overhauled gun control in America when it enacted the GCA, it empowered the Executive Branch to promulgate only those regulations necessary to administer the GCA. ATF argues that it exercised this delegated power when it redefined frames and receivers, which are central

components of modern firearms that house the firing mechanism and related essential items for the firearm to function. The Final Rule, as relevant here, reinterprets the statutory term "frame or receiver" in 18 U.S.C. § 921(a)(3)(B) to henceforth mean that serial numbers must be included on "partially complete" frames and receivers, jettisoning a definition that was first adopted by regulation in 1968 and then recodified in a regulation that had been untouched since 1978. ATF then muddied the waters still further, adding that the Final Rule covers objects that can be "converted to function as a frame or receiver." In doing so, ATF violated the Administrative Procedure Act (APA).

I. The statutory history of 18 U.S.C. § 921(a)(3)(B) confirms that the Final Rule violates the APA. Congress's initial foray into gun control was the National Firearms Act in 1934 (NFA), which was followed shortly thereafter in 1938 by the Federal Firearms Act (FFA). Those statutes first defined terms such as "firearm" and established the first serialization regime. Ironically, the FFA explicitly included regulating "any part or parts" of firearms. But when Congress massively expanded federal regulation of firearms in 1968 when it passed the GCA, it also repealed that provision from the FFA.

Legislative debates during the 1960s leading up to the enactment of the GCA confirm that this was not an oversight on Congress's part, as it found the FFA's language "impractical, if not impossible" insofar as it treated all weapons parts as actual firearms. The Senate Report accompanying the GCA specifically noted this deliberate change. This history also

includes a debate over language in an early version of the GCA that allowed criminalization of violations of rules promulgated under GCA rulemaking authority, which was removed when Senators made the point that only politically accountable lawmakers should define what constitutes a crime under the GCA.

Congress definitively defined "firearm" in the GCA, and included in that definition "frame or receiver." Pub. L. No. 90-618, § 102, 82 Stat. 1213, 1214. This definition accorded with the one recommended by the Treasury Department (which is where ATF was originally situated as an agency component), as well as technical dictionaries at the time. When Treasury held a public hearing on the topic, one industry witness specifically praised the clarity of the GCA's definition.

Subsequent legislation, including the Firearms Owners' Protection Act in 1986, Pub. L. No. 99-308, 100 Stat. 449 (1986), continued to pare back ATF's regulatory reach, including specifying that the Attorney General (through ATF) may prescribe "only such rules and regulations as are necessary" to implement the GCA. None of those subsequent statutes modified the definitions at issue here in 18 U.S.C. § 921(a)(3).

II. Expanding the frame or receiver definition to include "partially complete" products is unworkable. A firearm part is "partially complete" if it is anywhere between raw materials and a ready-to-sell final form at a retail outlet, and ATF's scant guidance referring to a "critical stage of manufacture" does nothing to tell industry participants when they must shoulder the

burden of serializing the object that will eventually become a frame or a receiver, risking their license (as a Federal Firearms Licensee—or "FFL") and potential criminal penalties if they do not correctly guess where ATF's magic line is drawn in the manufacturing process. The only stage of manufacture at which a gun maker or a gun seller knows the law does not require a serial number is when it is a "primordial ooze": completely unformed blocks of metal or plastic, or liquid versions thereof. But the earlier in the gunsmithing process that serialization must occur, the greater the cost to the industry and consumers.

Laws are written by Congress, not regulators, and Congress chose to require a serial number on an actual—and thus finished—frame or receiver. To interpret the term differently is to redefine it. In recent years, ATF has demonstrated a pattern and practice of plaguing the industry with Orwellian redefinitions of Congress's policy choices, which this Court—and lower federal courts—have increasingly held unlawful, including redefining terms such as "machinegun" and "short-barreled rifles."

ATF's redefinition of "frame or receiver" not only exceeds Congress's statutory mandate, but also adds significant burdens on both manufacturers and retailers, far beyond ATF's estimated cost of $14.3 million. The most obvious burden is the need to serialize objects well before they are true frames and receivers. Additionally, the Final Rule requires that firearms with multi-part frames or receivers must include a serial number on each part. Yet another burden will often be borne by retailers but at times also by manufacturers: Personally made firearms

(PMFs), when accepted for repairs or servicing, must be serialized and fully documented in the inventory books of those establishments unless those firearms can be returned to their owners prior to close of business. Finally, the Final Rule will impose an additional obligation on firearms dealers by changing the current 20-year requirement for keeping inventory records to extend in perpetuity until the business closes permanently.

III. Common canons of statutory interpretation confirm that ATF's redefinition of "frame or receiver" is unlawful. ATF rules like the Final Rule here have regularly leaned on an expectation of *Chevron* deference, but with *Chevron*'s recent demise ATF does not have a leg to stand on. *See Loper Bright Enters. v. Raimondo,* 144 S. Ct. 2244, 2273 (2024).

First is the canon of constitutional doubt. When a provision in a statute is fairly susceptible to multiple interpretations, one of which would raise doubts about the statute's constitutionality, this Court adopts a narrower reading that obviates the doubt. The problematic interpretation need not even be determined to be invalid; the fact that it merely raises a serious question is reason enough for this Court to eschew it unless Congress expressly states its intention to press into that territory. The canon is implicated here because the Second Amendment is a fundamental right for private citizens in the United States, but one that requires gunmakers and sellers as an antecedent to its exercise. ATF's Final Rule raises unacceptable doubts on that score as it is not evident that this burden on the Second Amendment is analogous to Framing-era restrictions as required by

New York State Rifle & Pistol Association, Inc. v. Bruen, 597 U.S. 1 (2022), so this Court must avoid engaging the conflict by setting aside the Final Rule's broader sweep.

And second is the rule of lenity, under which ambiguities in criminal statutes must be resolved in favor of a potential defendant. As another separation-of-powers rule, it reserves defining criminality to Congress, not the Executive. But more than that, the Due Process Clause guarantees that private actors must have adequate notice and fair warning of what the law expects of them. The rule extends to civil applications of criminal statutes, and both applications are relevant here.

The Court should affirm the judgment below.

ARGUMENT

I. Statutory History Confirms the Meanings of "Firearm" and "Frame or Receiver."

"It makes sense to read" parts of a statutory provision "in light of the history of the provision." *Fischer v. United States*, 144 S. Ct. 2176, 2186 (2024). After analyzing the statutory text, a court may look at "the statutory history, which reinforces that textual analysis." *Snyder v. United States*, 144 S. Ct. 1947, 1955 (2024). Congress was not writing on a blank slate when it passed the Gun Control Act of 1968, Pub. L. No. 90-618, 82 Stat. 1213 (codified at 18 U.S.C. § 921 *et seq.*) (GCA), defining "firearm" in 18 U.S.C. § 921(a)(3)(B). Two federal statutes had been on the books for three decades at that point. One is the National Firearms Act, Pub. L. No. 73-474, 48 Stat. 1236 (1934) (NFA). The other is the Federal Firearms

Act, Pub. L. No. 75-785, 52 Stat. 1250 (1938) (FFA) (repealed 1968).[2] The meanings of "firearm" and "frame or receiver" are shaped by the FFA, the GCA, and contemporaneous regulations adopted in 1968, which subsequent enactments and regulations did not alter.

As the Fifth Circuit noted, the FFA gave the Executive Branch the authority to regulate "any part or parts of" firearms, but "Congress *removed* this language when it enacted the GCA, replacing 'any part or parts' with just 'the frame or receiver of any such weapon.'" Pet. App. 20a. Congress also removed criminal penalties for violations of FFA regulations in passing the GCA. Moreover, the Firearms Owners' Protection Act, Pub. L. No. 99-308, 100 Stat. 449 (1986) (FOPA), further curtailed agency regulatory power.

A. Origins of the Federal Firearms Act

The FFA defined a firearm as "any weapon, by whatever name known, which is designed to expel a projectile or projectiles by the action of an explosive … or any part or parts of such weapon." Pub. L. No. 75-785, § 1(3), 52 Stat. 1250 (previously codified at 15 U.S.C. § 901(3) (1938)) (repealed 1968). As pertinent here, it also stated: "Any person violating any of the provisions of this Act or any rules and regulations promulgated hereunder" was subject to fines and imprisonment, *id.*, § 5, 52 Stat. at 1252 (previously

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[2] This statutory regime established by the NFA and FFA was augmented seven years before the GCA in the Act of October 3, 1961, Pub. L. No. 87-342, 75 Stat. 757, in a manner not relevant here.

codified at 15 U.S.C. § 905 (1938)), with the latter being a hallmark of a criminal statute, *see Mont v. United States*, 587 U.S. 514, 521–22 (2019). Furthermore, under the FFA, "The Secretary of the Treasury may prescribe such rules and regulations as he deems necessary to carry out the provisions of this Act." Pub. L. No. 75-785, § 7, 52 Stat. at 1252 (previously codified at 15 U.S.C. § 907 (1938)).[3]

Regulations under the FFA required a licensed manufacturer to maintain records of firearms disposed of, including a description thereof and "the serial numbers if such weapons are numbered." 26 C.F.R. § 315.10(a)(1) (1939).[4] A licensed dealer was required to maintain "records of all firearms acquired or disposed of[.]" *Id*. § 315.10(b). And a later amendment required that records include "firearms in an unassembled condition, but not including parts of firearms." 26 C.F.R. §§ 315.10(a), (b) (1948).[5]

A Revenue Ruling issued a few years later determined that "a barrel[ed] action comprised of the barrel …; front and rear stock bands; receiver with complete bolt, trigger action, magazine, etc., is a weapon, complete except for the stock, which is capable of expelling a projectile or projectiles by the action of an explosive." Whether "assembled or

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[3] Originally a Treasury component, ATF was later transferred to the Justice Department, under the Attorney General. Homeland Security Act of 2002, Pub. L. No. 107-296, § 1111, 116 Stat. 2135, 2274–75 (codified at 6 U.S.C. § 531).

[4] *See* 4 Fed. Reg. 1903, 1910 (May 5, 1939), *available at* https://www.loc.gov/item/fr004087/.

[5] *See* 13 Fed. Reg. 4383, 4386 (July 30, 1948), *available at* https://tinyurl.com/y8u4y8mx.

unassembled," it was held to be a "firearm" and not "parts of firearms" under the FFA. Rev. Rul. 55-175, 1955-1 C.B. 562, 1955 WL 10177, at *1.

Two years before the GCA's enactment, the Seventh Circuit held that "Browning automatic rifle magazines" were "parts" within the FFA's "part or parts" definition because "such weapons could not be fired automatically without the magazines." *United States v. Lauchli*, 371 F.2d 303, 313–14 (7th Cir. 1966). These *finished* parts contained in machineguns were "serviceable parts, thus bringing them within the scope of the [FFA]." *Id.* at 314.

In sum, under the FFA, a "firearm" was a "weapon" designed to expel a projectile, whether assembled or unassembled. To be a "part or parts," the items had to be serviceable. A "receiver" housed the bolt, trigger action, and magazine. This background precludes coverage of partially completed material that had not become an actual weapon or useable parts.

Despite modern political jargon about "ghost guns," from the ratification of the Second Amendment in 1791 to 1958, no federal legislation required that anyone—even a firearm manufacturer—mark a firearm with a serial number. Then in 1958, manufacturers and importers were required to serialize certain firearms:

> Each licensed manufacturer and importer of a firearm produced on and after July 1, 1958, shall identify it by stamping ... the name of the manufacturer or importer, and the serial number, caliber, and model of the firearm.... However,

> individual serial numbers and model designation will not be required on any shotgun or .22 caliber rifle ....

26 C.F.R. § 177.50 (1958).[6]

B. Legislation changing "part or parts" to "frame or receiver"

In 1963, a bill was drafted to amend the definition of "firearm" under the FFA to provide that: "The term 'firearm' means any weapon, by whatever name known, which will, or is designed to, expel a projectile or projectiles by the action of an explosive, [or] the frame or receiver of any such weapon …." *Investigation of Juvenile Delinquency in the United States: Hearings on S. Res. 63 Before the Subcomm. to Investigate Juvenile Delinquency of the S. Comm. on the Judiciary*, 88th Cong., pt. 14 at 3414 (1963).[7] During congressional deliberations, the Department of the Treasury underlined the practical need for tightening the definition because including all "parts" of a firearm had become unwieldy:

> The present definition includes any "part" of a weapon within the term. It has been found that it is impracticable, if not impossible, to treat all parts of a firearm as if they were a weapon capable of firing. This is particularly true with respect to recordkeeping provisions since small parts are not easily identified by a serial number. Accordingly, there are no objections to modifying

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[6] *See* 23 Fed. Reg. 343, 346 (Jan. 18, 1958), *available at* https://tinyurl.com/ysapjh6a.

[7] *Available at* https://tinyurl.com/4hca2ewe.

> the definition so that all parts, other than frames and receivers, are eliminated.

Id. (U.S. Dep't of Treasury, Comments and Suggested Changes on Section 1(3) of Subcomm. Draft, Technical Memorandum Re Draft of Proposed Bill to Amend the Federal Firearms Act (Mar. 18, 1963)).

Three years later, another bill added "which may be readily converted to" to the definition of "firearm," Federal Firearms Amendments of 1966, S. Rep. No. 89-1866, at 24 (1966). The motivation for that change was "to include specifically any starter gun designed for use with blank ammunition which will or which may be readily converted to expel a projectile or projectiles by the action of an explosive." *Id.* at 14.

By 1968, the definition of "firearm" was settled. As a Senate Report on the bill that eventually became the GCA noted: "It has been found that it is impractical to have controls over each small part of a firearm. Thus, the revised definition substitutes only the major parts of the firearm; that is, frame or receiver for the words 'any part or parts.'" S. Rep. No. 90-1097, at 111 (1968), *as reprinted in* 1968 U.S.C.C.A.N. 2112, 2200.

C. Congress refuses to delegate the power to criminalize violations of law to firearm regulators.

Initially, the precursor bills to the GCA included a provision—like the FFA—making it a crime to violate the Act or a regulation. Senate Bill 917 (S. 917, 90th Cong.) in 1968 would have penalized anyone who "violates any provision of this chapter or any rule or regulation promulgated thereunder," and empowered

the Secretary of the Treasury to "prescribe such rules and regulations as he deems reasonably necessary." 114 Cong. Rec. 14,792 (May 23, 1968) (statement of Sen. Griffin reading from S. 917 at 101, 105).

Debating that legislation, Senator Robert Griffin objected, arguing that lawmakers "should not delegate our legislative power … in the area of criminal law," and that due process required that "we should spell out in the law what is a crime." *Id.* (statement of Sen. Griffin). Likewise, Senator Howard Baker rejected "plac[ing] in the hands of an executive branch administrative official the authority to fashion and shape a criminal offense to his own personal liking." *Id.* (statement of Sen. Baker). After that exchange, S. 917 was amended to delete the provision making it a criminal offense to violate "any rule or regulation promulgated thereunder." *Id*. at 14,792–93.

That deletion was reflected in the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, 82 Stat. 197, which repealed the FFA and punished "[w]hoever violates any provision of this chapter," with no reference to criminal sanctions for violating regulations promulgated by the Secretary. *Id.* § 902, 82 Stat. at 233 (penalties); *id.* § 906, 82 Stat. at 234 (FFA repeal). Before that statute took effect, it was superseded by the GCA, which enacted the same penalty clause providing criminal sanctions for violations of the statute, but not rules promulgated under the statute. *See* Pub. L. No. 90-618, § 102, 82 Stat. at 1223–24, 1226.

D. "Firearm" and "frame or receiver" under the GCA

The GCA's definition of "firearm" has been in effect since the statute's enactment in 1968: "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 …." *Id.*, 82 Stat. at 1214. The simplicity of this statutory language leaves no room for reinvention, as it clearly delineates between a weapon that can be readily converted to function as a "firearm" and a "frame or receiver." Put another way, even if the statute left room for the Executive to fill in any gaps with regards to what qualifies as a "frame or receiver," there is no room to expand upon what qualifies as a "firearm," which is defined by the definitive list in the statutory provision.

In the initial implementing regulations, the Treasury Department proposed the following definition which was approved without change in the final rule in 1968: "*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." *Notice of Proposed Rulemaking, Commerce in Firearms and Ammunition*, 33 Fed. Reg. 16,285, 16,287 (Nov. 6, 1968); *Final Rule, Commerce in Firearms and Ammunition*, 33 Fed. Reg. 18,555, 18,558 (Dec. 14, 1968), *later recodified in Title and Definition Changes*, 43 Fed. Reg. 13,531, 13,537 (Mar. 31, 1978). It also proposed that manufacturers and importers must mark the serial number and all other

required markings on the frame or receiver. 33 Fed. Reg. at 16,293.

The definition reflected the ordinary meaning of a "frame or receiver" in 1968. The *Small Arms Lexicon* published that year defined "frame" as "the basic structure and principal component of a firearm." Chester Mueller & John Olson, *Small Arms Lexicon and Concise Encyclopedia* 87 (1968). "Receiver" was "the part of a gun that takes the charge from the magazine and holds it until it is seated in the breech. Specifically, the metal part of a gun that houses the breech action and firing mechanism[.]" *Id.* at 168.

The *Small Arms Lexicon* also clearly defined the other terms used in the regulation. "Breech" means "the end of the barrel into which the cartridge is inserted," *id.* at 35, and a "breechblock" is "the movable block of metal that closes and seals the breech preparatory to firing the gun," *id.* A "bolt" is "the sliding part in a breechloader that pushes a cartridge into position and locks or holds the mechanism to prevent it from opening when the gun is fired." *Id.* at 31. A "hammer" is "the piece that pivots on an axis to deliver a blow to a firing pin." *Id.* at 99. A "firing mechanism" is "those parts of a gun that cooperate to cause the propelling charge to fire." *Id.* at 82.

Again, the definition for "frame or receiver" in the Treasury Department's proposed implementing regulations for the GCA reflected the commonsense determination that a frame or receiver is "[t]hat part of a firearm which provides housing for" for all of these parts. And so a block of metal that does not "provide"

(in the present tense) such housing was not a frame or receiver as those terms were used in 1968.

The Treasury Department held a public hearing on the proposed regulations. Not a single witness objected to the definition of a frame or receiver. Quite to the contrary, an industry witness praised the "very clear definition of a … receiver[.]"[8]

Several witnesses objected to the requirement that all required information be marked on the frame or receiver, which in "many firearms is not large enough"; and moreover, "the use of interchangeable barrels … alter[s] the caliber or gauge of a firearm."[9] The final rule was changed to allow the barrel to be marked with all of the information other than the serial number. 33 Fed. Reg. at 18,564.

The 1968 regulation's definition of "frame or receiver," retained without change in the 1978 regulation that remained in force until the Final Rule at issue here, makes clear that a "frame or receiver" as used in the GCA is the actual, finished housing for the

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[8] Tr. of Proceedings, Dep't of Treasury, IRS, *Determining the Suitability of Proposed Regulations to Implement Recently Enacted Legislation Concerned with Federal Regulation of Commerce in Firearms and Ammunition*, at 133 (Nov. 21, 1968) (comment of Charles Steen, Sarco, Inc.), *available at* https://stephenhalbrook.com/wp-content/uploads/2024/07/Transcript-Hearing-GCA-Regs-11-21-68.pdf.

[9] Sporting Arms & Ammunition Mfrs.' Inst., Statement Suggesting Modifications to Proposed Regulations (26 C.F.R. Part 178) Under the Gun Control Act of 1968, at 26–27 (Nov. 21, 1968) (attach. 2 to Treasury Tr., *supra,* note 8), *available at* https://stephenhalbrook.com/wp-content/uploads/2024/07/SAAMI-Statements.pdf.

main parts, not material that requires any further manufacturing steps or can be converted into finished housing. Since the days of the Early Republic, "respect was thought especially warranted when an Executive Branch interpretation was issued roughly contemporaneously with enactment of the statute and remained consistent over time." *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2258 (2024).

E. FOPA reduced ATF's regulatory power and retained the definition of "frame or receiver."

The Firearms Owners' Protection Act reduced ATF's regulatory reach, modifying the rulemaking authority conferred upon the Executive to what it is today: The Attorney General may prescribe "*only* such rules and regulations as are *necessary* to carry out the provisions of this chapter" (i.e., Chapter 44 of Title 18). 18 U.S.C. § 926(a) (emphases added). FOPA deleted the prior language that "the Secretary may prescribe such rules and regulations *as he deems reasonably* necessary[,]" Pub. L. No. 99-308, § 106(3), 100 Stat. 449, 459, narrowing the statutory grant of authority from that which the relevant Cabinet officer deemed reasonably necessary to only authorize rules that actually are necessary.

FOPA did not disturb the definition of "firearm" or modify ATF's definition of a frame or receiver that had been adopted in 1968. Further amendments to the GCA were enacted in 1993, 1994, and 2022, without touching the definition of "firearm" or repudiating ATF's definition of "frame or receiver." *See* Brady Handgun Violence Prevention Act, Pub. L.

No. 103-159, 107 Stat. 1536 (1993); Public Safety & Recreational Firearms Use Protection Act, Pub. L. No. 103-322, tit. XI, 108 Stat. 1796 (1994); Bipartisan Safer Communities Act, Pub. L. No. 117-159, 136 Stat. 1313, 1326–27 (2022). "[O]nce an agency's statutory construction has been 'fully brought to the attention of the public and the Congress,' and the latter has not sought to alter that interpretation although it has amended the statute in other respects, then presumably the legislative intent has been correctly discerned." *United States v. Rutherford*, 442 U.S. 544, 554 n.10 (1979) (quoting *Apex Hosiery Co. v. Leader*, 310 U.S. 469, 487–89 (1940)).

The statutory and regulatory history align as weighty evidence of the meaning of "frame or receiver." That history confirms Respondents' and *amicus*' interpretation, that Congress's choice of words codified at 18 U.S.C. § 921(a)(3)(B) cannot include a frame or a receiver that is only "partially complete." Likewise, this history underscores the industry's settled expectation that the Executive branch would adhere to Congress's explicit language and its own commonsense interpretation of the statute.[10]

[10] For more detail on the statutory and administrative history during 1938–1968, *see* Stephen P. Halbrook, *The Meaning of 'Firearm' and 'Frame or Receiver' in the Federal Gun Control Act: The ATF's 2022 Final Rule in Light of Text, Precedent, and History*, SSRN 35–37 (Aug. 17, 2024) (under review), https://tinyurl.com/ys7pu88w.

II. ATF's Regulatory Overreach Will Impose Significant Compliance Burdens on Businesses in the Firearms Industry.

Federal agencies can only act within the scope of the power Congress grants those agencies by statute. *West Virginia v. EPA*, 597 U.S. 697, 723 (2022). There is no question that there have been significant advances in firearms technology over the past half-century that give rise to debates on how best to deal with new challenges for combatting criminal misuse of firearms. But the separation of powers makes clear that even when policy changes are desirable, and permitted by the Constitution, updating statutory language is the province of lawmakers, not regulators or courts. *See Wisconsin Cent. Ltd. v. United States*, 585 U.S. 274, 284 (2018); *see, e.g.*, *Garland v. Cargill*, 602 U.S. 406, 414–15 (2024); *id.* at 429 (Alito, J., concurring).

What is more, even if agencies were permitted to make regulatory changes based on new circumstances, they must consider the economic costs imposed by changes to the regulatory framework of industries under their statutory jurisdiction. *See West Virginia*, 597 U.S. at 714; *Utility Air Regul. Grp. v. EPA*, 573 U.S. 302, 322–24, 333 (2014). ATF did not adequately factor in that burden here.

A. ATF jettisoned the dictionary and adopted a hopelessly vague standard for "partially complete" and readily "converted" frames and receivers.

Congress overhauled the Nation's statutory regime regulating the ownership of firearms when it

enacted the GCA.[11] In that statute, Congress defined "firearm" as: "(A) any weapon … 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). Congress empowered the Secretary of the Treasury (later changed to the Attorney General) to engage in rulemaking regarding the GCA, but he "may prescribe only such rules and regulations as are necessary to carry out" its provisions. *Id.* § 926(a). The Attorney General subsequently delegated this authority to ATF. 28 C.F.R. § 0.130.

As discussed above, ATF settled on a definition of "frame or receiver" that interpreted 18 U.S.C. § 921(a)(3)(B) to mean: "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." 33 Fed. Reg. at 18,558. That commonsense, clear definition has thus endured for more than five decades.

In 2022, ATF changed the longstanding definitions of "firearm" and "frame or receiver" in *Definition of "Frame or Receiver" and Identification of Firearms*, 87 Fed. Reg. 24,652 (Apr. 26, 2022) (codified in relevant part at 27 C.F.R. §§ 478.11, 478.12(c)) ("Final Rule"). Under the Final Rule:

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[11] GCA amended a law enacted just months earlier, the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, tit. IV, 82 Stat. 197.

> 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[.]

Id. at 24,739.

The wrongheadedness of ATF's new definition is manifest. While Congress can define statutory terms however it sees fit, ATF cannot rewrite statutes. Thus, it is bound by Congress's language choice, and must define terms with reference to objective sources like dictionaries. *See, e.g.*, *National Cable & Telecomms. Ass'n v. Brand X Internet Srvcs.*, 545 U.S. 967, 989 (2005). But ATF's definition of "frame or receiver" cannot be supported by any dictionary, as it defies common sense: Now "frame or receiver" somehow means "partially complete frame or receiver." It is bad enough that "frame or receiver" now means "disassembled frame or receiver," "nonfunctional frame or receiver;" and "frame or receiver parts kit." But at least words like "disassembled" and "nonfunctional" have ascertainable definitions (even if those definitions cannot be reconciled with the language Congress codified in 18 U.S.C. § 921(a)(3)(B)).

To say the terms "frame" and "receiver" now include a "partially complete" frame or a "partially

complete" receiver is hopelessly vague. As Judge Oldham noted below, "This is perhaps ATF's most aggressive attempt to bootstrap hunks of metal and plastic into the GCA's definition of a 'firearm.'" Pet. App. 58a–59a (Oldham, J., concurring). There is no way to ascertain where ATF draws the line. ATF says that an object "becomes a frame or receiver when it has reached a 'critical stage of manufacture.'" 87 Fed. Reg. at 24,685. But that term, too, is undefined—floating in the ether. Not to worry, ATF assures the public, because a manufacturer crosses the line when an object "may readily be completed, assembled, restored, or otherwise converted" to functionality. *Id.* But ATF's expansion of the definition to cover objects that can "readily" be "converted" into a frame or receiver is likewise hopelessly flawed, involving a test of no fewer than eight factors a court must examine, with no indication that the list is comprehensive. *Id.* at 24,735.

This "I know it when I see it" standard is in the eye of the beholder—and that beholder is ATF. Under ATF's new definition, "anything beyond primordial ooze, liquid polymer, and wholly unformed raw metal" might now be deemed a "firearm" or as a "frame" or "receiver." Pet. App. 59a (Oldham, J., concurring). An FFL risks its license, and with it the ability to do business—if not criminal penalties—if it cannot see the line ATF draws with invisible ink as to when a frame or receiver is "partially complete," but sufficiently far along in the manufacturing process, such that it triggers additional regulatory measures, including serialization and recordkeeping requirements. *See, e.g.*, 27 C.F.R. § 478.92

(serialization requirements for frame or receivers); *see also id.* § 478.123(a) (requiring that manufacturers and importers of a "frame or receiver" create a record within seven days of "manufacture or other acquisition"). That is not a workable standard. Indeed, the result is Orwellian, as ATF is determined to stretch the definition of "frame or receiver" to encompass products that cannot be supported by the statutory text or simple logic, completely subject to the whims of an agency that holds the power to revoke FFL licenses. It is no wonder that such a rule imposes significant costs and other negative consequences on the industry that has the misfortune of being the target of such an anti-lexicon campaign.

B. ATF's unlawful rejection of commonsense definitions imposes immense burdens and costs on business.

ATF has a pattern and practice of these unknowable standards. Like many highly regulated industries, the firearms industry is continually subject to evolving regulations from ATF. This regulatory churning imposes significant costs on the private sector, impacting not only the manufacturers and retailers in each such industry, but also the prices and choices available to consumers. There are substantial costs of various types imposed here because of reliance on the previous regulatory framework. And rejecting basic, longstanding, and self-evident definitions inevitably imposes costs on the firearms industry. ATF acknowledges costs of $14.3 million per year, 87 Fed. Reg. at 24,654, but as explained below, the full burden on the industry and consumers is ultimately greater than that.

1. ATF has a pattern and practice of imposing counter-textual redefinitions of words found in longstanding statutes. Indeed, in *Cargill* the Court recently rejected an ATF rule reinterpreting the word "machinegun" in 26 U.S.C. § 5845(b), holding that the definition cannot extend to firearms with bump stocks. 602 U.S. at 414–15. *Cargill* rejected ATF's argument that statutory terms can be non-legislatively updated to account for newer technologies, reasoning that "it is never [this Court's] job to rewrite statutory text under the banner of speculation about what Congress might have done." *Id.* at 428 (cleaned up).

Likewise, the Eighth Circuit recently rebuffed ATF's latest attempt to impose another of its dictionary-noncompliant definitions when it rejected ATF's pistol brace rule. *See Firearms Regul. Accountability Coal., Inc. v. Garland*, -- F.4th --, 2024 WL 3737366 (8th Cir. Aug. 9, 2024) (*FRAC*). At issue in that case, *id.* at *1 & n.1, is another final rule from ATF—*Factoring Criteria for Firearms with Attached "Stabilizing Braces"*, 88 Fed. Reg. 6,478 (Jan. 31, 2023) (codified at 27 C.F.R. §§ 478, 479). ATF made a similar move—this time "reclassif[ying] pistols equipped with stabilizing braces (braced weapons) as [National Firearms Act]-regulated 'short-barreled rifles'[.]" *FRAC,* 2024 WL 3737366, at *1. Following this Court's lead in *Cargill*, the Eighth Circuit rejected ATF's final rule, holding it was arbitrary and capricious. *Id.* at *11–12.

In this case, the Fifth Circuit rejected the Final Rule on much clearer ground—that it amounts to an assault on the English language. This Court should affirm and once again conclude that ATF cannot defy

the clear statutory text by regulating an industry on a whim, imposing standards that involve reading ATF's collective mind as to where lines are drawn.

ATF's engrafting of "partially complete" into the definition of "frame or receiver" in 18 U.S.C. § 921(a)(3)(B) is not just unsalvageable—it is also costly. So too with "convertible." Firearms and firearm parts are made from costly raw materials and are transformed into completed firearms or completed parts—like a frame or receiver—by skilled craftsmen using precision-engineered heavy machinery. The financial impact of expanding ATF's regulatory reach is thus significant both to the companies in that industry and to the citizens purchasing those products.

2. The Final Rule burdens FFLs on the manufacturing side in a self-evident fashion. They must now serialize frames and receivers at some unknowable point in the manufacturing process *before* that manufacturer has completed the production of that component, as opposed to during the completion of the fabrication process, though of course requiring serialization of a "partially complete" frame or receiver is internally inconsistent with the separate provision in the same Final Rule specifying the timeframe in which a serial number must be added to a frame *after* the manufacturing process has concluded. *See* 27 C.F.R. § 478.92(a)(1)(vi)(A). Yet another new imposition in the Final Rule is that it requires a serial number to be listed multiple times on a firearm in the case of a firearm with a multi-piece frame or receiver. 87 Fed. Reg. at 24,747 (now codified at 27 C.F.R. § 479.102(a)(3)). While clarifying that such a firearm

does not require (indeed, cannot have) multiple serial numbers that differ from one another, a multi-piece frame or receiver would be required to be stamped in more than one place in the same firearm, imposing additional costs in time and resources for each such firearm.

The Final Rule also imposes a burden on FFLs on the retail side, specifically with additional administrative burdens when dealers service PMFs. If a dealer's work on the firearm cannot be completed before close of business on the day the firearm is received at the business, "the firearm must be recorded as an 'acquisition,'" and once the firearm is returned to its customer, it must recorded as a "'disposition.'" 87 Fed. Reg. at 24,730. As a necessary consequence, the PMF must be serialized, either by the dealer or by another. *Id.* at 24,742 (codified at 27 C.F.R. § 478.92(a)(2)); *accord id.* at 24,729–30. While it is permissible for someone other than the dealer to make that marking, if no other person places identifying marks on the firearm, then the dealer is required to shoulder that burden. *See id.* at 24,729–31. This new requirement is another violation of the GCA, as only licensed importers and manufacturers, not dealers, are required to "identify by means of a serial number engraved or cast on the receiver or frame" of a firearm in a manner prescribed by regulation. 18 U.S.C. § 923(i).

Nor is that the only additional recordkeeping burden. FFLs are required to maintain records of firearm transfers, which includes purchases and other activities resulting in firearms being added to, or removed from, the firearms held in inventory. *See* 18

U.S.C. § 923(a), (c). Under the previous regime, FFLs were required to retain those records for 20 years. 87 Fed. Reg. at 24,730. The Final Rule modified the requirement, codified at 27 C.F.R. §§ 478.50(a), 478.129, to now require FFLs to retain those records for as long as the business exists. 87 Fed. Reg. at 24,730, 24,731, 24,746.

These burdens on the firearms industry are unjustified and unlawful under the APA. This Court should accordingly set aside the Final Rule.

III. The Canon of Constitutional Doubt and Rule of Lenity Provide Further Support for Respondents' Interpretation.

Several of this Court's most common interpretive tools confirm that ATF's interpretation of the various statutory provisions in the Final Rule challenged here cannot be reconciled with the statutory text.

A. The canon of constitutional doubt

First, the canon of constitutional doubt counsels against ATF's interpretation of the GCA. It is well-settled that "where an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress." *Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988) (citation omitted); *accord* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 247–51 (2012). Also known as the canon of constitutional avoidance, it requires that "when statutory language is susceptible of multiple

interpretations, a court may shun an interpretation that raises serious constitutional doubts and instead may adopt an alternative that avoids those problems." *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018).

This canon does not require the Court to conclude that a broader interpretation would necessarily be unconstitutional, only that it would raise serious doubts on that score. *United States v. Jin Fuey Moy*, 241 U.S. 394, 401 (1916) (citation omitted). As a result, "[w]here an administrative interpretation of a statute invokes the outer limits of Congress' power," this Court requires "a clear indication that Congress intended that result." *Solid Waste Agency of N. Cook Cnty. v. U.S. Army Corps of Eng'rs*, 531 U.S. 159, 172 (2001). As a prudential matter, this Court assumes "that Congress does not casually authorize administrative agencies to interpret a statute to push the limit of congressional authority." *Id.* at 172–73.

The Court adhered to that jurisprudential balance with regards to agency power even during the era of *Chevron* deference. Now *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), has been overruled by *Loper Bright*, 144 S. Ct. at 2273. For decades, courts struggled to find the optimal balance between *Chevron* deference and clear-statement rules in administrative law cases where both interpretive guides were present as countervailing factors. *See* Abbe R. Gluck & Lisa S. Bressman, *Statutory Interpretation from the Inside—An Empirical Study of Congressional Drafting, Delegation, and the Canons: Part I*, 65 Stan. L. Rev. 901, 938–45, 995–98 (2013). And few agencies took greater advantage of *Chevron* deference than ATF,

prevailing in numerous interpretive battles merely because courts concluded that ATF's interpretation of the GCA and other federal laws met the minimal standard of being "reasonable." *See* Br. for NSSF as *Amicus Curiae* at 6–10, *Loper Bright*, 144 S. Ct. 2244 (No. 22-451).

The constitutional-doubt canon comes to bear here because ATF's interpretation burdens the Second Amendment right to keep and bear arms. The right to keep and bear arms is not only an individual right, *District of Columbia v. Heller*, 554 U.S. 570, 598 (2008), it is also a right that is fundamental under the Constitution. *McDonald v. City of Chicago*, 561 U.S. 742, 778 (2010). Enumerated rights are "[p]remised on mistrust of governmental power," *Citizens United v. FEC*, 558 U.S. 310, 340 (2010), and one of the most common manifestations of that mistrust is when the government seeks to restrict an exercise of that right through regulation.

The Second Amendment is unusual among constitutional rights in that most people are incapable of exercising it without antecedent actions by third parties. Given that the right to keep and bear arms can be exercised only when a citizen is able to obtain functional firearms, and that few Americans have the skill or materials to create personally made firearms (PMFs), regulatory burdens imposed on companies who manufacture or sell firearms erect obstacles to law-abiding American citizens being able to exercise their Second Amendment rights.

Burdens on the right to keep and bear arms must be analogous to those accepted by the American people

in 1791 to be permissible under the Second Amendment. *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 17 (2022). That would extend to frames and receivers, because the "reference to arms does not apply only to those arms in existence in the 18th century." *Id.* at 28 (cleaned up). A firearm is a composite device comprised of various components. A frame is a central component of a modern pistol, and a receiver is similarly essential to modern long guns. If a frame or receiver is not covered by the Second Amendment, then neither are modern pistols, rifles, or shotguns, which would contravene this Court's central holding in *Bruen*.

It is not necessary for this Court to conclude that ATF's interpretation of "frame or receiver" violates the Second Amendment. Instead, this Court need only conclude that the Final Rule would raise a doubt regarding the constitutionality of ATF's interpretation of the GCA. ATF's definition of frames and receivers reaches so deeply into the manufacturing process that it includes intermediate stages of making such components. As explained above, that overreach will have significant impacts on routine industry processes, which requires historical analysis that ATF did not provide in the Final Rule. But Congress did not write 18 U.S.C. § 921(a)(3) in a manner that makes this question unavoidable, so this Court should therefore set aside ATF's novel interpretation.

B. The rule of lenity

A second reason to reject ATF's interpretation of 18 U.S.C. § 921(a)(3)(B) is the rule of lenity. It is simply the well-established principle that ambiguity

regarding the reach of a criminal statute should be resolved against the government's claim of authority. *Liparota v. United States*, 471 U.S. 419, 427 (1985). Lenity is based "on the plain principle that the power of punishment is vested in the legislative" branch of government. *United States v. Wiltberger*, 18 U.S. 76, 95 (1820). That "rule exists in part to protect the Due Process Clause's promise that a fair warning should be given to the world in language that the common world will understand, of what the law intends to do if a certain line is passed." *Bittner v. United States*, 598 U.S. 85, 102 (2023) (cleaned up).

Such criminal penalties obtain here. *See* 18 U.S.C. § 924(a)(1). And even if they did not, "if a law has both criminal and civil applications, the rule of lenity governs its interpretation in both settings." *Whitman v. United States*, 574 U.S. 1003, 1003 (2014) (Scalia, J., respecting denial of cert.); *see Leocal v. Ashcroft*, 543 U.S. 1, 11–12 n.8 (2004); *United States v. Thompson/Ctr. Arms Co.*, 504 U.S. 505, 518 n.10 (1992) (plurality). *Thompson/Ctr. Arms* is especially relevant here, as it involved the interpretation of a term in a federal gun-control statute, the NFA. 504 U.S. at 507–08.

Only a duly enacted statute is a "manifestation of the legislative will," *Arnold v. United States*, 13 U.S. 104, 119 (1815), as the court below noted, Pet. App. 2a n.1. That has particular application regarding the GCA, because "criminal laws are for courts, not for the Government, to construe." *Abramski v. United States*,

573 U.S. 169, 191 (2014); *see also United States v. Apel*, 571 U.S. 359, 369 (2014).[12]

The rule of lenity is "so deeply ingrained" that, when it comes to the GCA, it "must be known to both drafter and reader alike so that [it] can be considered inseparable from the meaning of the text." Scalia & Garner, *Reading Law*, *supra*, at 31. "Due process requires Congress to define penal statutes with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *Sackett v. EPA*, 598 U.S. 651, 680–81 (2023) (cleaned up). In the heavily regulated space of federal gun control laws, such a rule is at its apogee.

CONCLUSION

For the foregoing reasons, as well as those set forth by Respondents, the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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[12] *Abramski* is also especially significant, since it concerned a federal gun-control statute. *Abramski*, 573 U.S. at 172.

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