No. 24-5700

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IN THE SUPREME COURT OF THE UNITED STATES

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ANDERSEN RABEL, PETITIONER

v.

UNITED STATES OF AMERICA

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

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# BRIEF FOR THE UNITED STATES IN OPPOSITION

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SARAH M. HARRIS
Acting Solicitor General
Counsel of Record

KEVIN O. DRISCOLL
Deputy Assistant Attorney General

KATHERINE TWOMEY ALLEN
Attorney

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

## QUESTIONS PRESENTED

1. Whether the court of appeals correctly rejected petitioner's challenges to the sufficiency of the evidence supporting his conviction for knowingly possessing an unregistered firearm silencer, in violation of 26 U.S.C. 5861(d).

2. Whether the court of appeals correctly found that the district court did not abuse its discretion in excluding certain evidence proffered by petitioner regarding asserted federal agency practice and in admitting evidence from petitioner's cell phone to show knowledge that the kits he sold were firearm silencers.

ADDITIONAL RELATED PROCEEDINGS

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

United States v. Rabel, No. 22-cr-20058 (Nov. 16, 2022)

United States Court of Appeals (11th Cir.):

United States v. Rabel, No. 22-13854 (July 11, 2024)

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## OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-18a) is not published in the Federal Reporter but is available at 2024 WL 3373705.

## JURISDICTION

The judgment of the court of appeals was entered on July 11, 2024. The petition for a writ of certiorari was filed on September 25, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Southern District of Florida, petitioner was convicted of one count of knowingly possessing an unregistered firearm, in violation of 26 U.S.C. 5861(d). Judgment 1. The court sentenced petitioner to eight months of imprisonment, to be followed by three years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. 1a-18a.[1]

1. Petitioner worked at Miami Gun Shops, a federal firearms licensee in Florida. Pet. App. 2a. Petitioner was designated as a "responsible person" at the store, which meant that he could direct the business as it relates to firearms at the store. Ibid. As a licensed dealer, Miami Gun Shops could manufacture and sell firearms, including silencers, so long as it complied with federal law. Ibid.

The National Firearms Act, 26 U.S.C. 5801 et seq., prohibits the possession of certain defined types of firearms unless the device is properly registered to the possessor in the National Firearms Registration and Transfer Record and is serialized. 26 U.S.C. 5861(d) and (i). The term "firearm" includes "any silencer (as defined in [18 U.S.C. 921])." 26 U.S.C. 5845(a)(7). Section 921, in turn, defines a "firearm silencer" as "any device for

[1] The appendix to the petition for a writ of certiorari is not sequentially paginated. This brief treats it as if it were and designates the first page of the court of appeals' opinion as "1a."

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 * * * and any part intended only for use in such assembly or fabrication." 18 U.S.C. 921(a)(25).[2]

On January 21, 2022, an undercover agent working for the Miami-Dade Police Department visited Miami Gun Shops and asked petitioner for the store's owner, Manuel Reguiera. Pet. App. 2a. Petitioner told the agent that Reguiera was not there, called Reguiera, and gave the phone to the agent. Ibid. In petitioner's presence, the agent asked Reguiera if he could purchase "soda cans," which is a slang term for silencers. Ibid. Petitioner then spoke with Reguiera and brought the agent to the back of the store. Ibid.

In the back room, petitioner showed the agent four packaged kits labeled "9.5mm Monocore w[ith] Booster." Pet. App. 2a-3a (brackets in original). The agent asked to buy the kits, which petitioner told him would cost "five hundred apiece." Gov't C.A. Br. 5 (citation omitted). The kits contained a hollow metal tube that had an open hole on one end and a closed cap on the other end. Pet. App. 3a. The tubes contained monocore "baffling material" that separated the inside of each tube into multiple

[2] At the time of petitioner's offense, the relevant definition was found at 18 U.S.C. 921(a)(24) (2018). On June 25, 2022, the definition was redesignated as Section 921(a)(25), without any other change. See Bipartisan Safer Communities Act, Pub. L. No. 117-159, Div. A, Tit. II, § 12002(2), 136 Stat. 1325.

small chambers. Ibid. The open end of the metal tube was attached to a "Nielsen device" or "recoil booster," which is an apparatus that assists with recoil when a firearm equipped with a silencer is discharged. Gov't C.A. Br. 5-6. The kits also contained a replacement end cap with a hole drilled through it that could replace the closed cap that was attached to the tube, as well as an Allen wrench that the buyer could use to switch the end caps. Pet. App. 3a. Before making the purchase, the agent asked petitioner if all four kits came with the replacement end cap, and petitioner confirmed that they did. Ibid.

Petitioner and the agent completed the sale, but petitioner did not perform a background check on the agent or record the sale. Pet. App. 3a. The kits that petitioner sold did not have serial numbers on them and were not registered in the National Firearms Registration and Transfer Record. Ibid.

2. A grand jury indicted petitioner, Reguiera, and Miami Gun Shops on charges related to the unlawful possession and sale of firearms. Pet. App. 3a. Based on his possession and sale of the kits, petitioner was charged with one count of knowingly possessing an unregistered silencer, in violation of 26 U.S.C. 5861(d); one count of transferring an unregistered silencer, in violation of 26 U.S.C. 5861(e); and one count of failure by a federally licensed dealer to keep proper records, in violation of 18 U.S.C. 922(b)(5). Pet. App. 3a-4a; Indictment 10-12.

After a five-day trial, the jury found petitioner guilty of knowingly possessing an unregistered silencer, but acquitted him of the other two charges. Pet. App. 8a; Gov't C.A. Br. 3. The district court sentenced petitioner to eight months of imprisonment, to be followed by three years of supervised release. Judgment 2-3.

3. The court of appeals affirmed in an unpublished per curiam decision. Pet. App. 1a-18a.

a. First, the court of appeals determined that the district court did not abuse its discretion in excluding evidence that the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) had purportedly changed its policy on the legality of "solvent traps" and silencer-conversion kits. Pet. App. 9a.[3]

The court of appeals observed that to prove a violation of Section 5861(d), the government must show that (1) the defendant "possessed a 'firearm' within the meaning of 26 U.S.C. [section] 5845(a) of the National Firearms Act; (2) he knew the features of the firearm that brought it within the scope of the Act; and (3) the firearm was not registered to the defendant." Pet. App. 10a (citation and internal quotation marks omitted; brackets in original). The court explained that, conversely, the government "need not prove that the defendant knew the weapon was unregistered," "that the defendant knew his possession of the

[3] A solvent trap is a device that can be attached to the muzzle of a firearm that is designed to collect cleaning solvent while cleaning the firearm. See Gov't C.A. Br. 10.

weapon was unlawful," or "that he knew what features define a 'firearm' under 26 U.S.C. [section] 5845(a)." Ibid. (citation omitted; brackets in original). And the court of appeals agreed with the district court that even if ATF had in fact changed its policy regarding solvent traps and silencer-conversion kits -- an issue the court did not decide -- evidence of such a change would be irrelevant to whether petitioner had the requisite mens rea with respect to the kits he sold. Id. at 10a-11a.

b. Second, the court of appeals determined that the district court did not abuse its discretion in admitting text messages and a video that were extracted from petitioner's cell phone. Pet. App. 11a. The video, which was sent to petitioner by text message, showed an unidentified person firing a gun with a silencer attached. Id. at 4a. Petitioner had responded via text: "Lmao!!!! Love it!!! that solvent trap is real quiet too!!!" C.A. Supp. App. 198; see Pet. App. 4a. The court of appeals noted that under Federal Rule of Evidence 404(b), "[e]vidence of any other crime, wrong, or act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character," but it can be used "for another purpose, such as * * * knowledge." Pet. App. 11a-12a (citations omitted; brackets in original).

The court of appeals observed that here, the video and petitioner's response were "clearly relevant to whether [petitioner] knew the kits [he sold] were silencers." Pet. App.

12a. The court explained that because petitioner had argued at trial that he believed the kits were merely solvent traps used for cleaning a firearm (see n.3, supra), petitioner's reference to the apparent silencer in the video as a "solvent trap" was "directly relevant to whether [petitioner's purported] belief was sincere." Pet. App. 13a. The court further noted that petitioner appeared to concede that the evidence was "relevant." Ibid.; see Pet. C.A. Reply Br. 10. And the court of appeals agreed with the district court that, viewing the evidence in the light most favorable to its admission, its probative value was not substantially outweighed by any prejudicial effect of the video's depiction of someone discharging a firearm. Pet. App. 13a.

c. Third, the court of appeals found no error in the district court's denial of petitioner's motion for judgment of acquittal. Pet. App. 13a-18a. The court of appeals reiterated that the government only needed to prove that petitioner "'knew the features of the firearm that brought it within the scope of the Act,'" not that petitioner knew "what defines a firearm under the statute." Id. at 14a (citation omitted). And it agreed with the district court that sufficient evidence supported the jury's finding that the specific kits petitioner sold "were a 'combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer' to 'silenc[e], muffl[e], or diminish[] the report of a portable firearm.'" Ibid. (quoting 18 U.S.C. 921(a)(25)) (brackets in original).

The court of appeals observed that the government had presented evidence that the baffling material in the tube and the Nielsen device served only to muffle the sound of a firearm discharge and to enable a firearm to operate normally with a silencer attached. Pet. App. 14a-15a. The court also highlighted trial evidence showing that once the end caps in the kits were swapped (see p. 4, supra), the device would reduce the sound of a firearm by approximately 14 decibels, and emphasized that petitioner's own expert had testified that once the end caps were swapped the kit operated as a silencer. Pet. App. 15a.

The court of appeals further found that the government had presented "extensive evidence" that petitioner knew the kits were silencers. Pet. App. 15a. The court observed that the evidence showed that petitioner had sold the kits after the agent asked to buy "soda cans," which is a slang term for silencers; that petitioner knew the contents of the kits, including that their packaging stated that they contained a "[m]onocore w[ith] booster"; that petitioner had assured the agent that the kits contained the swappable end caps, further demonstrating that petitioner knew the kits enabled the buyer to make a functioning silencer; and finally that petitioner had referred to the apparent silencer in the text-message video as a "solvent trap," undermining his argument that he believed the kits contained mere cleaning supplies. Id. at 15a-16a (brackets in original).

d. Fourth, the court of appeals rejected petitioner's argument that the kits did not constitute silencers when he sold them because the end caps had not yet been swapped. Pet. App. 16a. The court pointed to the text of the National Firearms Act, which defines a silencer to include "'any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer' -- and not just the assembled product." Ibid. (quoting 18 U.S.C. 921(a)(25)).

e. Finally, the court of appeals rejected petitioner's argument that he should have been acquitted because Miami Gun Shops has a license to manufacture and distribute firearms and petitioner was a designated responsible person at the store. Pet. App. 16a-18a. The court explained that an unregistered silencer cannot be legally possessed even by a manufacturer. Id. at 17a. And it further explained that petitioner's argument relied on his previous assertion that the kits were not themselves firearms because they had not yet been assembled into silencers, which failed for the reasons the court already stated. Ibid.

ARGUMENT

Petitioner renews his contention (Pet. 12-23) that he was entitled to acquittal as a matter of law, either on the theory that the mens rea evidence was insufficient or on the theory that he could not commit the offense because was working for a licensed firearms dealer. The court of appeals correctly rejected those theories, and its nonprecedential decision does not conflict with

any decision of this Court or of any other court of appeals. This Court has previously denied petitions for writs of certiorari raising similar issues, and the same result is warranted here.[4]

Petitioner also renews his contention that the district court abused its discretion in its evidentiary rulings, by excluding evidence that ATF allegedly changed its position regarding solvent traps and by admitting the text-message exchange in which petitioner referred to a silencer as a "solvent trap" and the related video. The court of appeals correctly found that the district court did not abuse its discretion in those evidentiary rulings; the lower courts' fact-bound determinations do not warrant this Court's review; and any error would have been harmless. No further review is warranted.

1. The court of appeals correctly affirmed the denial of petitioner's motion for judgment of acquittal.

a. The government presented sufficient evidence of petitioner's mens rea. Petitioner was convicted of "possess[ing] a firearm which is not registered to him in the National Firearms Registration and Transfer Record," 26 U.S.C. 5861(d), specifically, a "firearm silencer" under 18 U.S.C. 921(a)(25). The term "firearm silencer," in turn, means "any device for silencing, muffling, or diminishing the report of a portable

[4] See Schieferle v. United States, 2024 WL 5011713 (Dec. 9, 2024) (No. 24-120); Andujo v. United States, 143 S. Ct. 443 (2022) (No. 21-8103); Owens v. United States, 522 U.S. 806 (1997) (No. 96-1559); Woodbridge v. United States, 516 U.S. 871 (1995) (No. 95-317).

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." 18 U.S.C. 921(a)(25); see 26 U.S.C. 5845(a)(7).

The government was thus required to prove that petitioner knowingly possessed a "firearm silencer"; that the device was not properly registered to him; and that he knew the characteristics of the device that rendered it subject to registration. 26 U.S.C. 5845(a)(7) and 5861(d); see Staples v. United States, 511 U.S. 600, 602 (1994) (discussing the analogous knowledge requirement for machineguns); pp. 13-16, infra. And as the court of appeals recognized (Pet. App. 15a-16a), the government presented "extensive evidence" that petitioner knew the kits had the features that made them silencers -- i.e., that they consisted of a "combination of parts" "intended for use in assembling" a "device for silencing, muffling, or diminishing the report of a portable firearm," 18 U.S.C. 921(a)(25).

First, the government presented evidence that petitioner knew that each kit contained a replacement end cap with a hole drilled in it that, when swapped with the end cap on the tube in the kit, enabled the buyer to make a fully functioning silencer. Pet. App. 15a. Indeed, when the undercover agent was making the purchase, he asked petitioner whether all of the kits came with the drilled

end caps, and petitioner confirmed that they did. Gov't C.A. Br. 15; see Pet. App. 3a, 15a.

Second, the government presented evidence that the packaging for the kits stated that they contained a "9.5mm Monocore w[ith] booster." Pet. App. 2a-3a (brackets in original); see id. at 15a. The government presented testimony that a "booster" is a "very common device" known among gun owners that serves the sole purpose of "allowing a firearm to shoot properly" by "counteracting the weight that a firearm silencer puts on the barrel of a firearm." D. Ct. Doc. 161, at 97, 105 (Mar. 23, 2023). And the government presented testimony that "Monocore baffles" are "some of the most common types of baffles" and that they serve the sole purpose of "silencing sound." Id. at 90-91.

Third, the government presented evidence that petitioner sold the kits after the agent asked to buy "soda cans," which is a slang term for silencers, and that one of petitioner's coworkers had referred to a silencer as a "can" in a text-message conversation with petitioner. Pet. App. 15a; see D. Ct. Doc. 161, at 68-69. And fourth, the government presented evidence that petitioner had previously referred to an apparent silencer in a video as a "solvent trap," calling it "real quiet." Pet. App. 4a; see id. at 15a-16a; see also p. 6, supra. That evidence, in combination with the other evidence presented at trial, amply proved petitioner's mens rea.

Nor, in any event, would review be warranted to address petitioner's fact-bound disagreement with the lower courts' sufficiency determination. This Court does not ordinarily grant certiorari "to review evidence and discuss specific facts." United States v. Johnston, 268 U.S. 220, 227 (1925); see Kyles v. Whitley, 514 U.S. 419, 456-457 (1995) (Scalia, J., dissenting) ("[U]nder what we have called the 'two-court rule,' the policy [in Johnston] has been applied with particular rigor when district court and court of appeals are in agreement as to what conclusion the record requires.") (citing Graver Tank & Mfg. Co. v. Linde Air Prods. Co., 336 U.S. 271, 275 (1949)). Petitioner does not identify any sound basis for departing from that practice here.

b. Petitioner asserts (Pet. 13) that the government was additionally required to prove his knowledge of the law -- namely, that he knew that the kits fit within the legal definition of "firearm" under the National Firearm Act. He acknowledges that under this Court's decision in Staples v. United States, 511 U.S. 600 (1994), "the government must prove that [he] knew of the features of the solvent trap that would make it a silencer under the [statute]." Pet. 16; see Pet. 11-12 (agreeing with the Eleventh Circuit's similar observation in United States v. Ruiz, 253 F.3d 634, 638 n.4 (2001) (per curiam)); see also Pet. App. 10a (relying on Ruiz). But petitioner apparently construes that requirement to include proof not only that he knew the functional aspects of the kits, but also that he "kn[ew] that the solvent

cans are firearms as defined by the [National Firearms Act]" and "sought to evade the registration requirements of the [Act]." Pet. 13. His view of the mens rea requirement is wrong and has been uniformly rejected by courts.

In Staples, this Court held that even though 26 U.S.C. 5861(d) is silent as to mens rea, "the usual presumption that a defendant must know the facts that make his conduct illegal should apply." 511 U.S. at 605, 619 (emphasis added). Applying that principle, the Court concluded that Section 5861(d) requires proof that the defendant knew the factual "characteristics" of the firearm -- there, a machinegun -- "that brought it within the statutory definition of a machinegun." Id. at 602; see id. at 619 (requiring knowledge "of the features of his AR-15 that brought it within the scope of the Act").

Staples' conclusion that Section 5861(d) requires proof of the defendant's knowledge of the relevant facts provides no support for petitioner's contention that the statute also requires proof of the defendant's knowledge of the law. Indeed, as Justice Ginsburg emphasized in her concurrence in Staples, the "mens rea presumption requires knowledge only of the facts that make the defendant's conduct illegal, lest it conflict with the related presumption, 'deeply rooted in the American legal system,' that, ordinarily, 'ignorance of the law or a mistake of law is no defense to criminal prosecution.'" 511 U.S. at 622 n.3 (Ginsburg, J.,

concurring in the judgment) (quoting Cheek v. United States, 498 U.S. 192, 199 (1991)).

The Court later confirmed Justice Ginsburg's view in Bryan v. United States, 524 U.S. 184 (1998), where the Court identified Staples as an exemplar of the general rule that knowledge of illegality is not required. See id. at 193. Bryan quoted the holding of Staples "that a charge that the defendant's possession of an unregistered machinegun was unlawful required proof 'that he knew the weapon he possessed had the characteristics that brought it within the statutory definition of a machinegun.'" Ibid. (quoting Staples, 511 U.S. at 602). And the Court emphasized that "[i]t was not, however, necessary to prove that the defendant knew that his possession was unlawful." Ibid. (citing Rogers v. United States, 522 U.S. 252, 254-255 (1998) (plurality opinion)); see Rogers, 522 U.S. at 259 n.7 (approving of instruction that "required the jury to find that the defendant knew that he possessed a device having all the characteristics of a silencer").

The courts of appeals have likewise consistently recognized that while Section 5861(d) requires proof that the defendant knew the relevant features of the device that subjected it to the Act, the statute does not require proof of knowledge of the law. See, e.g., United States v. Kay, 513 F.3d 432, 448 & n.58 (5th Cir. 2007); United States v. Jamison, 635 F.3d 962, 968-969 (7th Cir. 2011); United States v. Otto, 64 F.3d 367, 369-370 (8th Cir. 1995), cert. denied, 516 U.S. 1133 (1996); United States v. Summers, 268

F.3d 683, 688 (9th Cir. 2001), cert. denied, 534 U.S. 1166 (2002); United States v. Gonzales, 535 F.3d 1174, 1178 (10th Cir.), cert. denied, 555 U.S. 1077 (2008); United States v. Owens, 103 F.3d 953, 955-956 (11th Cir.), cert. denied, 522 U.S. 806 (1997). Petitioner points to no contrary authority. This Court's review is not warranted.

c. Petitioner's contention (Pet. 21-23) that the district court erred in denying his motion for judgment of acquittal on the basis that he was working for a licensed firearms dealer also lacks merit and does not warrant further review. Petitioner argues that because Miami Gun Shops has a license that permits it to purchase, manufacture, and distribute firearms, and because petitioner was designated by the store as a "responsible person" under federal law, he can possess weapons that are being built and tested. Petitioner further argues that he can order solvent traps and transform them into firearms, so long as he registers them when he intends to do so. As a result, he contends, he and the Miami Gun Shop "are incapable of illegally possessing the solvent traps." Pet. 23.

The court of appeals correctly rejected that mistaken theory. Pet. App. 16a-17a. As the court explained, manufacturers cannot lawfully possess unregistered silencers, and the kits themselves -- i.e., before any transformation -- constituted silencers. Id. at 17a. As noted above, the statute defines "firearm silencer" to include "any combination of parts, designed or redesigned, and

intended for use in assembling or fabricating a firearm silencer," 18 U.S.C. 921(a)(25), not just the assembled product. See pp. 10-11, supra. Petitioner does not address the court of appeals' reasoning or identify a conflict with any decision from this Court or another court of appeals. And in any event, petitioner forfeited this argument by failing to raise it in the district court, so it would be subject to plain-error review only. See Fed. R. Crim. P. 52(b); Gov't C.A. Br. 20. No further review is warranted.

2. Petitioner's challenges to the district court's evidentiary rulings also do not warrant this Court's review.

a. Petitioner asserts (Pet. 7-12) that the district court erred in excluding evidence that ATF allegedly changed its position and did not regard solvent traps as silencers prior to February 2022. This Court recently denied review of a petition for a writ of certiorari that similarly challenged a firearm conviction based in part on a claim that ATF had changed its policy regarding solvent traps. See Schieferle v. United States, 2024 WL 5011713 (Dec. 9, 2024) (No. 24-120); see also U.S. Br. in Opp. at 12 in Schieferle, supra, No. 24-120 (arguing that the contention was mistaken). The Court should likewise decline to review petitioner's claim here.

Petitioner's claim of evidentiary error relies (Pet. 10) on the premise that the excluded ATF documents and expert testimony are relevant to his knowledge of the legality of the unregistered

kits. But as explained above (see pp. 13-16, supra), that premise is wrong; Section 5861(d) does not require proof that petitioner knew that his possession of the kits was unlawful. And the court of appeals correctly observed that petitioner's evidence relating to the alleged policy change was irrelevant under the applicable mens rea standard. Pet. App. 10a-11a.

Moreover, even if the district court erred in excluding petitioner's evidence regarding supposed ATF policy, any error was harmless. Although the district court excluded certain proffered documents and testimony on the asserted change in policy, petitioner was able to introduce other evidence relating to his theory, including a 2017 ATF bulletin regarding solvent traps and a website extracted from his cell phone stating that a buyer can legally purchase solvent traps without filling out an ATF Form 1, but cannot "alter, modify, or redesign" them into silencers without a Form 1 approval. See Gov't C.A. Br. 25-26; D. Ct. Doc. 161, at 116; C.A. Supp. App. 212, 214. Petitioner relied on that evidence in closing to argue that he believed it was legal to sell the unregistered kits. See Gov't C.A. Br. 26. Given the strength of the government's evidence, see pp. 11-12, supra, the district court's exclusion of petitioner's additional ATF evidence did not influence the jury's verdict. See Kotteakos v. United States, 328 U.S. 750, 764-765 (1946).

b. Finally, petitioner's highly fact-bound contention (Pet. 23-28) that the district court erred under Federal Rules of

Evidence 404(b) and 403 in admitting the text-message exchange in which he referred to a silencer as a "solvent trap" and the related video does not warrant this Court's review.

Federal Rule of Evidence 404(b) bars the admission of "[e]vidence of any other crime, wrong, or act * * * to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." Fed. R. Evid. 404(b)(1). But the Rule also makes clear that "[t]his evidence may be admissible for another purpose," including "knowledge, * * * absence of mistake, or lack of accident." Fed. R. Evid. 404(b)(2).

In the decision below, the court of appeals stated that evidence is admissible under Rule 404(b) when (1) it is "relevant to an issue other than the defendant's character"; (2) there is "sufficient proof so that a jury could find that the defendant committed the extrinsic act"; and (3) the evidence's "probative value" is not "substantially outweighed by its undue prejudice," as required by Rule 403. Pet. App. 12a (citations and internal quotation marks omitted). Petitioner does not disagree with that framework, see Pet. 26, and the court of appeals correctly recognized that the district court did not abuse its discretion in applying the framework to the text message and video here.

First, petitioner's reference to the apparent silencer in the video as a "solvent trap" was relevant to rebut his defense that he did not believe the kits were silencers. Pet. App. 13a. Indeed,

as the court of appeals observed, petitioner appeared to concede that the evidence was relevant. Ibid.; see Pet. C.A. Reply Br. 10. Second, petitioner does not dispute that he sent the text message. See Pet. App. 13a. Third, the district court permissibly exercised its discretion in determining that the probative value of the evidence was not substantially outweighed by any prejudicial effect. Ibid.

Petitioner asserts (Pet. 27) that the jury could have been misled into believing that one can "simply put a solvent trap on the end of a rifle and it will be a silencer." But the government did not argue that attaching any solvent trap to a firearm would create a silencer; instead, the prosecution focused on the specific features of the kits that petitioner sold. See pp. 7-8, 11-12, supra. Petitioner also asserts (Pet. 27) that the person in the video may have lawfully modified a solvent trap to become a silencer. But the government did not argue to the jury that the person in the video was committing a crime; instead, the video simply showed petitioner's knowledge about the form and function of silencers. See Gov't C.A. Br. 34-35. Finally, petitioner asserts (Pet. 28) that "[s]howing a man shooting a high-powered weapon with a silencer into the earth only inflamed the passions of the jury against" petitioner. But shooting a gun into the ground is not a particularly heinous or violent act. And as the court below recognized, the jury acquitted petitioner of more

counts than it found him guilty of, undermining the argument that the jury was inflamed. Pet. App. 13a.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

SARAH M. HARRIS
Acting Solicitor General

KEVIN O. DRISCOLL
Deputy Assistant Attorney General

KATHERINE TWOMEY ALLEN
Attorney

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