

No. 24-6669

IN THE SUPREME COURT OF THE UNITED STATES

GREGORY STUMP, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether 26 U.S.C. 5861(h), a federal statute that prohibits receiving or possessing a firearm with an obliterated serial number, violates the Second Amendment on its face.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A2) is available at 2024 WL 4850762.

JURISDICTION

The judgment of the court of appeals was entered on November 21, 2024. The petition for a writ of certiorari was filed on February 19, 2025. 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 Northern District of West Virginia, petitioner was

convicted of possessing a firearm with an obliterated serial number, in violation of 26 U.S.C. 5861(h). Pet. App. C1. He was sentenced to 27 months of imprisonment, to be followed by three years of supervised release. Id. at C2-C3. The court of appeals affirmed. Id. at A1-A2.

1. One morning in April 2020, petitioner exchanged gunfire with another person in a residential area in Morgantown, West Virginia. See Gov't C.A. Br. 2, 4. The police later stopped a car driven by petitioner. See id. at 2-3. After a pat-down search, the police found a crack pipe, cocaine, and pharmaceutical pills on petitioner's person. See id. at 4. After obtaining a warrant, the police also searched petitioner's car and found a firearm with an obliterated serial number. See id. at 4-5.

2. A federal grand jury indicted petitioner for possessing a firearm as an unlawful user of a controlled substance, in violation of 18 U.S.C. 922(g)(3), and possessing a firearm with an obliterated serial number, in violation of 26 U.S.C. 5842, 5861(h), and 5871. See Indictment 1-2. A jury found petitioner guilty on the latter count but acquitted him on the former count. See Pet. App. C1. The district court sentenced petitioner to 27 months of imprisonment, to be followed by three years of supervised release. See id. at C2-C3.

3. The Fourth Circuit affirmed. Pet. App. A1-A2. The court rejected petitioner's contention, raised for the first time on

appeal, that Section 5861(h)'s ban on possessing firearms with obliterated serial numbers violates the Second Amendment on its face. See id. at A2. The court explained that petitioner's claim was foreclosed by United States v. Price, 111 F.4th 392 (2024), cert. denied, 2025 WL 951173 (2025), in which the en banc Fourth Circuit had rejected a facial challenge to 18 U.S.C. 922(k), an overlapping federal statute that likewise forbids possessing firearms with obliterated serial numbers. Pet. App. A2.

ARGUMENT

Petitioner renews (Pet. 15-20) his contention that Section 5861(h) violates the Second Amendment on its face. As a threshold matter, petitioner's failure to preserve his claim in the district court provides a sufficient reason to deny review. In any event, the court of appeals correctly rejected petitioner's contention, and its decision does not conflict with any decision of this Court or of any other court of appeals. Earlier this Term, the Court denied a petition for a writ of certiorari presenting a similar question. See Price v. United States, 2025 WL 951173 (Mar. 31, 2025) (No. 24-5937). The Court should do likewise here.

1. As petitioner conceded below, he "did not raise" his Second Amendment claim "in the district court," making that claim reviewable only "for plain error." Pet. C.A. Br. 6; see Pet. 13 (invoking the "plain error standard"). Petitioner's forfeiture of his Second Amendment claim by itself justifies denying the petition

for a writ of certiorari. This Court has consistently denied petitions for writs of certiorari raising unpreserved Second Amendment challenges. See, e.g., Trammell v. United States, 145 S. Ct. 561 (2024) (No. 24-5723); Chavez v. United States, 145 S. Ct. 459 (2024) (No. 24-5639); Dorsey v. United States, 145 S. Ct. 457 (2024) (No. 24-5623). The Court should follow the same course here.

2. Even putting aside the forfeiture, petitioner's claim does not warrant further review. Just last month in Price, this Court denied a petition for a writ of certiorari presenting a facial challenge to 18 U.S.C. 922(k), a statute that prohibits transporting, shipping, receiving, or possessing a "firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered." Ibid. Section 5861(h), a provision of the National Firearms Act, 26 U.S.C. 5801 et seq., similarly prohibits receiving or possessing "a firearm having the serial number * * * obliterated, removed, changed, or altered." 26 U.S.C. 5861(h). Section 5861(h) applies to a narrower set of weapons than does Section 922(k), but that distinction just makes Section 5861(h)'s constitutionality even easier to defend. See 26 U.S.C. 5845(a) (defining "firearm" for purposes of the National Firearms Act).

As the government explained in its brief in opposition in Price -- a copy of which is being served on petitioner -- a ban on

receiving or possessing a firearm with an obliterated serial number does not violate the Second Amendment on its face. See Br. in Opp. at 7-8, Price, supra (No. 24-5937) (Price Br. in Opp.). A facial challenge to a federal statute cannot succeed if the statute complies with the Constitution in even “some of its applications.” United States v. Rahimi, 602 U.S. 680, 693 (2024). Section 5861(h) has at least some valid applications. For instance, the government may apply it to persons who are outside the scope of “the people” protected by the Second Amendment and who accordingly have no constitutional right to keep and bear arms. U.S. Const. Amend. II. Because the Amendment protects a right to possess arms for “traditionally lawful purposes, such as self-defense within the home,” District of Columbia v. Heller, 554 U.S. 570, 577 (2008), the government also may apply the statute to persons who obliterate serial numbers on firearms to evade detection for the crimes they commit with those firearms. The government likewise may apply the statute to persons who receive or possess firearms with obliterated serial numbers as part of unlawful domestic or international firearms trafficking. That ends the facial challenge.

Even apart from the standard for facial invalidation, petitioner’s challenge to Section 5861(h) lacks merit. The Second Amendment permits firearms regulations that are “consistent with the principles that underpin our regulatory tradition.” Rahimi, 602 U.S. at 692. As the government explained in Price, American

legislatures have long imposed “conditions and qualifications” on the manufacture and sale of arms, Heller, 554 U.S. at 627, including by requiring the placement of marks or numbers on firearms and ammunition, see Price Br. in Opp. 9 (citing statutes). Further, the primary reason to obliterate a serial number is to avoid being connected with a firearm that was stolen or involved in a crime. See id. at 11. That is why 41 States and the District of Columbia prohibit obliterating firearm serial numbers or possessing firearms with obliterated serial numbers. See ibid.

No court of appeals has held that Section 5861(h) or Section 922(k) violates the Second Amendment. Since Bruen, two courts of appeals have rejected unpreserved challenges to Section 922(k) on plain-error review. See United States v. Lopez, No. 22-13036, 2024 WL 2032792, at *2-*3 (11th Cir. May 7, 2024) (per curiam); United States v. Ramadan, No. 22-1243, 2023 WL 6634293, at *2-*3 (6th Cir. Oct. 12, 2023). And every district court to consider the issue, except for the district court in Price, has concluded that Section 922(k) complies with the Second Amendment. See Price, 111 F.4th at 403 n.5 (collecting cases).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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