No. ____

IN THE

Supreme Court of the United States

PATRICK TATE ADAMIAK,

Applicant,

v.

UNITED STATES,

Respondent.

APPLICATION TO THE HON. JOHN ROBERTS FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Pursuant to Supreme Court Rule 13(5), Patrick Tate Adamiak ("Applicant") hereby moves for an extension of time of 30 days, to and including March 12, 2026, for the filing of a petition for a writ of certiorari. Unless an extension is granted, the deadline for filing the petition for certiorari will be February 10, 2026.

In support of this request, Applicant states as follows:

1. The United States Court of Appeals for the Fourth Circuit rendered its decision on October 14, 2025. (Exhibit 1). Applicant petitioned for *en banc* rehearing on October 28, 2025. The United States Court of Appeals for the Fourth Circuit denied Applicant's motion for rehearing *en banc* on November 12, 2025. *Id.* This Court has jurisdiction under 28 U.S.C. § 1254(1).

2. At issue in this case is the government, for the first time, interpreting the National Firearms Act to apply to a series of inert articles that the Bureau of

Alcohol, Tobacco, Firearms, and Explosives ("ATF") has, for decades, permitted the unrestricted commercial sale, resulting in Applicant's 20-year sentence, which the Fourth Circuit affirmed *per curiam*.

3. Applicant was charged with with the knowing "recei[pt] and possess[ion of] a firearm, namely a PPSH machinegun, which was not registered" to him in "violation of 26 U.S.C. §§ 5841, 5845, 5861 (d) and 5871." §5845 contains no less than seven independent definitions of "machinegun," each with divergent essential elements, none of which contemplate the inoperable, destroyed relics Applicant possessed. Each of the charges in the indictment were this conclusory. Applicant moved to dismiss the indictment as it failed to state the elements "without any uncertainty or ambiguity" *United States v. Carll*, 105 U.S. 611 (1881), and the district court denied the motion. Applicant further moved to dismiss the indictment on Second Amendment grounds, asserting that *if* the Act *did* cover destroyed, non-functional relics as charged, that the Government must prove the attachment of felony consequences to the simple possession of such articles consistent with longstanding precedent.

4. Applicant anticipates filing a petition that demonstrates the error in the Fourth Circuit's affirmance of the District Court. First, the Fourth Circuit overlooked or misapprehended the undisputed record evidence that all items underlying Appellant's convictions were non-functional relics requiring material alteration and fabrication, not mere assembly, to become NFA-subject weapons. This renders the evidence legally insufficient under 26 U.S.C. § 5845(b) and (f) as interpreted by

United States v. Thompson/Center Arms Co., 504 U.S. 505 (1992), *Cargill v. Garland*, 602 U.S. 240 (2024), and *Staples v. United States*, 511 U.S. 600 (1994). Second, the Fourth Circuit misapprehended and failed to address Appellant's preserved Second Amendment challenge treating the challenged conduct as categorically valid without conducting an "as applied" inquiry under *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022). See *United States v. Hemani,* No. 24-1234, 2025 WL 2949569 (Oct. 20, 2025). Third, the Fourth Circuit panel labored under the erroneous premise that a bill of particulars would have cured the notice issues in the indictment, contrary to the "settled rule that a bill of particulars cannot save an invalid indictment." *Russell v. United States,* 369 U.S. 749 (1962).

5. Applicant's counsel, Mark Pennak and Matthew Larosiere, require additional time to prepare a petition that fully addresses the important issues raised by the decision below in a manner that will be most helpful to the Court.

6. Mr. Pennak only recently became involved in this action, and needs additional time to review the record and ensure the petition fully addresses the issues on appeal.

7. Mr. Larosiere's primary office computer failed in early December, removing access to the materials he had been preparing for several weeks. Additionally, Mr. Larosiere is a Type 1 diabetic and fell ill in early January, with a prolonged fever substantially impairing his ability to prepare the petition. Finally, Mr. Larosiere has trial court obligations in Central Florida on February 6, which has

further frustrated his ability to timely prepare a petition with the quality the issues on appeal demand.

WHEREFORE, for the foregoing reasons, Applicant respectfully requests that an extension of time to and including March 12, 2026, be granted within which Applicant may file a petition for writ of certiorari.

Respectfully submitted,

/s/ Mark W. Pennak
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DATED: January 31, 2026.

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CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on this 31st day of January 2026, three copies of the attached Application were served via overnight Federal Express on the Honorable John Roberts. Three copies of the Application were also served via overnight Federal Express and one a copy was served via email on counsel for Respondent:

D. John Sauer
Solicitor General
United States Department of Justice
950 Pennsylvania Ave., N.W.
Washington, DC 20530
202-514-2217
supremecourtbriefs@usdoj.gov

I declare under penalty of perjury that the foregoing is true and correct.

DATED: January 31, 2026

/s/ Mark W. Pennak
Mark W. Pennak
Counsel for Applicant

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-4451

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PATRICK TATE ADAMIAK,

Defendant - Appellant.

FIREARMS POLICY COALITION; FPC ACTION FOUNDATION,

Amici Supporting Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Arenda L. Wright Allen, District Judge. (2:22-cr-00047-AWA-LRL-1)

Argued: September 12, 2025 Decided: October 14, 2025

Before AGEE, RICHARDSON and BERNER, Circuit Judges.

Affirmed in part and remanded with instructions by unpublished per curiam opinion.

ARGUED: Matthew Michael Larosiere, Lake Worth, Florida, for Appellant. Jacqueline Romy Bechara, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, for Appellee. **ON BRIEF:** Jessica D. Aber, United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, for Appellee. Joseph G.S.

Greenlee, GREENLEE LAW, PLLC, McCall, Idaho, for Amici Curiae.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

A jury found Defendant Patrick Tate Adamiak guilty of receiving and possessing an unregistered firearm, possessing and transferring a machinegun, and three counts of receiving and possessing an unregistered destructive device. The district court sentenced him to twenty years' imprisonment. On appeal, Adamiak contends that at least one of his convictions violated the Double Jeopardy Clause of the Fifth Amendment. He further objects to the adequacy of the indictment under which he was charged, the sufficiency of the evidence against him, the district court's jury instructions, and his sentence. Finally, Adamiak argues that his convictions violate the Second Amendment and that the statutes under which he was convicted are unconstitutionally vague. Only his Double Jeopardy argument succeeds. Having thoroughly reviewed the record and carefully considered the briefs, arguments, and materials provided by the parties, we discern no other reversible error.

I. Analysis

We properly assert jurisdiction over this appeal pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742. We "review the district court's factual findings . . . for clear error, but we review its legal conclusions de novo." *United States v. Perry*, 757 F.3d 166, 171 (4th Cir. 2014) (quoting *United States v. Woolfolk*, 399 F.3d 590, 594 (4th Cir. 2005)). As for challenges to sufficiency of the evidence, "reversal . . . will be confined to cases where the prosecution's failure is clear," and no "rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *United States v. Green*, 599 F.3d 360,

367 (4th Cir. 2010) (first quoting *Burks v. United States*, 437 U.S. 1, 17 (1978), then quoting *United States v. Madrigal–Valadez*, 561 F.3d 370, 374 (4th Cir. 2009)).

A. Double Jeopardy

We turn first to Adamiak's argument under the Fifth Amendment's Double Jeopardy Clause, which provides that no person shall "be subject for the same offence to be twice put in jeopardy of life or limb." U.S. Const. amend. V. The clause "prohibits the government from subjecting a person to 'multiple punishments for the same offense.'" *United States v. Schnittker*, 807 F.3d 77, 81 (4th Cir. 2015) (quoting *Ohio v. Johnson*, 467 U.S. 493, 498 (1984)). "To determine whether two offenses charged under separate statutes are the same offense, courts apply the *Blockburger* test." *United States v. Whitley*, 105 F.4th 672, 677 (4th Cir. 2024). "If each offense 'requires proof of a fact that the other does not, the *Blockburger* test is satisfied,' meaning the two offenses are not the same, 'notwithstanding a substantial overlap in the proof offered to establish the crimes.'" *Id.* (citing *Brown v. Ohio*, 432 U.S. 161, 166 (1977)). This particular requirement of the Double Jeopardy Clause "ensure[s] that the sentencing discretion of courts is confined to the limits established by the legislature." *Johnson*, 467 U.S. at 499. It follows, then, that "cumulative sentences are not permitted" for convictions constituting the same offense "unless elsewhere specifically authorized by Congress." *Missouri v. Hunter*, 459 U.S. 359, 367 (1983) (emphasis omitted) (quoting *Whalen v. United States*, 445 U.S. 684, 693 (1980)).

Adamiak contends, and the Government concedes, that his convictions and consecutive sentences on Counts One and Two of the indictment, for possessing or receiving an unregistered firearm in violation of 18 U.S.C. § 5861(d) and possessing or transferring a machinegun in violation of 18 U.S.C. § 922(o), violate the Double Jeopardy Clause. We agree. As charged, the jury could convict Adamiak based on the same facts: knowing possession of a machinegun. *See United States v. Kuzma*, 967 F.3d 959, 977 (9th Cir. 2020). Thus, the Section 922(o) offense does not require proof of any fact that the Section 5861(d) offense does not. *See Whitley*, 105 F.4th at 677. Neither statute evinces a clear Congressional intent to authorize cumulative punishment. *See Missouri*, 459 U.S. at 366–67 (quoting *Whalen*, 445 U.S. at 691–92, 693); *Kuzma*, 967 F.3d at 977. They are thus "the same offense for double jeopardy purposes." *Whitley*, 105 F.4th at 678 (quoting *Currier v. Virginia*, 585 U.S. 493, 500 (2018)).

Because Adamiak's convictions and consecutive sentences on Counts One and Two violate his Fifth Amendment right, "the only remedy consistent with [ ] congressional intent is for the District Court, where the sentencing responsibility resides, to exercise its discretion to vacate one of the underlying convictions." *Ball v. United States*, 470 U.S. 856, 864 (1985). We therefore remand with instructions to vacate Adamiak's conviction under either Count One or Count Two, and to resentence Adamiak in a manner consistent with this opinion.

B. Adequacy of the Indictment

We next turn to the adequacy of the indictment. "[A]n indictment must contain the elements of the offense charged, fairly inform a defendant of the charge, and enable the defendant to plead double jeopardy as a defense in a future prosecution for the same offense." *United States v. Barringer*, 25 F.4th 239, 246–47 (4th Cir. 2022) (quoting *United States v. Kingrea*, 573 F.3d 186, 191 (4th Cir. 2009)). "It is generally sufficient" for "an indictment [to] set forth the offense in the words of the statute itself." *Perry*, 757 F.3d at 171 (quoting *Hamling v. United States*, 418 U.S. 87, 117 (1974)). The indictment must also include "a statement of the facts and circumstances" necessary to inform the accused of the particular offense with which he is charged. *Id.* (quoting *Hamling*, 418 U.S. at 117–18).

Counts One, Three, Four, and Five allege violations of 26 U.S.C. § 5861(d), which criminalizes the unlawful possession of an unregistered firearm or destructive device. That statute makes it "unlawful for any person to" (1) "receive or possess" (2) "a firearm" (3) "which is not registered to him in the National Firearms Registration or Transfer record" with (4) knowledge that the features of the relevant firearm "brought it within the scope of the Act." 26 U.S.C. § 5861(d); *Staples v. United States*, 511 U.S. 600, 619 (1994). Count Two alleges unlawful possession and transfer of a machinegun in violation of 18 U.S.C. § 922(o). That statute makes it unlawful for any person to (1) transfer or possess (2) a machinegun with (3) knowledge that the relevant weapon possessed characteristics that qualified it as a machinegun. 18 U.S.C. § 922(o); *Staples*, 511 U.S. at 619.

The indictment against Adamiak states each element of the relevant offenses. It further specifies which items within Adamiak's possession comprised the basis of the relevant offense. It lists a PPSH machinegun as the basis for the first two firearms counts. As to the remaining three counts, it lists a M79, 40mm grenade launcher, a M203, 40mm grenade launcher and two RPG-7 variant recoilless antitank projectors. This detail adequately informed Adamiak of the nature of the charges against him. To the extent he desired further specificity, he could have sought a bill of particulars. *United States v. Powers*, 40 F.4th 129, 136 (4th Cir. 2022) ("A defendant who needs evidentiary details beyond those provided in the indictment to prepare his defense may seek a bill of particulars"). He did not.

Adamiak further argues the indictment is deficient because it does not specify which statutory definition of "machinegun" or "destructive device" applies to the relevant item. There is no basis for this argument in the relevant case law, nor is such detail required to accord with the requirements and purpose of an indictment. *See United States v. Resendiz-Ponce*, 549 U.S. 102, 109–10 (2007).

C. Remaining Issues on Appeal

Adamiak's remaining arguments fare no better. He argues that the question of whether the items discovered in his home qualify as "machineguns" or "destructive devices" is one of law that should not have been submitted to the jury. Not so. "[W]hile 'the judge must instruct the jury on the *law applicable* to the issues raised at trial . . . . [,] the next two steps are *strictly for the jury*: (1) determining the facts as to each element of

the crime, and (2) applying the law as instructed by the judge to those facts.'" *United States v. Lindberg*, 39 F.4th 151, 160 (4th Cir. 2022) (quoting *United States v. Johnson*, 71 F.3d 139, 142 (4th Cir. 1995), *abrogated on other grounds by United States v. Medley*, 972 F.3d 399, 412 (4th Cir. 2020) (en banc)); *see also United States v. Ramirez-Castillo*, 748 F.3d 205, 213 (4th Cir. 2014) ("[T]he jury's constitutional responsibility is not merely to determine the facts, but to apply the law to those facts and draw the ultimate conclusion of guilt or innocence." (quoting *United States v. Gaudin*, 515 U.S. 506, 514 (1995)).

A thorough review of the record shows sufficient evidence for the jury to convict Adamiak of the charged offenses. The Government put forth the testimony of federal law enforcement agents involved in the investigation, a cooperating informant, an individual that interacted with Adamiak in a professional capacity as a firearms retailer, and several expert witnesses. "[A]ny rational trier of fact could have found the essential elements of the crime[s] beyond a reasonable doubt." *Coleman v. Johnson*, 566 U.S. 650, 654 (2012) (emphasis omitted) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

Further, the jury instructions accurately stated the law. Adamiak's Second Amendment challenge is squarely foreclosed by this court's holdings in *Bianchi v. Brown*, 111 F.4th 438, 453 (4th Cir. 2024) and *United States v. Hunt*, 123 F.4th 697, 704 (4th Cir. 2024), and the relevant statutes are not unconstitutionally vague. Finally, we conclude that the district court committed no error in sentencing.

II. Conclusion

For these reasons, we remand to the district court with instructions to vacate Adamiak's conviction on either Count One or Count Two, and to resentence accordingly. We otherwise affirm the district court in all other respects.

AFFIRMED IN PART AND REMANDED WITH INSTRUCTIONS

FILED: November 12, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-4451
(2:22-cr-00047-AWA-LRL-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

PATRICK TATE ADAMIAK

Defendant - Appellant

FIREARMS POLICY COALITION; FPC ACTION FOUNDATION

Amici Supporting Appellant

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 40 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Agee, Judge Richardson, and Judge Berner.

For the Court

/s/ Nwamaka Anowi, Clerk